

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE: WELLS FARGO & COMPANY  
SECURITIES LITIGATION

Case No. 1:20-cv-04494-JLR-SN

**SUPPLEMENTAL JOINT DECLARATION OF JOHN C. BROWNE AND LAURA H.  
POSNER IN FURTHER SUPPORT OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION, AND (II) LEAD  
COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

JOHN C. BROWNE and LAURA H. POSNER, declare as follows:

1. I, John C. Browne, am a partner in the law firm Bernstein Litowitz Berger & Grossmann LLP, counsel for Lead Plaintiffs Handelsbanken Fonder AB and Louisiana Sheriffs’ Pension & Relief Fund, and co-Lead Counsel for the proposed Settlement Class in the above-captioned action (the “Action”).<sup>1</sup>

2. I, Laura H. Posner, am a partner in the law firm Cohen Milstein Sellers & Toll PLLC, counsel for Lead Plaintiffs Public Employees’ Retirement System of Mississippi and the State of Rhode Island, Office of the General Treasurer, on behalf of the Employees’ Retirement System of Rhode Island, and co-Lead Counsel for the proposed Settlement Class in the Action.

3. We submit this declaration in further support of (i) Lead Plaintiffs’ motion for final approval of the proposed Settlement and the Plan of Allocation, and (ii) Lead Counsel’s motion for attorneys’ fees and Litigation Expenses.

4. Attached hereto are true and correct copies of the following documents:

<b>Exhibit 1</b>	Supplemental Declaration of Alexander P. Villanova Regarding the Mailing of the Notice and Claim Form, and Report on Requests for Exclusion Received
<b>Exhibit 2</b>	Objection from Newport Trust Company, LLC, dated August 17, 2023
<b>Exhibit 3</b>	Amendment to Stipulation and Agreement of Settlement, dated August 31, 2023
<b>Exhibit 4</b>	Letter from Newport Trust Company, LLC, dated August 31, 2023
<b>Exhibit 5</b>	Objection from Larry D. Killion, dated August 16, 2023  (Financial account numbers in the documents submitted by Mr. Killion have been redacted in the interest of privacy and security.)

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<sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement dated May 8, 2023 (ECF No. 178-1) (the “Stipulation”).

<b>Exhibit 6</b>	Objection from Patricia A. White, dated August 4, 2023
<b>Exhibit 7</b>	<i>In re Micro Focus Int'l PLC Sec. Litig.</i> , No. 18-CIV-01549, objection (Cal. Super. Ct. May 8, 2023), and slip op. (Cal. Super. Ct. July 27, 2023)
<b>Exhibit 8</b>	<i>City of Sterling Heights Police &amp; Fire Ret. Sys. v. Reckitt Benckiser Grp. PLC</i> , No. 20-cv-10041, slip op. (S.D.N.Y. July 19, 2023), ECF No. 181
<b>Exhibit 9</b>	<i>Reynolds v. FCA US LLC</i> , No. 19-cv-11745, slip op. (E.D. Mich. June 27, 2023), ECF No. 106
<b>Exhibit 10</b>	<i>In re Nielsen Holdings PLC Sec. Litig.</i> , No. 18-cv-7143, Hearing Tr. (S.D.N.Y. July 20, 2022), ECF No. 159
<b>Exhibit 11</b>	Objection from Charles Aaron McIntyre, dated August 21, 2023  (Financial account numbers in the documents submitted by Mr. McIntyre and information on transactions in securities other than Wells Fargo common stock have been redacted in the interest of privacy and security.)

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

Dated September 1, 2023.

/s/ John C. Browne  
John C. Browne

/s/ Laura H. Posner  
Laura H. Posner

# **Exhibit 1**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE: WELLS FARGO & COMPANY  
SECURITIES LITIGATION

Case No. 1:20-cv-04494-JLR-SN

**SUPPLEMENTAL DECLARATION OF ALEXANDER P. VILLANOVA  
REGARDING THE MAILING OF THE NOTICE AND CLAIM FORM,  
AND REPORT ON REQUESTS FOR EXCLUSION RECEIVED**

I, Alexander P. Villanova, hereby declare under penalty of perjury as follows:

1. I am a Senior Project Manager employed by Epiq Class Action & Claims Solutions, Inc. (“Epiq”). Pursuant to the Court’s May 16, 2023 Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 182) (“Preliminary Approval Order”), Epiq was authorized to act as the Claims Administrator in connection with the Settlement reached in the above-captioned action (“Action”).<sup>1</sup>

2. I submit this declaration as a supplement to my earlier submitted declaration, the Declaration of Alexander P. Villanova Regarding the Mailing of Notice and Claim Form and the Publication of the Summary Notice, dated August 3, 2023 (ECF No. 190-7) (“Initial Mailing Declaration”). The following statements are based on my personal knowledge and information provided by other Epiq employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated May 8, 2023 (ECF No. 178-1).

**CONTINUED DISSEMINATION OF THE NOTICE PACKET**

3. Since the execution of the Initial Mailing Declaration, Epiq has continued to disseminate copies of the Notice and Claim Form (together, “Notice Packet”) in response to requests from potential Settlement Class Members, brokers, and other nominees. Through August 31, 2023, Epiq disseminated a total of 1,835,524 Notice Packets to potential Settlement Class Members, brokers, and other nominees. In addition, Epiq re-mailed a total of 12,472 Notice Packets to persons whose original mailing was returned by the U.S. Postal Service and for whom updated addresses were provided by the Postal Service.

**UPDATE ON CALL CENTER SERVICES AND CASE WEBSITE**

4. Epiq continues to maintain the toll-free telephone number (1-888-301-4209) and Interactive Voice Recording to accommodate inquiries from potential Settlement Class Members. Since the administration began on June 7, 2023, Epiq has received 4,445 in-bound calls, which included 622 hours and 6 minutes spent by callers interacting with the IVR and 436 hours and 27 minutes speaking with Epiq’s live operators. Epiq has made 364 out-bound calls to respond to messages left or to follow up on earlier communications. Epiq has also received 2,348 emails sent to [info@WellsFargoSecuritiesClassAction.com](mailto:info@WellsFargoSecuritiesClassAction.com) and has sent 1,894 outgoing emails in connection with this case. Epiq has promptly responded to each telephone and email inquiry and will continue to respond to those inquiries.

5. Epiq also continues to maintain the dedicated case website ([www.WellsFargoSecuritiesClassAction.com](http://www.WellsFargoSecuritiesClassAction.com)) to assist potential Settlement Class Members. On August 7, 2023, Epiq posted to the website copies of the papers filed in support of Lead Plaintiffs’ motion for final approval of the Settlement and Plan of Allocation and Lead Counsel’s motion for attorneys’ fees and Litigation Expenses (ECF Nos. 186-190). Epiq will continue maintaining and,

as appropriate, updating the case website and toll-free telephone number until the conclusion of the administration.

**REPORT ON REQUESTS FOR EXCLUSION RECEIVED**

6. The Notice informed potential Settlement Class Members that requests for exclusion from the Settlement Class must be addressed to *Wells Fargo Securities Litigation, EXCLUSIONS*, c/o Epiq Class Action and Claims Solutions, Inc., P.O. Box 5430, Portland, OR 97228-5430, such that they must be received no later than August 18, 2023. The Notice also set forth the information that must be included in each request for exclusion. Epiq has monitored all mail delivered to the P.O. Box. Epiq has received 119 requests for exclusion from individuals or from individual or family trusts, of which 104 were received on or before August 18, 2023 and 15 were received after that date. Of the 119 requests for exclusion, 24 state that the individuals in question did not buy shares of Wells Fargo common stock during the Class Period and another 60 did not provide sufficient information on their transactions in Wells Fargo stock to permit a determination as to whether they are a class member or not. Epiq has not received any requests for exclusion from any institutional investors. Exhibit A attached hereto lists the names of those who have requested exclusion from the Settlement Class and their city and state.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed on August 31, 2023 in Beaverton, Oregon.



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Alexander Villanova

**Exhibit A****Requests for Exclusion Received**

<b>Number</b>	<b>Name</b>	<b>City and State</b>
1	Shirley Angel	Port Angeles, WA
2	Stephanie Bales	Ramona, CA
3	Estate of Gilberte Beaulieu	Montreal, QC, Canada
4	Estate of Murielle Beaulieu	Saint Jean-sur-Richelieu, QC Canada
5	Christine Bedard	St. Brieux, SK, Canada
6	Stanley Bikowski	Lakeville, IN
7	Norma M. Bosch	St. Charles, MO
8	Margaret A. Bowden Trust U/A 8/18/00	North Providence, RI
9	Charles Carroll Brice	Morrisville, PA
10	Ashland O. Brown	Stockton, CA
11	Estate of Robert Butler	Hubley, NS, Canada
12	Karen J. Cantine	Glasgow, KY
13	Robert D. Carpenter and Jane H. Carpenter	Ellisville, MO
14	Paul J. Castronovo	Cheektowaga, NY
15	Daniel Charbonneau	Canton, TX
16	Jose Luis Cordero	Cheshire, CT
17	David Cote	Southbury, CT
18	John Beatty Cotnam, Trustee John Beatty Cotnam Management Trust, and John Beatty Cotnam Exempt Trust	Nashua, NH
19	Thomas Michael Deatherage and Deborah S. Deatherage	North Myrtle Beach, SC
20	Carlos Del Valle, Trustee Dr. Carlos Del Valle Retirement Plan	Dorado, PR
21	Marion L. Dodd	Dundee, IL
22	Joseph Davey Dodd	Dundee, IL
23	John H. Douglas Jr.	Belle Fourche, SD
24	John C. Dube	Austin, TX
25	Robert L. Ebright	South Jordan, UT
26	Joan Ehnlé	Cambridge, IL
27	Estate of John W. Fenmor-Collins Alison JF Collins, Former Executor	Victoria, BC, Canada
28	Estate of Thomas A. Ficklin	Cleveland, GA
29	Estate of Mary Kathryn Fiero	Layton, UT
30	Susan E. Fies	Reading, PA
31	George T. Fitzelle, Jr.	Fredericksburg, VA

<b>Number</b>	<b>Name</b>	<b>City and State</b>
32	John Flack	Gilbert, AZ
33	Leticia Granados Flynn	Beacon, NY
34	Thomas F. Flynn, UGMA Leticia G. Flynn, Custodian	Beacon, NY
35	Scott Michael Gorbitz and Ann Chiyo Tsukasa Gorbitz Revocable Living Trust	Peoria, AZ
36	Dennis Frederick Gunther	Saline, MI
37	Peggy Ann Gunther	Saline, MI
38	Estate of Corey Allen Hale	St. Louis, MO
39	Edward Hamborsky	Alexandria, VA
40	Stephen Harrison	Liberty, MO
41	Carol Ann Haug	White Haven, PA
42	David L. Hawkins	Stockbridge, GA
43	Estate of Doris C. Heck	Lititz, PA
44	Doris C. Heck IRA	Lititz, PA
45	Estate of David J. Helm David James Helm Survivor Trust U/A DTD 4/28/1993	Sierra Madre, CA
46	Patsy Ann Helmcamp and Estate of Richard D. Helmcamp	Cleburne, TX
47	Joseph Houx and Julita Antolin Houx	Dollard-des-Ormeaux, QC, Canada
48	Asad Khalil Ibn Ibaku Leonard Edward Wells	Mobile, AL
49	Nereida Irizarry	Holyoke, MA
50	M. Yvonne Jewell	Reedley, CA
51	Manuel Jimenez	Bowmanville, ON, Canada
52	Martin James King	Newbury, Berkshire, UK
53	Albert G. Krause	Belton, TX
54	Rueann Laughlin Estate of Michael J. Laughlin	Palm Beach Gardens, FL
55	Anne Levenson	Miami, FL
56	C. Barry Lewis	West Chester, PA
57	Barbara H. Luke	Lawrenceville, GA
58	Alexander R. MacKenzie	Lauderhill, FL
59	Dianne MacLachlan and Estate of Cameron MacLachlan	Calgary, AB, Canada
60	Mark J. Mankowski	West Melbourne, FL
61	Simon Markowski	New York, NY
62	Charles Anna Marsh	Jamestown, NC
63	Thomas O. Marshall and Eleanor F. Marshall	Enderby, BC, Canada

<b>Number</b>	<b>Name</b>	<b>City and State</b>
64	The Stotland Family 2006 Trust, DTD 9/22/06 Hector L. Martel, Trustee	West Covina, CA
65	The Stotland Family Bypass Trust, DTD 9/22/06 Hector L. Martel, Trustee	West Covina, CA
66	Michael D. McDonald	Dover, AR
67	Gerard McHale	Waterbury, CT
68	Mary Ellen McNulty	San Jose, CA
69	Walter A. Meller	Bedford, TX
70	Clarence Roger Miller	Coal Valley, IL
71	Shamin Mohammed	Port Sydney, ON, Canada
72	Linda Moore	Galena, KS
73	Estate of Bernard Neveu by Gerald R. Malcomson, Trustee	Algoma Mills, ON, Canada
74	Natalie V. Nielsen	West Des Moines, IA
75	Kien Nguyen	Snohomish, WA
76	Armando Pensado	Irvine, CA
77	Janet M. Peterson	West Linn, OR
78	Steven L. Peterson	Huntsville, AL
79	Patrick Joesph Poggi	Briarcliff Manor, NY
80	Cynthia Prindle	Maple Grove, MN
81	Line Rancourt	St. Georges, QC, Canada
82	Joseph Remstad	Brighton, MI
83	Kris Roberts and DiAnn Platt-Roberts	Central Lake, MI
84	Carol Ruppert	Mount Prospect, IL
85	Mary Ann Salvino, Trustee Salvino Revocable Trust	West Sacramento, CA
86	Peggy L. Seab	Grand Rapids, OH
87	Leona Sesholtz	Park Ridge, NJ
88	Eugene Sewell	Mansfield, LA
89	Helen O'Melia Skipper Trust of 1967	Fulton, AL
90	Michael B. Sonnen, Trustee Lorraine C. Sonnen, Trustee Sonnen Family Trust 12/15/09	Redlands, CA
91	Brenton C. Steck, Jr.	La Porte, IN
92	Terilynne Steinman	Rancho Cordova, CA
93	Estate of Nelson Sunshine	Smithers, BC, Canada
94	Mila Syzrantsev	San Ramon, CA
95	Benjamin R. Taylor	Santa Rosa, CA
96	Matthew Thomson	Gaithersburg, MD
97	Kenneth Tomes Tice and Kathleen Perzik Tice	Cumming, GA

<b>Number</b>	<b>Name</b>	<b>City and State</b>
98	Frances C. Vessichio	New Haven, CT
99	Julie M. Viola and Peter J. Viola	New Fairfield, CT
100	Gabriele Vogt	Middletown, VA
101	Hemanth Vyas	Hyderabad, India
102	Teresa Anne Wood	Maple Grove, MN
103	Evelyn Yeary	Corpus Christi, TX
104	Dianne M. Yen	Sacramento, CA
105	Durga Vijaya Laxmi Addagalla	Hyderabad, India
106	Edwin D. Blinks and Barbara W. Blinks	Dubuque, IA
107	Charles J. Bocchicchio	Philadelphia, PA
108	Bolla Krishna Chaitanya	Hyderabad, India
109	Nancy A. Conway	Denver, CO
110	Kiran Dommati	Mancherial, India
111	Mary H. Dorn	Virginia Beach, VA
112	Vamsi Chandra Guddati	Hyderabad, India
113	Bradford Huso	Mason City, IA
114	Nicholas Michael McBride	Naples, FL
115	Nancy J. McBride Living Trust by Nicholas Michael McBride	Naples, FL
116	Swathi Palla	Hyderabad, India
117	Methuku Srinivas	Hyderabad, India
118	Rosemarie A. Trevani	Hopedale, MA
119	Carlos Valladares	Bronx, NY

# **Exhibit 2**



August 17, 2023

Clerk's Office  
U.S. District Court  
Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl St.  
New York, NY 10007

Re: Objection to Settlement of *In re Wells Fargo & Co. Securities Litigation*, No. 1:20-cv-04494-GHW-SN (S.D.N.Y.)

Honorable Judge Rochon:

In accordance with the requirements as set forth in the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Notice") in the matter of *In re Wells Fargo & Co. Securities Litigation*, No. 1:20-cv-04494-GHW-SN (S.D.N.Y.) (the "Class Action"), Newport Trust Company, LLC ("Newport Trust") by this letter files an objection to the Settlement on behalf of two Settlement Class Members, the Wells Fargo & Company 401(k) Plan and the Wells Fargo & Company Cash Balance Plan<sup>1</sup> (the "Plans"). Attached with this letter as Document Set 1 are documents sufficient to prove the Plans' membership in the Settlement Class, including documents showing the number of shares of Wells Fargo common stock (i) owned as of the opening of trading on February 2, 2018, and (ii) purchased/acquired and/or sold from February 2, 2018 through March 12, 2020, inclusive, as well as the dates and prices of each such purchase/acquisition and/or sale and, for each, the numbers of shares purchased/acquired and/or sold. Capitalized terms not defined herein shall have the meanings given to them in the Notice.

As detailed herein, Newport Trust objects specifically to the definition of "Released Plaintiffs' Claims" as set forth in the Settlement. Newport Trust has been engaged by Wells Fargo & Company ("Wells Fargo") and the Wells Fargo Employee Benefits Review Committee to act as independent fiduciary on behalf of the Plans in relation to the Settlement of the Class Action; in its capacity as independent fiduciary, Newport Trust has the sole authority to determine which option(s) related to the Settlement are in the best interest of the Plans, in accordance with the Department of Labor's Prohibited Transaction Exemption 2003-39 ("PTE 2003-39"). Newport Trust has extensive experience serving in the capacity of independent fiduciary to employee benefit plans, including in connection with class action lawsuit settlements, and is closely familiar with the fiduciary obligations imposed by ERISA<sup>2</sup>.

In performing Newport Trust's responsibilities as independent fiduciary, we conducted a review of the Class Action and the terms of the Settlement, and interviewed counsel for both the Defendants and the Plaintiffs. Based on our review, we have determined that it is in the best interest of the Plans to object to the definition of "Released Plaintiffs' Claims" in the Settlement. The definition is set forth below:

"Released Plaintiffs' Claims" means all claims and causes of action of every nature and description, whether known or Unknown Claims (as defined in ¶ 29 [of the Notice] below),

<sup>1</sup> Formerly named the Wells Fargo and Company Pension Plan.

<sup>2</sup> The Employee Retirement Income Security Act, 29 U.S.C. §§1001-1461

In Re Wells Fargo & Company Securities Litigation  
 August 17, 2023  
 Page 2 of 4



whether arising under federal, state, common, or foreign law, that Lead Plaintiffs or any other member of the Settlement Class (a) asserted in the Complaint; or (b) could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and that relate to the purchase, acquisition, or ownership of Wells Fargo common stock during the Class Period. This release does not include any claims that have already been asserted in a related shareholder derivative action or ERISA action, including *Timothy Himstreet and Montini Family Trust v. Charles W. Scharf, et al., No. CGC-22-599223* (Cal. Super. Ct. Apr. 19, 2022), or any claims relating to the enforcement of the Settlement. (emphasis added).

Newport Trust specifically objects to the exclusion underlined above, as it only excludes from Released Plaintiffs' Claims ERISA actions that have already been asserted, but not ERISA claims that have not yet been asserted. In considering the value of all claims that would be forgone by the Plans' acceptance of the definition of Released Plaintiffs' Claims in the Settlement, Newport Trust has attempted to evaluate what, if any, unasserted ERISA claims the Plans may have relating to the matters forming the basis of the claims asserted in the Complaint. We have unfortunately been unable to secure any assurances that no such potential ERISA claims exist and we note that the statute of limitations for bringing such claims has not yet run. Although we acknowledge that the Settlement would provide the Plans material recovery of losses suffered as a result of the actions set forth in the Complaint, it will not provide for full recovery of the Plans' losses, and we believe that there could be additional substantial remedies available to the Plans under ERISA which are *unique to the Plans*<sup>3</sup> as Class Members. It is Newport Trust's view that foreclosing to the Plans a potential source of recovery for the harms they have suffered could render the Settlement unfair, unreasonable, and inadequate with respect to the Plans.

We note that the scope of the Released Plaintiffs' Claims is generally consistent with what we have seen in other securities class action settlements, however, we believe it is also common in similar cases that either (i) a related ERISA action has also already been brought on behalf of employee benefit plans sponsored by the defendants, or (ii) in some instances, the scope of the release more broadly excludes all ERISA claims, whether or not previously asserted<sup>4</sup>. Newport Trust requests in this instance that the Court modify the language of the definition of Released Plaintiffs' Claims with respect to the employee benefit plans sponsored by the Defendants to exclude any ERISA actions that could be brought relating to the allegations as set forth in the Complaint, not limited to only those that have previously been

<sup>3</sup> No other Class Members are ERISA employee benefit plans sponsored by the Defendants.

<sup>4</sup> See, e.g., *Purple Mountain Trust v. Wells Fargo & Company, et al.*, 3:18-cv-03948 (N.D. Cal. Jul 02, 2018), which provides the following definition of Released Claims: "Released Claims" means any and all claims, debts, rights, and causes of action or liabilities of every nature and description, including any claims for damages, interest, attorney's fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever whether known claims or Unknown Claims, whether arising under federal, state, local, statutory, common, or foreign law, or any other law, rule, or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, that both: (i) concern, arise out of, relate to, or are based upon the purchase or acquisition of Wells Fargo common stock during the Class Period; and (ii) were asserted or could have been asserted in this Action by Lead Plaintiff or any other member of the Class against any of the Released Defendant Parties (as defined below) and that arise out of or relate in any way to any of the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the complaint. Notwithstanding the foregoing, "Released Claims" does not include claims relating to the enforcement of the Settlement **or claims that could be brought in any derivative or ERISA action based on similar allegations.** (emphasis added)

In Re Wells Fargo & Company Securities Litigation  
August 17, 2023  
Page 3 of 4



asserted. Newport Trust proposes this may be accomplished by modifying the exclusion in the following manner:

"This release does not include: (i) any claims that have already been asserted in a related shareholder derivative action or ERISA action, including *Timothy Himstreet and Montini Family Trust v. Charles W. Scharf, et al.*, No. CGC-22-599223 (Cal. Super. Ct. Apr. 19, 2022); ~~(ii) or~~ any claims relating to the enforcement of the Settlement; or (iii) any ERISA action based on similar allegations that could be brought by or on behalf of employee benefit plans sponsored by the Defendants."

Newport Trust does not at this time request the opportunity to appear at the Settlement Hearing, but we are willing to do so should the Court require it. The Court's careful consideration of this objection is greatly appreciated.

Respectfully submitted,

A handwritten signature in black ink that reads "William E. Ryan III". The signature is written in a cursive style with a large initial "W".

William E. Ryan III

CEO, President and Chief Fiduciary Officer of Newport Trust Company, LLC

With copies to:

Cohen Milstein Sellers & Toll PLLC  
Laura H. Posner  
88 Pine St., 14th Floor  
New York, NY 10005

Bernstein Litowitz Berger & Grossmann LLP  
John C. Browne  
1251 Avenue of the Americas  
New York, NY 10020

Sullivan & Cromwell LLP  
Christopher M. Viapiano  
1700 New York Ave., N.W.  
Suite 700  
Washington, DC 20006

Attachments: Document Set 1

In Re Wells Fargo & Company Securities Litigation  
August 17, 2023  
Page 4 of 4



## DOCUMENT SET 1

- Summary of Positions for the Wells Fargo for the Wells Fargo & Company 401(k) Plan for the Class Period
- Summary of Transactions for Wells Fargo for the Wells Fargo & Company 401(k) Plan for the Class Period
- Wells Fargo & Company 401(k) Plan Trust Statements for the Class Period
- Wells Fargo & Company Cash Balance Plan Trust Statements for the Class Period

# **Exhibit 3**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE WELLS FARGO & COMPANY  
SECURITIES LITIGATION

Case No. 1:20-cv-04494-GHW-SN

**AMENDMENT TO STIPULATION AND AGREEMENT OF SETTLEMENT**

This Amendment to the Stipulation and Agreement of Settlement, dated as of August 31, 2023 (the “Amendment”), is entered into between (a) Lead Plaintiffs Handelsbanken Fonder AB (“Handelsbanken”); Public Employees’ Retirement System of Mississippi (“Mississippi”); State of Rhode Island, Office of the General Treasurer (“Rhode Island”); and Louisiana Sheriffs’ Pension & Relief Fund (“Louisiana Sheriffs”) on behalf of themselves and the other members of the Settlement Class and (b) defendants Wells Fargo & Company (“Wells Fargo”), Timothy J. Sloan, John R. Shrewsberry, C. Allen Parker, and Elizabeth “Betsy” Duke (“Defendants” and, collectively with Lead Plaintiffs, the “Parties”), by and through their respective undersigned counsel to amend the terms of the Stipulation and Agreement of Settlement in the above-captioned action dated May 8, 2023 (the “Stipulation”).<sup>1</sup>

WHEREAS, on May 8, 2023, the Parties entered into the Stipulation; and

WHEREAS, the Parties now wish to amend the Stipulation pursuant to paragraph 43 solely to further limit the scope of the release provided to Defendants’ Releasees as applied to any potential ERISA claims arising out of the allegations in the Complaint;

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<sup>1</sup> Unless otherwise provided in this Amendment, the capitalized terms herein shall have the same meanings as they have in the Stipulation.

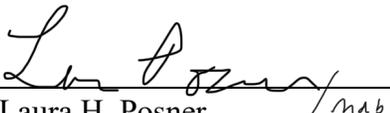
NOW THEREFORE, the Parties stipulate and agree as follows:

1. The Stipulation is modified to add the following as the last sentence of paragraph 5: The Parties agree that the release of Plaintiffs' Released Claims provided to Defendants' Releasees shall not effect a release of ERISA claims, if any, that arise out of or are based upon the allegations in the Complaint.

2. Except as expressly stated herein, nothing in this Amendment shall affect the scope of the releases provided under the Stipulation.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment to be executed, by their duly authorized attorneys, as of August 31, 2023.

**COHEN MILSTEIN SELLERS & TOLL PLLC**

By:   
\_\_\_\_\_  
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*Counsel for Lead Plaintiffs Public Employees' Retirement System of*

*Mississippi, State of Rhode Island, Office of the General Treasurer,  
on behalf of the Employees' Retirement System of Rhode Island, and  
Lead Counsel for the Class*

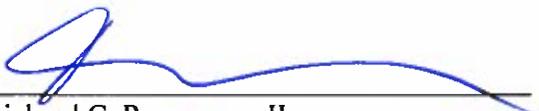
**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

By:   
\_\_\_\_\_  
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*Counsel for Lead Plaintiffs Handelsbanken Fonder AB and  
Louisiana Sheriffs' Pension & Relief Fund, and Lead Counsel for  
the Class*

**SULLIVAN & CROMWELL LLP**

By:   
\_\_\_\_\_  
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sbaskin@shearman.com

*Counsel for Defendant Elizabeth Duke*

# **Exhibit 4**



August 31, 2023

Clerk's Office  
U.S. District Court  
Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl St.  
New York, NY 10007

Re: Withdrawal of Objection to Settlement of *In re Wells Fargo & Co. Securities Litigation*, No. 1:20-cv-04494-GHW-SN (S.D.N.Y.)

Honorable Judge Rochon:

On August 17, 2023, in accordance with the requirements as set forth in the Notice of (I) Pendency of Class Action and Proposed Settlement, (II) Settlement Fairness Hearing, and (III) Motion for Attorneys' Fees and Litigation Expenses (the "Notice") in the matter of *In re Wells Fargo & Co. Securities Litigation*, No. 1:20-cv-04494-GHW-SN (S.D.N.Y.) (the "Class Action"), Newport Trust Company, LLC ("Newport Trust") filed an objection to the Settlement on behalf of the Wells Fargo & Company 401(k) Plan and the Wells Fargo & Company Cash Balance Plan (the "Objection"); by this letter we now request that our Objection be withdrawn, subject to the Court's acceptance of the Amendment as described below.

Newport Trust was contacted by Class Counsel on August 29, 2023, with a proposal to amend the Stipulation and Agreement of Settlement (the "Amendment"), to address the concerns raised in our Objection. Newport Trust has now come to an agreement with all parties; the proposed Amendment has been executed by the parties to the Stipulation, which we understand will be filed with the Court on September 1, 2023, and posted to the Settlement website, [www.wellsfargosecuritieslitigation.com](http://www.wellsfargosecuritieslitigation.com).

Based on the foregoing and subject to the Court's acceptance of the Amendment when submitted, Newport Trust respectfully requests to withdraw its Objection. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William E. Ryan III", with a stylized flourish at the end.

William E. Ryan III  
CEO, President and Chief Fiduciary Officer of Newport Trust Company, LLC

With electronic copies to:

Cohen Milstein Sellers & Toll PLLC  
Laura H. Posner, [LPosner@cohenmilstein.com](mailto:LPosner@cohenmilstein.com)

Bernstein Litowitz Berger & Grossmann LLP  
John C. Browne, [johnb@blbglaw.com](mailto:johnb@blbglaw.com)

Sullivan & Cromwell LLP  
Christopher M. Viapiano, [viapianoc@sullcrom.com](mailto:viapianoc@sullcrom.com)

# **Exhibit 5**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE WELLS FARGO & COMPANY  
SECURITIES LITIGATION

)  
)  
)

Case No. 1:20-CV-04494-GHW-SN

**OBJECTION  
TO PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES,  
AND REQUEST FOR DOWNWARD ADJUSTMENT**

1. Objection Applicant, Larry D. Killion, herein 'Applicant', a Settlement Class Member (Claim ID: E7SYKGST) submits this **OBJECTION, to apply to the entire class (and not just to me personally)**, the Applicant does not plan to attend the Final Approval Hearing, is not represented by counsel and is a pro se Applicant, request for modification and downward adjustment of any pending or submitted Plaintiff's Motion/Application For Award of Attorneys' Fees and Expenses, and Class Representative Service Award, IF ANY, (herein the 'Motion' or 'Application') because such Motion is unreasonable, unfair and not in the best interest of the Settlement Class Members.
2. Dates, prices and number of Wells Fargo (WFC) shares purchased/sold by me during the Class Period, to the best of my knowledge are shown in the attached Exhibit A Trade Confirmation for Wells Fargo WFC Shares between February 2, 2018 and June 9, 2020.
3. This Objection is based on those documents of record in Plaintiff <https://www.WellsFargoSecuritiesClassAction.com/>, as of the date of this Objection. Applicant further objects to the unreasonable time period (10 days!) in which to file its Objection and per the Notice document received by Applicant by postal mail delivery during the week of August 7 and the Notice citing any Objection must be filed by August 18, 2023, is patently unreasonable and not consistent with due process of law standard of conduct. Applicant has complained of such unreasonable Objection date by recording such via [info@WellsFargoSecuritiesClassAction.com](mailto:info@WellsFargoSecuritiesClassAction.com). Applicant submits that this Court take into account a more honest, fair and reasonable time period in which to file Objections, and that a 10 day period is unreasonable on its face; and this Court accept and take into account this Objection in its deliberations. Applicant has submitted this Objection by Express Mail.- Further, Applicant attaches an Amicus Curaie discussion brief regarding the abuse/misuse of attorney fee claims in regard to Class Action suits.

**OBJECTION**

3. Rationale behind this Objection, includes...

3.1 Although Representative Plaintiff's in this Class Action Lawsuit have ostensibly approved the the Application, I do not agree with such approval, and hereby submit this Objection.

3.3 The Motion is not in the best interest of Settlement Class Members and is not reasonable.

3.3 The Motion must be thoroughly tested for its reasonableness, and should take into account:

3.3.1 American Bar Association Model Rules of Professional Conduct, Rule 1.5 Fees

- A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.
- Traditional fee analysis to determine reasonableness takes into account...
  - the time and labor required,
  - the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - the fee customarily charged in the locality for similar legal services;
  - the amount involved and the results obtained;
  - the time limitations imposed by the client or by the circumstances;
  - the nature and length of the professional relationship with the client;
  - the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - whether the fee is fixed or contingent

3.3.2 The well thought out reasoning of award of Attorney Fees in similar Federal Court Class Action Ruling rulings, in particular attorney fee reasonableness test criteria described in

- *Stabraker v. DLC Ltd.*, 376 F.3d 819, 825 (8th Cir. 2004), which initiated the **lodestar standard**.
  - Determining reasonable fees under the **lodestar method** is a two-step process.
    - First, the court must determine the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work. By multiplying the number of reasonable hours by the reasonable hourly rate, the court determines the base fee or 'lodestar'.
    - The court then may adjust the base fee or lodestar up or down (by applying a multiplier), if relevant factors indicate an adjustment is necessary to reach a *reasonable* fee in the case.
    - Under the lodestar method, the most heavily weighted multipliers are the time and labor required.
    - Reasonableness takes into account the factors used by the traditional fee *determination*.

3.3.3 Class Action Fairness Act of 2005;

- Since the case was brought under CAFA, a federal law, Class Action settlements [damages and attorney's fees] are subject to Court approval which takes into account...

- Reports filed with the House of representatives and the Senate containing recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members that the settlements are supposed to benefit and recommendations on the best practices that courts can use to ensure that— the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; recommendations on the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement

4. The Court is requested to invoke its discretionary powers to modify and reduce the Motion to make it reasonable.

5. The economics of the requested Motion indicate:

5.1 The proposed total Settlement Fund to all Class Members is \$1,000,000,000.

5.2 Individual Class Member award are estimated to be \$0.57 per WFC shares (gross, before deduction of attorneys fees and costs. The allegation of trying to establish speculative artificial inflation in Wells Fargo Common Stock, as illustrated in the below charts ranging from approximately 10% to less than 2% given 'normal' market variability as being associated with fraud, is consistent with opinionated experts since statistician can 'prove' anything given enough rhetoric and time – the fog index. The work product to establish this variability is due to experts whose compensation is most likely buried in the \$2 million dollar expense claim and nothing to do with attorney work product.

5.4 Total Attorney Expenses applied for are up to \$190 million (19% of the Settlement Fund).

5.5 Court documents establish that Congressional Hearings and reports and regulatory reports regarding Wells Fargo conduct, were well established and available in the public record, thus the many million pages of cited documents regarding attorney fee claims were not the result of attorney work product, but merely a compilation of extensive information already available to Plaintiff's and Plaintiff's counsel, making an up to 19% attorney fee work product claim to be outrageously overstated, and should assessed that the 'up to' message for claimed attorney fees be assessed by the court to award a much smaller and reasonable fee. Applicant suggests the fee be noticeably less than 5%, and even then the attorney fee will be \$50 million. which is viewed as being more than reasonable in regard to lawyers assembling pre-established records on which the class action claim is brought.

5.6 Attorney hours spent on the case and hourly rates are unspecified.

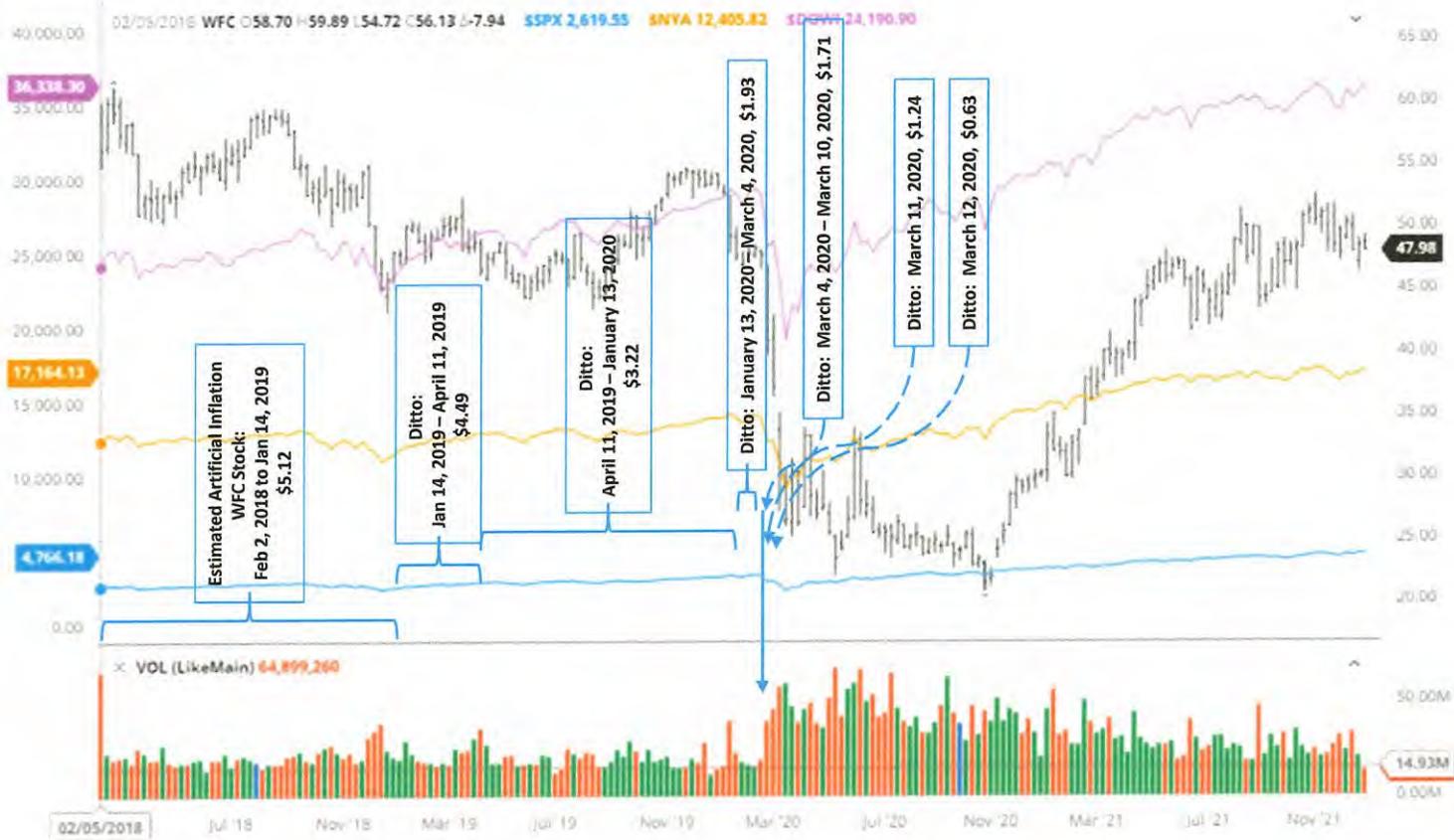
5.7 The disparity between the amount of recover to each Class Member compared to the paycheck each attorney could receive suggests a exorbitant and unreasonable basis of on which to base attorney fees.

Graphic illustration of Wells Fargo Stock price over the period 02/05/2018 thru January 3, 2022  
 Compared against S&P 500, Dow Jones Industrial Average and NYSE Composite Indices

General Observation: Between the period February 2, 2018 and March 12, 2020 (the Class Period, WFC Stock Price generally trended with the indices, indicating WFC Stock price movement reacted to the market in general.



