UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:21-md-03015-SINGHAL/Valle

IN RE: JOHNSON & JOHNSON SUNSCREEN MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	**MDL CASE NO. 3015**
Theodore H. Frank, Objector	

OBJECTION OF THEODORE H. FRANK

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INTRODUCTION

Congress has condemned "abuses of the class action device," such as when "counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value" and where "unjustified awards are made to certain plaintiffs at the expense of other class members." 28 U.S.C. § 1711 note §§ 2(a)(3), (a)(3)(A). To address these abuses, Congress passed the Class Action Fairness Act ("CAFA"), which implements a strict and specific regime for evaluating all settlements and accompanying fee awards that involve coupons. 28 U.S.C. § 1712. Yet the plaintiffs don't mention CAFA a single time in support of either settlement approval or their fee request.

This coupon settlement proposes to distribute coupons with a maximum face value of $10.58—but a likely value closer to $5[1]—that can be used to buy products that the complaint alleges to be carcinogenic, while class counsel seeks uncontested fees of $2.6 million dollars in cash. Non-aerosol products purchasers may file a claim to receive *up to* two coupons, prorated to a value $5 each at the time of this filing, which is allegedly "equal to the average retail selling price of the Non-Aerosol Product(s) purchased[.]" Dkt. 55-9 at 14. These coupons are highly unlikely to be redeemed, and redemption value is the relevant valuation under § 1712 and Rule 23(e)(2)(C)(ii).

Aerosol product purchasers receive even less than that: illusory injunctive relief and no monetary or coupon relief. Aerosol product purchasers could have applied for a refund for up to three products without proof of purchase and more than three with proof of purchase from Johnson & Johnson's pre-existing—but long-expired—refund program. Even crediting class counsel with the refund program extension, however, the requested amount of attorney's fees far exceeds what is reasonable considering the monetary value of the benefits accrued to the class.

Class counsel's efforts to justify the disproportionate settlement fall flat. The settling parties' claim that the settlement caused the refund program for purchasers of aerosol products is untrue. The program was preceded by and resulted from Johnson & Johnson's voluntary recall program and the

[1] Under the settlement the actual value of the coupons will be determined by the number of valid claims made such that the total amount of coupons does not exceed $1.75 million. Dkt. 55-9 at 15. As of June 24, 2022, 172,764 claims have been submitted. Assuming each claim is for two coupons, the maximum allowed without proof-of-purchase, then Frank's back-of-the-envelope calculations put the final coupon value at $5.06 (($1,750,000 / 172,764) / 2 = $5.06). For purposes of this brief, Frank uses the approximate $5 value per coupon.

U.S. Food and Drug Administration's investigation into the possible contamination of Johnson & Johnson sunscreen products with benzene, which were announced July 14, 2021. Notice of the appearance of benzene in Johnson & Johnson sunscreen products came two months prior from independent pharmaceutical lab Valisure, which filed a citizen petition alerting the FDA of the issue on May 24, 2021. The first-filed complaint in this consolidated action was filed in this Court on May 25, 2021. *Serota v. Johnson & Johnson Consumer Inc.,* No. 21-cv-61103 (S.D. Fla.), Dkt. 1.

The parties settled on December 17, 2021, stating "The Aerosol Products Refund Program is ongoing" and that "[Johnson & Johnson] will hold open and not discontinue the Aerosol Products Refund Program until January 14, 2022." Dkt. 55-9, at 13-14. But Johnson & Johnson had announced the recall and refund offer months earlier on July 14, 2021, *without* any deadline by which consumers had to request a refund. *See Johnson & Johnson Consumer Inc. Issues Voluntary Recall of Specific NEUTROGENA® and AVEENO® Aerosol Sunscreen Products Due to the Presence of Benzene*, Johnson & Johnson (notifying consumers that they "may contact the [Johnson & Johnson] Consumer Care Center 24/7 with questions or to request a refund by calling 1-800-458-1673.").[2] With December marking the first mention of the purported extension, the parties appear to be agreeing to extend the program from no deadline in the first place. Further, plaintiffs do not disaggregate the monetary value of the refund before versus after the supposed extended refund period, and instead only provide the total monetary value of all refunds provided, rather than for just the four weeks after the settlement. As a matter of law, a settlement may not take credit for relief provided by a defendant before a settlement agreement. (Nor may a suit take credit for an ongoing refund program. *In re Aqua Dots Prod. Liab. Litig.*, 654 F.3d 748 (7th Cir. 2011).) Thus, plaintiffs' $9.5 million attribution as settlement value is fictional.

So too is plaintiffs' attribution of $80 million in settlement value to prospective injunctive relief relating to recalled products. Again, as a matter of law, imposing costs on Johnson & Johnson is not equivalent to providing benefits to the class. More fundamentally, prospective injunctive relief does not match the class itself, which comprises individuals who purchased in the past, not those who will purchase in the future.

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[2] *Available at* https://www.jnj.com/johnson-johnson-consumer-inc-issues-voluntary-recall-of-specific-neutrogena-and-aveeno-aerosol-sunscreen-products-due-to-the-presence-of-benzene

As a result, the only true compensatory relief to class members is the coupons to non-aerosol purchasers. Under the most generous estimates, empirical data suggest that no more than 5% of the coupons will be redeemed; the parties do not satisfy their burden under Rule 23(e)(2)(C)(ii) to suggest a higher-than-expected rate. What class counsel characterizes as a $1.75 million benefit for the class is likely under $100,000. Yet class counsel asks for over 27 times this amount, far above the Eleventh Circuit's benchmark of around 25% for fee awards in common fund settlements. *See Arkin v. Pressman*, No. 21-11019, 2022 U.S. App. LEXIS 18205, at *3 (11th Cir. Jun. 30, 2022).

If the Court finds that there is any value in the settlement's proposed injunctive relief, then the class should not be certified under Rule 23(a)(4) because the relief would create an impermissible interclass conflict between past-purchaser and future-purchaser class members. Only future purchasers would avail themselves of whatever benefit the injunctive relief creates, thereby treating them differently than those class members who will never purchase Johnson & Johnson sunscreen products again. And any prospective relief provides no unique benefit to class members, as opposed to non-class members and opt-outs.

The settlement includes other indicia of an unfair, lawyer-driven settlement that fails Rule 23 scrutiny. Class counsel seeks to insulate the award from attack by including a clear sailing agreement that prevents Johnson & Johnson from challenging the fee request and allowing any unawarded fees under the clear sailing threshold to revert to Johnson & Johnson instead of the class.

In discharging its fiduciary duty to the class, the Court should deny final settlement approval. In the alternative, if the Court approves the settlement, CAFA counsels that the Court should delay any fee award until after the coupon redemption period so that attorney fees are commensurate with the relief *actually received* by class members.

ARGUMENT

I. Objector Frank is a member of the settlement class.

Objector Ted Frank is a class member who purchased Johnson & Johnson aerosol and lotion sunscreen products during the class period and has filed a claim here. *See* Declaration of Theodore H. Frank, ¶¶ 5-8 (attached).

Frank is Director of Litigation at the Hamilton Lincoln Law Institute, whose Center for Class

Action Fairness ("CCAF") represents him *pro bono*. Frank's declaration under oath includes all information required by the Preliminary Approval Order, including his organization's history of objecting to class-action settlements and fee requests on behalf of himself and other class members. As the Seventh Circuit recently wrote, "Frank's track record—which now includes his success in this case—speaks for itself." *In re Stericycle Sec. Litig.*, 35 F.4th 555 (7th Cir. 2022). CCAF attorney John M. Andren intends to appear at the fairness hearing on his behalf. Frank brings this objection through CCAF in good faith to protect the interests of the class. Frank Decl. ¶¶ 11-14. His objection applies to the entire class, and to class members like himself who will not benefit from the injunctive relief; he adopts any objections not inconsistent with this one.

II. Because class-action settlements are predisposed to agency problems, courts must scrutinize settlements to prevent class counsel from self- dealing at the expense of absent class members.

A. Courts must be wary of the allocation of a class-action settlement.

To protect absent class members, courts have a duty to make sure that class counsel have not bargained away the rights of the class. "The parties to an ordinary settlement bargain away only their own rights—which is why ordinary settlements do not require court approval. In contrast, class-action settlements affect not only the interests of the parties and counsel who negotiate them, but also the interests of the unnamed class members who by definition are not present during the negotiations." *In re Dry Max Pampers Litig.*, 724 F.3d 713, 715 (6th Cir. 2013) ("*Pampers*"). To combat the omnipresent "danger that the parties and counsel will bargain away the interests of the unnamed class members in order to maximize their own," the district court must act as a fiduciary of the class and apply zealous scrutiny to the proposed settlement. *Id.* "Careful scrutiny by the court is necessary to guard against settlements that may benefit the class representatives or their attorneys at the expense of the absent class members." *Holmes v. Cont'l Can Co.*, 706 F.2d 1144, 1147 (11th Cir. 1983) (quotation omitted). "[T]he district judge has a heavy duty to ensure that any settlement is 'fair, reasonable, and adequate' and that the fee awarded plaintiffs' counsel is entirely appropriate." *Piambino v. Bailey II*, 757 F.2d 1112, 1139 (11th Cir. 1985) ("*Piambino II*"). This duty is "akin to the high duty of care that the law requires of fiduciaries." *Figueroa v. Sharper Image Corp.*, 517 F. Supp. 2d 1292, 1320 (S.D. Fla. 2007) (cleaned up).

Every dollar reserved to the class is a dollar defendants cannot pay class counsel, so naturally, a conflict of interest emerges. Defendants are "uninterested in what portion of the total [settlement] payment will go to the class and what percentage will go to the class attorney." *Piambino II*, 757 F.2d at 1143 (cleaned up); *accord In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 949 (9th Cir. 2011) ("*Bluetooth*"). Because of this indifference, judges must look for not just actual collusion (governed by Rule 23(e)(2)(B)) but also the Rule 23(e)(2)(C) problem: "subtle signs that class counsel have allowed pursuit of their own self-interest and that of certain class members to infect the negotiations." *Pampers*, 724 F.3d at 718 (cleaned up). Thus, while class counsel and defendants have proper incentives to bargain effectively over the size of a settlement, they have no such constraints on allocating it between the payments to class members and the fees for class counsel—unless courts police that allocation. *Bluetooth*, 654 F.3d at 949; *see also Pampers*, 724 F.3d at 717.

When, as here, class counsel favor themselves over their clients, a district court has a legal obligation to reject the proposed settlement. *Bluetooth*, 654 F.3d at 948-49; *see also Pampers*, 724 F.3d at 721; *Pearson v. NBTY, Inc.*, 772 F.3d 778, 786-87 (7th Cir. 2014).

B. Coupon settlements present specific allocation issues and are disfavored.

Congress expressed concern in CAFA that "[c]lass members often receive little or no benefit from class actions, and are sometimes harmed, such as where … class counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value." 28 U.S.C. § 1711 note §§ 2(a)(3), (a)(3)(A); *see also EasySaver*, 906 F.3d at 754-55. Such unfairness was prevalent because the use of coupons unlikely to be redeemed "masks the relative payment of class counsel as compared to the amount of money actually received by the class members." *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1179 (9th Cir. 2013) ("*Inkjet*") (quoting Christopher R. Leslie, *A Market-Based Approach to Coupon Settlements in Antitrust and Consumer Class Action Litigation*, 49 UCLA L. REV. 991, 1049 (2002)).

Coupon settlements suffer from other flaws, including that "they often do not provide meaningful compensation to class members; they often fail to disgorge ill-gotten gains from the defendant; and they often require class members to do future business with the defendant in order to receive compensation." *Figueroa*, 517 F. Supp. 2d at 1302. Coupons also benefit the defendant as they can "serve as a form of advertising for the defendants …." *In re Mexico Money Transfer Litig.*, 267 F.3d 743, 748 (7th Cir. 2001). And when a settlement contemplates unused coupon value functionally

reverting to the defendant, in this case by never leaving the defendant in the first place, the dangers are "even more grave." *Roes*, 944 F.3d at 1053. "Unchecked, such reversions would allow defendants to create a larger coupon pool than they know will be claimed or used, just to inflate the value of the settlement and the resulting attorneys' fees." *Id.* at 1054.

It is because of "the[se] well-documented problems associated with such settlements [that] Congress voiced its concern over coupon settlements when it amended [CAFA] to call for judicial scrutiny of attorneys' fee awards in coupon cases." *Reed v. Continental Guest Servs. Corp.*, No. 10 Civ. 5642, 2011 WL 1311886, at *3 (S.D.N.Y. Apr. 4, 2011). Because of the inherent dangers of coupon settlements, CAFA requires a district court to apply "heightened judicial scrutiny" and to value the settlement, at least for fee purposes, based "on the value to class members of the coupons that are redeemed," 28 U.S.C. § 1712(a). *See also McKinney-Drobnis*, 16 F.4th at 602. The Senate Committee's Report on CAFA confirms these legislative aims:

> [W]here [coupon] settlements are used, the fairness of the settlement should be seriously questioned by the reviewing court where the attorneys' fee demand is disproportionate to the level of tangible, non-speculative benefit to the class members. In adopting [Section 1712(e)'s requirement of a written determination that the settlement is fair, reasonable, and adequate], it is the intent of the Committee to incorporate that line of recent federal court precedents in which proposed settlements have been wholly or partially rejected because the compensation proposed to be paid to the class counsel was disproportionate to the real benefits to be provided to class members.

S. Rep. 109-14, at 31 (2005), as reprinted in 2005 U.S.C.C.A.N. 3, 32.

As discussed in Section III.A below, one cannot evade CAFA with the semantic trip of calling coupons "vouchers," as the parties do. Dkt. 78-1 at 2. As in other contexts, legal effect "is governed by functions rather than labels." *Hertz Corp. v. Alamo Rent-A-Car*, 16 F.3d 1126, 1131 (11th Cir. 1994).

C. Settlements may contain illusory relief that obscures the true allocation of the class relief.

Class counsel can structure a settlement to obscure the relative allocations between lawyers and class members by artificially inflating the settlement's apparent value. The illusion of a large settlement benefits both class counsel and a defendant: "The more valuable the settlement appears to the judge, the more likely the judge will approve it. And the bigger the settlement, the bigger the fee for class counsel." See Howard M. Erichson, *How to Exaggerate the Size of Your Class Action Settlement*,

DAILY JOURNAL (Nov. 8, 2017).[3] Without judicial oversight to weed out such practices, class members are left with disproportionate settlements in which class counsel recovers far more than the 25-percent benchmark set by this Court. *See* Howard Erichson, *Aggregation as Disempowerment*, 92 NOTRE DAME L. REV. 859 (2016).

Consider the likelihood of settlement approval if class counsel openly sought approval of a common-fund cash settlement of $1.75 million, which paid the lawyers $2.6 million in fees and expenses and paid class members $87,500 in collective damages—as this settlement ultimately does. Few judges would approve that deal, and it is foreclosed by precedent. *See, e.g.*, *Dennis v. Kellogg Co.*, 697 F.3d 858, 868 (9th Cir. 2012) (class counsel receiving even 38.9% of settlement benefit is "clearly excessive"); *Bluetooth*, 654 F.3d at 947-49 (disproportionate fee award is a hallmark of an unfair settlement). For the deal to have any chance of court approval, it must conceal this result. So settling parties create hypothetical class recoveries and difficult-to-calculate "benefits" that ultimately have little value to the class but are cheap for defendants to provide. These hypothetical recoveries get a high price tag that inflates the overall "value" of the settlement package that goes to the judge but do nothing for the class.

