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PSC Members – Political Subdivisions

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SANTA CRUZ COUNTY, CALIFORNIA; POPE COUNTY, ILLINOIS; and THE VILLAGE OF EDDYVILLE, ILLINOIS, Individually and on Behalf of a Class of Entities Similarly Situated In re MCKINSEY & CO., INC. NATIONAL PRESCRIPTION OPIATE CONSULTANT LITIGATION This Document Relates to: ALL SUBDIVISION ACTIONS	Case No. 3:21-md-02996-CRB **DECLARATION OF PROFESSOR WILLIAM B. RUBENSTEIN IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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. The Plaintiffs' Steering Committee for the Political Sub-Divisions[1] seeks final approval of the proposed class action settlement. Among other factors, the Court must determine whether the settlement proposal "treats class members equitably relative to each other."[2] The plan of allocation that the settlement employs relies, in part, on "the default allocation provided for in the [2021 National Settlements]."[3] I served as the Court's expert on class certification issues in the National Prescription Opiate MDL Litigation (MDL 2804), out of which this default allocation emerged. Accordingly, Lead Counsel has retained me to assist the Court by (a) explaining the history behind the development of the default allocation formula and (b) providing my expert opinion as to whether it treats class members equitably relative to each other.

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[1] By order dated August 16, 2021, this Court appointed Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein, LLP to serve as Lead Counsel and Chair of the Plaintiffs' Steering Committee, and five additional lawyers/firms to serve as the Plaintiffs' Steering Committee for Political Subdivisions – Aelish M. Baig, of Robbins Geller Rudman & Dowd, LLP; Emily Roark of Bryant Law Center, PSC; Jayne Conroy of Simmons Hanly Conroy, LLC; Joe Rice of Motley Rice, LLC; and Matthew Browne, of Browne Pelican, PLLC. Pretrial Order No. 2: Order Appointing Plaintiffs' Lead Counsel and Plaintiffs' Steering Committee, ECF No. 211 at 1-4 (Aug. 16, 2021). In response to the motion for preliminary approval of the present settlement, this Court appointed these lawyers as "Interim Settlement Class Counsel under Rule 23(g)(3)." Order Granting Preliminary Approval of Class Settlement and Direction of Notice under Fed. R. Civ. P. Rule 23(e), ECF No. 609 at 4 (Nov. 5, 2023) (hereinafter "Prelim. App. Order"). For ease of exposition, I refer to them throughout as "Class Counsel."

[2] Fed. R. Civ. P. 23(e)(2)(D).

[3] Plaintiffs' Notice of Unopposed Motion and Motion for Preliminary Approval of Class Action Settlement: Memorandum of Points and Authorities in Support, ECF No. 598 at 7-8 (Sept. 26, 2023) (hereinafter "Prelim. App. Br.").

2. After setting forth my qualifications to serve as an expert (Part I, *infra*), and briefly outlining the facts relevant to my opinion (Part II, *infra*), I provide the Court the following information and opinion:

- ***The parties in MDL 2804 developed the default allocation formula using public health data, scientific expertise, and class member input to ensure it tracked the impact of the opioid epidemic on political subdivisions – and a Special Master and the Court both found it equitable on a preliminary review***. (Part III, *infra*). The parties in MDL 2804 developed the default allocation formula in the context of seeking certification of a "negotiation class." This was a new form of class certification whereby a court would certify a class for purposes of negotiating a lump sum settlement. If a supermajority of the class voted to approve the lump sum their counsel had negotiated, all would be bound by it; any class member could opt out prior to the negotiation but not later. For class members to make an informed pre-settlement opt-out decision, they needed to know how much of any lump sum settlement would be allocated to them. Accordingly, the parties in MDL 2804 generated a formula for distributing a nationwide settlement among county-level political subdivisions throughout the United States. Three features characterized the process of generating that formula: (1) the formula aimed to distribute money according to how the opioid epidemic had impacted each county, and it achieved this end by basing allocations on three sets of objective, county-based, public health data: opioid-related overdoses, opioid-related deaths, and the distribution of opioid-related pills per capita; (2) neutral medical and public health experts assisted in the development of that algorithm; (3) many class members and their counsel were involved in the process of developing the formula, and all class members were given the opportunity to review it through a remarkable state-of-the-art allocation website. In the process of certifying the negotiation class, Judge Polster appointed a Special Master to ensure the formula met the intraclass equity requirements of Rule 23(e)(2)(D), and after the Special Master so found, Judge Polster adopted her findings following his own independent review. The Sixth Circuit ultimately rejected the negotiation class certification mechanism, but on grounds completely unrelated to the allocation formula. Thus, when many States were later able to settle with some defendants outside the MDL, their so-called 2021 National Settlements[4] all employed the MDL 2804 allocation formula as a default mechanism for intrastate allocations.

[4] *See id.* at 2 (defining "2021 National Settlements" as "the multi-state opioids industry settlements with Janssen Pharmaceuticals, Inc., McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation").

- ***Four aspects of the history behind the default allocation formula provide strong support for the conclusion that it treats class members equitably relative to each other***. (Part IV, *infra*). *First*, the default allocation formula is based on objective public data, reviewed and placed in context by public health and medical experts. There is little doubt it is a data-driven, neutral, objective formula that achieves the central goal of distributing funds according to the epidemic's impact. *Second*, and remarkably, many class members and stakeholders were involved in developing the default allocation formula in MDL 2804, in collaboration with scientific/medical experts and the MDL's leadership. Class member participation in generating an allocation formula is rare, as most class actions involve large classes of anonymous members with small stakes. Because MDL 2804 involved thousands of cases filed by significant political subdivisions, with meaningful stakes in the controversy, participation was more plausible – and to the credit of the MDL leadership, encouraged and important. *Third*, the allocation formula has already been reviewed and approved by a Special Master and a federal court, albeit not in the context of a full settlement review. *Fourth*, the fairness of the mechanism finds further support in the fact that States and subdivisions chose to use it as a default in the 2021 National Settlements.