### Speculative Artificial Inflation WFC Stock; Ostensibly Assessed By Specialist's Consultants Using Statistical Analysis



6. The proposed Attorney Fee Application/Motion is unreasonable in the following respects:
- A fee of up to \$190,000,000 based on a 19% contingency amount of the Settlement Amount is outrageous, unreasonable and should shock the conscience of the Court, as it relegates a non-tort law consumer/investor stock claim based on white collar fraud, with one based on tort law, to the same characteristic of ambulance chasing attorney's associated with negligence claims where contingency fees have become the norm and a key incentive factor for tort lawyers (especially those using roadside billboard advertisements to swing their justice sledge hammer at guilty until proven innocent car accident truck drivers) to advance cases and big attorney pay checks sourced from the real suffering of others, whether they have merit or not, because of the vicissitudes faced by defendant's burdened more so with not defending the merits of a case but the emotions and sympathy of a jury, stirred up by plaintiff counsel rhetoric. The more honest argument is attorney fee claims should/must be based on defense of time and hourly rate as the proper measure of 'earned' attorney fee, not negligent type contingency fee claims.
  - The case claim is all about hired gun academic or consultive experts, using the wizardry of statistical analysis – where just about any hypothesis including those associated with security fraud complaints associating published statements with creating a fraud and how it affects decimal place value of stock, whether real or imaginary (especially when the variance of the stock market is what the market is all about or it would not exist) – is defended as being possible, probable or likely. And the vagaries of the fraud law and counsel crafting a case...whether real or fantasy....further insulates plaintiff's from finding the real truth of a claim and a defendant given the honest right to address real issues. What all this means is that the substance of a case is primarily based on the hired gun experts establishing and proving the case with statistical proofs and not the acumen of the lawyers...who are predominantly advancing procedural tasks. Consequently the 'value' of fees and effort of the claim is buried in the \$2 million expense claim, where ostensibly the hired gun expert fee is buried and not in claimed attorney fee and not in claimed attorney fees. How \$2 million real expense is converted to \$190,000,000 phantom attorney fee claim is part of the magic (and incentive to bring Class Action lawsuits by attorneys) of the Class Action industry process and why contingency fees should/must be disallowed in favor of defending time and hourly rate attorney fee defenses.
  - While Class Actions at times have their place in justice, like all things in life the Class Action process – and associated attorney fee claims - can be used for its intended purpose (seeking real justice – though small as it may be for each 'victim' where there are many victims) or misused or abused. That misuse and abuse option is fertile ground for crafty counsel to formulate a Class Action case (much incentivized by a huge multi-million dollar contingency fee pay check paid for by the 'victims') based on Class Action substantive law causes of action vagaries and uncertainties, resulting in an attack on defendants (most of which are law abiding advocates and publicly traded companies who are duty bound to adhere to a myriad of regulatory standards, who consistently hire their own experts to give them guidance regarding compliance with the law and honestly try to do the right thing) and they then paying out typically huge settlement checks a huge portion of which are paid to attorneys. That is not reasonable. The accompanying Amicus Curiae brief on the Class

Action industry and attorney fee abuse further illustrates the misuse and abuse of the Class Action process, which this Claim is alleged to be part of, and what can be advanced to put real justice back into the definition of Class Action, and not a transport vehicle misused or abused to create huge attorney fee paychecks.

- Every day every human in life faces a continuum of events that could arguably be viewed as causing some type of Class Action harm (where harm is not in the best interest of the victim). There is always a certain degree of risk and consequence all us humanoids must absorb as life's destiny...else we all would all be borne in the court house and never leave. An unusual long crossing train at a road intersection that has stopped moving traffic and the stalled driver's time being stolen by the slow moving train; the vending machine stealing our quarter with no product in return because of a mechanical glitch in the machine; lightening induced power outages and the loss of consumer production time; stock values that constantly go up and down – buy low/sale high strategy does not always work and without that variance the market would not exist; are all just some examples of assumed risk in society. Basing huge Class Action attorney's fees on converting an otherwise assumed risk into a justice claim...is but one of many circumstances courts are charged with assisting with and defining what justice means and to what extent one pays for the claims of another. Consequently, yet more arguments why Class Action attorney fee claims should be based on defending time spent and hourly rate as being reasonable and not inflated due to crafting a case instead of asserting righteous justice merits.

7 Any reduction in the Motion is to be returned to and distributed to the Settlement Class Members, the real victims of this cause of action, and not as a contribution to attorney fees.

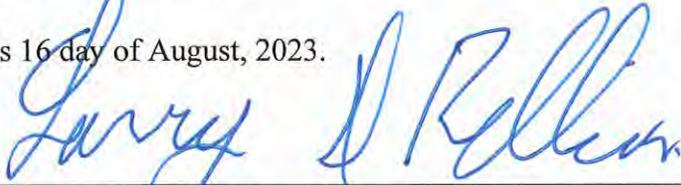
8. A review of class action settlements suggests attorneys typically are 'rubber stamped' awarded their request because in part they have subjected the court to a plethora of case law cites, statutory law prose, subjective facts, mountains of documents and other heaps of information (extracted from past cases) – especially when a \$190,000,000 attorney paycheck is in the offing - all of which may or may not be germane to the case but certainly adds a lot of fog to the landscape that a Court with limited budget of resources most likely cannot fully assimilate.

9. Settlement (with all parties accepting a cash Settlement amount as an acceptable compromise of the issues) was achieved without trial associated with much/most of the case discovery already developed by congressional and regulatory hearings, before the case was filed. Consequently, the extent and reasonableness of claimed earned legal fees are in question. Using the same high fee whether a case settles in two hours or after preliminary discovery and pre-trial settlement negotiation does not make sense and does not pass the smell test.

- While it is instructive to take into account attorney work claims of:
  - Preparing legal documents (complaints, depositions, subpoenas, attending hearings, legal research), law firms versed in class action cases (and one of the reasons class counsel is certified to be so by the court) already have in hand the understanding of relevant statutes and case law, and unless a novel area of securities fraud issues are understood and billable time not required to be wasted and spent on developing these items, they are already in the library.

Respectfully submitted

This 16 day of August, 2023.



*[Larry D. Killion, Applicant]*

Settlement Class Member

713 906-9135, (mobile)  
832 203-7695(fax)  
11235ldk@comcast.net email  
2114 Oxford Street  
Houston, Harris County, Texas 77008

### CERTIFICATE OF SERVICE

I, Larry D. Killion, hereby certify that on the 16 day of August , 2023, copies of the **OBJECTION TO PROPOSED ATTORNEY] FEE AND EXPENSE MOTION AND REQUEST FOR DOWNWARD ADJUSTMENT, WERE** mailed by first class prepaid postage or by email, to the following recipients:

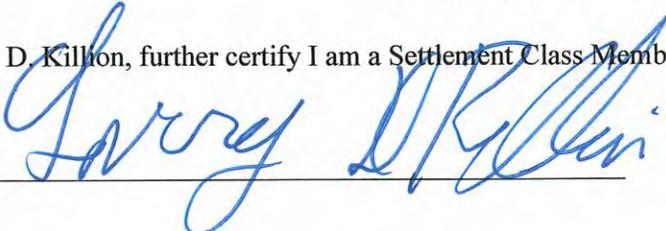
US District Court  
Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl St.  
New York, NY 10007

LEAD COUNSEL  
Cohen Milstein Sellers & Toll PLLC  
88 Pine St., 14<sup>th</sup> Floor  
New York, NY 10005  
and  
John C. Browne  
Bernstein Litowitz Berger  
& Grossmann LLP  
1251 Avenue of the Americas  
New York, NY 10020

Defendant  
Sullivan & Cromwell LLP

Christopher M. Viapiano  
1700 New York Ave., N.W.  
Suite 700  
Washington, D.C. 20006

I, Larry D. Killon, further certify I am a Settlement Class Member.

  
\_\_\_\_\_  
[name]

It is presumed Lead Counsel will post this Objection as a relevant document in this case online internet posting cite.

**EXHIBIT A**

**Dates, prices and number of Wells Fargo (WFC) shares purchased/sold during the Class Period.**

# In re Wells Fargo & Co. Securities Litigation,

Case No. 1:20-cv-04494-GHW-SN (S.D.N.Y.)

## Submit a Claim - Confirmation

Thank you for your submission. Your confirmation code is: E7SYKGST.

Please keep this code for your records, and refer to it if you ever have questions about your Claim Form for the Administrator.

## What Happens Next?

Now that your Claim is submitted, it will be reviewed for validity by the Claims Administrator. If your Claim is rejected for any reason, you will be notified and given an opportunity to address any deficiencies. Otherwise, if your Claim is deemed to be eligible, you may receive benefits, depending on the results of the Settlement Hearing and any appeals that might occur.

The Court in charge of this case still has to decide whether to approve the Settlement. Payments will not be made until the Court grants Final Approval and after any appeals are resolved.

Accurate processing of claims may take significant time. Thank you in advance for your patience.

It is your responsibility to update the Claims Administrator if you move or your contact information changes. You can send your updated contact information to the Claims Administrator at:

*Wells Fargo Securities Litigation*  
c/o Epiq Class Action and Claims Solutions, Inc.  
P.O. Box 5430  
Portland, OR 97228-5430  
[info@WellsFargoSecuritiesClassAction.com](mailto:info@WellsFargoSecuritiesClassAction.com)

Please include this confirmation code with your correspondence.

[Contact Us](#) [Privacy Policy](#) [Terms of Use](#)

Questions? Contact the Claims Administrator at 1-888-301-4209 or [info@WellsFargoSecuritiesClassAction.com](mailto:info@WellsFargoSecuritiesClassAction.com).

<b>WFC Shares Purchased</b> (Trade Confirmation Attached)			
<b>Trade Date (List Chronologically)(Month /Day/Year)</b>	<b>Number of Shares</b>	<b>Price Per Share</b>	<b>Total Purchase Price (Excluding Commission)</b>
2/26/2018	224	\$59.19	\$13,259.19
5/17/2018	9	\$54.27	\$488.44
8/10/2018	5	\$57.97	\$289.88
10/11/2018	5	\$51.86	\$259.31
10/18/2018	12	\$54.12	\$649.46
11/21/2018	9	\$52.84	\$475.61
1/4/2019	2	\$47.46	\$94.92
3/27/2019	124	\$48.94	\$6,069.17
8/1/2019	3	\$48.37	\$145.13
8/22/2019	23	\$45.50	\$1,046.50
10/2/2019	20	\$48.78	\$975.78
10/17/2019	13	\$49.87	\$648.36
10/24/2019	15	\$51.00	\$765.12
10/31/2019	21	\$51.43	\$1,080.17
11/15/2019	8	\$53.63	\$429.05
11/18/2019	6	\$53.95	\$323.76
1/16/2020	29	\$48.89	\$1,418.07
2/24/2020	17	\$46.56	\$791.57
2/27/2020	26	\$43.41	\$1,128.66
4/2/2020	14	\$26.97	\$377.63
<b>WFC Shares Sold</b> (Trade Confirmation Attached)			
<b>Trade Date (List Chronologically)(Month /Day/Year)</b>	<b>Number of Shares</b>	<b>Price Per Share</b>	<b>Total Purchase Price (Excluding Commission)</b>
3/29/2018	14	\$51.99	\$727.95
9/14/2018	1	\$55.15	\$55.14
11/1/2018	2	\$53.58	\$107.16
3/21/2019	2	\$49.93	\$99.85
3/6/2020	115	\$37.29	\$4,288.91

Holdings on or about February 2, 2018 of WFC Shares = 224

Holdings on or about June 9, 2020 of WFC Shares = 451

Wells Fargo (WFC) Stock Activity (Feb 2, 2018 thru June 9, 2020)



Transaction Confirmation  
Confirm Date: February 26, 2018

Page 1 of 20

Brokerage Account Number  
[REDACTED] IRA - ROLLOVER

LARRY D KILLION

FMT CO CUST IRA ROLLOVER  
FBO LARRY D KILLION  
2114 OXFORD ST  
HOUSTON TX 77008-2649

030000059

Online Fidelity.com/pas  
FAST(sm)-Automated Telephone 800-544-5555  
Premium Services 800-544-4442  
8am - 11pm ET, Mon - Fri  
Portfolio Advisory Services 800-544-3455

REFERENCE NO	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
18057-0B90TC	1*	000	02-26-18	02-28-18	949746101	18057-JJPF0B		
DESCRIPTION and DISCLOSURES								
You Bought			WELLS FARGO CO NEW COM			Principal Amount		13,259.19
		224	WE HAVE ACTED AS AGENT			Settlement Amount		13,259.19
at		59.1928	AVERAGE PRICE TRADE DETAILS ON REQUEST					
Symbol:			WFC					

REFERENCE NO	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
18088-XBMT9B	1*	000	03-29-18	04-03-18	949746101	23006-53150B		
DESCRIPTION and DISCLOSURES								
You Sold			WELLS FARGO CO NEW COM			Principal Amount		727.97
		14	WE HAVE ACTED AS AGENT			Activity Assessment Fee		0.02
at		51.9980	LOTS WITHOUT SPECIFIC SHARES			Settlement Amount		727.95
Symbol:			INSTRUCTIONS WILL BE DEPLETED USING					
WFC			HIGH COST IN, FIRST OUT METHOD					
			EXEC ON MULT EXCHG DETAILS ON REQUEST					
			AVERAGE PRICE TRADE DETAILS ON REQUEST					

REFERENCE NO	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
18137-XBG4VS	1*	000	05-17-18	05-21-18	949746101	27591-17677B		
DESCRIPTION and DISCLOSURES								
You Bought			WELLS FARGO CO NEW COM			Principal Amount		488.44
		9	WE HAVE ACTED AS AGENT			Settlement Amount		488.44
at		54.2711	EXEC ON MULT EXCHG DETAILS ON REQUEST					
Symbol:			AVERAGE PRICE TRADE DETAILS ON REQUEST					
WFC								

REFERENCE NO	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
18222-XBG67G	1*	000	08-10-18	08-14-18	949746101	01075-20998B		
DESCRIPTION and DISCLOSURES								
You Bought			WELLS FARGO CO NEW COM			Principal Amount		289.88
		5	WE HAVE ACTED AS AGENT			Settlement Amount		289.88
at		57.9759	EXEC ON MULT EXCHG DETAILS ON REQUEST					
Symbol:			AVERAGE PRICE TRADE DETAILS ON REQUEST					
WFC								

REFERENCE NO	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
18257-0CKG6H	1*	000	09-14-18	09-18-18	949746101	18257-0JQ62B		
DESCRIPTION and DISCLOSURES								
You Sold			WELLS FARGO CO NEW COM			Principal Amount		55.15
		1	WE HAVE ACTED AS AGENT			Activity Assessment Fee		0.01
at		55.1532	LOTS WITHOUT SPECIFIC SHARES			Settlement Amount		55.14
Symbol:			INSTRUCTIONS WILL BE DEPLETED USING					
WFC			HIGH COST IN, FIRST OUT METHOD					
			AVERAGE PRICE TRADE DETAILS ON REQUEST					

REFERENCE NO.	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
18284-XBPFPP	1*	000	10-11-18	10-15-18	949746101	40591-69951B		
DESCRIPTION and DISCLOSURES								
You Bought		5	WELLS FARGO CO NEW COM			Principal Amount		259.31
at		51.8612	WE HAVE ACTED AS AGENT			Settlement Amount		259.31
Symbol:			EXEC ON MULT EXCHG DETAILS ON REQUEST					
WFC			AVERAGE PRICE TRADE DETAILS ON REQUEST					

REFERENCE NO.	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
18291-XBGRJS	1*	000	10-18-18	10-22-18	949746101	01597-60637B		
DESCRIPTION and DISCLOSURES								
You Bought		12	WELLS FARGO CO NEW COM			Principal Amount		649.46
at		54.1220	WE HAVE ACTED AS AGENT			Settlement Amount		649.46
Symbol:			EXEC ON MULT EXCHG DETAILS ON REQUEST					
WFC			AVERAGE PRICE TRADE DETAILS ON REQUEST					

REFERENCE NO.	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
18305-0D34TS	1*	000	11-01-18	11-05-18	949746101	18305-JLNPGB		
DESCRIPTION and DISCLOSURES								
You Sold		2	WELLS FARGO CO NEW COM			Principal Amount		107.17
at		53.5850	WE HAVE ACTED AS AGENT			Activity Assessment Fee		0.01
Symbol:			LOTS WITHOUT SPECIFIC SHARES			Settlement Amount		107.18
WFC			INSTRUCTIONS WILL BE DEPLETED USING					
			HIGH COST IN, FIRST OUT METHOD					

REFERENCE NO.	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
18325-XB53DP	1*	000	11-21-18	11-26-18	949746101	00307-17363B		
DESCRIPTION and DISCLOSURES								
You Bought		9	WELLS FARGO CO NEW COM			Principal Amount		475.61
at		52.8461	WE HAVE ACTED AS AGENT			Settlement Amount		475.61
Symbol:			EXEC ON MULT EXCHG DETAILS ON REQUEST					
WFC			AVERAGE PRICE TRADE DETAILS ON REQUEST					

REFERENCE NO.	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
19004-0CQWQP	1*	000	01-04-19	01-08-19	949746101	19004-JJPMTE		
DESCRIPTION and DISCLOSURES								
You Bought		2	WELLS FARGO CO NEW COM			Principal Amount		94.92
at		47.4600	WE HAVE ACTED AS AGENT			Settlement Amount		94.92
Symbol:			EXEC ON MULT EXCHG DETAILS ON REQUEST					
WFC			AVERAGE PRICE TRADE DETAILS ON REQUEST					

REFERENCE NO.	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
19080-0CL3GJ	1*	000	03-21-19	03-25-19	949746101	19080-JJNGBB		
DESCRIPTION and DISCLOSURES								
You Sold		2	WELLS FARGO CO NEW COM			Principal Amount		99.86
at		49.9300	WE HAVE ACTED AS AGENT			Activity Assessment Fee		0.01
Symbol:			LOTS WITHOUT SPECIFIC SHARES			Settlement Amount		99.85
WFC			INSTRUCTIONS WILL BE DEPLETED USING					
			HIGH COST IN, FIRST OUT METHOD					
			AVERAGE PRICE TRADE DETAILS ON REQUEST					

REFERENCE NO.	TYPE	REG. REP.	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
19086-0E8B9L	1*	000	03-27-19	03-29-19	949746101	19086-JJVNSB		
DESCRIPTION and DISCLOSURES								
You Bought		124	WELLS FARGO CO NEW COM			Principal Amount		6,069.17
at		48.9449	WE HAVE ACTED AS AGENT.			Settlement Amount		6,069.17
Symbol:	WFC							

REFERENCE NO.	TYPE	REG. REP.	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
19213-1BJZNX	1*	000	08-01-19	08-05-19	949746101	19213-JJPVRE		
DESCRIPTION and DISCLOSURES								
You Bought		3	WELLS FARGO CO NEW COM			Principal Amount		145.13
at		48.3793	WE HAVE ACTED AS AGENT.			Settlement Amount		145.13
Symbol:	WFC							

REFERENCE NO.	TYPE	REG. REP.	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
19234-XBMDDM	1*	000	08-22-19	08-26-19	949746101	01431-02800B		
DESCRIPTION and DISCLOSURES								
You Bought		23	WELLS FARGO CO NEW COM			Principal Amount		1,046.50
at		45.5002	WE HAVE ACTED AS AGENT.			Settlement Amount		1,046.50
Symbol:	WFC							
	EXEC ON MULT EXCHG DETAILS ON REQUEST							
	AVERAGE PRICE TRADE DETAILS ON REQUEST							

REFERENCE NO.	TYPE	REG. REP.	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
19275-XBRJLG	1*	000	10-02-19	10-04-19	949746101	06445-34070B		
DESCRIPTION and DISCLOSURES								
You Bought		20	WELLS FARGO CO NEW COM			Principal Amount		975.78
at		48.7892	WE HAVE ACTED AS AGENT			Settlement Amount		975.78
Symbol:	WFC							
	EXEC ON MULT EXCHG DETAILS ON REQUEST							
	AVERAGE PRICE TRADE DETAILS ON REQUEST							

REFERENCE NO.	TYPE	REG. REP.	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
19290-XBKW8K	1*	000	10-17-19	10-21-19	949746101	29228-41067B		
DESCRIPTION and DISCLOSURES								
You Bought		13	WELLS FARGO CO NEW COM			Principal Amount		648.36
at		49.8740	WE HAVE ACTED AS AGENT.			Settlement Amount		648.36
Symbol:	WFC							
	EXEC ON MULT EXCHG DETAILS ON REQUEST							
	AVERAGE PRICE TRADE DETAILS ON REQUEST							

REFERENCE NO.	TYPE	REG. REP.	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
19297-XBH93F	1*	000	10-24-19	10-28-19	949746101	01275-86825B		
DESCRIPTION and DISCLOSURES								
You Bought		15	WELLS FARGO CO NEW COM			Principal Amount		765.12
at		51.0083	WE HAVE ACTED AS AGENT.			Settlement Amount		765.12
Symbol:	WFC							
	EXEC ON MULT EXCHG DETAILS ON REQUEST							
	AVERAGE PRICE TRADE DETAILS ON REQUEST							

REFERENCE NO	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO		
19304-1BWMVN	1*	000	10-31-19	11-04-19	949746101	19304-JKBZDB		
DESCRIPTION and DISCLOSURES								
You Bought			WELLS FARGO CO NEW COM			Principal Amount		1,080.17
		21	WE HAVE ACTED AS AGENT.			Settlement Amount		1,080.17
at		51.4365	AVERAGE PRICE TRADE DETAILS ON REQUEST					
Symbol:	WFC							

REFERENCE NO.	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
19319-XBGSIM	1*	000	11-15-19	11-19-19	949746101	19319-80066B		
DESCRIPTION and DISCLOSURES								
You Bought			WELLS FARGO CO NEW COM			Principal Amount		429.05
		8	WE HAVE ACTED AS AGENT.			Settlement Amount		429.05
at		53.6308	EXEC ON MULT EXCHG DETAILS ON REQUEST					
Symbol:	WFC							

REFERENCE NO	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO		
19322-XBG72F	1*	000	11-18-19	11-20-19	949746101	16426-08023B		
DESCRIPTION and DISCLOSURES								
You Bought			WELLS FARGO CO NEW COM			Principal Amount		323.76
		6	WE HAVE ACTED AS AGENT.			Settlement Amount		323.76
at		53.9592	EXEC ON MULT EXCHG DETAILS ON REQUEST					
Symbol:	WFC							

REFERENCE NO.	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
20016-XBB67D	1*	000	01-16-20	01-21-20	949746101	30564-67500B		
DESCRIPTION and DISCLOSURES								
You Bought			WELLS FARGO CO NEW COM			Principal Amount		1,418.07
		29	WE HAVE ACTED AS AGENT.			Settlement Amount		1,418.07
at		48.8991	EXEC ON MULT EXCHG DETAILS ON REQUEST					
Symbol:	WFC							

REFERENCE NO	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO		
20055-XBQGG	1*	000	02-24-20	02-26-20	949746101	20410-74238B		
DESCRIPTION and DISCLOSURES								
You Bought			WELLS FARGO CO NEW COM			Principal Amount		791.57
		17	WE HAVE ACTED AS AGENT.			Settlement Amount		791.57
at		46.5631	EXEC ON MULT EXCHG DETAILS ON REQUEST					
Symbol:	WFC							

REFERENCE NO	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO		
20058-XBNXJT	1*	000	02-27-20	03-02-20	949746101	31379-28065B		
DESCRIPTION and DISCLOSURES								
You Bought			WELLS FARGO CO NEW COM			Principal Amount		1,128.66
		26	WE HAVE ACTED AS AGENT.			Settlement Amount		1,128.66
at		43.4100	EXEC ON MULT EXCHG DETAILS ON REQUEST					
Symbol:	WFC							

REFERENCE NO.	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
20066-1B9T2P	1*	000	03-06-20	03-10-20	949746101	20066-JJEKZE		
DESCRIPTION and DISCLOSURES								
You Sold		115	WELLS FARGO CO NEW COM			Principal Amount		4,289.01
at		37.2957	WE HAVE ACTED AS AGENT.			Activity Assessment Fee		0.10
Symbol:			LOTS WITHOUT SPECIFIC SHARES			Settlement Amount		4,288.91
WFC			INSTRUCTIONS WILL BE DEPLETED USING HIGH COST IN, FIRST OUT METHOD.					

REFERENCE NO.	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
20093-XBTWGV	1*	000	04-02-20	04-06-20	949746101	35464-99769B		
DESCRIPTION and DISCLOSURES								
You Bought		14	WELLS FARGO CO NEW COM			Principal Amount		377.63
at		26.97359	WE HAVE ACTED AS AGENT.			Settlement Amount		377.63
Symbol:			EXEC ON MULT EXCHG DETAILS ON REQUEST					
WFC			AVERAGE PRICE TRADE DETAILS ON REQUEST					

**WFC Holdings February 2018**



FIDELITY PRIVATE CLIENT GROUP®

INVESTMENT REPORT  
February 1, 2018 - February 28, 2018

Account # [REDACTED]  
LARRY D KILLION - ROLLOVER IRA

**Holdings**

Stocks (continued)

Stocks (continued)

Description	Percent of Holdings	Beginning Market Value Feb 1, 2018	Quantity Feb 28, 2018	Price Per Unit Feb 28, 2018	Ending Market Value Feb 28, 2018	Cost	Unrealized Gain/Loss Feb 28, 2018	EAI (\$) / EY (%)
WELLS FARGO CO NEW COM (WFC)	2.66	unavailable	224,000	58.4100	13,083.84	13,259.19	-175.35	349.44 / 2.670

10 of 32

**WFC Holdings June 2020**



FIDELITY PRIVATE CLIENT GROUP®

INVESTMENT REPORT  
June 1, 2020 - June 30, 2020

Account # [REDACTED]  
LARRY D KILLION - ROLLOVER IRA

**Holdings**

Stocks (continued)

Description	Percent of Holdings	Beginning Market Value Jun 1, 2020	Quantity Jun 30, 2020	Price Per Unit Jun 30, 2020	Ending Market Value Jun 30, 2020	Cost	Unrealized Gain/Loss Jun 30, 2020	EAI (\$) / EY (%)
WELLS FARGO CO NEW COM (WFC)	1.94	11,937.97	451,000	25.6000	11,545.60	22,783.94	-11,238.34	920.04 / 7.970

UFGTP

YOU MUST READ THE RELEASE AND YOUR SIGNATURE ON PAGE 7 WILL CONSTITUTE YOUR ACKNOWLEDGMENT OF THE RELEASE.

**PART III: SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I (we) submit this Claim Form under the terms of the Settlement described in the Notice. I (we) also submit to the jurisdiction of the United States District Court for the Southern District of New York with respect to my (our) claim as a Settlement Class Member and for purposes of enforcing the releases set forth in the Settlement and repeated herein. I (we) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Action. I (we) agree to furnish additional information to the Claims Administrator to support this Claim if requested to do so.

**PART IV: RELEASE**

1. I (we) hereby acknowledge, on behalf of myself (ourselves), and each of my (our) heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, and any other person or entity legally entitled to bring Released Plaintiffs' Claims on behalf of myself (ourselves), in that capacity, that I (we) fully, finally, and forever compromise, settle, release, resolve, relinquish, waive, and discharge each and every Released Plaintiffs' Claim against Defendants and the other Defendants' Releasees, and are forever barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.
2. "Defendants' Releasees" means Defendants and Charles W. Scharf, including each of their current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, heirs, executors, estates, administrators, joint ventures, entities in which they have a controlling interest, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, accountants, auditors, and attorneys, in their capacities as such.
3. "Released Plaintiffs' Claims" means all claims and causes of action of every nature and description, whether known or Unknown Claims (as defined in ¶ 4 below), whether arising under federal, state, common, or foreign law, that Lead Plaintiffs or any other member of the Settlement Class (a) asserted in the Complaint; or (b) could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint and that relate to the purchase, acquisition, or ownership of Wells Fargo common stock during the Class Period. This release does not include any claims that have already been asserted in a related shareholder derivative action or ERISA action, including *Timothy Himstreet and Montini Family Trust v. Charles W. Scharf, et al.*, No. CGC-22-599223 (Cal. Super. Ct. Apr. 19, 2022), or any claims relating to the enforcement of the Settlement.
4. "Unknown Claims" means any Released Plaintiffs' Claims which any Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, in each case which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiffs and Defendants acknowledge that they may hereafter discover facts in addition to or different from those which he, she, or it or their counsel now knows or believes to be true with respect to the subject matter of the Released Claims, but, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly settle and release, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, settled and released,

any and all Released Claims without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiffs and Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement.

5. This release shall be of no force or effect unless and until the Court approves the Settlement and the Effective Date of the Settlement (as defined in the Stipulation) occurs.
6. I (we) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to the Settlement or any other part or portion thereof.
7. I (we) hereby warrant and represent that I (we) have included information about all of my (our) purchases and sales of Wells Fargo common stock during the required periods as set forth above.
8. I (we) hereby warrant and represent that I (we) have not submitted any other Claim covering the same purchases of Wells Fargo common stock and knows (know) of no other person having done so on my (our) behalf.
9. I (we) hereby warrant and represent that I am (we are) not excluded from the Settlement Class as defined in the Notice and that I (we) have not requested to be excluded from the Settlement Class pursuant to the procedures set forth in the Notice.
10. I (we) submit to the jurisdiction of the Court with respect to my (our) Claim and for purposes of enforcing the releases set forth herein.
11. I (we) agree to furnish such additional information with respect to this Claim as Lead Counsel, the Claims Administrator, or the Court may require.
12. I (we) waive the right to trial by jury, to the extent it exists, and agree to the determination by the Court of the validity or amount of this Claim, and waive any right of appeal or review with respect to such determination.
13. I (we) acknowledge that I (we) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
14. I (we) certify that I am (we are) not subject to backup withholding under the provisions of section 3406(a)(1)(c) of the Internal Revenue Code.

**Note:** if you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

I (WE) DECLARE THAT THE FOREGOING INFORMATION SUPPLIED BY THE UNDERSIGNED IS TRUE AND CORRECT.

Executed this 16 day of August/2023, in Houston, Tx/USA  
(Month/Year) (City) (State/Country)

Larry D Killian

Signature of Claimant

Signature of Joint Claimant, if any

Larry D Killian

Print Name of Claimant

Print Name of Joint Claimant, if any

08 - 16 - 2023  
MM DD YYYY

Date

MM - DD - YYYY

Date

If Claimant is other than an individual, or is not the person completing this form, the following also must be provided:

Signature of Person Completing Form

MM - DD - YYYY

Date

Print Name of Person Completing Form

Capacity of Person(s) Signing (e.g., Beneficial Purchaser, Executor or Administrator)

REMINDER CHECKLIST

- 1. Please be sure to sign this Claim Form.
- 2. Remember to attach **COPIES OF** documentation verifying your transactions listed above.
- 3. **DO NOT SEND ORIGINALS OF ANY DOCUMENTS VERIFYING YOUR TRANSACTIONS.**
- 4. Keep a copy of your Claim Form for your records.
- 5. If you move, please send your new address to the Claims Administrator at the address below:

*Wells Fargo Securities Litigation*  
c/o Epiq Class Action and Claims Solutions, Inc.  
P.O. Box 5430  
Portland, OR 97228-5430  
888-301-4209  
info@WellsFargoSecuritiesClassAction.com

- 6. Do not use highlighter on the Claim Form or supporting documentation.

**ATTORNEY'S FEES**  
**IN CLASS ACTION LAWSUITS**  
**WHAT TO DO ABOUT HUGE (UNREASONABLE?) LAWYER PAYCHECKS**



## Table of Contents

<b>Class Action Lawsuit Industry</b>	3
<b>Incentive Factors</b>	4
<b>How To Control Award Of Huge Attorney Fees</b>	5
<b>First - Attorney Fee Reduction Action Plans</b>	5
<b>Why These Plans?</b>	7
<b>Short Lesson: Class Action Lawsuit Boot Camp</b>	11
<b>Advantages of a Class Action Lawsuit, includes:</b>	12
<b>Disadvantage of a Class Action Lawsuit, includes:</b>	12
<b>Attorney's Fees</b>	15
<b>Advantages of Contingency Fee Structure Includes:</b>	16
<b>Disadvantages of Contingency Fee Structure Includes:</b>	17
<b>Attorney Fees Reasonableness Test</b>	18
<b>Use, Misuse and Abuse – Standards of Proof and Other Reforms</b>	20
<b>Justice and Class Action Lawsuits</b>	23
<b>Appendix A –</b>	28
<b>Class Action Lawsuits – Huge Attorney Fee Illustrations</b>	28
<b>Appendix B</b>	30
<b>Example Form Objection To Attorney's Fees</b>	30
<b>Appendix C</b>	35
<b>Example Op=Out Form</b>	35
<b>Appendix D</b>	37
<b>Class Action Lawsuits – Attorney Fee Legislation</b>	37
<b>Appendix E</b>	41
<b>Class Action Lawsuit Postcard Claim Form</b>	41

## Class Action Lawsuit Industry

The Class Action Lawsuit Industry (“**CALI**”) is alive and well (some law firms even publicizing their ‘*Class Action Lawsuit of the Month*’, merchandising (carnival barker?) Class Action justice as if it is a used car,



- As post card Class Action Lawsuit mailed notices to victims (‘**Class Members**’) (now managed by third party non-lawyer administrators, part of the industry) arrive more frequent than holiday season sales catalogues,
- Accompanied by Class Action representing attorneys demanding huge multi-million dollar fees using the Class Action Lawsuit as a vehicle to secure such fees,
- While Class Members typically each receive a token amount, as Class Action compensation (the so-called Settlement Fund), the vast majority of which do not even know they were victims, and most unaware of the huge attorney fee claim<sup>1</sup>.

The smell test of all this does not look or sound right.



Attorney’s fee awards in the CALI appear to have settled in on a ‘standard’ ‘rubber-stamp’ court approved fee based on 30% to 40% of the Class Action claimed harm – sounds similar to roadside billboard justice using a sledgehammer to crush guilty until proven innocent truck drivers associated with negligence claims while conveniently **NOT** advertising contingency fee subtractions by attorneys from the victims damages, in the 30%? to 40%? range (plus expenses) – feels like the victim has suffered twice. Yet attorney’s fees for each Class Action case (whether based on billable hours or contingency fee demands) are supposed to be tested on a standalone reasonableness standard and not a ‘one-size-fits-all’ demand<sup>2</sup>.

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<sup>1</sup> Rare is the Class Member who will take the time to study court documents to educate themselves about the attorney fee over-reach, and instead, as tactfully understood by representing counsel, lured into the sense of some easy money sourced from the Class Action lawsuit nominal compensation award, sort of like being a surprised winner in a raffle not knowing you were even entered to participate.

<sup>2</sup> Most Class Action lawsuit attorney fee demands are accompanied by voluminous pages (sometimes rivaling the number of pages about the merits of the case) explaining why huge fees are relevant, as well as comparing the current case with prior cases as additional justification why the size of the award is prudent. Both of these arguments

### Incentive Factors

Incentive factors causing this Class Action Lawsuit industry growth, especially the award of huge attorney fees (leaving the real victims – if in fact they are victims - of a case with only a nominal award), includes:

- **Incentive No. 1: Huge Lawyer Fees.** A review of randomly selected Class Action federal court files<sup>3</sup>, illustrates the magnitude of huge attorney fee award incentives, accompanied by small nominal claim awards to individual Class Members. The example cases cited in Appendix A indicate typical individual award to Class Members of less than \$20 and many in the few \$100s, while multi-million dollar awarded attorney's fees representing 25%+ of **TOTAL** award claim for a minimum average range of **per attorney** fee of \$222,000 to \$287,000. The per attorney fee is understated, since the average calculation assumes the estimated number of assigned attorneys to a case, work full time on the case, which is not realistic, and consequently dramatically understates the real average attorney fee take;
- **Incentive No. 2: 'Deep-Pocket' Defendants.** Many/Most [corporate] defendants in Class Action Lawsuits who honestly try to comply with applicable consumer and investor laws, are well known, established and trusted, and highly regulated, publicly stock traded companies: (Appendix A publicly traded companies include: Nielsen-NYSE, T-Mobile-NASDAQ, American Airlines-NASDAQ, Oracle Corporation-NYSE), are financially sound with 'deep-pockets' and capable of paying huge attorney fees, thus 'easy-worth-the-effort' litigation incentive targets. These businesses routinely retain experts to give them advice in regard to compliance with relevant consumer and investor laws and regulations. These compliance characteristics are indicative of a company NOT out-to-cheat its customers or investors.
- **Incentive No. 3: Speculative Law Compliance – Use, Misuse, Abuse.** Consumer and investor laws on which most Class Action lawsuits are based, are not 'black-and-white' and easily interpreted as to what is right and what is wrong, but are complex and subject to wide ambiguous interpretations – for example security fraud and consumer protection laws – making compliance with these laws challenging even for the most compliant minded company – especially for honest defendants. Because of the speculative nature of these laws, this is fertile ground for litigation minded lawyers having the incentive to craft a case, whether real or illusionary, that places doubt in jury's and Jurist's minds whether or not such speculative laws have been violated. As in all things in life, stuff (in this case laws) can be **used** for their intended public protection purposes, or **misused** or **abused**, for whatever reason, such as an over-reaching grant of attorney fees.

Awareness of these Class Action Lawsuit litigation incentives is nothing new, as there is a history of studies, reports and papers (see the Bibliography of examples of such), discussing and analyzing the pros and cons of Class Action lawsuits, many focusing on and criticizing what justice is all

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are inconsistent with a one-size-does-not-fit-all lawyer fee claim. The harder one has to argue for something is all the more reason to instill a sense of suspicion especially where the weight (and not the quality) of the justifying argument is not in the merits of the argument but in the volume of paper being used to cover up fictional proof.

<sup>3</sup> Appendix A is a summary of recent Class Action lawsuits illustrating applications for huge attorney's fees coupled with nominal awards to Class Member victims.

about and the disparity between huge plaintiff's attorney's fees paid by honorable defendants coupled with nominal award claims paid to the real victims. While many of these reports are scholarly and well researched, they have had little impact on reducing – so-far, or at least shifting, huge attorney fee awards and filtering out unjustified Class Action Lawsuit claims or putting more justified compensation into the pockets of the real victims and less in the pockets of representing attorneys.

*Many of these reports ask the question:*

*Have Class Action lawsuits merely been used as a vehicle for attorneys to secure huge fees with justice a secondary objective<sup>4</sup>?*

### How To Control Award of Huge Attorney Fees

This paper does not repeat the arguments cited in historical writings...**BUT SUPPLEMENTS** some new dimensions to the topic.

- **First:** By suggesting **self-help** and **law-help** action plans the public can adopt to (i) influence the adjustment to huge attorney fee paychecks in Class Action Lawsuits by (ii) honestly assessing the merits of a Class Action claim and whether or not Justice is being served - and not attorney fee greed AND any attorney fee award claim based on 'honest' reasonableness tests.
- **Second:** By providing this summary discussion of why such self-help and law-help plans make sense.

#### **First - Attorney Fee Reduction Action Plans**

- **Self-Help**
  - **If attorney fees are viewed as being unreasonably huge (does not pass the smell test<sup>5</sup>), Class Action members should file written Objections with the Court, challenging the unreasonableness of such fees. (Example objection form provided in Appendix B).**
  - **Class members electing NOT TO PARTICIPATE ("Opt-Out")<sup>6</sup> in the Class Action lawsuit. (Example opt-out form provided in Appendix C).**

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<sup>4</sup> Not uncommon, a huge number of pages filed in Class Action lawsuits are dedicated to defending huge attorney fee applications compared to defending the merits of the actual Class Action Claim.

<sup>5</sup> Like pornography, often you know it when you see it.

