SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MIDDLESEX COUNTY
DOCKET NO. MID-L-6360-23
APP. DIV. NO. _____

ESPOSITO, et al. Plaintiff(s), v. CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, Defendant(s).	:	TRANSCRIPT OF CLASS ACTION SETTLEMENT FAIRNESS HEARING

Place: Middlesex County Courthouse
56 Paterson Street, 2nd Floor
New Brunswick, NJ 08903

Date: March 22, 2024

BEFORE:

THE HONORABLE ANA VISCOMI, J.S.C.

TRANSCRIPT ORDERED BY:

STEPHEN P. DeNITTIS, ESQ.
(DeNittis Osefchen Prince, P.C.)

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I N D E X

(Proceedings commenced at 10:05:08 a.m.)

THE COURT: This is Judge Ana Viscomi. We are here today on Friday, March 22, 2024 for a Fairness Hearing in the matter of Dean Esposito on behalf of himself and all others similarly situated v. Cellco Partnership d/b/a Verizon Wireless, Docket No. 6360-23. I'm going to ask that the attorneys enter their appearances first and state your name for the record, spell your last name. And then any other time that you address the Court this morning, state your name again. On behalf of the plaintiffs?

MR. DENITTIS: Good morning, Your Honor.

THE COURT: Good morning.

MR. DENITTIS: Stephen DeNittis from DeNittis Osefchen and Prince on behalf of the plaintiffs in the settlement class.

THE COURT: And your spelling of your last name for the record.

MR. DENITTIS: Oh, sure. It's D-E, capital N-I-T-T-I-S.

THE COURT: Thank you. Further, for the plaintiffs?

MR. HATTIS: Hello, Your Honor. Dan Hattis from Hattis & Lukacs on behalf of plaintiffs.

THE COURT: Your last name?

MR. HATTIS: H-A-T-T-I-S.

THE COURT: Thank you.

MR. CRIDEN: Good morning, Your Honor. Michael Criden, C-R-I-D-E-N, Criden & Love, P.A.

THE COURT: Thank you. Are there any other additional plaintiffs online, plaintiff's counsel? No.

MR. DENITTIS: No, Your Honor.

THE COURT: And for the defendant?

MR. JACOBSON: Good morning, Your Honor. Jeffrey Jacobson, J-A-C-O-B-S-O-N, from Faegre Drinker, on behalf of Verizon. And Shon Morgan on the television is going to make his appearance as well.

THE COURT: Thank you.

MR. MORGAN: Good morning. Good morning, Your Honor. Shon Morgan on behalf of Verizon. M-O-R-G-A-N.

THE COURT: Thank you very much. So I'm now going to lay out the procedure for today's Fairness Hearing. I'm going to ask counsel first to make a presentation to the Court, as I normally would do when I conduct a fairness hearing.

I will then hear from any objectors who have timely filed objections. And I'm going to limit those presentations to -- from any timely filed objector to ten minutes each. If you need more time, let me know.

If you don't need ten minutes, you don't need to take ten minutes. And then I'll ask counsel to respond.

So I do not know how long we will be today. I will let you know, though, that at 12:20 if we are still here I will need to take a one hour plus break. The judges have a mandatory seminar at 12:30, so I will need to do that. I also want to let everyone know that it is not my intention to approve or disprove the settlement today. I do want additional materials submitted based upon what I've read from the claims administrator. I want to see where this is with updated information once the time period to file concludes. Sometimes after -- I think it's April 15 that they can submit a new claim. So we'll schedule a return date then.

So who wishes to address the Court on behalf of plaintiffs?

MR. DENITTIS: I do, Your Honor, Stephen DeNittis.

THE COURT: Thank you.

MR. DENITTIS: Thank you. So, Your Honor, obviously we've submitted voluminous papers. We're here today on three applications. One, a motion requesting final approval of the class action settlement. Two, seeking approval of incentive awards

for the lead plaintiffs. And Three, seeking approval of an award of attorney fees and costs to counsel.

Before I get to the basis and history of the case and also the meat of our motions, I just want to put on the record for the Court that due process and the Court's December 15th, 2023 order for preliminary approval setting forth the notice procedures has been met.

Mr. Chumley from Angeion has submitted a declaration. He indicates in that declaration that on December 7th, 2023, pursuant to the Court's order, he received a list of the almost 59 million class members. After processing that list, Angeion began sending out notices on January 2nd, 2024. Email notices went out to 50,677,285 persons of records, I should say, with validated email addresses for 49,038,282. By January 16th 44,360,608 records with an initial email had been delivered. There was 44,000 that were bounced back, as well as 144,000 that were delivered to unsubscribed emails. And then 154,243 that had a hard bounce-back.

Angeion then processed 9,065,633 postcard notices to those, including those people who had a hard bounce-back. And then again a second set of notices, a second notice was again sent to all of those unique emails, as well as there was 861 of the email -- of the

postcard notices that were bounced back. They did postal look-ups, resent those postcards with 154,000 that they could not confirm got delivered.

So other than that notice -- and all the notices were sent timely, according to your -- pursuant to your court order. As of today there's been -- and with the updated declaration I sent to Your Honor, there's been 4.8 million claims filed to date, exactly it's 4,824,000 has been filed to date. There's been 11,935 requests for opt-outs. After removing duplicates, it's 10,380 unique exclusions that have been filed timely, according to the administrator. Of those, there's also 47 timely objections that have been filed.

Lastly, we discovered last night that of the opt-outs 1,615 had filed an opt-out and they filed a claim, which is contradictory. And then there's another 3 --

THE COURT: So how is that being treated?

MR. DENITTIS: So we were -- I was going to address that with Your Honor.

MR. JACOBSON: Can I take it, Steve?

MR. DENITTIS: Yeah, sure, that's fine.

MR. JACOBSON: So, Your Honor, as Mr. DeNittis -- I'm sorry, Jeffrey Jacobson for Verison.

As Mr. DeNittis was saying, we have about half of the opt-outs that either definitely or probably filed a claim. Our intention, with the Court's permission, is for the settlement administrator to send a note to them saying, hey, you've submitted both an opt-out form and a claim form. Please let us know your intention. And if you don't respond, the default is that we're going to process the claim and not the opt-out.

THE COURT: I would prefer if we do that by way of an order. So if you can --

MR. JACOBSON: I was hoping Your Honor would say that.

THE COURT: Yeah. So if you can prepare the form of the order so that the individuals are advised that by order of the Court we're giving them the opportunity to do so, to decide which avenue they wish to pursue. Otherwise, the Court will treat it thereafter, if they do not respond, as an opt-out.

MR. JACOBSON: No, as a claim.

THE COURT: As a claim, got it. Thank you.

MR. JACOBSON: Thank you, Your Honor.

THE COURT: All right. So you'll take care of the form of order?

MR. JACOBSON: We'll take care of that today, Your Honor.

THE COURT: Thank you.

MR. DENITTIS: So this is Steve DeNittis back on the record, Your Honor. So other than what I've submitted and other than what Mr. Jacobson just talked about, we believe that Your Honor's December 15th, 2023 order has been complied with and that due process has been given to the class.

Now, I'd like to move to our final approval motion. Before going into why this is a fair settlement, I think it's very important for plaintiffs to explain to the Court, even though it was in our papers, what went into this case and why this case is far from cookie cutter.

Our office and Mr. Hattis' office were contacted, because we've done some of these wireless fee cases in the past, about a case against Verizon in May of 2021. And after investigating the case the merits -- the key issue in the case is, did Verizon fail to disclose the administrative charge when they sold people monthly plans by just saying fees and taxes will apply. And then our arguments were, it was even worse once people got their first bill. But not only was the fee not adequately disclosed, but after the fact on their first bill we contended that there was a misrepresentation. That being, there was a statement

saying surcharges are to reimburse us for costs imposed by local state or federal government. And we said that that's not true, it's just a profit, sir.

However, the merits wasn't the only issue in the case even with how they have fared nationally. The biggest issue is arbitration costs. And we've had strategy meetings on how we were going to attack this case and we decided to do a two-prong approach that had never been done before. And that is, in addition to filing four class actions to bring class actions against Verizon, we also wanted to file mass arbs, a lot of them, thousands of them.

In the last five years the technique of using mass arbs for litigants has come around for just a few number of firms. It puts immense pressure on companies because companies for the last 20, 25 years, as Your Honor may have encountered in this court, always says arbitration is a fair forum, bring your cases in arbitration. So we were like, we're going to bring a set of cases in arbitration, as well as the class actions.

And what was unique about Verizon's arbitration clause that was different than many that we've seen, they had what was called a bellwether provision. And that bellwether provision stated that

if one firm or group of attorneys has 25 or more people that they represent in arbitration, then only 10 may be filed at a time. So if you have thousands of arbitrations, it literally could take over 100 years to arbitrate them all. So we had those cases in arbitration.

We also filed and we made sure we had in our cases that we filed in court more than 25 plaintiffs to bust the bellwether. That was going to be one of our strategies to say that the arbitration clause is unconscionable, for among other reasons. So we filed, we filed our first case MacClelland in California for just a California class. That was filed in November of 2021. Two months later, because Verizon is New Jersey and headquartered in New Jersey, we filed a statewide New Jersey class against Verizon.

And the reason why we did that is, our intentions were if we were able to bust the arb clause and remain in court, that was going to be the first case we were going to file a class certification on. Because under Lee v. Carter in our court, we believe the standard to get certified in New Jersey state court is a little bit more plaintiff favorable than you would be in federal court. It's a little bit less rigorous of an analysis. So then we filed that case.

We then filed a few months later a case in federal court on behalf of citizens of five other states. And the states we picked were the states that were most favorable to beating an arb clause. And then about a year later we filed another case in federal court and market related on behalf of persons from 24 more states. And then we ultimately brought in plaintiffs from 46 states because we ultimately wanted to have a nationwide class. But in case we couldn't get a nationwide class, we wanted to be able to have as many subclasses as possible to cover that issue.

We then fought the arbitration clause in California. That was the first one that was -- while they were fully briefed in New Jersey and California, that was the first one that was heard. Judge Chen in California ruled that the arbitration clause was unconscionable for the bellwether, but also for multiple other reasons. And he held that the arbitration clause only, not the entire agreement, just the arbitration clause was unenforceable.

Two months later we then argued before Judge Corbin in this court in Achey the same motion. Judge Corbin just -- what he did was just held one of the clauses, the treble damages clause was unenforceable, but he severed that and sent the case to arbitration,

which we then appealed and then argued before the Appellate Division and got a published decision holding, as MacClelland, that the entire agreement, the entire arbitration agreement is unenforceable for six reasons, to bellwether barring trebled damages, an exculpatory cause barring evidence. And there were so many unconscionable provisions Achey court said there wasn't a meeting of the minds as to the arbitration clause. And so it found that there wasn't even mutual consent for it.

So when we litigated this case -- and then we also did some discovery in the MacClelland case and got about 80,000 pages in documents. Simultaneously while we were doing that, we were also fighting an arbitration. So we had initially put Verizon on notice of 2,000 arbitrations. We then put them on notice of a second batch of 2,000 arbitrations. And then we put them on notice of another 9,000 arbitrations. The first batch of 2,000 arbitrations we asked for a process arbitrator to determine that -- because we were only allowed to -- even when we put them on notice of 2,000, we were only allowed to file 10. We asked for a process arbitrator to determine that under AAA's protocols the bellwether violated their protocol for speedy and efficient resolution of an arbitration.

The AAA process arbitrator heard that, he agreed with us and he said, "Well, I'm not going to enforce this arbitration clause unless Verizon agrees to waive the bellwether." Verizon agreed to waive the bellwether. We then filed, in fact, filed our 2,000 arbitrations and they were getting teed up to be heard.

What was absolutely critical in the case to getting Verizon to the settlement table was that Achey was decided on May 3rd, 2023, and at the same time that we got that decision in Achey, which was a published decision on the bellwether, we also -- Verizon got billed the first installment for arbitration fees, which was $2.7 million with another 2.9 that would be forthcoming in 60 days. With the pressure from both sides finally coming to a pinnacle, they agreed to go to arbitration.

It's important to note, and I'll get to this when I go over the Girsh factors, but it's really important to note that this case is far from cookie cutter. Cases against wireless companies that have brought these claims have not fared well. There are two cases we cite in our papers against T-Mobile, Janda v. T-Mobile and Lowden. They both sided with T-Mobile saying telling persons fees and taxes will apply is enough of a disclosure. A case against Comcast,

Tillage v. Comcast, that is another case that while the judge said I'll barely let you get by a motion to dismiss for now, we'll let the case litigate. When it went to class certification, the judge denied class cert saying that under the voluntary payment doctrine issue, it's a question of whether these people knew or didn't know individually if they had to pay this fee.

In addition to that, and something that one of the objectors pointed out, Mr. Weinstein, cases against Verizon on this exact administrative charge have lost. Mr. Weinstein, one of the objectors, and I'll respond to him at the appropriate time, but incredibly says we didn't get enough money. Yet, he litigated not one, but three cases against Verizon on this exact same charge for ten years and he lost all three cases, found he couldn't beat the arb clauses.

So, you know, it's important for the Court to understand the history and the background of what went into this case for three small law firms to take on four large well heeled defense firms to come up with a strategy to attack Verizon from two sides to eventually get to where we are today, which resulted in two published opinions, a ruling before AAA.

So when I get to the risk factors that I describe in Girsh, I'll go more into the risk, but

ultimately while sure it would always be great to come before the Court with a larger settlement. As of now and from what we could find, this is the largest deceptive fee settlement in the country that we've been able to find dealing with a wireless or cable carrier to date that's been proposed.

In addition, from what I could find there's been some larger individual cases, but there hasn't been a class action settlement in New Jersey State Court that I could find that's been proposed larger than this one. So the efforts that we've put forth in this, again, while anybody could look at any settlement and say I should've got more money, poo poo this, you didn't get enough, this should've been better, that should've been better, it was a compromise after a lot of work looking at the risk.

Because what had occurred is right before we settled, the Supreme Court of New Jersey took up Verizon's petition for certification. We were very concerned about that. That tells me they could've just said "affirmed," but the fact that they took it up caused us concern. Because if that decision was overturned or the MacClelland that was before the 9th Circuit that had not -- the 9th Circuit had not ruled yet and there was a delegation issue as to whether the

arbitrator or the court should decide the arb costs, if either one of those cases were overturned we wouldn't be here today. And, you know, a lot of the objectors talk about, oh, this was a slam dunk, this was cookie cutter, this was so easy. They just don't know the case. I mean, if one of those appeals lost there wouldn't be a settlement.

And so keeping in mind with the settlement that's been proposed, that's what we have going on. So that the settlement, Your Honor, that's been proposed, it's a $100 million non-reversionary settlement. The way it was determined was, every person -- the fee that is -- that we're claiming is illegal is $1.95 a month charge. The way the settlement was set up, it was going to be a $15 payment to everyone. And then every person would get an extra dollar for every month they were on service to account for that account holder to have a variation. The longer they were on service, the longer money they would receive.

We did not make a variation on the number of lines because, frankly, the way Verizon keeps its records on the number of lines people get added and taken off their accounts so frequently that it was just easier to negotiate the settlement based on a 2.5 average line number per account.

Now, other settlements, there's two other settlements to look to. Vianu v. AT&T, which is the identical case just for a case of California. So they didn't have issues of different state laws to deal with on class cert, but it was a very similar fee. They just came up with a flat fee of $7.25 with no variation and the court said that was fair and reasonable. So this case is in line with that, except that's just a multiple of eight times larger.

So unfortunately -- well, fortunately and unfortunately, we had so many claims that there's a pro rata reduction and that was contemplated. So on our notices that we send out to the class telling persons you would receive -- you can receive up to. Class members were told that five times "up to," not that they're guaranteed 100, not that it's going to be 100. They have the chance to get up to $100 depending on how many months they've been on service and depending on how many claims in. Because depending, if too many claims come in that exceed the fund it will be pro rata reduced. And that number was based on a claim rate of 1 to 3 percent. And we cite numerous cases in our brief how 1 to 3 percent is acknowledged by courts as being an average claim rate in large consumer class actions.

We're trending now towards an 8.2 percent claim rate, and it's looking like our projection of having five million claims looks like it's going to be spot on, it's looking like we're going to end with a million and a half claim rate.

So in going through the factors as to why this settlement is fair, New Jersey Courts, they favor the settlement of class actions. While, you know, New Jersey Courts recognize that class actions are complex, that they have a lot of uncertainty even in any case that looks like a slam dunk because you always issues, even if you win class cert that could be reviewable, even if you win on the merits that could be reviewable. And here you had the arbitration clause to contend with. And then you had legitimate defenses with the voluntary payment documents defense.

In addition, New Jersey Courts have held that the role of the court isn't to try to renegotiate and try to say what would be the best deal. It's to look at what's been proposed, and with a balancing of scales is what's proposed fair? Obviously, you know, some of non-attorney objectors were like, you know, I want my full fees returned, not understanding. In a perfect world that would be great, but as Your Honor knows and as myself litigating for 28 years, it's very hard to

get 100 cents on the dollar settlement, you know, it's always a balancing and a compromise. So the Court's role really isn't to try to say, well yeah this could be better or that could be better. It's just what's been proposed, is it fair?

