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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BRENDAN LUNDY, MYRIAH WATKINS, ELIZABETH CHILDERS, MICHELLE AGNITTI, AND ROBIN HODGE,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

ANNA ST. JOHN,

Objector.

Case No. 3:18-cv-6793-JD

CONTINGENT OBJECTION OF ANNA ST. JOHN

Judge: Hon. James Donato
Courtroom: 11, 19th Floor
Date: October 19, 2023
Time: 10:00 A.M.

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INTRODUCTION

The proposed settlement has a potentially fatal flaw: it allows the Court to direct all or part of the net settlement fund to third parties solicited through class counsel's "outreach" rather than send $25-$30 to class members largely through inexpensive digital payment methods. Neither party argues that the standards for activating the settlement provisions for *cy pres* are met or urges the Court to make such a determination (although both incorrectly contend that *cy pres* would nevertheless be a benefit to the class). This objection, brought by class member Anna St. John, relies on legal precedent and the factual record to explain that a *cy pres* distribution is improper and inconsistent with the terms of the settlement agreement and Rule 23. If the Court agrees and approves direct distribution of the full net settlement fund to the claiming class members, then it can disregard this objection.

Cy pres is, by definition, "next best." Here, the best—and only legally permissible—approach is to send payment directly to the class. Neither of the two conditions under which the proposed settlement allows the Court to choose *cy pres* distribution is met. First, it is undisputed that it is economically and administratively feasible to send the expected $25-$30 *pro rata* settlement payment to claiming class members, particularly as most payments will be sent digitally through PayPal, Venmo, and the like, rather than paper checks sent through the mail. Second, the record provides no basis for the Court to find that any portion of the *pro rata* payment would be a windfall to class members. The settlement represents about half of the class's nominal damages and their damages under a disgorgement theory (against a company with tens of billions of dollars in net income over the class period) were undetermined and remained in dispute.

Notably, the parties added the *cy pres* provisions to "address[] the Court's primary concern that distribution of the settlement proceeds to class members may be economically and administratively infeasible," while plaintiffs maintain a preference for direct distribution to the class "before reverting to *cy pres*." *See* Dkt. 188 at 1, 2. Now that the claims process has been completed, the Court's initial concern fortunately has not come to fruition, and direct distribution is both feasible and required under Rule 23.

The Court can avoid the many legal issues surrounding *cy pres* by approving a *pro rata* distribution, which the parties agree is feasible. *Cy pres* carries with it a host of infirmities. At least several of the proposed *cy pres* recipients engage in highly controversial advocacy that many class members, including the objector, do not

wish to support. In addition, class counsel admits that it conducted "outreach" to selected recipients and that at least two proposed recipients have a preexisting relationship with the defendant and/or its counsel, and the Court indicated that it had a preference for organizations addressing issues beyond the scope of this case, raising concern about favoritism toward causes and groups rather than true alignment with the class's interest.

Accordingly, the settlement should be approved only if the fund is distributed as a direct benefit to the class in the form of a *pro rata* distribution.

Objector St. John is a member of the settlement class.

Objector Anna St. John is a member of the proposed settlement class because she is a natural person residing in the United States who used Facebook between January 30, 2015 and April 18, 2018, and whose iOS Location Services setting for the Facebook application was turned off at points during that period. On information and belief, Facebook inferred her location via her IP Addresses. *See* Declaration of Anna St. John (St. John Decl.") ¶ 6. Ms. St. John is not within any of the classes of persons excluded from the settlement. *Id.* ¶ 7. Her business address is 1629 K Street NW, Suite 300, Washington, DC 20006, her phone number is (917) 327-2392, and her email address is annastjohn@gmail.com. This phone number and email address are associated with her Facebook account, the URL of which is https://www.facebook.com/annastjohn. She filed a claim through the settlement website and received a confirmation email attached as Exhibit 1 to her declaration. Her objection applies to the entire class.

Hamilton Lincoln Law Institute's Center for Class Action Fairness ("CCAF") represents St. John *pro bono* (and also employs her), and CCAF attorney Neville Hedley intends to appear at the final approval hearing on her behalf. CCAF represents class members *pro bono* where class counsel employs unfair procedures, including the misuse of *cy pres*, to benefit themselves at the expense of the class. *See generally* St. John Decl. ¶¶ 13-22. Since it was founded in 2009, 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); St. John Decl ¶ 16. St. John brings this objection through CCAF in good faith to protect the interests of the class. *Id.* ¶ 10.

II. **The district court has a fiduciary duty to the unnamed class members and there is no presumption in favor of settlement approval.**

"Class-action settlements are different from other settlements. The parties to an ordinary settlement bargain away only their own rights—which is why ordinary settlements do not require court approval." *In re Dry Max Pampers Litig.*, 724 F.3d 713, 715 (6th Cir. 2013). Unlike ordinary settlements, "class-action settlements affect not only the interests of the parties and counsel who negotiate them, but also the interests of unnamed class members who by definition are not present during the negotiations." *Id.* "[T]hus, there is always the danger that the parties and counsel will bargain away the interests of unnamed class members in order to maximize their own." *Id.*

To guard against this danger, a district court must act as a "fiduciary for the class . . . with a jealous regard" for the rights and interests of absent class members. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) (cleaned up). It "must remain alert to the possibility that some class counsel may urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment on fees." *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1178 (9th Cir. 2013) (cleaned up). And it must not "assume the passive role" that is appropriate for an unopposed motion in ordinary bilateral litigation. *Redman v. RadioShack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014). In particular, settlement value "must be examined with great care to eliminate the possibility that it serves only the 'self-interests' of the attorneys and the parties, and not the class, by assigning a dollar number to the fund that is fictitious." *Dennis v. Kellogg Co.*, 697 F.3d 858, 868 (9th Cir. 2012). It is error to exalt fictions over "economic reality." *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015).

