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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

JONATHAN CORRENTE, *et al.*,

Plaintiffs,

v.

THE CHARLES SCHWAB CORPORATION,

Defendant.

THEODORE H. FRANK,

Objector.

Case No. 4:22-cv-470-ALM

Hon. Amos L. Mazzant, III

OBJECTION OF THEODORE H. FRANK

Class member Theodore H. Frank objects to the settlement and fee request in this case. Frank complies with the lengthy disclosure requirements of the preliminary approval order—which take up more space than his objection itself—in the contemporaneously filed declaration.

Introduction

In June 2022, Plaintiffs brought a class action under the Clayton Act seeking to unwind the October 2020 merger between Schwab and TD Ameritrade as anti-competitive and seeking damages and disgorgement for the reduction in competition.

Class counsel proposes a settlement that rewards them with $9 million, but achieves exactly zero of the requested relief. Instead the proposed prospective injunctive relief affects the world at large, rather than granting relief to the class, and solely acts as a prophylactic against apparently purely hypothetical future anticompetitive violations.

Plaintiffs are entitled to bring a class action in good faith that turns out to be unsuccessful. What they are not entitled to do is use the class action device to pay themselves and their attorneys for a meritless class action. And Rule 23(e) and the Constitution prohibits federal courts from rewarding attorneys who use class actions to benefit solely themselves. *E.g.*, *In re Subway Footlong Sandwich Mktg. Lit.*, 869 F.3d 351 (7th Cir. 2017). Recognizing that "class actions are more ripe for abuse than other litigation contexts,"[1] the Fifth Circuit tasks district courts with "guard[ing] against the public perception that attorneys exploit the class action device to obtain large fees at the expense of the class." *Fessler v. Porcelana Corona De Mex., S.A.*, 23 F.4th 408, 419-20 (5th Cir. 2022) (internal quotation omitted).

While the settlement does not expressly release the claims of class members for damages, it does so *de facto*: the statute of limitations has expired for damages claims more than four years old. *American Pipe* tolls only individual claims for damages, but there is no tolling of *class* claims, and as plaintiffs concede in their complaint, these claims cannot feasibly be brought except as a class action.

[1] *Morrow v. Jones*, 140 F.4th 257, 2025 U.S. App. LEXIS 14230, at *7 (5th Cir. 2025).

Class members get *zero* dollars for the *de facto* release of these claims. The notice fails to communicate this legal effect of the settlement. This is unfair, and makes the notice legally insufficient. *See* Section I.

It might be fair to release claims for nothing if and only if class members have suffered no injury. But if class members have suffered no *past* or *continuing* injury, then the plaintiffs lose Article III standing to seek prospective injunctive relief for purely hypothetical future injury. This precludes settling claims for prospective injunctive relief, precludes class certification, and requires dismissal. *See* Section II.

Frank adopts by reference the objection filed by the State of Iowa (Dkt. 245); and Frank adopts any other objection not inconsistent with this objection. Frank's objection is on behalf of the entire class, and, in particular, class members who were customers of Schwab between the time of the merger and July 28, 2021.

I. The Settlement is a *de facto* release of class damages claims for nothing, and plaintiffs forfeit any argument that this is fair, reasonable, or adequate.

Plaintiffs assert that "The proposed class settlement does not release or resolve any damages claims available under Section 4 of the Clayton Act." Dkt. 197 at 1. This is technically true, but misleading, because a court *approval* of the settlement will foreclose future class claims for damages. *Individual* class member claims are tolled by the class action, but it is now impossible to bring class claims for damages where the four-year statute of limitations has expired, because class actions are not tolled. *China Agritech, Inc. v. Resh*, 584 U.S. 1800 (2018). And as plaintiffs acknowledge in their complaint,

> Because the damages suffered by each individual Class member may be relatively smaller than the costs of litigation, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, such that most or all Class members would have no rational economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous…

Dkt. 1 ¶ 476. The loss of the class claims thus means the loss of the individual claims. And the loss of the class claims by themselves is material. *E.g.*, *Crawford v. Equifax Payment Svcs.*, 201 F.3d 877, 880 (7th Cir. 2000) (Easterbrook, J.). Yet the notice misleadingly communicates that "Settlement Class Members are not releasing any damage or monetary claims against Schwab." The notice says nothing about the legal effect of a settlement approval on class claims for past damages. A misleading class notice precludes settlement approval. *In re Katrina Canal Breaches Litig.*, 628 F.3d 185, 197-99 (5th Cir. 2010). Notice is especially important with respect to the release. *See, e.g., Vassalle v. Midland Funding LLC,* 708 F.3d 747, 759 (6th Cir. 2013) (incomplete description of released claims constitutes a Due Process violation); *Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227-29 (11th Cir. 1998) (same); *see also Mirfasihi v. Fleet Mortg. Co.*, 356 F.3d 781, 785 (7th Cir. 2004) (reversing settlement approval because, *inter alia*, the notice omitted the material fact that the release would have washed away claims being asserted in a parallel state court litigation). Furthermore, none of the class representatives' declarations in support of the settlement indicate any understanding of the effect of *China Agritech* on the class if the settlement is approved.

Indeed, it's far from clear that any of the class counsel understand this implication—they entirely fail to mention it in the notice, and do not mention it in the motions for settlement approval. The Court should investigate: did class counsel intentionally mislead the Court and the class by failing to mention *China Agritech* or its effect on the class, or was class counsel unaware of the legal effect of their settlement—in which case they are not adequate representatives of the class?

Plaintiffs simultaneously assert that Schwab overcharged consumers by "more than one hundred million dollars per year." Dkt. 197 at 1, 25. Plaintiffs are *de facto* releasing class claims of hundreds of millions of dollars (after trebling) for zero dollars. This is unfair even when the alleged damages are much smaller. *E.g.*, *Crawford*, 201 F.3d at 880. Yet, because Plaintiffs falsely tell the Court that there will be no adverse effect on the ability of class members to recover past damages, they make no effort to argue otherwise, and have forfeited any argument that the settlement fairly compensates for these alleged damages. They rest entirely on the false premise that the Settlement "does not release damages claims." Dkt. 197 at 24. But if the case were to proceed as a Rule 23(b)(3) action, the range

of damages is between zero (for a loss) and over a billion dollars (for trebled damages, which plaintiffs assert is worth over ten million dollars a month (Dkt. 197 at 25) for conduct ongoing since October 2020).