Going into the risk factors of Girsh, New Jersey Courts have longed looked at the 3rd Circuit case Girsh v. Jepson, which is a nine-factor test, which talks about is a settlement fair and reasonable. The first element is the complexity, expense and duration of trial. In this case the settlement weighs in favor of settlement under that factor. Why? Because we've been litigating almost three years and we haven't even gotten past the arbs costs yet. We still have to do discovery and finish on class certification, and then we would still have to win and prosecute the merits. And then certainly even if we were to overcome those, Verizon would appeal because the issues in this case on the merits are novel in New Jersey and there's not good precedent around the country. So they would certainly appeal and put forth a lot of risk.

So if the settlement is approved and if -- I know Your Honor said you weren't going to rule on the bench today, but if you did people would see money around July. And so that's a lot better than waiting

some indefinite period of time that could be five, six years from now, legitimately. That's not just some pie in the sky prognostication, that's legitimate.

Second, the reaction of the class is another factor that courts look to. In this case the reaction of the class is very favorable. We have 4.8 million claims to date, which is great. And out of 58 million people, we have under 11,000 opt-outs, which that may sound like a lot, but when you compare it to 58 million people, which is 20 percent of the entire country, that's a very, very small number. And we cite a litany of cases in our papers, how there's been opt-out percentages, as much as 20 percent of the class And courts still say that shows that it's a good reaction of the class. Here, it's a fraction of a percent.

There's been 47 objections. Again, as they would be filed, and I'm sure the Court was feeling this way, as we were, every time there'd be another posting I was like, oh my God, there seems like there's so many objections, but, frankly, it's a very small number of objections. It's like one objection out of every 1.2 million people. Again, it's like one ten thousandth of a percent. And we cite a lot of cases with much higher objection rates where courts have said this is a fair settlement and that's a very good reaction from the

class.

The stage of the proceedings, that also weighs in favor of approving the settlement. It wasn't like we just filed this case and Verizon came to the table and said, "Hey, here's a hundred million dollars." It was litigated for almost three years. We got data from Verizon to be able to make a proposal on a class-wide basis with how many class members, how much money was collected. And we have the knowledge on the merits and also on the law to be able to intelligently negotiate a settlement.

It's also important to note, from our 129 plaintiffs that we have, as well as 13,000 arbitration clients, all of our arbitration clients, for the most part, almost all of them submitted bills of some sort, some type of evidence to us, which we've had in a database. Our 129 plaintiffs had given us documents as well. So we had a lot of data on our own side before even getting to Verizon's discovery that they had provided to us to be able to analyze the case. I mean, we had started tracking their advertisements when people had come to us back in May of 2021. So we had catalogues of their ads and what they said and that we can analyze. And so we knew pretty well what the merits would be when we argued the case.

Factor four and five of the Girsh factors is what's really important. I somewhat touched upon them already, Your Honor, but I would be remiss not to emphasize it.

You know, the risks that this case faced, we were still fighting the arb clauses. As I had already articulated, they were both up upon review to the Court. And any argument to the otherwise that they were certain to win, the objectors just don't know the case, frankly.

Two, class certification was far from certain. Only one of the fee cases like this that had gone to the class certification stage, being litigated by a very competent firm, Lieff Cabraser, one of the largest class action firms in the country, lost class cert. And that was the precedent that we would have to deal with going forward.

Third, on the merits, as I indicated, our merits were far from certain. As you've heard us talk about with Mr. Murphy's clients, he actually litigated six arbitrations before his arbitration panel and lost every one of them, some that the disclosures were adequate, some that the voluntary payment doctrine barred the claims because these people knowingly paid these fees for a long time.

In addition to those six losses, as I already articulated, Janda v. T-Mobile, Lowden v. T-Mobile wins for the defendants. Castagnola v. Hewlett-Packard, a similar case win for the defendant. Freeman v. Priceline, a similar case win for the defendant. And as I indicated, objector Mr. Weinstein, fortunately because we weren't apprised of these, he gave us Katz v. Cellco, which he litigated, Adell v. Cellco, which he litigated, and Litman v. Cellco that he litigated in 2008/2009. Identical case, he lost. Yet, we're here with a settlement. So that, along with the cases we cite on the voluntary payment doctrine defense, is a -- these are the risks that we faced that we feel weigh in favor of this being a fair settlement.

As for class certification through trial, we feel that, again, this weighs in favor of the settlement for what I have already indicated. You know, the issue of whether Verizon could withstand a larger verdict or judgment, that's not really an issue. They're the 26th largest company in the world. They're on the Fortune Top 100. So that's not a factor that really weighs in one way or another.

And so for all of these reasons, Your Honor, we submit that final approval, that Your Honor should -- oh, I'm sorry, I was remiss to state the range of

reasonableness of the settlement in terms of what could be obtained. So there's two theories in our case that if people went to trial and got the full amount of -- with the average class member, if they went to trial and got the full amount of their recovery, you'd be talking about $250, give or take, if they had two and a half line and they were on the service 2. -- 54 months, which was the average amount of time someone was on the service.

The other damages theory we had is, if the Court were to allow us to overcome the voluntary payment doctrine, but say we're going to just limit damages, which courts have done, to one month recovery since people knowingly paid past that, the recovery would be $1.95. And that is real. I mean, again, the objectors poo poo that, they say we're crazy, then they say we don't know what we're talking about. Frankly, anyone who litigates these cases and is in the trenches, they know that they're real issues, okay. And so what people are being provided, the average class member is going to receive $11.80, which comes out to be almost six months of refunds under our first damages theory. And under the second damages theory, they're going to be getting what would be equivalent to like 250 cents over what the damages are.

So between -- the first example is 4.5 percent, the second is 250 percent. Under Education v. Yellow Book, which is a New Jersey Appellate Division case from New Jersey, courts have said it's routine for settlements to be in the 9 to 12 percent range. It's a little lower than that even though it's a big case on the one type of damages theory, but far greater than that on the other. So this falls right into that in terms of the reasonableness of the range of recovery. So --

THE COURT: And that's why the Court wants to wait and see where this falls and get an update on that to see whether it still falls within that range, okay?

MR. DENITTIS: Absolutely. We've been trending about the claims coming in now about 20,000 to 30,000 a month. So it should --

UNIDENTIFIED ATTORNEY: A week.

MR. DENITTIS: I mean, excuse me, a week. Thank you for correcting. It should be about that, but that's a good suggestion, Your Honor. So for all those reasons, Your Honor, we respectfully submit as to the motion for final approval we would submit that it's in line with the precedent that's there. It's a fair and reasonable settlement taking into account all of the risks that were faced and that it should be approved.

I'll reserve some of my rebuttal time that Your Honor said I would have to the objectors once they present.

As to our motion for incentive awards, so there's -- we're asking for all 129 plaintiffs to receive a $3,500 incentive award. For the numerous cases we've cited in our brief, and I don't need to state them all on the record here, incentive awards are used and recognized by courts for cases just like this. Who wants to be bothered bringing a claim for $1.95, at most maybe $200, $300? Our courts recognize it's a public service when people do that. And if their efforts wind up getting a settlement, that benefits many people. They could partake and get a smaller incentive award.

They typically range from $1,500 to as much as $25,000. We're asking for $3,500 here. And the reason why that is, their efforts were critical. They were critical to busting the arbs and the arb clauses. And if we didn't have them, if we didn't have 25 people in each case, we would've not been able -- it would have been much more difficult to bust the arb clauses.

So as a class action attorney, I've done literally hundreds, we typically like to have one or two lead plaintiffs. Why? It reduces the amount of discovery. I only have two sets of discovery, I only

have two depositions. So, however, we did not follow our general rule here, we had 129. And for the reasons, One, to bust the arbs. And, Two, to give us a better chance on class certification. If we couldn't get a nationwide class certified, we could have 46 subclasses. Some of the objectors have said that -- so before getting to the objectors, it's in line with precedent.

Some of the objectors have argued, well look, that's too many people, they shouldn't have that many people, that's too much money going to them. And on its face, if you don't know the case, maybe to an outside objector that -- I can see that. However, if you know the strategies that we have embarked upon from the beginning of the case, they were critical. In fact, in our MacClelland case we initially filed with five people and we said we really need to get 25. We actually wanted over 25 for each case. So then this way, since they were all with one firm, it would invoke the rule that only ten arbs could be filed at a time, which helped our argument that it was unconscionable.

So for that reason we would submit that the incentive awards are within the precedent of this Court, actually less than the precedent of this Court. And knowing what these people accomplished and the

information that they gave us, putting themselves forward in a very highly publicized case, that the incentive awards are reasonable and we would request Your Honor to approve the incentive awards.

Our last application is our award for attorney fees and costs. So we have set forth in our papers that we're requesting 33.3 percent inclusive of costs. And while the settlement papers said we were going to seek that plus costs, we had $163,000 in costs, we're just incorporating that into the number.

We would submit that number is fair and reasonable for several reasons. One, you know, this case, we took an enormous amount of risk in this case. We did a Loadstar cross-check, which isn't required in New Jersey, but we did that for purposes to show the Court we just didn't -- we're not getting a windfall. This case took up 50 percent of the time of all the attorneys in our three offices almost over the last two and a half years. Beginning investigation not so much, but from the two and a half year point forward it was a war.

That coupled with the fact that, you know, the attorney fees during the whole case was not talked about. We negotiated the common fund. We negotiated all of the terms of the settlement. And then at the

very end we indicated that we were going to be seeking a third. And we talked with the defendants and they understood that they would not object up to a third. Clear sailing agreements in New Jersey are not -- there's no case law that says you can't have those. Even the cases in 3rd Circuit say they're not, per se, illegal. They're common, quite frankly, in class actions. And it's really not as big of a deal and it's not a reversionary settlement. I mean, the fact here is this money is going all to the class.

Where it becomes a bigger problem is, if you have a hundred million dollar settlement and we're getting a -- requesting a third fee, and in the end of the day $50 million goes back to the defendant because it wasn't all claimed, that's bad. But here, you know, that's not the case. So it's in line with precedent from New Jersey Courts giving up to a third. It's in line with a litany of -- even though it's persuasive authority and not binding this Court, over dozens of trial court opinions, orders awarding a third. We put in virtually three pages of string cite cases in the 3rd Circuit giving a third.

And then the criticism by some of the objectors is, well this is a megaphone case, it's a sliding scale less. And on Page 48 of our omnibus

brief we give a string cite of cases from all around the country, Southern District of Florida, Illinois, Ohio, Delaware, D.C., Eastern District of Philadelphia, of Pennsylvania, all giving a third in a common fund.

You know, it sounds startling, admittedly, when someone is asking for a fee like that, but you have to put into context that we're taking this case without getting paid, we're risking our money. And if we would've lost, we wouldn't have gone out of business, but it would've really hurt. And so it's that risk that courts recognize is why they permit a fee, a contingency fee.

Moreover, even though it's not required under New Jersey law, just to show the Court we weren't getting a windfall, we just gave a summary of our hours and of the work that we did, putting forth based on our hourly rate that's been approved by other courts and then also applying the Laffey Matrix, which third courts, 3rd Circuit Courts use to see what is a fair hourly rate. Under our approved hourly rates, Loadstar is $17 million. Out of the Laffey Matrix rates it's $25 million. Under the 3rd Circuit, because we took it on a contingent, it's about a 1.94 multiplier that we're asking on our time for the risk that we took since we weren't getting paid hourly.

So for all of those reasons we would submit -- and also to point out, we only have two associates in all of our offices, we're all partners, but our hourly rates for partners are far less than what a lot of big firm's associates are. My rate is $650, that's been approved. You know, I lecture all over on class actions based on my expertise and that's a low rate. I mean, there's attorneys in New York getting, you know, $1,400 an hour.

So, you know, with all that being said, we would ask that with the job that we did, with the settlement that we were able to obtain, with the strategies that we mapped out and that we won, and with the risks that we faced, that our fees and costs would be approved as being fair and reasonable.

So unless Your Honor has any specific questions for me, I would rest and just wait to hear from the objectors, unless Your Honor has some questions.

THE COURT: Not at this time, thank you.

MR. DENITTIS: Thank you.

THE COURT: Do any of the plaintiffs' counsel wish to add to that?

MR. HATTIS: No. Thank you, Your Honor.

MR. CRIDEN: No, Your Honor.

THE COURT: Okay. Do defense counsel wish to address this?

MR. JACOBSON: Just in the spirit of getting as quickly as possible to the objectors, I just want to address one thing for one minute. Jeffrey Jacobson again for Verizon.

Why are we here? We support the settlement. I agree with Mr. DeNittis' recitation of the risks. I would emphasize the risks perhaps a little more than Mr. DeNittis would, but I let Mr. DeNittis' presentation stand. But why are we here?

Your Honor, Verizon faced a class action in California, the MacClelland case. We had class actions in New Jersey State Court because Verizon is here in New Jersey. And so there was diversity between a New Jersey only class and Verizon. Verizon also had federal cases here in New Jersey.

In our view, the MacClelland case not an appropriate vehicle for settlement because it's in California. Verizon wanted to settle in New Jersey. The choice was federal court or state court. Because the New Jersey Supreme Court had accepted review of the Appellate Division's decision, it made sense to us to have a state court settlement because any appeals from a decision the court might make would go up through

that system and would end up before the court that would ultimately have to decide the critical issue of whether the Appellate Division got it right or wrong on the arbitration provision.

Your Honor, obviously, is very experienced in these cases and we were very comfortable leaving ourselves in the hands of a Middlesex Superior Court judge for this settlement. So that's why we're here for this, as Mr. DeNittis said, very large settlement.

So with that, I'll just -- unless Your Honor has any questions for me, before we hear from the objectors we'll get to them and see what we can do by 12:20.

THE COURT: Thank you.

MR. DENITTIS: Judge, I'm sorry, I just have one point to make. It'll be one sentence.

THE COURT: Sure.

MR. DENITTIS: I forgot to put this --

THE COURT: One sentence?

MR. DENITTIS: Well, two sentences.

THE COURT: Okay.

MR. DENITTIS: There's been an allegation by one of the objectors that we forum shopped here. We have three cases in New Jersey. We litigated the Achey case, which was the farthest along of all the

cases. We wanted to amend that case to put forth the settlement; however, when class action attorneys have cases in various jurisdictions and forums there's always the possibility of the risk that the Court may not approve it, in which case they go back and litigate all of their cases.

So no one wanted to disturb the pending Supreme Court case, no one wanted to disturb MacClelland, no one wanted to disturb Corsi or Allen because they were in the process of briefing the arb issue. So the easiest thing was, pick all the plaintiffs and file it in a case here. This is where the Achey case was. The Achey case has been filed almost as long as the MacClelland case, so that is just -- just to dispel that notion, that's why and explains why the Esposito case came to be. We attempted to amend the Achey case and Verizon said, "We'd rather not," and so that's why we have this case. Just to let the Court know.

MR. JACOBSON: I think that was nine sentences.

THE COURT: Thank you.

MR. DENITTIS: What?

MR. JACOBSON: It was nine sentences.

MR. DENITTIS: Yeah, it was nine sentences,

he counted.

THE COURT: I don't think the Court would've appreciated an amendment to Achey.

Mr. Morgan, do you wish to add anything?

MR. MORGAN: Nothing from me, Your Honor, thank you.

THE COURT: Thank you. All right, we're going to take a ten-minute break. We'll be back at 11 and we'll hear from the objectors that have timely objected at that time, all right? I have to give my staff a break, so we'll be back at 11. Thank you.

MR. DENITTIS: Thank you, Your Honor.

(Off the record from 10:46:51 to 11:00:00)

(New transcriber commenced at this point)

THE COURT: Yes. All right. We're back on the record. Is everyone still connected on Zoom?

COURT CLERK: Yes.

THE COURT: Okay. So we're now going to begin with the objectors that have timely filed objections that are here, present in the courtroom. Because we are creating a record -- I think you can move that podium if you want to put it on a slant. But we'll go there. All right? And so -- yeah, why don't we put it at a slant? Yes. Okay. That gives them enough room. All right.

So, who would like to begin first?

MR. KELLETT: Your Honor, Charles Kellett, K-e-l-l-e-t-t, from the law firm McLaughlin & Stern, on behalf of objectors George Lin, Linda Tang, Mark Oja and Christine Oja. I am local counsel. Mr. Quyen Hoang has been admitted pro hac vice as of this week, so I'll turn over my -- my arguments to him, if --

THE COURT: Thank you.

MR. KELLETT: -- that's okay with Your Honor.

THE COURT: Come on up, please.

MR. HOANG: Good morning, Your Honor. Quyen Hoang, H-o-a-n-g, appearing on behalf of the objectors, who aren't present in court.

