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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL RODMAN, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SAFEWAY INC.,

Defendant.

Case No. 3:11-CV-03003 JST (JCS)

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND EXPENSE REIMBURSEMENT, SERVICE AWARD, AND APPROVAL OF JUDGMENT DISTRIBUTION PLAN

Date: **March 29, 2018**
Time: **2:00 p.m.**
Courtroom: **9 – 19th Floor**

The Honorable Jon S. Tigar

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT, pursuant to this Court's Order Regarding Judgment Distribution (ECF #475), on March 29, 2018 at 2:00 p.m., or as soon as thereafter as counsel may be heard in Courtroom 9 of the above-entitled Court, located at 450 Golden Gate Avenue, 19th Floor, San Francisco, California, 94102, the Honorable Jon S. Tigar presiding, Plaintiff, Michael Rodman ("Plaintiff" or Rodman"), and Class Counsel will move for an award of 35% of Judgment for attorneys' fees and unreimbursed expenses, a $10,000 Service Award for Representative Plaintiff, and approval of the proposed Plan of Judgment Distribution.

This motion is based upon this Notice of Motion and Motion and the Memorandum of Points and Authorities filed concurrently herewith, the declarations of Steven A. Schwartz, James C. Shah, Mathew Wessler, Michael Rodman, and Brian Devery filed concurrently herewith, all other pleadings, papers, records and documentary materials and file were deemed to be on file in this action, those matters of which the court may take judicial notice, and upon the oral arguments of counsel made at the hearing on this motion.

Respectfully Submitted,

Date: January 4, 2018

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By: */s/ Steven A. Schwartz*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff, Michael Rodman ("Rodman"), and Class Counsel litigated this matter for more than six years against an unyielding defendant vigorously represented by skilled counsel.[1] Every single step of this litigation was hard-fought -- from the motion to dismiss, through numerous discovery disputes, class certification, decertification, two rounds of cross motions for summary judgment, and then through the eve of trial, a new round of discovery, the eve of a second scheduled trial, and appeal. At the end of the day, Class Counsel met the challenge and obtained a judgment of more than $42 million, representing 100% of damages plus pre- and post-judgment interest. Moreover, Safeway will soon pay over $100,000 in taxable costs and has also agreed to pay the administration costs (estimated at over $350,000) to provide notice and distribute the Judgment.[2]

By this Motion, Plaintiff and Class Counsel request that the Court:

- Award 35% of the Judgment for attorneys' fees and unreimbursed (*i.e.*, non-taxable) expenses;[3] and
- Approve a $10,000 Service Award for Rodman for his efforts in achieving the Judgment; and
- Approve the Plan of Judgment Distribution, including the proposed *cy pres* payment of any residual funds to Meals on Wheels.

[1] Safeway's counsel through the majority of this case, Craig Cardon, was recently recognized by Law360 as a "2017 MVP" for his work on retail and ecommerce matters. https://www.law360.com/articles/989749/mvp-sheppard-mullin-s-craig-cardon

[2] The parties agreed to defer discussion of the responsibility for administration costs of any secondary distribution.

[3] Class Counsel have incurred approximately $267,212.28 in unreimbursed expenses, net of taxable costs to be paid by Safeway. Class counsel do not seek a separate award for these expenses. Rather, they are included in the requested 35% award.

If approved, the 35% Fee and Expense award will result in Class Counsel receiving a 2.1 multiple on their lodestar for their dogged work. At the same time, class members will receive in the first distribution an average net recovery of 89% of the markup they paid. Moreover, given the likelihood of a secondary distribution due to uncashed checks, it is likely that class members who cash their checks will ultimately receive the full amount of their markup plus most, if not all, of the associated interest.

Given the exceptional result here -- a full recovery of damages plus pre- and post-judgment interest, taxable costs, and administration costs -- as well as the effort required to achieve it, the requested fee/expense award is appropriate under the governing standards using either a percentage-of-the-fund or lodestar-plus-multiplier methodology. For example, the Supreme Court of California recently affirmed a fee award representing 33.33% of a $19 million common fund, plus expenses, where the amount recovered was only 16% of the total amount in controversy in the case. *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, (2016) and 231 Cal. App. 4th 860, 869 (Cal. App. 2nd 2014).

As this Court and the Ninth Circuit have held, the "most important factor is the results achieved for the class" and "[o]utstanding results merit a higher fee." *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 U.S. Dist. Lexis 102408 at *62-64, 68-69, 71 (N.D. Cal. Aug. 3, 2016) (citing cases and awarding 27.5% fee, representing 1.94 lodestar multiple, based on 20 percent recovery of damages, and discussing cases with awards of up to 30%); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 U.S. Dist. LEXIS 5383 at *171 (N.D. Cal. Jan. 14, 2016) (awarding 30% fee, plus expenses); *Betancourt v. Advantage Human Resourcing, Inc.*, No. 14-cv-01788-JST, 2016 U.S. Dist. LEXIS 10361 at *13-14, 24 (N.D. Cal. Jan. 28, 2016) (awarding 34.3% of recovery that represented only 9.7% of maximum potential recovery and noting that

"the majority of class action settlements approved" have "fee multipliers that" fall "between 1.5 and 3," *citing Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming 3.63 multiple); *Willner v. Manpower, Inc.*, No. 11-cv-02946 – JST, 2015 U.S. Dist. LEXIS 80697 at *11, 17-18, 22 (N.D. Cal. June 22, 2015) (awarding 30% or recovery that was only "between 30 and 35%" of potential recovery had the plaintiff "prevailed at trial," and finding that "Multipliers can range from 2 to 4 or even higher."); *see also Ruiz v. XPO Last Mile, Inc.*, 2017 WL 6513962 at *5-7 (S.D. Cal. Dec. 20, 2017) (awarding 35% of $13.9 million settlement fund (representing a 1.78 multiplier), plus almost $250,00 in expenses, even though plaintiffs "may of course have won more at trial."); *Fernandez v. Victoria's Secret Stores, LLC*, 2008 WL 8150856 at *14-16 (C.D. Cal, 2008) (awarding 34% of gift cards valued at $8.5 million (representing a 1.8 multiplier), plus almost $250,000 in expenses, after only 2 years of litigation and before expert discovery or summary judgment proceedings).

Further, the 35% award will represent only a 2.1 multiplier of Class Counsel's lodestar, which is also easily within the range commonly awarded. In another recent case where, as here, counsel achieved a fully-litigated judgment representing a full recovery ($203 million judgment), Judge Alsup awarded fees representing a multiplier of more than 5 times class counsel's lodestar. *Gutierrez v. Wells Fargo*, No. 07-05923-WHA, 2015 US Dist. LEXIS 67298 at *23 (N. D Cal. 2015). *See also* Final Order and Judgment in *In re Real Estate Associates Limited Partnerships Litigation, No.* 98-7035 DDP (C.D. Cal. Nov. 24, 2003) (Schwartz Decl., Exhibit 14) at ¶24) (Judge Dean Pregerson awarded class counsel 35% of an $83 million settlement,[4] plus over $5.7 million in expenses,[5] representing a 1.57 multiplier. *See* Schwartz Decl., ¶ 22.

[4] In that case, lead trial counsel Chimicles & Tikellis LLP obtained an approximate $120 million judgment of damages plus pre-judgment interest before the trial court, and settled the case for $83 million prior to substantive appellate proceedings. Schwartz Decl., ¶22.

Finally, the proposed $10,000 service award for Plaintiff is consistent with governing standards, as is the parties' Plan of Judgment Distribution, including the proposed *cy pres* payment of any residual funds to Meals on Wheels.

II. BACKGROUND

As reflected by the nearly 500 docket entries, securing this recovery required almost seven years of hard-fought litigation. As reflected at paragraph 12 of the Schwartz Declaration, the efforts of Class Counsel and Plaintiff included, but by no means were limited to, the following:

Pleadings: Drafting the Complaint and Amended Complaint and defeating Safeway's Motion to Dismiss.

Document Discovery: Serving nine sets of document requests, nine sets of interrogatories, two sets of requests to admit; reviewing tens of thousands of pages of documents; analyzing numerous, large transaction databases; responding to three sets of interrogatories, and document requests; and conducting substantial investigative work.

Discovery Motions: Participating in dozens of meet and confer sessions concerning discovery disputes; briefing multiple discovery disputes before Magistrate Judge Spero (ECF # 37, 62, 67, 76, 80, 82); attending three hearings before Judge Spero (ECF # 64, 77, 93), and handling emergency pre-trial motions and conferences with the Court related to Safeway's late production of documents from its Legacy Shared Computer Drive Archive (ECF # 378, 379, 380).

Depositions: Conducting 12 depositions of Safeway personnel, former Safeway officers, employees and contractors, and the designee for the Internet Archive; deposing Safeway's damages expert Joseph Anastasi and its Survey expert

[5] Thus, class counsel received almost 42 % of the settlement fund for fees and expenses. Schwartz Decl., ¶22.

David Lewin, and defending the deposition of Plaintiff's damages and database expert Paul Manning, as well as Plaintiff's deposition.

Expert Discovery: Working with Plaintiff's consulting and testifying database experts in evaluating Safeway's database productions (which had to be repeatedly be reproduced due to missing data fields and compilation mistakes identified by Class Counsel and their experts) and in connection with testifying-expert Paul Manning's report and supplemental report regarding damages; consulting with non-testifying survey experts and working with those experts to address the expert reports proffered by Safeway.

Contested Motion Practice: Briefing and arguing myriad motions, including motions for class certification, decertification, permission for interlocutory appeal, two rounds of cross motions for summary judgment with supplemental briefing and sur-replies regarding liability, contract modification, damages, affirmative defenses, and the limitation of liability clause in Safeway's online grocery contract, reconsideration, motions to strike, evidentiary objections, and *Daubert* motions.

Trial Preparation: Fully preparing for two distinct trials related to pre-2006 damages issues, including filing the required Joint Pretrial Statement, briefing numerous motions *in limine*, participating in the final pretrial conference, interviewing and preparing witnesses, assembling and exchanging all trial exhibits and compiling impeachment exhibits and related work with vendors to load exhibits with appropriate highlights and call-outs for trial-presentation purposes, and preparing outlines for opening and closing arguments, direct examination and cross examination of witnesses, and preparing for anticipated legal issues in connection with trial.

Settlement Negotiations: Briefing and participating in a court-ordered Early Neutral Evaluation before Stephen Taylor; briefing and preparing for a mediation before retired Judge William Cahill of JAMS including various pre-mediation phone

calls/meeting with Judge Cahill; fully briefing and participating in a mediation before retired Judge Edward Infante of JAMS; and participating in the Ninth Circuit's mediation process.

Appellate Proceedings: Fully briefing and arguing Safeway's appeal to the Ninth Circuit and related preparation, including various moot courts and consultations with appellate specialists Gupta Wessler PLLC, whom Class Counsel retained to assist in defeating Safeway's appeal. *See* Wessler Declaration

Judgment Distribution Related Work: Consulting with various administrators, conducting legal and other independent research and evaluating and crafting plans for an effective notice program, judgment distribution program, and to minimize uncashed checks; successfully negotiating with Safeway to pay class counsel's taxable costs of $118,610.80, plus the costs of Judgement Administrator, Angeion Group, (estimated at over $350,000) for notice and judgment distribution services.[6]

Update regarding Notice: Consistent with this Court's Order Regarding Judgment distribution (ECF#475), Judgment Administrator, Angeion Group, has updated the class member address lists and distributed Notice to class members. *See* Devery Declaration. Notice was disseminated on December 15, 2017. The deadline for any objections from class members is March 2, 2018. To date, no class member has filed any objection or reached out to Class Counsel or the Judgment Administrator to raise any objections. Schwartz Decl., ¶15; Devery Decl., ¶17. Class Counsel and the Judgment Administrator have collected updated contact information to further update the Class List and also responded to all substantive

[6] While Class Counsel believe Safeway is responsible for such costs, *see Hunt v. Imperial Merchant Services, Inc.*, 560 F.3d 1137, 1144 (9th Cir. 2009), the authority is not singular on the issue. Indeed, Judge Alsup recently refused to order Wells Fargo to pay such costs. *See Gutierrez*, 2015 US Dist. LEXIS 67298 at *29. Securing Safeway's agreement, therefore, ensured that class members' net recovery would not be diluted by administrative expenses.

inquiries from class members. Schwartz Decl., ¶15; Devery Decl., ¶3, 8-15, 17. Class Counsel will address class members' reaction to the Fee/Expense request, service award, and plan of distribution in their reply due on March 16, 2018. As reflected at paragraph 11 of the Rodman declaration, he supports Class Counsel's fee request.

III. ARGUMENT

A. Governing Standards For Fees

Rule 23(h): Even though Class Counsel seek fees from a judgment fund, and not a settlement fund, their fee request is still subject to Court review and approval pursuant to Fed. R. Civ. P. 23(h).

California Law: All of Class members' claims were based on California contract law pursuant to a California choice-of-law provision in Safeway's online grocery delivery contract. Moreover, this Court's jurisdiction was based on diversity. Accordingly, as this Court held in *Willner*, 2015 U.S. Dist. LEXIS 80697 at *15-16:

> The law governing the settled claims, here California law, also governs the award of fees. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) ("Because Washington law governed the claim, it also governs the award of fees."). Nevertheless, the Court may still look to federal authority for guidance in awarding attorneys' fees. *See Apple Computer, Inc. v. Superior Court*, 126 Cal. App. 4th 1253, 1264 n. 4, 24 Cal. Rptr. 3d 818 (2005) ("California courts may look to federal authority for guidance on matters involving class action procedures.").

Accord Klein v. City of Laguna Beach, 810 F.3d 693, 701 (9th Cir. 2016) ("federal courts apply state law for attorneys' fees to state claims because of the *Erie* doctrine").

Percentage Method with Lodestar Crosscheck: In determining the appropriate fee in connection with a common fund settlement, "courts have

discretion to employ either the lodestar method or the percentage-of-recovery method." *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 U.S. Dist. Lexis 102408 at *61, quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *accord Willner*, 2015 U.S. Dist. LEXIS 80697 at *15-16; *Betancourt*, 2016 U.S. Dist. LEXIS 10361 at *20, citing *In re Bluetooth* and *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 27, 97 Cal. Rptr. 2d 797 (2000) ("Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.").[7] Courts typically exercise their discretion to use the percentage method, where, as here, there is an easily-quantified common fund, in lieu of engaging in the more time-consuming task of calculating the lodestar. *Id.* In such cases, courts typically perform a "lodestar cross-check to ensure the reasonableness of its selected percent-of-the-fund award." *In re Cathode Ray Tube (CRT)*, 2016 U.S. Dist. Lexis 102408 at *71; *Willner*, 2015 U.S. Dist. LEXIS 80697 at *17, citing *In re Bluetooth* and *In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512, 89 Cal. Rptr. 3d 615 (2009).

In the Ninth Circuit, the "benchmark" percentage for an award of attorneys' fees in a class action is 25 percent. *In re Cathode Ray Tube (CRT)*, 2016 U.S. Dist. Lexis 102408 at *61-62, citing *In re Bluetooth*, 654 F.3d at 942. This benchmark is just a starting place, however, and the Court must determine the appropriate percentage by "tak[ing] into account all of the circumstances of the case." *Id*. at 62, citing *Vizcaino*, 290 F.3d at 1048.

***Ketchum/Kerr* Factors**:

Under both California and Ninth Circuit law, courts consider various factors to determine whether an upward adjustment to the 25% benchmark or a multiplier on counsel's lodestar is warranted. Under California law, courts typically consider the

[7] Like this case, *Betancourt* involved California state-law claims litigated in this Court pursuant to diversity jurisdiction. *Id*. at *2-3, 7.

following adjustment factors in deciding an appropriate fee award: (1) the results achieved for the class; (2) the complexity of the case and the risk of and expense to counsel of litigating it; (3) the skill, experience, and performance of counsel (both sides); (4) the contingent nature of the fee; and (5) fees awarded in comparable cases. *See Ketchum v. Moses*, 17 P.3d 735, 741, 744-45 & n.2 (Cal. 2001); *accord Chaudhry v. City of L.A.*, 751 F.3d 1096, 1106 (9th Cir. 2014) (contingency risk is a relevant factor under California state law); *Garcia v. Resurgent Capital Servs*., 2012 U.S. Dist. LEXIS 123889, at *33 (N.D. Cal. Aug. 30, 2012) (same); *see also Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 489, (2016) (citing *Lealao*).

Court applying federal law consider similar factors. *CRT,* 2016 U.S. Dist. Lexis 102408 at *61-62 at 62, citing *Vizcaino*, 290 F.3d at 1048-1049 and *In re Bluetooth*, 654 F.3d at 941-42.[8] These factors are referred to as the "*Kerr* factors." *Id*. at *62, citing *Fischer v. SJB-P.D. Inc*., 214 F.3d 1115, 1119 (9th Cir. 2000) and *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.1975), abrogated on other grounds by *City of Burlington v. Dague*, 505 U.S. 557(1992); *see also Stetson v. Grissom*, 821 F.3d 1157, 1166-67 (9th Cir. 2016). Generally, however, under California law, "trial courts have considerably wider latitude … in the selection of factors that may be used …." *Lealao*, 97 Cal. Rptr. 2d at 815 (citation omitted).

B. The Court Should Approve 35% Fee/Expense Request

All of the *Ketchum/Kerr* factors support the requested fee.

1. The Results Achieved for the Class

"The most important factor is the results achieved for the class. Outstanding results merit a higher fee." *In re Cathode Ray Tube (CRT)*, 2016 U.S. Dist. Lexis 102408 at *62-63, citing *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) and *In re Bluetooth, 654 F.3d at 942*. Class Counsel here obtained a 100% recovery of breach of contract damages, pre- and post-judgment interest,

taxable costs, plus the costs of notice and judgment administration expenses.[8] Very few class action settlements in the Ninth Circuit or elsewhere have resulted in full recoveries of damages plus interest, and even fewer litigated judgments in class actions have resulted in the full recovery achieved here. In the *CRT* cases, this Court awarded 30% and 27% of the common fund even though the recoveries, while impressive, fell far short of the complete recovery here. In the *Gutierrez* and *Real Estate Associates* cases, cited above, class counsel's results amply justified the 35% percentage award and a 5-times multiplier award (about 2.5 times the requested multiplier here). In *Betancourt*, this Court awarded 34.3% of the common fund recovery because "the average individual recovery for attending an interview exceeds the average hourly rate" that class members should have been paid (even though that recovery represented only 9.7% of maximum potential recovery when including potential statutory damages). 2016 U.S. Dist. LEXIS 10361 at *2-3, 13-14, 24.

Given the outstanding recovery here, and the effort that was required to achieve it, a 35% fee is well-deserved. This is particularly true since, even after payment of 35% in fees and expenses, the class will still receive a net recovery of 89% of the markup, and those class members who cash their checks could easily receive their full share of markup plus interest after a second round distribution due to uncashed checks.

2. The complexity of the case and the risk of and expense to counsel of litigating it

As set forth above and as reflected by nearly 500 docket entries, this case involved complex legal and factual issues, including the issue of first impression that

[8] It is appropriate to include the costs of notice in the valuation of the common fund for percentage-fee purposes. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015); *Staton v. Boeing Co.*, 327 F.3d 938, 974-975 (9th Cir. 2003). Class Counsel's 35% request does not, however, seek fees based on the approximately $350,000 of such costs being paid by Safeway.

went up to the Ninth Circuit, concerning whether online terms conditions can bind consumers to future amendments without actual notice of amendments. Additional complex issues included: class certification issues; the facts surrounding Safeway's online grocery delivery business and its historical contracts; changes to those contracts; FAQs, advertising, and course of conduct over a decade; legal contract liability issues including contract formation issues, expert survey evidence, and difficult damages issues; Safeway's affirmative defenses; and appellate issues. The Court once described this case as "one of the most interesting cases I have." ECF #400, at 7.

In prosecuting the case, Class Counsel incurred a substantial lodestar – almost $7 million – and almost $400,000 in expenses, all contingent on success. Given Safeway's hard-nosed litigation strategy and unwillingness to settle the case at any stage of the litigation, Class Counsel faced substantial risks in prosecuting class members' claims.

3. The skill, experience, and performance of counsel (both sides)

This factor strongly supports an upward adjustment, not just due to the skillful and efficient performance of Class Counsel, but also due to the caliber of Safeway's attorneys and the vigorous defense put forth by Safeway. As the Court is aware, nearly every issue in the case was contested, resulting in protracted litigation with risk at every step.

Safeway is a billion dollar company with formidable in-house attorneys that made a decision to vigorously contest the litigation. Schwartz Decl., ¶12. Judge White repeatedly recommended that the parties explore early settlement (*See* ECF# 55, at 8:18-24; ECF# 69). Safeway, however, refused to participate in an early mediation before retried Judger Cahill of JAMS, and a subsequent mediation with Judge Infante was unproductive.. Schwartz Decl., ¶12.

Safeway's lead outside counsel Craig Cardon is an Executive Committee member of Global 100 law firm Sheppard Mullin and widely recognized as a formidable adversary. Mr. Cardon was assisted by his partner Anna McLean among others at Sheppard Mullin and, during the course of the litigation, by highly-distinguished Reed Smith Appellate specialists Paul Fogel and Brian Sutherland. Safeway also employed two renowned experts form Berkley Research Group. *Id*. at ¶13. After Sheppard Mullin's withdrawal from the case, a four-partner team of litigators from Reed Smith joined Messrs. Fogel and Sutherland in defending Safeway. *Id*. In short, Safeway hired the best, most aggressive lawyers with instructions to concede nothing and litigate everything.[9]

In the face of this formidable team of adversaries, Class Counsel skillfully and doggedly prosecuted class members' claims to judgment and defeated Safeway's appeal. Class Counsel Messrs. Schwartz and Mathews of Chimicles &Tikellis LLP have a track record of success in prosecuting complex, cutting edge national class actions, including other full recovery outcomes in this court, such as a $53 million settlement with Apple in which class members received on average a net recovery of about 117%. *Id*. at ¶¶6-8.[10] Judge Olguin of the Central District of California recently described Messrs. Schwartz of Matthews as "among the most capable and experienced lawyers in the country in [consumer class actions]." *Chambers v. Whirlpool*, 214 F. Supp. 3d 877, 902 (C.D. Cal. 2016). Likewise, Mr. Shah and his firm, Shepherd, Finkelman Miller and Shah LLP, have a long history of obtaining excellent results on behalf of classes they represent. *See* Shah Declaration at ¶¶9-10. The qualifications of Class Counsel are set forth in more detail in the Schwartz and

[9] The "concede nothing" attitude changed somewhat shortly before the second-scheduled trial, after the Reed Smith litigators took over the representation. *Id*. But Reed Smith vigorously prosecuted Safeway's appeal.

[10] They have also achieved other full or near-full class recoveries in cases against Siemens, T-Mobile, Whirlpool, Bayer Corp., American Airlines, Merrill Lynch, 24 Hour Fitness, and Nationwide Insurance. *Id*.

Shah declarations. The Wessler declaration sets forth the experience of Gupta Wessler PLLC, one of the most highly-regarded appellate firms that Class Counsel hired to assist in defense of Safeway's appeal.

Absent Class Counsel's skill and tireless efforts, class members' recovery would have, at best, been far less than the full recovery achieved here.

4. The contingent nature of the fee

Class Counsel's fee was entirely contingent. They litigated the case for more than six years, foregoing work on other matters, with the risk that all could have been for naught. Moreover, Class Counsel were not assisted by any governmental investigation or newspaper expose.[11] They prosecuted the case themselves (with the assistance of Rodman) and faced an intransigent adversary. Moreover, the fact that there were no copycat cases filed by other class action firms – in a practice area where copycats are frequent – suggests that this was perceived as a difficult case. Accordingly, "this factor weighs strongly in favor of an increase from the Ninth Circuit 25% benchmark for attorney's fees." *In re (CRT)*, 2016 U.S. Dist. Lexis 102408 at *67-68.

5. Fees awarded in comparable cases

Because this case was fully-litigated to judgment for the entire amount of potential damages, plus interest, which was successfully defended on appeal, there are very few truly "comparable" class action cases. In the *CRT* cases, where far less than 100% of damages were recovered, this Court awarded 30% and 27.5% to class

[11] *See Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (awarding multiplier in part based upon finding "that counsel faced substantial risk in prosecuting this action [in that it] did not have the benefit of fruits from underlying government actions"), remanded on other grounds, 2010 U.S. Dist. LEXIS 24155 (C.D. Cal. Feb. 3, 2010); *cf. Coordination Proceeding Special Title Rule 1550b*, 2004 Cal. Super. LEXIS 257, *25 (2004) (multiplier should be reduced because "[c]lass counsel fail to reconcile their risk assessment with the benefits they obtained . . . other earlier government and private . . . proceedings . . ." and observing that "[t]he ability to rely upon a prior government enforcement action is widely understood by courts and commentators to materially reduce contingent risk.").

counsel representing the direct and indirect purchaser classes, respectively, and discussed other cases involving awards between 25% and 30%. Other decisions reflect awards of similar and even higher percentages for lesser results than achieved here. *See In re Toyota Motor Corp. Unintended Acceleration Mktg.,Sales Practices, & Prods. Liab. Litig.*, No. 8:10ML 02151 JVS (FMOx), 2013 U.S. Dist. LEXIS 123298 at *307-309 (C.D. Cal. July 24, 2013) (awarding 2.87 lodestar multiplier and citing "empirical study" that "in 2006 and 2007" the most frequently awarded percentages for attorneys' fees in the Ninth Circuit were "25 percent, 30 percent and 33 percent" and that across all federal courts, "[n]early two-thirds of the awards were between 25 percent and 35 percent."), citing, among other cases, *In re Vitamins Antitrust Litig.*, MDL No. 1285, 2001 U.S. Dist. LEXIS 25067, (D.D.C. July 16, 2001) (awarding 34 percent of $365 million settlement fund).

None of those cases involved anything remotely approaching a full recovery. This Court's decision to award 34.3% in *Betancourt* is much closer on point as is Judge Pregerson's 35% award in *Real Estate Associates*. Likewise, in *Laffitte*, the Supreme Court of California affirmed a fee award representing 33.33% of a $19 million common fund, plus expenses, where the amount recovered was only 16% of the total amount controversy in the case. *See* 1 Cal. 5th 480, and 231 Cal. App. 4th 860, 869. The decisions in *Ruiz* and *Fernandez* awarding 35% and 34% percent plus expenses also support the percentage requested here.

Moreover, this is not a case "where awarding 25% [or more] of a 'megafund' would yield windfall profits for class counsel in light of the hours spent on the case. *See In re CRT*, 2016 U.S. Dist. Lexis 102408 at *69-70. Unlike the *CRT* cases and others discussed in this Court's fee decisions where the potential damages were enormous, thereby resulting in large common fund recoveries despite recovering only a fraction of potential damages, here the maximum potential damages were in the low tens of millions, and the Judgment Fund is slightly more than $42 million

due to Class Counsel's diligence and efforts in recovering the totality of the damages, plus interest and taxable costs. In megafund cases, this Court has relied upon a lodestar cross-check to evaluate the propriety of a fee award. *Id*. As reflected below, a crosscheck of Class Counsel's lodestar reveals that the 35% request results in a lodestar multiplier of about 2.1, which is well within range of fees awarded in less successful cases.

6. Lodestar cross check

Class Counsel's lodestar through December 2017 is $6,882,750.93 as follows:

Firm	Hours	Lodestar
Chimicles & Tikellis LLP	7,698.14	$4,754,492.33
Shepherd Finkelman Miller & Shah LLP	3,175.40	$1,923,363.00
Gupta Wessler PLLC	323.22	$204,895.60
TOTALS	**11,196.76**	**$6,882,750.93**

See Schwartz, Shah and Wessler Declarations at ¶ 18 & Exhibit 2, ¶ 5 & Exhibit 1, and ¶ 9 respectively.[12] That lodestar will increase as Class Counsel continue to perform their duties managing the distribution of the Judgement. Thus, if the Court grants the requested 35% fee/expense request, the multiple on Class Counsel's

[12] Class Counsel maintain contemporaneous detailed time records (*id*. at ¶¶ 17, 4, and 3 respectively) and their rates are consistent with those upheld by this Court in *In re CRT*, 2016 U.S. Dist. LEXIS 24951 at *303-305. Moreover, undersigned Class Counsel's rates have been repeatedly been approved by Courts, including in connection with adversarial fee petitions. *Chambers v. Whirlpool*, 214 F. Supp. at 899 (approving rates of Messrs. Schwartz and Mathews in contested fee proceeding); *In re LG Front-Loading Washing Machine Litigation*, Case No. 08-51 (D.N.J.) at Dkt. No. 421 at page 1 (copy at Schwartz Decl., Exhibit 5 ("the hourly rates of each Lead Counsel firm are likewise reasonable and appropriate in a case of this complexity"); *In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, 44-48 (D.N.J. May 14, 2012) (copy at Schwartz Decl., Exhibit 12) ("The Court finds the billing rates to be appropriate and the billable time to have been reasonably expended."); *Ardon v. City of Los Angeles*, Case No. BS363959 (Superior Court, County of Los Angeles), Final approval Order at 19-20 (copy at Schwartz Decl., Exhibit 10-11 (approving C&T's rates, including Co-Lead Counsel Mr. Mathews' rate). *See generally* Schwartz Decl., ¶ 19 & related exhibits; *see also* Shah Decl., ¶ 6 (listing cases approving rates) and Wessler Decl., ¶ 3.

lodestar will be about 2.1, and that multiplier will continue to decrease as Class Counsel spend more time on behalf of the class.[13]

In addition, Class Counsel have collectively incurred almost $400,000 in expenses, only $118,610.80 of which will be reimbursed by Safeway as a taxable expense,[14] as reflected in the following chart:

Firm	Expenses
Chimicles & Tikellis LLP	305,158.09
Shepherd Finkelman Miller & Shah LLP	$80,664.99
Total	**$385,823.08**
Amount Reimbursed by Safeway	$118,610.80
Unreimbursed Expenses	**$267,212.28**

See Schwartz Decl., ¶ 21 & Exhibit 13; Shah Decl., ¶ 7 & Exhibit 2. Class Counsel do not seek a separate award for unreimbursed expenses. Taking into consideration these expenses and Class Counsel's future expenses and additional legal work reduces the multiplier even more.[15]

As set forth in *In re CRT* (*id*. at 69-70) and discussed above, the Ninth Circuit awarded a 3.63 multiplier in *Vizcaino* and noted that a survey of attorneys' fees found that even in "megafund" cases 83 percent of such cases awarded a multiplier from 1 - 4 and cited other cases awarding multipliers of between 2.5 - 3.5. Like this Court in *Willner*, 2015 U.S. Dist. LEXIS 80697 at *22, Judge Alsup has recognized that "Multipliers can range from 2 to 4 or even higher." *Gutierrez*, 2015 US Dist.

[13] Class Counsel take seriously their obligations to monitor, and prosecute as necessary, notice and settlement/judgment distribution processes, and intend to do so here. Schwartz Decl., ¶14.

[14] Consistent with the parties' Joint Report (ECF#473 at 8), Safeway will soon pay Class Counsel $118,610.80 in taxable costs.

[15] In contrast, all of the cases cited above awarded expenses separate from and in addition to the percentage fee award.

LEXIS 67298 at *22, quoting *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255, 110 Cal. Rptr. 2d 145 (Cal. Ct. App. 2001).

In *Gutierrez*, Judge Alsup awarded a multiplier of 5 to Lead Class Counsel Lieff Cabraser, and even awarded a multiple of 2 to a non-lead firm that was replaced after "many blunders" that "nearly wrecked" the case, including performing a "slapdash job on the original damages study" that resulted in their offering to settle the case for $20 million (less than 10% of the ultimate recovery). 2015 US Dist. LEXIS 67298 at *23-24. Class Counsel's efforts here are comparable to those of Lieff Cabraser in *Gutierrez* and compare favorably to the other firm in that case which still received a 2x multiplier.

In short, a lodestar cross check confirms that Class Counsel's 35% request is more than reasonable.[16]

7. Other Considerations

Most of the criticisms of class actions focus on whether class counsel vigorously represent the interests of class members with undivided loyalty, or whether in too many instances class counsel recover only illusory benefits for class members that are disproportionate with requested fees. In recognition of those concerns, the fee decisions of this Court's and Ninth Circuit seek to properly align the pecuniary incentives of class counsel with the interests of class members by

[16] Class Counsel do not believe that the amount Safeway previously paid Class Counsel for discovery sanctions is relevant to the percentage or lodestar crosscheck analysis. However, it has no material effect even if included. Reducing Class Counsel's lodestar by the sanctions payment for purposes of the lodestar cross check would result in only a roughly 2.33 fee multiple net of expenses (*see* footnotes 3 and 15 above), which is still well-within the common range. Moreover, the total fees (net of expenses) that would be paid to Class Counsel -- even including the sanctions payment -- will be slightly less than 35% of the total benefits they generated when the judgment amount, taxable costs, judgment administration costs, and the sanctions award are factored in (see footnote 8 above).

awarding either higher *or lower* fees based on holdings that: "The most important factor is the results achieved for the class. Outstanding results merit a higher fee" but, in contrast, "where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained." *In re* CRT, 2016 U.S. Dist. Lexis 102408 at *62-63. Approving the 35% request here is consistent with the goal of establish proper incentives for class counsel to maximize recoveries for the classes thy represent.

C. Service Award for Class Representative Michael Rodman

Class Counsel also request that the Court approve a $10,000 service award for Rodman. As class representative, Rodman's efforts included producing hundreds of pages of his personal records (such as bank and credit card statements), responding to several sets of written questions by Safeway, traveling from Philadelphia to San Francisco to appear for a court-ordered Early Neutral Evaluation and then again for a full-day deposition, preparing to appear at trial and working with Class Counsel over the course of more than six years to obtain the Judgment and defend it against Safeway's appeal. Rodman Decl., ¶¶ 2-10; Shah Decl., ¶ 11. Class Counsel submit that the proposed award is consistent with the standards set forth in *Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013) and *Willner v. Manpower, Inc.*, No. 11-cv-02946-JST, 2015 U.S. Dist. LEXIS 80697 at *25-30 (N.D. Cal. June 22, 2015).

D. The Plan of Distribution, Including the *Cy Pres* Residual, Should be Approved

Since the Judgment was affirmed, the Parties, with the assistance of two experienced class action settlement administrators, have engaged in significant discussions and analyses to evaluate how to distribute the Judgment (net of any fees awarded to Class Counsel) to Class members. Schwartz Decl., ¶16. Based on their evaluation, the Parties reached the following agreement:

- Checks will be mailed via first-class US mail.
- The amount of each Class members' check will be each Class members' *pro rata* share of the Judgment available for distribution (*i.e.* the Judgment plus pre- and post-judgment interest minus any attorneys' fees/expenses and service award approved by the Court). Each Class members' *pro rata* share will be based on the amount of the markup that Class member was charged by Safeway, with adjustments for refunds/returns, plus the pre-judgment interest associated with the specific dates of that Class member's grocery transactions;
- Checks will be issued after this Court's decision on Class Counsel's Motion for attorneys' fees/expenses and the proposed service award for Mr. Rodman becomes final. Before mailing out checks, the Judgment Administrator will send an email to Class members with valid email addresses to advise them that their checks will be mailed soon and confirm their mailing address.[17] After checks are mailed, the Judgment Administrator will send at least three reminder emails to Class members who have not cashed their checks. Class members will have 90 days to cash the checks from the date of mailing. To the extent any of the checks come back as undeliverable, the Judgment Administrator will take reasonable steps to identify the correct mailing address for that particular Class member.
- After reasonable efforts by the Parties and Judgment Administrator to encourage Class members to cash checks are exhausted, it is likely that there will be money remaining due to uncashed checks. Depending on

[17] The Parties have also instructed the Judgment Administrator to send an additional mailing to Class members who paid more than $1,000 in total markups reiterating the request in the Notice to ensure that checks are written to the appropriate person or entity.

that amount, Class Counsel anticipate that they will request that, if practicable, the Court approve sending a second check to those Class members *who cashed their first checks* in proportion to their share of the Judgment. *See Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990) ("Federal courts have broad discretionary powers in shaping equitable decrees for distributing unclaimed class action funds."); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 U.S. Dist. Lexis 102408 at *30-31 (N.D. Cal. Aug. 3, 2016). As noted above, Safeway reserves its position with respect to whether any distribution of checks after the first distribution is warranted and how the costs should be allocated for any further check distributions that Class Counsel may advocate.

- To the extent there is any money remaining (whether after a first distribution or a second distribution if one occurs), Class Counsel request, with Safeway's consent, that such remaining money be distributed *cy pres*. Class Counsel propose, and Safeway has agreed, that such remaining money be distributed to Meals on Wheels, a national senior nutrition program, that, among other things, delivers nutritious meals to senior citizens. The *cy pres* of any residual funds to this organization meets the standards set forth in *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011) and *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012) (requiring "a driving nexus between the plaintiff class and the *cy pres* beneficiaries.").

The Court should approve this plan. Mailing checks will result in higher expected cashing rates compared to other methods to get money to class members. Schwartz Decl., ¶16. Calculating each class member's *pro rata* share by taking account of each member's markup and associated interest is the allocation most

consistent with the Judgment, which was an aggregation of the markup and interest for each individual transaction. The plan for multiple email check cashing reminders represents best practice and has been effective in maximizing cashing rates in other cases. *Id*. Redistributing funds from uncashed checks to class members who cashed their checks in the initial round of distribution makes sense. Finally, the proposed *cy pres* distribution to Meals on wheels of any residual after meets the standards set forth in *Nachshin* and *Dennis*, *supra*. Assuming there is a second distribution, such a residual will likely be small. Moreover, before making such a *cy pres* distribution, once the exact amount is known, Class Counsel will request Court approval.

IV. CONCLUSION

Representative Plaintiff Michael Rodman and Class Counsel respectfully request that the Court approve Class Counsel's request for attorneys' fees and expenses, approve the $10,000 service award, and approve the proposed plan of judgment distribution. Plaintiff and Class Counsel will provide an update to the Court and address any objections or other comments by class members in their Reply currently due on March 15, 2018.

Respectfully Submitted,

Date: January 4, 2018

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MICHAEL RODMAN and the Class

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2018, I electronically filed the Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Attorneys' Fees and Expense Reimbursement, Service Award, and Approval of Judgment Distribution Plan using this Court's CM/ECF system. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

Dated: January 4, 2018

/s/ Steven A. Schwartz
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on behalf of himself and all others
similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL RODMAN, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SAFEWAY, INC.,

Defendant

No. CV 11-03003-JST(JCS)

DECLARATION OF STEVEN A. SCHWARTZ IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND EXPENSE REIMBURSEMENT, SERVICE AWARD, AND APPROVAL OF JUDGMENT DISTRIBUTION PLAN

Date: **March 29, 2018**
Time: **2:00 p.m.**
Courtroom: **9 – 19th Floor**

I, Steven A. Schwartz, declare as follows:

1. I am a partner at the law firm of Chimicles & Tikellis LLP in Haverford, Pennsylvania. My partner, Timothy N. Mathews, and I, along with our co-counsel James C. Shah from the law firm of Shepherd, Finkelman, Miller & Shah, LLP, are Court-appointed Class Counsel for the Plaintiff and the Class in the above-captioned action ("Action"). I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees and Expense Reimbursement, Service Award, and approval of the plan of Judgment distribution. I have personal knowledge of the facts set forth in this declaration, and if called as a witness can and would testify competently thereto. My partner Mr. Mathews and I have worked closely together on this case from the outset. Collectively, we have been involved in all aspects of the prosecution of this case. Mr. Mathews has reviewed this declaration and assisted in its preparation. My co-counsel James C. Shah has also reviewed this declaration.

FIRM AND ATTORNEY BACKGROUND, AND BILLING RATES

2. Chimicles & Tikellis LLP ("C&T) is a leading national class action law firm with offices in Haverford, Pennsylvania and Wilmington, Delaware. A copy of C&T's firm resume is attached as Exhibit 1 hereto. For over 30 years, C&T's attorneys have concentrated in prosecuting class actions across the country. C&T has recovered billions of dollars on behalf of institutional, individual, and business clients in securities, corporate derivative, consumer, and antitrust litigation nationwide. With top-to-bottom staffing and wide-ranging experience, C&T has successfully litigated numerous cases where, like here, we have achieved exceptional results.

3. I graduated from Duke Law School in 1987, where I served as an editor and a senior editor of *Law & Contemporary Problems.* I am admitted to practice in the Commonwealth of Pennsylvania, the Supreme Court of the United States, the Courts of Appeals for the Third, Sixth, Eighth, and Ninth Circuits, and the United States

District Courts in the Eastern and Western Districts of Pennsylvania, The Eastern District of Michigan, and the District of Colorado. I am a member in good standing in every court to which I have ever been admitted to practice, and have never been the subject of any disciplinary proceedings. I hold an "AV" rating from Martindale Hubbell and have been named a "Super Lawyer" by Law & Politics and the publishers of *Philadelphia Magazine* every year beginning in 2006 and a Top 100 Trial Lawyer by National Trial Lawyers the last few years.

4. I have substantial experience in class litigation in state and federal courts across the country. At the beginning of my legal career, I defended class actions as an associate at Schnader Harrison Segal & Lewis. In 1990, I joined a predecessor firm of my current partner Nicholas Chimicles and have concentrated in prosecuting class actions since then.

5. My firm takes seriously its fiduciary duty to the classes it is appointed to represent, and accordingly, has a longstanding culture that strives to obtain the maximum recovery possible for our clients. The full recovery judgment in this case is consistent with that culture.

6. While achieving full recoveries/judgments in class actions is exceedingly rare, besides the full recovery of damages plus interest in this case, I have personally served in a leadership role in many successful class action cases in which class members received a net recovery approximating the full amount of their compensatory damages, including the following:

- *In re Apple iPhone/iPod Warranty Litigation* (N.D. Cal.). Mr. Mathews and I served as Court-appointed co-lead counsel in this case in which Apple agreed to a $53 million non-reversionary, cash settlement to resolve claims that it had improperly denied warranty coverage for malfunctioning iPhones due to alleged liquid damage. Class members were automatically mailed settlement checks for more

than 100% of the average replacement costs of their iPhones, net of attorneys' fees.

- *Wong v. T-Mobile*, No. 05-cv-73922-NGE-VMM (E.D. Mich.). In this billing overcharge case, I negotiated settlement where T-Mobile automatically mailed class members checks representing a 100% net recovery of the overcharges, with all counsel fees and paid by T-Mobile in addition to the class members' 100% recovery.

- *Shared Medical Systems 1998 Incentive Compensation Plan Litig.*, March Term 2003, No. 0885 (Phila. C.C.P.). In this case on behalf of Siemens employees, after securing national class certification and summary judgment as to liability, on the eve of trial I negotiated a net recovery for class members of the full amount of the incentive compensation sought (over $10 million), plus counsel fees and expenses. At the final settlement approval hearing, Judge Bernstein remarked that the settlement "should restore anyone's faith in class action[s]…"

- *In re Pennsylvania Baycol: Third-Party Payor Litig*., September Term 2001, No. 001874 (Phila. C.C.P.) ("Baycol"). In this case brought by health and welfare funds, after the court certified a nationwide class and granted plaintiffs' motion for summary judgment as to liability, the parties reached a settlement providing class members with a net recovery that approximated the maximum damages (including pre-judgment interest) suffered by class members. That settlement represented three times the net recovery of Bayer's voluntary claims process (which had been negotiated by AETNA and CIGNA and accepted by many large insurers).

- *In re Certainteed Corp. Roofing Shingle Products Liability Litigation*, No, 07-MDL-1817-LP (E.D. Pa.). I served as Chair of Plaintiffs' Discovery Committee in this defective shingle case in which the parties reached a settlement valued at between $687 to $815 million by the Court.

- *Wolens, et al. v. American Airlines, Inc*. I served as plaintiffs' co-lead counsel in this case involving American Airlines' retroactive increase in the number of frequent flyer miles needed to claim travel awards.

In a landmark decision, the United States Supreme Court held that plaintiffs' claims were not preempted by the Federal Aviation Act. 513 U.S. 219 (1995). After 11 years of litigation, American agreed to provide class members with mileage certificates that approximated the full extent of their alleged damages, which the Court, with the assistance of a court-appointed expert, valued at between $95.6 million and $141.6 million.

- *In Re ML Coin Fund Litigation*, (Superior Court of the State of California for the County of Los Angeles). I served as plaintiffs' co-lead counsel and successfully obtained a settlement from defendant Merrill Lynch in excess of $35 million on behalf of limited partners, which represented a 100% net recovery of their initial investments (at the time of the settlement the partnership assets were virtually worthless due to fraud committed by Merrill's co-general partner).

- *Nelson v. Nationwide*, March Term 1997, No. 045335 (Phila. C.C.P.). I served as lead counsel on behalf of a certified class and, after securing judgment as to liability, I negotiated a settlement whereby Nationwide agreed to pay class members approximately 130% of their bills.

7. My partner, Tim Mathews, joined C&T after graduating *magna cum laude* from Rutgers School of Law in 2003, where he was Lead Marketing Editor for the *Rutgers Journal of Law and Religion*, a teaching assistant for the legal research and writing program, a merit scholarship recipient, and recipient of the 1L legal writing award. He has broad experience prosecuting consumer, securities, antitrust, ERISA, and taxpayer class actions, including significant appellate experience in the Third, Fourth, Ninth, and Eleventh circuits. He is also a member of the Amicus Committee for the National Association of Shareholder and Consumer Attorneys (NASCAT). He has been selected as a "Rising Star" by Pennsylvania Super Lawyers on five occasions. He also serves as a member of the Planning Commission for Lower Merion Township, Pennsylvania.

8. Mr. Mathews was Co-Lead counsel in the *In re Apple iPhone Warranty Litigation*, mentioned above, and contributed significantly to achieving the $53 million recovery. Other representative cases in which Mr. Mathews has had a lead role include:

- *In re 24 Hour Fitness Prepaid Memberships Litigation* (4:16-cv-01668-JSW) (full recovery settlement currently pending before Judge White)
- *Ardon v. City of Los Angeles*, Case No. BS363959 (Superior Court, County of Los Angeles) ($92.5 million settlement after winning a landmark appeal in Supreme Court of California, which established the rights of taxpayers to file class action tax refund claims under the California Government Code);
- *McWilliams v. City of Long Beach*, Case No. BC361469 (Superior Court, County of Los Angeles) ($16.6 million settlement, currently pending preliminary approval, after winning a second landmark decision in the Supreme Court of California holding that local governments cannot supplant the *Ardon* decision through local ordinances);
- *Chambers v. Whirlpool Corp., et al.*, Case No. 11-1773 FMO (C.D. Cal.) *(C.D.Cal.)*– Mr. Mathews and I are co-lead counsel in this class action litigation involving alleged defects in Whirlpool, Kenmore, and KitchenAid dishwashers, in which the Court recently preliminarily approved a settlement providing wide-ranging relief to owners of approximately 24 million implicated dishwashers.
- *In re Colonial Bancgroup, Inc.* (M.D.Ala.)– Mr. Mathews played a lead role in achieving settlements totaling $18.4 million for shareholders in this securities lawsuit involving one of the largest U.S. bank failures of all time.
- *In re Mutual Funds Investment Litig.* (MDL 1586, D.Md.) – Mr. Mathews played a prominent role for our firm as Lead Fund Derivative Counsel in this MDL, including arguing before the Fourth Circuit. The MDL arose out of the mutual fund market timing and

late trading scandal of 2003, involved eighteen mutual fund families and hundreds of parties, and resulted in numerous published decisions and settlements totaling over $250 million.

9. Mr. Mathews and I assigned and supervised several other experienced attorneys, law clerks and paralegals from our firm to assist with the prosecution of this case. We also closely coordinated our efforts with our co-counsel at Shepherd Finkelman, Miller & Shah LLP. The staffing utilized in this case was efficient.

C&T's WORK IN THIS CASE

10. As reflected above, Mr. Mathews and I have achieved many class action settlements and judgments representing a full or near-full recovery of damages like the full-recovery Judgment obtained here. In our experience, such results necessarily require intense, day-to-day prosecution of class members' claims by a small team, including the most senior lawyers on the case, dedicated to prosecuting day-to-day form start-to-finish. That is exactly what Mr. Mathews and I did in prosecuting this case.

11. From the outset, Safeway and its counsel aggressively litigated this case from the filing of the complaint to the Ninth Circuits' affirmance of the Judgment, making few concessions along the way. Safeway made Class Counsel work to meet their burden at every step.

12. Some of the work we performed that is not reflected on the nearly 500 docket entries include the following:

- **Document Discovery**: Serving nine sets of document requests, nine sets of interrogatories, two sets of requests to admit; reviewing of tens of thousands of pages of documents; analyzing numerous, large transaction databases; and responding to three sets of interrogatories, and document requests; and conducting

substantial investigative work including scouring the Internet Archive.

- **Discovery Motions**: Engaging in dozens of meets of meet and confers concerning discovery disputes; briefing multiple discovery disputes before Magistrate Judge Spero (ECF # 37, 62, 67, 76, 80, 82); three hearings before Judge Spero (ECF # 64, 77, 93), and emergency pre-trial motions and conferences with the Court related to Safeway's tardy production of documents from its Legacy Shared Computer Drive Archive (ECF # 378, 379, 380).
- **Depositions:** Conducting 12 depositions of Safeway personnel, former Safeway officers, employees and contractors, and the designee for the Internet Archive; deposing Safeway's damages expert Joseph Anastasi and its Survey expert David Lewin, and defending the deposition of Plaintiff's damages and database expert Paul Manning.
- **Expert Discovery**: Working with Plaintiff's consulting and testifying database experts in evaluating Safeway's database productions (which had to be repeatedly be reproduced due to missing data fields and compilation mistakes identified by Class Counsel and our experts) and in connection with testifying-expert Paul Manning's report and supplemental report regarding damages; and consulting with non-testifying survey experts and working with those experts to address the expert reports proffered by Safeway and effectively cross examine Safeway's survey expert.

- **Trial Preparation**: I was Lead Trial Counsel for the class. With the assistance of Mr. Mathews and Mr. Shah, we fully prepared for two distinct trials related to a trial on liability to Class members who registered prior to 2006, including filing the required Joint Pretrial Statement, briefing numerous motions *in limine*, participating in the final pretrial conference, interviewing and preparing witnesses, assembling and exchanging all trial exhibits and compiling impeachment exhibits and related work with vendors to load exhibits with appropriate highlights and call-outs for trial-presentation purposes, and preparing outlines for opening and closing arguments, direct examination and cross examination of witnesses and possible impeachment witnesses, and preparing for anticipated legal issues in connection with trial.
- **Settlement Negotiations**: Class Counsel prepared extensive briefs and participated in a court-ordered Early Neutral Evaluation before Stephen Taylor; prepared extensive briefs and prepared for a mediation before retired Judge William Cahill of JAMS including various pre-mediation phone calls/meeting with Judge Cahill (Safeway ultimately refused to participate in that mediation, even though the parties had paid a significant non-refundable deposit); fully briefed and participated in a mediation before retired Judge Edward Infante of JAMS (that proved unproductive by lunchtime); and participated in the Ninth Circuit's mediation process.
- **Judgment Distribution Related Work**: We consulted with various administrators, conducting legal and other independent

research and evaluating and crafting plans for an effective notice program, judgment distribution program, and to minimize uncashed checks; successfully negotiated with Safeway to pay Class Counsel's taxable costs of $118,610.80, plus the costs of Judgement Administrator Angeion Group (estimated at over $350,000) for notice and judgment distribution services.

13. Safeway was represented by distinguished and aggressive outside counsel through the litigation. Safeway's lead outside counsel Craig Cardon is an Executive Committee member of Global 100 law firm Sheppard Mullin and widely recognized as a formidable adversary. Mr. Cardon was assisted by his partner Anna McLean among others at Sheppard Mullin and, during the course of the litigation, by highly-distinguished Reed Smith Appellate specialists Paul Fogel and Brian Sutherland. Safeway also employed two renowned experts from Berkley Research Group. After Sheppard Mullin's withdrawal from the case, a four-partner team of litigators from Reed Smith joined Messrs. Fogel and Sutherland in defending Safeway. It was my observation that Safeway's outside counsel were instructed to concede little if anything and to litigate everything – at least until days before the second scheduled trial when, given the overwhelming evidence that Safeway's pre-2006 contract and contract-formation procedures were the same as after 2006, Safeway agreed to stipulate to a judgment with respect to pre-2006 damages.

14. **Notice and Judgment Distribution Work**: My firm understands the importance of not only negotiating/crafting a favorable notice and claims administration/judgment distribution process, but also of carefully monitoring those processes. This aggressive and proactive role in evaluating the efficacy of the notice and claims administration/judgment distribution process is an obligation we take seriously. In this regard, in various cases we have proactively identified and corrected

mistakes by defendants or claims administrators. For example, in various consumer class cases involving Whirlpool, we identified notice glitches that failed to include certain information as required by the notice plan, thereby spiking the claims rate and also identified the failure of Whirlpool to "pre-qualify" many class members for settlement payments without the need to submit claims forms, resulting in a four-fold increase of prequalified class members. As another example, in the Apple iPhone case mentioned above, even though Apple and the settlement administrator had sent email notice to Apple customers in several prior class settlements, we identified a systemic weakness -- the failure to utilize a list cleansing process for email notice -- in the notice process that was not identified by either Apple, the highly-regarded settlement administrator, or plaintiffs' counsel in those prior cases. That weakness resulted in approximately one-third of the potential class members failing to receive their notice. Once the problem was fixed, the email notice was re-sent. Fixing that glitch resulted in a doubling of claims submitted by those class members who were not entitled to automatic issuance of checks (because their warranty denials were not captured in Apple's databases). Likewise, here we intend to continue to vigorously monitor the progress of the claims process until it is completed. We have taken the same proactive approach in this case and intend to monitor the notice and judgment distribution process until they are completed.

15. **Update regarding Notice**: We engaged in significant discussions and analyses with Safeway and Judgment Administrator Angeion Group to evaluate how best to provide notice and distribute the Judgment (net of any fees awarded to Class Counsel) to Class members. After the Court approved the parties' Notice proposal, we worked with the Judgment Administrator to make sure that the notice process was carried out properly and closely monitored that process. Notice was disseminated on December 15, 2017. The deadline for any objections is March 2, 2018. To date, no

class member has filed any objection or reached out to Class Counsel or the Judgment Administrator to raise any objections. We did receive dozens of phone calls and emails primarily regarding judgment distribution logistics (*e.g.*, updating addresses, asking for verification that the notice was not spam, or asking question about the litigation) and responded to each. We also responded to numerous other inquiries from class members in connection with prior court-approve notices, and collected a list of address updates that we provided to the Judgment Administrator.

16. **Judgment Distribution Plan:** After consulting with Safeway, Judgment Administrator Angeion Group, and another class action administrator from whom Safeway received a bid to serve as judgment administrator, the Parties concluded that mailing checks will result in higher expected cashing rates compared to other methods sometimes used in class actions to get money to class members, that email check-cashing reminder notices represents best practices and has been effective in maximizing cashing rates in other cases.

Lodestar and Expenses

17. My firm's policy requires all professionals to contemporaneously record their time with detailed descriptions of the work performed. Prior to January 1, 2016, my firm billed in quarter-hour (15 minute) increments. On January 1, 2017, my firm switched to billing in one-tenth hour (6 minute) increments. Within a few business days of the end of each month, all time is input into our Timeslips billing system and each professional receives a printout of their monthly detailed time entries to review and, as appropriate, edit for clarity and accuracy. Prior to the filing of this declaration, I reviewed the detailed time entries and removed any entries that were mistakenly entered in this case.

18. As reflected on the summary chart attached as Exhibit 2, my firm spent almost 7,700 hours prosecuting class members' claims and my firm's total lodestar is

$4,754,492.33. Over 95% of my firm's lodestar consists of work performed by Mr. Mathews and me. This staffing, in coordination with the staffing of our co-counsel Shepherd Finkelman, Miller & Shah LLP, is and consistent with the staffing we have utilized in the other class actions where we have secured full recovery settlements and judgments.

19. Based on my knowledge and experience, my firm's billing rates as reflected in the lodestar reports attached hereto are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. We set our rates based on an analysis of rates charged by our peers and approved by courts throughout the country. Over the past two decades, our rates have been approved by state and federal courts throughout the country, including successful consumer class cases where my firm served as lead class counsel:

- *Chambers v. Whirlpool Corp., et al*., 11-1773 FMO (C.D. Cal.)(October 11, 2016) reviewing the hourly rates of C&T counsel and holding, over Defendants' objections, that "the hourly rates sought by counsel are reasonable." This included overruling defendants' specific objections to my $750/hour rate and my partner Tim Mathews' rate. In approving C&T's fee petition over defendants' objections, Judge Olguin specifically held that Steve Schwartz and Tim Mathews of C&T "are among the most capable and experienced lawyers in the country in these kinds of cases." *See* Dkt. No. 351 (Exhibit 3) at 23; Dkt. No. 218-7 at 77 (Exhibit 4);
- *In re LG Front-Loading Washing Machine Litigation*, Case No. 08-51 (D.N.J.) at Dkt. No. 421 at page 1 ("the hourly rates of each Lead Counsel firm are likewise reasonable and appropriate in a case of this complexity"); approved rates including my $750/hour rate and Mr.