The value of injunctive relief is "easily manipulable by overreaching lawyers seeking to increase the value assigned to a common fund." *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003). Defendants benefit from *res judicata* following judicial approval of the settlement and the minimal cost of such relief, while class counsel hopes for approval of a higher fee request. The critical question for a reviewing court is whether the change achieved by the settlement actually benefits class members. Even if commencement of the litigation might have spurred a defendant to alter its conduct, that voluntary change in conduct is not consideration for the class members' release of claims. *Koby v. ARS Nat'l. Services, Inc.*, 846 F.3d 1071, 1080 (9th Cir. 2017). The value to class members of a defendant agreeing in the settlement to stop doing something it already stopped is virtually zero. *See id.*; *Staton*, 327 F.3d at 961; Erichson, 92 NOTRE DAME L. REV. at 874-76. Here, Johnson & Johnson undertook the "new testing and business practices to prevent the recurrence of benzene contamination in its sunscreen products" (Dkt. 78-1 at 3), as a result of the investigation and petition filed by an

[3] *Available at* https://www.dailyjournal.com/articles/344700-how-to-exaggerate-the-size-of-your-class-action-settlement.

independent laboratory and the later recall of affected products it undertook under the supervision of the FDA. Plaintiffs refuse to provide a valuation for this supposed injunctive relief, instead asserting vaguely that this "important injunctive relief" is value created by the settlement. *Id.*

Where courts fail to scrutinize settlements, they will look like the one here: valueless injunctive relief; coupons that can't even purchase a product that is the subject of the lawsuit; and attorneys' fees wildly disproportionate to the actual payout to the class, shielded from appellate review by self-dealing "clear-sailing" and "kicker" clauses. E.g., *Roes*; *Pampers*; *Bluetooth*; *Pearson*. The Settlement here has these telltale signs. Meanwhile, class counsel capitalized on Johnson & Johnson's voluntary, pre-settlement recall and refund program by characterizing it as a settlement benefit that somehow compensated class members for their release of claims. *E.g.*, Dkt. 78-1 at 3. Exacerbating the problems, the Settlement includes a "clear-sailing" clause whereby Johnson & Johnson agreed not to challenge the attorneys' fees as well as a "kicker" so that any reduction in the fee award reverts to Johnson & Johnson rather than the class. Dkt. 55-9 at 17. "The clear sailing provision reveals the defendant's willingness to pay, but the kicker deprives the class of that full potential benefit if class counsel negotiates too much for its fees." *Bluetooth*, 654 F.3d at 949. And worse, it prevents the court from correcting the misallocation of the settlement relief by returning excessive fees to class members.

The vitality of the class-action mechanism depends on rigorous scrutiny by the judiciary and the application of doctrinal tests that properly align the incentives of class counsel with those of the vulnerable, absent class members whose claims they settle away. This oversight function cannot be delegated to private mediators who serve the interests of the named parties. There is no presumption in favor of settlement approval; a rigorous analysis is required, not merely a surface-level one. *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1261-63 (11th Cir. 2020) ("*NPAS*"). The Court must scrutinize this settlement's red flags and should reject the proposal before it. And as discussed in Section III below, the settlement violates CAFA and Rule 23(e) as a matter of law.

III. The coupon settlement is unfair, as the class is not the foremost beneficiary.

The coupon settlement does not follow CAFA's requirement to base attorney's fees on the value of coupons redeemed. Instead, class counsel negotiated a settlement that allows themselves to extract fees far outstripping the class's actual settlement benefit. This is an impermissible distribution of settlement proceeds to class counsel and particularly unwarranted as absent class members receive

$0 in cash compensation because of this settlement. Merely reducing the fee award cannot correct this imbalance because counsel has insulated its negotiated fee through what is effectively a clear sailing agreement, which ensures that if counsel does not get its requested $2.6 million, the money remains with the defendant. Such a cynical and self-dealing settlement should be rejected in its entirety.

A. The $5 vouchers are coupons.

"Coupon" is not defined in CAFA and thus must be given its "ordinary meaning." *See Kouichi Tanicgushi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012) . "A coupon may be defined as a certificate or form 'to obtain a discount on merchandise or services,'" and "Webster's also defines coupons as 'a form surrendered in order to obtain an article, service or accommodation.' Coupons are commonly given for merchandise for which no cash payment is expected in exchange." *Dardarian v. Officemax N. Am., Inc.*, No. 11-cv-00947, 2013 U.S. Dist. LEXIS 98653, at *6-7 (N.D. Cal. July 12, 2013) (quoting WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1988)). Not only does this ordinary meaning of "coupon" comport with the ordinary meaning of "voucher," *id.*, but Congress intended the terms to be used interchangeably. *Redman v. Radioshack Corp.*, 768 F.3d 622, 636 (7th Cir. 2014).

The $5 vouchers here are no more than certificates "to obtain a discount on merchandise or services." *Dardarian*, 2013 U.S. Dist. LEXIS 98653, at *6-7. That the parties used the euphemism "voucher" in place of "coupon" does not change the underlying substance of the relief. *See, e.g.*, *Inkjet*, 716 F.3d at 1176 ("e-credits" are a "euphemism" for coupons); *EasySaver*, 906 F.3d 747 ("credits"); *Figueroa*, 517 F. Supp. 2d at 1320 ("merchandise credits" are coupons); *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 952 (9th Cir. 2015) ("*Online DVD*") (courts should "ferret[] out the deceitful coupon settlement that merely co-opts the term 'gift card' to avoid CAFA's requirements"); *McKinney-Drobnis v. Oreshack*, 16 F.4th at 604 ("vouchers" "valid only for select products or services" count as coupons under CAFA).

Even if the Court is inclined to disregard the ordinary meaning of coupon and follow the multifactor balancing applied in *McKinney-Drobnis*, the $5 "vouchers" are still coupons. *McKinney-Drobnis* considered three guiding factors in determining that the vouchers resulting from the settlement were coupons under CAFA: "(1) whether class members have 'to hand over more of their own money before they can take advantage of' a credit, (2) whether the credit is valid only 'for select products or services,' and (3) how much flexibility the credit provides, including whether it expires or is freely

transferrable." 16 F.4th at 602 (quoting *EasySaver* at 755). Applying those factors, the $5 vouchers here are coupons. As in *McKinney-Drobnis*, the vouchers here might "require class members 'to hand over more of their own money before they can take advantage of' those benefits[.]" 16 F.4th at 604. Because of the number of claims submitted for vouchers and the thereby high likelihood of the coupons being prorated to a value of $5 to avoid exceeding $1.75 million in the aggregate. According to its own product website, the only Neutrogena sun product that costs close than $5 is Sun Rescue™ After Sun Medicated Relief Gel for Sunburned Skin, listed for a 25% discounted sale price of $5.99. *See* Declaration of John M. Andren ¶ 5 But that is not a *sunscreen* product, so a $5 voucher "is not enough to purchase" Neutrogena's or Aveeno's sunscreen offerings and class members cannot replace "the [product] that class members were allegedly injured by—without spending their own money." *McKinney-Drobnis,* 16 F.4th at 604.

Similarly, the number of "products that [Aveeno and Neutrogena] sells pale in comparison to the millions of low-cost products that Walmart sells, as in *Online DVD*" and all of Aveeno and Neutrogena's products "fall under the same umbrella category of" skincare, hair care, and cosmetics. *Id.* at 605. Indeed, the type of products that can be obtained with a settlement coupon here is even more limited than the "251 different products" available in *McKinney-Drobnis*. *Id.* As in *McKinney-Drobnis*, class members cannot elect cash instead of a coupon. *Compare* 16 F.4th at 599-600 *with* Dkt. 55-9 at 14-15. The Johnson & Johnson coupons contain an expiration date and are thereby less flexible than the coupons found to be coupons in *McKinney-Drobnis*. *Compare* 16 F.4th at 605, *with* Dkt. 55-9 at 15. And, as in *McKinney-Drobnis*, the vouchers are transferable and can be aggregated. *Compare* 16 F.4th at 605, *with* Dkt. 55-9 at 14.

In short, the vouchers expire, can be used only for a narrow range of Aveeno- and Neutrogena-branded items, and fall within any meaning of "coupon" under CAFA. Thus, the attorney's fees should be based on the actual value of coupons redeemed, not the total value of coupons available to the class.

B. In economic reality, the settlement impermissibly benefits class counsel at the expense of the class.

As discussed below, the class is likely to redeem less than $100,000 of the coupons. Meanwhile, class counsel negotiated for itself a $2.7 million pay day, backed by illusory injunctive relief that only

benefits consumers generally (*i.e.*, not class members), and shielded by clear sailing. This settlement is a prime example of a "sharp professional practice" of attorneys "us[ing] the class action procedure for their personal aggrandizement." *Piambino II*, 757 F.2d at 1144 (cleaned up). Regardless of whether the Court determines that the settlement relief qualifies as "coupons" under CAFA, the settlement still unfairly affords class counsel "preferential treatment" at the expense of the class. *See Roes*, 944 F.3d at 1052 (vacating settlement approval without reaching the CAFA question); *Pampers*, 724 F.3d at 718 ("preferential treatment" standard); *Arkin*, No. 21-11019, 2022 U.S. App. LEXIS 18205, at *21. *Roes* reiterates three subtle signs of a class action settlement that is inequitable between class counsel and the class in violation of Rule 23(e)(2)(C)(iii): (1) A disproportionate distribution of fees to counsel; (2) a clear sailing agreement; and (3) a reversion of unclaimed funds or unawarded fees to the defendant. 944 F.3d at 1049. All are present here.

1. Class counsel asks for a disproportionate distribution of fees.

The first sign of preferential treatment is "when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded." *Bluetooth*, 654 F.3d at 947; *accord In re GMC Pick-Up Trucks Fuel-Tank Prods. Liab. Litig.*, 55 F.3d 768, 803 (3d Cir. 1995) ("[N]on-cash relief … is recognized as a prime indicator of suspect settlements."); *see also* American Law Institute, *Principles of the Law of Aggregate Litigation* § 3.05, *comment b* at 208 (2010) ("a proposed settlement in which the class receives an insubstantial payment while the fees requested by counsel are substantial could raise fairness concerns"). This is an example of the latter scenario; the class receives coupons and prospective injunctive relief while the agreement permits the representatives to seek, unopposed, an award of $2.6 million in fees.

A proportionate attorney award is roughly 25% of the settlement value.[4] "In mathematical

[4] *See Arkin*, No. 21-11019, 2022 U.S. App. LEXIS 18205, at *3; *Camden I Condo. Ass'n v. Dunkle,* 946 F.2d 768, 774-75 (11th Cir. 1991) (establishing benchmark of "20 to 30% range"); Theodore Eisenberg & Geoffrey P. Miller, *Attorneys' Fees & Expenses in Class Action Litigation: 1993-2008*, 7 J. OF EMPIRICAL LEGAL STUD. 248, 262 (2010) (surveying cases and finding a mean fee in consumer cases of 25%); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811, 833 (2010) (analyzing 688 class action settlements in 2006 and 2007 and finding a mean of 25% and a median of 25.4% for the award of attorneys' fees "with almost no awards more than 35 percent").

terms, the equation for the percentage method in constructive common-fund cases effectively works like this: the actual payment to counsel is the product of (1) the percentage the court decides to award, and (2) the payment to the class plus the expected payment to counsel (together, the class benefit)." *In re Home Depot Inc., Customer Data Sec. Breach Litig.*, 931 F.3d 1065, 1092 (11th Cir. 2019); *accord Redman*, 768 F.3d at 630. And an award that vastly exceeds the 25% benchmark is disproportionate and renders the settlement unfair. *See, e.g.*, *Pampers*, 724 F.3d 713 (vacating settlement where fees cannibalized $2.7 million of the $3.1 million constructive common fund value); *Roes*, 944 F.3d at 1056 (vacating approval where fees amounted to 45% of the cash settlement component). To reach the appropriate ratio here, the class benefit would have to be valued at about $7.8 million.[5] This $7.8 million cannot consist of the face value of the coupon relief, as "the portion of any attorney's fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed." 28 U.S.C. § 1712(a); *see also Inkjet*, 716 F.3d at 1186 n.18. The burden of proving that quantum of benefit lies with the proponents of the settlement. *Pampers*, 724 F.3d at 719; *accord Holmes*, 706 F.2d at 1147. Class counsel cannot meet this burden because (1) the actual redemption rate of coupons is typically in the low single digits, (2) setting aside the redemption rate, class counsel's valuation of the aggregate settlement relief is inflated, and (3) class counsel fails to attempt any real valuation of the prospective injunctive relief.

First, evaluating whether a coupon settlement is unfairly skewed toward class counsel will require a court to make estimates from redemption rates in analogous cases,[6] which shows the redemption rate will almost certainly be in the low single digits. *See, e.g.*, *Swinton*, 454 F. Supp. 3d at 866 (citing white paper showing "coupons delivered via email accessed through a mobile device … were redeemed at a rate of 2% to 4%."); James Tharin & Brian Blockovich, *Coupons and the Class Action Fairness Act*, 18 GEO. J. LEGAL ETHICS 1443, 1445, 1448 (2005) (typically "redemption rates are tiny,"

[5] 2.6 million / (2.6 million + 7.8 million) = 25%.

[6] CAFA may allow such *ex ante* predictive judgments when approving a coupon settlement as fair, though it requires deferring any fee award until after the coupons have been redeemed. *Compare Redman*, 768 F.3d at 634 (allowing estimation of redemption rate based on considered economic judgment at settlement approval stage), *with Inkjet*, 716 F.3d at 1181-83 & 1187 n.19 (requiring actual accounting of coupons redeemed before an attorneys' fee attributable to them may be awarded; further suggesting bifurcating or staggering the fee award).

"mirror[ing] the annual corporate issued promotional coupon redemption rates of 1-3%"); Steven B. Hantler & Robert E. Norton, *Coupon Settlements: The Emperor's Clothes of Class Actions*, 18 GEO. J. LEGAL ETHICS 1343, 1347 (2005) (noting one settlement where only two of more than 96,000 coupons were redeemed). Without providing data on the rate of redemption by claimants of the vouchers, the parties have failed to prove the vouchers have actual value. *See Pampers*, 724 F.3d at 719 (parties failed to prove that a "rerun" refund program had actual value and did not even proffer "data as to the numbers of consumers who obtained refunds" in the earlier refund offer). Even if the redemption rate is an unusually robust 5%—a retail value of under $100,000—class counsel will have allocated over 93% of settlement benefit to themselves. Anything more than $33 thousand in fees is a disproportionate windfall to class counsel at the expense of the class. Under Eleventh Circuit precedent and Rule 23(e)(2)(C)(iii), the settlement should be rejected. *See, e.g.*, *Camden I,* 946 F.2d at 774-75.

It is the burden of the proponents of the settlement to prove that the voucher "has actual value for consumers." *Pampers*, 724 F.3d at 719 (citing *Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1216 (11th Cir. 2012)) (internal quotations and other citations omitted). As of May 28, 2022, only 172,611 claims for vouchers have been received, corresponding to $3,652,449 million were every single claimant to qualify for two vouchers and use both. But because the amount allocated for vouchers is limited to $1.75 million, if all claimants redeemed two vouchers, their vouchers would have to be prorated to $5 per voucher.

Second, class counsel do not meet their burden to quantify any degree of class benefit from the so-called injunctive relief for it to be considered in the Court's fairness analysis. *See* Dkt. 110, at 8-9. The proponents of a settlement must "bear the burden of demonstrating that class members would benefit from the settlement's injunctive relief." *Koby v. ARS Nat'l Servs.*, 846 F.3d 1071, 1079 (9th Cir. 2017); *Pampers*, 724 F.3d at 719 (compiling authorities). This non-monetary relief includes a putative extension of the refund program for aerosol products and the prospective relief of: (1) the non-sale of any aerosol products subject to the aerosol product recall; (2) corrections to the sourcing and use of isobutane raw material supply, which contained the carcinogen benzene leading to the recall in the first place; and (3) testing of finished goods aerosol products.

Counsel for plaintiffs places a monetary value of more than $80 million on the "prospective" injunctive relief and claims credit for it in its entirety by including it in the monetary value of the

settlement to class members. Dkt. 82-1 at 10. But this prospective injunctive relief consists of actions the FDA would have required Johnson & Johnson to take, regardless of the settlement. And the monetary value could have been directed at the class members who purchased non-aerosol sunscreens in the form of refunds, since they cannot benefit from the prospective relief unless they continue to purchase Neutrogena and Aveeno products. Put simply, the prospective injunctive relief is a sellout of the class. To the extent that it has any value at all, it imposes settlement costs that could have instead been benefits targeted to the class of past purchasers.

"The fairness of the settlement must be evaluated primarily based on how it *compensates class members*—not on whether it provides relief to other people, much less on whether it interferes with the defendant's marketing plans." *Pampers*, 724 F.3d at 720 (internal quotation marks omitted; emphasis in original). "Future purchasers are not members of the class, defined as it is as consumers who have purchased [the product]." *Pearson*, 772 F.3d at 786. These are proper recognitions of the principle that the class consists of people who interacted with defendant in the past, while the prospective injunctive relief can only benefit those who interact with defendant in the future. Commentators have recognized the problem of such fictive injunctive relief in settlements that remit no benefit to class members. *See, e.g.*, Erin L. Sheley & Theodore H. Frank, *Prospective Injunctive Relief and Class Settlements*, 39 HARV. J. L. PUB. POL'Y 769, 832 (2016) ("[T]here should be a presumption against approval of such settlements or awarding fees for such relief outside of the actions against public institutions originally contemplated by Rule 23(b)(2).")