Oh. Excuse me. First off, I'd like to start by -- oh, I don't know how much time we're allotting. You said ten minutes. I think I might need around 30. Is that --

THE COURT: Thirty?

MR. HOANG: Is that acceptable?

THE COURT: It's a long time. I --

MR. HOANG: Well then I'll try and cut it short as best I can.

THE COURT: Yeah. Thirty is -- it's a long period of time.

MR. HOANG: Yes. I just thought it was

important because, again, I need to make a record. I'm flying all the way out from California, Your Honor.

THE COURT: I appreciate that. Why don't we start? But try to condense --

MR. HOANG: I'll try.

THE COURT: -- and to incorporate everything.

MR. HOANG: I'll do my best, Your Honor.

THE COURT: Thank you.

MR. HOANG: Thank you. I'd like to start off by -- by addressing a few of the parties' strawman arguments that they just made, Your Honor. First, the parties are claiming that it's objector's position that the free settlement clause is proof of collusion, and we are not making that claim. What we are simply saying is that because this is a settlement only class action, and there's a free settlement provision, that this court is directed to apply a more rigorous scrutiny standard in this fairness hearing than the rubber stamp standard that plaintiffs are asking for. This standard is applied in the Third Circuit pursuant to In re GM Pickup Trucks, and we believe it is the correct standard, and a more cautious standard, and we pray that this Court will use it.

Now, the other strawman argument is the parties are implying that I am claiming that the

settlement is undervalued because the administrative charge is a slam dunk. I am not making that claim, Your Honor. What I am saying is that the California class members have a very good case that has not yet been sufficiently considered because the class action complaint, in Paragraph 361B alleges that Verizon violated California's consumer protection statutes by, quote, inserting unconscionable provisions in its consumer agreements in violation of the CLRA, including but not limited to in an arbitration clause, which waives the right to seek public injunctive relief in any form in violation of California law.

And what I have heard today, all this morning is they're talking about the administrative charge, but they seem to forget what -- what clearly Verizon violated and was proven to violate was the -- was creating unconscionable provisions that violated California law. Someone needs to speak out for the rights of the Californians. There's six million of us. We are -- we -- we are the largest market for Verizon.

And so I'm saying that this part of the complaint is a near certainty because Judge Chen in MacClelland did indeed hold that there -- excuse me -- that there were numerous unconscionable provisions in Verizon's customer agreement.

It is a near certainty because that order has preclusive effect. The parties are saying that there is still significant risk because Verizon has appealed the ruling, but similar arguments have already been made to the Ninth Circuit in other cases, and they have been routinely shot down. The Ninth Circuit upheld the denial of arbitration based on McGill in the Roberts v. AT&T case, the McArdle v. AT&T case, the Blair v. Rent-A-Center case, and the Tillage v. Comcast case.

And plaintiff thinks that there is going to be a great risk that the Ninth Circuit will overturn itself this time? I don't think so, Your Honor. I think the big issue on appeal is not that the arbitration clause was violated, which they clearly did. I think the big issue was all this talk about mass arbitration. That is the big -- big deal of the appeal. And if you read a lot of the amicus briefs, in the MacClelland case they talked about the propriety of mass arbitrations, because that is a new creature of litigation that hasn't -- hasn't been used quite a bit.

What is mostly will happen with the MacClelland appeal, just as it did in the Vianu case is Verizon will most likely dismiss it just like what AT&T did.

Now, regardless of how any of the parties

feel about my views on this case, Your Honor, is the fact that it is clear the parties have not considered how MacClelland and Achey how their rulings has changed the contours of the original complaint vis-a-vis Paragraph 361B. All I've heard this morning was about the -- the administrative charge, Your Honor. And there has been not enough talk about the arbitration provisions.

So, by being singularly focused on only the administrative charge instead of the totality of the allegations in the complaint means that the plaintiffs did not have an adequate appreciation of the total merits of the case when they were negotiating the settlement.

This goes against Girsh factor number three, and that militates against finding that the settlement agreement is fair and adequate.

Now, plaintiffs, in their motion for final approval, and in their reply to our objection, doubled down on their claim that this is not a cookie cutter case. Those are their words. I don't want to beat this drum to death, Your Honor, but it is important to point out that this case literally is a cookie cutter case.

If we look at the original MacClelland

complaint that started this whole thing off, I have it as Exhibit A in our exhibit book right here. If it will please the Court I will provide it to your staff. But if we -- I was looking through the original MacClelland complaint and I was able to identify large swaths of language that was lifted off of the Vianu v. AT&T Mobility complaint, which was drafted by the Lieff Cabraser law firm.

I highlighted the text in the MacClelland complaint and provided corresponding paragraphs to the Vianu complaint. And that Vianu complaint is included in our exhibit book, Exhibit B.

Now, if we look at the instant settlement agreement, which is Exhibit C in our exhibit book, it gets much worse, Your Honor. The instant settlement agreement is virtually identical to the Vianu settlement agreement, also drafted by Lieff Cabraser. The settlement agreement is attached as Exhibit D in our exhibit book. And just for clarity, attached as Exhibit E in our exhibit book, Your Honor, is a settlement agreement in Roberts v. AT&T, also by Lieff Cabraser. The language of Roberts also tracks both this settlement agreement, as well as the Vianu settlement agreement.

Now, what this tells us is this settlement

agreement in front of Your Honor today is basically a plagiarized work product from another law firm. Why is this important? Well, Verizon's counsel dismissed our objection as scattershot. It is not. We tried to be as thorough as we could in pointing out the flaws of this agreement. It is important to stress that these problems stem from counsel's decision to borrow heavily from the settlement agreement from Lieff Cabraser. And the Lieff Cabraser -- they drafted that -- drafted that settlement agreement and narrowly tailored it for a California only class, consisting of about 5.6 million class members.

But plaintiff here then took this document and then tries to shoehorn a nationwide class of 58 million class members made up of 46 subclasses, and at least 50 or more state consumer protection laws. That's unheard of, Your Honor. It's outrageous. The bottom line is that how can this Court be expected to find that this settlement agreement is fair and equitable when it can't even be certain if the terms in it are intended for the settlement class, this settlement class, or was instead some vestigial artifact, terms unintentionally carried over from some settlement agreement in some other case.

Plaintiffs' counsel cannot provide this Court

with any assurance, because they were the ones who hid this plagiarism from you. This is appellate fodder, and it should be disqualifying, Your Honor.

Now, moving on to illegality. The settlement agreement has indeed an illegal attorney malpractice waiver. It reads in pertinent parts the parties agree to release each other from conduct in this action, including but not limited to any claims of abuse of process, malicious prosecution, et cetera. It also goes on to read the list of claims released by this Section 9C includes but is not limited to claims for attorney's fees, costs of suits, or sanctions of any kind.

Counsel for plaintiff and Verizon myopically argue that there is no specific mention of the word malpractice, so this is not a problem. The issue is objectors are arguing that the includes but not -- but is -- were arguing that the includes but is not limited to language is expansive in its scope and necessarily includes malpractice.

The case law supports our position. The Third Circuit in Cooper Distributing v. Amana Refrigeration, 63 F.3d 262, at Page 280, stated that by using the phrase, quote, "including but not limited to," the parties unambiguously stated that the list was

not exhaustive. The Court also cited other cases stating that the including but not limited to language created a considerably discretionary standard. Quote, "The phrase including but not limited to is the classic language of totally unrestricted and hence totally discretionary standards."

The bottom line, Your Honor, is because the attorney liability waiver did not expressly exclude attorney malpractice it necessarily includes -- it necessarily includes it, and so this provision is illegal under California and New Jersey law.

We should also ask why is this waiver even in here? I looked at Counsel DeNittis's other class action settlement agreements to see if they included such a waiver. I looked at Seale v. Altice. I looked at Grillo v. RCN, Reid v. RCN, Barba v. Old Navy, Andrews v. Gap Factory, Celestin v. Avis, and Manopla v. Home Depot. None of those settlement agreements have an attorney liability waiver.

So why does this settlement agreement have one, Your Honor? Because Counsel DeNittis, I believe, heavily borrowed from the Vianu settlement agreement, which had the waiver in its Paragraph 9C. And no surprise this settlement agreement has one also, and it's also on Paragraph 9C.

The question needs to be asked was the attorney liability waiver in this settlement agreement negotiated with Verizon for the benefit of this settlement class, or again, was it some vestigial relic unintentionally carried over from the settlement of an entirely different lawsuit?

Because of this doubt, Your Honor, there can be no confidence that this settlement agreement is in the best interests of the class and this motion for final approval must be denied.

Now, the settlement agreement is also illegal because it violates our McGill rule, which voids contracts that restricts the right to seek public injunctions. The settlement reads in pertinent parts -- I'll make it short, "including without limitation any such claims, requests for relief, one, alleged in this action, two, for rescission, declaratory relief, injunctive relief, or any other equitable relief of any kind."

As before, the including but not limited to language means that the injunctive relief that is referenced necessarily includes both private and public injunctive relief because they did not expressly exclude public injunctive relief. It is included in the waiver. And so this agreement is illegal in

California under McGill.

Of course Verizon in their reply to our objection on this matter argues that this settlement agreement is intended only to encompass private injunctive relief, so McGill doesn't apply. The problem with this argument, Your Honor, is that the settlement agreement goes on to prohibit claims -- claims or requested relief for violations of California's deceptive, unlawful and unfair practices, and our consumer protection statutes.

Verizon already made this argument to Judge Chen in their motion to compel arbitration in the MacClelland case, Your Honor. Judge Chen stated that, quote, "the statutory scheme set out in our UCL, the CLRA, and the false advertising law are explicitly designed to provide for public injunctive relief. And that by definition primarily for the benefit of the general public."

And also the Ninth Circuit in Blair v. Rent-A-Center applied McGill and similarly held that the injunctive relief under the consumer protection statutes is public injunctive relief. So by prohibiting the settlement class from bringing a future claim under California's consumer protection statutes, they are directly violating McGill.

Mr. Jacobson argues in his reply that McGill cannot be read so broadly to apply to this settlement agreement. My response would be that he cites no sources for that, and that he is asking this Court to find a class action settlement exception to the McGill rule. This new law cannot be made in New Jersey courts, Your Honor, and it would be better addressed in front of Judge Chen, or better yet, to the California Supreme Court.

Now, the settlement agreement is illegal because it will perpetuate an illegal contract, Your Honor. In the MacClelland case Judge Chen clearly found the entire Verizon service contract illegal when he denied Verizon's motion to compel arbitration.

The parties are being coy, Your Honor. In plaintiffs' opposition to Verizon's motion to compel arbitration in the MacClelland action, Counsel Hattis argues in the very first paragraph, quote, "Defendant Cellco Partnership and Verizon are attempting to compel arbitration based upon an adhesive contract that is so permeated by unconscionability that it is unenforceable under California law." Counsel Hattis here is arguing the entire contract is void, and Judge Chen obliged. In the MacClelland decision Judge Chen refers to the entire Verizon customer agreement as the agreement with

a capital A, and the arbitration agreements with a lower case a. So we know he is talking about the entire contract.

Judge Chen then wrote that severance is not appropriate because the agreement, capital A, is permeated by unconscionability. He further states, "It appears to the Court that the object of the agreement is to force Verizon consumers into an inferior and in many circumstances wholly ineffective forum."

Your Honor, a contract with an improper purpose is the definition of an illegal contract. And that is what the MacClelland Court found, and that is what the settlement agreement will perpetuate.

To the extent that the parties here argue that in their reply that Verizon updated the customer agreement so it is no longer illegal, that is simply not true. Attached as Objector's Exhibit F is a copy of the most current Verizon customer agreement dated February 2024. It still has most of those -- the provisions that Judge Chen and the Achey Court found as unconscionable, such as a ban on class action, a ban on public injunctive relief, a ban on punitive damages, and the controversial bellwether provisions, except that the new bellwether provision now expands from ten cases at a time to 25 cases at a time. That change is

inconsequential, Your Honor.

But there is also another unconscionable provision that has never been addressed until it was brought up in defense counsel's reply when he was trying to intimidate Mr. Murphy and his clients. Mr. Jacobson writes, quote, "Mr. Murphy can only keep up his fee shifting act for so long before the courts -- before the costs of arbitration will revert back to him and his clients." He writes, "Verizon's customer agreement says that if the arbitrator determines that your claim was filed for purposes of harassment or is patently frivolous, the arbitrator will require you to reimburse Verizon for any filing, administrative or arbitrator fees associated with the arbitration."

And sure enough, this fee shifting provision is in the current agreement and has been in all prior iterations. This fee shifting provision is patently unenforceable under California law. Specifically, it says the arbitrator will require you to reimburse. The word will is similar to shall, and it is a word of mandate that leaves no discretion to the arbitrator as to how much to pay or as to who shall pay it. It is targeted directly at the customer.

However, in California courts the fee shifting statute is found under our Code of Civil

Procedure, Section 128.5, and it states that fees can be shifted to the frivolous actor only upon 21 days' notice on a separate motion for sanctions, and the Court has discretion to impose a fee upon the client, the attorney, or both. And the Court also has discretion to impose any fine from zero dollars or however much the Court feels is necessary to deter such future conduct.

The New Jersey sanction motion is under Rule 1:4-8(b), is largely the same as California except for the requirement of only 20 days' notice.

Because of this disparity regarding discretion, Your Honor, Verizon is making the arbitration forum a more risky and hostile venue than going to court. In MacClelland Judge Chen already ruled that contracts that impose arbitration not simply as an alternative to litigation, but as an inferior forum, are unconscionable. Judge Chen also cited the California Supreme Court case, Armendariz v. Foundation Health Psychcare for the chilling effects of these wholly one-sided unconscionable provisions, and we can see this chilling effect in Mr. Jacobson's saber rattling against Mr. Murphy and his clients.

So the instant settlement agreement, if approved as is will indeed foist upon six million

California class members and about 1.3 million New Jersey class members a clearly unconscionable and illegal contract.

Now, because these unconscionable provisions were in all prior iterations of Verizon's service agreement this settlement agreement arguably bans class members from all future attacks on Verizon's unconscionable arbitration provisions. And that's what I really have a problem with in terms of the settlement agreement, Your Honor.

I think in terms of me and the plaintiff, we don't have much of a difference with regards to how much they want to value the administrative charge. If they feel that it's a hundred million dollars' worth, that might be so, but this settlement agreement also will ban the issues regarding their use of an illegal arbitration provision, Your Honor. And that's what bothers me. This is our rights under California law to protect ourselves against unconscionable provisions, Your Honor. And someone needs to speak out for these rights of California.

We -- I do not want us in the California class to be lost in this nationwide class action settlement, Your Honor.

THE COURT: Repeat that last part again. By

virtue of the settlement agreement you are contending that it bars future claims --

MR. HOANG: Yes.

THE COURT: -- with regard to the arbitration?

MR. HOANG: With regards to arbitration. The one thing -- it's funny, the one thing that two courts have found that -- that Verizon actually violated were -- was that they inserted unconscionable provisions into their service agreement, and they broke the law. Two courts have found that. And yet in this settlement agreement the -- the injunction that was -- that Verizon agreed to was only in regards to the administrative charge, which no one has addressed yet, but the courts have already ruled that they violated the law in that instance, and the settlement agreement talks nothing about that. It allows them to continue doing it.

In fact, in the settlement agreement Verizon expressly reserves for themselves to continue charging the administrative charge, as well as the arbitration clause, Your Honor. And I think that in itself is also another reason to object to the settlement and to deny the settlement as it is written.

Now, this brings us to the issue of how

expansive the settlement agreement really is, Your Honor. Plaintiff and Verizon's counsel argued that the release is limited and states that the release clearly prohibits only those claims that were or reasonably could have been alleged in this action, arising from or relating to the administrative charge.

Counsel is not being candid with Your Honor because the release continues on to read, "including without limitation any such claims or requests for relief, one, alleged in this action, two, for rescission, three, for violation of any deceptive, unlawful or unfair business trade practices." Again, case law instructs us to read expansively the including but not limited to language.

So the release is to be read as banning all future claims regarding administrative charge and also banning all future claims for everything that was alleged in the complaint, as well as banning all future claims for equitable relief, and banning all future claims for violations of state consumer protection statutes against Verizon.

It is so expansive that it's illegal under California law because it bans future claims against Verizon under our consumer protection statutes, and such bans are void against public policy.

The fact that we are even arguing about this, Your Honor, shows that the release at best is unclear, and this settlement agreement should be denied until it is made clear.

My fears and my broad interpretation is well-founded because if we were to ask Lieff Cabraser, who are the real drafters of the settlement because plaintiffs here are very heavily borrowing from their work product, Your Honor. They would agree with me. And how can I know that? Because if we look at the release in Paragraph 9B of the Vianu settlement agreement they had a footnote, Number 2, that reads, "For the voidance of doubt the list preceding this footnote in this paragraph is subject to the limiting language in this paragraph that follows this footnote." So in the Vianu settlement, and that's Page 30 of the Vianu settlement is where that footnote is, "the release of future claims against AT&T can be understood as being limited to any and all claims that were alleged in the complaint, and the ban on future equitable relief or future violations were all tethered to the complaint that was filed against AT&T."