Mathews' $650 rate. *See* Dkt. 421 at page 1 (Exhibit 5); Dkt. No. 409-5 at page 59 (Exhibit 6);

- *Alessandro Demarco v. Avalon Bay Communities, Inc.*, No. 2:15-628 (D.N.J), July 11, 2017 Order; Dkt. No. 223 at ¶18 (Exhibit 7) ("The court, after careful review of the time entries and rates requested by Class Counsel, and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for attorneys' fees …"). The hourly rates specifically reviewed and approved by this Court include various C&T partners and associates;
- *In re Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation*, Case No. 15-0018 (JLL)(LAD) (D.N.J. Feb 27, 2017); Dkt. No. 126 at pg. 2 (Exhibit 8), which specifically reviewed Class Counsel's "time summaries and hourly rates," and found that "the hourly rates of each of Plaintiffs' Steering Committee firm are ... reasonable and appropriate in a case of this complexity." The hourly rates specifically reviewed and approved by this Court include various C&T partners and associates;
- *Johnson et al. v. W2007 Grace Acquisition I Inc. et al.*, Case No. 2:13-cv-2777 (W.D. Tenn.), at ECF #135 pg. 37 (opinion filed Dec. 4, 2015) (Exhibit 9) ("Both the hours spent and the hourly rates [by lead counsel Chimicles & Tikellis LLP] are reasonable given the nature and circumstances of this case, and the applied lodestar multiplier is at the low end of the range regularly approved in securities class actions"). The hourly rates reviewed by this Court include various C&T partners and associates;

- *Ardon v. City of Los Angeles*, Case No. BS363959 (Superior Court, County of Los Angeles), Final approval Order at 19-20 (Exhibits 10-11); (approving C&T's rates, including Mr. Mathews' rate);
- *Henderson v. Volvo Cars of N. Am., LLC*, 2013 U.S. Dist. LEXIS 46291 *4-47 (D.N.J. Mar. 22, 2013) (C&T's rates "are entirely consistent with hourly rates routinely approved by this Court in complex class action litigation.")
- *In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, 44-48 (D.N.J. May 14, 2012) ("The Court finds the billing rates to be appropriate and the billable time to have been reasonably expended."). I was Co-Lead Counsel in that case and the court approved my 2011 rate of $700/hour. *See* Exhibit 12.
- *In re Prudential Sec. Ins. Limited Partnerships Lit.*, 985 F. Supp. 410, 414 (S.D.N.Y. 1997) (approving C&T's rates and hours billed in case where C&T was on Plaintiffs' Executive Committee in settlement resulting in a $130 million recovery).

20. Although my firm primarily receives compensation on a contingent basis in connection with class action and derivative litigation, my firm also receives compensation for its attorneys on an hourly basis in connection with certain matters. Absent special billing agreements, the hourly rates we bill our hourly clients are the same rates we bill for our contingent cases. For example, I have personally been paid my full billing rates for hourly work, including by medical provider clients who first retained me to *defend* themselves against lawsuits brought by insurance companies for disgorgement of payments made by those insurers and subsequently retained me to serve as lead counsel in connection with class cases they brought as class representatives against the insurers to compel payments wrongfully withheld to them

and other medical providers. My firm has also been paid our normal billing rates on a non-contingent hourly basis by a wide array of clients, including trust beneficiaries, class action defendants, private investors, etc. My firm was also recently retained by the Pennsylvania State Employees' Retirement System ("SERS") to represent that entity as representative plaintiff in securities fraud litigation. As part of that retention, SERS negotiated and agreed to a contingent fee contract that provided for fees based, in part, on C&T's normal billing rates.

21. As reflected in Exhibit 13, my firm also incurred $305,445.89 in expenses in connection with the prosecution of this case. These expenses were reasonable and necessary to ensure proper prosecution of class members' claims and are of the type that have been previously approved by courts in connection with class actions we have prosecuted and are of the type that would normally be charged to fee-paying clients. To date, we have not received any reimbursements for these expenses. As reflected in the parties' Joint Report (ECF#473 at 8), defendant Safeway will soon pay Class Counsel $118,610.80 in taxable costs.

22. Attached as Exhibit 14 is the Final Order and Judgment in *also In re Real Estate Associates Limited Partnerships Litigation*, *No.* 98-7035 DDP (C.D. Cal. Nov. 24, 2003). In that case, lead trial counsel Chimicles & Tikellis LLP obtained an approximate $120 million judgment of damages plus pre-judgment interest before the trial court, and settled the case for $83 million prior to substantive appellate proceedings. The fee awarded represented a 1.57 multiple of class counsel's lodestar. In addition to the 35% fee, the court wared over $5.7 million in expenses. Thus, class counsel received almost 42% of the settlement fund for fees and expenses.

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

Dated: January 4, 2018

/s/ *Steven A. Schwartz*
Steven A. Schwartz

EXHIBIT 1

Chimicles & Tikellis LLP

Attorneys At Law

HAVERFORD, PA

361 West Lancaster Avenue
Haverford, PA 19041
Voice: 610-642-8500
Toll Free: 866-399-2487

WILMINGTON, DE

P.O. Box 1035
222 Delaware Avenue
Suite 1100
Wilmington, DE 19899
Voice: 302-656-2500
Fax: 302-656-9053

Our Attorneys-Partners

Practice Areas:

- Antitrust
- Automobile Defects and False Advertising
- Corporate Mismanagement & Shareholder Derivative Action
- Defective Products and Consumer Protection
- Mergers & Acquisitions
- Non-Listed REITs
- Other Complex Litigation
- Securities Fraud

Education:

- University of Virginia School of Law, J.D., 1973
- University of Virginia Law Review; co-author of a course and study guide entitled "Student's Course Outline on Securities Regulation," published by the University of Virginia School of Law
- University of Pennsylvania, B.A., 1970

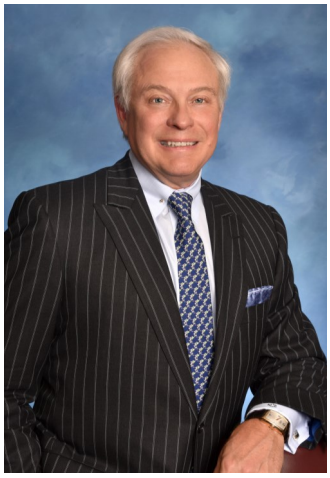
Memberships & Associations:

- Supreme Court of Pennsylvania Disciplinary Board Hearing Committee Member, 2008-2014.
- Past President of the National Association of Securities and Commercial Law Attorneys based in Washington, D.C., 1999-2001
- Chairman of the Public Affairs Committee of the American Hellenic Institute, Washington, D.C.
- Member of the Boards of Directors of Opera Philadelphia, Pennsylvanians for Modern Courts, and the Public Interest Law Center of Philadelphia.

Admissions:

- Supreme Court of Pennsylvania
- United States Supreme Court
- Second Circuit Court of Appeals
- Third Circuit Court of Appeals

NICHOLAS E. CHIMICLES



Mr. Chimicles has been lead counsel and lead trial counsel in major complex litigation, antitrust, securities fraud and breach of fiduciary duty suits for over 40 years. Representative Cases include:

⇒ *Ardon v. City of Los Angeles,* No. BC363959 (Superior Ct. of California, Los Angeles), judgment was entered in December 2016, approving a settlement whereby the City will reimburse from a $92.5 million fund anyone who paid the improperly imposed telephone utility users tax between October 2005 and March 2008. The settlement was reached after the Supreme Court of California unanimously upheld the rights of taxpayers to file class-wide tax refund claims under the CA Government Code.

⇒ *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation,* Civ. No. 2:13-cv-2777, involved various violations of contractual, fiduciary and corporate statutory duties by defendants who engaged in various related-party transactions, wrongfully withheld dividends and financial information, and failed to timely hold an annual preferred stockholder meeting. This litigation resulted in a swift settlement valued at over $76 million after ten months of hard-fought litigation.

⇒ *Lockabey v. American Honda Motor Co.,* Case No. 37-2010-87755 (Superior Ct., San Diego). A settlement valued at over $170 million resolved a consumer action involving false advertising claims relating to the sale of Honda Civic Hybrid vehicles as well as claims relating to a software update to the integrated motor assist battery system of the HCH vehicles. As a lead counsel, Mr. Chimicles led a case that, in the court's view, was "difficult and risky" and provided "significant public value."

⇒ *City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc.*, Case No. 07 C 6174 (N.D. Ill.). A $90 million settlement was reached in 2010 in this class action challenging the accuracy of a proxy statement that sought (and received) stockholder approval of the merger of an external advisor and property managers by a multi-billion dollar real estate investment trust, Inland Western Retail Real Estate Trust, Inc. The settlement provided that the owners of the advisor/property manager entities (who are also officers and/or directors of Inland Western) had to return nearly 25% of the Inland Western stock they

- Fourth Circuit Court of Appeals
- Sixth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Tenth Circuit Court of Appeals
- Eleventh Circuit Court of Appeals
- Court of Appeals for the D.C. Circuit
- Eastern District of Pennsylvania
- Eastern District of Michigan
- Northern District of Illinois
- District of Colorado
- Eastern District of Wisconsin
- Court of Federal Claims
- Southern District of New York

Honors:

- Fellow of the American Bar Foundation (2017) - an honorary organization of lawyers, judges and scholars whose careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.
- Prestigious 2016 Thaddeus Stevens Award of the Public Interest Law Center (Philadelphia) in recognition of his leadership and service to this organization.
- Ellis Island Medal of Honor in May 2004, in recognition of his professional achievements and history of charitable contributions to educational, cultural and religious organizations.
- Pennsylvania and Philadelphia SuperLawyers, 2006-present.
- AV® rated by Martindale-Hubbell

received in the merger.

⇒ *In re Real Estate Associates Limited Partnerships Litigation*, No. CV 98-7035 DDP, was tried in the federal district court in Los Angeles before the Honorable Dean D. Pregerson. Mr. Chimicles was lead trial counsel for the Class of investors in this six-week jury trial of a securities fraud/breach of fiduciary duty case that resulted in a $185 million verdict in late 2002 in favor of the Class (comprising investors in the eight REAL Partnerships) and against the REALs' managing general partner, National Partnership Investments Company ("NAPICO") and the four individual officers and directors of NAPICO. The verdict included an award of $92.5 million in punitive damages against NAPICO. This total verdict of $185 million was among the "Top 10 Verdicts of 2002," as reported by the National Law Journal (verdictsearch.com). On post-trial motions, the Court upheld in all respects the jury's verdict on liability, upheld in full the jury's award of $92.5 million in compensatory damages, upheld the Class's entitlement to punitive damages (but reduced those damages to $2.6 million based on the application of California law to NAPICO's financial condition), and awarded an additional $25 million in pre-judgment interest. Based on the Court's decisions on the post-trial motions, the judgment entered in favor of the Class on April 28, 2003 totaled over $120 million.

⇒ *CNL Hotels & Resorts, Inc. Securities Litigation*, Case No. 6:04-cv-1231 (M.D. Fla., Orl. Div. 2006). The case settled Sections 11 and 12 claims for $35 million in cash and Section 14 proxy claims by significantly reducing the merger consideration by nearly $225 million (from $300 million to $73 million) that CNL paid for internalizing its advisor/manager.

⇒ *Prudential Limited Partnerships Litigation*, MDL 1005 (S.D.N.Y.). Mr. Chimicles was a member of the Executive Committee in this case where the Class recovered from Prudential and other defendants $130 million in settlements, that were approved in 1995. The Class comprised limited partners in dozens of public limited partnerships that were marketed by Prudential.

⇒ *PaineWebber Limited Partnerships Litigation*, 94 Civ. 8547 (S.D.N.Y.). Mr. Chimicles was Chairman of the Plaintiffs' Executive Committee representing limited partners who had invested in more than 65 limited partnerships that PaineWebber organized and/or marketed. The litigation was settled for a total of $200 million, comprising $125 million in cash and $75 million in additional benefits resulting from restructurings and fee concessions and waivers.

⇒ *In Re Phoenix Leasing Incorporated Limited Partnership Litigation*, Superior Court of the State of California, County of Marin, Case No. 173739. In February 2002, the Superior Court of Marin County, California, approved the settlement of this case which involved five public partnerships sponsored by Phoenix Leasing Incorporated and its affiliates and resulting in entry of a judgment in favor of the class

Practice Areas:

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Delaware Law School of Widener University, J.D., 1988
- University of Delaware, B.S. Chemistry, 1983

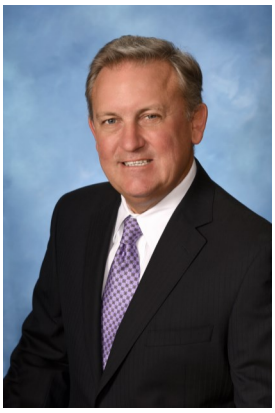
Memberships:

- Delaware State Bar Association

Admissions:

- Supreme Court of Delaware

ROBERT J. KRINER, JR.



Robert K. Kriner, Jr. is a Partner in the Firm's Wilmington, Delaware office. From 1988 to 1989, Mr. Kriner served as law clerk to the Honorable James L. Latchum, Senior Judge of the United States District Court for the District of Delaware. Following his clerkship and until joining the Firm, Mr. Kriner was an associate with a major Wilmington, Delaware law firm, practicing in the areas of corporate and general litigation.

Mr. Kriner has prosecuted actions, including class and derivative actions, on behalf of stockholders, limited partners and other investors with claims relating to mergers and acquisitions, hostile acquisition proposals, the enforcement of fiduciary duties, the election of directors, and the enforcement of statutory rights of investors such as the right to inspect books and records. Among his recent achievements are Sample v. Morgan, C.A. No. 1214-VCS (obtaining full recovery for shareholders diluted by an issuance of stock to management), In re Genentech, Inc. Shareholders Litigation, Consolidated C.A. No. 3911-VCS (leading to a nearly $4 billion increase in the price paid to the Genentech stockholders) and In re Kinder Morgan, Inc. Shareholders Litigation, Consolidated Case No. 06-C-801 (action challenging the management led buyout of Kinder Morgan, settled for $200 million).

Recently, Mr. Kriner led the prosecution of a derivative action in the Delaware Court of Chancery by stockholders of Bank of America Corporation relating to the January 2009 acquisition of Merrill Lynch & Co. In re Bank of America Corporation Stockholder Derivative Litigation, C.A. No. 4307-CS. The derivative action concluded in a settlement which included a $62.5 million payment to Bank of America.

Steven A. Schwartz

Practice Areas:

- Antitrust
- Corporate Mismanagement & Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud

Education:

- Duke University School of Law, J.D., 1987
  - ◊ Law & Contemporary Problems Journal, Senior Editor
- University of Pennsylvania, B.A., 1984 - *cum laude*

Memberships & Associations:

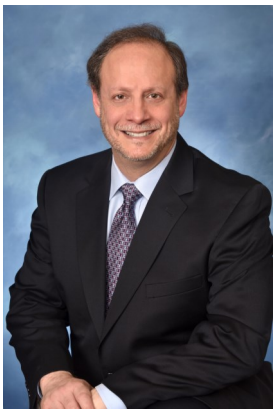
- National Association of Shareholder and Consumer Attorneys (NASCAT) Executive Committee Member
- American Bar Association
- Pennsylvania Bar Association

Admissions:

- United States Supreme Court
- Pennsylvania Supreme Court
- Third Circuit Court of Appeals
- Sixth Circuit Court of Appeals
- Eighth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Eastern District of Pennsylvania
- Western District of Pennsylvania
- Eastern District of Michigan
- District of Colorado

Honors:

- National Trial Lawyers Top 100
- AV Rating from Martindale Hubbell
- Pennsylvania Super Lawyer, 2006-Present



Steven A. Schwartz, has prosecuted complex class actions in a wide variety of contexts. Notably, Mr. Schwartz has been successful in obtaining several settlements and judgements where class members received a full recovery on their damages. Representative cases include:

⇒ *Rodman v. Safeway, Inc.,* No. 11-cv-03003-JST (N.D.Cal.) – Mr. Schwartz is lead counsel in this action alleging that Safeway breached its grocery delivery contract with customers by overcharging customers by about 10%. The district court certified a national class, held Safeway breached its contracts, and entered a $42 million judgment against Safeway, which represents 100% of class members' damages plus interest. Safeway appealed that judgment to the Ninth Circuit Court of Appeals. Argument on the appeal is set for June 2017.

⇒ *In re Apple iPhone/iPod Warranty Litigation*, No. CV-10-01610 (N. D. Cal.)—Plaintiffs alleged that Apple improperly denied warranty coverage for iPhone and iPod Touch devices based on external "Liquid Submersion Indicators" (LSIs), which are small paper-and-ink laminates, akin to litmus paper, which are designed to turn red upon exposure to liquid. Apple placed the external LSIs in the headphone jack and/or dock connector of certain iPhone and iPod Touch devices and denied warranty coverage if an external LSI had turned pink or red. Apple agreed to pay $53 million to settle the case. The Court approved the national settlement, and eligible Settlement Class Members received checks representing approximately 117 percent of their damages.

⇒ *International Fibercom*, No. 03-2161 (D. Ariz.)—Mr. Schwartz was lead counsel in prosecuting several related actions in the United States District Court for the District of Arizona and New Jersey state court seeking to recover damages for an individual client who sold his closely-held wireless connectivity company to International Fibercom, Inc.("IFC") for $8 million in IFC stock that proved to be worthless due to alleged securities fraud. After extensive litigation, Mr. Schwartz secured an $8 million judgment against IFC's CEO, CFO and COO and collected over $6 million of that judgment from IFC's primary and excess D&O insurers even though those insures had denied coverage under their policies.

⇒ *Wong v. T-Mobile*, No. 05-cv-73922-NGE-VMM (E.D. Mich.)—his case involved allegations that T-Mobile overcharged its subscribers by billing them for services for which they had already paid a flat rate monthly fee to receive unlimited access. The parties reached a

settlement requiring T-Mobile to refund class members with a 100% net recovery of the overcharges, with all counsel fees and expenses to be paid by T-Mobile in addition to the class members' recovery.

⇒ *Shared Medical Systems 1998 Incentive Compensation Plan Litig.*, March Term 2003, No. 0885 (Phila. C.C.P.)—This case was brought on behalf of employees of Defendant Siemens who had their incentive compensation reduced by 30%, even though they had earned the full amount of their incentive compensation based on the targets, goals and quotas in their incentive compensation plans. After securing national class certification and summary judgment as to liability, on the eve of trial, Mr. Schwartz negotiated a net recovery for class members of the full amount that their incentive compensation was reduced, with all counsel fees and expenses in addition to class members' recovery. In approving the settlement, Judge Bernstein noted that it "…should restore anyone's faith in class action[s]…"

⇒ *In re Pennsylvania Baycol: Third-Party Payor Litig.,* September Term 2001, No. 001874 (Phila. C.C.P.)—This case was bought by various Health and Welfare Funds in connection with the withdrawal by Bayer of its anti-cholesterol drug Baycol. After the court certified a nationwide class of third-party payors and granted plaintiffs' motion for summary judgment as to liability, the parties reached a settlement providing class members with a net recovery that approximated the maximum damages (including pre-judgment interest) suffered by class members. That settlement represented three times the net recovery of Bayer's voluntary claims process (which was accepted by various large insurers like AETNA and CIGNA).

⇒ *In re Certainteed Corp. Roofing Shingle Products Liability Litigation*, No, 07-MDL-1817-LP (E.D. Pa.)—Mr. Schwartz served as Chair of Plaintiffs' Discovery Committee. That case alleged that CertainTeed sold defective shingles. The parties reached a settlement which was approved and valued by the Court at between $687 to $815 million.

⇒ *In re DVI, Inc. Securities Litigation*, No. 2:03-CV-05674-LDD (E.D. Pa.)—Mr. Schwartz served as Plaintiffs' Liaison Counsel in a securities fraud case with total settlements of almost $24 million, which represent a significant percentage of class members' provable damages and included substantial cash payments from the assets of several individual defendants above any payments from their D&O insurers.

⇒ *In re Colonial BankGroup, Inc.*, No. 2:09-cv-104 (M.D. Ala.)—Mr. Schwartz helped achieve over $18 million in settlements for shareholders in this securities lawsuit involving one of the largest bank failures.

⇒ *Wolens, et al. v. American Airlines, Inc.*—Mr. Schwartz served as plaintiffs' co-lead counsel. Plaintiffs alleged that American Airlines breached its AAdvantage frequent flyer program contracts when it

retroactively increased the number of frequent flyer miles needed to claim travel awards. In a landmark decision, the United States Supreme Court held that plaintiffs' claims were not preempted by the Federal Aviation Act. 513 U.S. 219 (1995). The parties reached a settlement in which American agreed to provide class members with mileage certificates that represented the full extent of their alleged damages, which the Court valued, after retaining its own valuation expert, at between $95.6 million and $141.6 million.

⇒ *In Re Coin Fund Litigation*, (Superior Court of the State of California for the County of Los Angeles)—Mr. Schwartz served as plaintiffs' co-lead counsel and successfully obtained a settlement from defendant Merrill Lynch in excess of $35 million on behalf of limited partners, which represented a 100% net recovery of their initial investments.

⇒ *Nelson v. Nationwide,* March Term 1997, No. 045335 (Phila. C.C.P.)—Mr. Schwartz served as lead counsel on behalf of a certified class of Pennsylvania physicians and chiropractors who were not paid by Nationwide Mutual Insurance Company for physical therapy/physical medicine services provided to its insureds. After securing judgment as to liability from the Philadelphia Court of Common Pleas and Pennsylvania Superior Court, Mr. Schwartz negotiated as settlement whereby Nationwide agreed to pay class members approximately 130% of their bills.

Practice Areas:

- Securities Fraud
- Non-Listed REITs
- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Villanova University School of Law, J.D., 1999 - *cum laude*
- Boston University, B.A. Political Science, 1996
-

Memberships & Associations:

- Pennsylvania Bar Association
- Villanova Law School Alumni Association

Admissions:

- Pennsylvania Supreme Court
- New Jersey Supreme Court
- Third Circuit Court of Appeals
- District of New Jersey
- Eastern District of Pennsylvania

Honors:

- Pennsylvania SuperLawyer: 2013, 2014
- Named Pennsylvania Rising Star by Super Lawyers: 2006-2012
- Sutton Who's Who in American Law

Kimberly Donaldson Smith

Kimberly Donaldson Smith is a partner in the Firm's Haverford Office. Kimberly has been counseling clients and prosecuting cases on complex issues involving securities, business transactions and other class actions for over 15 years.

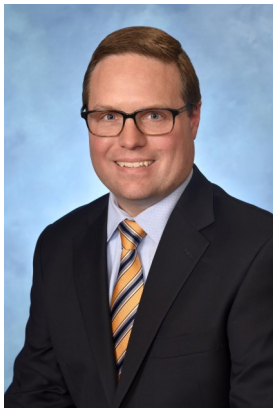
Kimberly concentrates her practice in sophisticated securities class action litigation in federal courts throughout the country, and has served as lead or co-lead counsel in over a dozen class actions. She is very active in investigating and initiating securities and shareholder class actions.

Kimberly is currently prosecuting federal securities claims on behalf of investors in numerous cases. Kimberly was instrumental in the outstanding settlements achieved for the investors in: *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation,* Civ. No. 2:13-cv-2777 (W.D. Tenn.)(a settlement valued at over $76 million for current and former W2007 Grace preferred stockholders); *In re Empire State Realty Trust, Inc. Investor Litigation*, Case 650607/2012, NY Supreme Court (a $55,000,000 cash settlement fund and $100 million tax savings for the Empire investors); *CNL Hotels & Resorts Inc. Federal Securities Litigation*, Case No. 04-cv-1231 (M.D. Fla.)(a $35,000,000 cash settlement fund and a $225 million savings for the CNL shareholders); *Inland Western Retail Real Estate Trust, Inc., et al. Litigation*, Case 07 C 6174 (U.S.D.C. N.D. Ill) (a $90 million savings for the Inland shareholders subjected to a self-dealing transaction); and *Wells REIT Securities Litigation*, Case 1:07-cv-00862/1:07-cv-02660 (U.S.D.C. N.D. GA)(a $7 million cash settlement fund for the Wells REIT investors).

Notably, Kimberly was an integral member of the trial team that successfully litigated *the In re Real Estate Associates Limited Partnership Litigation*, No. CV 98-7035 DDP (CD. Cal.) through a six-week jury trial that resulted in a landmark $184 million plaintiffs' verdict, which is one of the largest jury verdicts since the passage of the Private Securities Litigation Reform Act of 1995. The Real Estate Associates judgment was settled for $83 million, which represented full recovery for the Class (and an amount in excess of the damages calculated by Plaintiffs' expert).

Kimberly's pro bono activities include serving as a volunteer attorney with the Support Center for Child Advocates, a Philadelphia-based, nonprofit organization that provides legal and social services to abused and neglected children. Since 2006, Kimberly has been recognized by Law & Politics and the publishers of Philadelphia Magazine as a Pennsylvania Super Lawyer or Rising Star, as listed in the Super Lawyers' publications.

Timothy N. Mathews



Tim Mathews is a partner in the firm's Haverford, PA office. His practice covers a broad array of subject matters, including securities, consumer protection, tax refund, shareholder derivative, insurance, and ERISA litigation. Mr. Mathews is also an experienced appellate attorney in the United States Courts of Appeals for the Third, Fourth, Ninth, and Eleventh Circuits, as well as the Supreme Court of California.

Representative cases in which Mr. Mathews has held a lead role include:

- Rodman v. Safeway, Inc. (N.D.Cal.) – $42 million judgment against Safeway, Inc. in December 2015, representing 100% of damages plus interest for grocery delivery overcharges.
- Ardon v. City of Los Angeles (Superior Court, County of Los Angeles) – $92.5 million tax refund settlement with the City of Los Angeles after winning landmark decision in the Supreme Court of California securing the rights of taxpayers to file class-wide tax refund claims under the CA Government Code.
- Chambers v. Whirlpool Corp. (C.D.Cal.) – Settlement providing 100% of repair costs and other benefits for up to 24 million dishwashers that have an alleged propensity to catch fire due to a control board defect.
- In re Apple iPhone Warranty Litig. (N.D.Cal.) – $53 million settlement in case alleging improper iPhone warranty denials; class members received on average 118% of their damages.
- In re Colonial Bancgroup, Inc.– Settlements totaling $18.4 million for shareholders in securities lawsuit involving one of the largest U.S. bank failures of all time.
- International Fibercom (D.Ariz.) – Represented plaintiff in insurance coverage actions against D&O carriers arising out of securities fraud claims; achieved a near-full recovery for the plaintiff.
- In Re Mutual Funds Investment Litigation, MDL 1586 (D.Md.) – Lead Fund Derivative Counsel in the multidistrict litigation arising out of the market timing and late trading scandal of 2003, which involved seventeen mutual fund families and hundreds of parties, and resulted in over $250 million in settlements.

Mr. Mathews graduated from Rutgers School of Law-Camden with high honors, where he served as Lead Marketing Editor for the Rutgers Journal of Law & Religion, served as a teaching assistant for the Legal Research and Writing Program, received the 1L legal Writing Award, and received a Dean's Merit Scholarship and the Hamerling Merit Scholarship. He received his B.A. from Rutgers University-Camden in

Practice Areas:

- Antitrust
- Corporate Mismanagement
- Consumer Fraud & Deceptive Products
- Securities Fraud Litigation

Education:

- Rutgers School of Law-Camden, J.D., 2003 - *with High Honors*
- Rutgers University-Camden, B.A., 2000 - *with Highest Honors*

Memberships & Associations:

- National Association of Shareholder and Consumer Attorneys (NASCAT) Amicus Committee Member
- Rutgers Journal of Law & Religion – Lead Marketing Editor (2002-2003)

Admissions:

- Pennsylvania
- New Jersey
- Eastern District of Pennsylvania
- District of New Jersey
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Eleventh Circuit

Honors:

- Pennsylvania Super Lawyers Rising Star 2008, 2010, 2013-2014
- Rutgers Law Legal Writing Award 2003

2000 with highest honors, where he was inducted into the Athenaeum honor society.

Mr. Mathews serves on the Amicus Committee for the National Association of Shareholder and Consumer Attorneys (NASCAT). He also serves as a member of the Planning Commission for the township of Lower Merion. His pro bono work has included representation of the Holmesburg Fish and Game Protective Association in Philadelphia. He lives in Wynnewood, PA, with his wife and two children.

Practice Areas:

- Antitrust
- Automobile Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud

Education:

- Penn State Dickinson School of Law, J.D., 2005 - Woolsack Honor Society
- Penn State Harrisburg, M.B.A., 2004 - Beta Gamma Sigma Honor Society
- Washington and Lee University, B.S., 2002 - *cum laude*

Memberships & Associations:

- Executive Committee, Young Lawyers Division of the Philadelphia Bar Association
- Board Member, The Dickinson School of Law Alumni Society
- Editorial Board, Philadelphia Bar Reporter from 2013-16
- Member, Washington and Lee Alumni Admissions Program

Admissions:

- Third Circuit Court of Appeals
- D.C. Circuit Court of Appeals
- Eastern District of Pennsylvania
- Middle District of Pennsylvania
- District of New Jersey
- District of Colorado
- U.S. Court of Federal Claims

Honors:

- Named a "Lawyer on the Fast Track" by The Legal Intelligencer
- Named a Pennsylvania "Rising Star" in 2010, 2011, 2012, 2013, 2014
- Recognized as a "Top 40 Under 40" lawyer by The National Trial Lawyers

Benjamin F. Johns

Benjamin F. Johns first began working at the firm as a Summer Associate while pursuing a J.D./M.B.A. joint degree program in business school and law school. He became a full-time Associate upon graduation, and is now a Partner. Ove the course of his legal career, Ben has argued in the United States Court of Appeals for the District of Columbia Circuit, the Commonwealth Court of Pennsylvania sitting *en banc*, and in other state and federal district courts across the country. He has argued and briefed dispositive motions to dismiss, for class certification and for summary judgment. He has also deposed prison guards, lawyers, bankers, engineers, I.R.S. officials, information technology personnel, and other witnesses.

Specifically, he has provided substantial assistance in the prosecution of the following cases:

⇒ *In re Checking Account Overdraft Litig.,* No. 1:09-MD-02036-JLK (S.D. Fla.). (Ben is actively involved in these Multidistrict Litigation proceedings, which involve allegations that dozens of banks reorder and manipulate the posting order of debit transactions. Settlements collectively in excess of $1 billion have been reached with several banks. Ben was actively involved in prosecuting the actions against U.S. Bank ($55 million settlement) and Comerica Bank ($14.5 million settlement).

⇒ *In re Flonase Antitrust Litig.,* 2:08-cv-03301-AB (E.D. Pa.). (indirect purchaser plaintiffs alleged that the manufacturer of Flonase (a nasal allergy spray) filed "sham" citizen petitions with the FDA in order to delay the approval of less expensive generic versions of the drug. A $46 million settlement was reached on behalf of all indirect purchasers. Ben argued a motion before the District Court.).

⇒ *In re: Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litig.,* No. 15-cv-18-JLL-JAD (D.N.J.) (Ben was appointed by the Court to the Plaintiffs' Steering Committee in this MDL proceeding, which involved allegedly defective wood-composite decking, and which ultimately resulted in a settlement valued at approximately $20 million).

⇒ *In re TriCor Indirect Purchasers Antitrust Litig.,* No. 05-360-SLR (D. Del.). ($65.7 million settlement on behalf of indirect purchasers who claimed that the manufacturers of a cholesterol drug engaged in anticompetitive conduct designed to keep generic versions off of the market.)

⇒ *Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation,* No. 1:10-cv-00264-CAB (N.D. Ohio). ($20 million settlement on behalf of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA.)

⇒ *West v. ExamSoft Worldwide, Inc.*, No. 14-cv-22950-UU (S.D. Fla.) ($2.1 million settlement on behalf of July 2014 bar exam applicants in several states who paid to use software for the written portion of the exam which allegedly failed to function properly).

⇒ *Henderson, v. Volvo Cars of North America, LLC,* No. 2:09-cv-04146-CCC-JAD (D. N.J.). (provided substantial assistance in this consumer automobile case that settled after the plaintiffs prevailed, in large part, on a motion to dismiss).

⇒ *In re Marine Hose Antitrust Litig.,* No. 08-MDL-1888 (S.D. Fla.) (Settlements totaling nearly $32 million on behalf of purchasers of marine hose.)

⇒ *In re Philips/Magnavox Television Litig.,* No. 2:09-cv-03072-CCC-JAD (D. N.J.). (Settlement in excess of $4 million on behalf of consumers whose flat screen televisions failed due to an alleged design defect. Ben argued against one of the motions to dismiss.)

⇒ *Allison, et al. v. The GEO Group*, No. 2:08-cv-467-JD (E.D. Pa.), and *Kurian v. County of Lancaster*, No. 2:07-cv-03482-PD (E.D. Pa.). (Settlements totaling $5.4 million in two civil rights class action lawsuits involving allegedly unconstitutional strip searches at prisons).

⇒ *In re Recoton Sec. Litig.*, 6:03-cv-00734-JA-KRS (M.D.Fla.). ($3 million settlement for alleged violations of the Securities Exchange Act of 1934)

⇒ *Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB (D. Colo.). (Obtained a settlement in this consumer fraud case that provided full recovery to approximately 930,000 class members.)

Ben has also had success at the appellate level in cases to which he substantially contributed. *See Cohen v. United States*, 578 F.3d 1 (D.C. Cir. 2009), *reh'g granted per curiam*, 599 F.3d 652 (D.C. Cir. 2010), *remanded by*, 650 F.3d 717 (D.C. Cir. 2011) (en banc) (reversing district court's decision to the extent that it dismissed taxpayers' claims under the Administrative Procedure Act); *Lone Star Nat'l Bank, N.A. v. Heartland Payment Sys.*, No. 12-20648, 2013 U.S. App. LEXIS 18283 (5th Cir. Sept. 3, 2013) (reversing district court's decision dismissing financial institutions' common law tort claims against a credit card processor).

Ben was elected to and served a three year term on the Executive Committee of the Philadelphia Bar Association's Young Lawyers Division (2011-2014). He also served on the Editorial Board of the Philadelphia Bar Reporter, and is presently on the Board of Directors for the Dickinson School of Law Alumni Society. Ben was also a head coach in the Narberth basketball summer league for several years. He has been published in the Philadelphia Lawyer magazine and the Philadelphia Bar Reporter, presented a Continuing Legal Education course to fellow lawyers, and spoken to a class of law school students about the practice. While in college, Ben was on the varsity basketball team and spent a semester studying abroad in Osaka, Japan. Ben has been named a "Lawyer on the Fast Track" by The Legal Intelligencer, a "Top 40 Under 40" attorney by The National Trial Lawyers, and a Pennsylvania "Rising Star" for the past five years.

Practice areas:

- Corporate Mismanagement and Shareholder Derivative Actions
- Mergers and Acquisitions

Education:

- SUNY Cortland, B.S., 2002, *cum laude*
- Syracuse University College of Law, 2006, J.D., *cum laude*
- Whitman School of Management at Syracuse University, 2006, M.B.A

Memberships and Associations:

- Board of Bar Examiners of the Supreme Court of the State of Delaware, Secretary

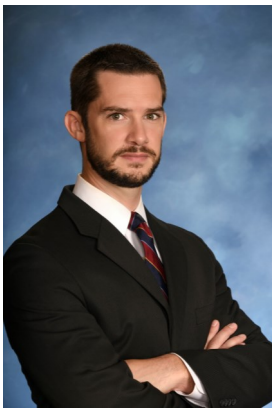
Admissions:

- Supreme Court of Delaware
- Supreme Court of Connecticut
- District of Colorado
- District of Delaware
- Third Circuit Court of Appeals

Honors:

- Named a 2016 and 2017 Delaware "Rising Star"
- Martindale Hubbell-Distinguished rated

Scott M. Tucker



Scott M. Tucker is a Partner in the Firm's Wilmington Office. Mr. Tucker is a member of the Firm's Mergers & Acquisitions and Corporate Mismanagement and Shareholder Derivative Action practice areas. Together with the Firm's Partners, Mr. Tucker assisted in the prosecution of the following actions:

⇒ *In re Kinder Morgan, Inc. Shareholders Litigation, Consol. C.A. No. 06-C-801 (Kan.)* (action challenging the management led buyout of Kinder Morgan Inc., which settled for $200 million).

⇒ *J.Crew Group, Inc., et al. v. New Orleans Employees' Retirement System, et al., C.A. No. 6479-VCS (Del. Ch.)* (action that challenged the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management which resulted in a settlement fund of $16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction to be approved by a majority of the unaffiliated shareholders).

⇒ *In re Genentech, Inc. Shareholder Litigation, C.A. No. 3911-VCS (Del. Ch.)* (action challenging the attempt by Genentech's controlling stockholder to take Genentech private which resulted in a $4 billion increase in the offer).

⇒ *City of Roseville Employees' Retirement System, et al. v. Ellison, et al., C.A. No. 6900-VCP (Del. Ch.)* (action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and controlling shareholder of Oracle, which led to a settlement valued at $440 million, one of the larger derivative settlements in the history of the Court of Chancery.

Mr. Tucker is the Secretary of the Board of Bar Examiners of the Supreme Court of the State of Delaware and a member of the Richard K. Hermann Technology Inn of Court. While attending law school, Mr. Tucker was a member of the Securities Arbitration Clinic and received a Corporate Counsel Certificate from the Center for Law and Business Enterprise.

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Litigation

Education:

- Rutgers University - School of Law, J.D., *with honors, 2001- Rutgers Law Review*
- Rutgers University - School of Business, MBA, *with honors*, 2001
- University of Maryland – College Park, B.A. in psychology, 1997

Memberships & Associations:

- American Constitution Society
- National Association of Shareholder and Consumer Attorneys
- Public Justice
- Philadelphia Bar Association

Admissions:

- Delaware
- New Jersey
- Pennsylvania
- United States District Court for the Eastern District of Pennsylvania
- U.S. District Court of New Jersey
- Second Circuit Court of Appeals

Catherine Pratsinakis

Catherine, a Partner of the Firm, has represented institutional and retail investors in complex corporate governance and securities litigation for 15 years across the country.

Notably, Catherine represented lead plaintiffs in *In re Parmalat Sec. Litig.*, MDL 04-1653 (S.D.N.Y.) which resulted in nearly $100 million in settlements with Parmalat and its former officers, directors, banks and auditors. A highlight of this case included Catherine obtaining the Court's permission to prosecute Parmalat in the securities class action despite being a protected debtor under the bankruptcy code. Catherine also represented lead plaintiffs in one of the most infamous cases of self-dealing ever before seen. *In re Hollinger Int'l Sec. Litig.*, 04-CV-0834 (N.D. Ill.) (recovery of $37.5 million).

Catherine also achieved significant results for investors in the Delaware Court of Chancery with litigation such as *Teachers Retirement System of Louisiana v. Greenberg*, No. 20106 (Del. Ch.), where she overcame a special litigation committee review of the self-interested transactions at issue, and went on to help secure one of the most significant settlements ($115 million) in the Court of Chancery on the eve of trial.

Catherine has also represented thousands of investors in "going dark" litigation whereby shareholders in once public companies are stranded in illiquid investments in private enterprises with limited access to financials. In *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation, Civ. No.* 2:13-cv-2777 (W.D. Tenn.), Catherine brought a lawsuit against a once public company that stopped disseminating financials to its stockholders after it went private. After seven years of being frozen out of any benefits to ownership, the Firm recovered $76 million for shareholders in ten months of hard-fought litigation and an aggressive discovery plan.

Catherine also enjoys tackling important governance matters such as in *Delaware County Retirement Fund v. Portnoy*, Civ. No. 1:13-cv-10405 (D. Mass.), she sought to invalidate a highly oppressive arbitration bylaw adopted by a multi-billion dollar REIT for the sole purpose of preventing a shareholder lawsuit against its self-dealing management.

She has litigated numerus class actions and derivative suits, including *BioScrip*, *Cablevision, HealthSouth*, *Mattel, Barnes & Noble, Covad Communications, Safety-Kleen, DVI Inc. and Constellation Energy Group*.

Catherine Pratsinakis

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Litigation

Education:

- Rutgers University - School of Law, J.D., *with honors, 2001- Rutgers Law Review*
- Rutgers University - School of Business, MBA, *with honors*, 2001
- University of Maryland – College Park, B.A. in psychology, 1997

Memberships & Associations:

- American Constitution Society
- National Association of Shareholder and Consumer Attorneys
- Public Justice
- Philadelphia Bar Association

Admissions:

- Delaware
- New Jersey
- Pennsylvania
- United States District Court for the Eastern District of Pennsylvania
- U.S. District Court of New Jersey
- Second Circuit Court of Appeals

Immediately out of law school, Catherine joined the litigation and bankruptcy departments of one of the largest defense firms in Philadelphia where she spent her time representing Fortune 500 companies in an array of commercial litigation, including antitrust, malpractice, shareholder, consumer and creditor actions. She was recruited to join a specialized securities litigation boutique in Wilmington, DE, where she worked for seven years representing institutional clients before joining Chimicles & Tikellis in 2013.

During law school, Catherine served as Law Clerk to the Honorable Joseph E. Irenas in the U.S. District Court for the District of New Jersey.

Catherine made law review in 1999 and served on the Rutgers Law Journal as a Notes and Casenotes Editor from 2000-2001.

She has participated in the Volunteer for the Indigence Program (VIP) in Philadelphia, served on the editorial board of the Philadelphia Bar Reporter and volunteers in her community through youth organizations, Friends of Weccacoe Playground, an organization committed to revitalizing an inner-city park and community center in Queen Village, Philadelphia where she lives with her husband and three children.

Our Attorneys-Of Counsel

PAMELA S. TIKELLIS

Practice Areas:

- Antitrust
- Corporate Mismanagement and Shareholder Derivative Action
- Mergers and Acquisitions
- Other Complex Litigation
- Securities Fraud

Education:

- Widener University School of Law, J.D., 1982
- Graduate Faculty of the New School for Social Research, Master's in Psychology, 1976
- Manhattanville College, B.A., 1974

Memberships and Affiliations:

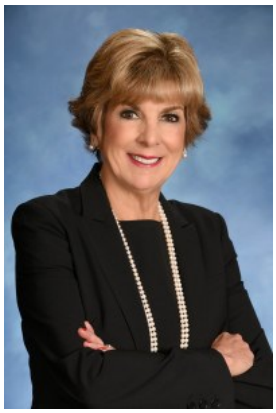
- American Law Institute
- American Association for Justice
- American Bar Association
- Delaware Bar Association
- Delaware Trial Lawyers Association

Admissions:

- Delaware
- District of Delaware
- Third Circuit Court of Appeals

Honors:

- 1982-1983 Law Clerk, Court of Chancery of the State of Delaware
- 1994-2012 Member of the Board of Bar Examiners of the Supreme Court of State of Delaware, Chair from 2010-2012
- The Delaware Bar Admission Study Committee by Order of the Delaware Supreme Court, Member
- 1989-1992 Delaware Bar Association Ethics Committee, Chairman



Pamela S. Tikellis co-founded the Firm in 1994, and effective July 1, 2017, became Of Counsel to the Firm. Ms. Tikellis is recognized for her extensive knowledge in areas of Delaware corporate law, fiduciary responsibility, securities and investments and matters related to protecting and promoting the rights of institutional investors. Ms. Tikellis, for more than thirty years, has litigated some of the landmark cases regarding corporate governance issues, mergers and acquisitions, stockholders' rights and other matters regarding corporate and securities litigation.

For example, Ms. Tikellis served as Co-Lead Counsel in the class action challenging the $21 billion management-led buyout of Kinder Morgan, Inc., In re Kinder Morgan, Inc. Shareholders Litigation, Consol. C.A. No. 06-C-801 (Kan.). That action resulted in the creation of a $200 million settlement fund one of the largest common funds in a merger and acquisition settlement.

Ms. Tikellis served as Co-Lead Counsel in the Court of Chancery derivative litigation City of Roseville Employees Retirement System, et. al. v Lawrence J. Ellison, et. al., C.A. No. 6900-CS. This action arose out of Oracle Corporations acquisition of Pillar Data Systems, Inc. (Ellison's private company) and alleged that the acquisition of Pillar was unfair to Oracle to Ellison's benefit. The Court approved a settlement resulting in Mr. Ellison's agreeing to return 95% of the amount Oracle pays for Pillar back to Oracle creating a benefit for Oracle and its shareholders valued at $440 million-one of the largest derivative settlements in the history of the Court of Chancery.

From 2012-2015, Ms. Tikellis served as Co-Lead Counsel in In re Freeport-McMoran Copper & Gold Inc, C.A. No. 8145-VN, a derivative action arising out of Freeport-McMoran Copper & Gold Inc.'s agreement to acquire Plains Exploration Production Co. and McMoran Exploration Production Co. The Court approved the settlement of this case in April, 2015, resulting in a dividend to be paid to Freeport stockholders, a credit redeemable by Freeport for financial advisory assignments, and other corporate governance enhancements. The settlement created a benefit for Freeport and its shareholders valued at nearly $154 million and is believed to be the first to ensure the benefits of such a settlement flow to stockholders in the form of a cash dividend.

- 2011 through present Chambers USA—Ranked As Leading Individual
- 2012 through present Best Lawyers
- 2007 through present Named Delaware Super Lawyer
- Member, Richard N. Rodney Inn of Court
- AV® rated by Martindale Hubbell

Currently, Ms. Tikellis is co-lead counsel in a derivative action captioned In re Sanchez Energy Derivative Litigation, C.A. No. 9132-VCG (Del. Ch.) pending in the court of Chancery of the State of Delaware. The action alleges wrongdoing by the directors Sanchez Energy Corporation for causing the Company to acquire assets in the Tuscaloosa Marine Shale from Sanchez Resources LLC, an entity affiliated with Sanchez Energy's CEO, Tony Sanchez, III, and Executive Chairman Tony Sanchez, JR. at a grossly excessive price and at the expense of Sanchez Energy. The action settled for over $30 million with the settlement receiving court approval on November 6, 2017.

Ms. Tikellis also currently represents Norfolk County Retirement System in an action challenging the acquisition of Starz ("Starz") by Lions Gate Entertainment Corp. ("Lions Gate") (the "Merger"), In re: Starz Stockholder Litigation, Cons. C.A. No. 12584-VCG (Del. Ch.). Pursuant to the Merger, John C. Malone ("Malone"), Starz's controlling stockholder and a director of Lions Gate, will receive superior consideration, including voting rights in Lions Gate, while the remaining Starz stockholders will receive less valuable consideration and lose their voting rights.

Ms. Tikellis has written extensively on topics ranging from corporate governance, mergers and acquisitions, stockholder derivative suits and ethics, and is a frequent speaker at industry events and continuing legal education programs including the National Conference on Public Employee Retirement Systems, the Practicing Law Institute, the American Association of Justice, the American Bar Association and the Delaware Bar Association.

Named repeatedly in Chambers and Partners as a Leading Individual, Ms. Tikellis is "very experienced, dogged and knowledgeable in Delaware corporate law." "She has significant expertise in securities fraud, antitrust and other complex litigation."

Practice Areas:

- Antitrust
- Automotive Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation

Education:

- Villanova Law School, J.D. - *cum laude*
  - ◊ *Villanova Law Review*, Associate Editor
  - ◊ *Villanova Moot Court Board*
  - ◊ Obert Corporation Law Prize
- University of Virginia, B.A., English literature

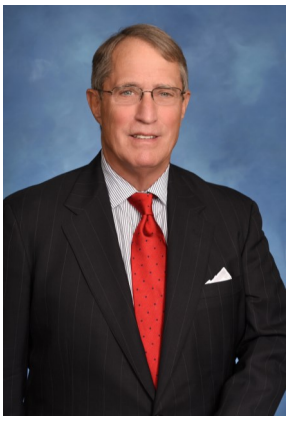
Memberships & Associations:

- Pennsylvania Bar Association
- Passe´ International

Admissions:

- Pennsylvania
- Eastern District of Pennsylvania
- Federal Circuit

Anthony Allen Geyelin



Tony is of Counsel to the firm at the Haverford office, where for the last decade he has used his extensive private and public sector corporate and regulatory experience to assist the firm in the effective representation of its many clients. Tony has previously worked as an associate in the business department of a major Philadelphia law firm; served as Chief Counsel and then Acting Insurance Commissioner with the Pennsylvania Insurance Department in Harrisburg; and represented publicly traded insurance companies based in Pennsylvania and Georgia as their senior vice president, general counsel and corporate secretary.

Tony has represented the firm's clients in a number of significant litigations, including the AHERF, Air Cargo, Certainteed, Cipro, Clear Channel, Del Monte, Honda Hybrid Vehicles, Insurance Brokers, iPhone LDI, Intel, Marine Hoses, Phoenix Leasing, and Reliance Insolvency matters.

Outside of the office Tony's pro bono, professional and charitable activities have included volunteering as a Federal Public Defender; service as a member and officer of White-Williams Scholars, the Schuylkill Canal Association, and the First Monday Business Club of Philadelphia; and serving as a member of the National Association of Insurance Commissioners and the Radnor Township (PA) Planning Commission.

Our Attorneys-Associates

Practice Areas:

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions
- Securities Fraud

Education:

- University of Virginia School of Law, J.D., 2008
- University of Virginia, B.A., 2004

Memberships & Associations:

- Delaware State Bar Association
- The Richard S. Rodney American Inn of Court

Admissions:

- Supreme Court of Delaware
- District of Delaware
- Supreme Court of New York
- ·Supreme Court of Connecticut

Vera G. Belger

Vera G. Belger is an associate in the Wilmington office. Ms. Belger's practice focuses on shareholder and unitholder class and derivative actions arising pursuant to Delaware law. Together with the Firm's Partners, Ms. Belger has assisted in the prosecution of the following actions:

- *In re Barnes & Noble Stockholder Derivative Litigation,* C.A. No. 4813-CS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative litigation arising from Barnes & Noble, Inc.'s acquisition of Barnes & Noble College Booksellers, Inc., which resulted in a settlement of nearly $30 million).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.,* C.A. No. 6900-VCP (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and largest shareholder of Oracle, which led to a settlement valued at $440 million, one of the larger derivative settlements in the history of the Court of Chancery).
- *In re Freeport McMoRan Copper & Gold, Inc. Derivative Litig.,* C.A. No. 8145-VCN (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative litigation which produced an unprecedented result including a $147.5 million dividend to be paid to Freeport's shareholders and substantial corporate governance and other benefits).
- *In re Wilmington Trust Securities Litigation,* C.A. No. 10-cv-990-EJR (U.S. Dist. Ct. Del. (Liaison Counsel in federal action alleging reckless failure of a banking institution that had been one of Delaware's most respected corporations for generations).

Ms. Belger's pro bono activities include serving as a guardian ad litem through the Office of the Child Advocate. While attending law school, Ms. Belger was a Board Member of the Public Interest Law Association Board and a participant in the William Minor Lile Moot Court Competition. Following graduation, Ms. Belger was an associate with an international law firm where she practiced complex commercial litigation.

Practice Areas:

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Villanova University School of Law, J.D., 2007
  - ◊ Co-President of Asian-Pacific American Law Students Association
- Tufts University, B.A., 2002 – *cum laude* in Political Science

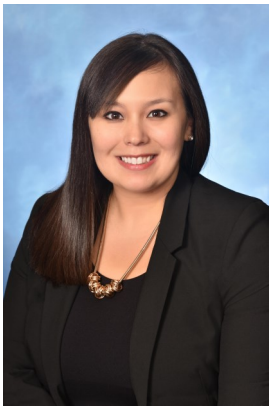
Memberships & Associations:

- Delaware State Bar Association
- The Richard S. Rodney American Inn of Court

Admissions:

- Delaware, 2007
- U.S. District Court for the District of Delaware, 2008

Tiffany J. Cramer



Tiffany J. Cramer is an associate in the Wilmington office. Her entire practice is devoted to litigation, with an emphasis on corporate mismanagement & derivative stockholder actions and mergers & acquisitions.

Together with the Firm's Partners, Ms. Cramer has assisted in the prosecution of numerous shareholder and unitholder class and derivative actions arising pursuant to Delaware law, including:

- *In re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813-CS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative litigation arising from Barnes & Noble, Inc.'s acquisition of Barnes & Noble College Booksellers, Inc., which resulted in a settlement of nearly $30 million).
- *In re Atlas Energy Resources, LLC Unitholder Litigation*, Consol. C.A. No. 4589-VCN (Co-Lead Counsel in the Court of Chancery class action litigation challenging Atlas America, Inc.'s acquisition of Atlas Energy Resources, LLC, which resulted in a settlement providing for an additional $20 million fund for former Atlas Energy Unitholders).
- *In Re Genentech, Inc. Shareholders Litigation*, Consol. C.A. No. 3911-VCS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery class action litigation challenging Roche Holding's buyout of Genentech, Inc., which resulted in a settlement providing for, among other things, an additional $4 billion in consideration paid to the minority shareholders of Genentech, Inc.).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.*, C.A. No. 6900-VCP (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and largest shareholder of Oracle, which led to a settlement valued at $440 million, one of the larger derivative settlements in the history of the Court of Chancery).
- *In re Freeport McMoRan Copper & Gold, Inc. Deriv. Litig.,* C.A. No. 815-VCN (Del. Ch.) (Co-Lead Counsel in Court of Chancery derivative litigation arising from Freeport McMoRan Copper & Gold, Inc.'s acquisition of Plains Exploration Production Co. and McMoran Exploration Production Co, which led to a settlement valued at nearly $154 million, including an unprecedented $147.5 million dividend paid to Freeport's stockholders).

While in law school, she served as law clerk to the Honorable Jane R. Roth of the United States Court of Appeals for the Third Circuit. While in college, she played the bassoon as a member of the Tufts Symphony Orchestra.

Practice Areas:

- Defective Products and Consumer Protection
- Automobile Defects & False Advertising
- Whistleblower/Qui Tam Lawsuits
- Other Complex Litigation
- Pharmaceutical & Medical Device Litigation
- Corporate Mismanagement & Shareholder Derivative Action

Education:

- Villanova University School of Law, J.D., 2012
- Journal of Catholic Social Thought – Executive Editor (2011-2012), Staff Editor (2010-2011)
- Georgetown University, B.A. (Government), 2009

Memberships and Associations:

- Member, Philadelphia Bar Association
- Member, D.C. Bar
- Member, New Jersey Bar Association
- Member, Georgetown University Alumni Admissions Program (AAP)
- Member, Young Friends of the Philadelphia Orchestra

Admissions:

- Pennsylvania
- New Jersey
- District of Columbia

Courts

- Eastern District of Pennsylvania
- District of New Jersey

Andrew W. Ferich

Andrew W. Ferich is an associate in the Firm's Haverford office. Andy focuses his practice on complex litigation, including in the Firm's consumer protection and whistleblower/qui tam practice groups.

Prior to joining the Firm, Andy was an associate at a national litigation firm in Philadelphia where he focused his practice on commercial litigation, financial services litigation, and antitrust matters. Andy possesses major jury trial experience.

Andy currently assists in prosecuting the following matters, among others:

- Brickman, et al. v. HomeAway, Inc., et al., No. 1:16-cv-00733-LY (W.D. Tex.) (consumer class action on behalf of owners of rental/ vacation properties across the country alleging that owners entered into rental listing subscription agreements with HomeAway and its websites based upon the false and broken promise that renters and travelers would never be assessed a fee at booking);
- DeMarco, et al. v. AvalonBay Communities, Inc., et al., No. 2:15-cv-00628-JLL-JAD (D.N.J.) (settled class action lawsuit on behalf of hundreds of tenants and former tenants of AvalonBay community that was destroyed in a massive fire, in which case C&T has been appointed interim co-lead counsel);
- Don Beadles I/T/F Alva Synagogue Church of God v. Chesapeake Energy Corp, et al. (In re Anadarko Basin Oil and Gas Lease Antitrust Litigation), No. 16-cv-0238-M (W.D. Okla.) (antitrust action under federal antitrust laws brought on behalf of a class of landowners who leased land to defendants for drilling for natural gas and received less in lease bonuses and royalties than they should have due to defendants' anticompetitive lease bid-rigging scheme);
- In re: Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litigation, No. 2;15-cv-00018-JLL-JAD (D.N.J.) (litigated this products liability case relating to allegedly defective wood-composite decking to a settlement; C&T was been appointed to the Plaintiffs' Steering Committee);
- Heber, et al. v. Toyota Motor Sales, U.S.A., Inc., et al., No. 8:16-cv-01525-AG-JCG (C.D. Cal.) (prosecuting a class action lawsuit against Toyota on behalf of owners and lessees of Toyota automobiles alleged to contain soy- or other bio-based materials that attract rodents and result in rodent damage; C&T has been appointed interim co-lead counsel);
- Rollolazo et al. v. BMW of North America, LLC, et al, No. 8:16-cv-00966-BRO-SS (C.D. Cal.) (prosecuting a class action lawsuit against BMW on behalf of owners of the BMW i3 REx—a plug-in electric hybrid vehicle with a gas engine known as a Range Extender—wherein Plaintiffs have alleged that a defect in the Range Extender causes class vehicles to abruptly and dangerously decelerate during operation);
- Gordon, et al. v. Chipotle Mexican Grill, Inc., No. 1:17-cv-01415-

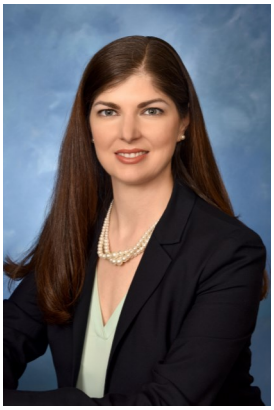
CMA (D. Colo.) (litigating this class action relating to a data breach suffered by Chipotle that allegedly exposed consumers' payment card data to hackers, in which case C&T has been appointed interim co-lead counsel);

- In re Nexus 6P Prods. Liab. Litig., No. 5:17-cv-02185-BLF (N.D. Cal.) (class action lawsuit alleging that smartphones manufactured by Google and Huawei contain defects that cause the phones to "bootloop" and experience sudden battery drain; C&T has been appointed interim co-lead class counsel);
- In re LG Refrigerators Consumer Class Action, No 2:17-cv-03664-WJM-MF (D.N.J.) (litigating class action alleging that a defect in certain of defendant's refrigerators cause compressor failure, resulting in cooling failure in the freezer and refrigerator compartments; C&T has been appointed interim co-lead class counsel);
- Williams v. Butler & Hosch, P.A., No. 0:15-cv-61139-CMA (S.D. Fla.) (obtained class certification in this class action lawsuit on behalf of hundreds of former employees improperly terminated under the WARN Act);
- Davis, et al. v. Washington University in St. Louis, et al., No. 4:17-cv-01641-RLW (E.D. Mo.) (ERISA class action alleging excessive fees and other breaches of fiduciary duty relating to university 403(b) retirement plan).