3. The fact that the default allocation formula is, as noted above, data-driven and neutral, treating class members solely in reference to the relevant opioid saturation in their political subdivision, provides sufficient evidence by which the Court could easily find it equitable. What is notable about this situation is how much more evidence there is in support of that conclusion: class members helped generate the allocation, a Special Master and another federal court have blessed it, and States and subdivisions throughout the country all deemed it equitable by employing it as their own default in later settlements. I am unaware of any proposed class action settlement with an accumulation of this much evidence in support of the conclusion that the allocation treats class members equitably relative to each other. The Court's task should be easy.

I.
BACKGROUND AND QUALIFICATIONS[5]

4. 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 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, Yale, and Stanford Law Schools while a public interest lawyer 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.

5. 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;

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

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.

6. 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 Second Circuit invited me to moderate a panel on class action law at the 2015 Second 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.

7. 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 activities, 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.

8. 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.

9. I have been retained as an expert witness in more than 100 cases and as an expert consultant in about another 30 or so cases. These cases have been in state and federal courts throughout the United States; most have been class actions and other complex matters, 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.

10. Courts have appointed me to serve as an expert in complex 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.[6]

- 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.[7]

- 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.

11. Courts have often relied on my expert witness testimony.[8]

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[6] *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).

[7] *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.").

[8] *See, e.g.*, *In re Genetically Modified Rice Litig.*, 764 F.3d 864, 872 (8th Cir. 2014); *Benson v. DoubleDown Interactive, LLC*, No. 18-CV-0525-RSL, 2023 WL 3761929, at *2 (W.D. Wash. June 1, 2023); *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.*, 522 F. Supp. 3d 617 (N.D. Cal. 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 Pracs., & 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

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, MDL 2804, and the 2021 National Settlements, a list of which is attached as Exhibit B. Finally, I have reviewed the case law and scholarship relevant to the issues herein.

II
THE PROPOSED ALLOCATION FORMULA

14. The Court's order preliminarily approving the proposed settlement defines the class as follows:

> "Class" or "Settlement Class" means: any (1) General Purpose Government (including, but not limited to, a municipality, county, county subdivision, city, town, township, parish, village, borough, gore, or any other entity that provides municipal-type government), (2) Special District within a State, and (3) any other subdivision, subdivision official (acting in an official capacity on behalf of the subdivision) or sub-entity of or located within a State (whether political, geographical or otherwise, whether functioning or nonfunctioning, regardless of population overlap, and including, but not limited to, nonfunctioning governmental units and public institutions). The foregoing shall specifically include but not be limited to the litigating subdivisions listed in Schedule A, attached to the Settlement Agreement.[9]

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 (S.D.N.Y. 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).

[9] Prelim. App. Order at 2.

As shorthand, it is fair to say that the class is generally comprised of all political subdivisions of each of the 50 states, some of which have filed cases herein and are accordingly referred to as "litigating subdivisions."

15. Allocation of the $207 million lump sum settlement essentially unfolds at three levels:

- *Interstate.* The lump sum is initially divided by State, with the group of all political subdivisions within a State receiving an aggregate share based on a formula developed in conjunction with the 2021 National Settlements. Class Counsel explain that "[t]he states agreed amongst themselves as to inter-state allocations. . . ."[10]

- *Intrastate.* Each State's share must then be divided among its political subdivisions. The plan of allocation reflects two approaches. In allocating the 2021 National Settlements within a State, some States and their subdivisions had generated agreed-to intrastate allocation formulas; for those States, the current plan of allocation simply adopts that prior plan. In allocating the 2021 National Settlements within a State, other States did not generate intrastate allocation agreements but instead fell back on a nationwide subdivision allocation agreement, referred to as the "default direct-to-subdivision allocation"; for those States, the current plan of allocation simply adopts that prior plan. As the settling parties point out, the effect of adopting these two approaches to intrastate allocations is simply to supply for this settlement the same intrastate infrastructure that characterized the 2021 National Settlements, but that was missing in the prior State-only McKinsey settlement.[11]

- *Tiny subdivisions.* Finally, like the 2021 National Settlements, the current plan of allocation places one additional restriction on allocation: it allocates none of the common fund to political subdivisions with a population of 10,000 or less, unless that subdivision has filed a lawsuit and is therefore a litigating subdivision.

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[10] Prelim. App. Br. at 8.

[11] *Id.* at 9 ("The Settlement is . . . designed to provide the direct payments that subdivisions negotiated in the earlier national settlements but that were missing from the McKinsey-AG settlement. Plaintiffs' intention with this plan of allocation is to put Class members in, as nearly as possible, the position they would have been had they had the opportunity to actively negotiate the AG Settlement (as they did with every other national opioids settlement) . . . .").

16. For purposes of applying the intraclass equity principle set forth in Rule 23(e)(2)(D), the first provision above (the interstate division) is straightforward and based on a plan the States hashed out among themselves in allocating the 2021 National Settlements. Its pedigree provides its legitimacy. So, too, the third provision mentioned above (the exclusion of small sub-divisions from direct monetary recovery). The 2021 National Settlements adopted a similar approach so as to ensure that monies were distributed to entities that actually expended significant resources remediating the opioid epidemic; these smaller subdivisions tended not to have done so themselves, yet they realize an indirect benefit from distributions to their overarching subdivisions (*e.g.*, a small city/subdivision benefits from a distribution to the county within which it is situated). This approach is both sensible and supported by decisions approving allocations that exclude infeasible *de minimis* distributions.[12] Thus, it is the second step above (intrastate allocation) that is the topic of the remaining portions of my Declaration.