Now, to the extent the parties argue that the judge in the Vianu settlement overruled similar objections, my answer would be that the judge was not

presented with the same release language, because in Vianu the release contained this limiting language in Footnote Number 2.

Now, this same limiting language by Lieff Cabraser is also in the Roberts settlement. It's in Page 31 of the Roberts settlement. It's very suspicious that plaintiff would borrow heavily the release language of Vianu but leave out the limited language of Vianu. This is clearly an attempt by plaintiff to perniciously broaden the release so that it can arguably encompass all future actions by the settling class against Verizon.

How can I say this so confidently, Your Honor? Because this issue could be resolved simply by inserting a fixed date into the release. For example, barring all claims for relief against Verizon that could have been reasonably brought up until the date of final approval of settlement. That would be a fixed date.

I know this can be done, Your Honor, because Counsel DeNittis did this for all his other class action settlements. For example, in the Seale v. Altice settlement agreement the release was tethered to a fixed date, which was defined as arising from -- I'm sorry, arising prior to the date of preliminary

approval orders entered by the Court.

In the Grillo v. RCN, Reid v. RCN, and Celestin v. Avis settlement, the fixed date was defined as all claims that were alleged, or claims have been alleged in the litigation arising prior to the settlement effective date. In Barba v. Old Navy, in Andrews v. Gap Factory, the release claim was defined as conduct by the defendant alleged during the class period.

And my personal favorite, Your Honor, is in Manopla v. Home Depot. The release was tethered to a fixed date defined as from beginning of the world until today. That is very clear.

So why is Counsel DeNittis treating the Verizon settlement class so differently, and why is he changing his standard practice so blatantly? The one thing that stands out to me is in all his prior settlement agreements the attorney's fees involved were in the two to three million dollar range, and this settlement agreement gives him a shot at $33 million.

I am not accusing counsel of collusion. I'm simply pointing out these facts, Your Honor. But the fact that these issues, these subtle signs of collusion are present means that the Court cannot have the confidence to find the instant settlement agreement is

fair and adequate for the class, and this motion for approval must be denied.

Now, counsel -- Counsel Hattis states in his reply -- I'm sorry. It's Counsel DeNittis in his reply says, quote, this is without exception the largest, most complex class action on which any class counsel has ever worked.

So let's look at how counsel treats the most complex class action case ever. In this sprawling nationwide class involving 58 million members, 46 subclasses, and 50 or more vastly different consumer protection statutes, how much did they spend on legal research for such a complex case? Looking at their expenses, the DeNittis firm spent zero dollars, the Hattis firm spent zero dollars, and the Criden law firm only asked for $1,361. In such a complex case covering 58 million class members how much did they spend on factual research? Less than $300 between all three firms, Your Honor. In such a complex case, based on false advertising, how much did they spend on advertising experts? Zero. On such a complex case alleging the unlawful business practice of calling the Verizon junk fee an administrative charge when they allege that it is in truth and in fact a lever to jack up prices, how much did they spend on telecommunication

industry experts? Also zero. Did they depose any Verizon executives? No. Any third-party industry participants? No.

Now, to be clear, the law does not require formal discovery to find that a settlement agreement is fair and adequate, but how can this Court have confidence in this settlement agreement when the facts show that they hardly spent any money at all on fact gathering and legal research. And I would like to point out the -- the federal court case was heard by one judge. I forgot -- I forget his name, but he clearly denied Verizon's motion to compel without prejudice, stating that the parties need to go back and do some more discovery. I mean, there clearly has not been sufficient work done on this case, Your Honor.

THE COURT: You're at a half an hour. How much do you have left?

MR. HOANG: Just five more minutes, Your Honor.

THE COURT: Wrap it up then.

MR. HOANG: Thank you. Now, Counsel DeNittis states that in his reply that his 13,500 arbitration clients were absolutely crucial to the settlement agreement. Let's unpack this, as he claims they are crucial for two reasons. One, they were supposedly

crucial to convince Judge Chen to deny arbitration because Verizon bellwether provision would drag out the resolution of his arbitration group past 120 years. This claim is demonstrably erroneous, Your Honor. Judge Chen found the bellwether provision was one of several unconscionable provisions in the service agreement that formed the basis for his denial of arbitration.

So counsel's arbitration group was nice to have, but it was not crucial to this decision. Judge Chen already had the McGill violation, and the violations against prohibiting class actions, jury duty, punitive damages. My assessment is supported by the California Supreme Court case of Armandariz Foundation cited by Judge Chen. The Armendariz Court held that you need only two unconscionable provisions in a contract of adhesion to find that the contract was permeated by unconscionability so as to find the agreement to arbitrate void. So clearly it was not crucial, Your Honor.

Now, the second reason that counsel denied its claims to arbitration (indiscernible) was crucial, and that he is very proud of is what is the most unsettling to me, Your Honor, and that's what caused me to fly out here 2,000 or so miles and should give this

Court great pause. He is proud that he was able to use his arbitration clients as a cudgel to force Verizon into settling the instant class action. I believe that is indeed the first time that the threat of mass arbitration as used in a mega fund class action settlement.

This would put Your Honor in the unenviable position of setting a very dangerous precedent. We need to put this in perspective, Your Honor. Plaintiffs' counsel went into three federal courts. In one New Jersey Court they submitted briefs to the Ninth Circuit, as well as the New Jersey Court of Appeals, and the New Jersey Supreme Court to argue that Verizon intentionally designs their arbitration agreement, in Judge Chen's words, to force Verizon's consumer into an inferior and in many circumstances wholly ineffective forum.

And yet knowing this, Your Honor, Counsel DeNittis nevertheless assigns 13,500 of his clients into arbitration. counsel DeNittis forgets that he owes every one of his clients a fiduciary duty and the moment he assigns them to the arbitration group while knowing it is a more dangerous forum, he broke that duty of care.

Your Honor, these are real people, and these

are real individual rights that we're talking about. These aren't pawns for Counsel DeNittis to sacrifice as he wages a class action war against Verizon.

If Your Honor grants plaintiffs' motion for fees as is, Your Honor will be condoning and indirectly encouraging such conduct. The principle for any attorney, the first principle of any attorney is the fiduciary duty to their client, to look out for their best interests. This must be the guiding light as the Court considers the instant fee motion, Your Honor. It must be our north star.

Objectors pray that this Court reinforces the standard in its ruling by awarding plaintiffs' attorney's fees between seven million but no more than 10 million, which would represent fair value for their work in the litigation component of this case.

I'll just leave it there, Your Honor, because I ran out of time. Thank you for Your Honor's time, and I will welcome any questions that you have. But I'll leave it at that.

THE COURT: Thank you. You can leave your citations and the binder? That's for us?

MR. HOANG: These are our exhibits, Your Honor. Those are just the copies of the -- the settlement agreement and also Verizon's current --

THE COURT: Thank you. Much appreciated.

MR. HOANG: Thank you.

MR. DENITTIS: Your Honor, just a question. Are you going to have me address one -- each at a time, or all at one time?

THE COURT: No. At the end.

MR. DENITTIS: Okay.

THE COURT: Is that -- is that acceptable to you?

MR. DENITTIS: That's fine. This one would be the only one to alter that, just because there's a lot to unpack there, but I'm fine.

THE COURT: Well --

MR. DENITTIS: However Your Honor wants to do it.

THE COURT: -- you haven't heard anything else yet, so --

MR. DENITTIS: Yeah.

THE COURT: -- I wouldn't --

MR. DENITTIS: No, but I mean I know what their papers say. I know what their --

THE COURT: Okay.

UNIDENTIFIED ATTORNEY: Both the best and worst objection you've heard so far.

(Laughter)

THE COURT: Who wishes to address the Court next? Yes? Good afternoon.

MR. WOOFTER: Good afternoon, Your Honor. Daniel Woofter, W-o-o-f as in Frank, t as in Tom, e-r, from the law firm Goldstein, Russell and Woofter. I am joined in the court by local counsel Ryan Cooper, C-o-o-p-e-r, and of his titular law firm, and my law partner, Kevin Russell, R-u-s-s-e-l-l, two l's, and we have one of the objectors here in the court with us today, Scott Simpson.

THE COURT: Okay. Hold on a second. Are you hearing him okay on the record? Okay. I just wanted to make sure the record was picking up your voice.

MR. WOOFTER: Okay. Thank you.

THE COURT: For my benefit, because that does not amplify your voice in this courtroom, could you just speak up a little bit?

MR. WOOFTER: Absolutely, Your Honor.

THE COURT: Thank you.

MR. WOOFTER: And I did time this, and it clocks in at eight minutes, so --

THE COURT: Okay.

MR. WOOFTER: So, good morning, Your Honor. I am here on behalf of the so-called Murphy objectors, eleven of them. Oh, and I should have mentioned, Evan

Murphy himself is also here in the courtroom with us today of Murphy Advocates, LLC.

THE COURT: Hello, Mr. Murphy.

MR. WOOFTER: Eleven of the objectors are members of the class with pending Triple-A filings that have been in limbo before a process arbitrator since long before this class action lawsuit was filed.

I'd like to make three overall points today. First, I'd like to start by explaining why our clients are objecting to the settlement. In short, we are here, as we've bee from the beginning, with a singular focus of protecting our clients' right to pursue the arbitrations they started before this action was filed.

Second, I'd like to address the specific ways in which the settlement agreement interferes with our clients' right to pursue those arbitrations and is otherwise unfair and unreasonable. Third, I will explain how our objections could very easily be resolved by this Court without having to deny approval of the settlement all together, specifically by treating our clients as having opted out unless they file a claim with the administrator by the end of the claims period. In other words, the Court should treat those who took the affirmative step of hiring Mr. Murphy to pursue arbitrations on their behalf, but

neither filed a formal opt out, nor filed a claim as intending to continue their arbitrations rather than as choosing to terminate those arbitrations and release their claims against Verizon in exchange for nothing.

That resolution best accommodates the interests of these specifically situated class members, and would allow the Court to approve the settlement and avoid unnecessary appeals.

Since the outset of these proceedings the only purpose in being here has been --

THE COURT: Hold on one moment. Why are you standing, sir?

MR. JACOBSON: Because I want to make sure, because we may be able to shortcut this. If we're talking about 11 objectors who wish to be treated as opt outs --

MR. WOOFTER: No. They are here objecting on behalf of all similarly situated class members.

MR. JACOBSON: All right. Well --

MR. WOOFTER: Those clients who are objectors -- or those clients who are our clients and were before Esposito was filed who are in the process arbitration as we speak. And that has been stayed by Verizon.

MR. JACOBSON: And --

THE COURT: Well, that's -- that's

THE COURT: Well, that's -- that's part of the rub. So there's only -- there's 11 that have been filed. When the Court heard the intervention motion it was unclear to the Court exactly how many clients Mr. Murphy had, because the number seemed to change a little bit. But I want to be clear, what you are asking for as a possible resolution is a carve out for all of his clients, whether or not there's presently filed an arbitration proceeding. Am I correct?

MR. WOOFTER: Yes, Your Honor, in so many words. And it's not just because it was, you know, deemed filed or arguing about being filed. They retained Mr. Murphy to pursue arbitration on their behalf.

And just -- you know, it is a pedantic note that's not that important to these proceedings, but the AAA's own rules say that a process arbitrator can't be appointed until the arbitrations are filed and the claims have been paid for.

THE COURT: I understood that. So, the question for the Court is is there now a definitive number of clients that Mr. Murphy has?

MR. WOOFTER: There cannot be a definitive number. And this is -- to answer your question about the relief we're seeking, there can't be a definitive

number until April 15, because we accept that any of our current clients who opt to file a claim for the settlement should be deemed to have clearly and unequivocally shown that they don't want to continue with the arbitrations they hired Mr. Murphy to pursue.

THE COURT: Understood.

MR. WOOFTER: Uh-huh.

THE COURT: So, based upon the current number that have opted in, what is your best estimate as to how many clients Mr. Murphy has that have not opted in?

MR. WOOFTER: About eight and a half thousand.

THE COURT: Okay.

MR. JACOBSON: Because I think this -- I just want to make one point, just to make sure that counsel is aware and the Court is aware, then I'll happily sit down. So, with regard to the 11 objectors, if they remain objectors and don't opt out, and if the Court overrules their objection, they will not be able to arbitrate.

THE COURT: Uh-huh.

MR. JACOBSON: They will be done. They have to choose between objecting and staying in. We have already -- there are 10,000 opt outs, the vast majority of which are Mr. Murphy's website generated folks. We

are going to send that corrective communication from the -- not corrective. We're going to send that clarifying communication -- in fact, we've already submitted the order to Your Honor's chambers. So we'll send that communication, and then everybody who says no, I want to hire Mr. Murphy and opt out, they're out.

So, I -- I think that we're talking only about several thousand people who counsel is saying didn't submit an opt out form by the deadline. The Court has already denied Mr. Murphy's intervention motion.

THE COURT: Uh-huh.

MR. JACOBSON: And there is -- the settlement agreement is very clear that there can't be mass opt outs, so --

MR. WOOFTER: Your Honor, if I may just make my objection so I can explain our position, rather than him assuming what I am trying to say? I would appreciate being able to be heard.

THE COURT: I think counsel is trying to resolve the issue. But that's -- that's fine.

MR. WOOFTER: All this will become clear to him once I finish the presentation --

THE COURT: Okay.

MR. WOOFTER: -- and they can respond at that

point.

THE COURT: Go right ahead.

MR. WOOFTER: Again, since the outset of these proceedings, in our letters to the Court, in our intervention motion, in our filings with regard to the opt out campaign that was done thereafter, and now, our only purpose in being here has been to protect our clients' interests. We have objected that the opt out procedures designed by the parties were unduly onerous and designed to discourage opt outs, particularly Mr. Murphy's clients. Mr. Murphy further did his best to communicate with his original clients to ascertain whether they wanted to abandon their arbitrations they asked him to pursue, and participate in the class settlement. He e-mailed all of his clients, informed them of the settlement, and provided links to the settlement website, not just the settlement agreement.

He asked them to let him know if they wanted out of their retainer agreements with him, and to participate in the settlement. A handful said they wanted to do that, and he released them from their contracts.

He then asked that he be allowed to opt out the rest pursuant to his power of attorney with them. When the parties opposed that, in an abundance of

caution he also wrote to his original clients again and urged -- and urged them to send in opt out forms and provided them assistance in doing so.

Given all this, Mr. Murphy's original clients now fall into three categories. In the first category there are about 1,300 who have directed us to affirmatively opt them out of the settlement. Pursuant to this Court's recent orders we will be providing proof of those opt outs, along with proof of the other opt outs for our newly retained clients.

In the second category are the original clients who filed the claim with the settlement administrator. According to the parties 728 had filed claims with the settlement administrator at the time of the parties' filings. But the vast majority of Mr. Murphy's original clients fall into a third category that includes most of the objectors. These clients did not tell Mr. Murphy that they wanted to become part of the class and have not filed a claim, but also did not file an opt out form. And as I mentioned earlier, that's about 8,500 people.

The parties seemingly agree that the first group, those who filed opt out forms with Mr. Murphy's assistance have validly opted out. And we have agreed that the second group, those who filed claims with the

claims administrator by the deadline should be treated as part of the class.

The question then is what to do with this final group of clients. The parties argue that those over 8,000 clients should be deemed through silence to have decided to terminate the attorney-client relationship they have with Mr. Murphy and to forego the arbitrations they directed him to pursue.

We believe instead that those of our clients in the process arbitration, and we can provide further documentation of that to the Court, who have not filed the claim by the claims deadline should be excluded from the class. It is entirely a fiction to suggest that those clients would opt not to get anything out of the settlement in exchange for releasing their pending claims.

Again, this Court can resolve this in its discretion and avoid unnecessary appeals simply by ordering that Mr. Murphy's preexisting clients who have not filed a claim with the administrator by the end of the claim period are not bound by the settlement. If the Court resolves our objections in that manner w will walk away.

Now, I'll get into specifics of our objections, and particularly we raised five. First the

settlement unlawfully waives class members' arbitration rights without affirmative unambiguous consent required by the FAA and New Jersey Arbitration Act. Second, the settlement ignores intractable intra-class conflicts and render the named plaintiffs' claims atypical of the class and makes their representation of class members actively pursuing arbitration inadequate. Third, the settlement imposes unjustifiable barriers to opting out of the class. Fourth, the settlement is premised on a misleading inadequate class notice. And fifth, the settlement is unfair and unreasonable in other related aspects.

As to the NJA and FAA, the Appellate Division and Third Circuit have held that a person who signed an arbitration agreement cannot be hailed into court, or deprived of her right to arbitrate absent clear and convincing evidence that she has waived her arbitration rights. In this case that means the Court cannot infer that Mr. Murphy's arbitration clients have decided to abandon the arbitrations they hired him to pursue for them from the mere failure to respond to the class notice.

