**IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

Case No. 2:22-cv-2261-CSB-EIL

**PLAINTIFFS' RESPONSE TO MOTION FOR RECONSIDERATION OF ORDER OVERRULING OBJECTIONS AND ORDER GRANTING FINAL APPROVAL**

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## I. INTRODUCTION

Plaintiffs Julie Campbell, Diana Bickford, and Kerrie Mulholland ("Plaintiffs") respectfully submit this opposition to the Motion for Reconsideration filed by Objector Nigel Cohen. Objector's instant motion is not a principled objection to this Settlement. It is the latest installment in a well-documented institutional campaign by the Hamilton Lincoln Law Institute, doing business as the Center for Class Action Fairness ("HLLI" or "CCAF"), and its counsel Adam Schulman, against a particular category of *cy pres* recipient: nonprofit consumer-advocacy organizations that HLLI disfavors on ideological grounds. In the instant motion, Objector does not contend that the $28 million non-reversionary common fund is inadequate. He does not contend that the claims process is unfair, or that the release sweeps too broadly. His sole target, now as before, is the National Consumer Law Center ("NCLC"), an organization that Objector's counsel has opposed as a *cy pres* recipient in case after case across the country, without regard to the strength of the settlement or the interests of the class it would delay.

As shown below, the Court should deny the instant motion for four independent reasons. *First*, the instant motion fails to identify any "newly discovered evidence," or any "manifest error of law or fact." Objector's motion makes an unavailing attempt to cloak the "facts" he now presents as information "discovered through objector's counsel's independent research after final approval issued." (Dkt. 161 at 2.) That is not newly discovered evidence. That is a concession that Objector's own counsel simply failed to conduct his research when he first filed his objection to the settlement. The same public court dockets he now cites were equally available to him before he filed his original objection (Dkt. 138), before the Court's June 16, 2026 order overruling that objection (Dkt. 152), and before the June 26, 2026 fairness hearing. Indeed, these public dockets were available to Objector when he filed his objection on March 27, 2026. (*See* Dkt. 138.) The Court already considered and rejected the theory that any relationship between NCLC and one of the three Class Counsel's firm, Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser" or "LCHB") disqualifies NCLC as a potential *cy pres* recipient. (Dkt. 152 at 5-9.) Objector does not identify any error in that reasoning. He simply supplies more examples of the professional overlap the Court already found insufficient to disqualify NCLC.

*Second*, Objector tries to argue that a payment to NCLC as *cy pres* represents a conflict of interest that should have been disclosed. However, the *cy pres* funds at issue here are, by definition, funds that cannot be reasonably distributed to class members and thus selection of a *cy pres* cannot be a conflict of interest. The *cy pres* payment will only arise after two full rounds of cash payments to Settlement Class Members, where a third distribution would be impracticable. Thus, the selection of a *cy pres* recipient in this action cannot in any way conflict with the interests of the class members because the funds would never be eligible for payment to class members.

*Third*, it is premature. Under Section 18.3 of the Class Action Settlement Agreement & Release ("Settlement Agreement" or "S.A."), as noted, any residual funds are distributed to NCLC only when a further distribution to class members is impracticable. (Dkt. 121-1 (S.A.) § 18.) Even then, the *cy pres* distribution to NCLC is "subject to Court approval." (*Id*. § 12.) The Settlement Agreement further provides that no funds distributed to NCLC may be used for litigation. (*Id*. § 18.3.) Indeed, as the Court has already found, these procedures comport with best practices and Seventh Circuit authority by requiring Settlement Funds to go directly to Class Members and permitting a small *cy pres* award only if is not administratively feasible to direct residual funds to Class Members. At present, neither party, and certainly not Objector, is aware of the size of a potential residual *cy pres* fund, if any. As such, Objector has nothing ripe to object to. The Court's Final Approval Order expressly anticipated this sequencing, retaining continuing jurisdiction over "any motion to approve distribution of the Settlement Fund to any Cy Pres Recipient(s)." (Dkt.

