IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

IN RE: ADVOCATE AURORA HEALTH PIXEL LITIGATION	)	Lead Case No. 22-CV-1253-JPS
	)	
	)	(Consolidated with Case Nos. 22-CV-1278-JPS;
	)	22-CV-1305-JPS; 23-CV-0259-JPS;
	)	23-CV-0260-JPS)
	)	
	)	This Document Relates to: All Actions

THEODORE M. WYNNYCHENKO'S SUPPLEMENTAL OBJECTION

Class Counsel filed the detailed billing accompanying their Supplement (Dkt. 51, "Supp.") with every single description completely redacted, contrary to Circuit law and the public operation of courts, and disabling Objector Wynnychenko from fully commenting on their submission. That said, there may be diminishing returns to examining individual billing records, and the Court is well-positioned to examine the billing in view of his Objection (Dkt. 42) and this supplement.

The Objector agrees with Class Counsel on certain points: the size of the fund is not such that the Court *must* apply a "sliding scale," a method more important for "megafund" settlements approaching $100 million (though it would certainly be within its discretion to do so). But the Objector maintains that Class Counsel's voluntary reduction to a 26% fee award of the gross common fund (in reality a 34.5% fee award under this Circuit's require net fund methodology)[1] exceeds what a knowledgeable client or fiduciary would permit, and provides Courts too little leeway in other cases. If a settlement reached before counsel contests a single motion for the class warrants 26% (net 34.5%), courts have little upward space to award greater percentages for cases where counsel litigates through risky motions for class certification or summary judgment.

Objector recommends a fee award of 18% of the gross fund (really 23.8% of the net fund) due to the high claims rate in this case, which increased administration higher than expected. Such

[1] *See, e.g. Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014).

award provides at least a 1.32 lodestar risk multiplier. In fact, the publicly-available bare billing records suggest significant duplicative work caused by six groups of attorneys filing six duplicative complaints against the defendant. Duplicative work provided no marginal benefit to the class, and the Court should use its access to the billing descriptions to roughly estimate the extent of duplication. Objector suspects the lodestar multiplier under an 18% gross fee award approaches the Circuit's presumptive ceiling of 2.0 after omitting duplicative time, and trusts the Court to exercise its discretion in reckoning a fair fee award that balances the interests of class members with the risk borne by class counsel.

Dr. Wynnychenko submits this supplement in hopes the Court finds it useful in its independent review. But should Class Counsel file a reply disputing the amount of duplication that the Objector finds likely, Class Counsel should also file reasonably-redacted billing summaries. The Objector cannot evaluate arguments characterizing evidence that counsel chose to make unavailable.

I. Class Counsel ought not to have over-redacted their filing, but Objector trusts the Court's commitment to independently scrutinize the billing.

Class Counsel says they "took steps to remove [the] potential for duplication of work," (Supp. 1) but their redaction of every billing description makes it impossible for Objector Wynnychenko to evaluate this claim, and is contrary to Seventh Circuit precedent. The Seventh Circuit cautions that courts should not handicap objectors by making the "the details of class counsel's hours" unavailable to them. *Redman v. RadioShack Corp.*, 768 F.3d 622, 638 (7th Cir. 2014). Confidential information in billing records is the exception—an "unlikely event"—not the rule, lest over-concealment "paralyze[] objectors." *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 286 (7th Cir. 2002). This follows the general presumption favoring public access when litigation materials do not implicate privilege, rule, or statute. *In re Specht*, 622 F.3d 697, 701 (7th Cir. 2010). This presumption of access has "particular strictness" "in class actions—where by definition some members of the public are also parties to the case" *Shane Grp. Inc., v. BCBS of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) (quoting *In re Cendant Corp.*, 260 F.3d 183, 194 (3d Cir. 2001)).

The Court accurately summarized the Objector's position that "redactions may be applied for some entries"—namely those that raise *bona fide* issues of attorney-client or work product privilege.

Dkt. 49 at 2. "[I]n cases where the party seeking an award of fees claims its billing statements are privileged, the attorney-client privilege and the work product doctrine cannot preclude the opposing party from conducting an analysis of the reasonableness of the petitioning party's claim for attorneys' fees." *Arctic Cat Inc., v. Polaris Indus.*, 2017 WL 6187325 (D. Minn. May 15, 2017) (cleaned up). Billing descriptions rarely contain privileged material, and for this reason, "no court of appeals has held that disclosure of the general subject matter of a billing statement…violates attorney-client privilege." *Avgoustis v. Shinseki*, 639 F.3d 1340, 1344-45 (Fed. Cir. 2011).