That mere silence cannot by any stretch of the imagination be considered clear and convincing evidence of an intent to waive arbitration rights,

particularly when the opt out requirements are burdensome, and the value of the claims are relatively small.

It is particularly implausible here because the result of neither opting out nor filing a claim by the deadline will be that the clients are presumed to have consented to waive their arbitration rights and release their claims against Verizon in exchange for exactly nothing.

That is also the precise reason the intra-class conflict dooms the settlement. As we have argued the class cannot include both members who are actively pursuing arbitration like our original clients, and those who are not. Unlike the class representatives our clients retained an attorney to pursue their claims in arbitration, and it is undisputed that he has presented those claims to the triple-A. Although the parties dispute, as we just talked about whether those claims should be deemed officially filed, everyone acknowledges that all of the claims are before a process arbitrator to decide that very question. But the precise status of those claims does not matter for purposes of this intra-class conflict.

The fact remains that Mr. Murphy's clients are pursuing arbitration and the class representatives

aren't.

The class representatives cannot waive our arbitration -- our clients' arbitration rights for them. The parties say that there have been a number of class settlements despite the presence of arbitration agreements like the one here, but they have not pointed to a single case that actually addressed whether that result is consistent with the FAA and NJAA, which appears to be an issue of first impression for this Court.

We can continue to litigate that question on appeal, but the question can also be avoided by carving out the class from the class any of our original clients who have not filed a claim by the deadline. We again agree that filing a claim constitutes sufficiently clear indication of consent to waive arbitration rights under the NJAA and FAA.

The pending mass arbitration is also why our original clients are objecting to the opt out procedures. Verizon entered an agreement with each of our clients, giving them the right to arbitrate their claims. They then retained Mr. Murphy to pursue arbitration against Verizon on their behalf.

Now, Verizon argues that to continue the process arbitration where their triple-A petitions are

pending, they were required to mail a physical opt out with an original signature at their own expense to the settlement administrator or be deemed already to have decided to release the claims since the opt out period is over.

As we pointed out this opt out regime was unduly burdensome, providing class members less time to opt out than is the norm, less time than was allowed to file a claim, and requiring paper opt outs when claims were allowed to be filed online.

The obvious purpose was to deter our opt outs, which is especially illegitimate in the context of a waiver of arbitration rights. This objection too can be resolved by the Court simply by carving out those clients in the process arbitration who don't -- who didn't file an Esposito settlement claim by April 15.

Finally, the class notice as we now know was unquestionably deficient, but our objections on this front can be set aside for our part if our original clients who did not file a claim are carved out of the release.

The notice does not even mention that class members have an alternative right to bilaterally arbitrate claims against Verizon. No one disputes that

opt outs have that right. Instead the parties have argued repeatedly that those of our clients who are not part of the settlement can arbitrate their claims pursuant to the agreement.

As we have noted, and no party has disputed, the agreement is merely voidable, even under Achey and MacClelland, such that it is up to our clients whether to avoid it. Yet the notice never mentions this alternative right. Nor does the notice adequately describe the release. In addition to the objections brought by Attorney Hoang, the parties have never explained why it is appropriate to describe the release by directing class members to the full settlement agreement where the intrepid class member would have to make it all the way to Page 29 to find the relevant language.

Most egregiously, the notice misled class members into thinking they could receive up to $100 for their claims when it was quickly apparent to the parties at least this would be impossible.

Whether intentional or not, there should be zero question that the language in the release was not sufficient to give class members enough information to make an informed decision about whether to file a claim in exchange for a broad release or to opt out.

But this Court doesn't need to take our word for it. It needs only to look to the pro se objections to see the class was misled. For example, Objector T. McGregory expressed, quote, "Extreme dissatisfaction with the $100 distribution I will receive." A. Aurulian (phonetic) objected that, quote, "A settlement payment of $100 will not cover my loss." C. Mobely (phonetic) stated that, quote, "A mere $100 is not enough." C. Perkins objected that, quote, "The lawyers make big bucks while the injured customers get $100." Dr. McAllister objected, quote, "To this $100 claim amount. K. Jeffries wrote, quote, "I am expressing the views contained herein solely because I, as a customer of Verizon Wireless who stands to benefit in the amount of $100 if the settlement is allowed to proceed, don't believe the entrants of the settlement class are adequately protected by the proposed settlement." Perhaps the most -- there are other examples, but perhaps the most illustrative was an objection by T. Jessup (phonetic), who was trying to file a claim and wants the settlement and says, quote, "The screen would not accept my selection, which was a $100 Mastercard as opposed to Venmo or other electronic methods."

These examples make clear that the class could not reasonably be expected to make an informed

decision on whether to file a claim for benefits because the parties never gave them enough information at the outset to weigh whether the -- to file a claim or opt out.

It is no excuse that the parties disbelieved that only about one-and-a-half percent of the class would file a claim. Those pro se objectors, the most active and intrepid of the class who have reviewed this agreement were only ever told their recoveries would be capped at $100, and that the parties expected very few people to file a claim.

A. Williams, another pro se objector, put it in stark terms. Quote -- this whole thing is a quote. "As a member of the public, a long-time Verizon customer, and a member of this class action settlement, I was at first excited to realize I was going to be compensated up to $100 for the junk fees I have been charged by defendant. Then I read the motion for the attorneys' fees and costs and realized this was not a true attempt to hold a large corporation responsible. It was a well-organized and litigated plan to receive an incredibly large sum of money from the corporation on the backs of millions of individual customers. On Page 6 of the motion claimants can realistically expect $11.80 to $18.99 as their share, a laughable amount for

any claimant that's been a loyal customer for years and unknowingly being taken advantage of." End quote.

We are not saying that this Court can't approve this settlement eventually under the fairness factors that they're required. What we're saying is that the notice, it can only do so at least at a minimum if a curative notice is sent to the class to say, hey, that original claim you filed where you thought you could get up to $100, it is now at most worth about $18.99.

And on that point I just want to pause on what the -- the motion that was just filed for this Court's consideration. We would ask that we be heard on that at a date in the future because we have not -- you know, we also received the administrator's filing late lat night and have not been able to compare it to our current lists of (indiscernible). In fact, we still haven't submitted to this Court pursuant to its order two days ago, which is forthcoming, to be filed on Monday of the proof of opt outs, proof of retainers, and list the Court has asked for.

And at a minimum, especially in light of what I just said, I think that the parties should be required, if they ask those who filed both a claim and an opt out, whether they wish to remain in the class,

that they should be told that, oh, by the way, it's not $100, the max you could get is $18.99. And in fact, we now know that's even -- it's even less than that.

And if not, that we at least should be able to go back to our clients and inform them of that ourself. Thank you, Your Honor

THE COURT: Thank you. Who wishes to be heard next? Is there anyone else who has timely filed an objection present in the courtroom that wishes to be heard? In the courtroom. I want to take care of everyone in the courtroom first. All right.

So now we're going to go online. Mr. Weinstein, you have been waiting, so we'll begin with you. I don't know if we have to unmute you, or whether you can unmute yourself. There you go.

MR. WEINSTEIN: Thank you, Your Honor.

THE COURT: And for the record, your name is? And spell your last name.

MR. WEINSTEIN: Certainly. My name is William Weinstein, and my last name is spelled W-e-i-n-s-t-e-i-n, and I'm objecting both on behalf of myself and my wife (indiscernible).

A class action settlement has to be fair and reasonable and adequate to the class as a whole. In assessing that the comparison would be the relevant --

would be the relative benefits to the class versus the benefits to the defendants. In this case the benefit to the defendant is radically disproportionate to the benefits to the class as a whole. There are four factors that are -- are integrated into that analysis, and the first factor is the size of the class in this case. The second factor is the amount of the settlement. The third factor is the use of the claim form in this settlement. And the fourth factor is the method of allocation, which ultimately determines how much of a benefit each -- each class member who files a claim is going to get.

The size of this class is 58 million class members, according to plaintiffs and defendants. That is an extraordinarily large class size. The amount of the settlement, which is $100 million, is less than one percent of the total damages of $15 billion. And I know a point has been made of the fact that this is the largest consumer settlement in New Jersey, in other courts, et cetera, et cetera, but $15 billion in damages is an immense figure. Just for context and comparison, the Exxon Valdez settlement was a billion dollars plus $500 million in punitives. Sam Bankman-Fried and the recent FTX scam, $10 billion. Now, Bernie Madoff was $20 billion, although they recovered

almost $18 billion to give back to the class.

Here we've got $15 billion in damages, and we're ending up with a settlement amount of $100 million.

The use of the claim -- and aside from the $15 billion, for example in New York, because we have a 914 area code, the general business law claim that was asserted in the complaint under 349 allows $50 or treble damages, whichever is greater, and also $1,000 in penalties or punitive damages if the violation is willful under Section 350. The advertising claim that was asserted is Count 39 of the complaint. You're entitled to $500 in damages. And our calculations and our objection were strictly based on the amount of administrative charges filed -- sorry, charged.

The use of the claim form in this case is wholly unnecessary and results in a disproportionate benefit to the defendants and a lack of adequate benefit to all of the members of the class as a whole.

In our objection we referenced an FTC report on class actions from 2019 that stated that in some cases the process for compensation can be fairly simple. The class may be well defined and well known, especially where defendants have clear records with customer contact information and purchase details. In

those instances distribution of the award can be straightforward. Case administrators can simply send checks to the affected consumers.

There's no dispute here that Verizon has complete records of the total dollar amounts of the administrative charges for each member of the class and for each customer, and for each line. I know plaintiffs' counsel mentioned something about using an average number of lines because lines come and go, but the fact is that Verizon has the precise data that it would need to calculate how much administrative charges were charged with respect to each line, and with respect to each customer, and with respect to each class member.

In a situation like that use of the claim form can do nothing more than limit the amount of people who receive any benefits at all, and maximize the number of people who receive no benefits at all, and that is proved out in this case. Even though there were almost $5 million claims filed to date there are still 53 million class members who are going to receive nothing under the settlement when there's no reason for them to receive nothing. Credits could be posted to their accounts automatically. It doesn't require any affirmative action on their parts.

Now, what's interesting is that the response of -- well, the response of Verizon is that the claim process was made easy to maximize the number of claims. Of course that ignores the fact that there were 53 million class (indiscernible) claims were filed. But I think that if you look at plaintiffs' counsel's response to this objection I think that is enlightening. Plaintiffs' counsel says an automatic settlement payment to each class member without any prerequisite filing of a claim form would significantly lower the payments to class members and would further change the entire structure of the settlement. That's exactly our point.

I think what plaintiffs' counsel is admitting is that if there was a claim form used that this settlement would be inadequate because the amount that's received by class members on the whole under this particular $100 million settlement -- settlement fund, which of course is reduced by attorney's fees, et cetera, would result in people receiving a very small amount of -- of compensation.

The other thing -- the other factor that fits into this is the method of allocation. And we -- we noted that, for example, in our case we had four lines, and administrative charges charged through the entire

period, more than $700 in claims. The problem is that a cap of $100 was arbitrarily imposed in order to basically render the number of lines that anybody has irrelevant. Each person with one line gets the same amount as anybody who gets -- who has four lines.

The allocation though is critical to how plaintiffs' counsel and Verizon calculated the amount of the settlement fund that would theoretically satisfy the people who they could anticipate might file claims, the ten percent or less of the people in the class who might file claims. And I believe that the figure of one percent to three percent was used. Clearly if only one percent of the 58 million class members would file claims, then $58 million would resolve on a $100 to each class member, subject to the variability of how many months somebody paid the administrative charge. That's a formula that would satisfy that requirement. That's a formula that would satisfy the projection the plaintiffs' counsel used.

However, plaintiffs' counsel also came up with -- also said that they could expect a one percent to three percent of those rates. At three percent the amount of the damages is only $33 that could be a maximum claim, and of course as the number goes up the amount that any class member is going to receive who

files a claim is going to go down.

With respect to the notice, there was no range of the damages given. The other objectors have mentioned the notice. I just point out again that plaintiffs' counsel and Verizon's counsel have -- they haven't denied it, in fact have admitted that they were anticipating conservatively a one to three percent range, therefore by definition there was a reasonable chance that the most somebody would get would be $33 filing $100 claim.

With respect to the release, we objected on the grounds that there was no date -- no end date included, even though there has been in many other settlements, certainly the ones that I have participated in. And when reading the responses of Verizon and plaintiffs' counsel, I realized that what they're saying is is that nobody can ever bring an administrative charge claim ever in the future unless Verizon somehow changes its conduct.

So what that basically means is that -- is that the class action settlement isn't requiring any change in the conduct. It's allowing them to continue the exact same conduct that they are continuing. If that's the case, then the settlement is really illusory. Yes, there are five million people who may

get about $11 or more, but nothing has changed. The entire basis for the lawsuit still continues to go on forever. If a date was imposed to end the effectiveness of the release, then that would have an impact on how Verizon continues to conduct its business.

As it is, not only the class but all future customers are not really protected from Verizon's conduct.

With respect to the fees that the -- that the attorneys' fees, I know the request is based on how much time was spent in the arbitrations, it's -- it's debatable that they needed 13,000 arbitration clients in order to have the arbitration (indiscernible) held to be unenforceable. The MacClelland decision and the Achey (phonetic) decision, neither of them really relied on the number of named plaintiffs in the case. They relied on the fact that plaintiffs' counsel had estimated 134 to 157 years of arbitrations only with respect to 2,000 and something clients in each of those cases.

I know that -- I haven't seen anything that insulates a request for attorneys' fees on a percentage basis from a requirement that the lodestar be reviewed to determine the overall reasonableness of the percent

that's being awarded or requested.

And in this case there's too little information about what it is that really benefitted the class versus what it is that was incurred strictly in the strategy of mass arbitration to bring Verizon to the settlement table.

Finally, with respect to the incentive fees, the -- the $3,500 is perhaps reasonable in a case where there's active participation. Here we've got over $400,000 in incentive fees that are being awarded to 129 plaintiffs, according to plaintiffs' counsel in many instances just for providing the documentation regarding their charges. There isn't really any active -- there's no evidence of any active participation by a number of these class representatives for whom the incentive fees are being requested. Certainly even the 25 in the MacClelland case and the 28 I believe in the Achey case, how many of them actually did anything beyond providing documents is also unclear. 129 incentive fees at $3,500 apiece is something that I have never seen. It's extraordinary, in my opinion.

So, to sum up, what we've got is we've got ten percent of 58 million people receiving ten percent of the amount of damages that were described in the notice. You've got Verizon receiving releases with

respect to let's say 14 -- 14 billion -- $14.9 billion of claims in exchange for paying $100 million. And it just doesn't provide a kind of fair, adequate and reasonable benefit to the classes of all -- classes of all who is going to receive. And so when the vast majority of the classes of all is going to receive zero from the settlement and still be subjected to the ongoing conduct of Verizon that is the subject of the releases and all of the claims in this case. Thank you, Your Honor.

THE COURT: Thank you, Mr. Weinstein. Who is next online?

COURT CLERK: Mr. Zimmermann.

THE COURT: How do you pronounce the last name?

COURT CLERK: Zimmermann.

THE COURT: Mr. Zimmermann? You have to unmute yourself, Mr. Zimmermann.

MR. ZIMMERMANN: Yes. Can you hear me now?

THE COURT: Yes, sir. Just spell -- state your name and spell your last name for the record, please?

MR. ZIMMERMANN: Sure. Scott Zimmerman, Z-i-——e-r-m-a-n-n. Thank you for allowing me to be heard. I'm a conscientious objector. I say that because I am

not seeking anything at all for myself, and not to extract anything from the settlement. I objected because I think there's good grounds to object, but also I wanted to give the Court the perspective of a plaintiffs' class action lawyer, which I did almost exclusively for the last portion of my practice.

I just don't think that a third of $100 million settlement is fair. Plaintiffs' counsel should be compensated for bringing in the (indiscernible), that -- (indiscernible), Judge. You've got to look at it this way. The attorney time devoted to the case should be devoted primarily to liability, and that amount of effort is not really dependent on the amount of damages.

The amount of extra time required to deal with damages is minimal, yet plaintiffs' counsel is seeking about the highest amount possible for the first million, second ten million, 50 million, and 100 million, the same amount of fees, a third, is -- should not be given to the entire (indiscernible) of the settlement.

I did make reference to empirical studies that were done of some called mega settlements, and the -- the sweet spot in those is 20, 22 percent, to the extent that (indiscernible) counsel has (indiscernible)

from (indiscernible) giving more money or allowing the (indiscernible) fees in greater amount in mega cases should be considered to be outlier cases. It sort of cherry-picked from it.

I reiterate for the Court's reading, which I'm sure already has been done, the other points. I turn my attention to the incentive awards, and I concur with the prior statements made. You know, there's been no factual basis identified to award $3,500. And in fact, to the extent that any of the named plaintiffs are class (indiscernible), actually actively participated, they are really being severely underpaid, when you just make a one-size-fits-all award of $3,500. And as said previously by others, it comes out to a lot of money.