160 ¶ 13(d).) Objector is asking this Court to reopen a final judgment and delay relief to hundreds of thousands of claiming class members over a contingency that may never occur.

*Fourth*, and most fundamentally, the class has waited long enough. This case was filed in November 2022, litigated for three years through eleven pending motions, and settled only after extensive, arm's-length negotiation. (Dkt. 152 at 2.) This Court entered its final judgment on July 6, 2026. (Dkt. 160.) Hundreds of thousands of class members have already filed claims and are entitled to receive their pro rata payments. (Dkt. 156 (Shaffer Decl.) ¶ 7.) Every day of delay occasioned by a recycled, ideologically motivated objection to a potential future *cy pres* distribution is a day the class is denied the benefit of a settlement this Court has already found fair, reasonable, and adequate. (Dkt. 160 ¶ 9.)

Even though Plaintiffs strongly believe that Objector's objection and its motion for reconsideration are entirely without merit, Plaintiffs would prefer to pay the class members rather than continue to fight an ideological battle that is ultimately a side show to this litigation. To that end, with Defendant's consent, Plaintiff withdraws its request to name NCLC as the *cy pres* recipient. Instead, Plaintiffs propose that the Court direct the parties to file a motion for *cy pres* payment after the amount of the *cy pres* is established. That motion will propose a new *cy pres* recipient that the Court can consider at that time. Even though Plaintiffs believe NCLC is a worthy *cy pres* recipient, they must put the interests of the class first, and this proposed approach should allow the class to obtain the relief they have long waited for without further delay from objectors.

As demonstrated below, Objector's arguments fail on reconsideration. The Court has already determined that the Settlement is fair, reasonable, and adequate. Accordingly, the Court should properly deny Objector's motion in its entirety.

## II. ARGUMENT

### A. Objector has Failed to Meet the Standard for Reconsideration

It is settled law that "[m]otions for reconsideration serve the narrow purpose of correcting manifest errors of law or fact or presenting newly discovered evidence." *Russo v. Walgreen Co.*, No. 1:17-CV-02246, 2026 LX 144160, at *14-15 (N.D. Ill. Mar. 30, 2026) (citing *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir. 1987)). "[A] motion for reconsideration is not an appropriate forum for rehashing previously rejected arguments or arguing matters that could have been heard during the pendency of the previous motion." *Id.* (citation modified). Indeed, reconsideration motions are not appropriate vehicles to raise arguments that could have been raised earlier through reasonable diligence. *See id.* Evidence is "newly discovered" for purposes of a reconsideration motion when the moving party shows "not only that this evidence was newly discovered or unknown to it until after the hearing, but also that it could not with reasonable diligence have discovered and produced such evidence during the pendency of the motion." *Hong Kong Leyuzhen Tech. Co. Ltd. v. Floerns*, No. 24 C 2939, 2025 LX 617790, at *11 (N.D. Ill. Dec. 31, 2025) (quoting *Caisse Nationale De Credit Agricole v. CBI Indus.*, 90 F.3d 1264, 1269 (7th Cir. 1996) (citation modified)).

Objector's motion confirms that reconsideration is not warranted here. Objector's entire motion rests on his assertion that Class Counsel had an obligation to "disclose" that Lieff Cabraser has, at various points over roughly two decades, served as co-counsel alongside NCLC in unrelated matters, and that NCLC and Lieff Cabraser have filed or received amicus support from one another in a handful of other unrelated matters, and that somehow is "newly discovered" information. (Dkt. 161 at 3-4.) Indeed, the information Objector now presents consists entirely of publicly available litigation records such as public dockets, party-and-attorney listings, and published opinions. Objector concedes that this publicly available information was "discovered through objector's counsel's independent research *after* final approval issued." (Dkt. 161 at 2 (emphasis added).) That concession itself is fatal to the instant motion.