"Where the parties negotiate a settlement agreement before the class has been certified, settlement approval requires a higher standard of fairness and a more probing inquiry than may normally be required under Rule 23(e)." *Roes v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019) (cleaned up); *accord Dennis*, 697 F.3d at 867 (*quoting Staton v. Boeing*, 327 F.3d 938, 960 (9th Cir. 2003)). In such circumstances, consideration of the eight *Churchill Village*[1] factors "alone is not enough to survive appellate review." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011) ("*Bluetooth*"). "This more exacting review is warranted to ensure that class representatives and their counsel do not secure a disproportionate benefit at the expense of the

[1] *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

unnamed plaintiffs who class counsel had a duty to represent." *Roes*, 944 F.3d at 1049 (internal quotations omitted).

It is "insufficient" that the settlement happened to be at "arm's length" without "secret cabals" or express collusion of the settling parties. *Id.* at 1050 n.13 (internal quotation omitted). Because of the danger of conflicts of interest endemic to class action procedure, third parties must monitor the reasonableness of the settlement as well. *Bluetooth*, 654 F.3d at 948 (*quoting Staton*, 327 F.3d at 960). Courts "must be particularly vigilant not only for explicit collusion, but also for more subtle signs that class counsel have allowed pursuit of their own self-interests … to infect the negotiations." *Dry Max Pampers*, 724 F.3d at 718 (quoting *Dennis*, 697 F.3d at 864).

In short, there is no presumption in favor of settlement approval: the proponents of a settlement bear the burden of proving its fairness. *Roes*, 944 F.3d at 1049 & n.12; *accord In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 782 (9th Cir. 2022); *Saucillo v. Peck*, 25 F.4th 1118, 1131 (9th Cir. 2022); *Koby v. ARS Nat'l Servs.*, 846 F.3d 1071, 1079 (9th Cir. 2017). Any such presumption would be inconsistent with Rule 23(e)(2) which "assumes that a class action settlement is invalid." *Briseño v. Henderson*, 998 F.3d 1014, 1030 (9th Cir. 2021).

III. Premature use of *cy pres* would improperly favor third-party charities over class members in contravention of Rule 23.

The settlement allows the Court to direct funds to *cy pres* recipients in two instances: (1) if the Court determines that distribution to the class is not economically or administratively feasible, Settlement (Dkt. 188-1) ¶ 63; *id.* ¶ 64(a); and (2) if "the Court determines that a pro rata distribution to Settlement Class Members would result in an unreasonable windfall to Settlement Class Members who submitted valid claims," *id.* ¶ 64(b).

Neither scenario provides a proper justification for diverting class members' settlement funds here. First, the settlement is expected to pay class members who submitted a valid claim at least $25. Class members were able to select from a variety of digital payment options, including by PayPal, Venmo, Zelle, or virtual prepaid card (Weisbrot Decl., Dkt. 188-1 ¶ 45), making even micro payments possible and underscoring the economic and administrative feasibility of sending funds to class members. While class members were permitted to request that the settlement administrator mail them a traditional paper check, the parties have not indicated that a significant number of class members—all Internet users almost certainly familiar with digital payment methods—made such a request or, in any event, that distribution will be so costly as to make

distribution infeasible. *See* Section III.B.

Second, the settlement provides no standard and no basis for the Court to determine whether the *pro rata* distribution to the class members would "result in an unreasonable windfall," and there is no basis for making such a finding under any conceivable standard. Again, neither party claims that the $25-$30 payment would be a windfall, and class members had un-adjudicated damages theories that remained in dispute at the time of settlement that would readily support such a payment amount. *See* Section III.C.

More generally, *cy pres* is a disfavored remedy in class action settlements that improperly exalts the interests of third parties over those of the class members on whose behalf the case was brought. *See* Section III.A. Among other problems present here, it compels speech by class members and directs funds to organizations that are favored by the parties or their counsel rather than selected purely based on being the "second best" option (after class members) for receiving the funds, and appears to have been added at the behest of the Court rather than freely negotiated by the parties. *See* Sections III.D-E. Direct payment to the class is feasible, consistent with Rule 23, and should be ordered here.

A. *Cy pres* is a disfavored remedy in class actions that improperly favors third-party charities over class members.

Cy pres was never intended to be a form of relief in class-action settlements. *Frank v. Gaos*, 139 S. Ct. 1041, 1047 (2019) (Thomas, J., dissenting). The original use of *cy pres*—or, properly, *cy près comme possible*, meaning "as near as possible"—was to permit "a benefit to be given other than to the intended beneficiary or for the intended purpose because changed circumstances make it impossible to carry out the benefactor's intent." *Pearson v. NBTY, Inc.*, 772 F.3d 778, 784 (7th Cir. 2014). The doctrine originated in the area of charitable trusts and allowed, for example, the March of Dimes to shift to addressing birth defects once vaccines conquered polio. *Id.*