Plaintiffs' firms generally provide their hours with minimal redactions, if any. For example, the Objector attaches public filings of detailed billing for work performed by co-lead attorneys Klinger and Coates, respectively, filed in connection with other fee requests. Supp. Exhibits 1 & 2. The descriptions of work performed in by attorney Klinger contain no redactions at all. Attorney Coates' filing includes aggressive redactions for claimed work product (from an unusual case where the defendant contested a fee request line-by-line), but most descriptions remain comprehensible. These filings demonstrate that Class Counsel knows how billing ought to be filed, and they further confirm that—contrary to fairness hearing argument—such filings are in no way "unprecedented."

That said, the Objector does not wish to delay proceedings by insisting that Class Counsel reasonably redact their hours. The Court has appropriately committed to independently scrutinize the fee request. The Objector trusts that the Court will capably review the time entries in view of his commentary below, and only asks that the Court's written opinion cautions future attorneys to not excessively redact submissions to the Court, especially when these filings affect third parties as common fund fee awards necessarily do.

II. With qualifications, Objector agrees with several of Class Counsel's points.

First, Class Counsel argues that courts rarely apply the "sliding scale" approach to attorneys' fees for settlements of "only" about $13.6 million; the Objector agrees. Smaller percentages for attorneys' fees are designed to prevent windfalls that may occur based on the intuitive proposition that a $100 million settlement does not require ten times more effort than a $10 million settlement. The size of any settlement reflects not only the skill of the attorneys, but also the intrinsic value of the

underlying claims surrendered by class members. Declining scales recognize that much of the value of a settlement, particularly one achieved with very little litigation, owes more to the strength of class claims or size of the class than attorney effort, so courts ought to award declining percentages to rapidly-settled and *large* settlements. Sliding scales help discourage attorneys from wasting too much time redundantly jockeying for position in valuable cases. If courts award 25% or even 20% of a rapid $500 million settlement, they encourage hundreds of attorneys to pursue high-profile litigation in hopes of securing a small slice of the rich windfall. This is bad because class attorneys serve a valuable function in society by vindicating wrongs that are too small for ordinary people to rationally pursue: "only a lunatic or a fanatic sues for $30." *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013). Larger percentages should be accorded for the first few million dollars of recovery to encourage attorneys to pursue comparatively smaller cases instead of exclusively chasing well-publicized and gargantuan grievances. Unfortunately, courts often decline to adopt sliding scales, and so attorney stampedes occur far too often.

While Class Counsel reached settlement after conducting little litigation and after attorneys filed *six* duplicative complaints, Class Counsel is right that neither courts nor clients generally recommend *any* declining percentage until a settlement exceeds $10 million, and even then only a comparatively modest discount for the second-smallest bracket. The sliding scale should not make a large difference in this case.

Second, the Objector agrees that courts should primarily award attorneys' fees based on the percentage of the fund made available to class members (not the gross fund) and only "cross-check" the lodestar billing as a sort of sanity check against questionable windfalls. This practice automatically rewards efficient attorney work and discourages wasteful billing. *Cf.* Supp. 3-4. As explained more fully in the next section, the Objector quarrels only with the percentage of the award in this case. He proposes 20% would be more reasonable than 26% given that Class Counsel achieved settlement before briefing a single contested motion for the benefit of class members.

Finally, Wynnychenko agrees that Class Counsel resolved his objection to the *cy pres* element of the settlement. The procedure suggested by Class Counsel to stipulate to a *cy pres* beneficiary for

residual settlement funds (like uncashed checks) resolves any concern that the parties might send the funds to an affiliated group, creating an appearance of impropriety. Both Defense and Class Counsel assured the undersigned before the fairness hearing that they intend to pick an independent charity serving customers in this region. Their willingness to allow review of the beneficiary indicates good faith on this issue.[2]

III. The Court should award a fee of roughly 18% of the settlement.

As explained in the Objection, the primary flaw of the revised fee request is not its failure to employ a sliding scale, but its inadequate consideration of the early stage of litigation. *See* Objection, Dkt. 42 at 4-8; *In re Stericycle Sec. Litig.*, 35 F.4th 555, 566 (7th Cir. 2022) (vacating 25% fee award where a district court failed to consider the early stage of litigation, among other things).