III.
THE HISTORY BEHIND THE ALLOCATION FORMULA

The Challenges in MDL 2804

17. The National Prescription Opiate MDL Litigation (MDL 2804) has presented unique challenges to the Court and parties. The MDL is primarily comprised of thousands of cases pursued by political subdivisions seeking compensation for the costs they have been forced to expend to combat the opioid epidemic; however, the largest plaintiffs – States themselves – have

[12] *See, e.g.*, *Sims v. BB&T Corporation*, 2019 WL 1995314, *4 (M.D.N.C. 2019) (explaining, where recoveries were essentially *de minimis*, "the justification for [] different treatment is obvious, as this *de minimis* recovery would cost more in processing than its value, and thus would increase administrative costs and diminish recovery to class members overall while providing marginal benefits to the few class members") (cleaned up).

generally not filed suit in federal court and, worse, in many ways lie beyond the authority of the federal court.[13] There are few precedents for collecting all of the country's political subdivisions into a single aggregate settlement, but there is no way of simultaneously corralling all of the States into an aggregate settlement in a federal court. The many political subdivisions are, in turn, *political* subdivisions, so while their interests in this lawsuit may converge, their political orientations often diverge from one another and/or from their State governments. Generating consensus across the group is far more difficult than in other money damage classes – for instance, securities holders – where class members generally have aligned monetary incentives. The defendants' side of the v. is no less complex: the MDL plaintiffs have sued a variety of entities at every step of the opioid distribution level – manufacturers, distributors, and pharmacies – each of which played different roles, have differing levels of culpability and resources, and are represented by their own counsel. The MDL created something of a Rubik's cube in imagining potential settlement opportunities.

18. Given that States were pursuing opioid cases outside the MDL, often in their own State courts, while many subdivisions had filed suit within the MDL, two lines of settlement negotiations emerged. Within the MDL, Judge Polster appointed one of three Special Masters – the late Professor Francis McGovern – to oversee settlement discussions, while outside the MDL, some defendants pursued settlement opportunities directly with State governments.

19. The problem that plagued both settlement tracks was a familiar one: defendants were hesitant to make fulsome settlement offers unless they could be guaranteed some sort of

[13] U.S. Const. amend. XI ("The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.").

finality, or so-called global peace. A settlement with only States would leave them litigating against subdivisions; a settlement with a nationwide class of subdivisions, while a step in the right direction, nonetheless seemed elusive because of limitations in the available settlement structures. Specifically, mandatory class actions under Rule 23(b)(1)(A) or (B) did not perfectly fit the situation and were unlikely to receive judicial approval; an opt-out class action under Rule 23(b)(3) left defendants fearing they would pay an enormous sum to settle an inventory of cases but would end up still having to litigate against opt-out class members, likely those with the largest damage claims. As the Special Master and parties worked through these various class action settlement structures, Professor McGovern brought me into the litigation to serve as the Court's expert on class action rules and procedures.

20. In the context of these discussions, Professor McGovern proposed applying to the class action setting a non-class method for reaching aggregate settlements among mass tort plaintiffs. Specifically, in the aggregate settlement setting, if one lawyer represents multiple plaintiffs, governing ethics rules bar the lawyer from accepting a lump sum settlement on behalf of all the clients unless and until each client agrees individually, after being informed of all the details (the lump sum, her share, everyone else's share, and the lawyer's share).[14] This ethics rule generates a holdout problem: if any one plaintiff objects, the lawyer is ethically obligated to reject the entire settlement for all the other plaintiffs.

[14] Model Rules of Prof'l Conduct R. 1.8(g) ("A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.").

21. In 2010, the American Law Institute adopted an approach to aggregate settlements that aimed to solve the holdout problem by substituting majority rule for individual consent.[15] Specifically, the clients would agree before any negotiation that they would have the opportunity to vote yes/no on whether to accept the size of any proposed aggregate settlement, with a supermajority vote binding all (even those who voted against) to accept the sum; each client would know what her share of any aggregate settlement would be, and what the voting procedure would be, before consenting to join the voting bloc. But once joined, all would be bound by the majority vote at the backend.

22. Professor McGovern and I, working with the parties in MDL 2804, adopted this structure for class actions – generating an approach we called a "negotiation class action" – with similar features. If the Rule 23 class certification prongs were otherwise met, a court could certify a class for the sole purpose of negotiating an aggregate settlement with one or more defendants. The court would authorize notice directed to the class members setting forth the allocation scheme and voting rules and giving each class member a one-time opportunity to opt out. At the conclusion of the opt-out period, there would be a fixed class size. The defendant could then make a lump sum settlement offer knowing the precise contours of the group with which it was dealing. The class would vote on whether to accept the offer, with the supermajority vote binding all of the class members, and with no class member having a second opportunity to opt out.[16]

[15] Am. Law Inst., Principles of the Law of Aggregate Litigation § 3.17 (2010).

[16] Professor McGovern and I explained the approach in a law review article published the following year. Francis E. McGovern and William B. Rubenstein, *The Negotiation Class: A Cooperative Approach to Class Actions Involving Large Stakeholders*, 99 Tex. L. Rev. 73 (2020).

23. The plaintiffs' steering committee (PSC) in MDL 2804 took up the idea and filed a motion for negotiation class certification, which Judge Polster approved in a thorough decision in the summer of 2019.[17] Defendants and some putative class members sought interlocutory review of that decision under Rule 23(f). The Sixth Circuit granted the petition and, after full briefing and argument, reversed Judge Polster's decision in a split opinion the following year.[18] The Circuit essentially held that the negotiation class approach is not consistent with the language and structure of Rule 23. In so holding, however, the majority cast no aspersion on the proposed allocation formula. On the contrary, the majority decision – when suggesting that the typical "litigation class" or "settlement class" might have been employed instead of the "negotiation class" – noted that, "There is no apparent reason why some of the procedural elements of the negotiation class, such as the supermajority voting scheme and county-level allocation formula, could not be used to facilitate the participation of more Plaintiffs in a lawful settlement class."[19]

The Allocation Formula and its Development

24. I set forth that history to explain why, in MDL 2804, a plan for allocating a lump sum settlement among all political subdivisions in the United States was developed prior to there being any settlement and to explain the process by which it was developed and subsequently deployed.

25. Given that under the negotiation class certification approach, class members would have to make their opt-out decision before knowing the size of any lump sum settlement, the

[17] *In re Nat'l Prescription Opiate Litig.*, 332 F.R.D. 532 (N.D. Ohio 2019).