Cy pres is a poor fit for class actions when courts permit settlements to be gamed to divert material amounts of money away from the class—and is an approach that raises "fundamental concerns." *Marek v. Lane*, 571 U.S. 1003, 1006 (2013) (Roberts, C.J., respecting the denial of certiorari); *see generally In re Google Inc., Street View Elec. Comm'ns. Litig.*, 21 F.4th 1102, 1123 (9th Cir. 2021) (Bade, J., concurring) (cataloging five "justified concerns" that arise with *cy pres* remedies). There are no "changed circumstances" in these class-action settlements. There is no original "benefactor" whose wishes must be accommodated "as near as

possible," once the true beneficiary purpose ceased to exist. Even more fundamentally, there is no "charitable" objective in a Rule 23 class action. *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 363 (3d Cir. 2010) (Weis, J., concurring and dissenting in part). Rather, a class action is a procedural device to aggregate private claims for compensation to class members—not to create a charitable trust. *Cf. Shady Grove Orthopedic Assocs., P.A., v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010). But *cy pres* does not confer any "unique consideration" on class members; if it provides any benefits, it is only the same "generalized benefits as opt-outs or non-class-members." *Google Street View*, 21 F.4th at 1124 (Bade, J., concurring). In short, application of *cy pres* to Rule 23 class settlements unquestionably extends the doctrine far beyond its original roots and rationale into an area where the doctrine's premises are not only absent but *contrary* to the purposes of Rule 23.

Thus, non-compensatory *cy pres* distributions, disfavored among both courts and commentators alike, remain an inferior avenue of last resort. *See e.g.*, *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d 1060, 1063 (8th Cir. 2015) ("*BankAmerica*") (many courts have "criticized and severely restricted" *cy pres*); *Pearson*, 772 F.3d at 784 ("A *cy pres* award is supposed to be limited to money that can't feasibly be awarded to…the class members"); *Klier v. Elf Atochem N. Am., Inc.*, 658 F.3d 468, 475 (5th Cir. 2011) ("[The *cy pres*] option arises only if it is not possible to put those funds to their very best use: benefitting the class members directly."). This Circuit has warned that *cy pres* settlements can easily become a "paper tiger." *Dennis*, 697 F.3d at 868; *see also Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011) ("the *cy pres* doctrine…poses many nascent dangers to the fairness of the distribution process"). Put simply, no class complaint includes a request for *cy pres* in its prayer for relief, it is "not a form of relief to the absent class members and should not be treated as such." *Gaos*, 139 S. Ct. at 1047 (2019) (Thomas, J., dissenting).

"*Cy pres* distributions also present a potential conflict of interest between class counsel and their clients because the inclusion of a *cy pres* distribution may increase a settlement fund, and with it attorneys' fees, without increasing the direct benefit to the class." *In re Baby Prods. Antitrust Litig.*.,708 F.3d 163, 173 (3d Cir. 2013) ("*Baby Products*"). Commentators have observed these same defects. *See e.g.*, Martin H. Redish, Peter Julian, & Samantha Zyontz, *Cy Pres Relief and the Pathologies of the Modern Class Action: A Normative and Empirical Analysis*, 62 FLA. L. REV. 617 (2010); Theodore H. Frank, Statement before the House Judiciary Committee Subcommittee on the Constitution and Civil Justice, *Examination of Litigation Abuse* (Mar. 13, 2013), *available at* https://cei.org/sites/default/files/Testimony%20-%20Cy%20Pres.pdf.

As the "next best," the *cy pres* "option arises only if it is not possible to put those funds to their very best use: benefitting the class members directly." *Klier*, 658 F.3d at 475; *accord BankAmerica*, 775 F.3d at 1063-66; *Pearson*, 772F.3d at 784; *Ira Holtzman, C.P.A. & Assocs. v. Turza*, 728 F.3d 682, 689 (7th Cir. 2013) (Easterbrook, J.). This rule follows from the precept that "[t]he settlement-fund proceeds, generated by the value of the class members' claims, belong solely to the class members." *Klier*, 658 F.3d at 474; *accord* ALI Principles of the Law of Aggregate Litigation § 3.07 comment(b). *See also Bluetooth*, 654 F.3d at 947 (reversing approval of *cy pres*-only settlement and noting that it is a sign of self-dealing when "the class receives no monetary distribution but class counsel is amply rewarded").

Accordingly, any distribution of class settlement funds should be made only as a true last resort under strict conditions that ensure it is in fact in alignment with the class's interests. The settlement provisions allowing the alternative of *cy pres* do not meet this standard. Instead, as commentators have observed with respect to *cy pres* more broadly, they tempt judges to play benefactor with someone else's money. Adam Liptak, *Doling Out Other People's Money*, N.Y. Times (Nov. 26, 2007). "District courts should avoid the legal complications that assuredly arise when judges award surplus settlement funds to charities and civic organizations." *Klier*, 658 F.3d at 482 (Jones, C.J., concurring) (cleaned up); *accord SEC v. Bear, Stearns & Co.*, 626 F. Supp. 2d 402, 415-16 (S.D.N.Y. 2009).

There is no good cause to activate the *cy pres* provisions here and, if *cy pres* is utilized, the settlement would not meet the fairness standard under Rule 23(e).

B. Class distribution is not economically or administratively infeasible; deeming it so would be legal error.

The parties agree that the amount of the settlement fund that will be distributed *pro rata* to claiming class members will be in the range of $25 to $30. *See* Dkt. 204 at 1; *see also* Dkt. 203 at 1 ("about $29 each"). This monetary relief is relatively "substantial," Dkt. 203 at 1. Neither party contends that a *pro rata* distribution to the class is economically or administratively infeasible. *See, e.g.*, Dkt. 203 at 6 ("Class Counsel believe the *pro rata* cash distributions of about $29 per claimant are an excellent result and feasible to effectively distribute to claimants…."). In fact, consistent with their fiduciary duties as well as Rule 23, "Class Counsel believe that it is preferable to attempt to pay the Class Members who submit claims … before reverting to *cy pres*." Dkt. 188 at 2.

