No. 21-15763
(Consolidated with Nos. 21-15758, 21-15761, and 21-15762)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE: APPLE INC. DEVICE PERFORMANCE LITIGATION

NAMED PLAINTIFFS AND SETTLEMENT CLASS MEMBERS,
Plaintiffs-Appellees,

v.

ANNA ST. JOHN,
Objector-Appellant,

v.

APPLE, INC.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of California, No. 5:18-md-02827-EJD

Reply Brief of Appellant Anna St. John

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Summary of Argument

Class counsel does not dispute several facts that are dispositive under Ninth Circuit law:

- The district court found that the *Vizcaino* factors[1] did not support an upward adjustment from this Circuit's 25% benchmark for attorneys' fees. ER-24.[2]
- The district court held that the "better approach is to look to empirical research on megafund cases." ER-23.
- The district court found that the empirical research shows that "[t]he requested 28.3% far exceeds the mean and median percentages reported" in prominent studies of class-action fee awards. ER-24.
- The studies the district court reviewed show a fee in a 17-18% range would have been in line with the average fee award in settlements of this size. ER-24.

Under the district court's own reasoning, a fee award of 17% to 18% would be proper. Instead, anchoring itself to class counsel's request, the court awarded an *above-benchmark* 26%, when class counsel achieved less than extraordinary results and did not provide superior representation—leaving behind nearly $200 million that Apple was ready to

[1] *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).

[2] "ER" refers to St. John's Excerpt of Records. "PL-SER" refers to plaintiffs' Supplemental Excerpt of Records. "Dkt." refers to the district court docket. "OB" refers to St. John's opening brief. "PB" refers to plaintiffs' response brief.

pay to the class. This *non sequitur* cannot withstand appellate review. "[D]istrict courts must show their work when calculating" fee awards. *Padgett v. Loventhal*, 706 F.3d 1205, 1208 (9th Cir. 2013). A district court must "fully explain[]" its reasoning in a fee award. *E.g.*, *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009). That requirement would be a nullity if the Ninth Circuit permits a district court to have a conclusion that contradicts the explanation.

Indeed, class counsel's failure to secure $190 million in additional recovery for the class confirms the unreasonableness of the district court's above-benchmark award. Apple was willing to pay up to $500 million for the class's release of claims. Because class counsel failed to structure the class process and notice to ensure a robust response rate, however, the class is recovering nearly $200 million less while giving Apple the same release of claims that it valued at $500 million. Plaintiffs provide no valid reason why it was appropriate for the district court to ignore this glaring deficiency by class counsel. It is directly relevant to both the success achieved and the quality of representation factors in the *Vizcaino* analysis that plaintiffs claim the district court studiously conducted. And it is especially ironic in a case brought against Apple for throttling the speed of iPhones that class counsel suffers no consequence for effectively throttling the recovery of class members.

The district court's deficient lodestar crosscheck also shows that the fee award was unreasonable. The district court failed to examine certain billing excesses identified by appellant St. John when it cross-checked the attorneys' lodestar. Plaintiffs deny this, but their only supporting evidence is a couple of vague references the district court

made to the quarterly billing records they submitted, rather than any critical review by the court.

In short, although plaintiffs claim that the district court's fee award was the product of its consideration of each of the *Vizcaino* factors, empirical studies of attorneys' fee awards, and a lodestar cross-check, the district court's consideration of each of these was irredeemably flawed. The district court also failed to address why St. John's objections were not valid—itself a reason for remand. *E.g., Dennis v. Kellogg*, 697 F.3d 858, 864 (9th Cir. 2012).

Class counsel's fee award reduces each claimant's recovery by nearly $20, *on top* of the $190 million class counsel's failure to ensure a robust response by their clients shortchanged the class. Plaintiffs provide no valid legal grounds for affirming the multiple errors in the district court's analysis. Reversal of this decision is necessary to encourage future class counsels to maximize class recovery and ensure that the settlement funds end up in class members' hands rather than the defendant's.

Argument

I. The above-benchmark attorneys' fee award in this megafund case fails as a matter of law because class counsel failed to maximize class recovery by nearly $200 million.