[18] *In re Nat'l Prescription Opiate Litig.*, 976 F.3d 664 (6th Cir. 2020).

[19] *Id.* at 676.

approach turned on providing class members a sense of what their share would be. If given that information, class members would be able to calculate, before the opt-out period ended, how they would fare with, say, a $100 million settlement, or a $1 billion settlement, or a $10 billion settlement. They could then make an informed decision about whether to stick with the group, based both on how their share of the total settlement accorded with their litigation goals and on how equitable the allocation (and voting) formula seemed to them.

26. With this goal in mind, the PSC in MDL 2804 set out to develop an allocation formula to apply to a lump sum settlement of opioid-related proceeds. There had been very few, if any, nationwide political subdivision class settlements, so there existed no template upon which to build. Regardless, because the opioid epidemic impacted different communities differently, any allocation formula would have to be opioid specific. To generate the formula, the PSC undertook four specific sets of tasks (writ large):

- *First*, the PSC used the tools of litigation to secure orders from Judge Polster requiring the federal Drug Enforcement Agency ("DEA") to release data contained in the DEA's Automated Records and Consolidated Orders System/Diversion Analysis and Detection System ("ARCOS/DADS") database, the so-called "ARCOS data." As Judge Polster explained, the ARCOS data "shows the precise number of opioid pills delivered to each City and County in America, partitioned by manufacturer and distributor and pharmacy" and hence proved "essential in settlement discussions regarding apportionment of any obligation amongst defendants, and allocation of any settlement funds to plaintiffs."[20] Judge Polster noted that the ARCOS data enabled settlement discussions to "proceed based on meaningful, objective data, not conjecture or speculation [and provided] invaluable, highly-specific information regarding historic patterns of opioid sales."[21]

- *Second*, gathering and analyzing the ARCOS data, and other public health data, helped set a baseline, but that baseline often hid important nuances. For example, the raw data

[20] *In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804, 2018 WL 2182288, at *1 (N.D. Ohio May 8, 2018).

[21] *Id.*

could provide a sense of the saturation of opioids in any political subdivision: one subdivision of 100,000 persons may have had 1,000,000 prescriptions filled, or 10 per person, while another subdivision of 100,000 persons may have had 1,000 prescriptions filed, or .01 per person. Yet although a political subdivision experienced enormous opioid saturation as measured by ARCOS prescription data, the public hospital that was inundated by those patients – and accordingly entitled to relief under the legal theories in the MDL lawsuits – may have been a county hospital, not the city's hospital, and/or a neighboring city or county hospital. Thus, the PSC engaged a series of medical and public health experts to work with it, and the parties, to go beyond the ARCOS data itself and generate an allocation approach that applied the compensation goals of the lawsuit to the public health data in a pertinent fashion. That approach allocated proceeds according to an algorithm based on three equally weighted, objective public health factors: "(1) the number of persons suffering opioid use disorder in the county; (2) the number of opioid overdose deaths that occurred in the county; and (3) the amount of opioids distributed within the county."[22] The first factor was based on data collected by the federal Department of Health and Human Services and reported in the National Survey on Drug Use and Health; the second factor was based on data from the Multiple Causes of Death national mortality data, as reported by the National Center for Health Statistics, the Centers for Disease Control and the Department of Health and Human Services; the third factor relied on the ARCOS data, as adjusted to account for negative outcomes.[23]

- *Third*, consistent with this effort, the PSC convened groups of plaintiff political subdivisions to help generate the allocation formula. Thousands of political subdivisions had lawsuits consolidated in the MDL, while many others were litigating in state courts outside the MDL. Through formal PSC-convened plaintiff meetings, as well as informal communications networks, many of these litigating entities participated in the development of the allocation formula. The presence of litigating entities, each with its own unique interests and perspective, enabled the types of nuances identified above to emerge and helped fashion a final allocation formula that took careful account of all of the various factors at issue as much as possible.

- *Fourth*, as the main purpose of the negotiation class approach was to fix a large group of municipalities into an aggregate settlement group, the allocation formula had to be presented to and accepted by that mass of political subdivisions throughout the country, not just the more active players participating in the development process. In a truly stunning display of technological wizardry, the PSC developed an allocation formula website. The website encompassed a map of the United States and enabled a user to

[22] Plaintiffs' Memorandum in Support of Renewed and Amended Motion for Certification of Rule 23(b)(3) Cities/Counties Negotiation Class, *In re National Prescription Opiate Litigation*, Case No. 1:17-md-02804, ECF Doc # 1820-1 at 55 (July 9, 2019) (hereinafter "Pl. Neg. Class Br.").

[23] *Id.* at 55-59.

> click on any county and see that county's share of the lump sum settlement, as well as to plug in a lump sum number and see the county's actual dollar recovery at that lump sum level. Perhaps most importantly, the map enabled one municipality to scroll across to a neighboring municipality and compare its take to that of its fellow class members.[24]

27. When the PSC moved for certification of a negotiation class in MDL 2804, it included the proposed allocation formula as part of the motion,[25] given the centrality of the formula to ensuring that class members had sufficient information upon which to base their opt-out decision, were the Court to grant certification. As there was not yet a proposed settlement when the PSC moved for negotiation class certification, there was no reason for the Court to apply Rule 23(e)'s settlement approval principles. However, Judge Polster appreciated that if he went ahead with the negotiation class, the parties negotiated a lump sum settlement, the class members voted on it and approved it, and then moved for final approval, he would have to apply Rule 23(e)(2)(D) at that point. And if the allocation formula failed, everything that preceded it would have been a complete – yet avoidable – waste of time.[26] The Court accordingly appointed one of the case's

[24] The link to the allocation map (https://allocationmap.iclaimsonline.com/) is no longer operational, but in conjunction with the publication of Professor McGovern and my law review article on negotiation class certification, the Texas Law Review generated a permanent link that preserves a snapshot of the landing page for the original site. *See In re: National Prescription Opiates [sic] Litigation*, MDL No. 2804 (N.D. Ohio), *Allocation Map*, at https://perma.cc/6J6G-ATZZ.