Nor does the evidentiary record or legal precedent support a finding that *pro rata* distribution is economically or administratively infeasible here. In *Fraley v. Facebook, Inc.*, 966 F. Supp. 2d 939 (N.D. Cal. 2013), cited by plaintiffs (Dkt. 188 at 2), a $13 million settlement fund was feasibly distributed to a class of 150 million Facebook users through a claims process (as the settlement at issue proposes). After the district court rejected a proposed *cy pres*-only settlement in *Fraley*, the settling parties were feasibly able to offer $10 to each claiming class member in a claims process. There ended up being so few claims that the parties responded to objections by increasing the payment to claimants to $15.[2] *Fraley* demonstrates that administrative costs of a claims process need not cannibalize even a settlement fund nearly one-third the size of the one before the Court with a class more than twice as large.

Numerous other cases support the feasibility of directly paying class members through a claims process like the one here, which is likely much less costly due to its utilization of digital payments and which the parties have not identified as being costly or burdensome in any way:

Case Name	Size of Class	Gross Cash Settlement Amount[3]	Administrative Costs
Fraley v. Facebook, Inc., No. 11-cv-1726 RS (N.D. Cal. 2013)	~150 million	$20 million	~$900,000
Koller v. Med Foods, Inc., No. 3:14-CV-2400-RS (N.D. Cal.)	Unknown (150 million bottles sold during class period)	$7 million	$432,700
In re Carrier iQ, Inc., Consumer Privacy Litig., 2016 WL 4474366, 2016 U.S. Dist. LEXIS 114235 (N.D. Cal. Aug. 25, 2016)	~30 million	$9 million	$655,500
Perkins v. LinkedIn Corp., No. 13-cv-04303-LHK (N.D. Cal.)	~20.8 million	$13 million	$716,750
Leiner v. Johnson & Johnson Consumer Companies, Inc., No. 1:15-cv-05876 (N.D. Ill.)	~12.9 million	$5 million	$439,222
In re LivingSocial Marketing and Sales Practices Litig. No. 11-mc-00472, 298 F.R.D. 1 (D.D.C. 2013)	~10.9 million	$7.58 million	~$130,000 See Dkt. 40.

[2] Although *In re Google LLC St. View Elec. Communs. Litig.*, 611 F. Supp. 3d 872, 879 (N.D. Cal. Mar. 18, 2020), examined the feasibility of distributing funds to every member of the entire class, that situation is inapposite here, where the terms of the settlement allow for *pro rata* distribution through a claims process in the first instance.

[3] This figure includes payments to class members, fees and expenses to class counsel, and notice and administration costs payments to the administrator.

Case Name	Size of Class	Gross Cash Settlement Amount[3]	Administrative Costs
			(included direct notice)
In re Google Plus Profile Litigation, No. 5:18-cv-06164-EJD (N.D. Cal.)	~10 million	$7.5 million	Estimated at $265,000 (included direct notice)
Zepeda v. PayPal, No. 10-cv-02500-SBA, 2017 WL 1113293, 2017 U.S. Dist. LEXIS 43672 (N.D. Cal. Mar. 24, 2017)	~10.5 million	$3.2 million	Capped at $400,000 (included direct notice)
Thomas Iglesias v. Ferrara Candy Co., No. 3:17-cv-00849-VC (N.D. Cal.)	>10 million	$2.5 million	Capped at $522,000
In re Sony PS3 "Other OS" Litigation, No. 10-cv-01811-YGR (N.D. Cal.)	10 million	$3.75 million	$495,000
Chester v. The TJX Cos., Inc., No. 15-cv-0437, 2017 WL 6205788 (C.D. Cal. Dec. 5, 2017)	~8 million	$8.5 million	Estimated at $500,000 (included direct notice)
Kumar v. Salov North America Corp., 4:14-cv-02411-YGR (N.D. Cal.)	~5.4 million	Less than $1.7 million	Preliminary cost est. $450,000
Martin v. Cargill, Inc., 295 F.R.D. 380 (D. Minn. 2013)	~5 million	$5.3 million	Class counsel represented administration costs as $170,000. Settlement established administration fund of $300,000
Frohberg v. Cumberland Packing Corp., No. 14-cv-00748 (E.D.N.Y.), *terms available at* http://web.archive.org/web/20160528175123/https://www.steviaintherawsettlement.com/	~ 2 million	Up to $1.5 million	Capped at $210,000
Shestopal v. Follett Higher Education Group Inc., No. 15-cv-8980 (N.D. Ill)	~1.9 million	$3.5 million	Capped at $499,000 (included direct notice)
Aguiar v. Merisant Co., 14-cv-00670 (C.D. Cal.), *terms available at* http://web.archive.org/web/20160329153716/https://www.pureviasweetenersettlement.com/	~1.2-2.4 million	$1.65 million	Unknown (included direct notice to part of class)
Dashnaw v. New Balance Ath., Inc., 2019 U.S. Dist. LEXIS 126183, 2019 WL 3413444 (S.D. Cal. Jul.	~1.1 million	$1.4 million	Capped at $200,000