The Seventh Circuit requires a market-approximating approach to fees. *In re Synthroid Mktg. Litig.*, 325 F.3d 974, 975 (7th Cir. 2003) ("*Synthroid II*"). Courts have difficulty ascertaining the market rate because past court awards do *not* reflect any real market, and class plaintiffs usually lack the sophistication and/or incentive to control class attorneys' fees. The best guideposts are employee pension funds, which are legally sophisticated and often possess securities holdings massive enough that the fee award makes a real difference to their recovery. (Consumer plaintiffs, in contrast, almost always receive vastly more from their incentive awards than any marginal benefit from reducing attorneys' fees might afford them. For example, the named plaintiffs in this settlement receive service

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[2] Objector Wynnychenko disagrees that the *cy pres* issue is the only "live" part of his objection. Supp. 5. As explained in his filing before the fairness hearing, "Dr. Wynnychenko stands by his objection," but offered a lightly amended proposed order "in the spirit of compromise." Dkt. 48-1 at 1, 3. Compromise is something courts generally favor, and neither the Objector nor his counsel should be penalized for offering one here, especially when Objectors' counsel will not seek nor accept a fee award for attorney time spend on this case.

The undersigned also stands by his position that he "does not reciprocate" any animus expressed by Class Counsel, and that "not every plaintiffs' counsel would agree to surrender $500,000 for the benefit of class members." *Id.* at 1. This is commendable. In exercising its sound discretion, the Court may favorably consider Class Counsel's agreement to reduce a previously-excessive fee request. While the high request should not have been bargained for in the first place, the voluntary reduction gets more than halfway to the fee award the Objector now suggests—an *upward* revision from Objector's original 10% recommendation. Dkt. 42 at 23.

awards of $3500, and even if the Court reduced fees all the way to 0%, class members' claims' value may increase by $10—it is simply not economically rational for individual class members to scrutinize their attorneys' fee requests. *In re Continental Ill. Secs. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992).)

Vigilant institutional plaintiffs, however, recommend fees on the order of 8%-15% for settlements achieved prior to litigating a motion to dismiss. Objection at 4 n.3. While the circumstances of every case are different, and so knowledgeable clients might permit higher percentages where they believe the value of the case is smaller, knowledgeable clients would *still* rationally insist that quick settlements permit smaller percentage awards than more heavily-litigated settlements. For example, as of 2023, Chicago Teachers' Pension Fund requires that firms representing it to limit attorneys' fees based on "a multi-tiered, multi-variable fee schedule in which litigation counsel's compensation will vary depending upon the size of the total recovery, as well as such variables as the point in the case where settlement negotiations are completed or a final judgment is obtained," or a "non-traditional contingency fee arrangement[]" to achieve the same goals. Chicago Teachers' RFP at 7-8.[3] This is exactly what the Seventh Circuit recommends: percentage fee awards should vary based on the size of the fund *and* stage of litigation. *See Stericycle*, 35 F.4th at 561, 566 n.8. "Systems where fees rise based on the stage of litigation rather than the calendar are more common in private agreements." *Synthroid I*, 264 F.3d at 722.

Courts should follow this practice and award smaller percentages for early settlements because it aligns the incentives of class members with their attorneys, who have to invest more time and money to advance litigation. The settlement value of a case tends to increase after plaintiffs overcome procedural hurdles. Surviving a motion to dismiss entitles the plaintiffs to more fulsome (and costly) discovery. And certifying a class increases defense risk further, so rational defendants pay more to settle cases that clear these important hurdles. The hurdles each pose risks to the class, who may walk

[3] Chicago Teachers' Pension Fund, *Request for Proposal – Securities Litigation Legal Services*, No. FY2023-0001, *available online at* https://www.ctpf.org/sites/files/2022-08/8.29.2022Amended%20Securities%20Litigation.Revised.pdf, attached as Exhibit 3.

away with nothing if a case gets dismissed or certification denied, but they impose both risk and *increase the stakes* to class counsel, which causes a potential agent-principal conflict.