[25] *See* Pl. Neg. Class Br. at 55-60.

[26] Order Directing Special Master Yanni to Assess Fairness of Allocation and Voting Proposals to Non-Litigating Entities, *In re National Prescription Opiate Litigation*, Case No. 1:17-md-02804, ECF Doc # 2529 at 3 (Aug. 26, 2019) ("It would be perverse—and an enormous waste of judicial and societal resources—to launch this whole negotiation class only to later hold that the allocation or voting schemes, identified at the outset, were inequitable *ab initio*.").

Special Masters (Cathy Yanni) to "provide the Court a one-time, neutral perspective on the proposed allocation . . . scheme[]."[27]

28. Special Master Yanni's report focused on various aspects of the allocation formula at issue in the negotiation class structure, some of which are not pertinent here. As to the core allocation mechanism, however (the distribution based on the ARCOS and other public health data, as developed by the parties in conjunction with medical and public health experts), Special Master Yanni wrote this:

> [T]he plan for allocating 75% of the settlement fund is objective, transparent, and fair. Settlement proceeds are allocated according to an algorithm based on three sets of objective public health data directly at the heart of this case: opioid-related overdoses, opioid-related deaths, and the distribution of opioid-related pills per capita in a given jurisdiction. The results are made transparent to the entire class, as any class member (or member of the public) can utilize an on-line allocation tool to see precisely what share of any settlement will go to each and every county in the country. This allocation model reflects a serious effort on the part of the litigating entities that devised it to distribute the class's recovery according to the driving force at the heart of the lawsuit – the devastation caused by this horrific epidemic. The legitimacy of the main allocation model supports an initial assumption that the litigating entities operated in good faith in developing the allocation plan.[28]

29. Judge Polster reviewed Special Master Yanni's report in certifying the negotiation class and adopted her findings. He explained his reasoning, and why some objections to the core allocation plan were off-base, as follows:

> As to the allocation plan, the Court agrees with Special Master Yanni's conclusion that the method for allocating the core class recovery (75% of the fund) reflects a lot of hard work and is a significant and eminently fair step toward resolution of these many cases. ***Nothing in the allocation model appears to skew toward any group other than those hardest hit by the opioid epidemic***.[29]

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[27] *Id.*

[28] Report of Special Master Cathy Yanni, *In re National Prescription Opiate Litigation*, Case No. 1:17-md-02804, ECF Doc # 2579 at 5 (Sept. 10, 2019) (hereinafter "Yanni Rep.").

[29] *In re Nat'l Prescription Opiate Litig.*, 332 F.R.D. at 553 (emphasis added) (cleaned up).

30. Because the Sixth Circuit reversed Judge Polster's endorsement of the negotiation class approach, the negotiation class certification allocation formula was never formally subjected to the Rule 23(e)(2)(D) analysis in the context of a proposed class action settlement. However, the guts of the allocation formula became part of later settlements and were met with informal approval of the class members therein. To understand that piece of the story requires returning to the second settlement track identified in paragraph 18, above – the State driven settlements.

Later Endorsement of the Allocation Formula

31. Defendants would necessarily have to settle with State governments outside the MDL, as many States had filed cases in their own State courts and those cases could not be removed and consolidated into the MDL. The defendants' concern, noted above, was that settling with a State would leave it open to cases from the State's political subdivisions. Some State attorneys general had the legal authority to shut down subdivision litigation, but not all did and even among those who could, the politics of doing so was complicated. Accordingly, the defendants and States developed something of a carrot/stick approach to aggregate settlements – essentially, the defendants provided multi-year settlements and graduated the amount provided each year based on the presence or absence of subdivision litigation. This empowered the States to work with their subdivisions to cease litigating independently, as the State's recovery from a defendant would increase the less outstanding litigation existed in that State.[30]

[30] The National Association of Attorneys General explained the provisions as follows:

> Because of the unprecedented nature of this nationwide litigation – involving thousands of separate cases and tens of thousands of potential governmental claimants – there are several provisions calibrated to incentivize maximum participation by state and local governments and to incentivize early participation. They include the division of payments into base and

32. Of course, to accomplish the goal of curtailing subdivision litigation, each State had to generate a mechanism to allocate the State's recovery among its subdivisions that was sufficiently attractive to the subdivisions to get them to stop litigating independently. Some States generated specific intrastate allocation mechanisms for that purpose and for those that did, that mechanism is employed here. In the States that were unable to establish intrastate allocation mechanisms, or otherwise did not, allocation defaulted to the data-driven, expert developed, class member participatory mechanism from MDL 2804; thus, the MDL 2804 formula became known as the national default allocation mechanism.

33. Had the negotiation class been affirmed and led to a settlement, there would have been a settlement process enabling objections to the allocation mechanism and a direct application of Rule 23(e)(2)(D) within the litigation in which the default mechanism was established. An absence of objections in that setting could provide evidence upon which a court might rely in

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> bonuses, with bonuses based on participation levels. There are also suspension, offset, and look-back provisions that are intended to deter future opioid litigation against the companies by state and local governments, now that they have agreed to a $26 billion global nationwide settlement. These deterrents are substantially lessened in the event certain high levels (tiers) of participation by states and subdivisions are achieved nationally.
>
> A state and its subdivisions can secure maximum payments for themselves by achieving full resolution (subject to certain minor exceptions) of the actual and potential opioid-related legal claims by public entities within the state. This can be done through voluntary opt-ins, legislation, judicial action, or any combination of these methods that resolves existing claims and bars future claims. States that are unable to achieve complete resolution can still receive substantial payments by resolving a significant portion of current and future subdivision claims. The partial payment percentages are set forth in sliding scales based on participation levels among subdivisions within a state.