Andy received his law degree from Villanova University School of Law in 2012. While in law school, Andy clerked for a small suburban Philadelphia law firm. Prior to law school, Andy attended Georgetown University and was a member of the baseball team. During his time in college, Andy also worked on Capitol Hill and for a well-known D.C. think tank.

Andy is admitted to practice in Pennsylvania, New Jersey, and the District of Columbia.

Alison Gabe Gushue



Alison G. Gushue is an associate in the Firm's Haverford Office. Her practice is devoted to litigation, with an emphasis on consumer fraud, securities, and derivative cases. Ms. Gushue also provides assistance to the Firm's Institutional Client Services Group.

Prior to joining the firm, Ms. Gushue was counsel to the Pennsylvania Securities Commission in the Division of Corporation Finance. In this capacity, she was responsible for reviewing securities registration filings for compliance with state securities laws and for working with issuers and issuers' counsel to bring noncompliant filings into compliance.

Together with the Partners, Ms. Gushue has provided substantial assistance in the prosecution of the following cases:

- *Lockabey et al. v. American Honda Motor Co., Inc.*, Case No. 37-2010 -00087755-CU-BT (San Diego Super. Ct.) (settlement valued by court at $170 million for a class of 460,000 purchasers and lessees of Honda Civic Hybrids to resolve claims that the vehicle was advertised with fuel economy representations it could not achieve under real-world driving conditions, and that a software update to the IMA system further decreased fuel economy and performance)
- *In re DVI Inc. Securities Litigation*, Case No. 2:03-cv-05336-LDD (over $17m in settlements recovered for the shareholder class in lawsuit alleging that the company's officers and directors, in conjunction with its external auditors and outside counsel, violated the federal securities laws)
- *In re LG Front Loading Washing Machine Litigation*, Case No. 2:08-cv -61 (D.N.J); and In re Whirlpool Front Loading Washing Machine Litigation, Case No. 1:08-wp-65000 (N.D. Oh.) (pending cases which allege that LG and Whirlpool's front loading washing machines suffer from a defect that leads to the formation of mold and mildew on the inside of the washing machines and production of foul and noxious odors)

Ms. Gushue has also provided pro bono legal services to nonprofit organizations in Philadelphia such as the Philadelphia Bankruptcy Assistance Project and the Public Interest Law Center of Philadelphia.

Practice Areas:

- Automobile Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud

Education:

- Villanova University School of Law, J.D., 2006
  - ◊ Villanova Environmental Law Journal – managing editor of student works (2006), staff writer (2005)
- University of California, Los Angeles, B.A., 2003 – *cum laude*

Membership & Associations:

- Member, Philadelphia Bar Association

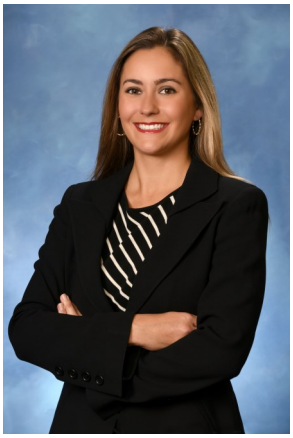
Admissions:

- Pennsylvania
- New Jersey
- Eastern District of Pennsylvania
- District of New Jersey

Honors:

- Pennsylvania Super Lawyers Rising Star 2013-2016

Stephanie E. Saunders



Stephanie E. Saunders is an associate in the Firm's Haverford office. She focuses her practice on complex litigation including securities fraud, shareholder derivative, and consumer protection cases. She also provides assistance to the Firm's Client Development Group which is responsible for establishing and maintaining strong client relations.

Stephanie received her law degree from the Drexel University Thomas R. Kline School of Law in 2015. Her law school career was marked by several academic honors which included being named the CALI Excellence for the Future Award® recipient in Legal Methods & Legal Writing for earning the highest grade in the class. While in law school, she clerked for the Firm and conducted her practice-intensive semester long co-op with the Firm during her second year of law school.

Upon graduating from Drexel University's LeBow College of Business in 2005, Stephanie began her professional career in marketing. She was an integrated marketing and promotions manager with Condé Nast Publications in Manhattan where she managed and executed print and digital advertising campaigns. Upon returning to the Philadelphia region, she joined PNC Wealth Management where she was the marketing segment manager of Hawthorn, an ultra-high net worth multi-family office, where she was responsible for the development of integrated marketing plans, advertising, and client events.

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation

Education:

- Drexel University Thomas R. Kline School of Law, J.D., 2015
- Drexel University, B.S. in Business Administration, 2005

Memberships and Associations:

- Member, Philadelphia Bar Association
- Member, Pennsylvania Bar Association

Admissions:

- Pennsylvania, 2015

Jessica L. Titler

Jessica L. Titler is an associate in the Firm's Haverford office. She focuses her practice on complex litigation including securities fraud, shareholder derivative suits, and consumer protection cases. Prior to joining the Firm, Jessica clerked for the Honorable Karen L. Suter in the Superior Court of New Jersey, Appellate Division.

Jessica received her law degree from the Temple University James E. Beasley School of Law in 2015. While in law school, Jessica served as managing editor of the Temple International & Comparative Law Journal and as president of the Business Law Society. She also held positions with the Internal Revenue Service Office of Chief Counsel and Administrative Office of Pennsylvania Courts, as well as clerked for a small central Pennsylvania law firm. Jessica graduated from University of Pittsburgh where she majored in Communications and Writing. In her free time, Jessica enjoys world travel, cooking, and animal rescue.

Practice Areas:

- Corporate Mismanagement
- Consumer Fraud & Defective Products
- Other Complex Litigation
- Securities Fraud Litigation

Education:

- Temple University James E. Beasley School of Law, J.D., 2015 – cum laude
- Temple International & Comparative Law Journal – managing editor (2015), staff editor (2014)
- University of Pittsburgh, B.A., 2012 – cum laude

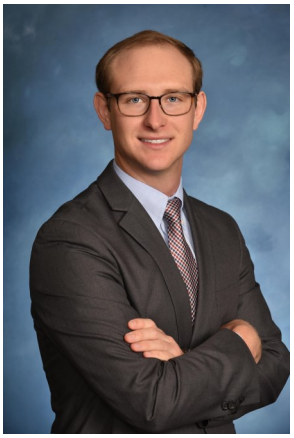
Memberships and Associations:

- Member, Philadelphia Bar Association
- Member, Pennsylvania Bar Association

Admissions:

- Eastern District of Pennsylvania
- District of New Jersey
- Pennsylvania
- New Jersey

Zachary P. Beatty



Zachary P. Beatty is an associate in the Firm's Haverford office. He focuses his practice on complex litigation including securities fraud, shareholder derivative suits, and consumer protection class actions.

Zachary received his law degree from Michigan State University College of Law in 2017. While in law school, Zachary served as a managing editor for the Michigan State Law Review. His law school career was marked by several academic honors including earning Jurisprudence Awards for receiving the highest grades in his Corporate Finance, Business Enterprises, Constitutional Law II, and Advocacy classes. Zachary clerked for a small central Pennsylvania law firm and clerked for the Honorable Carol K. McGinley in the Lehigh County Court of Common Pleas. He also clerked for the Firm's Haverford office. Zachary graduated from York College of Pennsylvania where he majored in history.

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation

Education:

- Michigan State University College of Law, J.D. *summa cum laude*, 2017
- Michigan State Law Review – managing editor (2016-2017), staff editor (2015-2016)
- York College of Pennsylvania, B.A. *magna cum laude*, 2013

Admissions:

- Pennsylvania

Practice Areas

Health & Welfare Fund Assets

C&T Protects Clients' Health & Welfare Fund Assets Through Monitoring Services & Vigorously Pursuing Health & Welfare Litigation.

At no cost to the client, C&T seeks to protect its clients' health & welfare fund assets against fraud and other wrongdoing by monitoring the health & welfare fund's drug purchases, Pharmacy benefit Managers and other health service providers. In addition, C&T investigates potential claims and, on a fully-contingent basis, pursues legal action for the client on meritorious claims involving the clients' heath & welfare funds. These claims could include: the recovery of excessive charges due to misconduct by health service providers; antitrust claims to recover excessive prescription drug charges and other costs due to corporate collusion and misconduct; and, cost-recovery claims where welfare funds have paid for health care treatment resulting from defective or dangerous drugs or medical devices.

Monitoring Financial Investments

C&T Protects Clients' Financial Investments Through Securities Fraud Monitoring Services.

Backed by extensive experience, knowledge of the law and successes in this field, C&T utilizes various information systems and resources (including forensic accountants, financial analysts, seasoned investigators, as well as technology and data collection specialists, who can cut to the core of complex financial and commercial documents and transactions) to provide our institutional clients with a means to actively protect the assets in their equity portfolios. As part of this no-cost service, for each equity portfolio, C&T monitors relevant financial and market data, pricing, trading, news and the portfolio's losses. C&T investigates and evaluates potential securities fraud claims and, after full consultation with the client and at the client's direction, C&T will, on a fully-contingent basis, pursue legal action for the client on meritorious securities fraud claims.

Corporate Transactional

C&T Protects Shareholders' Interest by Holding Directors Accountable for Breaches of Fiduciary Duties

Directors and officers of corporations are obligated by law to exercise good faith, loyalty, due care and complete candor in managing the business of the corporation. Their duty of loyalty to the corporation and its shareholders requires that they act in the best interests of the corporation at all times. Directors who breach any of these "fiduciary" duties are accountable to the stockholders and to the corporation itself for the harm caused by the breach. A substantial part of the practice of Chimicles & Tikellis LLP involves representing shareholders in bringing suits for breach of fiduciary duty by corporate directors.

Practice Areas

Securities Fraud

C&T Protects and Recovers Clients' Assets Through the Vigorous Pursuit of Securities Fraud Litigation.

C&T has been responsible for recovering over $1 billion for institutional and individual investors who have been victims of securities fraud. The prosecution of securities fraud often involves allegations that a publicly traded corporation and its affiliates and/or agents disseminated materially false and misleading statements to investors about the company's financial condition, thereby artificially inflating the price of that stock. Often, once the truth is revealed, those who invested at a time when the company's stock was artificially inflated incur a significant drop in the value of their stock. C&T's securities practice group comprises seasoned attorneys with extensive trial experience who have successfully litigated cases against some of the nation's largest corporations. This group is strengthened by its use of forensic accountants, financial analysts, and seasoned investigators.

Antitrust and Unfair Competition

C&T Enforces Clients' Rights Against Those Who Violated Antitrust Laws.

C&T successfully prosecutes an array of anticompetitive conduct, including price fixing, tying agreements, illegal boycotts and monopolization, anticompetitive reverse payment accords, and other conduct that improperly delays the market entry of less expensive generic drugs . As counsel in major litigation over anticompetitive conduct by the makers of brand-name prescription drugs, C&T has helped clients recover significant amounts of price overcharges for blockbuster drugs such as BuSpar, Coumadin, Cardizem, Flonase , Relafen, and Paxil, Toprol-XL, and TriCor.

Real Estate Investment Trusts

C&T is a Trail Blazer in Protecting Clients' Investments in Non-Listed Equities.

C&T represents limited partners and purchaser of stock in limited partnerships and real estate investment trusts (non-listed REITs) which are publicly-registered but not traded on a national stock exchange. These entities operate outside the realm of a public market that responds to market conditions and analysts' scrutiny, so the investors must rely entirely on the accuracy and completeness of the financial and other disclosures provided by the company about its business, its finances, and the value of its securities. C&T prosecutes: (a) securities law violations in the sale of the units or stock; (b) abusive management practices including self-dealing transactions and the payment of excessive fees; (c) unfair transactions involving sales of the entities' assets; and (d) buy-outs of the investors' interests.

Practice Areas

Shareholder Derivative Action

C&T is a Leading Advocate for Prosecuting and Protecting Shareholder Rights through Derivative Lawsuits and Class Actions.

C&T is at the forefront of persuading courts to recognize that actions taken by directors (or other fiduciaries) of corporations or associations must be in the best interests of the shareholders. Such persons have duties to the investors (and the corporation) to act in good faith and with loyalty, due care and complete candor. Where there is an indication that a director's actions are influenced by self-interest or considerations other than what is best for the shareholders, the director lacks the independence required of a fiduciary and, as a consequence, that director's decisions cannot be honored. A landmark decision by the Supreme Court of Delaware underscored the sanctity of this principal and represented a major victory for C&T's clients.

Corporate Mismanagement

C&T is a Principal Advocate for Sound Corporate Governance and Accountability.

C&T supports the critical role its investor clients serve as shareholders of publicly held companies. Settlements do not provide exclusively monetary benefits to our clients. In certain instances, they may include long term reforms by a corporate entity for the purpose of advancing the interests of the shareholders and protecting them from future wrongdoing by corporate officers and directors. On behalf of our clients, we take corporate directors' obligations seriously. It's a matter of justice. That's why C&T strives not to only obtain maximum financial recoveries, but also to effect fundamental changes in the way companies operate so that wrongdoing will not reoccur.

Defective Products and Consumer Protection

C&T Protects Consumers from Defective Products and Deceptive Conduct.

C&T frequently represents consumers who have been injured by false advertising, or by the sale of defective goods or services. The firm has achieved significant recoveries for its clients in such cases, particularly in those involving defectively designed automobiles and other consumer products. C&T has also successfully prosecuted actions against banks and other large institutions for engaging in allegedly deceptive conduct.

Representative Cases

Securities Cases Involving Real Estate Investments

***CNL Hotels & Resorts Inc. Securities Litigation*, Case No. 6:04-CV-1231, United States District Court, Middle District of Florida.**

C&T was Lead Litigation Counsel in CNL Hotels & Resorts Inc. Securities Litigation**,** representing a Michigan Retirement System, other named plaintiffs and over 100,000 investors in this federal securities law class action that was filed in August 2004 against the nation's second largest hotel real estate investment trust, CNL Hotels & Resorts, Inc. (f/k/a CNL Hospitality Properties, Inc.) ("CNL Hotels") and certain of its affiliates, officers and directors. CNL raised over $3 billion from investors pursuant to what Plaintiffs alleged to be false and misleading offering materials. In addition, in June 2004 CNL proposed an affiliated-transaction that was set to cost the investors and the Company over $300 million ("Merger").

The Action was filed on behalf of: (a) CNL Hotels shareholders entitled to vote on the proposals presented in CNL Hotels' proxy statement dated June 21, 2004 ("Proxy Class"); and (b) CNL Hotels' shareholders who acquired CNL Hotels shares pursuant to or by means of CNL Hotels' public offerings, registration statements and/or prospectuses between August 16, 2001 and August 16, 2004 ("Purchaser Class").

The Proxy Class claims were settled by (a) CNL Hotels having entered into an Amended Merger Agreement which significantly reduced the amount that CNL Hotels paid to acquire its Advisor, CNL Hospitality Corp., compared to the Original Merger Agreement approved by CNL Hotels' stockholders pursuant to the June 2004 Proxy; (b) CNL Hotels having entered into certain Advisor Fee Reduction Agreements, which significantly reduced certain historic, current, and future advisory fees that CNL Hotels paid its Advisor before the Merger; and (c) the adoption of certain corporate governance provisions by CNL Hotels' Board of Directors. **In approving the Settlement, the Court concluded that in settling the Proxy claims, "a substantial benefit [was] achieved (estimated at approximately $225,000,000)" and "this lawsuit was clearly instrumental in achieving that result."** The Purchaser Class claims were settled by Settling Defendants' payment of **$35,000,000**, payable in three annual installments (January 2007 to January 2009).

On August 1, 2006, the Federal District Court in Orlando, Florida granted final approval of the Settlement as fair, reasonable, and adequate, and in rendering its approval of an award of attorneys' fees and costs to Plaintiffs' Counsel, the Court noted that "Plaintiffs' counsel pursued this complex case diligently, competently and professionally" and "achieved a successful result." More than 100,000 class members received notice of the proposed settlement and no substantive objection to the settlement, plan of allocation or fee petition was voiced by any class member.

Representative Cases

Securities Cases Involving Real Estate Investments

***In re Real Estate Associates Limited Partnership Litigation*, Case No. CV 98-7035, United States District Court, Central District of California.**

Chimicles & Tikellis LLP achieved national recognition for obtaining, in a federal securities fraud action, the first successful plaintiffs' verdict under the PSLRA. Senior partner Nicholas E. Chimicles was Lead Trial Counsel in the six-week jury trial in federal court in Los Angeles, in October 2002. The jury verdict, in the amount of $185 million (half in compensatory damages; half in punitive damages), was ranked among the top 10 verdicts in the nation for 2002. After the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for $83 million, representing full recovery for the losses of the class**.** At the final hearing, held in November 2003, the Court praised Counsel for achieving both a verdict and a settlement that "qualif[ied] as an exceptional result" in what the Judge regarded as "a very difficult case…" In addition, the Judge noted the case's "novelty and complexity…and the positive reaction of the class. Certainly, there have been no objections, and I think Plaintiffs' counsel has served the class very well."

Case Summary: In August of 1998, over 17,000 investors ("Investor Class") in 8 public Real Estate Associates Limited Partnerships ("REAL Partnerships") were solicited by their corporate managing general partner, defendant National Partnership Investments Corp. ("NAPICO"), and other Defendants via Consent Solicitations filed with the Securities and Exchange Commission ("SEC"), to vote in favor of the sale of the REAL Partnerships' interests in 98 limited partnerships ("Local Partnerships"). In a self-dealing and interested transaction, the Investor Class was asked to consent to the sale of these interests to NAPICO's affiliates ("REIT Transaction"). In short, Plaintiffs alleged that defendants structured and carried out this wrongful and self-dealing transaction based on false and misleading statements, and omissions in the Consent Solicitations, resulting in the Investor Class receiving grossly inadequate consideration for the sale of these interests. Plaintiffs' expert valued these interests to be worth a minimum of $86,523,500 (which does not include additional consideration owed to the Investor Class), for which the Investor Class was paid only $20,023,859.

Plaintiffs and the Certified Class asserted claims under Section 14 of the Securities Exchange Act of 1934 ("the Exchange Act"), alleging that the defendants caused the Consent Solicitations to contain false or misleading statements of material fact and omissions of material fact that made the statements false or misleading. In addition, Plaintiffs asserted that Defendants breached their fiduciary duties by using their positions of trust and authority for personal gain at the expense of the Limited Partners. Moreover, Plaintiffs sought equitable relief for the Limited Partners including, among other things, an injunction under Section 14 of the Exchange Act for violation of the "anti-bundling rules" of the SEC, a declaratory judgment decreeing that defendants were not entitled to indemnification from the REAL Partnerships.

Trial: This landmark case is the *first* Section 14 – proxy law- securities class action seeking damages, a significant monetary recovery, for investors that has been tried, and ultimately won, before a jury anywhere in the United States since the enactment of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Trial began on October 8, 2002 before a federal court jury in Los Angeles. The jury heard testimony from over 25 witnesses, and trial counsel moved into evidence approximately 4,810 exhibits; out of those 4,810 exhibits, witnesses were questioned about, or referred to, approximately 180 exhibits.

Representative Cases

Securities Cases Involving Real Estate Investments

On November 15, 2002, the ten-member jury, after more than four weeks of trial and six days of deliberation, unanimously found that Defendants knowingly violated the federal proxy laws and that NAPICO breached its fiduciary duties, and that such breach was committed with oppression, fraud and malice. The jury's unanimous verdict held defendants liable for compensatory damages of $92.5 million in favor of the Investor Class. On November 19, 2002, a second phase of the trial was held to determine the amount of punitive damages to be assessed against NAPICO. The jury returned a verdict of $92.5 million in punitive damages. In total, trial counsel secured a unanimous jury verdict of $185 million on behalf of the Investor Class.

With this victory, Mr. Chimicles and the trial team secured the 10th largest verdict of 2002. (See, National Law Journal, "The Largest Verdicts of 2002", February 2, 3003; National Law Journal, "Jury Room Rage", Feb. 3. 2002). Subsequent to post-trial briefing and rulings, in which the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for $83 million. The settlement represented full recovery for the losses of the class.

Prosecuting and trying this Case required dedication, tenacity, and skill: This case involved an extremely complex transaction. As Lead Trial Counsel, C&T was faced with having to comprehensively and in an understandable way present complex law, facts, evidence and testimony to the jury, without having them become lost (and thus, indifferent and inattentive) in a myriad of complex terms, concepts, facts and law. The trial evidence in this case originated almost exclusively from the documents and testimony of Defendants and their agents. As Lead Trial Counsel, C&T was able, through strategic cross-examination of expert witnesses, to effectively stonewall defendants' damage analysis. In addition, C&T conducted thoughtful and strategic examination of defendants' witnesses, using defendants' own documents to belie their testimony.

The significance of the case: The significance of this trial and the result are magnified by the public justice served via this trial and the novelty of issues tried. This case involved a paradigm of corporate greed, and C&T sent a message to not only the Defendants in this Action, but to all corporate fiduciaries, officers, directors and partners, that it does not pay to steal, lie and cheat. There needs to be effective deterrents, so that "corporate greed" does not pay. The diligent and unrelenting prosecution and trial of this case by C&T sent that message.

Moreover, the issues involved were novel and invoked the application of developing case law that is not always uniformly applied by the federal circuit courts. In Count I, Plaintiffs alleged that defendants violated § 14 of the Exchange Act. Subsequent to the enactment of the PLSRA, the primary relief sought and accorded for violations of the proxy laws is a preliminary injunction. Here, the consummation of the REIT Transaction foreclosed that form of relief. Instead, Plaintiffs' Counsel sought significant monetary damages for the Investor Class on account of defendants' violations of the federal proxy laws. C&T prevailed in overcoming defendants' characterization of the measure of damages that the Investor Class was required to prove (defendants argued for a measure of damages equivalent to the difference in the value of the security prior to and subsequent to the dissemination of the Consent Solicitations), and instead, successfully recouped damages for the value of the interests and assets given up by the Investor Class. The case is important in the area of enforcement of fiduciary duties in public partnerships which are a fertile ground for unscrupulous general partners to cheat the public investors.

Representative Cases

Securities Cases Involving Real Estate Investments

Aetna Real Estate Associates LP

Nicholas Chimicles and Pamela Tikellis represented a Class of unitholders who sought dissolution of the partnership because the management fees paid to the general partners were excessive and depleted the value of the partnership. The Settlement, valued in excess of $20 million, included the sale of partnership property to compensate the class members, a reduction of the management fees, and a special cash distribution to the class.

***City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc., Case No. 07 C 6174*, United States District Court, Northern District of Illinois .**

C&T was principal litigation counsel for the plaintiff class of stockholders that challenged the accuracy of a proxy statement that was used to secure stockholder approval of a merger between an external advisor and property managers and the largest retail real estate trust in the country. In 2010, in a settlement negotiation lead by the Firm, we succeeded in having $90 million of a stock, or 25% of the merger consideration, paid back to the REIT.

***Wells and Piedmont Real Estate Investment Trust, Inc., Securities Litigation, Case Nos. 1:07-cv-00862, 02660*, United States District Court, Northern District of Georgia.**

C&T served as co-lead counsel in this federal securities class action on behalf of Wells REIT/Piedmont shareholders. Filed in 2007, this lawsuit charged Wells REIT, certain of its directors and officers, and their affiliates, with violations of the federal securities laws for their conducting an improper, self-dealing transaction and recommending that shareholders reject a mid-2007 tender offer made for the shareholders' stock. On the verge of trial, the Cases settled for $7.5 million and the Settlement was approved in 2013.

***In re Cole Credit Property Trust III, Inc. Derivative and Class Litigation, Case No. 24-C-13-001563,* Circuit Court for Baltimore City.**

In this Action filed in 2013, C&T, as chair of the executive committee of interim class counsel, represents Cole Credit Property Trust III ("CCPT III") investors, who were, without their consent, required to give Christopher Cole (CCPT III's founder and president) hundreds of millions of dollars' worth of consideration for a business that plaintiffs allege was worth far less. The Action also alleges that, in breach of their fiduciary obligations to CCPT III investors, CCPT III's Board of Directors pressed forward with this wrongful self-dealing transaction rebuffing an offer from a third party that proposed to acquire the investors' shares in a $9 billion dollar deal. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

Representative Cases

Securities Cases Involving Real Estate Investments

***Delaware County Employees Retirement Fund v. Barry M. Portnoy, et al.*, Case No. 1:13-cv-10405, United States District Court, District Court of Massachusetts.**

C&T is lead counsel in an action pending in federal court in Boston filed on behalf of Massachusetts-based CommonWealth REIT ("CWH") and its shareholders against CWH's co-founder Barry Portnoy and his son Adam Portnoy ("Portnoys"), and their wholly-owned entity Reit Management & Research, LLC ("RMR"), and certain other former and current officers and trustees of CWH (collectively, "Defendants"). The Action alleges a long history of management abuse, self-dealing, and waste by Defendants, which conduct constitutes violations of the federal securities laws and fiduciary duties owed by Defendants to CWH and its shareholders. Plaintiff seeks damages and to enjoin Defendants from any further self-dealing and mismanagement. The Defendants sought to compel the Plaintiff to arbitrate the claims, and Plaintiff has vigorously opposed such efforts on several grounds including that CWH and its shareholders did not consent to arbitration and the arbitration clause is facially oppressive and illegal. The parties are awaiting the Court's ruling on that matter.

***In re Empire State Realty Trust, Inc. Investor Litigation, Case 650607/2012,* New York Supreme Court.**

In this action filed in 2012, C&T represents investors who own the Empire State Building, as well as several other Manhattan properties, whose interests and assets are proposed to be consolidated into a new entity called Empire State Realty Trust Inc. The investors filed an action against the transaction's chief proponents, members of the Malkin family, certain Malkin-controlled companies, and the estate of Leona Helmsley, claiming breaches of fiduciary for, among other things, such proponents being disproportionately favored in the transaction. A Settlement of the Litigation has been reached and was approved in full by the Court. The Settlement consists of: a cash settlement fund of $55 million, modifications to the transaction that result in an over $100 million tax deferral benefit to the investors, and defendants will provide additional material information to investors about the transaction.

Representative Cases

Securities Cases (Non-Real Estate)

***Continental Illinois Corporation Securities Litigation*, Civil Action No. 82 C 4712, United States District Court, Northern District of Illinois.**

Nicholas Chimicles served as lead counsel for the shareholder class in this action alleging federal securities fraud. Filed in the federal district court in Chicago, the case arose from the 1982 oil and gas loan debacle that ultimately resulted in the Bank being taken over by the FDIC. The case involved a twenty-week jury trial conducted by Mr. Chimicles in 1987. Ultimately, the Class recovered nearly $40 million.

***PaineWebber Limited Partnerships Litigation, 94 Civ. 8547,* United States District Court, Southern District of New York**

The Firm was chair of the plaintiffs' executive committee in a case brought on behalf of tens of thousands of investors in approximately 65 limited partnerships that were organized or sponsored by PaineWebber. In a landmark settlement, investors were able to recover $200 million in cash and additional economic benefits following the prosecution of securities law and RICO (Racketeer Influenced and Corrupt Organizations Act) claims.

***ML-Lee Litigation, ML Lee Acquisition Fund L.P.* and *ML-Lee Acquisition Fund II L.P.* and *ML-Lee Acquisition Fund (Retirement Accounts)*, (C.A. Nos. 92-60, 93-494, 94-422, and 95-724), United States District Court, District of Delaware.**

C&T represented three classes of investors who purchased units in two investment companies, ML-Lee Funds (that were jointly created by Merrill Lynch and Thomas H. Lee). The suits alleged breaches of the federal securities laws, based on the omission of material information and the inclusion of material misrepresentations in the written materials provided to the investors, as well as breaches of fiduciary duty and common law by the general partners in regard to conduct that benefited them at the expense of the limited partners. The complaint included claims under the often-ignored Investment Company Act of 1940, and the case witnessed numerous opinions that are considered seminal under the ICA. The six-year litigation resulted in **$32 million** in cash and other benefits to the investors.

***Orrstown Financial Services, Inc., et al,* Securities Litigation, Case No. 12-cv-00793 United States District Court, Middle District of Pennsylvania.**

In this federal securities fraud class action filed in 2012, C&T serves as Lead Counsel, and the Southeastern Pennsylvania Transportation Authority as Lead Plaintiff. The action alleges that Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by misleading investors concerning material information about Orrstown's loan portfolio, underwriting practices, and internal controls. After extensive investigation, including having interviewed several confidential witnesses, C&T filed a 100+ page amended complaint in early 2012. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

Representative Cases

Securities Cases (Non-Real Estate)

***In re Colonial BancGroup, Inc. Securities Litigation*, Case No. 09-CV-00104, United States District Court, Middle District of Alabama.**

C&T is actively involved in prosecuting this securities class action arising out of the 2009 failure of Colonial Bank, in which Norfolk County Retirement System, State-Boston Retirement System, City of Brockton Retirement System, and Arkansas Teacher Retirement System are the Court-appointed lead plaintiffs. The failure of Colonial Bank was well-publicized and ultimately resulted in several criminal trials and convictions of Colonial officers and third parties involved in a massive fraud in Colonial's mortgage warehouse lending division. The pending securities lawsuit includes allegations arising out of the mortgage warehouse lending division fraud, as well as allegations that Colonial misled investors concerning its operations in connection with two public offerings of shares and bonds in early 2008, shortly before the Bank's collapse. In April 2012, the Court approved a $10.5 million settlement of Plaintiffs' claims against certain of Colonial's directors and officers. Plaintiffs' claims against Colonial's auditor, PwC, and the underwriters of the 2008 offerings are ongoing.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***In re Genentech, Inc. Shareholders Litigation*, C.A. No. 3911-VCS, Delaware Court of Chancery.**

In this shareholder class action, C&T served as Co-Lead Counsel representing minority stockholders of Genentech, Inc. in an action challenging actions taken by Roche Holdings, Inc. ("Roche") to acquire the remaining approximately 44% of the outstanding common stock of Genentech, Inc. ("Genentech") that Roche did not already own. In particular, Plaintiffs challenged that Roche's conduct toward the minority was unfair and violated pre-existing governance agreements between Roche and Genentech. During the course of the litigation, Roche increased its offer from $86.50 per share to %95 per share, a $4 billion increase in value for Genentech's minority shareholders. That increase and other protections for the minority provided the bases for the settlement of the action, which was approved by the Court of chancery on July 9, 2009.

***In re Kinder Morgan Shareholder Litigation*, C.A. No. 06-c-801, District Court of Shawnee County, Kansas**

In this shareholder class action, C&T served as Co-Lead Counsel representing former stockholders of Kinder Morgan, Inc. (KMI) in an action challenging the acquisition of Kinder Morgan by a buyout group lead by KMI's largest stockholder and Chairman, Richard Kinder. Plaintiffs alleged that Mr. Kinder and a buyout group of investment banks and private equity firms leveraged Mr. Kinder's knowledge and control of KMI to acquire KMI for less than fair value. As a result of the litigation, Defendants agreed to pay $200 million into a settlement fund, believed to be the largest of its kind in any buyout-related litigation. The district Court of Shawnee County, Kansas approved the settlement on November 19, 2010.

***In re Freeport-McMoran Sulphur, Inc. Shareholder Litigation*, C.A. No. 16729, Delaware Court of Chancery.**

In this shareholder class action, C&T serves as Lead Plaintiffs' Counsel representing investors in a stock-for-stock merger of two widely held public companies, seeking to remedy the inadequate consideration the stockholders of Sulphur received as part of the merger. In June 2005, the Court of Chancery denied defendants' motions for summary judgment, allowing Plaintiffs to try each and every breach of fiduciary duty claim asserted in the Action. In denying defendants' motions for summary judgment the Court held there were material issues of fact regarding certain board member's control over the Board including the Special Committee members and the fairness of the process employed by the Special Committee implicating the duty of entire fairness and raising issues regarding the validity of the Board action authorizing the merger. The decision has broken new ground in the field of corporate litigation in Delaware. Before the trial commenced, Plaintiffs and Defendants agreed in principle to settle the case. The settlement, which was approved in April 2006, provides for a cash fund of $17,500,000.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***In re Chiron Shareholder Deal Litigation*, Case No. RG05-230567 (Cal. Super.) & *In re Chiron Corporation Shareholder Litigation*, C.A. No. 1602-N, Delaware Court of Chancery**

C&T represents stockholders of Chiron Corporation in an action which challenged the proposed acquisition of Chiron Corporation by its 42% stockholder, Novartis AG. Novartis announced a $40 per share merger proposal on September 1, 2005, which was rejected by Chiron on September 5, 2005. On October 31, Chiron announced an agreement to merge with Novartis at a price of $45 per share. C&T was co-lead counsel in the consolidated action brought in the Delaware Court of Chancery. Other similar actions were brought by other Chiron shareholders in the Superior Court of California, Alameda City. The claims in the Delaware and California actions were prosecuted jointly in the Superior Court of California. C&T, together with the other counsel for the stockholders, obtained an order from the California Court granting expedited proceedings in connection with a motion preliminary to enjoin the proposed merger. Following extensive expedited discovery in March and April, 2006, and briefing on the stockholders' motion for injunctive relief, and just days prior to the scheduled hearing on the motion for injunctive relief, C&T, together with Co-lead counsel in the California actions, negotiated an agreement to settle the claims which included, among other things, a further increase in the merger price to $48 per share, or an additional $330 million for the public stockholders of Chiron. On July 25, 2006, the Superior Court of California, Alameda County, granted final approval to the settlement of the litigation.

Gelfman v. Weeden Investors, L.P., Civ. Action No. 18519-NC, Delaware Court of Chancery

Chimicles & Tikellis LLP served as class counsel, along with other plaintiffs' firms, in this action against the Weeden Partnership, its General Partner and various individual defendants filed in the Court of Chancery in the State of Delaware. In this Class Action, Plaintiffs alleged that Defendants breached their fiduciary duties to the investors and breached the Partnership Agreement. The Delaware Chancery Court conducted a trial in this action which was concluded in December 2003. Following the trial, the Chancery Court received extensive briefing from the parties and heard oral argument. On June 14, 2004, the Chancery Court issued a memorandum opinion, which was subsequently modified, finding that the Defendants breached their fiduciary duties and the terms of the Partnership Agreement, with respect to the investors, and that Defendants acted in bad faith ("Opinion"). This Opinion from the Chancery Court directed an award of damages to the classes of investors, in addition to other relief. In July 2004, Class Counsel determined that it was in the best interests of the investors to settle the Action for over 90% of the value of the monetary award under the Opinion (over $8 million).

I.G. Holdings Inc., et al. v. Hallwood Realty, LLC, et al., C.A. No. 20283, Delaware Court of Chancery.

In the Delaware Court of Chancery, C& T represented the public unitholders of Hallwood Realty L.P. The action challenged the general partner's refusal to redeem the Partnership's rights plan or to sell the Partnership to maximize value for the public unitholders. Prior to the filing of the action, the Partnership paid no distributions and Units of the Partnership normally traded in the range of $65 to $85 per unit. The prosecution of the action by C&T caused the sale of the Partnership, ultimately yielding approximately $137 per Unit for the unitholders plus payment of the attorneys' fees of the Class.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***Southeastern Pennsylvania Transportation Authority v. Josey*, et. al., C.A. No. 5427, Delaware Court of Chancery.**

Chimicles & Tikellis served as class counsel in this action challenging the acquisition of Mariner Energy, Inc. by Apache Corporation. Following expedited discovery, C&T negotiated a settlement which led to the unprecedented complete elimination of the termination fee from the merger agreement and supplemental disclosures regarding the merger. On March 15, 2011, the Delaware Court of Chancery granted final approval to the settlement of the litigation.

***In re Pepsi Bottling Group, Inc. Shareholders Litigation*, C.A. No. 4526, Delaware Court of Chancery.**

The Firm served as class counsel, along with several other firms challenging PepsiCo's buyout of Pepsi Bottling Group, Inc. C&T's efforts prompted PepsiCo to raise its buyout offer for Pepsi Bottling Group, Inc. by approximately $1 billion and take other steps to improve the buyout on behalf of public stockholders.

***In re Atlas Energy Resources LLC, Unitholder Litigation*, Consol C.A. No. 4589, Delaware Court of Chancery.**

The Firm was co-lead counsel in an action challenging the fairness of the acquisition of Atlas Energy Resources LLC by its controlling shareholder, Atlas America, Inc. After over two-years of complex litigation, the Firm negotiated a $20 million cash settlement, which was finally approved by the court on May 14, 2012.

***In re J. Crew Group, Inc. S'holders Litigation*, C.A. No. 6043, Delaware Court of Chancery.**

The Firm was co-lead counsel challenging the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management. After hard-fought litigation, the action resulted in a settlement fund of $16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction to be approved by a majority of the unaffiliated shareholders. The settlement was finally approved on December 16, 2011.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***In re McKesson Derivative Litigation, Saito*, et al. v. McCall, et al., C.A. No. 17132, Delaware Court of Chancery.**

As Lead Counsel in this stockholder derivative action, C&T challenged the actions of the officers, directors and advisors of McKesson and HBOC in proceeding with the merger of the two companies when their managements were allegedly aware of material accounting improprieties at HBOC. In addition, C&T also brought (under Section 220 of the Delaware Code) a books and records case to discover information about the underlying events. C&T successfully argued in the Delaware Courts for the production of the company's books and records which were used in the preparation of an amended derivative complaint in the derivative case against McKesson and its directors. Seminal opinions have issued from both the Delaware Supreme Court and Chancery Court about Section 220 actions and derivative suits as a result of this lawsuit. Plaintiffs agreed to a settlement of the derivative litigation subject to approval by the Delaware Court of Chancery, pursuant to which the Individual Defendants' insurers will pay $30,000,000 to the Company. In addition, a claims committee comprised of independent directors has been established to prosecute certain of Plaintiffs' claims that will not be released in connection with the proposed settlement. Further, the Company will maintain important governance provisions among other things ensuring the independence of the Board of Directors from management. On February 21, 2006, the Court of Chancery approved the Settlement and signed the Final Judgment and Order and Realignment Order.

***Barnes & Noble Inc.,* C.A. No. 4813, Delaware Court of Chancery.**

C&T served as Co-Lead Counsel in a shareholder lawsuit brought derivatively on behalf of Barnes & Noble ("B&N") alleging wrongdoing by the B&N directors for recklessly causing B&N to acquire Barnes & Noble College Booksellers, Inc. ("College Books") the "Transaction") from B&N's founder, Chairman and controlling stockholder, Leonard Riggio ("Riggio") at a grossly excessive price, subjecting B&N to excessive risk. The case settled for nearly $30 million and finally approved by the court on September 4, 2012.

***Sample v. Morgan*, et. al., C.A. No. 1214-VCS, Delaware Court of Chancery.**

Action alleging that members of the board of directors of Randall Bearings, Inc. breached their fiduciary duties to the company and its stockholders and committed corporate waste. The action resulted in an eve-of-trial settlement including revocation of stock issued to insiders, a substantial cash payment to the corporation and reformation of the Company's corporate governance. The Court finally approved the settlement on August 5, 2008.

***Manson v. Northern Plain Natural Gas Co*., LLC, et. al., C.A. No. 1973-N, Delaware Court of Chancery.**

Chimicles & Tikellis served as counsel in a class and derivative action asserting contract and fiduciary duty claims stemming from dropdown asset transactions to a partnership from an affiliate of its general partner. The case settled for a substantial adjustment (valued by Plaintiff's expert to be worth more than $100 million) to the economic terms of units issued by the partnership in exchange for the assets. The settlement was finally approved by the Court on January 18, 2007

Representative Cases

Consumer Cases

***Lockabey v. American Honda Motors Co., Inc.*, Case No. 37-2010-00087755-CU-BT-CTL, San Diego County Superior Court**

Mr. Chimicles is co-lead counsel in a nationwide class action involving fuel economy problems encountered by purchasers of Honda Civic Hybrids ("HCH"). *Lockabey v. American Honda Motors Co., Inc.*, Case No. 37-2010-00087755-CU-BT-CTL (Super. Ct. San Diego). After nearly five years of litigation in both the federal and state courts in California, a settlement benefiting nearly 450,000 consumers who had leased or owned HCH vehicles from model years 2003 through 2009. Following unprecedented media scrutiny and review by the attorneys general of each state as well as major consumer protection groups, the settlement was approved on March 16, 2012 in a 40 page opinion by the Honorable Timothy B. Taylor of the San Diego County (CA) Superior Court in which the Court stated:

> *The court views this as a case which was difficult and risky… The court also views this as a case with significant public value which merited the 'sunlight' which Class Counsel have facilitated.*

Depending on the number of claims that are filed (deadline will not expire until 6 months after a pending single appeal is resolved), the Class will garner benefits ranging from $100 million to $300 million.

***In re Pennsylvania Baycol: Third-Party Payor Litigation*, Case No. 001874, Court of Common Pleas, Philadelphia County**.

In connection with the withdrawal by Bayer of its anti-cholesterol drug Baycol, C&T represents various Health and Welfare Funds, including the Pennsylvania Employees Benefit Trust Fund, and a certified national class of "third party payors" seeking damages for the sums paid to purchase Baycol for their members/insureds and to pay for the costs of switching their members/insureds from Baycol to an another cholesterol-lowering drug. The Philadelphia Court of Common Pleas granted plaintiffs' motion for summary judgment as to liability; this is the first and only judgment that has been entered against Bayer anywhere in the United States in connection with the withdrawal of Baycol. The Court subsequently certified a national class, and the parties reached a settlement (recently approved by the court) in which Bayer agreed to pay class members a net recovery that approximates the maximum damages (including pre-judgment interest) suffered by class members. The class settlement negotiated by C&T represents a net recovery for third party payors that is between double and triple the net recovery pursuant to a non-litigated settlement negotiated by lawyers representing third party payors such as AETNA and CIGNA that was made available to and accepted by numerous other third party payors (including the TRS). C&T had advised its clients to reject that offer and remain in the now settled class action. On June 15, 2006 the court granted final approval of the settlement.

Representative Cases

Consumer Cases

Shared Medical Systems 1998 Incentive Compensation Plan Litigation, Philadelphia County Court of Common Pleas, Commerce Program, No. 0885.

Chimicles & Tikellis LLP is lead counsel in this action brought in 2003 in the Philadelphia County Court of Common Pleas. The case was brought on behalf of approximately 1,300 persons who were employees of Defendant Siemens Medical Solutions Health Services Corporation (formerly Shared Medical Systems, Inc.) who had their 1998 incentive compensation plan ("ICP") compensation reduced 30% even though the employees had completed their performance under the 1998 ICP contracts and had earned their incentive compensation based on the targets, goals and quotas in the ICPs. The Court had scheduled trial to begin on February 4, 2005. On the eve of trial, the Court granted Plaintiffs' motion for summary judgment as to liability on their breach of contract claim. With the rendering of that summary judgment opinion on liability in favor of Plaintiffs, the parties reached a settlement in which class members will receive a net recovery of the full amount of the amount that their 1998 ICP compensation was reduced. On May 5, 2005, the Court approved the settlement, stating that the case "should restore anyone's faith in class actions as a reasonable way of proceeding on reasonable cases."

***Wong v. T-Mobile USA, Inc.*, Case No. CV 05-cv-73922-NGE-VMM, United States District Court, Eastern District of Michigan.**

Chimicles & Tikellis LLP and the Miller Law Firm P.C. filed a complaint alleging that defendant T-Mobile overcharged its subscribers by billing them for data access services even though T-Mobile's subscribers had already paid a flat rate monthly fee of $5 or $10 to receive unlimited access to those various data services. The data services include Unlimited T-Zones, Any 400 Messages, T-Mobile Web, 1000 Text Messages, Unlimited Mobile to Mobile, Unlimited Messages, T-Mobile Internet, T-Mobile Internet with corporate My E-mail, and T-Mobile Unlimited Internet and Hotspot. Chimicles & Tikellis LLP and the Miller Law Firm defeated a motion by T-Mobile to force resolution of these claims via arbitration and successfully convinced the Court to strike down as unconscionable a provision in T-Mobile's subscription contract prohibiting subscribers from bringing class actions. After that victory, the parties reached a settlement requiring T-Mobile to provide class members with a net recovery of the full amount of the un-refunded overcharges with all costs for notice, claims administration, and counsel fees paid in addition to class members' 100% net recovery. The gross amount of the overcharges, which occurred from April 2003 through June 2006, is approximately $6.7 million. To date, T-Mobile has refunded approximately $4.5 million of those overcharges. A significant portion of those refunds were the result of new policies T-Mobile instituted after the filing of the Complaint. Pursuant to the Settlement, T-Mobile will refund the remaining $2.2 million of un-refunded overcharges.

***In re Checking Account Overdraft Litig*., No. 1:09-MD-02036-JLK, United States District Court, Southern District of Florida.**

These Multidistrict Litigation proceedings involve allegations that dozens of banks reorder and manipulate the posting order of consumer debit transactions to maximize their revenue from overdraft fees. Settlements in excess of $1 billion have been reached with several banks. C&T was active in the overall prosecution of these proceedings, and was specifically responsible for prosecuting actions against US Bank (pending $55 million settlement) and Comerica Bank (pending $14.5 million settlement).

Representative Cases

Consumer Cases

***In re Apple iPhone/iPod Warranty Litig.,* No. 10-CV-01610, United States District Court, Northern District of California** .

C&T is interim co-lead counsel in this case brought by consumers who allege that that Apple improperly denied warranty coverage for their iPhone and iPod Touch devices based on external "Liquid Submersion Indicators" (LSIs). LSIs are small paper-and-ink laminates, akin to litmus paper, which are designed to turn red upon exposure to liquid. Plaintiffs alleged that external LSIs are not a reliable indicator of liquid damage or abuse and, therefore, Apple should have provided warranty coverage. The district court recently granted preliminary approval to a settlement pursuant to which Apple has agreed to pay $53 million to settle these claims.

***Henderson v. Volvo Cars of North America LLC, et al.,* No. 2:09-CV-04146-CCC-JAD, United States District Court, District of New Jersey.**

C&T was lead counsel in this class action lawsuit brought behalf of approximately 90,000 purchasers and lessees of Volvo vehicles that contained allegedly defective automatic transmissions. After the plaintiffs largely prevailed on a motion to dismiss, the district court granted final approval to a nationwide settlement in March 2013.

***In re Philips/Magnavox Television Litig.*, No. 2:09-cv-03072-CCC-JAD, United States District Court, District of New Jersey.**

This class action was brought by consumers who alleged that a defective electrical component was predisposed to overheating, causing their televisions to fail prematurely. After the motion to dismiss was denied in large part, the parties reached a settlement in excess of $4 million.

***Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation*, No. 1:10-cv-00264-CAB, United States District Court, Northern District of Ohio.**

This case was brought on behalf of a class of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA. The case settled for approximately $20 million worth of benefits to class members. C&T, which represented an outpatient surgical center, was the sole lead counsel in this case.

***Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB, United States District Court, District of Colorado.**

C&T was co-lead counsel in this consumer case in which a settlement that provided full recovery to approximately 930,000 class members was achieved.

***In re Certainteed Corp. Roofing Shingle Products Liability Litigation*, No, 07-MDL-1817-LP, United States District Court, Eastern District of Pennsylvania.**

This was a consumer class action involving allegations that CertainTeed sold defective roofing shingles. The parties reached a settlement which was approved and valued by the Court at between $687 to $815 million.

Representative Cases

Antitrust Cases

***In re TriCor Indirect Purchasers Antitrust Litig.*, No. 05-360-SLR, United States District Court, District of Delaware.**

C&T was liaison counsel in this indirect purchaser case which resulted in a $65.7 million settlement. The plaintiffs alleged that manufacturers of a cholesterol drug engaged in anticompetitive conduct, such as making unnecessary changes to the formulation of the drug, which was designed to keep generic versions off of the market.

***In re Flonase Antitrust Litig.*, No. 2:08-cv-3301, United States District Court, Eastern District of Pennsylvania.**

C&T was liaison counsel and trial counsel on behalf of indirect purchaser plaintiffs in this pending antitrust case. The plaintiffs allege that the manufacturer of Flonase engaged in campaign of filing groundless citizens petitions with the Food and Drug Administration which was designed to delay entry of cheaper, generic versions of the drug. The court has granted class certification, and denied motions to dismiss and for summary judgment filed by the defendant. A $46 million settlement was reached on behalf of all indirect purchasers a few months before trial was to commence.

***In re In re Metoprolol Succinate End-Payor Antitrust Litig.*, No. 1:06-cv-00071, United States District Court, District of Delaware.**

C&T was liaison counsel for the indirect purchaser plaintiffs in this case, which involved allegations that AstraZeneca filed baseless patent infringement lawsuits in an effort to delay the market entry of generic versions of the drug Toprol-XL. After the plaintiffs defeated a motion to dismiss, the indirect purchaser case settled for $11 million.

***In re Insurance Brokerage Antitrust Litigation*, No. 2:04-cv-05184-GEB-PS, United States District Court, District of New Jersey.**

This case involves allegations of bid rigging and steering against numerous insurance brokers and insurers. The district court has granted final approval to settlements valued at approximately $218 million.

EXHIBIT 2

RODMAN v. SAFEWAY LITIGATION

LODESTAR CHART

FIRM NAME: CHIMICLES & TIKELLIS LLP

REPORTING PERIOD: Inception to November 30, 2017

NAME	STATUS	HOURLY RATE	HOURS	LODESTAR
Mathews, Timothy N.	P	$650.00	3578.77	$2,326,198.33
Schwartz, Steven A.	P	$750.00	2702.12	$2,026,587.50
Chimicles, Nicholas E.	P	$950.00	55.05	$52,297.50
Johns, Benjamin F.	P	$625.00	7.70	$4,812.50
Sauder, Joseph G.	FP	$700.00	2.00	$1,400.00
Smith, Kimberly Donaldson	P	$700.00	1.10	$770.00
Saler, Christina Donato	FSC	$575.00	132.25	$76,043.75
Gushue, Alison G.	A	$535.00	75.50	$40,392.50
Ferich, Andrew W.	A	$375.00	98.50	$36,937.50
Saunders, Stephanie E.	A	$325.00	110.75	$35,993.75
Beatty, Zachary P.	A	$350.00	64.60	$22,610.00
Titler, Jessica L.	A	$350.00	19.60	$6,860.00
Birch, David W.	IT	$250.00	5.45	$1,362.50
Ward, Donna	IT	$300.00	0.25	$75.00
Gaughan, Bryan M.	FPL	$250.00	21.25	$5,312.50
Royer, Jesse D.	FPL	$150.00	220.00	$33,000.00
Ngo, Phuong	FPL	$100.00	173.25	$17,325.00
Wright, Karen L	PL	$250.00	67.00	$16,750.00
Bibbo, Fredric A.	FLC	$120.00	57.50	$6,900.00
Mastraghin, Corneliu	PL	$250.00	22.90	$5,725.00
Cain, Shelby R.	FPL	$175.00	23.50	$4,112.50
Khaleel, Mourin N.	FPL	$120.00	20.50	$2,460.00
Orvik, Erik J.	FPL	$150.00	14.50	$2,175.00
Boyer, Justin P.	PL	$175.00	5.00	$875.00
Kane, Erica E.	FPL	$225.00	2.50	$562.50
Beatty, Zachary P.	FLC	$210.00	59.75	$12,547.50
Kelly, Ryan I.	FLC	$190.00	26.60	$5,054.00
Hill, Tyler J.	FLC	$60.00	61.00	$3,660.00
Hammell, Christine M.	FLC	$60.00	42.50	$2,550.00
Saunders, Stephanie E.	FLC	$210.00	10.25	$2,152.50
Roberts, Gemma L.	FLC	$60.00	6.25	$375.00
Epstein, Blair M.	FLC	$60.00	5.00	$300.00
Tzarnas, Alexa N.	FLC	$60.00	4.25	$255.00
Ostapowicz, Robert B.	FLC	$60.00	1.00	$60.00
TOTALS			**7698.14**	**$4,754,492.33**

EXHIBIT 3

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEVE CHAMBERS, et al., Plaintiffs, v. WHIRLPOOL CORPORATION, et al., Defendants.	Case No. SA CV 11-1733 FMO (JCGx) **ORDER RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MOTION FOR AWARD OF ATTORNEY'S FEES AND EXPENSES**

Having reviewed and considered all the briefing filed with respect to the parties' Joint Motion for Final Approval of Class Action Settlement (Dkt. 254, "Final Approval Motion") and plaintiffs' Motion for Award of Attorneys' Fees and Expenses and for Service Awards for Plaintiffs (Dkt. 218, "Fees Motion"), as well as the oral argument presented during the final approval hearing on August 25, 2016, the court concludes as follows.

INTRODUCTION

On November 9, 2011, plaintiffs filed this class action against Whirlpool Corporation ("Whirlpool"), Sears Holdings Corp., and Sears, Roebuck & Co., Inc. (together with Sears Holdings Corp., "Sears") (collectively, "defendants"). (See Dkt. 1, Complaint). The Fourth Amended Complaint (Dkt. 98, "4AC"), the operative complaint in this matter, alleges 25 causes of action for violations of: the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.; breach of express and implied warranty; violations of the Song-Beverly Act, Cal. Civ. Code §§ 1792 et seq.; strict

product liability; failure to warn; unjust enrichment/restitution; fraudulent concealment/nondisclosure; negligence; violations of the consumer protection statutes of the states of Ohio, California, Georgia, Illinois, Maryland, Massachusetts, Missouri, New Jersey, New York, Utah, and Virginia; and declaratory judgment, 28 U.S.C. § 2201. (See id. at ¶¶ 216-553).

After conducting extensive discovery and engaging in substantial settlement negotiations, the parties reached a settlement and filed a joint motion for preliminary approval on September 11, 2015. (See Dkt. 192, Joint Motion of All Parties for Preliminary Approval of Class Action Settlement). On November 12, 2015, the court granted preliminary approval of the settlement, (see Dkt. 199, Court's Order of November 12, 2015 ("Preliminary Approval Order" or "PAO") at 32), appointed Kurtzman Carson Consultants, LLC ("KCC") as the Claims Administrator, (see id. at 33), directed KCC to provide notice to the class members, (see id.), and scheduled a final approval hearing for June 10, 2016. (See id. at 34). At the request of the parties, the court subsequently rescheduled the final approval hearing for August 25, 2016. (See Dkt. 207, Court's Order of February 23, 2016, at 3).

BACKGROUND

I. PLAINTIFFS' ALLEGATIONS.

This case arises out of plaintiffs' allegations that certain Whirlpool-manufactured dishwashers branded "Whirlpool®," "Kenmore®," and "KitchenAid®" had a design defect that caused overheating in high current connections to the electronic control board ("ECB"), causing the ECB consoles to smoke, emit fumes and sparks, or catch fire, thereby posing a safety risk. (See Dkt. 199, PAO at 2). Plaintiffs allege that these Overheating Events[1] were caused by a design defect that rendered certain high-current connections to the ECBs insufficiently robust. (See Dkt. 98, 4AC at ¶¶ 163-65). This defect led to the gradual degradation of the electrical pathways, which caused overheating to extreme temperatures and ignition of surrounding plastics

[1] An "Overheating Event" is defined as "the overheating of the Dishwasher's Electronic Control Board such that the class member or another person observed or experienced smoke, flames, fumes, sparks, or electrical arcing from the control console area of their Dishwasher." (Dkt. 192-4, Class Action Settlement Agreement and Release of All Claims ("Settlement Agreement") at 9-10, ¶ BB).

and wire insulation. (See id. at ¶¶ 7-8, 50 & 164-65). According to plaintiffs, defendants failed to disclose, or actively concealed, this defect. (See id. at ¶¶ 189-91). The group of plaintiffs, 18 persons from 11 different states, sued on behalf of a class of millions of consumers who have owned the subject Whirlpool-manufactured dishwashers. (See Dkt. 199, PAO at 2).