The $80 million valuation is illusory as a matter of law in other respects. *First*, "[t]he standard under Rule 23(e) 'is not how much money a company spends on purported benefits, but the value of those benefits to the class.'" *Bluetooth*, 654 F.3d at 944 (quoting *In re TD Ameritrade Accountholder Litig.*, 266 F.R.D. 418, 423 (N.D. Cal. 2009) (Walker, J.)). It is "egocentrism" to assume that the class members are concerned about the costs incurred by Johnson & Johnson. *Pampers,* 724 F.3d at 720; *Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d 781, 784 (7th Cir. 2004) (putting defendant out of business not valuable to class members). *Second*, Johnson & Johnson would have incurred these costs independently of the settlement because of the pre-existing recall. To artificially inflate the valuation of the settlement to support an exorbitant attorney's fees payout, class counsel is including necessary expenditures by Johnson & Johnson that are a byproduct of Johnson & Johnson's day-to-day business operations.

These costs are epiphenomenal and predetermined, resulting from the recall, not the settlement, and certainly not the product of litigation. Notably, class counsel does not include a predicted redemption rate, nor valuation of the coupons in her appraisal of "The Monetary Value of the Settlement to Class Members." Dkt. 82-1, ¶¶ 45-49.

The extension of the refund program and the prospective injunctive relief do not result from the settlement agreement. Defendant has not shown that extending the refund program or any of the safety measures being taken for future product lines to prevent the recurrence of a recall because of carcinogens were not actions being taken regardless of the settlement. In any event, an injunction to obligate a defendant to continue doing what it was doing has "no real value." *Koby*, 846 F.3d at 1080. Even if class counsel could demonstrate that the refund period was extended as a result of the settlement, they have not disclosed the extension's monetary value. Instead, they have only provided that the total refund amount of $9,528,207.62, most of which was surely obtained in the initial publicity in the July recall months before settlement. In failing to disclose this information, Class counsel have not revealed the value-add of litigation to the refund program and thereby the class. Dkt. 82-1, ¶¶ 47. Class counsel cannot retroactively claim credit for benefits accrued to consumers before December 17 who happen to also be members of the class when those benefits do not result from the settlement. *See, e.g.*, *Allen v. Bedolla*, 787 F.3d 1218, 1224 & n.4 (9th Cir. 2015) (amount that the class *actually* receives matters). Pre-settlement actions cannot count toward the value of the settlement and thereby cannot factor into attorney's fees. Rule 23(e) applies and the insulated, disproportionate fee request that relies on the zero value "injunctive" relief renders the settlement unfair under Rule 23(e)(2).

Whether the Court views this settlement as a coupon or in-kind settlement, class counsel seeks a windfall at the expense of class members. That disproportionality makes the settlement unfair under Rules 23(e)(2)(A) and (e)(2)(C)(ii) and (iii), and it also makes class certification improper under Rules 23(a)(4) and (g)(4) because an "extremely expedited settlement of questionable value accompanied by an enormous legal fee" casts doubt on the adequacy of counsel's representation. *GM Trucks*, 55 F.3d at 801-803. "If, as it appears, [class counsel] was indeed motivated by a desire to grab attorney's fees instead of a desire to secure the best settlement possible for the class, it violated its ethical duty to the class." *Tech. Training Assocs., Inc.*, *v. Buccaneers Ltd. P'ship*, 874 F.3d 692, 694 (11th Cir. 2017).

2. The settlement agreement contains a disfavored clear-sailing clause.

A second indication of preferential treatment for counsel present in the settlement is the "clear-sailing" clause—*i.e.*, where defendant consents not to challenge the award of fees to Class counsel. *Roes*, 944 F.3d at 1050-51; see Dkt. 55-9 at 17. "Provisions for clear sailing clauses 'decouple class counsel's financial incentives from those of the class, increasing the risk that the actual distribution will be misallocated between attorney's fees and the plaintiffs' recovery.'" *Vought v. Bank of Am.*, 901 F. Supp. 2d 1071, 1100 (C.D. Ill. 2012) (quoting *Int'l Precious Metals Corp. v. Waters*, 530 U.S. 1223, 1224 (2000) (O'Connor, J., respecting the denial of certiorari)). It shows that the class attorneys have negotiated "red-carpet treatment" to protect their fee award while urging class settlement "at a low figure or less than optimal basis." *Pampers*, 724 F.3d at 718 (internal quotation omitted). The "red carpet treatment" is especially pronounced in coupon cases, where class counsel have had little success in the face of defendants invoking section 1712's restriction on fees. See Chambers, 980 F.3d 645; *Linneman v. Vita-Mix Corp.*, 970 F.3d 621 (6th Cir. 2020). Thus, a clear-sailing clause is a "questionable feature" that, "at least in a case … involving a non-cash settlement award to the class[,] … should be subjected to intense critical scrutiny." *Redman*, 768 F.3d at 637; *accord Guoliang Ma v. Harmless Harvest, Inc.*, 2018 WL 1702740, 2018 U.S. Dist. LEXIS 123322, at *12 (E.D.N.Y. Mar. 31, 2018); *see also* William D. Henderson, *Clear Sailing Agreements: A Special Form of Collusion in Class Action Settlements*, 77 TUL. L. REV. 813, 816 (2003) (courts should "adopt a per se rule that rejects all settlements that include clear sailing provisions.").7

3. The segregated fee fund acts as a disfavored kicker.

A third indication of preferential treatment here is a "kicker" clause under which class counsel's fee fund is segregated from the class benefit so that any unawarded fees revert to the defendant rather than going to benefit the class. *Bluetooth*, 654 F.3d at 948-49; *see also Arkin*, No. 21-11019, 2022 U.S. App. LEXIS 18205, at *21 (describing among other things the disincentive to seek

7 Negotiating class benefit and fees separately does not allay the inherent conflict when representatives negotiate their own compensation unless "fee negotiations [are] postponed until the settlement was judicially approved." *In re Cmty. Bank of N. Va. & Guar. Nat'l Bank of Tallahassee Second Mortg. Litig.*, 418 F.3d 277, 308 (3d Cir. 2005); *accord Pearson*, 772 F.3d at 786-87 (finding implausible that separate negotiation could benefit the class); *Richardson v. L'Oreal United States*, 991 F. Supp. 2d 181, 204 (D.D.C. 2013) (separate negotiation cannot cure unfair allocation between class and counsel).

out class members created by kicker provisions). Here, the unawarded fees never leave Johnson & Johnson's pocket. Dkt. 55-9 at 16-17. As a coupon settlement, Johnson & Johnson does not actually pay out any funds to the class until the claims are made, meaning any unused funds do not revert to Johnson & Johnson, but never leave its accounts.

A segregated fee structure is an inferior settlement structure for one principal reason: the segregation of parts means that the Court cannot remedy any allocation issues by reducing fee awards. *See Pearson*, 772 F.3d at 786. There is "no apparent reason the class should not benefit from the excess allotted." *Roes*, 944 F.3d at 1059-60. Fee segregation thus has the self-serving effect of protecting class counsel by deterring scrutiny of the fee request. *See Pearson*, 772 F.3d at 786 (calling it a "gimmick for defeating objectors"). A court and potential objectors have less incentive to scrutinize a request because the kicker combined with the clear-sailing agreement means that any reversion benefits only the defendant that had already agreed to pay that initial amount. Charles Silver, *Due Process and the Lodestar Method*, 74 TUL. L. REV. 1809, 1839 (2000) (such a fee arrangement is "a strategic effort to insulate a fee award from attack"); Lester Brickman, LAWYER BARONS 522-25 (2011) (arguing that reversionary kicker is *per se* unethical). For these reasons, a "kicker" clause should be subject to a "strong presumption of … invalidity." *Pearson*, 772 F.3d at 787.

IV. If the prospective injunctive relief is of value, the class cannot be certified under Rule 23(a)(4) because of an impermissible conflict of interest between past purchasers and repeat purchasers.

If the court finds that the injunctive relief is of value, it creates a conflict of interest between the past purchasers who want to maximize compensatory remedy and repeat purchasers who have an interest in injunctive relief, creating a zero-sum allocation conflict. Consumers generally and repeat purchaser class members who want to continue buying aerosol sunscreen products from Johnson & Johnson benefit from greater prospective injunctive relief, while class members who are solely past purchasers and want to maximize compensatory relief are not benefited by prospective injunctive relief. This creates an internal conflict within the class rendering over-valuation of the injunctive relief and invalidation of the finding of adequate representation of those class members solely interested in financial renumeration.

Binding Eleventh Circuit precedent holds that it is impermissible to join similarly conflicting

parties into a single class with unitary representation. *W. Morgan-E. Lawrence Water & Sewer Auth. v. 3M Co.*, 737 F. App'x 457, 464 (11th Cir. 2018) ("*3M Co.*") (holding "the Class's interests could not adequately be represented by counsel purporting to negotiate on behalf of both the Water Authority and the Class, because their interests were inherently conflicted"). In *3M Co.*, class members "asserted claims for monetary damages addressing individualized harms … claims not shared by the Water Authority" while the Water Authority was seeking to "maximiz[e] the amount of injunctive relief obtained from Defendants while minimizing the value of … class members' individualized claims for compensatory damages." *Id.* at 464.

V. Alternatively, if the Court approves the settlement, it should defer the fee award until after the coupon redemption period.

CAFA requires that attorneys' fees founded on coupon relief must be based on the actual redemption of the coupons. 28 U.S.C. §§ 1712(a), (c).[8] While the Ninth Circuit interprets CAFA to mandate a percentage-based fee award in coupon settlements, other circuits interpret it merely to limit how the percentage-based method can be applied, with an option to use the lodestar method instead. *See Linneman*, 970 F.3d at 627-28 (detailing the split). The Eleventh Circuit has not weighed in. The Ninth Circuit's reasoning provides the best reading of the statute. That said, the conflict does not matter for purposes of this case because the percentage-based award plaintiff seeks here would violate every circuit's reading of the statute by "using the face of coupons in determining the value of a settlement." *Id.* at 928.

We are told that in gross "[t]he total hours billed by appointed Class counsel for this litigation

[8] Even if the Court holds that the refund process extension provides material benefit and the settlement is not solely a coupon settlement, Section 1712 of CAFA still applies. *McKinney-Drobnis,* 16 F.4th at 604 (9th Cir. 2021) (finding that "section 1712(a) uses mandatory language, stating that if a proposed settlement *provides for coupon relief*, the attorneys' fee award 'shall' be based on the redemption value of the coupons") (emphasis added); *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg, Sales Prac. & Prods. Liab. Litig.*, 952 F.3d 471, 491 (4th Cir. 2020) (argument to the contrary is "unconvinc[ing]"); *Rougvie v. Ascena Retail Grp., Inc.*, 2016 WL 4111320, 2016 U.S. Dist. LEXIS 99235, at *84 (E.D. Pa. July 29, 2016) (applying CAFA to settlement where class could choose between cash or store merchandise vouchers as "the only consistent reading of the Act"); *McKnight v. Uber Techs., Inc.*, 2019 U.S. Dist. LEXIS 136706, 2019 WL 3804676 (N.D. Cal. Aug. 13, 2019) (applying CAFA despite cash option).

is 2,552.47 hours." Dkt. 78-1 at 17. But class counsel has failed to provide the information needed to assess the hours they claim to have expended. Only two of class counsel have even bothered to submit charts of the hours billed to the litigation. *See* Declarations of Alexandra Walsh & Kimberly Channick, Dkt.78-1 196-204. Even there, information is provided only by day with no breakdown by task. For instance, Kimberly Channick's July 23, 2021, entry for 7.7 hours, includes a block narrative description of the work performed as "[t]eam call, calls with outside counsel, editing relatedness motion." *Id.* at 203. Class members (and the Court) have zero insight into how those 7.7 hours are distributed among the listed tasks. This information is required for any meaningful review of class counsel's work in a lodestar fee award. It is troubling that only two have even bothered to submit even cursory time logs.

Even assuming all 2,552.47 claimed hours were reasonably expended—a generous assumption in a case in which almost no litigation occurred and a settlement was reached on Dkt. 25—class counsel's rate of $750 per hour for every partner, associate, and paralegal far exceeds industry standards. In 2017-18, the median rate for class-action practitioners in Miami was $350/hour. Ronald L. Burdge, UNITED STATES CONSUMER LAW ATTORNEY FEE SURVEY REPORT, 2017-2018 ("Survey Report"), at 258, *available at* https://burdgelaw.com/wp-content/uploads/2019/10/US-Consumer-Law-Attorney-Fee-Survey-Report-2017-2018.pdf. With inflation, a reasonable blended market rate in 2022 is no more than $420/hour, suggesting a multiplier of more than 2.4 would be required to reach the requested $2.6 million amount. Even at the excessive rate of $750/hour, class counsel's costs of billed hours multiplied by rate still falls well short of $2.6 million. At either rate, in a CAFA coupon settlement of this type, no upward multiplier at all would be warranted. *See, e.g., Linneman*, 970 F.3d at 632-33; *Chambers*, 980 F.3d at 665. Ultimately, the consequence is that only the percentage method could potentially justify class counsel's fee request. If the Court approves the settlement, it should defer the fee request pending a report on redemptions after the one-year voucher expiration period.

CONCLUSION

The proposed coupon settlement disproportionately benefits class counsel at the expense of class members. The proposed settlement also contains other problematic provisions—clear sailing and a kicker. Given the Court's fiduciary duty to the class, one heightened under CAFA, the proposed settlement should not be approved. Alternatively, if the Court approves the settlement, it should not award fees until after the coupon redemption period.

Date: July 7, 2022

Respectfully submitted,

/s/ John M. Andren

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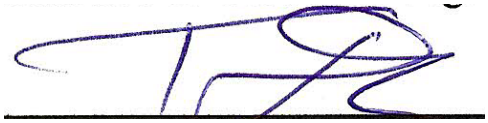
Attorneys for Objector Theodore H. Frank

I, Theodore H. Frank, am the objecting class member. I sign this written objection drafted by my attorneys as required by ¶17(e) of the Preliminary Approval Order.



Theodore H. Frank

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the Court via the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ John M. Andren
John M. Andren
Florida Bar No. 1011609

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MDL Case No.: 3015

IN RE: JOHNSON & JOHNSON SUNSCREEN MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION
Theodore H. Frank, Objector.

DECLARATION OF THEODORE H. FRANK

I, Theodore H. Frank, declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. My business address is Hamilton Lincoln Law Institute, 1629 K St. NW, Suite 300, Washington, DC 20006. My personal address is 1302 Waugh Dr., Box 158, Houston, Texas 77019. My telephone number is (703) 203-3848. My email address is ted.frank@hlli.org.

3. Hamilton Lincoln Law Institute ("HLLI") and its attorneys, of which I am one, along with John Andren, represent me in this matter.

4. I intend to appear at the Fairness Hearing through my counsel John Andren.

Class Membership

5. On information and belief, I began regularly purchasing Neutrogena® Ultra Sheer® Body Mist Sunscreen for personal use upon recommendation from the Consumer Reports website in the summer of 2011. I made at least three purchases, and at least one purchase of the Neutrogena aerosol product for personal use was made during the class period between May 26, 2015 and July 2021, in either Virginia or Texas. To the best of my recollection, I either purchased the product in Virginia in the summer of 2019 to take with me on a cross-country drive, but it is possible I purchased the product in Texas after that move. A true and correct copy of a photo of the product I purchased is attached as Exhibit 1. I am not within any of the classes of persons excluded from the settlement. I have not opted out.

6. Sometime between the aerosol recall date of July 15, 2021, and a vacation that started on August 10, 2021, I purchased a container of Neutrogena® Ultra Sheer® Dry-Touch Water Resistant Sunscreen Lotion, for personal use, in my home state of Texas. (Unfortunately, I failed to pack the lotion before my flight.) A photo of the product I purchased is attached as Exhibit 2.

7. I therefore am a member of the putative settlement class as defined in the Class Action Settlement Agreement and the Court's Preliminary Approval Order with standing to object.