The settlement must be rejected.

II. There are problems precluding a settlement for prospective injunctive relief when there is no compensation for past injury under Article III and Rule 23(b)(b).

A court must satisfy itself of Article III jurisdiction, including Article III standing by the plaintiffs, when approving a settlement. *Frank v. Gaos*, 586 U.S. 485 (2019); *Williams v. Reckitt Benckiser LLC*, 65 F.4th 1243, 1254 (11th Cir. 2023). A plaintiff must demonstrate standing "with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). "And standing is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek." *Transunion LLC v. Ramirez*, 594 U.S. 413, __, 141 S. Ct. 2190, 2208 (2021).

Here, plaintiffs had Article III standing to bring the complaint: they alleged past and continuing damages, entitled to relief in damages and a retrospective injunction dissolving an allegedly anticompetitive merger. But they fail to demonstrate standing at the conclusion of the case where the relief they seek is now entirely different: prospective relief "ensuring adequate information barriers among the market makers." Dkt. 197 at 1.

For injunctive relief specifically, plaintiffs must demonstrate a "real and immediate threat of future injury" that is not merely conjectural or hypothetical. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 105 (1983); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013); *Williams*, 65 F.4th at 1253. If plaintiffs "lack Article III standing to pursue their claims against [Schwab] for injunctive relief," the district court lacks jurisdiction to approve a settlement of those claims. *Williams*, 65 F.4th at 1254, 1256. The lack of concrete relief to all class members also precludes certification under Rule 23(b)(2). *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 827 F.3d 223, 238

(2d Cir. 2016) (reversing certification of (b)(2) class where substantial number of class members "actually received nothing.").

Lyons establishes that past injury alone does not confer standing for injunctive relief unless there is a sufficient likelihood of future harm. The *Lyons* plaintiff, who had been subjected to a chokehold by police, lacked standing to seek an injunction against future chokeholds because he could not show a likelihood of being subjected to one again. 461 U.S. at 105-06. Similarly, *Clapper* held that speculative fears of future harm from potential government surveillance were insufficient for standing, because plaintiffs needed to show that the harm was "certainly impending." 568 U.S. at 410-14.

But the plaintiffs have made no showing that Schwab *currently* lacks adequate information barriers among the market makers in a way that they will suffer "certainly impending" harm. Indeed, the fact that class counsel thinks that they shouldn't even attempt to recover a billion dollars before taking their $9 million in fees and walking away shows that the ability to prove the harm is remote.

Class counsel can't have it both ways. Either they do not have Article III standing to seek or settle for prospective injunctive relief under *Williams*, or they have sold the class out by releasing any effective means of class recovery for hundreds of millions of dollars without compensation to anyone other than themselves and the class representatives.

Either way, the settlement should be rejected.

Conclusion

The Court must reject the settlement.

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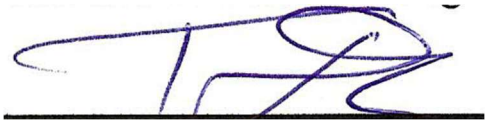
Attorneys for Objector Theodore H. Frank

I am the objecting class member, and I agree to my attorney filing this objection.



Theodore H. Frank

III. Certificate of Service

I hereby certify that on July 29, 2025, I electronically filed the foregoing document with the Clerk of the Court using the ECF System, which will send notification to the ECF counsel of record.

Additionally, I caused a substantially similar copy of the Objection and contemporaneously-filed Declaration of Theodore H. Frank United States Postal first-class mail to:

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Hon. Amos L. Mazzant, III

DECLARATION OF THEODORE FRANK

I, Theodore H. Frank, declare as follows:

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

2. I am a current U.S. brokerage customer of Schwab, and have been continuously for over twenty years. (I have not retained any records of Schwab trades predating June 2004, but I have records of Schwab trades in June 2004.) Some of my current account numbers end in x882, x930, and x843. I am not an employee, officer, director, legal representative, heir, successor, or wholly or partly owned subsidiaries or affiliates; nor am I one of the judicial officers or their immediate family members or associated court staff assigned to this case.

3. I am therefore a class member.

4. My full name is Theodore Harold Frank.

5. My mailing address for my Schwab account is 1302 Waugh Drive, PMB 158, Houston, TX 77019. My telephone number is (703) 203-3848. My email address is ted.frank@hlli.org and I use tfrank@gmail.com for my Schwab account.

6. I am Director of Litigation at the non-profit Hamilton Lincoln Law Institute ("HLLI"), and a Senior Attorney with its Center for Class Action Fairness ("CCAF"). I am represented by HLLI/CCAF attorney M. Frank Bednarz. I reserve the right to appear by counsel at the fairness hearing. I do not currently plan to present any witnesses or exhibits, but reserve the right to do so in rebuttal to any claims made by class counsel about this objection, and to cross-examine plaintiffs' witnesses and experts.

7. I object for the reasons stated in my contemporaneously-filed objection. In addition, I adopt the objection filed by the Iowa Attorney General's office; and I adopt any other objection not inconsistent with my objection. My objection is on behalf of the entire class.