Say that a defendant was willing to settle a freshly-filed complaint for $12 million, but would increase their maximum settlement offer to $20 million if the case survives a motion to dismiss, and that there is only a 1-in-4 chance the case gets dismissed. A fiduciary for the class would recommend taking that risk, because the ***expected value***[4] of clearing the MTD hurdle is $16 million (3/4^{ths} of the time the class wins $20 million), but class counsel may be tempted to settle early if their fee is the same percentage either way. For example, if class counsel knows they must invest about $1.2 million of attorney time for an early settlement, but would need to spend $2 million in attorney time to secure a post-MTD settlement, their expected value for the early settlement equals 25% of $12 million, less attorney time, so $1.8 million profit on top of their quite generous hourly rates ($3 million minus $1.2 million). But attorneys would only reckon a $1.75 million expected value to contest a motion to dismiss if they win the same 25% fee either way (if successful, counsel might secure a $5 million fee award, but will only win 3/4^{ths} of the time, an expected value of $3.75 million, but they are saddled with the entire $2 million of lost attorney time *whether they win or lose*). "[C]lass counsel will be more inclined to take the safe path than class members would prefer." Amanda Rose, *Cutting Class Action Agency Costs: Lessons from the Public Company*, 54 U.C. Davis L. Rev. 337, 393 (2020).

Or to explain without math: class attorneys may want to accept one bird in hand even when class members would benefit from hunting two birds in the bush, because every shot costs the attorneys time and money. Courts should award attorneys larger percentages to reward attorneys who pursue wild game at their own risk for the benefit of class members.

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[4] Expected value is a concept from statistics and probability that calculates what one would expect on average from a series of outcomes over time. Imagine that someone were to offer you either $1—or $3 if you win a fair coin flip. Assuming the loss of a dollar would not be ruinous, you should take the coin flip because the expected value of the wager equals $1.50, and over a large number of flips you would average that amount. Plaintiffs' law firms make these sort of calculated risks every time they file a suit. Attorneys might win nothing from the dismissal of an individual case, so attorneys usually diversify their risks by investing in several cases. Successful settlements ideally compensate for the loses. Fee awards usually allow a lodestar multiplier to compensate for counsel's risk.

Courts align the incentives of class and counsel by doing what savvy in-house attorneys like those of Chicago Teachers' do: award lower percentages for early settlements. If an early settlement only results in 20% fees, but 25% post-MTD, then the expected value to class counsel in this example would be $1.2 million above their hourly rates pre-MTD, but a much better $1.75 million if they take the justified risk to invest further in the case. The class is also better off: they have a 3/4^{ths} chance of $15 million net attorneys' fees, so have an expected settlement value of $11.25 million post-MTD compared to $9.6 million for the early settlement, minus a 20% fee award.

Neither Class Counsel's Supplement nor their February 23 filing (Dkt. 47) grapples with Objector's argument that the early stage of settlement militates in favor of a smaller percentage. They instead compare their revised fee request to the Seventh Circuit's award in *Synthroid II*, which granted 30% for the first $10 million of recovery. Supp. 2. But the *Synthroid II* settlement arose from voluminous antitrust litigation, with a "docket sheet … over 100 pages long," following complex factual discovery, "scores" of depositions, and expert reports in several disciplines. *In re Synthroid Mktg. Litig.*, 110 F. Supp. 2d 676, 683 (N.D. Ill. 2000). Class attorney may require a 30% fee from the first smidgen of recovery when they bear that kind of risk advancing their client's case, but a district court errs when it disregards "the early stage at which the case settled." *In re Stericycle Sec. Litig.*, 35 F.4th at 566; *see also Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, 897 F.3d 825, 827 (7th Cir. 2018) (affirming reduction in fee award due to "the early stage at which this litigation was settled").

This settlement, while indisputably valuable to the class and well-administered, did not entail the sort of Herculean effort and gambler's risk involved in *Synthroid II*. Here, settlement came early. Class Counsel did not litigate a single contested motion—with the sole exception of the Illinois plaintiffs' futile resistance to defendant's motion to transfer, which Class Counsel *opposed*. Dkt. 16 at 4. This motion did not benefit class members, but instead might have helped attorneys for the Illinois cases who hoped to win appointment as interim class counsel themselves.