8. On or about May 18, 2022, I filed a claim in this settlement. My claim number is an eight-digit number ending in -9242. I was given a six-digit claimant ID number ending in -3094.

9. I was surprised that the settlement website did not ask me for any information about my aerosol purchase. I am an experienced class-action attorney, and it took me a long time to figure out what my rights were under the settlement as a class member who purchased the aerosol product. They are apparently non-existent: I was given no notice that there was a refund program, and the Johnson & Johnson website simply states that refunds are not available.

10. The proposed injunctive relief is prospective, and I currently have no plans to purchase any Neutrogena or Aveeno sunscreen product in the future, as my experience with the lotion was unsatisfactory, and I will purchase aerosols from another manufacturer instead.

11. I bring this objection in good faith. I have no intention of settling this objection for any sort of side payment. Unlike objectors who threaten or attempt to disrupt a settlement unless plaintiffs' attorneys buy them off with a share of attorneys' fees, neither I nor my counsel engage in *quid pro quo* settlements and will not withdraw an objection or appeal in exchange for payment.

12. Thus, if contrary to HLLI's recommendation, I agree to withdraw my objection or any subsequent appeal for a payment by class counsel or defendants paid to me or any person or entity related to me in any way without court approval, I hereby irrevocably waive any and all defenses to a motion seeking disgorgement to the class of any and all funds paid in exchange for dismissing my objection or appeal. In addition, if the Court has any skepticism about my motives, I am happy to stipulate to an injunction forbidding me from seeking compensation for settling my objection at any stage without court approval.

13. The specific reasons for my objection and a detailed statement of the legal basis for such objection is set forth in my contemporaneously filed objection.

14. My objection applies to the entire class; to class members who, like me, will not purchase existing brands of Neutrogena sunscreen in the future; and to class members who, like me, purchased aerosol products, but receive no cash benefits.

Center for Class Action Fairness

15. I founded the non-profit Center for Class Action Fairness ("CCAF"), a 501(c)(3) non-profit public-interest law firm based out of Washington, DC, in 2009. In 2015, CCAF merged into the

non-profit Competitive Enterprise Institute ("CEI") and became a division within their law and litigation unit. In January 2019, CCAF became part of the Hamilton Lincoln Law Institute, a new non-profit public-interest law firm founded in 2018.

16. CCAF's mission is to litigate on behalf of class members against unfair class action procedures and settlements. CCAF represents class members pro bono where class counsel employs unfair procedures to benefit themselves at the expense of the class. *See, e.g.*, *In re Stericycle Sec. Litig.*, 35 F.4th 555, 572, 572 n.11 (7th Cir. 2022) (citing cases); *McKinney-Drobnis v. Oreshack*, 16 F.4th 594, 609 (9th Cir. 2021) (rejecting attempt to evade CAFA's strictures on coupon settlements); *Briseño v. Henderson*, 998 F.3d 1014 (9th Cir. 2021); *In re EasySaver Rewards Litig.*, 906 F.3d 747 (9th Cir. 2018) ("*EasySaver*") (sustaining CCAF's client's objection for failing to abide by the CAFA's strictures on coupon settlements); *Pearson v. NBTY, Inc.*, 772 F.3d 778, 787 (7th Cir. 2014) (CCAF "flagged fatal weaknesses in the proposed settlement" and demonstrated "why objectors play an essential role in judicial review of proposed settlements of class actions"); *Redman v. RadioShack Corp.*, 768 F.3d 622 (7th Cir. 2014) (coupon settlement); *In re Dry Max Pampers Litig.*, 724 F.3d 713, 716-17 (6th Cir. 2013) ("*Pampers*") (CCAF's client's objections "numerous, detailed, and substantive"); *see also* Adam Liptak, *When Lawyers Cut Their Clients Out of the Deal*, N.Y. TIMES, Aug. 13, 2013 (calling Frank "[t]he leading critic of abusive class action settlements"). Since it was founded in 2009, CCAF has "develop[ed] the expertise to spot problematic settlement provisions and attorneys' fees." Elizabeth Chamblee Burch, *Publicly Funded Objectors*, 19 THEORETICAL INQUIRIES IN LAW 47, 55-57 & n.37 (2018). Over that time CCAF has recouped more than $200 million for class members by driving settling parties to reach an improved bargain or by reducing outsized fee awards. *See* Andrea Estes, *Critics hit law firms' bills after class-action lawsuits*, BOSTON GLOBE (Dec. 17, 2017) (more than $100 million at time).

17. The Center has been successful, winning reversal or remand in over twenty federal appeals decided to date in courts of appeals and the Supreme Court. *E.g., Frank v. Gaos*, 139 S. Ct. 1041 (2019); *Briseño v. Henderson*, 998 F.3d 1014 (9th Cir. 2021); *Berni v. Barilla S.P.A*, 964 F.3d 141 (2d Cir. 2020); *Pearson v. Target Corp.*, 968 F.3d 827 (7th Cir. 2020); *In re Lithium Ion Batteries Antitrust Litig.*, 777 Fed. Appx. 221 (9th Cir. 2019) (unpublished); *In re Google Inc. Cookie Placement Consumer Privacy*

Litig., 934 F.3d 316 (3d Cir. 2019); *In re EasySaver Rewards Litig.*, 906 F.3d 747 (9th Cir. 2018); *In re Subway Footlong Mktg. Litig.*, 869 F.3d 551 (7th Cir. 2017); *In re Target Corp. Customer Data Sec. Breach Litig.*, 847 F.3d 608 (8th Cir. 2017); *In re Walgreen Co. Stockholder Litig.*, 832 F.3d 718 (7th Cir. 2016); *In re EasySaver Rewards Litig.*, 599 Fed. Appx. 274 (9th Cir. 2015) (unpublished); *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d 1060 (8th Cir. 2015); *Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014); *Redman v. RadioShack Corp.*, 768 F.3d 622 (7th Cir. 2014); *In re MagSafe Apple Power Adapter Litig.*, 571 Fed. Appx. 560 (9th Cir. 2014) (unpublished); *In re Dry Max Pampers Litig.*, 724 F.3d 713 (6th Cir. 2013); *In re HP Inkjet Printer Litigation*, 716 F.3d 1173 (9th Cir. 2013); *In re Baby Products Antitrust Litigation*, 708 F.3d 163 (3d Cir. 2013); *Dewey v. Volkswagen*, 681 F.3d 170 (3d Cir. 2012); *Robert F. Booth Trust v. Crowley*, 687 F.3d 314 (7th Cir. 2012); *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. 2011); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011). While, like most experienced litigators, we have not won every appeal we have litigated, CCAF has won the majority of them. Our appeals and *certiorari* petitions are often supported by *amicus* briefs from state attorneys general.

18. CCAF has represented clients in the following objections to settlements or fee requests. While the Preliminary Approval Order only requires this information for the past 5 years, I provide this information for all CCAF objections, including cases where I or another CCAF attorney objected *pro se*, so there is no dispute over whether we have complied with the disclosure requirements. Note that some cases involve multiple objections to multiple iterations of the settlement. Unless otherwise indicated, we did not receive payment. In the interests of disclosure, I am identifying all objections where HLLI and CCAF attorneys have appeared as counsel or *pro se* even if those attorneys have not yet worked or will not work on this objection. (For example, former CCAF attorney Melissa Holyoak is now Utah Solicitor General, and will not work on this objection for CCAF.) This list does not include class-action settlement cases where we were appointed or sought *amicus* status on behalf of class interests without representing an objecting class member, or cases where we sought to be appointed guardian ad litem on behalf of the class.

Case	Result
In re Bluetooth Headset Products Liability Litigation, Case No 2:07-ML-1822-DSF-E (C.D. Cal.)	District court approved the settlement and fee request. On appeal, the Ninth Circuit vacated, 654 F.3d 935 (9th Cir. 2011). On remand, the district court approved the settlement and reduced fees from $800,000 to $232,000. We did not appeal again, and did not seek or receive any payment.
In re TD Ameritrade Account Holder Litigation, Case No C 07-2852 VRW (N.D. Cal.)	The objection was successful and the district court rejected the settlement. 2009 U.S. Dist. LEXIS 126407 (N.D. Cal. Oct. 23, 2009). A substantially improved settlement was approved. We did not seek or receive any payment.
Fairchild v. AOL, Case No 09-cv-03568 CAS (PLAx) (C.D. Cal.)	The trial court approved the settlement and fee request. The Center appealed and in November, 2011, the Ninth Circuit reversed, sustaining the Center's objection to the improper *cy pres*. *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. 2011). On remand, the parties cured the abusive *cy pres*.
In re Yahoo! Litigation, Case No 06-cv-2737 CAS (FMOx) (C.D. Cal.)	The district court approved the settlement and fee request. I withdrew from representations of my clients during the appeal, and my former clients chose to voluntarily dismiss their appeal. I received no payment. I believe the appeal was meritorious and would have prevailed and that the plaintiffs' tactic of buying off my clients at the expense of the class was unethical.
True v. American Honda Motor Co., Case No. 07-cv-00287 VAP (OPx) (C.D. Cal.)	The objection was successful and the district court rejected the settlement. 749 F. Supp. 2d 1052 (C.D. Cal. 2010). The parties negotiated a substantially improved settlement in California state court, winning the class millions of dollars more in benefit. CCAF attorney Frank Bednarz appeared for the objector *pro hac vice*.
Lonardo v. Travelers Indemnity, Case No. 06-cv-0962 (N.D. Ohio)	The parties in response to the objection modified the settlement to improve class recovery from $2.8M to $4.8M while reducing attorneys' fees from $6.6M to $4.6M and the district court approved the modified settlement and awarded CCAF about $40,000 in fees. 706 F. Supp. 2d 766 (N.D. Ohio 2010). The "Court is convinced that Mr. Frank's goals are policy-oriented as opposed to economic and self-serving." *Id.* at 804. We did not appeal, and received no payment beyond that ordered by the court.
In re Motor Fuel Temperature Sales Practices Litigation, Case No. 07-MD-1840-KHV (D. Kan.)	We objected to the settlement with Costco; the district court rejected the settlement, but approved a materially identical one after our renewed objection. The district court approved several other settlements that CCAF objected to (including several with me as the objector). The Tenth Circuit affirmed and denied our petition for rehearing *en banc*. Another appellant unsuccessfully sought *certiorari*.

Case	Result
Bachman v. A.G. Edwards, Cause No: 22052-01266-03 (Mo. Cir. Ct.)	The district court approved the settlement and fee request, and the decision was affirmed by the intermediate appellate court. The Missouri Supreme Court declined further review.
Dewey v. Volkswagen, Case No. 07-2249(FSH) (D.N.J.)	We objected on behalf of multiple class members, including a law professor. The district court approved the settlement, but reduced the fee request from $22.5 million to $9.2 million. CCAF appealed and the settling parties cross-appealed the fee award. On appeal, the Third Circuit sustained CCAF's objection to the Rule 23(a)(4) determination and vacated the settlement approval. 681 F.3d 170 (3d Cir. 2012). On remand, the parties modified the settlement to address CCAF's objection and make monetary relief available to hundreds of thousands of class members who had been frozen out by the previous settlement. The district court awarded CCAF $86,000 in fees. Other objectors appealed and we defended the district court's settlement approval on appeal. The Third Circuit affirmed the settlement approval and the Supreme Court denied *certiorari*. We received no payment beyond that authorized by the court.
In re Apple Inc. Securities Litig., Case No. C-06-5208-JF (N.D. Cal.)	As a result of CCAF's objection, the parties modified the settlement to pay an additional $2.5 million to the class instead of third-party *cy pres*. The district court awarded attorneys' fees to CCAF and approved the settlement and fee request. We did not appeal and received no payment beyond that authorized by the court.
Robert F. Booth Trust v. Crowley, Case No. 09-cv-5314 (N.D. Ill.) (Rule 23.1) (*pro se* objector)	The district court denied my motion to intervene and dismiss abusive shareholder derivative litigation that sought $930,000 in fees, and then rejected the proposed settlement. I appealed. On appeal, the Seventh Circuit agreed (1) that my motion to intervene should have been granted and (2) my motion to dismiss should have been granted, and remanded with orders to dismiss the litigation. 687 F.3d 314 (7th Cir. 2012). As a result, Sears shareholders saved $930,000 in attorneys' fees. CCAF was awarded a few hundred dollars in costs.

Case	Result
In re Classmates.com Consolidated Litigation, Case No. 09-cv-0045-RAJ (W.D. Wash.)	We objected on behalf of law professor Michael Krauss. The district court granted CCAF's objection and rejected the settlement. The parties proposed an improved settlement, and the district court sustained our renewed objection to the settlement. The parties modified the settlement again to pay class members over $2 million more than the original settlement, and the district court agreed with CCAF that the fee request was excessive, reducing the fee request from $1.05 million to $800,000. The district court praised CCAF's work and sanctioned plaintiffs $100,000 (awarded to the class) for its abusive discovery of objectors. 2012 U.S. Dist. LEXIS 83480 (W.D. Wash. Jun. 15, 2012). CCAF did not appeal and did not receive any payment after withdrawing what the district court said would have been a meritorious request for attorneys' fees.
Ercoline v. Unilever, Case No. 10-cv-1747 (D. N.J.) (*pro se* objector)	The district court approved the $0 settlement and fee request. I did not appeal, and neither I nor CCAF sought or received any payment.
In re HP Inkjet Printer Litigation, Case No. 05-cv-3580 (N.D. Cal.)	The district court approved the settlement and reduced the fee request from $2.3 million to $1.5 million. On appeal, the Ninth Circuit vacated the settlement approval and fee award. 716 F.3d 1173 (9th Cir. 2013). On remand, the district court again approved the settlement and reduced the fee request to $1.35 million. We did not appeal, and did not seek or receive any payment.
In re HP Laserjet Printer Litigation, Case No. 8:07-cv-00667-AG-RNB (C.D. Cal) (*pro se* objector)	The trial court approved the settlement, while lowering the attorneys' fees from $2.75M to $2M. We did not appeal, and did not seek or receive any payment.
In re New Motor Vehicles Canadian Export Antitrust Litigation, No. MDL 03-1532 (D. Me.) (I was objector represented by CCAF counsel Dan Greenberg)	The trial court agreed with my objection that the *cy pres* was inappropriate, and the parties modified the settlement to augment class recovery by $500,000. The court affirmed the fee request, but awarded CCAF about $20,000 in fees.
Sobel v. Hertz Corp., No. 06-cv-545 (D. Nev.) (CCAF attorney Dan Greenberg)	The district court agreed with our objection and refused to approve the coupon settlement. The parties litigated, and the district court granted partial summary judgment in the amount of $45 million, and awarded CCAF fees of $90,000. Hertz won reversal on appeal, and CCAF received nothing.

Case	Result
Cobell v. Salazar, Case No. 1:96-cv-1285 (TFH) (D.D.C.)	The district court approved the settlement, but reduced the requested fees from $224 million to $99 million, and reduced the proposed incentive award by several million dollars, creating over $130 million of additional benefit to the class. On appeal, the D.C. Circuit affirmed the settlement approval. 679 F.3d 909. CCAF's client retained other counsel and petitioned the Supreme Court to hear the case. The Supreme Court denied the writ of *certiorari*. We neither sought or received any payment.
Stetson v. West Publishing, Case No. CV-08-00810-R (C.D. Cal.) (CCAF attorney Dan Greenberg)	The district court sustained our objection and rejected the coupon settlement. The parties proposed a modified settlement that improved class recovery by several million dollars. We did not object to the new settlement, and neither sought nor received payment.
McDonough v. Toys "R" Us and *Elliott v. Toys "R" Us*, Case Nos. 2:06-cv-00242-AB, No. 2:09-cv-06151-AB (E.D. Pa.)	The district court approved the settlement and fee request. CCAF appealed, and the Third Circuit vacated the settlement approval and fee award. *In re Baby Prods Antitrust Litig.*, 708 F.3d 163 (3d Cir. 2013). On remand, the parties negotiated an improved settlement that improved class recovery by about $15 million. We did not object to the settlement but objected to the renewed fee request. The district court awarded CCAF $742,500 in fees and reduced class counsel's fees by the same amount. CCAF appealed, but voluntarily dismissed the appeal without receiving any payment beyond what was ordered by the court.
Trombley v. National City Bank, Case No. 10-cv-232 (JDB) (D.D.C.)	We objected to an excessive fee request of ~$3000/hour for every partner, associate, and paralegal in a case that settled in a reverse auction shortly after a complaint was filed; we further objected to an arbitrary allocation process that prejudiced some class members at the expense of others. The district court approved the settlement and fee request. CCAF did not appeal, and received no payment. Later, CCAF won appeals in the Third and Ninth Circuits on some of the issues we raised in this case.
Blessing v. Sirius XM Radio Inc., Case No. 09-cv-10035 (S.D.N.Y.)	The district court approved the settlement and fee request, and the Second Circuit affirmed in an unpublished order. CCAF petitioned for *certiorari*. The Supreme Court denied *certiorari*, but Justice Alito wrote separately to indicate that, while *certiorari* was inappropriate, the Second Circuit erred in holding CCAF's client did not have standing to challenge the improper class counsel appointment. *Martin v. Blessing,* 134 S. Ct. 402 (2013).