II. SETTLEMENT TERMS.

After "litigating intensively[,]" (Dkt. 192-3, Declaration of Charles S. Fax in Support of Joint Motion for Preliminary Approval [] ("Fax Decl.") at ¶ 12), and "engaging in settlement negotiations in six full days of mediation sessions with one of the nation's most esteemed mediators," (see Dkt. 192-4, Settlement Agreement at 3), the parties reached a settlement that plaintiffs assert "provides substantial relief to the Class, including considerable monetary and injunctive relief that will protect Class Members, Non-Class Members[2] and other consumers going forward." (Dkt. 254-2, Plaintiffs' Memorandum in Support of Joint Motion for Final Approval of Class Action Settlement ("Pls.' Final Approval Brief") at 11). The Settlement Class[3] is comprised of certain purchasers and owners of Class Dishwashers,[4] (see Dkt. 192-4, Settlement Agreement at 13, ¶ ZZ) (defining the "Settlement Class"), and includes two subclasses: the Past Overheating Subclass, consisting of those who experienced an Overheating Event within 12 years after the purchase date but before the Notice

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[2] Non-Class Members include individuals "who own or owned Dishwashers equipped with either a 'NewGen' or a 'Raptor' platform electronic control board." (Dkt. 192-4, Settlement Agreement at 9, ¶ X). A list of model and serial numbers by which NewGen and Raptor dishwashers can be identified is attached to the Settlement Agreement as Exhibit 5. (See Dkt. 192-9, Model & Serial No. List for Raptor & NewGen).

[3] The Settlement Class includes "all residents in the United States and its territories who (a) purchased a new Class Dishwasher, (b) acquired a Class Dishwasher as part of the purchase or remodel of a home, or (c) received as a gift, from a donor meeting those requirements, a new Class Dishwasher not used by the donor or by anyone else after the donor purchased the Class Dishwasher and before the donor gave the Class Dishwasher to the claimant." (Dkt. 199, PAO at 3).

[4] "Class Dishwashers" are defined as "all KitchenAid, Kenmore, and Whirlpool-brand automatic dishwashers manufactured by Whirlpool between October 2000 and January 2006 that contained either a 'Rushmore' or 'Rush' electronic control board." (Dkt. 192-4, Settlement Agreement at 6, ¶ I). A list of model and serial numbers for all Class Dishwashers is attached to the Settlement Agreement as Exhibit 2. (See Dkt. 192-6, Model and Serial No. List for Class Dishwashers).

Date;[5] and the Future Overheating Subclass, consisting of those who experience an Overheating Event within ten years after the purchase date or within two years of the Notice Date, whichever is later. (See Dkt. 199, PAO at 3-4).

All members of the Settlement Class, including the subclasses, will receive the following benefits under the Settlement Agreement:

> a full recovery of costs spent on repairs; $200 to $300 in cash for Class Members who replaced their Dishwashers; $100 or a 30% rebate on the purchase of a new dishwasher [for] Class Members who experience an Overheating Event in the future; a rebate of 10% to 15% on the purchase of a new dishwasher to all Class Members regardless of whether they ever experience an Overheating Event; and enhanced safety warnings to service personnel about the dangers of bypassing Thermal Cut-Offs ("TCOs") (a safety shut-off device).

(Dkt. 254-2, Pls.' Final Approval Brief at 1; see Dkt. 199, PAO at 4-5 (describing the settlement terms)). The Settlement Agreement provides similar benefits to Non-Class Members, except that rebates will not be provided to those who have not experienced an Overheating Event. (See Dkt. 254-2, Pls.' Final Approval Brief at 1).

The settlement amount is uncapped, as defendants have agreed to compensate all eligible class members. (See Dkt. 199, PAO at 5). Defendants have also agreed to pay class counsel's attorney's fees, costs, and expenses awarded by the court, in addition to the costs and notice of settlement administration. (See id.). Finally, defendants have agreed to pay a $4,000.00 service award to each named plaintiff and to purchase the websites of lead plaintiff Steve Chambers. (See Dkt. 192-4, Settlement Agreement at 47, ¶ IX.D).

[5] The Notice Date is defined as the date on which the Claims Administrator completes the initial mailing of summary notices to class members, (see Dkt. 192-4, Settlement Agreement at 9, ¶ Y), which was February 4, 2016. (See Dkt. 254-6, Supplemental Declaration of Patrick M. Passarella Re: Notice Procedures and Claims Filing ("Suppl. Passarella Decl.") at ¶ 3).

III. RELEASE OF CLAIMS.

Upon final approval, Class Members who have not validly requested exclusion from the settlement will release all claims that they "now have or, absent [the settlement], may in the future have had . . . by reason of any act, omission, harm, matter, cause, or event . . . that relates to any of the defects, malfunctions, or inadequacies of the Class Dishwashers that are alleged or could have been alleged" in this lawsuit. (Dkt. 192-4, Settlement Agreement at 48-49, § X.A). The release includes "future injuries, damages, losses, or future consequences or results, excluding any future injury to person or to property other than the Class Dishwasher itself[,]" (id. at 50, § X.E), as well as unknown claims which would otherwise be preserved under California Civil Code § 1542. (See id. at 50-51, § X.F). The release does not extinguish "claims for personal injury or for damage to property other than to the Class Dishwasher itself." (Id. at 49, § X.B).

IV. NOTICE TO CLASS.

The court-appointed Claims Administrator, KCC, has implemented the multi-pronged notice program previously approved by the court. (See Dkt. 254-2, Pls.' Final Approval Brief at 7-8; see also Dkt. 199, PAO at 28-32 (approving multi-pronged notice program)). In accordance with that program, KCC: mailed and e-mailed summary notices and TCO repair notices to 4,162,934 Class members for whom Whirlpool's and Sears' records contained contact information; published notices in the national editions of certain magazines and on a variety of websites; purchased 14,000,000 internet banner impressions on a variety websites, partially targeted to reach adults 25 and older who were behaviorally categorized as "Dishwashing Machine/Home Appliance/Home Owners" on Facebook; and maintained a settlement website, www.dishwashersettlement.com, which received a total of 249,711 visits. (See Dkt. 254-6, Suppl. Passarella Decl. at ¶¶ 3-7 & 13). KCC also operated an Interactive Voice Response ("IVR") system via a toll-free telephone number, which received a total of 20,411 calls. (See id. at ¶ 12).

As of July 7, 2016, KCC had received a total of 133,040 claims, which includes: 106,331 claims for a rebate; 15,963 claims for both a rebate and a reimbursement; 10,417 claims for a reimbursement only; and 329 claims that were received near the claims deadline and had yet to be categorized. (See Dkt. 254-6, Suppl. Passarella Decl. at ¶ 18). Of the total 26,380

reimbursement claims, KCC was "unable to estimate how many claims will be accepted, deemed deficient with an opportunity to correct, or rejected after the time to correct deficiencies has passed." (Id.). Also, as of July 7, 2016, KCC received 498 timely requests from Class Members to be excluded from the settlement. (See id. at ¶ 15).

LEGAL STANDARD

Federal Rule of Civil Procedure 23 provides that "the claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "The primary concern of [Rule[6] 23(e)] is the protection of th[e] class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of S.F., 688 F.2d 615, 624 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983). Whether to approve a class action settlement is "committed to the sound discretion of the trial judge[,]" Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir.), cert. denied, 506 U.S. 953 (1992), who must examine the settlement for "overall fairness." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). Neither district courts nor appellate courts "have the ability to delete, modify or substitute certain provisions. The settlement must stand or fall in its entirety." Id. (internal quotation marks and citation omitted).

In order to approve a settlement in a class action, the court must conduct a three-step inquiry. First, it must assess whether defendants have met the notice requirements under the Class Action Fairness Act ("CAFA"). See 28 U.S.C. § 1715(d). Second, it must determine whether the notice requirements of Rule 23(c)(2)(B) have been satisfied. Finally, it must conduct a hearing to determine whether the settlement agreement is "fair, reasonable, and adequate." See Fed. R. Civ. P. 23(e)(2); Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003) (discussing the Rule 23(e)(2) standard); Adoma v. Univ. of Phoenix, Inc., 913 F.Supp.2d. 964, 972 (E.D. Cal. 2012) (conducting three-step inquiry).

In determining whether a settlement agreement is fair, adequate, and reasonable, the court must weigh some or all of the following factors: "(1) the strength of the plaintiff's case; (2) the risk,

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[6] All "Rule" references are to the Federal Rules of Civil Procedure.

expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement." In re Bluetooth Headset Prod. Liab. Litig. ("Bluetooth"), 654 F.3d 935, 946 (9th Cir. 2011).

However, when "a settlement agreement is negotiated prior to formal class certification, consideration of these eight . . . factors alone is not enough to survive appellate review." Bluetooth, 654 F.3d at 946 (emphasis in original). This is because "[p]rior to formal class certification, there is an even greater potential for a breach of fiduciary duty owed the class during settlement." Id. District courts, therefore, also must determine "that the settlement is not the product of collusion among the negotiating parties." Id. at 947 (internal quotation and alteration marks omitted). In making that determination, courts should look for signs of collusion, including "(1) when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded[;]" "(2) when the parties negotiate a clear sailing arrangement providing for the payment of attorneys' fees separate and apart from class funds[;]" and "(3) when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund[.]" Id. at 947 (internal quotation marks and citations omitted).

DISCUSSION

I. FINAL APPROVAL OF CLASS SETTLEMENT.

A. Class Action Fairness Act.

CAFA requires that "[n]ot later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve [notice of the proposed settlement] upon the appropriate State official of each State in which a class member resides and the appropriate Federal official[.]" 28 U.S.C. § 1715(b). The statute provides detailed requirements for the contents of such a notice, which must include, among other things, "any proposed or final notification to class members[,]" and "any proposed or final class action

settlement[.]" 28 U.S.C. §§ 1715(b)(3) & (4). The court may not grant final approval of a class action settlement until the CAFA notice requirement is met. See id. at § 1715(d) ("An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under [28 U.S.C. § 1715(b).]").

Here, the Settlement Agreement was filed on September 11, 2015. (See Dkt. 192-4, Settlement Agreement). Defense counsel provided the required CAFA notice on September 21, 2015. (See Dkt. 198, Defendants' Status Report to Confirm Compliance with CAFA's Notice Requirements at 2). At the final approval hearing, defense counsel advised the court that no objections had been received in response to the CAFA notice.

B. Class Certification.

In its order granting preliminary approval, the court certified the class pursuant to Rule 23(b)(3). (See Dkt. 199, PAO at 10-18 & 32). Because circumstances have not changed, and for the reasons set forth in its Order of November 12, 2015, the court hereby affirms its order certifying the class for settlement purposes under Rule 23(e). See In re Apollo Grp. Inc. Sec. Litig., 2012 WL 1378677, *4 (D. Ariz. 2012) ("The Court has previously certified, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and hereby reconfirms its order certifying a class.").

C. Rule 23(c) Notice Requirements.

Class actions brought under Rule 23(b)(3) must satisfy the notice provisions of Rule 23(c)(2), and upon settlement of a class action, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Rule 23(c)(2) prescribes the "best notice that is practicable under the circumstances, including individual notice" of particular information. Fed. R. Civ. P. 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule 23(b)(3)).

After undertaking the required examination, the court approved the form of the proposed class notice. (See Dkt. 199, PAO at 28-33). As discussed above, the notice program previously approved by the court has been fully implemented by KCC. (See Dkt. 254-2, Pls.' Final Approval Brief at 7-8; Dkt. 254-6, Suppl. Passarella Decl. at ¶¶ 3-7 & 12-13). Accordingly, based on its prior

findings and the record before it, the court finds that the Class Notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, their right to exclude themselves from the action, and their right to object to the proposed settlement. (See Dkt. 199, PAO at 28-33).

D. Whether the Settlement is Fair, Adequate, and Reasonable.

1. **The Strength of Plaintiffs' Case and the Risk, Expense, Complexity, and Duration of Further Litigation**.

In evaluating the strength of the case, the court should assess "objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach [a settlement]." Adoma, 913 F.Supp.2d at 975. "In assessing the risk, expense, complexity, and likely duration of further litigation, the court evaluates the time and cost required." Id. at 976.

While the merits of plaintiffs' case appear to be fairly strong, plaintiffs have shown that defendants have, and likely would have continued to, vigorously defend the action had the parties not reached a settlement. For instance, defendants filed a motion to dismiss the 4AC, (see Dkt. 104, Partial Motion to Dismiss Plaintiffs' Fourth Amended Complaint), in which they argued, among other things, that: Whirlpool's limited warranty covering "defects in materials and workmanship" does not extend to the alleged design defect; plaintiffs did not satisfy all conditions precedent to warranty coverage; the defects did not manifest or were not substantially certain to manifest within the warranty period for many Class Dishwashers; the warranties were expired; and most Class Members had already received full value of the useful life of their dishwashers. (See Dkt. 254-2, Pls.' Final Approval Brief at 9) (describing arguments in motion to dismiss).

If plaintiffs overcame defendants' motion to dismiss, the resolution of the case would have been lengthy, complex, and expensive. As defendants stated, "[t]his litigation would be expected to include . . . further expert discovery, class certification proceedings (with a potential interlocutory appeal under Rule 23(f) by the disappointed parties), summary judgment proceedings, one or more class trials, and one or more post-trial appeals." (Dkt. 256, Defendants' Memorandum in Support of Joint Motion for Final Approval of Class Action Settlement at 19). According to

defendants, "[r]esolving the putative class claims for all putative class members in all states easily could take five additional years." (Id.) (emphasis in original). Given that this case "has already consumed almost five years[,]" (Dkt. 254-2, Pls.' Final Approval Brief at 10), the court finds it significant that the Class Members will receive "immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." Nat'l Rural Telecommc'ns. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004). In short, the court finds that this factor supports a finding that the settlement is fair, adequate, and reasonable.

2. **The Risk of Maintaining Class Action Status Through Trial**.

Because plaintiffs had not yet filed a motion for class certification, there was a risk that the class would not be certified. That risk was magnified in this case because nationwide class certification under California law or the laws of multiple states is rare. See, e.g., Mazza v. Am. Honda Motor Co., 666 F.3d 581, 585 (9th Cir. 2012) (vacating class certification order because the district court "erroneously concluded that California law could be applied to the entire nationwide class"); In re Pharm. Indus. Average Wholesale Price Litig., 252 F.R.D. 83, 94 (D. Mass. 2008) ("While numerous courts have talked-the-talk that grouping of multiple state laws is lawful and possible, very few courts have walked the grouping walk."). This factor also weighs in favor of approving the settlement. See Gardner v. GC Servs., LP, 2012 WL 1119534, *4 (S.D. Cal. 2012) ("[B]ecause settlement was reached prior to a hearing on Plaintiff's motion for class certification, settlement was reached at a time when there was still a risk that the class would not be certified by the Court.").

3. **The Amount Offered in Settlement**.

"[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotation marks omitted). In granting preliminary approval of the settlement, the court concluded that the settlement amount was fair, reasonable, and adequate in light of the litigation risks in the case. (See Dkt. 199, PAO at 18-28). Accordingly, this factor also weighs in favor of granting final approval.

4. **The Extent of Discovery Completed and Stage of Proceedings**.

"A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." Nat'l Rural Telecommc'ns, 221 F.R.D. at 528. "A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." Id. at 527. The court previously examined these factors at length, noting that the parties had conducted extensive discovery, (see Dkt. 199, PAO at 19), and "thoroughly investigated and considered their own and the opposing parties' positions[,]" (id. at 20), which enabled them to develop "a sound basis for measuring the terms of the Settlement against the risks of continued litigation[.]" (Id.). The parties therefore entered the settlement discussions with a substantial understanding of the factual and legal issues from which they could advocate for their respective positions. See Nat'l Rural Telecommc'ns, 221 F.R.D. at 527-28 (noting that parties' examination of the factual and legal bases of the disputed claims through completion of discovery "strongly militates in favor of the Court's approval of the settlement"); Barbosa v. Cargill Meat Solutions Corp., 297 F.R.D. 431, 447 (E.D. Cal. 2013) ("What is required is that sufficient discovery has been taken or investigation completed to enable counsel and the court to act intelligently.") (internal quotation marks omitted). This factor also supports approval of the settlement.

5. **The Experience and Views of Counsel**.

"Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. This is because parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." Nat'l Rural Telecommc'ns, 221 F.R.D. at 528 (internal quotation marks and citation omitted). The court has previously noted the diligence, experience, and competency of class counsel. (See Dkt. 199, PAO at 14). According to class counsel, "the settlement is eminently reasonable in light of the results achieved, as measured against the risks and costs of further litigation." (Dkt. 192-3, Fax Decl. at ¶ 16). Thus, this factor also supports approval of the settlement.

6. **The Presence of a Government Participant**.

There is no government participant in this matter. Accordingly, this factor is inapplicable. See Wren v. RGIS Inventory Specialists, 2011 WL 1230826, *10, supplemented by 2011 WL 1838562 (N.D. Cal. 2011) (noting that lack of government entity involved in case rendered this factor inapplicable to the analysis).

7. **The Reaction of Class Members to the Proposed Settlement**.

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." Nat'l Rural Telecommc'ns, 221 F.R.D. at 529. Here, as class counsel noted, "[t]he reaction of Class Members has been overwhelmingly positive: [o]ver 133,000 Class Members filed claims, while fewer than 500 timely excluded themselves from the Class, and only 15 filed objections[.]" (Dkt. 254-2, Pls.' Final Approval Brief at 1-2). Since approximately 3.6 million class members received notice of the settlement, (see id. at 1 n. 2), these figures roughly correspond to a 0.0139% exclusion rate and a 0.0004% objection rate among noticed class members.

Most of the objections were filed by "serial" objectors who are well-known for routinely filing meritless objections to class action settlements for the improper purpose of extracting a fee rather than to benefit the Class. These serial objectors include: (1) Timothy R. Hanigan and Christopher Bandas, (see Dkt. 301, Court's Order of August 12, 2016, at 3); (2) Steve A. Miller, John C. Kress, and Jonathan E. Fortman, (see Dkt. 302, Court's Order of August 12, 2016, at 3 n. 1); (3) Patrick S. Sweeney,[7] (see Dkt. 234, May 27, 2016 Objection of Patrick Sweeney ("Sweeney Obj."); see Larsen v. Trader Joe's Co., 2014 WL 3404531, *7 (N.D. Cal. 2014); (4) Jan L. Miorelli, see In re:

[7] In fact, Mr. Sweeney is so prolific in objecting to class action settlements that the court received another objection from him in a different case, Spann v. J.C. Penney Corp., Case No. SA CV 12-0215 FMO (KESx) (C.D. Cal.) ("Spann"), for which the court held a final approval hearing on the same day as in this case. (See id., Dkt. 265, June 30, 2016 Objection of Patrick Sweeney). What's more, in both cases, Mr. Sweeney's objections contain information unrelated to the subject litigation. (See id. at ECF 5) (arguing that "Class Members will be compensated for a percentage of the amount they were charged for the insurance policies" even though no insurance policies were ever at issue in the case); (Dkt. 234, Sweeney Obj. at ¶ 9) (objecting to a cy pres procedure even though no such procedure exists under the Settlement Agreement).

Target Corp. Customer Data Sec. Breach Litig., 2016 WL 4942081, *1 (D. Minn. 2016); (5) Christopher T. Cain, see Hill v. State St. Corp., 2015 WL 1734996, *2 (D. Mass. 2015); (6) W. Allen McDonald, see In re Enfamil LIPIL Mktg. & Sales Practices Litig., 2012 WL 1189763, *4 (S.D. Fla. 2012); (7) Steven Helfand,[8] see Brown v. Hain Celestial Grp., Inc., 2016 WL 631880, *9-10 (N.D. Cal. 2016); and (8) Joseph Darrell Palmer, see Dennis v. Kellogg Co., 2013 WL 6055326, *4 n. 2 (S.D. Cal. 2013).

The court has already stricken three objections filed by the serial objectors. The objection filed by attorney Palmer on behalf of his clients Geri Whaley and John Hightower, (Dkt. 231, Objections of Geri Whaley and John Hightower ("Palmer Obj.")), was stricken because Mr. Palmer was not authorized to practice law at the time he filed the objection. (See Dkt. 298, Court's Order of August 12, 2016). The objections filed by Mr. Sweeney, (see Dkt. 234, Sweeney Obj.), and Mr. McDonald, (see Dkt. 236, Objection to Proposed Settlement and Motion for Attorneys' Fees ("McDonald Obj.")), were stricken after class counsel confirmed that Mr. Sweeney and Mr. McDonald had refused to comply with class counsel's discovery requests. (See Dkt. 328, Court's Order of August 25, 2016, at ¶ 2). As the court noted during the final approval hearing, when someone objects to a class action settlement, that person is subject to discovery related to that objection. See also In re Netflix Privacy Litig., 2013 WL 6173772, *2 (N.D. Cal. 2013) ("[A]n objector who voluntarily appears in litigation is properly subject to discovery."). An objector cannot refuse to participate in discovery and still have his or her objection considered by the court.

Regardless, the court has reviewed and considered the merits of all of the objections filed by the serial objectors, including those objections stricken by the court. The objection filed by attorneys Miller, Kress, and Fortman materially misrepresents the Settlement Agreement, stating repeatedly that "only Mr. Chambers and class counsel [are] getting paid on this case[,]" (see Dkt. 226, Kelly Kress' Objections to Class Action Settlement and Attorneys' Fees ("Kress Obj.") at 2), even though many Class Members will receive cash payments. (See Dkt. 199, PAO at 5 & 25). The record is replete with other examples of how Kelly Kress and her counsel failed to

[8] Like Mr. Sweeney, Mr. Helfand also filed a meritless objection in the Spann case. (See Spann, Dkt. 260, Objection by Walter F. Ellingwood (filed by Mr. Helfand)).

comprehend even the basic terms of the Settlement Agreement. (See, e.g., Dkt. 323, Plaintiffs' Supplemental Memorandum in Response to Certain Objections [] ("Pls.' Suppl. Memo") at 13-17) (identifying inaccuracies in Ms. Kress's objection and discussing statements made during the depositions of Ms. Kress and her counsel). The objection filed by attorneys Hanigan and Bandas, (see Dkt. 232, First Amended Objections of Christine Knott and Kimberly Smith ("Knott Obj.")), contradicts several statements made by their client and objector, Christine Knott, during her deposition. For example, Ms. Knott stated that she: would not object to a fee award of $27 million to class counsel, (see Dkt. 270-1, Excerpts of Deposition of Christine Knott at 76-77); agrees with the court's approval of the sale of Steve Chambers' websites to Whirlpool, (see Dkt. 254-5, Excerpts of Deposition of Christine Knott at 150); and believes the rebates provided under the settlement are valuable even if the rebate-holder does not purchase a new Whirlpool dishwasher. (See id. at 212). Perhaps the lack of consistency between Ms. Knott's deposition testimony and her written objection can be explained by the fact that she never spoke with Mr. Hanigan or Mr. Bandas before the objection was filed. (See id. at 34-38). In fact, during her deposition, Ms. Knott testified that she did not even know that Mr. Hanigan represented her. (See id. at 38).

In short, having considered all the arguments set forth by the serial objectors, (see Dkt. 226, Kress Obj.; Dkt. 231, Palmer Obj.; Dkt. 232, Knott Obj.; Dkt. 234, Sweeney Obj.; Dkt. 235, Objection to Class Action Settlement of George Liacopoulos (filed by Mr. Miorelli); Dkt. 236, McDonald Obj.), the court finds their objections to be without merit. See Roberts v. Electrolux Home Prods., Inc., 2014 WL 4568632, *11 (C.D. Cal. 2014) (rejecting analogous objections submitted by serial objectors because "[t]heir main claim, that nothing short of a total recall of all Dryers could constitute a fair and reasonable settlement, not only ignores the allegations of the case and the positions of the Parties, but is meritless and demonstrates a failure to appreciate the fact that settlements are by necessity compromises.").

The court has also reviewed and considered all the objections submitted by non-serial objectors, and finds that they do not undermine the settlement.[9] One objector felt that the

[9] One objector withdrew her objection after discovering that she was not eligible to receive compensation under the settlement. (See Dkt. 249, Request to Withdraw Objection at 2; Dkt. 227,

settlement "does not compensate . . . owners for their anxiety and concern" over potential future Overheating Events, and that "some financial compensation . . . is appropriate in order to compensate for the concern and anxiety . . . if the machine is not replaced." (Dkt. 209, Objection of Joel Rubenstein). The settlement, however, does address these issues; it provides insurance-like coverage for future Overheating Events as well as rebates for owners who wish to replace their machines. (See Dkt. 199, PAO at 4-5). Two other objectors are concerned that they will not qualify for relief because they do not have the documentation or evidence required under the Settlement Agreement. (See Dkt. 212, Objection of Helen E. Summers; Dkt. 238, Objection of Steven E. Rogers). It is not unfair, however, to require Class Members to provide some modicum of proof to support their claims; otherwise, the Claims Administrator would have no way of identifying and rejecting claims that are erroneous or fraudulent. Nonetheless, objectors who do not have the necessary documentation may still be able to submit a valid claim, as the Settlement Agreement requires the Claims Administrator to search defendants' databases for applicable records before deeming a claim deficient. (See Dkt. 192-4, Settlement Agreement at 23 & 25, ¶¶ IV.B.3 & IV.B.5).

Finally, one objector who experienced an Overheating Event contends that $200 is insufficient compensation, and that defendants should "modify the safety warnings in future owner's manuals to prevent owners from experiencing what [she] experienced." (Dkt. 239, Objection of Vicki M. Finn at 1). Given that the objector's dishwasher functioned properly for over seven years, (see id.), the court is satisfied that the $200 payment does not render the settlement unfair. Further, changing future owners' manuals would be ineffective because Whirlpool's current dishwashers have a different design, (see Dkt. 254-2, Pls.' Final Approval Brief at 25), and the enhanced safety warnings required by the settlement do help to address the objector's concerns. (See id.). In short, under the circumstances, the limited requests for exclusion and the small number of objections filed by non-serial objectors support approval of the settlement. See Nat'l

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Objection to Proposed Settlement). Another objector wrote to express her disappointment that Whirlpool had not recalled all of its dishwashers, but stated that she "do[es] not object to the settlement[.]" (See Dkt. 237). The court has reviewed and considered the merits of the remaining objections and has addressed each of them, directly or indirectly, throughout this Order.

Rural Telecommc'ns, 221 F.R.D. at 529; Churchill Vill., LLC v. Gen. Elec., 361 F.3d 566, 577 (9th Cir. 2004) (upholding final approval of a class settlement where "only 45 of the approximately 90,000 notified class members objected to the settlement" and 500 class members opted out).

E. Whether the Settlement is the Product of Collusion.

Because the parties negotiated and reached a settlement prior to formal certification of the class, the court must ensure that the settlement was not the product of collusion. See Bluetooth, 654 F.3d at 947-48. In granting preliminary approval of the settlement, the court carefully scrutinized the settlement and concluded that "there is no evidence of collusion or fraud leading to, or taking part in, the settlement negotiations between the parties." (Dkt. 199, PAO at 19).

With respect to "signs" of collusion, the court notes that, unlike Bluetooth, where the class received no monetary award, a portion of the class members here will receive monetary relief. (See Dkt. 199, PAO at 4-5). Moreover, "[b]ecause the parties have not agreed to an amount or even a range of attorneys' fees, and have placed the matter entirely into the Court's hands for determination, there is no threat of the issue explicitly tainting the fairness of settlement bargaining." Turner v. Murphy Oil USA, Inc., 472 F.Supp.2d 830, 845 (E.D. La. 2007). Finally, because there is no common fund, no unclaimed funds will revert to defendants. (See, generally, Dkt. 192-4, Settlement Agreement).

In short, there are no signs of collusion in the negotiation of the settlement. Indeed, the settlement provides substantial relief for the class and was reached via arms-length negotiations with the assistance of an experienced mediator. (See Dkt. 199, PAO at 19); see also In re HP Laser Jet Litig., 2011 WL 3861703, *4 (C.D. Cal. 2011) (finding that, although Bluetooth warning signs were present, while not dispositive, the fact "that the parties appeared before a neutral third party mediator" supported "a finding of non-collusion"). Thus, the court finds that the settlement is fair, reasonable, and adequate, and not the product of collusion among the parties.

II. AWARD OF ATTORNEY'S FEES, COSTS, AND SERVICE AWARDS.

A. Attorney's Fee Award.

As part of the settlement, the parties agreed to "negotiate in good faith the award of attorneys' fees and costs to be paid by [defendants] to Class Counsel, subject to court approval."

(Dkt. 192-4, Settlement Agreement at 47, § IX.B). The parties further agreed that, if they "are unable to agree on a stipulated amount of attorneys' fees and costs to be awarded to Plaintiffs' counsel, the parties will submit their dispute regarding the award of attorneys' fees and costs to the Court." (Id.). Because the parties could not agree on a stipulated amount of attorney's fees, plaintiffs have filed a contested Fees Motion. (See Dkt. 218, Fees Motion).

1. **Method of Determining the Award**.

Rule 23(h) provides that, "[i]n a certified class action, the court may award reasonable attorney's fees . . . that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Generally speaking, courts have discretion to choose among two different methods for calculating a reasonable attorney's fee award. See Bluetooth, 654 F.3d at 941; Laffitte v. Robert Half Int'l Inc., 1 Cal.5th 480, 504 (2016) ("The choice of a fee calculation method is generally one within the discretion of the trial court[.]"). Under the "percentage-of-the-fund" or "percentage-of-recovery" method, the "court simply awards the attorneys a percentage of the fund sufficient to provide class counsel with a reasonable fee." Hanlon, 150 F.3d at 1029. This method is typically used when a common fund is created. See Bluetooth, 654 F.3d at 942.

Alternatively, under the lodestar method, the court multiplies the number of reasonable hours expended by a reasonable hourly rate. See Hanlon, 150 F.3d at 1029. Once the lodestar has been determined, the "figure may be adjusted upward or downward to account for several factors including the quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." Id. The lodestar method is typically utilized when the relief obtained is "not easily monetized," such as when injunctive relief is part of the settlement. See Bluetooth, 654 F.3d at 941. The court's discretion in choosing between these two methods "must be exercised so as to achieve a reasonable result." Id. at 942; see Laffitte, 1 Cal.5th at 504 ("[T]he goal under either the percentage or lodestar approach [is to] award . . . a reasonable fee to compensate counsel for their efforts.").

Defendants assert that CAFA requires the court to apply a percentage-of-recovery approach, which would limit the award of attorney's fees to a percentage of the actual redemption value of the rebates awarded. (See Dkt. 246, Opposition to Plaintiffs' Motion for Attorneys' Fees[]

("Fees Opp.") at 25-28). However, the court is not convinced that CAFA governs attorney's fees in this case. In diversity actions such as this one, the Ninth Circuit applies state law to determine the right to fees and the method for calculating fees. See Mangold v. Cal. Public Util. Comm'n, 67 F.3d 1470, 1478 (9th Cir. 1995) ("Existing Ninth Circuit precedent has applied state law in determining not only the right to fees, but also in the method of calculating the fees."); Rodriguez v. Disner, 688 F.3d 645, 653 n. 6 (9th Cir. 2012) ("If . . . we were exercising our diversity jurisdiction, state law would control whether an attorney is entitled to fees and the method of calculating such fees."); see also Roberts, 2014 WL 4568632, at *8 (holding that "the lodestar method is the appropriate approach for the calculation of attorneys' fees in this case[,]" and not mentioning CAFA).

Further, the Settlement Agreement provides that "the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California." (Dkt. 192-4, Settlement Agreement at 55, § XV.G). The Settlement Agreement does not exclude attorney's fees from its choice of law provision, (see, generally, id.), nor does CAFA preempt the parties' choice of law clause. See Norris v. Commercial Credit Counseling Servs., Inc., 2010 WL 1379732, *3 (E.D. Tex. 2010) ("[T]he court declines to adopt the Plaintiffs' assertion that CAFA preempts the contractual forum selection/choice-of-law clause."); Guenther v. Crosscheck Inc., 2009 WL 1248107, *5 (N.D. Cal. 2009) ("CAFA does not trump a valid, enforceable and mandatory forum-selection clause[.]").

But even assuming CAFA did apply, the court would still have discretion in choosing the method of determining attorney's fees. Under 28 U.S.C. § 1712(a), "[i]f a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney's fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed." In so-called "coupon settlements" – meaning settlements where the only relief afforded to class members is one or more coupons[10]

[10] Although CAFA defines a variety of terms, see 28 U.S.C. § 1711, it does not define a "coupon." See, generally, id. Courts have generally held that "a coupon is a discount on merchandise or services offered by the defendant," Foos v. Ann, Inc., 2013 WL 5352969, *2 (S.D. Cal. 2013) (emphasis omitted), which "require[s] class members to do future business with the

– some courts, including the Ninth Circuit, have held that it is inappropriate to award fees using the lodestar method. See, e.g., In re HP Inkjet Printer Litig. ("HP Inkjet"), 716 F.3d 1173, 1183-84 (9th Cir. 2013) (holding that "in a case where the class receives only coupon relief," attorney's fees must "be calculated using the redemption value of the coupons"); Davis v. Cole Haan, Inc., 2013 WL 5718452, *2 & *3 (N.D. Cal. 2013) (holding that, where "the proposed settlement is a coupon settlement[,] . . . the Court cannot award the requested lodestar award"); but see In re Sw. Airlines Voucher Litig., 799 F.3d 701, 708-09 (7th Cir. 2015) (rejecting the majority view in HP Inkjet and holding instead that 28 U.S.C. § 1712(a) "does not . . . prohibit the use of the lodestar method for coupon settlements"); HP Inkjet, 716 F.3d at 1187 (Berzon, J., dissenting) ("On my reading of the statute, CAFA allows the use of a lodestar to calculate attorney's fees . . . whether the relief obtained for the class involves, in whole or in part, coupons, or whether it does not.").

This settlement, however, is not a pure coupon settlement. In addition to coupon relief, the settlement provides monetary and injunctive relief. (See Dkt. 199, PAO at 4-5) (describing the settlement terms). For example, qualifying class members will receive full cash reimbursement for repair costs and/or a cash payment of $200 or $300 for the purchase of a replacement dishwasher. (See id. at 4). Moreover, all Class Members – as well as Non-Class Members and the general public – will benefit from the enhanced safety instructions and revisions to Whirlpool's service kit pointers and training bulletins required by the settlement. (See id. at 5). The settlement also provides "insurance-like" coverage for future Overheating Events for owners of the approximate 13.5 million Dishwashers still in service. (See Dkt. 276, Reply in Support of Award of Attorneys' Fees [] ("Fees Reply") at 2).

Where, as here, the settlement includes both coupon relief and monetary relief, CAFA authorizes the court to calculate attorney's fees utilizing the lodestar method. See 28 U.S.C. § 1712(b) ("If a proposed settlement in a class action provides for a recovery of coupons to class

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defendant in order to receive compensation." True v. Am. Honda Motor Co., 749 F.Supp.2d 1052, 1069 (C.D. Cal. 2010). At the final approval hearing, plaintiffs argued that the rebates provided under the settlement do not qualify as coupons. The court need not resolve this question, however, because the lodestar method is appropriate regardless of whether the rebates are coupons for CAFA purposes.

members, and a portion of the recovery of the coupons is not used to determine the attorney's fee to be paid to class counsel, any attorney's fee award shall be based upon the amount of time class counsel reasonably expended working on the action."); Davis, 2013 WL 5718452, at *2 ("Lodestar fees may . . . be awarded if the class obtains non-coupon relief."); HP Inkjet, 716 F.3d at 1183 ("Whereas § 1712(a) governs cases where the class obtains only coupon relief, § 1712(b) applies in situations where a coupon settlement also provides for non-coupon relief[.]").

Defendants argue in the alternative that the court should treat the settlement as a "mixed" settlement under 28 U.S.C. § 1712(c), which requires the court to use the percentage-of-recovery method to calculate the portion of attorney's fees based on coupon relief, see 28 U.S.C. § 1712(c)(1), and the lodestar method to calculate the portion of attorney's fees based on equitable relief. (See Dkt. 246, Fees Opp. at 29-30). However, this provision only applies when the settlement "provides for an award of coupons to class members and also provides for equitable relief, including injunctive relief[.]" 28 U.S.C. § 1712(c). It does not contemplate – and therefore does not apply to – settlements that involve coupon relief and monetary relief. See Shames v. Hertz Corp., 2012 WL 5392159, *16 n. 14 (S.D. Cal. 2012) (holding that 28 U.S.C. § 1712(c) does not apply to settlements that involve "monetary relief in the form of cash payments"). Attorney's fees for such settlements are calculated under 28 U.S.C. § 1712(b). See HP Inkjet, 716 F.3d at 1183.

Finally, defendants assert that even if the court has discretion to apply the lodestar method, the court should nevertheless use the percentage-of-recovery method because "coupons are the 'primary' benefit" conferred by the settlement. (See Dkt. 246, Fees Opp. at 26). According to defendants, "more than 99.8% of the Class is eligible to make a claim for only a coupon." (Id. at 27) (emphasis in original). But even if defendants' calculation is correct, that does not mean rebates are the primary benefit of the settlement; the crux of this action deals with the Overheating Events suffered by owners of Class Dishwashers, and the settlement entitles each of those individuals to monetary relief. (See Dkt. 199, PAO at 5 & 25). The rebates are simply an additional benefit beyond the primary relief of compensating "Class members whose dishwashers have failed, and [providing] coverage for future failures." (Dkt. 276, Fees Reply at 7). Taking up

defendant's invitation to apply the percentage-of-recovery method would punish class counsel for obtaining additional relief. For that reason, and because the settlement does not create a common fund, the court finds that the lodestar method is appropriate.[11] See Grays Harbor Adventist Christian Sch. v. Carrier Corp., 2008 WL 1901988, *1 (W.D. Wash. 2008) ("Because the attorneys' fees will be paid separately by [defendant] without reducing the relief available to the Class, the lodestar method is appropriate.").

2. **Lodestar Figure**.

"The lodestar calculation begins with the multiplication of the number of hours reasonably expended by a reasonable hourly rate." Hanlon, 150 F.3d at 1029. The number of hours reasonably expended "is calculated by considering whether, in light of the circumstances, the time could reasonably have been billed to a private client." Moreno v. City of Sacramento, 534 F.3d 1106, 1111 (9th Cir. 2008). In general, courts "'should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case.'" Chaudhry v. City of L.A., 751 F.3d 1096, 1111 (9th Cir.), cert. denied, 135 S.Ct. 295 (2014) (quoting Moreno, 534 F.3d at 1112). "Typically, '[a]n attorney's sworn testimony that, in fact, [he] took the time claimed . . . is evidence of considerable weight on the issue of the time required." Holt v. Kormann, 2012 WL 5829864, *6 (C.D. Cal. 2012) (internal quotation marks omitted). Nevertheless, the court is tasked with conducting its own independent review. See Gates v. Deukmejian, 987 F.2d 1392, 1401 (9th Cir. 1992) (holding that the court has a duty "to independently review plaintiffs' fee request").

"[T]he determination of a reasonable hourly rate is not made by reference to the rates actually charged the prevailing party[,]" but rather, "by reference to the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity." Welch v. Metro. Life Ins. Co., 480 F.3d 942, 946 (9th Cir. 2007) (internal quotation marks omitted). The court must determine the reasonable hourly rate in the context of rates charged in "the relevant community[,]" which is "the forum in which the district court sits." Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 979 (9th Cir. 2008). "The hours

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[11] The court would apply the lodestar method, and would reach the same result with respect to the award of attorney's fees and costs, under either California law or 28 U.S.C. § 1712(b).

expended and the rate should be supported by adequate documentation and other evidence[.]" Hanlon, 150 F.3d at 1029. Once calculated, "there is a 'strong presumption' that the lodestar figure is reasonable[.]" Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542, 554, 130 S.Ct. 1662, 1673 (2010) ("[T]he lodestar figure has, as its name suggests, become the guiding light of our fee-shifting jurisprudence.") (internal quotation marks omitted).

The documentation submitted by class counsel shows an unadjusted lodestar of $8,948,487.98. (See Dkt. 218-3, Firm Time & Expense Summary at 2). This figure consists of 23,860.75 hours worked by all class counsel, (see id.), multiplied by an average hourly rate of approximately $375. (See Dkt. 218-1, Memorandum of Points and Authorities in Support of Plaintiffs' [Fees Motion] ("Fees Brief") at 19 n. 9). Defendants do not challenge the total number of hours billed by class counsel, nor do they point to any specific time entries for which class counsel should not compensated. (See, generally, Dkt. 246, Fees Opp.); see also Gates, 987 F.2d at 1397-98 ("The party opposing the fee application has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party in its submitted affidavits."); Scarfo v. Cabletron Sys. Inc., 54 F.3d 931, 965-66 (1st Cir. 1995) (holding that defendant's failure to challenge plaintiff's counsel's assertion regarding billed time constituted waiver on appeal).

Defendants do, however, lodge a series of objections to the reasonableness of class counsel's hourly rates and billing practices. (See Dkt. 246, Fees Opp. at 34-49). Defendants assert that the court "should reduce the base lodestar because several firms seek to charge excessive rates for document review[.]" (See id. at 35). In particular, defendants challenge the fees sought by three plaintiffs' firms, Chimicles & Tikellis, LLP ("C&T"), Lieff Cabraser Heimann & Bernstein, LLP ("LCHB"), and Weinstein Kitchenoff & Asher LLC ("WK&A"), which collectively seek to recover approximately $2,200,000 in fees for 5,224 hours of document review, resulting in a blended rate of $421.60 per hour. (See id. at 36). Having reviewed the law firms' time and billing records, (see Dkt. 222-1, Declaration of Timothy N. Mathews [] ("Mathews Decl.") (C&T); Dkt. 222-2, Declaration of Nicole D. Sugnet [] ("Sugnet Decl.") (LCHB); Dkt. 218-9, Declaration of Robert S. Kitchenoff [] (WK&A)), the court finds that the number of hours expended on document

review and the hourly rates sought by counsel are reasonable.

The main thrust of defendants' argument is that plaintiffs' firms could have performed the same document review at less cost by hiring contract attorneys instead of keeping document review in-house. (See Dkt. 246, Fees Opp. at 37-38) (suggesting that the court "adjust the rates applicable to 75% of Class Counsel's document review time down to a contract attorney rate of $60 per hour"). While the court "may permissibly look to the hourly rates charged by comparable attorneys for similar work," it "may not attempt to impose its own judgment regarding the best way to operate a law firm, nor to determine if different staffing decisions might have led to different fee requests." Moreno, 534 F.3d at 1115. The court's determination must be driven by "[t]he difficulty and skill level of the work performed, and the result achieved – not whether it would have been cheaper to delegate the work to other attorneys[.]" Id. Thus, even if the court did consider a hypothetical scenario where class counsel retained contract attorneys, the court could only speculate as to how counsel's overall costs would have differed. (See Dkt. 276, Fees Reply at 17) (explaining that hiring "minimally-qualified outside contractors" to conduct document review "would have increased Class Counsel's overall document review lodestar") (emphasis in original).

Contrary to defendants' position, (see Dkt. 246, Fees Opp. at 37-38), it is not always appropriate to hire contract attorneys to perform document review. Arguably, when a party needs to conduct basic document review to respond to voluminous discovery requests – a task that is typically limited to "checking the box" for relevance and privilege – it might make sense to engage an agency offering a pool of temporary contract attorneys. The same is not true, however, when a small plaintiff's firm engaged in high-stakes litigation needs to review voluminous disclosures by well-heeled corporate defendants – a task that, to ensure critical evidence is not missed, requires attention to detail and a sophisticated understanding of the facts and law at issue in the case. Given class counsel's experience prosecuting similar complex civil cases, (see Dkt. 199, PAO at 14) ("Class Counsel are among the most capable and experienced lawyers in the country in these kind of cases."), and the Ninth Circuit's admonition that the court "may not attempt to impose its own judgment regarding the best way to operate a law firm[,]" see Moreno, 534 F.3d at 1115, the court will not second-guess class counsel's staffing decisions in this case.

In any event, regardless of whether a task is performed by a law firm partner, a contract attorney, or a paralegal, the reasonableness of the fees depends on "[t]he difficulty and skill level of the work performed, and the result achieved[,]" Moreno, 534 F.3d at 1115, not the title of the person who did the work. See In re: Cathode Ray Tube Antitrust Litig. ("In re CRT"), 2016 WL 721680, *45 (N.D. Cal. 2016) ("[T]he legal community now commonly uses contract attorneys. There is not the slightest justification to downgrade their billing rates or not apply a multiplier to them."). These considerations weigh in favor of approving the fees sought by class counsel. With respect to difficulty, the court does not agree that document review is menial or mindless work; in complex civil litigation such as the instant case, it is a critically important and challenging task. With respect to skill, while defendants argue that the court should consider class counsel's first-level reviewers as "contract attorneys[,]" (see Dkt. 246, Fees Opp. at 37 n. 24), defendants have not identified, and the court is not aware of, any reason to doubt the skill level of the work these attorneys performed. (See, generally, id.). Finally, as to the result achieved, the court has already concluded that class counsel negotiated a "compelling" settlement, particularly "given the substantial litigation risks" at play. (See Dkt. 199, PAO at 21).

Excluding fees attributable to Anthony Geyelin, whose role as lead attorney for the entire document review involved very little first-level review,[12] (see Dkt. 276, Fees Reply at 18; Dkt. 276-1, Supplemental Declaration of Timothy N. Mathews [] ("Mathews Suppl. Decl.") at ¶ 6), the blended rate for the document review challenged by defendants is $260.75 per hour.[13] (See Dkt. 276, Fees Reply at 18). Courts have routinely approved document review fees at similar or higher rates charged by "attorneys of an ability and reputation comparable to that of prevailing counsel

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[12] The court finds that it is appropriate to exclude Geyelin's fees from the calculation of a blended document review rate because Geyelin's work was fundamentally different from that of the first-level document reviewers. As "the central point person for the document review," Geyelin "performed key roles with respect to deposition preparation, trial preparation, and other litigation tasks." (Dkt. 276-1, Mathews Suppl. Decl. at ¶ 6; see Dkt. 217-2, Declaration of Timothy N. Mathews at ¶¶ 25-26).

[13] Even this figure may overstate the true blended hourly rate for class counsel's first-level reviewers, because it includes work performed by attorney Christina Saler, who "did not perform any first level document review. All of her work related to second level review and preparation of a detailed memorandum of facts." (Dkt. 276, Fees Reply at 19 n. 20).

. . . for legal work of similar complexity." Welch, 480 F.3d at 946 (internal quotation marks omitted); see, e.g., In re CRT, 2016 WL 721680, at *43 (holding that class counsel's "rate for document review at $350 per hour" was "reasonable and responsible"); Perfect 10, Inc. v. Giganews, Inc., 2015 WL 1746484, *21 (C.D. Cal. 2015) (approving "paralegal fees at rates between $240 for a paralegal with five years' experience to $345 for a paralegal with 23 years' experience"). Under the circumstances, the court finds that class counsel's requested document review rates are reasonable.

Next, defendants contend that the court "should reduce the base lodestar for claimed hourly rates that are unreasonably high[.]"[14] (See Dkt. 246, Fees Opp. at 38). Defendants challenge the rates claimed by two firms, LCHB and C&T, (See id. at 39-42), both of which are preeminent law firms which almost exclusively prosecute high-stakes, complex class actions against the largest companies in the world. (See Dkt. 222-1, Mathews Decl. at ¶¶ 8 & 11-12 (C&T); Dkt. 222-2, Sugnet Decl. at ¶¶ 2-5 (LCHB)). Having reviewed the record, the court finds that counsel from C&T and LCHB have provided sufficient documentation to support their claimed hourly rates. Steven Schwartz and Timothy Mathews have extensive class action experience, including many cases where they have served as co-lead counsel and obtained full recoveries on behalf of consumers. (See Dkt. 222-1, Mathews Decl. at ¶¶ 4-12) (describing a $42 million summary judgment in a class action against Safeway and a $53 million class action recovery from Apple). Nicole Sugnet and Kristen Sagafi of LCHB have achieved similarly impressive results in consumer and other class actions against large companies. (See Dkt. 222-2, Sugnet Decl. at ¶¶ 5-9) (describing multi-million dollar settlements obtained in a variety of cases).

The rates charged by these attorneys range from $485 to $750 per hour. (See Dkt. 246, Fees Opp. at 40-41) (challenging the rates charged by Schwartz ($750/hour), Mathews ($600/hour), Sagafi ($625/hour), and Sugnet ($485/hour)). In Los Angeles, hourly rates between

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[14] Defendants also argue that the court "should reduce the lodestar for unsupported rates[.]" (See Dkt. 246, Fees Opp. at 47). Specifically, defendants argue that WK&A failed to submit sufficient biographical information for four billers: Eckart, Ely, Quarembo, and Spiegel. (See id.). To rebut this argument, class counsel submitted an additional declaration regarding the four billers, which demonstrates that they are sufficiently experienced to justify their claimed billing rates. (See Dkt. 276-5, Supplemental Declaration of Robert S. Kitchenoff [] at ¶¶ 12-16).

$485 and $750 are common. See, e.g., Counts v. Meriweather, 2016 WL 1165888, *3-4 (C.D. Cal. 2016) (finding hourly rates of $701.25, $552.50, and $446.25 per hour "reasonable and consistent with the prevailing rates in the Central District"); Rodriguez v. Cty. of L.A., 96 F.Supp.3d 1012, 1023 (C.D. Cal. 2014) (approving rates from $500 to $975); (see also Dkt. 218-1, Fees Brief at 19) (quoting a National Law Journal survey of regional billing rates published in 2014, showing standard partner rates among top Los Angeles firms ranging from $490 to $975). Thus, the court finds that the challenged rates are reasonable and consistent with those charged by comparable attorneys in the Central District.[15]

Defendants urge the court to ignore class counsel's actual billing rates and instead apply the Laffey matrix, an inflation-adjusted table of hourly rates for attorneys and paralegals maintained by the U.S. Attorney's Office for the District of Columbia. (See Dkt. 246, Fees Opp. at 42). The Ninth Circuit has questioned the reliability of the Laffey matrix, describing it as an unreliable measure of fees, particularly for legal markets on the west coast. See Prison Legal News v. Schwarzenegger, 608 F.3d 446, 454 (9th Cir. 2010) ("[J]ust because the Laffey matrix has been accepted in the District of Columbia does not mean that it is a sound basis for determining rates elsewhere, let alone in a legal market 3,000 miles away. It is questionable whether the matrix is a reliable measure of rates even in Alexandria, Virginia, just across the river from the nation's capital."). The court agrees that the Laffey matrix is a less useful tool than both class counsel's true billing rates and the National Law Journal's 2014 survey, and therefore declines to consider or apply it.

Defendants also challenge class counsel's submission of their current hourly rates, and contend that those rates should be adjusted to represent the "historical" rates for all plaintiffs' firms. (See Dkt. 246, Fees Opp. at 45). "District courts have the discretion to compensate plaintiff's attorneys for a delay in payment by . . . applying the attorneys' current rates to all hours

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[15] Defendants also argue that "the price of legal services in San Francisco[,]" where LCHB is located, "is higher than in the Central District." (See Dkt. 246, Fees Opp. at 40). However, it makes no difference whether San Francisco lawyers are generally more expensive than Los Angeles lawyers – the only question before the court is whether these particular attorneys' rates are in line with the prevailing standards of the Central District. See Camacho, 523 F.3d at 979.

billed during the course of the litigation[.]" Welch, 480 F.3d at 947. Here, class counsel has waited approximately five years to collect a fee in this case, and during that time they spent over $500,000 in out of pocket costs to prosecute the action. (See Dkt. 218-1, Fees Brief at 2 & 45). Under the circumstances, the court finds it appropriate to award class counsel attorney's fees based on their current hourly rates as compensation for the delay in payment.

Finally, defendants assert that the court "should reduce the lodestar for improper billing entries in quarter-hour increments." (See Dkt. 246, Fees Opp. at 47). While quarter-hour billing is not per se unreasonable, several courts have imposed across-the-board fee reductions on the ground that this practice may have resulted in excessive billing. See, e.g., Welch, 480 F.3d at 948-49 (affirming district court's 20% across-the-board reduction for quarter-hour billing); Benihana of Tokyo, LLC v. Angelo, Gordon & Co., 2015 WL 5439357, *7 (D. Haw. 2015) ("The Court finds that a ten percent reduction in mainland counsel's hours is appropriate to ensure that Plaintiff does not receive any undue benefit from her counsel's practice of quarter-hour billing."). Courts are particularly inclined to reduce fees when an attorney's time entries contain a large number of quarter-hour or half-hour entries for simple tasks that are likely to have taken a fraction of the recorded time, such as e-mails or telephone calls. See, e.g., Benihana of Tokyo, LLC, 2015 WL 5439357, at *7 (reducing fees based on quarter-hour billing because "[t]here are many time entries that reflect that counsel billed for fifteen minutes to review emails with co-counsel and simple pro hac vice forms that likely took only a few minutes to review"); Rosales v. El Rancho Farms, 2015 WL 4460635, *30 (E.D. Cal. 2015) (reducing fees by 20% where an attorney's "billing 15 minutes for reading a minute order suggests that the reported time was inflated significantly by the quarter-hour billing minimum on other tasks such as reviewing emails, leaving a telephone message, and conferences with co-counsel") (emphasis in original).

Here, over half of the time entries claimed by C&T attorneys Schwartz and Mathews are for simple tasks that purportedly took 15 or 30 minutes to complete. (See Dkt. 222-1, Mathews Decl. at Exh. 4, ECF 5903-6078; see also Dkt. 246, Fees Opp. at 48 (identifying "857 quarter-hour and half-hour entries for emails, phone calls, and intra-office conferences" which correspond to 51.6% of Mathews' entries and 53.4% of Schwartz's entries)). Many of these entries are vague

in describing the scope of the tasks performed. For example, one 15 minute entry refers to "pro hac issues." (See id. at ECF 5968). Another 15 minute entry refers to an "email regarding warranty stip[ulation]." (See id. at ECF 5978). Both of these tasks are of a type that could have taken "only a few minutes to [complete]." Benihana of Tokyo, LLC, 2015 WL 5439357, at *7, see Welch, 480 F.3d at 949 ("[T]he court found the hours were inflated because counsel billed a minimum of 15 minutes for numerous phone calls and e-mails that likely took a fraction of the time."). Under the circumstances, the court will apply a ten percent across-the-board reduction on Schwartz and Mathews' overall fees, for a total reduction of $130,038.75. (See Dkt. 221-1, Schwartz Decl. at Exh. 2, ECF 5899) (listing Schwartz and Mathews' total combined lodestar as $1,300,387.50); see also Moreno, 534 F.3d at 1112 (holding that the district court can impose a "haircut" reduction of ten percent "based on its exercise of discretion and without a more specific explanation").

In short, the court calculates class counsel's lodestar at 8,818,449.23,[16] and finds this figure to be reasonable and supported by adequate documentation. See Blum v. Stenson, 465 U.S. 886, 897, 104 S.Ct. 1541, 1548 (1984) (holding that the resulting lodestar figure "is presumed to be [a] reasonable fee").

3. **Lodestar Multiplier**.

Although the lodestar figure is presumptively reasonable, see Perdue, 559 U.S. at 554, 130 S.Ct. at 1673, "that presumption may be overcome in those rare circumstances in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee." Id. Thus, after computing the lodestar, "[t]he resulting figure may be adjusted upward or downward to account for several factors[.]" Hanlon, 150 F.3d at 1029; see Stetson v. Grissom, 821 F.3d 1157, 1166 (9th Cir. 2016) ("The district court also has discretion to adjust the lodestar upward or downward using a multiplier that reflects a host of reasonableness factors[.]") (internal quotation marks omitted). The factors that the court should consider, known as the Kerr factors, include: (1) the time and labor required; (2) the novelty and difficulty of the

[16] This figure equals the proposed lodestar of $8,948,487.98, less $130,038.75.

questions involved; (3) the skills necessary to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. See Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir.1975), abrogated on other grounds by City of Burlington v. Dague, 505 U.S. 557, 112 S.Ct. 2638 (1992).

Class counsel requests that the court apply a 1.68 multiplier to their unadjusted lodestar. (See Dkt. 218-1, Fees Brief at 26). In the Ninth Circuit, multipliers "ranging from one to four are frequently awarded . . . when the lodestar method is applied." Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1051 n. 6 (9th Cir.), cert. denied, 537 U.S. 1018 (2002) (approving multiplier of 3.65); see Parkinson v. Hyundai Motor Am., 796 F.Supp.2d 1160, 1170 (C.D. Cal. 2010) ("Where appropriate, multipliers may range from 1.2 to 4 or even higher."); Van Vranken v. Atl. Richfield Co., 901 F.Supp. 294, 298-99 (N.D. Cal. 1995) (holding that a multiplier of 3.6 was "well within the acceptable range for fee awards in complicated class action litigation" and that "[m]ultipliers in the 3-4 range are common"). Thus, class counsel's request for a 1.68 multiplier is in line with, if not lower than, the multipliers applied by courts in similarly complex class actions. See, e.g., Vizcaino, 290 F.3d at 1052-54 (tallying multipliers in dozens of class action suits); In re: Cathode Ray Tube Antitrust Litig., 2016 WL 4126533, *10 (C.D. Cal. 2016) (multiplier of 1.96); In re High-Tech Emp. Antritrust Litig., 2015 WL 5158730, *10 (N.D. Cal. 2015) (multiplier of 2.2); Barovic v. Ballmer, 2016 WL 199674, *4 (W.D. Wash. 2016) (multiplier of 2.5).