<sup>6</sup> The United States litigation centric legal system and State and Federal Class Action laws, have opted for the "opt-out" form of Class Action Lawsuit claims. This means the unaware public are 'automatically' ("opted-in") as a Class Member participant and only by pro-actively filing an "opt-out" written notice with the Court will such Member NOT be part of the Class Action Lawsuit result. As later recommended, the laws should be changed such that the public are NOT automatic members of a class, and only by affirmatively filing an "opt-in" statement with the Court will they then be Class Member participants. This "opt-in" standard will go a long way toward eliminating non-merit-based Class Action cases (let the affected public decide) as well as substantially reduce the misuse/abuse tactics associated with award of unreasonable legal fees.

- **Law-Help**

- **The public contact their elected government Representatives requesting they pass new laws...**
  - **Laws designed to promote reasonableness tests of the award of attorney's fees in Class Action Lawsuits such as a realistic fee formula or caps on awards. (Example contact form provided in Appendix D).**
  - **Laws or rules governing the standard of proof for any Class Action Lawsuit claim to be based on the more stringent Clear and Convincing Evidence standard (and not Preponderance of the Evidence).**
  - **Laws designed to simplify, easy to understand, postcard Class Action lawsuit notices, clearly and conspicuously describing (1) what potential claim is being sought, (2) how much (cash and non-cash) in total and how much each individual Class Member may be entitled, (3) how the size of the Class Action Claim and attorney's fees are effected if Class Members opt-out of participating in the lawsuit, and (4) how attorney fees are calculated, estimated total amount to be requested and indicative average attorney fee per lawyer. (Example notice form provided in Appendix E).**
  - **Independent Commissions (including non-lawyer participants) be used by the Court to determine if a case should be classified as a Class Action Lawsuit and a similar independent Commission used to assess reasonableness of attorney fee claims.**
  - **Laws regarding the prohibition of contingency legal fees in regard to Class Action Lawsuits, requiring attorneys to justify their fee as being reasonable in regard to hourly rate and time spent on a case.**
  - **Laws requiring prior to a lawsuit being certified as a Class Action Lawsuit, the defendant shall be given a mandatory prior notice (the "Class Action Pre-Certification Notice" or "CAPCN" letter), of such planned certification request, and an opportunity for defendant to resolve the case, avoiding the racking up attorney's fees by Plaintiff's counsel.**
  - **Require any Class Member to act proactively and opt-in to participate in a Class Action lawsuit (with the default being the public are NOT automatically opted-in to a Class Action Lawsuit), unlike the current model where Class Member default is opted -in and to opt-out, the Member must proactively file an opt-out document with the Court.**
  - **Prohibit the payment of Incentive Payments to Representing Plaintiff's, since such payment is in the nature of a bounty paid for winning the race to the Court house to first file a lawsuit, is merely an incentive for Court house racers to promote litigation for the purpose of winning a bounty instead of seeking justice and is an unconscionable taking of assets belonging to Class Members. The Class Members are all victims and to treat some grossly different than others shocks the**

conscience of justice and should likewise shock the conscience of the Court.

#### Why These Plans?

- **Objection:** The law requires prior to the Court's approving of a Class Action Claim that it be tested for being just, fair and reasonable and requested attorney's fees, be tested for 'reasonableness'. Each test is on a case-by-case basis, no one-size-fits-all (at least that's the objective test –yet awards regularly migrate to a 30% to 40% 'standard' of recovery and reasonableness test arguments citing as one of the primary arguments for justifying a fee request based on other cases as a consistent basis of award).
  - Attorneys regularly cite as a part of their reasoning why their [huge] fee request is reasonable because it is consistent with other Class Action Lawsuits (30%-40% contingency fee rationale?) which is contrary to the one-size-does-not-fit all reasonableness test reasoning.
  - Counsel argues why they should be certified as Class Action Lawsuit Class Representing Counsel based on their skills and experience, then argues why a [huge] fee is required because of the complexity (speculative nature?) of a case. It is inconsistent on one hand Counsel will argue it is skilled ostensibly requiring less time/effort to handle a case, yet when it comes to their fee, such fee should be [huge] regardless of the skill factor. *Rare is the worker who argues for a cut in pay.*
  - Class Action Member attorney fee Objections filed with the Court, helps remind the Court of its reasonableness test obligations – especially since the Class Member is the victim and for every dollar paid attorney's is often one less dollar paid to the real victim (at least in contingency fee cases). If the victims don't complain, it would be natural for a Court to *assume* victims are ok with the requested fee, which naturally dampens the Court's enthusiasm, with a busy Court docket, to pursue a deep dive test of reasonableness. It's not that victim's don't have an interest in the case and reasonable attorney's fees, the complexity of filing Objections with the Court as well as studying Court filed documents, deters many well intentioned victims to themselves committing to a deep-dive analysis – and astute Plaintiff's counsel are aware of this lethargic tactic that Class Members don't have the time or initiative or understanding to file a cumbersome objection associated with a few buck claim result.
- **Opt-Out:** If many/most Class Action Members collectively elected not to participate in a Class Action Lawsuit (*opt-out*), then the Claim amount should be automatically reduced (since there are less 'victims'), and if there is a request for [huge] attorney's fees, typically based on a contingency fee (attorney's being paid a percentage of the Claim awarded to the real victims), then the fee would be less. And even if a fee is not based on a contingency payment, a huge attorney fee and trivial victim award compared to that fee, will expose the unreasonableness of the fee claim.

- For example, a 30% fee of \$100 million Claim for 100,000 Class Members means \$30 million to lawyers and \$700.00 to each Class Member, is a lot less than 30% of \$500,000 Claim for 500 Class Members means \$150,000 to lawyers and \$700.00 to each Class Member. Still a disparity between attorney fee and Class Member award, but tempers lawyer's appetite to promote a questionable suit given their fee is much reduced (tension between values associated with earned fee and justice incentives). Or in the alternative, an attorney fee claims for \$30million, regardless if the victim remedy is \$100million or \$0.5million. That smell test thing again.
- In many Class Action lawsuits, the amount awarded to victims is small and nominal in amount (a few 100 dollars or less, or a discount coupon), while attorney's fee paychecks can potentially exceed \$200,000 per lawyer (most likely an understatement since it depends on how many attorneys worked on a case and how long and hourly rate).
- ⊖ Class Action members 'giving up' a small nominal award in exchange for stopping, over the top [huge] lawyer fees, is a powerful consumer weapon.
- While Class Action Lawsuits are designed to punish illegal business practices that harms a large number of the public, always be mindful that payment of Class Action nominal claims and [huge] attorney's fees, can result in the business adding that cost back into the price of the business goods or services which means consumers and investors will in the future end up paying for the illusion of a victorious Class Action win.
- While a business reputation may suffer a little at first, if at all, generally after the lawsuit combat is over, all is forgiven and the dust settles, it's back to business as usual – except lawyer's fat paychecks have been cashed and deposited, and consumers and investors get stuck with funding the 'hidden' bill.
- **Attorney Fee Law:** Request for attorney's fees in a Class Action lawsuit, is often based on a business alleged to have violated some law adversely affecting many parties (such as a consumer protection or securities fraud law), and that law including the statutory right to plaintiff's attorney's fees to be paid as part of the claim by a losing defendant (in contrast to the general 'American Rule' where parties pay for their own attorney's fee regardless of who wins or loses).
  - Laws are not written for Class Action Lawsuits, but to seek justice for individual victims for a particular cause of action including compensating the victim for its incurred attorney's fees as part of the award against bad business practices.
  - Lawyers favor taking cases and bringing lawsuits based on a law that includes award of attorney's fees, especially where the defendant has 'deep pockets' (financially strong) and can afford to pay [huge] fees.
  - There needs to be a Class Action attorney fee law designed to ensure any award of attorney's fee to be based on a statutory and not discretionary 'reasonableness standard', that comes into play any time there is a Class

- Action Lawsuit.** Ideally, award of attorney fee would be influenced by the amount EACH victim is awarded – low victim award, low attorney fee – especially since justice is blind to the magnitude of awarded attorney fees.
- In many Class Action Lawsuits, attorney’s fees are determined as a percentage of the victim’s Claim amount (so called contingency fee). Consequently, the ‘losing’ defendant in a case, either as a result of a trial judgment or settlement, is somewhat indifferent<sup>7</sup> about the size of the attorney fee since it is deducted from the Claim amount. Even so, such a deduction may not be in the best interest of the Class Members for not receiving fair, reasonable and adequate compensation for such victim’s Class Action losses due to such legal fee deduction.
  - It is more prudent regarding Class Action Lawsuits, for Class Action laws to prohibit contingency attorney fees (similar to criminal or domestic relation cases), leaving the attorney to honestly defend its time spent on the case and hourly rate, separate and apart to any Claim award paid to Class Members. Such hourly rate attorney fee defense will attract a more systematic and objective assessment of the fee, since (1) if the fee is paid by the victims, the Court will have a much clearer understanding of the details and basis of the hourly rate based fee request, and (2) if the fee is paid by the defendant, the defendant will be in a more realistic and efficient tester of the reasonableness of an hourly rate based fee claim, since the defendant is the one paying the fee.
  - **Standard of Proof:** Because of the unique nature of Class Action Lawsuit, that in the context of Justice for ALL<sup>8</sup>, places excessive defense burdens on a defendant, justice should demand a Clear and Convincing Evidence standard of proof (and not Preponderance of the Evidence standard) associated with certifying a case as a Class Action lawsuit as well as the same standard of proof to be used in the trial of the matter. This higher burden of proof properly places an incentive on plaintiff’s, Class Members and Class Counsel, to honestly pursue a case that has merit and one suited for Class Action and based on the objective of seeking justice for ALL, and not merely an ‘easy’ Class Action Lawsuit case brought for revenge or a vehicle to secure huge attorney’s fees, with justice for harmed citizens as a secondary objective.
  - **Class Action Notice:** Postcard claim notices alerting Class Members to a Class Action Lawsuit, are difficult to understand and often require the reader to go online through the internet (or retain their own counsel at their expense), to obtain better informed detail information (if they know how to request online information as well as where to locate information of interest and interpret it).
    - The postcard claim notice needs to be much more user-friendly, easy to read and understand, and clearly advise the reader what the Class Action lawsuit is all about, how much is being demanded from the defendant, how much each Class Member will be entitled and full disclosure of how attorney fees are

<sup>7</sup> Unless the settlement is artificially pumped up to include attorney’s fees as additional compensation instead of the resolve being based on what harm has been incurred by Class Members absent attorney fee claims.

<sup>8</sup> Justice for All, is in the context of the Nation’s founding documents (U.S. Constitution, Bill of Rights, Declaration of Independence, etc.), asserting justice to prevail for both plaintiffs AND defendants.

being determined, what the total attorney fee could be and the average paycheck of how much each lawyer working on the case will receive.

- **Class Action Pre-Certification Notice or “CAPCN” letter:** A practical remedy to help deter unreasonable attorney fee demands, prior to a Court certifying a case as a Class Action lawsuit, the plaintiff and plaintiff’s counsel in such case shall be obligated, to give defendant prior notice (the “CAPCN” letter) which provides clear and unambiguous information concerning:
  - The legal rationale on what the Class Action complaint is all about (a ‘show cause’ testament);
  - How much Class Member compensation (cash and non-cash) the defendant is expected to pay to resolve the complaint, net of any attorney fee;
  - The amount of claimed attorney’s fees incurred as of the CAPCN letter, but prior to certifying a case as a Class Action Lawsuit;
  - Such letter then giving the defendant an opportunity to resolve the complaint without Class Action certification, and if a defendant offer of resolution is rejected, if after a case is certified as a Class Action Lawsuit, and the case is resolved in favor of Class Members (either by settlement or court judgment) the Class Action claim (not including attorney’s fees) is equal to or less than what the defendant offered to settle with the CAPCN letter, then in that circumstance, any claimed attorney fees will be limited to what was offered at the CAPCN stage of resolution.
- **Opt-In Class Action Participation:** Class Action laws should be modified that require Class Members to affirmatively by written notice to the Court, to “opt-in”, in order to participate in the Class Action Lawsuit. Most non-USA legal systems require an ‘opt-in’ standard in order to participate in a Class Action Lawsuit. The history of this opt-in standard illustrates that Class Action Lawsuit filings are few in number and not abused by plaintiff’s counsel BUT more important, has NOT resulted in numerous lawsuits by non-Class members bringing their own action – which deters USA plaintiff’s counsel opt-out justification arguments that an opt-in standard will cause an explosion of small cases...not true. An opt-in standard is a great tool to modulate the acceleration of the USA Class Action Lawsuit industry growth...driven much by attorney fee greed.

### Background: Class Action Lawsuit Boot Camp

**Class Actions** (also known as a **Class-Action Lawsuit, Class Suit, or Representative Action**) are most common where the allegations usually involve at least 40 people who the same defendant has allegedly been injured in the same way. Instead of each damaged person bringing one's own lawsuit, the Class Action allows all the claims of all Class Members—whether they know they have been damaged or not—to be consolidated and resolved in a single proceeding through the efforts of **Representative Plaintiff(s)** and Representative Plaintiff's lawyers appointed as **Class Counsel**. The Class Action binds (by default) all Class Members (victims) of the Class (including being bound by the attorney fee arrangement agreed with the initial Representative Plaintiffs in a Class Action Lawsuit – a huge exception to the general rule where attorneys and their individual clients mutually agree to fee arrangements), unless a Class Member gives timely notice to opt-out and not be represented by such Class Action. Depending on the Class Action details, any victim that opts-out, may or may not preserve its right to bring its own separate lawsuit (and individual attorney fee arrangement).

There is a familiar saying about “strength in numbers.” For example, a single person who was misled into paying 50 cents too much for an illegally overpriced stick of deodorant doesn't have enough incentive to go to the trouble and expense of litigation just to recover that small amount of money. Even-so, because the United States has had a culture of being litigious (billboard justice has become the norm), regardless of the merits or size of a claim (perhaps on occasion Caveat Emptor- buyer beware - is the better and more honest remedy), U.S. centric attorneys are quick on the lawsuit panic button, because the fabric of U.S. justice promotes win-lose sledge hammer litigation mindedness accompanied with huge attorney fee awards and not mature hand-shake win-win resolve. (Restitution is better placed in the Board Room and not the Court Room).

It's when many people—often tens of thousands, or more—are honestly harmed a similar way by the same problem, that a Class Action lawsuit may be worth bringing. (May in the sense every little wrong does not justify a remedy – as some assumption of risk and impact is the more honorable and logical thing to do – just like bringing up a child, until a boundary is known and not to be broken, punishing a first-time innocent offender does nothing to promote the development of a child into healthy adolescence). Uniting all similarly affected parties into a plaintiff's Class (Class Members) has the effect of raising the stakes significantly for [corporate] defendants. That's part of the law of the jungle. It's more likely that an honorable Class payoff will be worth fighting for, and companies that face the prospect of Class Action liability, have a strong incentive to settle a merit based claim and correct their behavior (even though many have acted innocently and without intent to do wrong) and implement better (learn from their unintentional mistakes) business practices, designed to prevent bad (whether intentional or unintentional) practices – which illustrates a merit based circumstance, and not one based on astute plaintiff's legal counsel crafting a claim (and sugar plum vision of huge attorney fee award) because of the uncertainty and speculative nature of the underlying law.

Even-so, small claim litigation revenge tactics should [must?] always be tempered (rejected?) with what justice is all about. All small claim infractions do not justify seeking combat lawsuit justice, more times than not premised on seeking revenge – where in many cases, attorney's stir the

emotions pot of the ‘victims’ to use the litigation hammer and unjustifiably beat up the alleged wrongdoing but honest defendant. In whose best interest are Class Action Lawsuits brought? For alleged victims? Huge fee greedy attorneys? Correcting a real wrong? Correcting an illusionary wrong? Justice for ALL?

#### Advantages<sup>9</sup> of a Class Action Lawsuit, includes:

- **Efficiency.** Combining meritorious cases in a Class Action can increase the efficiency of the legal process and lower the costs of litigation. In cases with common questions of law and fact, aggregation of claims into a Class Action may avoid the necessity of repeating days of the same witnesses, exhibits and issues from trial to trial. That’s the theoretical argument...but in reality, the likelihood of a plethora of case filings is highly unlikely.
- **Meaningful.** A Class Action may overcome the problem that meaningful small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A Class Action ensures that a defendant who engages in widespread harm (whether intentional or not) – but does so minimally against each individual plaintiff – must compensate all affected individuals for their injuries. But in all cases, is that justice? (Every little wrong may have a remedy but that remedy may be a mature assumption of risk attitude and get on with life and not revenge or a course of conduct to create a vehicle to justify an award of large attorney fees way out of proportion of victim awards).
- **Behaviour Incentive.** Class-Action cases may be brought to purposely and honorably change behaviour (whether by intentional or unintentional acts) of a class of which the defendant is a member.
- **Race To the Bank.** In "limited fund" cases (which means the defendant(s) do not have ‘deep pockets’ and not financially strong), a Class Action ensures that all plaintiffs (victims) receive some relief and that early filing plaintiffs (they win the race to the bank) do not raid the common fund (owned by the shallow pockets of the defendant) of all its assets before other plaintiffs may be compensated.
- **Confusion.** A Class Action avoids the situation where different court rulings could create incompatible standards of conduct for the defendant to follow.

#### Disadvantage of a Class Action Lawsuit, includes:

- **Caveat Emptor (Buyer Beware – Victim Liable for Certain Consequences).** Class Action procedures are arguably inconsistent with due process mandates and unnecessarily promote litigation of otherwise small, trivial claims, and challenges what Justice is all about. A certain amount of risk is expected to be assumed by the public without recourse for someone else to pay in all circumstances. There needs to be a rational balance between seeking justice and seeking revenge or a vehicle to achieve an award of large attorney fees. What is honorable and what is greed?

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<sup>9</sup> While these advantages in a theoretical sense make for good ideological arguments...and justification behind plaintiff’s and their counsel promoting Class Action Lawsuit cases, the reality of life is that it is highly unlikely a plethora of individual cases will flood the courts with nominal claims, nor inconsistent rulings influence the cause of Justice.

- **Abuse.** The preamble to the (Federal) Class Action Fairness Act of 2005, implies that some Class Actions are abusive, harm Class Members with legitimate claims, especially where most defendants have tried to honestly act responsibly, and such abuse, adversely affecting interstate commerce (legitimate businesses stops providing useful consumer goods or services in fear of defending costly abusive Class Actions), and undermined public respect for the country's judicial system and what Justice for ALL means (the Court's permitting abusive Class Actions to be pursued – sometimes as a vehicle for Class Counsel to secure huge fees while the real victim's receive nominal value).
  - More times than not, Class Action Lawsuit defendants are reputable companies. These companies utilize their own legal and business experts who give advice and counseling and what to do to comply with relevant State and Federal laws. Rare is the reputable company that intentionally violates a law but in contrast, acts responsibly for law compliance. Even-so, many laws are written so broadly and many ambiguous as to what is right or wrong, and because of business complexity and broad interpretations of the law, stealthy plaintiff's litigation counsel are capable of crafting an argument (with or without merit) that often creates an illusionary environment of uncertainty (the 'fog index') whether or not a reputable company violated a law. An attorney's job is to represent the best interest of their client and earn a fee (legal representation is a vocation and profession) AND comply with professional standards of conduct – the ethics of law – Justice for ALL mandates. Because of law interpretation uncertainty and speculation, reputable companies will, without any admission of liability, often settle a case, to avoid unnecessary defense expenses, wasted time, and unwanted bad publicity – since rare is the opportunity for the defendant to honestly present the more honest defense facts, as the consuming public do not have the time or inclination to listen to such (that's human nature that plaintiff's counsel understand and use to their benefit). (Not unlike the quick message broadcast in roadside billboard lawyer advertisements, advising that the 'hammer' goes after truck drivers involved in accidents – automatic guilt and remedy – so much for due process. The ugly side of Justice).
- **Victims Are Secondary.** Class Members often receive little or nominal benefit from Class Actions.
  - Examples
    - Huge fees for the attorneys, while leaving Class Members with token coupons or other awards of little or nominal value;
    - Unjustified awards are made to certain plaintiffs at the expense of other Class Members (such as Representative Plaintiff's requesting priority payments for them having started the lawsuit or acting as Representative Plaintiffs); or such Representative Plaintiff's being paid a 'bounty' fee for having initiated a case that prompted the Class Action certification, and hence an 'entitlement' to a bounty that other Class Members, who merely missed out on being the initial claimant, is not entitled to such bounty. This

bounty is an unreasonable win-fall for such plaintiff's and contrary to ALL Class Members being treated the same;

- Confusing published and mailed Class Action postcard claim notices, that interfere with Class Members being able to fully understand and effectively exercise their rights;
- Laws require the Court's approval of all Class-Action settlements, and in most cases, Class Members are given a chance to opt-out (not participate) in Class Action settlements. Even so, though Class Members, despite being given opt-out post card claim notices, may be unaware of their right to opt-out because they did not receive the notice, did not read it or did not understand it.
  - The Class Action Fairness Act of 2005 attempts to address some of these concerns...
    - An independent expert may scrutinize 'coupon settlements' (where a business is willing to issue 'coupons' that provide for a discount or payment for future goods or services) before the Court's approval of the settlement, in order to ensure that the settlement will be of [some?] value to the Class Members.
    - Since many Class Members do not use or spend their coupons (many are trashed or forgotten), the award of contingency attorney's fees includes the value of unused coupons which means such fees should be lowered in regard to unused coupons. Even so, coupons are not customarily part of Class Action lawsuit settlements.
- **Who Is the Victim?** Various studies of Class Actions in federal court found that many plaintiffs (victims) received only a tiny fraction of the money awarded while plaintiff lawyers frequently secured a huge, highly disparate share of the settlement than their clients – the real victims in the lawsuit. Many Class Action lawsuits can be viewed as merely a vehicle or conduit through which attorneys can secure huge fees and not an honest mechanism of seeking Justice for real victims.

State and Federal laws provide for the bringing of Class Action Lawsuits. Most of the time a Class Action lawsuit is brought in federal court and not a State court, because:

- The victims (plaintiffs) in the lawsuit are resident in many States (diversity of citizenship), consequently, federal court is viewed as being fairer to all plaintiff's instead of those residing in any one particular State;
- Federal Courts are more experienced with hearing Class Action Lawsuits;
- Class Action Fairness Act of 2005, is a federal law that makes it easier for Class Action Lawsuits to be heard in federal courts.

An individual lawsuit often starts out with one or more initial plaintiffs (victims), claiming some business or entity violated a Federal (or State) law. Coincident with that case, the underlying complaint indicates there are many more similarly and adversely affected victims.

Attorneys who accept such a ‘small’ case, recognizing there are many potential victims with similar claims, will petition a [federal] court to *certify* the case as a Class Action lawsuit (thereby turning a small case into a big case on which to base large attorney fees), naming the initial plaintiff’s as ‘Representative Plaintiff’s’ (or lead plaintiff’s) in the Class Action claim and the attorneys requesting the Court (because of counsel’s Class Action skills) to also name (certify) them as Class Counsel, thereby representing all victims. By such Representative Plaintiff winning the race to the courthouse and advancing a Class Action certification claim, that initial plaintiff filing and certification filings has automatically resulted in many rights of other potential Class Member plaintiff’s being denied: such as (1) the right to select counsel and agree an attorney fee arrangement, (2) the right to pursue a claim or not, and (3) the right not to be forced into a lawsuit as a participant since State and Federal Class Action laws default to an automatic opt-in standard of participation.

After the Class Action Lawsuit is well advanced – sometimes many months or years (where Class Counsel has reached a tentative settlement agreement with defendants for both victim’s damages and attorney’s fees or resolved a case at trial), Class Member’s for the first time become aware of the Class Action Lawsuit, by receiving a postcard claim notice in the mail:

- Advising them of the lawsuit (most not even aware they were a party to a lawsuit),
- Awareness that they are an identified Class Member victim,
- Guidance on where to obtain information (usually on-line through the internet), that includes guidance on what the suit is about and what remedy Class Members may be entitled and how to file a claim as well as some general reference to filing objections (regarding adequacy of the claim settlement or reasonableness of requested attorney fees).
- The notice will also cite unless the Class Member timely opts-out (elects not to participate in the Class Action lawsuit) of the suit, they will automatically be included, generally at no cost, and will be bound by any outcome of the suit or settlement.

When plaintiff’s Class Counsel wins a Class Action lawsuit, or when they secure a pre-trial settlement with the defendant, legal fees and court costs are typically demanded in the award or Claim. This Total award or Claim is often referred to as the “Common Fund,” from which legal fees, as well as recovery for Class Members damages, are paid, unless a separate claim is made for attorney’s fees on top of total Claim to be awarded Class Members.

### Attorney’s Fees

While the practice of law seeks Justice, it’s still a business, and unless an attorney has agreed to work pro bono (free of charge, a public service), an attorney can expect [reasonable] compensation in exchange for their legal services.

Federal and State Courts in the United States in regard to attorney’s fees, follow what is called the ‘American Rule’. What this rule means is that each party (both plaintiffs and defendants) in a lawsuit are responsible for funding and paying their own attorney’s fees, no matter who wins the case.

However, this Rule can be modified by either...

- **Contract:** Parties to a contract can agree under certain circumstances, one of the parties will pay the legal fees of the other in regard to a particular dispute, or
- **Statute:** If there is a law (a statute) that specifically provides as part of its remedies, award of attorney's fees to a successful party – normally the plaintiff (i.e., a defendant is ordered to pay plaintiff's attorney fees). Many times, such statute-based award of attorney's fees can be many times greater than the value of actual damages suffered by a successful plaintiff, or
- **Settlement:** Plaintiff's attorney fees could also be paid by defendant, as a result of the defendant settling a case and volunteers to include payment of plaintiff's attorney fees as part of the settlement. (Theoretically, attorney's fees agreed by defendant as part of the settlement, is a form of a contract whereby, the attorney's client acquiesces in that fee arrangement as if the attorney and their client negotiated such fee arrangement).

The details of how attorney fees are typically determined and calculated is a matter of negotiated contract between an attorney and their client, and can be:

- An agreed hourly rate billed by the attorney and paid by the client (a 'fixed fee' arrangement), or
- A contingency fee, where the attorney does not charge a separate fee, but will take a percentage (25% to 40% as examples) out of a successful award (hence the attorney fee is contingent on winning a case). If the attorney is not successful in winning a case (either by going to trial or securing a pre-trial settlement), then it will not receive a fee, or
- A combination of fixed fee and contingency fee.

In a Class Action Lawsuit, the Representative Plaintiff is the **only** plaintiff who negotiates attorney fee arrangements for the Class Action. All other Class Members do not participate in such negotiations, and as a consequence, if they participate in the Class Action (and not opting out), then those Class Members have impliedly and automatically agreed with the attorney fee arrangement established between Class Counsel and Representative Plaintiffs. Typically, Representative Plaintiffs will agree with Class Counsel to a contingency fee (and not a separate out-of-pocket 'fixed fee' hourly rate – unless the claim is based on a statute that provides for award of attorney fees), which means Class Counsel will deduct its contingency fee from any Class Action successful award (either determined by trial or pre-trial settlement).

*Even so, any attorney fee arrangement must still be tested by the Court for reasonableness. This reasonableness test applies even with "clear sailing" agreements which are cases in which the defendant agrees to a noticeably large award of attorney fees and agrees not to object to that amount (perhaps a defendant quick dispute resolution tactic whereby Class Counsel are incentivized with a quick paycheck while the victims award may be lacking – which may challenge the ethics of representative counsel giving priority to representing the client's best interest and not preference to the attorney's paycheck).*

#### **Advantages of Contingency Fee Structure Includes:**

- No Up-front Fees. Helps give those lower-income clients better access to legal assistance and the court system.
- Incentive. If attorneys don't get paid unless client gets paid (win's its case), the attorney will be highly motivated to do everything in their power in order to get their client the best possible result. A performance-based agreement.
- No Costs for Losses. Lawyers are willing to risk not collecting a fee for the work they put into things.
- Contingency fees are helpful in cases where a client is short on funds and has an otherwise costly or complicated case.

#### Disadvantages of Contingency Fee Structure Includes:

- Encourages attorney to pursue non-merit case as nothing to lose but their time and foregoing other clients, and in a slow work environment, not much may be given up, or the pot of gold huge attorney fee incentive is worth the gamble to pursue a case<sup>10</sup>.
- A contingency fee arrangement can and often does cost a client more than a regular hourly fee.
- Once the parties agree on the contingency fee, the client owes the agreed upon percentage no matter how long the case will take—whether it takes a year or a week or two hours. This is especially true in the rare 'clear-cut' cases that may only require a few phone calls and a couple of hours of work in order to settle.
- Incentivized contingent fee lawyers may settle too soon and for too little to acquire a quick paycheck, and the client suffers.
- Contingent fees are usually too high relative to the risks that attorneys bear in a particular case, especially where they control whether or not to take a case and have already run their own risk of winning assessment analysis not shared with the client. (Is this insider knowledge and not in the best interest of the client?)

Since Class Counsel represents all Class Members and not just the Representative Plaintiffs, the Court must approve any settlement award for all Class Members including attorney fees.

Approval is conditioned on the settlement amount being fair, reasonable and adequate, and attorney's fees are reasonable.

Whether a Class Action settlement agreement is fair, reasonable and adequate, has been a bone of contention for companies who have pushed for **tort reform**, particularly as it concerns awards of huge attorney fees in Class Action litigation. These companies often complain about the huge awards of attorney fees that often change hands in Class Action settlements the amount of which are often extremely greater than actual damages claimed by plaintiffs, and they argue that **damage caps** and limits on attorney fees are necessary for the sake of justice, reasonableness and fairness.

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<sup>10</sup> While there is a risk in a contingency fee structured case of losing and not receiving a fee, attorneys who accept contingency cases are normally skilled at assessing the risk of recovery, and consequently are comfortable when they take on such cases that they more than likely will receive a fee. Not unlike the contingency fee-based billboard litigation hammer attorney seeking justice from truck driver accident bad guy defendants (and their insurers). Such sound bit messaging masks over the more honest concepts of justice, due process, unintentional accident, factual circumstances and a few other miscellaneous tid-bits that populist minded ears don't have time to listen to.

### Attorney Fees Reasonableness Test

Courts look to a variety of resources to assist them in determining if requested attorney's fees in a Class Action lawsuit are reasonable. If the court finds that the attorney fee agreement is unreasonable or unfair, the court may step in using its discretionary powers and either invalidate the agreement or amend it to make it reasonable.

Four significant resources used by the Court to test for reasonableness include:

1. American Bar Association Model Rules of Professional Conduct, Rule 1.5 Fees (many State Bar Association Rules of Professional Conduct are patterned after the ABA Model, and an attorney is duty bound to adhere to the Rules of Conduct else suffer consequences which could include disbarment from practicing law);
  - A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.
  - Traditional fee analysis to determine reasonableness takes into account...
    - the time and labor required,
    - the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
    - the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
    - the fee customarily charged in the locality for similar legal services;
    - the amount involved and the results obtained;
    - the time limitations imposed by the client or by the circumstances;
    - the nature and length of the professional relationship with the client;
    - the experience, reputation, and ability of the lawyer or lawyers performing the services; and
    - whether the fee is fixed or contingent
  - The traditional approach to proving attorneys' fees is for an attorney—sometimes the same attorney representing the party seeking fees—to testify as an expert on what are reasonable fees for the case (a little self-serving but that's the rules).
2. Federal Rules of Civil Procedure, Class Action Rule 23;
  - The Court '*may*' [*emphasis added, a discretionary power*] award reasonable attorney's fees that are authorized by law or by the parties' agreement.
3. Class Action Fairness Act of 2005;
  - Class Action settlements [damages and attorney's fees] are subject to Court approval,
  - Reports are to be filed with the House of representatives and the Senate containing
    - Recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members that the settlements are supposed to benefit;
    - Recommendations on the best practices that courts can use to ensure that—the fees and expenses awarded to counsel in connection with a class action

- settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation;
- Recommendations on the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement.
4. Court rulings, in particular attorney fee reasonableness test criteria described in
- *Stabraker v. DLC Ltd.*, 376 F.3d 819, 825 (8th Cir. 2004), which initiated the **lodestar standard**.
  - Determining reasonable fees under the **lodestar method** is a two-step process.
    - First, the court must determine the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work. By multiplying the number of reasonable hours by the reasonable hourly rate, the court determines the base fee or ‘lodestar’.
    - The court then may adjust the base fee or lodestar up or down (by applying a multiplier), if relevant factors indicate an adjustment is necessary to reach a *reasonable* fee in the case.
  - Under the lodestar method, the most heavily weighted multipliers are the time and labor required.
  - Reasonableness takes into account the factors used by the traditional fee determination.
  - Lodestar, presumably refers to a number that provides a guiding point-or lodestar-in the determination of an appropriate attorney fee award.

What is evident from assessing the resources used to determine what is or is not a reasonable attorney fee, is fraught with many subjective elements and not much independent deterministic<sup>11</sup> tests.

Class Counsel submit copious documents defending its request for attorney’s fees. The extent of this documentation can be voluminous and taxes the limited resources and busy dockets Courts have to study in detail all documents, consequently a challenged circumstance to fully assess all allegations and supporting documents. At times the sheer weight of filed documents can be a substitute for believed validity and justification. Elegant simplicity is more beneficial and honorable than intellectual complexity. The observation is that better guidance is needed in resolving what is or is not reasonable in regard to attorney’s fees and perhaps time for updated legislation to provide clarity and reduce the fog.

Consequently because of this absence of certainty, or at least a more determined method of attorney fee computation in Class Action lawsuits, astute counsel is free to argue for just about any fee they wish and paint it with broad strokes of reasonableness and justification whether in fact or

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<sup>11</sup> As in physics, deterministic refers to a cause-and-effect result which means if the same input to a situation is used again, then the same result will occur. A consistent and expected result. In contrast, a probabilistic result means if the same input is used again in a situation the outcome can be different. An inconsistent and uncertain result such as a 50% chance of such and such happening. Chaos is the extreme of the two which refers to a circumstance that is totally unpredictable regardless of the input.

illusionary. Just how long is a piece of string? Where is justice in all this, other than the rubber stamp embossed with 'APPROVED'?

### Use, Misuse and Abuse – Standards of Proof and Other Reforms

As in most things in life, we humans can use a tool or seek justice, in the spirit of what was honestly intended – a proper use, or take a less honest path of misusing or abusing the circumstance.

The more honest argument of the extent the Class Action industry and the participants in that syndicate have often wandered from the righteous path of intended honorable use to less honest misuse or abuse paths are illustrated in the following examples...

**Certification Reform.** Original or Representative Plaintiffs seeking to certify a case as a Class Action lawsuit under Federal Rules of Civil Procedure, Rule 23 must plead and prove: (1) an adequate class definition (precise and unambiguous, identity of class members is reasonably determined excluding remote and unlikely victims) (2) ascertainability (fairly easy process to identify class members), (3) numerosity (a showing that joining and naming all Class Members in a common lawsuit is impractical) , (4) commonality (questions of common fact and law), (5) typicality (claims of the Representative Plaintiffs are typical of the claims of Class Members), (6) adequacy (Representative Plaintiffs will fairly and adequately protect the interests of the class – no conflict of interests) and (7) at least one of the requirements in Rule 23(b), namely: (a) separate adjudications will create a risk of decisions that are inconsistent with or dispositive of other class members' claims, (b) declaratory or injunctive relief is appropriate based on the defendant's acts with respect to the class generally, or (c) common questions predominate and a class action is superior to individual actions.

Not unusual, expert testimony (often from compensated academia professors – hired guns, invoking often complex and little understood statistical analyses and arguments of why the ingredients exist for justifying a case as a Class Action lawsuit – who are also governed by use, misuse and abuse standards of conduct) are used by attorney's as a resource to establish enough 'doubt' in the mind of the judiciary, that the easy course is to certify a case as a Class Action lawsuit. The adage there are liars, damn liars and statisticians, is still in vogue. Given enough complex equations, PowerPoint slides and laser pointers, an expert can argue just about any side of a case and sound pretty convincing – especially when it's paid for testimony and the basis of a decision is foggy, not deterministic and dependent on subjective feelings. And to think all of this insightful assessment of class certification takes place in a few minutes or a few hours at a court room hearing (the court docket of which is always busy and a court's objective to move things along – justice to is dependent on the sweep of a ticking clock) in which participants in that hearing claim some sort of justified immediate understanding and acceptance of what the truth is and make an on the spot decision – yay or nay to certification. It takes a university student often many hours if not days just to solve one calculus or differential equation math problem – not including the study and prep time...yet the complexity of class action certification decisions happens in the twinkle or an eye.

The Representative Plaintiffs bear the burden of proving that the prerequisites to class certification have been met by a *preponderance of the evidence*. Theoretically this standard is supposed to be based on evidence and not speculation.

A certification decision can be challenged, and an appeal made to a higher court. An appeal may be accepted when: (1) the decision is questionable and the certification order represents the death knell for a defendant who will be compelled to settle even if the plaintiff's claims are not meritorious, (2) the decision raises an unsettled, fundamental and generally applicable issue of law that will likely evade end-of-the-case review, or (3) the decision is manifestly erroneous.

Reform is needed in the law or Rules, to cause the courts to be more pragmatic and reflective in a class certification decision. Some potential reforms might include:

- A separate Commission is relevant, composed of independent experts from many disciplines, who must first hear the class certification arguments and provide their opinion to the court whether the tests for certification are honestly and factually present, the cost of such Commission paid for by the plaintiff (and if a class is certified as a Class Action, the plaintiff in a successful Class Action lawsuit may include that cost in their recovery)
  - Often times when one is at risk of incurring an out-of-pocket cost, their desire to pursue a certain path is more tempered and reflective and becomes a self-assessing factor to not pursue highly questionable course of conduct;
- A separate and specially trained or class action certification expert judge or magistrate independent from the court a case is filed in, rules on a certification argument.
- If a class certification request is denied, the plaintiff is responsible for paying the defendant's costs and attorney's fees for defending the matter. A statutory form of attorney fee but paid by the losing plaintiff.

**Standards of Proof Reform.** The standard of proof in a court, listed in order of the degree of persuasive arguments (highest and most intense listed first) include:

- Beyond a reasonable doubt in criminal law.
- Clear and convincing evidence
  - Present evidence that leaves the listener with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true.
- Preponderance of the evidence in most civil cases.
  - Prove that something is more likely than not.
- Probable cause in the acquisition of a warrant or arrest proceeding.
- Reasonable belief as part of establishing probable cause.
- Reasonable suspicion in cases involving police stop and searches.
- Some credible evidence in cases necessitating immediate intervention, like child protective services disputes.
- Some evidence in cases involving inmate discipline.
- Substantial evidence in many appellate cases.
  - Degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree.

Class Action certification and other proofs in a Class Action lawsuit are governed by the Preponderance of the Evidence standard of proof, as is most civil lawsuits. Because of the unique nature of a Class Action lawsuit, and the heightened unique exposure to claims of a defendant to

many plaintiffs and defendant's expanded defense burdens, the standard of proof in a Class Action lawsuit should be based on Clear and Convincing Evidence. Such a standard will go a long way towards self-governing promotion of the honesty of a case in regard to hired gun expert Class Certification complex testimony and Class Action attorney specialists promoting the Class Action industry. Justice can still prevail even with a Clear and Convincing Evidence standard of proof, but the burden shifts to the plaintiff to present a more honest case.

**Self-Serving Reform.** Class Counsel representing a Class Action lawsuit, is obligated to demonstrate Class Member (victim) remedies are tested to a standard of being **fair, reasonable and adequate** and any claim for attorney's fees be tested to a standard of **reasonableness**.

