

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

IN RE
MYLAN, N.V. SECURITIES
LITIGATION

Case No. 2:20-cv-00955-NR

CLASS ACTION

Hon. J. Nicholas Ranjan

THEODORE H. FRANK,

Objector.

DECLARATION OF OBJECTOR THEODORE H. 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 the objector, and I object to the fees on behalf of the entire class. My mailing address is 1302 Waugh Drive, PMB 158, Houston, Texas 77019. My telephone number is (703) 203-3848. My business email address is ted.frank@hlli.org, and I consent to service by e-mail in this case. I use tfrank@gmail.com for my Schwab account.

3. Hamilton Lincoln Law Institute and its attorneys, of which I am one, represent me in this matter and I appear *in pro. per.* I intend to attend the fairness hearing, and have separately filed a notice of appearance. 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.

4. This Declaration addresses multiple topics relevant to my Objection, which I've divided into sections below. I first detail my membership in the class. Then I introduce into evidence the other exhibits attached to this Declaration and relevant to my Objection. I then detail class counsel's history with the Named Plaintiff and the Mississippi Attorney General. Finally, I provide background and context regarding my professional work at the Hamilton Lincoln Law Institute, its Center for Class Action Fairness, and other class action work I've done. I give this to inform the Court as to my intent and credibility as an objector here, as well as to preempt the typical *ad hominem*

attacks that have been levied against my firm and me as we've advanced and won pro-class arguments while representing objectors throughout the country.

Class Membership

5. On February 16, 2018, during the class period, I purchased 1,000 shares of Mylan common stock (ticker: MYL) in my Charles Schwab investment account at an average price of \$42.23 per share. A redacted version of a true and correct copy of my trade notification emailed from Charles Schwab is included as Exhibit A1 to this Declaration.

6. I continuously held these 1,000 shares throughout the class period and for over two years. On March 11, 2020, after the disclosure of the misrepresentations alleged in Plaintiff's complaint, I sold all 1,000 shares of Mylan common stock in my Charles Schwab investment account at an average price of \$14.37 per share. A redacted version of a true and correct copy of my trade notification emailed from Charles Schwab is included as Exhibit A2 to this Declaration.

7. I made no other transactions in Mylan common stock during the class period.

8. I am a member of the class as defined in the complaint.

9. On or about April 18, I received postcard notice from the administrator notifying me of my membership in the putative settlement class.

10. I submitted a claim form via the class settlement website, with my claim number ending in 83BJ9. A redacted version of a true and correct copy of the claim form confirmation is attached as Exhibit B to this Declaration.

11. I have redacted personal identifying information and non-relevant financial information related to other contemporaneous trade notifications relating to other stocks from Exhibits A1, A2, and B. Should the Court require any of this information unredacted, I am happy to submit it for review *in camera*.

Incorporated Exhibits

12. In addition to this Declaration, which is included as an attachment to my contemporaneously-filed Objection, I also incorporate a number of exhibits to substantiate this Declaration. These include:

- a. **Exhibit C**, which is a letter dated May 20, 2013 from George W. Neville, Mississippi Special Assistant Attorney General, to Jonathan Ben-Asher, Esq. (attorney to plaintiff Bruce D. Bernstein), is a true and accurate copy of a filing from *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, No. 14-cv-6867-VEC, Dkt. 30-6 (S.D.N.Y. Mar. 18, 2016), an exhibit that Bernstein Litowitz filed in support of its motion and memoranda of law in support of allowing the action to remain under seal;
- b. **Exhibit D** is a true and accurate copy of the “Candidates” information tab regarding the Democratic Attorneys General Association on the site FollowTheMoney.org, detailing the organization’s donations for 2015, *available online at* <https://www.followthemoney.org/entity-details?eid=11633>;
- c. **Exhibit E**, which is the “Political Organization Report of Contributions and Expenditures” for the Democratic Attorneys

General Association, dated January 26, 2016. It is a true and correct copy of the Form 8872 report for the second half of 2015, as available from the IRS at <https://forms.irs.gov/app/pod/basicSearch/search>;