You know, so, to the extent that I don't know what the Court will do in this because of the absence of a record of what the contributions were made, you know, but, you know, is it worth more than $1,000 for lending your name to a lawsuit? Particularly in comparison to what the class members are going to get. Usually courts think about a ratio between the award of the incentive award, and what class members get.

And, you know, that (indiscernible) I know, I'm just doing this in a vacuum what seemed to be the

outer limit.

I will close by saying that I have not raised an objection to the settlement itself because quite frankly on the outside looking in I just don't know enough to assess the -- those things. My failure to object the settlement itself should not be viewed as taking any side on that. I'm just neutral. And with that, I conclude.

THE COURT: Thank you, Mr. Zimmermann.

Is there anyone else online? No, Okay. So it's 12:15. We'll take the lunch break now, come back at 1:35. My program runs until 1:30. We'll see you at 1:35. At that point in time we'll hear the responses to the objections. And the Court has some concerns based upon what's been stated here today, and looks forward to the response of counsel. Thank you.

For those of you online, if you wish to return, we'll be back on at 1:35 for our break. Thank you. This courtroom will be locked during the break, so if you wish to leave anything here, non-valuables, you may. Okay?

COURT CLERK: And we're off the record.

(Luncheon recess from 12:15:09 to 1:41:26)

(New transcriber commenced at this point)

THE COURT: We are now back on the record. I

want thank everyone for being here today, whether you presented before the Court or are here as an observer. And I want to thank those online as well that have been with us today and to present concerns to the court regarding approval of the settlement. And there were some very interesting arguments that were raised by counsel that -- and by individuals that appear before the Court today that I would like counsel to address. So I guess I'll begin with plaintiffs.

MR. DENITTIS: Thank you, your Honor. So the first objection that I would like to respond to is by the objection by Mr. Hoang. So from its inception there's many things that Mr. Hoang argued that are just factually and legally just absolutely incorrect, just wrong.

First of all, this argument that the Court in MacClelland, Judge Chen, invalidated the entire Verizon customer agreement and not the arb clause is just flat out wrong. It's a published opinion, Your Honor can read it. In fact, when we argued that case before Judge Chen, we were -- we wanted to argue a couple portions of the Verizon agreement that were unenforceable. And he even instructed us, "Well, let's just stick to the arb clause." It was just the arb clause. No one -- no court has invalidated the entire

Verizon agreement. That's just not true. So I don't know how else to respond to that statement.

Secondly, the statement that we got no practice changes and that there's been no injunctive relief and that people are going be stuck not being able to go after Verizon ever again for all this illegal conduct that they're still doing is just not wrong. And I'll tell you why, okay. One is --

THE COURT: Is there a document here that points me to the language?

MR. DENITTIS: It will. So in -- so it's in -- there's a couple of things. It's in -- it's on page seven of my omnibus motion.

THE COURT: All right. Let's just find your omnibus motion.

MR. DENITTIS: The response.

THE COURT: Oh, I found it.

MR. DENITTIS: And there's some items --

THE COURT: I found plaintiff's omnibus opposition.

MR. DENITTIS: Yes.

THE COURT: But let's find the motions, just give me --

MR. DENITTIS: Well, it's our opposition, excuse me.

THE COURT: Okay. And where do I find it?

MR. DENITTIS: So on Page 7. So there's a bunch of small paragraphs that are in that section there talking about what changes were made by Verizon during the course of this litigation. Some were part of the settlement agreement that's attached as Exhibit G -- H, excuse me, which I'll go over in a minute. And then others are just changes that they made as a result of our litigation. So the first thing is, the arbitration clause that we litigated over that we had the courts find to be unenforceable has been changed. And I'm happy to submit, if need be, a new arbitration agreement to Your Honor. The new arbitration agreement removed the following clauses that we challenged. One, the bellwether clause has been changed.

THE COURT: Okay. Do I have the new arbitration agreement here?

MR. DENITTIS: You don't have that in front of you, Your Honor.

THE COURT: So you'll provide that to the Court?

MR. DENITTIS: I can provide that to you, yes.

THE COURT: Okay.

MR. DENITTIS: But that new --

THE COURT: Continue with your presentation.

MR. DENITTIS: Okay. That arbitration agreement, which was changed four times during our litigation because of the arguments we made, made the following changes that we articulate and are argued:

One, yes, we challenged the bellwether provision. And the bellwether provision said if any attorney is represented by more than 25 people, those people -- those people represented by that attorney would need to go with 10 claims at a time and then go to mediation. If that doesn't settle, 10 claims at a time, go to mediation and then so forth and so on with no end date. They could be arbitrated in perpetuity and make people be stuck in arbitration for -- until all the claims are arbitrated.

THE COURT: And just by way of background, in the various litigations that were filed, --

MR. DENITTIS: Yes.

THE COURT: -- was it the same arbitration provision that we are talking about?

MR. DENITTIS: Yes.

THE COURT: So there's no changes in language based upon one jurisdiction as opposed to another?

MR. DENITTIS: No, same across the country.

THE COURT: Okay.

MR. DENITTIS: The change to the bellwether now is, 50 people have to arbitrate and then mediate. And then 80 people arbitrate, then mediate. And then after two rounds of arbitrating and mediating, they could opt out of the arb clause and proceed in court.

So people after attempting the bellwether process could proceed in court against Verizon, if they wish, now the way the current agreement stands, or before they were locked into arbitration forever. That's a huge distinction.

Second distinction is, Verizon had a clause in their arbitration clause saying, you must put us on notice within 180 days of realizing your claim or be barred. That clause has been removed from our case. There was a limitation on punitive damages. That has been removed and now says, if punitive damages are not permitted in a specific state they're not allowed, but you're permitted to pursue punitive damages. That's now no longer in the agreement.

THE COURT: Does that new agreement also recognize that some states also may permit punitives, but have a cap on punitives?

MR. DENITTIS: What it just says is, as allowable by law.

THE COURT: Okay.

MR. DENITTIS: So the other clause is, we had challenged an exculpatory clause that said that people cannot rely on verbal testimony in bringing their claims against Verizon. They must only rely on the documents. That has been taken out of the agreement because of our efforts. So that that's how the arb clause has changed. So I guess the first -- Mr. Hoang made it sound like people are still stuck with this arb clause. They're not. It's considerably changed and it was changed because of our efforts.

The second really big change because of our efforts, we changed on the bill -- no, let me kind of back up. Our theory in our case was that this administrative charge was not adequately disclosed, okay. And then when it was first disclosed on the first bill, they lied about it.

Okay. So let's talk about the disclosures as to the inadequate disclosure. As a result of our case and as part of Exhibit H to our settlement agreement, the practice changes are they're now disclosing the fee in their customer agreement expressly and also on their website, which was not done before, okay. Those are practice changes.

Another big practice change, which was a result of our case, which if all these practice changes

-- you know, we wouldn't have brought our case if these were not present. So this other -- the argument that they lied on the bill, they lied on the bill because they said surcharges, which an administrative charge was lumped under, are to reimburse Verizon for costs imposed by local, state and federal governments. That was on the front page of their bill. It was like highlighted in our complaint. They first in the first two weeks after we filed our cases, they put it to the back of their bill. And then about two or three months later, they altogether removed it.

So that's really important for the Court to understand. Those are the facts our case was based on. Like, so this whole argument that somehow what Verizon was doing was going to go on in perpetuity and that all these people were being screwed over by us because we're locking them into this settlement agreement is just not true. Frankly, sitting here it's upsetting honestly because it's just not -- it's not an accurate statement.

And what the Court has to understand is, the fee in itself is not illegal. So as long as wireless carrier adequately discloses a fee, honestly discloses a fee, they could charge whatever they want. So that was never our case. So the fact that Verizon is still

charging an administrative charge and the fact that some class members are upset about it, hey, I'm with you.

You know, President Biden has proposed instituting a Junk Fee law to just stop fees altogether. Until that's passed, this is the best we've got. So that's really important to understand in looking at the release that I want talk about and this whole business about this being an illegal settlement agreement under McGill. If you understand those parameters that I just explained, everything else sort of falls into place about some of these legal arguments.

So let's talk about the release. There's all this business how people are giving up all these future claims forever and we plagiarized from Lieff Cabraser on this settlement agreement. Mr. Hoang failed to tell the Court, I don't know if he did it purposefully or just doesn't understand, Mr. Hattis was Lieff Cabraser's co-counsel in Roberts v. AT&T and Vianu v. AT&T and helped draft that settlement agreement. So that's number one.

Number Two, we did not draft this settlement agreement in this case. Verizon drafted it and sent it to us. And why did it look similar to Vianu? Not

because I'm trying to breach some fiduciary duty. It's because Verizon is AT&T, they're two major competitors. It was really important to them that this settlement agreement was similar. Because, of course, their GC is not going to say, how come we're agreeing to this and they didn't?

That's a real issue in these big cases. So they drafted it, we improved it. This issue about the release not having an end date, I've -- and I'll represent to this Court, I've been leader/co-lead counsel in 300 class actions. I have all sorts of settlement agreements. Do I have some with an explicit end date? Yes. While this doesn't have an explicit end date in the release, there is an end date. And I'll tell you what it is, it's November 8th, 2023. That's the end of the class period. And that --

THE COURT: Which is specified --

MR. DENITTIS: In that --

THE COURT: -- very clearly in the class that's being potentially certified.

MR. DENITTIS: Exactly.

THE COURT: And for the record, "All current and former individual consumer account holders in the United States (based on account holder's last known billing address) who received postpaid wireless or data

services from Verizon and who were charged and paid an administrative charge and/or an administrative and Telco recovery charge between January 01, 2016 and November 8th, 2023."

MR. DENITTIS: Thank you.

THE COURT: Right. And for the benefit of those that are not familiar with courts and documents that are filed in courts, more often than not these settlement agreements become part of a public record. And so to use the word plagiarism is offensive to the Court. The Court did not stop it; however, is addressing it now.

MR. DENITTIS: Thank you, Your Honor.

THE COURT: And so the Court would understand how settlement agreements that have been essentially approved by courts could be utilized again.

MR. DENITTIS: Exactly.

THE COURT: And also not speaking on behalf of Verizon, but certainly understands that defendant's corporations or individual plaintiffs, why is so and so getting something that is not in my agreement? You know, I want at least the same, right, if not more. So let's move on from that.

MR. DENITTIS: Okay. Thank you, Your Honor. So just to suffice it to say that the Vianu court, and

Mr. Hoang is right that's almost a virtually identical agreement, was faced with this same objection by an objector. And Judge Chen said, "No, this does not release future claims." It's clear the practice changes have changed and (indiscernible) administrative charges of what was alleged in the complaint. So on that, that's really all I need to say about that.

As to this settlement, so there was two arguments about this McGill rule. And I just want to digress for a moment and tell Your Honor a little bit about it because I know you don't do -- I don't -- maybe you do know, I don't want to insult the Court, but I don't think you know about the McGill rule in California.

What the McGill rule in California says is, if an arbitration agreement has a -- says you cannot pursue claims in court, you must pursue all class action -- class action claims are waived and must be pursued in arbitration and this includes claims for public injunctive relief, if a class action waiver provision in California has that language, courts in California say that that makes a class action waiver unenforceable, okay?

Mr. Hoang is right, that language, that part of the language was in our case and was in these two

AT&T cases that he talks about. And I want point this out because he makes it sound like the 9th Circuit appeal in MacClelland was going be a slam dunk because of what happened in those two AT&T cases, but he's wrong and there's a big reason why he's wrong.

In the AT&T cases, they expressly said it was the court's decision to determine if the arbitration agreement was enforceable, okay. In Verizon, the Verizon court delegated it to the arbitrator. I'm sorry, the Verizon agreement delegated it to the arbitrator to decide that issue, as well as gave the arbitrator the ability to sever an unlawful clause. So it still goes to arbitration.

Why is that a big deal? Well, the big issue in the appeal was that Judge Chen, who gave us a great ruling as plaintiffs, should've never decided the issue and that the argument should have been, Number One, decided by an arbitrator. And then even if an arbitrator did decide it, you could easily just sever that clause and still send the case to arbitration. That was not an issue in AT&T. That is a huge issue for someone to come into this court and say that was a slam dunk either is misleading the Court or just doesn't know the facts of this case. So, again, sitting here is very frustrating to hear that. So that

addresses that.

Plus, there's also an issue, in AT&T there was what's considered -- what's called a poison pill. What that means is, some arbitration agreements which AT&T said is if a court finds this agreement violates McGill, the whole arbitration clause is invalid. Because courts are like, you know, we don't want to -- we don't want to have a mass arb. Here, it didn't have that language. So a court could sever this bad language and still have the arbitration move forward. And the main thrust -- because, look, these clauses in this agreement, no offense to Verizon, were horrible, they were unconscionable.

But we were concerned in the 9th Circuit appeal we may not even get to the thrust of that argument because the court could just say, "We're sorry under precedent of the 9th Circuit," and there are cases that are divided on this in the 9th Circuit, "We're going send this to the arbitrator and delegate it to the arbitrator." This really should have been decided by Judge Chen. And the 9th Circuit has two lines of cases that are directly inapposite on this. And Judge Chen followed one set of 9th Circuit cases and other courts could follow another. So that was a real risk. So to come up here and say that's not a

risk here, again, it's just not accurate.

This other business about the McGill rule that Mr. Hoang tries to argue is that this, our settlement agreement, somehow invalidates -- is unenforceable due to the McGill case for California people. That's only if you buy into his argument that this release bars future claims. And that only buys into his argument if you don't recognize that there was changes to the release, but there was changes to the release that make that not true. And this limits this case -- this settlement agreement does not bar future claims.

If Mr. Hoang wants to venture out and attempt to try a class action, which he hasn't, and file a class action case and bring a claim that we did, again challenging the clause again, the fee again, it's still being charged, knock yourself out, good luck, you know, have at it. But to say that this would prevent that claim, he's wrong. And he could even hear from Verizon. Verizon will comment on that as well.

Something else that Mr. Hoang does that was troubling is he misled the Court looking at our expenses, how we didn't do any legal research. First of all, I have a Lexis account. It's a flat charge. I don't charge any client ever for research. So to try

to insinuate we did no legal research on this case because we didn't charge for it in our expenses that we've put before Court is just misleading. It's just flat out wrong. I mean, we did a ton of research on this case.

Again, the misconception by Hoang, by MR Zimmerman, by Mr. Weinstein we are not doing an hourly fee petition here. Our whole theory on our argument for fees is based on common benefit. It's a common fund that's been recognized by the Supreme Court. I don't want to go ad nauseam in citing all the cases, it's in our fee briefs. And we have literally three pages of cites in our initial fee brief. We also cite cases in our omnibus brief on Page -- I'm sorry, I could tell the -- I could tell what pages. On Page 9, 10 and 11 of our fee brief we have three pages of cases just talking about how fees in the 3rd Circuit are between 30 and 35 percent and we're asking for 33.

And then this idea -- the only reason we put forth our time, and I'll reiterate this again, I won't belabor it, we just did it because of -- look, we're not -- it's a big fee, I understand, and we wanted to put forth to the Court that, look, we're not getting some windfall. This whole business also by Mr. Hoang that somehow there's a conflict between the people in

arbitration and people in court, it really falls for a bunch of reasons.

So we filed the arbitrations with the intent of arbitrating them, okay. We did not know that people like Mr. Murphy or others were going actually be in arbitration also and lose those claims. We felt we could win those claims. We had every intention of winning those claims. However, those people, those arbitration clients that we're representing are faring much better from this settlement than we believe if they would've stayed in arbitration. We had every intention to arbitrate them, but facts of a case change. Real litigators know that. When you litigate a case, facts come in, you make changes to your strategy. When we saw that we were like, well, if we could get a class settlement to include the arbitration people, that might be their best bet. So that's no conflict, they benefitted. So, again, that holds nowhere.

I think that might be all I have for Mr. Hoang. So in sum, I just think that you have to -- Mr. Hoang, I don't know him. Maybe he has some real issues that he thought warranted discussion. I think some of these could have just been resolved with a phone call and a counsel-to-counsel discussion. It sounds like he

has intentions to appeal. I really think if he does that with the clarifications that we're talking about, if he makes these factual and legal inaccuracies to another court, you know, I think he -- that some of them might borderline being misrepresentations because they're just not true. So that's all I have to say about Mr. Hoang.

THE COURT: Before you move on --

MR. DENITTIS: Yes.

THE COURT: -- to the next set, I just want turn to Verizon counsel whether there was anything in relation to Mr. Hoang's presentation that you wanted to speak to the Court about.

MR. JACOBSON: I think I would ask the Court first if the Court had any questions that I would like -- it would like me to answer before I do that because I want make sure I've responded to the Court's concerns.

THE COURT: Well, I do have a question on counsel fees, but we'll come to that later --

MR. DENITTIS: Okay.

THE COURT: -- because I think a number of the objectors had a --

MR. DENITTIS: Yes.

