IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE COMPANY, Plaintiff, on behalf of itself and all others similarly situated, vs. THE UNITED STATES OF AMERICA, Defendant.	No. 1:16-cv-259C-KCD (Judge Davis)
COMMON GROUND HEALTHCARE COOPERATIVE, Plaintiff, on behalf of itself and all others similarly situated, vs. THE UNITED STATES OF AMERICA, Defendant.	No. 1:17-cv-00877-KCD (Judge Davis)

CLASS COUNSEL'S MOTION FOR APPROVAL OF ATTORNEY'S FEE REQUEST

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I. INTRODUCTION

In vacating this Court's previous fee award, the Federal Circuit did not find fault with the vast majority of the Court's detailed and thoughtful analysis. *See generally Health Republic Ins. Co. v. United States*, 58 F.4th 1365 (2023). Nor did the court identify any particular defects in the Court's reasoning. The Federal Circuit held only that, given the notice's language, "the law required a lodestar cross-check," and directed this Court to "reconsider any parts of its analysis affected by the conclusions we have reached." *id.* at 1374, 1378. As guideposts, the Federal Circuit noted that, "[f]or a lodestar cross-check, the resulting multiplier need not fall within any pre-defined range," but explained that a court should "take care to explain how the application of a multiplier is justified by the facts of a particular case." 58 F.4th at 1375 (citations and quotation marks omitted). In short, despite the objectors' broadside attack against this Court's application of the seven *Moore* factors, the Federal Circuit took issue with only one aspect of this Court's decision—the lodestar cross-check—and directed the Court to "provide more explanation than so far presented concerning the adequacy of Quinn Emanuel's hours and rates in light of the Objectors' criticisms." *Id.* at 1378.

For these reasons, Class Counsel focuses this motion on a lodestar cross-check and how it interplays with the seven reasonableness factors, all of which this Court correctly found support the fee percentage Class Counsel seeks. *See* Dkt. 138.[1] Those factors and the Court's conclusions about them are relevant to the cross-check because, as the Federal Circuit's opinion and precedent from across the country make clear, each factor weighing in favor of a requested fee serves to increase the maximum permissible implied lodestar multiplier. The caselaw also teaches that

[1] Unless otherwise specified, all generic references to "Dkt." in this motion are to docket entries in the *Health Republic* class action.

where counsel obtain the best results for the riskiest claims, the most substantial awards are merited. And if class counsel preemptively caps its fee at the very low end of both the market for identical claims *and* awards in similar types of action, those fees should be deemed reasonable, even with a high implied multiplier.

Below and in its supporting papers, Class Counsel provides a complete lodestar cross-check analysis demonstrating why a 5% fee remains reasonable and correct. In brief, the benefit the class received from Class Counsel's work was uniquely favorable, and Class Counsel undertook extraordinary risks and costs to obtain this result on claims it pioneered, all while capping its fee at a percentage below any other offered for the exact same claims. No court, to Class Counsel's knowledge, has ever found that such facts warrant a low lodestar multiplier—quite the opposite. And the cases the Federal Circuit cited that applied a lower multiplier make this point, because they were either substantially simpler, settled sooner, involved follow-on claims the class counsel did not originate, or obtained demonstrably worse results for the class.

Among the documents supporting Class Counsel's brief is the Declaration of Professor William Rubenstein, the current author of *Newberg and Rubenstein on Class Actions*, the leading treatise on class actions. Professor Rubenstein provides a detailed analysis of Class Counsel's lodestar and concludes, *inter alia*, that it not only is clearly reasonable for a case like this, but it exhibits the sort of efficiency and efficacy that the law seeks to reward. As part of this analysis (which relies in part on an extensive database Professor Rubenstein keeps in the ordinary course of his research and scholarship), he explains how Class Counsel's work yielded more for the class on a per hour basis than any other class action of which he is aware. He also provides, based on his unquestioned expertise, important context and analysis of the fee request, explaining why many

of the objectors' previous arguments either misunderstand or misapply the concept of a lodestar cross-check.

Class Counsel does not rely on Professor Rubenstein's analysis and declaration alone. In the original fee application, Class Counsel used its historical rates to calculate its lodestar, which resulted in the 19x multiplier the Court analyzed. This was conservative of Class Counsel, because courts are in accord—including in opinions the United/Kaiser Objectors themselves recently cited, *see* Dkt. 188, at 6 (citing *In re Washington Public Power Supply Systems Securities Litigation*, 19 F.3d 1291, 1302 (9th Cir. 1994)), that class counsel should submit lodestar cross-checks based on their *current* rates at the time of the fee application. Had Class Counsel done so in July 2020 with its original fee application, the implied multiplier would have been substantially lower. Using its now-current rates only for work performed through July 2020, that multiplier reduces further to **11.5**.[2] There is copious authority indicating that such an implied multiplier is reasonable for a case like this, where every reasonableness factor weighs heavily in class counsel's favor.

As the case law on which the Federal Circuit relied makes clear, class actions that exhibit the unique combination of high risk and huge benefits to the class warrant the very highest multipliers of all (when they use multipliers). And, comparing other large class action results—as the Federal Circuit urged this Court to do—indicates that courts routinely award fee percentages far higher than 5% for results that do not even approach the net amount of damages the class here has already received. The lodestar cross-check therefore serves to confirm, not undercut, Class

[2] Class Counsel utilizes its lodestar through July 2020 so the Court may compare apples to apples between its two fee petitions (*i.e.*, the same work on the same hours billed for the same results). Since July 2020, however, Class Counsel has continued to work for the risk corridor subclasses, as well as build on its risk corridors work for the cost-sharing reduction class members (almost all of which are also risk corridor class members). Class Counsel will address that additional lodestar at the appropriate time.

Counsel's request, and it is for these reasons that Class Counsel respectfully renews its application for a 5% fee from the Non-Dispute Subclass's common fund.

II. ARGUMENT

As *Geneva Rock Prods, Inc. v. United States*, the case the class notice cited, explains:

> [T]he lodestar cross-check provides information for the court's consideration, not a mandate[.] The lodestar multiplier does not need to fall within a specific range, but a comparison to the lodestar multipliers in similar cases may provide additional guidance to the court. Nevertheless, 'the lodestar cross-check does not trump the primary reliance on the percentage of common fund method.'

119 Fed. Cl. 581, 595-96 (2015) (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 (3d Cir. 2005) ("*Rite Aid II*")) (*rev'd in part on other grounds by Longnecker Prop. v. United States*, 2016 WL 9445914, at *1 (Fed. Cir. Nov. 14, 2016).[3] The Federal Circuit reaffirmed this concept in its decision in this case, noting that application of a lodestar cross-check "does not exclude taking full account of the relevant attorney-fees considerations as they apply to a particular case." *Health Republic*, 58 F.4th at 1375.

Since "the implicit goal of the lodestar approach" is "to approximate the reasonable fee that a competitive market would bear," *McDaniel v. Cnty. Of Schenectady*, 595 F.3d 411, 420 (2d Cir. 2010), the reasonableness factors a Court applies in the first instance help it determine whether an implied lodestar multiplier is too high or too low. *Health Republic*, 58 F.4th at 1375; *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). This multi-faceted interplay between the lodestar number and the reasonableness factors is why, in appropriate cases, multipliers sometimes skew outside of the typical range. *See*, *e.g.*, *infra* at 8-11 (collecting cases). For the reasons discussed below, this is exactly such a case, because the implied lodestar from

[3] Class Counsel notes that, like the Court in *Geneva Rock*, the Federal Circuit also approvingly cited *Rite Aid* multiple times. *See Health Republic*, 58 F.4th at 1372, 1375, 1378.

Class Counsel's work not only is within a range previously accepted by other courts, but is also eminently reasonable in light of this Court's detailed analysis of the seven *Moore* factors.

A. Class Counsel's Lodestar Is Reasonable

1. Legal standard

The first step in a lodestar cross-check is to identify the lodestar that the Court will analyze.

(a) Type of proof

When determining class counsel's lodestar for a cross-check, "[m]ore relaxed specificity and documentation standards apply" than would if "the lodestar method is directly used to set the fee." *Health Republic*, 58 F.4th at 1378. Thus, "[t]he lodestar cross-check calculation need entail neither mathematical precision nor bean-counting." *Id.* (quoting *Rite Aid II*, 396 F.3d at 306). In performing that calculation, "[t]he district courts may rely on summaries submitted by the attorneys and need not review actual billing records." *Rite Aid II*, 396 F.3d at 306-307. This is because doing otherwise would defeat the entire purpose of utilizing a percentage-of-the-fund approach. *See id.*; *see also In re Crocs, Inc. Sec. Litig.*, 2014 WL 4670886, at *4 n. 4 (D. Colo. Sept. 18, 2014) ("Because the Court has adopted the percentage method, the lodestar calculation is used only for comparison purpose. … Thus, the Court will not undertake an exhaustive lodestar analysis.").

(b) Calculating the lodestar amount

To determine the lodestar amount, a court takes "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The reasonable hourly rate is based on the "experience, skill, and reputation of the attorney requesting fees." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986), *amended*, 808 F.2d 1373 (9th Cir. 1987). To determine a reasonable hourly rate, the Court looks to "the rate prevailing in the community for similar work performed by attorneys of comparable skill,

experience, and reputation." *Id.* at 1210-11. When, unlike most class action firms, class counsel primarily bills by the hour and can provide evidence of the rates it charges paying clients, the "firm's normal and customary rates are the best evidence that the rate is comparable to the market rate." *Science Applications Int'l Corp. v. United States*, 2021 WL 3557427, at *2 (Fed. Cl. Aug. 11, 2021) (internal quotations omitted); *Kastrati v. M.E.G. Restaurant Enterprises Ltd.*, 2023 WL 180043, at *2 (S.D.N.Y. Jan. 13, 2023) ("Courts in this district also have recognized that an 'attorney's customary billing rate for fee-paying clients is ordinarily the best evidence of' a reasonable hourly rate.") (citing and quoting *In re Stock Exchanges Options Trading Antitrust Litig.*, 2006 WL 3498590, at *9 (S.D.N.Y. Dec. 4, 2006)); *see also* Rubenstein Decl. ¶¶ 15-17. The relevant community for hourly rates is typically the forum in which the district court sits. *Bywaters v. United States*, 670 F.3d 1221, 1233 (Fed. Cir. 2012) (quoting *Avera v. Sec'y of Health & Hum. Servs.*, 515 F.3d 1343, 1349 (Fed. Cir. 2008)).

(c) A lodestar cross-check utilizes class counsel's current rates at the time of the fee application

A final point not previously briefed, but which the United/Kaiser Objectors' own cited caselaw makes clear, is that class counsel seeking fees from a common fund are entitled to present their lodestar in terms of their current hourly rates at the time of their fee application. *See*, *e.g.*, *Washington Public Power Supply Systems*, 19 F.3d at 1305 (cited by United/Kaiser Objectors, Dkt. 188, at 6); *Stetson v. West Publ'g Corp.*, 714 Fed. Appx. 681, 683 (9th Cir. Oct. 30, 2017) (noting adjustments to current rates should be "as of the date of the fee request"); *Smith v. Village of Maywood*, 17 F.3d 219, 221 (7th Cir. 1994) (similar); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *9 (S.D.N.Y. Nov. 7, 2007) ("The use of current rates to calculate the lodestar figure has been repeatedly endorsed by courts") (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998)).

To be sure, the Federal Circuit has held in the context of fee-shifting from the government that counsel must utilize historical, not current, rates—the so-called "no-interest rule." *See Biery v. United States,* 818 F.3d 704, 714 (Fed. Cir. 2016). That is because "no award in the nature of interest ***against the United States*** is permitted unless expressly and unambiguously authorized by statute." *Chiu v. United States*, 948 F.2d 711, 719 (Fed. Cir. 1991) (emphasis added); *see also Biery*, 818 F.3d at 714 (citing *id.* at 719). This Court made similar rulings here regarding Plaintiffs' request for pre- and post-judgment interest against the government. *See* Dkt. 31, at 26-27.

This motion, however, does not seek any fees or payment from the government and, thus, *Biery*'s no-interest rule has no application here. Class Counsel is unaware of any decision from either the Court of Federal Claims or Federal Circuit applying *Biery* in the context of a common fund fee request. Accordingly, as the Federal Circuit urged this Court to do with Fed. R. Civ. P. 23 case law, *see*, *e.g.*, *Health Republic*, 58 F.4th at 1371 ("Appropriately borrowing from case law under Fed. R. Civ. P. 23 … the parties before us recognize…"), this Court should apply the consensus view that current rates are appropriate for a lodestar cross-check. *See supra*; *see also* 5 Newberg and Rubenstein on Class Actions § 15:50 (6th ed.) ("[F]ees are usually not paid until the end of a fee-shifting case and that delay is generally accounted for 'either by basing the award on current rates or by adjusting the fee based on historical rates to reflect its present value.'" (quoting *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 556 (2010)))

2. Class Counsel's implied lodestar multiplier

In Wolfson Decl., Ex. A, Class Counsel provides a detailed breakdown of the attorneys and legal staff members who provided services for this case, and identifies their respective hourly rates and hours billed on an annual basis. That exhibit then totals their respective lodestar for each year and adds up all lodestar for Class Counsel's work through July 30, 2020. *Id.* As that analysis demonstrates, if the Court applies Class Counsel's 2020 rates, Class Counsel's total lodestar is

$11,372,851.50, implying a 16.25 multiplier. If the Court utilizes Class Counsel's current rates, Class Counsel's lodestar is $16,083,217.00, implying an 11.5 multiplier.

In support of its lodestar amount, Class Counsel provides a description of the work its attorneys performed, which was necessary, proper, and reasonable to achieve these results it did for the class. Wolfson Decl. ¶¶ 2-6. Professor Rubenstein performed an independent analysis of Class Counsel's work based on his deep expertise in class actions and by comparing class actions of similar size and complexity. He concludes the amount and type of work that Class Counsel performed is not only clearly reasonable, but exhibits the exact type of restraint and efficiency that courts should encourage, because class-action attorneys sometimes seek to pad their hours in order to inflate their lodestar. Rubenstein Decl. ¶¶ 18-27. Finally, one of Class Counsel's Global Co-Managing Partners—who previously headed its Washington, D.C. office—provides confirmation that the rates Class Counsel cites in its supporting papers are the normal and customary rates it charges paying clients, and provides further confirmation that these are rates clients pay for the services of D.C.-based attorneys. Burck Decl. ¶¶ 3-5; *see also* Wolfson Decl. ¶ 4.[4]

Based on this multi-layered proof, Class Counsel submits its lodestar reflects the true and accurate amounts it would have billed by the hour for these cases, had it not taken on the risk of representing the class on full contingency.

B. Class Counsel's Implied Multiplier Is "Within The Realm of Reason"

Although every fee request must be specific to its facts, *Health Republic*, 58 F.4th at 1374-1377, it bears noting that Class Counsel's implied lodestar multiplier is well-supported in the case law. *Perez v. Rash Curtis & Assoc.*, 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020), is instructive.

[4] If the Court would like to see, as additional proof, redacted examples of actual invoices utilizing these hourly rates for Washington, D.C.-based attorneys and matters, Class Counsel would be happy to provide them *in camera*.

There, like here, the court certified a class, which class counsel then took to final judgment. *Id.* at *1, *15. There, like here, the class award resulted in a "megafund" (*i.e.*, a fund over $100 million). *Id.* At *15 ($267 million class award); *see also Mercier v. United States*, 156 Fed. Cl. 580, 592 (2021) (Kaplan, C.J.) (defining megafund as anything over $100 million). And there, like here, class counsel's expected lodestar on the case (reduced in various amounts based on different assumptions) implied different multipliers well above the norm; in that case, 13.42, 15.42, and 18.15. 2020 WL 1904533, at *20-*21. However, ***un***like here, class counsel in *Perez* requested 33.33% of the class award. *Id.* at *15.

In conducting a lodestar cross-check, the *Perez* court observed that "all three multipliers are still within the surveyed acceptable range" and awarded class counsel the requested 33.33% fee. It did so because it found that the following facts "weigh in favor of a higher lodestar multiplier": "[t]he benefit obtained for the class [was] an extraordinary result," there was (and remained, in that particular case) the substantial risk of nonpayment, and "the general quality of the representation and the complexity and novelty of the issues presented" were high. *Id.* at *21. This Court reached essentially the same conclusions about Class Counsel (among others) in its original fee award. *See* Dkt. 138 at 13-17.

Perez is not the only case that confirms reasonable fees can nevertheless imply high multipliers; numerous cases the Federal Circuit did not mention or distinguish make the same essential point. *See*, *e.g.*, *In re Mercedes-Benz Emissions Litigation*, 2021 WL 7833193, at *16 (D.N.J. Aug. 2, 2021) ("Courts in this Circuit and elsewhere have approved large multipliers, when appropriate, in a range exceeding 10."); *see also Farrell v. Bank of America Corp., N.A.*, 2020 WL 5230456 (9th Cir. Sept. 2, 2020) (10.15 multiplier, as demonstrated by the dissent's discussion of the lodestar relative to the fee award); *In re Doral Financial Corp. Secs. Litig.*, No. MDL 1706,

ECF No. 107 (S.D.N.Y. July 17, 2007) ("A 15.25% fee represents a reasonable multiplier of 10.26."); *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 182 (8.9 multiplier); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (8.3 multiplier).

As Professor Rubenstein further explains, his own research confirms the same. Rubenstein Decl. ¶¶ 35-37. He cautions, however, that looking *just* at multipliers cited in lodestar cross-check cases can provide a misleading view of what constitutes a reasonable contingent fee. First, the vast majority of contingency arrangements in the United States are private, but most exceed 30% and all indications are that many embody very high multipliers. *Id.* ¶¶ 38-39. Second, only about half of class action fee awards utilize a lodestar cross-check, so looking only at multipliers without reference to the greater body of fee percentage awards ignores critical information for the reasonableness analysis. *Id.* Third, because attorneys are more likely to invite or justify their fee requests with a lodestar cross-check when their lodestar-to-fee ratio is relatively low, relying only on lodestar cross-check cases ignores selection bias. *Id.* It is for these reasons that he discusses how an implied multiplier interacts with the reasonableness factors, rather than supplant them. *Id.* ¶¶ 29-34, 40-44.

To this point, although the Federal Circuit noted the three cases this Court previously cited regarding high multipliers provided "weak support" for a high multiplier here, those cases still exhibit the correct *process* for analyzing a lodestar cross-check (or cross-check-style arguments).

For example, while it is true that *Americas Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. 2012), was not a decision under federal law, *see Health Republic*, 58 F.4th at 1375, the Delaware Supreme Court analyzed a class action fee request by looking primarily at the benefits class counsel generated for the class (in accord with *Hensley*), as well as at a number of reasonableness

factors in light of arguments akin to a lodestar cross-check (*i.e.*, that class counsel's fee would equal "66 times the value of their time and expenses"). *Americas Mining*, 51 A.3d at 1252.

Similarly, in *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926 (E.D. Pa. May 19, 2005), the lack of objectors was one factor applied in a broader analysis to approve a fee equaling 15.6 class counsel's lodestar.

Finally, it is true that in *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327 (Bankr. D. Md. 2000), the court assessed whether a contingent-fee agreement was reasonable under 11 U.S.C. § 328(a), and that it was not a common fund case. However, the reasonableness analysis *Merry-Go-Round* utilized is effectively identical to the approach the Supreme Court required in *Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002), for contingent-fee agreements under 42 U.S.C. § 406(b)(1)(A). The Federal Circuit approvingly quoted and cited *Gisbrecht* just one page earlier in its decision. *Compare Health Republic*, 58 F.4th at 1374 (quoting and citing *Gisbrecht*); *with* 1375 (discussing *Merry-Go-Round*). These two opinions confirm that courts routinely assess the reasonableness of contingent fees through a variety of means, and have concluded in proper cases that reasonable fees can imply multipliers as high as 19.6 (or higher).

What constitutes a "proper case" varies, but the consistent through line is that courts analyze the reasonableness of a fee request in light of the overall circumstances, and, if those reasonableness factors cut heavily in class counsel's favor, conclude a high multiple is permissible. Professor Rubenstein, the Federal Circuit, and multiple opinions the Federal Circuit cited approvingly (discussed further below) confirm the same.

C. The Court's Findings On The *Moore* Factors Collectively Demonstrate Why A Fee Implying Even A Very High Multiplier Is Appropriate Here

As the Federal Circuit noted, there is no *per se* rule against fees that imply high lodestar multipliers; it is just that multipliers "far outside the evident relevant norm … require exceptional

justification." *Health Republic*, 58 F.4th at 1376. Class Counsel has always conceded the amount of work it performed in these cases implies a high lodestar multiplier, *see*, *e.g.*, Dkt. 84 at 30, Dkt. 93 at 14-15; its contention remains that the seven *Moore* factors provide exactly the "exceptional justification" for that type of award. Given the focus here on a lodestar cross-check, the below discussion explains—by looking to the logic of other cases, as the Federal Circuit urged, *see Health Republic*, 58 F.4th at 1375 ("More particularly still, a court should 'examine[ ] the reasoning behind ... awards in cases of similar size.'" (quoting *In re Cendant*, 243 F.3d at 737))—how and why the Court's findings on the *Moore* factors refute the idea that Class Counsel seeks a windfall, and how each finding pushes up the ceiling for what constitutes an unreasonable implied multiplier.[5]

1. The extraordinary benefits Class Counsel generated for the class strongly support a high multiplier (*Hensley*; seventh *Moore* factor)

Ultimately, *the* most important question for determining whether a lodestar multiplier indicates a fee is too high or too low is the benefit obtained for the class. *See Hensley*, 461 U.S. at 434-36; *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009) (ultimate reasonableness of the fee "is determined primarily by reference to the level of success achieved by the plaintiff").[6] Courts employing a lodestar cross-check thus view the benefit to the class as the "foremost" consideration in assessing multipliers, and find that exceptional results warrant higher multipliers. *See*. *e.g.*, *Perez*, 2020 WL 1904533, at *21 (holding multipliers between 13.42-18.15 were

[5] Class Counsel's discussion addresses the *Moore* factors out of order, because the caselaw explains why some factors hold more importance than others when conducting a lodestar cross-check.

[6] Although *Hensley* and *McCown* are fee-shifting cases and therefore of limited utility with respect to the detail of proof necessary for a lodestar cross-check, the Federal Circuit noted that *Hensley* is instructive in how to assess lodestar for cross-check purposes. *See Health Republic*, 58 F.4th at 1378.

reasonable, given, *inter alia*, class counsel obtained an "extraordinary result" for the class); 5 Newberg on Class Actions § 15:87 (citing "the risks counsel took" and "the results they achieved for the class" as the most important factors in assessing "the reasonableness of a lodestar multiplier").[7] In contrast, where class counsel achieves "only limited success" for the plaintiffs, a court should "award only that amount of fees that is reasonable in relation to the results obtained." *Hensley*, 461 U.S. at 436, 440; *see also*, *e.g.*, *McKnight v. Uber Techs., Inc.*, 2021 WL 4205055, at *7 (N.D. Cal. Sept. 2, 2021), *aff'd sub nom. McKnight v. Hinojosa*, 54 F.4th 1069 (9th Cir. 2022) (applying *Hensley* in percentage-of-the-fund case to slightly reduce fee request because the results class counsel achieved were not "exceptional").

As this Court already found, Class Counsel created huge benefits for the class. Dkt. 138 at 13-17. The first and most obvious is that Class Counsel not only identified the facts and legal theories underlying the class's (and broader industry's) risk corridor claims, but also had the conviction of belief to locate a class representative, Health Republic, who was willing to bring suit even in the face of intense skepticism. *Id.*; *see also* Dkt. 84-1 (Swedlow Decl.) ¶¶ 8-9; Dkt. 84-4 (Bonder Decl.) ¶¶ 9-10.

But, of course, the benefits did not stop there. As the Court previously held, the legal theory Class Counsel identified and was the first to pursue is the only theory that ultimately won at the Supreme Court, and Class Counsel helped promote and support that theory at every step. Dkt. 138

[7] *See also In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736 n.44 (E.D. Pa. 2001) ("*Rite Aid I*") (if lodestar multiplier does not increase where counsel obtains abnormally good results, "the lodestar approach begins to dominate and supersede the percentage of the recovery formula"); *In re Enron Corp. Secs., Derivative, & Erisa Litig.*, 586 F. Supp. 2d 732, 752 (S.D. Tex. 2008) ("The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement [and] the skill of the attorneys[.]"); *In re WorldCom, Inc. Secs. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (noting that "public policy" supports a high multiplier where "[t]he size of the recovery achieved for the class . . . could not have been achieved without the unwavering commitment of Lead Counsel to this litigation.")

at 15-16. In the end, Class Counsel's pioneering and dogged efforts resulted in a 100% damages recovery for the class (and for all other risk corridors plaintiffs), *id.* at 13-17, resulting in billions of dollars in recoveries nearly every class member had effectively written off. As Professor Rubenstein notes, this generated $384,000 of recovery per hour worked; a unique result among class actions, stemming from uniquely efficient work. Rubenstein Decl. ¶¶ 1, 23.

With one notable exception, Class Counsel remains unaware of a single megafund case where counsel obtained 100% damages for the class. That one exception, however—*In re Urethane Antitrust Litigation*—resulted in a one-third fee award on an $835 million common fund ($278 million). 2016 WL 4060156 (D. Kan. July 29, 2016). Thus, to the best of Class Counsel's knowledge, *this* case is entirely unique in terms of the benefits obtained versus the fee requested—*i.e.*, even if Class Counsel receives its requested 5% fee, the class will receive more of its damages than any other megafund case while paying less.

For example, the court in *In re Blue Cross Blue Shield Antitrust Litig.*, recently awarded class counsel $626.5 million out of a $2.67 billion common fund settlement; a 23.47% fee. 2022 WL 4587617, at *1 (N.D. Ala. Aug. 9, 2022). In arguing for that fee, class counsel noted the settlement represented approximately "7.3% to 14.3% of estimated maximum potential recoveries" of past damages. *See In re Blue Cross Blue Shield Antitrust Litig.*, No. 2:13-cv-20000-RDP, Dkt. 2733-1, at 48 (N.D. Ala. May 28, 2021). Class counsel in that case therefore received a fee almost 3.5x higher than what Class Counsel requests here, but for a result that (as a percentage of damages) is a small fraction of what Class Counsel achieved and (in hard numbers) is approximately 70% of what Class Counsel obtained for the class here. This highlights the extraordinary nature of this lawsuit and the class's uniquely extraordinary benefits.

Furthermore, the benefits Class Counsel provided also included the class structure itself. As unrebutted evidence makes clear, several class members—including *both* United and Kaiser—opted into the class because they felt they could not bring suit directly against the government, else potentially face its wrath. Dkt. 93-2 (Swedlow Supp. Decl.) ¶¶ 7, 9. The benefit from "hiding" as an absent class member thus meant the difference between a 100% recovery of the amounts the government previously refused to pay, versus no risk corridor recovery at all

It is true the Federal Circuit observed that "[i]f the benefits are large in comparison to the amount of time counsel spent on the case, a downward adjustment is ... in order." *Health Republic*, 58 F.4th at 1374 (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002). However, the pertinent question is "a downward adjustment from what?" In the Supreme Court opinion the Federal Circuit cited for this proposition, the benchmark was a 25% contingent fee. *See Gisbrecht*, 535 U.S. at 807. The same 25% benchmark was at issue in the very next case the Federal Circuit cited, *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) ("Thus, for example, where awarding 25% of a 'megafund' would yield windfall profits for class counsel in light of the hours spent on the case, courts should adjust the benchmark percentage ...."). And, in the very next opinion the Federal Circuit cited, *Walmart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 122 (2d Cir. 2005), the Court assessed whether class counsel's request for an 18% fee on a $3.3 billion settlement was reasonable—in that case, the District Court awarded 6.5%, which the Second Circuit upheld. *Id.* at 122-124.

Here, Class Counsel recognized that any substantial amount of opt-ins would render typical fee award benchmarks inappropriate. It therefore adjusted its fee downward to the bottom of the megafund fee spectrum, thereby preemptively addressing the concern the Federal Circuit notes. Had the case settled before Class Counsel spent significant time or effort vindicating the class's

rights, then the notice gave additional comfort any fee percentage could be reduced even further under those circumstances. *See* Dkt. 138 at 20 n.6.[8] Thus, the notice's cross-check language protected against windfalls stemming from early settlement, ultra-high opt-in rates, or both.

But, of course, an early and/or partial settlement is not what happened. Nor did every single QHP opt into the class. Instead, class members representing approximately a third of all unpaid risk corridor amounts opted in, Class Counsel continued to litigate the case for years, and, through Class Counsel's efforts (both within the class action and without), the class obtained a 100% damages award, 95% of which Class Counsel obtained permission to distribute as soon as it could. The windfall situation the notice contemplated did not occur and, after the Federal Circuit originally held the risk corridors claims Class Counsel originated were invalid as a matter of law, *see Moda Health Plan, Inc. v. United States*, 892 F.3d 1311 (Fed. Cir. 2018), *rev'd and remanded sub nom. Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308 (2020), Class Counsel faced the highly likely risk of never being paid—yet, it continued on for years after that.