8. Although we hope that Class Counsel will comport themselves professionally in responding to objections in this case, we are concerned by the Preliminary Approval Order's requirement that all objectors and their counsel lists all cases in which they have participated in an objection in the past five years. Courts nationwide have variously condemned this demand as

"designed to discourage objections," "too onerous," "unnecessary," and "needlessly frustrat[ing] and discourag[ing] objections to the settlement, with no countervailing benefits to the Court or the class." *See respectively Lackawanna v. Tivity Health Support*, 2019 WL 7195309, 2019 U.S. Dist. LEXIS 148756, at *14 (W.D.N.Y. Aug. 29, 2019); *Walters v. Target Corp.*, 2019 WL 6467705, 2019 U.S. Dist. LEXIS 207489, at *23 (S.D. Cal. Dec. 2, 2019); *Allicks v. Omni Specialty Packaging*, 2020 WL 5648132, 2020 U.S. Dist. LEXIS 173964, *19 (W.D. Mo. Sept. 22, 2020); *Ark. Fed. Credit Union v. Hudson's Bay Co.*, 2021 WL 8445929, 2021 U.S. Dist. LEXIS 136943, *8 (S.D.N.Y. Jul. 22, 2021); *see also Trabakoolas v. Watts Water Tech., Inc.*, 2014 WL 12814348, at *2 (N.D. Cal. Feb. 14, 2014) (excising a similar proposed requirement). The Court ought not enforce it in this case, and I object to it as unfairly burdensome and irrelevant. In particular, I do not track "participation" in objections, only when objections are initiated, and it is extremely burdensome to track which cases continued to have filings after 2020. Nevertheless, as to not prejudice my objection, I provide this information below.

9. While maintaining my objection to this demand, I aver that CCAF has represented clients or HLLI attorneys in the following objections to proposed class action settlements in the past five years. This list does not include class-action settlement cases where we were appointed or sought amicus status on behalf of class interests without representing an objecting class member; cases where we sought to be appointed guardian ad litem on behalf of the class; cases where we sought to intervene on behalf of a shareholder after parties dismissed a class-action complaint for a payout to the attorneys without a class-action settlement. Note that some cases involve multiple objections to multiple iterations of the settlement. In the interests of disclosure, I am identifying all objections where HLLI and CCAF attorneys have appeared as counsel or *pro se* even if those attorneys have not yet worked or will not work on this objection: *Hyland v. Navient*, No. 18-cv-9031-DLC (S.D.N.Y.); *In re Apple, Inc. Device Performance Litigation*, No. 18-md-2827-EJD (N.D. Cal.); *In re Google Inc. Cookie Placement Consumer Privacy Litigation*, No. 12-MD-2358 (D. Del.); *Mckinney-Drobnis v. Massage Envy Franchising, LLC*, No. 16-cv-6450-MMC (N.D. Cal.); *In re ConAgra Foods*, Inc., No. 11-cv-05379-CJC (C.D. Cal.); *Jones v. Monsanto Co.*, No. 19-cv-0102-BP (W.D. Mo.); *In re Flint Water Cases*, No. 5:16-cv-10444-JEL-MKM (E.D. Mich.); *Fruitstone v. Spartan Race, Inc.*, No. 1:20-cv-20836 (S.D. Fla.); *Williams v. Reckitt Benckiser*

LLC, No. 20-cv-23564 (S.D. Fla.); *In re Wawa Inc., Data Security Litigation*, No. 19-cv-6019 (E.D. Pa.); *In re Broiler Chicken Antitrust Litigation*, No. 16-cv-08637 (N.D. Ill.); *Hesse v. Godiva Chocolatier, Inc.*, No. 19-cv-00927-AJN (S.D.N.Y.); *In re Novo Nordisk Securities Litigation*, No. 17-cv-00209-ZNQ-LHG (D.N.J.); *In re Johnson & Johnson Sunscreen Marketing, Sales Practices and Products Liability Litigation*, No. 21-cv-3015-AHS (S.D. Fla.); *In re Morgan Stanley Data Security Litigation*, No. 20-cv-5914-PAE (S.D.N.Y.); *Kurtz v. Kimberly-Clark Corp.*, No. 14-cv-1142 (E.D.N.Y.); *In re All-Clad Metalcrafters LLC, Cookware Marketing and Sales Practices Litigation*, No. 21-mc-491-NR (W.D. Pa.); *In re JUUL Labs Inc. Marketing, Sales Practices, and Products Liability Litigation*, No. 19-md-02913-WHO (N.D. Cal.); *In re Altria Group, Inc. Derivative Litigation*, No. 3:20-cv-772 (DJN) (E.D. Va.); *Sharpe v. A&W Concentrate Co.*, No. 19-cv-00768-BMC (E.D.N.Y.); *Lundy v. Meta Platforms, Inc.*, No. 3:18-cv-6793-JD (N.D. Cal.); *In re Advocate Aurora Health Pixel Litigation*, No. 22-cv-1253-JPS (E.D. Wis.); *In re Google Location History Litigation*, No. 18-cv-5062-EJD (N.D. Cal.) (where HLLI represented three objectors including Scott St. John); *Smith v. Assurance IQ, LLC*, No. 2023-CH-09225 (Cir. Ct. Cook Cty. Ill.); *Stark v. Patreon Inc.*, No. 3:22-cv-03131 (N.D. Cal.); *In re Automotive Parts Antitrust Litigation*, No. 2:12-md-02311 (E.D. Mich.); *Lopez v. Apple Inc.*, No. 4:19-cv-04577-JSW (N.D. Cal.). Sixteen federal appeals resulted from thirteen of these objections, and we have a win-loss record of 10-5 in those appeals, with one pending.

10. In addition, we made an appearance on behalf of an objector on appeal in the Eighth Circuit in 2024, but withdrew at the client's request in 2025 before making any substantive filings on the merits. *Burnett v. Monestier*, No. 24-3585.

11. This list does not include cases we continued to pursue after 2020 in which we had filed an objection before July 29, 2020; or cases where someone else brought an unsuccessful objection and we agreed to represent the objector on appeal. This is because we do not track "participation," but only initiation. A case may conclude, and then be reopened or relitigated years later over post-judgment disputes. In an abundance of caution, I hereby list cases where I objected or my firm or Mr. Bednarz or I represented objectors between 2009 and July 29, 2020: *In re Bluetooth Headset Products Liability Litigation*, Case No 2:07-ML-1822-DSF-E (C.D. Cal.); *In re TD Ameritrade Account Holder Litigation*, Case No C 07-2852 VRW (N.D. Cal.); *Fairchild v. AOL*, Case No 09-cv-03568 CAS (PLAx)