THE COURT: I may have after I look at the

new arbitration language, and so I just want to be assured that everything is covered. So what you indicated verbally today, if in writing both sides could just make a presentation on that. That's all that I have, but I turn the floor now to you.

MR. JACOBSON: Sure, sure. So I mean with regard to the customer agreement and the arbitration provisions, I mean it will surprise the Court not at all to hear that we have a disagreement about the validity of the arbitration clause that Mr. DeNittis challenged. And there were issues before the 9th Circuit in the New Jersey Supreme Court, that I think that even the old agreement would've passed muster.

It doesn't matter, we're well beyond that now. And I think Mr. DeNittis was accurate in his description of the current agreement, which we'll submit to the Court forthwith. And so that's -- I think Mr. DeNittis is correct that the facts on the ground have changed rather dramatically. And I also agree with Mr. DeNittis with regard to the release and the definition of the class, so I think we're fine on that.

Unless the Court has anymore questions for me about Mr. Hoang's objection because I agree with Mr. DeNittis' presentation, I'll save my time for

responding to Mr. Murphy because we've got a number of issues with regard to the opt-outs.

THE COURT: That's fine.

MR. JACOBSON: Thank you.

MR. DENITTIS: Thank you, Your Honor. And just one point I want make to Mr. Hoang's objection that wasn't really emphasized a lot in court, but it was a lot in his papers, was this idea that there's a 25 percent benchmark in California and that somehow California folks are at a disadvantage if Your Honor would issue a third fee here.

I would just like to point out on Page 36 of our omnibus response, California federal courts have awarded in excess of 25 percent in class action settlements. Often, even in mega fund cases, In re Lidoderm Anti-Trust Litigation, 2018 West Law 4620695, Northern District of California 2018, fee award of one-third within range of awards in this circuit, granting one-third fee on $105 million settlement fund.

Also, the 9th Circuit approval In re Pacific Enterprises Security Litigation, 9th Circuit 1995, affirming a 33 percent fee award on a common fund.

And then In re TFT-LCD Indirect Purchaser Anti-Trust Litigation, again, Northern District California 2013, a 30 percent fee awarded in that case

on a $1.8 billion fund.

So, you know, I just want dispel this somewhat fallacy. It's obviously in Your Honor's discretion, there's no question, right, but there's a lot of authority that -- like, we're not breaching some fiduciary duty. We're not trying to get a windfall. I mean we worked really hard and so that's where we're coming from there, that's all it is.

So to go on to some of the other objectors. So let's talk about Mr. Murphy. So some of the objection arguments that have been raised by Mr. Murphy's group -- and when I say "Mr. Murphy," I don't mean any disrespect to Mr. Woofter, his co-counsel. The group, they make the argument that -- again, they're revisiting some of the arguments that were made at the intervention motion. And, you know, we think again some of those don't hold order. None of them hold order here for a bunch of reasons.

One, you know, they're attacking the ability to opt out again. And this whole business of like, well we have some people who didn't opt out. We think that the fault rule should be being that they signed an arbitration agreement, it should be that they have to go to arbitration unless they expressly said they don't want to go to arbitration. There's a lot of problems

with that finding. One is, here in Achey the arbitration agreement has been deemed to not even have mutual assent. Because our Appellate Division said there are so many unconscionable provisions in this agreement that they didn't even have mutual assent to go to arbitration. So under that agreement there is no arbitration agreement right now that for his folks, that's Number One.

Number Two, courts have rejected that argument. And if you look to when we cite this in our papers, it's TikTok litigation. It's from, and I just want put it on the record, 565 F.Supp.3d. 1076 Northern District of Illinois (2021) in a big TikTok settlement. A group of objectors came in and made that identical argument saying, "Oh, you can't settle because there's an arb clause. And, basically, you can't settle people's claims with an arbitration clause because they chose arbitration first." The court said no, and we cited it in our papers, that, you know, you could settle a class action even if there's an arbitration clause out there. If the Court were to deem that there even is one here, while there's not.

Third, it belies reality. I mean, being a consumer lawyer we do consumer cases all the time and I talk to people that come into my office before every

case. My first question is, did you sign an arb cause? And 95 percent of the time they're like, what is that? And then I'm like, well, do you have an agreement? Well, I don't know. What did you buy online? Oh, let me check. And then the fact that matter is, Your Honor, people don't even know they signed them.

So to try to say that these people in Verizon, these 58 million people all knowingly chose, "If I'm bringing a claim against Verizon I want to be in arbitration," that's just not reality. I mean, if you do consumer work, that is just not a reality. So for that reason, I think all of those arguments fail. I think the argument that somehow the notice procedure here was not appropriate, was inappropriate because they weren't allowed to mass opt out, I think --

THE COURT: Well, the Court accepted ultimately, subject to --

MR. DENITTIS: Exactly.

THE COURT: -- this is a client regardless, is accepting those opt-outs.

MR. DENITTIS: That's my -- that's the point I was going to make. So the Court accepted the opt-outs. The only thing the Court didn't do was allow a mass opt-out, which they're trying to reargue again, essentially. And I --

THE COURT: Talk to me, though, about the one issue that was raised was that there was an inadequate time period in order to opt out.

MR. DENITTIS: So --

THE COURT: Because that was raised in argument today.

MR. DENITTIS: So there are -- there's a couple -- there's a few arguments to that. First of all, the only people that have made that argument has been their group, no other class member out of the 58 other people.

THE COURT: All right. Put that --

MR. DENITTIS: I'm just saying that, but I just want to make that point. And the reason I make that point is, case law says 35 days to opt out is enough time, and that's what it was here. That's case law, right, and that's what -- Your Honor, it was 35 days, okay?

MR HATTIS: Oh, and I'm sorry, just to say one thing on that.

THE COURT: For the record your name is?

MR HATTIS: So my name is Dan Hattis, H-A-T-T-I-S, for plaintiffs. So I do a lot of practice in the 9th Circuit in the Northern District, which is where like the MacClelland case is, and they have

guidelines in terms of the -- of how much time you get to opt out.

THE COURT: As we do here.

MR. HATTIS: And they're actually the exact number that we have in this case. So that's actually the default in the Northern District of California.

THE COURT: Okay.

MR. DENITTIS: Again, in a lot of ways I hate to, in a sense, fight with them. Because, look, I -- if they want to litigate and take cases to arbitration, go have at it. I really, you know, good for them. The point is, the thing is, it's kind of disingenuous that they didn't have enough time. And we talked about this in our intervention motion. We went through a class action mediation and they were there and they knew we were negotiating a class action settlement. And they nicely said, you know, "We want just continue with our cases. We don't want to have -- don't want anything to do with it."

We asked them how many people they had a few times before then during that, and the number always changed. So they knew we were negotiating. They could have easily just said, here's our list, here's our name of our people, first and last name, which they don't have all the time in their lists. This is their

address, this is their account number, whatever the case may be. We want this group opted out. I would've gone to bat to opt them out, right? That didn't happen.

Then they found out in November, well before all the other class members, they found out in November that we had a settlement. So from November, they knew November 15th because it was announced on the 9th Circuit that argument was going be postponed because there's been a settlement. They knew then because they called us. And from that point on until the opt-out date, they could've opted people out.

We had a call with them. I'm like, "Listen, if I were you I would start contacting your people, just opt your people out, go on your merry way. We're not going do anything to disturb your case. If you opt out, just follow the guidelines." And they did opt people out. They opted out. It's -- I could tell you the exact amount because we have the update, which is from Mr. Chumley. After de-duplication and after opting out people who might have forgotten a last name or an address, it's around -- it's around 10,000. He had around 10,000 bulk opt-outs that were legitimate opt-outs, other than maybe they filed a claim also, but he opted them out.

So, obviously, they were able to do that. And I think this case highlights more than most why it's really important for people to have themselves individually opted out. I mean, here we have almost 5,000 people opting out and filing a claim. So there's a disconnect.

THE COURT: While the Court understands that in light of the issues that were raised and the quantity of potential claimants, the Court felt that it was important to honor the intent of Mr. Murphy's clients whether they did it individually or through him, even though the procedures that are spelled out for opt-outs clearly indicate how one is to opt out, which is on an individual basis.

So here the Court allowed it because that was, the Court felt, the intention of those individuals. And so we have about 10,000, which I think is a good number. I don't know still the total number of Mr. Murphy's clients, but I think at least that's been satisfied to a great extent.

MR. DENITTIS: And we have no problem with that. I guess the one issue that I was disheartened to hear raised by Mr. Murphy's team is that if somehow we could let out those -- not us, but it's more Verizon, frankly. Somehow Verizon is agreeable to allowing

those other people that didn't opt out yet, but they still want to give them a chance to opt out. If they're going to -- if they don't get opted out, then they're going continue with their objection. If they are opted out, then they're not going to object.

And I just think -- I just thought, and I hate to put it this way, it's just a little distasteful, in that they made it really clear if they could opt their people out, you know, then they're out and we're going go in our merry way. We have no intention to object to any of the substantive issues in the settlement agreement.

There's a small group of people, for whatever reason, I don't know if they're at fault, if the clients aren't responding to Mr. Murphy or Mr. Murphy can't get a hold of them, but a small group of people who haven't opted out and it just displeases me to hear that for some couple thousand people they're willing to hold up a settlement for 58 million people.

And potentially if they object, then have us somehow to figure out -- and we're going ask for a bond to post. I have to send a new notice out to everyone letting them know why we can't pay them their benefits because some group of like 4,000 or 5,000 people want to be opted out of the settlement, and they didn't file

the procedures to do so. So that's a rub that I have that is really troubling to me for the class.

THE COURT: Well, that's a concern for the Court. So this Court has presided over consumer fraud class action claims for probably the last ten years. And typically -- I'll admit this is the first. Well, I was part of the nationwide class that was before Justice Breyer, the admissions case of Volkswagen. I had the New Jersey portion of that, but this is by far the largest.

But typically when we do have objectors try to resolve that before we get to this day or even on this day try to resolve it, because here the wishes of approximately however many millions of folks that have already submitted in a claim may not be honored and held up on appeal. And so what I would say to all of you is, if there's still a way to perhaps resolve it that you should try so that the wishes of the many can be basically granted. The Court --

MR. DENITTIS: So --

THE COURT: The Court's issues with regard to this proposed settlement, I mean we've touched upon part of it today. And part of it, I mean let's face it, from an outside observer looking at the counsel fees, without knowing the intricacies that are involved

in consumer fraud class action and here in multiple jurisdictions and the risks that are taken, I do have some questions with regard to our representative plaintiffs, and we'll get to that later on.

MR. DENITTIS: Sure.

THE COURT: But the Court needs to satisfy itself. And I know many of the judges that approved these settlements that have occurred here in the 3rd Circuit, and I see that a third is not unconscionable. While this may be the first here in the 3rd Circuit approaching a million, it's certainly not in the country, but I understand that and at first blush it seems shocking.

The reason why I also want to wait until after April 15 is to get a better sense of, at the end of the day, those that have submitted in to opt in, what is it that they will get, because --

MR. DENITTIS: Like a final allocation.

THE COURT: Right, the allocation.

MR. DENITTIS: Mm-hmm.

THE COURT: That's important for the Court to know --

MR. DENITTIS: I understand.

THE COURT: -- to ultimately determine the fairness of this.

MR. DENITTIS: And it is trending that our projection I think is going be spot on, but I understand the Court's --

THE COURT: Okay. Why don't you continue.

MR. DENITTIS: Okay. So as to Mr. Murphy, that's really how I feel about that. I would love nothing more than the parties to try to work out their situation. Unfortunately, part of that is Verizon's as well. So I don't have the final say. Especially with this, it's a little bit more. I mean, look, if these people want out, I don't want to bind them to a settlement they don't want. So let's talk about Mr. Zimmerman.

THE COURT: Well, before you get to Mr. Zimmerman --

MR. DENITTIS: Oh, sorry.

THE COURT: Mr. DeNittis (sic), did you wish to address --

MR. DENITTIS: Oh, I'm so sorry.

THE COURT: Thank you.

MR. JACOBSON: So Jeffrey Jacobson for Verizon.

THE COURT: What did I call you -- I don't know what I just called -- I called you Mr. DeNittis.

MR. JACOBSON: You called me him. He's going

make more money in this case than I do, so that's all right, but --

THE COURT: His double billing today. Oh, no.

MR. JACOBSON: So with regard to the mass opt-out, so I re-read Your Honor's orders from Wednesday, and I understand that Your Honor is saying that if Mr. Murphy provides proof of his representing people, you will allow him to mass opt them out.

THE COURT: The ones that filed to opt out.

MR. JACOBSON: Okay. The ones that filed, that's --

THE COURT: Correct.

MR. JACOBSON: So they needed to --

THE COURT: Right. So it needs to line up.

MR. JACOBSON: So we're -- so I --

THE COURT: So I get -- I'm the only one that gets the retainer agreements. You get an index of who's there. And if I have it and it matches, then those individuals that submitted those forms in, because remember the opt-out procedures required individual opt-outs.

MR. JACOBSON: Right.

THE COURT: Specifically did not allow for that which occurred. The Court is going to forget that

in this case and say, you know what, these were the wishes of those individuals. They chose to express it through their attorney. And so if I verify that they are their attorney and then we match up names and addresses with the retainers, then those people are good.

MR. JACOBSON: So these are people who, through his website, filled out the form and then they mailed the opt-out forms to the settlement administrator?

THE COURT: Right.

MR. JACOBSON: Correct, okay. So then in that case I'm going save Your Honor two minutes because that's -- okay, so I think what we're -- just to be clear, and it'll help because this is also reflected in the proposed order that we sent to Your Honor's chambers, so that we're talking about the universe of the settlement administrator provided to the Court last night, there's 10,076 opt-outs, the vast bulk of which came in through that website process.

About half of those people also, either definitely or probably, filed claims. Mr. Woofter again said to the Court today that if it's their intention to file a claim, they file a claim. So that communication will issue from the settlement

administrator to those folks saying, hey, what did you want?

THE COURT: Right.

MR. JACOBSON: And if they're in, they're in. If they're out, they're out. And then -- okay, so that's --

THE COURT: Correct. So I think we come to the bigger issue, and that is assuming the Court finds this to be fair and reasonable under the standards that it must under New Jersey law, is there going to be peace here? And it sounds to me like there might be appellate review as to the Murphy claimants. And maybe the California claimants, I don't know, but you're going have to deal with that. I guess, is there any desire on Verizon's part to look at the Murphy claimants any differently?

MR. JACOBSON: So I want to answer the Court's question this way and I -- because I'm onboard with Mr. DeNittis here. I mean, I think that it would be difficult to justify holding up the settlement as a whole in a dispute over opt-outs because it's -- if we're assuming that everybody who filed a claim is going to get their -- is going to get paid in the settlement, we're only talking about whether this other group of people -- well, I don't even know if we're --

the funny thing is, Your Honor, I'm not sure what we're -- I'm not sure what we're -- I'm thinking on my feet here. I'm not sure what we're still talking about because we're not --

THE COURT: I think we're talking about the people, not these 5,000 that did a dual because they're now going to pick.

MR. JACOBSON: It's the other folks that he wanted to mass opt out that you --

THE COURT: Right, that didn't -- that feel they didn't have enough time or enough communication. And I don't know what that number is.

MR. JACOBSON: So with regard to those folks, Your Honor, it's our position that it's too late for them to opt out now.

THE COURT: Right.

MR. JACOBSON: Now, Your Honor declined our request that Mr. Murphy should send a directive communication to the group of people, but that cuts both ways. And so Mr. Woofter said, "Is it okay if we communicate with our clients and suggest that they file a claim?" By all means, I mean they've got another three weeks. So they shouldn't come away with nothing. They can file claims in the settlement and be covered by that.

If there is an appellate dispute over those 3,000 people, I suspect we can put our heads together with plaintiff's counsel and find a way to have that appeal not block the settlement as a whole because it's a dispute over 3,000 people who've decided not to file claims because they've decided that they want to live or die by virtue of whether they can opt out and pursue arbitrations.

I mean, the only other thing I would say about that, Your Honor, is, you know, just speaking plainly, and this is not -- I don't mean this as an insult. I mean, they're in a business. We're all in business. The people who engaged their team spent maybe 90 seconds filling out a form on the site. I mean, this was, "Hey, we can get you more money, fill out this form," and they did. And so when Mr. Murphy and his team put the retainer agreements before the Court, they're going to be these cookie cutter things that were automatically generated on the website. And so --

THE COURT: I'm not evaluating that.

MR. JACOBSON: And I'm not suggesting that Your Honor should. What I'm saying is that the fiction -- just as Mr. DeNittis was saying, people don't necessarily realize what they're signing in a customer

agreement. Whether I agree with that or I disagree with that, that cuts as well when somebody fills out this form on the website to engage somebody to arbitrate for them. So I am afraid that because each incremental person that is allowed to bring an arbitration inflicts potentially thousands of dollars in costs on Verizon, I'm required to say I can't just let 3,000 more people go. So we would have to have a dispute over that, but I think we can find a way to make sure that that dispute doesn't stand in the way for, you know, months or longer of the settlement itself. Because I think we can figure out a way in conjunction with all of us to make sure that that appeal is narrowly structured.