Placing a ceiling on the fee was itself a benefit to the class. That sort of voluntary downward departure from typical benchmarks should be rewarded—not punished—especially when it means the class now enjoys unique benefits no other megafund class has ever received.

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[8] This comfort addressed the concerns raised by courts in the Federal Circuit's two other case citations in the portion of its opinion citing *Gisbrecht*, *Bluetooth*, and *Walmart*. *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 736 (3d Cir. 2001) (involving a settlement class counsel obtained after just four months of work); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 339 (3d Cir. 1998) (remanding for further consideration of fee award, because class counsel largely followed on an independent task force's work and the lower court did not explain fee award in light of such facts). The Federal Circuit's final citation, *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000), reiterated the typical warning against providing fees that are windfalls, but otherwise held only that courts within the Second Circuit can employ either the lodestar or percentage methods, and encouraged courts utilizing the percentage method to still conduct a cross-check. *Id.* at 49.

2. Because the lodestar method is meant to approximate a competitive fee, a 5% award remains a bargain (fourth *Moore* factor)

In *In re Synthroid Mktg. Litig.*, 264 F.3d 712 (7th Cir. 2001)—which the Federal Circuit cited approvingly, *see Health Republic*, 58 F.4th at 1375—the Seventh Circuit observed that applying an automatic "megafund cap" to fees would disincentivize any "sane lawyer" from even attempting to achieve an amazing result for a class. *Synthroid*, 274 F.3d at 718. It therefore discussed the reasoning behind that Circuit's "market-based approach" to class counsel fees, the gist of which is that "any method other than looking to prevailing market rates assures random and potentially perverse results." *Id.* at 719. Accordingly, under *Synthroid*, courts benchmark reasonable fees by looking first at "actual agreements" (*e.g.*, between counsel and class representatives), and next at data from similar suits "where large [plaintiffs] have chosen to hire counsel up front." *Id.* at 720.

Class Counsel recognizes only one *Moore* factor explicitly utilizes a market-based approach. And the *ex ante* "deal" Class Counsel offered class members was a 5% fee cap subject to a lodestar cross-check. However, *Geneva Rock* (the case the opt-in notice cited) explicitly considers a lodestar cross-check in light of the *Moore* factors. 119 Fed. Cl. at 592. Thus, class members agreed that market agreements are relevant to determining Class Counsel's fees.

As to the first benchmark (actual agreements between Class Counsel and class members), each of Health Republic and Common Ground agreed to pay Class Counsel 25% of their damages, had the case not been certified and proceeded to individual judgments. Dkt. 84-1 (Swedlow Decl.) ¶ 8. Had Class Counsel just pursued the two class representative's claims, it would have made over $28 million in fees from them alone.

Moreover, not a single other contingency lawyer handling risk corridor claims was willing to go as low as 5% for its fees. Dkt. 93-2 (Swedlow Supp. Decl.) ¶¶ 10-12. This is powerful market

evidence under the fourth *Moore* factor because, even paying a 5% fee, every single class member has already received more in net risk corridor damages than any other risk corridor plaintiff paying a contingency fee. Rubenstein Decl. ¶ 43. Thus, the unrebutted market evidence shows Class Counsel provided a bargain, which contributes to the overall picture that even a high multiplier here is not unreasonable. *Id.*

3. Riskier cases warrant higher multipliers (third *Moore* factor)

In another case the Federal Circuit cited approvingly, *Florin v. Nationsbank of Georgia, N.A.*, 60 F.3d 1245 (7th Cir. 1995)—*see Health Republic*, 58 F.4th at 1375—the Seventh Circuit noted that a risk multiplier goes up with the risk of a case. *See Florin*, 60 F.3d at 1247. The Federal Circuit held the same. *See Health Republic*, 58 F.4th at 1375 (applying a lodestar cross-check "does not exclude taking full account of the relevant attorney-fees considerations as they apply to a particular case," such as "the risk of nonpayment in a contingency-fee commonfund arrangement"). In *Florin*, the Seventh Circuit noted one could quantify this interplay between risk and reasonable reward by dividing 1 (*i.e.*, the lodestar amount) by the chance of success (*i.e.*, the risk). 60 F.3d at 1247 n.3. That is just one formulation of the concept, but useful here.

As the Court noted, the objective facts here show this was a very risky case. Dkt. 138 at 17. The majority of lower courts to review the claims rejected them. The initial Federal Circuit panel rejected them. The Federal Circuit refused to review that decision *en banc*. In the end, "[i]t would take a favorable decision by the Supreme Court to change the course." *Id.* As Professor Rubenstein puts it:

> Specifically, after the Federal Circuit had ruled against the plaintiffs on the key legal issue in related cases, the only chance of success relied on a constellation of factors that are more infrequent than Halley's Comet: (1) the Supreme Court had

> to grant the petition for *certiorari*, a step the Court takes in about 1.3% of cases;[9] and (2) it then had to reverse the Federal Circuit, a step the Court takes in about 71% of the cases arising from this Circuit that it actively reviews.[10] Together, these odds (.013 x. .71) means the case had a .0092 chance – roughly 1 in 100 chance – of succeeding at that moment.

Rubenstein Decl. ¶ 44.

With all of these risks ahead, Class Counsel nevertheless pioneered the class's claims and continued to invest heavily in them even after the Court stayed this case pending the appeals and even after the initial Federal Circuit loss. Dkt. 138 at 17. In fact, Class Counsel billed *one third* of its lodestar on the class's behalf *after* the Federal Circuit handed down its *Moda* opinion; *i.e.*, the absolute riskiest point to invest its time and efforts. Wolfson Decl. ¶ 7. Applying *Florin*'s logic and risk multiplier formula, Class Counsel's odds of winning at the beginning of this case were not high. Looking at all the facts now, it appears that, *at best*, it had a 10% chance of success from the start, which immediately implies a risk-based multiplier of 10. And, if one takes into account *ex ante* the chances that the Supreme Court would not only take up the case, but then also find in the class's favor, the risk-based multiplier goes up dramatically from there—easily to 100. Rubenstein Decl. ¶ 44.

The *Moore* factors, of course, look at risk as just one factor among many, so any lodestar cross-check cannot simply assess an implied multiplier in terms of risk. However, here, the extraordinarily risky nature of the claims pushes up the risk-based portion of any multiplier to what would otherwise be termed the very high end. That is fully consistent with a 5% fee.

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[9] Supreme Court of the United States, *The Supreme Court at Work* ("Each Term, approximately 5,000-7,000 new cases are filed in the Supreme Court. . . . Plenary review, with oral arguments by attorneys, is currently granted in about 80 of those cases each Term . . ."), available at https://www.supremecourt.gov/about/courtatwork.aspx.

[10] Ballotpedia, *SCOTUS case reversal rates (2007-Present)*, available at https://ballotpedia.org/SCOTUS_case_reversal_rates_(2007_-_Present).

4. The complexity and duration of this litigation support a higher multiplier (second *Moore* factor)

As does the riskiness of a case, its complexity and duration also push up what is considered a reasonable fee. *See*, *e.g.*, *Mercier*, 156 Fed. Cl. at 591; *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 416–17 (S.D.N.Y. 2018) (holding that the complexity factor favored approval of counsel's fee request because the case presented "unique and difficult issues not only for the parties, but also for the broader investor public"); *cf. Minuteman Health, Inc. v. United States Dep't of Health & Human Servs.*, 291 F. Supp. 3d 174, 179 (D. Mass. 2018) (the Affordable Care Act "is a notoriously complex statute, health insurance is notoriously difficult to administer effectively, and the federal health-care bureaucracy is notoriously cumbersome."). As the Court already noted, the legal questions presented in these cases were far from straightforward. *See* Dkt. 138 at 14-15. Furthermore, Class Counsel lent its aid "in either a direct or supporting role at every level before the class members in these cases were awarded judgment in their favor," a process that "spanned the course of over four [now, seven] years." *Id.* at 15. Class Counsel also organized and managed two large classes representing over one third of the overall risk corridor claims value. *Id.* at 16. This *Moore* factor is thus yet another basis to conclude that Class Counsel earned fees at the high end of implied multipliers.

5. A 5% fee is at the extreme low end of all class actions, including "megafund" cases (sixth *Moore* factor)

As this Court recognized in its original decision, *see* Dkt. 138 at 21-22, and as every single expert who has provided analysis for this case explains—including Professor Rubenstein, who literally wrote the book on class actions—a 5% fee is at the extreme low end of class action fee awards, regardless of the size of the common fund. *See* Rubenstein Decl. ¶¶ 2, 30 n.29; Dkt. 84-2 (Fitzpatrick Decl.) ¶¶ 23, 26; Dkt. 84-3 (Silver Decl.) ¶¶ 20, 69, 75-77. Moreover, although courts utilize the percentage-of-the-fund method over 90% of the time to award fees, they utilize a

lodestar cross-check only about 40-50% of the time. 5 Newberg and Rubenstein on Class Actions § 15:67 (Rubenstein ed., 5th ed. 2020) (approximately 50% of common fund cases do not consider lodestar at all); Rubenstein Decl. ¶ 38; Fitzpatrick Decl. ¶ 29 (citing studies showing that over half of courts do not employ the lodestar method primarily or as a cross-check). This means that only about 40% of percentage-based fee awards involve a lodestar cross-check, indicating that any reasonableness analysis involving a lodestar cross-check should also look at fees awarded in class actions *without* a cross-check. Rubenstein Decl. ¶¶ 38-39. This is why the sixth *Moore* reasonableness factor is "the ***percentage*** applied in other class actions," rather than the "lodestar multiplier." *See Health Republic*, 58 F.4th at 1372 (quoting *Moore*, 63 Fed. Cl. at 787).

That a 5% fee is at the very low end of class action fee awards is even more notable when one also considers (as discussed in detail above) that most class actions settle, meaning that class members typically receive far less than the 95% of damages class members already received here. This includes megafund case after megafund case,[11] examples of which Class Counsel cited in its previous papers and respectfully notes the Federal Circuit neither mentioned nor distinguished. *See generally Health Republic*, 58 F.4th 1365. And the vast majority of even those cases routinely award class counsel far more than the 5% Class Counsel requests here.

[11] *See*, *e.g.*, *In re Southern Peru Copper Corp.*, 2011 WL 6382006, at *1 (Del. Ch. Dec. 20, 2011) (awarding approximately $304 million in fees and expenses, totaling 15% of the $2 billion judgment); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249 (D.N.H. 2007) (awarding $464 million in fees, representing 14.5% of $3.3 billion recovery); *In re NASDAQ Market-Makers Antitrust Litigation*, 187 F.R.D. 465, 488 (S.D.N.Y. 1998) (in case involving recovery in excess of $1 billion, fee of $143,780,000, or 14% of the total fund was reasonable and appropriate); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014) (holding that that requested attorney fee award representing 9.56% of total recovery, or approximately $544.8 million, was fair and reasonable); *In re Enron Corp. Securities, Derivative & ERISA Litigation*, 586 F. Supp. 2d 732 (S.D. Tex. 2008) (holding that that requested attorney fee award representing 9.52% of total recovery, or approximately $688 million, was fair and reasonable).

Chief Judge Kaplan's October 29, 2021 opinion in *Mercier v. United States*, 156 Fed. Cl. 580 (2021)—a decision that post-dates Class Counsel's original fee petition—is instructive here. In that case, class counsel obtained a $160 million settlement from the government, which equaled 65% of the class members' claimed overtime and back pay damages. *Id.* at 584. In assessing class counsel's 30% fee request, Chief Judge Kaplan first analyzed the request in light of the same seven *Moore* factors this Court applied in its original fee award decision. *Id.* at 591. Then, recognizing that high of a settlement made *Mercier* a "megafund" case, *id.* at 592, Chief Judge Kaplan applied extra scrutiny to class counsel's 30% fee request (including a lodestar cross-check) to balance (a) properly incentivizing attorneys to take on similar cases in the future, (b) recognizing the excellent work the particular class counsel in that case provided, and (c) avoiding a windfall. *Id.* at 591-593. In the end, on $10.8 million in lodestar, and based on her comprehensive analysis, Chief Judge Kaplan awarded class counsel a 20% fee ($32 million), thus reducing the net amount class members obtained from the case to approximately 48% of their claimed damages. *Id.*

Mercier provides useful and important context for Class Counsel's renewed fee request. In a megafund class action from the Court of Federal Claims involving lodestar lower than this case and a common fund just 4% of what Class Counsel obtained for the class, the Court awarded a fee percentage four times *higher* than what Class Counsel requests, netting class members (as a percentage of their damages) approximately half of what class members here would receive: 48% v. 95%. None of this is a criticism of *Mercier* or its reasoning; rather, the point is that, by every single metric, class members here will be better off than similarly-situated megafund class members from the Court of Federal Claims, but pay less as a percentage of their damages for that result. If one takes seriously that the ultimate benefit to the class is what most matters for assessing reasonableness in light of a lodestar cross-check, *see supra* at 12-16, and that the sixth *Moore*

factor specifically requires looking at fee percentages from similar cases, the stark difference in net result between *Mercier* and this case (even after applying Class Counsel's 5% fee) dramatically underscores why Class Counsel's fee request remains reasonable.

These comparable cases explain why a fee implying even a multiplier in the high teens is reasonable in this case. As discussed above, such a multiplier has been accepted in the past, *see supra* at 8-11, and in nearly every other megafund case and in virtually all other class actions, class counsel obtaining far less beneficial results for the class have received higher fees, whether expressed as a percentage or in hard dollars. The class members here are better off with a lower fee percentage than any megafund class members of which Class Counsel is aware, including the megafund class members in *Mercier*. These comparisons weigh strongly in favor of finding 5% reasonable, even with a high implied multiplier. *Moore*, 63 Fed. Cl. at 787.

6. Providing excellent representation increases what constitutes a reasonable fee (first *Moore* factor)

Because "[t]he quality of Class Counsel is essentially undisputed here," Dkt. 138 at 13, Class Counsel does not focus overmuch on this factor except to note that, just like each of the other *Moore* factors, higher quality representation pushes up the number that constitutes a reasonable fee. *See*, *e.g.*, *Perez*, 2020 WL 1904533, at *21; *see also Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at *1 (S.D.N.Y. Nov. 29, 2018) (noting that quality of counsel is "best measured by results"). As the Court observed, "Class Counsel demonstrated a degree of foresight in bringing these suits and focusing their attention on the Section 1342 claim several months before other parties began filing individual complaints based in part on the same legal theory," and that the claims Class Counsel pioneered "resulted in a huge award to the classes here." Dkt. 138 at 13-14. This sort of creative, forward-thinking, and relentless representation demonstrates independent value worth rewarding.

7. The low number and nature of the objections indicates Class Counsel's fee request is reasonable (fifth *Moore* factor)

In the briefing on Class Counsel's original fee application, "90 percent of the organizations whose entities opted into these suits, representing approximately $2.1 billion in damages, do not object to the fee." Dkt. 138 at 25. As the Court observed, "the number of objections is relatively low when viewed in the context of the classes here," and it therefore found that "the final factor supports the determination that Class Counsel's fee request is reasonable." *Id.*

On this renewed motion, it bears noting that applying a 5% fee to *just* the $2.1 billion in damages represented by the non-objectors yields Class Counsel over $100 million in fees. Cross-checking Class Counsel's lodestar to just that portion of the damages in this case implies a multiplier well outside the "norm," confirming that a high multiplier does not itself indicate Class Counsel would receive a windfall here—which is further bolstered by the fact that Class Counsel resolved three different risk corridor subclass's claims *after* its initial fee petition, and not a single subclass member objected to a 5% fee.

Finally, looking to the *nature* of the objections, the only objector argument with which the Federal Circuit agreed is that the Court needed to conduct a full lodestar cross-check. The Federal Circuit, however, did *not* endorse any of the other objections (despite that the objectors raised them during the appeal), nor did it accept the objectors' argument that Class Counsel should receive fees implying a 0.88 lodestar multiplier. Given that this *Moore* factor does not just look at the number of objections, but also their character, even the nature of the objections raises little concern about the reasonableness of Class Counsel's fee—particularly when the factors the Supreme Court and multiple Courts of Appeal on which the Federal Circuit relied indicate that Class Counsel earned the 5% fee it requests.

III. CONCLUSION

For the foregoing reasons, Class Counsel respectfully renews its request that the Court approve its application for an attorney's fee of 5% of the net recovery for the Non-Dispute Subclasses in *Health Republic* and *Common Ground*. In *Health Republic*, this amounts to an attorney's fee of $95,183,102.35 on a net recovery of $1,903,662,047.19; in *Common Ground*, this amounts to an attorney's fee of $89,665,569.32 on a net recovery of $1,793,311,386.47.

Dated: May 2, 2023

Respectfully submitted,

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Attorneys for Plaintiff Health Republic Insurance Company, Common Ground Health Cooperative, and the Class

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE COMPANY, Plaintiff, on behalf of itself and all others similarly situated, vs. THE UNITED STATES OF AMERICA, Defendant.	No. 1:16-cv-259C-KCD (Judge Davis)
COMMON GROUND HEALTHCARE COOPERATIVE, Plaintiff, on behalf of itself and all others similarly situated, vs. THE UNITED STATES OF AMERICA, Defendant.	No. 1:17-cv-00877-KCD (Judge Davis)

DECLARATION OF ADAM B. WOLFSON

I, Adam B. Wolfson, declare:

1. I am a Partner in the San Francisco and Los Angeles offices of Quinn Emanuel Urquhart & Sullivan LLP, appointed class counsel in this matter. I make this declaration of my own personal knowledge and, if called to testify, I could and would competently testify hereto under oath.

2. Attached hereto as **Exhibit A** is a series of spreadsheets summarizing Class Counsel's lodestar on a per attorney and total basis through July 2020, the date of the original fee petition. As indicated by its title, the first spreadsheet reflects lodestar through July 2020 at Class

Counsel's historical rates; *i.e.*, the hourly rates of its attorneys that were in place at the time they billed to the class actions. The second spreadsheet reflects Class Counsel's lodestar if it used its then-current rates in July 2020, and the third spreadsheet reflects Class Counsel's lodestar utilizing its current rates as of today. The final spreadsheet compares the different lodestar calculations and their implied lodestar multipliers.

3. I assembled the spreadsheets included in Exhibit A with the assistance of our accounting department. The historical rates set forth in the first spreadsheet are the rates my firm utilized for internal purposes throughout the life of the case. To update those rates to "current," I first asked our accounting department to provide the hourly rates at which each attorney on the team billed out as of July 2020. For any associate who had left the firm by that point, we utilized the hourly rate at which the firm billed out attorneys of equivalent seniority, which is defined by the year they graduated from law school (and which is uniform across associates). For the 2023 rates, we applied the same methodology, with the exception that three partners (Stephen Swedlow, J.D. Horton, and Fred Bennett) were also no longer with the firm. For each, the accounting department provided the current hourly rates for the "band" of the partnership in which the firm billed each partner before their departure. This roughly corresponds to the partners' years out of law school, but also their level of specialization.

4. The hourly rates included in each of the spreadsheets attached as part of Exhibit A are the actual hourly rates I and my colleagues quote to and charge paying clients. For the historical rates, those were hourly rates quoted to clients in the years in which the respective attorneys and other team members billed their time. Current rates are the hourly rates we quote to clients as of the date of this declaration.

5. As Exhibit A shows, a number of different Class Counsel attorneys worked on

these cases over the years. The following provides a summary of the key team members' and the overall team's work.

- The two highest billers in these cases were, respectively, J.D. Horton and Stephen Swedlow. Mr. Horton is a specialist in healthcare law and is the attorney who first identified the potential claims at issue here. He worked on the cases from their inception, including doing much of the initial work to assess the claims' potential viability. He then worked on readying the case for filing and, once we did file, continued to help develop the claims and legal arguments and defeat the government's attempts to escape liability. As the cases progressed, Mr. Horton was a constant team member whose records show he worked on every aspect of the cases. In that role, he worked closely with Mr. Swedlow, who was lead counsel in the cases until he departed Quinn Emanuel at the end of 2022 for public service as a judge in Illinois state court. Similar to Mr. Horton, Mr. Swedlow worked on these cases from the beginning and whose records show he was involved in nearly every aspect of the case. He, along with Mr. Horton, also took a central role in communicating and coordinating with the class members, and similarly coordinated with plaintiffs' counsel representing other risk corridor plaintiffs. Mr. Swedlow set forth his work in greater detail in his previous declarations from the original fee petition briefing. *See* Dkt. 84-1, 93-2.

- I am the next highest biller on these cases. Similar to Mr. Swedlow and Mr. Horton, I was on the case from its inception, although I joined shortly after they first identified the potential claims. Once I joined the case, I was centrally involved in further fleshing out the facts and legal theory, developing the complaint, identifying Health Republic as a potential class representative and discussing the potential lawsuit with its CEO and other officers, responding to the government's motion to dismiss, moving to certify the class, handling the opt-in process (including reaching out to potential class members and discussing the case with them), drafting and developing the class's motion for summary judgment, and drafting and working with co-counsel in each of the parallel appeals. I also regularly corresponded with class members and other interested parties in connection with the cases.

- Several other partners also provided their services in these cases over the years. These included Kathleen Sullivan, David Cooper, William Adams, Andy Schapiro, Eric Winston, Steven Edwards, and Fred Bennett. Ms. Sullivan, Mr. Cooper, and Mr. Adams are each appellate specialists and were critical in helping formulate, draft, and critique the various appellate-level briefs Class Counsel submitted in the parallel appeals. They also helped moot others who were preparing for oral argument on risk corridors-related issues. Mr. Schapiro, who is an appellate expert in his own right but also practices more regularly as a trial lawyer, assisted in

various aspects of the core litigation on both the appellate and everyday level. He has since stepped into a more central role helping lead the cases with me, including in the final subclass work for the risk corridors claims, as well as in the ongoing cost-sharing reduction claims. Finally, each of Mr. Winston, Mr. Edwards, and Mr. Bennett provided spot advice on various different issues that arose over the years. Mr. Winston is a bankruptcy specialist and helped think through potential issues that might arise from class members that went bankrupt or were otherwise put into insolvency proceedings due to, *inter alia*, the government's failure to pay full risk corridor amounts. (That exact scenario has since played out and is something we as Class Counsel have addressed for several subclass members.) Mr. Edwards and Mr. Bennett were each senior litigation partners with expertise in government-facing and other relevant types of litigation that they brought to bear to help think through and assist in directing the team to preemptively research/assess issues that might arise in these cases.

- Among the associate team, Arthur Roberts, Margaret Haas, and Hunter Thompson provided the bulk of associate-level services on the case through its early days. This included research, drafting, fact gathering, interacting with class members (a very time-intensive task, given the number of class members), interacting with other risk corridor plaintiffs and their counsel, and other necessary day-to-day tasks. In 2020, two more associates, Ben Berkman and Allison Huebert, provided additional core support for the team, working on similar types of tasks. And, as reflected in the lodestar charts included as Exhibit A, several other associates provided discrete help throughout the years for both cases.

- A number of paralegals also assisted with various tasks in the cases, although our primary paralegal throughout was Katherine Fuller.

6. Having been on these cases from the beginning, I can attest that the team's goal throughout was to provide the class with the greatest possible combination of efficiency and efficacy. Among other things, we regularly held team check-in calls, where the core partner team (Mr. Swedlow, Mr. Horton, and myself) would receive reports from the various team members about their work, and we would then discuss strategy and next steps. On these calls and in team emails, we provided clear divisions of labor and response deadlines, in order to minimize duplication of work while ensuring that no stone went unturned for the class. In terms of staffing on the case, the paramount concern was always how and whether a team member could add to

the collective effort. My understanding then, as well as my understanding now after reviewing our time records in this case, is that each team member that billed time provided critical services for the class. If the Court has any further questions about specific time billers, I am happy and willing to provide such information.

7. In connection with this renewed fee petition, I reviewed our billing records to determine the relative amount of lodestar we devoted to the case at various points in time. In that regard, I determined that the Quinn Emanuel team billed approximately one third of the total lodestar it submits here (*i.e.*, for work performed through July 2020) *after* the Federal Circuit issued its *Moda* opinion. In other words, we billed fully one third of our time when the claims were at their riskiest, because the Federal Circuit had at that point concluded the claims were not legally viable. But we believed it was important to devote every resource available to revive the claims, either via an *en banc* decision from the Federal Circuit or from the Supreme Court itself.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 2, 2023, at Los Angeles, California.