In many cases Class Counsel unnecessarily strains the honesty standard of argument, that the case is shoe-horned to fit within the standards of reasonableness, fairness or adequacy. The more honest arguments include:

- Argument: Class Members have not objected to the size of the remedy or attorney's fees so therefore they must by default be reasonable.
  - Reform: Most Class Members only became aware they were entitled to a claim when they received postcard notice from Class Counsel the claim exists, and typically the claim amount is so small, the Class Member may or may not file a claim (assuming they spend time to study the notice), and spend no time challenging the suit given the small nature of the event. Hence arguing the absence of objection as part of the rationale of a claim and attorney fee being reasonable is a rather salty circular self-serving argument, and one hopefully a court will disregard (ignore?).
- Argument: Attorney's fee claims are comparable to other Class Action lawsuit awards, citing common percentage take regarding contingency fee awarded attorney's fee in other cases.
  - Reform: This one-size-fits-all attorney fee reasonableness standard is contrary to the obligation of attorneys to determine their fee on the merits and effort involved in each individual case. Reasonable attorney's fee justification is not like earning a fixed real estate agent sales commission (the 6% 'standard' shared between buyer and seller agents). Then again, justifying a fee based on other case 'standards', is another admission of the observation that Class Action lawsuits have become a commoditized industry and vehicle to rack up huge attorney's fees and not a forum for justice.
- Argument: Expert testimony (often university professor experts – hired guns) demonstrate with subjective little understood complex statistical stealth, that the basis of a case is sounded as evidence and proof of the bad conduct of a defendant.
  - Reform: An expert arguing in a security fraud case for example, that defendant's alleged bad conduct caused an inappropriate one penny swing in a defendant's stock price...is a pretty far-fetched argument to make, given stock price swings happen on a daily basis and to pin-point specific conduct of a defendant why the swing happened, especially when a nominal amount, is often a bridge to far...and all the more reason to have a Clear and Convincing Evidence standard of proof.
- Argument: Class Counsel base their attorney fee on a contingency basis, a percentage of the Claim award to Class Members, citing Class Action 'victims' are seeking justice and

Class Counsel graciously accepting a case to advance that justice and willing to do so on a contingency basis relieving the Class Members of bearing the legal costs of a case, and usually such fees are paid by a losing defendant if an underlying statute on which a case is brought provides for attorney fees as part of the remedy.

- Reform: How often does Class Counsel seek to orchestrate a case as a Class Action lawsuit, driven by the objective of increasing the size of a Claim because of Class Member participation, and the size of the percentage take from a large Class Action Claim as attorney's fees, is hugely more valuable than a percentage take from an individual plaintiff claim? Thus, an observation that contingency attorney's fees should not be permitted in Class Action lawsuits, leaving the attorney to justify their fee based on reasonableness standard tests associated with time and hourly rates.
- Argument: Class Counsel justify the merits of a Class Action case (either as certification as a Class Action or violation of a law) and their right to attorney's fees, based on a plethora of cited cases, mountains of self-serving justification documentation and other resources heaped upon a court's already busy docket. The weight of the argument is based on the paper weight of the documents filed and not on the quality and weight of evidence of the argument.
  - Reform: Similar to discovery proceedings, perhaps attorneys should be limited to the number of pages of documentation they file in a case, unless a show cause hearing is held to show why more and not less is necessary. The goal being elegant simplicity vs intellectual complexity. Whenever an argument is based on excessive rhetoric and paper weight, red alarm bells should ring louder than ever that the underlying honesty of the argument is lacking and being displaced and made up by heavy mass and not quality class arguments.

### Justice and Class Action Lawsuits

The Class Action lawsuit industry seems to have wrinkled the path of what justice (or injustice) is all about.

The Declaration of Independence, the Constitution of the United States of America, and the Bill of Rights, the "founding documents" of the nation, speak directly to the ideals of freedom from oppression, equality, and justice *for all*. Justice is fairness and equal treatment and applies to both the plaintiff AND the defendant since that simple 'all' word is rather encompassing.

Class Action Lawsuits seem to treat defendants as tyrants and oppressors of the public. That is not justice for *all*.

What is just remains a matter for debate. Observing the same outcome of a situation, one person may say justice was done. Another may declare the outcome an injustice and great wrong. Is the porridge too hot or just, right? Is the attorney fee too huge or just, right?

Justice may be viewed as a subjective process of assessing the fairness of relations between individuals and groups of people, such as...

- Getting what one deserves.

- Equitable sharing of civic burdens.
  - We all get car door ding marks, and we all give them. While such is normally an accidental ‘wrong’, to seek a \$50 door ding damage repair bill and charge a \$10,000 attorney fee is not what justice is *all* about. Revenge maybe. Assumption of a certain amount of risk is a constant balancing act in anything us humans do. (Maybe the door ding issue can be resolved by car makers installing soft bumper guards on door edges or wider parking lanes.)
- Individual virtue and ethical conduct (especially attorney’s whose law license demands they honor Bar Association ethics and code of professional conduct and act responsibly and always seek justice for *all* and not revenge).

Is it unreasonable/unethical for plaintiff’s attorney to pursue a Class Action lawsuit, knowing their fee will be many many magnitudes greater than any nominal recovery of victims, where such huge fee is paid to the attorney instead of compensation to the victims? Is that justice?

Are huge attorney fee awards seen as a substitute for punitive (‘punishment’) damages above and beyond actual damages, of a Class Action lawsuit defendant? Justice would suppose punishment is by way of compensation paid to victims, and where applicable, award of punitive damages (also paid to victims above and beyond actual damages) as a punishment for unacceptable intentional egregious acts of defendants. Attorney fees are in relation to reasonable honest legal services provided on behalf of the plaintiff/victims and NOT a means of punitive punishment of defendants.

Who does justice define as the victim? The Class Member victims? Plaintiff’s lawyers as victims? Defendant victims being exposed to paying huge legal fees and lawyers misusing or abusing what justice is *all* about?

It’s time for a change.

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## Appendix A –

## Class Action Lawsuits – Huge Attorney Fee Illustrations

**Example Class Action Case 1 (<https://www.nielsensecuritiessettlement.com/>)**

In Re Nielsen Holdings PLC Securities Litigation  
Civil Action No. 1:18-cv-07143-JMF  
United States District Court  
Southern District of New York

Proposed Settlement Fund	\$73,000,000	(\$0.19 per share)
Proposed Contingency Attorney's Fees (25%)	\$18,250,000	(\$0.05 per share)
Plus Attorney Expenses	\$ 1,110,000	
Total Legal Cost	\$19,360,000	
Claimed Attorney Hours	17,206	
Total Class Member (Victims)	384,000,000	(\$73,000,000/\$0.19)
Attorney Hourly Rate Disclosure Ranges		
Paralegals	\$315 to \$505	
Associate Attorneys	\$895 to \$2,017	
Of Counsel	\$975 to \$1,560	
Partners	\$1,250 to \$1,983	
Average Attorney hourly rate	\$1,060	(\$18,250,000/17,206)
Attorney Fee Per Lawyer (assuming 82 lawyers)	\$222,561	(\$18,250,000/82)
Range of Victim Award (depends on shares owned)		
500 shares	\$70	(500*\$0.14)
10,000 shares	\$1,400	(10,000*\$0.14)
100,000 shares	\$14,500	(100,000*0.14)

**Example Class Action Case 2 (<https://www.t-mobilesettlement.com/>)**

In Re T-Mobile Customer Data  
Security Breach Litigation  
Civil Action No. 4:21-md-03019-BCW  
United States District Court  
Western District of Missouri

Proposed Settlement Fund	\$350,000,000	
Plus Future Data Security Upgrades	\$150,000,000	
Proposed Contingency Attorney's Fees (22.5%)	\$78,750,000	(reduced from 30%)
Plus Attorney Expenses	\$ 147,982	
Total Legal Cost	\$19,360,000	
Claimed Attorney Hours	8,225	
Total Class Member (Victims)	79,150,000	
Attorney Hourly Rate Disclosure Ranges	\$270 to \$1275	

Average Attorney hourly rate	\$9,574	(\$78,750,000/8,225)
Attorney Fee Per Lawyer (assuming 100 lawyers)	\$787,500	(\$78,750,000/100)
Range of Victim Award (depends on shares owned)	\$3.42	(\$271,250,000/79,150,000)

**Example Class Action Case 3 (<https://www.baggagefeeclassaction.com/>)**

Cleary v. American Airlines Inc.  
 Baggage Claim  
 Civil Action No. 4:21-cv-00184-O  
 United States District Court  
 Northern District of Texas

Proposed Settlement Fund	\$7,500,000	(min.)
Proposed Fixed Fee Attorney's Fees	\$2,850,000	(27.5% total award)
Attorney Expenses	\$1,142,945	
Claimed Attorney Hours	3,641	
Total Class Member (Victims)	588,654	
Average Attorney hourly rate	\$782	(\$2,850,000/3,641)
Attorney Fee Per Lawyer (assuming 10 lawyers)	\$285,000	(\$2,850,000/10)
Victim Award	\$12.74	(\$7,500,000/588,654)

**Example Class Action Case 4 (<https://www.OracleSecuritiesLitigation.com>)**

In re Oracle Corporation Securities Litigation  
 Securities Fraud  
 Civil Action No. 18-cv-04844-BLF  
 United States District Court  
 Northern District of California, San Jose Division

Proposed Settlement Fund	\$17,500,000	
Proposed Fixed Fee Attorney's Fees	\$3,500,000	(20% total award)
Attorney Expenses	\$900,000	
Claimed Attorney Hours	17,900	
Total Class Member (Victims)	979,000	
Average Attorney hourly rate	\$195	(\$3,500,000/17,900)
Attorney Fee Per Lawyer (assuming 10 lawyers)	\$350,000	(\$3,500,000/10)
Victim Award	\$0.01/share (~2.7 bn shares)	
	(~1800 shares per shareholder avg)	
	\$18 avg share of claim	

A self-serving assertion: The small number of objections in comparison to the size of the Class supports a finding that the Settlement is fair, reasonable, and adequate. The reason folks did not opt-out have nothing to do with a fair, reasonable and adequacy test. Case cites false statements illegally inflated Oracles stock value – then trading between \$43 and \$47. Jan 2023 trade value is over \$85, and a peak end of 2022 at over \$100. The casual observer would cite business as usual and a good year for Oracle investors...justifying a 1 cent swing in stock value because of excessive puffing – craftily disguised as security fraud (with a lot of academic experts pontificating on their crystal ball insightfulness and naval gazing) is poppycock. Liars, damn liars and statisticians come to mind.

Appendix B

Example Form Objection to Attorney’s Fees

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF (State)
DIVISION

IN RE [NAME USED IN COURT DOCUMENTS]

Case No.

OBJECTION TO PROPOSED ATTORNEY FEE AND EXPENSE APPLICATION AND REQUEST FOR DOWNWARD ADJUSTMENT

1. Objection Applicant, (your name) (pro se), a Settlement Class Member (Class Member ID, claim number) submits this OBJECTION, to apply to the entire class (and not just to me personally), the Applicant does not plan to attend the Final Approval Hearing, has not objected to any class action settlement within the past three years, and request for modification and downward adjustment of any pending or submitted Attorney Fee and Expense Application (herein the ‘Application’) because such Application is unreasonable, unfair and not in the best interest of the Settlement Class Members.

[Cross through or delete Option 1 or Option 2 that does not apply]

2. Option (1) Since as of the filing of this Objection, Lead Counsel has not filed in https://www, copy of the Application, nor sent a copy to Objection Applicant, this Objection is based on those documents of record in the cited website so filed as of the date of this Objection.

12 Read the post card claim notice and follow any specific instructions regarding filing of an objection, such as timing, address to send the Objection to, and any conditions. This Appendix B form contains typical conditions but may not be complete.

13 Pro se means you are representing yourself.

14 Class member ID is usually cited in the post card claim notice received in the mail concerning the Class Action

15 If you have filed a claim after receiving the post card claim notice, you usually will be issued a claim number.

16 The Class Action lawsuit will be found on the internet which will allow you to have access to all case documents and other information about the case. Insert the internet website. Often times an Objection is filed before all relevant documents are filed online. Final attorney fee applications are often filed late.

*Option (2) This Objection is based on those documents of record in <https://www> \_\_\_\_\_, as of the date of this Objection.*

### **OBJECTION**

3. Rationale behind this Objection, includes...

3.1 Although Representative Plaintiff's in this Class Action Lawsuit have ostensibly approved the Application, I do not agree with such approval, and hereby submit this Objection.

3.3 The Application is not in the best interest of Settlement Class Members and is not reasonable.

3.3 The Application must be thoroughly tested for its reasonableness, including taking into account:

3.3.1 American Bar Association Model Rules of Professional Conduct, Rule 1.5 Fees

- A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.
- Traditional fee analysis to determine reasonableness takes into account...
  - the time and labor required,
  - the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - the fee customarily charged in the locality for similar legal services;
  - the amount involved and the results obtained;
  - the time limitations imposed by the client or by the circumstances;
  - the nature and length of the professional relationship with the client;
  - the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - whether the fee is fixed or contingent

3.3.2 Federal Rules of Civil Procedure, Class Action Rule 23;

- The Court '*may*' [*emphasis added, a discretionary power*] award reasonable attorney's fees that are authorized by law or by the parties' agreement.

3.3.3 Class Action Fairness Act of 2005;

- Class Action settlements [damages and attorney's fees] are subject to Court approval, taking into account...
  - Reports filed with the House of representatives and the Senate containing recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members that the settlements are supposed to benefit and recommendations on the best practices that courts can use to ensure that— the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the

litigation; recommendations on the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement

- 3.3.4 Court rulings, in particular attorney fee reasonableness test criteria described in
- *Stabraker v. DLC Ltd.*, 376 F.3d 819, 825 (8th Cir. 2004), which initiated the **lodestar standard**.
    - Determining reasonable fees under the **lodestar method** is a two-step process.
      - First, the court must determine the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work. By multiplying the number of reasonable hours by the reasonable hourly rate, the court determines the base fee or ‘lodestar’.
      - The court then may adjust the base fee or lodestar up or down (by applying a multiplier), if relevant factors indicate an adjustment is necessary to reach a *reasonable* fee in the case.
      - Under the lodestar method, the most heavily weighted multipliers are the time and labor required.
      - Reasonableness takes into account the factors used by the traditional fee *determination*.

4. The Court is requested to invoke its discretionary powers to modify and reduce the Attorney Fee Expense Application to make it reasonable.

5. The economics of the requested Application indicate:

5.1 The proposed Settlement Common Fund to all Class Members is \$ \_\_\_\_\_. (Total indicated settlement to be paid to victims)

5.2 Total Class Members are \_\_\_\_\_ (total number of victims)

5.3 Individual Class Member award are estimated to be \$ \_\_\_\_\_ (cite how much each victim may receive or at least a range)

5.4 Total Attorney Fees and Expenses applied for are \$ \_\_\_\_\_

5.5 The total legal hours expended on the case are \_\_\_\_\_

5.6 The average hourly rate charged for legal services is \$ \_\_\_\_\_ (paragraph 5.4 divided by paragraph 5.5)

5.7 The average paycheck for each attorney working on the case is \$ \_\_\_\_\_

(paragraph 5.4 divided by the total number of attorneys estimated to be working on the case, small cases may be up to 5, big cases may be 75 or more)

5.8 The disparity between the amount of recovery to each Class Member compared to the paycheck each attorney could receive suggests an exorbitant and unreasonable basis on which to base attorney fees.

6. Any reduction in the Application is to be returned to and distributed to the Settlement Class Members, the real victims of this cause of action, and not as a contribution to attorney fees.

7. A review of class action settlements suggests attorneys typically are ‘rubber stamped’ awarded their request because in part they have subjected the court to a plethora of case law cites, statutory law prose, subjective facts, mountains of documents and other heaps of information (extracted from past cases) – especially when a \$\_\_\_\_\_ [insert amount of claimed fee] attorney paycheck is in the offing - all of which may or may not be germane to the case but certainly adds a lot of fog to the landscape that a Court with limited budget of resources most likely cannot fully assimilate.

8 Settlement (with all parties accepting a cash Settlement amount as an acceptable compromise of the issues) was achieved without trial. Consequently, the extent and reasonableness of claimed earned legal fees are in question. Using the same high fee whether a case settles in two hours or after preliminary discovery and pre-trial settlement negotiation does not make sense and does not pass the smell test.

- o While it is instructive to take into account attorney work claims of:
  - o Preparing legal documents (complaints, depositions, subpoenas, attending hearings, legal research), law firms versed in class action cases already have in hand the understanding of relevant statutes and case law, and unless a novel area of data breach issues are understood and billable time not required to be wasted and spent on developing these items, they are already in the library.

9. [Add any other information that is unique to the case that illustrates why you think the requested attorney fee and expense application is unreasonable] At your discretion you might also include a copy of the above paper that might give the Court some additional information to think about].

Respectfully submitted.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[name, printed and sign document]

Settlement Class Member

\_\_\_\_\_, (mobil)

\_\_\_\_\_, (fax)

\_\_\_\_\_ email

\_\_\_\_\_ address

\_\_\_\_\_ address

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, copies of the **OBJECTION TO PROPOSED ATTORNEY] FEE AND EXPENSE APPLICATION AND REQUEST FOR DOWNWARD ADJUSTMENT, WERE** mailed by first class prepaid postage or by email, to the following recipients:

**IN THE UNITED STATES DISTRICT COURT FOR THE  
\_\_\_\_\_ DISTRICT OF \_\_\_\_\_  
\_\_\_\_\_ DIVISION**

Clerk of the Court  
[address/email]

CLASS COUNSEL  
[name]  
[address/email]

Defendant  
[address/email]

I, \_\_\_\_\_, further certify I am a Settlement Class Member.

\_\_\_\_\_  
[name]

It is presumed Lead Counsel will post this Objection as a relevant document in this case online internet posting cite.

Appendix C

Example Op-Out Form

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF (State)
DIVISION

IN RE [NAME USED IN COURT DOCUMENTS]

)
)

Case No. \_\_\_\_\_

ELECTION TO OPT-OUT OF THE CAPTIONED CLASS ACTION LAWSUIT

- 1. Opt-out Applicant, \_\_\_\_\_ (your name) (pro se17), a Settlement Class Member (Class Member ID18 \_\_\_\_\_) submits this Election to Opt-Out of the captioned class action lawsuit and not participate in such suit, and without prejudice, reserve any and all of my rights to pursue a separate claim

Respectfully submitted.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[name, printed and sign document]

Settlement Class Member

\_\_\_\_\_, (mobil)

\_\_\_\_\_, (fax)

\_\_\_\_\_ email

\_\_\_\_\_ address

\_\_\_\_\_ address

CERTIFICATE OF SERVICE

17 Pro se means you are representing yourself in the objection.

18 Class member ID is usually cited in the post card notice you received about the Class Action

I, \_\_\_\_\_, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, copies of the **Election to Opt-Out of the captioned class action lawsuit and not participate in such suit**, was mailed by first class prepaid postage or by email, to the following recipients:

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF \_\_\_\_\_  
DIVISION**

Clerk of the Court  
[address/email]

CLASS COUNSEL  
[name]  
[address/email]

Defendant  
[address/email]

I, \_\_\_\_\_, further certify I am a Settlement Class Member.

\_\_\_\_\_  
[name]

It is presumed Lead Counsel will post this Objection as a relevant document in this case online internet posting cite.

*[This is a general form. The postcard notice received about the Class Action lawsuit may contain other information of what to do to opt-out of the case. Please refer to that detail as required].*

## Appendix D

### Class Action Lawsuits – Attorney Fee Legislation

*[Date]*

To:

*Name of U.S. Representative/Senator*

*[address – local/Capitol]*

*Via mail, email, fax*

From

*[name]*

*[address]*

*[email]*

*[phone]*

*[fax]*

*Re: Class Action Lawsuit – Attorney Fee Legislation*

*Dear Congress Person [name] or Senator [name],*

*My name is [name] \_\_\_\_\_ and I live and vote in the district you represent.*

*I write to you as a concerned citizen regarding Class Action Lawsuits and Attorney Fee Legislation.*

*I am sure you are aware of Class Action Lawsuit rights and the public service such activities serve.*

*I have attached a recent paper on such action, in particular the concern regarding huge attorney's fees granted in many Class Action cases and what action plans can be advanced to provide some control over run-away fees.*

*While the judicial Court system has oversight to assess the reasonableness of such fees, there seems to be a consistent 'one-size-fits-all' demeanor advanced when such fees are defended by Class Counsel. This demeanor is contrary to the reasoning that one-size-does-not-fit- all where each case and its fee structure are to be assessed on their own merits and tested against a standard of fairness, reasonableness and adequacy. Most Class Counsel argue that their claimed attorney's fees (a self-serving argument) are consistent in the formula used to determine fees among all other cases.*

*The attached paper and my own experience suggest legislation may well be required to provide the necessary control over excessive fee awards.*

*I am writing to seek your counseling and perhaps leadership in advancing relevant legislation that can address the run-away legal fee paycheck issues and problems outlined in the attached paper.*

*While I don't have the answers, I do have some ideas.*

### **Contingency Fee Prohibition**

*Perhaps, similar to prohibition of the use of contingency legal fees (where the fee is based on the attorney taking a percentage of the case outcome) in regard to domestic relation and criminal cases, Class Action lawsuit may well be added to the prohibited list, thereby leaving attorneys to argue and defend a fee based on 'fixed fee' reasonable hours and reasonable billing rate arguments.*

*As you know, the legal profession has almost unanimously determined for years that allowing attorneys to base their contingency fee on the outcome of a divorce or child custody case would create a risk of the attorney having a financial interest in the outcome as well as being against public policy and therefor unreasonable by default. This could potentially lead unscrupulous attorneys to take actions that could be against the interests of children, or it could encourage attorneys to do things to make sure clients actually divorce. On the contrary, a skilled and ethical divorce attorney should always consider reconciliation, resolution, and fairness to be part of the goal and avoidance of the destruction of family relationships. There can be no financial interest in seeing to it that clients get divorced.*

*Likewise, contingency fees are prohibited in regard to criminal cases also based on public policy reasons.*

*Shouldn't Class Action counsel likewise ethically consider resolution and fairness to be the goal of such actions.*

### **Reasonableness Tests Codification**

*As outlined in the attached paper, the groundwork for attorney fee codification has been laid out in the various resources currently consulted to assess attorney fee reasonableness.*

*Those resources include: American Bar Association Model Rules of Professional Conduct, Rule 1.5 Fees; Federal Rules of Civil Procedure, Class Action Rule 23; Class Action Fairness Act of 2005; court rulings, in particular attorney fee reasonableness test criteria described in *Stabraker v. DLC Ltd.*, 376 F.3d 819, 825 (8th Cir. 2004), which initiated the **lodestar standard**.*

*Should legislation be passed to codify the various methods used to test for reasonableness of attorney's fees, thereby removing much of the subjective uncertainty and differences without a distinction confusion?*

*Should a codified formula (which may also include a cap) be determined that provides guidance what is considered a reasonable attorney fee, with an opportunity for attorneys to challenge the formula if they can demonstrate why their fee structure is the better reasonable structure?*

### **Independent Committee**

*Currently, attorney fee reasonableness tests are assessed by other attorneys. I have included the Court system in this testing network since most jurists are attorneys. Should there be some form of independent committee, commission or panel used to test the reasonableness of attorney fees, the participants of which also includes non-lawyers? Professions that come to mind that might be part of such panel includes Insurance (risk management), Accountants, Professional Engineers, Military Officer, Police Officer, Day Care Management, Clergy, Local Union Leadership.*

*An independent committee, commission or panel is not unlike the independent expert appointed under the Class Action Fairness Act of 2005, who is instructed to scrutinize 'coupon settlements' (where a business is willing to issue 'coupons' that provide for a discount or payment for future goods or services) before the Court's approval of the settlement, in order to ensure that the settlement will be of [some?] value to the Class Members.*

*Class Action Counsel might argue that the complexity of defending why legal fees are reasonable, is not readily understood by the lay person. Quite the contrary, if attorneys cannot argue their defense of why their fee is reasonable in plain understood English, then the fog index is in full force...and that corrupts the concept that a little bit of sunshine is a great disinfectant.*

### **Class Action Certification Reform**

*A separate Class Action certification Commission should be created, composed of independent experts from many disciplines, who must first hear the class certification arguments and provide their opinion to the court whether the tests for certification are honestly and factually present, the cost of such Commission paid for by the plaintiff (and if a class is certified as a Class Action, the plaintiff in a successful Class Action lawsuit may include that cost in their recovery)*

*Often times when one is at risk of incurring an out-of-pocket cost, their desire to pursue a certain path is more tempered and reflective and becomes a self-assessing factor to not pursue a highly questionable course of conduct.*

*If a class certification request is denied, the plaintiff is responsible for paying the defendant's costs and attorney's fees for defending the matter.*

### **Plaintiff Filing Reform**

*Similar to discovery proceedings, Class Counsel attorneys should be limited to the number of pages of documentation they file in a case, unless a show cause hearing is held to show why more and not less is necessary. The goal being elegant simplicity vs intellectual complexity. Whenever an argument is based on excessive rhetoric and paper weight, red alarm bells should ring louder than ever that the underlying honesty of the argument is lacking and being displaced and made up by heavy mass and not quality class arguments.*

**Standard of Proof Reform**

*The standard of proof used to either certify a case as a Class Action or evidence presented in a trial of the matter, should be based on Clear and Convincing Evidence and not Preponderance of the Evidence. A higher standard of proof makes sense, since such standard will have a self-governing incentive for plaintiff's and Class Counsel to advance an honest case as well as promoting the nation's founding documents objective of Justice for ALL, especially since a defendant is confronted with the unique and unusual aspects defending a Class Action claim.*

**Pre-Certification Notice**

*The honest merits of a lawsuit certified as a Class Action, should first be tested, that prior to such certification, Plaintiff's should first submit a mandatory notice letter (the Class Action Pre-Certification Notice Letter, or CAPCN) to the defendant giving them clear and unambiguous information concerning: (i) The legal rationale on what the Class Action complaint is all about; (ii) How much Class Member compensation (cash and non-cash) the defendant is expected to pay to resolve the complaint, net of any attorney fee; and (iii) The amount of claimed attorney's fees incurred as of the CAPCN letter, but prior to certifying a case as a Class Action lawsuit;*

*Such letter then giving the defendant an opportunity to resolve the complaint without Class Action certification, and if a defendant offer of resolution is rejected, if after a case is certified as a Class Action lawsuit, and the case is resolved in favor of Class Members (either by settlement or court judgment) the Class Action claim (not including attorney's fees) is equal to or less than what the defendant offered to settle with the CAPCN letter, then in that circumstance, any claimed attorney fees will be limited to what was offered at the CAPCN stage of resolution.*

*I trust you find this request of interest and can shed some light on the issues and help find resolution to some of the problems cited.*

*Regards,*

*Name*

**Appendix E**

**Class Action Lawsuit Postcard Claim Form**

*[Date]*

To:

*Name of U.S. Representative/Senator*  
*[address – local/Capitol]*  
*Via mail, email, fax*

From

*[name]*  
*[address]*  
*[email]*  
*[phone]*  
*[fax]*

*Re: Class Action Lawsuit – Postcard Claim Form*

*Dear Congress Person [name] or Senator [name],*

*My name is [name] \_\_\_\_\_ and I live and vote in the district you represent.*

*I write to you as a concerned citizen regarding Class Action Lawsuits and the content of postcard claim forms used to notify potential Class Members of their claim rights.*

*I am sure you are aware of Class Action Lawsuit rights and the public service such activities serve.*

*I have attached a recent paper on such action, in particular the concern regarding user friendly notification and information contained in postcard claim forms and what action plans can be advanced to provide improved user-friendly better-informed awareness of important issues associated with such forms.*

*I believe legislation is needed to simplify, make easier to understand, postcard Class Action lawsuit claim notices, designed to clearly and conspicuously describe:*

- (1) what potential claim is being sought,*
- (2) how much (cash and non-cash) in total and how much each individual Class Member may be entitled,*

*(3) how the size of the Class Action Claim and attorney's fees are effected if Class Members opt-out of participating in the lawsuit and*

*(4) how attorney fees and expenses are calculated, estimated total amount to be requested and indicative average attorney fee per lawyer and average hourly rate being charged.*

*Such postcard claim form legislation could be an amendment to the Class Action Fairness Act of 2005.*

*It is not uncommon when a Class Member receives a postcard claim form in the mail, short of hiring their own attorney, they need to have a reasonable understanding of how to navigate through online internet systems in order to obtain additional relevant information. The internet navigation process as well as interpreting much of the 'legal mumbo gumbo' cited in important documents, gets lost in translation, leaving Class Members with little insight of their rights and significance of important issues.*

*One issue of importance is the user friendly opportunity to make the postcard claim form easy to understand on which a Class Member can then be able to clearly judge the merits of receiving a small nominal value in a Class Action lawsuit, while attorney's receive huge paychecks, using the Class Action Lawsuit as a vehicle to secure such fee (and justice taking back seat peanut gallery priority), thus allowing Class Members to make a much better informed decision of opting out (not participating) in the Claim or staying in.*

*I trust you find this request of interest and can shed some light on the issues and help find resolution to some of the problems cited.*

*Regards,*

*Name*

# **Exhibit 6**

38 Young's Road  
Basking Ridge, NJ 07920  
August 4, 2023

United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: In RE Wells Fargo & Company Securities Litigation, Case No. 1:20-cv-04494-GHW-SN

Dear United States District Court:

I am a Settlement Class Member and have not excluded myself from the Settlement Class. As a Settlement Class Member, I object to the amount of attorney's fees potentially payable in this matter. The Notice of Pendency of Class Action And Proposed Settlement notes in Paragraph 5 that fees could be awarded "in an amount not to exceed 19% of the Settlement Fund." Assuming the Net Settlement Amount, net of interest and certain expenses, is in the range of the \$1,000,000,000 cash outlined in Paragraph 2, attorney's fees could amount to approximately \$190,000,000.

This would be payable to two law firms who were appointed as Lead Counsel three years ago. Even assuming substantial work prior to their appointment, and if each firm had multiple lawyers and staff working on the case, the hourly rates would be enormous. Recognizing the premium reasonably paid for contingent work, nevertheless, I suggest that even a 2.5% payment of such an enormous settlement, i.e. approximately \$25,000,000, would be an enormous windfall to these firms.

As I know you are well aware, every dollar that is paid for fees and expenses (and I have not even addressed the Litigation Expense of up to \$2,000,000) comes directly out of payments to the Settlement Class.

Thank you for exercising your prudent judgment on behalf of all parties.

Sincerely,



Patricia A. White

**W**  
Mrs Patricia White  
38 Youngs Rd  
Basking Ridge NJ 07920-4033

DV DANIELS NJ 070

5 AUG 2023 PM 6 L



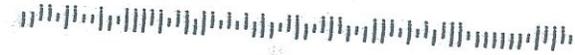
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007



Re: Wells Fargo & Co  
Securities Litigation  
Case No 1:20-cv-04494  
GHW-SN



10007-131608



# **Exhibit 7**

**FILED**  
SAN MATEO COUNTY

JUL 27 2023

Clerk of the Superior Court

By

~~DEPUTY CLERK~~

1 ROBBINS GELLER RUDMAN  
& DOWD LLP  
2 JAMES I. JACONETTE (179565)  
655 West Broadway, Suite 1900  
3 San Diego, CA 92101-8498  
Telephone: 619-231-1058  
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jamesj@rgrdlaw.com

5 COTCHETT, PITRE & MCCARTHY, LLP  
6 MARK C. MOLUMPY (168009)  
TYSON REDENBARGER (294424)  
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SCOTT+SCOTT ATTORNEYS AT LAW LLP  
JOHN T. JASNOCH (281603)  
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jjasnoch@scott-scott.com  
jpettigrew@scott-scott.com

12 *Class Counsel*

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 In re MICRO FOCUS INTERNATIONAL )  
PLC SECURITIES LITIGATION )

Lead Case No. 18CIV01549

CLASS ACTION

17 This Document Relates To:

18 ALL ACTIONS.

17 ~~PROPOSED~~ JUDGMENT AND ORDER  
GRANTING FINAL APPROVAL,  
18 APPROVING PLAN OF ALLOCATION,  
AND AWARDED ATTORNEYS' FEES,  
19 REIMBURSEMENT OF EXPENSES, AND  
APPROVING SERVICE AWARDS

21 Assigned for All Purposes to:  
22 Hon. Marie S. Weiner, Dept. 2

23 DATE: July 25, 2023  
24 TIME: 2:00 pm

25 Date Action Filed: 03/28/18

26  
27  
28  
[PROPOSED] JUDGMENT AND ORDER GRANTING FINAL APPROVAL, APPROVING PLAN OF  
ALLOCATION, AND AWARDED ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND  
APPROVING SERVICE AWARDS

1 WHEREAS, the Court is advised that the Parties, through their counsel, have agreed, subject  
2 to Court approval following notice to the Settlement Class and a hearing, to settle this Action upon  
3 the terms and conditions set forth in the Stipulation of Settlement dated January 24, 2023 (the  
4 “Stipulation” or “Settlement”);<sup>1</sup> and

5 WHEREAS, on February 7, 2023, the Court entered its Order Preliminarily Approving  
6 Settlement and Providing for Notice, which preliminarily approved the Settlement, and approved the  
7 form and manner of notice to the Settlement Class of the Settlement, and said notice has been made,  
8 and the fairness hearing having been held; and

9 NOW, THEREFORE, based upon the Stipulation and all of the filings, records and  
10 proceedings herein, and it appearing to the Court upon examination that the Settlement set forth in  
11 the Stipulation is fair, reasonable and adequate, and upon a Settlement Fairness Hearing having been  
12 held after notice to the Settlement Class of the Settlement to determine if the Settlement is fair,  
13 reasonable, and adequate and whether the Final Judgment should be entered in this Action:

14 **THE COURT HEREBY FINDS AND CONCLUDES THAT:**

15 A. The provisions of the Stipulation, including definitions of the terms used therein, are  
16 hereby incorporated by reference as though fully set forth herein.

17 B. This Court has jurisdiction of the subject matter of this Action and over all of the  
18 Parties and all Settlement Class Members.

19 C. The Settlement Class is certified and Plaintiffs Ian Green and Cardella Family Irrevoc  
20 Trust U/A 06/17/15, whom the Court previously appointed as Class Representatives for the Certified  
21 Class, have adequately represented the Class and shall remain in that role, as Settlement Class  
22 Representatives. The Class Members are ascertainable and it is impracticable to bring all of them  
23 before the Court individually. Common questions of law and fact predominate over individual issues.  
24 The claims of the Class Representatives are typical of the claims of the Settlement Class. Class  
25 treatment is superior to individual lawsuits for resolving the claims alleged.

26  
27  
28 <sup>1</sup> All capitalized terms not defined herein are defined in the Stipulation.

1 D. The form, content, and method of dissemination of notice given to the Settlement Class  
2 was adequate and reasonable and constituted the best notice practicable under the circumstances,  
3 including individual notice to all Settlement Class Members who could be identified through  
4 reasonable effort.

5 E. Notice, as given to the Settlement Class, complied with the requirements of California  
6 law, satisfied the requirements of due process, and constituted due and sufficient notice of the matters  
7 set forth herein.

8 F. The Settlement set forth in the Stipulation, which calls for a cash payment in the  
9 amount of \$107.5 million, is fair, reasonable, and adequate.

10 (i) The Settlement was negotiated at arm's length by the Parties, all of whom were  
11 represented by highly experienced and skilled counsel. The Settlement was reached only after, among  
12 other things: (a) extensive proceedings, including motion practice, in this Action and in the Federal  
13 Action, as well as related proceedings on appeal; (b) the completion of a substantial amount of fact  
14 discovery in this Action, including 21 depositions of fact witnesses and the production of millions of  
15 pages of documents by or on behalf of Defendants and third parties; (c) two mediations conducted by  
16 an experienced mediator who was thoroughly familiar with this Action; (d) prior to the mediations,  
17 the exchange between the Plaintiffs and Defendants of detailed mediation statements, together with  
18 accompanying documentary exhibits, which highlighted the factual and legal issues in dispute;  
19 (e) follow-up negotiations between Plaintiffs and Defendants with the assistance of the mediator and  
20 the involvement, on certain occasions, of the Federal Plaintiff; and (f) Plaintiffs' Counsel's extensive  
21 investigations. Accordingly, the Parties were well-positioned to evaluate the settlement value of this  
22 Action. The Stipulation has been entered into in good faith and is not collusive.

23 (ii) If the Settlement had not been achieved, the Parties faced the expense, risk,  
24 and uncertainty of extended litigation. The Court takes no position on the merits of the Parties'  
25 arguments, but notes these arguments as evidence in support of the reasonableness of the Settlement.

26 G. Plaintiffs and their counsel have fairly and adequately represented the interests of  
27 Settlement Class Members in connection with the Settlement.

28

1 H. Plaintiffs, all Settlement Class Members, and Defendants are hereby bound by the  
2 terms of the Settlement set forth in the Stipulation.

3 **IT IS HEREBY ORDERED THAT:**

4 1. The Settlement, on the terms set forth in the Stipulation, is finally approved as fair,  
5 reasonable, and adequate, and, based on the findings set forth above, the Settlement Class defined in  
6 the Stipulation is certified. The Settlement shall be consummated in accordance with the terms and  
7 provisions of the Stipulation. The Parties shall bear their own costs, except as otherwise provided in  
8 the Stipulation.

9 2. All Released Parties as defined in the Stipulation are fully and finally released in  
10 accordance with, and as defined in, the Stipulation.

11 3. Upon the Effective Date, Plaintiffs and each Settlement Class Member, including the  
12 Federal Plaintiff, shall be deemed to have, and by operation of this Final Judgment shall have, fully,  
13 finally, and forever released, relinquished, and discharged all Released Claims against the Released  
14 Parties, whether or not such Settlement Class Member executes and delivers a Proof of Claim and  
15 Release.

16 4. Upon the Effective Date, each of the Released Parties shall be deemed to have, and by  
17 operation of this Final Judgment shall have, fully, finally, and forever released Plaintiffs, Plaintiffs'  
18 Counsel, and each and all of the Settlement Class Members, including the Federal Plaintiff, from all  
19 Released Defendants' Claims.

20 5. All Settlement Class Members who have not timely made their objections to the  
21 Settlement in the manner provided in the Notice of Proposed Settlement of Class Action ("Notice")  
22 are deemed to have waived any objections by appeal, collateral attack, or otherwise.

23 6. All Settlement Class Members who have failed to properly and timely submit valid  
24 requests for exclusion (requests to opt out) from the Settlement Class are bound by the terms and  
25 conditions of the Stipulation and this Final Judgment.

26 7. The requests for exclusion by the persons or entities identified in Exhibit A to this  
27 Final Judgment are accepted by the Court.

1           8.     All other provisions of the Stipulation are incorporated into this Final Judgment as if  
2 fully rewritten herein.

3           9.     Plaintiffs and all Settlement Class Members, including the Federal Plaintiff, are hereby  
4 permanently barred and enjoined from instituting, commencing, maintaining, or prosecuting in any  
5 court or tribunal any of the Released Claims against any of the Released Parties.