National Association of Attorneys General, *Summary of State/Subdivision Agreements with Johnson & Johnson and 3 Major Pharmaceutical Distributors* at 1-2, available at https://ncdoj.gov/wp-content/uploads/2021/07/2-pager-full-deal-final-002.pdf.

affirming the *bona fides* of an allocation plan.[31] Although that form of direct evidence is lacking, the subsequent use of the default allocation plan by States and their political subdivisions throughout the country provides strong evidence of the fairness of the default plan. Put differently, the default allocation plan is so equitable that interested parties rely on it where agreement is otherwise elusive.

IV.
THE ALLOCATION FORMULA HISTORY PROVIDES STRONG SUPPORT FOR THE CONCLUSION THAT IT TREATS CLASS MEMBERS EQUITABLY.

34. Rule 23(e)(2)(D), as amended in 2018, requires the Court to ensure that a proposed settlement "treats class members equitably relative to each other" before granting final approval to it.[32] The Advisory Committee's notes to the 2018 codification of this factor provide context in stating, "Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief."[33]

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[31] The Ninth Circuit has long instructed district courts to apply the so-called *Churchill* factors in reviewing a proposed class action settlement, one of which is "the reaction of the class members to the proposed settlement." *See Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). The Circuit recently noted that the "amended Rule 23(e) did not 'displace' this court's previous articulation of the relevant factors, and it is still appropriate for district courts to consider these factors in their holistic assessment of settlement fairness." *McKinney-Drobnis v. Oreshack*, 16 F.4th 594, 609 n.4 (9th Cir. 2021). *See generally* William B. Rubenstein, 4 *Newberg and Rubenstein on Class Actions* § 13:58 (6th ed. 2022) (reporting and discussing fact that "[c]ourts have often held that if only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement") (hereinafter "*Newberg and Rubenstein on Class Actions*").

[32] Fed. R. Civ. P. 23(e)(2)(D).

[33] Fed. R. Civ. P. 23(e)(2)(D) advisory committee's note to 2018 amendment.

35. There are four remarkable aspects of the history reported in the prior section that provide strong support for the conclusion that the proposed allocation formula meets Rule 23(e)(2)(D)'s equitable goal.

36. *First*, ***substantively***, and most importantly, the default national allocation formula is based on three sets of objective public health data, all reported by the federal government, as applied by public health and medical experts to the issues in this case. The datapoints themselves are remarkably precise indicators of the saturation of the opioid problem in any given area, and the further refinement of the data for use as an allocation formula relied on neutral public health and medical experts with no incentives to skew the data in any particular manner. There is little doubt that the allocation formula is solely directed at remediating the impact of the opioid epidemic on political subdivisions throughout the United States and is therefore substantively sound.

37. *Second*, ***procedurally***, and uniquely for class action practice, class members themselves were involved in developing the national default allocation mechanism in the context of the 2021 National Settlements. This is unusual for class actions, as class members typically have so little at stake that it would be inefficient for them to spend time sorting out an allocation formula; courts, lawyers, and claims administrators do it for them. Here, of course, class members have significant economic, political, and social interests at stake. It is a credit to this allocation formula that it results from the MDL 2804 PSC's effort to solicit class member input: the underlying premise of adjudication in the United States is, of course, that settlement decisions are

vested with the client, not counsel,[34] and where plausible, class action should aim for no less.[35] One commentator has noted that the structure of negotiation class certification – figuring out an allocation formula ***before*** money is on the table and ***before*** the opt-out opportunity, as occurred in MDL 2804 – "is much more likely to result in an allocation that is fair to all segments of the class with their differing interests."[36]

38. *Third*, ***historically***, a Special Master, appointed by Judge Polster in MDL 2804, reviewed the allocation formula in real time in that litigation and found it to be sound; Judge Polster, in turn, adopted that finding after undertaking his own independent evaluation. To be sure,

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[34] Model Rules of Prof'l Conduct R. 1.2(a) ("A lawyer shall abide by a client's decision whether to settle a matter.").

[35] Elizabeth J. Cabraser & Samuel Issacharoff, *The Participatory Class Action*, 92 N.Y.U. L. Rev. 846, 859-60 (2017) (describing how class members – particularly those with large stakes – have become more active in class action litigation and noting relationship to democratic-like values); William B. Rubenstein, *Divided We Litigate: Addressing Disputes Among Group Members and Lawyers in Civil Rights Campaigns*, 106 Yale L.J. 1623, 1654-62 (1997) (discussing mechanisms for democratic decision-making in group litigation).

[36] Alan B. Morrison, *A Negotiation Class: A New, Workable, and (Probably) Lawful Idea*, 99 Tex. L. Rev. Online 49, 50 (2020). Professor Morrison explains:

> That is because class counsel needs as many class members as possible to remain in the class so that the defendant will be willing to negotiate over as close to a global settlement as possible. A negotiation class is unlike the typical settlement in which the allocation is done by class counsel after the deal with the defendant is struck, when absent class members have little leverage. By contrast, in the negotiation class, the allocation occurs first, when class members are not forced to choose between no deal and a bad deal. As a result, in order to reach agreement on an allocation formula, class counsel must consider the interests of all subgroups within the class (or realistically, their lawyers), even if they are not actually at the bargaining table. And class counsel must listen and take those views into account so that the class supports the allocation when the judge is asked to certify the class, so that large numbers of class members do not opt out, and so that the class as a whole votes to support the ultimate settlement if class counsel is able to reach an agreement with the defendant.

Id.

that review did not come in the context of a proposed settlement – rather, in the context of negotiation class certification as explained above – but these prior jurists nonetheless applied the principle of Rule 23(e)(2)(D) to these facts and found the formula sound.

39. *Fourth*, subsequent events provide strong support for the conclusion that the allocation formula has been ***consented to*** by many class members. As noted above, significant class participation went into the formula at the outset. In the negotiation class certification proceedings in MDL 2804, only a few putative class members expressed any concern about this aspect of the allocation formula, and Judge Polster's decision explained that the objections were either based on a misunderstanding of the facts underlying the formula and/or addressed by other aspects of the settlement.[37] Although negotiation class certification never came to fruition, the parties generating the subsequent 2021 National Settlements all employed the national allocation formula as a default. This shows that the formula drew support from both States and political subdivisions, as it was used precisely where those entities were unable to otherwise generate an intrastate allocation plan and/or because it provided a satisfactory intrastate allocation plan.