Adam B. Wolfson

Historical Rate Lodestar

Attorney/Paralegal	Title	Bar Year	Office	Historical Hourly Rate	Total Hours Billed	Total Lodestar / Year
Adam Wolfson - 2016	Partner	2005	Los Angeles		246.70	
Adam Wolfson - 2017	Partner	2005	Los Angeles		222.10	
Adam Wolfson - 2018	Partner	2005	Los Angeles		150.00	
Adam Wolfson - 2019	Partner	2005	Los Angeles		56.30	
Adam Wolfson - 2020	Partner	2005	Los Angeles		77.60	
Alec Levy - 2016	Associate	2014	Chicago		3.90	
Alexander Resar - 2020	Associate	2017	New York		74.30	
Allison Huebert - 2020	Associate	2012	Chicago		99.50	
Amanda McGuire - 2020	Paralegal	NA	Chicago		7.20	
Andrew H. Schapiro - 2019	Partner	1990	Chicago		37.00	
Andrew H. Schapiro - 2020	Partner	1990	Chicago		52.70	
Andrew Thompson - 2016	Law Clerk	2018	Los Angeles		53.20	
Arthur M. Roberts - 2016	Associate	2008	San Francisco		142.30	
Arthur M. Roberts - 2017 - Jan - Aug	Associate	2008	San Francisco		303.50	
Arthur M. Roberts - 2017 - Sept - Dec	Associate	2008	San Francisco		21.40	
Arthur M. Roberts - 2018	Of Counsel	2008	San Francisco		1.10	
Benjamin Berkman - 2020	Associate	2015	Chicago		246.00	
Cleland B. Welton, II - 2019	Of Counsel	2009	New York		4.20	
David Lakin - 2020	Associate	2017	Chicago		10.00	
David M. Cooper - 2020	Partner	2004	New York		128.10	
Eric D. Winston - 2016	Partner	1998	Los Angeles		7.20	
Fahri Abduhalikov - 2017	Paralegal	NA	Washington DC		2.60	
Fred G. Bennett - 2017	Partner	1973	Los Angeles		17.50	
Harry Larson - 2020	Associate	2019	Chicago		126.70	
Hunter B. Thomson - 2016 - Jan - Aug	Associate	2014	New York		55.70	
Hunter B. Thomson - 2016 - Sept - Dec	Associate	2014	New York		148.50	
Hunter B. Thomson - 2017	Associate	2014	New York		127.70	
J. D. Horton - 2015	Partner	1997	Los Angeles		9.10	
J. D. Horton - 2016	Partner	1997	Los Angeles		1,237.70	
J. D. Horton - 2017	Partner	1997	Los Angeles		714.50	
J. D. Horton - 2018	Partner	1997	Los Angeles		295.70	
J. D. Horton - 2019	Partner	1997	Los Angeles		798.80	
J. D. Horton - 2020	Partner	1997	Los Angeles		943.00	
James Zhang - 2016	Lit Support	NA	New York		2.20	
Katherine B. Fuller - 2016	Paralegal	NA	Chicago		22.00	
Katherine B. Fuller - 2017	Paralegal	NA	Chicago		16.20	
Katherine B. Fuller - 2018	Paralegal	NA	Chicago		33.10	

Historical Rate Lodestar

Attorney/Paralegal	Title	Bar Year	Office	Historical Hourly Rate	Total Hours Billed	Total Lodestar / Year
Katherine B. Fuller - 2019	Paralegal	NA	Chicago	[redacted]	25.10	[redacted]
Katherine B. Fuller - 2020	Paralegal	NA	Chicago		60.10	
Kathleen Sullivan - 2020	Partner	1981	Los Angeles		5.50	
Keith Errick - 2019	Lit Support	NA	New York		0.40	
Margaret Haas - 2016 - Jan - Aug	Associate	2012	Chicago		143.90	
Margaret Haas - 2016 - Sept - Dec	Associate	2012	Chicago		110.50	
Margaret Haas - 2017 - Jan - Aug	Associate	2012	Chicago		233.70	
Margaret Haas - 2017 - Sept - Dec	Associate	2012	Chicago		67.60	
Margaret Haas - 2018 - Jan - Aug	Associate	2012	Chicago		87.10	
Margaret Haas - 2018 - Sept - Dec	Associate	2012	Chicago		7.60	
Margaret Haas - 2019 - Jan - Aug	Associate	2012	Chicago		207.80	
Margaret Haas - 2019 - Sept - Dec	Associate	2012	Chicago		39.00	
Margaret Haas - 2020	Associate	2012	Chicago		140.90	
Marot Lorimer - 2017	Paralegal	NA	Chicago		158.10	
Marot Lorimer - 2018	Paralegal	NA	Chicago		7.40	
Matthew A. Bergjans - 2015	Associate	2014	Los Angeles		15.80	
Matthew A. Bergjans - 2016	Associate	2014	Los Angeles		74.70	
Rachel Appleton - 2016	Associate	2011	Los Angeles		1.80	
Stephen Swedlow - 2016	Partner	1995	Chicago		592.80	
Stephen Swedlow - 2017	Partner	1995	Chicago		362.40	
Stephen Swedlow - 2018	Partner	1995	Chicago		176.10	
Stephen Swedlow - 2019	Partner	1995	Chicago		230.10	
Stephen Swedlow - 2020	Partner	1995	Chicago		381.30	
Steven M. Edwards - 2016	Of Counsel	1972	New York		4.00	
Teri Juarez - 2019	Paralegal	NA	Los Angeles		0.80	
Teri Juarez - 2020	Paralegal	NA	Los Angeles		0.80	
					9,630.60	$9,698,059.50
					Costs (7/30/20)	$394,491.64
					Fees + Costs	$10,092,551.14

2020 Rates Lodestar

Attorney/Paralegal Name	Title	Bar Year	Office	2020 Hourly Rate	Total Hours Billed	Total Lodestar / Year
Adam Wolfson - 2016	Partner	2005	Los Angeles		246.70	
Adam Wolfson - 2017	Partner	2005	Los Angeles		222.10	
Adam Wolfson - 2018	Partner	2005	Los Angeles		150.00	
Adam Wolfson - 2019	Partner	2005	Los Angeles		56.30	
Adam Wolfson - 2020	Partner	2005	Los Angeles		77.60	
Alec Levy - 2016	Associate	2014	Chicago		3.90	
Alexander Resar - 2020	Associate	2017	New York		74.30	
Allison Huebert - 2020	Associate	2012	Chicago		99.50	
Amanda McGuire - 2020	Paralegal	NA	Chicago		7.20	
Andrew H. Schapiro - 2019	Partner	1990	Chicago		37.00	
Andrew H. Schapiro - 2020	Partner	1990	Chicago		52.70	
Andrew Thompson - 2016	Law Clerk	2018	Los Angeles		53.20	
Arthur M. Roberts - 2016	Associate	2008	San Francisco		142.30	
Arthur M. Roberts - 2017	Associate	2008	San Francisco		303.50	
Arthur M. Roberts - 2017	Associate	2008	San Francisco		21.40	
Arthur M. Roberts - 2018	Of Counsel	2008	San Francisco		1.10	
Benjamin Berkman - 2020	Associate	2015	Chicago		246.00	
Cleland B. Welton, II - 2019	Of Counsel	2009	New York		4.20	
David Lakin - 2020	Associate	2017	Chicago		10.00	
David M. Cooper - 2020	Partner	2004	New York		128.10	
Eric D. Winston - 2016	Partner	1998	Los Angeles		7.20	
Fahri Abduhalikov - 2017	Paralegal	NA	Washington D		2.60	
Fred G. Bennett - 2017	Partner	1973	Los Angeles		17.50	
Harry Larson - 2020	Associate	2019	Chicago		126.70	
Hunter B. Thomson - 2016	Associate	2014	New York		55.70	
Hunter B. Thomson - 2016	Associate	2014	New York		148.50	
Hunter B. Thomson - 2017	Associate	2014	New York		127.70	
J. D. Horton - 2015	Partner	1997	Los Angeles		9.10	
J. D. Horton - 2016	Partner	1997	Los Angeles		1,237.70	
J. D. Horton - 2017	Partner	1997	Los Angeles		714.50	
J. D. Horton - 2018	Partner	1997	Los Angeles		295.70	
J. D. Horton - 2019	Partner	1997	Los Angeles		798.80	
J. D. Horton - 2020	Partner	1997	Los Angeles		943.00	
James Zhang - 2016	Lit Support	NA	New York		2.20	
Katherine B. Fuller - 2016	Paralegal	NA	Chicago		22.00	
Katherine B. Fuller - 2017	Paralegal	NA	Chicago		16.20	
Katherine B. Fuller - 2018	Paralegal	NA	Chicago		33.10	

2020 Rates Lodestar

Attorney/Paralegal Name	Title	Bar Year	Office	2020 Hourly Rate	Total Hours Billed	Total Lodestar / Year
Katherine B. Fuller - 2019	Paralegal	NA	Chicago	[redacted]	25.10	[redacted]
Katherine B. Fuller - 2020	Paralegal	NA	Chicago		60.10	
Kathleen Sullivan - 2020	Partner	1981	Los Angeles		5.50	
Keith Errick - 2019	Lit Support	NA	New York		0.40	
Margaret Haas - 2016	Associate	2012	Chicago		143.90	
Margaret Haas - 2016	Associate	2012	Chicago		110.50	
Margaret Haas - 2017	Associate	2012	Chicago		233.70	
Margaret Haas - 2017	Associate	2012	Chicago		67.60	
Margaret Haas - 2018	Associate	2012	Chicago		87.10	
Margaret Haas - 2018	Associate	2012	Chicago		7.60	
Margaret Haas - 2019	Associate	2012	Chicago		207.80	
Margaret Haas - 2019	Associate	2012	Chicago		39.00	
Margaret Haas - 2020	Associate	2012	Chicago		140.90	
Marot Lorimer - 2017	Paralegal	DEF	Chicago		158.10	
Marot Lorimer - 2018	Paralegal	DEF	Chicago		7.40	
Matthew A. Bergjans - 2015	Associate	2014	Los Angeles		15.80	
Matthew A. Bergjans - 2016	Associate	2014	Los Angeles		74.70	
Rachel Appleton - 2016	Associate	2011	Los Angeles		1.80	
Stephen Swedlow - 2016	Partner	1995	Chicago		592.80	
Stephen Swedlow - 2017	Partner	1995	Chicago		362.40	
Stephen Swedlow - 2018	Partner	1995	Chicago		176.10	
Stephen Swedlow - 2019	Partner	1995	Chicago		230.10	
Stephen Swedlow - 2020	Partner	1995	Chicago		381.30	
Steven M. Edwards - 2016	Of Counsel	1972	New York		4.00	
Teri Juarez - 2019	Paralegal	NA	Los Angeles		0.80	
Teri Juarez - 2020	Paralegal	NA	Los Angeles		0.80	
					9,630.60	11,372,851.50
					Costs (7/30/20)	394,491.64
					Fees + Costs	11,767,343.14

2023 Rates Lodestar

Attorney/Paralegal Name	Title	Bar Year	Office	2023 Hourly Rate	Total Hours Billed	Total Lodestar / Year
Adam Wolfson - 2016	Partner	2005	Los Angeles		246.70	
Adam Wolfson - 2017	Partner	2005	Los Angeles		222.10	
Adam Wolfson - 2018	Partner	2005	Los Angeles		150.00	
Adam Wolfson - 2019	Partner	2005	Los Angeles		56.30	
Adam Wolfson - 2020	Partner	2005	Los Angeles		77.60	
Alec Levy - 2016	Associate	2014	Chicago		3.90	
Alexander Resar - 2020	Associate	2017	New York		74.30	
Allison Huebert - 2020	Associate	2012	Chicago		99.50	
Amanda McGuire - 2020	Paralegal	NA	Chicago		7.20	
Andrew H. Schapiro - 2019	Partner	1990	Chicago		37.00	
Andrew H. Schapiro - 2020	Partner	1990	Chicago		52.70	
Andrew Thompson - 2016	Law Clerk	2018	Los Angeles		53.20	
Arthur M. Roberts - 2016	Associate	2008	San Francisco		142.30	
Arthur M. Roberts - 2017	Associate	2008	San Francisco		303.50	
Arthur M. Roberts - 2017	Associate	2008	San Francisco		21.40	
Arthur M. Roberts - 2018	Of Counsel	2008	San Francisco		1.10	
Benjamin Berkman - 2020	Associate	2015	Chicago		246.00	
Cleland B. Welton, II - 2019	Of Counsel	2009	New York		4.20	
David Lakin - 2020	Associate	2017	Chicago		10.00	
David M. Cooper - 2020	Partner	2004	New York		128.10	
Eric D. Winston - 2016	Partner	1998	Los Angeles		7.20	
Fahri Abduhalikov - 2017	Paralegal	NA	Washington D		2.60	
Fred G. Bennett - 2017	Partner	1973	Los Angeles		17.50	
Harry Larson - 2020	Associate	2019	Chicago		126.70	
Hunter B. Thomson - 2016	Associate	2014	New York		55.70	
Hunter B. Thomson - 2016	Associate	2014	New York		148.50	
Hunter B. Thomson - 2017	Associate	2014	New York		127.70	
J. D. Horton - 2015	Partner	1997	Los Angeles		9.10	
J. D. Horton - 2016	Partner	1997	Los Angeles		1,237.70	
J. D. Horton - 2017	Partner	1997	Los Angeles		714.50	
J. D. Horton - 2018	Partner	1997	Los Angeles		295.70	
J. D. Horton - 2019	Partner	1997	Los Angeles		798.80	
J. D. Horton - 2020	Partner	1997	Los Angeles		943.00	
James Zhang - 2016	Lit Support	NA	New York		2.20	
Katherine B. Fuller - 2016	Paralegal	NA	Chicago		22.00	
Katherine B. Fuller - 2017	Paralegal	NA	Chicago		16.20	
Katherine B. Fuller - 2018	Paralegal	NA	Chicago		33.10	

2023 Rates Lodestar

Attorney/Paralegal Name	Title	Bar Year	Office	2023 Hourly Rate	Total Hours Billed	Total Lodestar / Year
Katherine B. Fuller - 2019	Paralegal	NA	Chicago	[redacted]	25.10	[redacted]
Katherine B. Fuller - 2020	Paralegal	NA	Chicago		60.10	
Kathleen Sullivan - 2020	Partner	1981	Los Angeles		5.50	
Keith Errick - 2019	Lit Support	NA	New York		0.40	
Margaret Haas - 2016	Associate	2012	Chicago		143.90	
Margaret Haas - 2016	Associate	2012	Chicago		110.50	
Margaret Haas - 2017	Associate	2012	Chicago		233.70	
Margaret Haas - 2017	Associate	2012	Chicago		67.60	
Margaret Haas - 2018	Associate	2012	Chicago		87.10	
Margaret Haas - 2018	Associate	2012	Chicago		7.60	
Margaret Haas - 2019	Associate	2012	Chicago		207.80	
Margaret Haas - 2019	Associate	2012	Chicago		39.00	
Margaret Haas - 2020	Associate	2012	Chicago		140.90	
Marot Lorimer - 2017	Paralegal	NA	Chicago		158.10	
Marot Lorimer - 2018	Paralegal	NA	Chicago		7.40	
Matthew A. Bergjans - 2015	Associate	2014	Los Angeles		15.80	
Matthew A. Bergjans - 2016	Associate	2014	Los Angeles		74.70	
Rachel Appleton - 2016	Associate	2011	Los Angeles		1.80	
Stephen Swedlow - 2016	Partner	1995	Chicago		592.80	
Stephen Swedlow - 2017	Partner	1995	Chicago		362.40	
Stephen Swedlow - 2018	Partner	1995	Chicago		176.10	
Stephen Swedlow - 2019	Partner	1995	Chicago		230.10	
Stephen Swedlow - 2020	Partner	1995	Chicago		381.30	
Steven M. Edwards - 2016	Of Counsel	1972	New York		4.00	
Teri Juarez - 2019	Paralegal	NA	Los Angeles		0.80	
Teri Juarez - 2020	Paralegal	NA	Los Angeles		0.80	
					9,630.60	$16,083,217.00
					Costs (7/30/20)	$394,491.64
					Fees + Costs	$16,477,708.64

Lodestar Comparison Summary

Rates	Total Lodestar	5% Fee	Implied Multiplier
Historical	$9,698,059.50	$184,848,671.67	19.06
2020 Current	$11,372,851.50	$184,848,671.67	16.25
2023 Current	$16,083,217.00	$184,848,671.67	11.49

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE COMPANY, Plaintiff, on behalf of itself and all others similarly situated, vs. THE UNITED STATES OF AMERICA, Defendant.	No. 1:16-cv-259C-KCD (Judge Davis)
COMMON GROUND HEALTHCARE COOPERATIVE, Plaintiff, on behalf of itself and all others similarly situated, vs. THE UNITED STATES OF AMERICA, Defendant.	No. 1:17-cv-00877-KCD (Judge Davis)

DECLARATION OF WILLIAM A. BURCK

I, William A. Burck, declare:

1. I am Global Co-Managing Partner of Quinn Emanuel Urquhart & Sullivan LLP, and was formerly Co-Managing Partner of Quinn Emanuel's Washington, D.C. office. I make this declaration of my own personal knowledge and, if called to testify, I could and would competently testify hereto under oath.

2. I have practiced law for over 20 years, the last 18 of which has been in Washington, D.C. After clerking for Judge Alex Kozinski on the Ninth Circuit and then Justice Kennedy on the Supreme Court, I spent two years as a federal prosecutor in the Southern District

of New York before returning to Washington, D.C. There, from 2005-2009, I joined the White House as Deputy Assistant and Deputy Staff Secretary to President George W. Bush, then the Department of Justice and finally returned to the White House as Special Counsel and Deputy Counsel to President Bush. I entered private practice as a partner in Weil, Gotshal & Manges LLP's Washington, D.C. office. In 2012, I joined Quinn Emanuel in its Washington, D.C. office as Co-Managing Partner of that office. In 2022, I became Global Co-Managing Partner of the firm and, in that role, today help lead the firm.

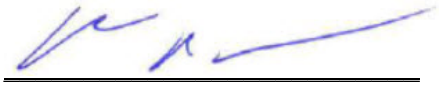
3. In my roles first as the Co-Managing Partner for Quinn Emanuel's Washington, D.C. office and now as Global Co-Managing Partner, one of my job responsibilities has been to set the hourly rates for the partners and associates who practice out of our D.C. office and more generally in Washington, D.C. I and my Co-Managing Partners do so by developing an understanding of the hourly rates our competitor firms charge, and setting our own hourly rates based on that understanding of the market. The vast majority of Quinn Emanuel's work is not on contingency, so setting these hourly rates in a way that is competitive in the D.C. market is incredibly important to our business there, as well as to our broader business throughout the country.

4. Quinn Emanuel's partner-level hourly rates are set primarily according the amount of time the partner has been in practice, which typically coincides with the year they graduated law school. Although the hourly rates can also, in certain circumstances, reflect certain types of expertise or specialization, that type of upward revision to the partner's hourly rate is the exception, not the rule. This approach places our partners into different "bands" of hourly rates, which are consistent across partners in that band and quoted to clients seeking hourly work. If the Court wishes us to do so, we can submit a copy of Quinn Emanuel's hourly rate sheets *in*

camera for the years at issue in this fee petition. We can also provide redacted copies of client bills demonstrating our hourly rates for D.C.-based attorneys and D.C.-based matters. Given the sensitive nature of such submissions, I have not attached them; however, we are happy to provide them so the Court may confirm for itself what I declare here.

5. I have reviewed the hourly rates listed in the lodestar calculations attached to Mr. Wolfson's Declaration and can confirm that these are the rates that Quinn Emanuel actually s charged for these attorneys to paying clients in the same timeframes. I can also confirm those rates are comparable to the rates we charge for lawyers of equivalent experience and skill who are based out of and/or work in Washington, D.C. For example, Mr. Swedlow graduated law school in 1995 and practiced out of Chicago, and Mr. Horton graduated law school in 1997 and practiced out of Los Angeles. However, both were for years included in the same hourly rate "band" as numerous Washington, D.C.-based Quinn Emanuel lawyers who graduated law school between 1995-2000. Similarly, Mr. Wolfson graduated law school in 2005 and practices out of the West Coast, but is in the same hourly rate "band" as multiple different Washington, D.C.-based partners who graduated law school between 2005-2008.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 2, 2023, at Washington D.C.



William A. Burck

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE COMPANY, Plaintiff, v. THE UNITED STATES Defendant.	)	No. 1:16-cv-259C-KCD (Judge Davis)

EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN

1. I am the Bruce Bromley Professor of Law at Harvard Law School and have been recognized as a leading national expert on class action law and practice. Class Counsel[1] seek a fee of approximately $184.8 million, which constitutes 5% of the roughly $3.7 billion recovery.[2] The Federal Circuit's decision in this matter requires this Court to undertake two functions: (1) to ascertain Class Counsel's lodestar and (2) to then assess the relevance of that data point to Class Counsel's 5% fee request.[3] Class Counsel have retained me to provide my expert opinion on these

[1] By order dated January 3, 2017, this Court granted a motion for class certification and appointed Quinn Emanuel Urquhart & Sullivan, LLP to serve as "lead counsel for the class . . ." Order, *Health Republic*, Dkt. 30 at 2. I refer to the firm as "Class Counsel" throughout.

[2] Class Counsel's Motion for Approval of Attorney's Fee Request and Class Representative Incentive Award, *Health Republic*, Dkt. 84 at 39 (requesting approval of "in *Health Republic* . . . an attorney's fee of $95,183,102.35 on a net recovery of $1,903,662,047.19; [and] in *Common Ground*, an attorney's fee of $89,665,569.32 on a net recovery of $1,793,311,386.47").

[3] *Health Republic Ins. Co. v. United States*, 58 F.4th 1365, 1378 (Fed. Cir. 2023) (holding that "reconsideration must include a lodestar cross-check in accordance with this opinion, including an assessment of whether there is sufficient justification for an award with an implicit multiplier outside the mainstream of relevant multipliers").

two issues. After setting forth my qualifications to serve as an expert (Part I, *infra*), I state the following opinions:

- ***Class Counsel's lodestar reflects reasonable billing rates and hours*** (Part II, *infra*).

  - ✓ ***Rates.*** Rates are reasonable if they are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. An attorney's customary billing rate for fee-paying clients is ordinarily the best evidence of a reasonable hourly rate. Unlike most class action lawyers, Class Counsel is a law firm that primarily works for fee-paying clients; they have, accordingly, presented evidence that the rates used in their lodestar cross-check are the customary billing rates currently paid by fee-paying clients in this market.

  - ✓ ***Hours.*** The total number of hours Class Counsel expended in this case is about one-tenth of the norm for cases of this size, in large part because the case turned on a key legal issue; while Class Counsel deftly developed critical facts, the case did not involve the tsunami of document discovery many enormous class actions entail. Some lawyers in this situation might be tempted to pad their hours so as to raise their lodestar and lower their multiplier, but the total number of Class Counsel's hours is so low, it is evident they were both efficient in prosecuting this case and engaged in no churning or lodestar padding. A qualitative assessment of the time spent supports these conclusions. What is extraordinary here is the relationship between the number of hours expended and the recovery for the client: roughly speaking, Class Counsel secured about $384,000 for every hour they worked on the case, 95% of which the class will keep if Counsel receive the requested 5%; this recovery-per-hour worked is more than 30 times the mean and median for the largest class action cases.

- ***Class Counsel are entitled to a significant lodestar multiplier given the risks they undertook and the unparalleled results they achieved for the class*** (Part III, *infra*). The review of Class Counsel's lodestar implies that a 5% fee award would be roughly 10 times their total lodestar by the end of this litigation. Courts have assessed the meaning of lodestar multipliers in at least three manners,[4] each of which provides support for Counsel's request here:

[4] Each of these approaches finds support in the Federal Circuit's decision in this case. *Id.* at 1372 (identifying "seven *Moore* factors" often used to assess fee reasonableness in this Circuit) (quoting *Moore v. United States*, 63 Fed. Cl. 781, 787 (2005) (citing Manual for Complex Litigation § 14.121 (4th ed. 2004)).

- ✓ ***Multifactor test***. Courts routinely approve common fund fee awards that embody a multiple of class counsel's lodestar in recognition of the risks that class counsel take in contingent fee matters and the results that they achieve for the class in a given case. Here, Class Counsel took significant risks, investing more than $16 million of their own time and money into an untested case against the largest defendant (the United States) and largest law firm (the Department of Justice) in the world; the case did not piggy-back on a government enforcement action (as many class actions do), nor was it one in a series of similar cases regularly pursued by class counsel (as many securities, antitrust, or consumer class actions are); it was an entirely novel endeavor, based on a one-off situation, that ultimately required the remarkably rare occurrence of a Supreme Court victory to ensure recovery. And those risks surely paid off when Class Counsel secured for the class one of the largest funds in class action history, with recoveries available to 100% of the class, at 100% of the monies due, averaging an unprecedented $13 million per class member. There is no doubt that they are entitled to a healthy multiple of their lodestar.

- ✓ ***Numerical comparison***. Empirical evidence shows the average multiplier to be about 1.5 times counsel's lodestar, with that number roughly doubling (to about 3.2) in large fund cases; but in dozens of cases (appended as Exhibit C), courts have awarded much higher multipliers, including some at or above the 10-level sought here. Nonetheless, numerical comparisons are somewhat constrained by several limitations in the available data: (1) there is no empirical evidence of the multipliers lawyers make in the vast majority of contingent fee cases (basic tort matters), but it is likely the multipliers in those cases are often quite high; (2) there is empirical evidence of multipliers in only about half of all class action cases; and (3) it is likely that lawyers most often propose, and by implication courts most often undertake, a cross-check in those cases in which multipliers are low, creating a selection bias problem with the available data. Thus, while the multiplier implied by Class Counsel's lodestar is at the high end of available data, it is surely a more normal data point across the full range of contingent fee cases.

- ✓ ***Market approach.*** One of the factors acknowledged by the Federal Circuit in this case is "the fee that likely would have been negotiated between private parties in similar cases."[5] Because this case is an opt-in class action, and class members are large savvy corporate entities, there is evidence in the record showing that the 5% (and lodestar cross-check) offered here was below the fee that was offered by competing law firms for handling this matter. Looking at the fee negotiation at the outset of the case also enables an assessment of the case's risk free of hindsight bias. The Seventh Circuit, which insists on this approach, has noted that the multiplier seen at the end of the case is inversely related to the risk at the beginning

[5] *Id.*

> of the case, such that a 10-level multiplier implies that there was a 1/10 chance of victory at the outset of the case. That conclusion is not implausible here, given that the ultimate outcome depended upon the rare circumstance of the Supreme Court granting a petition for *certiorari* and proceeding to overturn a circuit ruling.

2. I have long been a proponent of the lodestar cross-check, explaining in my scholarship that simply comparing percentages across cases without reference to the lodestar multiplier, and other qualitative factors, is a relatively meaningless exercise.[6] The same point, however, is equally true in reverse: simply comparing multipliers across cases without reference to the percentage being charged, and other qualitative factors (such as the *Moore* factors regularly employed by courts in this circuit), is a similarly misguided exercise. Here, the multiplier is high, but at the same time, class members are receiving extraordinarily robust recoveries, embodying extraordinarily high dollar numbers, while paying only 5% in fees – a percentage award among the lowest 1% of all awards in class action cases – in a case that faced enormous hurdles on the road to recovery. A 5% fee would provide Class Counsel with a significant profit, but such an award would be neither unprecedented nor unsupportable.

I.
BACKGROUND AND QUALIFICATIONS[7]

3. I am the Bruce Bromley Professor of Law at Harvard Law School. I graduated from Yale College, *magna cum laude*, in 1982 and from Harvard Law School, *magna cum laude*, in 1986. I clerked for the Hon. Stanley Sporkin in the U.S. District Court for the District of Columbia following my graduation from law school. Before joining the Harvard faculty as a

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[6] *See* 5 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 15:86 (6th ed. & Supp. 2023) [hereinafter "*Newberg and Rubenstein on Class Actions*"].

[7] My full c.v. is attached as Exhibit A.

tenured professor in 2007, I was a law professor at the UCLA School of Law for a decade, and an adjunct faculty member at Harvard, Stanford, and Yale Law Schools while a litigator in private practice during the preceding decade. I am admitted to practice law in the Commonwealth of Massachusetts, the State of California, the Commonwealth of Pennsylvania (inactive), the District of Columbia (inactive), the U.S. Supreme Court, six U.S. Courts of Appeals, and four U.S. District Courts.

4. My principal area of scholarship is complex civil litigation, with a special emphasis on class action law. I am the author, co-author, or editor of five books and more than a dozen scholarly articles, as well as many shorter publications (a fuller bibliography appears in my appended c.v.). Much of this work concerns various aspects of class action law. Since 2008, I have been the sole author of the leading national treatise on class action law, *Newberg on Class Actions*. Between 2008 and 2017, I re-wrote the entire multi-volume treatise from scratch as its Fifth Edition and, subsequently, produced the treatise's Sixth Edition – *Newberg and Rubenstein on Class Actions* – which was published in 2022. As part of this effort, I wrote and published a 692-page volume (volume 5 of the Sixth Edition) on attorney's fees, costs, and incentive awards; this is the most sustained scholarly treatment of class action attorney's fees and has been cited in numerous federal court fee decisions. For five years (2007–2011), I published a regular column entitled "Expert's Corner" in the publication *Class Action Attorney Fee Digest*. My work has been excerpted in casebooks on complex litigation, as noted on my c.v.

5. My expertise in complex litigation has been recognized by judges, scholars, and lawyers in private practice throughout the country for whom I regularly provide consulting advice and educational training programs. Since 2010, the Judicial Panel on Multidistrict Litigation

(JPML) has annually invited me to give a presentation on the current state of class action law at its MDL Transferee Judges Conference, and I have often spoken on the topic of attorney's fees to the MDL judges. The Federal Judicial Center invited me to participate as a panelist (on the topic of class action settlement approval) at its March 2018 judicial workshop celebrating the 50th anniversary of the JPML, *Managing Multidistrict and Other Complex Litigation Workshop*. The Ninth Circuit invited me to moderate a panel on class action law at the 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop. The American Law Institute selected me to serve as an Adviser on a Restatement-like project developing the *Principles of the Law of Aggregate Litigation*. In 2007, I was the co-chair of the Class Action Subcommittee of the Mass Torts Committee of the ABA's Litigation Section. I am on the Advisory Board of the publication *Class Action Law Monitor*. I have often presented continuing legal education programs on class action law at law firms and conferences.

6. My teaching focuses on procedure and complex litigation. I regularly teach the basic civil procedure course to first-year law students, and I have taught a variety of advanced courses on complex litigation, remedies, and federal litigation. I have received honors for my teaching, including: the Albert M. Sacks-Paul A. Freund Award for Teaching Excellence, as the best teacher at Harvard Law School during the 2011–2012 school year; the Rutter Award for Excellence in Teaching, as the best teacher at UCLA School of Law during the 2001–2002 school year; and the John Bingham Hurlbut Award for Excellence in Teaching, as the best teacher at Stanford Law School during the 1996–1997 school year.

7. My academic work on class action law follows a significant career as a litigator. For nearly eight years, I worked as a staff attorney and project director at the national office of the

American Civil Liberties Union (ACLU) in New York City. In those capacities, I litigated dozens of cases on behalf of plaintiffs pursuing civil rights matters in state and federal courts throughout the United States. I also oversaw and coordinated hundreds of additional cases being litigated by ACLU affiliates and cooperating attorneys in courts around the country. I therefore have personally initiated and pursued complex litigation, including class actions.

8. I have been retained as an expert witness in about 100 cases and as an expert consultant in another 30 or so cases. These cases have been in state and federal courts throughout the United States, most have been complex class action cases, and many have been MDL proceedings. I have been retained to testify as an expert witness on issues ranging from the propriety of class certification, to the reasonableness of settlements and fees, to the preclusive effect of class action judgments. I have been retained by counsel for plaintiffs, for defendants, and for objectors.

9. Courts have appointed me to serve as an expert in complex fee matters:

- In 2015, the United States Court of Appeals for the Second Circuit appointed me to argue for affirmance of a district court order that significantly reduced class counsel's fee request in a large, complex securities class action, a task I completed successfully when the Circuit summarily affirmed the decision on appeal.[8]

- In 2017, the United States District Court for the Eastern District of Pennsylvania appointed me to serve as an expert witness on certain attorney's fees issues in the National Football League (NFL) Players' Concussion Injury Litigation (MDL 2323). In my final report to the Court, I recommended, *inter alia*, that the Court should cap individual retainer agreements at 22%, a recommendation that the Court adopted.[9]

[8] *See In re IndyMac Mortg.-Backed Sec. Litig.*, 94 F. Supp. 3d 517 (S.D.N.Y. 2015), *aff'd sub nom. DeValerio v. Olinski*, 673 F. App'x 87 (2d Cir. 2016).