Nothing about the supposed "independent research" required access to anything other than public records that existed, in the same form, well before Objector filed his original objection on March 27, 2026. Thereafter, Objector had many opportunities when he could have supplemented the record by raising the issues he now belatedly raises. There was no reason Objector could not have presented these issues when he filed a motion for leave to file supplemental declarations on April 13, 2026, or in response to the Court's order on June 16, 2026, or during the fairness hearing on June 26, 2026. Objector, represented by a sophisticated counsel with an institutional track record of litigating *cy pres* issues, offers no explanation whatsoever for why this research was not performed, or could not have been performed, at any of those earlier junctures. This is precisely the kind of post-hoc, piecemeal litigation strategy that Rule 59(e) is designed to foreclose. At some point, an issue needs to be resolved so the parties can move on, here it needs to be resolved so the class members can be sent the payments this Court has already approved.

Similarly, Objector's attempt to shift the burden on Class Counsel to disclose two decades worth of tangential contacts is unavailing. Class Counsel's declaration in response to the Objection stated, accurately and without qualification, that "no Class Counsel have any relationship with NCLC." (Dkt. 142-1 (Hutchinson Decl.) ¶ 13.) None of the attorneys appointed as Class Counsel in this matter have a relationship with NCLC. Furthermore, none of the cases Objector cites to in his motion for reconsideration contradict that statement. As shown below, the cases the Objector cites to are historical matters unrelated to the case at hand. Nor has Objector provided any reason to even question that NCLC is a legitimate, worthy *cy pres* recipient. As such, Objector has failed to identify any reason why the Court should revisit its prior ruling.

### B. As Constituted in the Settlement Agreement *Cy Pres* Payments to NCLC do not Create a Conflict of Interest that Needed to be Disclosed

At the heart of Objector's prior objection papers and his instant improper motion for reconsideration is the idea that, in light of the relationship between Leiff Cabraser and NCLC, the *cy pres* payment to NCLC somehow creates a conflict of interest that Class Counsel should have disclosed. However, at a fundamental level this argument is incorrect. Contrary to the cases Objector relies on, the *cy pres* payments here cannot conflict with funds that would otherwise be paid to the class. Thus, the payment and selection of a *cy pres* cannot conflict with the interests of the class members.

Objector continues to rely on *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823 (N.D. Cal. 2017) ("*Knapp*") in support of his argument. Objector argues that the relationship between Leiff Cabraser's co-counseling with NCLC is the same as the one that led the *Knapp* Court to disqualify NCLC as the *cy pres* recipient. (Dkt. 161 at 6.) However, *Knapp* does not compel the same result here. *Knapp* is a single, non-binding decision of a California district court. The *Knapp* opinion addressed this issue in four short sentences, it provided no analysis or reasoning, and it cited no sources that supported its apparently categorical conclusion that a co-counsel relationship in another matter per se precludes any *cy pres* award. 283 F. Supp. 3d at 835. Neither the Seventh Circuit nor the Central District of Illinois has adopted its categorical approach to attorney-organization relationships in the *cy pres* context. Tellingly, the *Knapp* court itself observed that NCLC "would normally be an acceptable *cy pres* beneficiary[.]" 283 F. Supp. 3d at 835.

But more fundamentally, even on its own terms, *Knapp* is readily distinguishable from the current matter. Courts in this Circuit scrutinize *cy pres* awards more closely when the award competes with the class's own recovery than when the *cy pres* will merely receive residual funds. Residual funds, by their nature, will not reach class members. *See Hughes v. Kore of Indiana*

*Enter., Inc*., 731 F.3d 672, 674-76 (7th Cir. 2013) (explaining that a *cy pres* distribution is not antithetical to class member interest where the payment would provide no meaningful relief to individual class members). For example, in *Pearson v. NBTY, Inc*., 772 F.3d 778 (7th Cir. 2014), the court closely criticized a *cy pres* award where the charity received more than the entire claiming class combined, receiving $1.13 million while $865,284 was set to be distributed to the "30,245 class members who submitted claims." *Id.* at 780. The *Knapp cy pres* was similarly set to be funded from any reduction in class counsel's requested fees and costs, 283 F. Supp. 3d at 830, funds that typically would have been available for distribution to the class members.