(C.D. Cal.); *In re Yahoo! Litigation,* Case No 06-cv-2737 CAS (FMOx) (C.D. Cal.); *True v. American Honda Motor Co.*, Case No. 07-cv-00287 VAP (OPx) (C.D. Cal.); *Lonardo v. Travelers Indemnity*, Case No. 06-cv-0962 (N.D. Ohio); *In re Motor Fuel Temperature Sales Practices Litigation*, Case No. 07-MD-1840-KHV (D. Kan.); *Bachman v. A.G. Edwards*, Cause No: 22052-01266-03 (Mo. Cir. Ct.); *Dewey v. Volkswagen*, Case No. 07-2249(FSH) (D.N.J.); *In re Apple Inc. Securities Litig.*, Case No. C-06-5208-JF (N.D. Cal.); *Robert F. Booth Trust v. Crowley,* Case No. 09-cv-5314 (N.D. Ill.); *In re Classmates.com Consolidated Litigation*, Case No. 09-cv-0045-RAJ (W.D. Wash.); *Ercoline v. Unilever*, Case No. 10-cv-1747 (D. N.J.); *In re HP Inkjet Printer Litigation*, Case No. 05-cv-3580 (N.D. Cal.); *In re HP Laserjet Printer Litigation,* Case No. 8:07-cv-00667-AG-RNB (C.D. Cal); *In re New Motor Vehicles Canadian Export Antitrust Litigation*, No. MDL 03-1532 (D. Me.); *Sobel v. Hertz Corp.*, No. 06-cv-545 (D. Nev.); *Cobell v. Salazar*, Case No. 1:96-cv-1285 (TFH) (D.D.C.); *Stetson v. West Publishing*, Case No. CV-08-00810-R (C.D. Cal.); *McDonough v. Toys "R" Us* and *Elliott v. Toys "R" Us*, Case Nos. 2:06-cv-00242-AB, No. 2:09-cv-06151-AB (E.D. Pa.); *Trombley v. National City Bank,* Case No. 10-cv-232 (JDB) (D.D.C.); *Blessing v. Sirius XM Radio Inc.,* Case No. 09-cv-10035 (S.D.N.Y.); *Weeks v. Kellogg Co.*, Case No. CV-09-08102 (MMM) (RZx) (C.D. Cal.); *In re Dry Max Pampers Litig.*, Case No. 1:10-cv-00301 TSB (S.D. Ohio); *In re Mutual Funds Investment Litig.*, No. 04-md-15862 (D. Md.); *Barber Auto Sales, Inc. v. UPS*, No. 5:06-cv-04686-IPJ (N.D. Ala.); *Brazil v. Dell*, No. C-07-1700 RMW (N.D. Cal.); *Fogel v. Farmers*, No. BC300142 (Super. Ct. Cal. L.A. County); *Walker v. Frontier Oil*, No. 2011-11451 (Harris Cty. Dist. Ct. Tex.); *In re MagSafe Apple Power Adapter Litig.*, No. C. 09-1911 JW (N.D. Cal.); *In re Online DVD Rental Antitrust Litig.,* No 4:09-md-2029 PJH (N.D. Cal.); *In re Nutella Marketing and Sales Practices Litig.*, No 11-1086 (FLW)(DEA) (D. N.J.); *In re Groupon, Inc., Marketing and Sales Practices Litig.*, No. 3:11-md-2238-DMS-RBB (S.D. Cal.); *In re Johnson & Johnson Derivative Litig.*, No. 10-cv-2033-FLW (D.N.J.); *Pecover v. Electronic Arts Inc.*, No. C 08-02820 CW (N.D. Cal.); *In re EasySaver Rewards Litigation*, No. 3:09-cv-2094-AJB (WVG), No. 3:09-cv-2094-BAS (S.D. Cal.); *In re Citigroup Inc. Securities Litigation*, No. 07 Civ. 9901 (SHS) (S.D.N.Y.); *City of Livonia Employees' Retirement System v. Wyeth*, No. 1:07-cv-10329 (RJS) (S.D.N.Y.); *In re Bayer Corp. Combination Aspirin Prods. Mktg. and Sales Practices Litig.*, No. 09-md-2023 (BMC) (JMA) (E.D.N.Y.); *In re Southwest Airlines Voucher Litig.*, No. 11-cv-8176 (N.D. Ill.); *Fraley v. Facebook, Inc.*, No. 11-cv-01726