[9] *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1658808, at *1 (E.D. Pa. Apr. 5, 2018) ("I adopt the conclusions of Professor Rubenstein and order that IRPAs' fees be capped at 22% plus reasonable costs.").

- In 2018, the United States District Court for the Northern District of Ohio appointed me to serve as an expert consultant to the Court on complex class action and common benefit fees issues in the National Prescription Opiate Litigation (MDL 2804).

- The United States District Courts for the Southern District of New York and the Eastern District of Pennsylvania have both appointed me to serve as a mediator to resolve complex matters in class action cases, including fee issues.

10. One of the functions I can provide as an expert witness is to present empirical evidence of class action practices from other cases. As part of my scholarly work on class action law, I have created and maintain a database containing data on more than 1,000 class action lawsuits. Specifically, my research assistants coded the data from case reports appearing in the journal, *Class Action Attorney Fee Digest* (CAAFD). CAAFD was published monthly from January 2007 to September 2011 for a total of 57 issues and reported on 1,187 unique court-approved state and federal class actions. For each case, a CAAFD case abstract describes the awarding court and judge, the subject matter of the dispute, the settlement/judgment benefits, the attorney fee and expense awards (both as requested by plaintiff's counsel and as approved by the court), the case filing and attorney fee award dates, any named plaintiff awards, and miscellaneous data on case and settlement/judgment administration. In creating the database from the CAAFD reports, my research team cross-checked the accuracy of a subset of federal reports against source documents from PACER; we found only one error – an understatement of the settlement benefit value by 2% – in 726 data fields, or fewer than 0.15% of fields. I am therefore confident about the accuracy of the data in my database and use it regularly as a source for my scholarship and expert witness work.

11. Courts have often relied on my expert witness testimony in fee matters.[10]

12. I have been retained in this case to provide an opinion concerning the issues set forth in the first paragraph, above. I am being compensated for providing this expert opinion. I was paid a flat fee in advance of rendering my opinion, so my compensation is in no way contingent upon the content of my opinion.

13. In analyzing these issues, I have discussed the case with the counsel who retained me. I have also reviewed documents from this litigation and the related cases, a list of which is attached as Exhibit B, and I have reviewed the case law and scholarship relevant to the issues herein.

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[10] *See, e.g.*, *In re Genetically Modified Rice Litig.*, 764 F.3d 864, 872 (8th Cir. 2014); *In re Zetia (Ezetimibe) Antitrust Litig.*, No. 2:18-MD-2836, 2022 WL 18108387, at *7 (E.D. Va. Nov. 8, 2022); *Reed v. Light & Wonder, Inc.*, No. 18-CV-565-RSL, 2022 WL 3348217, at *1-2 (W.D. Wash. Aug. 12, 2022); *City of Westland Police & Fire Ret. Sys. v. MetLife, Inc.*, No. 12-CV-0256 (LAK), 2021 WL 2453972 (S.D.N.Y. June 15, 2021); *In re Facebook Biometric Info. Priv. Litig.*, No. 15-CV-03747-JD, 2021 WL 757025, at *10-*12 (N.D. Cal. Feb. 26, 2021); *Kater v. Churchill Downs Inc.*, No. 15-CV-00612-RSL, 2021 WL 511203, at *1-*2 (W.D. Wash. Feb. 11, 2021); *Wilson v. Playtika Ltd.*, No. 18-CV-5277-RSL, 2021 WL 512230, at *1-*2 (W.D. Wash. Feb. 11, 2021); *Wilson v. Huuuge, Inc.*, No. 18-CV-5276-RSL, 2021 WL 512229, at *1-*2 (W.D. Wash. Feb. 11, 2021); *Amador v. Baca*, No. 210CV01649SVWJEM, 2020 WL 5628938, at *13 (C.D. Cal. Aug. 11, 2020); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *10 (S.D. Ill. Dec. 16, 2018); *Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2018 WL 6305785, at *5 (M.D.N.C. Dec. 3, 2018); *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1658808, at *4 (E.D. Pa. Apr. 5, 2018); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 3175924, at *3 (N.D. Cal. July 21, 2017); *Aranda v. Caribbean Cruise Line, Inc.*, No. 1:12-cv-04069, 2017 WL 1369741, at *5 (N.D. Ill. Apr. 10, 2017), *aff'd sub nom. Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792 (7th Cir. 2018); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL 5158730, at *9 (N.D. Cal. Sept. 2, 2015); *Asghari v. Volkswagen Grp. of Am., Inc.*, No. 13-CV-02529 MMM, 2015 WL 12732462, at *44 (C.D. Cal. May 29, 2015); *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-md-2591-JWL, 2015 WL 2165341, at *5 (D. Kan. May 8, 2015); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1172 (C.D. Cal. 2010); *Commonwealth Care All v. Astrazeneca Pharm. L.P.*, No. CIV.A. 05-0269 BLS 2, 2013 WL 6268236, at *2 (Mass. Super. Aug. 5, 2013).

II.
CLASS COUNSEL'S LODESTAR IS REASONABLE

14. A lodestar cross-check entails comparing class counsel's lodestar – "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate"[11]– against the proposed percentage award.[12] The point of the lodestar cross-check is not to generate the precise fee award, as in a fee-shifting case, but rather to provide the court with a general sense of the proposed percentage award's relationship to an hours-based award; as such "[m]ore relaxed specificity and documentation standards apply to examination of the lodestar in a percentage-of-the-fund case compared to the standards applied when the lodestar method is directly used to set the fee (especially where paid by the adverse party)."[13]

(A)
The Hourly Rates are Supported by the "Best Evidence"

15. The *Manual for Complex Litigation* states:

> What constitutes a reasonable hourly rate varies according to geographic area and the attorney's experience, reputation, practice, qualifications, and customary charge. The rate should reflect what the attorney would ***normally command*** in the relevant marketplace.[14]

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[11] *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

[12] For an in-depth examination of the lodestar cross-check concept, see 5 *Newberg and Rubenstein on Class Actions*, *supra* note 6, at §§ 15:84 to 15:89.

[13] *Health Republic*, 58 F.4th at 1378 (Fed. Cir. 2023) (citing *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 306 (3d Cir. 2005) ("The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting." (footnote omitted))).

[14] *Manual for Complex Litigation (Fourth)*, § 14.122 (2004) (emphasis added) (citing *Blum v. Stenson*, 465 U.S. 886, 895 (1984) ("'[R]easonable fees' . . . are to be calculated according to the prevailing market rates in the relevant community . . . ."); *Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167 (3d Cir. 1973)).

What rate class action lawyers "normally command" is often a complicated question because many class action attorneys work solely on contingent fee cases, do not have regular fee-paying clients, and hence the rates they "normally command" are simply the rates that courts have approved in reviewing class action fee petitions in the past. In such cases, I have often undertaken in-depth rate studies generating empirical data on hourly billing rates approved by courts overseeing class action fee awards in the relevant jurisdiction during a relevant time period; courts have relied on my studies in conducting lodestar cross-checks.[15]

16. None of that complexity is present here, however, as these Class Counsel inform me that they will file documentation showing that they have many clients regularly paying hourly rates for services similar to those rendered to this class, in this (District of Columbia) jurisdiction. In this situation, as Judge Roumel recently explained in a decision of this Court, ascertaining the reasonable billing rate is straightforward:

> Although a court may look to other factors to determine a reasonable rate, a firm's normal and customary rates are the ***best evidence*** that the rate is comparable to the market rate. Where, as here, attorney and client have agreed on the time to be spent and the rates to be charged, the market has spoken and there is no reason for the court to reverse engineer the process.[16]

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[15] *See, e.g.*, *City of Westland Police*, 2021 WL 2453972, at *2 (concluding that Professor Rubenstein's study of rates in comparable class actions "support a finding that counsel's hourly rates for its attorneys and staff attorneys are in line with the prevailing market rates for comparable attorneys of comparable skill and standing in the pertinent legal community and therefore properly are included in the lodestar") (cleaned up); *In re High-Tech*, 2015 WL 5158730, at *9 (approving billing rates and citing Rubenstein Declaration's "graphs showing rates charged by Class Counsel here are similar to prevailing market rates from fee awards in this district").

[16] *Sci. Applications Int'l Corp. v. United States*, No. 17-CV-00825 C, 2021 WL 3557427, at *2 (Fed. Cl. July 26, 2021) (emphasis added) (cleaned up); *see also Kastrati v. M.E.G. Rest. Enterprises Ltd.*, No. 1:21-CV-00481 (KHP), 2023 WL 180043, at *2 (S.D.N.Y. Jan. 13, 2023) ("Courts in this district also have recognized that an attorney's customary billing rate for fee-paying clients is ordinarily the best evidence of a reasonable hourly rate.") (cleaned up).

17. Given that Class Counsel have submitted a sworn affidavit testifying to the rates that they normally command in 2023 for legal services similar to those provided to this class, in this market, I will assume the Court's acceptance of these current rates, and their reasonableness, for purposes of my analysis.

(B)
The Total Amount of Hours Billed is Exceptionally Efficient for an Outcome of this Magnitude

18. Counsel are entitled to be compensated for reasonable time spent at all points in the litigation. Courts are cautioned to avoid engaging in an "*ex post facto* determination of whether attorney hours were necessary to the relief obtained."[17] The issue "is not whether hindsight vindicates an attorney's time expenditures, but whether, at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures."[18]

19. I examine the hours that Class Counsel billed in two ways: *first*, by a quantitative comparison to the hours expended in similarly large cases (¶¶ 20-24, *infra*); and *second*, by a qualitative analysis of the tasks undertaken (¶¶ 25-26, *infra*).[19]

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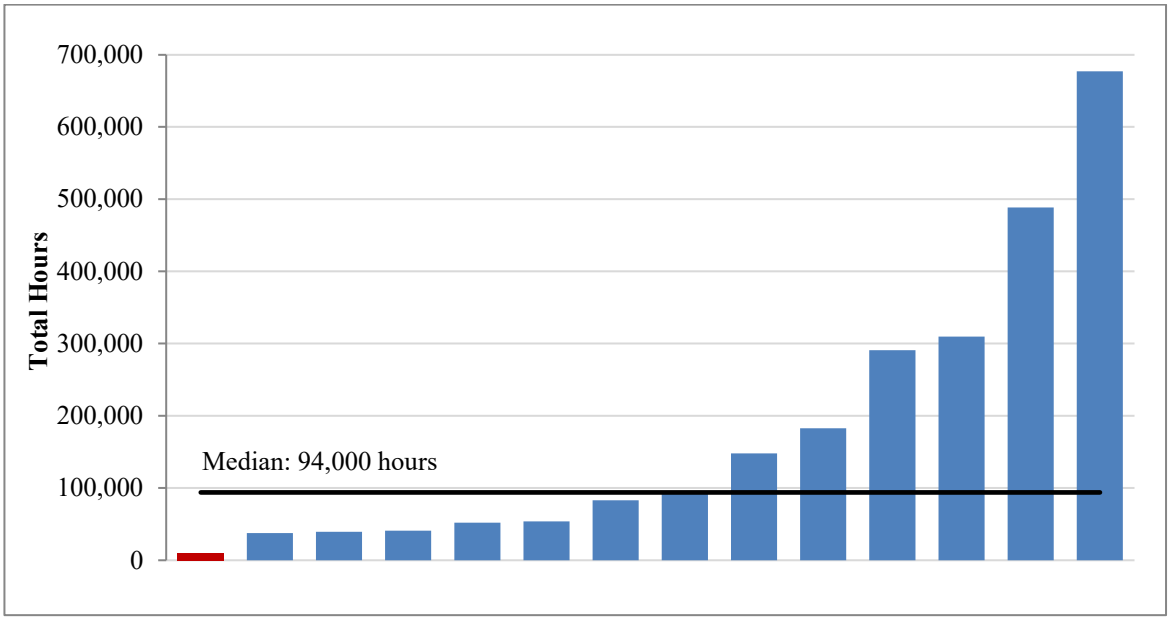
[17] *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992).

[18] *Id.*

[19] Class Counsel did not provide me – nor did I ask to see – a breakdown of each hour expended, given the "more relaxed specificity and documentation standards [that] apply to examination of the lodestar" in the cross-check context. *Health Republic*, 58 F.4th at 1378; *see also Fields for estate of Lawrence v. Sec'y of Health & Hum. Servs.*, No. 17-1056V, 2022 WL 1573538, at *4 (Fed. Cl. May 10, 2022) ("In determining a proper fee award, courts need not, and indeed should not, become green-eyeshade accountants, as the goal in awarding attorneys' fees is to achieve rough justice, not auditing perfection.") (cleaned up).

20. *Quantitative Assessment.* In my database of more than 1,000 cases (*see* ¶ 10, *supra*), there are 13 cases with common fund sizes similar to this case, specifically between $500 million and $5.0 billion (in 2023 dollars). The hours class counsel expended to produce those common funds ranged from 37,466 to 677,000, as depicted in Graph 1 below.

GRAPH 1
CLASS COUNSEL'S TOTAL HOURS BILLED COMPARED TO TOTAL HOURS BILLED IN CLASS ACTIONS OF SIMILAR SIZE

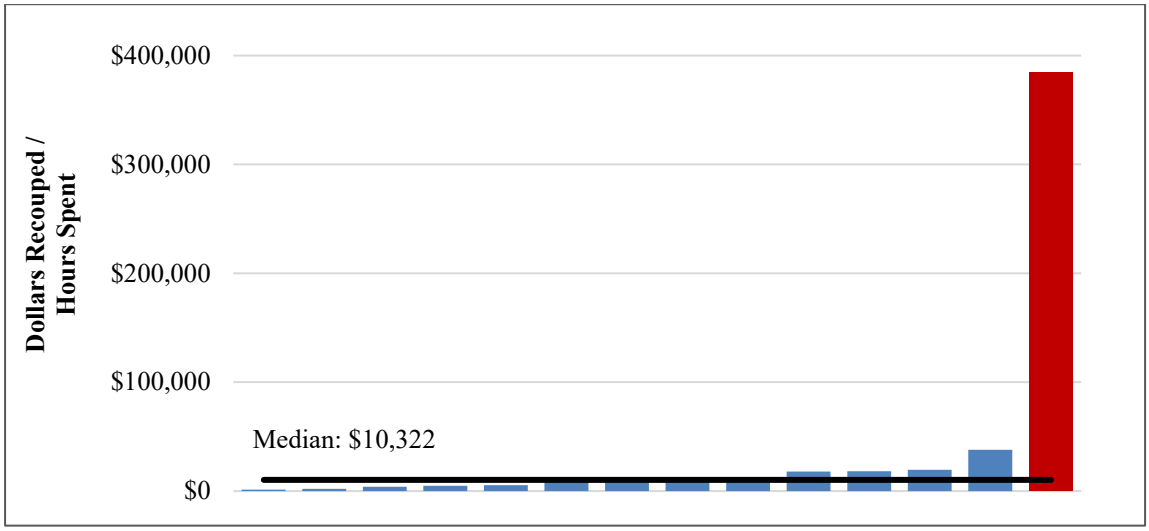


21. Class Counsel's total hours are represented by the red bar in Graph 1 and, as is visually evident, they fall at the lowest end of the chart, far below that of comparably sized class actions. Class Counsel billed 9,631 hours as of July 2020 (the date of Class Counsel's original fee petition), while the *median* of the comparison set is 94,000, or over nine times higher than what Class Counsel billed by that point. The *average* across the comparison set is 192,063 and, even excluding the outlier case to the far right of the graph, the average of the remaining comparison cases is 151,652, or 15 times more than Class Counsel's hours.

22. While Class Counsel's hours are far below those of comparably sized class actions, it is also worth noting that all of the cases being compared were pending in courts for different total time periods. Thus, to normalize the comparison in another fashion, we divided the total hours in each case by the total number of days the case was pending, yielding the hours counsel billed each day the case was pending. These normalized calculations show that the *median* amount of time spent on class actions of similar magnitude was 64 hours/day, which is 12 times higher than Class Counsel's 5 hours/day, and the *average* was 97 hours/day, which is 19 times higher. Class Counsel, in other words, billed a mere fraction (less than one-tenth) of the comparison set's hours per day while achieving results of similar (or, for 12 of the 13 cases in the comparison set, better) size and amount.

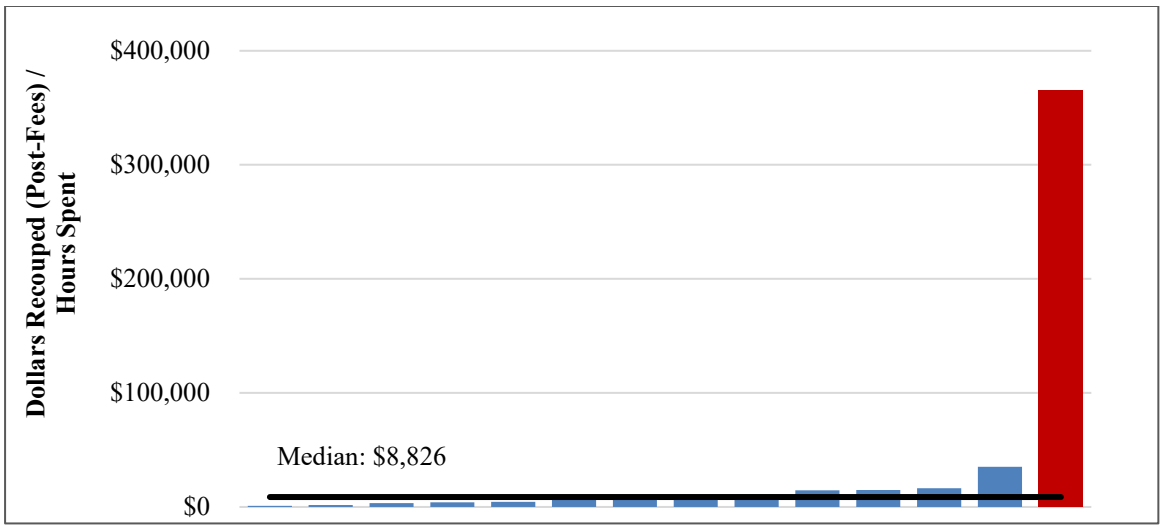
23. Counsel's low number of hours is consistent with the primarily legal nature of this case, as it did not require extensive time-intensive discovery from the government. At the same time, this extremely low number of total hours provides support for the conclusion that Class Counsel did not pad their lodestar with excess hours. But that conclusion minimizes Class Counsel's achievement because, not only did they efficiently manage their hours, but the recovery they produced is also extraordinarily large. Putting those two data points together (time and results) shows that Class Counsel secured about $384,000 every hour they worked on the case – this is about 37 times the median for the 13 comparably-sized class actions in my data base, as reflected in Graph 2 below, and 32 times the average.

GRAPH 2
CLASS COUNSEL'S DOLLARS RECOUPED PER HOURS SPENT COMPARED TO THAT IN CLASS ACTIONS OF SIMILAR SIZE



As remarkable, since the class here will pay, at most, 5% in fees, this means that the class members will receive about $365,000 for every hour class counsel expended, which is 41 times than the median for class actions of this size, as reflected in Graph 3, and 35 times the average.

GRAPH 3
CLASS COUNSEL'S DOLLARS RECOUPED (POST-FEES) PER HOURS SPENT COMPARED TO THAT IN CLASS ACTIONS OF SIMILAR SIZE



24. The data presented in Graphs 1-3 provide strong quantitative support for the conclusions that Class Counsel were efficient, that they have not attempted to pad their lodestar, and that their efficiency was remarkably – indeed, epically – productive. These conclusions are confirmed by a more qualitative assessment of the efforts that Class Counsel undertook.

25. *Qualitative Assessment.* Class Counsel initially filed the *Health Republic* complaint in February 2016, seeking unpaid risk corridor payments for the 2014 and 2015 benefit years. Once it became clear Congress would not appropriate funds to pay full risk corridor amounts for the 2016 benefit year either, Class Counsel filed the *Common Ground* complaint in June 2017. Subsequently, Class Counsel amended the complaints to add claims for cost-sharing reduction reimbursements, which rely on a similar theory as the risk corridor claims but involve different unpaid amounts under the Affordable Care Act.

26. Up to the July 30, 2020, filing of their initial fee petition in this matter, Class Counsel cumulatively logged about 9,630 hours of time. If an average lawyer at Class Counsel's firm bills about 2,200 hours/year,[20] the 9,630 expended here equates to about four-and-a-third lawyer years. Given that the case had been pending about four-and-a-third years at the time of the filing of the fee petition, the total hours here amount to the equivalent of one lawyer working more

[20] Roughly speaking, 2,200 hours/year may be considered as one lawyer working "full time." The National Association for Law Placement (NALP)'s most recent data available online, published in May 2016, reflect the hours billed by firms in 2013 and 2014. *Update on Associate Hours Worked*, NALP (May 2016), https://www.nalp.org/0516research. Those data show that, for lawyers at the largest firms (700+ lawyers), about 2/3 worked more than 2,200 hours/year, and the average number of hours worked in 2014 was 2,199. These data are a good referent in that Class Counsel's firm falls into this (700+ lawyers) category. *See* The Firm, https://www.quinnemanuel.com/the-firm/about-us/ (representing that the firm employs "1000+" attorneys).

or less full time on the case throughout that duration. That number seems quite reasonable in that, during those roughly four years, Class Counsel's activities included:

- developing a thorough understanding of the Affordable Care Act – and, more specifically, the risk corridors program – to determine the viability of a legal claim and the legal theory(s) that could support liability;
- researching the government's actions in various bills, rules, statements in press releases, and oral statements to the media, as well as undertaking all the factual investigation required before filing a detailed, first-of-its kind complaint in court;
- linking that factual investigation to the proper legal claims by researching relevant legal precedents under federal law;
- identifying potential class representatives and securing retention;
- investigating, preparing, and filing the initial complaint, ensuring compliance with the pleading standards of Rule 8 and Rule 12, as interpreted by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007);
- responding, successfully, to an initial motion to dismiss the case (which was the first successful opposition to a motion to dismiss in any risk corridor-related case);
- identifying experts and working with them to develop core substantive arguments for both the lower court proceedings and, eventually, related appellate-level proceedings;
- researching, drafting, and filing a motion for class certification in this novel opt-in setting (which went unopposed in the end);
- developing and obtaining approval for a plan to provide notice to potential class members regarding the certified class action and their options to opt in to the class;
- undertaking extensive communications and meetings with potential risk corridor class members throughout the country regarding the benefits of opting into the class, which, Class Counsel inform me, included direct communications with each of the objecting class members (the majority of which, as the Court previously noted, are controlled by two entities, United Healthcare and Kaiser);
- undertaking regular communications with class members to update them on case proceedings, including updates during the appellate processes up to the Supreme Court and back, throughout the remainder of both actions to the present;

- filing a summary judgment motion against the government on all of the risk corridor claims;
- filing multiple *amicus* briefs at each stage of the Federal Circuit process in the related *Moda* and other risk corridors appeals (*i.e.*, the original appeal; the subsequent petition for *en banc* review) and at the Supreme Court level as well (the petition for a writ of *certiorari* and the merits stage);
- strategizing with and assisting in mooting appellate counsel at both the Federal Circuit and Supreme Court levels;
- finalizing judgment on the risk corridor claims following the Supreme Court's decision in *Maine Community Health* and distributions of those funds.

27. In sum, then, the range and depth of Class Counsel's efforts set forth in the prior paragraph add important context to the number of hours they expended. Viewed in isolation, the number might leave the impression that this litigation followed some easy path to pre-ordained judgment; but this qualitative review demonstrates the opposite: this was carefully planned litigation pursued by dogged counsel who played a vital role in initially conceiving this litigation and then seeing it through the Supreme Court victory. The outcome was never inevitable – indeed, as explained below,[21] the case had extraordinarily long odds after the Federal Circuit originally ruled – and Class Counsel deserve commendation not just for helping to achieve this result, but also for doing so in such an efficient manner.

* * *

28. Class Counsel's lodestar – the product of rates regularly charged to paying clients and a very modest number of hours, given the $3.7 billion common fund – amounts to more than $16 million dollars. That means that the 5% ($184.8 million) fee Class Counsel seek is about 11.5

[21] *See* ¶ 44, *infra.*

times their lodestar. How to assess the meaning of that data point is the subject of the subsequent section. In that section, I refer to Class Counsel's multiplier as "in the 10 range" given the possibility of both higher and lower variations:

- *First*, Class Counsel will submit their total lodestar using 2023 rates, but they have informed me that they will also advise the Court what that total lodestar would be using their 2020 rates (at the time of the initial fee petition). Employing 2020 rates, Class Counsel's total lodestar is lower and their multiplier accordingly higher than the 11.5 implied by the 2023 rates.

- *Second*, however, Class Counsel have undertaken (and continue to undertake) extensive additional litigation for individual class members (labeled as subclasses) in this case; the recoveries in those cases will have been generated in part by some of the lodestar at issue here that is common across all the classes and subclasses – as well as by significant additional lodestar Class Counsel have notably expended on those efforts. In my opinion,[22] the best approach to analyzing class counsel's multiplier in a multi-fund/multi-settlement case is to set all of the lodestar they expend throughout the entire case against all of the awards they secure for all of the class members.[23] Were that approach taken here, Class Counsel's multiplier would be lower than the 11.5 through the July 2020 filing.[24]

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[22] I lectured on this topic ("Multiple Class Actions Settlements Within a Single MDL – Repetitive Class Action Fees") at the Judicial Panel on Multidistrict Litigation's 2018 [MDL] Transferee Judges' Conference, in West Palm Beach, Florida, October 30, 2018.

[23] This is the best approach for several reasons, a key one of which is that it is often difficult for class counsel in a multiple-class or multiple-settlement situation to allocate and assign lodestar to specific cases or settlements alone. *See, e.g.*, *Bendixen v. Sprint Commc'ns Co. L.P.*, No. 3:11-CV-05274-RBL, 2013 WL 2949569, at *3 (W.D. Wash. June 14, 2013) (noting, in a multiple-case situation, although undertaking a cross-check on a global basis, that: "In terms of a lodestar crosscheck, the overlapping nature of fiber-optic-cable right-of-way discovery, motions practice, research, litigation, and settlement efforts across the country for more than a decade . . . have prevented Settlement Class Counsel from segregating their fees and expenses into a 'Washington-only' category or similar categories for other states.").

[24] I draw that conclusion because Class Counsel have expended significant individualized time on the subclass cases although the dollar amounts of those cases will of course pale in comparison to the $3.7 billion in the two overarching judgments.

Given the possibility that Class Counsel's multiplier could be lower or higher than the 11.5, I employ the locution that it is "in the 10 range" as a way of attempting to capture that variance.

III.
ALL ASSESSMENT METHODS SUPPORT THE CONCLUSION THAT A SIGNIFICANT LODESTAR MULTIPLIER IS WARRANTED

29. In *Newberg and Rubenstein on Class Actions*,[25] I explain that there is more guidance from the circuit courts on whether a lodestar cross-check ought to be employed than there is on the question of how to assess the results of that cross-check and I note that the appellate courts' guidance on the latter question is not particularly illuminating. I explain that into that void, lower courts have adopted several methods to make sense of the cross-check outcome, and, in particular, to determine whether any positive multiplier that emerges from the cross-check is indeed warranted. Specifically, three primary approaches have emerged: (1) employing a multi-factor test, focusing especially on the risk of non-recovery, the quality of counsel's work, and the results achieved; (2) comparing the proposed multipliers to empirical evidence about multipliers in other cases; and (3) using a market approach that aims to assess the multiplier in terms of what parties might have bargained for *ex ante*, when the risks and results were unknown, and not after the case is over when that analysis is impaired by hindsight bias. In the succeeding three sections, I apply each of these methods to the 10-level multiplier that a 5% fee here would embody. This approach closely tracks the Federal Circuit's statement in this case that:

> Even when the lodestar method is used only as a cross-check, courts must take care to explain how the application of a multiplier is justified by the facts of a particular case. In particular, a court must provide sufficient analysis and consideration of multipliers used in

[25] This paragraph is adapted from 5 *Newberg and Rubenstein on Class Actions*, *supra* note 6, at § 15:87.

> comparable cases to justify the award made. More particularly still, a court should examine the reasoning behind awards in cases of similar size.[26]

As this passage makes clear, the three methods I employ are not the *only* plausible means of analyzing a multiplier (for instance, the Circuit embraces a careful factual comparison between cases, which I understand Class Counsel to be providing to the Court); but the three approaches I employ provide valuable context, consistent with the Federal Circuit's guidance.