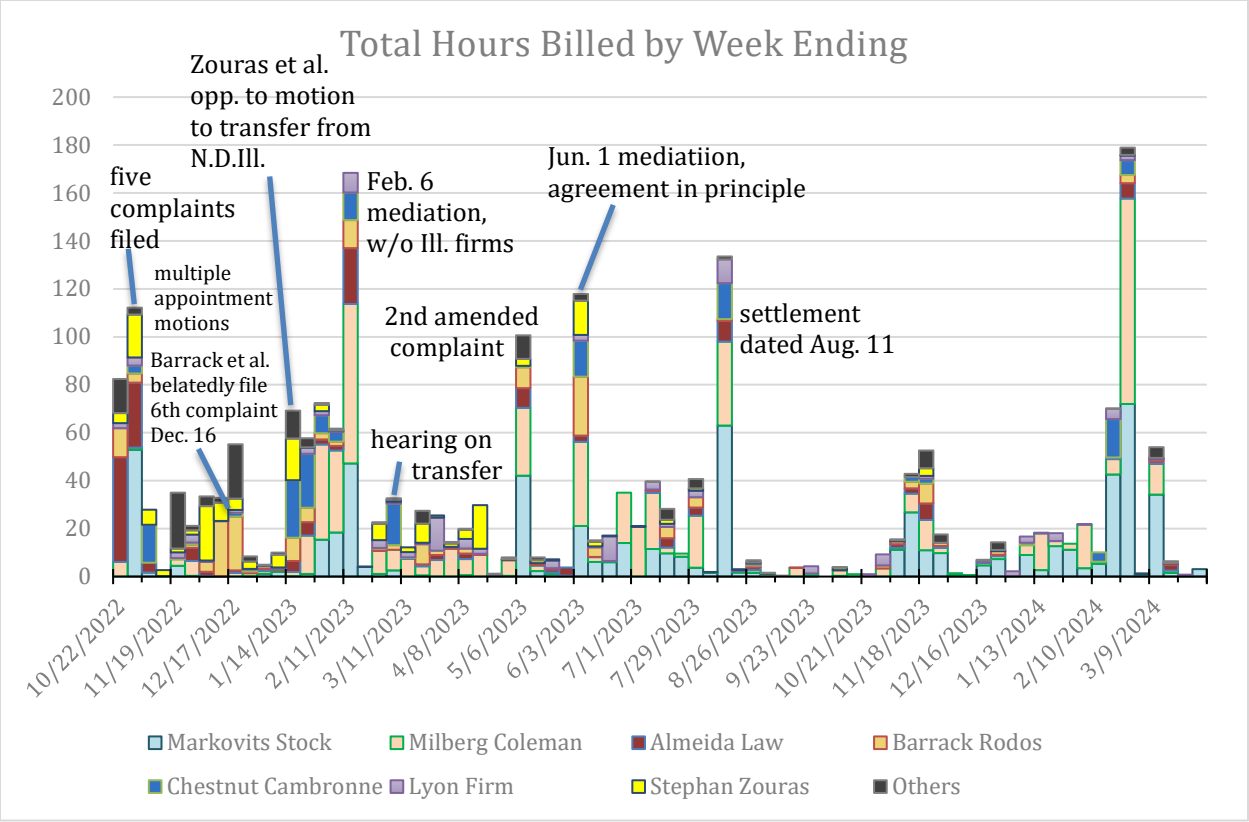
Given the early stage of the settlement, Objector proposes a flat fee of 18%, of the gross common fund, or $2,200,500. Note that this suggested fee award is really about 23.8% of the net common fund, which is how the Seventh Circuit requires calculating fee awards, but the Objector

states it as 18% so that it compares to Class Counsel's revised "26%" fee request, and the larger amount has a rational basis because administrations costs have greatly exceeded expectations due to the unexpectedly strong claim rate—a good thing. But for these circumstances, Objector would normally recommend a fee award from the *net* settlement fund. Dkt. 5, 23. The percentage is based on the lower fees required by the New York and Chicago Teachers' pension funds for early-stage settlements (*id.* at 4 n.3), granting an upward allowance to rebut any argument that these funds typically engage counsel to pursue claims with higher settlement value. An 18% award also permits courts space to award higher percentages to attorneys who litigate cases through a motion to dismiss, fact and expert discovery, certification, summary judgment motions, and ultimately (albeit rarely), trial. If rapid settlements uniformly receive 26% (really 34.5% net in this case, Dkt. 47 at 5), courts have too little additional space to award higher percentages for cases where counsel bears extraordinary risk.

Objector's proposed fee award also fairly compensates class counsel with a risk multiplier between 1.29 and 1.78, depending on their reasonably expended hours, as explained below.