Case Name	Size of Class	Gross Cash Settlement Amount[3]	Administrative Costs
29, 2019)			
In re Packaged Ice Antitrust Litig., 322 F.R.D. 276 (E.D. Mich. 2017)	>1 million	$2.7 million	$650,000
Bezdek v. Vibram USA, Inc., No. 12-cv-10513 (D. Mass.), *terms available at* http://web.archive.org/web/20160503083715/https://www.fivefingerssettlement.com/	Unknown, millions of products sold during class period	$3.75 million	Unknown, (included direct notice to ~300,000 class members)
Stephenson v. Neutrogena Corp., No. C 12-00426 PJH (N.D. Cal.)	Unknown	$1.8 million	Capped at $500,000
In re LinkedIn User Privacy Litig., No. 12-cv-03088, 309 F.R.D. 573 (N.D. Cal.), *terms available at* http://web.archive.org/web/20150801221322/https://www.linkedinclassactionsettlement.com/Home.aspx	~800,000	$1.25 million	$140,000 (included direct notice)
Lagarde v. Support.com, Inc., No. 12-cv-0609, 2013 U.S. Dist. LEXIS 42725 (N.D. Cal. Mar. 25, 2013)	~759,000	$8.595 million	Capped at $100,000 (included direct notice)

If the Court were to find that *pro rata* class distribution is not feasible, the fairness of the settlement becomes deeply questionable. Following the 2018 amendments, Rule 23(e)(2)(C)(ii) requires courts to consider "the effectiveness of any proposed method of distributing relief to the class." If the Court chooses to distribute the funds purely through *cy pres*—despite no party claiming that a *pro rata* distribution is infeasible—then there is no distribution to the class at all (only to third parties). Such an approach is improper and would render Rule 23(e)(2)(C)(ii) a nullity.

It would also mean that a class action is not "superior to other available methods of adjudicating the controversy" and therefore the settlement fails the superiority prong of Rule 23(b)(3). Although the Ninth Circuit declined to adopt this view in *Joffe v. Google, Inc.*, 21 F.4th 1102, 1115 (9th Cir. 2021), St. John preserves the argument that if a settlement class certification "serves only as a vehicle through which to extinguish the absent class members' claims without providing them with any relief" because it would be infeasible to distribute settlement funds to class members, then a class action is not a superior means of adjudicating this controversy. *See Gaos*, 139 S. Ct. at 1047 (Thomas, J., dissenting).

C. The Settlement's allowance for the Court to determine that a *pro rata* distribution is a windfall is improper and, if actualized, would make the settlement unfair.

The Settlement also allows the Court to determine "that a *pro rata* distribution to Settlement Class Members would result in an unreasonable windfall to Settlement Class Members who submitted valid claims," such that the fund is distributed *pro rata* only "up to a certain value, with the remainder of the Net Settlement Fund distributed to the *Cy Pres* Recipients." Settlement, Dkt. 188-1 ¶ 64(c). Neither the settlement nor the parties in their moving papers suggest any standards or guidance the Court could rely upon to make such a determination—either as to the existence of a windfall or the specific amount. Inventing a standard now would not comport with the notice requirements of Rule 23. *Cf. In re Katrina Canal Breaches*, 628 F.3d 185, 197-98 (5th Cir. 2010).

The record provides no support for a windfall finding under any conceivable standard. The settlement fund amounts to only about "50% of a possible recovery under a nominal-damages theory" (Dkt. 203 at 12), and plaintiffs had also been pursuing a disgorgement theory of damages. Although the defendant argues that proving such a theory would be difficult, even the defendant acknowledges that plaintiffs could have presented expert testimony and evidence to support that theory of recovery (*see* Dkt. 204 at 4), and thus, additional recovery remained available (if in dispute) to plaintiffs under that theory. With a net income of over $22 billion in 2018, the last year of the class period, it is plausible that class members' claims could be worth more than the expected $25-$30 each. "[A] vague anxiety over windfalls" cannot justify preferring *cy pres* to class redistributions. Rhonda Wasserman, *Cy Pres In Class Action Settlements*, 88 S. CAL. L. REV. 97, 160 (2014).

Indeed, neither party argues that any portion of the *pro rata* amount ($25-$30/claimant) is a windfall that should lead the Court to decide that third parties are more deserving recipients of the settlement fund. This silence is in line with the principle that "[t]he settlement-fund proceeds, having been generated by the value of the class members' claims, belong solely to the class members." *See Klier*, 658 F.3d at 475. This case was brought on behalf of the class members, and it is their damages claims that provide the basis for the settlement.

D. The Court's encouragement that the parties address premature feasibility concerns was procedurally improper.

Fundamentally, the provision giving the Court unbounded discretion to determine whether a *pro rata*

distribution constitutes a windfall raises the sort of "legal complications" that Judge Jones warned of in *Klier*, 658 F.3d at 482 (Jones, C.J., concurring), and that are exemplified by earlier cases, such as a district court's *sua sponte* redirection of proposed *cy pres* to a local university where the judge taught as a visiting law professor. *In re Google Buzz Privacy Litig.*, 2011 WL 7460099, at *3 (N.D. Cal. June 2, 2011); Pamela A. MacLean, *Competing for Leftovers*, California Lawyer (Sept. 2, 2011). Even a hint of such impropriety should be avoided.

The parties here appear to have added the *cy pres* provisions at the Court's urging after the Court expressed concern about the feasibility of distributing the settlement fund directly to the class, and the Court provided guidance about the types of recipients it would deem appropriate, some of which related to digital access issues and other issues that are not aligned as a "next best" use for this particular class. *See* Dkt. 198 at 7:7-11:21. This background makes the addition of the *cy pres* provision even more problematic because it was procedurally improper. *See In re Hall*, 4 F.4th 376, 379 (6th Cir. 2021) ("Respectfully, courts do not typically tell counsel which positions they must take. Rather, '[i]n our adversarial system of adjudication, we follow the principle of party presentation.' *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020). Courts must diligently ensure that class counsel places the interests of the absent class members over the interests in achieving settlement—not the other way around.").