(A)
A Multi-Factor Analysis Supports a Significant Multiplier as Class Counsel Took Large Risks and Secured an Extraordinary Quantity of Money for the Class

30. As noted above,[27] in this case, the Federal Circuit recognized that "Claims Court decisions have used a multi-factor test approach, under which the court considers (1) the quality of counsel; (2) the complexity and duration of the litigation; (3) the risk of nonrecovery; (4) the fee that likely would have been negotiated between private parties in similar cases; (5) any class members' objections to the settlement terms or fees requested by class counsel; (6) the percentage applied in other class actions; and (7) the size of the award."[28] In the following paragraphs, I sort factors (1)-(3) and (7) into two categories – risks and results – and consider each in turn. (Factor (6) calls for comparing *percentages* across cases;[29] in the succeeding section I provide data

[26] *Health Republic*, 58 F.4th at 1375 (cleaned up).

[27] *See* note 4, *supra*.

[28] *Health Republic*, 58 F.4th at 1372 (citing *Moore v. United States*, 63 Fed. Cl. 781, 787 (2005) (citing Manual for Complex Litigation § 14.121 (4th ed. 2004))).

[29] That analysis is easy here: in only 1% of the cases in my database did courts approve awards lower than 5%.

comparing *multipliers* across cases; and factor (4), market prices, is the subject of my concluding section).

31. Eight independent factors demonstrate the riskiness of this case:[30]

- ***This case was risky because it did not piggy-back on a government enforcement action.*** Many class actions follow on the heels of government enforcement actions, such as securities class actions that follow SEC enforcement actions or antitrust cases that follow Department of Justice actions. Class counsel have a lower risk in such cases as their investigative costs may be lower; as they may be able to employ non-mutual offensive issue preclusion to establish liability without litigation;[31] and/or as the defendant has a natural incentive to settle with the government, thereby easing the road to settlement with the class. Not this case: obviously, no government agency pursued this issue against the federal government itself. Moreover, these Class Counsel filed the first cases in this line of cases, indicating that they independently detected, investigated, theorized, and executed the entire case from scratch, as described in greater depth above.[32]

- ***This case was especially risky because the government's liability was uncertain.*** Many class actions pursue obvious instances of wrongdoing publicized in the media, such as the BP oil spill case or the Volkswagen emissions case. These cases embody less risk because settlement is almost a given. This case is the opposite: there was no high-profile prior exposé of the government's actions here and liability was anything but pre-ordained.

- ***This case was especially risky because of the uncertainty of the legal theory.*** In many class actions, application of the antitrust, securities, or consumer laws is based on well-established precedent and enables counsel, at the outset, to gauge – with some certainty – the chances of success in the new case. Not so here: this case turned on a single, completely novel, legal issue that was hotly contested, with the United States government strongly opposing Class Counsel's approach to the legal claim. The case embodied significant risk because the outcome was so uniquely unpredictable.

- ***This case was especially risky because the issues and money at stake were so significant that the United States litigated especially vigorously.*** Notwithstanding the United States government's resources, it is not every day it confronts a case that could

[30] The point is not to look at Counsel's risks *ex post*, but rather to demonstrate the strength of the achievement compared to the risks *ex ante*.

[31] *See, e.g.*, *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979).

[32] *See* ¶ 26, *supra*.

cost the Treasury multiple billions of dollars. Given the magnitude of this case, the government defended it with special interest and vigor.

- ***This case was especially risky because of its expense.*** Class Counsel report a lodestar and expenses above $16 million, much of which was invested in the class's case even after the Federal Circuit's decision in *Moda*. This means that Class Counsel have loaned the class more than $16 million dollars – continuing even when the odds were longest – and risked losing every penny of it on the outcome of this case.

- ***This case was especially risky because Class Counsel litigated against the largest defendant in the world, the United States government***. While Class Counsel were funding this case themselves, with more than ten million dollars of their own money, they were up against a defendant with almost unlimited resources.

- ***This case was especially risky because Class Counsel litigated against the largest law firm in the world, the United States Department of Justice***. The Department of Justice's website declares that it "is the world's largest law office, employing more than 9,200 attorneys."[33] Class Counsel's risk was increased significantly by the skill, depth, resources, and tenacity of the Justice Department.

- ***Given their commitment to this highly risky case, Class Counsel were precluded from taking other, simpler, work.*** In a normal class action lawsuit, it is fair to conclude that class counsel's devotion of time and resources prevents them from pursuing simpler, bread-and-butter, actions, which might have a higher expectation of settlement and hence ease of recovery of a contingent fee. That statement applies with particular force here, as Quinn Emanuel is one of the nation's largest firms, with its general business model being based on having a steady line of paying clients. The opportunity costs for these lawyers were especially high, therefore, as they traded off the safety of devoting these hours to paying clients in exchange for a fee that was completely contingent in nature.

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

[33] U.S. Department of Justice, https://www.justice.gov/agencies/chart.

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

- ***Counsel obtained landmark monetary relief for the class***. Put simply, $3.7 billion is an extraordinary sum of money. This is one of the largest class action outcomes in history, possibly the largest class action *judgment* (as opposed to *settlement*) in history. I am aware of only a handful of cases that have ever generated more recovery for a class, each of which was a large scale, multi-year, sprawling matter with enormous classes of affected plaintiffs: the BP Oil Spill; the Volkswagen Diesel emissions scandal; the long-running Diet Drug MDL; the Visa/Master Card antitrust matter; and two large infamous securities fraud cases (Enron and WorldCom). To the best of my knowledge, this is the largest class action outcome – judgment or settlement – against the federal government in history.

- ***100% of the class is eligible for relief.*** Given the legal nature of the victory here, all class members can share in the recovery and, better still, Class Counsel has committed to ensuring recovery even for those class members whose claims may have certain specific offsets (the so-called sub-classes here).

- ***Class members will receive cash not script***. Class actions sometimes end in settlements that return class members little direct compensation, occasionally nothing more concrete than coupons or recoveries going exclusively to third party *cy pres* recipients.[34] The *Manual for Complex Litigation* therefore warns federal judges overseeing class action settlements to be on the lookout for settlements "granting class members illusory nonmonetary benefits, such as discount coupons for more of defendants' products. . . ."[35] The judgment secured in this case delivered cash compensation directly to class members (95% of it years ago, to boot), a form of recovery that speaks highly of the case's outcome.

- ***Net of fees, class members will receive 100% of their estimated recoverable damages***. Not only does this judgment provide cash payments to class members, each payment amounts to 100% of the monies owed to the class member, an extraordinary return for a class action lawsuit.

[34] *See* 4 *Newberg and Rubenstein on Class Actions*, *supra* note 6, at §§ 12:7 to 12:13 (on nonpecuniary damages).

[35] *Manual for Complex Litigation (Fourth)* § 21.61 (2004).

- ***The estimated damages per class member are enormous.*** Class members' recoveries are enormous, over $13 million on average.[36] This is extraordinary and extraordinarily unusual, as most class actions are for small amounts of money.

- ***The relief required significant, contested adversarial litigation against strong opposition, leaving no hint of collusion.*** A critical concern in class suits is that the class's agents might be tempted to sell out the class by agreeing to a low recovery in return for a high fee. The *Manual for Complex Litigation* therefore warns federal judges overseeing class action settlements that "[a]ctive judicial oversight of the settlement process [is necessary to] prevent collusion between counsel for the class and defendant and [to] minimize the potential for unfair settlements."[37] Here, there is not a hint of collusion: the government hotly contested the legal claim at the center of this lawsuit, and the related lawsuits, defending the cases all the way to the Supreme Court. There is no evidence whatsoever of Class Counsel selling out the Class's interest – indeed, Class Counsel's continued commitment to seeing through all of the subclass actions is strong and ongoing evidence to the contrary.

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

(B)
The Proposed Multiplier is at the High End of Available Data, But Those Data Reflect Certain Limitations

35. The available empirical evidence shows that the average percentage fee award generally embodies a positive lodestar multiplier. In five studies with pertinent data, the average

[36] Declaration of Professor Charles Silver, *Health Republic*, Dkt. 84-3 at ¶ 24 ("The members of the Health Republic class will receive an average gross recovery of about $13.7 million apiece. The members of the Common Ground class will receive about $13.8 million apiece.").

[37] *Manual for Complex Litigation (Fourth)* § 22.923 (2004).

lodestar multiplier ranged from 1.42 to 3.89,[38] meaning that, in the ***average*** case, the percentage-of-the-fund method yielded an award to class counsel of about 1.5 times their normal hourly rates.

36. All of the empirical studies with pertinent data also show that multipliers tend to rise as the size of the class's fund increases,[39] with the average multiplier in these larger-fund cases across the four studies with data being 3.20. The "larger funds" in these studies started at modest levels (two below $100 million, one at $100 million, and the fourth at $175.5 million), implying that isolation of multipliers in a set of larger funds alone might yield an average multiplier higher than 3.2.

37. While the multiplier sought here is higher than the average multiplier in these studies' larger fund cases, it is not a complete outlier. In appropriate circumstances, courts have approved percentage awards embodying lodestar multipliers at or above the range sought here. In

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[38] 5 *Newberg and Rubenstein on Class Actions*, *supra* note 6, at § 15:89 (citing William B. Rubenstein et al., *Class Action Fee Awards 2006–2011: An Empirical Study* tbl.14) (1.42 average multiplier in 790 cases from 2006-2011); Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 965 tbl.12 (2017) [hereinafter "Eisenberg & Miller III"] (1.48 average multiplier in 294 cases from 2009-2013); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 833-34 tbl.9 (2010) (1.65 average multiplier in 204 cases from 2006-2007); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 272 tbl.14 (2010) [hereinafter "Eisenberg & Miller II"] (1.81 average multiplier in 368 cases from 1993-2008); Stuart J. Logan, Beverly C. Moore & Jack Moshman, *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 167, 167 (2003) [hereinafter "Logan, Moore & Moshman"] (3.89 average multiplier in 1,120 cases from 1973-2003).

[39] *See* Eisenberg & Miller III, *supra* note 38, at 967 tbl.13 (2.72 average multiplier in 35 cases over $67.5 million); Eisenberg & Miller II, *supra* note 38, at 274 tbl.15 (3.18 average multiplier in 40 cases over $175.5 million); 5 *Newberg and Rubenstein on Class Actions*, *supra* note 6, at § 15:89 (2.39 average multiplier in 89 cases over $44.6 million); Logan, Moore & Moshman, *supra* note 38, at 167 (4.5 average multiplier in 64 cases over $100 million).

Exhibit C, I provide a list of 84 cases with multipliers of 4 or greater, 52 of which are cases with multipliers of 5 or greater. The reported cases on this list include cases approving multipliers as high as 19 and encompass roughly a handful of cases at or above the level sought here. This list is not meant to be either exhaustive or representative of all multipliers that courts have approved. Rather, it demonstrates that courts approve percentage awards that embody multipliers consistent with the multiplier sought here in appropriate circumstances.

38. While comparing the multiplier sought here to empirical data about multipliers approved in other cases places this case near the high end of what courts have approved, that conclusion is likely exaggerated given at least three limitations in the empirical data on multipliers:

- *First,* there is no publicly-available empirical data about multipliers in the vast majority of contingent fee matters – individual tort cases – as the fees in these cases arise out of private contracts between attorney and client and need no court approval. However, many large-scale tort practices settle large volumes of cases with insurance companies, with the law firms undertaking little or no legal work prior to the settlement.[40] As tort attorneys in these matters tend to take 30-40% of the recoveries, their lodestar multipliers are likely very high. So too, in many mass tort MDLs, lawyers have large inventories of contingent fee cases, but perform little actual legal work as most is undertaken by a central plaintiffs' steering committee; federal judges have expressed such concern about the resulting profits to the individual tort lawyers in some of these MDLs that they have often capped the amounts these lawyers are permitted to charge their clients in these cases.[41]

[40] *See* Nora Freeman Engstrom, *Run-of-the-Mill Justice*, 22 Geo. J. Leg. Ethics 1485, 1526 (2009) (describing "settlement mills" and explaining that in one large settlement mill, "claims usually settled after only four-to-six hours of employee (not necessarily attorney) effort," while at another, "'regular run-of-the-mill cases' required only two-to-three hours of attorney time").

[41] *See In re Nat'l Football League Players' Concussion*, 2018 WL 1658808, at *4 (adopting report of court-appointed expert (Professor Rubenstein) recommending 22% fee cap and summarizing prior court approaches to fee caps).

- *Second,* the empirical evidence of multipliers in class action cases is similarly limited as courts undertake a lodestar cross-check in only about half of all cases.[42]

- *Third*, it is likely that lawyers are more prone to propose, and therefore courts to undertake, a cross-check in those cases in which multipliers are low, creating a selection bias problem with the available data. For instance, many courts have held that "a lodestar cross check need not be performed where plaintiff's counsel achieves a significant result through an early settlement"[43] – in other words, in cases where a multiplier is likely to be significant.

Thus, while a 10-range multiplier is at the high end of available data, it is surely a more normal data point across the full range of contingent fee cases.

39. For these and other reasons, few courts rely on a comparison of the multiplier number, standing alone, in assessing the reasonableness of a proposed fee; most – if not all – assess the proposed multiplier qualitatively, as I did in the prior section. Some circuits also consider what rate private parties would have negotiated, a task to which I turn next.

[42] 5 *Newberg and Rubenstein on Class Actions*, *supra* note 6, at § 15:89 (reporting that courts performed a cross-check that in 53% of the percentage cases in one six-year (2003–2008) study and in 42% of cases in another five-year (2009–2013) study).

[43] *See, e.g., Rankin v. Am. Greetings, Inc*., No. 2:10-CV-01831-GGH, 2011 WL 13239039, at *2 (E.D. Cal. July 6, 2011); *see also Glass v. UBS Fin. Servs., Inc*., No. C-06-4068 MMC, 2007 WL 221862, at *16 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 F. App'x 452 (9th Cir. 2009) ("Under the circumstances presented here, where the early settlement resulted in a significant benefit to the class, the Court finds no need to conduct a lodestar cross-check."); *Lopez v. Youngblood,* No. CV-F-07-0474 DLB, 2011 WL 10483569, at *14 (E.D. Cal. Sept. 2, 2011) ("A lodestar cross-check is not required in this circuit, and in a case such as this, is not a useful reference point.") (citing *Glass v. UBS Fin. Servs., Inc*., No. C-06-4068 MMC, 2007 WL 221862, at *16 (N.D. Cal. Jan. 26, 2007)).

(C)

The Proposed Multiplier Could be Seen to Reflect the Risk at the Case's Inception

40. Some courts, particularly those in the Seventh Circuit, utilize a so-called market approach to analyzing the reasonableness of a proposed fee, including the multiplier. These courts focus on what fee arrangement the lawyer and a sophisticated client might have made at the outset of the case, while all of the risk of the case was palpable and the outcome unknown. The upside of this approach is that it aims to weed out the hindsight bias that impairs the fee analysis when that inquiry is undertaken at the end of the case; specifically, when the outcome is known, it may have a feeling of inevitability and obscure the real risk that existed at the outset of the case.[44]

41. In undertaking this type of market analysis, the Seventh Circuit has noted that a risk multiplier at a case's end is the inverse of what the risk might have been at its outset. Specifically, the Court has stated that a "multiplier is determined by dividing 1 by the probability of success."[45] This means "that a multiplier of 2 stands for the proposition that the probability of success *ex ante* was 50% (1/2) while a multiplier of 10 translates into a 10% chance of success *ex ante* (1/10)."[46]

42. Both the *bargaining* and *ratio* facets of this market approach can be used to assess the reasonableness of the proposed multiplier here. Indeed, as noted above,[47] "the fee that likely

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[44] This paragraph is adapted from 5 *Newberg and Rubenstein on Class Actions*, *supra* note 6, at § 15:79.

[45] *Florin v. Nationsbank of Georgia, N.A.*, 60 F.3d 1245, 1247 n.3 (7th Cir. 1995) ("A risk multiplier of 1.01 equates to a finding that the class counsel had better than a 99% chance of recovering its fees. The multiplier is determined by dividing 1 by the probability of success.").

[46] 5 *Newberg and Rubenstein on Class Actions*, *supra* note 6, at § 15:87.

[47] *See* ¶ 30, *supra*.

would have been negotiated between private parties in similar cases"[48] is one of the factors the Federal Circuit acknowledged in its decision in this case.

43. *Market prices.* To the extent that fees law aims to mimic the market, it often requires a court, at the conclusion of the case, to envision negotiations that might have occurred at the outset of the case. Here, no such inventiveness is required: Class Counsel submitted an affidavit with their initial fee petition attesting to having had conversations with representatives of class members who informed Class Counsel that:

> [E]ven after the 5% fee disclosure [in this case] was publicly made, other law firms willing to engage QHP issuers on contingency fee engagements were still not willing to match this 5% contingency fee rate. As a consequence, after the supplemental notice, some QHP issuers chose to opt into the class after unsuccessfully seeking to obtain a contingency rate lower than 5%.[49]

This suggests that the market price for the services class counsel rendered – when assessed at the outset – was higher than 5% and that class members are therefore receiving Class Counsel's services at a competitive price, even at the full 5%.[50]

44. *Risk gauges.* Moreover, applying the Seventh Circuit's inverse ratio approach, the 10-level multiplier embedded in Class Counsel's 5% request implies that the odds of winning this

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[48] *Health Republic*, 58 F.4th at 1372 (citing Manual for Complex Litigation § 14.121 (4th ed. 2004)).

[49] Declaration of Stephen A. Swedlow, *Health Republic*, Dkt. 84-1 at 7; *see also* Supplemental Declaration of Stephen A. Swedlow, *Health Republic*, Dkt. 93-2 at 5 (explaining that "even after the supplemental notice [clarifying that Class Counsel would seek no more than 5% in this matter] the 'market' rate for Risk Corridors contingency cases was still above 5% of the recovery").

[50] Counsel in a class action, representing a group of claimants, should be able to provide the relevant legal services at a reduced cost to each claimant as opposed to the cost of proceeding individually, given economies of scale. But that fact merely supports the conclusion that the 5% offered here is lower than what the market set outside this proceeding.

case, at the outset, were no greater than 1/10. The Court could find that the risk inherent in this matter hit that mark (or exceeded it) at the outset, as the risk far exceeded 1/10 in the midst of the action. Specifically, after the Federal Circuit had ruled against the plaintiffs on the key legal issue in related cases, the only chance of success relied on a constellation of factors that are more infrequent than Halley's Comet: (1) the Supreme Court had to grant the petition for *certiorari*, an action the Court takes in about 1.3% of cases;[51] and (2) it then had to reverse the Federal Circuit, an action the Court takes in about 71% of the cases arising from this Circuit that it actively reviews.[52] Together, these odds (.013 x. .71) means the case had a .0092 chance – roughly 1 in 100 chance – of succeeding at that moment. What is particularly impressive is that Class Counsel neither abandoned the class nor sat on the sidelines after the demoralizing moment of the Federal Circuit's *Moda* decision – indeed, they inform me that a significant amount of their lodestar is time spent helping to secure the Supreme Court reversal, demonstrating that when the chips were down and the risks of the case extremely high, they doubled down on behalf of the class.

* * *

[51] Supreme Court of the United States, *The Supreme Court at Work* ("Each Term, approximately 5,000-7,000 new cases are filed in the Supreme Court. . . . Plenary review, with oral arguments by attorneys, is currently granted in about 80 of those cases each Term . . . ."), https://www.supremecourt.gov/about/courtatwork.aspx.

[52] Ballotpedia, *SCOTUS case reversal rates (2007-Present)*, available at https://ballotpedia.org/SCOTUS_case_reversal_rates_(2007_-_Present).

45. I have testified that:

- Class Counsel's lodestar reflects reasonable billing rates and hours.

- Class Counsel are entitled to a significant lodestar multiplier given the risks they undertook and the unparalleled results they achieved for the class; the proposed multiplier is high when compared to other cases but not unprecedented; and evidence suggests that 5% is commensurate with, or below, the market rate charged by other lawyers for undertaking these cases at the outset, with a 10-level multiplier implying the case had a 1/10 chance of achieving this remarkable outcome at its outset, a conclusion that the Court could reasonably draw.

April 28, 2023 William B. Rubenstein

EXHIBIT A

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ACADEMIC EMPLOYMENT

HARVARD LAW SCHOOL, CAMBRIDGE MA

Bruce Bromley Professor of Law	2018-present
Sidley Austin Professor of Law	2011-2018
Professor of Law	2007-2011
Bruce Bromley Visiting Professor of Law	2006-2007
Visiting Professor of Law	2003-2004, 2005-2006
Lecturer in Law	1990-1996

Courses: Civil Procedure; Class Action Law; Remedies
Awards: 2012 Albert M. Sacks-Paul A. Freund Award for Teaching Excellence
Membership: American Law Institute; American Bar Foundation Fellow

UCLA SCHOOL OF LAW, LOS ANGELES CA

Professor of Law	2002-2007
Acting Professor of Law	1997-2002

Courses: Civil Procedure; Complex Litigation; Remedies
Awards: 2002 Rutter Award for Excellence in Teaching
Top 20 California Lawyers Under 40, *Calif. Law Business* (2000)

STANFORD LAW SCHOOL, STANFORD CA

Acting Associate Professor of Law	1995-1997

Courses: Civil Procedure; Federal Litigation
Awards: 1997 John Bingham Hurlbut Award for Excellence in Teaching

YALE LAW SCHOOL, NEW HAVEN CT

Lecturer in Law	1994, 1995

BENJAMIN N. CARDOZO SCHOOL OF LAW, NEW YORK NY

Visiting Professor	Summer 2005

LITIGATION-RELATED EMPLOYMENT

AMERICAN CIVIL LIBERTIES UNION, NATIONAL OFFICE, NEW YORK NY

Project Director and Staff Counsel 1987-1995

-Litigated impact cases in federal and state courts throughout the United States.
-Supervised a staff of attorneys at the national office, oversaw work of ACLU attorneys around the country and coordinated work with private cooperating counsel nationwide.
-Significant experience in complex litigation practice and procedural issues; appellate litigation; litigation coordination, planning and oversight.

HON. STANLEY SPORKIN, U.S. DISTRICT COURT, WASHINGTON DC

Law Clerk	1986-87

PUBLIC CITIZEN LITIGATION GROUP, WASHINGTON DC

Intern	Summer 1985

EDUCATION

HARVARD LAW SCHOOL, CAMBRIDGE MA
J.D., 1986, *magna cum laude*

YALE COLLEGE, NEW HAVEN CT
B.A., 1982, *magna cum laude*
Editor-in-Chief, YALE DAILY NEWS

SELECTED COMPLEX LITIGATION EXPERIENCE

Professional Service and Highlighted Activities

◊ *Author,* NEWBERG AND RUBENSTEIN ON CLASS ACTIONS (6th ed. 2022); NEWBERG ON CLASS ACTIONS (sole author since 2008, sole author of entirely re-written Fifth Edition (2011-2019))

◊ *Speaker,* Judicial Panel on Multidistrict Litigation, Multidistrict Litigation (MDL) Transferee Judges Conference, Palm Beach, Florida (invited to present to MDL judges on recent developments in class action law and related topics (2010-2022))

◊ *Panelist,* Federal Judicial Center, *Managing Multidistrict Litigation and Other Complex Litigation Workshop* (for federal judges) (March 15, 2018)

◊ *Amicus curiae,* authored *amicus* brief on proper approach to incentive awards in class action lawsuits in conjunction with motion for rehearing *en banc* in the United States Court of Appeals for the Eleventh Circuit (*Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. 2020))

◊ *Amicus curiae,* authored *amicus* brief in United States Supreme Court on proper approach to *cy pres* award in class action lawsuits (*Frank v. Gaos*, 139 S. Ct. 1041 (2019))

◊ *Amicus curiae,* authored *amicus* brief in California Supreme Court on proper approach to attorney's fees in common fund cases (*Laffitte v. Robert Half Int'l Inc.*, 376 P.3d 672, 687 (Cal. 2016) (noting reliance on *amicus* brief))

◊ *Amicus curiae,* authored *amicus* brief in the United States Supreme Court filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion,* No. 09-893, 131 S. Ct. 1740 (2011))

◊ *Adviser,* American Law Institute, *Project on the Principles of the Law of Aggregate Litigation*, Philadelphia, Pennsylvania

◊ *Advisory Board, Class Action Law Monitor* (Strafford Publications), 2008-

◊ *Co-Chair,* ABA Litigation Section, Mass Torts Committee, Class Action Sub-Committee, 2007

◊ *Planning Committee,* American Bar Association, Annual National Institute on Class Actions Conference, 2006, 2007

◊ "*Expert's Corner*" (Monthly Column), *Class Action Attorney Fee Digest,* 2007-2011

Judicial Appointments

◊ *Co-Mediator.* Appointed by the United States District Court for the Eastern District of Pennsylvania to help mediate a complex attorney's fees issue (*In re National Football League Players' Concussion Injury Litigation*, Civil Action No. 2:12-md-02323 (E.D. Pa. June-September 2022))

◊ *Meditator.* Appointed by the United States District Court for the Southern District of New York to mediate a set of complex issues in civil rights class action (*Grottano v. City of New York*, Civil Action No. 15-cv-9242 (RMB) (May 2020-January 2021))

◊ *Expert consultant.* Appointed by the United States District Court for the Northern District of Ohio, and Special Master, as an expert consultant on class certification and attorney's fees issues in complex multidistrict litigation (*National Prescription Opiate Litigation,* MDL 2804, Civil Action No. 1:17-md-2804 (N.D. Ohio Aug. 13, 2018; June 29, 2019; March 10, 2020))

◊ *Expert witness.* Appointed by the United States District Court for the Eastern District of Pennsylvania as an expert witness on attorney's fees in complex litigation, with result that the Court adopted recommendations (*In re National Football League Players' Concussion Injury Litigation*, 2018 WL 1658808 (E.D. Pa. April 5, 2018))

◊ *Appellate counsel.* Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom.*, *DeValerio v. Olinski*, 673 F. App'x 87, 90 (2d Cir. 2016))

Expert Witness

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Benson, et al. v. DoubleDown Interactive, LLC, et al.,* Civil Action No. 2:18-cv-00525 (W.D. Wash. 2023))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fees request (*In re Twitter Inc. Securities Litigation,* Case No. 4:16-cv-05314 (N.D. Cal. October 13, 2022))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Ferrando v. Zynga Inc.,* Civil Action No. 2:22-cv-00214 (W.D. Wash. 2022))

◊ Submitted an expert witness declaration concerning reasonableness of proposed settlement in nationwide securities class action, in light of competing litigation (*In re Lyft, Inc. Securities Litigation,* Case No. 4:19-cv-02690 (N.D. Cal. August 19, 2022))

◊ Submitted an expert witness declaration concerning reasonableness of common benefit attorney's fee request (*In re: Zetia (Ezetimibe) Antitrust Litigation*, MDL No. 2836, 2:18-md-2836 (E.D. Va. July 12, 2022))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Reed v. Scientific Games Corp.,* Civil Action No. 2:18-cv-00565 (W.D. Wash. 2022))

◊ Submitted an expert witness declaration concerning reasonableness of proposed settlement in nationwide securities class action, in light of competing litigation (*In re Micro Focus International PLC Securities Litigation,* Master File No. 1:18-cv-06763 (S.D.N.Y., May 4, 2022))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Americredit Financial Services, Inc., d/b/a/ GM Financial v. Bell,* No. 15SL-AC24506-01 (Twenty-First Judicial Circuit Court, St. Louis County, Missouri, March 13, 2022))

◊ Submitted an expert witness declaration concerning reasonableness of common benefit attorney's fee request (*In re: Marjory Stoneman Douglas High School Shooting FTCA Litigation*, Case No. 0:18-cv-62758 (S.D. Fla. February 7, 2022))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*City of Westland Police & Fire Ret. Sys. v. MetLife, Inc.*, No. 12-CV-0256 (LAK), 2021 WL 2453972(S.D.N.Y. June 15, 2021))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Kater v. Churchill Downs,* Civil Action No. 2:15-cv-00612 (W.D. Wash. 2020))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Wilson v. Playtika, LTD,* Civil Action No. 3:18-cv-05277 (W.D. Wash. 2020))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Wilson v. Huuuge,* Civil Action No. 3:18-cv-005276 (W.D. Wash. 2020))

◊ Submitted expert witness declarations and testified at fairness hearing concerning (1) reasonableness of attorney's fee request and (2) empirical data confirming robustness of class claims rate (*In re Facebook Biometric Information Privacy Litigation,* Civil Action No. 3:15-cv-03747-JD (N.D. Cal. (2020))

◊ Retained as an expert witness on issues regarding the Lead Plaintiff/Lead Counsel provisions of the Private Securities Litigation Reform Act of 1995 (PSLRA) (*In re Apple Inc. Securities Litigation.,* Civil Action No. 4:19-cv-02033-YGR (N.D. Cal. (2020))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Amador v. Baca*, Civil Action No. 2:10-cv-01649 (C.D. Cal. February 9, 2020))

◊ Submitted an expert witness declaration concerning reasonableness of class action settlement (*In re: Columbia Gas Cases*, Civil Action No. 1877CV01343G (Mass. Super. Ct., Essex County, February 6, 2020))