As plaintiffs repeatedly cite the need to compensate class counsel for their $310 million recovery, both plaintiffs and St. John agree that the percentage approach achieves their goal by aligning class counsel's interests with those of their clients. *See* PB48. That alignment of interests only works, however, if the court evaluates what the class members *actually* receive, as opposed to what the class members could have

received or simply didn't receive. *See Briseño v. Henderson,* 998 F.3d 1014, 1026 (9th Cir. 2021) (impugning claims-made settlement that left the class with "scraps"); *Pearson v. NBTY, Inc.*, 772 F.3d 772,783, 787 (quoting *Eubank v. Pella Corp.*, 753 F.3d 718, 720 (7th Cir. 2014)). Fed. R. Civ. Proc. 23(e)(2)(C)(ii) is informative: it requires courts to evaluate the objective "effectiveness" of relief distribution, rather than how hard class counsel claimed to subjectively try to distribute class relief. Thus, class counsel's self-serving assertions about the hard work they put into notice are all red herrings: what matters is whether the notice and claims process *worked*, and it didn't. The evidence is that notice to Gmail users went to the spam folder, and that the settlement administrator provided no evidence of asking Google to "white list" the class notice domain name so that class members would actually receive the email. OB8-10. The court's fee analysis necessarily must encompass review of class counsel's role in obtaining relief for the class and ensuring that their clients actually receive a benefit from the settlement.

A. The district court found that the "better approach" to setting a fee award was to look to empirical research, which shows that 26% is excessive.

Plaintiffs don't dispute that the district court's 26% fee award is far higher than the mean and median percentage-based awards established by the empirical data reviewed by the district court. Nor do plaintiffs dispute that the district court found that the "better approach" for setting a fee award was "to look to empirical research on megafund cases" rather than isolated cases such as they cited in their motion requesting attorneys' fees. ER-23. That empirical research shows that a fee award between 15% and 20% is more typical of a settlement of $310 million like the one here. *See* OB25 (citing Logan, Stuart, *et al.*, *Attorney Fee Awards in Common Fund Class Actions*, 24 Class

Action Reports (March-April 2003) (empirical survey showed average recovery of 15.1% where recovery exceeded $100 million); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 265 tbl. 7 (2010) (mean percentage fee in 68 class action settlements with recovery above $175.5 million was 12% and median award was 10.2% with standard deviation of 7.9%)). Plaintiffs similarly do not dispute—as the empirical data shows—that courts typically award below-benchmark percentages in megafund cases to avoid awarding windfall fees to class counsel. *See* OB23-25. And, here, the district court found that the case was in fact a megafund, generally defined as a settlement fund "in excess of $100 million." *See In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 932 (9th Cir. 2020) (internal quotation omitted).

The district court contradicted its own methodology by recognizing the importance of but failing to give effect to the empirical data. The court thus erred by awarding an above-benchmark fee where the measure that constitutes a "better approach" than a flat benchmark showed that an award several percentages lower was proper. *Powers v. Eichen*, 229 F.3d 1249, 1256-58 (9th Cir. 2000). "'Discretion is not 'whim.'" *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 139 (2005).

Plaintiffs now are eager to distance themselves from their own role in directing the court away from the empirical data. They claim that the district court's 26% fee award should be affirmed based on the court's review of individual cases awarding fees between 27% and 36%, in addition to the empirical research showing that far lower fees are more appropriate. PB55. But even the individual case in which they claim the district court based the 26% fee award only awarded 16.9% because the 25% benchmark would

yield windfall profits for the attorneys. PB55 (citing ER-28 and *In re Facebook Biometric Info. Privacy Litig.*, 522 F. Supp. 3d 617, 622 (N.D. Cal. 2021)). And plaintiffs hindered the district court's analysis by telling the court that their 28.3% request was "within the usual range" in "high recovery, common fund cases," and without making any adjustment for a class recovery of $310 million versus $500 million. *See* 8-PL-SER-2109. The First Circuit recently upheld sanctions ordered against class counsel that materially misled the district court about empirical surveys establishing mean and median percentages in the teens for megafund settlements. *See Ark. Teacher Ret. Sys. v. State Street Corp.*, No. 21-2069, 2022 WL 391450, 2022 U.S. App. LEXIS 3556, at *23-26 (1st Cir. Feb. 9, 2022). The First Circuit emphasized the need for candor by counsel in their fee motions because of the *ex parte* setting in which courts typically rule on such motions. While the district court here correctly recognized the importance of the empirical data, its ultimate award of attorneys' fees was, without explanation, inconsistent with that approach. This Court should not accept class counsel's attempt to justify that district court's deficient analysis based on the same discredited argument in which they rely on a handful of individual cases that have awarded higher percentages.