(RS) (N.D. Cal.); *Pearson v. NBTY*, No. 11-CV-07972 (N.D. Ill); *Marek v. Lane,* 134 S. Ct. 8 (2013); *Dennis v. Kellogg, Inc.*, No. 09-cv-01786 (IEG) (S.D. Cal.); *Berry v. LexisNexis.*, No. 11-cv-754 (JRS) (E.D. Va.); *In re BankAmerica Corp. Secs. Litig.*, No. 13-2620 (8th Cir.); *Redman v. Radioshack Corp.*, No. 11-cv-6741 (N.D. Ill.); *Richardson v. L'Oreal USA,* No. 13-cv-508-JDB (D.D.C.); *Gascho v. Global Fitness Holdings, LLC*, No. 2:11-cv-436 (S.D. Ohio); *Steinfeld v. Discover Financial Services*, No. 3:12-cv-01118-JSW (N.D. Cal.); *In re Aetna UCR Litigation*, No. 07-3541, MDL No. 2020 (D.N.J); *Poertner v. The Gillette Co.*, No. 6:12-cv-00803 (M.D. Fla.); *In re Google Referrer Header Privacy Litigation*, No. 10-cv-04809 (N.D. Cal.); *Delacruz v. CytoSport, Inc.*, No. 4:11-cv-03532-CW (N.D. Cal.); *In re American Express Anti-Steering Rules Antitrust Litigation*, No. 11-md-2221 (E.D.N.Y.); *In re Capital One Telephone Consumer Protection Act Litigation*, 12-cv-10064 (N.D. Ill.); *Lee v. Enterprise Leasing Company-West*, LLC, No. 3:10-cv-00326 (D. Nev.); *Jackson v. Wells Fargo*, No. 2:12-cv-01262-DSC (W.D. Pa.); *In re Transpacific Passenger Air Transp. Antitrust Litig.,* No. 3:07-cv-05634-CRB (N.D. Cal.); *Careathers v. Red Bull N. Am., Inc.*, No. 1:13-cv-0369 (KPF) (S.D.N.Y.); *In re Riverbed Securities Litigation*, Consolidated C.A. No. 10484-VCG (Del. Ch.); *In re Target Corp. Customer Data Security Breach Litig.*, MDL No. 14-2522 (PAM/JJK) (D. Minn.); *In re Polyfoam Antitrust Litig.*, No. 10-MD-2196 (N.D. Ohio); *Hays v. Walgreen Co.*, No. 14-C-9786 (N.D. Ill.); *In re Subway Footlong Sandwich Mktg. & Sales Pract. Litig.*, No. 2:13-md-2439-LA (E.D. Wisc.); *In re Colgate-Palmolive SoftSoap Antibacterial Hand Soap Mktg. & Sales Pract. Litig.*, No. 12-md-2320 (D.N.H.); *Doe v. Twitter, Inc.,* No. CGC-10-503630 (Cal. Sup. Ct. S.F. Cty.); *Rodriguez v. It's Just Lunch Int'l*, No. 07-cv-9227 (SHS)(SN) (S.D.N.Y.); *Rougvie v. Ascena Retail Group,* No. 15-cv-724 (E.D. Pa.); *Allen v. Similasan Corp.*, No. 3:12-cv-0376-BAS (JLB) (S.D. Cal.); *In re PEPCO Holdings, Inc., Stockholder Litig.*, C.A. No. 9600-VCMR (Del. Ch.); *In re Pharmacyclics, Inc. Shareholder Litig.*, No. 1-15-CV-278055 (Santa Clara County, Cal.); *Williamson v. McAfee, Inc.*, No. 5:14-cv-00158-EJD (N.D. Cal.); *Edwards v. National Milk Producers Fed'n*, No. 11-cv-04766-JSW (N.D. Cal.); *In re Google Inc. Cookie Placement Consumer Privacy Litig.*, No. 12-MD-2358 (D. Del.); *Saska v. The Metropolitan Museum of Art*, No. 650775/2013 (Sup. Ct. N.Y. Cty., N.Y.); *Birbrower v. Quorn Foods, Inc.*, No. 2:16-cv-01346-DMG (AJW) (C.D. Cal.); *Aron v. Crestwood Midstream Partners L.P.*, No. 16-20742 (5th Cir.); *Kumar v. Salov N. Am. Corp.*, No. 14-cv-02411-YGR (N.D. Cal.); *Campbell v. Facebook, Inc.*, No. 13-cv-5996-PJH (N.D. Cal); *Knapp v.*

Art.com, Inc., No. 16-cv-00768-WHO (N.D. Cal.); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02420 YGR (DMR); *Ma v. Harmless Harvest, Inc.*, No. 16-cv-7102 (JMA) (SIL) (E.D.N.Y.); *In re Anthem Inc. Data Breach Litigation*, 15-md-02617-LHK (N.D. Cal); *Leung v. XPO Logistics, Inc.*, No. 15-cv-03877 (N.D. Ill.); *Cannon v. Ashburn Corp*, No. 16-cv-1452 (D.N.J.); *Farrell v. Bank of Am., N.A.*, No. 3:16-cv-00492-L-WVG (S.D. Cal.); *In re Petrobras Securities, Litigation*, No. 14-cv-9662 (S.D.N.Y.); *Berni v. Barilla*, No. 16-cv-4196 (E.D.N.Y.); *In re Domestic Airline Travel Antitrust Litigation*, No. 15-mc-1404 (D.D.C.); *Cowen v. Lenny & Larry's*, No. 17-cv-1530 (N.D. Ill.); *In re Samsung Top-Load Washing Machine Marketing Sales Practices and Prod. Liability Litig.*, No. 17-ml-2792-D (W.D. Okla.); *Littlejohn v. Ferrara Candy Co.*, No. 17-cv-1530 (S.D. Cal.); *In re Wells Fargo & Co. Shareholder Derivative Litigation*, No. 3:16-cv-05541-JST (N.D. Cal.); *In re Stericycle Securities Litigation*, No. 16-cv-7145 (N.D. Ill.); *In re Volkswagen Clean Diesel MDL*, No. 3:15-md-02672-CRB (N.D. Cal.); *In re ConAgra Foods, Inc.,* No. 2:11-cv-05379-CJC-AGR (C.D. Cal.); *Mckinney-Drobnis v. Massage Envy Franchising, LLC,* No. 16-cv-6450-MMC (N.D. Cal.); *Rael v. The Children's Place*, No. 3:16-cv-00370-GPC-LL (S.D. Cal.); *Exum v. National Tire and Battery*, No. 9:19-cv-80121 (S.D. Fla.); *Gold v. Lumber Liquidators*, No. 14-cv-05373 (N.D. Cal.); *In re Google LLC Street View Electronic Communications Litigation*, No. 10-md-02184 (N.D. Cal.); *In re Equifax, Inc. Customer Data Breach Litigation*, No. 17-md-2800-TWT (N.D. Ga.). In addition, I represented other clients in private practice between 2012 and 2015, but all of those cases concluded by 2019. I do not include cases where an objector consulted with me or CCAF but we did not agree to formal representation or make any formal appearance on behalf of the objector.

12. I am further informed that Mr. St. John served for six years as a senior official in the Louisiana Department of Justice; he may have appeared as counsel on objections filed by the State of Louisiana or other states; but he has no recollection or record of specific filings.

Pre-Empting *Ad Hominem* Attacks

13. This part of the declaration is not relevant to the merits of the objection. Unfortunately, it is the experience of CCAF that, when we object to settlements and fee requests, class counsels engage in abusive and false *ad hominem* attacks against us. Such attacks are irrelevant to the substance of the objection, and are indicative of class counsel's unwillingness to engage us on the

merits. The vast majority of district court judges do not fall for such transparent and abusive tactics. In an effort to anticipate such attacks and to avoid collateral litigation over a right to file a reply, I discuss and refute the most common ones below.

14. To protect the record, I submit this declaration. If the Court is inclined to rule solely on the merits and disregard irrelevant *ad hominem* attacks, it need not review the rest of the declaration, which simply provides factual background about the history of CCAF.