On the other hand, the *cy pres* here will only receive funds that are left after two rounds of distributions to the class members, when those remaining funds cannot practicably be paid to the class members. (S.A. § 18.) Courts view this type of residual distributions with far less skepticism because the funds cannot be reasonably paid to the class members and thus cannot be detrimental to class members. *See Birchmeier v. Caribbean Cruise Line, Inc.,* 896 F.3d 792, 794-98 (7th Cir. 2018) (affirming a settlement directing post-second-round remainders to a later-selected *cy pres* recipient, and rejecting a Rule 23 notice challenge to that process); *see also Mace v. Van Ru Credit Corp.,* 109 F.3d 338, 345 (7th Cir. 1997) (explaining that *cy pres* is inappropriate where class members could be identified and paid, but appropriate where "it is difficult or impossible to identify the persons to whom damages should be assigned or distributed"). That is particularly so where the award follows multiple rounds of payments to class members. *Birchmeier,* 896 F.3d at 794-98. Here, class members will be paid first, if funds remain, they will be paid again, and only when the funds cannot practicably be distributed to the class members will the funds go to the *cy pres*. Thus, here the *cy pres* payment never competes with a distribution to a class member, and as such NCLC's selection could not be considered a conflict of interest because its selection will never conflict with the interests of the Class.

In this way, this matter is also clearly distinguishable from *In re Southwest Airlines Voucher Litig*., 799 F.3d 701 (7th Cir. 2015) ("*Southwest*"), which Objector relies on to claim that Class Counsel should have disclosed all conflicts of interest. *Id.* at 716. In *Southwest* the class counsel failed to disclose a familial relationship between him and the named class representative, where the representative stood to receive a sizable service award (obviously again funds that could otherwise be included in payments to class members). *Id.* There can be no question that a family relationship like that created numerous instances where counsel and the representatives' interests conflicted with those of the class in *Southwest*, thereby requiring disclosure. Here, as shown, any payments to NCLC by definition cannot harm the class members' interests, and as such the justification for disclosure does not exist here.

This lack of conflict only puts in sharper focus the fact that Objector's arguments have nothing to do with the welfare and benefit of the class. Instead, the instant objection reflects only Objector and his counsel's personal ideological opposition to NCLC receiving money. The objection process is not intended to substitute an objector's preferences for those of the parties; one objector's ideological based preference does not render the settlement unreasonable. *See Linnear v. Illinicare Health Plan*, No. 1:17-cv-07132, 2019 U.S. Dist. LEXIS 239825, at *6 (N.D. Ill. Dec. 17, 2019) (holding that an "objector's preference for a different formula for distribution of settlement funds does not lead the court to conclude that the agreed-upon formula is unreasonable").

### C. The Court has Already Considered and Rejected Objector's Arguments Ruling that NCLC is an Appropriate C*y Pres* Recipient

The substance of Objector's renewed attack on NCLC fares no better than it did the first time. The Court's June 16, 2026 order (Dkt. 152) already considered, at length, whether any relationship between Lieff Cabraser and NCLC disqualifies NCLC as a potential *cy pres* recipient, and correctly concluded that it does not. The cases Objector cites in its motion for reconsideration do not disqualify NCLC as a potential *cy pres* recipient.