B. The district court's analysis of the *Vizcaino* factors was legally insufficient because it did not consider that class counsel failed to maximize class recovery.

Plaintiffs focus their opposition on the district court's assessment of the factors set forth in *Vizcaino*, claiming that the district court "considered each of the factors." This focus is misplaced, however, for two reasons.

First, the district court found that "no single factor or combination of factors" from the *Vizcaino* analysis supported class counsel's requested 28.3% fee award. ER-24. Even if plaintiffs were correct, then, that the district court's *Vizcaino* analysis was thorough, the analysis does not support the district court's upward deviation from the benchmark. The district court determined that empirical surveys were a better approach and also performed a lodestar crosscheck. St. John doesn't dispute that the district court assessed the *Vizcaino* factors: St. John's complaint is that the district court's assessment is inconsistent with its conclusion.

Second, and more fundamentally, the district court erred in its analysis by failing to consider critical facts in the "success achieved" and quality of representation factors. Failure to consider "a factor entitled to substantial weight" is an abuse of discretion. *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 939 (9th Cir. 2009).

Class counsel certainly did not achieve an "unprecedented, or at least exceptional" result (ER-24) when they prevented the class from receiving $200 million that Apple was willing to pay. Plaintiffs fail to address the district court's finding, based on their assertions in their own briefing, that the "response rate in this case could very well have surpassed the predicted percentage response rate. Indeed, at the preliminary approval stage, Class Counsel expressed the expectation that the response rate would be 'at the high end of the range, or greater….'" ER-54 n.6 (quoting Pls.' Mot. for Prelim Approval at 18:3-6).

Class counsel apparently have no response to this finding in the face of empirical data showing that claims rates increase as the size of the available recovery per-class member increases, and here, the claims rate was lower than what one would expect for

a recovery of its size despite plaintiffs' purportedly robust publicity. *See* OB27-28. It was unreasonable under Rule 23(h) for the district court to award an above-benchmark fee without even considering this outcome. The meager claims rate was fully within class counsel's control, given the established connection between a low response rate and inadequate notice of a settlement. *See Roes v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1046 n.7 (9th Cir. 2019). Class counsel's performance also foundered because, upon establishing that Apple was willing to pay $500 million to settle—and would receive the same release of claims regardless of the number of claims—there was "no apparent reason"[3] that a class counsel should not negotiate for that reversion to go to the class, rather than the defendant. Class counsel failed to ensure class members actually received the class notice, rather than have it go directly to their spam folders, and used a claim form that required a statement under perjury at odds with the class definition. As a result, the claims rate was unusually low, and the class received $200 million less in exchange the very same release of claims they would have provided for the maximum $500 million.

The cases that plaintiffs cite (PB57) to justify the district court's failure to consider the class's potential recovery of $500 million had class counsel maximized the claims rate have nothing to do with St. John's objection. They address whether the amount of the actual payment to the class or the "made available" amount should be the denominator in the fee calculation. *See, e.g.*, *Boeing Co. v. Van Gemert*, 444 U.S. 475 (1980) (fee award calculated from judgment of unclaimed funds); *Shames v. Hertz Corp.*,

[3] *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 949 (9th Cir. 2011).