Center for Class Action Fairness

15. I founded CCAF, which eventually became a 501(c)(3) non-profit public-interest law firm based out of Washington, DC, in 2009. In 2015, CCAF merged into the non-profit Competitive Enterprise Institute ("CEI") and became a division within their law and litigation unit. In January 2019, CCAF became part of the Hamilton Lincoln Law Institute, a new non-profit public-interest law firm I founded in 2018 with Melissa Holyoak, whom President Biden later nominated to be a commissioner at the Federal Trade Commission.

16. CCAF's mission is to litigate on behalf of class members against unfair class action procedures and settlements. CCAF represents class members *pro bono* where class counsel employs unfair procedures to benefit themselves at the expense of the class. *See, e.g., In re Stericycle Sec. Litig.*, 35 F.4th 555, 572, 572 n.11 (7th Cir. 2022) (citing cases); *Briseño v. Henderson*, 998 F.3d 1014 (9th Cir. 2021); *Pearson v. NBTY, Inc.*, 772 F.3d 778, 787 (7th Cir. 2014) (CCAF "flagged fatal weaknesses in the proposed settlement" and demonstrated "why objectors play an essential role in judicial review of proposed settlements of class actions"); *In re Dry Max Pampers Litig.*, 724 F.3d 713, 716-17 (6th Cir. 2013) (CCAF's client's objections are "detailed, and substantive").

17. Since its inception, CCAF has recouped over $200 million for class members by driving settling parties to reach an improved bargain or by reducing outsized fee awards. *E.g.*, *In re Wells Fargo & Co. Shareholder Derivative Litig.*, 445 F. Supp. 3d 508 (N.D. Cal. 2020) (reducing fees by more than $15 million and proportionally increasing shareholder recovery); *see also In re EasySaver Rewards Litig.*, No. 09-cv-02094-BAS-WVG, 2020 U.S. Dist. LEXIS 77483, 2020 WL 2097616 (S.D. Cal. May 1, 2020) (reducing fees by 40%); Andrea Estes, *Critics hit law firms' bills after class-action lawsuits*,

BOSTON GLOBE (Dec. 17, 2017) (more than $100 million at time); *cf. Ark. Teacher Ret Sys. v. State St. Corp.*, 25 F.4th 55 (1st Cir. 2022) (resulting decision from *Boston Globe* exposé, upholding sanctions against Lieff Cabraser). CCAF has received national acclaim for its work. *See, e.g.*, Adam Liptak, *When Lawyers Cut Their Clients Out of the Deal*, N.Y. TIMES, Aug. 13, 2013 ("the leading critic of abusive class action settlements"); Roger Parloff, *Should Plaintiffs Lawyers Get 94% of a Class Action Settlement?*, FORTUNE, Dec. 15, 2015 ("the nation's most relentless warrior against class-action fee abuse"); The Editorial Board, *The Anthem Class-Action Con*, WALL ST. J., Feb. 11, 2018 (opining "[t]he U.S. could use more Ted Franks" while covering CCAF's role in exposing "legal looting" in the Anthem data breach MDL). Academics have recognized CCAF for developing "the expertise to spot problematic settlement provisions and attorneys' fees." Elizabeth Chamblee Burch, Publicly Funded Objectors, 19 THEORETICAL INQUIRIES IN LAW 47, 55-57 & n.37 (2018).

18. CCAF has been successful, winning reversal or remand in over thirty federal appeals decided to date in courts of appeals and the Supreme Court; we've won at least one federal appeal a year for the last fifteen years, often creating new law in the process. *E.g., Frank v. Gaos*, 586 U.S. 485 (2019); *In re Broiler Chicken Antitrust Litig.*, -- F.4th -- (7th Cir. Jul. 2, 2025); *Kurtz v. Kimberly-Clark Corp.*, -- F.4th – (2d Cir. July 1, 2025); *Alcarez v. Akorn, Inc.*, 99 F.4th 368 (7th Cir. 2024); *In re Johnson & Johnson Aerosol Sunscreen Mktg., Sales Practices & Prods. Liab. Litig.*, 2024 WL 3065907 (11th Cir. Jun. 20, 2024) (*per curiam*); *In re Wawa, Inc. Data Sec. Litig.*, 85 F.4th 712 (3d Cir. 2023); *In re Broiler Chicken Antitrust Litig.*, 80 F.4th 797 (7th Cir. 2023); *Williams v. Reckitt Benckiser LLC*, 65 F.4th 1243 (11th Cir. 2023); *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769 (9th Cir. 2022); *In re Stericycle Sec. Litig.*, 35 F.4th 555 (7th Cir. 2022); *McKinney-Drobnis v. Oreshack*, 16 F.4th 594 (9th Cir. 2021); *Briseño v. Henderson*, 998 F.3d 1014 (9th Cir. 2021); *Berni v. Barilla S.P.A*, 964 F.3d 141 (2d Cir. 2020); *Pearson v. Target Corp.*, 968 F.3d 827 (7th Cir. 2020); *In re Lithium Ion Batteries Antitrust Litig.*, 777 Fed. Appx. 221 (9th Cir. 2019) (unpublished); *In re Google Inc. Cookie Placement Consumer Privacy Litig.*, 934 F.3d 316 (3d Cir. 2019); *In re EasySaver Rewards Litig.*, 906 F.3d 747 (9th Cir. 2018); *In re Subway Footlong Mktg. Litig.*, 869 F.3d 551 (7th Cir. 2017); *In re Target Corp. Customer Data Sec. Breach Litig.*, 847 F.3d 608 (8th Cir. 2017); *In re Walgreen Co. Stockholder Litig.*, 832 F.3d 718 (7th Cir. 2016); *In re EasySaver Rewards Litig.*, 599 Fed. Appx.

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

19. We frequently represent law professors in court, and have also been appointed amicus in district court and appellate court proceedings where there was no adversary presentation. *E.g., Arkansas Teacher Ret. Sys. v. State St. Corp.*, 25 F.3d 55 (1st Cir. 2022) (affirming district court with CCAF defending against an *ex parte* appeal of class counsel); *McKnight v. Uber Techs.*, No. 14-05615-JST, Dkt. 256 (N.D. Cal. Mar. 21, 2022) (requesting CCAF's amicus participation regarding a novel issue of class action procedure).