6           10.    Neither the Stipulation nor the Settlement, nor any act performed or document  
7 executed pursuant to or in furtherance of the Stipulation or the Settlement:

8                 (a)    shall be offered or received against any Defendant as evidence of, or construed  
9 as or deemed to be evidence of, any presumption, concession, or admission by any Defendant of the  
10 truth of any of the allegations in the Action or the Federal Action, or the validity of any claim that has  
11 been or could have been asserted in the Action or the Federal Action, or the deficiency of any defense  
12 that has been or could have been asserted in the Action or the Federal Action, including, but not  
13 limited to, litigation of the Released Claims, or of any liability, negligence, fault, or wrongdoing of  
14 any kind of any Defendant;

15                (b)    shall be offered or received against any Defendant as evidence of a  
16 presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing,  
17 or in any way referred to for any other reason as against any Defendant, in any other civil, criminal,  
18 or administrative action or proceeding, in any jurisdiction, other than such proceedings as may be  
19 necessary to effectuate the provisions of the Stipulation; provided, however, that Defendants may  
20 refer to the Stipulation to effectuate the liability protection granted them hereunder;

21                (c)    shall be construed as or received in evidence as an admission, concession,  
22 finding or presumption against Defendants that the consideration to be given hereunder represents the  
23 amount which could be or would have been recovered after trial or in any proceeding other than this  
24 Settlement, or that any of the claims of Plaintiffs, Federal Plaintiff, or Settlement Class Members have  
25 merit;

26                (d)    shall be construed as or received in evidence as an admission, concession,  
27 finding or presumption against Plaintiffs, the Federal Plaintiff, or any Settlement Class Member that  
28

1 any of their claims are without merit, or that any defenses asserted by Defendants have merit, or that  
2 damages recoverable in this Action or the Federal Action, or pursuant to any subsequent operative  
3 complaint filed in this Action or the Federal Action, would have exceeded the Settlement Fund; and

4 (e) Notwithstanding the foregoing, Defendants, Plaintiffs, Federal Plaintiff,  
5 Settlement Class Members and/or the Released Parties may file the Stipulation and/or this Final  
6 Judgment in any action that may be brought against them in order to support a defense or counterclaim  
7 based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar  
8 or reduction or any other theory of claim preclusion or issue preclusion or similar defense or  
9 counterclaim.

10 11. The Court hereby finds and concludes that the Action was brought, prosecuted and/or  
11 defended in good faith, with a reasonable basis.

12 12. Pursuant to and in full compliance with California law, this Court hereby finds and  
13 concludes that due and adequate notice was directed to all Persons and entities who are Settlement  
14 Class Members advising them of the Plan of Allocation and of their right to object thereto, and a full  
15 and fair opportunity was accorded to all Persons and entities who are Settlement Class Members to  
16 be heard with respect to the Plan of Allocation.

17 13. The Court hereby finds and concludes that the formula for the calculation of the claims  
18 of Authorized Claimants, which is set forth in the Notice sent to Settlement Class Members, provides  
19 a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established  
20 by the Stipulation among Settlement Class Members, with due consideration having been given to  
21 administrative convenience and necessity. Defendants and their Related Parties shall have no  
22 responsibility or liability for determining the allocation of, or distributing, any payments to any  
23 Settlement Class Members or Authorized Claimants or for any other matters pertaining to the Plan of  
24 Allocation.

# 35,833,333

25 14. The Court hereby awards Plaintiffs' Counsel attorneys' fees of \$ \_\_\_\_\_, plus  
26 expenses in the amount of \$ 843,852, together with a proportionate share of the interest earned  
27 on the Settlement Fund, at the same rate as that earned on the Settlement Fund, from the date of the  
28

1 establishment of the Settlement Fund to the date of payment. The Court finds that the amount of fees  
2 awarded is fair, reasonable, and appropriate, given the contingent nature of the case and the substantial  
3 risks of non-recovery, the time and effort involved, and the result obtained for the Class.

4 15. The awarded attorneys' fees and expenses and interest earned thereon shall  
5 immediately be paid to Lead Counsel from the Settlement Fund subject to the terms, conditions, and  
6 obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

7 16. Plaintiffs and the Federal Plaintiff are awarded the following amounts: Cardella  
8 Family Irrevoc Trust U/A 06/17/15, \$15,000; Ian Green, \$15,000; Iron Workers Local No. 25  
9 Pension Fund, \$15,000. Such payments are appropriate considering their active participation in  
10 representing the interests of the Settlement Class, as attested to by the declarations submitted to the  
11 Court. The payments are to be made from the Settlement Fund.

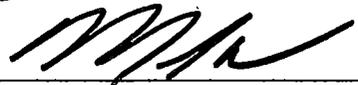
12 17. In the event that the Stipulation is terminated in accordance with its terms: (i) this Final  
13 Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (ii) this Action shall  
14 proceed as provided in the Stipulation.

15 18. Without affecting the finality of this Final Judgment in any way, this Court retains  
16 continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of  
17 the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c)  
18 hearing and determining applications for attorneys' fees, interest, and expenses in the Action; and (d)  
19 all Parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

20 19. For the reasons stated in the Reply Memorandum of Points and Authorities, the Court  
21 overrules the objections of Larry D. Killion and James J. Wacker.

22 **20. Plaintiffs shall promptly file and serve Notice of**  
**Entry of Judgment.**

23 DATED: July 27, 2023

  
\_\_\_\_\_  
THE HONORABLE MARIE S. WEINER  
JUDGE OF THE SUPERIOR COURT

# **EXHIBIT A**

**Exhibit A-1**

**Timely Exclusion Requests from the Settlement Class**

- |                               |                                 |
|-------------------------------|---------------------------------|
| 1. Barbara J. Dash            | 41. James D. Brothers           |
| 2. Elese M. Talone            | 42. Diana LeJeune               |
| 3. Joseph L. Lestieri         | 43. Michelle Schumacher         |
| 4. Lona L. Peterson           | 44. Roger Deminna               |
| 5. Laura E. Werry             | 45. Virginia Winston            |
| 6. David J. Smyth             | 46. Jacqueline C. Boyson        |
| 7. Michael Banks              | 47. Herbert A. Kai              |
| 8. Jeffrey J. Mosteller       | 48. Madelina R. Sabato          |
| 9. Estate of Mr. E. Vos       | 49. Cynthia S. Tiger            |
| 10. Diane M. Giles            | 50. Elizabeth Mary Thomas       |
| 11. Marta Hage                | 51. Jean-Marie Fierling         |
| 12. Miriam Villanueva         | 52. Lisa MacFarlane             |
| 13. Hans Leisentritt          | 53. Myra Kiely                  |
| 14. Bessie Gray               | 54. Patricia Garvey             |
| 15. Herbert Muhl              | 55. Donna Lenifero              |
| 16. Joan Polea                | 56. Carol H. Antunano           |
| 17. Andrea Pickard            | 57. Marion L. Dodd GDN          |
| 18. Rodney M. Welk            | 58. John A. Suchina             |
| 19. Sandra Liatsos            | 59. Samuel M. Sokoloff          |
| 20. Mark D. Van DeWege        | 60. Melba J Roberts             |
| 21. Catherine Killen          | 61. Jesse A Perez               |
| 22. Estate of Paul Winicki    | 62. Donald Cronin               |
| 23. Alfred Bracht             | 63. Barbara G. Bayne            |
| 24. Otto Langenbacher         | 64. Francesco Bonetti           |
| 25. Estate of Louise Kozerski | 65. Elizabeth J Gow             |
| 26. Susan Byrdy               | 66. Alberto Coll                |
| 27. Siobhan Caverly           | 67. Lola Escalante              |
| 28. George Thomas Davis       | 68. Joshua Meyer                |
| 29. Marcia E. McKinney        | 69. Vernelie Overman            |
| 30. Bradley Dettinger         | 70. Hilke Borbath               |
| 31. Naomi Judy                | 71. Louis A. DiMauro Jr.        |
| 32. Betty Ann Stewart         | 72. Helen L. Nolte              |
| 33. Doris F. Chisler          | 73. Robert Lee McCumber Trustee |
| 34. Denyse R. Rice            | 74. Marcella A. Martelli        |
| 35. Richard S. Wagner         | 75. Arlene L. Storm             |
| 36. Diane M. Lathrop          | 76. Dennis D. Johnson           |
| 37. Kay R Kelly               | 77. Charles E. Ohman            |
| 38. Borel Setten              | 78. Althea Grace Piveda         |
| 39. Robert C. Cohen           | 79. George Leskevich            |
| 40. Lynda Frances Bassett     | 80. Michael J DeSantis          |

**Exhibit A-1**

**Timely Exclusion Requests from the Settlement Class**

81. Judith Ann Payne
82. Otto E. Ehlers, Sr. Trust
83. Junko Sakazume
84. Monica M. Pollich
85. Anneliese M. Pollich
86. Bruno Isaia Schiesser
87. Julie Bowles
88. Margot Pieroway
89. Linda Kay Harris
90. Cecil J. Shaffer
91. Ivan Prikyl
92. E. Brown
93. Debbie Jernigan
94. Marc Schmitt
95. Barbara A. Baylard
96. Susana Sabadias
97. Norbert Wurle
98. Xavier Douchez
99. Jan Bojtos
100. Melba J Roberts
101. Vivien Joan Lambert
102. Giacinta Coriale
103. Katerina Louise Nommeots-Nomm

**Exhibit A-2**

**Untimely Exclusion Requests from the Settlement Class**

1. Barbara A Baylard on behalf of  
Jonathan Steward, Deceased

**Exhibit A-3**

**Timely Exclusion Requests from the Certified Class**

1. Joseph Baczynski
2. Elese M Talone
3. Alberto Coll
4. Donald B Gibson
5. Cynthia Winterhalter
6. Gloria Danet
7. Howard Easton
8. Marta Hage
9. Jennifer Jarret
10. Michael Niegel
11. Sandra Ellis
12. Jacqueline Suzanne Jones
13. Carol J. Arney
14. Robert De Bie
15. Hiroshi Matsuo
16. Cornelia H.M. Kerner-Huipen
17. Joseph Lettieri
18. Barbara J Dash
19. Marilyn B. Hilgers Trust
20. Miriam H. Rothengatter
21. Elizabeth Kesang
22. Cardo Investments Lp
23. Carlos Khouri Silva
24. Berenika Duda Uhryn
25. Arnold S. Berger, Phd
26. Marco Taddia
27. Alfred Borg
28. Ms. Goh Siew Lee
29. Carlos Khouri Silva
30. Bonita Hempel
31. Vivien Joan Lambert
32. S. Fil
33. Kenneth H. Peok Jr.
34. Michael Canry
35. Mark Francis Boffa
36. Antje Everink
37. Irmell Paanu-Eskola
38. John Mostyn
39. Linda L. Johnson
40. Tuomo Tainela
41. Scott L. Mccarthy
42. Luca Razzi
43. Ziad Odeh
44. Oran Cunning
45. Virginia Long
46. Russell Martin
47. Karalee A Moore

**Exhibit A-4**

**Untimely Exclusion Requests from the Certified Class**

1. Peter Craig
2. Anna Mounier
3. Agnes Prince-Crespel
4. Tay Hong Neo Catherine
5. Luca Razzi
6. Jeanne Newton
7. George Risly
8. Cheung Wai Chung



**SUPERIOR COURT OF SAN MATEO COUNTY**

400 County Center 800 North Humboldt Street  
Redwood City, CA 94063 San Mateo, CA 94401  
(650) 261-5100  
www.sanmateocourt.org

**FILED**

**SAN MATEO COUNTY**

7/27/2023

**Clerk of the Superior Court**

/s/ Andrea Daley

DEPUTY CLERK

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

Date: 7/27/2023  
In the Matter of: JAMES RAGSDALE vs MICRO FOCUS INTERNATIONAL PLC  
Case No.: 18-CIV-01549  
Documents: JUDGMENT AND ORDER GRANTING FINAL APPROVAL, APPROVING PLAN OF ALLOCATION, AND AWARDED ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND APPROVING SERVICE AWARDS

I certify that I am a Deputy Clerk of the San Mateo County Superior Court, that I am not a party to this cause, and that the above-listed documents were served upon the persons whose names and addresses are set forth below, on this date in San Mateo County, California, by placing the documents for collection and mailing so as to cause it to be mailed with the United States Postal Service by first class mail in a sealed addressed envelope with postage fully prepaid, following standard court practices. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: 7/27/2023

Neal I Taniguchi, Court Executive Officer/Clerk

By: /s/ Andrea Daley

Andrea Daley, Deputy Clerk

Copies Mailed To:

SEE ATTACHED SERVICE LIST:

SERVICE LIST

*Micro Focus*, Class Action Master File 18CIV1549  
as of July 2023

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May 8, 2023

Superior Court of San Mateo  
Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063  
Priority Mail

Re: Objection To Award of Attorney's Fees  
Superior Court of the State of California  
County of San Mateo  
Lead Case No. 18CIV01549  
Class Action Suit  
In re MICRO FOCUS INTERNATIONAL PLC  
SECURITIES LITIGATION

To the Clerk of the Court,

Please file the attached Objection among the records of the captioned cause of action for the Court's consideration. This Objection has been timely submitted (on or before May 30, 2023).

Regards,

  
Larry D. Killien, An Individual  
Settlement Class Member  
2114 Oxford St  
Houston, Tx 77088  
713 906-9135  
[11235ldk@comcast.net](mailto:11235ldk@comcast.net)

Cc:

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**Defendant's Counsel:**

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First Class Postage

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN MATEO**

In re MICRO FOCUS INTERNATIONAL PLC SECURITIES LITIGATION	)	
	)	Lead Case No. 18CIV01549
	)	CLASS ACTION
	)	Hon. Marie S. Weiner, Dept. 2

---

**OBJECTION TO PROPOSED OR FILED MOTION  
FOR AWARD OF ATTORNEY FEE AND EXPENSE APPLICATION  
AND REQUEST FOR DOWNWARD ADJUSTMENT**

1. Objection Applicant, Larry D. Killion, (pro se), a Settlement Class Member (Proof of Claim Receipt No. IEAORVKL, filed online, May 7, 2023) submits this **OBJECTION to award of attorney’s fees in the captioned cause, to apply to the entire class (and not just to Applicant personally)**, the Applicant does not plan to attend the Settlement Fairness Hearing, and request for modification and downward adjustment of any pending or submitted motion or other relevant document regarding request for award of Attorney’s Fee and expenses (herein the ‘Motion’) because such Motion is unreasonable, unfair and not in the best interest of the Settlement Class Members.
  
2. *Since as of the filing of this Objection, Plaintiff Counsel has not filed online in <https://www.microfocusclassaction.com/Home/Documents>, copy of the Motion, nor sent a copy to Objection Applicant, this Objection is based on those documents of record in the cited website so filed as of the date of this Objection.*

**OBJECTION**

3. Rationale behind this Objection, includes...
  - 3.1 Although participants in this Class Action Lawsuit have ostensibly approved the Settlement including the Motion, I do not agree with such approval, and hereby submit this Objection.
  - 3.3 The Application is not in the best interest of Settlement Class Members and is not reasonable.
  - 3.3 The Application must be thoroughly tested for its reasonableness, including taking into account:
    - 3.3.1 American Bar Association Model Rules of Professional Conduct, Rule 1.5 Fees

- A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.
  - Traditional fee analysis to determine reasonableness takes into account...
    - the time and labor required,
    - the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
    - the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
    - the fee customarily charged in the locality for similar legal services;
    - the amount involved and the results obtained;
    - the time limitations imposed by the client or by the circumstances;
    - the nature and length of the professional relationship with the client;
    - the experience, reputation, and ability of the lawyer or lawyers performing the services; and
    - whether the fee is fixed or contingent
- 3.3.2 Federal Rules of Civil Procedure, Class Action Rule 23;
- The Court '*may*' [*emphasis added, a discretionary power*] award reasonable attorney's fees that are authorized by law or by the parties' agreement.
- 3.3.3 Class Action Fairness Act of 2005;
- Class Action settlements [damages and attorney's fees] are subject to Court approval, taking into account...
    - Reports filed with the House of representatives and the Senate containing recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members that the settlements are supposed to benefit and recommendations on the best practices that courts can use to ensure that— the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; recommendations on the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement
- 3.3.4 Court rulings, in particular attorney fee reasonableness test criteria described in
- *Stabraker v. DLC Ltd.*, 376 F.3d 819, 825 (8th Cir. 2004), which initiated the **lodestar standard**.
    - Determining reasonable fees under the **lodestar method** is a two-step process.
      - First, the court must determine the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work. By multiplying the number of reasonable hours by the reasonable hourly rate, the court determines the base fee or 'lodestar'.
      - The court then may adjust the base fee or lodestar up or down (by applying a multiplier), if relevant factors indicate an adjustment is necessary to reach a *reasonable* fee in the case.

- Under the lodestar method, the most heavily weighted multipliers are the time and labor required.
- Reasonableness takes into account the factors used by the traditional fee *determination*.

4. The Court is requested to invoke its discretionary powers to modify and reduce the Motion to make it reasonable.

5. The economics of the requested Indicate indicate:

5.1 The proposed Settlement Fund to all Class Members is \$107.5 Million. (Total indicated settlement to be paid to victims)

5.2 Total Class Members are unknown by Applicant (total number of victims)

5.3 Total Attorney Fees and Expenses applied for are \$1.5million in expenses plus “up to” one third of the Settlement Fund amount equivalent to approximately \$35.3million. It is speculated the full one-third claim will be requested, as it is rare for an entity to argue against their own paycheck amount.

5.4 The total legal hours expended on the case are unknown by Applicant.

5.5 The average hourly rate charged for legal services is unknown by Applicant.

5.6 The average paycheck for each attorney working on the case is unknown by Applicant.

6. Any reduction in the Motion is to be returned to and distributed to the Settlement Class Members, the real victims of this cause of action, and not as a contribution to attorney fees.

7. A review of class action settlements in other jurisdictions suggests attorneys typically are awarded their request because in part they have subjected the court to a plethora of case law cites, statutory law prose, subjective facts, mountains of documents and other heaps of information (extracted from past cases) – especially when up to one third of \$107.5 million attorney fee award paycheck is in the offing - all of which may or may not be germane to the case but certainly adds a lot of fog to the landscape that a Court with limited budget of resources most likely cannot fully assimilate.

7.1 Reasonableness of the fee can be gauged to some extent by comparing what each of the Class victims will receive (unknown to Applicant but estimated how much each lawyer working on the case will receive. Assuming 150 lawyers, the average indicated fee is \$236,000 each on avg. How much is each victim receiving on average?

7.2 Reasonableness of the fee can be gauged against the analysis of the case which is not about unique legal principles, but about commercial issues, evaluated by experts and statisticians forming an analysis how stock price volatility can be attributed to wrong doing, which even in the most insightful set of circumstances, is always subject to some aspect of speculation, hence large legal fee is misplaced in regard to the keen substantive work otherwise provided by non-lawyer experts and stasticians. Plus per Plaintiff’s counsel own comments, extensive effort in the case was about procedural, non-substantive issues...indicating the merits of the case as having some

degree of speculation based on procedural grounds and nothing to do with Class Action damages. Even-so, a \$33million+ claim for attorney's fees is outrageous in its demand and distracts that sum away from the real victims of the case, the Class Members.

7.3 Legal fees are generally allowed by statute (reasonable hourly rate based tests) or agreed with clients. Class Action suits have the unfortunate characteristic that legal fees are determined by a very small subset of affected lead plaintiff 'clients', hence a one third contingency fee request is premised on Class Members not having the opportunity with participating in a reasonable fee setting.

7.4 What is the per Settlement Class take compared to attorney fee take? The court is requested to assess these ratios and factor in any disparity in the numbers.

8 Settlement (with all parties accepting a cash Settlement amount as an acceptable compromise of the issues) was achieved without trial. Consequently, the extent and reasonableness of claimed earned legal fees are in question. Using the same high fee whether a case settles in two hours or after preliminary discovery and pre-trial settlement negotiation does not make sense and does not pass the smell test.

- o While it is instructive to take into account attorney work claims of:
  - o Preparing legal documents (complaints, depositions, subpoenas, attending hearings, legal research), law firms versed in class action cases already have in hand the understanding of relevant statutes and case law, and unless a novel area of data breach issues are understood and billable time not required to be wasted and spent on developing these items, they are already in the library.

9. Awarding \$15,000 each 'lawsuit incentive payment' to representing Plaintiff's is really just a bounty for an award regarding being the first to race to the court house to file a case. Such bounty fees are unreasonable and prejudices Settlement Fund Allocation rights and privileges for those claimants that did not race to the court house. Such incentive fee is requested to be denied. A plaintiff should be compensated for justice and their damages, not a bounty for filing a lawsuit.

10. As an aide to the Court, please find attached a discussion paper regarding the trend in Class Action lawsuits, toward unreasonable attorney fee awards, and what can be advanced legislatively and procedurally to curtail such practice, as well as a discussion of the issues affected unreasonable attorney fee awards in class action suits.

Respectfully submitted.

This 8 day of May, 2023.



---

Larry D. Killion, Pro Se  
Settlement Class Member

713 906-9135, (mobil)  
832 203-7695(fax)  
[11235ldk@oomcast.net](mailto:11235ldk@oomcast.net) (email )  
2114 Oxford Street  
Houston, Texas 77008 address

### **CERTIFICATE OF SERVICE**

I, Larry D Killion, hereby certify that on the 8 day of May, 2023, copies of the **OBJECTION TO PROPOSED OR FILED MOTION FOR AWARD OF ATTORNEY FEE AND EXPENSE APPLICATION AND REQUEST FOR DOWNWARD ADJUSTMENT, WERE** mailed by first class prepaid postage or by email, to the following recipients:

Superior Court of San Mateo  
Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063  
Priority Mail

**Plaintiff's Counsel:**

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c/o Joseph Russello  
First Class Postage

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c/o Mark C. Molumphy  
First Class Postage

**Defendant's Counsel:**

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**ATTORNEY'S FEES**  
**IN CLASS ACTION LAWSUITS**  
**WHAT TO DO ABOUT HUGE (UNREASONABLE?) LAWYER PAYCHECKS**



## Table of Contents

<b>Class Action Lawsuit Industry</b>	3
<b>Incentive Factors</b>	4
<b>How To Control Award Of Huge Attorney Fees</b>	5
<b>First - Attorney Fee Reduction Action Plans</b>	5
<b>Why These Plans?</b>	7
<b>Short Lesson: Class Action Lawsuit Boot Camp</b>	11
<b>Advantages of a Class Action Lawsuit, includes:</b>	12
<b>Disadvantage of a Class Action Lawsuit, includes:</b>	12
<b>Attorney's Fees</b>	15
<b>Advantages of Contingency Fee Structure Includes:</b>	16
<b>Disadvantages of Contingency Fee Structure Includes:</b>	17
<b>Attorney Fees Reasonableness Test</b>	18
<b>Use, Misuse and Abuse – Standards of Proof and Other Reforms</b>	20
<b>Justice and Class Action Lawsuits</b>	23
<b>Appendix A –</b>	28
<b>Class Action Lawsuits – Huge Attorney Fee Illustrations</b>	28
<b>Appendix B</b>	30
<b>Example Form Objection To Attorney's Fees</b>	30
<b>Appendix C</b>	35
<b>Example Op=Out Form</b>	35
<b>Appendix D</b>	37
<b>Class Action Lawsuits – Attorney Fee Legislation</b>	37
<b>Appendix E</b>	41
<b>Class Action Lawsuit Postcard Claim Form</b>	41

## Class Action Lawsuit Industry

The Class Action Lawsuit Industry (“**CALI**”) is alive and well (some law firms even publicizing their ‘*Class Action Lawsuit of the Month*’, merchandising (carnival barker?) Class Action justice as if it is a used car,



- As post card Class Action Lawsuit mailed notices to victims (**‘Class Members’**) (now managed by third party non-lawyer administrators, part of the industry) arrive more frequent than holiday season sales catalogues,
- Accompanied by Class Action representing attorneys demanding huge multi-million dollar fees using the Class Action Lawsuit as a vehicle to secure such fees,
- While Class Members typically each receive a token amount, as Class Action compensation (the so-called Settlement Fund), the vast majority of which do not even know they were victims, and most unaware of the huge attorney fee claim<sup>1</sup>.

The smell test of all this does not look or sound right.



Attorney’s fee awards in the CALI appear to have settled in on a ‘standard’ ‘rubber-stamp’ court approved fee based on 30% to 40% of the Class Action claimed harm – sounds similar to roadside billboard justice using a sledgehammer to crush guilty until proven innocent truck drivers associated with negligence claims while conveniently **NOT** advertising contingency fee subtractions by attorneys from the victims damages, in the 30%? to 40%? range (plus expenses) – feels like the victim has suffered twice. Yet attorney’s fees for each Class Action case (whether based on billable hours or contingency fee demands) are supposed to be tested on a standalone reasonableness standard and not a ‘one-size-fits-all’ demand<sup>2</sup>.

---

<sup>1</sup> Rare is the Class Member who will take the time to study court documents to educate themselves about the attorney fee over-reach, and instead, as tactfully understood by representing counsel, lured into the sense of some easy money sourced from the Class Action lawsuit nominal compensation award, sort of like being a surprised winner in a raffle not knowing you were even entered to participate.

<sup>2</sup> Most Class Action lawsuit attorney fee demands are accompanied by voluminous pages (sometimes rivaling the number of pages about the merits of the case) explaining why huge fees are relevant, as well as comparing the current case with prior cases as additional justification why the size of the award is prudent. Both of these arguments

## Incentive Factors

Incentive factors causing this Class Action Lawsuit industry growth, especially the award of huge attorney fees (leaving the real victims – if in fact they are victims - of a case with only a nominal award), includes:

- **Incentive No. 1: Huge Lawyer Fees.** A review of randomly selected Class Action federal court files<sup>3</sup>, illustrates the magnitude of huge attorney fee award incentives, accompanied by small nominal claim awards to individual Class Members. The example cases cited in Appendix A indicate typical individual award to Class Members of less than \$20 and many in the few \$100s, while multi-million dollar awarded attorney's fees representing 25%+ of **TOTAL** award claim for a minimum average range of **per attorney** fee of \$222,000 to \$287,000. The per attorney fee is understated, since the average calculation assumes the estimated number of assigned attorneys to a case, work full time on the case, which is not realistic, and consequently dramatically understates the real average attorney fee take;
- **Incentive No. 2: 'Deep-Pocket' Defendants.** Many/Most [corporate] defendants in Class Action Lawsuits who honestly try to comply with applicable consumer and investor laws, are well known, established and trusted, and highly regulated, publicly stock traded companies: (Appendix A publicly traded companies include: Nielsen-NYSE, T-Mobile-NASDAQ, American Airlines-NASDAQ, Oracle Corporation-NYSE), are financially sound with 'deep-pockets' and capable of paying huge attorney fees, thus 'easy-worth-the-effort' litigation incentive targets. These businesses routinely retain experts to give them advice in regard to compliance with relevant consumer and investor laws and regulations. These compliance characteristics are indicative of a company NOT out-to-cheat its customers or investors.
- **Incentive No. 3: Speculative Law Compliance – Use, Misuse, Abuse.** Consumer and investor laws on which most Class Action lawsuits are based, are not 'black-and-white' and easily interpreted as to what is right and what is wrong, but are complex and subject to wide ambiguous interpretations – for example security fraud and consumer protection laws – making compliance with these laws challenging even for the most compliant minded company – especially for honest defendants. Because of the speculative nature of these laws, this is fertile ground for litigation minded lawyers having the incentive to craft a case, whether real or illusionary, that places doubt in jury's and Jurist's minds whether or not such speculative laws have been violated. As in all things in life, stuff (in this case laws) can be **used** for their intended public protection purposes, or **misused** or **abused**, for whatever reason, such as an over-reaching grant of attorney fees.

Awareness of these Class Action Lawsuit litigation incentives is nothing new, as there is a history of studies, reports and papers (see the Bibliography of examples of such), discussing and analyzing the pros and cons of Class Action lawsuits, many focusing on and criticizing what justice is all

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are inconsistent with a one-size-does-not-fit-all lawyer fee claim. The harder one has to argue for something is all the more reason to instill a sense of suspicion especially where the weight (and not the quality) of the justifying argument is not in the merits of the argument but in the volume of paper being used to cover up fictional proof.

<sup>3</sup> Appendix A is a summary of recent Class Action lawsuits illustrating applications for huge attorney's fees coupled with nominal awards to Class Member victims.

about and the disparity between huge plaintiff's attorney's fees paid by honorable defendants coupled with nominal award claims paid to the real victims. While many of these reports are scholarly and well researched, they have had little impact on reducing – so-far, or at least shifting, huge attorney fee awards and filtering out unjustified Class Action Lawsuit claims or putting more justified compensation into the pockets of the real victims and less in the pockets of representing attorneys.

*Many of these reports ask the question:*

*Have Class Action lawsuits merely been used as a vehicle for attorneys to secure huge fees with justice a secondary objective<sup>4</sup>?*

### How To Control Award of Huge Attorney Fees

This paper does not repeat the arguments cited in historical writings...**BUT SUPPLEMENTS** some new dimensions to the topic.

- **First:** By suggesting **self-help** and **law-help** action plans the public can adopt to (i) influence the adjustment to huge attorney fee paychecks in Class Action Lawsuits by (ii) honestly assessing the merits of a Class Action claim and whether or not Justice is being served - and not attorney fee greed AND any attorney fee award claim based on 'honest' reasonableness tests.
- **Second:** By providing this summary discussion of why such self-help and law-help plans make sense.

#### **First - Attorney Fee Reduction Action Plans**

- **Self-Help**
  - **If attorney fees are viewed as being unreasonably huge (does not pass the smell test<sup>5</sup>), Class Action members should file written Objections with the Court, challenging the unreasonableness of such fees. (Example objection form provided in Appendix B).**
  - **Class members electing NOT TO PARTICIPATE ("Opt-Out")<sup>6</sup> in the Class Action lawsuit. (Example opt-out form provided in Appendix C).**

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<sup>4</sup> Not uncommon, a huge number of pages filed in Class Action lawsuits are dedicated to defending huge attorney fee applications compared to defending the merits of the actual Class Action Claim.

<sup>5</sup> Like pornography, often you know it when you see it.

<sup>6</sup> The United States litigation centric legal system and State and Federal Class Action laws, have opted for the "opt-out" form of Class Action Lawsuit claims. This means the unaware public are 'automatically' ("opted-in") as a Class Member participant and only by pro-actively filing an "opt-out" written notice with the Court will such Member NOT be part of the Class Action Lawsuit result. As later recommended, the laws should be changed such that the public are NOT automatic members of a class, and only by affirmatively filing an "opt-in" statement with the Court will they then be Class Member participants. This "opt-in" standard will go a long way toward eliminating non-merit-based Class Action cases (let the affected public decide) as well as substantially reduce the misuse/abuse tactics associated with award of unreasonable legal fees.

- **Law-Help**

- **The public contact their elected government Representatives requesting they pass new laws...**
  - **Laws designed to promote reasonableness tests of the award of attorney's fees in Class Action Lawsuits such as a realistic fee formula or caps on awards. (Example contact form provided in Appendix D).**
  - **Laws or rules governing the standard of proof for any Class Action Lawsuit claim to be based on the more stringent Clear and Convincing Evidence standard (and not Preponderance of the Evidence).**
  - **Laws designed to simplify, easy to understand, postcard Class Action lawsuit notices, clearly and conspicuously describing (1) what potential claim is being sought, (2) how much (cash and non-cash) in total and how much each individual Class Member may be entitled, (3) how the size of the Class Action Claim and attorney's fees are effected if Class Members op-out of participating in the lawsuit, and (4) how attorney fees are calculated, estimated total amount to be requested and indicative average attorney fee per lawyer. (Example notice form provided in Appendix E).**
  - **Independent Commissions (including non-lawyer participants) be used by the Court to determine if a case should be classified as a Class Action Lawsuit and a similar independent Commission used to assess reasonableness of attorney fee claims.**
  - **Laws regarding the prohibition of contingency legal fees in regard to Class Action Lawsuits, requiring attorneys to justify their fee as being reasonable in regard to hourly rate and time spent on a case.**
  - **Laws requiring prior to a lawsuit being certified as a Class Action Lawsuit, the defendant shall be given a mandatory prior notice (the "Class Action Pre-Certification Notice" or "CAPCN" letter), of such planned certification request, and an opportunity for defendant to resolve the case, avoiding the racking up attorney's fees by Plaintiff's counsel.**
  - **Require any Class Member to act proactively and opt-in to participate in a Class Action lawsuit (with the default being the public are NOT automatically opted-in to a Class Action Lawsuit), unlike the current model where Class Member default is opted -in and to opt-out, the Member must proactively file an opt-out document with the Court.**
  - **Prohibit the payment of Incentive Payments to Representing Plaintiff's, since such payment is in the nature of a bounty paid for winning the race to the Court house to first file a lawsuit, is merely an incentive for Court house racers to promote litigation for the purpose of winning a bounty instead of seeking justice and is an unconscionable taking of assets belonging to Class Members. The Class Members are all victims and to treat some grossly different than others shocks the**

conscience of justice and should likewise shock the conscience of the Court.

#### Why These Plans?

- **Objection:** The law requires prior to the Court's approving of a Class Action Claim that it be tested for being just, fair and reasonable and requested attorney's fees, be tested for 'reasonableness'. Each test is on a case-by-case basis, no one-size-fits-all (at least that's the objective test –yet awards regularly migrate to a 30% to 40% 'standard' of recovery and reasonableness test arguments citing as one of the primary arguments for justifying a fee request based on other cases as a consistent basis of award).
  - Attorneys regularly cite as a part of their reasoning why their [huge] fee request is reasonable because it is consistent with other Class Action Lawsuits (30%-40% contingency fee rationale?) which is contrary to the one-size-does-not-fit all reasonableness test reasoning.
  - Counsel argues why they should be certified as Class Action Lawsuit Class Representing Counsel based on their skills and experience, then argues why a [huge] fee is required because of the complexity (speculative nature?) of a case. It is inconsistent on one hand Counsel will argue it is skilled ostensibly requiring less time/effort to handle a case, yet when it comes to their fee, such fee should be [huge] regardless of the skill factor. *Rare is the worker who argues for a cut in pay.*
  - Class Action Member attorney fee Objections filed with the Court, helps remind the Court of its reasonableness test obligations – especially since the Class Member is the victim and for every dollar paid attorney's is often one less dollar paid to the real victim (at least in contingency fee cases). If the victims don't complain, it would be natural for a Court to *assume* victims are ok with the requested fee, which naturally dampens the Court's enthusiasm, with a busy Court docket, to pursue a deep dive test of reasonableness. It's not that victim's don't have an interest in the case and reasonable attorney's fees, the complexity of filing Objections with the Court as well as studying Court filed documents, deters many well intentioned victims to themselves committing to a deep-dive analysis – and astute Plaintiff's counsel are aware of this lethargic tactic that Class Members don't have the time or initiative or understanding to file a cumbersome objection associated with a few buck claim result.
- **Opt-Out:** If many/most Class Action Members collectively elected not to participate in a Class Action Lawsuit (*opt-out*), then the Claim amount should be automatically reduced (since there are less 'victims'), and if there is a request for [huge] attorney's fees, typically based on a contingency fee (attorney's being paid a percentage of the Claim awarded to the real victims), then the fee would be less. And even if a fee is not based on a contingency payment, a huge attorney fee and trivial victim award compared to that fee, will expose the unreasonableness of the fee claim.

- For example, a 30% fee of \$100 million Claim for 100,000 Class Members means \$30 million to lawyers and \$700.00 to each Class Member, is a lot less than 30% of \$500,000 Claim for 500 Class Members means \$150,000 to lawyers and \$700.00 to each Class Member. Still a disparity between attorney fee and Class Member award, but tempers lawyer's appetite to promote a questionable suit given their fee is much reduced (tension between values associated with earned fee and justice incentives). Or in the alternative, an attorney fee claims for \$30million, regardless if the victim remedy is \$100million or \$0.5million. That smell test thing again.
- In many Class Action lawsuits, the amount awarded to victims is small and nominal in amount (a few 100 dollars or less, or a discount coupon), while attorney's fee paychecks can potentially exceed \$200,000 per lawyer (most likely an understatement since it depends on how many attorneys worked on a case and how long and hourly rate).
- Class Action members 'giving up' a small nominal award in exchange for stopping, over the top [huge] lawyer fees, is a powerful consumer weapon.
- While Class Action Lawsuits are designed to punish illegal business practices that harms a large number of the public, always be mindful that payment of Class Action nominal claims and [huge] attorney's fees, can result in the business adding that cost back into the price of the business goods or services which means consumers and investors will in the future end up paying for the illusion of a victorious Class Action win.
- While a business reputation may suffer a little at first, if at all, generally after the lawsuit combat is over, all is forgiven and the dust settles, it's back to business as usual – except lawyer's fat paychecks have been cashed and deposited, and consumers and investors get stuck with funding the 'hidden' bill.
- **Attorney Fee Law:** Request for attorney's fees in a Class Action lawsuit, is often based on a business alleged to have violated some law adversely affecting many parties (such as a consumer protection or securities fraud law), and that law including the statutory right to plaintiff's attorney's fees to be paid as part of the claim by a losing defendant (in contrast to the general 'American Rule' where parties pay for their own attorney's fee regardless of who wins or loses).
  - Laws are not written for Class Action Lawsuits, but to seek justice for individual victims for a particular cause of action including compensating the victim for its incurred attorney's fees as part of the award against bad business practices.
  - Lawyers favor taking cases and bringing lawsuits based on a law that includes award of attorney's fees, especially where the defendant has 'deep pockets' (financially strong) and can afford to pay [huge] fees.
  - There needs to be a Class Action attorney fee law designed to ensure any award of attorney's fee to be based on a statutory and not discretionary 'reasonableness standard', that comes into play any time there is a Class

**Action Lawsuit.** Ideally, award of attorney fee would be influenced by the amount EACH victim is awarded – low victim award, low attorney fee – especially since justice is blind to the magnitude of awarded attorney fees.

- In many Class Action Lawsuits, attorney’s fees are determined as a percentage of the victim’s Claim amount (so called contingency fee). Consequently, the ‘losing’ defendant in a case, either as a result of a trial judgment or settlement, is somewhat indifferent<sup>7</sup> about the size of the attorney fee since it is deducted from the Claim amount. Even so, such a deduction may not be in the best interest of the Class Members for not receiving fair, reasonable and adequate compensation for such victim’s Class Action losses due to such legal fee deduction.
- It is more prudent regarding Class Action Lawsuits, for Class Action laws to prohibit contingency attorney fees (similar to criminal or domestic relation cases), leaving the attorney to honestly defend its time spent on the case and hourly rate, separate and apart to any Claim award paid to Class Members. Such hourly rate attorney fee defense will attract a more systematic and objective assessment of the fee, since (1) if the fee is paid by the victims, the Court will have a much clearer understanding of the details and basis of the hourly rate based fee request, and (2) if the fee is paid by the defendant, the defendant will be in a more realistic and efficient tester of the reasonableness of an hourly rate based fee claim, since the defendant is the one paying the fee.
- **Standard of Proof:** Because of the unique nature of Class Action Lawsuit, that in the context of Justice for ALL<sup>8</sup>, places excessive defense burdens on a defendant, justice should demand a Clear and Convincing Evidence standard of proof (and not Preponderance of the Evidence standard) associated with certifying a case as a Class Action lawsuit as well as the same standard of proof to be used in the trial of the matter. This higher burden of proof properly places an incentive on plaintiff’s, Class Members and Class Counsel, to honestly pursue a case that has merit and one suited for Class Action and based on the objective of seeking justice for ALL, and not merely an ‘easy’ Class Action Lawsuit case brought for revenge or a vehicle to secure huge attorney’s fees, with justice for harmed citizens as a secondary objective.
- **Class Action Notice:** Postcard claim notices alerting Class Members to a Class Action Lawsuit, are difficult to understand and often require the reader to go online through the internet (or retain their own counsel at their expense), to obtain better informed detail information (if they know how to request online information as well as where to locate information of interest and interpret it).
  - The postcard claim notice needs to be much more user-friendly, easy to read and understand, and clearly advise the reader what the Class Action lawsuit is all about, how much is being demanded from the defendant, how much each Class Member will be entitled and full disclosure of how attorney fees are

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<sup>7</sup> Unless the settlement is artificially pumped up to include attorney’s fees as additional compensation instead of the resolve being based on what harm has been incurred by Class Members absent attorney fee claims.