*First*, as shown in the response to the Objection, the Parties' decision to select NCLC as a *cy pres* recipient was not a product of collusion. (Dkt. 142 at 13.) It was a routine, well-considered choice based on NCLC's recognized national expertise in consumer protection generally and TCPA-related advocacy in particular. (*See id.* at 13-14; Dkt. 152 at 6-7.) Courts across the country have repeatedly approved NCLC as an appropriate *cy pres* recipient in consumer and TCPA cases precisely because of that expertise. *See Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 205-06 (N.D. Ill. 2018) ("*Leung*") (holding that "the selection of NCLC as *cy pres* recipient is reasonable, and will tend to further the goals of the TCPA"); *Almada v. Kriger Law Firm*, No. 19-cv-2109-MMP, 2025 WL 1311347, at *4 (S.D. Cal. May 6, 2025); *Duncan v. JPMorgan Chase Bank, N.A.*, No. SA-14-CA-00912-FB, 2016 WL 4419472, at *17 (W.D. Tex. May 24, 2016); *Allicks v. Omni Specialty Packaging, LLC*, No. 4:19-cv-1038-DGK, 2024 WL 218127, at *2 (W.D. Mo. Jan. 19, 2024); *Reid v. I.C. Sys.*, No. 12-cv-02661-PHX-ROS, 2021 WL 4710779, at *3 (D. Ariz. Sept. 2, 2021); *Alcala v. Meyer Logistics, Inc.*, No. 17-cv-7211 PSG, 2019 WL 4452961, at *10 (C.D. Cal. June 17, 2019); *Rawa v. Monsanto Co.*, No. 4:17-cv-01252 AGF, 2018 WL 2389040, at *11-12 (E.D. Mo. May 25, 2018); *Durham v. Cont'l Cent. Credit, Inc.*, No. 07-cv-1763-BTM(WMc), 2011 WL 2173769, at *2 (S.D. Cal. June 2, 2011). This Court cited several of these very authorities in overruling Objector's original objection. (Dkt. 152 at 6-7.)

*Second*, the record shows that NCLC's selection here was also consistent with the parties' course of dealing. NCLC was the *cy pres* recipient in *Buchanan v. Sirius XM Radio, Inc.*, No. 3:17-cv-00728, Dkt. 132 (N.D. Tex. Mar. 3, 2022), the earlier, related TCPA action against this same Defendant. Because the *Buchanan* court approved NCLC as an appropriate recipient, the parties reasonably and independently concluded that NCLC would be an appropriate potential recipient here as well. (Dkt. 142 at 8-9.).

*Third*, Lieff Cabraser and NCLC both operate in the consumer-protection space. Lieff Cabraser has spent decades litigating consumer, privacy, and financial-services class actions; NCLC has spent decades advocating, through litigation support, amicus participation, and policy work, for the same category of consumers. (Dkt. 142 at 13-14.) Given the relatively small number of law firms and organizations that specialize in this area, it would be remarkable if their paths had *not* crossed repeatedly over a twenty-year period – as co-counsel in some matters, as amici in others. As such, "[i]t is also not surprising that plaintiffs' lawyers working in the field of consumer protection would have connections to nonprofits doing similar work." *Leung*, 326 F.R.D. at 206. This Court has already concluded that Elizabeth Cabraser's board position with NCLC is "not a disqualifying conflict of interest in this case" and that NCLC is "an appropriate *cy pres* recipient, should such a distribution be required." (Dkt. 152 at 9.)

The table below, compiled from publicly available sources all of which the Objector had access to at all times,[1] shows just how unremarkable this kind of professional overlap is in the consumer-protection bar:

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[1] Courts can always take judicial notice of publicly filed documents. *Homeland Ins. Co. of N.Y. v. Health Care Serv.*, No. 18 C 6306, 2022 U.S. Dist. LEXIS 127662, at *2 (N.D. Ill. July 19, 2022) ("A court may take judicial notice of ... documents contained in the public record.") (quoting *520 S. Michigan Ave. Assocs., Ltd. v. Shannon*, 549 F.3d 1119, 1137 n.14 (7th Cir. 2008))).