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

21. Class counsel occasionally try to tar CCAF as "professional objectors," and then cite court opinions criticizing for-profit attorneys who threaten to disrupt a settlement unless plaintiffs' attorneys buy them off with a share of attorneys' fees. But this is not the non-profit CCAF's *modus operandi*, so the court opinions class counsel rely upon to smear CCAF are inapposite. *See* D. Brooks Smith, *Class Action and Aggregate Litigation: A Comparative International Analysis,* 124 PENN ST. L. REV. 303, 321-30 (2020) (distinguishing between professional objectors and objecting public interest groups); Paul Karlsgodt & Raj Chohan, *Class Action Settlement Objectors: Minor Nuisance or Serious Threat to Approval*, BNA: CLASS ACTION LITIG. REPORT (Aug. 12, 2011) (distinguishing CCAF from

professional objectors). CCAF refuses to engage in *quid pro quo* settlements, and has never withdrawn an objection in exchange for payment. Instead, CCAF is funded entirely through charitable donations and court-awarded attorneys' fees. The difference between a for-profit "professional objector" and a public-interest objector is a material one. As the federal rules are currently set up, "professional objectors" have an incentive to file objections regardless of the merits of the settlement or the objection. In contrast, a public-interest objector such as myself has to triage dozens of requests for *pro bono* representation and dozens of unfair class action settlements, loses money on every losing objection (and most winning objections) brought, can only raise charitable donations necessary to remain afloat by demonstrating success, and has no interest in wasting limited resources and time on a "baseless objection." CCAF objects to only a small fraction of the number of unfair class action settlements or excessive fee requests it sees.

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

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

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

25. In *In re Equifax, Inc. Customer Data Breach Litigation*, No. 17-md-2800-TWT (N.D. Ga.), the district court's approval order stated that I am a "serial objector" who objected merely to benefit

myself or my attorney. It further accused me of making "misleading" statements about the settlement. The order did not cite any evidence or reason to support this finding, and I have reason to believe the court used this language only because it adopted nearly verbatim a proposed order that was submitted *ex parte* by plaintiffs' counsel, without exercising independent judgment to make these findings. (The parties refused to make public the *ex parte* submission and the Eleventh Circuit assumed on appeal that the attorneys wrote the opinion rather than order disclosure.) The allegation made by the district court is false. Our objection in *Equifax* was meritorious, similar to successful objections we've made elsewhere that have won millions of dollars for class members, including in this Circuit. *See In re Lithium Ion Batteries Antitrust Litig.*, 777 Fed. Appx. 221 (9th Cir. 2019). I did not make any false or misleading statements about the settlement, and on appeal, plaintiffs failed to identify any false or misleading statements I made, and admitted that I have never engaged in extortion. Ultimately, although the Eleventh Circuit denied our appeal on the merits, it observed that "often times objectors play a beneficial role in opening a proposed settlement to scrutiny and identifying areas that need improvement." *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1257 (11th Cir. 2021) (internal quotation omitted).

26. In *Exum v. National Tire and Battery*, No. 9:19-cv-80121 (S.D. Fla. 2020), one of HLLI's attorneys, Melissa Holyoak (who now serves one of the Commissioners at the Federal Trade Commission) mistakenly misconstrued the release clause in the settlement agreement and filed an objection with an argument that relied on that erroneous reading. Once she became aware of the error, she withdrew that portion of the objection and has publicly expressed contrition and embarrassment that her work did not live up to the high standards she sets for herself. The district court issued an order to show cause why she should not be sanctioned, stating that the "false statements and representations" "appear[] to be reckless or negligent." The court also referred to the HLLI attorney as a "serial" or "professional" objector but made no finding that she or any other HLLI attorney has ever withdrawn an objection in exchange for payment. HLLI filed a response to the order explaining that this error was made in good faith, with no intent to delay or otherwise interfere with the court proceedings and again expressing contrition. The court subsequently issued an order discharging the

order to show cause in which it stated that "it is clear to the Court that [the HLLI attorney] does hold herself to high standards" and the court was "satisfied and impressed" by HLLI's "prompt and candid response." The court found that the HLLI attorney "did not engage in bad faith conduct and did not knowingly or intentionally make a false statement or misrepresentation to the Court."

27. Between 2012 and 2015, I had a private practice unrelated to my non-profit work. One of my former clients, Christopher Bandas, is a professional objector who has settled objections and withdrawn appeals for cash payments. I withdrew from representation of Mr. Bandas in 2015 when he undertook steps that interfered with my non-profit work. Mr. Bandas was criticized by the Southern District of New York after I ceased to represent him, and class counsel in other cases often cites that language and attempts to attribute it to me. Class counsel in multiple cases, using boilerplate language, has tried to make it seem like my paid representation of Mr. Bandas was somehow scandalous, using language like "forced to disclose" and "secret." There is nothing scandalous about that, unless one believes it is scandalous for an attorney to be paid to perform successful high-quality legal services for a client. And the sneering is false: my representation of Mr. Bandas was not secret, as I filed declarations in my name on his behalf in multiple cases, noting under oath that I was being paid to perform legal work for him; I filed notices of appearances in cases where he had previously appeared; and my declaration in the *Capital One* case ending the relationship was filed voluntarily at great personal expense to myself, as I had been offered and refused to take a substantial sum of money to accede to a Lieff Cabraser fee award of over $3400/hour. I only worked for Mr. Bandas in cases where I believed there was a meritorious objection to be made, had no role in any negotiations he made to settle appeals, and my pay was flat-rate or by the hour and not tied to his ability to extract settlements. I argued two appeals for Mr. Bandas and won both of them. In 2019, the Northern District of Illinois recognized the quality of the work I did with Mr. Bandas by awarding us substantial attorneys' fees for our success in winning an appeal over an approval of a settlement with Pella Windows that ultimately resulted in a substantially improved settlement for the class. CCAF had no attorney-client relationship with Mr. Bandas, and Mr. Bandas never paid CCAF, other than for his share of printing expenses when he was an independent co-appellant representing clients unrelated to CCAF.

