

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

JULIE CAMPBELL, DIANA BICKFORD
and KERRIE MULHOLLAND, on behalf of
themselves and all others similarly situated,

Plaintiffs

v.

SIRIUS XM RADIO, INC.,

Defendant.

NIGEL COHEN,

Objector

Case No. 2:22-cv-02261-CSB-EIL

Hon. Colin Stirling Bruce

**MOTION FOR RECONSIDERATION OF
ORDER OVERRULING OBJECTIONS (DKT. 152) AND
ORDER GRANTING FINAL APPROVAL (DKT. 160)**

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INTRODUCTION

On March 27, class member Nigel Cohen filed objections to Plaintiffs’ motions for settlement approval and award of attorneys’ fees. Dkts. 138, 139. On April 10, the parties responded to those objections. Dkts. 142, 143, 144. On June 16, the Court issued an order overruling Cohen’s objections. Dkt. 152. On July 6, the Court entered a final settlement approval order and judgment. Dkt. 160.

Cohen brings this motion to reconsider these orders because the Court’s decision overruling his objection to the designation of the National Consumer Law Center (NCLC) as *cy pres* recipient relies on false premises arising from omissions in Class Counsel’s filings. Although Cohen could proceed directly to appeal without filing this motion to reconsider,¹ the Court should have a correct and complete record when deciding a case, especially one that implicates the rights of over ten million absent class members.

Cohen objected to the selection of NCLC as the *cy pres* recipient under the proposed settlement because his counsel were aware of an undisclosed preexisting relationship between the organization and the lead partner at Class Counsel Hutchinson’s firm, Lieff Cabraser. Dkt. 138 at 9-11. Cohen cited to the Northern District of California’s decision in *Knapp v. Art.com*, 283 F. Supp. 3d 823 (N.D. 2017), disapproving NCLC as a *cy pres* recipient when it had a separate co-counsel relationship with class counsel in outside litigation. Dkt. 138 at 10. Plaintiffs responded that *Knapp* was distinguishable and limited to the “narrow basis” of “class counsel’s firm...co-counsel[ing] with NCLC in another matter.” Dkt. 142 at 16. According to Plaintiffs, that “active, ongoing, direct professional relationship in *Knapp* between the case-handling firm and the recipient” was nothing like the relationship alleged here. Dkt. 142 at 6. The Court then relied on Plaintiffs’ distinction in its order overruling Cohen’s objection. Dkt. 152 at 8. For his part, Class Counsel Hutchinson expressly stated that “no Class Counsel have any relationship with NCLC.” Dkt. 142-1 at 4. Again, the Court relied on the statement in overruling Cohen’s objection. Dkt. 152 at 6.

¹ *ACF 2006 Corp. v. Ladendorf*, 826 F.3d 976, 981 (7th Cir. 2016) (Rule 59 reconsideration “is an option rather than a command”).

Both Plaintiffs' response brief and Mr. Hutchinson's declaration omit essential details of the preexisting relationship between Class Counsel Hutchinson's firm and NCLC, details undisclosed anywhere in the record and only discovered through objector's counsel's independent research after final approval issued: (1) Lieff Cabraser has co-counseled with NCLC on at least a half-dozen occasions; (2) Lieff Cabraser has itself represented NCLC; and (3) NCLC has filed amicus briefs in cases where Lieff represented a different plaintiff and had a financial stake in the litigation. Under the standard of this Circuit, Class Counsel should have disclosed these facts to the Court and the class initially, but even more so in response to Cohen's objection. *See In re Southwest Airlines Voucher Litig.*, 799 F.3d 701, 716 (7th Cir. 2015) ("Our message to the class action bar is short and simple: when in doubt, disclose.").

This Court should grant reconsideration, reopen the judgment, and find NCLC an unsuitable *cy pres* recipient in this case. If the Court approves an amended settlement, it should adjust the fee award downward to account for the lack of candor and the inefficient delay occasioned by the amendment process.

ARGUMENT

I. This Court should grant reconsideration because its approval of NCLC as a *cy pres* beneficiary was predicated on incomplete and incorrect facts.