No. 07-CV-2174, 2012 U.S. Dist. LEXIS 158577, at *59 (S.D. Cal. Nov. 5, 2012) (awarding a lodestar-based fee because the underlying claims had fee-shifting provisions). Class counsel's argument misreads *Boeing*, which did not apply to a claims-made settlement with "no fund," "no litigated judgment," and "no reasonable expectation … that more members of the class would submit claims than did." *Pearson*, 772 F.3d at 782. Class counsel's argument contradicts Ninth Circuit law. For example, the claims process in *Briseño* "could potentially provide over $95 million in payments and value to the class members" but this Court evaluated the settlement and $7 million fee award based on what the class *actually* received in the claims process. 998 F.3d at 1026. Even if *Boeing* applied to class-action settlement fee awards (as opposed to just litigated judgments), the 2018 amendment to Rule 23(e)(2)(C)(ii) abrogates it by requiring courts to consider the "effectiveness" of the distribution, rather than merely the amounts made available.

The problem here is not a question of what denominator the district court used. Instead, the court failed to consider the effect of class counsel's deficiency in maximizing the class payout. How can class counsel possibly have achieved a remarkable result or provided representation worthy of more than ten percentage points above the mean and median percentages in comparable settlements when they allowed the defendant to retain $200 million in class funds that it was willing to pay out because of a below-average claims rate? The court's decision shows that it failed to consider this issue. And this by itself is reversible error.

Indeed, class counsel's own fee petition, submitted in their supplemental excerpts, shows the perverse incentives created when courts do not penalize class

counsel for depressing the claims rate. Because the claims rate was so low, the *pro rata* recovery per *claiming* class member was artificially high—and class counsel had the chutzpah to argue below that this should justify higher fees. 8-PL-SER-2098. Class counsel's arguments (PB57) not only disclaim any fiduciary obligation to get money to their clients, but argue that courts should augment their fees when class counsel succeeds in coordinating with the defendant to depress the claims rate *and* class recovery in a case where direct distribution through ApplePay was readily available. It's more than a little ironic that such throttling of the notice and claims process occurred in a case involving allegations that Apple throttled the performance of iPhones. The notice may have met the bare constitutional minimum of Rule 23(c), but the court erred in failing to account for the lack of effectiveness in the distribution to the class when awarding attorneys' fees.

The district court correctly rejected plaintiffs' attempt to compare the result here to a different case in which the court awarded an above-benchmark fee award of 28%. ER-18 (discussing *Larsen v. Trader Joe's Co.*, 2014 WL 3404531 (N.D. Cal. July 11, 2014)). Plaintiffs cite to two other cases that purportedly justify their 28% fee award but again are inapposite. In *Vizcaino*, the court also found that "counsel's performance generated benefits beyond the cash settlement fund," with one such benefit valued at over $100 million, and class counsel lost twice in the district court only to revive their case on appeal. 290 F.3d at 1048-49. *In re Pacific Enters. Sec. Litig.*, too, involved additional settlement benefits to the class, including resumption of the defendant's dividend. 47 F.3d 373, 379 (9th Cir. 1995). The settlement here provides no equivalent benefits that

could justify an above-benchmark fee or that bolster the success achieved or quality of representation factors in the *Vizcaino* analysis.

Notably, plaintiffs don't argue that they achieved an admirable claims rate; they appear to concede that the claims rate was anemic and instead simply seek to avoid accountability and responsibility for that result. They only vaguely reference "several measures" the settlement administrator employed purportedly to ensure that notice emails did not go into recipients' spam folders, and they respond to the more robust measures that St. John identified in *In re Google Plus Profile Litigation* and *Facebook Biometric* by saying that St. John "ignores the steps taken in this case to address spam filters." PB58 n.24. But St. John didn't "ignore" the steps: she explained why those steps were self-evidently substandard, while plaintiffs fail to explain the negligence in taking additional reasonable steps that other settlements—including at least one settlement run by the settlement administrator here—successfully take. OB8-11 (citing record). And the results speak for themselves. Plaintiffs' feeble measures to provide notice to the class here resulted in a far lower claims rate than the notice provided in *Google Plus* and *Facebook Biometric*. At a minimum, class counsel should have protected their clients' interests by requiring the same types of notice that had shown significant success in cases involving comparable tech companies. Relying on "extensive media coverage" to do their job for them doesn't justify the massive $80.6 million fee. It appears to be such media coverage as well as the mailed notices sent to class members without valid email addresses that plaintiffs rely on to rebut the applicability of *Roes*, but that hardly addresses *Roes*' observation that a low claims rate often results from poor notice. And,

here, the emailed notice was caught in spam filters and class counsel failed to take known steps to avoid that outcome.