| Matter / Citation | Nature of Relationship | Subject Matter |
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| *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157 (9th Cir. 2013); *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. 2023) | LCHB co-counseled with NCLC in these unrelated FCRA matters that closed on or around June 18, 2018, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Class action based on Fair Credit Reporting Act alleging that the credit reporting companies misreported bankruptcy-discharged debts. |
| *In re California Bail Bond Antitrust Litig.*, No. 4:19-cv-00717-JST (N.D. Cal.) | LCHB is co-counsel with NCLC in an unrelated antitrust matter. | Antitrust class action alleging that insurance companies, sureties and bail agents conspired to fix, raise, and artificially inflate the prices of bail bonds. |
| *Adkins v. Morgan Stanley*, No. 1:12-cv-07667 (S.D.N.Y.) | LCHB co-counseled with NCLC in an unrelated fair housing matter that closed on or around July 19, 2017, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Class action based on the Fair Housing Act alleging that Morgan Stanley knowingly funded and structured predatory high-risk subprime mortgage loans. |
| *Powell-Perry v. Branch Banking & Trust Co.*, No. 1:10-cv-20820 (S.D. Fla.) | LCHB co-counseled with NCLC in an unrelated consumer-finance matter that closed on or around September 5, 2012, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Class action alleging that the defendant bank charged high overdraft fees. |
| *In re Chase Bank USA, N.A. "Check Loan" Contract Litig.*, No. 3:09-md-02032 (N.D. Cal.) | LCHB co-counseled with NCLC in an unrelated consumer-finance matter that closed on or around December 15, 2015, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Class action challenging Chase's unilateral alteration of its check loans terms by increasing the fees charged. |
| *Yourke v. Bank of America, N.A.*, No. | LCHB co-counseled with NCLC in an unrelated consumer-finance matter that closed on or around June 20, | Class action challenging the bank's practice of reordering purchases to |

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| 1:09-cv-21963 (S.D. Fla.) | 2011, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | maximize overdraft fees charged. |
| *White v. Trans Union LLC*, No. 8:05-cv-01073 (C.D. Cal.) | LCHB co-counseled with NCLC in an unrelated credit reporting matter that closed on or around August 21, 2008, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Class action based on Fair Credit Reporting Act alleging that the credit reporting agency continued to report certain pre-bankruptcy civil judgments after bankruptcy was discharged. |
| *Willis v. American Honda Finance Corp.*, No. 3:02-cv-00490 (M.D. Tenn.) | LCHB co-counseled with NCLC in an unrelated consumer-finance matter that closed on or around April 18, 2005, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Class action based on the Equal Credit Opportunity Act. |
| *Lee v. WFS Financial Inc.*, No. 3:02-cv-00570 (M.D. Tenn.) | LCHB co-counseled with NCLC in an unrelated consumer-finance matter that closed on or around November 11, 2004, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Class action based on the Equal Credit Opportunity Act. |
| *In re Hyundai & Kia Fuel Econ. Litig.*, No. 15-56014, 926 F.3d 539 (9th Cir. 2019) | LCHB represented NCLC, along with other non-profit consumer advocacy organizations in filing their amici curiae brief in an unrelated consumer class action. LCHB's limited representation of NCLC ended on or around June 28, 2019, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Consumer class action challenging Hyundai's statements about its vehicles' fuel efficiency. |
| *Home Depot U.S.A., Inc. v. Jackson*, No. 17-1471, 587 U.S. 435, 139 S. Ct. 1743 (2019) | LCHB represented NCLC in filing its amicus curiae brief in an unrelated consumer class action. LCHB's limited representation of NCLC ended on or around February 7, 2022, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Debt collection matter where the debtor responded by filing a third-party class action alleging that Home Depot had engaged in unlawful referral sales and deceptive and unfair |

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| | | trade practices under state law. |
| *Kauders v. Uber Techs., Inc.*, No. SJC-12883, 486 Mass. 557, 159 (2021) | LCHB represented NCLC, along with another non-profit consumer advocacy organization in filing their amici curiae brief in an unrelated consumer class action. LCHB's limited representation of NCLC ended on or around February 7, 2022, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Anti-discrimination lawsuit where the core issue was whether the arbitration clause in Uber's clickwrap agreement was binding on the users. |
| *Noel v. Thrifty Payless, Inc.*, No. S246490, 2019 Cal. LEXIS 3058 (May 1, 2019) | LCHB represented NCLC, along with another non-profit consumer advocacy organizations in filing their amici curiae brief in an unrelated consumer class action. LCHB's limited representation of NCLC ended on or around September 19. 2019, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Deceptive packaging and mislabeling consumer class action relating to inflatable outdoor pools. |
| *TransUnion LLC v. Ramirez* , No. 20-297, 594 U.S. 413 (2021) | LCHB represented Plaintiff and NCLC filed an amicus curiae brief supporting the position taken by LCHB's client independent of LCHB's representation. The case was closed on or around December 19, 2022, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Class action based on the Fair Credit Reporting Act challenging false reports in the credit reports provided by the defendant to third-parties. |
| *Scholl v. Mnuchin*, No. 4:20-cv-05309-PJH (N.D. Cal. Aug. 21, 2020) | LCHB represented Plaintiffs Colin Scholl and Lisa Strawn and NCLC filed an amicus curiae brief supporting the position taken by LCHB's clients independent of LCHB's representation. This case was closed on or around January 21, 2021, well before the Parties selected NCLC as the *cy pres* recipient in the instant case. | Class action on behalf of persons who have been incarcerated to challenge the government's refusal to issue their Economic Impact Payments during the Covid-19 pandemic. |