Case	Result
Weeks v. Kellogg Co., Case No. CV-09-08102 (MMM) (RZx) (C.D. Cal.) (CCAF attorney Dan Greenberg)	The district court sustained CCAF's objection and refused settlement approval. The parties modified the settlement to largely address CCAF's concerns, creating extra pecuniary benefit to the class. The Center sought and was awarded attorneys' fees as a percentage of the benefit conferred, and received no other payment beyond that awarded by the court.
In re Dry Max Pampers Litig., Case No. 1:10-cv-00301 TSB (S.D. Ohio)	The district court approved the settlement and fee request. On appeal, the Sixth Circuit vacated both orders. 724 F.3d 713 (6th Cir. 2013). On remand, plaintiffs dismissed the meritless litigation, benefiting the class that would not have to pay the higher costs from abusive litigation. We received no payment.
In re Mutual Funds Investment Litig., No. 04-md-15862 (D. Md.)	The trial court approved the settlement and fee award. CCAF did not appeal, and neither sought nor received any payment.
Barber Auto Sales, Inc. v. UPS, No. 5:06-cv-04686-IPJ (N.D. Ala.) (CCAF attorney Dan Greenberg)	The trial court approved the settlement and fee award. CCAF did not appeal, and neither sought nor received any payment.
Brazil v. Dell, No. C-07-1700 RMW (N.D. Cal.) (CCAF attorney Dan Greenberg)	The trial court approved the settlement and fee award. CCAF appealed. After CCAF filed its opening brief in the Ninth Circuit, the trial court modified its opinion approving the settlement and fee award. CCAF chose to voluntarily dismiss its appeal and neither sought nor received any payment.
Fogel v. Farmers, No. BC300142 (Super. Ct. Cal. L.A. County)	The trial court approved the settlement and reduced the fees from $90M to $72M. The Center was awarded fees and expenses for its objection, and did not appeal, and received no payment beyond what the court ordered.
Walker v. Frontier Oil, No. 2011-11451 (Harris Cty. Dist. Ct. Tex.)	The trial court approved the settlement and fee award. On appeal, the Texas Court of Appeals agreed that the $612,500 fee award violated Texas law, saving shareholders $612,500. *Kazman v. Frontier Oil,* 398 SW 3d 377 (Tex. App. 2013). We neither sought nor received payment.
In re MagSafe Apple Power Adapter Litig., No. C. 09-1911 JW (N.D. Cal.)	We objected on behalf of law professor Marie Newhouse. The trial court approved the settlement and fee award. On appeal, the Ninth Circuit in an unpublished decision vacated both orders and remanded for further proceedings. The Center renewed its objection and the district court approved the settlement but reduced fees from $3 million to $1.76 million. We did not appeal, and neither sought nor received any payment.

Case	Result
In re Online DVD Rental Antitrust Litig., No 4:09-md-2029 PJH (N.D. Cal.)	I was the objector. The district court approved the settlement and fee award, and the Ninth Circuit affirmed in an appeal I briefed and argued. 779 F.3d 934 (9th Cir. 2015). On remand, class counsel attempted to distribute over $2 million to *cy pres*. I objected to the *cy pres* proposal, and the court agreed with my objection and ordered distribution to the class. We did not seek attorneys' fees or receive any payment.
In re Nutella Marketing and Sales Practices Litig., No 11-1086 (FLW)(DEA) (D. N.J.) (CCAF attorney Dan Greenberg)	The district court approved the settlement, but reduced the fee award by $2.5 million. We did not appeal, and neither sought nor received any payment.
In re Groupon, Inc., Marketing and Sales Practices Litig., No. 3:11-md-2238-DMS-RBB (S.D. Cal.) (pro se objection; separately retained in private capacity on appeal)	The district court sustained the objection to the settlement; the parties presented a materially identical settlement and the district court approved that settlement and fee award. I did not appeal and received no payment. Other objectors appealed. After briefing was complete, I was retained by one of the appellants in my private capacity to argue the appeal on a flat-fee basis, and the Ninth Circuit agreed with me in an unpublished order that the district court's settlement approval applied the wrong standard of law, and vacated and remanded. On remand, the parties proposed a new settlement, and I did not object.
In re Johnson & Johnson Derivative Litig., No. 10-cv-2033-FLW (D.N.J.)	The district court approved the settlement. CCAF appealed and successfully moved to stay the appeal while the fee request was litigated. The district court reduced the fee request from $10.45 million to about $5.8 million, saving shareholders over $4.6 million. CCAF voluntarily dismissed its appeal, and neither sought nor received any payment.
Pecover v. Electronic Arts Inc., No. C 08-02820 CW (N.D. Cal.) (I objected, represented by CCAF attorney Melissa Holyoak)	The district court honored our objection to the excessive *cy pres* and encouraged modifications to the settlement that addressed my objection. As a result of the Center's successful objection, the class recovery improved from $2.2 million to $13.7 million, an improvement of over $11.5 million. The Center did not appeal the decision. The district court awarded $33,975 in attorneys' fees to the Center. The Center received no payment not ordered by the Court.

Case	Result
In re EasySaver Rewards Litigation, No. 3:09-cv-2094-AJB (WVG), No. 3:09-cv-2094-BAS (S.D. Cal.)	The district court approved the settlement and the fee request. On appeal, the Ninth Circuit vacated the settlement approval and remanded for further consideration. We renewed our objection, and the district court approved the settlement and fee request again. On appeal, the Ninth Circuit vacated and remanded the fee award, but affirmed the settlement approval. We sought *certiorari* on the settlement approval, but a defendant obtained a bankruptcy stay, and the Supreme Court denied *certiorari* after plaintiffs argued that *certiorari* should be denied because of the stay. Our client objected to the renewed fee request, and the district court upheld the objection, denying the motion without prejudice. We objected to a new fee request, and the district court substantially reduced fees. The district court then granted our request for attorneys' fees. We did not appeal further, and received no money not awarded by the court.
In re Citigroup Inc. Securities Litigation, No. 07 Civ. 9901 (SHS) (S.D.N.Y.) (*pro se* objection; then represented by CCAF attorneys)	I objected to, and the parties agreed to correct, defective notice. Upon new notice, I restricted my objection to the excessive fee request. The district court agreed to reduce the fee request (and thus increase the class benefit) by $26.7 million. 965 F. Supp. 2d 369 (S.D.N.Y. 2013). I was awarded costs. I appealed the fee decision, but voluntarily dismissed my appeal without seeking or receiving further payment. My objection to a later *cy pres* proposal was overruled; I won a stay of the *cy pres* order and appealed. While the appeal was pending, in 2017, class counsel agreed to distribute the proposed *cy pres* to shareholders through the SEC Fair Fund, and the appeal was remanded to district court after a favorable Rule 62.1 indicative ruling. The district court granted our request for attorneys' fees.
City of Livonia Employees' Retirement System v. Wyeth, No. 1:07-cv-10329 (RJS) (S.D.N.Y.)	The district court approved the settlement and reduced fees (and thus increased class benefit) by $3,037,500. Though the court ultimately agreed in part with our objection to fees, it was critical of our objection, though it mischaracterized the argument we made. The district court criticized the objection as "frivolous," but the First Circuit recently held in a non-CCAF case that the issue of a minimum distribution threshold does indeed make a settlement problematic. We did not appeal, and received no payment.

Case	Result
In re Bayer Corp. Combination Aspirin Prods. Mktg. and Sales Practices Litig., No. 09-md-2023 (BMC) (JMA) (E.D.N.Y.) (I objected, represented by CCAF attorney Adam Schulman)	Upon my objection, the parties modified the settlement to provide for direct distribution to about a million class members, increasing class recovery from about $0.5 million to about $5 million. The district court agreed with my objection to one of the *cy pres* recipients, but otherwise approved the settlement and the fee request. CCAF was awarded attorneys' fees. I did not appeal, and neither I nor CCAF received any payment not awarded by the court.
In re Southwest Airlines Voucher Litig., No. 11-cv-8176 (N.D. Ill.)	The district court approved the settlement, but reduced fees by $1.67 million. We appealed, and the plaintiffs cross-appealed; the Seventh Circuit affirmed, but reduced fees further. On remand, class counsel asserted rights to additional fees, and we objected again. The court denied the fee request in part, and, on motion for reconsideration, vacated the fee order on the grounds notice was required. We appealed a second time. While the appeal was pending, we negotiated a settlement that tripled relief to the class, and voluntarily dismissed our appeal. We moved for attorneys' fees, which the district court denied. We appealed the denial and won reversal and attorneys' fees on the third appeal.
Fraley v. Facebook, Inc., No. 11-cv-01726 (RS) (N.D. Cal.) (*pro se* objection)	The district court approved the settlement, which was modified after our objection by increasing class distributions by 50%. The district court further reduced fees by $2.8 million, which increased the *cy pres* distribution by the same amount. We did not appeal the settlement approval or fee award, and did not receive any payment. Our request for attorneys' fees was denied, and our appeal of that decision was denied. We did not seek *certiorari*.

Case	Result
Pearson v. NBTY, No. 11-CV-07972 (N.D. Ill) (I objected, represented by CCAF attorneys Melissa Holyoak and Frank Bednarz)	The district court approved the settlement, but reduced fees by $2.6 million. On appeal, the Seventh Circuit reversed the settlement approval, praising the work of the Center. 772 F.3d 778 (7th Cir. 2014). On remand, the settlement was modified to increase class recovery from $0.85 million to about $5 million. The second settlement was approved, and CCAF was awarded attorneys' fees of $180,000. Other objectors appealed; we cross-appealed to protect our rights. When the other objectors dismissed their appeals, we dismissed our cross-appeal without any payment beyond that ordered by the court. We moved the district court for relief requiring other objectors who received under-the-table payments to be required to disgorge those payments to the class, an action that was covered by the *Wall Street Journal*. The district court held it did not have jurisdiction over the action, and we appealed that decision and won in the Seventh Circuit. On remand, the district court denied the motion to disgorge extortionate objector fees, and we appealed that decision and won again in the Seventh Circuit. 968 F.3d 827 (7th Cir. 2020). The case is pending on remand.
Marek v. Lane, 134 S. Ct. 8, 571 US – (2013).	In 2013 an objector retained the Center to petition the Supreme Court for a writ of *certiorari* from *Lane v. Facebook*., 696 F.3d 811 (9th Cir. 2012), *rehearing denied* 709 F.3d 791 (9th Cir. 2013), a case we had not previously been involved in. Although the Supreme Court declined to hear the case, Chief Justice Roberts wrote an opinion respecting denial of *certiorari* declaring the Court's interest in the issue of *cy pres* that has been influential in improving many settlements for class members.
Dennis v. Kellogg, Inc., No. 09-cv-01786 (IEG) (S.D. Cal.)	On remand from a Ninth Circuit decision, the district court approved a modified settlement and the fee request. Law professor Todd Henderson was the objector to the modified settlement. The district court initially issued an opinion erroneously criticizing CCAF, but vacated and corrected that opinion. CCAF did not appeal or seek or receive any payment.
Berry v. LexisNexis., No. 11-cv-754 (JRS) (E.D. Va.) (CCAF attorney Adam Schulman *pro se*)	The district court approved the settlement and the fee request. The Fourth Circuit affirmed, and the Supreme Court denied *certiorari*.

Case	Result
In re BankAmerica Corp. Secs. Litig., No. 13-2620 (8th Cir.)	CCAF was retained as appellate counsel on behalf of a class representative objecting to a *cy pres* distribution and supplemental fee award, and prevailed. 775 F.3d 1060 (8th Cir. 2015). As a result, the class will receive an extra $2.6 to $2.7 million. CCAF did not seek or receive any payment beyond costs.
Redman v. Radioshack Corp., No. 11-cv-6741 (N.D. Ill.)	The district court approved the settlement and the fee request. On appeal, the Seventh Circuit reversed, upholding our objection. 768 F.3d 622 (7th Cir. 2014). We were awarded costs.
Richardson v. L'Oreal USA, No. 13-cv-508-JDB (D.D.C.) (CCAF attorney Adam Schulman)	The district court sustained our objection to the settlement. 991 F. Supp. 2d 181 (D.D.C. 2013). We neither sought nor received any payment.
Gascho v. Global Fitness Holdings, LLC, No. 2:11-cv-436 (S.D. Ohio)	We represented law professor Josh Blackman. The district court approved the settlement and fee request. The Sixth Circuit affirmed in a 2-1 decision, and denied *en banc* review. The Supreme Court denied *certiorari.*
Steinfeld v. Discover Financial Services, No. 3:12-cv-01118-JSW (N.D. Cal.)	We withdrew the objection upon assurances from the parties about the interpretation of some ambiguous settlement terms. We neither sought nor received any payment.
In re Aetna UCR Litigation, No. 07-3541, MDL No. 2020 (D.N.J) (I was a *pro se* objector with assistance from local counsel)	While our objection was pending, the defendant invoked its contractual right to withdraw from the settlement.
Poertner v. The Gillette Co., No. 6:12-cv-00803 (M.D. Fla.) (I objected, represented by CCAF attorney Adam Schulman)	The district court approved the settlement and the fee award, and the Eleventh Circuit affirmed in an unpublished order, and the Supreme Court denied *certiorari*, despite the circuit split with *Pearson*.
In re Google Referrer Header Privacy Litigation, No. 10-cv-04809 (N.D. Cal.) (I was a *pro se* objector and also represented HLLI attorney Melissa Holyoak)	The district court approved the settlement and the fee award. The Ninth Circuit affirmed in a 2-1 decision. On April 30, 2018, the Supreme Court granted *certiorari* for the October 2018 Term in *Frank v. Gaos*, No. 17-961. I argued the case in the Supreme Court October 31, 2018. In 2019, the Supreme Court vacated the decision and remanded for consideration of the question of Article III standing. The Ninth Circuit remanded to the district court, which found standing. After additional litigation, the parties reached a new settlement that they have yet to disclose publicly.

Case	Result
Delacruz v. CytoSport, Inc., No. 4:11-cv-03532-CW (N.D. Cal.) (I was a *pro se* objector)	I joined in part the *pro se* objection of William I. Chamberlain. The district court approved the settlement and the fee award. We did not appeal, and received no payment.
In re American Express Anti-Steering Rules Antitrust Litigation, No. 11-md-2221 (E.D.N.Y.)	We objected and the district court rejected the settlement. We have neither sought nor received payment.
In re Capital One Telephone Consumer Protection Act Litigation, 12-cv-10064 (N.D. Ill.)	Our objection was only to the fee request, and the district court agreed to a reduction of about $7 million in fees. We appealed seeking further reductions of fees, but plaintiffs offered to pay our client $25,000 to dismiss his appeal, and he accepted the offer against our recommendation and his earlier promise to us. Ethics rules prohibited us from interfering with the client's decision. CCAF received no payment. Seventh Circuit law requires the court to investigate before granting a motion to voluntarily dismiss an appeal of a class action settlement approval, but no investigation was performed, despite extensive press coverage of our protest of class counsel's unethical behavior.
Lee v. Enterprise Leasing Company-West, LLC, No. 3:10-cv-00326 (D. Nev.) (CCAF attorney Melissa Holyoak)	The district court approved the settlement and the fee request. CCAF did not appeal, and neither sought nor received any payment.
Jackson v. Wells Fargo, No. 2:12-cv-01262-DSC (W.D. Pa.)	The district court approved the settlement and the fee request. CCAF did not appeal, and neither sought nor received any payment. CCAF attorney Adam Schulman represented the objector.
In re Transpacific Passenger Air Transp. Antitrust Litig., No. 3:07-cv-05634-CRB (N.D. Cal.)	The district court approved the settlement, but reduced the Rule 23(h) request for fees and expenses by over $5.1 million, for the benefit of the class. The district court awarded CCAF fees. In a 2-1 decision, the Ninth Circuit affirmed settlement approval. The Supreme Court denied our *certiorari* petition. CCAF attorney Anna St. John argued at the district court and appellate level.
Careathers v. Red Bull N. Am., Inc., No. 1:13-cv-0369 (KPF) (S.D.N.Y.) (I objected, represented by CCAF attorney Erin Sheley)	The district court approved the settlement, but reduced the fee request by $1.2 million. We did not appeal, and neither sought nor received any payment.