These problems can be addressed by foregoing *cy pres* and approving direct distribution to the claiming class members.

E. Without class members' affirmative election, *cy pres* constitutes compelled speech in violation of the First Amendment.

Cy pres awards, sanctioned and enforced by district courts, also infringe on the First Amendment rights of class members by requiring them to subsidize political organizations or charities, chosen by the court, class counsel, and defendants, but which individual class members may not support or approve. Such forced payments require the "affirmative[] consent" of the class member and that consent may not be implied or "presumed." *See Janus v. Am. Fed'n of State, County, & Municipal Employees*, 138 S. Ct. 2448, 2486 (2018). That consent is absent here. Although the Ninth Circuit rejected a similar argument in *Joffe*, 21 F.4th at 1119, St. John preserves the argument here, as it is consistent with Supreme Court precedent that the option to "opt out" does not replace the requirement of affirmative consent, and here, unlike in *Joffe*, the funds *can* feasibly be distributed to the class.

Governmental power (in the form of a district court order binding class members) may not sanction the redirection of property (a monetary recovery belonging to class members) to third parties to engage in expressive activity without the affirmative consent of the persons to whom those funds belong. As *Harris v. Quinn* stated, "[t]he government may not prohibit the dissemination of ideas that it disfavors, *nor compel the endorsement of ideas that it approves*." 573 U.S. 616, 647 (2014) (quoting *Knox v. SEIU*, 567 U.S. 298, 309 (2012)) (emphasis added). *Knox* established that "compelled funding of the speech of other private speakers or groups" is unconstitutional in all but the most limited of circumstances, none of which are present in the *cy pres* context. 567 U.S. at 309-11.

Class counsel did not obtain the "affirmative consent" of each class member for any *cy pres* awards. Class members received only notice that *cy pres* was a possibility—without any information about how the Court would make its determination—and the opportunity to opt out of the class. Under *Janus*, an "opt out" opportunity is not "affirmative consent" and is thus insufficient: waiver of First Amendment rights "cannot be presumed." 138 S. Ct. at 2486.

The proposed recipients magnify the First Amendment concerns. For example, the ACLU has become notoriously ideological and politicized, supporting polarizing issues that many class members oppose or otherwise do not wish to support, such as vaccine mandates, widespread abortion access, and removing transgender sports bans. That a portion of the money is going to a Speech, Privacy, and Technology Project of the ACLU does not absolve these concerns, as money is fungible and there appears to be no limitation on the ACLU moving funds around such that class members are effectively supporting its more controversial activities. Similarly, the National Consumer Law Center is an advocacy group that advances contentious public policy positions with which some class members disagree and that are of questionable benefit, at best, for consumers. For example, NCLC has filed amicus briefs espousing narrow conceptions of First Amendment and separation of powers principles and expansive concepts of class action *cy pres*. *See* Amicus Brief of NCLC and Berkeley Center for Economic Justice, *Seila Law LLC v. CFPB*, No. 19-7 (U.S. Jan. 22, 2020) (denigrating separation of powers theory that was subsequently adopted by Supreme Court); Amicus Brief of NCLC, *Frank v. Gaos*, No. 17-961 (U.S. Sept. 5, 2018).

Moreover, many of the recipients were chosen only after class counsel conducted "outreach" to presumably favored organizations and causes (Dkt. 190 ¶ 6) and the Court emphasized that recipients should

focus on issues such as digital access to the disadvantaged and organizations that are underfunded (Dkt. 198 at 10:4-11:21), despite that issue having little to do with the claims and interests of the class members in this case alleging privacy, consumer protection, and fraud claims. This raises further concern about forcing class members to fund speech favored by the parties, their counsel, and the Court through *cy pres*, rather than as true "next best" alternatives in line with the class's interests.

Again, these and other concerns raised by *cy pres* can be avoided by approving direct *pro rata* distribution to the class.

CONCLUSION

For the foregoing reasons, the Court should decline to order any *cy pres* distribution in connection with the proposed settlement. Otherwise, the settlement cannot be approved.

Dated: October 5, 2023

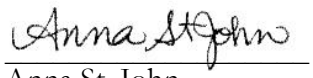
Respectfully submitted,

/s/ Neville S. Hedley
Neville S. Hedley (SBN 241022)
HAMILTON LINCOLN LAW INSTITUTE
CENTER FOR CLASS ACTION FAIRNESS
1629 K Street NW, Suite 300
Washington, DC 20006
Voice: 312-342-6008
Email: ned.hedley@hlli.org

Attorneys for Objector Anna St. John

I, Anna St. John, am the objector. I sign this written objection drafted by my attorneys with Hamilton Lincoln Law Institute, whom I retained to represent me in this matter.

Dated: October 5, 2023



Anna St. John

PROOF OF SERVICE

I hereby certify that on this day I electronically filed the foregoing Objection using the CM/ECF filing system thus effectuating service of such filing on all ECF registered attorneys in this case.

DATED this 5th day of October, 2023.

/s/ Neville S. Hedley
Neville S. Hedley

Neville S. Hedley (SBN 241022)
HAMILTON LINCOLN LAW INSTITUTE
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Attorneys for Objector Anna St. John

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BRENDAN LUNDY, MYRIAH WATKINS, ELIZABETH CHILDERS, MICHELLE AGNITTI, AND ROBIN HODGE,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

ANNA ST. JOHN,

Objector.

Case No. 3:18-cv-6793-JD

DECLARATION OF ANNA ST. JOHN

Judge: Hon. James Donato
Courtroom: 11, 19th Floor
Date: October 19, 2023
Time: 10:00 A.M.