As shown above, none of these matters in any way connected to Class Counsel, this class, SiriusXM, or the negotiation of this Settlement Agreement at the time NCLC was proposed as a potential *cy pres* recipient. Indeed, most of the matters listed above closed well before the Parties' selection of NCLC as the *cy pres* recipient in the instant case. Lieff Cabraser's representation of NCLC in NCLC's public advocacy briefs does not disqualify NCLC as an appropriate *cy pres* recipient. The foregoing cases where Lieff Cabraser represented NCLC as amicus curiae involved no payment, donation, or financial exchange of any kind between Lieff Cabraser and NCLC.

Indeed, if historical co-counsel and amicus relationships in unrelated matters were sufficient to disqualify a proposed *cy pres* recipient, it would become extremely difficult for any experienced consumer-protection litigator to ever propose NCLC, or any comparably prominent public-interest organization in the field, without first reviewing potentially decades of professional history. As shown, more than 125 attorneys at Lieff Cabraser volunteer for hundreds of organizations, and Elizabeth Cabraser volunteers for 25 different organizations alone. (Dkt. 142-1 (Hutchinson Decl.) ¶¶ 16-17.) A per se rule of the kind Objector asks the Court to create would not merely disqualify NCLC; it would almost entirely disqualify the entire specialized consumer-protection bar from ever proposing the organizations best positioned to use residual settlement funds for the purposes the underlying statute was designed to serve. No court, including this one, has adopted such a rule, and Objector has failed to identify any case to the contrary. Alternatively, these types of consumer organizations, many of which rely on donations like *cy pres* awards, would need to seriously consider never co-counseling with major plaintiff-side consumer protection firms out of the risk that any such relationship could later disqualify the organization from receiving funds. Objector's Motion never addresses these issues.

### D. Objector's Motion is a Premature Ideological Objection to the *Cy Pres* Recipient Rather than a Principled Objection to the Settlement

The record here shows that it is Objector's counsel's ideological opposition to consumer advocacy groups that is driving the initial objection and the instant motion, rather than a principled objection to the terms of the Settlement. HLLI and its counsel, Adam Schulman, have a well-documented institutional pattern of objecting to settlements, to *cy pres* recipients specifically, regardless of the strength of the underlying relief obtained for the class. This same pattern has been recognized and rejected by other courts. *See In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, MDL No. 2672 CRB (JSC), 2017 WL 1047834, at *4 (N.D. Cal. Mar. 17, 2017) (overruling a CCAF objection to a settlement providing consumers billions of dollars in compensation). This Motion is the latest example: having lost the argument once, Objector returns with more instances of the same arguments and facts this Court already held insufficient to disqualify NCLC.

As discussed above, no one knows whether there will be a *cy pres* payment. The settlement administrator has reported that approximately 441,008 Class Members filed claims. (Dkt. 156 (Shaffer Decl.) ¶ 10.) Under the Settlement's plain terms, any eventual *cy pres* amount is expected to be, at most, "a de minimis amount" compared to the overall benefit conferred on the class. (S.A. § 18.1(b).) Whether that de minimis amount will materialize at all depends on several variables such as the claims-processing outcomes, how many uncashed checks there are, and administrative feasibility of further distributions, all of which are unknown at present and cannot be known until the first two distribution rounds are complete.