A recent decision from the Western District of Wisconsin details additional problems with class notice emails that forcefully apply here. The notice provided to the class in *Powers v. Filters Fast, LLC*, No. 20-cv-982, 2022 U.S. Dist. LEXIS 27967, 2022 WL 461996 (W.D. Wisc. Feb. 15, 2022), like here, included an email to all class members, a second email to class members, and a mailed notice to class members who could not be reached by email. Just over one percent of the class filed a claim to recover $25 without showing individual injury. The court rejected the settlement due to deficiency in the notice because, in addition to a problem with the mailed notices, the emailed notice contained vague wording that suggested the email was spam and could be safely deleted without reviewing its contents. *Powers v. Filters Fast, LLC*, No. 20-cv-982, 2022 U.S. Dist. LEXIS 33452 (W.D. Wisc. Feb. 24, 2022). The email notice here suffered from similar infirmities that deterred class members from filing a claim. The first line of the email ominously stated: "**LEGAL NOTICE**." *See* Dkt. 416-3 at 2. Class counsel are the ones who proposed this form of notice to the court. 8-PL-SER-2168. It was fully within their power to draft a class notice more likely to elicit a class response and provide a greater recovery to their clients. But without consequences to their own attorneys' fee for leaving $190 million on the table, class counsel had no incentive to ensure the class received notice of the settlement so that they would actually recover for their claims.

Plaintiffs' reference to the number of objections as indicative of a "highly favorable" result is uninformed and flawed. There is no justification for relying on the

lack of objections as evidence of class members' acquiescence, much less support for a settlement—a view Judge Posner calls "naïve." *Redman v. RadioShack Corp.*, 768 F.3d 622, 628 (7th Cir. 2014); *accord Richardson v. L'Oreal USA, Inc.*, 991 F. Supp. 2d 181, 205 (D.D.C. 2013) (low objection rate "proves little"). That is particularly true here, where the method of email notification was prone to being filtered as spam in class members' email systems.

Finally, St. John's argument is not mere "disagreement" with the amount awarded. *Contra* PB5. Rather, it is based on the undeniable contradictions in the district court's ruling and its failure to address critical reasons that an above-benchmark fee award constitutes legal error. Plaintiffs rely (PB5) on *Murray v. S. Route Maritime, SA*, 870 F.3d 915, 923 (9th Cir. 2017), but *Murray* involves the *Daubert* inquiry, and does not affect attorneys' fee awards in a class action.

C. Plaintiffs forfeited a response to St. John's argument that remand is required at a minimum because the district court failed to address her objection that class counsel's failure to maximize recovery should result in a lower attorneys' fee award.

Plaintiffs do not even acknowledge St. John's argument that the district court erred by failing to respond to her objection that class counsel's work was deficient and results achieved sub-par because they failed to maximize class recovery and instead allowed the defendant to keep nearly $200 million that could have, with more diligence on class counsel's behalf, gone to the class. Under *Dennis* and *Powers*, remand, at a minimum, is required, to allow the district court to address such deficiencies in its attorneys' fee award. *Dennis*, 697 F.3d at 864; *Powers*, 229 F.3d at 1256-58. The Court

can go further, however, because it was legal error and an abuse of discretion for the district court to award over $80 million in attorneys' fees—several percentages and millions of dollars above an appropriate amount—in the face of such deficiencies by class counsel.

II. Lodestar methodology does not justify the attorneys' fees here.

The court would need to find only a small percentage of excessive billing to push the lodestar multiplier above the 2.232 proffered multiplier and into what the district court recognized as "windfall profit" territory. ER-27. The district court's failure to excise unreasonable rates and hours from class counsel's lodestar calculation thus had a direct effect on the class's recovery. By utilizing an *in camera* process, the district court shirked its obligation to "allow[] class members an opportunity thoroughly to examine counsel's fee motion, inquire into the bases for various charges and ensure that they are adequately documented and supported." *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010). Even before Rule 23(h) was added in 2003, an *in camera* process that "paralyzes objectors" was improper. *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 286 (7th Cir. 2002).