I, Anna St. John, 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 (917) 327-2392. My email address is annastjohn@gmail.com. This phone number and email address are associated with my Facebook account, the URL of which is https://www.facebook.com/annastjohn.

3. I am represented *pro bono* by attorneys at Hamilton Lincoln Law Institute's Center for Class Action Fairness ("CCAF"), where I am employed as an attorney and serve as president and general counsel. My attorney Neville S. Hedley intends to appear at the Final Approval Hearing on my behalf.

4. 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.

5. My objection applies to the entire class.

Class Membership

6. I am a natural person residing in the United States who used Facebook between January 30, 2015, and April 18, 2018, and whose iOS Location Services setting for the Facebook application was turned off at various points during that time period. As a matter of practice, I kept Location Services on my phone turned off when I was not using it for a specific purpose such as obtaining directions from my current location. On information and belief, my location information was inferred by Facebook via my IP Addresses, which I believe to be true based on location-targeted information that Facebook showed to me.

7. I am not a director, officer or agent of Defendant or its subsidiaries and affiliated companies, and I am not designated by Defendant as an employee of Defendant or its subsidiaries and affiliated companies;

I am not the Court, a member of the Court's immediate family, or Court staff, or any appellate court or its immediate family and staff; and I did not opt out of the Settlement Class.

8. I am therefore a member of the class with standing to object to the settlement.

9. I submitted a timely claim through the settlement website and received a Correlation ID of 2d8b2f19-56fc-4caf-bbdb-49f24c7afca5, a Submitted Claim ID of MLUN50000008323, and a Confirmation Code of 7yp8z64e7F9e. A true and correct copy of a claim confirmation email that I received is attached hereto as **Exhibit 1**.

Good Faith Objection

10. 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, I will not engage in quid pro quo settlements and will not withdraw an objection or appeal in exchange for payment.

11. Thus, if I were to agree to withdraw my objection or any subsequent appeal for a payment by class counsel or defendant paid to me or any person or entity related to me in any way without court approval, I 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.

12. Both the Hamilton Lincoln Law Institute ("HLLI") and I reserve the right to obtain equitable attorneys' fees should we confer benefit upon the class.

Center for Class Action Fairness

13. This portion of my declaration is not relevant to the merits of the objection. Unfortunately, it is the experience of HLLI's Center for Class Action Fairness ("CCAF") that, when we object to abusive settlements, class counsels engage in abusive and false *ad hominem* attacks against us, almost certainly copied boilerplate from a document circulated among class-action attorneys. Such attacks are irrelevant to the fairness

of the Settlement and are indicative of class counsel's unwillingness to engage us on the merits. To protect the record, we submit this Declaration. Though we are preempting many of these falsehoods in advance, we can predict that class counsel is likely to repeat the falsehoods anyway without any acknowledgment of the refutation. If the Court is inclined to rule solely on the merits and disregard irrelevant *ad hominem* attacks, it need not review the rest of the declaration, which simply provides factual background about the history of CCAF.

14. CCAF founded in 2009, is a 501(c)(3) non-profit public-interest law firm based out of Washington, DC. 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 HLLI, a new non-profit public-interest law firm Ted Frank founded in 2018 with Melissa Holyoak, who President Biden has since nominated to be a commissioner at the Federal Trade Commission.

15. 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 & n.11 (7th Cir. 2022) (citing cases); *Briseño v. Henderson*, 998 F.3d 1014 (9th Cir. 2021); *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"); *In re Dry Max Pampers Litig.*, 724 F.3d 713, 716-17 (6th Cir. 2013) (CCAF's client's objections were "numerous, detailed, and substantive"); *see also* Adam Liptak, *When Lawyers Cut Their Clients Out of the Deal*, N.Y. Times, Aug. 13, 2013 (calling CCAF founder Ted Frank "[t]he leading critic of abusive class action settlements").

16. 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. *E.g.*, *In re Wells Fargo & Co. Shareholder Derivative Litig.*, 445 F. Supp. 3d 508 (N.D. Cal. 2020) (reducing fees by more

than $15 million and proportionally increasing shareholder recovery); *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); *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 EasySaver Rewards Litig.*, No. 09-cv-02094-BAS-WVG, 2020 U.S. Dist. LEXIS 77483, 2020 WL 2097616 (S.D. Cal. May 1, 2020) (reducing fees by 40%); *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); *see also* Andrea Estes, *Critics hit law firms' bills after class-action lawsuits*, Boston Globe (Dec. 17, 2017) (more than $100 million at time); *cf. Ark. Teacher Ret Sys. v. State St. Corp.*, 25 F.4th 55 (1st Cir. 2022) (resulting decision from *Boston Globe* exposé, upholding sanctions against Lieff Cabraser).

17. The Center has been successful, winning reversal or remand in over two dozen federal appeals decided to date in courts of appeals and the Supreme Court. *E.g., Frank v. Gaos*, 139 S. Ct. 1041 (2019); *In re Broiler Chicken Antitrust Litigation*, No. 22-2889 (7th Cir. Aug. 30, 2023); *Williams v. Reckitt Benckiser LLC*, 65 F.4th 1243 (11th Cir. 2023); *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769 (9th Cir. 2022); *In re Stericycle Sec. Litig.*, 35 F.4th 555 (7th Cir. 2022); *McKinney-Drobnis v. Oreshack*, 16 F.4th 594 (9th Cir. 2021); *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. We frequently represent law professors in court, and have also been appointed amicus in district court and appellate court proceedings where there was no adversary presentation. *E.g., Arkansas Teacher Ret. Sys. v. State St. Corp.*, 25 F.3d 55 (1st Cir. 2022); *McKnight v. Uber Techs.*, No. 14-05615-JST, Dkt. 256 (N.D. Cal. Mar. 21, 2022) (requesting CCAF's amicus participation regarding a novel issue of class action procedure).