Here, nearly all of the Kerr factors support the requested multiplier.[17] Litigating this case required an extraordinary amount of time and labor; the case involved 18 plaintiffs from 11 states

[17] Several of the Kerr factors are neutral or do not apply: (1) the record contains no evidence of whether class counsel were precluded from other employment due to accepting this case; (2) the court is not aware of a "customary" fee for a case of this magnitude and complexity; (3) class counsel has not identified any time limitations or similar circumstances imposed by their clients; and (4) the record contains no evidence of the nature or length of class counsel's professional relationships with their clients.

suing on behalf of millions of consumers, and took nearly five years of litigation and "intense negotiations" to settle. (See Dkt. 199, PAO at 2). The case involved a number of difficult and complex legal questions giving rise to substantial litigation risks. (See id. at 21). Even if class counsel overcame these risks and prevailed at the class certification stage and at trial, the likely result would be a judgment as to liability only. (See Dkt. 218-1, Fees Brief at 10); see In re Sears, Roebuck & Co. Front-loading Washer Prods. Liab. Litig., 2016 WL 772785, at *2 (N.D. Ill. 2016) ("[T]he class was properly certified only for class liability proceedings, not for a determination of classwide damages."). These litigation risks, combined with the fact that defendants are "large corporation[s] with substantial resources, financial and otherwise," City of Omaha Police & Fire Ret. Sys. v. LHC Grp., 2015 WL 965696, *8 (W.D. La. 2015), make the case "undesirable." Id.

Further, the results obtained by class counsel are impressive. The settlement secures monetary relief for Class Members who suffered an Overheating Event, provides insurance-like coverage for future Overheating Events, promotes public safety by creating an incentive for current owners to replace their Class Dishwashers, and requires new warnings about the dangers of removing or bypassing TCOs. (See Dkt. 199, PAO at 21). These results are particularly impressive given that class counsel began with an 11-state lawsuit and converted it into a nationwide settlement. (See id. at 2 & 21). Achieving these results undoubtedly took a high level of skill on the part of counsel whom the court has already described as "among the most capable and experienced lawyers in the country in these kind of cases." (Id. at 14). Finally, the court notes that "one extremely important factor . . . is the contingent nature of success; for every successful . . . action brought, several more may be lost, and in these no fee will be received." White v. City of Richmond, 559 F.Supp. 127, 133 (N.D. Cal. 1982). "When [such an] action is successful, therefore, the attorneys must be rewarded, not only for the hours reasonably expended in prosecuting the action, but also for the risk that no fee would ever be forthcoming." Id. Here, "[c]lass counsel took on an extremely risky and complicated case, invested a lot of time and resources, and achieved a good result for the Class." (Dkt. 199, PAO at 14). Under the circumstances, class counsel deserve an upward adjustment in their attorney's fees request. The court finds that the requested multiplier of 1.68 adequately accounts for the several "factor[s] that

may properly be considered in determining a reasonable fee." Perdue, 559 U.S. at 554, 130 S.Ct. at 1673.

Defendants urge the court to apply a negative multiplier of 0.5, (see Dkt. 246, Fees Opp. at 52), thereby cutting class counsel's award in half. Defendants justify this request by reference to only one Kerr factor: the "degree of success obtained." (Id.); see Kerr, 526 F.2d at 70 (requiring the court to consider "the amount involved and the results obtained" by class counsel). Defendants contend that class counsel scored only a "modest" victory because "the total class benefit . . . is between $4,220,000 and $6,803,000" even though "the amount in controversy was more than $1,000,000,000." (Dkt. 246, Fees Opp. at 54). Defendants assert that class counsel should not be granted an award of attorney's fees that "dwarf[s] the class's recovery." (Id.). Defendants' assertions are not persuasive.

Every settlement will involve a disparity between the amount in controversy – an aspirational figure to begin with – and the final settlement amount; such is the nature of a settlement, "the very essence of [which] is compromise, a yielding of absolutes and an abandoning of highest hopes." Linney, 151 F.3d at 1242 (internal quotation marks omitted). The disparity will be particularly high in complex class actions involving multiple claims and millions of putative class members, as these conditions tend to inflate the theoretical amount in controversy in the first instance. That the ultimate settlement figure may be – in defendants' view – small in comparison does not reflect a lack of success on class counsel's part, particularly where, as here, the settlement includes non-monetary relief. Further, class counsel's lodestar is not unreasonable merely because it seems large in comparison to the monetary portion of a settlement involving non-monetary relief. See Bravo v. City of Santa Maria, 810 F.3d 659, 673 (9th Cir. 2016) (Reinhardt, J., concurring) (approving $1,023,610.41 fee award on a $5,002 verdict and explaining that, "[i]f the measure of awardable fees was limited by the damages received or anything like them, the lawyers would not be compensated for time necessarily spent on the case"); see also Gonzalez v. City of Maywood, 729 F.3d 1196, 1209 (9th Cir. 2013) (holding that a reasonable fee must be determined "in light of the context of th[e] case, . . . not based on [the court's] own notion of the correct ratio between the amount of attorney's fees and the amount the litigants recovered").

At the final approval hearing, defendants cited several cases that purportedly justify a negative multiplier, including Roberts, 2014 WL 4568632; Tait v. BSH Home Appliances Corp., 2015 WL 4537463 (C.D. Cal. 2015); and In re Bluetooth Headset Prods. Liab. Litig. ("Bluetooth II"), 2012 WL 6869641 (C.D. Cal. 2012). These cases either support the multiplier requested by class counsel or are inapplicable to the circumstances of this case.

In Roberts, the court granted class counsel's request for a positive multiplier of 1.23, see 2014 WL 4568632, at *8, only slightly below that requested by class counsel here. Notably, the court in Roberts did not hold that a larger multiplier would have been unreasonable; the court merely granted class counsel's request for a specific measure of attorney's fees and costs, explaining that it "represented only a 1.23x multiplier on Class Counsel's fees[.]" Id. (emphasis added). The court in Roberts also noted that "this multiplier will likely decrease as the Settlement moves forward and Class Counsel continues to monitor claims and respond to inquiries from the Class members." Id. The same is true here, "as Class Counsel will continue to invest significant time in the claims process and administration, settlement approval, and possible appeals." (Dkt. 276, Fees Reply at 13). Moreover, class counsel in Roberts only prosecuted the case for two years before it settled, see 2014 WL 4568632, at *8, whereas this case took two and a half times as long to resolve. (See Dkt. 199, PAO at 1-2); see also Kerr, 526 F.2d at 70 (requiring the court to consider "the time and labor required" to prosecute the action). In short, contrary to defendants' contention, the Roberts case supports class counsel's request for a 1.68 multiplier.

In Tait, the court applied a negative multiplier after calculating the precise value of the settlement and finding that class counsel's lodestar was not "reasonable in relation to the results obtained." See 2015 WL 4537463, at *13-14 ("[T]he maximum actual payment that will be made to class members is $1,070,795 . . . . [C]lass counsel's lodestar with no multiplier ($8,498,409.02) is a whopping 7.8 times [that] amount[.]") (emphasis in original). The court in Tait was able to substitute the value of the settlement for the "results obtained" because the settlement provided only monetary relief. See id. at *3 (describing the terms of the settlement). However, in this case, the court cannot calculate the value of the benefits obtained under the settlement, because the settlement includes significant non-monetary relief in addition to cash payments. (See Dkt. 199,

PAO at 4-5).

In Bluetooth II, the court applied a negative multiplier of 0.25 where "the settlement provide[d] for no monetary relief for the class at all" and "[t]he success actually obtained could (and should) have been achieved at far lower cost" as was "illustrated by Defendants' 'voluntary' addition of hearing loss warnings prior to settlement." 2012 WL 6869641, at *7. In contrast, the settlement here does provide substantial monetary relief, (see Dkt. 199, PAO at 4-5), and – as illustrated by the fact that defendants do not dispute the reasonableness of the hours billed by class counsel – the record does not suggest that class counsel could have achieved the same results at lower cost.

Finally, the court is satisfied that a "cross-check" using the percentage-of-recovery method is not required. "[W]here, as here, classwide benefits are not easily monetized, a cross-check is entirely discretionary." Yamada v. Nobel Biocare Holding AG, 825 F.3d 536, 547 (9th Cir. 2016). A percentage-of-recovery cross-check is unlikely to be helpful in this case for a number of reasons. First, there is no common fund against which to apply a benchmark percentage. (See, generally, Dkt. 192-4, Settlement Agreement); see also Hanlon, 150 F.3d at 1029 (establishing "25% of the common fund as a benchmark award for attorney fees" under the percentage-of-recovery method). Second, the non-monetary benefits conferred under the settlement cannot be quantified with precision, if at all. (See Dkt. 199, PAO at 4-5) (describing non-monetary benefits of settlement). In fact, during the final approval hearing, defense counsel repeatedly used the term "unquantifiable" to describe the value of the protections afforded by the settlement's requirement for enhanced safety warnings.

Third, assuming defendants are correct that the percentage-of-recovery method applies only to "the value of claims actually made by the Dishwasher owners[,]" (see Dkt. 246, Fees Opp. at 30), the court could not perform an accurate analysis until 2021, when the claims deadline for future Overheating Events will pass. (See Dkt. 218-1, Fees Brief at 36). On the other hand, assuming plaintiffs are correct that the percentage-of-recovery method applies to "the total potential class recovery[,]" (id. at 35), the court's analysis would be imprecise to the point of uselessness – the parties' estimates of the gross value of the settlement range from $4,220,000

at the low end, (see Dkt. 246, Fees Opp. at 54), to $116,700,000 at the high end. (See Dkt. 218-1, Fees Brief at 35). Given the inherent problems with accurately applying the percentage-of-recovery method in this case, the court elects not to conduct a discretionary cross-check. See Yamada, 825 F.3d at 547.

In short, the court finds that the lodestar of $8,818,449.23 is reasonable and supported by adequate documentation, and that a multiplier of 1.68 is warranted in light of the Kerr factors. The court will therefore award class counsel attorney's fees in the amount of $14,814,994.70.

4. **Objections**.

Most of the objections regarding class counsel's request for attorney's fees invoke the general theme that "the settlement does nothing for the consumers and is only a way of generating cash payments for the lawyers." (Dkt. 202, Objection of Alexander Korzun) (urging the court to "take the 19 million dollar lawyer fees and divide that up" among the class members); (see Dkt. 203, Objection of Frances F. Wolfson) ("[T]hese unreasonable payments should be trimmed and the proceeds distributed to members of the Class[.]"); (Dkt. 213, Objection of James P. Tierney) (describing "the $19 million in attorney's fees" as "excessive" and "highly disproportionate"). The court understands that some class members, unfamiliar with class action litigation, may be upset at the perceived disparity between their own award and the attorney's fees recovered by class counsel.[18] But this perception does not render the fee award unreasonable, particularly in light of the: (1) time, labor, and costs expended by class counsel (over a five-year period with no guarantee of recovery); (2) complexity of the case; (3) risks of failure in litigation; and (4) total benefits conferred under the settlement.

[18] Several objectors were under the impression that class counsel would seek $19 million in attorney's fees because that figure was included on the postcard notice sent to class members. However, the actual measure of fees sought by – and awarded to – class counsel is nearly $4 million less.

B. Costs.

The Settlement Agreement provides that defendants will pay class counsel's reasonable costs and expenses incurred in litigating this action. (See Dkt. 192-4, Settlement Agreement at 46, § IX.A). Class counsel have collectively incurred a total of $508,292.67 in costs. (See Dkt. 218-1, Fees Brief at 45; Dkt. 218-3, Firm Time & Expense Summary at 2). Defendants initially argued that class counsel's request for costs should be reduced by $30,629.90, (see Dkt. 246, Fees Opp. at 54), but subsequently withdrew their opposition and consented to paying the full amount requested by class counsel. (See Dkt. 276, Fees Reply at 33; Dkt. 276-1, Mathews Suppl. Decl. at ¶ 13). The court has reviewed the detailed listing of the costs and expenses incurred by each of class counsel's firms, (see Dkt. 218-1, Fees Brief at 45), and finds that the costs incurred by class counsel over the course of this five-year-long lawsuit are reasonable. The court therefore awards a total of $508,292.67 in costs.

C. Service Awards.

"[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments." Staton, 327 F.3d at 977. Here, plaintiffs request that the court grant incentive awards in the amount of $4,000.00 to each named plaintiff. (See Dkt. 218-1, Fees Brief at 46-47). Defendants do not oppose this request. (See, generally, Dkt. 246, Fees Opp.).

Plaintiffs request the service awards "in recognition of the time and effort [plaintiffs] personally invested in this lawsuit." (Dkt. 218-1, Fees Brief at 46). In particular, the named plaintiffs subjected themselves to public attention by lending their names to the case, responding to written discovery requests, being deposed by defendants' counsel, allowing their dishwashers to be disassembled and inspected by defendants, reviewing and authorizing the filings of various iterations of the complaint, consulting with class counsel on a regular basis, and evaluating and supporting the proposed settlement. (See id.); see also Rodriguez, 563 F.3d at 958-59 ("Incentive awards . . . are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in brining the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

In its order granting preliminary approval, the court discussed the fairness and adequacy of the service awards at issue and outlined the careful scrutiny required in this Circuit. (See Dkt. 199, PAO at 24-26); see also Radcliffe v. Experian Info. Solutions Inc., 715 F.3d 1157, 1163 (9th Cir. 2013) (instructing "district courts to scrutinize carefully the awards so that they do not undermine the adequacy of the class representatives."). The court also found that, "because the parties agree that the Settlement shall remain in force regardless of any service awards, . . . the awards are unlikely to create a conflict of interest between the named plaintiffs and absent class members." (Dkt. 199, PAO at 25). The court further noted the "substantial responsibility" taken on by plaintiffs in litigating this case, and that "the class has benefitted from the time and effort they spent doing so." (Id. at 26 n. 9).

"Many courts in the Ninth Circuit have . . . held that a $5,000 incentive award is 'presumptively reasonable.'" Hawthorne v. Umpqua Bank, 2015 WL 1927342, *8 (N.D. Cal. 2015); see Resnick v. Frank, 779 F.3d 941, 947 (9th Cir. 2015) (approving $5,000 incentive award even though it was "roughly 417 times larger than the $12 individual award" that unnamed class members would receive). In short, based on its review of the record, the court finds that the $4,000.00 service awards are fair and reasonable, and are hereby approved.

III. PURCHASE OF LEAD PLAINTIFF STEVE CHAMBERS' WEBSITES.

Plaintiffs request that the court approve the settlement provision requiring Whirlpool to purchase lead plaintiff Steve Chambers' websites for $100,000.00. (See Dkt. 218-1, Fees Brief at 47-49). In its order granting preliminary approval, the court analyzed this settlement provision in depth. (See Dkt. 199, PAO at 26-28). The court reviewed the parties' valuations of the websites, considered the "substantial role" that the websites played in the litigation, and noted the "significant investment by Mr. Chambers into the creation and maintenance" of the websites. (See id. at 26 & 27). The parties also advised the court during the final approval hearing that the websites enabled Whirlpool to learn about, and ultimately make settlement offers to, other potential class members while this litigation was pending. As a result, and for the reasons set forth in its Preliminary Approval Order, the court hereby affirms its finding that it is "fair and reasonable for Whirlpool to purchase the Chambers websites for $100,000." (Id. at 28).

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. The parties' Joint Motion for Final Approval of Class Action Settlement **(Document No. 254)** is **granted** as set forth herein.

2. The court hereby **grants final approval** to the parties' Class Action Settlement Agreement and Release of All Claims ("Settlement Agreement") **(Document No. 192-4)**. The court finds that the Settlement Agreement is fair, adequate, and reasonable; appears to be the product of arm's-length and informed negotiations; and treats all members of the class fairly. The parties are ordered to perform their obligations pursuant to the terms of the Settlement Agreement and this Order.

3. Plaintiffs' Motion for Award of Attorneys' Fees and Expenses and for Service Awards for Plaintiffs **(Document No. 218)** is **granted** as set forth herein.

4. The settlement class is certified under Federal Rules of Civil Procedure 23(c): All members of the class preliminarily approved on November 12, 2015, who did not properly and timely request exclusion pursuant to the procedures specified in the Settlement Agreement.

5. The form, manner, and content of the Class Notice meet the requirements of Federal Rules of Civil Procedure 23(c)(2).

6. The court affirms the appointment of plaintiffs Steve Chambers, Lynn Van Der Veer, Kevin O'Donnell, Joseph Cicchelli, Kurt Himler, Gary LeBlanc, George Bliss, Lyndee Walker, W. David Beal, Zila Koswener, Pamela Walchli, Raymond Paolini, Jr., and Jackie Steffes as class representatives.

7. The court affirms the appointment of: Charles Fax of Rifkin, Weiner, Livingston, Levitan & Silver LLC; Robert Kitchenoff of Weinstein Kitchenoff & Asher LLC; Steven Schwartz and Timothy Mathews of Chimicles & Tikellis LLP; Nicole Sugnet of Lieff Cabraser Heimann & Bernstein, LLP; and Jeff Cohon of Cohon & Pollak, LLP as class counsel.

8. Defendants shall pay each named plaintiff a service award of $4,000.00 in accordance with the terms of the Settlement Agreement.

9. Defendants shall pay lead plaintiff Steve Chambers a payment of $100,000.00 for the

purchase of Mr. Chambers' websites in accordance with the terms of the Settlement Agreement.

10. Defendants shall pay class counsel attorney's fees in the amount of $14,814,994.70 and costs in the amount $508,292.67.

11. The Claims Administrator, Kurtzman Carson Consultants, LLC, shall be paid for its fees and expenses in connection with the administration of the Settlement Agreement, in accordance with the terms of the Settlement Agreement.

12. All class members who did not validly and timely request exclusion from the settlement have released claims against defendant, as set forth in the Settlement Agreement.

13. Except as to any class members who have validly and timely requested exclusion, this action is **dismissed with prejudice**, with all parties to bear their own fees and costs except as set forth herein and in the prior orders of the court.

14. Without affecting the finality of this order in any way, the court hereby retains jurisdiction over the parties, including class members, for the purpose of construing, enforcing, and administering the order and Judgment, as well as the Settlement Agreement itself.

15. Judgment shall be entered accordingly.

Dated this 11th day of October, 2016.

/s/
Fernando M. Olguin
United States District Judge

EXHIBIT 4

STEVE CHAMBERS v. WHIRLPOOL CORPORATION
TIME SUMMARY

FIRM NAME: CHIMICLES & TIKELLIS LLP

REPORTING PERIOD: Inception to March 31, 2016

NAME	STATUS*	HOURLY RATE	HOURS	LODESTAR
Schwartz, Steven A.	P	$750.00	446.25	$334,687.50
Mathews, Timothy N.	P	$600.00	1609.50	$965,700.00
Scott, Daniel B.	FA	$500.00	45.25	$22,625.00
Geyelin, Anthony A.	A	$460.00	2829.25	$1,301,455.00
Donato Saler, Christina	SC	$500.00	229.75	$114,875.00
Pratsinakis, Catherine	SC	$500.00	27.00	$13,500.00
Gushue, Alison G.	A	$450.00	49.75	$22,387.50
Kenney, Joseph B.	FA	$300.00	48.75	$14,625.00
Gaughan, Bryan M.	FPL	$250.00	95.00	$23,750.00
Cain, Shelby R.	FPL	$175.00	104.25	$18,243.75
Royer, Jesse	FPL	$150.00	209.75	$31,462.50
Ngo, Phuong	FLA	$100.00	262.50	$26,250.00
Epstein, Blair M.	FLA	$60.00	35.75	$2,145.00
TOTALS			**5992.75**	**$2,891,706.25**

P = Partner
SC = Senior Counsel
A = Associate
FA = Former Associate
FPL = Paralegal
FLA = Legal Assistant

EXHIBIT 5

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: LG FRONT LOAD WASHING MACHINE CLASS ACTION LITIGATION	Civil Action No. 08-51(MCA)(LDW) **FINAL APPROVAL ORDER AND JUDGMENT**

THIS MATTER having been opened to the Court by counsel for the Plaintiffs and the Class for final approval of the proposed class action settlement (the "Settlement"), in accordance with the Settlement Agreement and Release dated May 25, 2016 (the "Agreement") [D.E. 404-3] and on the motion for an award of attorneys' fees and costs and approval of incentive awards dated August 9, 2016 [D.E. 409]; and

WHEREAS, the Court finds that it has jurisdiction over this Action and each of the Parties and all Settlement Class Members under 28 U.S.C. § 1332(d) and that venue is proper in this district; and

WHEREAS the Court finds as follows: The Settlement was entered into at arm's length by experienced counsel and only after extensive negotiations with well-respected mediators and the Court. The Settlement is not the result of collusion. The Settlement is fair, reasonable, and adequate;

WHEREAS the Court having reviewed Plaintiffs' Counsel's submissions in support of their request for attorneys' fees, including their time summaries and hourly rates, the Court finds that the request for attorneys' fees is reasonable and appropriate and the hourly rates of each Lead Counsel firm are likewise reasonable and appropriate in a case of this complexity;

WHEREAS, the Court similarly finds that incentive awards to each Class Representative are fair and reasonable; and

WHEREAS, this Court conducted a hearing on October 13, 2016 and has fully considered the record of these proceedings, the representations, arguments and recommendations of counsel, and the requirements of the governing law; and for good cause shown;

IT IS THIS 14 day of October, 2016:

ORDERED that the Final Approval and Judgment is GRANTED, subject to the following terms and conditions:

1. For the purposes of this Order, the Court hereby adopts all defined terms as set forth in the Agreement.

2. The "Settlement Class" certified for the sole purpose of consummating the settlement in this Action consists of and is hereinafter defined as:

> all residents of the United States who were the original purchasers of one or more Washers, for home and not commercial use, between January 1, 2002 and December 31, 2006.

Excluded from the Class are: (1) LG USA; (2) retailers, wholesalers, and other individuals or entities that purchased the Washers for resale; (3) the United States government and any agency or instrumentality thereof; (4) the judge to whom this case is assigned and any member of the judge's immediate family; and (5) Settlement Class Members who timely and validly opt to exclude themselves from the Settlement Class.

3. A list of all persons who have timely and validly requested to be excluded from the Settlement Class is annexed hereto as Exhibit A.

4. The Court finds that there have been a total of eight Objections filed to the Settlement that have not been withdrawn. The Court has duly considered these Objections and none provides a basis for not approving the Settlement.

5. The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.

6. The Court finds that the proposed Settlement Class meets all the applicable requirements of Fed. R. Civ. P. 23, affirms certification of the Settlement Class, and approves the Settlement set forth in the Agreement as being fair, just, reasonable, and adequate.

7. Based upon the Court's familiarity with the claims and parties, the Court finds that Ralph Ashe, Lyla Boone, Jill Burke, Nancy Cirillo, Paula Cook-Sommer, Richard Demski, Marcia Figueroa, Mike Franko, Glenn Grosso, Lori Grosso, Jason Harper, Gina Harper, Cristen Irving, Cindy Launch, Edward Manzello, Jill Olejniczak, Rick Quinn, Amy Quinn, Kim Scalise, Jonathan Zimmerman, and Carolyn Zimmerman adequately represent the interests of the Settlement Class and hereby appoints them as Class Representatives for the Settlement Class.

8. The Court finds that the following firms fairly and adequately represent the interests of the Settlement Class and hereby confirms them as Lead Class Counsel pursuant to Rule 23:

Steven A. Schwartz
Alison G. Gushue
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 W. Lancaster Ave.
Haverford, PA 19041

James E. Cecchi
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068

Jonathan D. Selbin
Jason L. Lichtman
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
250 Hudson Street, 8th Floor

Oren S. Giskan
GISKAN, SOLOTAROFF, ANDERSEN
& STEWART, LLP
11 Broadway, Suite 2150
New York, NY 10004

New York, NY 10013

James C. Shah
SHEPHERD, FINKELMAN, MILLER
& SHAH, LLP
35 East State Street
Media, PA 19063

9. The Court finds, upon review of the Settlement and consideration of the nine factors enunciated in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), that the Settlement and the proposed reimbursement program available from the Settlement are fair, reasonable and adequate. Accordingly, the Settlement is finally approved by the Court.

10. The Final Approval Order and Judgment as provided under the Agreement should be entered. Such order and judgment shall be fully binding with respect to all members of the Class and shall have res judicata, collateral estoppel, and all other preclusive effect for all of the Released Claims as set forth in the Agreement.

11. The operative complaint in this action, the Consolidated Amended Complaint [D.E. 31], is dismissed with prejudice, and the Released Claims against Defendant are released.

12. Settlement Class Members requesting exclusion from the Class shall not be entitled to receive any reimbursement as described in the Agreement.

13. The Settlement Administrator shall distribute to each Settlement Class Member who timely submitted a complete, properly executed, and valid Claim Form, and who are determined to be eligible to receive benefits under the Agreement, the benefits to which they are entitled.

14. Class Counsel is hereby awarded: (i) $ 5,775,000 in attorneys' fees; + expenses

15. Each Class Representative is to receive an incentive award in the sum of $ 4,000 .

16. The awarded attorneys' fees and costs, and Class Representative incentive awards are to be paid and distributed in accordance with the Agreement.

17. The Court authorizes Lead Class Counsel to allocate the fee and cost award among Class Counsel.

18. Each and every term and provision of the Settlement and Agreement shall be deemed incorporated into the Final Approval Order and Judgment as if expressly set forth and shall have the full force and effect of an Order of the Court.

19. The terms of this Final Approval Order and Judgment, and the Settlement and Agreement are binding on the Plaintiffs and all other Settlement Class Members, as well as their heirs, executors and administrators, successors and assigns.

20. The parties and their counsel are ordered to implement and to consummate the Settlement and Agreement according to its terms and provisions.

21. Other than as set forth herein, the parties shall bear their own costs and attorneys' fees.

22. The releases set forth in the Agreement are incorporated by reference. All Class Members, as of the Effective Date, shall be bound by the releases set forth in the Agreement whether or not they have availed themselves of the benefits of the Settlement.

23. The parties are authorized, without further approval from the Court, to agree in writing to and to adopt such amendments, modifications, and expansions of the Settlement or Agreement as are consistent with the Final Approval Order and Judgment.

24. No Settlement Class Member, either directly, representatively, or in any other capacity (other than a Settlement Class Member who validly and timely submitted a valid request for exclusion), shall commence, continue, or prosecute any action or proceeding against

Defendant or any other Releasee as set forth in the Agreement in any court or tribunal asserting any of the Released Claims, and are hereby permanently enjoined from so proceeding.

25. Without affecting the finality of the Final Approval Order and Judgment, the Court shall retain continuing jurisdiction over this action, the parties and the Settlement Class, and the administration and enforcement of the Settlement and Agreement. Any disputes or controversies arising with respect to the enforcement or implementation of the Settlement or Agreement shall be presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the parties' ability to exercise their rights under Paragraph 23 above.

26. Neither the Settlement or Agreement, nor any of its terms and provisions, nor any of the agreements, negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

a. Offered or received as evidence of or construed as or deemed to be evidence of liability or a presumption, concession or an admission by the Defendant of the truth of any fact alleged or the validity of any claim that has been, could have been or in the future might be asserted in the Action or in any litigation, or otherwise against the Defendant, or of any proposed liability, negligence, fault, wrongdoing or otherwise of the Defendant;

b. Offered or received as evidence of or construed as or deemed to be evidence of a presumption, concession or an admission of any purported violation of law, breach of duty, liability, default, wrongdoing, fault, misrepresentation or omission in any statement, document, report or financial statement heretofore or hereafter issued, filed, approved or made by Defendant or otherwise referred to for any other reason, other than for the purpose of and in such proceeding as may be necessary for construing, terminating or enforcing the Agreement;

c. Deemed to be or used as an admission of any liability, negligence, fault or wrongdoing of Defendant in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal;

d. Construed as a concession or an admission that Class Representatives or the Settlement Class Members have suffered any injury or damage; or, as an admission or concession that the consideration to be given in the Settlement represents the amount which could be or would have been awarded to the Class Representatives or the Settlement Class Members, after trial.

27. There being no just reason to delay, the Clerk is directed to enter this Final Approval Order and Judgment forthwith and designate this case as closed. The operative complaint in this action, the Consolidated Amended Complaint [D.E. 31], is dismissed with prejudice.

MADELINE COX ARLEO, U.S.D.J.

Exclusion Requests	
1	Antranette Robinson
2	Antranette Whitney Robinson
3	Ayden R Robinson
4	Barbara Gifford
5	Barbara Marsden
6	Belva M Countryman
7	Brandon Walton Robinson
8	Carol J Clift
9	Catherine J Baker
10	Cathy L Howle
11	Cheryl DeBriyn
12	David M Stewart
13	Debra Hagen
14	Donna Flowers
15	Donna Morrone
16	Garrett Wynne
17	Gloria Pauline Jackson
18	James Rains
19	Jan M Chubb
20	Jill Wynne
21	Joan D Kruse
22	Joan Ries
23	Judith P Hall
24	Keitha Jackson
25	Leonard Robinson
26	Levon Farra
27	Linda Lane
28	Margaret A Surrarrer
29	Nevaeh Tolliver
30	Pam Fischbach
31	Paulette Reitan
32	Philip E Waldbeser
33	Sister Francis Mensik on behalf of St Joseph Convent
34	Steven G Bonneville
35	Steven H MacLean
36	Teresita D Pasa
37	Theresa Gaffney
38	Tracy Froebel

EXHIBIT 6

IN RE: LG FRONT LOADING WASHING MACHINE CLASS ACTION LITIGATION

TIME SUMMARY

FIRM NAME: CHIMICLES & TIKELLIS LLP

REPORTING PERIOD: Inception to June 30, 2016

NAME	STATUS	HOURLY RATE	HOURS	LODESTAR
Chimicles, Nicholas E.	P	$950.00	7.25	$6,887.50
Schwartz, Steven A.	P	$750.00	1270.00	$952,500.00
Sauder, Joseph G.	FP	$700.00	40.25	$28,175.00
Mathews, Timothy N.	P	$650.00	3.00	$1,950.00
Schelkopf, Matthew D.	FP	$600.00	497.50	$298,500.00
Johns, Benjamin F.	P	$625.00	87.75	$54,843.75
Saler, Christina Donato	SC	$575.00	3.00	$1,725.00
Levy, Sheryl S.	IC	$550.00	0.75	$412.50
Gushue, Alison G.	A	$535.00	1604.50	$858,407.50
Scott, Daniel B.	FA	$500.00	241.75	$120,875.00
Geyelin, Anthony A.	OC	$460.00	14.75	$6,785.00
Cereghino, Shannon P.	IC	$450.00	41.75	$18,787.50
Bartholomew, Christine	IC	$400.00	121.00	$48,400.00
Kimmel, Kimberly L.	FA	$400.00	0.25	$100.00
Evans, Kimberly A.	FA	$300.00	74.50	$22,350.00
Smith, Phil L.	FIT	$300.00	0.75	$225.00
Ward, Donna M.	LA	$300.00	4.00	$1,200.00
Gaughan, Bryan M.	FPL	$250.00	4.00	$1,000.00
Mastraghin, Corneliu P.	PL	$250.00	10.00	$2,500.00
Mingle, Mary E.	FLA	$250.00	4.75	$1,187.50
Wright, Karen L.	LA	$250.00	14.00	$3,500.00
Birch, David W.	IT	$200.00	1.75	$350.00
Aldinger, Catherine A.	FPL	$195.00	28.00	$5,460.00
Paquette, Roland	FPL	$195.00	23.50	$4,582.50
Boyer, Justin P.	PL	$175.00	0.50	$87.50
Royer, Jesse D.	FLC	$150.00	53.50	$8,025.00
Bibbo, Frederic A.	FLC	$120.00	12.00	$1,440.00
DiLella, Carling L.	FLC	$60.00	22.50	$1,350.00
Johnson, Bonnie W.	FLC	$60.00	22.50	$1,350.00
Mickels, John K.	FLC	$60.00	55.50	$3,330.00
Neale, Marissa L.	FLC	$60.00	7.00	$420.00
TOTALS			**4272.25**	**$2,456,706.25**

P = Partner
FP = Former Partner
A = Associate
FA = Former Associate
PL = Paralegal
FPL = Former Paralegal
FLC = Former Law Clerk
FLA = Former Legal Assistant

EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ALESSANDRO DEMARCO, et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. AVALONBAY COMMUNITIES, INC., et al., Defendants.	Consolidated Civil Action No. 2:15-cv-00628-JLL-JAD CLASS ACTION **ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT**

Before the Court is Plaintiffs' unopposed application requesting that the Court enter an Order granting final approval of a class action settlement involving Plaintiffs Ebony Cooley and Digna Gutierrez (hereinafter "Plaintiffs") and Defendant AvalonBay Communities, Inc. (hereinafter "Defendant"), as fair, reasonable and adequate, awarding attorneys' fees and costs to Class Counsel as outlined herein, and awarding an incentive payment to Plaintiffs as detailed below.

Having reviewed and considered the Stipulation of Class Action Settlement, the application for final approval of the settlement, an award of attorneys' fees and costs, and an incentive award to the Plaintiffs, and having conducted a final approval hearing, the Court makes the findings and grants the relief set forth below approving the settlement upon the terms and conditions set forth in this Order.

THE COURT not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

THE COURT being required under Federal Rule of Civil Procedure 23(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether

the settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

IT IS ON THIS 11 day of July, 2017,

ORDERED that:

1. The settlement involves allegations in Plaintiffs' Consolidated Class Action Complaint and Jury Demand against Defendant for Negligence and Private Nuisance related to the January 21, 2015 fire at the apartment complex known as The Avalon at Edgewater.

2. Defendant has denied any wrongdoing and denies all liability alleged in the Complaint;

3. The settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant.

4. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Stipulation of Class Action Settlement.

5. On March 13, 2017 the Court entered a Preliminary Approval Order which among other things: (a) conditionally certified this matter as a class action, including defining the class and class claims, appointing Plaintiffs as Class Representatives, and appointing Co-Lead Counsel as Class Counsel; (b) preliminarily approved the First Amended Stipulation of Class Action Settlement; (c) approved the form and manner of Notice to the Settlement Class; (d) set deadlines for opt-outs and objections; (e) approved and appointed the Claims Adjuster; (f) approved and appointed the claims administrator; and (g) set the date for the Final Fairness Hearing.

6. In the Preliminary Approval Order, pursuant to *Rule* 23(b)(3), for settlement purposes only, the Court certified the Settlement Class, defined as follows:

> All residents and occupants of the Russell Building at Avalon at Edgewater as identified on the operative lease agreements as of January 21, 2015, whose property in a Russell Building apartment or storage unit was destroyed by The Fire.

7. The Court, having reviewed the terms of the First Amended Stipulation of Class Action Settlement submitted by the parties pursuant to *Rule* 23(e)(2), grants final approval of the First Amended Stipulation of Class Action Settlement and defines the Settlement Class as defined therein and in the Preliminary Approval Order, and finds that the settlement is fair, reasonable and adequate and meets the requirements of *Rule* 23.

8. The First Amended Stipulation of Class Action Settlement provides, in part, and subject to a more detailed description of the settlement terms in that Agreement, for:

A. Defendant to institute a Settlement Claims Process as outlined in the First Amended Stipulation of Class Action Settlement whereby Class Members can submit claims that will be evaluated by a Claims Adjuster mutually agreed upon by Class Counsel and Defendant. Class Members who agree to participate in the settlement will not be required to indemnify AvalonBay for any insurance subrogation claims related to The Fire, and will not be releasing any right regarding subrogation that has not previously been released.

B. Defendant to pay all costs of Claims Administration and Settlement Administration, including the cost of Claims Administrator, Claims Adjuster, mailing notice, and preparing and mailing checks.

C. Defendant to pay the reasonable attorneys' fees of Class Counsel, which shall be limited to $1,900.00 for each Russell Building unit for which a Claim(s) is submitted and an award issued pursuant to this Settlement Agreement.

D. Class Counsel to pay incentive awards of $2,500.00 per Class Representative.

9. The terms of the First Amended Stipulation of Class Action Settlement Agreement are fair, adequate, and reasonable and are hereby approved, adopted, and incorporated by the Court. The parties, their respective attorneys, Claims Administrator, and the Claims Adjuster are hereby directed to consummate the settlement in accordance with this Order and the terms of the First Amended Stipulation of Class Action Settlement.

10. Notice of the Final Approval Hearing, the application for counsel fees and costs, and the proposed payments to the Class Representative have been provided to Settlement Class

Members as directed by this Court's Orders, and proof of Notice has been filed with the Court by Defendant.

11. The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Rule 23(c)(2)(B).

12. Only 182 of potential settlement class members have requested to be excluded from the Settlement which is 66 of the 229 occupied Russell Building units, and less than 62% of the 294 residents and occupants of Russell Building units who were successfully mailed notices.

13. The Court has considered all the documents filed in support of the settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the final hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

14. Pursuant to the First Amended Stipulation of Class Action Settlement, Defendant, the Claims Administrator, Claims Adjuster, and Class Counsel shall implement the settlement in the manner and time frame as set forth therein.

15. Pursuant to the First Amended Stipulation of Class Action Settlement, Plaintiffs and the Settlement Class Members release claims as follows:

> Any individual, class, representative, group or collective claim, cost, attorneys' fees, court and litigation expenses, judgment, liability, expense, right, controversy, demand, suit, matter, obligation, damage (including, but not limited to, contract damage, compensatory damage, tort damage for bodily injury, personal injury, emotional distress, property damage and/or any other claim and punitive damage), loss, action or cause of action, of every kind, character and description whatsoever, either direct or consequential, at law or in equity, that a Releasing Party has or may have, including assigned claims, whether known or unknown, asserted or unasserted, latent or patent, suspected or unsuspected, concealed or hidden, that is, has been, could have been or in the future might reasonably be asserted, inferred, implied, included or connected under any body of law (federal law, common law, or under the laws of any state) by the Releasing

Party either in the Court or any other court or forum, regardless of legal theory or relief claimed, and regardless of the type of relief or amount of damages claimed, against any of the Released Parties arising from, concerning or in any way relating to The Fire and/or the Avalon at Edgewater complex and/or the construction, leasing or operation by AvalonBay or its employees of the Avalon at Edgewater complex, including any claims asserted or which could have been asserted in the Action. Plaintiffs Ebony Cooley and Digna Guitierrez and each Settlement Class Member fully, finally and forever settle, release and discharge all Released Parties from and against any and all Released Claims, including Edgewater Financing, LLC, AvalonBay Communities, Inc. and its insurers including, without limitation, Houston Casualty Company, Network Adjusters, Inc., Indian Harbor Insurance Company, QBE Insurance Corporation, Great American Insurance Company of New York, National Surety Corporation, Ohio Casualty Insurance Company, Navigators Insurance Company, the lenders to Edgewater Financing, LLC, and all entities and individuals involved in the design or construction of the Avalon at Edgewater complex; and all of their current and former affiliates, parents, subsidiaries, predecessors, successors and assigns and their past, present and future officers, directors, agents, servants, employees, members, partners, shareholders, attorneys, legal representatives, heirs, executors and administrators and any person, company or entity associated with or acting on their behalf.

Upon occurrence of the Effective Date, and to the fullest extent permitted by law, Plaintiffs and each member of the Settlement Class either directly, indirectly, representatively, as a member or on behalf of the general public, or in any other capacity, are and shall be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in, any action in this or any other forum (other than participation in the settlement as provided for in this Stipulation) in which any of the Released Claims are asserted against the Released Parties.

Plaintiffs and each member of the Settlement Class have released all of their claims against Defendant that they could have brought in their Complaint including the release of all claims for personal injuries arising out of The Fire.

16. Pursuant to the First Amended Stipulation of Class Action Settlement, and in recognition of their efforts on behalf of the Settlement Class, the Court approves payments to Plaintiffs in the total amount of $2,500.00 each as an incentive payment for their efforts on behalf of the Settlement Class. Class Counsel shall make such payment in accordance with the terms of the First Amended Stipulation of Class Action Settlement.

17. The Court has appointed Benjamin F. Johns of Chimicles & Tikellis LLP; Bruce D. Greenberg of Lite DePalma Greenberg, LLC; and Daniel R. Lapinski of Wilentz, Goldman & Spitzer, P.A. as Class Counsel.

18. The Court, after careful review of the time entries and rates requested by Class Counsel, and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for attorneys' fees in the amount of $1,900 for each Russell Building unit for which a Claim(s) is submitted and an award issued pursuant to this Settlement Agreement. In addition, 6% shall be paid directly from the award received by each Claimant, which payment from each award shall include all costs and expenses for time already spent and time to be spent in this Litigation (excluding responding to Notices of Rejection, arbitration submissions, arbitration proceedings, appellate submissions and appellate proceedings as to which Class Counsel reserves the right to represent Class Members for an additional fee to be negotiated with the individual Class Member), including but not limited to finalizing the Settlement Agreement, preparing settlement documents, drafting briefs, communicating with the Settlement Class, attending hearings and monitoring of the settlement. Payment shall be made pursuant to the terms of the First Amended Stipulation of Class Action Settlement.

19. This Order resolves all claims against all parties in this action and is a final order.

20. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the settlement.

21. Counsel for the parties shall work together to ensure that notice of the entry of this order will be provided to class members who did not opt-out (and who can be identified) within five business days.

Honorable Claire C. Cecchi

EXHIBIT A

OPT-OUT LIST

No. of Apts.	APT. NO.	NAME
1	103 Russell	Yesol Lee
	103 Russell	Jeonggwan Lee
2	105 Russell	Sarah Kaufman
	105 Russell	Emily Kaufman
	105 Russell	Noah Kaufman
	105 Russell	Roman Kaufman
	105 Russell	Aaron Kaufman
3	106 Russell	Michelle Marlowe
	106 Russell	Rhonda Fishman
4	124 Russell	Candida Boyette-Clemons
	124 Russell	Azza Symone Clemons
	124 Russell	Herbert Clemons
5	130 Russell	Satoko Yokoyama
	130 Russell	Yataro Yokoyama
	130 Russell	Tetsuya Yokoyama
6	134 Russell	Hamza Alkhayyat
7	136 Russell	Altagracia Correa
8	137 Russell	Judy Moon
	137 Russell	Carson Moon
	137 Russell	Zoe Moon
	137 Russell	Kyung Moon
	137 Russell	Tae Moon
9	141 Russell	Sandra Medina
	141 Russell	Christopher Medina
10	153 Russell	Andrew Paquin
	153 Russell	Inger Gomez
11	154 Russell	Duk Kyu Kim
	154 Russell	Eun Hye Yeo
	154 Russell	Yool Kim

12	160 Russell	Anton Meshchankin
	160 Russell	Alla Lyfenko
	160 Russell	Anna Meshchankina
	160 Russell	Kirill Meshchankin
13	207 Russell	Katharine Mularczyk
14	208 Russell	Karina Gonzalez Chhabra
	208 Russell	Mohina Chhabra
	208 Russell	Francisco Gonzalez
15	211 Russell	Gabriel Cavellucci-Landi
	211 Russell	Lucas Cavellucci-Landi
	211 Russell	Jan Carlo Landi
	211 Russell	Carla Cavellucci-Landi
16	215 Russell	Yeon Hee Kim
	215 Russell	Lena Yeon Kim
	215 Russell	Sungyoung Chung
17	216 Russell	Parimala Rao
	216 Russell	Aditya Rao
	216 Russell	Punjavi Manoj
18	218 Russell	Heba Alhejji
	218 Russell	Maryam Zainaddin
	218 Russell	Noor Zainaddin
	218 Russell	Zainab Zainaddin
	218 Russell	Aqeel Zainaddin
19	219 Russell	Sarah Jacobo
	219 Russell	Lisette Jacobo
20	220 Russell	Qiana Aviles
	220 Russell	Yvette Perez
21	227 Russell	Taewon Kim
	227 Russell	Donghee Koo
	227 Russell	Eyan Kim
	227 Russell	Gavin Kim
22	233 Russell	Gianni Davis
	233 Russell	Danielle Fields
	233 Russell	Eric Davis

	233 Russell	Tariq Witherspoon
23	235 Russell	Lillian Wanek
	235 Russell	Curt Wanek
	235 Russell	Jessica Wanek
24	236 Russell	Mohammedamin Mulla
	236 Russell	Anjunmara Mulla
25	251 Russell	Monica Zlotogorski
26	252 Russell	Marina Rubinstein
	252 Russell	Jasmin Putyatina
	252 Russell	Alla Zakharova
	252 Russell	Fedor Zakharov
27	253 Russell	Doyoung Kim
	253 Russell	Bo M. Kim
	253 Russell	Ellie Kim
28	254 Russell	Elvira Yamilova
	254 Russell	Alfiia Iamilova
	254 Russell	Maxim Kornev
	254 Russell	Gianna Stathopoulos
	254 Russell	Konstantinio Stathopoulos
29	303 Russell	Rhonda Gardner
30	304 Russell	Sylvester Odiase
	304 Russell	Ikelia Harriott
31	305 Russell	Tracey Blank
	305 Russell	Mark Blank
	305 Russell	Cooper Blank
	305 Russell	Miles Blank
32	308 Russell	Aditi Saraf-Bazaz
	308 Russell	Gaurav Bazaz
33	314 Russell	Maria Isabel Pinilla
	314 Russell	Nicolas Warren
34	316 Russell	Tahir Jamil
	316 Russell	Sophia Jamil
	316 Russell	Saira Jamil

	316 Russell	Taimur Jamil
35	318 Russell	Onur Oruc
	318 Russell	Elif Oruc
	318 Russell	Nuran Namal
	318 Russell	Necati Oruc
	318 Russell	Esra Oruc
36	321 Russell	Ali Abukhamsin
37	324 Russell	Kyung Mi Bae
	324 Russell	Dongwan Choi
	324 Russell	Junkyung Choi
38	326 Russell	Roslyn Sandifer
	326 Russell	Jon Marc Sandifer
39	331 Russell	Charmant, Inc.
	331 Russell	Sota Osakada
	331 Russell	Yu Osakada
	331 Russell	Mutsumi Osakada
40	333 Russell	Avivit Fisher
	333 Russell	Maximilian Schmeeckle
	333 Russell	Jon Schmeeckle
41	334 Russell	Dawood Almesher
42	339 Russell	Chang Hyun Lee
	339 Russell	Joo Hyun Lee
	339 Russell	Hee Young Lee
43	340 Russell	Yuma Kataoka
	340 Russell	Tomomi Kataoka
	340 Russell	Hiroshi Kataoka
44	341 Russell	Pierre Romain
45	342 Russell	Melissa Torres
	342 Russell	Michael Gutierrez
46	345 Russell	Froilan Pinili
	345 Russell	Danielle Krause
47	350 Russell	Rosina Barbastefano Aragon

	350 Russell	Isabela Quintero
48	353 Russell	Amishi Mittal
	353 Russell	Hemang Mittal
	353 Russell	Divya Agarwal
	353 Russell	Amit Mittal
49	355 Russell	Zohar Maimon
50	401 Russell	Tim Baek
	401 Russell	Esther Shin
	401 Russell	Joshua Baek
51	407 Russell	Ramon Pagan
	407 Russell	Carmon Pagan
	407 Russell	Katherine Pagan
52	409 Russell	Michael Zorya
	409 Russell	Alexey Zorya
	409 Russell	Olesya Zorya
53	412 Russell	Nicole Jacobson
	412 Russell	Monica Jacobson
	412 Russell	Douglas Jacobson
	412 Russell	Douglas Jacobson, Jr.
54	413 Russell	Brian D. Mogck
	413 Russell	Juliane T. Mogck
	413 Russell	Vincent Mogck
	413 Russell	David Mogck
55	415 Russell	Michael P. Reilly
	415 Russell	Karen S. Higginbotham
56	419 Russell	Noriaki Masuda
	419 Russell	Hana Masuda
	419 Russell	Sawa Masuda
	419 Russell	Kozue Masuda
57	431 Russell	Donghun Lee
	431 Russell	Jooyoung Park
58	432 Russell	Ryan Kim
	432 Russell	Yoon Young Choi
	432 Russell	Dong Joon Kim

59	433 Russell	Marat Yusipov
	433 Russell	Kirill Safarov
	433 Russell	Albina Safarov
	433 Russell	Elsa Safarova
60	434 Russell	Miyoko Kawaguchi
	434 Russell	Kota Kawaguchi
61	435 Russell	Martin Walters
62	437 Russell	Nicholas King
	437 Russell	John Kang
	437 Russell	Bianca Kang
63	439 Russell	Navin Rao
	439 Russell	Aanchal Rao
	439 Russell	Veena Rao
64	445 Russell	Barry Kay
	445 Russell	Lindsay Styles
65	446 Russell	Kevin Hong
66	458 Russell	Mohanad Hasan
	458 Russell	Rand Ameer
	458 Russell	Zain Hasan
	458 Russell	Tammar Hasan

EXHIBIT 8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: ELK CROSS TIMBERS DECKING MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION This Document Applies to: All Cases	Civil Action No.: 15-0018 (JLL) (JAD) MDL No. 2577 Honorable Jose L. Linares Honorable Joseph A. Dickson **FINAL ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT**

THIS MATTER having been opened to the Court by attorneys for Plaintiffs and attorneys for Defendant, by way of their joint motion for final approval of the proposed class action settlement (the "Settlement") in accordance with the Settlement Agreement (the "Agreement") dated September 16, 2016 [D.E. 108-1] and on the motion for an award of attorneys' fees and costs and approval of incentive awards dated December 12, 2016 [D.E. 117]; and

WHEREAS, the Court finds that it has jurisdiction over this Action and each of the Parties and all Settlement Class Members; and

WHEREAS the Court finds as follows: The Settlement was entered into at arm's length by experienced counsel and only after extensive negotiations presided

over by the Court. The Settlement is not the result of collusion. The Settlement is fair, reasonable, and adequate;

WHEREAS, the Court having reviewed Plaintiffs' Counsel's submissions in support of their request for attorneys' fees, including their time summaries and hourly rates, the Court finds that the request for attorneys' fees is reasonable and appropriate and the hourly rates of each Plaintiffs' Steering Committee firm are likewise reasonable and appropriate in a case of this complexity;

WHEREAS, the Court similarly finds that incentive awards to each Class Representative are fair and reasonable; and

WHEREAS, this Court conducted a hearing on February 27, 2017 and has fully considered the records of these proceedings, the representations, arguments and recommendations of counsel, and the requirements of the governing law; and for good cause shown;

IT IS THIS 27th day of February, 2017, ORDERED that the Joint Motion for Final Approval of the Settlement is hereby GRANTED. The Court further finds and orders as follows.

1. For purposes of this Order, the Court hereby adopts all defined terms as set forth in the Agreement;

2. The Court finds, for settlement purposes only, that all requirements of Fed.R.Civ.P. 23(a) and (b)(3) have been satisfied. The Court certifies a Settlement Class, as follows:

> All purchasers (and Permitted Transferees of the underlying warranties) of: (1) Decking manufactured or sold by GAF or Elk between January 1, 2002 and December 31, 2012 and installed on their property on the Notice Date, or (b) Railways manufactured or sold by GAF or Elk between January 1, 2005 and December 31, 2012 and installed on their property on the Notice Date.

Excluded from the Class are: (1) any persons who previously executed and returned a release, or endorsed a check bearing a release, with regard to their Decking materials; (2) all persons and entities who timely exercise their rights under Federal Rule of Civil Procedure 23 to opt out of the Settlement; (3) GAF or any of its predecessors, successors, parent or subsidiary companies, affiliates, officers, directors, employees, agents, attorneys, representatives, insurers, suppliers, distributors, or vendors; (4) Class Counsel, and any member of Class Counsels' immediate family; and (5) the Judges, including Magistrates, to whom the cases within the MDL Litigation were assigned in the transferor courts, the Judges, including Magistrates, to whom the MDL Litigation is assigned, and any member of those Judges', including Magistrates', immediate family.

3. A list of all persons who have timely and validly requested to be excluded from the Settlement Class is annexed hereto as Exhibit A.

4. The record shows that notice has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order [D.E. 112]. The Court hereby finds that such notice constituted the best notice practicable under the circumstances. Said notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law. The Notice given by Defendant to state and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

5. The Court finds, for settlement purposes only, that the proposed Settlement Class meets all the applicable requirements of Fed. R. Civ. P. 23, affirms certification of the Settlement Class, and approves the Settlement set forth in the Agreement as being fair, just, reasonable, and adequate.

6. Based upon the Court's familiarity with the claims and parties, the Court finds that Ken Burger, Frederick and Veronica Robertie, John Ross, Chad Sheridan, Robert Hoover and Judy Cohen, Thomas McGovern, Harrison Warren, Michael Narducci, Leanne Claxton, Jeff Ernst, Dorothy Kaiser, John Stidham, Arnold Williams and Cathy Phillips, Charles Denton, Dennis Turcheck, Christine Tuthill, Samir Khanna, Mark Giovanetti, John Shepherd, Donna and Johnathan Mapp, Dean Christofferson, Troy Koster, Steve Brown, Mark Law, John

Kuropatkin, Randy King, Robert Aspinwall, George Johnson, Edgar Rachor, Donald Vinson, Michelle Megerle, Douglas Smieja and Cheryl Johnson, and Joseph Campbell adequately represent the interests of the Settlement Class and hereby appoints them as Class Representatives for the Settlement Class.

7. The Court finds that the following attorneys and firms fairly and adequately represent the interests of the Settlement Class and hereby confirms them as Class Counsel pursuant to Rule 23:

Daniel K. Bryson
Scott Harris
Jeremy Williams
WHITFIELD BRYSON & MASON, LLP
900 W. Morgan Street
Raleigh, North Carolina 27603
(919) 600-5000
Lead Counsel

James E. Cecchi
Lindsey H. Taylor
CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700
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8. The Court confirms the appointment of Heffler Claims Group, LLC as the Third Party Claims Administrator.

9. The Court finds, upon review of the Settlement and consideration of the nine factors enunciated in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), that the Settlement and the proposed reimbursement program from the Settlement are fair, reasonable, and adequate. Accordingly, the Settlement is finally approved by the Court.

10. The Final Approval Order and Judgment as provided under the Agreement should be entered. Such order and judgment shall be fully binding with respect to all members of the Class and shall have res judicata, collateral estoppel, and all other preclusive effect for all of the Released Claims as set forth in the Agreement.

11. The operative complaint in this action, the Second Amended Omnibus Master Class Action Complaint and Demand for Jury Trial [D.E. 83-1], and all related lawsuits pending in the Court are dismissed with prejudice, and the Released Claims against Defendant are released.

12. Specifically, as set forth in Section 8.1 of the Agreement, the "Released Parties" or "Released Party" means GAF and any and all past, present, and future parent companies, subsidiaries, predecessors, successors, divisions, affiliates, assigns, and their respective past, present, and future officers,

stockholders, directors, agents, employees, attorneys, insurers, or representatives. "Released Parties" or "Released Party" also includes any and all past, present, and future vendors, distributors, retailers, dealers, contractors, and any other person or entity who sold, distributed and/or installed Decking materials, except to the extent that GAF denies a claim based on a causation defense contained in section 7.7 that was caused by a contractor or other entity, such as improper ventilation or installation, in which case this Release will not apply to the contractor or entity who installed the Claimant's decking.

13. The "Released Claims" means and includes, in addition to all claims set forth in the Complaint, any and all claims, demands, rights, liabilities, actions, causes of action, proceedings, judgments, liens, obligations, damages, equitable, legal and administrative relief, interest, attorneys' fees, expenses and costs, disbursements, losses, consequential damages, penalties, punitive damages, exemplary damages, damages based on a multiplication of compensatory damages, damages based on emotional distress and mental anguish, demands, obligations, rights, liens, entitlements, indemnities, and contributions of any kind or nature whatsoever related to Decking or Railways, whether known, unknown or presently unknowable, suspected or unsuspected, latent or patent, accrued or unaccrued, asserted or unasserted, fixed or contingent, liquidated or unliquidated, matured or unmatured, and whether based on federal or state statute, regulation, ordinance,

contract, common law, or any other source that has been, could have been, may be, or could be directly or indirectly alleged, asserted, described, set forth or referred to now, in the past, or in the future by the Settlement Class either in this MDL Litigation, or in any other court action or proceeding, or before any administrative or regulatory body, tribunal or arbitration panel. The "Released Claims" include, without limitation, all causes of action related to the design, specification, manufacture, production, promotion, advertising, sale, representation, distribution, or installation of Decking or Railways, or related to Qualified Damage or Mold Condition, without regard to whether such cause of action is or could be brought pursuant to common law, or any federal or state statute, regulation, or ordinance, including but not limited to federal or state statutes or regulations concerning unfair competition; unfair or deceptive methods of competition; unfair, deceptive, fraudulent, unconscionable, false or misleading conduct, acts, advertising or trade practices; consumer protection; or under the common law of any state as a claim for breach of contract, breach of express and implied warranties, reformation of warranty, breach of fiduciary duty, fraud, intentional misconduct, unjust enrichment, misrepresentation (negligent or otherwise), tort, negligence, breach of constructive trust, breach of the implied covenant of good faith and fair dealing, or any other common law or statutory basis. It is further agreed that the "Released Claims" include, without limitation, any and all claims for Mold Condition or color

fading or color deterioration of Decking or Railways. The Parties understand and agree that GAF's express limited warranties do not cover Mold Condition or color fading or color deterioration of Decking and Railways, and Settlement Class Members release any claim or assertion of such warranty rights. Except notwithstanding the foregoing, Released Claims do not include any claims that a claimant could assert against a contractor or entity for a successful causation defense asserted by GAF, i.e. improper ventilation or installation.