Case	Result
In re Riverbed Securities Litigation, Consolidated C.A. No. 10484-VCG (Del. Ch.)	CCAF assisted *pro se* objector Sam Kazman, a CEI attorney, before CCAF merged with CEI. The court approved the settlement and reduced the fee request. We did not seek further review, and neither sought nor received any payment.
In re Target Corp. Customer Data Security Breach Litig., MDL No. 14-2522 (PAM/JJK) (D. Minn.)	The district court denied our objection. We successfully appealed to the Eighth Circuit. On limited remand, the district court denied our objection again. We appealed to the Eighth Circuit, which ordered supplemental briefing, and then affirmed.
In re Polyfoam Antitrust Litig., No. 10-MD-2196 (N.D. Ohio) (CCAF attorney Anna St. John)	We objected to the fees and the *cy pres* proposal, and the district court reduced fees and rejected plaintiffs' proposed *cy pres* recipient. We did not appeal and received no payment. Our request for attorneys' fees was denied, and we did not appeal.
Hays v. Walgreen Co., No. 14-C-9786 (N.D. Ill.)	We objected to a $0 settlement that provided only worthless disclosures to the shareholder class. Our appeal in the Seventh Circuit was successful, and plaintiffs voluntarily dismissed their case on remand. We neither sought nor received any payment beyond costs.
In re Subway Footlong Sandwich Mktg. & Sales Pract. Litig., No. 2:13-md-2439-LA (E.D. Wisc.)	I objected, represented by CCAF attorney Adam Schulman. The district court approved the settlement and fee request over my objection. Our appeal in the Seventh Circuit was successful, and plaintiffs voluntarily dismissed their case on remand. We neither sought nor received any payment beyond costs.
In re Colgate-Palmolive SoftSoap Antibacterial Hand Soap Mktg. & Sales Pract. Litig., No. 12-md-2320 (D.N.H.)	CCAF attorney Anna St. John objected *pro se*. The district court approved the settlement and fee request over her objection. She filed an appeal relating to the *cy pres* provision of the settlement and dismissed the appeal without seeking or receiving any payment once the *cy pres* question became moot.
Doe v. Twitter, Inc., No. CGC-10-503630 (Cal. Sup. Ct. S.F. Cty.)	The district court approved the settlement over our objection, but reduced attorneys' fees. We did not appeal and neither sought nor received any payment.
Rodriguez v. It's Just Lunch Int'l, No. 07-cv-9227 (SHS)(SN) (S.D.N.Y.)	CCAF attorney Anna St. John successfully represented an objector to an abusive settlement; the court rejected the settlement. An improved settlement was approved. We appealed the settlement approval, and, upon further evaluation, chose to voluntarily dismiss the appeal. We neither sought nor received any payment.

Case	Result
Rougvie v. Ascena Retail Group, No. 15-cv-724 (E.D. Pa.)	CCAF attorney Adam Schulman appeared on behalf of two objectors; the parties modified the settlement in part, and district court agreed with our objection that CAFA applied and governed attorneys' fees. We did not appeal, but other objectors appealed. The appeals were voluntarily dismissed. We were ultimately awarded $78,000 in attorneys' fees for our work improving the settlement that provided $702,640 in additional class benefit.
Allen v. Similasan Corp., No. 3:12-cv-0376-BAS (JLB) (S.D. Cal.)	CCAF's objection on behalf of an objector to a $0 settlement was upheld. The parties negotiated a new settlement proposing to pay about $500,000 to the class. We did not object to the new settlement, and neither sought nor received payment.
In re PEPCO Holdings, Inc., Stockholder Litig., C.A. No. 9600-VCMR (Del. Ch.)	In response to our proposed objection on *Walgreen* grounds, class counsel voluntarily dismissed the lawsuit and proposed settlement, saving the shareholders a substantial amount of money. We were awarded attorneys' fees by the Court.
In re Pharmacyclics, Inc. Shareholder Litig., No. 1-15-CV-278055 (Santa Clara County, Cal.)	Law professor Sean J. Griffith, an objector with an unsuccessful objection to a $0 shareholder settlement, retained CCAF for the appeal. The California Court of appeal affirmed, and the California Supreme Court denied further review.
Williamson v. McAfee, Inc., No. 5:14-cv-00158-EJD (N.D. Cal.)	CCAF attorney Anna St. John represented an objector. After we objected, the parties disclosed that the settlement claims rate was higher than we anticipated, and the district court approved the settlement. We did not appeal, and neither sought nor received any payment.
Edwards v. National Milk Producers Fed'n, No. 11-cv-04766-JSW (N.D. Cal.)	CCAF attorney Anna St. John represented an objector who objected to fees only. The district court reduced the requested fees by over $4.3 million, to be distributed to the class. We were awarded attorneys' fees by the court. We did not appeal.
In re Google Inc. Cookie Placement Consumer Privacy Litig., No. 12-MD-2358 (D. Del.)	I objected in this case, represented by CCAF attorney Adam Schulman. The district court overruled our objection to the settlement, but reduced attorneys' fees. Our appeal to the Third Circuit was successful, vacating the settlement and remanding. 936 F.3d 316 (3d Cir. 2019). The case is pending in district court where I renewed my objection to the revised settlement.
Saska v. The Metropolitan Museum of Art, No. 650775/2013 (Sup. Ct. N.Y. Cty., N.Y.)	CCAF attorney Anna St. John objected *pro se*. The court approved the settlement and attorneys' fee award over her objection. We did not appeal, and have neither sought nor received payment.

Case	Result
Birbrower v. Quorn Foods, Inc., No. 2:16-cv-01346-DMG (AJW) (C.D. Cal.)	I objected on behalf of a class member to a claims-made settlement and fee request. The district court approved the settlement and fee award over the objection. We did not appeal, and received no payment.
Aron v. Crestwood Midstream Partners L.P., No. 16-20742 (5th Cir.)	An unsuccessful *pro se* objector retained us to prosecute his appeal of approval of a $0 settlement where the court refused to follow *Walgreen*. The Fifth Circuit dismissed the appeal for lack of appellate jurisdiction because the objector filed his objection past the deadline in the district court.
Kumar v. Salov N. Am. Corp., No. 14-cv-02411-YGR (N.D. Cal.)	Represented by CCAF attorneys, I objected to a lop-sided settlement and fee request. The district court approved the settlement, and the Ninth Circuit affirmed.
Campbell v. Facebook, Inc., No. 13-cv-5996-PJH (N.D. Cal)	Former CCAF attorney William Chamberlain represented a class member, CCAF attorney Anna St. John, objecting to an abusive settlement and fee request. The district court overruled the objection and approved the settlement. We appealed and the Ninth Circuit affirmed. 951 F.3d 1106 (9th Cir. 2020). We did not seek further review, and neither sought nor received any payment.
Knapp v. Art.com, Inc., No. 16-cv-00768-WHO (N.D. Cal.)	Another CCAF attorney and I represented a class member objecting to a settlement and fee request. The district court approved the settlement but agreed with us that fees should be awarded only after the redemption rate of the coupon relief was known. We objected to the resubmitted attorney fee request and won a reduction in attorneys' fees.
In re Lithium Ion Batteries Antitrust Litig., No. 13-md-02420 YGR (DMR)	On behalf of class member Frank Bednarz, I objected to a settlement and fee request. The court overruled the objection and approved the settlement, but reduced the attorneys' fees. We appealed the class certification and settlement approval to the Ninth Circuit and won remand. 777 Fed. Appx. 221, 223 (9th Cir. 2019). The parties improved the settlement. We then objected to the class attorneys' fees only. The district court overruled our objection to the class attorneys' fees, but awarded us and co-counsel fees of $250,000 for our role in improving the settlement. Our appeal to the Ninth Circuit on the fee issues is pending, as is plaintiffs' cross-appeal of our fee award.
Ma v. Harmless Harvest, Inc., No. 16-cv-7102 (JMA) (SIL) (E.D.N.Y.)	CCAF attorney Adam Schulman appeared on behalf of objector Anna St. John to a $0 settlement. The district court rejected the settlement. We did not seek fees.

Case	Result
In re Anthem Inc. Data Breach Litigation, 15-md-02617-LHK (N.D. Cal)	I represented an objector, CCAF attorney Adam Schulman, who objected to fees and asked the court to investigate overbilling. The district court agreed and appointed a special master to investigate, and ultimately reduced fees. In response to our objection to *cy pres* provisions in the settlement, the parties agreed to increase recovery to the class. We did not appeal and neither sought nor received any payment.
Leung v. XPO Logistics, Inc., No. 15-cv-03877 (N.D. Ill.)	On behalf of a class member, CCAF attorney Frank Bednarz objected to the fee request. The district court reduced fees slightly. We did not appeal.
Cannon v. Ashburn Corp, No. 16-cv-1452 (D.N.J.)	On behalf of an objector, CCAF attorney Adam Schulman objected to an abusive settlement through local counsel. The parties agreed to modify the settlement to improve class recovery, and the district court rejected the modified settlement. We did not seek fees.
Farrell v. Bank of Am., N.A., No. 3:16-cv-00492-L-WVG (S.D. Cal.)	I represent an objector who objected to fees, a *cy pres* provision, and the class certification in the alternative. The attorneys reduced their fee request in response to our objection, and the court approved the modified fee request and settlement. Our appeal to the Ninth Circuit was rejected in a split decision, and we filed a petition for *certiorari* with the Supreme Court. The Supreme Court denied cert, ending the case.
In re Petrobras Securities, Litigation, No. 14-cv-9662 (S.D.N.Y.).	CCAF represented an objector who objected to fees and class certification. The district court reduced fees by over $96 million and affirmed the settlement. We did not appeal. CCAF requested attorneys' fees, which were granted in part and denied in part. We appealed the denial of our attorneys' fees in the Second Circuit and won. On remand, the court again granted in part CCAF's request for fees, which we appealed to the Second Circuit; that appeal was denied.
Berni v. Barilla, No. 16-cv-4196 (E.D.N.Y.)	CCAF attorney Adam Schulman objected *pro se* to a $0 class-action settlement. The district court approved the settlement. On appeal, the Second Circuit vacated settlement approval. 964 F.3d 141 (2d Cir. 2020). We neither sought nor received any payment.
In re Domestic Airline Travel Antitrust Litigation, No. 15-mc-1404 (D.D.C.)	CCAF attorney Ted Frank represented class members and CCAF attorneys Ted Frank and Frank Bednarz in objecting to the lack of a distribution plan and a class notice suggesting that the settlement proceeds would go to *cy pres*. The district court approved the settlement and deferred any ruling on fees. The D.C. Circuit held that it does not have jurisdiction over an appeal because litigation against two remaining defendants is ongoing.

Case	Result
Cowen v. Lenny & Larry's, No. 17-cv-1530 (N.D. Ill.) (I objected, represented by CCAF attorney Frank Bednarz)	CCAF attorney Frank Bednarz represented class member and CCAF attorney Ted Frank in objecting to the disproportion in this coupon settlement. The parties modified the settlement to make relief more proportional to attorneys' fees, providing $537,950 more to the class (over original cap of $350,000) and mooting our objection. The district court granted our motion for $20,000 in attorneys' fees on August 20, 2019.
In re Samsung Top-Load Washing Machine Marketing Sales Practices and Prod. Liability Litig., No. 17-ml-2792-D (W.D. Okla.)	CCAF attorney Frank Bednarz represented a class member objecting to the disproportion attorneys' fees and actual relief, which consists of duplicative injunctive relieve and a claims-made settlement that provides only coupons to most class member. The district court reduced attorneys' fees by about $2.1 million and approved the settlement. The Tenth Circuit affirmed. We did not seek further review, and neither sought nor received any payment.
Littlejohn v. Ferrara Candy Co., No. 17-cv-1530 (S.D. Cal.)	CCAF attorney Ted Frank represented a class member objecting to this $0 settlement. The district court approved the settlement, and the Ninth Circuit affirmed.
In re Wells Fargo & Co. Shareholder Derivative Litigation, No. 3:16-cv-05541-JST (N.D. Cal.)	CCAF attorney Ted Frank objected to the fee request on behalf of a class member. The district court reduced the attorneys' fee award by $15.2 million. The court awarded us attorneys' fees of $98,473. We did not appeal.
In re Stericycle Securities Litigation, No. 16-cv-7145 (N.D. Ill.)	CCAF attorneys represent a shareholder class member, Mark Petri, objecting to the fee request in this settlement. The district court approved the settlement and awarded a reduced attorneys' fee award. The Seventh Circuit vacated and remanded the district court's fee award, agreeing with Petri that the lower court did not appropriately consider the actual market rate for securities litigation. The case is pending.
In re Volkswagen Clean Diesel MDL, No. 3:15-md-02672-CRB (N.D. Cal.)	CCAF attorneys objected to the settlement and fee request on behalf of a client in this case; the district court approved both. We appealed the fee award, but did not appeal the settlement approval. The Ninth Circuit dismissed the appeal on the grounds that our client's acceptance of the benefits of the settlement included the signature of a release that released him from any further claims and deprived him of appellate standing, and we did not appeal further.

Case	Result
In re ConAgra Foods, Inc., No. 2:11-cv-05379-CJC-AGR (C.D. Cal.)	CCAF attorney Ted Frank represented law professor Todd Henderson's objection to the disproportion between attorneys' fees and actual relief including worthless injunctive relief. The district court approved the settlement. On appeal, the Ninth Circuit reversed settlement approval and remanded. We renewed our objection, and the district court rejected settlement approval. The case is pending.
Mckinney-Drobnis v. Massage Envy Franchising, LLC, No. 16-cv-6450-MMC (N.D. Cal.)	CCAF attorney Ted Frank represented a class member, Kurt Oreshack, objecting to this coupon settlement. The district court approved the settlement and attorney's fee request. The Ninth Circuit vacated the fee award because it did not apply with CAFA and because the district court failed to scrutinize the attorneys' fee award. The parties modified the settlement to augment the coupon relief, to restrict the request for some of the attorneys' fees, and to eliminate the clear-sailing clause. CCAF represented Oreshack in filing a contingent objection, expressing concern that Massage Envy may not fully contest a fee request that no largely depends on illusory injunctive relief. The district court approved the settlement, and reduced the interim fee request. The case is pending for further fee requests after coupon redemptions.
Rael v. The Children's Place, No. 3:16-cv-00370-GPC-LL (S.D. Cal.)	CCAF attorney Ted Frank represented CCAF attorney Anna St. John in objecting to this coupon settlement. The district court agreed with our objection regarding certain deficiencies in the settlement approved the settlement with modifications, while holding jurisdiction over the fee request until coupons are redeemed. That process is still pending.
Exum v. National Tire and Battery, No. 9:19-cv-80121 (S.D. Fla.)	CCAF attorney Melissa Holyoak objected *pro se* to the settlement and attorneys' fee award. The district court approved the settlement and fee request, issuing criticism of Holyoak and an order to show cause why she should not be sanctioned for an admitted error in her objection. Upon her response, the district court dissolved the order to show cause without sanctions. We did not appeal.
Gold v. Lumber Liquidators, No. 14-cv-05373 (N.D. Cal.)	CCAF attorneys represented a class member objecting to this coupon settlement. Plaintiffs amended their attorneys' fee request, addressing our primary objection. The district court approved the settlement over objections. We did not appeal.
In re Google LLC Street View Electronic Communications Litigation, No. 10-md-02184 (N.D. Cal.)	CCAF attorney Ted Frank represented a class member objecting to this *cy pres* settlement. The district court approved the settlement. The Ninth Court affirmed. CCAF has petitioned the Supreme Court for review *sub nom. Lowery v. Joffe*.