19. 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. 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 ones below. If the Court is inclined to disregard the *ad hominem* attacks, it can avoid these collateral disputes entirely.

20. Class counsel often try to tar CCAF as "professional 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 smear CCAF are inapposite. *See* D. Brooks Smith, *Class Action and Aggregate Litigation: A Comparative International Analysis,* 124 Penn St. L. Rev. 303, 321-30 (2020) (distinguishing between professional objectors and objecting public interest groups); 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.

21. 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 CCAF 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.

22. 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 fair. This is especially true now that HLLI has expanded into successful litigation over other issues that our attorneys care about. We have successfully litigated regulatory and First-Amendment cases. *E.g.*, *CEI v. FCC*, 970 F.3d 372 (D.C. Cir. 2020); *Greenberg v. Goodrich*, 593 F. Supp. 3d 174 (E.D. Pa. 2022) (granting summary judgment and enjoining rule of professional conduct that would chill free speech). We also frequently file amicus briefs in the Supreme Court on constitutional issues. There is thus substantial opportunity cost with every class-action objection we file.

23. 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.

24. 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. *See In re Petrobras Secs. Litig.*, 786 Fed. Appx. 274, 277 (2d Cir. 2019). 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. *See In re Wells Fargo & Co, Shareholder Derivative Litig.*, 523 F. Supp. 3d 1108, 1117-19 (N.D. Cal. 2021).

25. 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.

26. 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.

27. 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.

28. Firms whose fees we have objected to have previously cited *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.

29. Adversaries often cite a decade-old case, *Lonardo v. Travelers Indem. 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 succeeded 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 CCAF founder "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.

30. While one district court called Mr. Frank 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 Mr. Frank non-pejoratively as a "professional objector" in an opinion agreeing with his objection and reversing a settlement

approval and class certification. Similarly, with respect to any accusation of CCAF 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.

31. 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 Mr. Frank is a "serial objector" who objected merely to benefit himself or his attorney. It further accused him of making "misleading" statements about the settlement. The order did not cite any evidence or reason to support this finding, and we 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 parties refused to make public the *ex parte* submission and the Eleventh Circuit assumed on appeal that the attorneys wrote the opinion rather than order disclosure.) 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. Mr. Frank did not make any false or misleading statements about the settlement, and on appeal, plaintiffs failed to identify any false or misleading statements he made, and admitted that he has never engaged in extortion. Ultimately, although the Eleventh Circuit denied our appeal on the merits, it observed that "often times objectors play a beneficial role in opening a proposed settlement to scrutiny and identifying areas that need improvement." *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1257 (11th Cir. 2021) (internal quotation omitted).

32. In *Exum v. National Tire and Battery*, No. 9:19-cv-80121 (S.D. Fla. 2020), one of HLLI's attorneys, Melissa Holyoak (who now serves as the Solicitor General of Utah and has since been nominated by President Biden to become one of five Commissioners at the Federal Trade Commission) 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 withdrew 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."

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

Executed on October 5, 2023, in New Orleans, LA.

Anna St. John

EXHIBIT 1

Claim Completed for the Facebook Lundy Settlement

Claim Confirmation Email <Confirmation@facebooklocationsettlement.com> Fri, May 19, 2023 at 10:23 PM
To: annastjohn@gmail.com

Dear **Anna St. John**,

You have successfully submitted a Claim Form on May 19, 2023 at 10:22:57 P.M..

THIS EMAIL IS A COPY OF YOUR CLAIM FORM.

YOUR CLAIM DETAILS
Correlation ID: **2d8b2f19-56fc-4caf-bbdb-49f24c7afca5**
Submitted Claim ID: **MLUN50000008323**
Confirmation Code: **7yp8z64e7F9e**

You will need the above Submitted Claim ID and Confirmation Code if you would like to edit your Claim at a later time.

NAME AND CONTACT INFORMATION
First Name: **Anna**
Last Name: **St. John**
Street Address 1: **1701 Jefferson Ave.**
Street Address 2:
City: **New Orleans**
State: **LA**
Zip Code: **70115**
Country: **USA**
Email Address: **annastjohn@gmail.com**
Phone 1:
Phone 2:

ADDITIONAL FIELDS
Did you reside in the United States at any point between January 30, 2015 and April 18, 2018, inclusive?: **YES**
Were you a Facebook user at any point between January 30, 2015 and April 18, 2018, inclusive, while you were residing in the United States?: **YES**
Did you have Location Services turned off for the Facebook application on your iOS or Android-based device(s) at any point in time between January 30, 2015 and April 18, 2018, inclusive?: **YES**
Did you access Facebook while Location Services was disabled for the Facebook application on your iOS or Android-based device(s) between January 30, 2015 and April 18, 2018, inclusive?: **YES**
Payment Method: **Venmo**
Username 1: **annastjohn**
Email Address 1: **annastjohn@gmail.com**

Signature: **Anna St. John**
Date: **5/19/2023 22:22:57**

If you would like to update any fields of your claim you can do so by clicking the edit claim link on top of the Submit Claim page on the Settlement Website. You can then log in to edit your claim using your Submitted Claim ID and Confirmation Code listed above.

If you have any questions regarding your Claim, please provide the Submitted Claim ID listed above and email us at: info@FacebookLocationSettlement.com.

Thank You,
Settlement Administrator
Facebook Location Settlement
www.FacebookLocationSettlement.com