This Court recognized precisely that structure when it entered final judgment. The Final Approval Order does not direct any *cy pres* distribution. Instead, the Court expressly retained "continuing and exclusive jurisdiction" over, among other things, "the disposition of the

Settlement Fund" and "any motion to approve distribution of the Settlement Fund to any Cy Pres Recipient(s)." (Dkt. 160 ¶ 13(b), (d).) In other words, the very issue Objector asks this Court to resolve now, whether NCLC should receive the *cy pres* funds, is not before the Court, has not been presented by any motion to approve an actual distribution, and will not be ripe unless and until a future motion for *cy pres* approval is filed. Indeed, Seventh Circuit law confirms that a *cy pres* award is appropriate, if at all, only for money that cannot feasibly be distributed to class members after direct distribution has been prioritized. *Pearson*, 772 F.3d at 784 (7th Cir. 2014); *Hughes*, 731 F.3d at 672; Dkt. 142 at 12-13. That is exactly what the Settlement Agreement provides here. As such, the Objector's instant motion asks the Court to adjudicate a hypothetical issue at this juncture.

Reopening a final judgment, delaying the distribution of a $28 million common fund to hundreds of thousands of claiming class members, and litigating anew the suitability of a *cy pres* recipient that may never receive a single dollar, is precisely the kind of disproportionate remedy Rule 59(e) does not contemplate. If and when a future motion to approve a *cy pres* distribution is filed, Objector will have a full and fair opportunity to raise this argument when it is actually ripe, with a concrete dollar figure and a live controversy before the Court. Nothing about that sequencing prejudices Objector in the slightest. It simply respects the order of operations the parties negotiated, and the Court already approved. Given that Objector does not challenge the adequacy of the $28 million common fund, the fairness of the claims process, the sufficiency of the notice, or the scope of the release, there is no principled reason to withhold relief from the class today to litigate that contingency before it has arisen, when the Court's retained jurisdiction guarantees Objector a full opportunity to raise it later, if it ever becomes necessary to do so.

### E. Objector's Motion is Without Merit, but for the Benefit of the Class Members, Plaintiffs Withdraw NCLC as the *Cy Pres* Recipient and Propose Naming a New Recipient

For all of the reasons stated above, Objector's instant Motion is meritless. Nevertheless, it seems obvious that Objector intends to continue to oppose the appointment of NCLC as the *cy pres* recipient through appeal, thereby possibly delaying payment to the class members. Even though for the reasons explained NCLC is a worthy *cy pres* recipient, it is not in the class's interest to fight a battle against an ideolog over an issue like appointment of a *cy pres* that has little to no impact on the class members or even on the underlying issues in the litigation. Therefore, after meeting and concurring with counsel for Defendant, and with Defendant's consent, Plaintiffs withdraw their request that NCLC be named as the *cy pres* recipient.

Instead, consistent with the issues raised in the previous section, Plaintiffs and Defendant propose that the Court direct the Parties to make a motion at a later date, after they know the amount of the *cy pres*, proposing a new *cy pres* recipient and seeking the Court's approval of that recipient at that time. Should Objector wish to do so, it could of course object and oppose that motion at that time. However, by then the issue will be ripe for judicial determination, and by withdrawing NCLC Plaintiffs believe they will moot the instant motion for reconsideration, moot the Objector's objection to that portion of the settlement, and allow the class members to be paid by avoiding any appeals that Objector is obviously considering regarding the *cy pres* recipient.

## III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully withdraw their request that NCLC be named the *cy pres* recipient, and request that the Court either rule that Objector Nigel Cohen's Motion for Reconsideration is moot or deny it in its entirety and permit the settlement administration process, including distribution of the Settlement Fund to Settlement Class Members, to proceed without further delay.

Dated: July 28, 2026

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(4), the foregoing complies with the type volume limitation, as it is double-spaced and does not contain more than 7000 words or 45,000 characters.

*/s/ Mason A. Barney*

## CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of July, 2026, the foregoing was filed electronically with the Clerk of the District Court using its CM/ECF system and to be served by operation of the Court's electronic filing service on all counsel of record.

*/s/ Mason A. Barney*