14. Notwithstanding Paragraphs 11 and 12,

a. this Release does not release GAF from claims for bodily injury, including claims for pain and suffering, emotional distress, mental anguish, or similar damages suffered as the result of such bodily injury.

b. Settlement Class Members will retain their rights, if any, under the terms of the applicable GAF express limited warranty under the following circumstances:

i. Settlement Class Members who have a claim for a manufacturing defect other than Qualifying Damage or Mold Condition, but only with respect to boards, handrail, or fascia for which they did not receive compensation under the settlement; or

ii. Settlement Class Members who discover Qualifying Damage that did not exist until after the Qualifying Damage Claims Period and who did not receive

compensation for the particular boards, handrail, or fascia at issue under the settlement.

c. If a Settlement Class Member's Claim is denied, in whole or in part, based on improper installation (including improper ventilation due to improper installation) of the Decking materials, as set forth in section 7.7(b), (d) or (e) of the Agreement, this Release shall not release any person or entity who installed the Decking materials on that Settlement Class Member's property.

d. For any claims that may be submitted pursuant to a Settlement Class Member's retention of his or her limited warranty rights, the fixed materials rate and the fixed labor rate (as identified in section 7.3 of the Agreement) for the Decking materials will apply under the applicable limited warranty, subject to any proration that may apply pursuant to the terms of the applicable limited warranty.

15. Upon the Court's entry of the Final Order and Judgment, all Settlement Class Members (on behalf of themselves and their agents, heirs, executors and administrators, successors, attorneys, representatives, and assigns), who have not properly and timely opted out of the Agreement pursuant to its terms

shall be conclusively deemed to have waived and released any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which reads:

> Section 1542. General Release – Claims Extinguished. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

or by any law of any state or territory of the United States or any other jurisdiction or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code, including, without limitation, Mont. Code Ann. § 28-1-1602, S.D. Codified Laws § 20-7-11, N.D. Cent Code § 9-13-02, and 18 Guam Code Ann. § 82602. Settlement Class Members acknowledge that they may hereafter discover facts or law other than or different from those which they know or believe to be true with respect to the claims which are the subject matter of this section. Nevertheless, it is the intention of each Named Plaintiff and each Settlement Class Member to fully, finally, and forever settle and release any and all known or unknown, suspected or unsuspected, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts or law.

16. Settlement Class Members requesting exclusion from the Class shall not be entitled to receive any reimbursement as described in the Agreement.

17. Upon the occurrence of the Effective Date, as defined in section 4 of the Agreement, the Parties are ordered to implement each and every obligation set forth in the Agreement in accordance with the Agreement's terms and provisions.

18. The Court has reviewed Plaintiffs' Counsel's submissions in support of their request for attorneys' fees and costs, including their time summaries and hourly rates, and finds that the request for attorneys' fees is reasonable and appropriate and the hourly rates of each firm are likewise reasonable and appropriate in a case of this complexity.

19. Class Counsel is hereby awarded $3,500,000 in attorneys' fees and expenses.

20. Each Class Representative is to receive an incentive award of $4,000 plus and additional $500 for each Class Representative whose Decking Materials were inspected by GAF as part of this litigation.

21. The awarded attorneys' fees and costs, and Class Representative incentive awards are to be paid and distributed in accordance with the Agreement.

22. The Court authorizes Lead Class Counsel to allocate the fee and cost award among Class Counsel.

23. Each and every term and provision of the Agreement shall be deemed incorporated into the Final Approval Order and Judgment as if expressly set forth and shall have the full force and effect of an Order of the Court.

24. The terms of this Final Approval Order and Judgment, and the Agreement are binding on the Plaintiffs and all other Settlement Class Members, as well as their heirs, executors and administrators, successors and assigns.

25. The Parties and their counsel are ordered to implement and to consummate the Agreement according to its terms and provisions.

26. Other than as set forth herein, the parties shall bear their own costs and attorneys' fees.

27. The releases set forth in the Agreement are incorporated by reference. All Settlement Class Members, as of the Court's entry of the Final Approval and Judgment, shall be bound by the releases set forth in the Agreement whether or not they have availed themselves of the benefits of the Settlement.

28. The Parties are authorized, without further approval from the Court, to agree in writing and to adopt such amendments, modifications, and expansions of the Agreement as are consistent with the Final Approval Order and Judgment.

29. No Settlement Class Member, either directly, representatively, or in any other capacity (other than a Settlement Class Member who validly and timely submitted a valid request for exclusion), shall commence, continue, or prosecute any action or proceeding against Defendant or any other Releasee as set forth in the Agreement in any court or tribunal asserting any of the Released Claims, and are hereby permanently enjoined from so proceeding.

30. Without affecting the finality of the Final Approval Order and Judgment, the Court shall retain continuing jurisdiction over the Action, the Parties and the Settlement Class, and the administration, enforcement, and interpretation of the Settlement. Any disputes or controversies arising with respect to the Settlement shall be presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the ability of the Parties to exercise their rights as described above.

31. Neither the Agreement, nor the fact thereof, nor any of its terms and provisions, nor any of the agreements, negotiations, or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

a. Offered or received as evidence of or construed as or deemed to be evidence of liability or a presumption, concession or an admission by the Defendant of the truth of any fact alleged or the validity of any claim that has been, could have been or in the future might be asserted in the Action or in any litigation, or otherwise against the Defendant, or of any proposed liability, negligence, fault, wrongdoing or otherwise of the Defendant;

b. Offered or received as evidence of or construed as or deemed to be evidence of a presumption, concession or an admission of any purported violation of law, breach of duty, liability, default,

wrongdoing, fault, misrepresentation or omission in any statement, document, report, or financial statement heretofore or hereafter issued, filed, approved or made by Defendant or otherwise referred to for any other reason, other than for the purpose of and in such proceeding as may be necessary for construing, terminating or enforcing the Agreement;

c. Deemed to be or used as an admission of any liability, negligence, fault, or wrongdoing of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal;

d. Construed as a concession or an admission that Class Representatives or the Settlement Class Members have suffered any injury or damage; or, as an admission or concession that the consideration to be given in the Settlement represents the amount which could be or would have been awarded to the Class Representatives or the Settlement Class Members, after trial.

32. In the event that the Settlement does not become effective according to the terms of the Agreement, this Final Order and Judgment shall be rendered null and void, shall be vacated, and all orders entered and releases delivered in

connection herewith shall be null and void to the extent provided by and in accordance with section 16.3 of the Agreement.

33. In the event that the Settlement becomes effective according to the terms of the Agreement, the terms of the Agreement and of this Final Order and Judgment shall be forever binding on the Parties and all Settlement Class Members, as well as on their respective heirs, executors, administrators, predecessors, successors, affiliates and assigns. The opt out(s) identified in Exhibit A to this Order are excluded from the Settlement Class pursuant to request and are not bound by the terms of the Settlement.

34. For the foregoing reasons, the Court **GRANTS** the Parties' Joint Motion for Final Approval [D.E. 124] and Plaintiffs' Motion for Attorneys' Fees and Expenses [D.E. 117]. There being no just reason to delay, the Clerk is directed to enter this Final Approval Order and Judgment forthwith and designate this case as closed. The operative complaint in this action, the Second Amended Omnibus Master Class Action Complaint and Demand for Jury Trial [D.E. 83-1], and all related lawsuits pending in the Court are dismissed with prejudice.

SO ORDERED, this 27th day of FEB, 2017.

HONORABLE JOSE L. LINARES, U.S.D.J.

EXHIBIT A

Opt Out Requests

NAME	ADDRESS
Joyce Wieseler	17861 356th Ave. Orient, SD 57467

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DAVID JOHNSON, PATRICK LYNCH, ROBERTO VERTHELYI, and FREDERICK SHEARIN, on behalf of themselves and a similarly situated class,	)	
Plaintiffs,	)	
vs.	)	**No. 13-2777**
W2007 GRACE ACQUISITION I, INC., TODD P. GIANNOBLE, GREGORY FAY, BRIAN NORDAHL, DANIEL E. SMITH, MARK RICKETTS, W2007 GRACE I, LLC, WHITEHALL PARALLEL GLOBAL REAL ESTATE LIMITED PARTNERSHIP 2007, W2007 FINANCE SUB, LLC, PFD HOLDINGS, LLC, THE GOLDMAN SACHS GROUP, INC., and GOLDMAN SACHS REALTY MANAGEMENT L.P.,	)	
Defendants.	)	

ORDER

Before the Court is the August 7, 2015 Motion for Final Approval of the Class Action Settlement, Certification of Settlement Classes, and Approval of Plan of Allocation (the "Motion") submitted by David Johnson ("Johnson"), Patrick Lynch ("Lynch"), Roberto Verthelyi ("Verthelyi"), and Frederick

Shearin ("Shearin") (collectively, "Named Plaintiffs"). (Motion, ECF No. 92.) Also before the Court is Named Plaintiffs' Motion for Attorney's Fees, Reimbursement of Expenses, and Named Plaintiffs' Contribution Awards (the "Motion for Attorney's Fees"). (Motion for Attorney's Fees, ECF No. 93.)

W2007 Grace Acquisitions I, Inc. (the "Company" or "W2007 Grace"), Todd P. Giannoble, Gregory Fay, Brian Nordhal, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc. ("Goldman Sachs"), Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007 ("Whitehall"), W2007 Finance Sub, LLC, W2007 Grace I, LLC ("Grace I"), and PFD Holdings, LLC[1] ("PFD") (collectively, "Defendants") do not oppose final approval. (Motion, ECF No. 92 at 4.)

Two groups have objected to the Motion. The first group identifies itself as the "Settlors." (Response in Opposition re Motion for Settlement, ECF No. 97.) The Settlors are not class members under the terms of the Settlement. The second group

[1] Named Plaintiffs refer to this entity as PFD Holdings and PDF Holdings throughout this action. (Compare ECF No. 86 (PFD Holdings) with Am. Compl., ECF No. 1-4 and ECF No. 87 (PDF Holdings)). Because its counsel refers to it as PFD in its Corporate Disclosure Statement, the Court will also. (Corporate Disclosure Statement, ECF No. 59.)

consists of members of the Holder Class (the "Holder Class Objectors").[2] (Notice re Motion for Settlement, ECF No. 100.)

For the following reasons, the Motion and the Motion for Attorney's Fees are GRANTED.

I. Background

A. The Litigation

W2007 Grace is a private, Dallas-based hotel real estate firm incorporated in Tennessee and controlled and owned by Goldman Sachs and certain of its affiliates. (Am. Compl., ECF No. 1-4 at ¶ 1.) Named Plaintiffs are current or former holders of W2007 Grace 8.75% Series B Cumulative Preferred Stock ("Series B Preferred Stock") and 9.00% Series C Cumulative Preferred Stock ("Series C Preferred Stock") (collectively, the "Preferred Stock"). (Id. at ¶ 1.) Named Plaintiffs bring this action on behalf of themselves and all current and former holders of Preferred Stock. (Id. at ¶ 1.)

W2007 Grace was formerly a publicly-traded company called Equity Inns, Inc. ("ENN"). (Id. at ¶ 2.) The Preferred Stock was valued at approximately $22.00 per share. (Id. at ¶ 47.) Preferred stockholders had limited rights to a fixed-interest cumulative dividend and a liquidation preference of $25.00 per share over the common stockholders. (Id.)

[2] The Holder Class Objectors are also referred to in the filings as the "Objectors" and the "PC Objectors".

On June 21, 2007, Goldman Sachs and some of its affiliates announced their intent to purchase ENN. (Id. at ¶ 44.) Goldman Sachs, through its affiliates, purchased ENN's common stock and assumed ENN's debt in a going-private merger transaction on October 25, 2007 (the "ENN Merger"). (Id. at ¶¶ 3;44;48-49.) Goldman Sachs used the Company to execute the ENN Merger. (Id. at ¶ 48.) Thereafter, Whitehall, a Goldman Sachs fund, purchased one hundred percent of the Company's common stock through a wholly-owned subsidiary, Grace I. (Id. at ¶¶ 31-32;48.) Whitehall and others[3] became the Company's Majority Shareholders. (Id. at ¶ 35.) After the ENN Merger, ENN dissolved into the Company. (Id. at ¶¶ 1;48-49.)

ENN's Charter provided that preferred stockholders could redeem their stock in the event of such a merger. (Id. at ¶ 3.) The Company did not redeem ENN preferred stock after the ENN Merger. (Id.) The Company required ENN preferred stockholders to make a one-to-one exchange of their ENN preferred stock for the Company's Series B and Series C Preferred Stock. (Id.) The preferred stockholders had rights identical to the rights they had when they held ENN preferred stock. (Id. at ¶ 51.)

Named Plaintiffs allege in their Amended Complaint that, after the ENN Merger, the Company "engag[ed] in a classic oppression scenario." (Id. at ¶ 6.) They allege that the

[3] W2007 Finance Sub, LLC, and Grace I.

Company used a two-part scheme to deny Named Plaintiffs any return on or benefits from their investment to compel the preferred stockholders to relinquish their stock at an inadequate price. (Id.) Named Plaintiffs allege that the first part of the scheme began when the Company "went dark." (Id. at ¶ 58.) They allege that Goldman Sachs and its affiliates suppressed the Preferred Stock secondary market by refusing to release necessary financial information to the public and refusing to make the Preferred Stock eligible for electronic transfer at the Depository Trust Company. (Id. at ¶¶ 7;59.) The value of the Series B Preferred Stock dropped from $17.50 to pennies per share. (Id. at ¶ 64.) The value of the Series C Preferred Stock dropped from $17.00 to pennies per share. (Id.) Named Plaintiffs also allege that the Company stopped paying dividends on the Preferred Stock in June 2008. (Id. at ¶¶ 7;91.)

Named Plaintiffs allege that Goldman Sachs entered into self-dealing loan agreements to collect large deal fees. (Id. at ¶ 7.) Goldman Sachs allegedly entered into loan covenants that ensured the Company's net income went to Goldman Sachs. (Id.) Those loan covenants provided for additional debt cushions, including a debt yield test and a cash trap. (Id. at ¶ 93.) An option was granted to a Goldman Sachs affiliate to purchase up to 97% of ENN's assets. (Id.) Goldman Sachs also

allegedly restructured the assets and property interests in ENN's hotels so that the preferred stockholders held a much smaller interest. (Id. at ¶ 7.) Named Plaintiffs allege that Goldman Sachs concealed the true value of the property interests. (Id.) The Company appeared to own the assets and income stream of W2007 Equity Inns Partnership L.P. (the "Operating Partnership"). The Operating Partnership owned ENN's hotel properties, which were acquired by Goldman Sachs affiliates during the ENN Merger. (Id. at ¶¶ 41;73.) The Company changed the ownership structure of the Operating Partnership so that the Company owned a single-digit interest in ENN's hotels. (Id. at ¶ 74.) The Majority Shareholders owned almost the entire income stream from ENN's hotels. (Id. at ¶ 78.) Goldman Sachs did not assist the preferred stockholders in appointing two director-nominees, as required by W2007 Grace's Charter (the "W2007 Grace Charter"). (Id. at ¶ 7.)

The second part of the alleged scheme began in 2012 when PFD, an affiliate of Goldman Sachs, began purchasing Preferred Stock through "creeping tender offers." (Id. at ¶ 8.) The value of the Series B Preferred Stock ranged between $1.42 and $9.90 per share. (Id. at ¶¶ 8;108.) The value of the Series C Preferred Stock ranged between $1.50 and $12.00 per share. (Id. at ¶ 108.) PFD owned 35% of the Preferred Stock by September 17, 2012. (Id.) The Company did not disclose that PFD had

acquired the Preferred Stock, or any other details. (Id.) By August 13, 2013, PFD had bought another 24.3% of the Preferred Stock. (Id. at ¶ 9.) PFD then owned 58.8% of the Preferred Stock. (Id.) PFD also announced its intention to consider a tender offer for the remaining Preferred Stock. (Id. at ¶ 10.) Named Plaintiffs allege that PFD's purchases were insider transactions. (Id. at ¶¶ 11, 124.)

Named Plaintiffs filed a Complaint in Shelby County Chancery Court on September 13, 2013. (Compl., ECF No. 1-2.) They filed an Amended Complaint on October 2, 2013. (Am. Compl., ECF No. 1-4.) The causes of action alleged are that Defendants: (1) breached their contracts with Plaintiffs, the implied covenant of good faith and fair dealing, and Defendants' fiduciary duty; (2) aided and abetted the breach of fiduciary duty; (3) violated the Tennessee Securities Act, T.C.A. § 48-1-121(a) (the "Blue Sky Law"); and (4) violated the Tennessee Business Corporation Act, T.C.A. § 48-17-103. (Id. at ¶¶ 137-94.) Named Plaintiffs seek (1) a declaratory judgment, (2) compensatory damages, (3) equitable relief ordering the redemption of the Preferred Stock at $25.00 a share, (4) equitable relief ordering the election of two preferred stockholder representatives to the Company's Board, (5) punitive damages, and (6) costs and expenses. (Id. at 42-44.) On October 4, 2013, Defendants removed this action under the Class

Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). (Not. Rem., ECF No. 1.)

In 2013, W2007 Grace sold several hotels (the "Trust Hotel Transaction"). (Smith 8/7/15, ECF No. 94 at ¶ 73;143; Draft Proxy Statement, ECF No. 77-8 at 70; Response to Written Objection, ECF No. 109 at 25.) A portion of the proceeds were used to pay down the mortgage on Senior Mezz hotels. (Proxy Statement, ECF No. 77-8 at 70; Response to Written Objection, ECF No. 109 at 25-28.) A Purchase Option for a 97% interest in the Senior Mezz Hotels was exercised on April 11, 2014. (Smith 8/7/15 Decl., ECF No. 94 at ¶ 32.) W2007 Grace retained a 3% interest in Senior Mezz. (Id. at ¶ 17(j).)

On January 23, 2014, Defendants moved to dismiss this action. (Motion to Dismiss, ECF Nos. 38;39;40.) Defendants argued that they owed no fiduciary duty to the Preferred Stockholders, that to the extent any duties existed, Defendants had fully complied with those duties, and that certain claims were untimely or inadequately pled. (Id.) Named Plaintiffs responded on March 21, 2014. (Response, ECF Nos. 50;51.) Defendants replied on April 25, 2014. (Reply, ECF No. 52.) The Motion to Dismiss was withdrawn on September 2, 2014, in light of the settlement negotiations. (Motion to Withdraw, ECF No. 72.)

B. Settlement

On June 2, 2014, the Company and a Whitehall affiliate announced that certain of their subsidiaries had entered into an agreement to sell 126 hotels for a combined purchase price of $1.925 billion, subject to certain adjustments, to affiliates of American Reality Capital Hospitality Trust, Inc. (the "ARC Transaction"). (Stipulation, ECF No. 77-1 at ¶ G.) Deutsche Bank Securities, Inc. ("DBSI") was asked to complete a fairness assessment of the ARC Transaction. (Proxy Statement, ECF No. 101-1 at 207.) The assessment concluded that as of November 28, 2014, and subject to certain assumptions, limitations, qualifications, and conditions, the consideration to be received by W2007 Grace from the transaction was fair. (Id.)

Once the ARC Transaction had been announced, the parties commenced rigorous settlement discussions. (Smith 8/5/15 Decl., ECF No. 94 at ¶ 91.) On August 20, 2014, the parties entered into a confidential, non-binding Memorandum of Understanding. (Stipulation, ECF No. 77-1 at ¶ K.) The Memorandum of Understanding sets forth certain proposed terms to settle all claims asserted against Defendants in this action on behalf of holders of Preferred Stock (the "Holder Class") and sellers of Preferred Stock (the "Seller Class") (collectively, the "Classes"). (Id.)

On October 8, 2014, the parties entered into the Stipulation and Agreement of Settlement (the "Settlement") to resolve Named Plaintiffs' claims against Defendants. The next day, Named Plaintiffs filed the Motion for Preliminary Approval of Class Action Settlement and Scheduling of Final Approval Hearing. (Motion for Preliminary Approval, ECF No. 76.)

The Holder Class includes anyone who, as of August 22, 2014, and through the Merger Effective Time[4], holds Preferred Stock, excluding Defendants and their affiliates, Holder Class Opt-Outs, and holders of Dissenting Shares. (Stipulation, ECF No. 77-1 at ¶ 1(ii).) The Seller Class includes preferred stockholders who sold some or all of their Preferred Stock between October 25, 2007, and October 8, 2014, inclusive, and suffered a loss, excluding Defendants and their affiliates, persons or entities who sold shares to PFD, and Seller Class Opt-Outs. (Id. at ¶ 1(nnn).)

The Holder Class will receive $26.00 per share pursuant to a merger transaction. (Smith 8/7/15 Decl., ECF No. 94 at ¶ 119.) The Settlement provides for a $6,000,000 Seller Class Settlement Fund to be distributed to members of the Seller Class after the payment of taxes and notice and administration expenses ("Net Seller Class Settlement Fund"). (Id.) That Fund

[4] The Merger Effective Time is when the Tennessee Articles of Merger have been duly filed with Tennessee's Secretary of State or at such later time as may be specified in the Tennessee Articles of Merger. (Stipulation, ECF No. 77-1 at ¶ 1(rr).)

will be paid pursuant to the Plan of Allocation. (Id.) Any residual amount will be distributed pro rata to the Holder Class. (Id.) Defendants will pay all attorney's fees and contribution awards, plus certain expenses. (Id.)

C. Preliminary Settlement Approval and Final Approval Hearing

The Court granted preliminary approval of the Settlement on April 30, 2015. (Preliminary Approval Order, ECF No. 90.) On May 10, 2015, W2007 Grace entered into an agreement and plan of merger (the "Merger Agreement") with W2007 Grace II, LLC ("Parent"), W2007 Grace Acquisition II, Inc. (the "Merger Sub"), and, solely for the purposes of certain payment obligations, PFD and Whitehall, pursuant to which W2007 Grace would be merged into the Merger Sub (the "Merger"). (Smith 8/7/15 Decl., ECF No. 94 at ¶ 150.) The Merger Sub would survive the Merger as a wholly owned subsidiary of the Parent. (Id.)

The Merger was contingent on several conditions: (1) approval of the Merger Agreement by the affirmative vote of a majority of all votes entitled to be cast by the holders of the outstanding W2007 Grace Preferred Stock; (2) the approval of an amendment to the W2007 Grace Charter to limit voting rights of preferred stockholders; (3) no more than 7.5% of the outstanding shares of the Preferred Stock asserted dissenters' rights; and (4) the Court's final approval of the Settlement. (Id. at ¶

151.) The Merger and the amendment to the W2007 Grace Charter were approved at the July 14, 2015 stockholder meeting. (Id. at ¶ 157.) No shareholder asserted dissenters' right. (Id. at ¶ 159.)

On September 11, 2015, the Court held a Final Approval Hearing. The Named Plaintiffs, Defendants, Settlors, and Holder Class Objectors were represented. (Hearing Transcript at 2.)

Based on its independent assessment of the record and the information presented by the parties and the objectors, the Court makes the following findings and reaches the following conclusions.

II. Jurisdiction

"The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000 . . . and is a class action in which (A) any member of a class of plaintiffs is a citizen of a State different from a named defendant . . . ." 28 U.S.C. § 1332(d)(2)(A). This is sometimes called the minimal diversity requirement.

Named Plaintiffs have brought a class action. Plaintiff David Johnson is a citizen of South Carolina. (Am. Compl., ECF No. 1-4 at ¶ 19.) The Company is incorporated in Tennessee with its principal place of business in Irving, Texas. (Id. at ¶ 24.) Because a member of the class of Plaintiffs is a citizen

of a state different from a named Defendant, there is minimal diversity under CAFA. The alleged amount in controversy is greater than $5,000,000. The Court has original jurisdiction.

III. Standard of Review

A. Approval of Settlement

Class settlement approval is committed to the district court's discretion. UAW v. Gen. Motors Corp., 497 F.3d 615, 625 (6th Cir. 2007). To approve a class settlement, the court must conclude that it is "fair, reasonable, and adequate." Id. at 631; Fed. R. Civ. P. 23(e)(1). A number of factors guide that inquiry: (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest. UAW v. Gen. Motors, 497 F.3d at 631. The court must also determine whether the settlement gives preferential treatment to the named plaintiffs. Vassalle v. Midland Funding LLC, 708 F.3d 747, 755 (6th Cir. 2013) (internal quotation marks and citation omitted).

B. Attorney's Fees and Expenses

Under Rule 23(h), in a "certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R.

Civ. P. 23(h). When parties to a class action seek attorney's fees and costs, they must comply with the following:

> (1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.
>
> (2) A class member, or a party from whom payment is sought, may object to the motion.
>
> (3) The court may hold a hearing and must find facts and state its legal conclusions under Rule 52(a).
>
> (4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

Fed. R. Civ. P. 23(h).

In general, "there are two methods for calculating attorney's fees: the lodestar and the percentage-of-the-fund." Van Horn v. Nationwide Prop. & Cas. Ins. Co., 436 F. App'x 496, 498 (6th Cir. 2011). "District courts have discretion 'to select the more appropriate method for calculating attorney's fees in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them.'" Id. (quoting Rawlings v. Prudential-Bache Props., Inc., 9 F.3d 513, 516 (6th Cir. 1993)). The award of attorney's fees is within the court's discretion. Bowling v. Pfizer, Inc., 102 F.3d 777, 779-80 (6th Cir. 1996).

In exercising their discretion, district courts often address the "Ramey factors":

> (1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.

Moulton v. U.S. Steel Corp., 581 F.3d 344, 351-52 (6th Cir. 2009) (internal quotation marks and citations omitted.)

IV. Analysis

A. Settlement Approval

1. The Risk of Fraud or Collusion

Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary. See, e.g., Leonhardt v. ArvinMeritor, Inc., 581 F. Supp. 2d 818, 838 (E.D. Mich. 2008); In re Telectronics Pacing Sys., 137 F. Supp. 2d 985, 1016 (S.D. Ohio 2001).

There is no evidence of fraud or collusion. The record demonstrates that the Settlement developed from vigorous, arm's-length negotiations. Negotiations began after the announcement of the ARC Transaction. (Smith 8/7/15 Decl., ECF No. 94 at ¶¶ 90-93;97; Motion for Final Approval, ECF No. 92-2 at 14.) The negotiations lasted for weeks and included multiple face-to-face meetings and dozens of conference calls. (Smith 8/7/15 Decl.,

ECF No. 94 at ¶ 98.) Attorney's fees were not discussed until the material terms of the Settlement had been agreed. (Id. at ¶ 110.) Chimicles & Tikellis LLP ("Chimicles" or "Class Counsel") retained expert consultants to assist in investigating the Classes' claims before and during settlement negotiations. (Id. at ¶¶ 49-50;94.) Because there is no evidence of fraud or collusion, this factor weighs in favor of approving the Settlement.

2. The Complexity, Expense, and Likely Duration of the Litigation

In evaluating a proposed class settlement, the court must weigh the risks, expense, and delay plaintiffs would face if they continued to prosecute the litigation through trial and appeal. UAW v. Gen. Motors, 497 F.3d at 631; Thacker v. Chesapeake Appalachia, L.L.C., 695 F. Supp. 2d 521, 531 (E.D. Ky. 2010).

More than two years have passed since Named Plaintiffs filed their Amended Complaint. There have been disputes about the W2007 Grace Charter, business transactions, loan agreements, the timeliness of claims, and whether fiduciary duties were owed or breached. (Smith 8/7/15 Decl., ECF No. 94.) Defendants continue to dispute the merits of Plaintiffs' claims. (Id. at ¶¶ 102;107; Motion for Final Approval, ECF No. 92-2 at 33-34.) The Seller Class's damages would be subject to a battle of the

experts because the parties disagree about whether the Class suffered any damage and, if so, how much damage can be attributed to Defendants rather than to the global financial crisis. (Smith 8/7/15, ECF No. 94 at ¶ 107-08;136; GDG Decl., ECF No. 94-2.)

The parties have taken extensive discovery and more would be necessary if the Settlement were not approved. (Motion for Final Approval, ECF No. 92-2 at 28.) The discovery process has been highly contentious. (Smith 8/7/15 Decl., ECF No. 94 at ¶ 69.) The extensive discovery that has already been taken and the need for experts demonstrate that continued litigation would be expensive. If necessary, Defendants intend to litigate the case through trial. (Id. at ¶ 102.) During the Final Approval Hearing, Defendants' Counsel confirmed that the Settlement is a one-time offer, and that, if it is not approved, further negotiations will begin from a less favorable negotiating posture. (Hearing Transcript at 34.) They confirmed that continued litigation may take years. (Id. at 32.) Supplemental filings represent that there may be financial complications with the ARC Transaction, supporting the argument that further litigation would be complex and susceptible to the uncertain financial stability of the entities affected by this case. (Supplemental Filing, ECF No. 132; Response to Supplemental

Filing, ECF No. 133; Reply to Holder Class Objectors' Response, ECF No. 134.)

Given the likelihood of continuing litigation, the cost of that litigation, and the Settlement's expedient provision of monetary relief, this factor weighs heavily in favor of approving the Settlement.

3. The Amount of Discovery Engaged in by the Parties

In evaluating a proposed class settlement, the court must consider the amount of discovery the parties have conducted. UAW v. Gen. Motors, 497 F.3d at 641. The parties' discovery must enable them to evaluate frankly the merits of the case and determine an appropriate settlement value. Discovery provides a level playing field for negotiations and ensures that the negotiations are informed rather than the product of uneducated guesswork. Olden v. Gardner, 294 F. App'x 210, 218 (6th Cir. 2008). The absence of expert opinions or formal discovery suggests that class counsel might not have obtained the best agreement possible for the plaintiff class. Id.

The parties have engaged in extensive formal and informal discovery. (Smith 8/7/15 Decl., ECF No. 94 at ¶¶ 48-50;66-73;75-83;92-96;106;140;143.) Class Counsel spent three months investigating possible claims before filing the Complaint. (Id. at ¶ 48.) After initiating the action, Class Counsel had multiple meetings with Named Plaintiffs and Defendants about

discovery and reviewed thousands of pages of documents and electronically stored information ("ESI"). (Id. at ¶¶ 66-73;75-83;92-96;140.) Class Counsel hired expert consultants to assist in evaluating that information. (Id. at ¶¶ 49-50;94.) Discovery continued after the settlement negotiations and after preliminary approval. (Id. at ¶ 140.) Defendants' Counsel represented that Class Counsel has been aggressive in its discovery of the facts. (Hearing Transcript at 32-33.)

There is no evidence to suggest that the settlement negotiations were uninformed or the product of uneducated guesswork. The parties have continued to engage in aggressive fact discovery during negotiations and pending approval of the Settlement. This factor weighs in favor of approving the Settlement.

4. The Likelihood of Success on the Merits

"The most important of the factors to be considered in reviewing a settlement is the probability of success on the merits." Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C., 636 F.3d 235, 245 (6th Cir. 2011). "The likelihood of success, in turn, provides a gauge from which the benefits of the settlement must be measured." Id. A plaintiff's likelihood of success should be weighed against the amount and form of relief offered in the settlement. UAW v. Gen. Motors, 497 F.3d at 631 (internal quotation marks and citation omitted).

"Although this inquiry understandably does not require [the court] to decide the merits of the case or resolve unsettled legal questions, [the court] cannot judge the fairness of a proposed compromise without weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement." Id.

"[The court's] task is not to decide whether one side is right or even whether one side has the better of these arguments." Id. at 632. "Otherwise, [the court] would be compelled to defeat the purpose of a settlement in order to approve a settlement." Id. "The question rather is whether the parties are using settlement to resolve a legitimate legal and factual disagreement." Id.

Defendants denied any liability in their Motion to Dismiss and have done so throughout the settlement negotiations. (Smith 8/7/15 Decl., ECF No. 94 at ¶¶ 62;102.) Plaintiffs argue that, although discovery has established that some of their assumptions in the Amended Complaint were inaccurate, many issues remain contested. (Hearing Transcript at 28; Motion for Final Approval, ECF No. 92-2 at 33.) To determine whether fiduciary duties were owed or breached would require complex, factual inquiries about the validity of various business transactions. There is a legitimate dispute about the validity and interpretation of the W2007 Grace Charter and various

agreements to which Defendants were parties. (Am. Compl., ECF No. 1-4; Motion to Dismiss, ECF No. 39; Motion for Final Approval, ECF No. 92-2; Smith 8/7/15 Decl., ECF No. 94 at ¶ 143.) There is a dispute about whether some of Plaintiffs' claims are time-barred. (Response to Motion to Dismiss, ECF No. 50 at 32-34.)

Defendants' decision to withhold dividends may also create a factual dispute that could be resolved in favor of either party. There would be a dispute about how much of the Seller Class's losses, if any, can be attributable to Defendants. (Smith 8/7/15 Decl., ECF No. 94 at ¶¶ 107-08;136.) If Plaintiffs amend their Amended Complaint to include causes of action based on the ARC Transaction, a complex analysis of the fairness of that transaction and whether W2007 Grace owes shareholders any proceeds would be required. The complexity of the legal and factual issues, the number of agreements, and the transactions at issue demonstrate that there is a legitimate dispute between the parties.

The Court must weigh the likelihood of success on the merits against the amount and form of recovery. If W2007 Grace were required to redeem the Preferred Stock under the terms of its charter, Named Plaintiffs estimate that the maximum amount per share would be $40.31. (Id. at ¶ 143(d).) Named Plaintiffs estimate that proceeds from the ARC Transaction are

approximately $22.46 per share of Preferred Stock, but Defendants contend that they are not required to distribute any of those proceeds. (Id. at ¶¶ 102;143(j);146(a).) Recovery at $26.00 per share, in addition to a pro rata distribution from the remainder of the Net Seller Class Settlement Fund, is a reasonable recovery for the Holder Class when weighed against the likelihood of success on the merits.

Named Plaintiffs, with the help of their expert, GlenDevon Group, Inc. ("GDG"), estimate that a settlement fund of $6,000,000 represents 25% of the maximum loss suffered by the Seller Class that could be attributed to the Defendants if Plaintiffs were successful in litigation. (Id. at ¶ 109.) That is also a reasonable recovery.

The Settlement offers both Classes immediate recovery. The amount that each member of the Classes will receive is fair, reasonable, and adequate given the legitimate factual and legal disputes that would arise during litigation and the maximum recovery Plaintiffs could receive. This factor weighs in favor of Settlement approval.

5. The Opinions of Class Counsel and Class Representatives

In deciding whether a proposed settlement warrants approval, the informed and reasoned judgment of plaintiffs' counsel and their weighing of the relative risks and benefits of protracted

litigation are entitled to great deference. See, e.g., Thacker, 695 F. Supp. 2d at 532-33; UAW v. Ford Motor Co., No. 07-CV-14845, 2008 WL 4104329 at *26 (E.D. Mich. Aug. 29, 2008) ("The endorsement of the parties' counsel is entitled to significant weight, and supports the fairness of the class settlement."); Stewart v. Rubin, 948 F. Supp. 1077, 1087 (D.D.C. 1996) (the trial court "should defer to the judgment of experienced counsel who have competently evaluated the strength of the proof").

Class Counsel's experience supports its entitlement to deference. Class Counsel is Chimicles & Tikellis LLP. The firm and the attorneys litigating the action have acted as lead and co-lead counsel in numerous class actions and complex cases. (Chimicles Résumé, ECF No. 77-12.) The firm has extensive experience litigating similar claims. (Id.) Liaison counsel is Hagler Bruce & Turner, PLLC ("Hagler" or "Liaison Counsel"). That firm's attorneys have extensive experience in complex, business litigation. (Hagler Résumé, ECF No. 77-13.)

Class Counsel's familiarity with the action also supports its entitlement to deference. Chimicles has been involved in the action since before the Complaint was filed. It conducted the three-month investigation of W2007 Grace and W2007 Grace's affiliates before filing the Complaint. (Smith 8/7/15 Decl., ECF No. 94 at ¶ 48.) It engaged in extensive discovery and retained the expert consultants. (Id. at ¶¶ 48-50;66-73;75-

83;92-96;106;140;143.) It represented Plaintiffs throughout the settlement negotiations, at the Final Approval Hearing, and has continued to engage in discovery on the merits of Plaintiffs' claims. (Id. at ¶¶ 64;70-73;95-96;140.) Hagler has devoted more than two hundred hours to the prosecution of the case. (Turner Decl., ECF No. 94-9.) Named Plaintiffs assisted with discovery and case preparation and do not object to the Settlement. (Smith 8/7/15 Decl., ECF No. 94 at ¶ 84.)

Class Counsel recommends Settlement approval. (Motion for Final Approval, ECF No. 92-2.) Given its experience in other cases and its intimate knowledge of the legal and factual issues in this case, Class Counsel's recommendation is entitled to deference. Given the endorsements by Class Counsel and the Named Plaintiffs, this factor weighs in favor of approving the Settlement.

6. The Reaction of Absent Class Members

Some courts consider the number of objections by class members in relation to the size of the class in considering the fairness of a settlement. In re Southeastern Milk Antitrust Litig., No. 2:07-cv-208, 2012 WL 2236692 at *4, (E.D. Tenn. June 15, 2015). There are many reasons that a class member might object or not object. 4 Newberg § 13:54 (5th ed.) "Given the ambiguity of the quantitative signals emanating from the number or objectors or opt-outs, this factor does little work in relieving a court

of its ultimate responsibility to analyze independently the actual merits of the settlement." Id. Once a settlement has been preliminarily approved, objectors must overcome a heavy burden to prove that it is unreasonable. In re Southeastern Milk Antitrust Litig., 2012 WL 2236692 at *4 (citing Williams v. Vukovich, 720 F.2d 909, 921 (6th Cir. 1983)).

There are an estimated 2,200 potential class members. (Smith 8/7/15 Decl., ECF No. 94 at ¶¶ 164-65.) There are 144 Holder Class Objectors. (Notice re Motion for Settlement, ECF No. 100; Supplemental Written Statement of Objection to the Settlement, ECF No. 104.) No member of the Seller Class has objected. No class member has opted out of the Settlement.

a. Settlors

The Settlors sold their shares to PFD on or about August 9, 2013, and subsequently filed an action in the Southern District of New York on August 7, 2015, seeking rescission of their Stock Purchase Agreements ("SPAs"). (Response in Opposition re Motion for Settlement, ECF. No. 97 at 1-2;4.) The Settlors argue that, if they are successful in that action, they would become members of the Holder Class. (Id. at 2.) They are not currently members of either class.

Federal Rule of Civil Procedure 23(e)(5) provides that "class members" may object to settlement proposals. The Sixth Circuit generally does not consider non-class member objections

to settlements. Fidel v. Farley, 534 F.3d 508, 515 n.5 (6th Cir. 2008). Other circuits have allowed non-settling parties to object when the settlement will prejudice the non-settling party by stripping it of a legal right. In re Integra Realty Resources, Inc., 262 F.3d 1089, 1102-03 (10th Cir. 2001); Agretti v. ANR Freight Sys., 982 F.2d 242, 247 (7th Cir. 1992); Eichenholtz v. Brennan, 52 F.3d 478, 482-83 (3d Cir. 1995).

The Settlors will not be prejudiced because they are not members of either class and are not bound by the Settlement. They have initiated a separate legal action arising from the sale of their shares. They may pursue their own claims against Defendants.

b. Holder Class Objectors

The Holder Class Objectors originally consisted of 106 objectors. (Notice re Motion for Settlement, ECF No. 100.) Thirty-eight Holder Class Objectors were added on September 3, 2015, after objections to the Settlement were required to be filed. (Supplemental Objection, ECF No. 104.)

The Holder Class Objectors argue that $26.00 per share is inadequate consideration for the Holder Class because W2007 Grace can pay more per share and it has an "undisputed obligation" to pay the Holder Class approximately $40.86 per share. (Notice re Motion for Settlement, ECF No. 100 at 15-20.)

Assuming, *arguendo*, that W2007 Grace has the assets to satisfy an obligation of more than $26.00 per share to the Holder Class, the objection rests on the unfounded assumption that the Preferred Shareholders are undoubtedly entitled to a payment from W2007 Grace. The objection does not take into account that one of the contentions that gave rise to the Settlement is whether Defendants owe the Preferred Shareholders any dividends or any payments under the terms of the W2007 Grace Charter. (Motion for Final Approval, ECF No. 92-2 at 29;32-34; Smith 8/7/15 Decl., ECF No. 94 at ¶¶ 101-02; Response to Written Objection, ECF No. 109 at 21-24.)

The Holder Class Objectors repeatedly assert that $26.00 per share is inadequate consideration for the Holder Class to "abandon their claims." That mischaracterizes the purpose of a settlement. The Court need not find that the Settlement is unfair because the Class might receive more if Named Plaintiffs could prove during litigation that W2007 Grace is liable to the Class. Granada Investments, Inc. v. DWG Corp., 962 F.2d 1203, 1206 (6th Cir. 1992). "A settlement is after all a compromise, reflecting real concessions on all sides." Id.

The consideration to be received by the Holder Class reflects a compromise between the parties to avoid complex, protracted litigation about whether W2007 owes the Preferred Shareholders any payment, and if so, how much. Contrary to the assertion

that the Holder Class is receiving inadequate consideration to "abandon their claims," each party has compromised to avoid litigation.

The Holder Class Objectors argue that the Settlement is unfair because Defendants engaged in transactions that transferred substantial W2007 Grace assets to other entities after being sued, but before W2007 Grace's current valuation was calculated for purposes of the Settlement. (Notice re Motion for Settlement, ECF No. 100 at 20-26.) The Holder Class Objectors argue that the Court should "add to the current value of the Company any value that Defendants siphoned from the Company after the claims were asserted." (Id. at 25.)

The first transaction at issue is the ARC Transaction.[5] The Holder Class Objectors also argue that the allocation of the purchase price is unfair. (Id. at 23.) They maintain that DBSI considered only the fairness of the transaction as a whole, not the allocation of the purchase price. (Notice re Motion for Settlement, ECF No. 100 at 23.)

[5] Supplemental filings by Named Plaintiffs represent that ARC's financial situation has changed, possibly affecting a principal component of the consideration ARC used in effecting the ARC Transaction. (Supplemental Filing, ECF No. 132.) Named Plaintiffs argue that this further supports the fairness of the Settlement. (Id.) The Holder Class Objectors argue that it does not prove that ARC cannot pay W2007 Grace. (Response to Supplemental Filing, ECF No. 133.) Because the Settlement was not contingent on the closing of the ARC Transaction and the Holder Class Objectors claim that ARC's recent SEC filings have "no bearing whatsoever" on its arguments about the fairness of the Settlement, these developments do not change the Court's assessment. (Id.) If anything, the supplemental filings demonstrate that further litigation would be more complex than previously anticipated.

The second transaction is the Trust Hotel Transaction. (Notice re Motion for Settlement, ECF No. 100 at 25-26.) The Holder Class Objectors argue that the transaction was unfair because the proceeds were used to pay the mortgage of Senior Mezz hotels in which W2007 Grace had only a 3% interest. (Id.) Named Plaintiffs argue that the decision to sell the hotels could be viewed as a reasonable management decision. (Response to Objectors, ECF No. 109 at 25-27.) Plaintiffs argue that discovery revealed W2007 Grace was bound by loan covenants. (Id.) They argue that they took the likelihood of success on any possible legal claims into consideration during settlement negotiations. (Id. at 27-28.)

The objection presumes a guarantee that a court would find the transactions unfair. Defendants defended all of their actions during settlement negotiations and would proceed to trial if necessary. (Smith 8/7/15 Decl., ECF No. 94 at ¶ 102.) The risks that Plaintiffs would face challenging the legality of the transactions were recognized during negotiations and after extensive discovery. (Id. at ¶¶ 95-96;100-02;143.) Defendants' defenses would require complex analyses of various contracts and W2007 Grace's actions. Tennessee law is generally deferential to corporate management when its business judgment is questioned. Summers v. Cherokee Children & Family Services, Inc., 112 S.W. 3d 486, 528 (Tenn. Ct. App. 2002); Lewis ex rel

Citizens Sav. Bank & Tr. Co. v. Boyd, 838 S.W. 2d 215, 220-21 (Tenn. Ct. App. 1992). DBSI opined that the consideration W2007 Grace would receive from the ARC Transaction was fair. (Proxy Statement, ECF No. 101-1 at 207.) The Settlement was not contingent on the closing of the ARC Transaction. (Smith 8/7/15 Decl., ECF No. 94 at ¶ 144.) It is not so clear that Plaintiffs could successfully challenge the validity of either transaction that the Settlement should be considered unfair.

The Holder Class Objectors also argue that there is not enough financial information to allow the Court to decide whether allocation of the proceeds of the ARC Transaction is fair. (Notice re Motion for Settlement, ECF No. 100 at 23-24;28.)

The Court's role in the final approval of the Settlement is to decide whether the Settlement, as a whole, is fair, reasonable, and adequate, not whether the ARC Transaction itself is fair. Given that the Settlement is a compromise between parties informed about the risks of challenging the validity of the transaction and that the Settlement was not contingent on the closing of the ARC Transaction, the Settlement is a fair result.

The Holder Class Objectors argue the Settlement is unfair and unreasonable because it effects the Merger, which was not approved by a majority of unaffiliated holders of Preferred Stock. (Id. at 7;9;27.) They argue that approval by a majority of unaffiliated shareholders should have been required. (Id. at

28.) They argue that any unaffiliated shareholders who did vote in favor of the Merger were misled by the Proxy Ballot, which states that the W2007 Grace Board (the "Board") recommended voting for the Merger. (Id.)

The Proxy Statement received by all shareholders provides that PFD alone has enough shares to approve the Merger. (Proxy Statement, ECF No. 101-1 at 188.) It also provides that the Board is not offering a recommendation for various reasons. (Id. at 189.) The Proxy Ballot provides that the Board's recommendation is for the merger. (Proxy Ballot, ECF No. 101-1 at 232.) Plaintiffs submit that mistake was a "typo." (Response to Written Objection, ECF No. 109 at 9 n.6.)

That Defendants could have required the vote of a majority of unaffiliated shareholders to approve the Merger does not itself render the Settlement unfair. The Court need not speculate about the intentions of shareholders who abstained from voting or were not represented at the meeting. PFD alone had the ability to approve the Merger. Knowing that, shareholders opposed to the Merger could have invoked their right to dissent under Tennessee law to obtain payment of the fair value of their shares. (Proxy Statement, ECF No. 101-1 at 195.) No shareholder exercised that right. (Schedule 13E-3, ECF No. 101-1 at 290.)

The Holder Class Objectors argue that the Settlement is unreasonable because PFD has the option to exchange its shares of Preferred Stock for common stock after the Merger. (Id. at 26.) They argue that PFD receives both the right to receive $26.00 per share and the right to exchange its shares for common stock. (Id. at 27.) They argue that Defendants purposefully reduced the money given members of the Holder Class so PFD's remaining shares would be more valuable. (Id.)

The differential treatment between PFD and the Holder Class is not unreasonable. Differential treatment raises questions about fairness when it occurs among members of the same class. Vassalle, 708 F. 3d at 755. PFD is not a member of the Holder Class. The number of risks the Holder Class faces if its members retain their shares makes a Settlement guaranteeing redemption of those shares fair, reasonable, and adequate. (Smith 8/7/15 Decl., ECF No. 94 at ¶ 143(j).) That PFD may exchange its shares for common stock does not change that result. That is especially true because, under the terms of the Stipulation, if PFD elects to exchange its shares for common stock, it will not receive the consideration of $26.00 per share. (Stipulation, ECF No. 77-1 at ¶ 10.)

Any argument that the price of $26.00 was purposefully kept low to benefit PFD is speculative. The Holder Class Objectors

offer no evidence to support that argument other than the fact that PFD can retain an interest in W2007 Grace after the Merger.

The other factors overwhelmingly support approval of the Settlement. The Holder Class Objectors have not met their burden of establishing that the Settlement is inadequate, unfair, or unreasonable.

7. The Public Interest

The law favors the settlement of class action litigation. See UAW v. Gen. Motors, 497 F.3d at 632 (noting "the federal policy favoring settlement of class actions").

The resolution of this litigation will, among other things, (1) provide timely payment to the Classes, (2) increase the certainty of those payments without more delay, (3) obviate the need for potentially years of litigation, and (4) provide a reasonable exit strategy for the Holder Class. In re Cardizem CD Antitrust Litigation, 218 F.R.D. 508, 520 (E.D. Mich. 2003) ("There is a strong public interest in encouraging settlement of complex litigation and class action suits because they are 'notoriously difficult and unpredictable' and settlement conserves judicial resources").

Because the Settlement provides both Classes with payments and increases the certainty of those payments without further delay, this factor weighs in favor of approving the Settlement.

8. Named Plaintiffs' Relief Compared to Unnamed Class Members' Relief

Because the Settlement provides the same relief for members of the Classes who are not named, this factor weighs in favor of approval of the Settlement.

For the foregoing reasons, the Settlement warrants final approval.

B. Fees

1. Attorney's Fees

The submitted request complies with the requirements of Fed. R. Civ. P. 23(h) and 54(d)(2). (Motion for Attorney's Fees, ECF No. 93-2.) No objections have been raised to the requested fees.

The court has discretion to choose between the lodestar method and the percentage-of-the-fund method when awarding attorney's fees. Van Horn, 436 F. App'x at 498. "The lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved." Rawlings, 9 F. 3d at 516. The court "generally must explain its 'reasons for adopting a particular methodology and the factors considered in arriving at the fee.'" Id. (quoting Moulton, 581 F.3d at 352).

In the Sixth Circuit, the court may base its fee award on the lodestar calculation and cross-check it with the percentage-of-

the-fund method. Van Horn, 436 F. App'x at 501. Courts in this circuit have used the lodestar method when the settlement is not a classic common fund settlement because the attorney's fee is independent of the class members' recovery. Id.; Gascho v. Global Fitness Holdings, LLC, No. 2:11-cv-436, 2014 WL 1350509 (S.D. Ohio April 4, 2014) *report and recommendation adopted*, No. 2:11-cv-436, 2014 WL 354819 (S.D. Ohio Jul. 16, 2014).

The lodestar is the product of "the number of hours reasonably expended on the litigation [and] a reasonable hourly rate." Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986). Lodestar multipliers may be applied to account for the risk that counsel assumes in undertaking a case, the quality of the work product, and the public benefit achieved. Rawlings, 9 F.3d at 516. Lodestar multipliers in securities class actions generally range from 1.3 to 4.5. In re Cardinal Health Inc. Securities Litigations, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007).

Attorneys must provide documentation to support the hours charged, and that documentation "must be of sufficient detail and probative value to enable the court to determine with a high degree of certainty that such hours were actually and reasonably expended in the prosecution of litigation." Imwalle v. Reliance Med. Prods., Inc., 515 F.3d 531, 553 (6th Cir. 2008). "The district court must conclude that the party seeking the award

has sufficiently documented its claim." Id. at 552 (internal quotation marks omitted). Where the documentation is inadequate, the district court may reduce the award accordingly. Id. at 553.

Class Counsel seeks $3,648,402.70 in attorney's fees to be paid by W2007 Grace separately from the amount paid to the Classes. (Motion for Attorney's Fees, ECF No. 93-2.) The lodestar method is more appropriate because this action is not a classic common fund case in which the attorney's fees are a percentage of the overall recovery.

Class Counsel has devoted more than 3,600 attorney and professional hours[6] and Liasion Counsel has devoted 182.1 attorney and professional hours to the prosecution of the action. (Smith 8/7/15 Decl., ECF No. 94 at ¶ 182;184.) The resulting lodestar is $2,134,922.50. (Id. at ¶ 187.) That amount is as of July 31, 2015, and does not include any expenses incurred afterward, including appearances at the Final Approval Hearing or work in administering the Settlement. (Id. at ¶ 185.) The requested fee yields a lodestar multiplier of 1.7. (Id. at ¶ 187.)

Class Counsel and Liaison Counsel have provided one-page summaries of the hours worked by each of their attorneys and the attorneys' current hourly rates. (Chimicles Lodestar Report,

[6] "Professional hours" refers to time spent by paralegals and law clerks.

ECF No. 94-6; Turner Decl., ECF No. 94-9 at 7.) Although those summaries are not detailed time-sheets, the Court finds no reason to doubt the reasonableness of the submitted lodestar calculation or to decrease the requested attorney's fees.

Kimberly Donaldson Smith, a partner at Chimicles, has declared under penalty of perjury that the summary was "prepared from contemporaneous, daily time records regularly prepared and maintained by C&T, which are available at the request of the Court." (Smith 8/7/15 Decl., ECF No. 94 at ¶ 182.) Van Turner, a partner at Hagler, has also declared under penalty of perjury the number of hours Hagler spent. (Turner Decl., ECF No. 94-9 at ¶¶ 1-10.) The fee amount was negotiated between the parties after the settlement negotiations for the Classes had been concluded and an agreement had been reached on the material terms of the Settlement. (Smith 8/7/15 Decl., ECF No. 94 at ¶ 110.) No objections have been raised. The fee does not reduce the payment the Classes will receive. Both the hours spent and the hourly rates are reasonable given the nature and circumstances of this case, and the applied lodestar multiplier is at the low end of the range regularly approved in securities class actions.

Cross-checking the lodestar method with the percentage-of-the-fund-method, the attorney's fees represent approximately 5% of the total benefit the Classes will receive. (Id. at ¶ 119;

Motion for Attorney's Fees, ECF No. 93-2.) That percentage is reasonable. Courts regularly approve fee awards greater than 5% of the total settlement amount. Gooch v. Life Investors Ins. Co. of America, 672 F.3d 402, 426 (6th Cir. 2012); Thacker, 695 F. Supp. 2d at 528.

The Ramey factors also support approving the fee. The benefit to the Classes, net of fees and expenses, is valued at more than $68,000,000 and provides a guaranteed monetary benefit in a complex case that was expected to continue for years. Class Counsel and Liaison Counsel spent hours conducting discovery, settlement negotiations, and meeting with Named Plaintiffs. Both firms are highly qualified with extensive experience in complex business litigation. They accepted the case on a contingency basis. Society benefits by encouraging counsel to take on difficult and risky class actions. For the foregoing reasons, the $3,648,402.70 attorney's fee is reasonable.

Plaintiffs seek payment of expenses from W2007 Grace totaling $351,597.30 and payment of expenses from the Net Seller Class Settlement Fund totaling $144,481.37. (Motion for Attorney's Fees, ECF No. 93-2 at 7-8.) No objections have been raised.

Expenses are reasonable if they are the type routinely billed by attorneys to paying clients in similar cases. In re Cardizem, 218 F.R.D. at 535. The expenses on the itemized Expense Reports are those typically billed by attorneys to

paying clients, such as research costs, expert fees, and administrative costs. (Expense Report, ECF No. 94-7; Turner Decl., ECF No. 94-9 at 9.) The requested expenses are reasonable.

2. Named Plaintiffs' Contribution Award

The Sixth Circuit has recognized that incentive awards may be appropriate. Vassalle, 708 F.3d at 756 (internal quotation marks and citation omitted). "[I]ncentive awards are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class." Hadix v. Johnson, 322 F.3d 895, 897 (6th Cir. 2003) (internal citations omitted). The Sixth Circuit has also opined that:

> The propriety of incentive payments is arguably at its height when the award represents a fraction of a class representative's likely damages; for in that case the class representative is left to recover the remainder of his damages by means of the same mechanisms that unnamed class members must recover theirs. The members' incentives are thus aligned. But we should be most dubious of incentive payments when they make the class representatives whole, or . . . even more than whole; for in that case the class representatives have no reason to care whether the mechanisms available to unnamed class members can provide adequate relief.

In re Dry Max Pampers Litig., 724 F.3d 713, 722 (6th Cir. 2013).

The first consideration is whether an award is permissible under the terms of the Settlement. In re Southern Ohio Correctional Facility, 24 F. App'x 520, 527 (6th Cir. 2001). A

contribution award is permissible here because the Stipulation provides that "Defendants shall not object to Class Counsel's request to the Court for . . . a payment of case contribution awards in the amount of $7,500 to each Named Plaintiff for the time and expenses incurred in bringing and litigating this Action to be paid by Defendant W2007 Grace upon Court approval." (Stipulation, ECF No. 77-1 at ¶ 45.)

District courts in the Sixth Circuit have considered the following factors in determining whether to approve incentive awards for class representatives: (1) the action taken by class representatives to protect the interests of class members and others and whether those actions resulted in a substantial benefit to class members; (2) whether the class representatives assumed substantial direct and indirect financial risk; and (3) the amount of time and effort the class representatives spent in pursuing the litigation. Enterprise Energy Corp. v. Columbia Gas Transmission Corp., 137 F.R.D. 240, 250 (S.D. Ohio 1991).