<sup>8</sup> Justice for All, is in the context of the Nation’s founding documents (U.S. Constitution, Bill of Rights, Declaration of Independence, etc.), asserting justice to prevail for both plaintiffs AND defendants.

being determined, what the total attorney fee could be and the average paycheck of how much each lawyer working on the case will receive.

- **Class Action Pre-Certification Notice or “CAPCN” letter:** A practical remedy to help deter unreasonable attorney fee demands, prior to a Court certifying a case as a Class Action lawsuit, the plaintiff and plaintiff’s counsel in such case shall be obligated, to give defendant prior notice (the “CAPCN” letter) which provides clear and unambiguous information concerning:
  - The legal rationale on what the Class Action complaint is all about (a ‘show cause’ testament);
  - How much Class Member compensation (cash and non-cash) the defendant is expected to pay to resolve the complaint, net of any attorney fee;
  - The amount of claimed attorney’s fees incurred as of the CAPCN letter, but prior to certifying a case as a Class Action Lawsuit;
  - Such letter then giving the defendant an opportunity to resolve the complaint without Class Action certification, and if a defendant offer of resolution is rejected, if after a case is certified as a Class Action Lawsuit, and the case is resolved in favor of Class Members (either by settlement or court judgment) the Class Action claim (not including attorney’s fees) is equal to or less than what the defendant offered to settle with the CAPCN letter, then in that circumstance, any claimed attorney fees will be limited to what was offered at the CAPCN stage of resolution.
- **Opt-In Class Action Participation:** Class Action laws should be modified that require Class Members to affirmatively by written notice to the Court, to “opt-in”, in order to participate in the Class Action Lawsuit. Most non-USA legal systems require an ‘opt-in’ standard in order to participate in a Class Action Lawsuit. The history of this opt-in standard illustrates that Class Action Lawsuit filings are few in number and not abused by plaintiff’s counsel BUT more important, has NOT resulted in numerous lawsuits by non-Class members bringing their own action – which deters USA plaintiff’s counsel opt-out justification arguments that an opt-in standard will cause an explosion of small cases...not true. An opt-in standard is a great tool to modulate the acceleration of the USA Class Action Lawsuit industry growth...driven much by attorney fee greed.

### Background: Class Action Lawsuit Boot Camp

**Class Actions** (also known as a **Class-Action Lawsuit, Class Suit, or Representative Action**) are most common where the allegations usually involve at least 40 people who the same defendant has allegedly been injured in the same way. Instead of each damaged person bringing one's own lawsuit, the Class Action allows all the claims of all Class Members—whether they know they have been damaged or not—to be consolidated and resolved in a single proceeding through the efforts of **Representative Plaintiff(s)** and Representative Plaintiff's lawyers appointed as **Class Counsel**. The Class Action binds (by default) all Class Members (victims) of the Class (including being bound by the attorney fee arrangement agreed with the initial Representative Plaintiffs in a Class Action Lawsuit – a huge exception to the general rule where attorneys and their individual clients mutually agree to fee arrangements), unless a Class Member gives timely notice to opt-out and not be represented by such Class Action. Depending on the Class Action details, any victim that opts-out, may or may not preserve its right to bring its own separate lawsuit (and individual attorney fee arrangement).

There is a familiar saying about “strength in numbers.” For example, a single person who was misled into paying 50 cents too much for an illegally overpriced stick of deodorant doesn't have enough incentive to go to the trouble and expense of litigation just to recover that small amount of money. Even-so, because the United States has had a culture of being litigious (billboard justice has become the norm), regardless of the merits or size of a claim (perhaps on occasion Caveat Emptor- buyer beware - is the better and more honest remedy), U.S. centric attorneys are quick on the lawsuit panic button, because the fabric of U.S. justice promotes win-lose sledge hammer litigation mindedness accompanied with huge attorney fee awards and not mature hand-shake win-win resolve. (Restitution is better placed in the Board Room and not the Court Room).

It's when many people—often tens of thousands, or more—are honestly harmed a similar way by the same problem, that a Class Action lawsuit may be worth bringing. (May in the sense every little wrong does not justify a remedy – as some assumption of risk and impact is the more honorable and logical thing to do – just like bringing up a child, until a boundary is known and not to be broken, punishing a first-time innocent offender does nothing to promote the development of a child into healthy adolescence). Uniting all similarly affected parties into a plaintiff's Class (Class Members) has the effect of raising the stakes significantly for [corporate] defendants. That's part of the law of the jungle. It's more likely that an honorable Class payoff will be worth fighting for, and companies that face the prospect of Class Action liability, have a strong incentive to settle a merit based claim and correct their behavior (even though many have acted innocently and without intent to do wrong) and implement better (learn from their unintentional mistakes) business practices, designed to prevent bad (whether intentional or unintentional) practices – which illustrates a merit based circumstance, and not one based on astute plaintiff's legal counsel crafting a claim (and sugar plum vision of huge attorney fee award) because of the uncertainty and speculative nature of the underlying law.

Even-so, small claim litigation revenge tactics should [must?] always be tempered (rejected?) with what justice is all about. All small claim infractions do not justify seeking combat lawsuit justice, more times than not premised on seeking revenge – where in many cases, attorney's stir the

emotions pot of the ‘victims’ to use the litigation hammer and unjustifiably beat up the alleged wrongdoing but honest defendant. In whose best interest are Class Action Lawsuits brought? For alleged victims? Huge fee greedy attorneys? Correcting a real wrong? Correcting an illusionary wrong? Justice for ALL?

**Advantages<sup>9</sup> of a Class Action Lawsuit, includes:**

- **Efficiency.** Combining meritorious cases in a Class Action can increase the efficiency of the legal process and lower the costs of litigation. In cases with common questions of law and fact, aggregation of claims into a Class Action may avoid the necessity of repeating days of the same witnesses, exhibits and issues from trial to trial. That’s the theoretical argument...but in reality, the likelihood of a plethora of case filings is highly unlikely.
- **Meaningful.** A Class Action may overcome the problem that meaningful small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A Class Action ensures that a defendant who engages in widespread harm (whether intentional or not) – but does so minimally against each individual plaintiff – must compensate all affected individuals for their injuries. But in all cases, is that justice? (Every little wrong may have a remedy but that remedy may be a mature assumption of risk attitude and get on with life and not revenge or a course of conduct to create a vehicle to justify an award of large attorney fees way out of proportion of victim awards).
- **Behaviour Incentive.** Class-Action cases may be brought to purposely and honorably change behaviour (whether by intentional or unintentional acts) of a class of which the defendant is a member.
- **Race To the Bank.** In "limited fund" cases (which means the defendant(s) do not have ‘deep pockets’ and not financially strong), a Class Action ensures that all plaintiffs (victims) receive some relief and that early filing plaintiffs (they win the race to the bank) do not raid the common fund (owned by the shallow pockets of the defendant) of all its assets before other plaintiffs may be compensated.
- **Confusion.** A Class Action avoids the situation where different court rulings could create incompatible standards of conduct for the defendant to follow.

**Disadvantage of a Class Action Lawsuit, includes:**

- **Caveat Emptor (Buyer Beware – Victim Liable for Certain Consequences).** Class Action procedures are arguably inconsistent with due process mandates and unnecessarily promote litigation of otherwise small, trivial claims, and challenges what Justice is all about. A certain amount of risk is expected to be assumed by the public without recourse for someone else to pay in all circumstances. There needs to be a rational balance between seeking justice and seeking revenge or a vehicle to achieve an award of large attorney fees. What is honorable and what is greed?

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<sup>9</sup> While these advantages in a theoretical sense make for good ideological arguments...and justification behind plaintiff’s and their counsel promoting Class Action Lawsuit cases, the reality of life is that it is highly unlikely a plethora of individual cases will flood the courts with nominal claims, nor inconsistent rulings influence the cause of Justice.

- **Abuse.** The preamble to the (Federal) Class Action Fairness Act of 2005, implies that some Class Actions are abusive, harm Class Members with legitimate claims, especially where most defendants have tried to honestly act responsibly, and such abuse, adversely affecting interstate commerce (legitimate businesses stops providing useful consumer goods or services in fear of defending costly abusive Class Actions), and undermined public respect for the country's judicial system and what Justice for ALL means (the Court's permitting abusive Class Actions to be pursued – sometimes as a vehicle for Class Counsel to secure huge fees while the real victim's receive nominal value).
  - More times than not, Class Action Lawsuit defendants are reputable companies. These companies utilize their own legal and business experts who give advice and counseling and what to do to comply with relevant State and Federal laws. Rare is the reputable company that intentionally violates a law but in contrast, acts responsibly for law compliance. Even-so, many laws are written so broadly and many ambiguous as to what is right or wrong, and because of business complexity and broad interpretations of the law, stealthy plaintiff's litigation counsel are capable of crafting an argument (with or without merit) that often creates an illusionary environment of uncertainty (the 'fog index') whether or not a reputable company violated a law. An attorney's job is to represent the best interest of their client and earn a fee (legal representation is a vocation and profession) AND comply with professional standards of conduct – the ethics of law – Justice for ALL mandates. Because of law interpretation uncertainty and speculation, reputable companies will, without any admission of liability, often settle a case, to avoid unnecessary defense expenses, wasted time, and unwanted bad publicity – since rare is the opportunity for the defendant to honestly present the more honest defense facts, as the consuming public do not have the time or inclination to listen to such (that's human nature that plaintiff's counsel understand and use to their benefit). (Not unlike the quick message broadcast in roadside billboard lawyer advertisements, advising that the 'hammer' goes after truck drivers involved in accidents – automatic guilt and remedy – so much for due process. The ugly side of Justice).
- **Victims Are Secondary.** Class Members often receive little or nominal benefit from Class Actions.
  - Examples
    - Huge fees for the attorneys, while leaving Class Members with token coupons or other awards of little or nominal value;
    - Unjustified awards are made to certain plaintiffs at the expense of other Class Members (such as Representative Plaintiff's requesting priority payments for them having started the lawsuit or acting as Representative Plaintiffs); or such Representative Plaintiff's being paid a 'bounty' fee for having initiated a case that prompted the Class Action certification, and hence an 'entitlement' to a bounty that other Class Members, who merely missed out on being the initial claimant, is not entitled to such bounty. This

bounty is an unreasonable win-fall for such plaintiff's and contrary to ALL Class Members being treated the same;

- Confusing published and mailed Class Action postcard claim notices, that interfere with Class Members being able to fully understand and effectively exercise their rights;
- Laws require the Court's approval of all Class-Action settlements, and in most cases, Class Members are given a chance to opt-out (not participate) in Class Action settlements. Even so, though Class Members, despite being given opt-out post card claim notices, may be unaware of their right to opt-out because they did not receive the notice, did not read it or did not understand it.
  - The Class Action Fairness Act of 2005 attempts to address some of these concerns...
    - An independent expert may scrutinize 'coupon settlements' (where a business is willing to issue 'coupons' that provide for a discount or payment for future goods or services) before the Court's approval of the settlement, in order to ensure that the settlement will be of [some?] value to the Class Members.
    - Since many Class Members do not use or spend their coupons (many are trashed or forgotten), the award of contingency attorney's fees includes the value of unused coupons which means such fees should be lowered in regard to unused coupons. Even so, coupons are not customarily part of Class Action lawsuit settlements.
- **Who Is the Victim?** Various studies of Class Actions in federal court found that many plaintiffs (victims) received only a tiny fraction of the money awarded while plaintiff lawyers frequently secured a huge, highly disparate share of the settlement than their clients – the real victims in the lawsuit. Many Class Action lawsuits can be viewed as merely a vehicle or conduit through which attorneys can secure huge fees and not an honest mechanism of seeking Justice for real victims.

State and Federal laws provide for the bringing of Class Action Lawsuits. Most of the time a Class Action lawsuit is brought in federal court and not a State court, because:

- The victims (plaintiffs) in the lawsuit are resident in many States (diversity of citizenship), consequently, federal court is viewed as being fairer to all plaintiff's instead of those residing in any one particular State;
- Federal Courts are more experienced with hearing Class Action Lawsuits;
- Class Action Fairness Act of 2005, is a federal law that makes it easier for Class Action Lawsuits to be heard in federal courts.

An individual lawsuit often starts out with one or more initial plaintiffs (victims), claiming some business or entity violated a Federal (or State) law. Coincident with that case, the underlying complaint indicates there are many more similarly and adversely affected victims.

Attorneys who accept such a ‘small’ case, recognizing there are many potential victims with similar claims, will petition a [federal] court to *certify* the case as a Class Action lawsuit (thereby turning a small case into a big case on which to base large attorney fees), naming the initial plaintiff’s as ‘Representative Plaintiff’s’ (or lead plaintiff’s) in the Class Action claim and the attorneys requesting the Court (because of counsel’s Class Action skills) to also name (certify) them as Class Counsel, thereby representing all victims. By such Representative Plaintiff winning the race to the courthouse and advancing a Class Action certification claim, that initial plaintiff filing and certification filings has automatically resulted in many rights of other potential Class Member plaintiff’s being denied: such as (1) the right to select counsel and agree an attorney fee arrangement, (2) the right to pursue a claim or not, and (3) the right not to be forced into a lawsuit as a participant since State and Federal Class Action laws default to an automatic opt-in standard of participation.

After the Class Action Lawsuit is well advanced – sometimes many months or years (where Class Counsel has reached a tentative settlement agreement with defendants for both victim’s damages and attorney’s fees or resolved a case at trial), Class Member’s for the first time become aware of the Class Action Lawsuit, by receiving a postcard claim notice in the mail:

- Advising them of the lawsuit (most not even aware they were a party to a lawsuit),
- Awareness that they are an identified Class Member victim,
- Guidance on where to obtain information (usually on-line through the internet), that includes guidance on what the suit is about and what remedy Class Members may be entitled and how to file a claim as well as some general reference to filing objections (regarding adequacy of the claim settlement or reasonableness of requested attorney fees).
- The notice will also cite unless the Class Member timely opts-out (elects not to participate in the Class Action lawsuit) of the suit, they will automatically be included, generally at no cost, and will be bound by any outcome of the suit or settlement.

When plaintiff’s Class Counsel wins a Class Action lawsuit, or when they secure a pre-trial settlement with the defendant, legal fees and court costs are typically demanded in the award or Claim. This Total award or Claim is often referred to as the “Common Fund,” from which legal fees, as well as recovery for Class Members damages, are paid, unless a separate claim is made for attorney’s fees on top of total Claim to be awarded Class Members.

### Attorney’s Fees

While the practice of law seeks Justice, it’s still a business, and unless an attorney has agreed to work pro bono (free of charge, a public service), an attorney can expect [reasonable] compensation in exchange for their legal services.

Federal and State Courts in the United States in regard to attorney’s fees, follow what is called the ‘American Rule’. What this rule means is that each party (both plaintiffs and defendants) in a lawsuit are responsible for funding and paying their own attorney’s fees, no matter who wins the case.

However, this Rule can be modified by either...

- **Contract:** Parties to a contract can agree under certain circumstances, one of the parties will pay the legal fees of the other in regard to a particular dispute, or
- **Statute:** If there is a law (a statute) that specifically provides as part of its remedies, award of attorney's fees to a successful party – normally the plaintiff (i.e., a defendant is ordered to pay plaintiff's attorney fees). Many times, such statute-based award of attorney's fees can be many times greater than the value of actual damages suffered by a successful plaintiff, or
- **Settlement:** Plaintiff's attorney fees could also be paid by defendant, as a result of the defendant settling a case and volunteers to include payment of plaintiff's attorney fees as part of the settlement. (Theoretically, attorney's fees agreed by defendant as part of the settlement, is a form of a contract whereby, the attorney's client acquiesces in that fee arrangement as if the attorney and their client negotiated such fee arrangement).

The details of how attorney fees are typically determined and calculated is a matter of negotiated contract between an attorney and their client, and can be:

- An agreed hourly rate billed by the attorney and paid by the client (a 'fixed fee' arrangement), or
- A contingency fee, where the attorney does not charge a separate fee, but will take a percentage (25% to 40% as examples) out of a successful award (hence the attorney fee is contingent on winning a case). If the attorney is not successful in winning a case (either by going to trial or securing a pre-trial settlement), then it will not receive a fee, or
- A combination of fixed fee and contingency fee.

In a Class Action Lawsuit, the Representative Plaintiff is the ***only*** plaintiff who negotiates attorney fee arrangements for the Class Action. All other Class Members do not participate in such negotiations, and as a consequence, if they participate in the Class Action (and not opting out), then those Class Members have impliedly and automatically agreed with the attorney fee arrangement established between Class Counsel and Representative Plaintiffs. Typically, Representative Plaintiffs will agree with Class Counsel to a contingency fee (and not a separate out-of-pocket 'fixed fee' hourly rate – unless the claim is based on a statute that provides for award of attorney fees), which means Class Counsel will deduct its contingency fee from any Class Action successful award (either determined by trial or pre-trial settlement).

***Even so, any attorney fee arrangement must still be tested by the Court for reasonableness. This reasonableness test applies even with "clear sailing" agreements which are cases in which the defendant agrees to a noticeably large award of attorney fees and agrees not to object to that amount (perhaps a defendant quick dispute resolution tactic whereby Class Counsel are incentivized with a quick paycheck while the victims award may be lacking – which may challenge the ethics of representative counsel giving priority to representing the client's best interest and not preference to the attorney's paycheck).***

**Advantages of Contingency Fee Structure Includes:**

- No Up-front Fees. Helps give those lower-income clients better access to legal assistance and the court system.
- Incentive. If attorneys don't get paid unless client gets paid (win's its case), the attorney will be highly motivated to do everything in their power in order to get their client the best possible result. A performance-based agreement.
- No Costs for Losses. Lawyers are willing to risk not collecting a fee for the work they put into things.
- Contingency fees are helpful in cases where a client is short on funds and has an otherwise costly or complicated case.

#### **Disadvantages of Contingency Fee Structure Includes:**

- Encourages attorney to pursue non-merit case as nothing to lose but their time and foregoing other clients, and in a slow work environment, not much may be given up, or the pot of gold huge attorney fee incentive is worth the gamble to pursue a case<sup>10</sup>.
- A contingency fee arrangement can and often does cost a client more than a regular hourly fee.
- Once the parties agree on the contingency fee, the client owes the agreed upon percentage no matter how long the case will take—whether it takes a year or a week or two hours. This is especially true in the rare 'clear-cut' cases that may only require a few phone calls and a couple of hours of work in order to settle.
- Incentivized contingent fee lawyers may settle too soon and for too little to acquire a quick paycheck, and the client suffers.
- Contingent fees are usually too high relative to the risks that attorneys bear in a particular case, especially where they control whether or not to take a case and have already run their own risk of winning assessment analysis not shared with the client. (Is this insider knowledge and not in the best interest of the client?)

Since Class Counsel represents all Class Members and not just the Representative Plaintiffs, the Court must approve any settlement award for all Class Members including attorney fees.

Approval is conditioned on the settlement amount being fair, reasonable and adequate, and attorney's fees are reasonable.

Whether a Class Action settlement agreement is fair, reasonable and adequate, has been a bone of contention for companies who have pushed for **tort reform**, particularly as it concerns awards of huge attorney fees in Class Action litigation. These companies often complain about the huge awards of attorney fees that often change hands in Class Action settlements the amount of which are often extremely greater than actual damages claimed by plaintiffs, and they argue that **damage caps** and limits on attorney fees are necessary for the sake of justice, reasonableness and fairness.

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<sup>10</sup> While there is a risk in a contingency fee structured case of losing and not receiving a fee, attorneys who accept contingency cases are normally skilled at assessing the risk of recovery, and consequently are comfortable when they take on such cases that they more than likely will receive a fee. Not unlike the contingency fee-based billboard litigation hammer attorney seeking justice from truck driver accident bad guy defendants (and their insurers). Such sound bit messaging masks over the more honest concepts of justice, due process, unintentional accident, factual circumstances and a few other miscellaneous tid-bits that populist minded ears don't have time to listen to.

### Attorney Fees Reasonableness Test

Court's look to a variety of resources to assist them in determining if requested attorney's fees in a Class Action lawsuit are reasonable. If the court finds that the attorney fee agreement is unreasonable or unfair, the court may step in using its discretionary powers and either invalidate the agreement or amend it to make it reasonable.

Four significant resources used by the Court to test for reasonableness include:

1. American Bar Association Model Rules of Professional Conduct, Rule 1.5 Fees (many State Bar Association Rules of Professional Conduct are patterned after the ABA Model, and an attorney is duty bound to adhere to the Rules of Conduct else suffer consequences which could include disbarment from practicing law);
  - A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.
  - Traditional fee analysis to determine reasonableness takes into account...
    - the time and labor required,
    - the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
    - the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
    - the fee customarily charged in the locality for similar legal services;
    - the amount involved and the results obtained;
    - the time limitations imposed by the client or by the circumstances;
    - the nature and length of the professional relationship with the client;
    - the experience, reputation, and ability of the lawyer or lawyers performing the services; and
    - whether the fee is fixed or contingent
  - The traditional approach to proving attorneys' fees is for an attorney—sometimes the same attorney representing the party seeking fees—to testify as an expert on what are reasonable fees for the case (a little self-serving but them's the rules).
2. Federal Rules of Civil Procedure, Class Action Rule 23;
  - The Court '*may*' [*emphasis added, a discretionary power*] award reasonable attorney's fees that are authorized by law or by the parties' agreement.
3. Class Action Fairness Act of 2005;
  - Class Action settlements [damages and attorney's fees] are subject to Court approval,
  - Reports are to be filed with the House of representatives and the Senate containing
    - Recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members that the settlements are supposed to benefit;
    - Recommendations on the best practices that courts can use to ensure that—the fees and expenses awarded to counsel in connection with a class action

settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation;

- Recommendations on the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement.

4. Court rulings, in particular attorney fee reasonableness test criteria described in
  - *Stabraker v. DLC Ltd.*, 376 F.3d 819, 825 (8th Cir. 2004), which initiated the **lodestar standard**.
  - Determining reasonable fees under the **lodestar method** is a two-step process.
    - First, the court must determine the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work. By multiplying the number of reasonable hours by the reasonable hourly rate, the court determines the base fee or ‘lodestar’.
    - The court then may adjust the base fee or lodestar up or down (by applying a multiplier), if relevant factors indicate an adjustment is necessary to reach a *reasonable* fee in the case.
  - Under the lodestar method, the most heavily weighted multipliers are the time and labor required.
  - Reasonableness takes into account the factors used by the traditional fee determination.
  - Lodestar, presumably refers to a number that provides a guiding point-or lodestar-in the determination of an appropriate attorney fee award.

What is evident from assessing the resources used to determine what is or is not a reasonable attorney fee, is fraught with many subjective elements and not much independent deterministic<sup>11</sup> tests.

Class Counsel submit copious documents defending its request for attorney’s fees. The extent of this documentation can be voluminous and taxes the limited resources and busy dockets Courts have to study in detail all documents, consequently a challenged circumstance to fully assess all allegations and supporting documents. At times the sheer weight of filed documents can be a substitute for believed validity and justification. Elegant simplicity is more beneficial and honorable than intellectual complexity. The observation is that better guidance is needed in resolving what is or is not reasonable in regard to attorney’s fees and perhaps time for updated legislation to provide clarity and reduce the fog.

Consequently because of this absence of certainty, or at least a more determined method of attorney fee computation in Class Action lawsuits, astute counsel is free to argue for just about any fee they wish and paint it with broad strokes of reasonableness and justification whether in fact or

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<sup>11</sup> As in physics, deterministic refers to a cause-and-effect result which means if the same input to a situation is used again, then the same result will occur. A consistent and expected result. In contrast, a probabilistic result means if the same input is used again in a situation the outcome can be different. An inconsistent and uncertain result such as a 50% chance of such and such happening. Chaos is the extreme of the two which refers to a circumstance that is totally unpredictable regardless of the input.

illusionary. Just how long is a piece of string? Where is justice in all this, other than the rubber stamp embossed with ‘APPROVED’?

### Use, Misuse and Abuse – Standards of Proof and Other Reforms

As in most things in life, we humans can use a tool or seek justice, in the spirit of what was honestly intended – a proper use, or take a less honest path of misusing or abusing the circumstance.

The more honest argument of the extent the Class Action industry and the participants in that syndicate have often wandered from the righteous path of intended honorable use to less honest misuse or abuse paths are illustrated in the following examples...

**Certification Reform.** Original or Representative Plaintiffs seeking to certify a case as a Class Action lawsuit under Federal Rules of Civil Procedure, Rule 23 must plead and prove: (1) an adequate class definition (precise and unambiguous, identity of class members is reasonably determined excluding remote and unlikely victims) (2) ascertainability (fairly easy process to identify class members), (3) numerosity (a showing that joining and naming all Class Members in a common lawsuit is impractical) , (4) commonality (questions of common fact and law), (5) typicality (claims of the Representative Plaintiffs are typical of the claims of Class Members), (6) adequacy (Representative Plaintiffs will fairly and adequately protect the interests of the class – no conflict of interests) and (7) at least one of the requirements in Rule 23(b), namely: (a) separate adjudications will create a risk of decisions that are inconsistent with or dispositive of other class members’ claims, (b) declaratory or injunctive relief is appropriate based on the defendant’s acts with respect to the class generally, or (c) common questions predominate and a class action is superior to individual actions.

Not unusual, expert testimony (often from compensated academia professors – hired guns, invoking often complex and little understood statistical analyses and arguments of why the ingredients exist for justifying a case as a Class Action lawsuit – who are also governed by use, misuse and abuse standards of conduct) are used by attorney’s as a resource to establish enough ‘doubt’ in the mind of the judiciary, that the easy course is to certify a case as a Class Action lawsuit. The adage there are liars, damn liars and statisticians, is still in vogue. Given enough complex equations, PowerPoint slides and laser pointers, an expert can argue just about any side of a case and sound pretty convincing – especially when it’s paid for testimony and the basis of a decision is foggy, not deterministic and dependent on subjective feelings. And to think all of this insightful assessment of class certification takes place in a few minutes or a few hours at a court room hearing (the court docket of which is always busy and a court’s objective to move things along – justice to is dependent on the sweep of a ticking clock) in which participants in that hearing claim some sort of justified immediate understanding and acceptance of what the truth is and make an on the spot decision – yay or nay to certification. It takes a university student often many hours if not days just to solve one calculus or differential equation math problem – not including the study and prep time...yet the complexity of class action certification decisions happens in the twinkle or an eye.

The Representative Plaintiffs bear the burden of proving that the prerequisites to class certification have been met by a *preponderance of the evidence*. Theoretically this standard is supposed to be based on evidence and not speculation.

A certification decision can be challenged, and an appeal made to a higher court. An appeal may be accepted when: (1) the decision is questionable and the certification order represents the death knell for a defendant who will be compelled to settle even if the plaintiff's claims are not meritorious, (2) the decision raises an unsettled, fundamental and generally applicable issue of law that will likely evade end-of-the-case review, or (3) the decision is manifestly erroneous.

Reform is needed in the law or Rules, to cause the courts to be more pragmatic and reflective in a class certification decision. Some potential reforms might include:

- A separate Commission is relevant, composed of independent experts from many disciplines, who must first hear the class certification arguments and provide their opinion to the court whether the tests for certification are honestly and factually present, the cost of such Commission paid for by the plaintiff (and if a class is certified as a Class Action, the plaintiff in a successful Class Action lawsuit may include that cost in their recovery)
  - Often times when one is at risk of incurring an out-of-pocket cost, their desire to pursue a certain path is more tempered and reflective and becomes a self-assessing factor to not pursue highly questionable course of conduct;
- A separate and specially trained or class action certification expert judge or magistrate independent from the court a case is filed in, rules on a certification argument.
- If a class certification request is denied, the plaintiff is responsible for paying the defendant's costs and attorney's fees for defending the matter. A statutory form of attorney fee but paid by the losing plaintiff.

**Standards of Proof Reform.** The standard of proof in a court, listed in order of the degree of persuasive arguments (highest and most intense listed first) include:

- Beyond a reasonable doubt in criminal law.
- Clear and convincing evidence
  - Present evidence that leaves the listener with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true.
- Preponderance of the evidence in most civil cases.
  - Prove that something is more likely than not.
- Probable cause in the acquisition of a warrant or arrest proceeding.
- Reasonable belief as part of establishing probable cause.
- Reasonable suspicion in cases involving police stop and searches.
- Some credible evidence in cases necessitating immediate intervention, like child protective services disputes.
- Some evidence in cases involving inmate discipline.
- Substantial evidence in many appellate cases.
  - Degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree.

Class Action certification and other proofs in a Class Action lawsuit are governed by the Preponderance of the Evidence standard of proof, as is most civil lawsuits. Because of the unique nature of a Class Action lawsuit, and the heightened unique exposure to claims of a defendant to

many plaintiffs and defendant's expanded defense burdens, the standard of proof in a Class Action lawsuit should be based on Clear and Convincing Evidence. Such a standard will go a long way towards self-governing promotion of the honesty of a case in regard to hired gun expert Class Certification complex testimony and Class Action attorney specialists promoting the Class Action industry. Justice can still prevail even with a Clear and Convincing Evidence standard of proof, but the burden shifts to the plaintiff to present a more honest case.

**Self-Serving Reform.** Class Counsel representing a Class Action lawsuit, is obligated to demonstrate Class Member (victim) remedies are tested to a standard of being **fair, reasonable and adequate** and any claim for attorney's fees be tested to a standard of **reasonableness**.

In many cases Class Counsel unnecessarily strains the honesty standard of argument, that the case is shoe-horned to fit within the standards of reasonableness, fairness or adequacy. The more honest arguments include:

- Argument: Class Members have not objected to the size of the remedy or attorney's fees so therefore they must by default be reasonable.
  - Reform: Most Class Members only became aware they were entitled to a claim when they received postcard notice from Class Counsel the claim exists, and typically the claim amount is so small, the Class Member may or may not file a claim (assuming they spend time to study the notice), and spend no time challenging the suit given the small nature of the event. Hence arguing the absence of objection as part of the rationale of a claim and attorney fee being reasonable is a rather salty circular self-serving argument, and one hopefully a court will disregard (ignore?).
- Argument: Attorney's fee claims are comparable to other Class Action lawsuit awards, citing common percentage take regarding contingency fee awarded attorney's fee in other cases.
  - Reform: This one-size-fits-all attorney fee reasonableness standard is contrary to the obligation of attorneys to determine their fee on the merits and effort involved in each individual case. Reasonable attorney's fee justification is not like earning a fixed real estate agent sales commission (the 6% 'standard' shared between buyer and seller agents). Then again, justifying a fee based on other case 'standards', is another admission of the observation that Class Action lawsuits have become a commoditized industry and vehicle to rack up huge attorney's fees and not a forum for justice.
- Argument: Expert testimony (often university professor experts – hired guns) demonstrate with subjective little understood complex statistical stealth, that the basis of a case is sounded as evidence and proof of the bad conduct of a defendant.
  - Reform: An expert arguing in a security fraud case for example, that defendant's alleged bad conduct caused an inappropriate one penny swing in a defendant's stock price...is a pretty far-fetched argument to make, given stock price swings happen on a daily basis and to pin-point specific conduct of a defendant why the swing happened, especially when a nominal amount, is often a bridge to far...and all the more reason to have a Clear and Convincing Evidence standard of proof.
- Argument: Class Counsel base their attorney fee on a contingency basis, a percentage of the Claim award to Class Members, citing Class Action 'victims' are seeking justice and

Class Counsel graciously accepting a case to advance that justice and willing to do so on a contingency basis relieving the Class Members of bearing the legal costs of a case, and usually such fees are paid by a losing defendant if an underlying statute on which a case is brought provides for attorney fees as part of the remedy.

- Reform: How often does Class Counsel seek to orchestrate a case as a Class Action lawsuit, driven by the objective of increasing the size of a Claim because of Class Member participation, and the size of the percentage take from a large Class Action Claim as attorney's fees, is hugely more valuable than a percentage take from an individual plaintiff claim? Thus, an observation that contingency attorney's fees should not be permitted in Class Action lawsuits, leaving the attorney to justify their fee based on reasonableness standard tests associated with time and hourly rates.
- Argument: Class Counsel justify the merits of a Class Action case (either as certification as a Class Action or violation of a law) and their right to attorney's fees, based on a plethora of cited cases, mountains of self-serving justification documentation and other resources heaped upon a court's already busy docket. The weight of the argument is based on the paper weight of the documents filed and not on the quality and weight of evidence of the argument.
  - Reform: Similar to discovery proceedings, perhaps attorneys should be limited to the number of pages of documentation they file in a case, unless a show cause hearing is held to show why more and not less is necessary. The goal being elegant simplicity vs intellectual complexity. Whenever an argument is based on excessive rhetoric and paper weight, red alarm bells should ring louder than ever that the underlying honesty of the argument is lacking and being displaced and made up by heavy mass and not quality class arguments.

### Justice and Class Action Lawsuits

The Class Action lawsuit industry seems to have wrinkled the path of what justice (or injustice) is all about.

The Declaration of Independence, the Constitution of the United States of America, and the Bill of Rights, the "founding documents" of the nation, speak directly to the ideals of freedom from oppression, equality, and justice *for all*. Justice is fairness and equal treatment and applies to both the plaintiff AND the defendant since that simple 'all' word is rather encompassing.

Class Action Lawsuits seem to treat defendants as tyrants and oppressors of the public. That is not justice for *all*.

What is just remains a matter for debate. Observing the same outcome of a situation, one person may say justice was done. Another may declare the outcome an injustice and great wrong. Is the porridge too hot or just, right? Is the attorney fee too huge or just, right?

Justice may be viewed as a subjective process of assessing the fairness of relations between individuals and groups of people, such as...

- Getting what one deserves.

- Equitable sharing of civic burdens.
  - We all get car door ding marks, and we all give them. While such is normally an accidental ‘wrong’, to seek a \$50 door ding damage repair bill and charge a \$10,000 attorney fee is not what justice is *all* about. Revenge maybe. Assumption of a certain amount of risk is a constant balancing act in anything us humans do. (Maybe the door ding issue can be resolved by car makers installing soft bumper guards on door edges or wider parking lanes.)
- Individual virtue and ethical conduct (especially attorney’s whose law license demands they honor Bar Association ethics and code of professional conduct and act responsibly and always seek justice for *all* and not revenge).

Is it unreasonable/unethical for plaintiff’s attorney to pursue a Class Action lawsuit, knowing their fee will be many many magnitudes greater than any nominal recovery of victims, where such huge fee is paid to the attorney instead of compensation to the victims? Is that justice?

Are huge attorney fee awards seen as a substitute for punitive (‘punishment’) damages above and beyond actual damages, of a Class Action lawsuit defendant? Justice would suppose punishment is by way of compensation paid to victims, and where applicable, award of punitive damages (also paid to victims above and beyond actual damages) as a punishment for unacceptable intentional egregious acts of defendants. Attorney fees are in relation to reasonable honest legal services provided on behalf of the plaintiff/victims and NOT a means of punitive punishment of defendants.

Who does justice define as the victim? The Class Member victims? Plaintiff’s lawyers as victims? Defendant victims being exposed to paying huge legal fees and lawyers misusing or abusing what justice is *all* about?

It’s time for a change.

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## Appendix A –

## Class Action Lawsuits – Huge Attorney Fee Illustrations

**Example Class Action Case 1 (<https://www.nielsensecuritiessettlement.com/>)**

In Re Nielsen Holdings PLC Securities Litigation  
Civil Action No. 1:18-cv-07143-JMF  
United States District Court  
Southern District of New York

Proposed Settlement Fund	\$73,000,000	(\$0.19 per share)
Proposed Contingency Attorney's Fees (25%)	\$18,250,000	(\$0.05 per share)
Plus Attorney Expenses	\$ 1,110,000	
Total Legal Cost	\$19,360,000	
Claimed Attorney Hours	17,206	
Total Class Member (Victims)	384,000,000	(\$73,000,000/\$0.19)
Attorney Hourly Rate Disclosure Ranges		
Paralegals	\$315 to \$505	
Associate Attorneys	\$895 to \$2,017	
Of Counsel	\$975 to \$1,560	
Partners	\$1,250 to \$1,983	
Average Attorney hourly rate	\$1,060	(\$18,250,000/17,206)
Attorney Fee Per Lawyer (assuming 82 lawyers)	\$222,561	(\$18,250,000/82)
Range of Victim Award (depends on shares owned)		
500 shares	\$70	(500*\$0.14)
10,000 shares	\$1,400	(10,000*\$0.14)
100,000 shares	\$14,500	(100,000*0.14)

**Example Class Action Case 2 (<https://www.t-mobilesettlement.com/>)**

In Re T-Mobile Customer Data  
Security Breach Litigation  
Civil Action No. 4:21-md-03019-BCW  
United States District Court  
Western District of Missouri

Proposed Settlement Fund	\$350,000,000	
Plus Future Data Security Upgrades	\$150,000,000	
Proposed Contingency Attorney's Fees (22.5%)	\$78,750,000	(reduced from 30%)
Plus Attorney Expenses	\$ 147,982	
Total Legal Cost	\$19,360,000	
Claimed Attorney Hours	8,225	
Total Class Member (Victims)	79,150,000	
Attorney Hourly Rate Disclosure Ranges	\$270 to \$1275	

Average Attorney hourly rate	\$9,574	(\$78,750,000/8,225)
Attorney Fee Per Lawyer (assuming 100 lawyers)	\$787,500	(\$78,750,000/100)
Range of Victim Award (depends on shares owned)	\$3.42	(\$271,250,000/79,150,000)

**Example Class Action Case 3 (<https://www.baggagefeeclassaction.com/>)**

Cleary v. American Airlines Inc.  
 Baggage Claim  
 Civil Action No. 4:21-cv-00184-O  
 United States District Court  
 Northern District of Texas

Proposed Settlement Fund	\$7,500,000 (min.)	
Proposed Fixed Fee Attorney's Fees	\$2,850,000 (27.5% total award)	
Attorney Expenses	\$1,142,945	
Claimed Attorney Hours	3,641	
Total Class Member (Victims)	588,654	
Average Attorney hourly rate	\$782	(\$2,850,000/3,641)
Attorney Fee Per Lawyer (assuming 10 lawyers)	\$285,000	(\$2,850,000/10)
Victim Award	\$12.74	(\$7,500,000/588,654)

**Example Class Action Case 4 (<https://www.OracleSecuritiesLitigation.com/>)**

In re Oracle Corporation Securities Litigation  
 Securities Fraud  
 Civil Action No. 18-cv-04844-BLF  
 United States District Court  
 Northern District of California, San Jose Division

Proposed Settlement Fund	\$17,500,000	
Proposed Fixed Fee Attorney's Fees	\$3,500,000 (20% total award)	
Attorney Expenses	\$900,000	
Claimed Attorney Hours	17,900	
Total Class Member (Victims)	979,000	
Average Attorney hourly rate	\$195	(\$3,500,000/17,900)
Attorney Fee Per Lawyer (assuming 10 lawyers)	\$350,000	(\$3,500,000/10)
Victim Award	\$0.01/share (~2.7 bn shares)	
	(~1800 shares per shareholder avg)	
	\$18 avg share of claim	

A self-serving assertion: The small number of objections in comparison to the size of the Class supports a finding that the Settlement is fair, reasonable, and adequate. The reason folks did not opt-out have nothing to do with a fair, reasonable and adequacy test. Case cites false statements illegally inflated Oracles stock value – then trading between \$43 and \$47. Jan 2023 trade value is over \$85, and a peak end of 2022 at over \$100. The casual observer would cite business as usual and a good year for Oracle investors...justifying a 1 cent swing in stock value because of excessive puffing – craftily disguised as security fraud (with a lot of academic experts pontificating on their crystal ball insightfulness and naval gazing) is poppycock. Liars, damn liars and statisticians come to mind.