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

29. Adversaries frequently cite another decade-old case, *Lonardo v. Travelers Indemnity Co.*, 706 F. Supp. 2d 766, 804 (N.D. Ohio 2010), where the district court criticized a policy-based argument by CCAF as supposedly "short on law"; however, CCAF ultimately was successful in the Seventh and Ninth Circuits on that same argument. *See Briseño v. Henderson*, 998 F.3d 1014 (9th Cir. 2021) (agreeing that reversionary clauses are a problematic sign of self-dealing); *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011) (same); *Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014) (same). Moreover, the court in *Lonardo* stated its belief that "Mr. Frank's goals are policy-oriented as opposed to economic and self-serving" and even awarded CCAF about $40,000 in attorneys' fees for increasing the class benefit by $2 million. *Lonardo*, 706 F. Supp. 2d at 813-17.

30. CCAF has no interest in pursuing "baseless objections," because every objection we bring on behalf of a class member has the opportunity cost of not having time to pursue a meritorious objection in another case. We are confronted with many more opportunities to object (or appeal erroneous settlement approvals) than we have resources to use, and make painful decisions several times a year picking and choosing which cases to pursue, and even which issues to pursue within the case. CCAF turns down the opportunity to represent class members wishing to object to settlements or fees when CCAF believes the underlying settlement or fee request is relatively fair. This is especially true now that HLLI has expanded into successful litigation over other issues that our attorneys care about. We have successfully litigated regulatory and first-amendment cases. *E.g., CEI v. FCC*, 970 F.3d 372 (D.C. Cir. 2020); *Stock v. Gray*, __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 58497 (W.D. Mo. Mar. 28, 2025) (granting summary judgment and enjoining rule of professional conduct that would chill free speech). We have brought pending class-action litigation in two federal district courts against NGOs that engage in civil terrorism against innocent drivers. *Cf.* Jason L. Riley, *If Police Won't Back Up*

'Mr. Brooklyn,' Maybe a Lawyer Will, Wall St. J. (Jan. 23, 2024). We also frequently file amicus briefs in the Supreme Court on constitutional issues. There is thus substantial opportunity cost with every class-action objection we file.

31. While I am often accused of being an "ideological objector," the ideology of CCAF's objections is merely the correct application of Rule 23 to ensure the fair treatment of class members. Likewise, I have often seen class counsel assert that I oppose all class actions and am seeking to end them, not improve them. The accusation—aside from being utterly irrelevant to the legal merits of any particular objection—has no basis in reality. I have been writing and speaking about class actions publicly for over a decade, including in testimony before state and federal legislative subcommittees, and I have never asked for an end to the class-action device, just proposed reforms for ending the abuse of class actions and class-action settlements. That I oppose class-action abuse no more means that I oppose class actions than someone who opposes food poisoning opposes food. As a child, I admired Ralph Nader and consumer reporter Marvin Zindler (whose autographed photo was one of my prized childhood possessions), and read every issue of *Consumer Reports* from cover to cover. I have focused my practice on conflicts of interest in class actions because, among other reasons, I saw a need to protect consumers that no one else was filling, and as a way to fulfill my childhood dream of being a consumer advocate. I have frequently confirmed my support for the principles behind class actions in declarations under oath, interviews, essays, and public speeches, including a January 2014 presentation in New York that was broadcast nationally on C-SPAN and in my Supreme Court briefing in *Frank v. Gaos*, No. 17-961. On multiple occasions, successful objections brought by CCAF resulted in new class-action settlements where the defendants pay substantially more money to the plaintiff class without CCAF objecting to the revised settlement. I have been a class representative in a federal class action, represented by a prominent plaintiffs' firm. *Frank v. BMOCorp., Inc.*, No. 4:17-cv-870 (E.D. Mo.). And HLLI is sole putative class counsel in two class actions pending in federal court.

32. On October 1, 2015, after consultation with its board of directors and its donors, CCAF merged with the much larger Competitive Enterprise Institute ("CEI"). Prior to its merger with

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

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

34. While at CEI, CCAF was supported by preexisting donors and revenues, and brought in more money to CEI than CEI budgeted to CCAF. The fact that a particular corporation or foundation had been giving money to CEI before CCAF became part of CEI had no effect on our litigation decisions; we frequently successfully litigated against CEI donors, including Google.

35. CCAF has since left CEI, and is now part of the Hamilton Lincoln Law Institute, which receives no corporate funding.

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

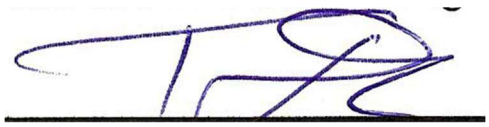
37. CCAF's history in requesting attorneys' fees reflects this approach. Despite having made dozens of successful objections and having won over $200 million on behalf of class members, CCAF has not requested attorneys' fees in the majority of its cases or even in the majority of its appellate victories. CCAF regularly passes up the opportunity to seek fees to which it is legally entitled. In *Classmates*, for example, CCAF withdrew its fee request and instead asked the district court to award

money to the class; the court subsequently found that an award of $100,000 "if anything" "would have undercompensated CCAF." *In re Classmates.com Consol. Litig.*, No. 09-cv-0045-RAJ, 2012 WL 3854501, at *11 (W.D. Wash. June 15, 2012). In other cases, CCAF has asked the court for a fraction of the fees to which it would be legally entitled based on the benefit CCAF achieved for the class and asked for any fee award over that fractional amount be returned to the class settlement fund. In *Petrobras*, despite winning tens of millions of dollars for the class, we requested less than $200,000 in fees. *See In re Petrobras Secs. Litig.*, 786 Fed. Appx. 274, 277 (2d Cir. 2019). In *Wells Fargo*, our good-faith objection on behalf of a shareholder aided the court in increasing benefit to shareholders by $15 million, and we requested only $250,000 (and received under $100,000) in fees through a court approval process—even though a fellow objector in the same case negotiated and received a payment of $1.75 million from Wells Fargo directly for settling his objections. *See In re Wells Fargo & Co, Shareholder Derivative Litig.*, 523 F. Supp. 3d 1108, 1117-19 (N.D. Cal. 2021).

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

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

Executed on July 29, 2025, in Houston, Texas.



Theodore H. Frank