A contribution award of $7,500 represents a fraction of most Named Plaintiffs' damages. (Johnson Decl., ECF No. 94-10; Shearin Decl., ECF No. 94-11; Verthelyi Decl., ECF No. 94-12; Lynch Decl., ECF No. 94-13.) Named Plaintiffs were not promised any payment or consideration for serving as class representatives. (Id.) No objections have been raised to the requested awards.

Named Plaintiffs spent hundreds of hours assisting Class Counsel with the litigation. (Id.) They assisted with discovery obligations. (Id.) They reviewed filings. (Id.) They were in regular communication with Class Counsel during settlement negotiations. (Id.) They took risks by being investigated, deposed, and traveling long distances to attend meetings and depositions. (Id.) Their contribution resulted in substantial recovery for the Classes in a complex case that would have taken years to resolve through litigation. Given their efforts, the amount ultimately recovered, and the inherent risks of litigating their claims, a $7,500 contribution award to each of the Named Plaintiffs is appropriate.

V. Conclusion

For the foregoing reasons, the Motion and the Motion for Attorney's Fees are GRANTED. The Court FINDS, CONCLUDES, and ORDERS that:

1. The following Classes, provisionally certified on April 30, 2014, are CERTIFIED for final settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3):

> Any and all persons or entities that, as of August 22, 2014, and through the Merger Effective Time, hold 8.75% Series B Cumulative Preferred Stock and/or 9.00% Series C Cumulative Preferred Stock issued by W2007 Grace Acquisition I, Inc. (collectively, the "Preferred Stock") as of August 22, 2014 through the Merger Effective Time, when W2007 Grace will be merged with and into another entity and all Preferred Stock shall

be converted into the right to receive $26.00 per share (the "Merger"), excluding: (a) Defendants and their affiliates, and (b) any persons or entities that validly (i) exercised dissenters' rights in the Merger or (ii) opted out of this class (the "Holder Class"). The Merger is the merger reflected in the Merger Agreement, when W2007 Grace will be merged with and into Merger Sub and all Series B Preferred Stock and Series C Preferred Stock, except for the Excluded Shares, shall be converted into the right to receive $26.00 per share. The Merger Effective Time occurs when the Tennessee Articles of Merger have been duly filed with the Secretary of State of the State of Tennessee or at such later time as may be specified in the Tennessee Articles of Merger.

Any and all persons or entities that sold some or all of their Preferred Stock between October 25, 2007, and October 8, 2014, inclusive (the "Seller Class Period"), and suffered a loss, excluding: (a) Defendants and their affiliates, and (b) any persons or entities that (i) sold shares to Defendant PFD Holdings, LLC in a private transaction or (ii) validly opted out of this class (the "Seller Class," and together with the Holder Class, the "Classes").

2. Named Plaintiffs are appointed representatives for the Classes.

3. Chimicles is appointed Class Counsel for the Classes. Hagler is appointed Liaison Counsel. Angeion Group LLC is appointed Claims Administrator.

4. The Settlement on the terms and conditions provided in the Stipulation is fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e). The Court has considered any objections submitted by members of the Holder

Class and those objections are OVERRULED.

5. The Settlement is incorporated into this Order and finally approved in its entirety. Unless otherwise defined in this Order, all capitalized terms used shall have the meanings set forth in the Stipulation.

6. The Parties are directed to implement and consummate the Settlement according to the terms and provisions of the Stipulation and all Exhibits attached thereto. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

7. The Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all members of the Classes who did not timely file valid requests for exclusion from the Classes by the August 21, 2015 deadline pursuant to the Court's Preliminary Approval Order.

8. The record shows that the Notice and Proof of Claim forms have been disseminated to members of the Classes in the manner approved in the Preliminary Approval Order. The Notice has been posted on Class Counsel's website. The Summary Form Notice was published in Investor's Business Daily and the Wall Street Journal Online Edition, and it was transmitted over PR Newswire.

9. The Notice, Proof of Claim Form, and Summary Form Notice: (1) constitute the best practicable notice under the circumstances; (2) constitute notice that was reasonably calculated, under the circumstances, to apprise all members of the Classes who could reasonably be identified of the pendency of the Action, the terms of the Settlement, their right to object to the Settlement, the right to exclude themselves from either or both Classes, and the right to appear at the Final Approval Hearing; (3) constitute due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (4) meet the requirements of the Federal Rules of Civil Procedure, due process, and other applicable law.

10. No individuals or entities have timely and validly excluded themselves from the Holder or Seller Classes.

11. The Action and all claims asserted in the Amended Complaint are DISMISSED WITH PREJUDICE by the Named Plaintiffs, and the other members of the Classes, and as against the Released Defendant Parties without costs, except for payments otherwise provided in the Stipulation.

12. During the course of the Action, the Parties and their respective counsel have at all times complied with the requirements of Fed. R. Civ. P. 11, and in particular Fed. R. Civ. P. 11(b).

13. On the Effective Date of the Settlement, Named Plaintiffs and all other members of the Classes, whether or not any such member of the Classes submits a Proof of Claim Form, shall be deemed to have released, dismissed, and forever discharged the Released Claims against each and all of the Released Defendant Parties, with prejudice and on the merits, without costs to any Party.

14. On the Effective Date of the Settlement, Named Plaintiffs and all other members of the Classes, and anyone claiming through or on behalf of any of them, are forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting any of the Released Claims against any of the Released Defendant Parties.

15. On the Effective Date of the Settlement, the Released Defendant Parties shall be deemed to have released, dismissed, and forever discharged the Released Claims against each and all of the Releasing Plaintiffs, with prejudice and on the merits, without costs to any Party and the Released Defendant Parties are forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in

any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting any Released Claims against any of the Releasing Plaintiffs.

16. The fact and terms of the Stipulation, including Exhibits thereto, this Order and Final Judgment, all negotiations, discussions, drafts and proceedings in connection with the Settlement, and any act performed or document signed in connection with the Settlement:

(a) Shall not be construed, offered, or received against Defendants, Named Plaintiffs, or any other Released Party as evidence of, or deemed to be evidence of, any presumption, concession, or admission by any of the Defendants, Named Plaintiffs, or any other Released Party with respect to the truth of any fact alleged by Named Plaintiffs or the validity, or lack thereof, of any claim that has been or could have been asserted in the Action or in any other action, or the adequacy or deficiency of any defense that has been or could have been asserted in the Action or in any other action, or of any liability, negligence, fault, or wrongdoing of Defendants or any other Released Defendant Party;

(b) Shall not be construed, offered or received

against the Released Defendant Parties as evidence of, or deemed to be evidence of, any presumption, concession or admission of any liability, fault, misrepresentation or omission with respect to any statement or written document approved or made by any Released Defendant Party, or against Named Plaintiffs or any other member of the Classes as evidence of any infirmity in the claims of Named Plaintiffs or those of any other member of the Classes;

(c) Shall not be construed, offered, or received against Defendants, Named Plaintiffs, or any other Released Party as evidence of, or deemed to be evidence of, any presumption, concession or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the Parties, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effect the provisions of the Stipulation; provided, however, that if the Settlement is approved by the Court, the Released Parties may refer to it to effect the liability

protections granted them hereunder;

(d) Shall not be construed, offered, or received against Defendants, Named Plaintiffs, or any other Released Party as evidence of, or deemed to be evidence of, any presumption, concession, or admission that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) Shall not be construed, offered, or received against Named Plaintiffs or any other member of the Holder or Seller Classes as evidence of, or deemed to be evidence of, any presumption, concession or admission that any of Named Plaintiffs', or any other member of the Classes', claims are without merit or that damages recoverable under the Amended Complaint would not have exceeded the Settlement Amount.

17. Any plan for allocating the Net Seller Class Settlement Fund to eligible members of the Seller Class or request for attorney's fees and reimbursement of expenses and contribution awards for each Named Plaintiff, submitted by Class Counsel, shall in no way disturb or affect this Judgment or any releases contained herein, and shall be considered separate from this Judgment.

18. Without affecting the finality of this Judgment, the Court retains continuing and exclusive jurisdiction over all matters relating to: (1) the implementation, administration, consummation, enforcement, and interpretation of the Settlement; (2) the allowance, disallowance, or adjustment of any claim made by members of the Classes on equitable grounds and any award or distribution of the Settlement Amount; (3) the disposition of the Settlement Amount; (4) the adjudication and determination of Class Counsel's request for an award of attorney's fees and expenses and case contribution awards for each Named Plaintiff; (5) the enforcement and administration of this Judgment; (6) the enforcement and administration of the Stipulation, including any releases executed in connection with it; and (7) other matters related or ancillary to the foregoing.

19. If the Settlement does not become effective in accordance with the terms of the Stipulation, this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation, and shall be vacated to the extent provided by the Stipulation and, in such event: (1) all orders entered and releases delivered in connection with this Order shall be null and void to the extent provided by and in accordance with the Stipulation; (2) the fact of the Settlement and papers submitted in support of the Settlement

shall not be admissible in any trial in connection with the Action and the parties to the Stipulation shall be deemed to have reverted *nunc pro tunc* to their respective status in the Action immediately before August 20, 2014; and (3) the balance of the Settlement Amount, less any Notice and Administration Expenses paid or incurred and less any Taxes paid, incurred, or owing, shall be returned in full as provided in the Stipulation.

20. Class Counsel and Liaison Counsel are hereby awarded attorney's fees in the amount of $3,648,402.70, which the Court finds to be fair and reasonable, and $351,597.30 in reimbursement of their reasonable expenses to be paid by W2007 Grace pursuant to the terms of the Settlement and $144,481.37 in Seller Class related expenses to be paid from the Seller Class Settlement Fund pursuant to the terms of the Settlement.

21. Named Plaintiffs are each awarded a Contribution Award in the amount of $7,500.00.

22. The Plan of Allocation is approved as fair and reasonable. Class Counsel and the Claims Administrator are directed to allocate the Settlement Amount in accordance with the Settlement Agreement and the Plan of Allocation.

23. The Claims Administrator shall determine each claimant's share of the Net Seller Class Settlement Fund based on that

claimant's recognized loss, as defined in the Plan of Allocation, annexed as Exhibit 5 to the Stipulation, subject to the Court's final review and approval.

24. Class Counsel shall apply to the Court for a Seller Class Distribution Order, on notice to Defendants' Counsel, approving the Claims Administrator's administrative determinations accepting and rejecting the Claims made by members of the Seller Class and each Eligible Claimant's recognized loss, as defined in the Plan of Allocation, annexed as Exhibit 5 to the Stipulation (or other such plan of allocation as the Court may approve), and approving any fees and expenses not previously paid, including the fees and expenses of the Claims Administrator.

So ordered this 4th day of December, 2015.

/s Samuel H. Mays, Jr.

SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE

EXHIBIT 10

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ESTUADRO ARDON, on behalf of himself and all others similarly situated, Plaintiff, v. CITY OF LOS ANGELES, Defendants.	Case No.: BC363959 ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND DENYING MOTION TO INTERVENE Dept.: 307 Date: October 24, 2016 Time: 9:00 a.m.

I. BACKGROUND

Plaintiff Estuardo Ardon filed this class action lawsuit against Defendant City of Los Angeles on December 27, 2006. Plaintiff sues on behalf of himself and all similarly situated tax payers, based on the contention that Defendant has been improperly collecting a tax. Pursuant to the Los Angeles City Telephone Utility Users Tax (UUT), Defendant imposed a 10% tax on amounts paid for certain telephone services: interstate, intrastate, and international calls, teletypewriter exchange services, and cellular telephone services. (Complaint, ¶1.) Plaintiff alleges that, pursuant to the UUT's own terms, services not taxable under the Federal Excise Tax cannot be taxed by the City (Id. at ¶¶ 1, 8), and that the Federal Excise Tax does not apply to

"postalized" fees, that is, fees for telephone services that are not based on both distance between the callers and the duration of the transmission. (Id. at ¶¶ 2-4.) The complaint notes that, while at the time the Federal Excise Tax was first implemented, billing for telephone communication was based on both distance and duration, such is no longer the case. Following multiple successful challenges to the collection of the Federal Excise Tax in federal courts, the I.R.S. announced in May, 2006, that it would cease collecting the tax on amounts paid only for services not based on both distance and elapsed transmission time, and that it would refund taxes collected from February 28, 2003 through July 31, 2006. (Id. at ¶¶ 5, 6.) Plaintiff alleges that the City has not acted similarly by offering a way for taxpayers to seek refunds. (Id. at ¶12.)

Thus, the aim of this litigation has been to compel the City both to stop collecting taxes on telephone services to which the Federal Excise Tax does not apply, and to allow taxpayers to recover amounts that were allegedly improperly collected. The pleading alleges claims for Declaratory and Injunctive Relief, Money Had and Received, Unjust Enrichment, and Violation of Due Process. It prays for a declaratory judgment that the City has improperly collected the UUT on all phone service on which federal courts and the IRS have declared the Federal Excise Tax to be inapplicable, for an injunction against further improper collection, for a decree that the City has violated the 5th and 14th Amendments to the U.S. Constitution, for a writ of mandamus requiring the City to provide a constitutionally adequate legal remedy for taxpayers to challenge the future collection of the UUT, for the prompt return of all amounts of funds in the City's possession that were illegally collected, and for reimbursement.

After this litigation was filed, the City amended the UUT to eliminate reference to the Federal Excise Tax and Plaintiff amended his complaint to add a claim for declaratory relief,

alleging that this amendment was unconstitutional. In February, 2008, voters approved a measure that amended the UUT and removed all reference to the Federal Excise Tax. (Motion at 5:19-20.)

Defendant City successfully raised a challenge to the pleadings based upon the argument that Plaintiff was prohibited from pursuing these claims on a class wide basis, and that each member of the class must comply with the claims presentation requirement before proceeding with a lawsuit. The City argued that *Woosley v. State of California* (1992) 3 Cal.4th 758, 792, prohibits class claims for the refund of taxes. The Court of Appeal affirmed the trial court, but was reversed by the California Supreme Court. In so doing, the California Supreme Court applied the reasoning of *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 457, which held that Government Code § 910 permits class claims against governmental entities because the word "claimant" refers to the class itself. Whereas *City of San Jose* (which involved nuisance claims concerning the San Jose Airport) stands for the general proposition that Government Code §910 permits class claims against governmental entities, *Woolsey* represents a specific prohibition against class claims for tax refunds where the tax statute at issue (there, the vehicle license fee) contains procedural requirements that are inconsistent with class claims. Finding that the taxing statute at issue (the UUT) does not contain any such procedural impediment, and that public policy does not prohibit this class action, the California Supreme Court held, "Class claims for tax refunds against a local governmental entity are permissible under section 910 in the absence of a specific tax refund procedure set forth in an applicable governing claims statute." (*Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241, 253.)

Following remittitur, the parties engaged in extensive discovery and mediation efforts, which ultimately resulted in settlement. Preliminary approval of the settlement was conditionally granted in August, 2015; an amended order granting preliminary approval was signed

September, 2015. (Joint Declaration of Francis M. Gregorek and Nicholas E. Chimicles (Joint Declaration), ¶30 and Exhibit E thereto.) The Court's August, 2015 order was conditioned in part upon presentation of a fully executed copy of the settlement agreement; at that time Plaintiff but not Defendant had signed it. The Second Amended Settlement Agreement has been signed by Defendant but not Plaintiff; accordingly, granting of this motion is conditioned upon presentation of a fully executed copy of the agreement, as the Court can only enforce agreements signed by parties.

II. MOTION FOR LEAVE TO INTERVENE

David Greenstein seeks leave to intervene in this action, citing CCP §387(a). This statute allows courts to permit a non-party to intervene where (1) proper procedures have been followed, (2) the nonparty has a direct and immediate interest in the litigation, (3) intervention will not enlarge the issues, and (4) the reasons for intervening outweigh opposition by the existing parties. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 51.) Here, while Greenstein says that he, "has an interest in the subject matter of the litigation as a class member," (Motion at 1:4-5) he presents no evidence of this, and Plaintiff presents evidence establishing that he does not. Even if he were a class member, the motion would be lacking in merit has Greenstein fails to demonstrate that his presence in this action is necessary. His only stated basis for intervening is to object to the requests for an incentive award to Plaintiff and a fee and cost award to Class Counsel both of which could be achieved by way of objection if Greenstein were a class member. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 253.)

Greenstein submitted a claim form on June 26, 2016. (Declaration of Rachelle Rickert, ¶6, and Exhibit E thereto.) On it, Greenstein states that he resides at 5160 Llano Dr., Woodland Hills, CA. (Exhibit E.) Plaintiff argues, however, that according to public records, Greenstein

transferred all interest in the real property located at 5160 Llano Drive to his ex-wife on March 29, 2004, prior to the start of the Class Period. (Rickert Declaration, ¶7, and Exhibit F thereto.) Plaintiff took Greenstein's deposition in order to probe this issue, questioning him not only about this document but other documents contained in other court files in which Greenstein stated under penalty of perjury that he resides in Mexico. (Rickert Declaration, ¶¶ 8-11 and Exhibits G, H, I, and J thereto.) The Court has read the excerpts of Greenstein's deposition concerning his contention to have resided at 5160 Llano Drive during the Class Period, including:

- He considered himself a full time resident of Mexico because he spent a lot more time in Mexico than out, and on his occasional trips to the United States he cannot say for sure where he stayed but he thinks it may have been at the house, with his ex-wife (pp. 51: 15-52:1; pp. 52:23 – 54:6; pp. 56:11- 57:19; pp. 62:21-64:4)
- He provided his ex-wife with money from time to time on a voluntary basis, which she may or may not have used to pay the phone bill (pp. 54:11-55:23; p. 71:3-6; p. 72:1-4).

Based upon the lack of evidence that Greenstein paid the telephone bill for the telephone at 5160 Llano Drive, as asserted in this claim form, the Court finds that Greenstein is not a class member. While this could potentially provide a basis for allowing him to intervene, Greenstein's motion lacks any argument or evidence to support the contention that he has an interest in this litigation. Perhaps because of these facts, at the hearing Greenstein orally withdrew his request to intervene

Greenstein's opposition to the motion for fees and incentive award is stricken and his objections are overruled. As he is not a class member and as his motion to intervene is denied, Greenstein lacks standing to oppose or object to anything in this litigation. On the same basis, Plaintiff's motion to quash deposition subpoena is granted.

III. MOTIONS FOR FINAL APPROVAL AND FOR FEES & COSTS AND INCENTIVE

A. SETTLEMENT CLASS DEFINITION

The Settlement Agreement defines the settlement class as follows: "[a]ll persons, including corporate and non-corporate entities wherever organized and existing, who paid telephone utility user taxes to the City of Los Angeles on the Kinds of Telephone Service utilized between October 19, 2005 and March 15, 2008, other than purely local service, teletypewriter exchange service, or long distance telephone service where the charges varied by both time and distance. The Settlement Class does not include prepaid mobile customers (which includes customers who purchased plans described as 'pay as you go,' 'pay as you talk,' pay and go wireless,' 'prepay or burner phone service' and 'no contract service') but does include prepaid mobile telephone service providers, *i.e.*, those that provide the above services to customers who prepay for wireless service. 'Purely local service' means local telephone service provided under a calling plan that does not include long distance telephone service, or that separately states the charge for local service on the bill to customers. The Settlement Class does not include any person, including any corporate and non-corporate entities wherever organized and existing, to whom the City has already paid a full refund of UUT paid for services utilized during the Class Period." (Second Amended Settlement Agreement, §I, p. 5-6.)

Kinds of Telephone Service means:

a. Residential landline service;

b. Business landline service; and

c. Mobile telephone service. (§I, ¶. 4.)

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B. TERMS OF SETTLEMENT AGREEMENT

The essential terms of the Settlement Agreement are as follows:

- Defendant agrees to a Settlement Fund in the amount of $92,500,000, to pay all claims, notice and claims administration expenses, an incentive award, and the fees and expenses of Class Counsel. (§III ¶A.1)
    - The Settlement Fund will be funded in installments. Within 30 days of entry of a final order and judgment, Defendant will provide an initial payment of $50,000,000, from which will be deducted the amount of any Advance Notice and Administration Expenses and a fee award to Class Counsel, which will be placed in a separate account. Thereafter, the Defendant will raise whatever funds are necessary to pay the difference between the Initial Payment and the amount required to pay all Class Member Payment Amounts, Notice and Claims Administration Expenses, Attorneys' Fees and Expenses, and Plaintiff's Incentive Award. (§III, ¶¶ A.2, A.3)
    - In the event the Settlement Fund is not entirely consumed, the balance, plus any interest that has accrued, will revert to Defendant. (§III, ¶A.4)
- To receive payment, class members must submit a completed claim form, provide certain information, and indicate which refund option they are selecting. (§III, ¶B.1)
    - Claim forms must submit claim forms within 120 days of notice. (§V ¶A)
    - Option 1 is called the Standard Refund Procedure. Class members who choose this option do not have to present evidence of UUT charges paid. Residential landline customers will receive $30. Business landline customers will receive $50. Mobile telephone customers will receive $50. (§III, ¶B.2)

- Option 2 is called Full Refund Procedure. Class members who select this option may claim a refund of the actual UUT paid during the Class Period, but must provide copies of bills showing such payments. For mobile telephone service customers, refunds will be in the amount shown on the bills, and for residential landline customers and business landline customers, refunds will be in the amount of 70% of the amount shown on the bills. (§III, ¶B.3)
- Class members may claim both Option 1 and Option 2 for different kinds of service, but regardless of the kind of refund selected, must submit a claim form signed under penalty of perjury. (§III, ¶¶ B.3, B.4)
- The claims administrator will decide if the claim forms are valid. (§III, ¶B.5)
- In lieu of receiving a payment, class members may donate their payment to one of four designated funds. (§III, ¶B.6)

- The cost of notice and administration will be the sole responsibility of the City and is capped at $288,000. (§IV. ¶L)
- Class Counsel will apply for an award of fees and costs not to exceed $18.5 million of the Settlement Fund, which will be paid from the Initial Payment, and the City reserves the right to object to any fee request in excess of $15 million. (§X, ¶A)
- Class Counsel will apply for a $10,000 incentive award for Plaintiff. (§X, ¶B)
- As of the Effective Date, Plaintiff and all class members (and their executors, estates, etc.) shall be deemed to have released the City and Related Parties from any and all Released Claims, whether known or unknown, and to have waived the protections afforded by CC§1542, solely as they relate to the allegations contained in Plaintiff's Complaint. (§VII, ¶A)

- Released Claims means, "any and all claims, demands, rights, damages, obligations, suits, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including both known and unknown claims of the Plaintiffs and all Class Members that were or could have been brought against the City and/or its Related Parties, or any of them, during the Class Period, arising from the facts alleged in the Complaint." (§I, p. 5)

C. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." CRC 3.769(g). "If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." CRC 3.769(h).

"In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also *Wershba, supra,* 91 Cal.App.4th at 245:Court needs to "scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or

overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned" ,(internal quotation marks omitted).)

"The burden is on the proponent of the settlement to show that it is fair and reasonable. However 'a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'" (*Wershba, supra* 91 Cal.App.4th at 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Notwithstanding an initial presumption of fairness, "the court should not give rubber-stamp approval." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) "Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished." (Ibid.) In that determination, the court should consider factors such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (Id. at 128.) "Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba, supra*, 91 Cal.App.4th at 245.)

Does a presumption of fairness exist?

a. Was the settlement reached through arm's-length bargaining? Yes. According to Class Counsel, the negotiations that eventually resulted in this settlement occurred

over the course of nearly 10 years, and included 5 formal mediation sessions before the Honorable Dickran Tevrizian (Ret.) Negotiations were at all times intense, challenging, and at arms'-length. In between sessions of mediation, when it was not at all clear that the case would ever settle, Class Counsel continued to aggressively litigate and filed a motion for class certification. (Joint Declaration, ¶¶ 27-30.)

b. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. The parties have diligently litigated this case and have expended significant energy on discovery. Plaintiff propounded numerous requests for production of documents from Defendant, and, with some, engaged in motion practice in order to compel compliance. Class Counsel also sought information from third party service providers, and engaged an expert to assist with data analysis. Defendant also propounded written discovery and took Plaintiff's deposition. The parties took the deposition of several service providers, and Defendant subpoenaed records from one. (Id. at ¶¶ 19-24.)

c. Is counsel experienced in similar litigation? Yes. At the time of preliminary approval, the attorneys representing Plaintiff and the class presented evidence of their substantial experience with class action litigation. (Declaration of Rachelle R. Rickert re: Preliminary Approval, ¶38, and Exhibits D, E, F, and G thereto.)

d. What percentage of the class has objected? Six objectors, out of a class of approximately 1.8 million, were received. (Declaration of Phil Cooper, ¶27 and Exhibit I thereto; Supplemental Declaration of Phil Cooper, ¶13 and Exhibit B

thereto; Second Supplemental Declaration of Phil Cooper, ¶14.) These six objections represent 0.00033% of the class.

CONCLUSION: The settlement is entitled to a presumption of fairness.

3. Is the settlement fair, adequate, and reasonable?

e. Strength of Plaintiffs' case. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar, supra,* 68 Cal.App.4th at 130.) The potential monetary value of the class claims was estimated by Defendant at $300 million. (Joint Declaration, ¶41, and Exhibit C thereto., "City of Los Angeles Continuing Disclosure Filing, Rule 15c2-12(b)(5) For the Period Ending June 20, 2013.") However, from the beginning, Defendant denied liability and has asserted defenses to this action. Thus, while Plaintiff continues to believe that his claims have merit and is prepared to proceed with litigation, Class Counsel has considered Defendant's positions and financial condition in coming to the conclusion that the proposed settlement is fair, reasonable, and adequate. For example, Defendant would contend that the UUT adopted the IRS's interpretation of the Federal Excise Tax at the time it was enacted in 1969, but the fact the IRS changed its position in 2006 does not require Defendant to change its interpretation of its ordinance. (Joint Declaration, ¶42.) Class Counsel also notes that Defendant would make an argument based upon the distinction between the federal authority Plaintiff relies on, which concern only long distance telephone service and not bundled service. (Ibid.) Given the uncertainty of establishing either class certification or liability, the $92,500,000 appears to be within the ballpark of reasonableness.

f. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

g. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226: "Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.")

h. Amount offered in settlement. Defendant has agreed to provide a Settlement Fund of $92,500,000. This amounts to approximately 31% of the estimated maximum potential value of the class claims. Taking into consideration the strengths and weakness of the case, as well as the prospect of a lengthy trial and the potential for an appeal thereafter, this settlement, which provides class members with the ability to submit a claim for a refund of the allegedly improper tax, represents a material benefit to class members. While the claims administrator, KCC Class Action Services, LLC, is still in the process of reviewing claim, it reports that it has received 312,116 of them. Although its review of claims is not yet complete, it has identified 285,010 claims for refunds in the standard amount, or approximately $19 million. It has also identified 12,869 in actual refund claims, many of which are from businesses such as

hospitals, banks, financial institutions, educational institutions, and others. (Supplemental Cooper Declaration, ¶¶4-7.)

i. Extent of discovery completed and stage of the proceedings. As discussed above, at the time of the settlement, the parties had conducted extensive discovery.

f. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour cases.

g. Presence of a governmental participant. Defendant is a governmental entity.

h. Reaction of the class members to the proposed settlement.

KCC is providing notice and claims administration services. On October 14, 2015, KCC commenced notice via the Media Notice Plan. (Cooper Declaration, ¶12, and Exhibit D thereto.) Notice was published in four magazines (Parade, People, El Aviso, and Hoy Fin De Semana) and seven newspapers (Wall Street Journal, Los Angeles Times, Los Angeles Daily News, La Opinion, Contigo, Impacto USA, and Unidos). Notice was also provided on local televisions stations (KCBS, KTLA, KNBC, and KTTV), radio (KIIS, KYSR), via internet banners (Google, Xaxis, and Los Angeles Times), and by newswire. (Ibid.)

KCC established a website in English and Spanish (www.LATaxRefund.com), which provides information and from which class members may download claim forms and submit them, and an Interactive Voice Response system in English and Spanish (888-643-6490). (Cooper Declaration, ¶¶9, 10.) As of July 1, 2016, the website had been visited 305,802 times, and the IVR had received 40,525 calls. (Id. at ¶23.)

Additionally, KCC mailed notice to 1,871,761 commercial and residential customers, between October 20 and 23, 2015. (Id. at ¶¶4-8, 11, 13.) In the days following the mailing it was

discovered that some class members received multiple notice packets while others in the same apartment building did not receive any. KCC corrected this issue and sent replacement notice packets, assuming for itself the full cost of doing so. (Id. at ¶14.) KCC also forwarded mail returned with forwarding addresses, and conducted searches for mail that was not returned with forwarding addresses, and re-mailed notices when more current addresses were found. (Id. at ¶¶ 15, 16.)

Pursuant to this Court's order amending the Second Amended Settlement Agreement, Amending Claim Form, and Extending Claims Filing Deadline, KCC created an updated notice packet, Notice of Opportunity to Amend, and updated Claim Form and reminder postcard, and updated the website. (Id. at ¶17.) KCC mailed the Remail Notice Packets to 56,435 of the previously identified undeliverable addresses using a generic placename holder, mailed the Amended Notice Packet to 223,529 claimants with claims on file, advising them of new options, and sent 1,186,542 reminder postcards to addresses on the class member list, using generic placeholder name. (Id. at ¶¶ 18-20.)

Based upon the extensive and wide-ranging notice campaign outlined in the Cooper Declaration, it appears that the notice procedure was aimed at reaching as many class members as possible. The Court finds that the notice procedure satisfies due process requirements.

As of October 12, 2016, after mailing notice to over 1.8 million potential class members, KCC has received:

328,486 claims (a claims rate of approximately 18%),

25 requests for exclusion (an opt-out rate of 0.0013%), and

6 objections (an objection rate of 0.00033%).

(Second Supplemental Cooper Declaration, ¶4.)

Objections

Attached as Exhibit I to the Cooper Declaration are the four objections that were received prior to July 1, 2016, and attached as Exhibit B to the Supplemental Cooper Declaration are the two additional objections received prior to the July 12, 2016 cut-off.

Scott Aden and Nancy Aden object that they will recover only 70% of the UUT paid. However, based upon the City's contention that "bundled" landline service (local and long distance charged together) were properly taxes, 70% represents a compromise figure. All settlements, in fact, represent a compromise. The balance of the Aden objection appears to be a request to recover an additional amount, in other words, something other than what is offered under this settlement. If they wanted to seek such recovery, the Adens had the option of opting out of this settlement and pursuing an independent action against the City.

Joel Drum's objection seems to be based in part on the fact that class members are only entitled to receive $30 for each residential service and $50 for each mobile service, even if they have more than one line. While this is true (Defendant explains that this is because it does not have information about the number of lines on which claimant's paid UUT), it is also true that Drum had the option of pursuing a claim under Option 2. Drum also appears to believe that Defendant should be required to refund 100% to claimants. But again, settlements constitute a compromise position and rarely give rise to the recovery of 100% of the damages.

One anonymous objection, hand-written on the class notice, is difficult to decipher or to respond.

Finally, the objection submitted by Alfonso Calabrese asserts that the settlement is inadequate because Mr. Calabrese's settlement award "will decrease in direct proportion to the overall claims filed," that class members should not have to prove their claims, that no

reasonable person would retain the documentation required to obtain the Recognized Claim Amount, which is still only 70%, and that there is no way the attorneys should receive 20% of the settlement fund just because the class is so large. As to the first and second arguments, as already stated above, settlement awards represent a compromise of disputed claims and are not meant to constitute a complete recovery of all alleged damages. By agreeing to this settlement, each side has taken into account the risks of proceeding with the litigation; for Plaintiff, this includes the risk of failing to prevail on a motion for class certification and failing to establish liability. Defendant notes that the reason for the claim requirement is that Defendant does not in fact have the taxpayer information necessary for the kind of refund Calabrese would have preferred. The third objection fails to take into account the procedure negotiated with carriers for the provision of the necessary documents. As to the argument regarding fees, as discussed below, class action attorneys often recover a percentage of the settlement in the range of 33%, and here the actual percentage is more like 19%.

In addition to the January, 2016 objection submitted to the claims administrator, Alfonso Calabrese filed "Supplemental Authority" in support of his objection on August 10, 2016, and on September 19, 2016, file both "Motion" for leave to file a supplemental objection and a supplemental objection. In these filings, Calabrese is represented by attorney George W. Cochran.

On August 8, 2016, Mr. Cochran, an Ohio attorney, filed an application for *pro hac vice* admittance, which was conditionally granted at the hearing upon submission of proof of payment to the State Bar.

Calabrese's supplemental authority memo argues that fees should be awarded pursuant to the lodestar rather than percentage method, noting that the California Supreme Court was about

to issue a landmark decision in *Laffitte v. Robert Half International Inc.* In fact, it did so and the holding of that case supports using the percentage method; see additional discussion, below.

Calabrese's request for leave to submit a "supplemental" objection asserts that there is good cause to allow his late objection because the supplemental Cooper declaration demonstrates commercial customers with sizeable claims are the true winners. However, the larger refunds to commercial customers are based on what they paid. All class action members are treated the same, as all have the opportunity to submit claims backed up by records of payment. Calabrese's supplemental objection is overruled.

Finally, the objection by Yvonne Howell is based upon the argument that the standard refund is insufficient and the cost of obtaining records needed to submit a full refund is cost prohibitive. While the Court appreciates the frustration and expense involved in obtaining the records needed to support a full refund claim, as Plaintiff notes, this objection as submitted before the new procedure was put into place which provides for reimbursement of the cost to obtain records.

The Court has considered and now overrules each of the above objections. The Court can appreciate the frustration of some class members about the time and effort needed to comply with the claim requirement, but this is not a substantial reason for denying final approval of this settlement. Considerable and lengthy negotiations were required before this settlement was reached, and it should be recognized that this settlement represents a compromise of disputed claims. Tto the extent the objections are based on a belief that the class should recover some higher amount, it should be noted that settlements, "need not obtain 100 percent of the damages sought in order to be fair and reasonable," and that even if the relief is substantially less than what would be available after a successful outcome, "this is no bar to a class settlement because

'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" (*Wershba, supra,* 91 Cal.App.4th at 250, citing *Air Line Stewards, etc., Loc. 550 v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109.) Finally, the Court notes that out of a class of potentially 1.8 million, the number of objections is miniscule, reflecting the class's overwhelmingly positive response.

CONCLUSION: The settlement can be deemed "fair, adequate, and reasonable."

D. ATTORNEY FEES AND COSTS

Class Counsel, Wolf Halderstein Adler Freemand & Herz, LLP, Chimicles & Tikellis, LLP, Cuneo Gilbert & Laduca, LLP, and Tostrud Law Group, PC, request an award of $18,500,000 for fees and costs. According to the Joint Declaration, Class Counsel have a combined lodestar of $11,813,095.75, and combined costs of $691,369.43. (Joint Declaration, ¶51.) (The lodestar and costs have increased since then; see below.) The lodestar excludes time attributable to opposing Defendant's appeal of this Court's order on Defendant's motion for return of privileged material and to disqualify counsel. (Id. at ¶52.)

The motion for fees argues that the fee and cost request is appropriate and should be approved under either the percentage of the common fund or the lodestar method. Defendant City opposes the motion for fees, arguing that the lodestar is the appropriate method of fee calculation, and asserting that the number of hours expended and the billing rates are unreasonably high. Plaintiff's Supplemental Brief argues again for fees pursuant to the percentage of the common fund method, based upon the recent California Supreme Court case *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480.

The Court requested that billing records or summaries be provided so that it could evaluate the reasonableness of the fee request, both as to hourly rates charged by the attorneys representing Plaintiff and the class, as well as the number of hours devoted to this litigation.

Based upon the supplemental declarations of Francis M. Gregork, Jon A. Tostrud, and Timothy N. Matthew, and the Declaration of Jonathan Cuneo, the lodestar calculation is as follows:

Law firm	Hours	Hourly Rate	Total Lodestar
Wolf Haldenstein Adler Freeman & Herz	12,791.4	$175-$800	$ 8,680,951.50
Tostrud Law Group, PC	1,270.9	$450-$600	$ 672,945.00
Chimicles & Tikellis, LLP	4,557.75	$60 - $950	$2,581,857.50
Cuneo Gilbert & Laduca, LLP	436.64	$150-$895	$ 319,127.50
TOTAL	**19,056.69**		**$12,254,881.50**

While the highest among the above hourly rates ($800-$900) are on the upper end of the prevailing rates in the community, they are not unreasonable. The City's expert, Gerald Knapton, says that if the rates were adjusted to the Third Quartile of prevailing rates for similar litigation in Los Angeles County (based in part on the 2015 Real Rate Report), the lodestar would be $8,287,728.23. (Knapton Declaration, ¶¶ 10-18.) In reply, Class Counsel notes that in another recent case, Mr. Knapton provided a declaration supporting the fee request by class counsel in *Skeen v. BMW of North America, LLC,* Civ. Case No. 2:13-cv-1531 WHW-CLW (D.N.J), in which he approved of rates up to $1,100 for partners working in the Los Angeles market. (Declaration of Rachelle Rickert, ¶2, and Exhibit A thereto.) Further, the Court notes that the bulk of the hours overall was by attorneys with billing rates in the $600-$700/hour range. Based on this Court's familiarity with the rates charged by attorneys in the Los Angeles area, the Court finds that the hourly rates charged by the attorneys are reasonable.

Defendant also argues that the number of hours expended on this litigation is unreasonable, noting as an example that often more than one attorney attended a deposition. This does not necessarily constitute a duplication of effort; given the hotly contested nature of this litigation and the complexity of the issues, Class Counsel could have reasonably deemed it necessary to have more than one attorney attend. Regarding the total number of hours expended, taking into consideration this case's nearly decade-long history and especially noting that Class Counsel deducted from these billing records the hours spent on appellate issues after the signing

of the Settlement Agreement, the Court finds the hours to be reasonable. Accordingly, $12,254,881.50 acts as the lodestar.

The $18,500,000 request, apart from costs, amounts to $17,784,850. [$18,500,000 - $715,150 cost request (see below) = $17,784,850] Given the $12,254,881 lodestar, to reach the $17,784,850 fee request requires application of a 1.45 multiplier. Here, given the quality of the representation, the novelty and difficulty of the issues presented and the skill displayed by the lawyers in presenting them, the results achieved on behalf of the class, and the contingent nature of the fee award, the Court has no trouble finding that this positive multiplier is warranted. Moreover, Defendant has agreed to a fee and cost award of $15,000,000. After deducting out $715,150 for costs, this would provide a fee award of $14,284,850. To achieve that amount would require application of a multiplier of 1.165. The difference between a multiplier of 1.45 and 1.165 is just .285.

Examining the fee request pursuant to the percentage method, the Court notes that it represents approximately 19% of the settlement. [$17,784,850 ÷ $92,500,000 = 0.1922] This is well below the average 33.33% generally awarded in class actions. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, FN13: "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.") The recent *Laffitte* case provides support for the fee request under the percentage method as cross-checked by the lodestar, which in this case the Court has found to be reasonable.

As for costs, Class Counsel present evidence that as a group they have incurred $715,150. (Supplemental Gregork Declaration, ¶7, and Exhibit 3 thereto; Supplemental Tostrud Declaration, ¶7, and Exhibit 2 thereto; Supplemental Mathews Declaration, ¶7, and Exhibit 2

thereto; Cuneo Declaration, ¶7, and Exhibit 1 thereto.) These costs include filing fees, court fees, legal research, mediator fees, expert witnesses, photocopying, postage, court reporters and transcripts, travel (including meals and hotels), phone, fax, and other miscellaneous items. The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the class.

Finally, as requested, copies of the *pro hac vice* orders were submitted, demonstrating that each of the out of state attorneys representing Plaintiff and the class may be awarded fees.

For all of the above reasons, the Court approves the $18,500,000 fee and cost request.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395: "[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citations.]".)

Here, the named Plaintiff requests an incentive award of $10,000. Estuardo Ardon retained counsel to represent him in pursuing a claim over the UUT, and ultimately agreed to pursue not only his own claims but those of all other City UUT taxpayers. (Ardon Declaration, ¶3.) He has participated in this litigation from the beginning, devoting in total about 150 hours. (Id. at ¶¶ 5, 6.) Ardon has been in regular contact with his attorneys during the nearly 10 years since this case was filed, and has spent time responding to discovery requests, searching for

documents, preparing for and being deposed by the city, and working with his attorneys to prepare a declaration for presentation with the motion for class certification. (Id. at ¶¶ 5-7.) Ardon believes he has fairly represented the class and states that he has no conflicts with the class. (Id. at ¶8.) Additionally, Ardon has accepted the risks that are associated with acting as a class representative, including the publicity that comes along with taking a stand against a large governmental entity. (Id. at ¶11, and Exhibit B thereto: article portraying Ardon in a negative light.) As a result of Ardon's conduct, new law has been enacted that enables taxpayers to file claims seeking the refund of improperly collected taxes, and the class members in this action will receive settlement payments to compensate them for the illegally imposed tax. (Ibid.)

In light of the above, especially the positive result for the class, and taking into consideration the long duration of this litigation, $10,000 appears to be a reasonable inducement for her participation in this case. The requested incentive award is approved.

F. CLAIMS ADMINISTRATION COSTS

To date, claims administrator KCC has invoiced and been paid $2,114,359.91. (Cooper Declaration, ¶32.) KCC has not sent any additional invoices but expects to send an invoice for $1,299,516.47 based on current outstanding costs. (Second Supplemental Cooper Declaration, ¶20.)

IV. CONCLUSION AND ORDER

A. TENTATIVE RULING

Conditioned upon the filing of fully executed copy of the Second Amended Settlement Agreement:

(1) Grant class certification for purposes of settlement;

(2) Grant final approval of the settlement as fair, adequate, and reasonable;

(3) Award $18,500,000 in fees and costs to Class Counsel;

(4) Award $10,000 as an incentive award to Plaintiff Estuado Ardon;

(5) Claims administrator KCC has already received $2,114,359.91; another $1,299,516.47 is ordered to be paid to KCC at this time;

(6) Order class counsel to lodge a proposed Judgment, consistent with this ruling by October 31, 2016;

(7) Order class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and

(8) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds is set for March 15, 2017, at 8:30 a.m. Final Report is to be filed by March 1, 2017.

Dated: October 25, 2016

/s/ Cole

Lisa Hart Cole
Judge of the Superior Court

EXHIBIT 11

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Attorneys for Plaintiff

[Additional Counsel Appear On Signature Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ESTUARDO ARDON, on behalf of himself and all others similarly situated, Plaintiff, v. CITY OF LOS ANGELES, Defendant.	Case No. BC363959 **DECLARATION OF TIMOTHY N. MATHEWS IN SUPPORT OF PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND PAYMENT OF AN INCENTIVE AWARD** Date Action Filed: December 27, 2006 Trial Date: None Set DATE: August 11, 2016 TIME: 9:00 a.m. DEPT: 307 JUDGE: Hon. Amy D. Hogue

1. I am a partner in the law firm of Chimicles & Tikellis LLP ("C&T"). I submit this Declaration in support of my firm's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by my firm in connection with this litigation.

2. My firm acted as Plaintiff's counsel in this class action and diligently worked in its initiation and prosecution. The efforts taken in prosecuting this litigation over the course of the last ten years are summarized in the Joint Declaration of Francis M. Gregorek and Nicholas E. Chimicles in Support of Plaintiff's Motion for Final Approval of Class Action Settlement, Attorneys' Fees, Reimbursement of Expenses and Payment of an Incentive Award. To avoid burdening this Court with repetitive recitations, they will not be repeated here.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by the partners, attorneys and professional support staff of my firm who were involved in this litigation, and the lodestar calculation based on my firm's current billing rates. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. We have excluded from our reported time and lodestar our time spent on the appeal in the Supreme Court of California filed by the City seeking to overturn the decision of this court and the Court of Appeals on the City's Motion for Order Compelling the Return of Privileged Material and to Disqualify Plaintiff's Counsel of Record.

4. The hourly rates for the partners, attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and which have been accepted and approved in other class action litigation. My firm's rates as reflected in the lodestar reports attached hereto are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. We set our rates based on an analysis of rates charged by our peers and approved by courts throughout the country. Over the past two decades, our rates have been approved by state and federal courts throughout the country. *See, e.g., Johnson et al. v. W2007 Grace Acquisition I Inc. et al.*, Case No. 2:13-cv-2777 (W.D.

Tenn.), at ECF #135 (opinion filed Dec. 4, 2015) ("Both the hours spent and the hourly rates [by lead counsel Chimicles & Tikellis LLP] are reasonable given the nature and circumstances of this case, and the applied lodestar multiplier is at the low end of the range regularly approved in securities class actions"); *Henderson v. Volvo Cars of N. Am., LLC,* 2013 U.S. Dist. LEXIS 46291 *4-47 (D.N.J. Mar. 22, 2013) (C&T's rates "are entirely consistent with hourly rates routinely approved by this Court in complex class action litigation"); *In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, 44-48 (D.N.J. May 14, 2012) ("The Court finds the billing rates to be appropriate and the billable time to have been reasonably expended."); *In re PaineWebber Limited Partnerships Lit.*, 94 Civ. 8547 (S.D.N.Y.), Opinion and Order dated March 27, 1998 (approving the Firm's billed hours and rates in case where firm was Lead Counsel in settlement resulting in $200 million recovery); *In re Prudential Sec. Ins. Limited Partnerships Lit.*, 985 F. Supp. 410, 414 (S.D.N.Y. 1997) (approving my Firm's rates and hours billed in case where my Firm was on Plaintiffs' Executive Committee in settlement resulting in a $130 million recovery). Further, although C&T primarily receives compensation on a contingent basis in connection with class action and derivative litigation, my firm also receives compensation for its attorneys on an hourly basis in connection with certain matters. C&T has been paid our normal billing rates on a non-contingent, hourly basis by a wide array of clients, including trust beneficiaries, class action defendants, and private investors.

5. The total number of hours expended on this litigation by my firm is 4,269.00 hours. The total lodestar for my firm is $2,409,091.25, consisting of $2,270,152.50 for attorneys' time and $138,938.75 for professional support staff time.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2, my firm has incurred a total of $218,305.71 in unreimbursed expenses in connection with the prosecution of this litigation.

8. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

9. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is the Chimicles & Tikellis LLP firm resume including biographies of the attorneys in the firm who were principally involved in this litigation.

10. Finally, Attached as Exhibit 4 is a detailed summary of time spent by the attorneys and professional support staff of the law firm of Levine Blaszak Block & Boothby, LLP ("LB3"). LB3 is a boutique law firm specializing in communications and information technology matters, which served in a consulting role during the initial investigation of this litigation. LB3 has not been reimbursed these amounts. The total number of hours expended on this litigation by LB3 is 14.50 hours, and the total lodestar for LB3 is $5,110.00.

The foregoing is affirmed as true and correct under penalty of perjury this 28th day of June, 2016.

Timothy N. Mathews

EXHIBIT 1

ARDON v. CITY OF LOS ANGELES

TIME SUMMARY REPORT

FIRM NAME: CHIMICLES & TIKELLIS LLP
REPORTING PERIOD: Inception To June 27, 2016

Name	Position	Hours	Hourly Rate	Current Cumulative Lodestar
Chimicles, Nicholas A.	P	732.75	$950.00	$696,112.50
Tikellis, Pamela S.	P	2.00	$895.00	$1,790.00
Malone, James R.	FPL	0.50	$700.00	$350.00
Mathews, Timothy N.	P	2485.00	$600.00	$1,491,000.00
Johns, Benjamin F.	P	127.25	$550.00	$69,987.50
Shuster, Morris M.	FOC	0.25	$550.00	$137.50
Scott, Daniel B.	FA	0.25	$500.00	$125.00
Gushue, Alison G.	A	1.75	$450.00	$787.50
Moumas, Aristotle C.	FA	1.25	$300.00	$375.00
Azuizu, Matthew T.	FA	34.50	$275.00	$9,487.50
Gaughan, Bryan M.	FPL	40.75	$250.00	$10,187.50
Mastraghin, Corneliu P.	PL	9.75	$250.00	$2,437.50
Mingle, Mary M.	FLA	25.50	$250.00	$6,375.00
Williams, Ward T.	FPL	32.00	$200.00	$6,400.00
Aldinger, Cathy A.	FPL	1.50	$195.00	$292.50
Hobbes, Jason W.	FLC	31.00	$190.00	$5,890.00
Marsh, Thomas A.	FLC	7.75	$190.00	$1,472.50
Sachs, Kimberly L.	LC	22.50	$190.00	$4,275.00
Sanders, Kimberly A.	FLC	6.50	$190.00	$1,235.00
Wozny, Michael J.	FLC	111.00	$190.00	$21,090.00
Cain, Shelby R.	FPL	39.50	$175.00	$6,912.50
Boyer, Justin	PL	302.75	$175.00	$52,981.25
Royer, Jesse D.	FPL	14.00	$150.00	$2,100.00
Ngo, Phuong	FPL	73.75	$100.00	$7,375.00
Apfel, Sandra	FPL	6.00	$60.00	$360.00
Epstein, Blair M.	FPL	21.75	$60.00	$1,305.00
Hammell, Christine M.	FPL	5.00	$60.00	$300.00
Ostapowicz, Robert B.	FPL	16.25	$60.00	$975.00
Hill, Tyler J.	FPL	99.00	$60.00	$5,940.00
Tzarnas, Alexa N.	FPL	4.25	$60.00	$255.00
Won, Hea Ran	PL	13.00	$60.00	$780.00
TOTALS		**4,269.00**		**$2,409,091.25**

P - Partner
FP - Former Partner
FOC - Former Of Counsel
A-Associate
FA - Former Associate
LC - Law Clerk
FLC - Former Law Clerk
PL - Paralegal
FPL - Former Paralegal
FLA - Former Legal Assistant

EXHIBIT 12

IN RE: PHILIPS/MAGNAVOX TELEVISION LITIGATION
CHIMICLES & TIKELLIS LLP TIME REPORT
INCEPTION THROUGH SEPTEMBER 30, 2011

NAME*		TOTAL HOURS	HOURLY RATE	LODESTAR
Steven A. Schwartz	P	339.75	$700.00	$237,825.00
Matthew D. Schelkopf	A	3.25	$425.00	$1,381.25
Daniel B. Scott	FA	60.25	$425.00	$25,606.25
Benjamin F. Johns	A	612.50	$350.00	$214,375.00
Alison G. Gushue	A	3.00	$325.00	$975.00
Corneliu P. Mastraghin	LA	9.50	$220.00	$2,090.00
John K. Mickels	FLA	8.00	$60.00	$480.00
Robert B. Ostapowicz	FLA	12.00	$60.00	$720.00
Carling L. DiLella	FLA	1.50	$60.00	$90.00
Donna M. Ward	LA	0.75	$250.00	$187.50
TOTALS:		**1,050.50**		**$483,730.00**

*P=Partner, A=Associate, LA=Legal Assistant
FA=Former Associate, FLA=Former Legal Assistant

EXHIBIT 13

RODMAN v. SAFEWAY LITIGATION
EXPENSE CHART

FIRM NAME: CHIMICLES & TIKELLIS LLP

REPORTING PERIOD: Inception through November 30, 2017

DESCRIPTION	TOTAL EXPENSES
Professional/Consulting	$132,692.22
Travel, Food & Lodging	$57,002.12
Deposition Transcripts	$44,331.70
Photocopies - Firm	$25,969.00
Notice Costs	$21,347.45
Computer Research	$9,205.15
Hearing Transcripts	$5,940.50
Courier	$3,291.44
Photocopies - Outside	$2,590.43
Subpoena Service	$1,802.19
Filing Fees	$550.00
Software/Technology	$296.46
Miscellaneous Expenses	$84.74
Postage	$21.66
Publications	$16.71
Telephone/Facsimile	$16.32
TOTAL	**$305,158.09**

EXHIBIT 14

ORIGINAL

LIONEL Z. GLANCY, ESQ. #134180
PETER A. BINKOW, ESQ. #173848
GLANCY & BINKOW LLP
1801 Avenue of the Stars, Suite 311
Los Angeles, California 90067
Telephone: (310) 201-9150
Telecopier: (310) 201-9160

Attorneys for Plaintiffs and the Class

Priority ✓
Send ✓
Enter ✓
Closed ✓
JS-5/JS-6 ___
JS-2/JS-3 ___
Scan Only ___

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE REAL ESTATE ASSOCIATES LIMITED PARTNERSHIP LITIGATION

Case No. CV 98-7035 DDP (AJWx)

CLASS ACTION

~~[PROPOSED]~~ FINAL ORDER AND JUDGMENT

Date: November 24, 2003
Time: 10:00 a.m.
Hon. Dean D. Pregerson

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

The Stipulation of Settlement, dated August 7-11, 2003 (the "Stipulation of Settlement") (capitalized terms herein shall have the same meaning as used in the Stipulation of Settlement unless otherwise indicated), the Plan of Distribution, and Class Counsel's Petition for Award of Attorneys' Fees, Reimbursement of Litigation Expenses, Incentive Awards for Plaintiffs, and Payment of Costs of Notice and Distribution of Settlement Fund, having been presented at the Final Hearing on November 24, 2003 pursuant to the Order Preliminarily Approving

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Settlement, Approving the Form and Manner of Notice, and Setting A Hearing Date for Final Approval of the Settlement ("Preliminary Approval Order") entered herein on August 25, 2003, and the Court having determined that Notice of Proposed Settlement ("Settlement Notice" or "Notice") was provided to Class Members in accordance with the Preliminary Approval Order, and that said Settlement Notice meets the requirements of Federal Rule of Civil Procedure 23(e); and the Parties having appeared by their attorneys of record; and the attorneys for the Parties having been heard in support of the Stipulation of Settlement and the Settlement; and an opportunity to be heard having been given to all other persons desiring to be heard as provided in and as scheduled by the Settlement Notice; and the entire matter of the Settlement having been considered by the Court:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this 24 day of November, 2003 as follows:

APPROVAL OF THE SETTLEMENT

1. Settlement Notice, substantially in the form attached as Exhibit C to the Stipulation of Settlement, has been given to the Class pursuant to and in the manner directed by the Preliminary Approval Order, proof of the mailing of the Settlement Notice has been filed with the Court by Complete Claim Solutions, Inc., and a full opportunity to be heard has been afforded to all signatories to the Stipulation of Settlement, the Class and persons in interest. The form and manner of the Settlement Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with the requirements of due process and the notice requirements of the Federal Rules of Civil Procedure and any other applicable law.

2. In the Preliminary Approval Order, the Court granted preliminary approval to the parties' modification of the Class definition to exclude the Defendants and their affiliates, successors or assigns. The Court now certifies the Amended Class ("Class") as follows:

> ALL PERSONS AND ENTITIES WHO HELD UNITS OR LIMITED PARTNERSHIP INTERESTS IN ONE OR MORE OF REAL ESTATE ASSOCIATES LIMITED, REAL ESTATE ASSOCIATES LIMITED II, III, IV, V, VI AND VII OR HOUSING PROGRAMS LIMITED AND WERE ENTITLED TO VOTE ON ONE OR MORE OF THE CONSENT SOLICITATION STATEMENTS DISSEMINATED IN AUGUST 1998 IN REGARD TO THOSE LIMITED PARTNERSHIPS EXCEPT THE DEFENDANTS OR ANY AFFILIATE, SUCCESSOR OR ASSIGN OF A DEFENDANT.

3. The Settlement as embodied in the Stipulation of Settlement is found to be fair, reasonable and adequate and in the best interests of the Class, and it is hereby approved. The signatories to the Stipulation of Settlement and their counsel are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions, and the Clerk of the Court is directed to enter and docket this Final Order and Judgment in the Action ("Final Judgment").

4. If the Settlement does not become effective in accordance with the terms of the Stipulation of Settlement, then this Final Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation of Settlement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void, and the Verdicts,

Judgments and Orders that have been vacated or expunged shall be reinstated *nunc pro tunc*.

5. Except as to any claims of Class Members who previously timely requested exclusion from the Class and have not elected to rescind their exclusion pursuant to paragraph 9 of the Preliminary Approval Order (the final list of opt outs is attached hereto as Exhibit A), the Action and the Class' claims contained therein, as well as all of the Released Claims, are dismissed with prejudice. The persons listed on Exhibit A have timely excluded themselves from the Class. These persons are not bound by this Final Judgment and shall not share in the benefits of the Settlement of the Action. All further references in this Final Judgment to "Class Members" excludes the persons listed on Exhibit A.

6. All Class Members will be subject to and bound by the provisions of the Stipulation of Settlement and this Final Judgment.

7. Entry of this Final Judgment enjoins and prohibits any member of the Class from seeking to recover, directly or indirectly, against any Released Parties based on the Released Claims, and directs and orders that the Class may only seek execution on the Final Judgment to exercise the rights of recovery in accordance with the Stipulation of Settlement.