IV. The bare hours filed by Class Counsel suggest significant duplication.

Duplicative, wasteful or redundant expenditures cannot be included in a reasonable lodestar accounting. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). Class actions unfortunately often foster a "camel is a horse designed by a committee" approach in which "an excess of lawyers seeks to share the wealth" of an exorbitant fee. *In re Stericycle, Inc.*, 2013 WL 5609328, 2013 U.S. Dist. LEXIS 147718, at *3 (N.D. Ill. Oct. 11, 2013) (Shadur, J.). While Class Counsel has handicapped the Objector by fully redacting all descriptions of their work, the timing of the billing suggests duplication, particularly in the first months of the litigation when attorneys filed six separate complaints. The undersigned plotted all hours claimed by week in the chart below:



The hours since about the June 1, 2023 mediation appear reasonable, with most of the work performed by interim co-lead counsel. The other firms appear to have billed only modest amounts consistent with approving work substantially performed by co-lead counsel and keeping their clients informed about the proceedings. This billing pattern contrasts with the time spent prior to the second amended complaint (Dkt. 27, May 5, 2023), when numerous firms billed simultaneously for filing additional complaints, an appointment motion for the Illinois plaintiffs, and contesting transfer, which the Wisconsin plaintiffs desired, but the Illinois plaintiffs resisted.

The limited information available in Class Counsel's redacted filings also suggest billing from **fifty-six different timekeepers**.[5] Seventeen of these timekeepers claimed fewer than 4 hours in the

[5] Not all of the timekeepers are identified by name, but they are: EAB, DSA, Samuel M. Ward, Stephen R. Basser, Gavin R. O'Hara, Bryan Thompson, Rob Harrer, NJHC, MF, PL, John G. Emerson, Michael Kind, Kelanna Coulter, Kevin Cox, Joe Lyon, Clint Watson, Alex Honeycutt, Alexander Wolf, Ashley Tyrrell, Carolyn CJ Cuneo, David Lietz, Gary Klinger, Glen Abramson, Heather Sheflin, Jacqualine Frasure, Jenna Santero, John Nelson, Nick Suciu, Russell Busch, Sandra Passanisi, Tiffany Kuipar, SDC, DJG, TRC, WBM, JTD, JCW, BNM, ID, Mooica Almeida, Teresa M. Becvar, Kerry Bowers, Michael Casas, Anna M Ceragioli, Meg Finerty, Hayley Hudson, Katie Mitchell, Mohammed Rathur, Emily Rios Santana, Isabella Rivera Volquez, Ryan F. Stephan, James

case, including seven attorneys with rates as high as $950/hour (Ryan F. Stephan, 0.3 hours).[6] "Such nominal hours [may] strike the Court as redundant or otherwise unnecessary work that adds little substance or value to the case." *Courthouse News Serv. v. O'Shaughnessy*, No. 2:22-cv-2471, 2023 WL 7626992, 2023 U.S. Dist. LEXIS 204958, at *9 (S.D. Ohio Nov. 15, 2023) (excluding such time entries). Objector trusts the Court can review the billing descriptions to determine whether the time was well-spent. The rates also appear quite high, with senior attorneys performing nearly all of the work and a blended hourly rate of $767/hour. *See Alcon Vision, LLC v. Lens.Com, Inc.*, No. 18-cv-407 (NG) (SJB), 2023 WL 8072507, 2023 U.S. Dist. LEXIS 208695, at *27 (E.D.N.Y. Nov. 21, 2023) (finding $740/hour "blended rate for all fourteen attorneys is higher than the highest rates partners have been awarded for complex litigation matters in this district"). Other oddities appear: Gary Klinger has two entries totaling 22 hours on January 28, 2023. These might be a data entry errors (another of Klinger's entries lists zero hours, so perhaps one of the numbers actually belongs to that entry), or it might include travel time, which private clients typically pay at a discounted rate. All this said, the undersigned has found limited utility in nitpicking undescribed hours. Class Counsel can always respond that any flagged hours represent a small portion of the total lodestar.

The Objector proposes two rough estimates of a reasonable lodestar discounting duplication inevitably caused by engaging so many attorneys in filing six different complaints.