Appendix B

Example Form Objection to Attorney’s Fees

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF (State)
DIVISION

IN RE [NAME USED IN COURT DOCUMENTS]

Case No. \_\_\_\_\_

OBJECTION TO PROPOSED ATTORNEY FEE AND EXPENSE APPLICATION AND REQUEST FOR DOWNWARD ADJUSTMENT

1. Objection Applicant, (your name) (pro se), a Settlement Class Member (Class Member ID, claim number) submits this OBJECTION, to apply to the entire class (and not just to me personally), the Applicant does not plan to attend the Final Approval Hearing, has not objected to any class action settlement within the past three years, and request for modification and downward adjustment of any pending or submitted Attorney Fee and Expense Application (herein the ‘Application’) because such Application is unreasonable, unfair and not in the best interest of the Settlement Class Members.

[Cross through or delete Option 1 or Option 2 that does not apply]

2. Option (1) Since as of the filing of this Objection, Lead Counsel has not filed in https://www, copy of the Application, nor sent a copy to Objection Applicant, this Objection is based on those documents of record in the cited website so filed as of the date of this Objection.

12 Read the post card claim notice and follow any specific instructions regarding filing of an objection, such as timing, address to send the Objection to, and any conditions. This Appendix B form contains typical conditions but may not be complete.

13 Pro se means you are representing yourself.

14 Class member ID is usually cited in the post card claim notice received in the mail concerning the Class Action

15 If you have filed a claim after receiving the post card claim notice, you usually will be issued a claim number.

16 The Class Action lawsuit will be found on the internet which will allow you to have access to all case documents and other information about the case. Insert the internet website. Often times an Objection is filed before all relevant documents are filed online. Final attorney fee applications are often filed late.

Option (2) This Objection is based on those documents of record in <https://www>, as of the date of this Objection.

### **OBJECTION**

3. Rationale behind this Objection, includes...

3.1 Although Representative Plaintiff's in this Class Action Lawsuit have ostensibly approved the Application, I do not agree with such approval, and hereby submit this Objection.

3.3 The Application is not in the best interest of Settlement Class Members and is not reasonable.

3.3 The Application must be thoroughly tested for its reasonableness, including taking into account:

3.3.1 American Bar Association Model Rules of Professional Conduct, Rule 1.5 Fees

- A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.
- Traditional fee analysis to determine reasonableness takes into account...
  - the time and labor required,
  - the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - the fee customarily charged in the locality for similar legal services;
  - the amount involved and the results obtained;
  - the time limitations imposed by the client or by the circumstances;
  - the nature and length of the professional relationship with the client;
  - the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - whether the fee is fixed or contingent

3.3.2 Federal Rules of Civil Procedure, Class Action Rule 23;

- The Court '*may*' [*emphasis added, a discretionary power*] award reasonable attorney's fees that are authorized by law or by the parties' agreement.

3.3.3 Class Action Fairness Act of 2005;

- Class Action settlements [damages and attorney's fees] are subject to Court approval, taking into account...
  - Reports filed with the House of representatives and the Senate containing recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members that the settlements are supposed to benefit and recommendations on the best practices that courts can use to ensure that— the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the

litigation; recommendations on the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement

3.3.4 Court rulings, in particular attorney fee reasonableness test criteria described in  
o *Stabraker v. DLC Ltd.*, 376 F.3d 819, 825 (8th Cir. 2004), which initiated the **lodestar standard**.

- o Determining reasonable fees under the **lodestar method** is a two-step process.
  - First, the court must determine the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work. By multiplying the number of reasonable hours by the reasonable hourly rate, the court determines the base fee or ‘lodestar’.
  - The court then may adjust the base fee or lodestar up or down (by applying a multiplier), if relevant factors indicate an adjustment is necessary to reach a *reasonable* fee in the case.
  - Under the lodestar method, the most heavily weighted multipliers are the time and labor required.
  - Reasonableness takes into account the factors used by the traditional fee *determination*.

4. The Court is requested to invoke its discretionary powers to modify and reduce the Attorney Fee Expense Application to make it reasonable.

5. The economics of the requested Application indicate:

5.1 The proposed Settlement Common Fund to all Class Members is \$ \_\_\_\_\_. (Total indicated settlement to be paid to victims)

5.2 Total Class Members are \_\_\_\_\_ (total number of victims)

5.3 Individual Class Member award are estimated to be \$ \_\_\_\_\_ (cite how much each victim may receive or at least a range)

5.4 Total Attorney Fees and Expenses applied for are \$ \_\_\_\_\_

5.5 The total legal hours expended on the case are \_\_\_\_\_

5.6 The average hourly rate charged for legal services is \$ \_\_\_\_\_ (paragraph 5.4 divided by paragraph 5.5)

5.7 The average paycheck for each attorney working on the case is \$ \_\_\_\_\_

(paragraph 5.4 divided by the total number of attorneys estimated to be working on the case, small cases may be up to 5, big cases may be 75 or more)

5.8 The disparity between the amount of recovery to each Class Member compared to the paycheck each attorney could receive suggests an exorbitant and unreasonable basis on which to base attorney fees.

6. Any reduction in the Application is to be returned to and distributed to the Settlement Class Members, the real victims of this cause of action, and not as a contribution to attorney fees.

7. A review of class action settlements suggests attorneys typically are ‘rubber stamped’ awarded their request because in part they have subjected the court to a plethora of case law cites, statutory law prose, subjective facts, mountains of documents and other heaps of information (extracted from past cases) – especially when a \$ \_\_\_\_\_ [insert amount of claimed fee] attorney paycheck is in the offing - all of which may or may not be germane to the case but certainly adds a lot of fog to the landscape that a Court with limited budget of resources most likely cannot fully assimilate.

8 Settlement (with all parties accepting a cash Settlement amount as an acceptable compromise of the issues) was achieved without trial. Consequently, the extent and reasonableness of claimed earned legal fees are in question. Using the same high fee whether a case settles in two hours or after preliminary discovery and pre-trial settlement negotiation does not make sense and does not pass the smell test.

- o While it is instructive to take into account attorney work claims of:
  - o Preparing legal documents (complaints, depositions, subpoenas, attending hearings, legal research), law firms versed in class action cases already have in hand the understanding of relevant statutes and case law, and unless a novel area of data breach issues are understood and billable time not required to be wasted and spent on developing these items, they are already in the library.

9. [Add any other information that is unique to the case that illustrates why you think the requested attorney fee and expense application is unreasonable] At your discretion you might also include a copy of the above paper that might give the Court some additional information to think about].

Respectfully submitted.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[name, printed and sign document]

Settlement Class Member

\_\_\_\_\_, (mobil)

\_\_\_\_\_, (fax)

\_\_\_\_\_ email

\_\_\_\_\_ address

\_\_\_\_\_ address

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, copies of the **OBJECTION TO PROPOSED ATTORNEY] FEE AND EXPENSE APPLICATION AND REQUEST FOR DOWNWARD ADJUSTMENT, WERE** mailed by first class prepaid postage or by email, to the following recipients:

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF \_\_\_\_\_  
DIVISION**

Clerk of the Court  
[address/email]

CLASS COUNSEL  
[name]  
[address/email]

Defendant  
[address/email]

I, \_\_\_\_\_, further certify I am a Settlement Class Member.

\_\_\_\_\_  
[name]

It is presumed Lead Counsel will post this Objection as a relevant document in this case online internet posting cite.

Appendix C

Example Op-Out Form

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF (State)
DIVISION

IN RE [NAME USED IN COURT DOCUMENTS]

)
)

Case No. \_\_\_\_\_

ELECTION TO OPT-OUT OF THE CAPTIONED CLASS ACTION LAWSUIT

- 1. Opt-out Applicant, \_\_\_\_\_ (your name) (pro se<sup>17</sup>), a Settlement Class Member (Class Member ID<sup>18</sup> \_\_\_\_\_) submits this Election to Opt-Out of the captioned class action lawsuit and not participate in such suit, and without prejudice, reserve any and all of my rights to pursue a separate claim

Respectfully submitted.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[name, printed and sign document]
Settlement Class Member

\_\_\_\_\_, (mobil)
\_\_\_\_\_, (fax)
\_\_\_\_\_ email
\_\_\_\_\_ address
\_\_\_\_\_ address

CERTIFICATE OF SERVICE

<sup>17</sup> Pro se means you are representing yourself in the objection.

<sup>18</sup> Class member ID is usually cited in the post card notice you received about the Class Action

I, \_\_\_\_\_, hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, copies of the **Election to Opt-Out of the captioned class action lawsuit and not participate in such suit**, was mailed by first class prepaid postage or by email, to the following recipients:

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF \_\_\_\_\_  
DIVISION**

Clerk of the Court  
[address/email]

CLASS COUNSEL  
[name]  
[address/email]

Defendant  
[address/email]

I, \_\_\_\_\_, further certify I am a Settlement Class Member.

\_\_\_\_\_  
[name]

It is presumed Lead Counsel will post this Objection as a relevant document in this case online internet posting cite.

*[This is a general form. The postcard notice received about the Class Action lawsuit may contain other information of what to do to opt-out of the case. Please refer to that detail as required].*

## Appendix D

### Class Action Lawsuits – Attorney Fee Legislation

*[Date]*

To:

*Name of U.S. Representative/Senator  
[address – local/Capitol]  
Via mail, email, fax*

From

*[name]  
[address]  
[email]  
[phone]  
[fax]*

*Re: Class Action Lawsuit – Attorney Fee Legislation*

*Dear Congress Person [name] or Senator [name],*

*My name is [name] \_\_\_\_\_ and I live and vote in the district you represent.*

*I write to you as a concerned citizen regarding Class Action Lawsuits and Attorney Fee Legislation.*

*I am sure you are aware of Class Action Lawsuit rights and the public service such activities serve.*

*I have attached a recent paper on such action, in particular the concern regarding huge attorney's fees granted in many Class Action cases and what action plans can be advanced to provide some control over run-away fees.*

*While the judicial Court system has oversight to assess the reasonableness of such fees, there seems to be a consistent 'one-size-fits-all' demeanor advanced when such fees are defended by Class Counsel. This demeanor is contrary to the reasoning that one-size-does-not-fit- all where each case and its fee structure are to be assessed on their own merits and tested against a standard of fairness, reasonableness and adequacy. Most Class Counsel argue that their claimed attorney's fees (a self-serving argument) are consistent in the formula used to determine fees among all other cases.*

*The attached paper and my own experience suggest legislation may well be required to provide the necessary control over excessive fee awards.*

*I am writing to seek your counseling and perhaps leadership in advancing relevant legislation that can address the run-away legal fee paycheck issues and problems outlined in the attached paper.*

*While I don't have the answers, I do have some ideas.*

### **Contingency Fee Prohibition**

*Perhaps, similar to prohibition of the use of contingency legal fees (where the fee is based on the attorney taking a percentage of the case outcome) in regard to domestic relation and criminal cases, Class Action lawsuit may well be added to the prohibited list, thereby leaving attorneys to argue and defend a fee based on 'fixed fee' reasonable hours and reasonable billing rate arguments.*

*As you know, the legal profession has almost unanimously determined for years that allowing attorneys to base their contingency fee on the outcome of a divorce or child custody case would create a risk of the attorney having a financial interest in the outcome as well as being against public policy and therefor unreasonable by default. This could potentially lead unscrupulous attorneys to take actions that could be against the interests of children, or it could encourage attorneys to do things to make sure clients actually divorce. On the contrary, a skilled and ethical divorce attorney should always consider reconciliation, resolution, and fairness to be part of the goal and avoidance of the destruction of family relationships. There can be no financial interest in seeing to it that clients get divorced.*

*Likewise, contingency fees are prohibited in regard to criminal cases also based on public policy reasons.*

*Shouldn't Class Action counsel likewise ethically consider resolution and fairness to be the goal of such actions.*

### **Reasonableness Tests Codification**

*As outlined in the attached paper, the groundwork for attorney fee codification has been laid out in the various resources currently consulted to assess attorney fee reasonableness.*

*Those resources include: American Bar Association Model Rules of Professional Conduct, Rule 1.5 Fees; Federal Rules of Civil Procedure, Class Action Rule 23; Class Action Fairness Act of 2005; court rulings, in particular attorney fee reasonableness test criteria described in *Stabraker v. DLC Ltd.*, 376 F.3d 819, 825 (8th Cir. 2004), which initiated the **lodestar standard**.*

*Should legislation be passed to codify the various methods used to test for reasonableness of attorney's fees, thereby removing much of the subjective uncertainty and differences without a distinction confusion?*

*Should a codified formula (which may also include a cap) be determined that provides guidance what is considered a reasonable attorney fee, with an opportunity for attorneys to challenge the formula if they can demonstrate why their fee structure is the better reasonable structure?*

### **Independent Committee**

*Currently, attorney fee reasonableness tests are assessed by other attorneys. I have included the Court system in this testing network since most jurists are attorneys. Should there be some form of independent committee, commission or panel used to test the reasonableness of attorney fees, the participants of which also includes non-lawyers? Professions that come to mind that might be part of such panel includes Insurance (risk management), Accountants, Professional Engineers, Military Officer, Police Officer, Day Care Management, Clergy, Local Union Leadership.*

*An independent committee, commission or panel is not unlike the independent expert appointed under the Class Action Fairness Act of 2005, who is instructed to scrutinize 'coupon settlements' (where a business is willing to issue 'coupons' that provide for a discount or payment for future goods or services) before the Court's approval of the settlement, in order to ensure that the settlement will be of [some?] value to the Class Members.*

*Class Action Counsel might argue that the complexity of defending why legal fees are reasonable, is not readily understood by the lay person. Quite the contrary, if attorneys cannot argue their defense of why their fee is reasonable in plain understood English, then the fog index is in full force...and that corrupts the concept that a little bit of sunshine is a great disinfectant.*

### **Class Action Certification Reform**

*A separate Class Action certification Commission should be created, composed of independent experts from many disciplines, who must first hear the class certification arguments and provide their opinion to the court whether the tests for certification are honestly and factually present, the cost of such Commission paid for by the plaintiff (and if a class is certified as a Class Action, the plaintiff in a successful Class Action lawsuit may include that cost in their recovery)*

*Often times when one is at risk of incurring an out-of-pocket cost, their desire to pursue a certain path is more tempered and reflective and becomes a self-assessing factor to not pursue a highly questionable course of conduct.*

*If a class certification request is denied, the plaintiff is responsible for paying the defendant's costs and attorney's fees for defending the matter.*

### **Plaintiff Filing Reform**

*Similar to discovery proceedings, Class Counsel attorneys should be limited to the number of pages of documentation they file in a case, unless a show cause hearing is held to show why more and not less is necessary. The goal being elegant simplicity vs intellectual complexity. Whenever an argument is based on excessive rhetoric and paper weight, red alarm bells should ring louder than ever that the underlying honesty of the argument is lacking and being displaced and made up by heavy mass and not quality class arguments.*

**Standard of Proof Reform**

*The standard of proof used to either certify a case as a Class Action or evidence presented in a trial of the matter, should be based on Clear and Convincing Evidence and not Preponderance of the Evidence. A higher standard of proof makes sense, since such standard will have a self-governing incentive for plaintiff's and Class Counsel to advance an honest case as well as promoting the nation's founding documents objective of Justice for ALL, especially since a defendant is confronted with the unique and unusual aspects defending a Class Action claim.*

**Pre-Certification Notice**

*The honest merits of a lawsuit certified as a Class Action, should first be tested, that prior to such certification, Plaintiff's should first submit a mandatory notice letter (the Class Action Pre-Certification Notice Letter, or CAPCN) to the defendant giving them clear and unambiguous information concerning: (i) The legal rationale on what the Class Action complaint is all about; (ii) How much Class Member compensation (cash and non-cash) the defendant is expected to pay to resolve the complaint, net of any attorney fee; and (iii) The amount of claimed attorney's fees incurred as of the CAPCN letter, but prior to certifying a case as a Class Action lawsuit;*

*Such letter then giving the defendant an opportunity to resolve the complaint without Class Action certification, and if a defendant offer of resolution is rejected, if after a case is certified as a Class Action lawsuit, and the case is resolved in favor of Class Members (either by settlement or court judgment) the Class Action claim (not including attorney's fees) is equal to or less than what the defendant offered to settle with the CAPCN letter, then in that circumstance, any claimed attorney fees will be limited to what was offered at the CAPCN stage of resolution.*

*I trust you find this request of interest and can shed some light on the issues and help find resolution to some of the problems cited.*

*Regards,*

*Name*

**Appendix E**

**Class Action Lawsuit Postcard Claim Form**

*[Date]*

To:

*Name of U.S. Representative/Senator*

*[address – local/Capitol]*

*Via mail, email, fax*

From

*[name]*

*[address]*

*[email]*

*[phone]*

*[fax]*

*Re: Class Action Lawsuit – Postcard Claim Form*

*Dear Congress Person [name] or Senator [name],*

*My name is [name] \_\_\_\_\_ and I live and vote in the district you represent.*

*I write to you as a concerned citizen regarding Class Action Lawsuits and the content of postcard claim forms used to notify potential Class Members of their claim rights.*

*I am sure you are aware of Class Action Lawsuit rights and the public service such activities serve.*

*I have attached a recent paper on such action, in particular the concern regarding user friendly notification and information contained in postcard claim forms and what action plans can be advanced to provide improved user-friendly better-informed awareness of important issues associated with such forms.*

*I believe legislation is needed to simplify, make easier to understand, postcard Class Action lawsuit claim notices, designed to clearly and conspicuously describe:*

*(1) what potential claim is being sought,*

*(2) how much (cash and non-cash) in total and how much each individual Class Member may be entitled,*

*(3) how the size of the Class Action Claim and attorney's fees are effected if Class Members opt-out of participating in the lawsuit and*

*(4) how attorney fees and expenses are calculated, estimated total amount to be requested and indicative average attorney fee per lawyer and average hourly rate being charged.*

*Such postcard claim form legislation could be an amendment to the Class Action Fairness Act of 2005.*

*It is not uncommon when a Class Member receives a postcard claim form in the mail, short of hiring their own attorney, they need to have a reasonable understanding of how to navigate through online internet systems in order to obtain additional relevant information. The internet navigation process as well as interpreting much of the 'legal mumbo gumbo' cited in important documents, gets lost in translation, leaving Class Members with little insight of their rights and significance of important issues.*

*One issue of importance is the user friendly opportunity to make the postcard claim form easy to understand on which a Class Member can then be able to clearly judge the merits of receiving a small nominal value in a Class Action lawsuit, while attorney's receive huge paychecks, using the Class Action Lawsuit as a vehicle to secure such fee (and justice taking back seat peanut gallery priority), thus allowing Class Members to make a much better informed decision of opting out (not participating) in the Claim or staying in.*

*I trust you find this request of interest and can shed some light on the issues and help find resolution to some of the problems cited.*

*Regards,*

*Name*

# **Exhibit 8**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_ X  
 CITY OF STERLING HEIGHTS POLICE & :  
 FIRE RETIREMENT SYSTEM, Individually :  
 and on Behalf of All Others Similarly Situated, :  
 :  
 Plaintiff, :  
 :  
 vs. :  
 :  
 RECKITT BENCKISER GROUP PLC, :  
 RAKESH KAPOOR, and SHAUN :  
 THAXTER, :  
 :  
 Defendants. :  
 \_\_\_\_\_ X

Civil Action No. 1:20-cv-10041-PKC

CLASS ACTION

[PROPOSED] ORDER AWARDING  
ATTORNEYS' FEES AND EXPENSES AND  
AN AWARD TO LEAD PLAINTIFF  
PURSUANT TO 15 U.S.C. §78u-4(a)(4)

PKC

This matter having come before the Court on July 19, 2023, on the motion of Lead Counsel for an award of attorneys' fees and expenses and an award to Lead Plaintiff (the "Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this Litigation to be fair, reasonable and adequate, and otherwise being fully informed of the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement dated March 10, 2023 (the "Stipulation"), and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be located with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rule 23 of the Federal Rules of Civil Procedure and the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 (15 U.S.C. §78u-4(a)(7)), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto. PCL

4. The Court hereby awards Lead Counsel attorneys' fees of <sup>25%</sup>27.5% of the Settlement Amount, plus expenses in the amount of \$574,923.16, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is fair, reasonable, and appropriate under the "percentage-of-recovery" method.

i.e.  
\$4,900,000  
PCL

5. The awarded attorneys' fees and expenses and interest earned thereon, shall be paid to Lead Counsel immediately upon execution of the Final Judgment and this Order and subject to the terms, conditions, and obligations of the Stipulation, and in particular, ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

6. In making this award of fees and expenses to Lead Counsel, the Court has considered and found that:

(a) the Settlement has created a fund of \$19,600,000 in cash that is already on deposit, and numerous Class Members who submit, or have submitted, valid Proof of Claim and Release forms will benefit from the Settlement created by Lead Counsel;

(b) over 198,900 copies of the Notice were disseminated to potential Class Members indicating that Lead Counsel would move for attorneys' fees in an amount not to exceed 33% of the Settlement Amount and for expenses in an amount not to exceed \$610,000, plus interest on both amounts;

(c) Lead Counsel expended substantial time and effort pursuing the Litigation on behalf of the Class;

(d) Lead Counsel pursued the Litigation entirely on a contingent basis;

(e) the Litigation involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(f) had Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class may have recovered less or nothing from the Defendants;

(g) public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation; and

(h) the attorneys' fees and expenses awarded are fair and reasonable.

7. Pursuant to 15 U.S.C. §78u-4(a)(4), the Court awards \$1,500 to Lead Plaintiff City of Birmingham Retirement and Relief System for the time it spent directly related to its representation of the Class.

8. The Court has considered the objection to the fee application filed by Larry D. Killion (ECF 175) and finds it to be without merit. The objection is overruled in its entirety.

9. Any appeal or any challenge affecting this Court's approval regarding the Fee Motion shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

10. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided in the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

DATED:

July 19, 2023

  
\_\_\_\_\_  
THE HONORABLE P. KEVIN CASTEL  
UNITED STATES DISTRICT JUDGE

# **Exhibit 9**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

CLAIR REYNOLDS, *et al.*,

Plaintiffs,

v.

FCA US LLC,

Defendant.

Case No. 2:19-cv-11745-MAG-EAS

Hon. Mark A. Goldsmith

Magistrate Judge Elizabeth A. Stafford

**ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES,  
EXPENSES, AND INCENTIVE AWARDS (Dkt. 96)**

THIS MATTER having come before the Court for consideration of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Incentive Awards ("Fee Motion");

WHEREAS, Defendant FCA US LLC ("FCA US") and Plaintiffs Clair Reynolds, Monica Martirano, William Martin Powers, Trina Hancock, Melinda Martinez, and Brady Laing (collectively, "Plaintiffs" or "Class Representatives"), by and through their attorneys, reached a Class Settlement (the "Settlement");

WHEREAS, the Parties submitted the Settlement Agreement together with Plaintiffs' Unopposed Motion for Preliminary Approval of the proposed settlement to the Court;

WHEREAS, the Court provisionally certified a Settlement Class and gave its preliminary approval of the Settlement on October 26, 2022 (the "Preliminary

Approval Order”) and directed the Parties to provide notice to the Class of the proposed Settlement and the Final Approval Hearing by regular mail and via the internet;

WHEREAS, the Court-appointed Settlement Claims Administrator CPT Group Administration effectuated notice to the Settlement Class in accordance with the Preliminary Approval Order;

WHEREAS, Plaintiffs submitted their Fee Motion on April 5, 2023;

WHEREAS, on April 19, 2023, the Court conducted the Final Approval Hearing to determine whether the proposed Settlement is fair, reasonable, and adequate, whether the Settlement should be granted final approved by this Court; and whether the Court should grant Plaintiffs’ Fee Motion; and

WHEREAS, the Parties having appeared at the Final Approval Hearing;

THEREFORE, after reviewing the pleadings and evidence filed in support of Plaintiffs’ Fee Motion, all objections and responses thereto, and hearing from the attorneys for the Parties,

**IT IS ON THIS 27th day of June, 2023, ORDERED and, ADJUDGED that the Court finds and orders as follows:**

1. All terms herein shall have the same meaning as defined in the Settlement Agreement.

2. This Order incorporates and makes part hereof the Settlement Agreement.

3. This Court has jurisdiction over the subject matter of this Litigation and over the Parties to this Litigation including all Settlement Class Members.

4. Notice to the Settlement Class required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, by mailing such Notice by first-class mail. The Settlement Claims Administrator, CPT Group Administration, also placed the Notice on the settlement website. Thus, notice has been given in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

5. The Settlement, including the requested fees and expenses, was a result of arm's-length negotiation by experienced counsel with an understanding of the strengths and weaknesses of their respective cases. In its Final Order, the Court has determined that the Settlement, including the requested fees and expenses, is fair, reasonable, and adequate, and serves the best interests of the Settlement Class, in light of all the relevant factors.

6. The Parties and Settlement Class Members have submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of this Settlement.

7. The Court received two objections to the relief requested in the Fee Motion.

a. The objection of Larry D. Killion (“Killion Objection”) (ECF No. 93) is overruled. The Killion Objection’s challenge to the contingent nature of the requested attorneys’ fees is not well taken and inconsistent with the law of this Circuit. Further, the information provided in the Killion Objection fails to establish standing as a member of the Settlement Class because the Vehicle Identification Number provided is not a Class Vehicle according to FCA US’s records.

b. The objection of FCA US LLC (ECF No. 98) was withdrawn after Plaintiffs’ opposition (ECF No. 102) was filed. *See* ECF No. 103.

8. Class Counsel are hereby awarded attorneys’ fees and expenses in the amount of \$3,500,000, a sum which the Court finds to be fair and reasonable. This sum includes the \$201,882,84 in litigation expenses that are approved by the Court. The attorneys’ fees and expenses awarded will be paid to Class Counsel by FCA US in accordance with the terms in the Settlement.

9. In making this award of attorneys’ fees and expenses, the Court has considered and found that the requested fee award is reasonable because:

a. Settlement Class Members will benefit significantly from the Settlement that occurred because of the efforts of Class Counsel;

- b. The fee sought by Class Counsel has been reviewed and approved as reasonable by Plaintiffs, who oversaw the prosecution and resolution of the Action;
  - c. Notice was mailed to potential Settlement Class Members stating that Class Counsel would apply for attorneys' fees and expenses in an amount not to exceed \$3,950,000 and service awards to Plaintiffs in amounts of \$4,000 each;
  - d. Class Counsel have conducted the Litigation and achieved the Settlement with diligent advocacy against experienced and skilled opposing counsel;
  - e. The Litigation raised a number of complex issues;
  - f. Had Class Counsel not achieved the Settlement, there would remain a significant risk Plaintiffs and the other members of the Settlement Class may have recovered less or nothing from Defendant;
  - g. Class Counsel devoted more than 4,428 hours, with a lodestar value of more than \$2,800,000 million based on a reasonable number of hours at reasonable rates, to achieve the Settlement;
  - h. The amount of attorneys' fees and expenses awarded are fair, reasonable, appropriate, and consistent with awards in similar cases;
- and

- i. The service awards to Plaintiffs, \$4,000 each for a total of \$24,000, are separately paid by Defendant and in addition to all other monies paid and relief afforded to the Class pursuant to the Settlement.

10. Plaintiffs Clair Reynolds, Monica Martirano, William Martin Powers, Trina Hancock, Melinda Martinez, and Brady Laing are hereby awarded \$4,000 each (for an aggregate total of \$24,000) for their representation of the Settlement Class, which the Court concludes is a reasonable method of compensating the Class Representatives for the time and effort expended in assisting the prosecution of this litigation and the risks incurred by becoming a litigant.

11. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

12. Co-Lead Counsel shall have the discretion to allocate the \$3,500,000 in attorneys' fees and expenses awarded in this Order to all Class Counsel in their sound discretion.

13. The Court finds that no just reason exists for delay in entering this Order. Accordingly, the Clerk is hereby directed to enter this Order.

**IT IS SO ORDERED**

Dated: June 27, 2023  
Detroit, Michigan

s/Mark A. Goldsmith  
\_\_\_\_\_  
MARK A. GOLDSMITH  
United States District Judge

# **Exhibit 10**

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 PUBLIC EMPLOYEES RETIREMENT  
SYSTEM OF MISSISSIPPI,  
4  
5 Lead Plaintiff,

6 CRAIG GORDON, Individually and  
On behalf of all others  
7 Similarly situated,  
8  
9 Plaintiffs,

v.

18 CV 7143 (JMF)

10 NIELSEN HOLDINGS PLC, *et al.*,  
11  
12 Defendants.

Hearing  
(via Telephone)

12 -----x

New York, N.Y.  
July 20, 2022  
4:00 p.m.

14 Before:

15  
16 HON. JESSE M. FURMAN,

District Judge

17  
18 APPEARANCES

19 LABATON & SUCHAROW LLP  
Attorneys for Lead Plaintiff  
20 BY: CHRISTINE M. FOX

21 ROBBINS GELLER RUDMAN & DOWD LLP  
Attorneys for Plaintiffs  
22 BY: ELLEN GUSIKOFF STEWART

23 SIMPSON THACHER & BARTLETT LLP  
Attorneys for Defendants  
24 BY: ALAN C. TURNER  
TYLER ANGER  
25

1 THE COURT: Good afternoon. This is Judge Furman. We  
2 are here in the matter of In Re Nielsen Holdings PLC Securities  
3 Litigation, 18 CV 7143.

4 Before I take appearances from counsel, couple of  
5 quick reminders. One, please mute your phone so there is no  
6 background noise distraction, especially all those that are on  
7 listen-only status. Number two, remember to unmute if or when  
8 you wish to say something, and please begin with your name so  
9 that the court reporter and I are clear on who is doing the  
10 speaking. Number three, a reminder that this is a public  
11 conference just as it would be if we were in open court. And,  
12 finally, a reminder that the conference may not be recorded or  
13 rebroadcast by anyone.

14 With that, I'll take appearances, beginning with  
15 counsel for lead plaintiff.

16 MS. FOX: Christine Fox from Labaton & Sucharow on  
17 behalf of plaintiffs.

18 MS. STEWART: Good afternoon, your Honor, Ellen  
19 Gusikoff Stewart of Robbins Geller, also on behalf of  
20 plaintiffs.

21 THE COURT: Good afternoon.

22 Counsel for defendants.

23 MR. TURNER: Good afternoon, your Honor, Alan Turner  
24 from Simpson Thacher & Bartlett, representing the defendants,  
25 and appearing with me is Mr. Anger, Tyler Anger.

1 THE COURT: Good afternoon to you as well.

2 We are here for the fairness hearing in connection  
3 with the proposed settlement. I did receive a motion for final  
4 approval of the settlement, as well as the plan of allocation  
5 for approval of proposed fees, costs, and payments to lead  
6 plaintiff and other named plaintiffs.

7 Earlier today I received and docketed a letter that I  
8 received. I am not quite sure why it took so long to make its  
9 way to me, but I got it just before this proceeding, which does  
10 purport to be an objection to the fee application. It's not  
11 clear from the face of the objection that it comes from a class  
12 member, but I guess I will presume it is an otherwise valid  
13 objection. It does appear to be timely, given when it was  
14 sent. I want to just make sure everybody has seen that.

15 Beyond that, I also received the moving papers, as  
16 well as one objection by Mr. Killion to the proposed fee  
17 application and supplemental objections, and I have also  
18 received a reply memorandum and related filings and then three  
19 proposed orders. Number one, I don't know if there was else I  
20 should have received, but let me check with you and also check  
21 if you have any updates beyond what I would have learned from  
22 reading all of those papers.

23 Ms. Fox.

24 MS. FOX: Good afternoon, your Honor.

25 The parties did receive one additional exclusion after

1 the filing of the reply memo. While that exclusion appears to  
2 be invalid, we wanted to let your Honor know about that. We  
3 also have some additional, more up-to-date metrics from the  
4 claims administrator regarding the number of claims that have  
5 come in to date, if your Honor would like me to go through  
6 that.

7 THE COURT: Yes, please.

8 MS. FOX: So the claims submission deadline just  
9 passed on Friday, July 15. The notice program, which was very  
10 robust, we sent out more than 273,000 notices. And so far,  
11 through electronic mail that has been processed and paper mail  
12 that has been opened and processed, the claims administration  
13 firm has received 14,700 claims. Of those 14,700 claims,  
14 approximately 12,098 appear to be valid claims and 2602 claims  
15 are invalid or are pending submission of additional data.

16 Now, the claims administration firm reports that they  
17 do expect these numbers to continue to increase, especially  
18 since the claims submission deadline only passed a few days  
19 ago, and there are claims of all sizes that are still being  
20 opened and processed.

21 THE COURT: Thank you.

22 Any other relevant or new information?

23 MS. FOX: That's all that we have, your Honor.

24 THE COURT: Obviously, you have been heard in  
25 connection with Mr. Killion's objection. I don't know if the

1 letter docketed earlier today requires any additional response,  
2 but I wanted to give you an opportunity to respond or be heard  
3 on that, if you wish.

4 MS. FOX: Certainly, your Honor.

5 In both our opening memo and in our reply memo, we  
6 addressed Mr. Killion's objection, which we feel should be  
7 overruled for a number of reasons, including the fact that it's  
8 counsel's opinion that the factors raised by Mr. Killion are  
9 not the factors which are looked at in this circuit. And in  
10 fact we have set forth in our memo why we are asking for a fee  
11 of 25 percent pursuant to the *Goldberger* factors. And I'm  
12 happy to go through any one of those if your Honor would like  
13 additional information.

14 But, in short, we feel that Mr. Killion's objection  
15 misses the mark on all fronts. And with respect to the  
16 objection that we just received before the hearing, we will  
17 rest on our papers regarding the support for the 25 percent fee  
18 requested.

19 THE COURT: Mr. Turner, anything you wish to say  
20 before I proceed?

21 MR. TURNER: Nothing further from the defendants, your  
22 Honor.

23 THE COURT: Thank you both and thank plaintiffs and  
24 lead counsel for their thorough submissions.

25 I am prepared to rule on the motions at this time, so

1 I will proceed.

2 On April 4, I preliminarily approved a settlement and  
3 certified a settlement class. That appears at ECF number 140.  
4 In the same order, I approved a plan of notice, set deadlines  
5 for the filing of claims, exclusions, objections, and final  
6 approval papers, and a date for this fairness hearing.

7 Upon review of plaintiffs' unopposed motion for final  
8 approval of the settlement and plan of allocation, see ECF  
9 number 143, the motion is granted, substantially for the  
10 reasons set forth in plaintiffs' thorough memoranda of law.  
11 See ECF numbers 145, which I will refer to as settlement  
12 memorandum, and 148, which I will refer to as the reply.

13 As an initial matter, nothing material having changed  
14 since my preliminary certification order, I find that  
15 certification of the settlement class and appointment of the  
16 named plaintiffs and class counsel pursuant to Rule 23 are  
17 appropriate.

18 I also find that the notice, which included almost  
19 257,000 copies of the notice by mail, I think, summary notice  
20 in the Wall Street Journal and on PR Newswire, see ECF number  
21 146-4 at paragraphs 7-8 and the settlement memorandum, pages 20  
22 and 24-25, satisfies the requirements of Rule 23(e)(1) and the  
23 due process clause.

24 Second, I find that the settlement itself is fair,  
25 reasonable, and adequate, in light of the factors set forth in

1 Rule 23(e)(2) and in *City of Detroit v. Grinnell Corp.*, 495  
2 F.2d 448, 463 (2d Cir. 1974). These factors include "the  
3 complexity of the litigation, comparison of the proposed  
4 settlement with the likely result of litigation, experience of  
5 class counsel, scope of discovery preceding settlement, and the  
6 ability of the defendant to satisfy a greater judgment." *In re*  
7 *Drexel Burnham Lambert Group*, 960 F.2d 285, 292 (2d Cir. 1992).

8 Here, all of the so-called *Grinnell* factors favor  
9 approval except perhaps the ability of the defendant to satisfy  
10 a greater judgment, but that factor, standing alone, does not  
11 suggest that a settlement is unfair. See, e.g., *Castagna v.*  
12 *Madison Square Garden L.P.*, 2011 WL 2208614 at \*7 (S.D.N.Y.  
13 June 7, 2011). Among other things, the settlement compares  
14 favorably with comparable settlements, see the settlement  
15 memorandum, 22-23; see also ECF number 146-3 at pages 1 and 19,  
16 and the settlement was negotiated at arm's length by highly  
17 experienced counsel under the supervision of a third-party  
18 mediator. See settlement memorandum at page 7. Moreover, the  
19 litigation was highly complex, with significant risks for the  
20 class, and plaintiffs had engaged in substantial litigation and  
21 discovery before agreeing to a settlement. See settlement  
22 memorandums 8-17, 21. Finally, the reaction of the class has  
23 been very positive. There were zero objections to the proposed  
24 settlement and only one valid request for exclusion. See pages  
25 1-2 of the reply and ECF number 149 at paragraphs 4 and 5.

1 That reaction is especially noteworthy, given the many class  
2 members are institutional investors or pension funds. In  
3 short, or, in sum, on balance, the *Grinnell* factors strongly  
4 favor approval.

5 Next, I find that the allocation plan is fair and  
6 adequate and has a reasonable rational basis, taking into  
7 account "the relative strength and values of different  
8 categories of claims." *In re Telik, Inc. Securities*  
9 *Litigation*, 576 F.Supp.2d 570, 580 (S.D.N.Y. 2008). See also  
10 the settlement memorandum, pages 23 and 24.

11 That leaves the motion for fees and costs. The Second  
12 Circuit has articulated six factors that courts must consider  
13 when determining whether to award attorneys' fees where the  
14 settlement contains a common fund: (1) the time and labor  
15 expended by counsel; (2) the magnitude and complexities of the  
16 litigation; (3) the risk of the litigation; (4) the quality of  
17 representation; (5) the requested fee in relation to the  
18 settlement; and (6) public policy considerations. See *In re*  
19 *World Trade Center Disaster Site Litigation*, 754 F.3d 114, 126  
20 (2d Cir. 2014) (quoting *Goldberger v. Integrated Research Inc.*,  
21 209 F.3d 43, 50 (2d Cir. 2000)). In addition to considering  
22 those factors, commonly referred to as the *Goldberger* factors,  
23 a Court may use one of two methods to calculate attorneys'  
24 fees: The lodestar method or the percentage-of-the-fund  
25 method. See, e.g., *McDaniel v. County of Schenectady*, 595 F.3d

1 411, 417 (2d Cir. 2010). The "trend in this circuit" favors  
2 the percentage method. *Wal-Mart Stores, Inc. v. Visa USA Inc.*,  
3 396 F.3d 96, 121 (2d Cir. 2005), upon which plaintiffs rely  
4 here, and using the lodestar to conduct a cross-check.