40. I explain in the *Newberg and Rubenstein on Class Actions* treatise that "the court's goal [in applying Rule 23(e)(2)(D)] is to ensure that similarly situated class members are treated similarly and that dissimilarly situated class members are not arbitrarily treated as if they were similarly situated."[38] The foregoing thorough review of the proposed allocation formula uncovers no such disparity here: the formula is data driven, expert-developed, party-negotiated, and class member approved. Indeed, the default allocation has so much evidentiary support that the only

[37] *In re Nat'l Prescription Opiate Litig.*, 332 F.R.D. at 553.

[38] 4 *Newberg and Rubenstein on Class Actions* § 13:56.

plausible red flag in this circumstance would be if the settling parties had adopted an allocation formula that did *not* track it.

41. Given the enormous magnitude of the opioid problem, the quantity of political actors and lawyers involved in addressing it, and the level of the monetary relief afforded in the many settlements that aim to remedy it, the actual legal language of the parties' proposed allocation formula can sound dense and ring in buzzwords. But when parsed, there is little doubt that it provides a valid, data driven, public health based, class member approved approach to dispersing the funds in this settlement.

* * *

42. I have testified that:

- The parties in MDL 2804 developed the default federal allocation program using objective public health data, in consultation with medical and public health experts, in a manner that encouraged and relied on stakeholder/class members input and approval; the Special Master and Court in that case both independently approved the mechanism; and States, political subdivisions, and settling defendants in other national settlements showed their approval of it by making it the default intrastate allocation formula.

- Both the content of the allocation formula and this history provide strong support for the conclusion that Rule 23(e)(2)(D)'s intraclass equity requirement has been met.

November 8, 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

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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

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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 (provided presentation to MDL judges on recent developments in class action law and related topics (2010, 2011, 2013-2019)

◊ *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 proposed hourly rates used in lodestar cross-check submission (*In re National Veterans Legal Services Program, et al. v. United States,* Case No. 1:16-CV-00745-PLF (D. D.C. 2023))

◊ Submitted expert witness declarations concerning reasonableness of – and proper approach to – attorney's fees in context of issue class action judgment (*James, et al., v. PacifiCorp, et al.,* Civil Action No. 20CV33885 (Oregon Circuit Court, Multnomah Cty. 2023))

◊ Retained as an expert witness concerning reasonableness of attorney's fee request (*In re Wells Fargo & Company Securities Litigation*, Case No. 1:20-cv-04494-GHW (S.D.N.Y. 2023))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*In re Facebook, Inc. Consumer Privacy User Profile Litigation,* Civil Action No. 3:18-cv-02843-VC (N.D. Cal. 2023))

◊ Submitted expert witness declaration concerning constitutionality of proposed procedures for resolving aggregate claims within a bankruptcy proceeding (*In re PG&E Corporation and Pacific Gas and*

Electric Company, Bankruptcy Case No. 19-30088 (N.D. Cal. Bankrpt. 2023))

◊ Submitted expert witness declaration concerning reasonableness of attorney's fee request (*Health Republic Insurance Company v. United States,* Civil Action No. 1:16-cv-0259C (Ct. Fed. Cl. 2023))

◊ 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 a consulting expert in complex MDL/class action concerning attorney's fees issues (2023)

◊ 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

◊ *Class Action Law Update,* MDL Transferee Judges Conference, Palm Beach, Florida, October 24, 2023 (scheduled)

◊ *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

In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation
Case No. 3:21-md-02996-CRB
U.S. District Court for the Northern District of California

DECLARATION OF PROFESSOR WILLIAM B. RUBENSTEIN IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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

A. ***In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation*, Case No. 3:21-md-02996-CRB (N.D. Cal.)**

1. Transfer Order, ECF No. 1
2. Pretrial Order No. 2: Order Appointing Plaintiffs' Lead Counsel and Plaintiffs' Steering Committee, ECF No. 211
3. Pretrial Order No. 3: Protocol for Common Benefit Work and Expenses, ECF No. 215
4. Pretrial Order No. 7: Initial Case Management Order, ECF No. 293
5. McKinsey Defendants' Notice of Motion and Motion to Dismiss the Complaints on the Grounds of *Res Judicata* and Release; Memorandum of Points and Authorities in Support, ECF No. 310
6. McKinsey Defendants' Notice of Motion and Motion to Dismiss for Lack of Personal Jurisdiction; Memorandum of Points and Authorities, ECF No. 313
7. Subdivision Plaintiffs' Opposition to McKinsey Defendants' Motion to Dismiss on the Grounds of Res Judicata and Release, ECF No. 345
8. Subdivision Plaintiffs' Opposition to McKinsey Defendants' Motion to Dismiss on the Grounds of Res Judicata and Release Exhibit A, ECF No. 345-2
9. Plaintiffs' Memorandum of Points and Authorities in Opposition to McKinsey Defendants' Motion to Dismiss for Lack of Personal Jurisdiction, ECF No. 347
10. McKinsey Defendants' Reply Memorandum of Points and Authorities in Further Support of Motion to Dismiss the Complaints on the Grounds of *Res Judicata* and Release, ECF No. 357
11. McKinsey Defendants' Reply in Support of Motion to Dismiss for Lack of Personal Jurisdiction, ECF No. 363
12. Order for Supplemental Briefing, ECF No. 370
13. McKinsey Defendants' Supplemental Brief in Further Support of Motion to Dismiss the Complaints on the Grounds of *Res Judicata* and Release, ECF No. 378
14. Order Denying Motion to Dismiss for Lack of Personal Jurisdiction, ECF No. 439
15. McKinsey Defendants' Notice of Motion and Motion to Dismiss Master Complaints for Failure to State a Claim; Memorandum of Points and Authorities, ECF. No. 462
16. NAS, TPP, and Tribal Plaintiffs' Memorandum of Points and Authorities in Opposition to McKinsey Defendants' Motion to Dismiss Master Complaints for Failure to State a Claim, ECF No. 481