Even with the limited billing information available to class members, there are several excessive practices apparent from just a surface view of the billing records available to which plaintiffs offer little defense. For example, St. John pointed out the excessive $350/hour billing for document review and the fact that the market rates for such work is typically under $100 and at most allowed at $240/hour. OB35. Plaintiffs are unapologetic and double down by claiming that class counsel charged their

attorneys' standard hourly rate, capped at $350—regardless of the type of work performed. This response ignores that it is the *work* and the "skill required to perform a task," not merely the identity of the attorney performing the work, that should govern the rates charged to their clients. *Moreno v. City of Sacramento,* 534 F.3d 1106, 1114 (9th Cir. 2008). As the oft quoted saying goes, "[a] Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn." *Ursic v. Bethlehem Mines*, 719 F.2d 670, 677 (3d Cir. 1983); *see, e.g., Trinity Lutheran Church of Columbia, Inc. v. Comer*, No. 13-cv-4022, 2018 WL 5848994, 2018 U.S. Dist. LEXIS 190824, at *27-*28 (W.D. Mo. Nov. 7, 2018) (reducing by 50% time spent on tasks that "are normally performed by administrative staff at far lower rates").

Plaintiffs' apparently concede, and offer no rebuttal to St. John's argument that even the 2.232 multiplier was unreasonable. As a practical matter, it reduced per-class device recovery by nearly $20. ER-26 n.7. As a legal matter, the Supreme Court has spoken: "[T]here is a 'strong presumption' that the lodestar figure is reasonable" without an enhancement multiplier. *Perdue v. Kenny A.*, 559 U.S. 542, 546, 554 (2010). Plaintiffs provide no "rare and exceptional" circumstances, nor do they provide any "specific evidence" showing that a lodestar fee alone "would not have been adequate to attract competent counsel." *Id.* at 554 (cleaned up). *See* OB33 (showing that lodestar alone would have attracted competent counsel). Counsel did not require more than doubled fees to work on this case. Any lodestar multiplier was unreasonable here, and it was legal error for the district court to grant one.

That the district court required class counsel to provide quarterly billing reports is inconsequential when plaintiffs identify nothing in the record showing that the district

court actually analyzed the reports for overbilling and other excesses. Thus, plaintiffs incorrectly rely on the district court's lodestar crosscheck as a ground to support the 26% attorneys' fee in this megafund case. The only record cites they provide are to the district court's vague references to JCCP counsel from the California state court action submitting "their own billing information to the Court" and "the underlying records." *See* PB10 (citing ER-25 n.5 & 26).

The meager ways in which class counsel claims to have exercised billing judgment only confirms the prejudice that the class suffered from the lack of scrutiny into billing. Of course class counsel should not bill the class for work prior to their appointment as class counsel on May 15, 2018, or for work after the court granted preliminary approval of the settlement. Class counsel should not be congratulated for meeting such low expectations and certainly should not receive a lower degree of scrutiny for their billings as they suggest. *See* PB10.

At a minimum, remand is appropriate to allow the district court to critically examine what appears to be a lodestar that class counsel inflated with excessive contract attorney and paralegal rates that would reduce the lodestar by over a million dollars. Remand is further required to provide class members with access to class counsel's billing records so that they too may examine the records, consistent with Rule 23(h) and *Mercury Interactive*.

Conclusion

The fee award should be vacated. At a minimum, remand is required for the district court to consider and give a reasoned response to St. John's objections and to

consider class counsel's attorneys' fee request in the light of the actual results they achieved and the quality of their representation in achieving those results and a crosscheck based on a lodestar analysis that excludes excessive hours and rates.

Dated: March 2, 2022

Respectfully submitted,

/s/ Anna St. John

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I certify that: This brief complies with the length limits permitted by Ninth Circuit Rule 32-1. The brief is 4,531 words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Executed on March 2, 2022.

/s/ Anna St. John
Anna St. John

Proof of Service

I hereby certify that on March 2, 2022, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Ninth Circuit using the CM/ECF system, which will provide notification of such filing to all who are ECF-registered filers.

/s/ Anna St. John
Anna St. John