◊ Submitted an expert witness declaration, and reply declaration, concerning reasonableness of attorney's fee request (*Hartman v. Pompeo*, Civil Action No. 1:77-cv-02019 (D.D.C. October 10, 2019; February 28, 2020))

◊ Submitted an expert witness declaration concerning reasonableness of common benefit attorney's fee request (*In re: Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724, 16-MD-2724 (E.D. Pa. May 15, 2019))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, relied upon by court in awarding fees (*Hale v. State Farm Mut. Auto. Ins. Co*., 2018 WL 6606079 (S.D. Ill. Dec. 16, 2018))

◊ Submitted expert witness affidavit and testified at fairness hearing concerning second phase fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.,* Case No. 217-2010-CV-00294 (New Hampshire Superior Court, Merrimack County (2018))

◊ Submitted expert witness report – and rebutted opposing expert – concerning class certification issues for proposed class action within a bankruptcy proceeding (*In re Think Finance,* Case No. 17-33964 (N.D. Tex. Bankrpt. 2018))

◊ Submitted expert witness declaration concerning specific fee issues raised by Court at fairness hearing and second declaration in response to report of Special Master (*In re Anthem, Inc. Data Breach Litigation,* Case No. 15-MD-02617-LHK (N.D. Cal. 2018))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request following plaintiffs' verdict at trial in consumer class action (*Krakauer v. Dish Network, L.L.C.,* Civil Action No. 1:14-cv-00333 (M.D.N.C. 2018))

◊ Submitted three expert witness declarations and deposed by/testified in front of Special Master in investigation concerning attorney's fee issues (*Arkansas Teacher Ret. Sys. v. State St. Bank & Trust Co.*, Civ. Action No. 1:11-cv-10230 (D. Mass. 2017-18))

◊ Retained as an expert witness on issues regarding the preclusive effect of a class action judgment on later cases (*Sanchez v. Allianz Life Insurance Co. of N. Amer.,* Case No. BC594715 (California Superior Court, Los Angeles County (2018))

◊ Retained as an expert witness and submitted report explaining meaning of the denial of a motion to dismiss in American procedure to foreign tribunals (*In re Qualcomm Antitrust Matter,* declaration submitted to tribunals in Korea and Taiwan (2017))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in 3.0-liter settlement, referenced by court in awarding fees (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,* 2017 WL 3175924 (N.D. Cal. July 21, 2017))

◊ Retained as an expert witness concerning impracticability of joinder in antitrust class action (*In re Celebrex (Celecoxib) Antitrust Litigation,* Civ. Action No. 2-14-cv-00361 (E.D. Va. (2017))

◊ Submitted an expert witness declaration and deposed concerning impracticability of joinder in antitrust class action (*In re Modafinil Antitrust Litigation,* Civ. Action No. 2-06-cv-01797 (E.D. Pa. (2017))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in 2.0-liter settlement (*In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability*

Litigation, 2017 WL 1047834 (N.D. Cal., March 17, 2017))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*Aranda v. Caribbean Cruise Line, Inc.,* 2017 WL 1368741 (N.D. Ill., April 10, 2017))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*McKinney v. United States Postal Service*, Civil Action No. 1:11-cv-00631 (D.D.C. (2016))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Johnson v. Caremark RX, LLC,* Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Geancopoulos v. Philip Morris USA Inc.,* Civil Action No. 98-6002-BLS1 (Mass. Superior Court, Suffolk County))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request in sealed fee mediation (2016)

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Gates v. United Healthcare Insurance Company,* Case No. 11 Civ. 3487 (S.D.N.Y. 2015))

◊ Retained as an expert trial witness on class action procedures and deposed prior to trial in matter that settled before trial (*Johnson v. Caremark RX, LLC,* Case No. 01-CV-2003-6630, Alabama Circuit Court, Jefferson County (2016))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*In re High-Tech Employee Antitrust Litig*., 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015))

◊ Retained as an expert witness concerning adequacy of putative class representatives in securities class action (*Medoff v. CVS Caremark Corp.,* Case No. 1:09-cv-00554 (D.R.I. (2015))

◊ Submitted an expert witness declaration concerning reasonableness of proposed class action settlement, settlement class certification, attorney's fees, and incentive awards (*Fitzgerald Farms, LLC v. Chespeake Operating, L.L.C.,* Case No. CJ-2010-38, Dist. Ct., Beaver County, Oklahoma (2015))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request, referenced by court in awarding fees (*Asghari v. Volkswagen Grp. of Am., Inc*., 2015 WL 12732462 (C.D. Cal. May 29, 2015))

◊ Submitted an expert witness declaration concerning propriety of severing individual cases from class action and resulting statute of repose ramifications (*In re: American International Group, Inc. 2008 Securities Litigation,* 08-CV-4772-LTS-DCF (S.D.N.Y. (2015))

◊ Retained by Fortune Global 100 Corporation as an expert witness on fee matter that settled before testimony (2015)

◊ Submitted an expert witness declaration and testified at Special Master proceeding concerning reasonableness of attorney's fee allocation in sealed fee mediation (2014-2015)

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*In re: Hyundai and Kia Fuel Economy Litigation,* MDL 13-02424 (C.D. Cal. (2014))

◊ Submitted an expert witness declaration concerning reasonableness of attorney's fee request (*Ammari Electronics v. Pacific Bell Directory*, Case No. RG0522096, California Superior Court, Alameda County (2014))

◊ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Deutsche Bank Securities, Inc.,* Case No. CGC-10-497839, California Superior Court, San Francisco County (2014))

◊ Submitted an expert witness declaration and deposed concerning plaintiff class action practices under the Private Securities Litigation Reform Act of 1995 (PSLRA), as related to statute of limitations question (*Federal Home Loan Bank of San Francisco v. Credit Suisse Securities (USA) LLC,* Case No. CGC-10-497840, California Superior Court, San Francisco County (2014))

◊ Retained as expert witness on proper level of common benefit fee in MDL (*In re Neurontin Marketing and Sales Practice Litigation,* Civil Action No. 04-10981, MDL 1629 (D. Mass. (2014))

◊ Submitted an expert witness declaration concerning Rule 23(g) selection of competing counsel, referenced by court in deciding issue (*White v. Experian Information Solutions, Inc.,* 993 F. Supp. 2d 1154 (C.D. Cal. (2014))

◊ Submitted an expert witness declaration concerning proper approach to attorney's fees under California law in a statutory fee-shifting case (*Perrin v. Nabors Well Services Co.,* Case No. 1220037974, Judicial Arbitration and Mediation Services (JAMS) (2013))

◊ Submitted an expert witness declaration concerning fairness and adequacy of proposed nationwide class action settlement (*Verdejo v. Vanguard Piping Systems,* Case No. BC448383, California Superior Court, Los Angeles County (2013))

◊ Retained as an expert witness regarding fairness, adequacy, and reasonableness of proposed nationwide consumer class action settlement (*Herke v. Merck,* No. 2:09-cv-07218, MDL Docket No. 1657 (*In re Vioxx Products Liability Litigation*) (E. D. La. (2013))

◊ Retained as an expert witness concerning ascertainability requirement for class certification and related issues (*Henderson v. Acxiom Risk Mitigation, Inc.,* Case No. 3:12-cv-00589-REP (E.D. Va. (2013))

◊ Submitted an expert witness declaration concerning reasonableness of class action settlement and performing analysis of Anet expected value@ of settlement benefits, relied on by court in approving

settlement (*In re Navistar Diesel Engine Products Liab. Litig.*, 2013 WL 10545508 (N.D. Ill. July 3, 2013))

◊ Submitted an expert witness declaration concerning reasonableness of class action settlement and attorney's fee request (*Commonwealth Care All. v. Astrazeneca Pharm. L.P.*, 2013 WL 6268236 (Mass. Super. Aug. 5, 2013))

◊ Submitted an expert witness declaration concerning propriety of preliminary settlement approval in nationwide consumer class action settlement (*Anaya v. Quicktrim, LLC,* Case No. CIVVS 120177, California Superior Court, San Bernardino County (2012))

◊ Submitted expert witness affidavit concerning fee issues in common fund class action (*Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Assoc.,* Case No. 217-2010-CV-00294, New Hampshire Superior Court, Merrimack County (2012))

◊ Submitted expert witness declaration and deposed concerning class certification issues in nationwide fraud class action, relied upon by the court in affirming class certification order (*CVS Caremark Corp. v. Lauriello,* 175 So. 3d 596, 609-10 (Ala. 2014))

◊ Submitted expert witness declaration in securities class action concerning value of proxy disclosures achieved through settlement and appropriate level for fee award (*Rational Strategies Fund v. Jhung,* Case No. BC 460783, California Superior Court, Los Angeles County (2012))

◊ Submitted an expert witness report and deposed concerning legal malpractice in the defense of a class action lawsuit (*KB Home v. K&L Gates, LLP,* Case No. BC484090, California Superior Court, Los Angeles County (2011))

◊ Retained as expert witness on choice of law issues implicated by proposed nationwide class certification (*Simon v. Metropolitan Property and Cas. Co.,* Case No. CIV-2008-1008-W (W.D. Ok. (2011))

◊ Retained, deposed, and testified in court as expert witness in fee-related dispute (*Blue, et al. v. Hill*,Case No. 3:10-CV-02269-O-BK (N.D. Tex. (2011))

◊ Retained as an expert witness in fee-related dispute (*Furth v. Furth*, Case No. C11-00071-DMR (N.D. Cal. (2011))

◊ Submitted expert witness declaration concerning interim fee application in complex environmental class action (*DeLeo v. Bouchard Transportation,* Civil Action No. PLCV2004-01166-B, Massachusetts Superior Court (2010))

◊ Retained as an expert witness on common benefit fee issues in MDL proceeding in federal court (*In re Vioxx Products Liability Litigation*, MDL Docket No. 1657 (E.D. La. (2010))

◊ Submitted expert witness declaration concerning fee application in securities case, referenced by court in awarding fee (*In re AMICAS, Inc. Shareholder Litigation,* 27 Mass. L. Rptr. 568 (Mass. Sup. Ct. (2010))

◊ Submitted an expert witness declaration concerning fee entitlement and enhancement in non-common

fund class action settlement, relied upon by the court in awarding fees (*Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172-74 (C.D. Cal. 2010))

◊ Submitted an expert witness declaration concerning class action fee allocation among attorneys (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning settlement approval and fee application in wage and hour class action settlement (*Salvas v. Wal-Mart*, Civil Action No. 01-03645, Massachusetts Superior Court (2010))

◊ Submitted an expert witness declaration concerning objectors' entitlement to attorney's fees (*Rodriguez v. West Publishing Corp.,* Case No. CV-05-3222 (C.D. Cal. (2010))

◊ Submitted an expert witness declaration concerning fairness of settlement provisions and processes, relied upon by the Ninth Circuit in reversing district court's approval of class action settlement (*Radcliffe v. Experian Inform. Solutions Inc.*, 715 F.3d 1157, 1166 (9th Cir. 2013))

◊ Submitted an expert witness declaration concerning attorney's fees in class action fee dispute, relied upon by the court in deciding fee issue (*Ellis v. Toshiba America Information Systems, Inc.*, 218 Cal. App. 4th 853, 871, 160 Cal. Rptr. 3d 557, 573 (2d Dist. 2013))

◊ Submitted an expert witness declaration concerning common benefit fee in MDL proceeding in federal court (*In re Genetically Modified Rice Litigation*, MDL Docket No. 1811 (E.D. Mo. (2009))

◊ Submitted an expert witness declaration concerning settlement approval and fee application in national MDL class action proceeding (*In re Wal-Mart Wage and Hour Employment Practices Litigation*, MDL Docket No.1735 (D. Nev. (2009))

◊ Submitted an expert witness declaration concerning fee application in national MDL class action proceeding, referenced by court in awarding fees (*In re Dept. of Veterans Affairs (VA) Data Theft Litigation*, 653 F. Supp.2d 58 (D.D.C. (2009))

◊ Submitted an expert witness declaration concerning common benefit fee in mass tort MDL proceeding in federal court (*In re Kugel Mesh Products Liability Litigation*, MDL Docket No. 1842 (D. R.I. (2009))

◊ Submitted an expert witness declaration and supplemental declaration concerning common benefit fee in consolidated mass tort proceedings in state court (*In re All Kugel Mesh Individual Cases*, Master Docket No. PC-2008-9999, Superior Court, State of Rhode Island (2009))

◊ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Warner v. Experian Information Solutions, Inc.*, Case No. BC362599, California Superior Court, Los Angeles County (2009))

◊ Submitted an expert witness declaration concerning process for selecting lead counsel in complex MDL antitrust class action (*In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL Docket No. 1869 (D. D.C. (2008))

◊ Retained, deposed, and testified in court as expert witness on procedural issues in complex class action

(*Hoffman v. American Express*, Case No. 2001-022881, California Superior Court, Alameda County (2008))

◊ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Salsgiver v. Yahoo! Inc.*, Case No. BC367430, California Superior Court, Los Angeles County (2008))

◊ Submitted an expert witness declaration concerning fee application in wage and hour class action (*Voight v. Cisco Systems, Inc.*, Case No. 106CV075705, California Superior Court, Santa Clara County (2008))

◊ Retained and deposed as expert witness on fee issues in attorney fee dispute (*Stock v. Hafif,* Case No. KC034700, California Superior Court, Los Angeles County (2008))

◊ Submitted an expert witness declaration concerning fee application in consumer class action (*Nicholas v. Progressive Direct*, Civil Action No. 06-141-DLB (E.D. Ky. (2008))

◊ Submitted expert witness declaration concerning procedural aspects of national class action arbitration (*Johnson v. Gruma Corp.,* JAMS Arbitration No. 1220026252 (2007))

◊ Submitted expert witness declaration concerning fee application in securities case (*Drulias v. ADE Corp.,* Civil Action No. 06-11033 PBS (D. Mass. (2007))

◊ Submitted expert witness declaration concerning use of expert witness on complex litigation matters in criminal trial (*U.S. v. Gallion, et al*., No. 07-39 (E. D. Ky. (2007))

◊ Retained as expert witness on fees matters (*Heger v. Attorneys' Title Guaranty Fund, Inc.,* No. 03-L-398, Illinois Circuit Court, Lake County, IL (2007))

◊ Retained as expert witness on certification in statewide insurance class action (*Wagner v. Travelers Property Casualty of America*, No. 06CV338, Colorado District Court, Boulder County, CO (2007))

◊ Testified as expert witness concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corporate Derivative Litigation*, Case No. 01098905, California Superior Court, Santa Barbara Cty, CA (2006))

◊ Submitted expert witness declaration concerning fee application in common fund shareholder derivative case (*In Re Tenet Health Care Corp. Corporate Derivative Litigation*, Case No. CV-03-11 RSWL (C.D. Cal. (2006))

◊ Retained as expert witness as to certification of class action (*Canova v. Imperial Irrigation District*, Case No. L-01273, California Superior Court, Imperial Cty, CA (2005))

◊ Retained as expert witness as to certification of nationwide class action (*Enriquez v. Edward D. Jones & Co.,* Missouri Circuit Court, St. Louis, MO (2005))

◊ Submitted expert witness declaration on procedural aspects of international contract litigation filed in court in Korea (*Estate of Wakefield v. Bishop Han & Jooan Methodist Church* (2002))

◊ Submitted expert witness declaration as to contested factual matters in case involving access to a public forum (*Cimarron Alliance Foundation v. The City of Oklahoma City,* Case No. Civ. 2001-1827-C (W.D. Ok. (2002))

◊ Submitted expert witness declaration concerning reasonableness of class certification, settlement, and fees (*Baird v. Thomson Elec. Co.*, Case No. 00-L-000761, Cir. Ct., Mad. Cty, IL (2001))

Expert Consultant

◊ Retained as an expert in confidential matter pending in international arbitration forum concerning litigation financing issues in complex litigation (2022-2023)

◊ Retained as an expert in matter pending in several federal courts concerning attorney's fees in class action setting (2022-2023)

◊ Retained as an expert witness on class action issues in complex mass tort MDL (*In re Roundup Products Liability Litigation,* Civil Action No. 3:16-md-02741-VC (N.D. Cal. (2020))

◊ Provided expert consulting services to Harvard Law School Predatory Lending and Consumer Protection Clinic concerning complex class action issues in bankruptcy (*In re: ITT Educational Services Inc.,* Case No. 16-07207-JMC-7A (Bank. S.D. Ind. 2020))

◊ Provided expert consulting services to law firm concerning complex federal procedural and bankruptcy issues (*Homaidan v. Navient Solutions, LLC*, Adv. Proc. No. 17-1085 (Bank. E.D.N.Y 2020))

◊ Provided expert consulting services to the ACLU on multi-district litigation issues arising out of various challenges to President Trump's travel ban and related policies (*In re American Civil Liberties Union Freedom of Information Act Requests Regarding Executive Order 13769*, Case Pending No. 28, Judicial Panel on Multidistrict Litigation (2017); *Darweesh v. Trump*, Case No. 1:17-cv-00480-CBA-LB (E.D.N.Y. (2017))

◊ Provided expert consulting services to law firm regarding billing practices and fee allocation issues in nationwide class action (2016)

◊ Provided expert consulting services to law firm regarding fee allocation issues in nationwide class action (2016)

◊ Provided expert consulting services to the ACLU of Southern California on class action and procedural issues arising out of challenges to municipality's treatment of homeless persons with disabilities (*Glover v. City of Laguna Beach*, Case No. 8:15-cv-01332-AG-DFM (C.D. Cal. (2016))

◊ Retained as an expert consultant on class certification issues (*In re: Facebook, Inc., IPO Securities and Derivative Litigation*, No. 1:12-md-2389 (S.D.N.Y. 2015))

◊ Provided expert consulting services to lead class counsel on class certification issues in nationwide class action (2015)

◊ Retained by a Fortune 100 Company as an expert consultant on class certification issues

◊ Retained as an expert consultant on class action and procedure related issues (*Lange et al v. WPX Energy Rocky Mountain LLC*, Case No. 2:13-cv-00074-ABJ (D. Wy. (2013))

◊ Retained as an expert consultant on class action and procedure related issues (*Flo & Eddie, Inc., v. Sirius XM Radio, Inc.*, Case No. CV 13-5693 (C.D. Cal. (2013))

◊ Served as an expert consultant on substantive and procedural issues in challenge to legality of credit card late and over-time fees (*In Re Late Fee and Over-Limit Fee Litigation*, 528 F.Supp.2d 953 (N.D. Cal. 2007), *aff'd*, 741 F.3d 1022 (9th Cir. 2014))

◊ Retained as an expert on Class Action Fairness Act (CAFA) removal issues and successfully briefed and argued remand motion based on local controversy exception (*Trevino, et al. v. Cummins, et al.*, No. 2:13-cv-00192-JAK-MRW (C. D. Cal. (2013))

◊ Retained as an expert consultant on class action related issues by consortium of business groups (*In re Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico on April 20, 2010*, MDL No. 2179 (E.D. La. (2012))

◊ Provided presentation on class certification issues in nationwide medical monitoring classes (*In re: National Football League Players' Concussion Injury Litigation,* MDL No. 2323, Case No. 2:12-md-02323-AB (E.D. Pa. (2012))

◊ Retained as an expert consultant on class action related issues in mutli-state MDL consumer class action (*In re Sony Corp. SXRD Rear Projection Television Marketing, Sales Practices & Prod. Liability Litig.*, MDL No. 2102 (S.D. N.Y. (2009))

◊ Retained as an expert consultant on class action certification, manageability, and related issues in mutli-state MDL consumer class action (*In re Teflon Prod. Liability Litig.*, MDL No. 1733 (S.D. Iowa (2008))

◊ Retained as an expert consultant/co-counsel on certification, manageability, and related issues in nationwide anti-trust class action (*Brantley v. NBC Universal*, No.- CV07-06101 (C.D. Cal. (2008))

◊ Retained as an expert consultant on class action issues in complex multi-jurisdictional construction dispute (*Antenucci, et al., v. Washington Assoc. Residential Partner, LLP, et al.,* Civil No. 8-04194 (E.D. Pa. (2008))

◊ Retained as an expert consultant on complex litigation issues in multi-jurisdictional class action litigation (*McGreevey v. Montana Power Company*, No. 08-35137, U.S. Court of Appeals for the Ninth Circuit (2008))

◊ Retained as an expert consultant on class action and attorney fee issues in nationwide consumer class action (*Figueroa v. Sharper Image*, 517 F.Supp.2d 1292 (S.D. Fla. 2007))

◊ Retained as an expert consultant on attorney's fees issue in complex class action case (*Natural Gas Anti-Trust Cases Coordinated Proceedings*, D049206, California Court of Appeals, Fourth District

(2007))

◊ Retained as an expert consultant on remedies and procedural matters in complex class action (*Sunscreen Cases*, JCCP No. 4352, California Superior Court, Los Angeles County (2006))

◊ Retained as an expert consultant on complex preclusion questions in petition for review to California Supreme Court (*Mooney v. Caspari,* Supreme Court of California (2006))

◊ Retained as an expert consultant on attorney fee issues in complex common fund case (*In Re DietDrugs (Phen/Fen) Products Liability Litigation* (E. D. Pa. (2006))

◊ Retained as an expert consultant on procedural matters in series of complex construction lien cases (*In re Venetian Lien Litigation*, Supreme Court of the State of Nevada (2005-2006))

◊ Served as an expert consultant on class certification issues in countywide class action (*Beauchamp v. Los Angeles Cty. Metropolitan Transp. Authority*, (C.D. Cal. 2004))

◊ Served as an expert consultant on class certification issues in state-wide class action (*Williams v. State of California*, Case No. 312-236, Cal. Superior Court, San Francisco)

◊ Served as an exert consultant on procedural aspects of complex welfare litigation (*Allen v. Anderson*, 199 F.3d 1331 (9th Cir. 1999))

Ethics Opinions

◊ Retained to provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2017))

◊ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2013))

◊ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2011))

◊ Provided expert opinion on issues of professional ethics in implicated by nationwide class action practice (*In re Professional Responsibility Inquiries* (2010))

◊ Provided expert opinion on issues of professional ethics implicated by complex litigation matter (*In re Professional Responsibility Inquiries* (2010))

◊ Provided expert opinion on issues of professional ethics in complex litigation matter (*In re Professional Responsibility Inquiries* (2007))

Publications on Class Actions & Procedure

◊ NEWBERG AND RUBENSTEIN ON CLASS ACTIONS (6th ed. 2022); NEWBERG ON CLASS ACTIONS (sole author since 2008, sole author of entirely re-written Fifth Edition (2011-2019)

◊ *Deconstitutionalizing Personal Jurisdiction: A Separation of Powers Approach*, Harvard Public Law Working Paper No. 20-34, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3715068.

◊ *The Negotiation Class: A Cooperative Approach to Class Actions Involving Large Stakeholders*, 99 TEXAS L. REV.73 (2020) (with Francis E. McGovern)

◊ *Profit for Costs*, 63 DEPAUL L. REV. 587 (2014) (with Morris A. Ratner)

◊ *Procedure and Society: An Essay for Steve Yeazell*, 61 U.C.L.A. REV. DISC. 136 (2013)

◊ *Supreme Court Round-Up – Part II*, 5 CLASS ACTION ATTORNEY FEE DIGEST 331 (September 2011)

◊ *Supreme Court Round-Up – Part I*, 5 CLASS ACTION ATTORNEY FEE DIGEST 263 (July-August 2011)

◊ *Class Action Fee Award* Procedures, 5 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2011)

◊ *Benefits of Class Action Lawsuits*, 4 CLASS ACTION ATTORNEY FEE DIGEST 423 (November 2010)

◊ *Contingent Fees for Representing the Government: Developments in California Law*, 4 CLASS ACTION ATTORNEY FEE DIGEST 335 (September 2010)

◊ *Supreme Court Roundup*, 4 CLASS ACTION ATTORNEY FEE DIGEST 251 (July 2010)

◊ *SCOTUS Okays Performance Enhancements in Federal Fee Shifting Cases – At Least In Principle*, 4 CLASS ACTION ATTORNEY FEE DIGEST 135 (April 2010)

◊ *The Puzzling Persistence of the AMega-Fund@ Concept*, 4 CLASS ACTION ATTORNEY FEE DIGEST 39 (February 2010)

◊ *2009: Class Action Fee Awards Go Out With A Bang, Not A Whimper*, 3 CLASS ACTION ATTORNEY FEE DIGEST 483 (December 2009)

◊ *Privatizing Government Litigation: Do Campaign Contributors Have An Inside Track?*, 3 CLASS ACTION ATTORNEY FEE DIGEST 407 (October 2009)

◊ *Supreme Court Preview*, 3 CLASS ACTION ATTORNEY FEE DIGEST 307 (August 2009)

◊ *Supreme Court Roundup*, 3 CLASS ACTION ATTORNEY FEE DIGEST 259 (July 2009)

◊ *What We Now Know About How Lead Plaintiffs Select Lead Counsel (And Hence Who Gets Attorney's Fees!) in Securities Cases*, 3 CLASS ACTION ATTORNEY FEE DIGEST 219 (June 2009)

◊ *Beware Of Ex Ante Incentive Award Agreements*, 3 CLASS ACTION ATTORNEY FEE DIGEST 175 (May 2009)

◊ *On What a "Common Benefit Fee" Is, Is Not, and Should Be*, 3 CLASS ACTION ATTORNEY FEE DIGEST

87 (March 2009)

◊ *2009: Emerging Issues in Class Action Fee Awards*, 3 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2009)

◊ *2008: The Year in Class Action Fee Awards*, 2 CLASS ACTION ATTORNEY FEE DIGEST 465 (December 2008)

◊ *The Largest Fee Award – Ever!*, 2 CLASS ACTION ATTORNEY FEE DIGEST 337 (September 2008)

◊ *Why Are Fee Reductions Always 50%?: On The Imprecision of Sanctions for Imprecise Fee Submissions*, 2 CLASS ACTION ATTORNEY FEE DIGEST 295 (August 2008)

◊ *Supreme Court Round-Up,* 2 CLASS ACTION ATTORNEY FEE DIGEST 257 (July 2008)

◊ *Fee-Shifting For Wrongful Removals: A Developing Trend?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 177 (May 2008)

◊ *You Cut, I Choose: (Two Recent Decisions About) Allocating Fees Among Class Counsel,* 2 CLASS ACTION ATTORNEY FEE DIGEST 137 (April 2008)

◊ *Why The Percentage Method?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 93 (March 2008)

◊ *Reasonable Rates: Time To Reload The (*Laffey*) Matrix,* 2 CLASS ACTION ATTORNEY FEE DIGEST 47 (February 2008)

◊ *The "Lodestar Percentage" A New Concept For Fee Decisions?,* 2 CLASS ACTION ATTORNEY FEE DIGEST 3 (January 2008)

◊ *Class Action Practice Today: An Overview, in* ABA SECTION OF LITIGATION, CLASS ACTIONS TODAY 4 (2008)

◊ *Shedding Light on Outcomes in Class Actions*, *in* CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM 20-59 (Joseph W. Doherty, Robert T. Reville, and Laura Zakaras eds. 2008) (with Nicholas M. Pace)

◊ *Finality in Class Action Litigation: Lessons From Habeas*, 82 N.Y.U. L. REV. 791 (2007)

◊ *The American Law Institute's New Approach to Class Action Objectors' Attorney's Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 347 (November 2007)

◊ *The American Law Institute's New Approach to Class Action Attorney's Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 307 (October 2007)

◊ *"The Lawyers Got More Than The Class Did!": Is It Necessarily Problematic When Attorneys Fees Exceed Class Compensation?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 233 (August 2007)

◊ *Supreme Court Round-Up,* 1 CLASS ACTION ATTORNEY FEE DIGEST 201 (July 2007)

◊ *On The Difference Between Winning and Getting Fees,* 1 CLASS ACTION ATTORNEY FEE DIGEST 163 (June 2007)

◊ *Divvying Up The Pot: Who Divides Aggregate Fee Awards, How, and How Publicly?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 127 (May 2007)

◊ *On Plaintiff Incentive Payments,* 1 CLASS ACTION ATTORNEY FEE DIGEST 95 (April 2007)

◊ *Percentage of What?,* 1 CLASS ACTION ATTORNEY FEE DIGEST 63 (March 2007)

◊ *Lodestar v. Percentage: The Partial Success Wrinkle,* 1 CLASS ACTION ATTORNEY FEE DIGEST 31 (February 2007) (with Alan Hirsch)

◊ *The Fairness Hearing: Adversarial and Regulatory Approaches*, 53 U.C.L.A. L. REV. 1435 (2006) (excerpted in THE LAW OF CLASS ACTIONS AND OTHER AGGREGATE LITIGATION 447-449 (Richard A. Nagareda ed., 2009))

◊ *Why Enable Litigation? A Positive Externalities Theory of the Small Claims Class Action*, 74 U.M.K.C. L. REV. 709 (2006)

◊ *What a "Private Attorney General" Is – And Why It Matters*, 57 VAND. L. REV. 2129(2004) (excerpted in COMPLEX LITIGATION 63-72 (Kevin R. Johnson, Catherine A. Rogers & John Valery White eds., 2009)).