Case	Result
In re Equifax, Inc. Customer Data Breach Litigation, No. 17-md-2800-TWT (N.D. Ga.)	CCAF attorney Melissa Holyoak represented CCAF attorney Ted Frank and another class member in objecting to an unfair settlement, inadequate representation of the class, and the fee request. The Eleventh Circuit affirmed, and the Supreme Court denied *certiorari*. Upon the district court's order, we deposited an appeal bond with the district court; after payment of costs, we were refunded more than we deposited because of interest.
Hyland v. Navient Corp., No. 1:18-cv-09031-DLC (S.D.N.Y.)	CCAF attorney Anna St. John represented a class member objecting to this *cy pres* settlement and attorneys' fee award. The district court approved the settlement but denied the entire fee request. Our appeal to the Second Circuit is pending.
In re Apple, Inc. Device Performance Litigation, No. 18-md-02827-EJD (N.D. Cal.)	CCAF attorney Ted Frank represented CCAF attorney Anna St. John objecting to the attorneys' fee request accompanying this settlement. The district court awarded less than plaintiffs requested. Our appeal to the Ninth Circuit is pending.
Jones v. Monsanto Co., No. 19-cv-0102-BP (W.D. Mo.)	CCAF attorney Adam Schulman represented CCAF attorney Anna St. John objecting to this settlement and accompanying attorneys' fee award. The district court approved the settlement and fee request. The Eighth Circuit affirmed. We plan to seek *en banc* review.
In re Flint Water Cases, No. 5:16-cv-10444-JEL-MKM (E.D. Mich.)	CCAF attorney Michael Frank Bednarz represented class members objecting to the attorneys' fee request in this settlement. The district court granted the fee request with only a minor reduction. We have appealed. The Sixth Circuit denied an interlocutory petition seeking a writ of *mandamus*.
Fruitstone v. Spartan Race, Inc., No. 1:20-CV-20836-BLOOM/Louis (S.D. Fla.)	CCAF represented a class member objecting to the proposed settlement and requesting deferment of the fee award until the settlement vouchers were redeemed. The district court approved the settlement and fee request. We did not appeal, and neither sought nor received any payment.
In re Wawa Inc., Data Security Litigation, No. 19-cv-6019 (E.D. Pa.)	CCAF attorney Adam Schulman represented CCAF director Ted Frank objecting to the proposed settlement because, *inter alia*, the settlement provided the class with only Wawa gift cards and provided class counsel with a disproportionate attorney's fee. The parties modified the settlement agreement to address Frank's Rule 23(e) objection, leaving only his objection to fees. The district court granted the fee request. Our appeal is pending.
In re Broiler Chicken Antitrust Litigation, No. 16-cv-08637 (N.D. Ill.)	CCAF attorney Ned Hedley represented CCAF attorney John Andren objecting to the fee request because, *inter alia*, class counsel's 33% of a $181 million settlement exceeded market rates. The objection is pending in district court.

Case	Result
Hesse v. Godiva Chocolatier, Inc., No. 19-cv-00927-AJN (S.D.N.Y.)	CCAF attorney Anna St. John represented class member Eli Lehrer objecting to the settlement because, *inter alia*, the settlement reserved $5 million for the attorneys, but only a claims-made settlement of undetermined value for the class. On April 20, 2022, the court approved the settlement and awarded attorneys' fees in an amount $2,150,000 less than class counsel requested, relying on the calculation method proposed by Mr. Lehrer. We neither sought nor received any payment.
In re Novo Nordisk Securities Litigation, No. 17-cv-00209-ZNQ-LHG (D.N.J.)	CCAF attorney Ned Hedley objected *pro se* to the fee request in this securities settlement. The objection is pending

19. As the chart shows, HLLI and CCAF achieve success or partial success in the vast majority of their objections, and have won hundreds of millions of dollars for class members, as well as numerous landmark appeals. We regularly represent law professors in court, and have been appointed *amicus* in district court and appellate court proceedings where there was no adversary presentation.

20. I have also objected at times or represented objectors outside of my work at CCAF. In 2008, before I started CCAF, I objected *pro se* (after dismissing the attorney I initially retained) to the class action settlement in *In re Grand Theft Auto Video Game Consumer Litigation*, No. 1:06-md-1739 (SWK) (S.D.N.Y.), because of the disproportionate recovery it gave to class counsel against the class. The district court refused to certify the class and approve the settlement. 251 F.R.D. 139 (S.D.N.Y. 2008). In the six cases which I list below, I was retained in my private capacity to represent appellants or objectors in cases where CCAF did not have a client. In each case, my retainer was for a flat fee with a right to a percentage of court-awarded fees, and if the lead attorney or client chose to settle an appeal or objection, I received no additional payment. I would only accept the work if I believed the appeal was meritorious. I have a 2-0 record in these cases where my clients chose to see the appeal through to its conclusion. One of these appeals was in the *Groupon* case in the Ninth Circuit listed above.

Case	Result
Eubank v. Pella Corp., 753 F.3d 718 (7th Cir. 2014).	I was retained on a flat-fee basis for briefing and argument of the appeal. The Seventh Circuit reversed settlement approval and ordered the reinstatement of defrocked class representatives. On remand, the settlement was substantially improved. I retained counsel to seek fees on my behalf, and the court awarded me fees in 2019.
In re Toyota Motor Corp. Unintended Acceleration Litigation, Nos. 13-56458 (L), 13-56468 (9th Cir.)	I was retained on a flat-fee basis to participate in the appeal and assist with the successful opposition to a motion for an appeal bond. The objecting client chose to voluntarily dismiss his appeal in response to a settlement offer, and I withdrew from representation before the dismissal. I received no payment from the plaintiffs or defendants. I believe the appeal was meritorious, and the arguments that I planned to make on behalf of the objector were later adopted by the Eighth Circuit in *BankAmerica Corp.*
In re Deepwater Horizon Economic and Property Settlement Appeals (No. 13-30095) and *In re Deepwater Horizon Medical Settlement Appeals* (No. 13-30221) (5th Cir.)	I was retained by counsel for five appellants on a flat-fee basis while the appeals were pending. After oral argument in 13-30095 and after briefing in 13-30221, three of the appellants retained new counsel who voluntarily dismissed their appeals; I do not know what deal they made, and I received no payment. The two remaining appellants chose to move to voluntarily dismiss their appeals without recompense. I received no payment from the plaintiffs or defendants or objectors. I believe the appeals were meritorious, and many of the arguments I made in the briefing were adopted by the Seventh Circuit in *Eubank*.
In re CertainTeed Fiber Cement (No. 14-1882) (3d Cir.)	I was retained on a flat-fee basis to work on the appeal after assisting counsel for the objector in the district court on an hourly basis. (In response to the district-court objection, the parties modified the settlement to bar reversion to the defendant, which was worth some amount of money to the class, but the district court denied a motion for attorneys' fees for the objector.) As cross-motions were pending in the Third Circuit, the parties settled, and I withdrew from representation, and the objectors dismissed their appeal. I received no payment from the plaintiffs or defendants. I believe the appeal was meritorious because the district court failed to comply with *Baby Products Antitrust Litigation*'s requirement to determine the actual payment to the class. The settlement approved by the district court was akin to that rejected by the Seventh Circuit in *Eubank*.

Case	Result
Fladell v. Wells Fargo Bank, No. 13-cv-60721 (S.D. Fla.)	I was retained on an hourly-fee basis to provide a draft objection to the attorneys for a pair of objectors, and then a declaration in support of the objection. After I submitted the declaration, a current CCAF client contacted me and suggested that I had a conflict of interest, and asked me to withdraw from the *Fladell* case. I disagreed that there was a conflict of interest, but received permission to withdraw to avoid any collateral dispute with my client, and waived my fee. I believe the objection was meritorious, and the district court's decision approving the settlement and overruling objections without determining actual benefit to the class contradicted *In re Baby Products* and *Pearson v. NBTY*, among other decisions. I did not participate in the appeal, and did not receive any money from its settlement.
In re Groupon, Inc., Marketing and Sales Practices Litig., No. 3:11-md-2238-DMS-RBB (S.D. Cal.)	Discussed above. After appellate briefing was complete, I was retained by one of the appellants in my private capacity to argue the appeal on a flat-fee basis, and the Ninth Circuit agreed with me in an unpublished order that the district court's settlement approval applied the wrong standard of law, and vacated and remanded. I did not participate further in the case.

21. There were several other cases where CCAF did not have a client where I consulted in my private capacity with attorneys representing objecting class members in cases about legal strategy for objections on an hourly basis or flat-fee basis, sometimes providing draft objections or outlines or draft briefs or draft responses to motions for appeal bonds or sanctions, sometimes providing copies of relevant public filings I had previously made, sometimes recommending that no objection be pursued. Because I did not file an objection as either counsel or objector in those cases, because I had no attorney-client relationship with the objector, because I was not the ultimate legal decisionmaker in those cases, because the ultimate legal decisionmaker in those cases did not always follow my advice or keep me apprised of the status of the case, because I withdrew from continued participation in several pending cases in June 2015, and because of contractual confidentiality obligations, I do not list them in this declaration. I similarly do not list numerous cases where objectors or attorneys or settling parties or experts have discussed pending settlements, client representations, objections, appeals, or collateral litigation with me and/or I have provided copies of public CCAF filings as a favor without payment or creating an attorney-client relationship. State attorneys general offices and the Department

of Justice occasionally telephone me or meet with me from time to time to discuss class action settlements or certifications, and I do not track or list those cases either.

22. I no longer accept paid representation in such cases in my private capacity with attorneys who do not agree in advance to avoid dismissing appeals for *quid pro quo* payment because CCAF engages in litigation to create precedent requiring objectors and their counsel to equitably disgorge payments received without court approval for withdrawing objections or appeals, and I want to avoid conflicts of interest while CCAF engaged in such litigation. I note that it would be simple enough for the settling parties to stipulate to settlement procedures definitively deterring bad-faith objectors by including an order forbidding payment to objectors without disclosure and court approval. Instead they have imposed abusively burdensome requirements on objection that will do little to deter bad-faith objectors while forcing attorneys for good-faith objectors to waste untold hours on a declaration of dozens of pages. I have expressed a willingness to be bound by an injunction barring us from settling this objection for payment without court approval if there is any doubt as to our good-faith intentions in objection to an unfair settlement and fee request.

23. A website purporting to list other cases where I acted as an attorney or objector is inaccurate, listing me in several cases where I had no role, made no appearances, and had no attorney-client relationship with the objector, and falsely attributing to me filings I had nothing to do with. The website is further inaccurate in omitting dozens of my successful objections, falsely characterizing successful objections as having been overruled entirely, and misrepresenting the substance of court filings and testimony. Though I have notified the website of its errors, and though I frequently submit declarations such as this one providing a full resume of my cases and results, they refuse to provide accurate information about my record.

24. A number of objectors I have no affiliation with have filed briefs plagiarizing my work or CCAF's work in other cases without consulting with me. At least one objector has incorrectly represented to a court that I have agreed to represent him before a retainer agreement was signed.

25. HLLI pays me on a salary basis that does not vary with the result in any case. HLLI and CCAF attorneys do not receive a contingent bonus based on success in any case, a structure that would be contrary to I.R.S. restrictions.

26. CCAF has won more than $200 million dollars for class members by driving the settling parties to reach an improved bargain or by reducing outsized fee awards. Andrea Estes, *Critics hit law firms' bills after class-action lawsuits*, Boston Globe (Dec. 17, 2016) (more than $100 million at time). *See also, e.g., McDonough v. Toys "R" Us*, 80 F. Supp. 3d 626, 661 (E.D. Pa. 2015) ("CCAF's time was judiciously spent to increase the value of the settlement to class members") (internal quotation omitted); *In re Citigroup Inc. Secs. Litig.*, 965 F. Supp. 2d 369 (S.D.N.Y. 2013) (reducing fees, and thus increasing class recovery, by more than $26 million to account for a "significantly overstated lodestar"); *In re Apple Inc. Sec. Litig.*, No. 5:06-cv-05208-JF, 2011 U.S. Dist. LEXIS 52685 (N.D. Cal. May 17, 2011) (parties nullify objection by eliminating *cy pres* and augmenting class fund by $2.5 million).

Pre-empting *Ad Hominem* Attacks

27. In my experience, class counsel often responds to CCAF objections by making a variety of *ad hominem* attacks, often wildly false. The vast majority of district court judges do not fall for such transparent and abusive tactics, and in *Stericycle*, the Seventh Circuit expressly criticized those tactics. Because the objection deadline is so close to the fairness hearing, we might not have a chance to supplement the record if class counsel engages in such tactics to distract from the merits of the objection. In an effort to anticipate such attacks and to avoid collateral litigation over a right to file a reply, I discuss and refute the most common *ad hominems* below. If the Court is inclined to disregard the *ad hominem* attacks, it can avoid these collateral disputes entirely and the discussion below will be irrelevant.

28. Class counsel often try to tar CCAF as "professional objectors" or "serial objectors" and then cite court opinions criticizing for-profit attorneys who threaten to disrupt a settlement unless plaintiffs' attorneys buy them off with a share of attorneys' fees. But this is not the non-profit CCAF's *modus operandi*, so the court opinions class counsel rely upon to tar CCAF are inapposite. *See* Edward

Brunet, *Class Action Objectors: Extortionist Free Riders or Fairness Guarantors*, 2003 U. Chi. Legal F. 403, 437 n. 150 (public interest groups are not professional objectors); Paul Karlsgodt & Raj Chohan, *Class Action Settlement Objectors: Minor Nuisance or Serious Threat to Approval*, BNA: Class Action Litig. Report (Aug. 12, 2011) (distinguishing CCAF from professional objectors). CCAF refuses to engage in *quid pro quo* settlements and has never withdrawn an objection in exchange for payment. Instead, it is funded entirely through charitable donations and court-awarded attorneys' fees. The difference between a for-profit "professional objector" and a public-interest objector is a material one. As the federal rules are currently set up, "professional objectors" have an incentive to file objections regardless of the merits of the settlement or the objection. In contrast, a public-interest objector such as myself has to triage dozens of requests for pro bono representation and dozens of unfair class action settlements, loses money on every losing objection (and most winning objections) brought, can only raise charitable donations necessary to remain afloat by demonstrating success, and has no interest in wasting limited resources and time on a "baseless objection." CCAF objects to only a small fraction of the number of unfair class action settlements and fee requests it sees.

29. While one district court called me a "professional objector" in a broader sense, that court stated that it was not meant pejoratively, and awarded CCAF fees for a successful objection and appeal that improved the settlement for the class. *Dewey v. Volkswagen*, 909 F. Supp. 2d 373, 396 n.24 (D.N.J. 2012). Similarly, the Seventh Circuit in *In re Subway Footlong Mktg. Litig.*, 869 F.3d 551 (7th Cir. 2017) referred to me non-pejoratively as a "professional objector" in an opinion agreeing with my objection and reversing a settlement approval and class certification.

30. In *In re Equifax, Inc. Customer Data Breach Litigation*, No. 17-md-2800-TWT (N.D. Ga.), the district court's approval order stated that I am a "serial objector" who objected merely to benefit myself or my attorney. It further accused me of making "misleading" statements about the settlement. The order did not cite any evidence or reason to support this finding, and I have reason to believe the court used this language only because it adopted nearly verbatim a proposed order that was submitted *ex parte* by plaintiffs' counsel, without exercising independent judgment to make these findings. The allegation made by the district court is false. Our objection in *Equifax* was meritorious, similar to

successful objections we've made elsewhere that have won millions of dollars for class members, and supported on appeal by an amicus brief by a prominent plaintiffs' attorney that agreed with our analysis. I did not make any false or misleading statements about the settlement, and on appeal, plaintiffs failed to identify any false or misleading statements I made and admitted that I have never engaged in extortion.

31. In *Exum v. National Tire and Battery*, No. 9:19-cv-80121 (S.D. Fla.), one of HLLI's attorneys mistakenly misconstrued the release clause in the settlement agreement and filed an objection with an argument that relied on that erroneous reading. Once she became aware of the error, she withdraw that portion of the objection and has publicly expressed contrition and embarrassment that her work did not live up to the high standards she sets for herself. The district court issued an order to show cause why she should not be sanctioned, stating that the "false statements and representations" "appear[] to be reckless or negligent." The court also referred to the HLLI attorney as a "serial" or "professional" objector but made no finding that she or any other HLLI attorney has ever withdrawn an objection in exchange for payment. HLLI filed a response to the order explaining that this error was made in good faith, with no intent to delay or otherwise interfere with the court proceedings and again expressing contrition. The court subsequently issued an order discharging the order to show cause in which it stated that "it is clear to the Court that [the HLLI attorney] does hold herself to high standards" and the court was "satisfied and impressed" by HLLI's "prompt and candid response." The court found that the HLLI attorney "did not engage in bad faith conduct and did not knowingly or intentionally make a false statement or misrepresentation to the Court."