Now, I can't do anything -- and please forgive me if I'm mispronouncing Mr. Hoang's name, but I can't do anything about that appeal. If there's an appeal, that's going hold the whole thing up. But I think with regard to the Murphy opt-outs, I suspect that that, if there is an appeal, would be relatively narrow.

THE COURT: Okay.

MR. JACOBSON: Thank you, Your Honor.

MR. DENITTIS: Thank you, Your Honor. Steve DeNittis this again back on the record.

The next objection I'd like to address is one by Mr. Scott Zimmerman. So his objection is somewhat narrow as to the fees and to the incentive awards, which, you know, we've been talking about. I'd just like to point out a couple things about his objection. So his whole objection is based on one case, it's his own.

He had a case that was a Telephone Consumer Protection Act case, relatively not as intricate as many issues as in this case. It settled like 10 to 12 years ago. It was a $40 million settlement. He asked for a third or 30 percent, he asked for 30 percent, and it got cut down. And the reasoning by the 8th Circuit was, well, you know, the bigger the fund, you know, we're going to give a lesser fee. And they relied on some study that's not been accepted here, that's not ever been referred to in a case in the 3rd Circuit. And he only relies on his one case in the 8th Circuit. It's not a published decision. And that flies in the face of all the other precedent that we cite.

So I mean Your Honor has discretion to reduce our fee. And if Your Honor is worried about optics and, obviously, if that's the reason why I understand, but it shouldn't be because of what Mr. Zimmerman argued. That's all I have to say about his case

because it really -- he really just -- it's just not really -- it's not based on any authority here.

And so for those reasons, it really just -- I understand it's -- you know, we had actually -- I had a call the other day. He's a nice guy and he's not looking to -- at least he said to me on the phone, I don't think he has any intention to object. So he just wanted to have his say, and I hope that's still the case. I mean not object, excuse me, appeal. But suffice it, I would just say that that portion of his objection should just be overruled.

As to the issue with the incentive award, you know, well great. Going back to Mr. Zimmerman, he said some things that is based on our Loadstar. Our application, again, is not based on our Loadstar, it's not that type of case.

THE COURT: You did that by way of comparison to the Court.

MR. DENITTIS: Yeah.

THE COURT: And so a lot of times when there is a common settlement fund and where there's a straight contingency, the Loadstar is done by way of comparison. Because more often than not it would be "worse." More fees come out of the Loadstar than would come out of the contingency. So the Court understands

and appreciates that you went through the time to put that together.

MR. DENITTIS: Okay. So that was the only issue with that part of his objection. The issue with the incentive awards, I think I talked quite a bit about our strategy and why the people were important. I understand.

THE COURT: I get that, but, you know, that was a valid point that was raised. And so we have those individuals that are representative plaintiffs, representative claimants who appear for depositions. And, you know, for those of us that conduct depositions as attorneys, it's just another day, right?

MR. DENITTIS: Yeah.

THE COURT: It's the work that we do. But if you actually speak to the folks that go through a deposition or even like before me, because I obviously haven't conducted a deposition in a while, talk to jurors about what they go through just coming to court or appearing for something as formal as a deposition, it produces a lot of anxiety for them.

So I would say that someone who's a representative class member that has sat down, drafted answers to interrogatories, actually appeared for a deposition, that that person has really -- I mean, you

think about when we talk about "the notoriety of it," you know. Their name is now on a pleading, people may be referring to their testimony in newspaper articles or if it ever gets to a trial and thereafter they're testifying. As opposed to someone else who is named as a representative plaintiff, but has not really put themselves out there as much. So there is a distinction there. And I don't know where this cuts in all of these cases that have been filed with the different representative plaintiffs.

MR. DENITTIS: So just to respond to that, Your Honor, and also to the objection that was raised. So a couple things. Just to clarify one misstatement by Mr. Weinstein and Mr. Zimmerman. It's not 10 percent of the money that's going to the objectors. It comes out to be 0.04 percent.

THE COURT: You're going to have to raise your voice.

MR. DENITTIS: 0.04 percent of the fund. So it's not 10 percent of the fund. So that's one factual inaccuracy because that's a big deal. But the other thing is --

MR. JACOBSON: I'm sorry, it's 0.4 percent.

MR. DENITTIS: Yeah. .04 percent.

MR. JACOBSON: 0.4.

MR. DENITTIS: Yeah, 0.4. Excuse me, sorry. That was not on purpose. But the other issue is, you know, I understand and $3,500 on the scale of incentive awards, you know, certainly if they were grilled for eight hours at a deposition we would probably be seeking $10,000 or $15,000, okay. So I understand that. Look, as much as I'd like to get that for the lead plaintiffs because but for their efforts we would've got this settlement, if Your Honor in your discretion reduced it, I understand. I'm just --

THE COURT: So are you saying that all of these representative plaintiffs for which you're seeking the same, essentially their input in these cases is the same?

MR. DENITTIS: Yes.

THE COURT: No one --

MR. DENITTIS: No.

THE COURT: No one has appeared for a deposition.

MR. DENITTIS: So all of it's been the same. All of them have met with us, signed a retainer, given us as many bills that they could gather, any email correspondence that they've had with the company. And so, you know, one of the things to keep in mind is oftentimes, you know, incentive awards serve two

purposes. One, it is to compensate people for their time, but that's not the only reason. I mean, courts recognize in some of the cases that we cite, you know, when someone has a dispute and they're mad about $1.95 and it's total less than $400 and they go to a lawyer and they're like, "Well I really want to do something about this," honestly, if I couldn't get an incentive award from people, my practice would dry up. Because who's going to go through that for $400? So the incentive awards aren't meant to give people a windfall, but, you know, these people helped us get a hundred million dollars. So that's kind of how --

THE COURT: I want to make sure they were all similarly situated.

MR. DENITTIS: Yeah, they are.

THE COURT: Because ones that have done more should be then on a different scale.

MR. DENITTIS: Yeah. No, no one's been deposed and no one's answered interrogatories.

THE COURT: Okay.

MR. DENITTIS: So to that point, that's really all I have about Mr. Zimmerman and about the incentive awards. Last objector I'd like to talk about is Mr. Weinstein. So, you know, Mr. Weinstein says a lot of things that are a little troubling because he

says a lot of things very authoritatively, but there's a lot of what he says that just isn't supported. So he came out of the -- with his objection saying, you know, courts look at a four factor test and one of them is, like what's the benefit to the defendant?

I've been doing class action for 28 years, done over 300. That's not any factor I've ever heard of and he's not citing to any factor. The factors are the Girsh v. Jepson factors. And I didn't hear him mention one of those factors. In fact, he ignores those factors when he talks about his objection.

He completely is blind to the risk. All he wants to talk about is how big the potential damages are, which they're not accurate by the way. What he submitted is not factually accurate. It's not that number. But he just wants to blindly talk about this case is great, it's tons of money, and these people, this is nothing.

Well, sure if you could get a verdict on a class-wide basis nationwide, he's right. But for all the facts and all the risks we talked about, I think it takes him a lot of chutzpah, in a sense, to say, "We didn't get enough money and you litigated this case not once, not twice, three times. You didn't get people dime." So compared to his cases, we're doing great.

That's all I've got to say to him. It's ridiculous, honestly.

The other thing is, he totally -- you know, he talks about how claims made settlements are somehow bad. I find it ironic he has on his website Emilio v. Robinson Oil Corporation, a case he settled for $700,000, paid out $275,000 to the class, took over $400,000 in fees and administrative costs, had a claim form that, oh coincidentally, if claims came in over the claim fund they would be pro rata reduced. Yet, somehow our claims process isn't right.

I'll be the first to admit, do we have settlements in some cases where people don't submit a claim form? Yes. Is that a nice way to settle a case? Yes. Is that the only way to settle a case? No. Courts have routinely recognized, for a whole host of reasons, claim forms are fine. For example, 35 percent of our class members are former clients. We have to send them a claim form, that's number one. Number Two, a lot of claimants don't like to get bill credits. They want money because they don't trust the defendant. So, you know, there's a whole host of reasons. And, again, the Court has to look at this settlement --

THE COURT: Or a coupon.

MR. DENITTIS: Oh, okay, sorry. All right,

so I get a little --

THE COURT: We got it. Let's go.

MR. DENITTIS: All right. So other than that, Your Honor, that's really, I think -- let me just make sure I don't have anything else. I think that's all I wanted to be said. Let me just ask my co-counsel.

(Pause on the record)

MR. DENITTIS: Okay. No, I have nothing else further, Your Honor. Thank you.

THE COURT: Okay.

MR. JACOBSON: So, Your Honor, Jeffrey Jacobson for Verizon. As I know the Court does, I have a lot of respect for people who, as civilians, come in and take the time to share their views with the Court. And so I want to treat them with the same respect that they've treated the process.

What really was not said at any point today was that a hundred million dollars is anything other than a lot of money as an amount to settle this case and it is multiples of -- if Verizon's voluntary payments argument is accepted and damages are limited to one month, which we would argue strenuously, it would be, at worst, the amount we're paying is multiples of that. And so it's a lot of money.

And so the facially persuasive idea that, well okay, then you should just give that money without a claims process, one of the principle problems, and I've been litigating class actions just as long as Mr. DeNittis has, if not longer, unfortunately, I have to say, but the price of cutting a check is itself about -- to cut and mail a check is itself over $2.

And so one of the primary things that a claims process accomplishes here is simply asking a class member, how do you wish to be paid? And in today's age most people say, give me a credit on my Amazon account or give me a MasterCard gift card or direct deposit it for me. And that actually is one of the main things that the claims process here accomplished.

If we didn't have that and if the settlement -- if people had insisted, well, no, we're going to just automatically send out money, and if a hundred million dollars is a fair amount, which it is in spades, you would've burned tens of millions of dollars cutting checks, which people would've pitched because they would have been for a buck or two. So there is no perfect solution here.

This was a hard fought negotiated solution that is going to distribute the bulk of a hundred

million dollars to a significant amount of people. And, again, nothing is perfect. I respect what the objectors have to say, but I think that the Court will see that the settlement is well within the range of reasonableness, such that it should be approved.

THE COURT: Thank you.

MR. JACOBSON: Thank you.

THE COURT: So where do we go from here? So as I indicated, I will not approve the settlement today. I do wish to think, because what the Court must do in application of the Girsh factors, Girsh being a case out of the 3rd Federal Circuit that the Court must apply, is to determine whether this is fair and reasonable. And without knowing at the end of the day the ultimate payouts, the Court really can't, in all consciousness, make that determination.

When I looked at this and when I looked about that whole voluntary payment defense, and it's a real interesting defense, and it's right in the sense that if a court were to accept that, but determine that after the first month it's a voluntary payment essentially, then $1.95 is it.

And this was a hard-fought battle not only here with the Achey case that has been up and down to the Appellate Division and now before the Supreme

Court, your battle out in California, and I guess you have two other federal jurisdictions that --

MR. DENITTIS: We do.

THE COURT: -- claims are pending. And the response, though, clearly people receive notice and have responded because the response has been overwhelming. The court is really satisfied that the public is being hurt by the members who are here today, some that have called the courthouse, left messages on different voicemails, and that have submitted papers that indicated they could not attend. But I mean, we have a lot of single page letters here from folks that have written in. And some that have written in indicated they have no problem with it, they're just writing the Court to let them know.

So I'm glad that the transparency of this process has brought out a lot of communication whether it be positive communication, depending upon your point of view, or whether it be negative.

And to the objectors that are here today, I thank you for bringing your concerns to the Court and that they are -- those concerns are being addressed. We may disagree about what the law is in the various jurisdictions, but ultimately this Court has to determine is this a fair and reasonable settlement for

a nationwide class under the factors it must apply?

So now I did receive a proposed form of order that I requested directing the settlement administrator to send notice to the settlement class. And this relates to the 5,336 people who both I think opted in and -- opted out, rather, and then submitted a claim form so that we know and we will respect their wishes as to what they wish to do.

The Court is also awaiting receipt from Mr. Murphy so that we can compile that list and be clear as to those folks that did opt-outs through his firm, who's in and who's out. And so we need to iron that out.

And we need to give -- although this settlement administrator really works rather quickly, we need to give him a little bit of time after April 15, which is the cutoff date, to let us know where everything stands and to give you time to, I guess, address the Court on the final analysis of where the numbers cut and whether you think it's still a settlement that the Court should approve.

Also, you're going to provide me a copy of the new arbitration agreement and any arguments relative to that. So let's pick a date after April 15th that we can come together. I have a five-week

trial starting on May 6th. So if possible, I'd like to come in before then. How much time do we need after April 15 in order to get the paperwork from the settlement administrator and any response you may have?

MR. DENITTIS: It'll be a few -- a couple days, at most. They've been -- Angeion has been great, so they'll be tracking the claims and they give us weekly updates every Monday. So that would be --

THE COURT: All right.

MR. DENITTIS: You know, if we just had a few days, that'd be fine.

MR. JACOBSON: And the only other thing I would add to that judge, I agree, is that, yes, a couple of extra days might yield (indiscernible). But in the law of large numbers, if you're talking about another a hundred claims that dribble in later, it's not going to change the comma.

THE COURT: Okay. All right. Well, then what about the 19th of April at 10:00 a.m.?

MR. DENITTIS: Yes, that works for plaintiff, Your Honor.

THE COURT: Okay. And to anyone who wishes to observe via Zoom rather than coming back here, you can send us an email and let us know. We'll make sure that you get a copy of that link.

COURT STAFF: Judge, April 19th we're remote.

THE COURT: We're remote that day. I knew there was something happening that day. Well, we could -- you have a problem all appearing remote that day?

MR. JACOBSON: Not at all.

MR. DENITTIS: It's okay with me, Your Honor.

THE COURT: All right. So let's do it that day at 10:00 a.m. We'll do it remotely then. So if anyone wishes to be included on that link, let us know. All right, so we're set then.

MR. COOPER: Excuse me, Your Honor. I'm sorry to interrupt. Ryan Cooper on behalf of the Murphy Objectors. I just wanted to clarify for the record, the order that was submitted during the hearing today presented as a consent order, I guess it would be treated, at the minimum, under the five-day rule. As it effects Mr. Murphy's clients and their status, we'd like to be heard on that. Mr. Woofter mentioned that during his argument, but I just wanted to make sure it was clear for the record.

THE COURT: Have you seen it?

MR. COOPER: Yes. Well, during lunch we had an opportunity to take a look at it on our phones, but we have and we do have opinions on it.

THE COURT: All right.

UNKNOWN MALE: And I'm happy to speak on it a little bit preliminarily now, if the Court wishes.

THE COURT: Well, really you're not parties. The Court has not permitted intervention. It's asking for a clarification. So I don't -- I'm not going to hold this up because of your concerns because you're not a party to this case. It's trying to essentially figure out which one of these -- how these 5,300 some odd what people want to work -- want to deal with this. If you want to chat with counsel after court today, but if they're telling me that both sides agree I'm ready to sign off on this.

UNKNOWN MALE: Okay. We would just note that those overlaps are largely our clients, likely. We just haven't had a chance to even look at what the settlement administrator put in last night and compare it to our list that we are preparing by the Court's order for Monday's filing. So we can respond by Monday, but we just don't know --

THE COURT: All right.

UNKNOWN MALE: -- who those people are yet. But they probably include some of our clients.

THE COURT: But it doesn't matter.

MR. DENITTIS: Right.

THE COURT: It doesn't matter if it includes

your clients or not. These are 5,300 people that are now going to be told directly to them saying you've done this, but you've also done that and they're two different things. What would you like to do? And so you can figure out who they are, but this is asking them. Is this submitted jointly, this form of order?

MR. DENITTIS: Yes.

THE COURT: All right. I'm going to sign it. It'll be uploaded on eCourts this afternoon. Thank you everyone.

MR. DENITTIS: Thank you, Your Honor.

MR. JACOBSON: Thank you, Your Honor.

THE COURT: So we'll see everyone who wishes to be with us on the 19th of April at 10:00 a.m. all remote. No one appear here because the judges are going to be remote that day as well in this courthouse, the civil judges anyway. And I look forward to the other materials you're sending me. Thank you so much.

MR. DENITTIS: Thank you, Your Honor for your time.

THE COURT: Thank you for your presentations today. Thank you for being here. Have a good afternoon. Have a nice weekend.

MR. DENITTIS: Thank you. You, too.

MR. JACOBSON: Thank you, Your Honor.

MR. HATTIS: Thank you, Your Honor.

MR. CRIDEN: Thank you, Your Honor.

MR. MORGAN: Thank you, Your Honor.

(Proceedings concluded at 2:45:14 p.m.)

* * * * *

CERTIFICATION

I, Yvonne Amber, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, from time stamp 10:05:08 to 10:46:31 and 1:41:26 to 2:45:14, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

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