5 Applying the *Goldberger* factors here, I find that the  
6 proposed fee award is reasonable. To what I've already said,  
7 since there is substantial overlap between the *Grinnell* factors  
8 and the *Goldberger* factors, I will add that the percentage  
9 proposed is consistent with the percentage of fees commonly  
10 awarded in this circuit in comparable litigations. See  
11 settlement memorandum, pages 26-28 (citing cases, including  
12 several of my own prior decisions). The reasonableness of the  
13 fee award is further confirmed by the lodestar cross-check,  
14 which results in a multiplier of 1.7, which is also comparable,  
15 if not below, those in other, similar cases both within and  
16 outside of this district. See the settlement memorandum at  
17 pages 33-35. That confirms that the "otherwise reasonable  
18 personal fee" does not result in a windfall. *In re Colgate*  
19 *Palmolive Company ERISA Litigation*, 36 F.Supp. 3d 344, 353  
20 (S.D.N.Y. 2014).

21 Once again, the reaction of the class supports that  
22 conclusion. One and only one class -- arguably, two class  
23 members did object to the proposed fee award, see ECF numbers  
24 146-9, 147, and the order of earlier today, 155, that small  
25 number is itself "powerful evidence that the requested fee is

1 fair and reasonable." That's also from *In re Telik, Inc.*  
2 *Securities Litigation* at page 594. Moreover, I find that the  
3 one objection from Mr. Killion is flawed both as a matter of  
4 law and a matter of fact, substantially for the reasons set  
5 forth in the reply at pages 5-7. The objection is particularly  
6 off base in suggesting that lead counsel's talent and  
7 experience is a reason to discount their fee; such a conclusion  
8 would provide a perverse incentive to experienced counsel to  
9 seek leadership positions, which would obviously redound to the  
10 disadvantage of plaintiffs' classes.

11 With respect to the objection that I received earlier  
12 today, number one, as I stated earlier, it's not readily  
13 apparent from the letter that it is even a valid objection from  
14 a member of the class. And, in any event, it provides no  
15 reason, no citation to any law or the relevant standards.  
16 Bottom line, no basis to conclude that the proposed fee award  
17 is unreasonable.

18 Accordingly, I exercise my "very broad discretion,"  
19 that's from *Goldberger*, 209 F.3d at 57, to overrule the one or  
20 possibly two objections and conclude that the proposed fee  
21 award is fair, reasonable, and appropriate. I further find  
22 that lead counsel are entitled to the \$850,266.93 in expenses  
23 that they seek in reimbursement, substantially for the reasons  
24 explained in their motion. See pages 35-37 of the settlement  
25 memorandum.

1           Finally, I approve of service awards to lead plaintiff  
2           Mississippi PERS and additionally named plaintiff Monroe  
3           County, substantially for the reasons explained in their motion  
4           as well. See pages 37-39. See also ECF number 146-1 and  
5           146-2; as well as *Hernandez v. Immortal Rise, Inc.*, 306 F.R.D.  
6           91, 101 (E.D.N.Y. 2015).

7           That resolves the pending motions. I will go ahead  
8           and sign the proposed orders making any changes that I think  
9           are appropriate.

10           Is there anything else for us to discuss, Ms. Fox?

11           MS. FOX: No. Thank you, your Honor. Appreciate the  
12           time and consideration.

13           THE COURT: Thank you for your efforts and, again,  
14           your thorough submissions.

15           Anything else from defendants. Mr. Turner?

16           MR. TURNER: Nothing, your Honor. Thank you.

17           THE COURT: Again, I will deal with the orders  
18           promptly.

19           With that, we are adjourned. I wish everybody a  
20           pleasant afternoon. Stay safe and healthy.

21           (Adjourned)

22

23

24

25

# **Exhibit 11**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE WELLS FARGO & COMPANY  
SECURITIES LITIGATION

Case No. 1:20-cv-04494-GHW-SN (S.D.N.Y)

DECLARATION

Class Member's Objection to Lead Counsel's motion for attorneys' fee and Litigation Expenses.

I, Charles Aaron McIntyre, declare under penalty of perjury that I am a member of the Settlement Class, who first received notice the prior week, is aware the notice required this to be filed and served August 18, 2023, believes in good faith that this has been filed and served as timely as practicable, is limiting this argument solely to facts contained within previously cited case law, and any facts thus used are true and correct to the best of my knowledge:

Lead Counsel's first argument for using the "percentage-of-fund" approach cites *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

In the Wal-Mart litigation, counsel sought 18%, similar to the 19% Lead Counsel is requesting in this case and counsel in Wal-Mart were awarded \$18.7 Million in expenses compared with the \$2 Million requested in this case. *Id.* at 121.

The expenses awarded in the Wal-Mart litigation were nearly ten times the expenses requested in this case, when adjusted for inflation.

In Wal-Mart, the appellate court affirmed a 6.5% award stating that:

The Wal-Mart award was found reasonable because “While courts in megafund cases often award higher percentages of class funds as fees than the district court awarded in this instance, *see [Visa Check III, 297 F.Supp.2d. at 525] n. 33*, the sheer size of the instant fund makes a smaller percentage appropriate. As a "cross-check" to a percentage award, courts in this Circuit use the lodestar method. *Goldberger*, 209 F.3d at 50. Here, the lodestar yields a multiplier of 3.5, which has been deemed reasonable under analogous circumstances. [27] *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 742 (3d Cir.2001) (finding lodestar multiplier of 1.35 to 2.99 common in megafunds over \$100 million); *NASDAQ Market-Makers*, 187 F.R.D. at 489 ("multipliers of between 3 and 4.5 have become common") (internal quotation marks omitted). Thus, the district court did not abuse its discretion in awarding plaintiffs' counsel a generous fee based on a somewhat low percentage of the fund.”

(*Wal-Mart*, 396 F.3d at 123) (footnote 27 omitted, and first citation inserted).

In a similar manner, the “sheer size” of the \$1 Billion fund here would arguably warrant a similar analysis.

Therefore, the court should not exceed the initial precedent provided by Lead Counsel.

Dated: August 21, 2023

Respectfully Submitted,

Class Member’s Signature:



Class Member’s Name: Charles Aaron McIntyre

Address: 25019 Angela Ct.

City/State/Zip: Damascus, MD 20872

Telephone/Fax: 301-728-1887

Email: lawguru@gmail.com



Transaction Confirmation  
Confirm Date: February 4, 2020

Page 1 of 4

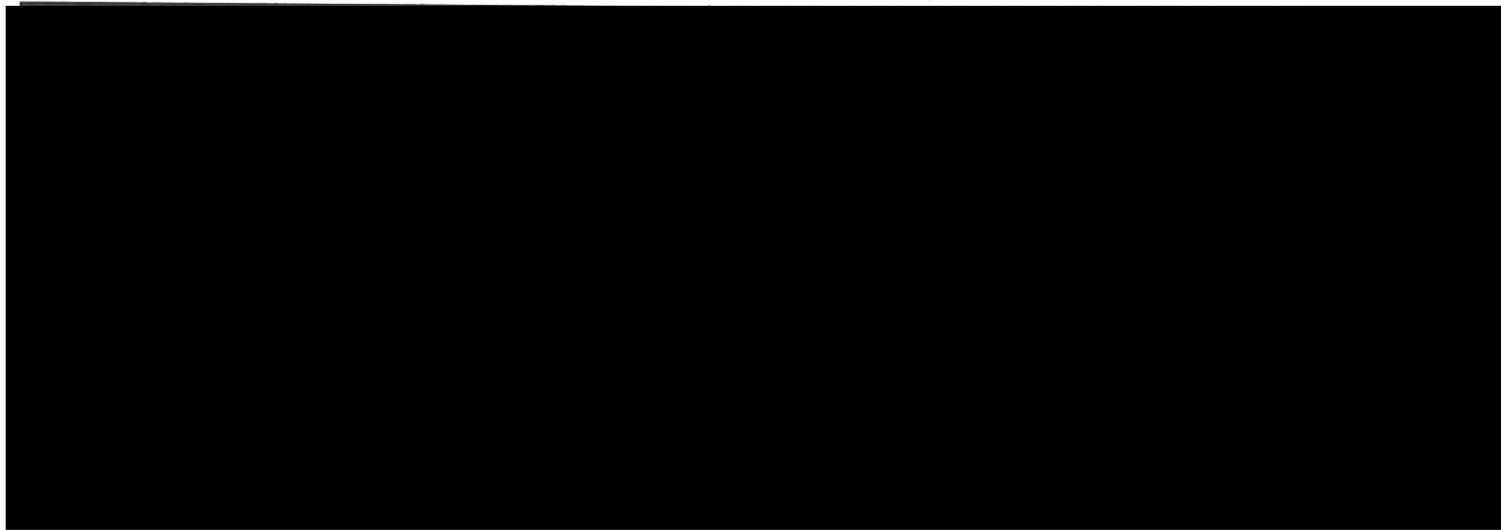
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CHARLES AARON MCINTYRE

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FBO CHARLES AARON MCINTYRE  
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AMOUNT OF INVESTMENT	\$
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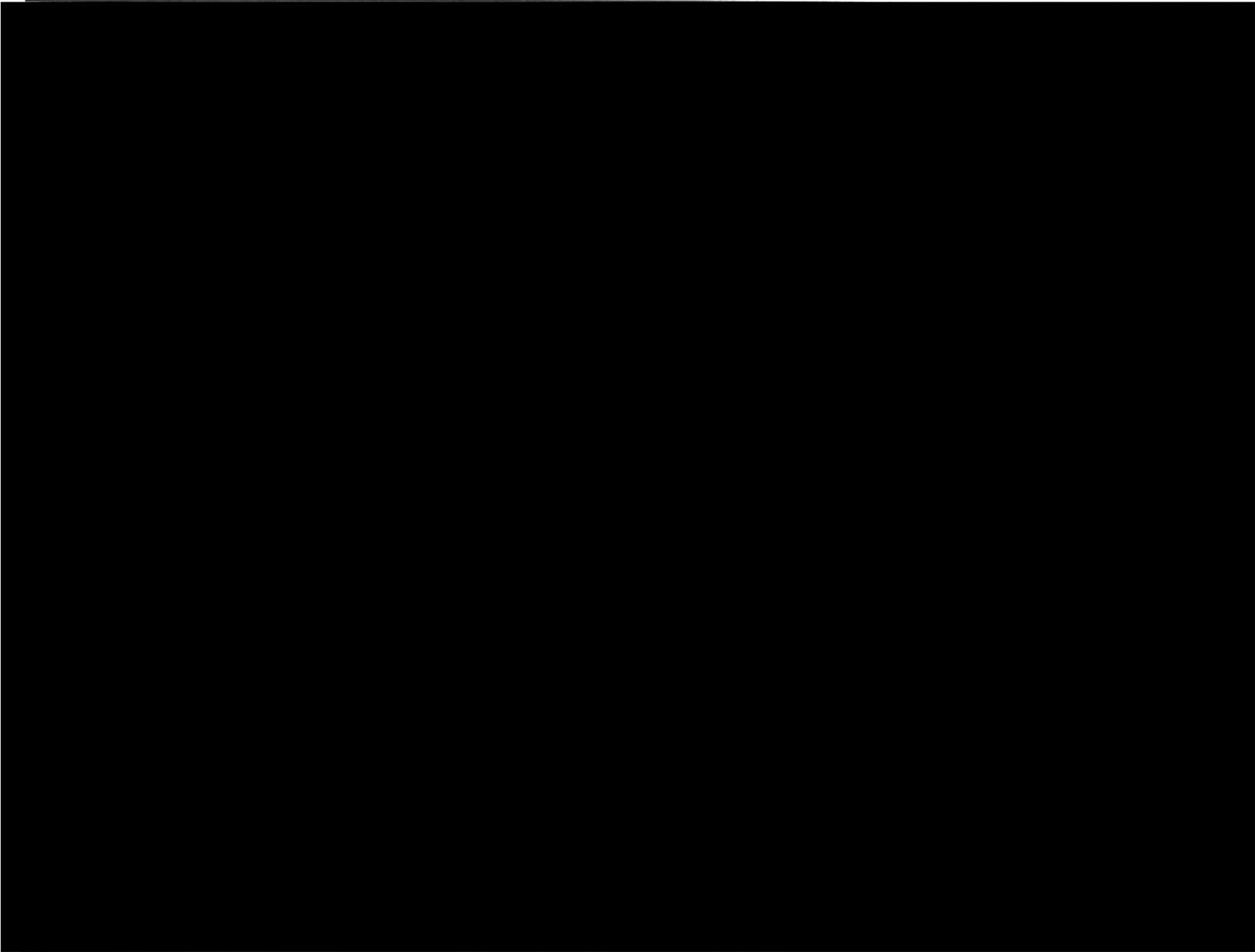
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**Confirm Date: February 4, 2020**

Page 3 of 4

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CHARLES AARON MCINTYRE



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You Bought  
 at  
 Symbol :  
 WFC

700  
 47.5250

DESCRIPTION and DISCLOSURES  
 WELLS FARGO CO NEW COM  
 WE HAVE ACTED AS AGENT.

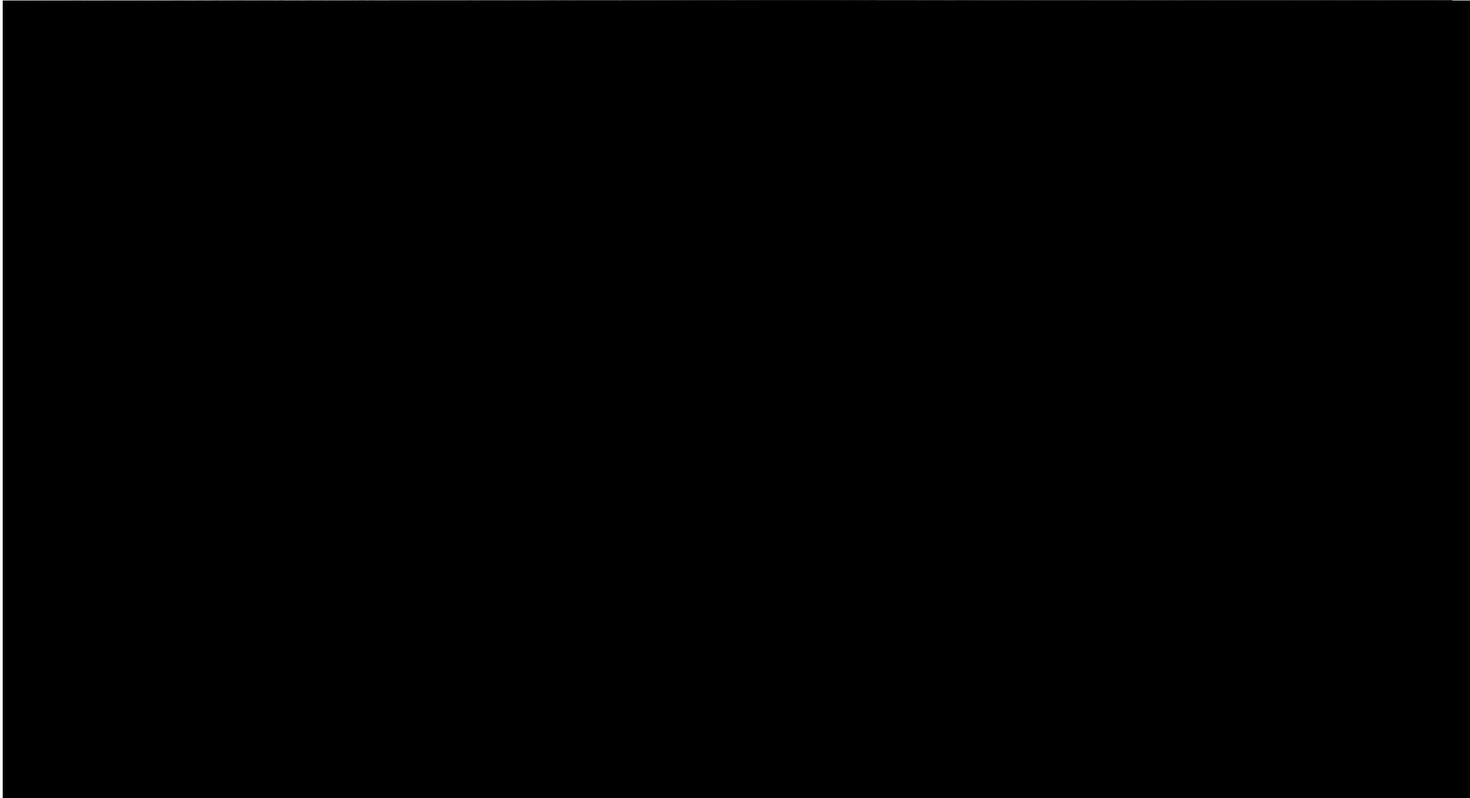
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 Settlement Amount 33,267.50

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**Confirm Date: February 4, 2020**

Page 2 of 4

Brokerage Account Number  
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**CHARLES AARON MCINTYRE**



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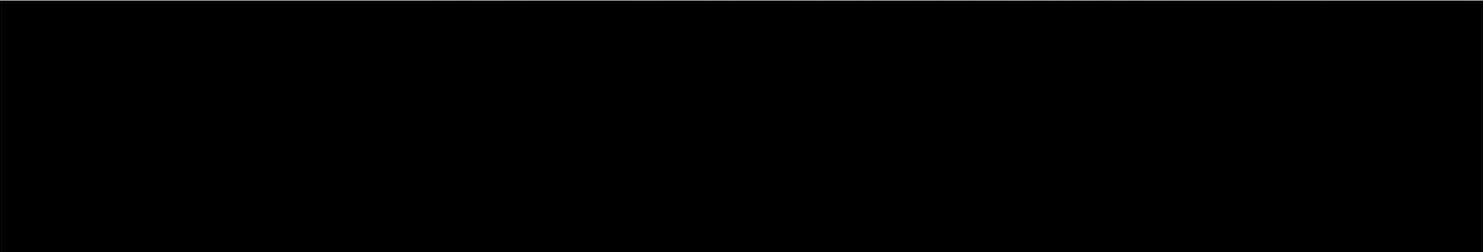
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**Transaction Confirmation**  
**Confirm Date: February 4, 2020**

Page 4 of 4

Brokerage Account Number  
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**CHARLES AARON MCINTYRE**





Transaction Confirmation  
Confirm Date: February 18, 2020

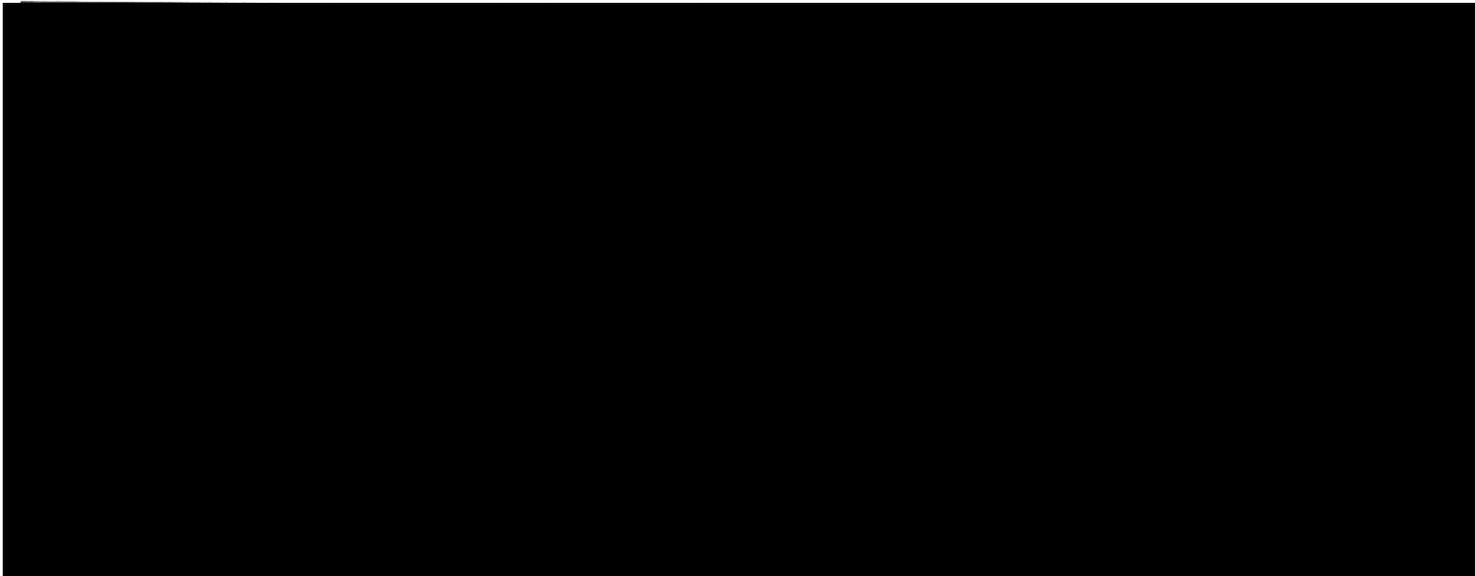
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DAMASCUS MD 20872-2353

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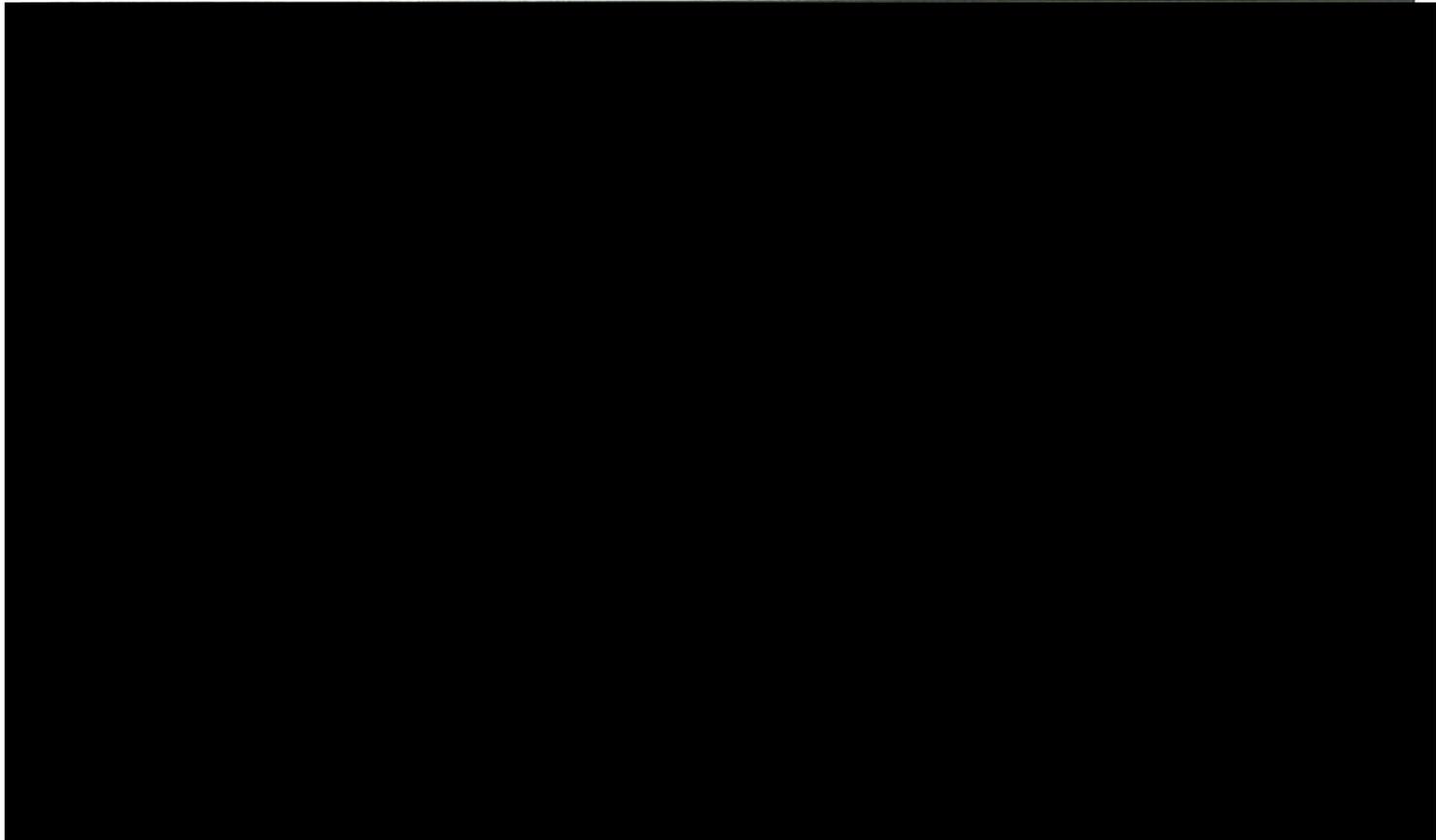
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**Confirm Date: February 18, 2020**

Page 2 of 3

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**CHARLES AARON MCINTYRE**



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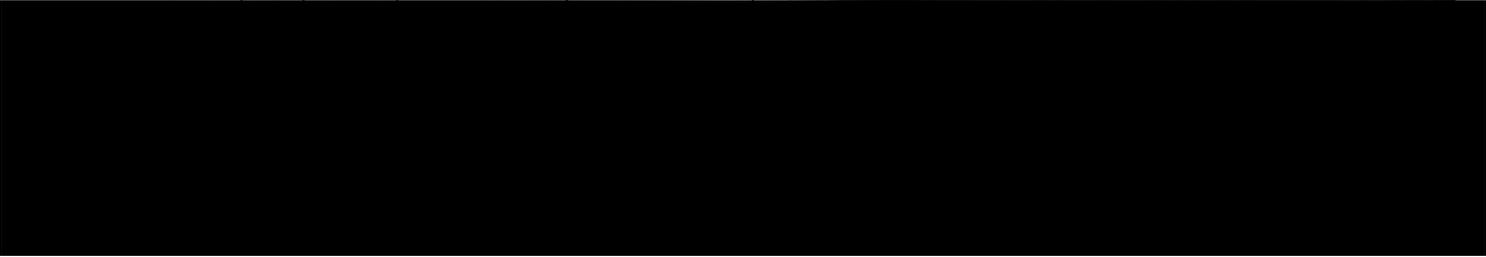
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**REMITTANCE COUPON**

**Transaction Confirmation**  
**Confirm Date: February 18, 2020**

Brokerage Account Number  
 [REDACTED] - ROLLOVER

**CHARLES AARON MCINTYRE**



REFERENCE NO.	TYPE	REG.REP.	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
20049-OFX5VX	2*	WK#	02-18-20	02-20-20	949746101	20049-P75PG		

You Bought

100  
 at 46.9754

DESCRIPTION and DISCLOSURES  
 WELLS FARGO CO NEW COM  
 WE HAVE ACTED AS AGENT.

Principal Amount 4,697.54  
 Settlement Amount 4,697.54

Symbol :  
 WFC



**Transaction Confirmation**  
**Confirm Date: November 23, 2020**

Brokerage Account Number  
 [REDACTED] IRA - ROLLOVER

**CHARLES AARON MCINTYRE**

FMT CO CUST IRA ROLLOVER  
 FBO CHARLES AARON MCINTYRE  
 25019 ANGELA CT  
 DAMASCUS MD 20872-2353

9900421331

Online Fidelity.com  
 FAST(sm)-Automated Telephone 800-544-5555  
 Customer Service 800-544-6666

REFERENCE NO.	TYPE	REG.REP.	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
20328-1FZZ1T	2*	WK#	11-23-20	11-25-20	949746101	20328-HWNDS		
DESCRIPTION and DISCLOSURES								
You Sold			WELLS FARGO CO NEW COM			Principal Amount	26,435.00	
at	1,000		WE HAVE ACTED AS AGENT.			Activity Assessment Fee	0.59	
Symbol :	26.4350		LOTS WITHOUT SPECIFIC SHARES			Settlement Amount	26,434.41	
WFC			INSTRUCTIONS WILL BE DEPLETED USING FIRST IN, FIRST OUT METHOD. PARTIAL EXECUTION					

9900421331

ALL ORDERS ARE UNSOLICITED UNLESS SPECIFIED ABOVE

FMT CO CUST IRA ROLLOVER  
 FBO CHARLES AARON MCINTYRE  
 25019 ANGELA CT  
 DAMASCUS MD 20872-2353

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AMOUNT OF INVESTMENT	\$
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**Transaction Confirmation**  
**Confirm Date: November 23, 2020**

Brokerage Account Number  
 [REDACTED] **IRA - ROLLOVER**

**CHARLES AARON MCINTYRE**

REFERENCE NO.	TYPE	REG.REP.	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
20328-1FZZ2G	2*	WK#	11-23-20	11-25-20	949746101	20328-HWNDS		

You Sold  
 at  
 Symbol :  
 WFC

3,296  
 26.4322

DESCRIPTION and DISCLOSURES  
 WELLS FARGO CO NEW COM  
 WE HAVE ACTED AS AGENT.  
 LOTS WITHOUT SPECIFIC SHARES  
 INSTRUCTIONS WILL BE DEPLETED USING  
 FIRST IN, FIRST OUT METHOD.  
 PARTIAL EXECUTION

Principal Amount 87,120.53  
 Activity Assessment Fee 1.93  
 Settlement Amount 87,118.60

9900421331

ALL ORDERS ARE UNSOLICITED UNLESS SPECIFIED ABOVE

REMITTANCE COUPON

In accordance with your instructions we are pleased to confirm the transaction or order for your account and risk subject to terms listed below.

Please inform our office promptly if there is an error in this confirmation. Your failure to do so may result in the inability to amend a transaction. Please address all communications to the firm and not to individuals and include your brokerage account number on all checks and communications.

It is understood and agreed that all transactions made for you are subject to the rules and customs of the exchange or market (and its clearing house, if any) where executed by us or by our agents, of the Financial Industry Regulatory Authority, Inc., as the case may be and to the Securities Exchange Act. It is further understood and agreed that on margin business all securities or other things bought or held by us, are pledged as collateral security for any and all claims and demands we then, or thereafter may have against the party giving such orders whether arising thereunder or not. It is further understood and agreed that we have the right to close transactions without further notice, at public or private sale, without liability for subsequent difference in value, when such a sale or purchase is deemed necessary by us for our protection, with the right upon our part of becoming the purchaser thereof free from all trust; that securities held by us in margin accounts (and in cash accounts until paid for in full) are or may be hypothecated for the sum, due thereon, or for a greater sum, under circumstances which will permit the commingling thereof with securities carried for the account of other customers; and that we have the right to loan such securities held by us.

When-Issued, When-Distributed or TBA Transactions: The information contained herein is an estimate based upon information available at the time of your order. The final figures will be forwarded to you when obtainable upon issue, delivery or pool allocation. Such transactions shall be settled at such time, place and in such manner and by delivery of such securities and/or other property as determined by the exchange or association to whose requirements the transaction is subject, or shall be canceled if such exchange or association shall so determine. National Financial Services LLC, ("NFS"), may demand deposits to secure this transaction and reserves the right to close this transaction upon the failure of the customer to tender such deposit.

Fractional Share Trading: National Financial Services ("NFS"), an affiliate broker-dealer, will execute the fractional component of a customer order in a principal capacity.

Open Orders. An open order will remain in effect until executed or canceled. Customers may attempt to cancel open orders at any time prior to execution. NFS will cancel open orders after 180 calendar days (or in accordance with standards set by your Employer) and we reserve the right, but are not obligated to, cancel open orders when the limit price becomes unrealistic in relation to the market price. Limits on open orders to BUY and STOP ORDERS TO SELL, subject to the rules of the exchange or association where the securities are traded, may be automatically adjusted on the date the security trades "ex-dividend", "ex-rights", "ex-distribution", or "ex-interest". Unexecuted portions of an open order which are executed on subsequent days are treated as separate orders for commission purposes, in accordance with industry practices.

Orders marked "solicited" are not the result of "investment advice" from Fidelity, as that term is defined under ERISA and underlying U.S. Department of Labor Regulations, except to the extent that Fidelity utilizes an unaffiliated third party in obtaining such advice.

Payment for Order Flow Disclosure [Exchange Act Rule 10b-10(a)(2)(i)(C)]. Fidelity Brokerage Services LLC ("FBS") and/or NFS receives remuneration, compensation, or consideration for directing orders in equity securities to particular broker/dealers or market centers for execution. The source and nature of any compensation received in connection with your particular transaction will be disclosed upon written request to FBS. Please review FBS's annual disclosure on payment for order flow policies and order routing policies.

The private placement memorandum, term sheet, prospectus or other disclosure documents ("Offering Materials") you previously received include important information concerning your alternative investment transaction (e.g., hedge funds, private equity funds, REITS). Please refer to these materials for an explanation of the subscription (i.e., purchase) and redemption process as well as information regarding compensation that FBS or NFS may receive from you and/or the alternative investment in connection with your transaction. The settlement date for these transactions is often extended a number of days beyond the subscription (i.e., trade) or redemption date. As part of the subscription process, your subscription funds could be held in escrow until such time as your subscription is accepted by the alternative investment. Gross proceeds are reflected on the statement and may not be realized at the time of the redemption if the fund is subject to a holdback. See the Offering Materials for more details. Any such assets retained by the fund are held as a general obligation of the fund and are not protected by SIPC.

447970.27.0

In connection with (i) access to, purchase or redemption of, and/or maintenance of positions in mutual funds and other investment products ("funds") such as alternative investments or private placements or (ii) infrastructure needed to support such funds, some funds, or their investment affiliates, pay FBS and/or NFS sales loads and 12b-1 fees described in the Offering Materials as well as additional compensation for shareholder services, start-up fees, infrastructure support and maintenance, and marketing, engagement and analytics programs. Additional information about the source(s) and amount(s) of compensation as well as other remuneration received by FBS or NFS will be furnished to you upon written request.

Currency exchanges may be effected by Fidelity FOREX, Inc. on a principal basis. Fidelity FOREX, Inc., an affiliate of NFS, may impose a commission or markup on the prevailing interbank market price. Fidelity FOREX may in turn share a portion of any foreign exchange commission or markup with NFS and/or FBS. The currency exchange rate applicable to any foreign security trade is available upon request.

For trades of positions set up for average cost, the cost basis per share is calculated as the average price of all shares in the position and shares are depleted on a first-in-first-out basis.

When there are multiple lots for the particular date indicated via versus purchase, the system depletes the lots starting with the highest quantity lot and moves through the lots in descending order of quantity until the order is filled. If an order cannot be matched versus purchase, or if the order quantity exceeds the matched lots, lots are depleted using the account-level default disposal method. If more than one lot has the same date and quantity, selection among such lots is random.

The local broker in a foreign securities transaction may be Fidelity Clearing Canada ULC, an affiliate of NFS and FBS.

Other remuneration may have been received and information will be furnished on request.

At the time you purchase shares of a no-load fund, those shares will be assigned either a transaction fee (TF) or no transaction fee (NTF) status. When you subsequently sell those shares, any applicable fees will be assessed based on the status assigned to the shares at the time of purchase.

Certificates of deposit and certain securities, including bonds, preferred stocks, and common stocks, may be subject to call or redemption (prior to maturity, if applicable). Call features may exist in addition to those which may appear on the front of the confirmation. Early call or redemption could affect Yield. Complete information will be provided upon written request.

This statement is computed for payment by bank draft on settlement date. If payment is made at a later date, additional interest to date of payment will be charged.

Name of the other party, time of execution and remuneration furnished on request. Fidelity Brokerage Services LLC, Member NYSE/SIPC. Account carried with National Financial Services LLC.

**\* T - TYPE OF ACCOUNT**

0 - Deliver / Receive vs. Payment	6 - Special Account
1 - Cash Account	8 - When Issued / TBA
2 - Margin Account	9 - Income Account
3 - Short Account	

If an odd-lot differential is indicated on the face of this confirmation, an amount of 12½ cents per share was added to the price of purchase or deducted from the price of sale.

- D1. Additional call features exist that may affect yield; complete information will be provided upon request.
- D2. No periodic interest payments - callable below maturity value without notice by mail to holder unless registered.
- D3. For bonds callable and issued in bearer form, it may be difficult for you to determine whether the securities have been called.
- D4. Asset-backed Securities. An asset-backed security represents an interest in or is secured by a pool of financial assets that may be subject to continuous prepayment. The actual yield may vary based on prepayment rates of the underlying receivable or other financial assets. Information concerning factors that affect yield will be furnished upon written request.

Ratings information, when provided, has been obtained from select ratings services which NFS believes to be reliable, however, NFS cannot guarantee its timeliness, accuracy or completeness. Ratings are opinions and not recommendations or investment advice. Ratings or the absence of ratings should not alone be relied upon when assessing the credit quality of a security or making an investment decision. Ratings are subject to change or withdrawal by the ratings services at any time. Ratings information may not be provided for all debt securities. When indicated, NR denotes that the security is not rated by the listed rating organization. The security may be rated by other rating services. Please contact your broker dealer if you need more information about a security.

## INSTRUCTIONS FOR DEPOSITING CERTIFICATES

### Endorsement Instructions

- 1) The signature on the back of the certificate must correspond exactly to the name as written upon the face of the certificate.
- 2) Write "National Financial Services LLC" on the line between "appoint" and "attorney."
- 3) Write your brokerage account number on the top right corner of the front of the certificate.
- 4) Failure to properly prepare the Certificate may result in delays completing your transaction.

### MAIL CERTIFICATES TO THIS ADDRESS:

NATIONAL FINANCIAL SERVICES LLC  
ATTN: Banking Services  
Mail Zone KC1N  
100 Crosby Parkway  
Covington, KY 41015



**Transaction Confirmation**  
**Confirm Date: November 23, 2020**

Page 1 of 1

Brokerage Account Number  
 [REDACTED] JOINT WRS - TOD

**CHARLES AARON MCINTYRE**

CHARLES AARON MCINTYRE  
 KATHARINE OHARA MCINTYRE  
 25019 ANGELA CT  
 DAMASCUS MD 20872-2353

9900196292

Online Fidelity.com  
 FAST(sm)-Automated Telephone 800-544-5555  
 Customer Service 800-544-6666

REFERENCE NO.	TYPE	REG.REP.	TRADE DATE	SETTLEMENT DATE	CUSIP NO.	ORDER NO.		
20328-OGP06J	2*	WK#	11-23-20	11-25-20	949746101	20328-HKNHX		
You Sold			DESCRIPTION and DISCLOSURES					
	1,950		WELLS FARGO CO NEW COM			Principal Amount	51,441.00	
at	26.3800		WE HAVE ACTED AS AGENT.			Activity Assessment Fee	1.14	
Symbol :			LOTS WITHOUT SPECIFIC SHARES			Settlement Amount	51,439.86	
WFC			INSTRUCTIONS WILL BE DEPLETED USING					
			FIRST IN, FIRST OUT METHOD.					

9900196292

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CHARLES AARON MCINTYRE  
 KATHARINE OHARA MCINTYRE  
 25019 ANGELA CT  
 DAMASCUS MD 20872-2353

If you are eligible to make a deposit, please use this form for investments in your brokerage account [REDACTED] only.

AMOUNT OF INVESTMENT	\$
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FIDELITY INVESTMENTS  
 PO BOX 770001  
 CINCINNATI OH 45277-0003

If there are sufficient funds in your brokerage core account (or margin account), Fidelity will use those funds to cover the trade(s) on this confirm. If you wish to deposit additional money, use this deposit slip and make checks payable to: NATIONAL FINANCIAL SERVICES LLC. Deposits will be made to the account listed above. Please mail checks to the Fidelity address on this form. Refer to the last page for instructions on depositing certificates.

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