◊ *The Concept of Equality in Civil Procedure*, 23 CARDOZO L. REV. 1865 (2002) (selected for the Stanford/Yale Junior Faculty Forum, June 2001)

◊ *A Transactional Model of Adjudication*, 89 GEORGETOWN L.J. 371 (2000)

◊ *The Myth of Superiority*, 16 CONSTITUTIONAL COMMENTARY 599 (1999)

◊ *Divided We Litigate: Addressing Disputes Among Clients and Lawyers in Civil Rights Campaigns*, 106 YALE L. J. 1623 (1997) (excerpted in COMPLEX LITIGATION 120-123 (1998))

Selected Presentations

◊ *Opioid Litigation: What's New and What Does it Mean for Future Litigation?,* RAND Institute for Civil Justice and RAND Kenneth R. Feinberg Center for Catastrophic Risk Management and Compensation, RAND Corporation, October 22, 2020

◊ *The Opioid Crisis: Where Do We Go From Here?"* Clifford Symposium 2020, DePaul University College of Law, Chicago, Illinois, May 28-29, 2020)

◊ *Class Action Law Update,* MDL Transferee Judges Conference, Palm Beach, Florida, October 30, 2019

◊ *Class Action Law Update,* MDL Transferee Judges Conference, Palm Beach, Florida, October 31, 2018

◊ *Attorneys' Fees Issues,* MDL Transferee Judges Conference, Palm Beach, Florida, October 30, 2018

◊ *Panelist,* Federal Judicial Center, Managing Multidistrict Litigation and Other Complex Litigation Workshop (for federal judges) (March 15, 2018)

◊ *Class Action Update,* MDL Transferee Judges Conference, Palm Beach, Florida, November 1, 2017

◊ *Class Action Update,* MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2016

◊ *Judicial Power and its Limits in Multidistrict Litigation,* American Law Institute, Young Scholars Medal Conference, *The Future of Aggregate Litigation*, New York University School of Law, New York, New York, April 12, 2016

◊ *Class Action Update & Attorneys' Fees Issues Checklist,* MDL Transferee Judges Conference, Palm Beach, Florida, October 28, 2015

◊ *Class Action Law,* 2015 Ninth Circuit/Federal Judicial Center Mid-Winter Workshop, Tucson, Arizona, January 26, 2015

◊ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2014

◊ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 29, 2013

◊ *Class Action Remedies,* ABA 2013 National Institute on Class Actions, Boston, Massachusetts, October 23, 2013

◊ *The Public Life of the Private Law: The Logic and Experience of Mass Litigation – Conference in Honor of Richard Nagareda,* Vanderbilt Law School, Nashville, Tennessee, September 27-28, 2013

◊ *Brave New World: The Changing Face of Litigation and Law Firm Finance*, Clifford Symposium 2013, DePaul University College of Law, Chicago, Illinois, April 18-19, 2013

◊ *Twenty-First Century Litigation: Pathologies and Possibilities: A Symposium in Honor of Stephen Yeazell,* UCLA Law Review, UCLA School of Law, Los Angeles, California, January 24-25, 2013

◊ *Litigation's Mirror: The Procedural Consequences of Social Relationships,* Sidley Austin Professor of Law Chair Talk, Harvard Law School, Cambridge, Massachusetts, October 17, 2012

◊ *Alternative Litigation Funding (ALF) in the Class Action Context – Some Initial Thoughts*, Alternative Litigation Funding: A Roundtable Discussion Among Experts, George Washington University Law School, Washington, D.C., May 2, 2012

◊ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Brooklyn Law School Faculty Workshop, Brooklyn, New York, April 2, 2012

◊ *The Operation of Preclusion in Multidistrict Litigation (MDL) Cases*, Loyola Law School Faculty Workshop, Los Angeles, California, February 2, 2012

◊ *Recent Developments in Class Action Law and Impact on MDL Cases,* MDL Transferee Judges Conference, Palm Beach, Florida, November 2, 2011

◊ *Recent Developments in Class Action Law,* MDL Transferee Judges Conference, Palm Beach, Florida, October 26, 2010

◊ *A General Theory of the Class Suit*, University of Houston Law Center Colloquium, Houston, Texas, February 3, 2010

◊ *Unpacking The "Rigorous Analysis" Standard,* ALI-ABA 12th Annual National Institute on Class Actions, New York, New York, November 7, 2008

◊ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of California (Boalt Hall) School of Law Civil Justice Workshop, Berkeley, California, February 28, 2008

◊ *The Public Role in Private Law Enforcement: Visions from CAFA*, University of Pennsylvania Law Review Symposium, Philadelphia, Pennsylvania, Dec. 1, 2007

◊ *Current CAFA Consequences: Has Class Action Practice Changed?,* ALI-ABA 11th Annual National Institute on Class Actions, Chicago, Illinois, October 17, 2007

◊ *Using Law Professors as Expert Witnesses in Class Action Lawsuits,* ALI-ABA 10th Annual National Institute on Class Actions, San Diego, California, October 6, 2006

◊ *Three Models for Transnational Class Actions*, Globalization of Class Action Panel, International Law Association 2006 Conference, Toronto, Canada, June 6, 2006

◊ *Why Create Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, UMKC Law Review Symposium, Kansas City, Missouri, April 7, 2006

◊ *Marks, Bonds, and Labels: Three New Proposals for Private Oversight of Class Action Settlements*, UCLA Law Review Symposium, Los Angeles, California, January 26, 2006

◊ Class Action Fairness Act, Arnold & Porter, Los Angeles, California, December 6, 2005

◊ ALI-ABA 9th Annual National Institute on Class Actions, Chicago, Illinois, September 23, 2005

◊ Class Action Fairness Act, UCLA Alumni Assoc., Los Angeles, California, September 9, 2005

◊ Class Action Fairness Act, Thelen Reid & Priest, Los Angeles, California, May 12, 2005

◊ Class Action Fairness Act, Sidley Austin, Los Angeles, California, May 10, 2005

◊ Class Action Fairness Act, Munger, Tolles & Olson, Los Angeles, California, April 28, 2005

◊ Class Action Fairness Act, Akin Gump Strauss Hauer Feld, Century City, CA, April 20, 2005

SELECTED OTHER LITIGATION EXPERIENCE

United States Supreme Court

◊ Served as *amicus curiae* and authored *amicus* brief on proper approach to *cy pres* award in class action lawsuits (*Frank v. Gaos*, No. 17-961, October Term 2018)

◊ Co-counsel on petition for writ of *certiorari* concerning application of the voluntary cessation doctrine to government defendants (*Rosebrock v. Hoffman*, 135 S. Ct.1893 (2015))

◊ Authored *amicus* brief filed on behalf of civil procedure and complex litigation law professors concerning the importance of the class action lawsuit (*AT&T Mobility v. Concepcion,* No. 09-893, 131 S. Ct. 1740 (2011)

◊ Co-counsel in constitutional challenge to display of Christian cross on federal land in California's Mojave preserve (*Salazar v. Buono*, 130 S. Ct. 1803 (2010))

◊ Co-authored *amicus* brief filed on behalf of constitutional law professors arguing against constitutionality of Texas criminal law (*Lawrence v. Texas*, 539 U.S. 558 (2003))

◊ Co-authored *amicus* brief on scope of *Miranda* (*Illinois v. Perkins*, 496 U.S. 292 (1990))

Attorney's Fees

◊ Appointed by the United States District Court for the Eastern District of Pennsylvania as an expert witness on attorney's fees in complex litigation, with result that the Court adopted recommendations (*In re National Football League Players' Concussion Injury Litigation*, 2018 WL 1658808 (E.D.Pa. April 5, 2018))

◊ Appointed by the United States District Court for the Northern District of Ohio as an expert consultant on common benefit attorney's fees issues in complex multidistrict litigation, with result that the Court adopted recommendations (*In re: Nat'l Prescription Opiate Litig*., No. 1:17-MD-2804, 2020 WL 8675733 (N.D. Ohio June 3, 2020))

◊ Appointed by the United States Court of Appeals for the Second Circuit to argue for affirmance of district court fee decision in complex securities class action, with result that the Court summarily affirmed the decision below (*In re Indymac Mortgage-Backed Securities Litigation*, 94 F.Supp.3d 517 (S.D.N.Y. 2015), *aff'd sub. nom*., *DeValerio v. Olinski*, 673 F. App'x 87, 90 (2d Cir. 2016)).

◊ Co-counsel in appeal of common benefit fees decision arising out of mass tort MDL (*In re Roundup Prod. Liab. Litig.,* Civil Action No. 21-16228, 2022 WL 16646693 (9th Cir, 2022)

◊ Served as *amicus curiae* and co-authored *amicus* brief on proper approach to attorney's fees in common fund cases (*Laffitte v. Robert Half Int'l Inc*., 1 Cal. 5th 480, 504, 376 P.3d 672, 687 (2016)).

Consumer Class Action

◊ Co-counsel in challenge to antenna-related design defect in Apple's iPhone4 (*Dydyk v. Apple Inc.,* 5:10-cv-02897-HRL, U.S. Dist. Court, N.D. Cal.) (complaint filed June 30, 2010)

◊ Co-class counsel in $8.5 million nationwide class action settlement challenging privacy concerns raised by Google's Buzz social networking program (*In re Google Buzz Privacy Litigation,* 5:10-cv-00672-JW, U.S. Dist. Court, N.D. Cal.) (amended final judgment June 2, 2011)

Disability

◊ Co-counsel in successful ADA challenge ($500,000 jury verdict) to the denial of health care in emergency room (*Howe v. Hull*, 874 F. Supp. 779, 873 F. Supp 72 (N.D. Ohio 1994))

Employment

◊ Co-counsel in challenges to scope of family benefit programs (*Ross v. Denver Dept. of Health*, 883 P.2d 516 (Colo. App. 1994)); *(Phillips v. Wisc. Personnel Com'n*, 482 N.W.2d 121 (Wisc. 1992))

Equal Protection

◊ Co-counsel in (state court phases of) successful challenge to constitutionality of a Colorado ballot initiative, Amendment 2 (*Evans v. Romer*, 882 P.2d 1335 (Colo. 1994))

◊ Co-counsel (and *amici*) in challenges to rules barring military service by gay people (*Able v. United States*, 44 F.3d 128 (2d Cir. 1995); *Steffan v. Perry*, 41 F.3d 677 (D.C. Cir. 1994) (*en banc*))

◊ Co-counsel in challenge to the constitutionality of the Attorney General of Georgia' firing of staff attorney (*Shahar v. Bowers*, 120 F.3d 211 (11th Cir. 1997))

Fair Housing

◊ Co-counsel in successful Fair Housing Act case on behalf of group home (*Hogar Agua y Vida En el Desierto v. Suarez-Medina*, 36 F.3d 177 (1st Cir. 1994))

Family Law

◊ Co-counsel in challenge to constitutionality of Florida law limiting adoption (*Cox v. Florida Dept. of Health and Rehab. Srvcs.*, 656 So.2d 902 (Fla. 1995))

◊ Co-authored *amicus* brief in successful challenge to Hawaii ban on same-sex marriages (*Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993))

First Amendment

◊ Co-counsel in successful challenge to constitutionality of Alabama law barring state funding foruniversity student groups (*GLBA v. Sessions*, 930 F.Supp. 1492 (M.D. Ala. 1996))

◊ Co-counsel in successful challenge to content restrictions on grants for AIDS education materials (*Gay Men's Health Crisis v. Sullivan*, 792 F.Supp. 278 (S.D.N.Y. 1992))

Landlord / Tenant

◊ Lead counsel in successful challenge to rent control regulation (*Braschi v. Stahl Associates Co.*, 544 N.E.2d 49 (N.Y. 1989))

Police

◊ Co-counsel in case challenging DEA brutality (*Anderson v. Branen*, 27 F.3d 29 (2d Cir. 1994))

Prison Conditions

◊ Co-counsel in appeal of class certification decision in damages class action arising out of conditions in St. Louis City Jail, *Cody, et al v. City of St. Louis,* Civil Action No. 22-2348 (8th Cir. 2023) (pending)

Racial Equality

◊ Co-authored *amicus* brief for constitutional law professors challenging constitutionality of Proposition 209 *(Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997))

SELECTED OTHER PUBLICATIONS

Editorials

◊ *Follow the Leaders*, NEW YORK TIMES, March 15, 2005

◊ *Play It Straight*, NEW YORK TIMES, October 16, 2004

◊ *Hiding Behind the Constitution*, NEW YORK TIMES, March 20, 2004

◊ *Toward More Perfect Unions,* NEW YORK TIMES, November 20, 2003 (with Brad Sears)

◊ *Don't Ask, Don't Tell, Don't Believe It*, NEW YORK TIMES, July 20, 1993

◊ *AIDS: Illness and Injustice*, WASH. POST, July 26, 1992 (with Nan D. Hunter)

BAR ADMISSIONS

◊ Massachusetts (2008)

◊ California (2004)

◊ District of Columbia (1987) (inactive)

◊ Pennsylvania (1986) (inactive)

◊ U.S. Supreme Court (1993)

◊ U.S. Court of Appeals for the First Circuit (2010)

◊ U.S. Court of Appeals for the Second Circuit (2015)

◊ U.S. Court of Appeals for the Fifth Circuit (1989)

◊ U.S. Court of Appeals for the Ninth Circuit (2004)

◊ U.S. Court of Appeals for the Eleventh Circuit (1993)

◊ U.S. Court of Appeals for the D.C. Circuit (1993)

◊ U.S. District Courts for the Central District of California (2004)

◊ U.S. District Court for the District of the District of Columbia (1989)

◊ U.S. District Court for the District of Massachusetts (2010)

◊ U.S. District Court for the Northern District of California (2010)

EXHIBIT B

Health Republic Ins. Co. v. United States
Case No. 1:16-cv-00259-KCD
U.S. Court of Federal Claims

EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN

EXHIBIT B
Partial List of Documents Reviewed by Professor Rubenstein
(other than case law and scholarship on the relevant issues)

A. *Health Republic Ins. Co. v. United States*, Case No. 1:16-cv-00259-KCD (Fed. Cl.)

1. Complaint, ECF No. 1
2. Defendant's Motion to Dismiss, ECF No. 8
3. Defendant's Motion to Dismiss Appendix 1, ECF No. 8-1
4. Defendant's Motion to Dismiss Appendix 2, ECF No. 8-2
5. Plaintiff's Opposition to Motion to Dismiss, ECF No. 11
6. Plaintiff's Opposition to Motion to Dismiss Appendix 1, ECF No. 11-1
7. Plaintiff's Opposition to Motion to Dismiss Appendix 2, ECF No. 11-2
8. Defendant's Reply in Support of Its Motion to Dismiss, ECF No. 14
9. Defendant's Reply in Support of Its Motion to Dismiss Exhibit, Risk Corridors Payments for 2015 from the Department of Health & Human Servs., ECF No. 14-1
10. Plaintiff's Motion to Appoint Quinn Emanuel Urquhart & Sullivan, LLP as Interim Class Counsel, ECF No. 15
11. Plaintiff's Motion to Appoint Quinn Emanuel Urquhart & Sullivan, LLP as Interim Class Counsel Appendix, ECF No. 15-1
12. Plaintiff's Motion for Class Certification, ECF No. 16
13. Plaintiff's Motion for Class Certification Appendix, ECF No. 16-1
14. Motion for Leave to File Amicus Curiae on Behalf of the United States House of Representatives, ECF No. 17
15. Amicus Curiae on Behalf of the United States House of Representatives, ECF No. 17-1
16. Amicus Curiae on Behalf of the United States House of Representatives Exhibit 1, ECF No. 17-2
17. Plaintiff's Opposition to Motion for Leave to File Amicus Curiae on Behalf of the United States House of Representatives, ECF No. 18
18. Plaintiff's Opposition to Motion for Leave to File Amicus Curiae on Behalf of the United States House of Representatives Appendix, ECF No. 18-1
19. Order Appointing Quinn Emanuel Urquhart & Sullivan, LLP as Interim Class Counsel, ECF No. 20
20. Order Denying Motion for Leave to File Amicus Curiae on Behalf of the United States House of Representatives, ECF No. 21
21. Defendant's Notice of Supplemental Authority, ECF No. 24
22. Plaintiff's Response to Defendant's Notice of Supplemental Authority, ECF No. 27
23. Defendant's Response to Plaintiff's Motion for Class Certification, ECF No. 28
24. Order Granting Class Certification, ECF No. 30
25. Order Denying in Part and Granting in Part Defendant's Motion to Dismiss, ECF No. 31
26. Plaintiff's Motion for Approval of Proposed Notice Plans, ECF No. 34

27. Declaration of Jennifer M. Keough Concerning Proposed Notice Program, ECF No. 34-1
28. Plaintiff's Motion for Approval of Proposed Notice Plans Exhibit 1, ECF No. 34-2
29. Defendant's Response to Plaintiff's Motion for Approval of Proposed Notice Plans, ECF No. 37
30. Order Discussing Changes to Proposed Notice, ECF No. 39
31. Plaintiff's Notice of Lodging of Updated Class Notion, ECF No. 41
32. Plaintiff's Notice of Lodging of Updated Class Notion Exhibit A, ECF No. 41-1
33. Plaintiff's Notice of Lodging of Updated Class Notion Exhibit B, ECF No. 41-2
34. Order Approving Class Action Notice Plan, ECF No. 42
35. Defendant's Answer to Complaint, ECF No. 43
36. Plaintiff's Unopposed Motion to Amend Class Notice, ECF No. 44
37. Plaintiff's Unopposed Motion to Amend Class Notice Exhibit A, ECF No. 44-1
38. Order Approving Notice Amendment, ECF No. 46
39. Plaintiff's Motion for Summary Judgment, ECF No. 47
40. Plaintiff's Motion for Summary Judgment Appendix, ECF No. 47-1
41. Plaintiff's Unopposed Motion to Supplement Class Notice, ECF No. 50
42. Plaintiff's Unopposed Motion to Supplement Class Notice Exhibit A, ECF No. 50-1
43. Order Approving Supplemental Class Notice, ECF No. 51
44. Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Cross-motion for Summary Judgment, ECF No. 52
45. Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Cross-motion for Summary Judgment Appendix, ECF No. 52-1
46. Plaintiff's Reply in Further Support of Its Motion for Summary Judgment and Opposition to Defendant's Cross-motion for Summary Judgment, ECF No. 55
47. Plaintiff's Reply in Further Support of Its Motion for Summary Judgment and Opposition to Defendant's Cross-motion for Summary Judgment Appendix, ECF No. 55-1
48. Defendant's Reply in Support of Its Cross-motion for Summary Judgment, ECF No. 56
49. Defendant's Reply in Support of Its Cross-motion for Summary Judgment Appendix, ECF No. 56-1
50. Plaintiff's Notice of Lodging of Certification of Class Membership, ECF No. 57
51. Plaintiff's Notice of Lodging of Certification of Class Membership Exhibit A, ECF No. 57-1
52. Plaintiff's Notice of Lodging of Certification of Class Membership Exhibit B, ECF No. 57-2
53. Plaintiff's Notice of Lodging of Certification of Class Membership Exhibit C, ECF No. 57-3
54. Plaintiff's Memorandum in Response to Court's Order Regarding Telephonic Status Conference, ECF No. 60
55. Order Staying Proceedings on Cross-motions for Summary Judgment, ECF No. 62
56. Joint Status Report, ECF No. 66
57. Joint Status Report Exhibit A, ECF No. 66-1
58. Joint Status Report and Request to Continue Stay of Proceedings, ECF No. 68
59. Order on Status Report Granting Continued Stay of Proceedings, ECF No. 69
60. Plaintiff's Unopposed Motion to Include Additional Class Members, ECF No. 70

61. Plaintiff's Unopposed Motion to Include Additional Class Members Exhibit A, ECF No. 70-1
62. Order Approving Additional Class Members, ECF No. 71
63. Joint Status Report, ECF No. 72
64. Joint Status Report Exhibit A, ECF No. 72-1
65. Joint Status Report Exhibit B, ECF No. 72-2
66. Joint Status Report, ECF No. 76
67. Joint Status Report, ECF No. 78
68. Joint Motion to Divide Class into Subclasses and Stipulation for Entry of Partial Judgment as to One Subclass, ECF No. 80
69. Joint Motion to Divide Class into Subclasses and Stipulation for Entry of Partial Judgment as to One Subclass Exhibit A, ECF No. 80-1
70. Joint Status Report, ECF No. 81
71. Order Granting Motion to Divide Class into Subclasses and Granting Partial Judgment as to One Subclass, ECF No. 82
72. Rule 54(b) Judgment for Non-Dispute Subclass, ECF No. 83
73. Class Counsel's Motion for Approval of Attorney's Fee Request and Class Representative Incentive Award, ECF No. 84
74. Class Counsel's Motion for Approval of Attorney's Fee Request and Class Representative Incentive Award Exhibit 1, ECF No. 84-1
75. Class Counsel's Motion for Approval of Attorney's Fee Request and Class Representative Incentive Award Exhibit 2, ECF No. 84-2
76. Class Counsel's Motion for Approval of Attorney's Fee Request and Class Representative Incentive Award Exhibit 3, ECF No. 84-3
77. Class Counsel's Motion for Approval of Attorney's Fee Request and Class Representative Incentive Award Exhibit 4, ECF No. 84-4
78. Class Counsel's Motion for Approval of Attorney's Fee Request and Class Representative Incentive Award Exhibit 5, ECF No. 84-5
79. Opposition and Objection to Class Counsel's Motion for Approval of Attorney's Fee Request, ECF No. 89
80. Class Counsel's Reply to Opposition and Objection, ECF No. 93
81. Class Counsel's Reply to Opposition and Objection Exhibit 1, ECF No. 93-1
82. Class Counsel's Reply to Opposition and Objection Exhibit 2, ECF No. 93-2
83. Class Counsel's Reply to Opposition and Objection Exhibit 3, ECF No. 93-3
84. Class Counsel's Reply to Opposition and Objection Exhibit 4, ECF No. 93-4
85. Class Counsel's Reply to Opposition and Objection Exhibit 5, ECF No. 93-5
86. Class Counsel's Motion for Approval of Attorney's Fee Request for the Freelancers Subclass, ECF No. 130
87. Class Counsel's Motion for Approval of Attorney's Fee Request for the Arches Subclass, ECF No. 134
88. Opinion and Order Approving in Part and Denying in Part Class Counsel's Requests for Fees, ECF No. 138
89. Order Approving Fees for Freelancers Subclass, ECF No. 139
90. Order Approving Fees for Arches Subclass, ECF No. 140
91. Objectors' Notice of Appeal, ECF No. 144
92. Class Counsel's Motion for Approval of Attorney's Fee Request for the Meritus Subclass, ECF No. 160

93. Class Counsel's Motion for Approval of Attorney's Fee Request for the Meritus Subclass Exhibit 1, ECF No. 160-1
94. Order Approving Fees for Meritus Subclass, ECF No. 162
95. Joint Status Report, ECF No. 188
96. Order with Fee Briefing Schedule, ECF No. 189

B. *Common Ground Healthcare Cooperative v. United States*, Case No. 1:17-cv-00877-KCD (Fed. Cl.)

97. Class Action Complaint, ECF No. 1
98. First Amended Class Action Complaint, ECF No. 10
99. Plaintiff's Motion for Class Certification, ECF No. 13
100. Plaintiff's Motion for Class Certification Appendix, ECF No. 13-1
101. Plaintiff's Motion to Appoint Class Counsel, ECF No. 14
102. Plaintiff's Motion to Appoint Class Counsel Appendix, ECF No. 14-1
103. Defendant's Response to Class Certification Motion, ECF No. 15
104. Order Denying Initial Notice Language, ECF No. 23
105. Plaintiff's Renewed, Unopposed Motion for Approval of Notice Plan, ECF No. 24
106. Plaintiff's Renewed, Unopposed Motion for Approval of Notice Plan Exhibit, ECF No. 24-1
107. Plaintiff's Renewed, Unopposed Motion for Approval of Notice Plan Exhibit, ECF No. 24-2
108. Order Approving Notice Plan, ECF No. 25
109. Order Approving Class Certification, ECF No. 30
110. Plaintiff's Report on Class Membership, ECF No. 38
111. Plaintiff's Report on Class Membership Exhibit A, ECF No. 38-1
112. Opinion and Order Granting Summary Judgment, ECF No. 48
113. Second Amended Class Action Complaint, ECF No. 59
114. Order Entering Judgment for CSR Class, ECF No. 71
115. Plaintiff's Motion for Class Certification, ECF No. 81
116. Order Approving Class Certification and Appointment of Counsel, ECF No. 90
117. Class Counsel's Motion for Approval of Attorney's Fee Request and Class Representative Incentive Award, ECF No. 107
118. Opposition and Objection to Class Counsel's Motion for Approval of Attorney's Fee Request, ECF No. 114

C. *Health Republic Ins. Co. v. United States*, Case No. 22-1018 (Fed Cir.)

119. Appellants' Opening Brief (Corrected), ECF No. 23
120. Brief of Plaintiffs-Appellees, ECF No. 32
121. Appellants' Reply Brief, ECF No. 35
122. Appendix, ECF No. 36
123. Opinion, ECF No. 51
124. Judgment, ECF No. 52

D. *Maine Community Health Options v. United States*, Case Nos. 18-1023, 18-1028, 18-1038 (U.S.)

125. Petition for a Writ of Certiorari, February 4, 2019
126. Brief for *Amicus Curiae* Blue Cross Blue Shield Association in Support of Certiorari, March 2019
127. Brief of *Amici Curiae* Economists in Support of Petitioners, March 8, 2019
128. Brief for the United States in Opposition to Petition for a Writ of Certiorari, May 2019
129. Petitioner's Reply in Support of Petition for a Writ of Certiorari, May 22, 2019
130. Brief for Petitioners, August 30, 2019
131. Brief for Petitioner Land of Lincoln, August 30, 2019
132. Brief for Petitioner Maine Community Health Options, August 30, 2019
133. Brief of America's Health Insurance Plans as *Amicus Curiae* in Support of Petitioners, September 6, 2019
134. Brief for *Amicus Curiae* Blue Cross Blue Shield Association in Support of Petitioners, September 6, 2019
135. Brief for the Chamber of Commerce of the United States of America as *Amicus Curiae* in Support of Petitioners, September 6, 2019
136. Brief of *Amici Curiae* Economists in Support of Petitioners, September 6, 2019
137. Brief for Highmark Inc. et al. as *Amici Curiae* Supporting Petitioners, September 6, 2019
138. Brief for the Respondent, October 2019
139. Reply for Petitioner Main Community Health Options, November 19, 2019
140. Reply Brief for Petitioners, November 20, 2019
141. Reply Brief for Land of Lincoln, November 20, 2019
142. Opinion of the Court, April 27, 2020

E. *First Priority Life Ins. Co. v. United States*, Case 1:16-cv-00587-VJW (Fed Cl.)

143. Complaint, ECF No. 1

F. *Land of Lincoln Mutual Health Insurance Company v. United States*

144. *Land of Lincoln Mut. Health Ins. Co. v. United States*, 129 Fed. Cl. 81 (2016)
145. *Land of Lincoln Mut. Health Ins. Co. v. United States*, 892 F.3d 1184 (Fed. Cir. 2018)

G. *Moda Health Plan, Inc. v. United States*

146. *Moda Health Plan, Inc. v. United States*, 130 Fed. Cl. 436 (2017)
147. *Moda Health Plan, Inc. v. United States*, 892 F.3d 1311 (Fed. Cir. 2018)
148. *Moda Health Plan, Inc. v. United States*, 908 F.3d 738 (Fed. Cir. 2018)

H. *Blue Cross and Blue Sielf of North Carolina v. United States*

149. *Blue Cross & Blue Shield of N. Carolina v. United States,* 131 Fed. Cl. 457 (2017)
150. *Blue Cross & Blue Shield of N. Carolina v. United States,* 729 F. App'x 939 (Fed. Cir. 2018)

EXHIBIT C

Health Republic Ins. Co. v. United States
Case No. 1:16-cv-00259-KCD
U.S. Court of Federal Claims

EXPERT REPORT OF PROFESSOR WILLIAM B. RUBENSTEIN

EXHIBIT C
List of Cases with Multipliers of 4 or More

1. *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327, 335-45 (Bankr. D. Md. 2000) ("Based on Fidelity's analysis which assumes a $300 blended hourly rate would be reasonable, the contingent fee requested by Snyder, Weiner, as modified, of $71.2 million would be 19.6 times the lodestar starting point….Snyder, Weiner will be awarded its requested fee in the amount of $71.2 million for professional services as special litigation counsel for the Chapter 7 Trustee.") (bankruptcy).