In class action settlement proceedings, class counsel have an elevated duty of candor. *See, e.g., Ark. Teacher Ret. Sys. v. State St. Corp.*, 25 F.4th 55, 65 (1st Cir. 2022) (affirming sanctions and accompanying fee reduction against Lieff Cabraser for misleading the district court, with the Center for Class Action Fairness participating in the otherwise *ex parte* posture to defend the decision of the district court). Class counsel must disclose any potential conflicts of interest themselves; "[c]lass members [are] not obligated, on penalty of waiver, to search on their own for a conflict of interest on the part of a class representative." *Southwest*, 799 F.3d at 714; *see also Eubank v. Pella Corp.*, 753 F.3d 718, 728 (7th Cir. 2014) (finding settlement notice "incomplete and misleading" when it did not disclose, *inter alia*, the familial relationship between class counsel and the named representative); *see generally* Dkt. 139 at 19-20 (noting that lack of disclosure affects the appropriate fee).

Rule 59(e) reconsideration motions serve two core functions: to present discovered evidence, and to correct manifest errors of law or fact. *Barrington Music Prods. v. Music & Arts Ctr.*, 924 F.3d 966, 968 (7th Cir. 2019). The rule “enables the court to correct its own errors and thus avoid unnecessary appellate procedures.” *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996). Both functions apply here. The Court’s order overruling Cohen’s objection depended on Class Counsel’s representations that they have no relationship with NCLC (Dkt. 152 at 5-6) and that *Knapp* was distinguishable because Lieff Cabraser’s lead partner’s volunteer association did not present “the same concerns as an active and direct professional relationship between the class counsel’s firm and NCLC.” Dkt. 152 at 8. While Class Counsel Hutchinson may not have directly lied to this Court with his narrow statement that “[he] ha[s] no relationship of any kind with” NCLC (Dkt. 142-1 at 4), it was not proper for him to omit the long list of ties between *his firm* and NCLC, while at the same time asking the Court to distinguish *Knapp* as only involving those same firm-organization ties. It is one thing that a partner at Class Counsel’s firm, who is not counsel of record, has a relationship with a putative *cy pres* recipient. (Obviously here the Court concluded that this relationship does not rise to the level of a disabling conflict). But it is quite another that Class Counsel’s *firm* itself has established and repeat professional business dealings.

To be specific, Lieff Cabraser has co-counseled with NCLC on at least nine occasions:

- *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157 (9th Cir. 2013). This litigation consisted of an ongoing relationship between Lieff and NCLC for two decades. *See White v. Experian Info. Solutions, Inc.*, No. 8:05-cv-01070 (C.D. Cal.); *Radcliffe v. Equifax Info. Servs., LLC*, 2023 WL 2184817 (9th Cir. Feb. 23, 2023).
- *In re California Bail Bond Antitrust Litig.*, No. 4:19-cv-00717-JST (N.D. Cal.), *party and attorney information available at*

<https://www.courtlistener.com/docket/14689660/parties/in-re-california-bail-bond-antitrust-litigation/>.²

- *Adkins v. Morgan Stanley*, No. 1:12-cv-07667 (S.D.N.Y.), party and attorney information available at <https://www.courtlistener.com/docket/4351295/parties/adkins-v-morgan-stanley/>.
- *Powell-Perry v. Branch Banking & Trust Co.*, No. 1:10-cv-20820 (S.D. Fla.), party and attorney information available at <https://www.courtlistener.com/docket/12832897/parties/powell-perry-v-branch-bank-trust-company/>.
- *In re Chase Bank USA, N.A. "Check Loan" Contract Litig.*, No. 3:09-md-02032 (N.D. Cal.), party and attorney information available at <https://www.courtlistener.com/docket/4176418/parties/in-re-chase-bank-usa-na-check-loan-contract-litigation/>.
- *Yourke v. Bank of America, N.A.*, No. 1:09-cv-21963 (S.D. Fla.), party and attorney information available at <https://www.courtlistener.com/docket/5563945/parties/yourke-v-bank-of-america-na/>.
- *White v. Trans Union LLC*, No. 8:05-cv-01073 (C.D. Cal.), party and attorney information available at <https://www.courtlistener.com/docket/6292984/parties/terri-n-white-v-trans-union-llc/>.
- *Willis v. American Honda Finance Corp.*, No. 3:02-cv-00490 (M.D. Tenn.).
- *Lee v. WFS Financial Inc.*, No. 3:02-cv-00570 (M.D. Tenn.).