8. Upon the Effective Date, by operation of the Final Judgment, all Class Members shall be deemed to have fully, finally and forever released, relinquished and discharged all Released Claims against each of the Released Parties.

a. "Released Claims" means: All claims, whether known or unknown, that have been or could have been asserted in the Action or otherwise by Plaintiffs or any Class member, in whatever capacity, including, but not limited to all claims for violations of federal or state law against: (i) the Defendants, (ii)

AIMCO, (iii) the Casden Indemnitors, (iv) any of the joint venturers, families, parent entities, associates, affiliates or subsidiaries of the people or entities identified in (i) – (iii) of this definitional paragraph; and (v) each of the respective past, present or future officers, directors, stockholders, representatives, employees, attorneys, consultants, accountants, agents, executors, heirs, beneficiaries, general or limited partners or partnerships, predecessors, successors and assigns of the people or entities identified in (i) – (iv) of this definitional paragraph, arising out of or relating to the facts and circumstances alleged, or that could have been alleged, in the Complaint, or otherwise relating in any way to the REAL Partnerships and the Class Members' investment therein, including, but not limited to, any claim for an accounting relating to the operation of the REAL Partnerships from their commencement to the Effective Date. In connection with the release of all claims both known and unknown, the parties agree to waive the benefits of §1542 of the California Civil Code (or of any law of any state or territory of the United States, or principle of common law that is similar, comparable or equivalent to §1542), which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

"Unknown Claims" further means any claim which Plaintiffs or any Class Member does not know or suspect to exist in his, her or its favor at the time of the Effective Date which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to object to this settlement. Plaintiffs and the Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but hereby stipulate and agree that each Plaintiff does and each Class Member shall be deemed to, upon the Effective Date, fully, finally and forever settle and release any and all released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to subsequent discovery or existence of such different or additional facts.

b. "Released Parties" means: (i) the Defendants, (ii) AIMCO, (iii) the Casden Indemnitors including Alan I Casden, the Casden Company, Casden Investment Corp., Cerberus Partners, L.P. and XYZ Holdings, LLC, (iv) any of the joint venturers, families, parent entities, associates, affiliates or subsidiaries of the people or entities identified in (i) – (iii) of this definitional

paragraph; and (v) each of the respective past, present or future officers, directors, stockholders, representatives, employees, attorneys, consultants, accountants, agents, executors, heirs, beneficiaries, general or limited partners or partnerships, predecessors, successors and assigns of the people or entities identified in (i) – (iv) of this definitional paragraph.

The foregoing Release shall not relieve any Released Party from fulfilling and fully and timely complying with all obligations that any Released Party has pursuant to the Stipulation of Settlement, the Notes or the Guaranty. If any Released Party does not fully and timely comply with and fulfill its respective obligations as set forth in the Stipulation of Settlement, the Notes and the Guaranty, the foregoing Release in no manner will insulate, estop or impede the Class' claims for, and the enforcement of, all of the Class' rights against such a Released Party to compel compliance with all terms of the Settlement.

9. Upon the Effective Date, each of the Released Parties, on its behalf and on behalf of each and all of their directors, officers, agents, affiliates, attorneys, successors, assigns and employees, shall be deemed to have, and by operation of this Final Judgment shall have fully, finally, and forever released, relinquished and discharged each and all of the Plaintiffs, Class Members, Class Counsel and the partners, associates and employees of the Class Counsel law firms, and the agents, experts and consultants retained by Class Counsel in the course of this Action, from all claims (including "Unknown Claims") arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Action or Released Claims.

10. The Court hereby vacates and expunges the Verdicts entered by the jury on November 15 and November 19, 2002 and the Judgment entered on April

29, 2003. The Court hereby vacates the Order entered on May 29, 2003 approving Plaintiffs' bill of costs.

11. In vacating and expunging the Verdicts and Judgment, the Court has considered and weighed the competing values of finality of judgment and right to relitigation of unreviewed disputes. The Court hereby finds that the right to relitigate disputes that have not been reviewed by an appellate court outweighs the interest in finality of judgment. Accordingly, the Verdicts and Judgment shall have no preclusive effect in any other litigation or proceeding.

12. Defendant National Partnership Investments Corp. and its affiliates, successors or assigns, shall not base future transactions, sales or transfers of any limited partnership interests held by any of the REAL Partnerships in any local limited partnerships or properties that were not transferred in the transaction as of December 30, 1998, on the authorizations or consents obtained as a result of the Consent Solicitations disseminated to the limited partners of the REAL Partnerships in August 1998.

13. Defendants and their affiliates, subsidiaries, successors or assigns shall not be entitled to be indemnified by any of the REAL Partnerships for any cost, expense or attorneys fees incurred, or to be incurred, or for the payment or satisfaction of the Judgment, the Settlement or Final Judgment, in this Action or any related action.

14. The Court will retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation of Settlement, and all signatories to the Stipulation of Settlement hereby submit to the jurisdiction of the Court for purposes of implementing and enforcing this Final Judgment and the Settlement embodied in the Stipulation of Settlement.

15. Neither the Stipulation of Settlement nor the Settlement, nor any of the negotiations or proceedings connected with it, nor any other document created in connection with the implementation of the settlement of this Action, with the exception of the confessions of judgment and the documents which support them, shall be:

a. Construed as an admission of any sort whatsoever by any party to the Stipulation of Settlement relating to any issue in the Action or Appeal or to any Released Claim;

b. Offered or received in evidence in the Action or Appeal or in any other action or proceeding between Plaintiffs and any signatory to this Stipulation of Settlement, except to effect or enforce the provisions of the Stipulation;

c. Referred to for any reason other than to effectuate or enforce the provisions of the Stipulation of Settlement, or as necessary in any action or proceeding relating to the Action or the facts underlying the Action (subject to the limitation in Section VI.4.b. of the Stipulation of Settlement).

PLAN OF DISTRIBUTION IS APPROVED

16. The Plan of Distribution, submitted concurrently with the Stipulation of Settlement, is found to be fair, reasonable and adequate and in the best interests of the Class, and it is hereby approved.

17. Each Class Member, who is an Eligible Claimant in accordance with and as defined by the Plan of Distribution, will receive his, her or its distribution from the Net Settlement Consideration based on the information provided to the Class Member by the Claims Administrator in the Investment Data Form accompanying the Settlement Notice, unless the Class Member provides

corrected information no later than October 31, 2003, in the manner provided for in the Settlement Notice and the accompanying Investment Data Form. Receipt of an Investment Data Form with the Notice reflects a preliminary determination that the Class Member is an Eligible Claimant. Corrected information or modifications pertaining to the Investment Data will be deemed to have been submitted when postmarked, if mailed by first class, or registered or certified mail, postage prepaid, addressed in accordance with the instructions given in the Notice and accompanying Investment Data Form, or, for all other submissions, at the time they are actually received by the Claims Administrator. To be accepted, the corrected information to the Investment Data must: (a) be completed in a manner that permits the Claims Administrator to determine the validity and credibility of the corrections or modifications to the Investment Data; and (b) be signed with an affirmation that the information is true and correct. The determination of whether to accept corrected information shall be made by the Claims Administrator in conjunction with Class Counsel, subject to review by this Court.

18. In any instance where a Class Member, who is an Eligible Claimant, in transferring Unit(s) or limited partnership interests to AIMCO Properties L.P. or any other AIMCO Entity, assigned his, her or its interest in this Action to AIMCO, and/or any entity in which AIMCO has or had a controlling interest or the legal representatives, successors, assigns or affiliates of AIMCO, such assignment shall, for purposes of determining the amount to be distributed to such Class Members, be deemed a nullity, and each such Class Member will receive his, her or its allocable share of the Net Settlement Fund to which he, she or it would be entitled, based on the Investment Data Form, as if said assignment had never been made.

19. In any instance where a Class Member does not receive an Investment Data Form along with the Settlement Notice, it has been preliminarily determined that the Class Member is not an Eligible Claimant and will not receive a distribution from the Net Settlement Consideration. Any Class Member who disputes such preliminary determination must provide the Claims Administrator with a written explanation and documentation in support of his, her or its position no later than October 31, 2003 in accordance with ¶ 11 of the Plan of Distribution.

20. Any person who claims entitlement to share in the Net Settlement Consideration as a result of purchasing Unit(s) or limited partnership interests from a Class Member/ Eligible Claimant and who did not receive the March 1999 REIT Transaction distribution must provide the Claims Administrator with a written explanation and documentation in support of his, her or its position no later than October 31, 2003 in accordance with ¶ 12 of the Plan of Distribution.

21. Any dispute arising concerning the right of a Class Member or the purchaser of a Class Member's Unit(s) or limited partnership interests to receive a distribution shall be finally resolved by the Court, or the Court's designee, in Los Angeles, California. Class Counsel shall report to the Court no later than February 2, 2004, about the disputes, if any, that need to be resolved between Class Members and any purchaser of a Class Member's Unit(s) or limited partnership interests and Class Counsel's recommendation as to the most efficient way to resolve such disputes. Distributions from the Net Settlement Consideration need not await resolution of any or all disputed claims. Class Counsel is authorized to make initial and subsequent distributions after reserving sufficient amounts to pay disputed claims upon their final resolution.

22. For purposes of transfers by operation of law (e.g., gifts, bequests, divorce and a change in account title such as an individual account to a retirement account), the transferee will be considered the Class Member.

23. Funds remaining in the Settlement Account from uncashed checks or bad addresses which are, in the aggregate, not economical to redistribute to the Class shall be given to one or more 501(c) corporations selected by Co-Lead Class Counsel and approved by the Court.

APPROVAL OF CLASS COUNSEL'S FEE PETITION

24. Class Counsel are hereby awarded fees in the amount of 35 % of the Settlement Consideration, as each component of the Settlement Consideration is received and deposited in the Settlement Fund, and litigation expenses in the amount of $ 5,740,720.23, said fees and expenses to be payable together with interest from the date of establishment of the Settlement Consideration, which Attorney's Fees and Expenses the Court finds to be fair and reasonable. The Court also approves Class Counsel's incurring costs of notice and the initial Net Settlement Fund distribution not to exceed $ 50,000. The costs of each future distribution (including, but not limited to, additional expenses incurred by Class Counsel in conjunction with administering the Settlement) of the Net Settlement Fund shall be borne by the Fund at the time of such distributions.

25. Each of the Named Plaintiffs, Wilmonte A. Nasutavicus, Aylin Gulbenkian, Dr. Richard Henry Bolt and Jane Bolt, is hereby awarded an Incentive Award in the amount of Ten Thousand Dollars ($10,000), which shall be paid from the Settlement Consideration in accordance with the terms of the Stipulation of Settlement. In addition, Sheila L. Field, the sole named Plaintiff in the action against the seven REAL Partnerships and Housing Programs, consolidated in this

Action, is hereby awarded an Incentive Award in the amount of Two Thousand Dollars ($2,000.00) to be paid from the Settlement Consideration.

ENTERED this 24 day of November, 2003.

BY THE COURT:

Hon. Dean D. Pregerson, J.

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Attorneys for Plaintiff Michael Rodman
on behalf of himself and all others
similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL RODMAN,

Plaintiff,

v.

SAFEWAY INC.,

Defendant.

Case No. 3:11-cv-03003-JST

DECLARATION OF JAMES C. SHAH IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, EXPENSE REIMBURSEMENT, SERVICE AWARD AND APPROVAL OF JUDGMENT DISTRIBUTION PLAN

I, James C. Shah, declare as follows:

1. I am a partner at the law firm of Shepherd, Finkelman, Miller & Shah, LLP ("SFMS" or the "Firm"). I am admitted to practice in California, Pennsylvania, New Jersey, New York and Wisconsin, as well as in multiple federal district and circuit courts. SFMS was appointed Co-Lead Counsel in the above-captioned litigation (the "Litigation"). I submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Costs and Service Award.

2. SFMS has actively participated in all aspects of the Litigation for more than six years, including, but not limited to: (1) case investigation; (2) drafting of the Complaint; (3)

communicating with the representative plaintiff; (4) formal discovery; (5) legal research; (6) drafting of motions and briefs; (7) court appearances; (8) participating in Litigation strategy decisions; (9) trial preparation; (10) communicating with class members throughout the course of the Litigation; (11) participating in settlement negotiations; (12) participating in the appeal process, including briefing; and (13) participating in the judgment distribution process. Thus, I am fully familiar with the proceedings. If called upon, I am competent to testify that the following facts are true and correct to the best of my knowledge, information, and belief.

3. SFMS has dedicated significant time and resources to prosecuting the Litigation on behalf of the class. The Firm's legal services were performed on a wholly contingent fee basis.

4. SFMS maintained detailed time records regarding the work performed in connection with the prosecution of the Litigation. Attached hereto as Exhibit "1" is a time summary chart reflecting the significant time that SFMS has dedicated to the Litigation. This chart was completed by SFMS based upon the records created contemporaneously during the pendency of the Litigation.

5. The total number of hours spent by the attorneys, paralegals and law clerks working on behalf of SFMS relating to the Litigation is 3,175.40. As reflected in Exhibit "1," through December 30, 2017, SFMS has accumulated a lodestar totaling $1,923,363.00.

6. The hourly rates range from $175 for certain paralegal work up to $775 for experienced senior litigation counsel. Based on my knowledge and experience, the hourly rates charged by SFMS are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. The hourly rates have been routinely approved by courts throughout the United States. *See, e.g., In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation*, MDL No. 2540 (D.N.J.) [Dkt 54]; *Q+Food v. Mitsubishi Fuso*

Truck of America, Inc. (D.N.J.), 3:14-cv-06046 [Dkt 70]; *In re: Ford Motor Co. Spark Plug and 3-Valve Engine Products Liability Litigation*, Case No. 1:12-md-02316-BYP (N.D. Oh. 2016) [Dkt. 122]; *Corson v. Toyota Motor Sales U.S.A., Inc.*, Case No. 1:12-cv-8499-JGB (C.D. Ca. 2016) [Dkt. 107]; *Allison Gay v. Tom's of Maine, Inc.*, Case No. 0:14-cv-60604-KMM (S.D. Fl. 2016) [Dkt. 43]; *Trewin v. Church and Dwight, Inc.*, Case No. 3:12-cv-01475-MAS-DEA (D.N.J. 2015) [Dkt. 68]; *Golden Star, Inc. v. Mass Mut. Life Ins. Co.*, Case No. 3:11-30235-MGM (D. Mass. 2015) [Dtk. 55]; *Butler National Corp. v. The Union Central Life Insurance Co.*, Case No. 1-1:12-cv-00177-SJD-KLL (S.D. Oh. 2014) [Dkt. 55]; *In re Whirlpool Corp. Front Loading Washer Products Liability Litigation*, Case No. 1:08-WP-65000 (N.D. Oh. 2016) [Dkt. 656]; and *Henderson v. Volvo Cars of North America, LLC*, 2013 WL 1192479 (D.N.J. March 22, 2013).

7. As reflected in Exhibit "2," SFMS, to date, has also expended a total of $80,664.99 in unreimbursed expenses in connection with the prosecution of the Litigation. The expenses include court filing and process fees, expert fees, copying costs, postage charges, telephone charges, computer research charges, deposition-related costs and transportation and travel expenses.

8. These expenses are reflected in the books and records of SFMS and are a true and accurate summary of the expenses for this case. The expenses for which reimbursement is sought all were necessarily incurred and are reasonable in amount.

9. SFMS has a lengthy history of representing consumers, employees, businesses and other clients in class action and other commercial litigation. A representative sample of the Firm's recent cases includes:

• Co-Lead Counsel: *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation*, MDL No. 2540 (D.N.J.) (Hon. Chief Judge Jerome B. Simandle) ($60 million common fund settlement of claims involving defective diesel emissions control technology);

- Co-Lead Counsel: *Q+Food v. Mitsubishi Fuso Truck of America, Inc.* (D.N.J.), 3:14-cv-06046 (Hon. Douglas E. Arpert) ($17.5 million common fund settlement of claims involving defective diesel emissions control technology);

- Co-Lead Counsel: *In re: Ford Motor Co. Spark Plug and 3-Valve Engine Products Liability Litigation* (N.D. Oh.), 1:12-md–02316 (Hon. Benita Y. Pearson) (nationwide settlement of engine defect claims);

- Co-Lead Counsel: *In re Land Rover LR3 Tire Wear Products Liability Litig.*, MDL No. 2008 (C.D. Ca.) (Hon. Andrew J. Guilford) (nationwide settlement of alignment defect claims);

- Co-Lead Counsel: *In re: Michelin North America, Inc. PAX System Marketing and Sales Practices Litigation*, MDL No. 1911 (D.Md.) (Hon. Robert W. Titus) (nationwide settlement of vehicle defect claims);

- Co-Lead Counsel: *Chandran v. BMW of North America, LLC, et al.*, Case No. 2:08-CV-02619 (D.N.J.) (Hon. Katharine S. Hayden) (nationwide settlement of tire defect claims);

- Plaintiffs' Steering Committee: *In re Whirlpool Corp. Front Loading Washer Products Liability Litigation*, MDL No. 2001 (N.D. Oh.) (Hon. Christopher A. Boyko) (nationwide settlement of washing machine defect claims);

- Co-Lead Counsel: *Henderson, et al. v. Volvo Cars of N.A., LLC*, 2:09-cv-04146 (D.N.J.) (Hon. Claire C. Cecchi) (nationwide settlement of defective transmission claims);

- Plaintiffs' Steering Committee: *In re: Dial Complete Marketing and Sales Practices Litigation*, MDL 2263 (D.N.H.) (Hon. Steven J. McAuliffe);

- Co-Lead Counsel: *In re: LG Front Load Washing Machine Class Action Litig.*, 2:08-cv-00051 (D.N.J.) (Hon. Madeline Cox Arleo) (nationwide settlement of washing machine defect claims);

- Plaintiffs' Steering Committee: *In re: MI Windows and Doors Inc. Products Liability Litigation*, MDL 2333 (D.S.C.) (Hon. David C. Norton) (nationwide settlement of window defect claims);

- Co-Lead Counsel: *D'Andrea v. K. Hovnanian, et al.*, L-734-06 (Sup. Ct. NJ) (Hon. Jean B. McMaster) ($21 million common fund settlement of claims involving defective HVAC systems);

- Co-Lead Counsel: *Koertge, et al. v. LG Electronics USA, Inc.*, No. 2:12-cv-6204 (D.N.J.) (Hon. Jose L. Linares) (nationwide settlement of stereo defect claims);

- Co-Lead Counsel: *Leiner v. Johnson & Johnson Consumer Companies, Inc.*, 15-cv-5876 (N.D. Ill.) (Hon. Elaine E. Bucklo) (nationwide settlement of false advertising claims);

- Co-Lead Counsel: *Gay v. Tom's of Maine, Inc.*, 14-cv-60604 (S.D. Fl.) (Hon. Chief Judge K. Michael Moore) (nationwide settlement of false advertising claims);

- Co-Lead Counsel: *Trewin v. Church & Dwight Co., Inc.*, 3:12-cv-01475 (D.N.J.) (Hon. Michael A. Shipp) (nationwide settlement of false advertising claims); and

- Lead Counsel: *Shorewest Realtors, Inc. v. Journal Sentinel, Inc.* (Milwaukee Count Cir. Ct.) (Hon. Richard J. Sankovitz) (nationwide settlement of circulation overstatement

claims against newspaper).

10. SFMS has a history of vigorously representing the interests of its clients in all matters, including class action litigation. Indeed, SFMS has recently tried, as lead or co-lead, three class action cases in the past several years, including trials in the Northern District of California (*Bowerman, et al. v. Field Asset Services, LLC*, Case No. C13-00057 WHO (N.D. Ca. 2017)), as well as the District of Massachusetts (*Healthcare Strategies, Inc., et al v. ING Life Insurance and Annuity Company*, Case No. 3:11-cv-00282 (WGY) (D. Conn. 2013) (a Connecticut case that was tried in the District of Massachusetts)), and the District of Colorado *CGC Holding Company, LLC, et al. v. Sandy Hutchens, et al.* (Civil Action No. 11-cv-01012-RBJ (D. Col. 2017)).

11. The class representative, Michael Rodman ("Rodman"), played an instrumental role with respect to the commencement and, ultimately, the result obtained in this Litigation. At the outset of the case, Rodman worked with Class Counsel to provide an understanding of the facts that served as the basis of his claims against Defendant, Safeway, Inc. ("Safeway"), and also reviewed the draft Complaint and provided input prior to its filing. Throughout the course of the Litigation, Rodman worked closely with Class Counsel. In addition to responding to Safeway's discovery requests, Rodman traveled on two separate occasions from Philadelphia to San Francisco in furtherance of the Litigation. The first time was in late 2011, to attend the Early Neutral Evaluation with Stephen E. Taylor; the second time was in October 2013, where he sat for his full-day deposition. In addition, Rodman was prepared to travel to San Francisco to be present for the trial that was scheduled to occur in October 2015. During the more than six years of the Litigation, Rodman vigorously represented the interests of the class and was an excellent class representative. I believe that the requested $10,000 Service Award is more than warranted under the circumstances.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed this 4th day of January, 2018 at Collingswood, New Jersey.

/s/James C. Shah
James C. Shah

Exhibit 1

Rodman v. Safeway, Inc.
Case No. 11-cv-03003

SFMS Fees

Timekeeper	**Hours**	**Rate**	**Total**
Natalie Finkelman Bennett	7	$750.00	$5,250.00
Valerie Chang	154.6	$375.00	$57,975.00
Elena DiBattista	3.5	$195.00	$682.50
Emily Finestone	27.8	$350.00	$9,730.00
Kathy Haight	50.3	$175.00	$8,802.50
Betsy F. Hitriz	25.3	$195.00	$4,933.50
Gabriela Holland	45.8	$185.00	$8,473.00
Karen Leser-Grenon	0.4	$475.00	$190.00
Rose Luzon	330	$575.00	$189,750.00
Pamela Mauger	29.6	$185.00	$5,476.00
James E. Miller	8.5	$775.00	$6,587.50
Christine Mon	49	$195.00	$9,555.50
Sue Moss	100.9	$195.00	$19,675.50
Michael Ols	12	$185.00	$2,220.00
Paul Rettinger	53.9	$475.00	$25,602.50
Laurie Rubinow	2.7	$650.00	$1,755.00
Chiharu Sekino	50.3	$350.00	$17,605.00
James C. Shah	1250.3	$750.00	$937,725.00
Scott R. Shepherd	465.8	$775.00	$360,995.00
Kolin Tang	399.1	$475.00	$189,572.50
Debbie Tutler	2.6	$175.00	$455.00
Isabel Vasquez	3.7	$195.00	$721.50
Itza Vilaboy	2.1	$185.00	$388.50
Lesley Weaver	62.9	$600.00	$37,740.00
Alexa White	4.7	$195.00	$916.50
Casey Yamasaki	1.3	$185.00	$240.50
Nathan C. Zipperian	31.3	$650.00	$20,345.00
Totals	**3,175.40**		**$1,923,363.00**

Exhibit 2

Rodman v. Safeway, Inc.
Case No. 11-cv-03003

SFMS Expenses

Expenses	**Amount**
Filing Fees/Summons/Couriers	$2,319.75
Computer Research/Access	$4,450.35
Court Reporting/Transcripts	$1,217.70
Experts/Investigators	$19,514.70
External Copying/Internal Copying	$7,244.20
Postage/Overnight Deliveries	$1,826.30
Process Services/Couriers	$1,477.45
Telephone/Internet Charges	$250.32
Travel and Related Expenses	$42,364.22
Grand Total	$80,664.99

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101 Second Street, Suite 1800
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Telephone: (415) 543-8700

Attorneys for Defendant SAFEWAY INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL RODMAN, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SAFEWAY INC.,

Defendant.

Case No. 3:11-CV-03003 JST (JCS)

DECLARATION OF BRIAN DEVERY

Date: March 29, 2018
Time: 2:00 p.m.
Courtroom: 9 – 19th Floor

The Honorable Jon S. Tigar

I, Brian Devery, pursuant to section 1746 of title 28 of the United States Code, declare as follows:

1. I am a Project Manager with Angeion Group ("Angeion"), the Judgment Administrator retained in this matter. Angeion's office is located at 1801 Market Street, Suite 660, Philadelphia, PA 19103. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. Angeion was retained by the parties and appointed by the Court to serve as Judgment Administrator and to, among other tasks (1) send Notice to class members via Email and USPS where applicable; (2) establish and maintain a case specific website and email address; (3) respond to Class Member inquiries; and (4) perform other duties as following the Court's Order Regarding Judgment Distribution dated November 28, 2017.

Class List

3. On or about November 28, 2017, Angeion received from the Defendant an Excel spreadsheet containing names, mailing addresses, and email addresses for members of the class ("Class List"). Angeion reviewed the spreadsheet to determine the appropriate noticing method for each class member contained on the Class List. The Class List, as provided, had a name, address and email address for each Class Member. Angeion reviewed the email addresses provided for proper syntax and to ensure each email address appeared complete. Angeion also updated the Class List to account for a list received from Class Counsel reflecting address changes and updates they had received from class members in connection with prior notices and throughout the duration of the litigation.

4. After reviewing the Class List, Angeion determined that all class members had email addresses and would receive Notice via email. Any Class Member whose Email Notice was undeliverable would be sent Notice via the United States Postal Service ("USPS").

5. The total class list consists of 297,822 Class Members.

Dissemination of the Judgment Notice

Email Notices

6. On December 15, 2017, Angeion caused the Court approved Notice to be sent via email to all Class Members. A true and accurate copy of the Email Notice is attached hereto as Exhibit A.

7. Of the 297,822 emails sent, a total of 82,555 emails were not delivered.

Mailed Notice

8. On December 18, 2017, Angeion reviewed the list of undeliverable emails and prepared to effectuate a mailing of the Postcard Notice to these Class Members. During that review, Angeion discovered that many Class Members shared the same physical address(es) and that these addresses were often affiliated with hotels and other vacation destinations.[1] Angeion consulted with Counsel for the Parties and removed the records that were obviously hotels or vacation destinations from the mailing data. Angeion is working with the Parties to locate a proper mailing address for these Class Members.

9. On December 20, 2017, Angeion caused the address information to be updated utilizing the USPS National Change of Address ("NCOA") database for 81,696 Class Members for whom email notice was attempted but not successful and where the address associated did not appear to be a vacation destination or hotel.

10. On December 21, 2017, Angeion caused the appropriate Postcard Notice to be mailed to the Class Members who did not receive a notice via email. A true and accurate copy of the Postcard Notice is attached hereto as Exhibit B.

11. Through January 2, 2018, Angeion has received a total of 158 Notices returned as undeliverable from the USPS with a forwarding address. Angeion updated our internal database and is in the process of forwarding any Notices not automatically forwarded by the USPS to the updated addresses as provided by the USPS. Should any forwarded postcard Notice be returned as

[1] The addresses here at issue were reviewed and determined to be hotels in Las Vegas and vacation destinations such as Disney Land.

undeliverable without another forwarding address, Angeion will conduct a skip trace to locate a new address for those class members.

12. Angeion received a total of 7,296 Notices that have been returned through January 2, 2018 as undeliverable from the USPS without a forwarding address.

13. Angeion will conduct skip traces utilizing Lexis Nexis, a nationally recognized address search firm. Lexis Nexis combines numerous public record and publicly available sources, which contain nationwide person locator, authentication and verification information for approximately 400 million unique individuals based in the United States and territories. Its sources include national credit reporting companies header databases, current and historic address files, white page phone publisher data, an Electronic Directory Assistance type database, Social Security death records from the Social Security Administration, and numerous public record sources, including motor vehicle registrations, driver's license databases, voter registration databases, public license data and property ownership records, and data collected by marketing, registrations and warranty card aggregators.

14. For any Class Member where the Postcard Notice is returned undeliverable and a new address is located, the class database will be updated, and a Postcard Notice will be mailed to the new address.

15. In response to the Notice, many class members have contacted Angeion or Class Counsel to provide updated address information, and Angeion is in the process of incorporating this information into its Class List.

Website

16. On December 15, 2017 Angeion took control of and updated the following website that has been devoted to this case: www.SafewayGroceryDeliveryClassAction.com. The Website contains general information about the Judgment and contains relevant Court documents (including the Long-Form Class Notice and the Order (ECF #474) and the Parties Joint Stipulation (ECF #474) Regarding Judgment Distribution, plus important dates and deadlines pertinent to this matter. The Website also has a "Contact Us" page whereby Class Members can contact Angeion via email to submit address updates and additional questions regarding the Judgment. Angeion will post Class

Counsel's Motion for Attorneys' Fees, Service Award, and to approve the proposed Plan of Distribution shortly after it is filed.

Class Member Inquiries/Objections

17. As of January 2, 2018, Angeion has received, either directly or through Class Counsel, various communications from Class Members, primarily providing updated contact information or asking questions (primarily about Judgment Distribution logistics). Angeion has and will continue to respond to such inquiries and, when appropriate, notify Class Counsel with respect to any substantive questions so that Class Counsel can respond to them. The deadline for Class Members to file with the Court any objection is March 2, 2018. In connection with its work to date, Angeion has not processed any inquiries from class members that could be viewed as objections to the fee request, Service Award, or Plan of Distribution.

Distribution and Remaining Tasks

18. Upon the issuance of a final order from this Court authorizing distribution to Class Members, Angeion will cause the distribution of Judgment Fund to Class Members to take place in accordance with the terms directed by this Court.

19. Angeion does not anticipate that the total administration fees for the aforementioned work and the additional work to mail checks to class members will exceed the initial estimate of $366,443.00. These costs are being paid by Safeway and will not reduce the amounts distributed to Class Members.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed this 2nd day of January 2018 at Oakdale, NY.

Brian Devery

Exhibit A

[redacted]

From: Safeway Judgment Administrator <administrator@qgemail.com>
Sent: Friday, December 15, 2017 11:01 AM
To: [redacted]
Subject: Legal Notice Regarding $42 Million Judgment entered in Safeway/Vons/Genuardis Grocery Delivery Class Action (Rodman v. Safeway)

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Safeway's records show that you are entitled to be paid from a $42 million class action judgment. Please read this notice carefully.

A court authorized this notice. It is not a solicitation from a lawyer.

- In June 2014, you were notified that you are a class member in a class action titled *Rodman v. Safeway Inc.*, in which the Plaintiff alleged that Safeway Inc. overcharged for certain groceries ordered for delivery through Safeway.com, Genuardis.com, and Vons.com.

- On November 30, 2015, the District Court entered a Judgment against Safeway and in favor of the Class members. Safeway appealed. On August 4, 2017, the Ninth Circuit Court of Appeals affirmed the Judgment. That Judgment is now final.

- The total Judgment amount is approximately $42 million. This is the full amount of all overcharges alleged in the lawsuit, plus pre- and post-judgment interest.

- The purpose of this notice is to inform you that:

    - The court-appointed Judgment Administrator will mail you a check at the following address representing your share of the Judgment after deduction for attorneys' fees, expenses, and service award ordered by the Court:

Your Reference number:	**SWY**[redacted]
Your Name and Address	[redacted]

    - You do not need to do anything in order to receive a check, but you should confirm that the name of the check recipient and mailing address listed above are correct;

    - Class Counsel intend to request that the Court award 35% of the Judgment, for attorneys' fees and expenses to Class Counsel for their more than six years of work

on this case and a $10,000 service award to the Class Representative Michael Rodman for his efforts in the prosecution of this lawsuit;

- **Assuming Class Counsel's request for fees, expenses, and service award are granted by the Court, the amount of the check that will be mailed to class members will be, on average, about 89% of the markup charged;**

- You may object or otherwise comment on Class Counsel's request for fees and expenses, the proposed service award, and the proposed plan of distribution. You may also object or otherwise comment on Class Counsel's request that the Court approve the distribution of any leftover funds from the Judgment after distributions to class members be sent to Meals on Wheels.

- **Your legal rights are affected whether you act or don't act. Read this notice carefully.**

Your Legal Rights Regarding the $42 Million Judgment	
DO NOTHING	If you do nothing, the court-appointed Judgment Administrator will mail a check representing your proportionate share of the Judgment (after deduction of attorneys' fees, expenses, and service award), to the person and mailing address listed above.
UPDATE YOUR ADDRESS, OR CHANGE THE NAME OF THE CHECK RECIPIENT	If the mailing address listed is incorrect, or if the check should be made out to someone else (such as a business entity), you can provide updated information by sending an email to SafewayJudgment@AdministratorClassAction.com, or by sending a letter, first-class mail to: Safeway Judgment Administrator, 1801 Market Street, Ste 660, Philadelphia, PA 19103.
OBJECT OR OTHERWISE COMMENT Deadline: March 2, 2018	You may object or otherwise comment on Class Counsel's request for attorneys' fees, expense reimbursement, and/or the proposed service award for Class Representative Michael Rodman, and/or the proposed distribution plan.
ATTEND THE HEARING	You can ask to speak at the hearing on March 29, 2018 about Class Counsel's request for attorneys' fees and expenses, the proposed service award, and/or the proposed distribution plan.

- **More information about the lawsuit, the judgment and your options is available at www.SafewayGroceryDeliveryClassAction.com.**

BASIC INFORMATION

1. Why did I get this notice?

Safeway's records show that you registered for its home delivery service prior to November 15, 2011, and received one or more orders for home delivery through Safeway.com, Vons.com, or Genuardis.com that were subject to a price markup that was the subject of this litigation. You were previously notified that you were a member of the certified class. The Honorable Jon S. Tigar of the United States District Court for the Northern District of California is overseeing this class action. The lawsuit is known as *Rodman v. Safeway, Inc.*, Civil Action No. 11-3003 (N.D. Cal.).

2. What is this lawsuit about?

Plaintiff Michael Rodman filed this lawsuit in June 2011. He alleged that Safeway, Vons and Genuardis (collectively "Safeway") breached their online grocery delivery terms and conditions by charging more than the prices charged for the same items in the store from which they were delivered on the day of delivery. Specifically, Safeway added a markup equal to about 10% of the in-store price of most non-Club Card items ordered for delivery.

Please note, the lawsuit challenged the markup as applied: (1) only to customers who registered before November 15, 2011; and (2) only to orders placed from April 2010, through **December 21, 2014**. Therefore, any markups which Safeway applied or continues to apply to any orders placed after December 21, 2014 are not part of this lawsuit.

3. What was the result of this lawsuit?

The Court ruled in March 2014 that this case should proceed as a class action, and in November 2015 the Court entered a Judgment against Safeway for 100% of the markup at issue after deduction for returns/refunds, plus interest. Safeway appealed. In August 2017, the Court of Appeals for the Ninth Circuit affirmed the Judgment.

4. When will money be available for class members?

Checks will be mailed after there is a final Order on Class Counsel's Motion for an award of attorneys' fees, and expenses and a service award for Class Representative Michael Rodman, and for approval of the plan of distribution. The hearing on the Motion is currently scheduled for 2:00 p.m. on **March 29, 2018** at Courtroom 9 on the 19th Floor of the United States Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102. Updates regarding the scheduling and results of the hearing and/or the timing of distribution of class members' checks will be posted on www.SafewayGroceryDeliveryClassAction.com.

5. How was my share of the Judgment determined?

The amount of your payment will be the amount of the markup you were charged by Safeway, as reflected in Safeway's records, with adjustments for refunds/returns, plus pre- and post-judgment interest based on the dates of your grocery transactions, minus your proportionate share of any attorneys' fees and expenses, and service award approved by the Court.

Safeway's transaction data reflects all of the grocery delivery transactions of each class member. Third party experts analyzed the relevant transaction data and determined the amount of the markup paid by each class member for each transaction, plus the pre-judgment interest associated with each transaction, with appropriate adjustments for refunds/returns, and submitted their reports to the Court. Based on those reports, the Court entered the Judgment, which includes the aggregate markup and associated pre-judgment interest for each member of the class. You are entitled to your proportionate share of the Judgment, minus any attorneys' fees, service award and expenses awarded by the Court. For example, if the aggregate markup you paid plus the pre-judgment interest associated with your transactions represents 2% of the aggregate markup, you will get 2% of the amount of the net Judgment available for distribution. Please note that because the markup at issue was small (about 10% of the price of non-Club Card items) and there are approximately three hundred thousand class members, most class members will receive a small percentage of the Judgment.

6. Do I have to do anything to get my share of the Judgment?

No. Your check will be mailed to you at the address listed on this Notice. If the mailing address listed for you is incorrect, or if the check should be made out to someone other than you (such as to a business entity), you should send an email to SafewayJudgment@AdministratorClassAction.com, or send a letter, first-class mail to: Safeway Judgment Administrator, 1801 Market Street, Ste 660, Philadelphia, PA 19103. You should make any corrections no later than **March 2, 2018**.

THE ATTORNEYS REPRESENTING YOU

7. Do I have an attorney in this case?

Yes. The Court has appointed Steven A. Schwartz and Timothy N. Mathews of Chimicles & Tikellis, LLP, and James C. Shah of Shepherd, Finkelman, Miller & Shah, LLP, as "Class Counsel." Their contact information is listed below. Class Counsel also hired another firm that specializes in appeals, Gupta Wessler PLLC, to assist with representing the Class in Safeway's appeal of the Judgment.

8. How will the attorneys be paid?

Class Counsel intend to request that the Court award 35% of the Judgment to pay all attorneys' fees, reimbursement of expenses. Class Counsel spent thousands of hours over more than six years achieving the Judgment and then defending the Judgment on appeal, and they also spent hundreds of thousands of dollars in out-of-pocket costs including payment of experts and other costs required for the successful prosecution of this case. **If the Court approves**

that request, class members will be mailed a check representing, on average, about 89% of the markup they paid.

9. What will the Class Representative Michael Rodman receive?

Class Counsel will request that the Court approve a $10,000 service award for Mr. Rodman for his services as the Class Representative. In addition to filing the lawsuit on behalf of all Class Members, Mr. Rodman's efforts included producing hundreds of pages of his personal records (such as bank and credit card statements), responding to several sets of written questions by Safeway, traveling from Philadelphia to San Francisco to appear for a court-ordered settlement conference and subsequently for a full-day deposition, preparing to appear at trial and working with Class Counsel over the course of more than six years to obtain the Judgment and defend it against Safeway's appeal.

10. What happens if there is money leftover because some Class Members do not cash their checks?

Once checks are mailed, class members will have 90 days to cash them. After checks are mailed to class members, the Judgment Administrator will send at least three emails reminding class members to cash their checks. If you lose your check, please request a replacement check by sending an email to SafewayJudgment@AdministratorClassAction.com, or by sending a letter, first-class mail to: Safeway Judgment Administrator, 1801 Market Street, Ste 660, Philadelphia, PA 19103. After reasonable efforts to encourage class members to cash checks are exhausted, it is likely that there will be money remaining due to uncashed checks. Depending on that amount, Class Counsel will likely request that, if practicable, the Court approve sending a second check to those class members who cashed their first checks in proportion to their share of the Judgment. To the extent there is any money remaining, Class Counsel will request, and Safeway has agreed, that the Court order that such remaining money in the Judgment Fund be distributed in to Meals on Wheels, a national senior nutrition program, that, among other things, delivers nutritious meals to senior citizens. Further information about Meals on Wheels is available at https://mealsonwheelsamerica.org.

OBJECTING TO CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES AND EXPENSES AND/OR THE PROPOSED SERVICE AWARD FOR CLASS REPRESENTATIVE MICHAEL RODMAN AND/OR THE DISTRIBUTION PLAN

11. Can I object to or otherwise comment on Class Counsel's fee request, the proposed Service award, and/or the proposed distribution plan?

The Judgment recovered 100% of the alleged overcharges plus pre- and post-judgment interest. You may not object to the Judgment. You are not required to object or comment on the fee request or the proposed service award or the proposed distribution plan. You may, however, object or otherwise comment on Class Counsel's request for payment of fees, expenses, and/or Mr. Rodman's service award, and/or the proposed distribution plan if you wish. Class Counsel's Motion and supporting evidence for an award of attorneys' fees, expenses, and the proposed service award, and the proposed distribution plan will be filed with the Court and available for review at www.SafewayGroceryDeliveryClassAction.com prior to

the objection deadline, and it will provide additional details concerning the efforts of Class Counsel and Mr. Rodman in achieving the judgment over the course of more than six years.

12. How do I object?

If you want to object to Class Counsel's request for an award of fees, expenses, or the proposed service award, or the proposed distribution plan, you must state your reasons in writing why the Court should not approve those requests. To do so, you or your attorney must file with the Court a written objection with any necessary supporting papers. Your objection must contain: (1) the name of this lawsuit (*Rodman v. Safeway, Inc.*, Civil Action No. 11-3003 (N.D. Cal.)); (2) your full name and current mailing and email address (and, if different, the name, address and email address on the Notice you received); (3) the specific reasons for your objection; (4) any evidence and supporting papers (including, but not limited to, all briefs, written evidence, and declarations) that you want the Court to consider in support of your objection; (5) a list, with docket numbers, of any objections you or your attorney has filed in class actions in the last five years; (6) your signature; (7) the date of your signature; and (8) if you plan to appear and speak at the Fairness Hearing, on your own or through your own lawyer, a statement indicating that it is your "Notice of Intent to Appear" at the Fairness Hearing.

You must mail your written objection and all supporting papers including any Notice of Intent to Appear at the address below and postmarked no later than March 2, 2018.

Clerk for *Rodman v. Safeway, Inc.*, Civil Action No. 11-3003-JST (N.D. Cal.)
United States Court for the Northern District of California
450 Golden Gate Avenue
San Francisco, California, 94102

13. Should I get my own attorney?

You do not need to hire your own lawyer. Class Counsel have been working on your behalf and will continue to represent class members in connection with the distribution of the Judgment. You may hire your own lawyer if you wish, however. If you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you in connection with Class Counsel's request for attorneys' fees and expenses, or the proposed service award to Class Representative Michael Rodman.

GETTING MORE INFORMATION

14. Are more details available?

Yes. Visit the website, www.SafewayGroceryDeliveryClassAction.com, where you will find copies of significant pleadings, Orders of the Court, this Notice and prior notices sent to class members. The Motion and supporting papers providing the detailed reasons supporting Class Counsel's request for attorneys' fees and expenses and the proposed service award and proposed distribution plan will also be posted on the website shortly after it is filed. You can also write to the Judgment Administrator to provide updated information about your mailing address or email address.

You may also contact one of the following attorneys appointed by the Court to serve as Class Counsel:

Court Appointed Class Counsel

Steven A. Schwartz
Timothy N. Mathews
CHIMICLES & TIKELLIS LLP
361 West Lancaster Avenue
Haverford, PA 19041
(610) 642-8500
E-mail: SAS@chimicles.com
TNM@chimicles.com

James C. Shah
SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
35 East State Street
Media, PA 19063
(610) 891-9880
Email: jshah@sfmslaw.com

PLEASE DO NOT CALL THE COURT OR SAFEWAY.

Unsubscribe

Exhibit B

www.SafewayGroceryDeliveryClassAction.com
Safeway Judgment Administrator
1801 Market Street, Ste 660
Philadelphia, PA 19103

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE PAID
xxxxxxx
PERMIT #xxx

LEGAL NOTICE

In June 2014, you were notified that you are a class member in a class action titled Rodman v. Safeway Inc., in which the Plaintiff alleged that Safeway Inc. overcharged for certain groceries ordered for delivery through Safeway.com, Genuardis.com, and Vons.com.

A judgment has been entered against Safeway requiring Safeway to refund overcharges for grocery delivery. You have been identified as a class member who is entitled to payment. Please read this notice carefully

The total Judgment amount is approximately $42 million. This is the full amount of all overcharges alleged in the lawsuit, plus pre- and post-judgment interest.

A federal court authorized this notice.
This is not a solicitation from a lawyer.

BARCODE

Postal Service: Please do not mark barcode

Reference # : xxxxxxxxxx
[NAME]
[STREET]
[CITY STATE ZIP]
[POSTAL BAR CODE]

A class action judgment has been entered against Safeway, Inc., for overcharging for certain groceries ordered online for delivery through Safeway.com, Vons.com, and Genuardis.com between April 2010 and December 21, 2014. The judgment is for 100% of the markup at issue, plus interest.

According to Safeway's records, you are a Class member who is entitled to a share of a judgment. Assuming the contact information on this postcard is accurate, you do not need to do anything to receive a check. Your check will be mailed within a few months. If the contact information on this postcard is incorrect, or if the check should be payable to someone other than you (like a business entity), you should send an email to SafewayJudgment@AdministratorClassAction.com or a letter by first-class mail to the Judgment Administrator at the return address on this Notice.

The Court appointed Steven A. Schwartz and Timothy N. Mathews of Chimicles & Tikellis, LLP, and James C. Shah of Shepherd, Finkelman, Miller & Shah, LLP, as "Class Counsel." Class Counsel invested thousands of hours and hundreds of thousands of dollars in out-of-pocket costs on this case over the course of six years. After achieving the judgment, which provides full relief, they successfully defended it on appeal. For their efforts, Class Counsel intends to request that the Court award 35% of the Judgment to pay all attorneys' fees and reimbursement of expenses. Class Counsel will also request a service award of $10,000 for the representative plaintiff, who invested significant time and effort on this case on behalf of himself and all class members. If the Court approves Class Counsel's requests for Attorneys' fees and a service award, **class members will receive, on average, a net recovery of about 89% of the markup charged.**

The hearing on the Motion is currently scheduled for 2:00 p.m. on **March 29, 2018** at Courtroom 9 on the 19th Floor of the United States Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102. **You do not need to attend the hearing.**

If you wish to object to Class Counsel's request for an award of fees, expenses, the proposed service award, or the proposed distribution plan, you or your attorney must file with the Court a written objection. Your objection must contain: (1) the name of this lawsuit (Rodman v. Safeway, Inc., Civil Action No. 11-3003 (N.D. Cal.)); (2) your full name, current mailing and email address; (3) the specific reasons for your objection; (4) any evidence and supporting papers that you want the Court to consider; (5) a list, with docket numbers, of any objections you or your attorney has filed in class actions in the last five years; (6) your signature; (7) the date of your signature; and (8) if you or your attorney plan to appear and speak at the Fairness Hearing a statement indicating that it is your "Notice of Intent to Appear." You must mail your written objection and all supporting papers including any Notice of Intent to Appear postmarked by **March 2, 2018** to Clerk for Rodman v. Safeway, Inc., Civil Action No. 11-3003-JST (N.D. Cal.), United States Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102.

This postcard is a summary only. Please visit www.SafewayGroceryDeliveryClassAction.com for additional information about the lawsuit, the judgment, your rights, and updates concerning the hearing.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL RODMAN,
Plaintiff,

v.

SAFEWAY INC.,
Defendant.

Case No. 11-cv-03003-JST

DECLARATION OF MATTHEW W.H. WESSLER IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND COSTS

I, Matthew W.H. Wessler, declare as follows:

1. I am a member of the Bars of the District of Columbia and Massachusetts and a Principal of Gupta Wessler PLLC, a national appellate and complex-litigation boutique in Washington, D.C. My practice is focused on advocacy before the U.S. Supreme Court and federal appellate courts, as well as class-action practice, and I am admitted to the Bars of the U.S. Supreme Court as well as the U.S. Court of Appeals for the First, Second, Third, Fourth, Eighth, Ninth, and Tenth Circuits.

2. I am submitting this declaration in support of the plaintiff's application for attorneys' fees in connection with the appeal and class-action Judgment distribution process arising out of this litigation. Steven Schwartz of Chimicles & Tikellis LLP first contacted me in May 2016 to inquire whether I might be willing to assist Class Counsel in connection with Safeway's appeal in this case before the U.S. Court of Appeals for the Ninth Circuit. Class Counsel believed that my experience handling a broad range of federal appeals, including in the Ninth Circuit, would substantially increase the chances of preserving the favorable set of decisions holding Safeway liable in this case on a class-wide basis. My firm's work in this case

included, among other things, working with Class Counsel in researching and drafting the appellee's opening brief on appeal and preparing Mr. Schwartz for argument before the Ninth Circuit. Based on my experience, I believe my firm's work provided substantial benefit to the Class.

3. In my own federal appellate practice, I charge clients a standard hourly rate of $675. Although I typically receive an up-front non-contingent engagement fee of no less than $50,000 for handling a federal appeal, I agreed to work on this appeal with Class Counsel, on behalf of the Class, on a contingent basis. I have substantial expertise in federal consumer-protection law and class actions and have handled multiple appeals arising from consumer class actions. I believe that my firm's lodestar is reasonable, and that it is less than the rates being charged by many attorneys of similar experience and expertise in federal courts.

4. After graduating from Cornell University Law School in 2005 and serving as a law clerk to the Honorable Richard L. Nygaard of the U.S. Court of Appeals for the Third Circuit and the Honorable William E. Smith of the U.S. District Court for the District of Rhode Island, I spent two years as an associate at Williams & Connolly LLP, one of the country's premier litigation firms. I then spent six years at Public Justice, P.C., a national public interest and impact litigation law firm in Washington, D.C. While there, I spearheaded the firm's focus on Supreme Court litigation and took the lead in several high-profile cases involving class actions, arbitration, preemption, and consumer and worker rights. In 2015, I became a named partner at Gupta Wessler PLLC, in Washington, D.C., where my practice focuses on plaintiff-side and public-interest appellate and complex litigation.

5. My caseload consists primarily of handling appeals of consumer and worker protection cases, including class actions, in federal appellate courts and the Supreme Court. I have argued before the U.S. Supreme Court on behalf of plaintiffs in a number of major

consumer and worker rights cases, including *Coventry Health Care v. Nevils*, 137 S. Ct. 1190 (2017), *Heimeshoff v. Hartford Life Insurance*, 134 S. Ct. 604 (2013), and *U.S. Airways v. McCutchen*, 133 S. Ct. 1537 (2013). In my work, I have also developed specific expertise in helping consumers and workers in cases on appeal involving contract disputes. Several recent examples include a landmark victory in the Fourth Circuit on behalf of a class of consumers seeking to overturn a forced arbitration clause and hold a major payday lender accountable for violating state and federal lending laws, *see Hayes v. Delbert Services Corp.*, 811 F.3d 666 (4th Cir. 2016), a reversal from the Second Circuit in a putative class action against Capital One brought by consumers who alleged that the bank breached its contract by overcharging overdraft fees, *see Roberts v. Capital One, N.A.*, 2017 WL 5952720 (2d Cir. Dec. 1, 2017), and a case currently pending in the First Circuit involving a class-action challenge to the ride-sharing company's efforts to enforce its contract and arbitration clause against riders, *Cullinane v. Uber* (1st Cir. No. 16-2023).

6. In addition to the work that I performed in this case, the following two members of my firm performed work on the appeal.

7. Rachel Bloomekatz is a principal of Gupta Wessler PLLC, and a member of the Bars of Massachusetts and Ohio. She is also admitted to the Bars of the U.S. Supreme Court, as well as the U.S. Court of Appeals for the Second, Third, Fourth, Sixth, Ninth, and Eleventh Circuits. Her practice is devoted to advocacy before the U.S. Supreme Court and state and federal appellate courts. Before joining the firm in 2016, Ms. Bloomekatz was an Issues and Appeals attorney at Jones Day. She was previously an Assistant Attorney General for Massachusetts, focusing on appellate litigation. She is a 2008 graduate of the UCLA-School of Law and spent three years serving as a law clerk to Justice Stephen Breyer of the U.S. Supreme Court, Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit, and Chief

Justice Margaret Marshall of the Massachusetts Supreme Judicial Court. The hourly billing rate for work performed by Ms. Bloomekatz is $575.

8. Stephanie Garlock was a legal assistant at Gupta Wessler until July 2017. The hourly billing rate for work performed by Ms. Garlock is $180.

9. My firm's time expended, lodestar and costs are as follows:

	Matthew W.H. Wessler	Rachel Bloomekatz	Stephanie Garlock
Total Hours	239.50	71.30	12.42
Hourly Rate	$675	$575	$180
Individual Total Lodestar	$161,662.50	$40,997.50	$2,235.60
Total Lodestar	**$204,895.60**		

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 21, 2017 in Cambridge, Massachusetts.

/s/ Matthew W.H. Wessler
Matthew W.H. Wessler

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Attorneys for Plaintiff Michael Rodman
on behalf of himself and all others
similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL RODMAN,

Plaintiff,

v.

SAFEWAY INC.,

Defendant.

Case No. 11-cv-03003-JST

DECLARATION OF MICHAEL RODMAN IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, EXPENSE REIMBURSEMENT, SERVICE AWARD AND APPROVAL OF JUDGMENT DISTRIBUTION PLAN

I, Michael Rodman, declare as follows:

1. I am the representative plaintiff in this action and submit this declaration in support of Plaintiff's Motion for Attorneys' Fees, Costs and Service Award.

2. I retained Class Counsel in 2011 to assist in the prosecution of my claims against Defendant, Safeway, Inc. ("Safeway"), arising from overcharges for groceries sold by Safeway through its website for home delivery.

3. In connection with the filing of this action in June 2011, I worked with Class Counsel to provide an understanding of the facts that served as the basis of my claims against Safeway and also reviewed the draft Complaint and provided input prior to its filing.

4. Throughout the entire course of the litigation, I have worked closely with Class Counsel to prosecute the case and vigorously represent the interests of the class.

5. After the commencement of the action, I traveled from Philadelphia to San Francisco to attend the Early Neutral Evaluation with Stephen E. Taylor, Esquire, on December 1, 2011.

6. Thereafter, as discovery progressed, I worked with Class Counsel to respond to document requests, as well as provide responses to multiple sets of interrogatories propounded by Safeway. In discovery, Safeway requested, and I produced, hundreds of pages of sensitive credit card and bank data. In order to obtain these records, I spent considerable time working with the institutions with which I maintained my accounts.

7. In October 2013, I prepared for my deposition with Class Counsel and traveled from Philadelphia to San Francisco, where I was deposed for a full day by Safeway's counsel on October 24, 2013.

8. Throughout the more than six-year duration of the litigation, I was in regular contact with Class Counsel, who provided me with updates regarding the progression of the litigation, including key pleadings and other documents. This level of communication permitted me to have an understanding regarding the status of the litigation and to permit me to perform my role as the representative plaintiff and provide assistance to Class Counsel as was deemed necessary.

9. As the case neared trial in October 2015, at Class Counsel's request, I cleared my schedule so that I would be available to travel to San Francisco and be present for the duration of the trial.

10. Although the case did not ultimately proceed to trial, with judgment being entered in favor of the class, I continued to monitor the case during the appeal to the Ninth

Circuit. I was pleased that the Ninth Circuit affirmed the rulings of this Court and am gratified that my efforts, and the efforts of Class Counsel, resulted in an excellent outcome for the class. I believe that my efforts, spanning many years, justify the requested Service Award in the amount of $10,000.

11. I am aware of, and have reviewed, the proposed judgment distribution plan and support it. Additionally, I am aware of Class Counsel's request for a fee of 35% of the judgment (inclusive of costs). Having worked closely with Class Counsel since mid-2011, I know how diligently they prosecuted this action and understand that their efforts were instrumental in obtaining the significant judgment for the class. I fully support the requested percentage.

12. Lastly, I am aware that, to the extent there is a *cy pres* distribution of certain of the judgment amount, the parties have designated that Meals on Wheels be the recipient. I, likewise, fully support Meals on Wheels being the designated *cy pres* recipient.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 4, 2018 in Merion Station, Pennsylvania.

/s/ Michael Rodman
Michael Rodman

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL RODMAN, On Behalf of Himself and All Others Similarly situated, Plaintiff, vs. SAFEWAY, INC., Defendant.	Case No.: 3:11-cv-03003 JST (JCS) **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND EXPENSE REIMBURSEMENT, SERVICE AWARD, AND APPROVAL OF JUDGMENT DISTRIBUTION PLAN**

The Court, having considered Plaintiff Michael **MOTION FOR ATTORNEYS' FEES AND EXPENSE REIMBURSEMENT, SERVICE AWARD, AND APPROVAL OF JUDGMENT DISTRIBUTION PLAN**, and finding good cause based on the entire record herein, ORDERS THAT:

1) The Motion for attorneys' fees and expense reimbursement is GRANTED and Class Counsel are awarded 35% of the approximate $42.3 million Judgement Fund for their attorneys' fees and unreimbursed expenses. Within ten (10) days of this Order, the Judgment Administrator and its bank, Huntington Bank, shall, upon receipt of written instructions from Class Counsel, distribute 35% of the Judgment Fund to Class Counsel.
2) The MOTION FOR SERVICE AWARD is granted. Within ten (10) days of this Order, the Judgment Administrator and its bank, Huntington Bank, shall, upon receipt of written instructions from Class Counsel, distribute $10,000 from the Judgment Fund to Plaintiff Michael Rodman.
3) The MOTION FOR APPROVAL OF JUDGMENT DISTRIBUTION PLAN is granted. The Judgment Administrator shall carry out the proposed Judgment Distribution Plan as set forth in the parties' Joint Report (ECF#473) and this Court's Order Regarding Judgment Distribution (ECF #475) and mail class members their Judgment distribution checks within twenty (20) days of the date when this Order becomes final and non-appealable. The Parties shall provide the Court with a joint status report, including a declaration from the Judgment Administrator, within sixty (60) days after the expiration of the deadline for class members to cash their judgment distribution checks, along with a proposal regarding how to distribute and funds left over due to uncashed checks. To the extent the Parties recommend and the Court

approves a *cy pres* distribution of residual funds, the Court approves Meals on Wheels as an appropriate *cy pres* recipient.

4) This Court shall maintain continuing jurisdiction.

IT IS SO ORDERED.

Dated: _____, 2018

_____

Honorable Jon S. Tigar
U.S.D.C., Northern District of California