2. *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, NO. CIV.A. 03-457, 2005 WL 1213926, at *18 (E.D. Pa. May 19, 2005) ("The Court further notes that the high lodestar multiplier (15.6) which results from the Court's award of attorneys' fees in this case is neutralized with respect to the reasonableness of a percentage fee award of 20% by the extraordinary support Plaintiffs have shown for counsel's request for fees.").

3. *Glendora Cmty. Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465, 479 (Ct. App. 1984) ("The contention of [appellant] is that the fee sought is more than 12 times the fee for which services at an hourly rate would have been obtained from an attorney specializing in condemnation (including $8,000 for costs on appeal). Such calculations are based upon hindsight rather than reasonable expectation.") (condemnation proceeding).

4. *In re Doral Fin. Corp. Sec. Litig.*, No. 1:05-md-01706, ECF No. 107 at 5 (S.D.N.Y. July 17, 2007) ("Lead Plaintiff's counsel's total lodestar is $1,917,094.50. A 15.25% fee represents a reasonable multiplier of 10.26. Given the public policy and judicial economy interests that support the expeditious settlement of cases...the requested fee is reasonable.").

5. *Weiss v. Mercedes-Benz*, 899 F. Supp. 1297 (D. N.J. 1995), *aff'd*, 66 F.3d 314 (3d Cir. 1995), as reported in *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 572, 592 (D.N.J. 1997) (stating that *Weiss* court had "award[ed] fee that resulted in a multiple of 9.3 times the lodestar and an average hourly rate of $2,779.63"), *vacated on other grounds sub nom. In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998).

6. *Skochin v. Genworth Fin., Inc.*, No. 3:19-CV-49, 2020 WL 6536140, at *11 (E.D. Va. Nov. 5, 2020) (awarding fees of $2 million and 15% of the Settlement Class's net damage awards with a cap of $24.5 million, representing 9.05 multiplier).

7. *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 182 (D. Mass. 1998) ("If a lodestar approach were used, the actual amount of attorney's fees of class counsel calculated by multiplying the number of hours worked by the hourly billing rate totals $826,665.00, such that the requested attorney's fees would constitute a lodestar multiplier of 8.9 percent. After hearing, and some hand-wringing, the Court concludes that the fee is not unreasonable under the common fund doctrine.") (class action within bankruptcy).

8. *Cosgrove v. Sullivan*, 759 F. Supp. 1667, 167 n.1 (S.D.N.Y. 1991) ("Under these circumstances, we set the prevailing counsel's fee at $1,000,000.00…[t]he total 'lodestar' in this case, which represents hours worked multiplied by a reasonable hourly rate, is $114,398.00.") (8.74 multiplier).

9. *Halcom v. Genworth Life Ins. Co.*, No. 3:21-CV-19, 2022 WL 2317435, at *13 (E.D. Va. June 28, 2022) ("Taking all of these considerations into account, the 8.4x multiplier is acceptable and the requested attorney fees are reasonable.").

10. *Muchnick v. First Federal Savings & Loan Association of Philadelphia*, No. CIV.A. 86-1104, 1986 WL 10791, at *1 (E.D. Pa. Sept. 30, 1986) ("Although the lodestar in this case is approximately $30,000.00, counsel seeks an attorneys' fee of $250,000.00 . . . I conclude that the requested fee is eminently reasonable under the circumstances of this case and can be justified under the lodestar method of calculation") (8.33 multiplier).

11. *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, Civil Action No. 05-11148-PBS, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) ("Balancing all the factors under the crosscheck approach, I award the amount of $70,000,000, which represents a multiplier of about 8.3 times lodestar, and about 20 percent of the common fund.").

12. *Santos v. Camacho*, No. CIV. 04-00006, 2008 WL 8602098, at*39 (D. Guam Apr. 23, 2008) ("Based on the significant results achieved through the efforts of Class Counsel in creating the funds for settlement and in light of case law, the court should find that this factor weighs strongly in favor of granting counsel a multiplier of 8."), *aff'd Simpao v. Gov't of Guam,* 369 F. App'x 837, 840 (9th Cir. 2010).

13. *Yuzary v. HSBC Bank USA, N.A.*, No. 12 CIV. 3693 PGG, 2013 WL 5492998, at *11 (S.D.N.Y. Oct. 2, 2013) ("Here, the lodestar sought by Class Counsel, approximately 7.6 times, falls within the range granted by courts and equals the 31.7% being sought. While this multiplier is near the higher end of the range of multipliers that courts have allowed, this should not result in penalizing plaintiffs' counsel for achieving an early settlement, particular where, as here, the settlement amount is substantial.").

14. *Hainey v. Parrott,* No. 1:02-CV-733, 2007 WL 3308027, at *1-2 (S.D. Ohio Nov. 6, 2007) ("[C]ounsel's lodestar fee calculation is approximately $241,000…[i]n consideration of the above factors, the Court finds that an award of attorney's fees of

30% of the common fund, or $1.8 million, is appropriate in this case.") (7.47 effective multiplier).

15. *In re Boston and Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A.*, 778 F.2d 890 (1st Cir. 1985) (awarding a "final fee of $232,310" contrasted with "hourly fees of $33,110," implying a multiplier of 7.0x) (bankruptcy).

16. *In re Rite Aid Corp. Sec. Litigation*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) ("Based on the $31,660,328.75 proposed fee award and the $4,549,824.75 lodestar, we conclude that plaintiffs' counsel requests approval of a fee award with a 6.96 multiplier.").

17. *Steiner v. Amer. Broadcasting Co., Inc.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) ("Based on class counsel's total hours, the lodestar multiplier was approximately 6.85. Although this multiplier is higher than those in many common fund cases, it still falls well within the range of multipliers that courts have allowed.") (internal citations omitted).

18. *Ramirez v. Lovin' Oven Catering Suffolk, Inc.*, No. 11 CIV. 0520 JLC, 2012 WL 651640 (S.D.N.Y. Feb. 24, 2012) (granting fees equal to 6.8 times lodestar).

19. *Riveras v. Bilboa Rest. Corp.*, No. 17-CV-4430-LTS-BCM, 2018 WL 8967112, at *1 (S.D.N.Y. Dec. 14, 2018) (finding 6.7 multiplier reasonable in FLSA action).

20. *In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1106 (D. Minn. 2009) ("Using the Court-calculated lodestar, this fee would represent a multiplier of nearly 6.5. The Court finds this multiplier appropriate.").

21. *Nieman v. Duke Energy Corp.*, No. 312CV00456MOCDSC, 2015 WL 13609363, at *2 (W.D.N.C. Nov. 2, 2015) ("The amount of the settlement and the efficiency of counsel in reaching such a resolution reinforce an upward variance from a 4.5 multiplier, but not an 8.0 multiplier. Considering all of the arguments presented, the court finds that the work accomplished in this case—which was substantial—is reasonably compensated by an 18% fee when the *Johnson* factors are considered and then crosschecked.") (6.43 multiplier).

22. *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 482 (S.D.N.Y. 2013) ("Here, the lodestar sought by Class Counsel, approximately 6.3 times, falls within the range granted by courts and equals the one-third percentage being sought. While this multiplier is near the higher end of the range of multipliers that courts have allowed, this should not result in penalizing plaintiffs' counsel for achieving an early settlement, particular where, as here, the settlement amount is substantial.").

23. *Spartanburg Reg'l Health Servs. Dist., Inc. v. Hillenbrand Indus., Inc.*, No. 7:03-cv-02141, ECF Nos. 377 (D. S.C. Aug. 15, 2006) (approving fee request noting multiplier "slightly above six"); ECF No. 338-5 (providing data showing 6.22 multiplier).

24. *Stevens v. SEI Investments Co.*, No. CV 18-4205, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) ("Class Counsel's request for $2,266,666.00 (one-third of the settlement amount) will result in Class Counsel receiving approximately 6.16 times the lodestar. Courts frequently approve attorneys' fees awards for amounts in excess of the calculated lodestar. Indeed, multiples ranging from 1 to 8 are often used in common fund cases.").

25. *Kane Cty., Utah v. United States*, 145 Fed. Cl. 15, 20 (2019) ("In order to equal one third of the total recovery, this lodestar amount must be subjected to a multiplier of approximately 6.13, which is within the range courts have approved in common fund cases.").

26. *Wenzel v. Colvin*, No. EDCV 11-0338 JEM, 2014 WL 3810247, at *4 (C.D. Cal. Aug. 1, 2014) ("The $1,000 per hour rate constitutes a multiplier of 6.06 over counsel's normal hourly rate, consistent with cases that reward excellent results.").

27. *In re Credit Default Swaps Antitrust Litig.*, No. 13MD2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) ("The loadstar calculation submitted by Class Counsel totals over $41 million as of April 1, reflecting over 93,000 hours of work by Class Counsel. This amount is equivalent to a loadstar multiple of just over 6.").

28. *In re Cardinal Health Inc. Securities Litigations*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) ("From the Court's analysis of the previous factors, the Court has found that approximately 18% is a reasonable award, which would yield a lodestar multiplier of six.").

29. *In re Krispy Kreme Doughnuts, Inc. Sec. Litig.*, No. 1:04-cv-00416, ECF No. 203 (M.D. N.C. Feb. 15, 2007) (approving fee request); ECF No. 193 at 17 (stating fee request embodied multiplier of "approximately 6").

30. *Ladewig v. Arizona Dep't of Revenue*, 204 Ariz. 352, 359, 63 P.3d 1089, 1096 (Ariz. Tax Ct. 2003) ("In this case, the Court believes that in light of the lengthy delay in recovery, and the high risks assumed by counsel, that a lodestar multiplier of 6 is appropriate.").

31. *In re RJR Nabisco, Inc. Securities Litigation*, No. 88 Civ. 7905(MBM), 1992 WL 210138, at *5-6 (S.D. N.Y. Aug. 14, 1992) ("[T]he requested fees total six times the value of the time spent by plaintiffs' counsel, what is referred to as the lodestar amount, which amount he says equals the total fees of all defense counsel. . . . [T]he award of a percentage fee in common fund cases such as this is consistent with the better and increasingly prevailing view in such cases, the requested percentage lies well within the limits awarded in similar cases, plaintiffs' counsel have not taken a free ride on the efforts of a government agency and the settlement was skillfully negotiated.").

32. *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 271 (S.D.N.Y. 2020) ("Class Counsel's requested fee represents a lodestar multiplier of 5.85, which is within the range of acceptable multipliers.").

33. *Williams v. Rohm & Haas Pension Plan*, No. 04-0078-SEB, 2010 WL 4723725 (S.D. Ind. Nov. 12, 2010), *aff'd*, 658 F.3d 629 (7th Cir. 2011) (awarding fees of $43.5 million, representing 5.85 multiplier).

34. *In re Mercedes-Benz Emissions Litigation*, No. 216CV881KMESK, 2021 WL 7833193, at *16 (D.N.J. Aug. 2, 2021) ("The requested fee award results in applying a multiplier of 5.67, within the range of multipliers typically awarded in the Third Circuit."), *adopted in full*, *In re Mercedes-Benz Emissions Litigation*, No. 2:16-cv-00881 (D.N.J. Sept. 20, 2021), ECF No. 345.

35. *Athale v. Sinotech Energy Ltd.*, No. 11 CIV. 05831 (AJN), 2013 WL 11310686, at *9 (S.D.N.Y. Sept. 4, 2013) ("This amounts to a lodestar multiplier of 5.65, which although high, is not unreasonable under the particular facts of this case.").

36. *In re Charter Commc'ns, Inc., Sec. Litig.*, No. 4:02-CV-1186 CAS, 2005 WL 4045741, at *22 (E.D. Mo. June 30, 2005) ("Here fees of 20% of the settlement yield a 5.61 multiplier, which is within the range of multipliers awarded in comparable complex cases.").

37. *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 198 (S.D.N.Y. 1997) ("Under such circumstances, a 5.5 times lodestar based on the $3,482,571.75 time charges appears reasonable.").

38. *Kang v. Wells Fargo Bank, N.A.*, No. 17-CV-06220-BLF, 2021 WL 5826230, at *18 (N.D. Cal. Dec. 8, 2021) (awarding fees of $21,053,146.92, representing 5.49 multiplier).

39. *Geneva Rock Prod., Inc. v. United States*, 119 Fed. Cl. 581, 595 (2015), *rev'd on other grounds*, *Longnecker Prop. v. United States*, No. 2015-5045, 2016 WL 9445914 (Fed. Cir. Nov. 14, 2016) ("In this case, an award 5.39 times the lodestar is reasonable under RCFC 23(h), given the complexity of the litigation, the diligent and skillful work by class counsel, and the pendency of the case for over six years.").

40. *Arrington v. Optimum Healthcare IT, LLC.*, No. CV 17-3950, 2018 WL 5631625, at *10 (E.D. Pa. Oct. 31, 2018) ("When calculated against the requested fee of $1,633,333.33, the lodestar multiplier is 5.3. . . . However, in this case, class counsel undertook significant risk to achieve a substantial settlement amount, and should not be penalized for settling the case early in the litigation. We are satisfied with the reasonableness of the requested fee and we will approve class counsel's request for $1,633,333.33 in attorneys' fees.").

41. *Rawa v. Monsanto Co.*, No. 4:17CV01252 AGF, 2018 WL 2389040, at *9 (E.D. Mo.

May 25, 2018), on appeal (noting that fee award had "corresponding lodestar multiplier of 5.3" that was "quite high compared to similar cases in this circuit" but finding it not "too high").

42. *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) ("In this case, dividing the $14 million fee request by the lodestar figure yields a multiplier of about 5.3. A review of the case law indicates that while that figure is toward the high end of acceptable multipliers, it is not atypical for similar fee-award cases.").

43. *Merkner v. AK Steel Corp.*, No. 1:09-CV-423-TSB, 2011 WL 13202629, at *5 (S.D. Ohio Jan. 10, 2011) ("Applying the rates requested with regard to the hours reflected in the Declarations of Mr. Coleman and Ms. Wallace yields a lodestar figure of $1,699,467. In light of the $9.1 million sought, the 'lodestar multiplier' would be 5.3. This multiplier is acceptable under the facts and circumstances of this case.").

44. *Di Giacomo v. Plains All Am. Pipeline*, No. CIV.A.H-99-4137, 2001 WL 34633373, at *11 (S.D. Tex. Dec. 19, 2001) ("This court finds that 5.3 is an acceptable multiplier in light of the particular facts of this case, discussed more fully below.").

45. *Arp v. Hohla & Wyss Enterprises, LLC*, No. 3:18-CV-119, 2020 WL 6498956, at *7 (S.D. Ohio Nov. 5, 2020) ("The multiplier on Class Counsel's lodestar is approximately 5.29 before accounting for any additional work. This is within the acceptable range.").

46. *Pinzon v. Jony Food Corp.*, No. 18-CV-105 (RA), 2018 WL 2371737, at *3 (S.D.N.Y. May 24, 2018) ("Although it is a close question, the settlement here falls within a reasonable range. According to the documentation and calculations submitted by Plaintiff's counsel, their lodestar amounts to $5,053. Even accepting the hours and fees requested by Plaintiff's counsel as accurate and reasonable, the fee award requested here has a lodestar multiplier of 5.23. This multiplier is on the high end of those generally allowed in this Circuit, but it is not unheard of … The Court thus approves the proposed attorneys' fees under the percentage of the fund method.").

47. *Craft v. Cty. of San Bernardino*, 624 F. Supp. 2d 1113, 1123 (C.D. Cal. 2008) ("The plaintiffs' request in this case for 25% of the class fund would result in a fee of $6,375,000, which is a multiplier of approximately 5.2 times the $1.2 Million lodestar in this case. The Court has concluded that it will award Class Counsel 25% of the class fund, and addresses the reasons for doing so below.").

48. *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 347 (S.D.N.Y. 2014) (noting that, "A fee award of 25% of the fund or $11,475,000 would represent a multiplier of 5.2 of the lodestar" and approving 25% award).

49. *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 791 (S.D. Tex. 2008) ("[T]he Court finds that the exceptional obstacles to recovery that were present here, and the remarkable success obtained by Lead Counsel's skill and

experience make this a rare and exceptional case warranting the application of the requested 5.2 multiplier under a lodestar cross-check or enhancement under a lodestar analysis.") (internal quotation marks and citation omitted).

50. *Zeltser v. Merrill Lynch & Co.*, No. 13 CIV. 1531 FM, 2014 WL 4816134, at *10 (S.D.N.Y. Sept. 23, 2014) (stating that "the lodestar sought by Class Counsel, approximately 5.1 times the fees sought, falls within the range granted by courts" and approving award).

51. *Ferrick v. Spotify USA Inc.*, No. 16-CV-8412 (AJN), 2018 WL 2324076, at *10 (S.D.N.Y. May 22, 2018) (finding that fee amounting to a 5.02 multiplier would "adequately compensate Class Counsel, and it recognizes the complexity of the case, the risks involved in the litigation, the efforts of Class Counsel and the quality of representation provided, and the benefits to the class from the settlement").

52. *In re Fernald Litig.*, No. C-1-85-149, 1989 WL 267038, at *5 (S.D. Ohio Sept. 29, 1989) ("We conclude, therefore, that plaintiffs' class counsel are entitled to twenty (20%) percent of the common fund created or an equivalent multiplier of five.").

53. *Fleisher v. Phoenix Life Ins. Co.*, No. 11-CV-8405 (CM), 2015 WL 10847814, at *18 (S.D.N.Y. Sept. 9, 2015) ("Based on the requested fee ($13,500,000), class counsel's aggregate lodestar yields a 'crosscheck' multiplier of 4.87. This is well within the range of crosscheck multipliers awarded in this circuit.").

54. *Perez v. Rash Curtis & Assocs.*, No. 4:16-CV-03396-YGR, 2021 WL 4503314, at *5 (N.D. Cal. Oct. 1, 2021) ("That said, and given the recovery to the class, the Court will authorize distribution of thirty-seven percent of the Settlement Amount to account for the fact that one of the two cases did in fact go to trial and under the agreement with plaintiff Perez, class counsel could have sought authorization of forty percent for that matter. Thirty-seven percent totals $27,972,000 which increases class counsel's lodestar to 4.8 and will address, in part, class counsel's independent decision to enter into a litigation funding agreement.").

55. *Meijer, Inc. v. 3M*, No. CIV.A. 04-5871, 2006 WL 2382718, at *24 (E.D. Pa. Aug. 14, 2006) ("[T]he Court finds that, given the facts of this case, the requested lodestar multiplier of 4.77 is acceptable and does not call for a reduction in Plaintiffs' Counsel's requested attorneys' fees award.").

56. *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 633 (N.D. Cal. 2021), *appeal dismissed*, No. 21-15555, 2021 WL 2660668 (9th Cir. June 22, 2021), and *aff'd*, No. 21-15553, 2022 WL 822923 (9th Cir. Mar. 17, 2022) ("Reducing the fee here to $97,500,000, reduces the multiplier to 4.71. This is more in line with comparable settlements, still sufficiently and appropriately generous, and more reasonable in the circumstances here. The results obtained and the risks at trial warrant a higher-end multiplier of 4.71, but not more.").

57. *Cornwell v. Credit Suisse Grp.*, No. 08-CV-03758(VM), 2011 WL 13263367, at *2 (S.D.N.Y. July 20, 2011) ("Lead Plaintiffs' counsel's total lodestar is $4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, the requested fee is reasonable.") (citation omitted).

58. *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 999 (D. Minn. 2005) (approving lodestar multiplier of 4.7 for securities class action component, because "[u]nder these circumstances, the court concludes that the 25% attorney fee, when cross-checked against a lodestar multiplier of 4.7, is reasonable;" also approving lodestar multiplier of 2.16 for ERISA component).

59. *Bodnar v. Bank of Am., N.A.*, No. CV 14-3224, 2016 WL 4582084, at *6 (E.D. Pa. Aug. 4, 2016) ("The collective lodestar for Class Counsel is $1,933,795.95. Accordingly, an award of 33% of the Settlement Fund or $9,075,000 results in a multiplier here of 4.69. Given the nature, complexity, and potential duration of this Action, as detailed above, the risk of non-recovery, the value of the social benefit, and the extraordinary results in light of the obstacles, the court finds that the multiplier is appropriate and reasonable, including when compared to awards in other cases in this court and Circuit.").

60. *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) ("Finally, in 'cross-checking' the percentage fee against the lodestar-multiple, it clearly appears that the modest multiplier of 4.65 is fair and reasonable.").

61. *Flores v. Express Servs., Inc.*, No. CV 14-3298, 2017 WL 1177098, at *4 (E.D. Pa. Mar. 30, 2017) ("The counsel fee request of $1,895,362.33 results in a multiplier of 4.6, that is a requested fee which is 4.6 times the lodestar amount. This multiplier is reasonable . . .").

62. *Holleran v Rita Medical Systems, Inc.*, No. RG06302394, 2007 WL 7759253 (Cal.Super. Oct. 04, 2007) ("Counsel for Plaintiffs seek fees in the total amount of $290,000, which represents a multiplier of 4.57. The agreed fees sought are substantially higher than the lodestar, but presumably reflect the contingent risk of the case to class counsel, the benefits of certainty and of limiting its own attorneys' fees to Angiodynamics, and other factors.").

63. *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA, 2015 WL 2438274, at *7 & 8 n.3 (N.D. Cal. May 21, 2015) (stating that, "[c]onsidering all of the facts and circumstances, the Court, in its discretion, concludes that [one firm] deserves a multiplier of 2 and [second firm] deserves a multiplier of 5.5" and noting that net result is a total multiplier of 4.53).

64. *Municipal Authority of Town of Bloomsburg v. Commonwealth of Pennsylvania*, 527 F. Supp. 982, 1000 (M.D. Pa. 1981) ("The multiplier of 4.5 requested by Petitioners will be applied to the lodestar fee despite the facts that such a multiplier is extremely high

and appears to be probably without precedent. It is warranted only because of the peculiar facts of this case.").

65. *Deloach v. Philip Morris Companies*, No. 1:00CV01235, 2003 WL 23094907, at *11 (M.D.N.C. Dec. 19, 2003) ("A multiplier of 4.45, in conjunction with an adjusted lodestar of $15,914,905.50, results in a fee award of $70,821,329.48. This figure represents a reasonable fee for the services provided by Plaintiffs' Co–Lead Counsel in this case.").

66. *Rabin v. Concord Assets Group, Inc.*, No. 89 Civ. 6130, 1991 WL 275757 (S.D. N.Y. Dec. 19, 1991) ("The requested attorneys' fees of $2,544,122.78 represents a multiplier of 4.4 to the lodestar figure based on time (which this Court finds to have been reasonably expended) and at various hourly rates (which this Court finds to be reasonable for the particular attorneys performing services).").

67. *Krakauer v. Dish Network, L.L.C.*, No. 1:14-CV-333, 2018 WL 6305785, at *6 (M.D.N.C. Dec. 3, 2018) ("In sum, a 4.39 multiplier is reasonable for this case.").

68. *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 16-CV-03698-NC, 2018 WL 2183253, at *7 (N.D. Cal. May 11, 2018) ("This amount requires a risk multiplier of 4.375 to reach the $3.5 million Plaintiffs seek. Though on the high end, this multiplier falls within the range of reasonableness.").

69. *Monserrate v. Tequipment, Inc.*, No. 11 CV 6090 RML, 2012 WL 5830557, at *4 (E.D.N.Y. Nov. 16, 2012) ("In sum, I find that a fee award of $465,000 which provides a 4.34 multiplier of the reduced lodestar and constitutes fifteen percent of the $3,100,000.00 Settlement Fund, is a fair and reasonable fee under *Goldberger* and related cases and should adequately compensate class counsel for its time and effort, for the risk it faced in this case, and for the high quality of its representation. Moreover, that reduced fee award will allow additional monies to be distributed to class members.").

70. *Demaria v. Horizon Healthcare Servs., Inc.*, No. 2:11-CV-07298 (WJM), 2016 WL 6089713, at *5 (D.N.J. Oct. 18, 2016) ("Although a lodestar multiplier of 4.3 is large, it is not unreasonable.").

71. *In re VeriFone Holdings, Inc. Sec. Litig.*, No. C-07-6140 EMC, 2014 WL 12646027, at *2 (N.D. Cal. Feb. 18, 2014) ("[A]lthough the lodestar cross-check though reveals a high multiplier—4.3 compared to the Ninth Circuit's observation that over 80% of multipliers fall between 1.0 and 4.0—other courts have awarded multipliers in excess of 4.0, and the Court finds that the multiplier here is acceptable in light of the very substantial risks involved and Lead Plaintiff's risk and extensive work on the case.").

72. *Buccellato v. AT & T Operations, Inc.*, No. C10-00463-LHK, 2011 WL 3348055, at *2 (N.D. Cal. Jun. 30, 2011) ("The resulting multiplier of 4.3 is reasonable in light of the time and labor required, the difficulty of the issues involved, the requisite legal skill

and experience necessary, the excellent and quick results.").

73. *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) ("Even assuming a value of one dollar per share, the 4.3 lodestar multiplier would be proper in this case.").

74. *Patti's Pitas, LLC v. Wells Fargo Merch. Servs., LLC*, No. 1:17-CV-04583 (AKT), 2021 WL 5879167, at *5 (E.D.N.Y. July 22, 2021) ("Dividing the $12 million fee request by Class Counsel's lodestar yields an implied 'multiplier' of approximately 4.26. This is within the range of multipliers approved during lodestar cross checks of percentage-of-fund awards.").

75. *Shannon v. Hidalgo County Board of Comm'r*, No. 08-369 (D. N.M. June 4, 2009) (4.2 multiplier) ("Class Counsel are awarded reasonable attorneys' fees, costs and gross receipts tax in the total amount of $333,333, to be paid forthwith from the settlement fund.").

76. *In re Twitter Inc. Sec. Litig.*, No. 416CV05314JSTSK, 2022 WL 17248115, at *1–2 (N.D. Cal. Nov. 21, 2022) (awarding a 22.5% fee in a $809.5 million settlement, implying a 4.15 multiplier given the "lodestar value of $43,931,080.75").

77. *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, No. 2:06-CV-01797-MSG, 2015 WL 12843830, at *6 (E.D. Pa. Oct. 15, 2015) ("A 27.5% fee award would equate to a lodestar multiplier of approximately 4.12. Such a multiplier is within the range of those frequently awarded in common fund cases.").

78. *In re GSE Bonds Antitrust Litig.*, No. 19-CV-1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) ("A fee award of 20% of the settlement fund, or $77.3 million, thus represents a multiplier of 4.09 of this lodestar. Although on the high end, a 4.09 multiplier is within the range of what has considered reasonable by courts.").

79. *Koch v. Desert States Emps. & UFCW Unions Pension Plan*, No. CV-20-02187-PHX-DJH, 2021 WL 6063534, at *7 (D. Ariz. Dec. 22, 2021) ("For the reasons stated in the Court's Order approving the Settlement Agreement and herein, a 4.0 multiplier of the Court's calculated lodestar is appropriate for Class Counsel in this particular case.").

80. *Uschold v. NSMG Shared Servs., LLC*, No. 18-CV-01039-JSC, 2020 WL 3035776, at *16 (N.D. Cal. June 5, 2020) ("A multiplier of 4 is warranted here based on the contingent nature of the fee agreement and Mr. Benjamin's explanation at the final approval hearing that this action required the majority of his firm's resources and attention since January 2018. The high end multiplier is warranted because it would result in a percentage of recovery of 12.9% of the Gross Settlement Amount, which is below "the usual range" awarded in common fund cases.").

81. *Hillson v. Kelly Servs. Inc.*, No. 2:15-CV-10803, 2017 WL 3446596, at *6 (E.D. Mich. Aug. 11, 2017) ("Here, as discussed, the risk in this case was considerable but not

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

82. *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, No. 1:04-CV-3066-JEC, 2012 WL 12540344, at *5 (N.D. Ga. Oct. 26, 2012) ("Here, the requested fee would represent a multiplier of approximately four times lodestar, which is well within the range of approved fees.").

83. *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359-60 (S.D.N.Y. 2003) ("When combined with the attorneys' fees awarded pursuant to the Citigroup Settlement, the amount sought is equivalent to a lodestar multiple of 4.0. . . . As no objection remains to the amount of costs sought by Lead Counsel, and the expenses do not appear facially unreasonable, the application for reimbursement of expenses is approved.").

84. *In re Cenco Inc. Sec. Litig.*, 519 F. Supp. 322, 327 (N.D. Ill. 1981) ("Accordingly, the lodestar rate and expenses sought are reasonable. Further, the court finds that a multiple of 4 accurately takes into account the factors discussed above and awards Sachnoff attorneys' fees in the amount of $893,450.00 plus $41,300.00 for paralegals and $24,783.32 in expenses.").