² In this case, Class Counsel Hutchinson himself appeared briefly, seemingly in error. See Notice of Change in Counsel, *In re Cal. Bail Bond Antitrust Litig.*, Dkt. 107 (May 28, 2020), available at <https://storage.courtlistener.com/recap/gov.uscourts.cand.338167/gov.uscourts.cand.338167.107.0.pdf>.

Lieff has represented NCLC itself on at least four occasions where NCLC appeared as *amicus curiae*:

- Brief for Public Justice, National Association of Consumer Advocates, National Consumer Law Center, and the Impact Fund as *Amici Curiae* Supporting Petitioners, *In re Hyundai & Kia Fuel Economy Litig.*, No. 15-56014 (9th Cir. Mar. 19, 2018).
- Brief for the National Consumer Law Center as *Amicus Curiae* Supporting Respondent, *Home Depot U.S.A., Inc. v. Jackson*, No. 17-1471 (U.S. Dec. 17, 2018).
- Brief for Public Justice, P.C. and National Consumer Law Center as *Amici Curiae* Supporting Plaintiffs-Appellees, *Kauders v. Uber Technologies, Inc.*, No. SJ-12883 (Mass. Aug. 21, 2020).
- Brief for the National Consumer Law Center and National Association of Consumer Advocates as *Amici Curiae* Supporting Appellant, *Noel v. Thrifty Payless, Inc.*, No. S246490 (Cal. Oct. 10, 2018).

NCLC has filed *amicus* briefs supporting Lieff Cabraser clients on at least two occasions:

- Brief of *Amicus Curiae* National Consumer Law Center, *et al.* in Support of Respondent, *TransUnion LLC v. Ramirez*, No. 20-297 (U.S. Mar. 10, 2021). When a settlement was reached on remand, the court awarded the plaintiffs’ attorneys, including Lieff Cabraser, \$4.2 million in attorneys’ fees. *Ramirez v. Trans Union, LLC*, No. 12-cv-00632, 2022 WL 17722395 (N.D. Cal. Dec. 15, 2022).
- Brief of *Amici Curiae* in Support of Plaintiffs’ Motion for Preliminary Injunction, *Scholl v. Mnuchin*, No. 4:20-cv-05309-PJH, Dkt. 40-1 (N.D. Cal. Aug. 21, 2020).

The connections between Class Counsel’s firm and NCLC exceed the relationship that the court found disqualifying in *Knapp v. Art.com*. 283 F. Supp. 3d at 835. Unlike here, class counsel in *Knapp* properly disclosed that conflict. *See* Declaration of Jason Kim, *Knapp v. Art.com*, No. 3:16-cv-00768, Dkt. 76-6 ¶13 (N.D. Cal. Jul. 27, 2017) (“I suggested the National Consumer Law Center (“NCLC”) as the designee, primarily because it was a *cy pres* designee in a case similar to this one.... At the time I made this suggestion, I was not aware that my firm was co-counsel with the NCLC in

another matter pending in the Northern District of California. I have no involvement in that matter and none of the attorneys who have involvement in that matter had any influence on my suggestion to designate the NCLC in this case.”). It is disturbing that Class Counsel here successfully urged the Court to distinguish *Knapp* on grounds that are manifestly erroneous. These are the exact sort of preexisting professional relationships that the Seventh Circuit, in no uncertain terms, instructed “the class action bar” to disclose. *Southwest*, 799 F.3d at 714-16.

Fundamentally, motions for reconsideration or reopening are “equitable in character and to be administered upon equitable principles.” *Di Vito v. Fidelity Deposit Co.*, 361 F.2d 936, 939 (7th Cir. 1966). Because of Class Counsel’s failure to disclose the conflict, they cannot now maintain that such arguments were available to class members like Cohen, either at the time of objection or at the fairness hearing.

CONCLUSION

For the above reasons, this Court should grant Cohen’s motion for reconsideration and deny settlement approval until the parties designate a suitable *cy pres* recipient. Further, Class Counsel’s fee award should be adjusted downward to account for the failure to disclose and inefficiency of representation.

Dated: July 14, 2026

/s/ Adam E. Schulman

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Certificate of Service

The undersigned certifies he electronically filed the foregoing Motion via the ECF system for the Central District of Illinois, thus effecting service on all attorneys registered for electronic filing.

Dated: July 14, 2026

/s/ Adam E. Schulman