First, the court could apply a rough fraction to lodestar claimed early in the case when duplication appears more likely. The following table shows the lodestar claimed for various stages of the case, and one possibility for roughly discounting for duplication:

Time period	Hours	Lodestar	Rough adjustment
Through Feb. 4, 2023	687.15	$509,529.90	$254,764.95
Feb 5 & 6, 2023	125.1	$105,706.70	$105,706.70

B. Zouras, 11, 39, 43, and 92 (the time sheets for Chestnut Cambronne PA do not contain names, initials, or even hourly rates, so for the purpose of this analysis the undersigned treats all of their hours as if they are the blended average rate for that firm, which is almost exactly $800/hour).

[6] The low-hour attorneys appear to be "NJHC," Kevin Cox, Carolyn CJ Cuneo, Anna M. Ceragioli, Katie Mitchell, Ryan F. Stephan, and "11"; the others bill below $300/hour, likely paralegals.

Time period	Hours	Lodestar	Rough adjustment
Through Apr. 30, 2023	241.33	$173,242.88	$86,621.44
May 1-5, 2023	100.33	$68,994.68	$68,994.68
Through present	1081.58	$857,405.88	$857,405.88
Sum:	**2235.49**	**$1,714,880.04**	**$1,373,493.65**

Objector suggests halving all the loadstar prior to the significant hours apparently spent preparing the Second Amended Complaint on May 5, 2023, but permitting all the hours claimed in connection with the first mediation (which counsel for the Illinois plaintiffs did not participate in).[7] Objector assumes for the sake of argument that this first mediation helped advance the potential for settlement although it "did not result in a settlement." Dkt. 47 at 12. Halving the time might not be a large enough deduction given the amount of duplication, but Objector suggests it in an abundance of caution given that he has no access to the billing descriptions. Later-filed complaints appear to have imitated the work of earlier complaints, and presumably occurred more efficiently, so a 5/6^{ths} reduction, would unfairly overstate the amount of duplication. The Court can fine-tune the rough deductions based on the amount of duplication suggested from the billing descriptions.

Second, the Court could roughly estimate duplication by omitting the time worked by several of the redundant firms. For example, the Court could discount time spent by counsel representing the Illinois plaintiffs and the sixth, later-filed and shortly thereafter dismissed *Harris* complaint, Case No. 22-cv-1515. These firms are Almeida Law Group, Barrack Rodos & Bacine, Chicago Consumer Law Center, Emerson Law, Kind Law, and Stephan Zouras, LLP. To be clear, the Objector does not suggest these attorneys should not be paid. The firms have negotiated the distribution of fees among themselves so that plaintiffs could obtain an uncontested global settlement with the defendant. But as a rough and modest estimate for duplication, it carves out time that likely did not provide the class with any additional benefit. These firms filed weeks after the other complaints (Barrack) or litigated against a transfer motion *supported* by co-lead Class Counsel. Based on Class Counsel's chart at the end

[7] Note that the totals vary slightly from Class Counsel's totals, because the hours claimed in the various attachments merged into Exhibit 1 of the Supplement vary slightly from the summary totals listed for several of the firms, but the figures are close enough to make the sort of reasoned estimate suitable for a lodestar crosscheck.

of Exhibit 1, these firms claim lodestar of $465,827.74, so deducting this amount results in $1,234,758.50.

These rough estimates of duplication would result in a generous 1.61 and 1.78 lodestar multiplier under Objector's proposed 18% gross fee award.

Even if Objector is mistaken and the Court finds that Class Counsel omitted the time spent on duplicative actions, and further finds that all time claimed was spend to the benefit of the class, and that *none* of the attorney rates strike the court as excessive, a 18% fee award would still afford Class Counsel with an adequate 1.29 multiplier as compensation for the risk that six different groups of law firms found worth taking by filing their complaints.

CONCLUSION

Objector Wynnychenko recommends a flat percentage of 18%, or $2,200,500, but trusts the Court to exercise its sound discretion in fixing the fee award. Should the Court's review of the detailed time entries reflect less duplication than the Objector suspects, an award of 25% or 26% of the gross fund would be within the Court's sound discretion given the unique circumstances of this case.

On the other hand, if the Objector *under*-estimates the duplicative work, the Court may also reasonably award less.

Dated: April 8, 2024

Respectfully submitted,

/s/ M. Frank Bednarz

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CERTIFICATE OF SERVICE

The undersigned certifies that, on April 8, 2024, he caused this document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of filing to all counsel of record registered for ECF filing.

Dated: April 8, 2024

By: /s/M. Frank Bednarz
M. Frank Bednarz