17. Plaintiffs' Notice of Motion and Motion for Entry of Pretrial Order No. 9 Establishing a Common Benefit Fee and Expense Fund; Memorandum of Points and Authorities In Support, ECF No. 555
18. Declaration of Elizabeth J. Cabraser in Support of Plaintiffs' Motion for Entry of Pretrial Order No. 9 Establishing a Common Benefit Fee and Expense Fund, ECF No. 555-1
19. Declaration of Elizabeth J. Cabraser in Support of Plaintiffs' Motion for Entry of Pretrial Order No. 9 Establishing a Common Benefit Fee and Expense Fund Exhibit A, ECF No. 555-2
20. Declaration of Elizabeth J. Cabraser in Support of Plaintiffs' Motion for Entry of Pretrial Order No. 9 Establishing a Common Benefit Fee and Expense Fund Exhibit B, ECF No. 555-3
21. Declaration of Elizabeth J. Cabraser in Support of Plaintiffs' Motion for Entry of Pretrial Order No. 9 Establishing a Common Benefit Fee and Expense Fund Exhibit C, ECF No. 555-4
22. Pretrial Order No. 9: Establishing a Common Benefit Fee and Expense Fund, ECF No. 567
23. First Amended Master Complaint (School Districts), ECF No. 593-2
24. Amended Master Class Action Complaint (Subdivision), ECF No. 597
25. Plaintiffs' Notice of Unopposed Motion and Motion for Preliminary Approval of Class Action Settlement; Memorandum of Points and Authorities in Support, ECF No. 598
26. Declaration of Aelish M. Baig in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF No. 598-1
27. Declaration of Aelish M. Baig in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement Exhibit 1, ECF No. 598-2
28. Declaration of Aelish M. Baig in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement Exhibit 2, ECF No. 598-3
29. Declaration of Cameron R. Azari, Esq. Regarding Settlement Notice Plan and Notices, ECF No. 598-4
30. [Proposed] Order Granting Preliminary Approval of Class Settlement and Direction of Notice Under Rule 23(e) of The Federal Rules of Civil Procedure, ECF No. 598-5
31. Plaintiff School Districts' Unopposed Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; and Memorandum of Points and Authorities in Support, ECF No. 599
32. Plaintiff School Districts' Unopposed Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; and Memorandum of Points and Authorities in Support Exhibit 1, ECF No. 599-1
33. Plaintiff School Districts' Unopposed Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; and Memorandum of Points and Authorities in Support Exhibit 2, ECF No. 599-2
34. Plaintiff School Districts' Unopposed Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; and Memorandum of Points and Authorities in Support Exhibit 3, ECF No. 599-3
35. Plaintiff School Districts' Unopposed Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; and Memorandum of Points and Authorities in Support Exhibit 4, ECF No. 599-4

36. Plaintiff School Districts' Unopposed Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; and Memorandum of Points and Authorities in Support Exhibit 5, ECF No. 599-5
37. Plaintiff School Districts' Unopposed Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; and Memorandum of Points and Authorities in Support Exhibit 6, ECF No. 599-6
38. [Proposed] Order Granting Preliminary Approval of Class Settlement and Direction of Notice Under Federal Rule of Civil Procedure 23(e), ECF No. 599-7
39. Order Granting Preliminary Approval of Class Settlement and Direction of Notice Under Rule 23(e) of The Federal Rules of Civil Procedure, ECF No. 609
40. Amended Order Granting Preliminary Approval of Class Settlement and Direction of Notice Under Rule 23(e) of The Federal Rules of Civil Procedure, ECF No. 617
41. Amended Order Granting Preliminary Approval of Class Settlement and Direction of Notice Under Federal Rule of Civil Procedure 23(e), ECF No. 621

B. ***In re National Prescription Opiate Litigation*, Case No. 1:17-md-02804-DAP (N.D. Ohio)**

42. Plaintiffs' Renewed and Amended Notice of Motion and Motion for Certification of Rule 23(b)(3) Cities/Counties Negotiation Class, ECF No. 1820
43. Plaintiffs' Memorandum in Support of Renewed and Amended Motion For Certification Of Rule 23(B)(3) Cities/Counties Negotiation Class, ECF No. 1820-1
44. [Proposed] Order Certifying Negotiation Class And Directing Notice, ECF No. 1820-2
45. Plaintiffs' Reply Brief in Further Support of Renewed and Amended Motion for Certification of Rule 23(b)(3) Cities/Counties Negotiation Class, ECF No. 2076
46. Order Directing Special Master Yanni to Assess Fairness of Allocation and Voting Proposals to Non-Litigating Entities, ECF No. 2529
47. Report of Special Master Cathy Yanni, ECF No. 2579
48. Memorandum Opinion Certifying Negotiation Class, ECF No. 2590
49. Order Certifying Negotiation Class and Approving Notice, ECF No. 2591
50. Order to Establish Qualified Settlement Fund, Appoint Panel of Common Benefit and Contingency Fee Fund Arbiters, Approve Fee Fund Allocation and Distribution Process, and Approve Common Benefit Cost Payment and Assessment, ECF No. 3828
51. Order to Establish Qualified Settlement Funds, Appoint Panel of Common Benefit and Contingency Fee Funds Arbiters, Approve Fee Fund Allocation and Distribution Process, and Approve Common Benefit Cost Payment and Assessment, ECF No. 5088

C. **Other**

52. Janssen Settlement Agreement in *National Prescription Opiate Litigation*, available at https://nationalopioidsettlement.com/wp-content/uploads/2023/01/Janssen-agreement-03302022-FINAL2-Exhibit-G-as-of-1.9.23.pdf
53. BrownGreer, *National Opioid Settlement Dashboards*, available at https://nationalopioidsettlement.com/wp-content/uploads/2023/10/Opioid-Payment-Dashboard-10.19.23.pdf