32. CCAF feels strongly enough about the problem of bad-faith objectors profiting at the expense of the class through extortionate means that it successfully initiated litigation to require such objectors to disgorge their ill-gotten gains to the class. *See Pearson v. Target Corp.*, 968 F.3d 827 (7th Cir. 2020); *see generally* Jacob Gershman, *Lawsuits Allege Objector Blackmail in Class Action Litigation*, Wall St. J., Dec. 7, 2016.

33. Before I joined CEI, I had a private practice unrelated to my non-profit work. One of my former clients, Christopher Bandas, is a professional objector who has settled objections and

withdrawn appeals for cash payments. I withdrew from representation of Mr. Bandas in 2015 when he undertook steps that interfered with my non-profit work. Mr. Bandas was criticized by the Southern District of New York after I ceased to represent him, and class counsel in other cases often cites that language and attempts to attribute it to me. Class counsel in multiple cases, using boilerplate language, has tried to make it seem like my paid representation of Mr. Bandas was somehow scandalous, using language like "forced to disclose" and "secret." The sneering is false: my representation of Mr. Bandas was not secret, as I filed declarations in my name on his behalf in multiple cases, noting under oath that I was being paid to perform legal work for him; I filed notices of appearances in cases where he had previously appeared; and my declaration in the *Capital One* case ending the relationship was filed voluntarily at great personal expense to myself, as I had been offered and refused to take a substantial sum of money to accede to a Lieff Cabraser fee award of over $3400/hour. I only worked for Mr. Bandas in cases where I believed there was a meritorious objection to be made, had no role in any negotiations he made to settle appeals, and my pay was flat-rate or by the hour and not tied to his ability to extract settlements. I argued two appeals for Mr. Bandas, and won both of them. There is nothing scandalous about that, unless one believes it is scandalous for an attorney to be paid to perform successful high-quality legal services for a client. CCAF had no attorney-client relationship with Mr. Bandas, and Mr. Bandas never paid CCAF, other than for his share of printing expenses when he was an independent co-appellant representing clients unrelated to CCAF.

34. Firms whose fees we have objected to have previously cited to *City of Livonia Employees' Ret. Sys. v. Wyeth*, No. 07 Civ 10329 (RJS), 2013 WL 4399015 (S.D.N.Y. Aug. 7, 2013), in efforts to tar CCAF. While the *Wyeth* court did criticize our client's objection (after mischaracterizing the nature of that objection), it ultimately agreed with our client that class counsel's fee request was too high and reduced it by several million dollars to the benefit of shareholder class members.

35. Adversaries frequently cite a decade-old case, *Lonardo v. Travelers Indemnity Co.*, 706 F. Supp. 2d 766, 804 (N.D. Ohio 2010), where the district court criticized a policy-based argument by CCAF as supposedly "short on law"; however, CCAF ultimately was successful in the Seventh and Ninth Circuits on that same argument. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935 (9th

Cir. 2011) (agreeing that reversionary clauses are a problematic sign of self-dealing); *Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014) (same). Moreover, the court in *Lonardo* stated its belief that "Mr. Frank's goals are policy-oriented as opposed to economic and self-serving" and even awarded CCAF about $40,000 in attorneys' fees for increasing the class benefit by $2 million. *Lonardo*, 706 F. Supp. 2d at 813-17.

36. CCAF has no interest in pursuing "baseless objections," because every objection we bring on behalf of a class member has the opportunity cost of not having time to pursue a meritorious objection in another case. We are confronted with many more opportunities to object (or appeal erroneous settlement approvals) than we have resources to use, and make painful decisions several times a year picking and choosing which cases to pursue, and even which issues to pursue within the case. CCAF turns down the opportunity to represent class members wishing to object to settlements or fees when CCAF believes the underlying settlement or fee request is relatively fair. This is especially true now that HLLI has expanded into successful litigation over other issues that our attorneys care about, such as freedom of speech and regulatory abuse. *See, e.g., Greenberg v. Goodrich*, No. 20-cv-3822, 2022 WL 874953, 2022 U.S. Dist. LEXIS 52881 (E.D. Pa. Mar. 24, 2022) (granting summary judgment and enjoining rule of professional conduct that would chill free speech).

37. While I am often accused of being an "ideological objector," the ideology of CCAF's objections is merely the correct application of Rule 23 to ensure the fair treatment of class members. Likewise, I have often seen class counsel assert that I oppose all class actions and am seeking to end them, not improve them. The accusation—aside from being utterly irrelevant to the legal merits of any particular objection—has no basis in reality. I have been writing and speaking about class actions publicly for nearly a decade, including in testimony before state and federal legislative subcommittees, and I have never asked for an end to the class action device, just proposed reforms for ending the abuse of class actions and class-action settlements. That I oppose class action abuse no more means that I oppose class actions than someone who opposes food poisoning opposes food. As a child, I admired Ralph Nader and consumer reporter Marvin Zindler (whose autographed photo was one of my prized childhood possessions), and read every issue of *Consumer Reports* from cover to cover. I have

focused my practice on conflicts of interest in class actions because, among other reasons, I saw a need to protect consumers that no one else was filling, and as a way to fulfill my childhood dream of being a consumer advocate. I have frequently confirmed my support for the principles behind class actions in declarations under oath, interviews, essays, and public speeches, including a January 2014 presentation in New York that was broadcast nationally on C-SPAN and in my briefing in *Frank v. Gaos*. On multiple occasions, successful objections brought by CCAF have resulted in new class-action settlements where the defendants pay substantially more money to the plaintiff class without CCAF objecting to the revised settlement. And I was the putative class representative in a federal class action, represented by a prominent plaintiffs' firm. *Frank v. BMOCorp., Inc.*, No. 4:17-cv-870 (E.D. Mo.).

38. On October 1, 2015, after consultation with its board of directors and its donors, CCAF merged with the much larger Competitive Enterprise Institute ("CEI"). Prior to its merger with CEI, CCAF never took or solicited money from corporate donors other than court-awarded attorneys' fees. CEI, which is much larger than CCAF, does take a percentage of its donations from corporate donors. As part of the merger agreement, I negotiated a commitment that CEI would not permit donors to interfere with CCAF's case selection or case management. In the event of a breach of this commitment, I was permitted to treat the breach as a constructive discharge entitling me to substantial severance pay. CCAF attorneys made several filings in several cases opposed by CEI donors.

39. CEI was willing to merge with CCAF because it supported CCAF's pro-consumer mission and success in challenging abusive class-action settlements and fee requests. But it is a large organization affiliated with dozens of scholars who take a variety of controversial positions. Neither I nor CCAF's clients agree with all of those positions, and they should not be ascribed to me, my clients, or this objection, any more than my support for a Pigouvian carbon tax should be ascribed to CEI scholars who have publicly opposed that position.

40. CCAF has since left CEI, and is now part of the Hamilton Lincoln Law Institute, which receives no corporate funding. We did not consult any of our donors about our objection to this settlement.

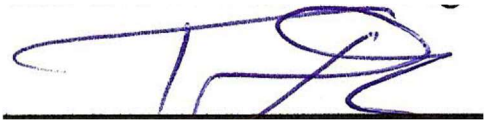
41. Some class counsels have accused us of improper motivation because CCAF has on occasion sought attorneys' fees. While CCAF is funded entirely through charitable donations and court-awarded attorneys' fees, the possibility of a fee award never factors into the Center's decision to accept a representation or object to an unfair class-action settlement or fee request.

42. CCAF's history in requesting attorneys' fees reflects this approach. Despite having made dozens of successful objections and having won over $200 million on behalf of class members, CCAF has not requested attorneys' fees in the majority of its cases or even in the majority of its appellate victories. CCAF regularly passes up the opportunity to seek fees to which it is legally entitled. In *Classmates*, for example, CCAF withdrew its fee request and instead asked the district court to award money to the class; the court subsequently found that an award of $100,000 "if anything" "would have undercompensated CCAF." *In re Classmates.com Consol. Litig.*, No. 09-cv-0045-RAJ, 2012 WL 3854501, at *11 (W.D. Wash. June 15, 2012). In other cases, CCAF has asked the court for a fraction of the fees to which it would be legally entitled based on the benefit CCAF achieved for the class and asked for any fee award over that fractional amount be returned to the class settlement fund. In *Petrobras*, despite winning tens of millions of dollars for the class, we requested less than $200,000 in fees. In *Wells Fargo*, our good-faith objection on behalf of a shareholder aided the court in increasing benefit to shareholders by $15 million, and we requested only $250,000 (and received under $100,000) in fees through a court approval process—even though a fellow objector in the same case negotiated and received a payment of $1.75 million from Wells Fargo directly for settling his objections.

43. Moreover, under federal non-profit law, attorney fees cannot be used to support more than 50% of our program expenses. None of our attorneys' salaries are tied to fee awards in any case, and all of our attorneys have salaries that are a fraction of what they could make in private practice.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 7, 2022, in Houston, Texas.



Theodore H. Frank

Exhibit 1

Frank Proof of Purchase for Non-Aerosol Product

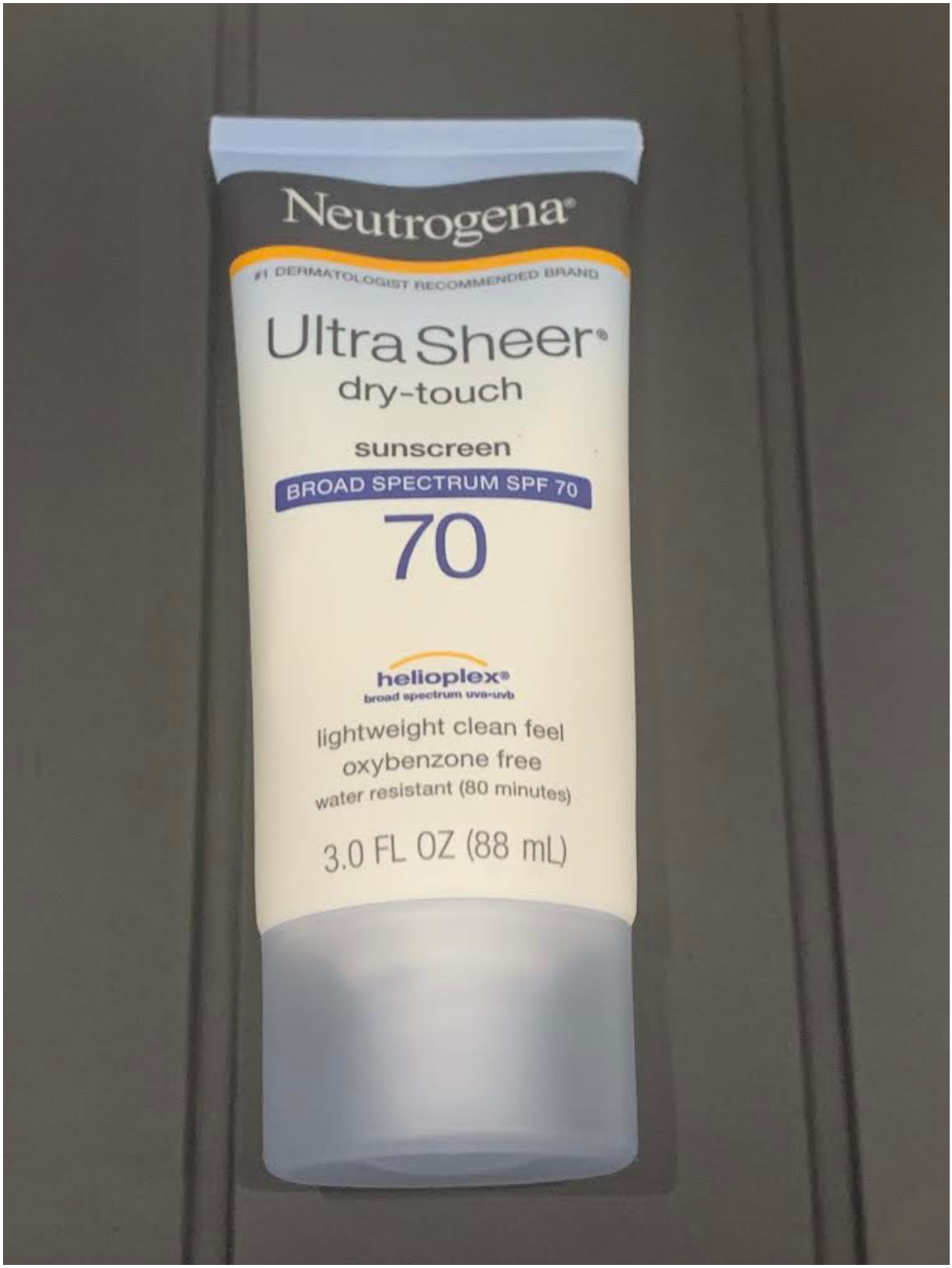

Neutrogena
#1 DERMATOLOGIST RECOMMENDED BRAND
Ultra Sheer
dry-touch
sunscreen
BROAD SPECTRUM SPF 70
70
helioplex
broad spectrum uva-uvb
lightweight clean feel
oxybenzone free
water resistant (80 minutes)
3.0 FL OZ (88 mL)

Exhibit 2

Frank Proof of Purchase for Non-Aerosol Product


New FullReach™ design
even reaches your back
Neutrogena
Ultra Sheer®
BODY MIST
SUNSCREEN
Broad Spectrum SPF 100+
100+
helioplex®
broad spectrum uva+uvb
WEIGHTLESS, CLEAN FEEL
non-greasy
water resistant (80 minutes)
#1 DERMATOLOGIST RECOMMENDED SUNCARE
NET WT. 5.0 OZ. (141 g)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 0:21-md-03015-SINGHAL/Valle

IN RE: JOHNSON & JOHNSON SUNSCREEN MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	**MDL Case No.: 3015**
Theodore H. Frank, Objector.	

DECLARATION OF JOHN M. ANDREN

I, John M. Andren, declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. My business address is Hamilton Lincoln Law Institute, 1629 K St. NW, Suite 300, Washington, DC 20006. My telephone number is (703) 582-2499. My email address is john.andren@hlli.org.

3. I am an attorney with the Hamilton Lincoln Law Institute ("HLLI") representing objector Theodore H. Frank in this matter.

4. I intend to appear at the Fairness Hearing, on behalf of objector Theodore H. Frank.

5. On July 7, 2022, I visited the website www.neutrogena.com. Once there I clicked "SHOP NOW" to view all Neutrogena products listed on Neutrogena's website. The products were advertised as "25% OFF SITEWIDE." I then sorted the products listing by "price – low to high" and counted how many items were available for under $5. I excluded products labeled as discontinued or out of stock, as such items were not available for purchase. I counted six items that were priced and available for purchase under $5 based on their 25% reduced sale price. To determine how many products Neutrogena had available for purchase total, I clicked through each page and counted every product that was available for purchase (*i.e.*, not out of stock or discontinued). I counted 205 products available for purchase. I then refined my search to sun related products to look at sunscreen options. No Neutrogena sunscreens were priced below $5.

6. On July 7, 2022, I visited the website www.aveeno.com. I clicked a "Where to Buy" link and then scrolled down on the "Where to Buy" page. At the bottom of the page, I clicked "View Products" to see the entire Aveeno products catalogue currently for sale. I counted the number of products available for sale on Aveeno's Products page. There were 121 products total available for purchase. I then clicked the menu bar in the top right corner and on the site map that appeared selected "Skin," followed by "By Concern," and finally "Sun Protection." Once on the Sun Protection products page, I filtered the products further by selecting "Sunscreen" under "Product Type" in the filter menu. This generated six sunscreen products. Aveeno does not sell its own products directly to consumers

online, necessitating the use of third-party retailers. I clicked "Buy Now" on each sunscreen to check prices. None of the Aveeno sunscreens were available to buy online from third party retailers for under $5.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 7, 2022, in Cashiers, North Carolina.

/s/John M. Andren
John M. Andren