- d. **Exhibit F** is an aggregation of annual financial reports submitted by the “Lynn Fitch for Mississippi” campaign for the years 2019 and 2021-25, as available from the Mississippi Secretary of State’s website, www.sos.ms.gov. Contributions from class counsel to Ms. Fitch’s campaign are highlighted in yellow;
- e. **Exhibit G**, which is the original retention agreement by the Attorney General for the underlying litigation, dated June 24, 2020, is a true and correct copy of an Internet Archive snapshot of the Mississippi Attorney General’s office’s website, taken August 20, 2023, at: <https://web.archive.org/web/20230820153559/https://www.ago.state.ms.us/wp-content/uploads/2020/07/Mylan-retention-agreement.pdf>; and
- f. **Exhibit H** is a true and correct copy of the superseding retention agreement, dated July 21, 2023, as available from the Mississippi Secretary of State’s website at: <https://attorneygenerallynnfitch.com/wp-content/uploads/2023/08/Mylan-Retention-Agreement.pdf>.

Class Counsel, MissPERS, and the Mississippi AG

13. MissPERS and Bernstein Litowitz have appeared together in dozens of major securities class actions, and their relationship has been the subject of a federal

whistleblower complaint and repeated judicial scrutiny. The following facts were not disclosed to the Court in the Plaintiffs' motion for appointment of lead plaintiff and counsel. *See* Dkt. 18.

14. Central to MissPERS and Bernstein Litowitz's relationship is the Mississippi Attorney General's office. Mississippi law gives the Attorney General, not MissPERS, "complete control" over MissPERS's litigation, including the ability to retain outside securities counsel for the fund. *See* Ex. C, Neville Letter at 2-4. This creates a perverse incentive denounced by legal scholars, *see* Stephen J. Choi et al., *The Price of Pay to Play in Securities Class Actions*, 8 J. EMPIRICAL LEGAL STUD. 650 (2011), where "an informal quid pro quo" arises in which "law firms specializing in securities class actions would contribute to the campaign coffers of the elected officials who oversee those funds, and that, in exchange (and in the hopes of getting more contributions), those officials would use their control over the funds to select those firms to serve as lead counsel for cases in which the funds are the lead plaintiff." *In re Cendant*, 264 F.3d 201, 270 n.49 (3d Cir. 2001).

15. In February 2006, then-Mississippi Attorney General Jim Hood retained Bernstein Litowitz for the first time as lead counsel for MissPERS in the Delphi Corporation securities class action "just days after receiving \$25,000 in donations" from the firm's attorneys. *Pay-to-Play and the Tort Bar*, Wall St. J. (Oct. 31, 2009) (calling out Bernstein Litowitz's connections to Mississippi and Louisiana officials by name). Since then, Bernstein Litowitz has donated aggressively to Mississippi Attorney General campaigns over two decades, two political parties, and two office-holders, while seeing its business on behalf of the State explode. Between 2005 and 2011, Bernstein Litowitz

attorneys donated \$122,000 to Hood—the most of any plaintiff firm—and they were rewarded with ten MissPERS securities suits, more than three times as many as any other firm. US Chamber Institute for Legal Reform, *Frequent Fliers: Repeat Plaintiffs in Shareholder Litigation* (2013), available at <https://tinyurl.com/mr2euyms>. Academics have estimated that Bernstein Litowitz earned \$1.3 billion in fees from securities class actions between 2005 and 2018. Choi, Stephen J., Jessica Erickson and Adam C. Pritchard, *The Business of Securities Class Action Lawyering*, 99 IND. L. J. 775, 793 (2024). In 98.5% of its cases in that sample, Bernstein Litowitz represented an institutional lead plaintiff. *Id.* at 794. In 2015, which was Attorney General Hood’s tightest race of four for the office, Bernstein Litowitz contributed \$100,000 to the Democratic Attorneys General Association on October 22, and DAGA wired \$150,000 to Hood the same day; over 40% of Hood’s 2015 reelection budget came from DAGA. *See* Exs. D & E.

16. When Hood elected to run for governor in 2019, Bernstein Litowitz shifted its attention to the Republican primary for Attorney General, as the State’s politics reflect a ruby-red political hue at the state level. Hood’s use of outside attorneys, especially those who donated to his campaign, was being actively debated in that primary, with the now-Attorney General Lynn Fitch seemingly the most amenable to continuing the practice. One of her opponents, Republican state rep Mark Baker, called for ending it and argued “the attorney general is the lawyer for the state, not the lawyer and the client and this virtually unchecked barrage of litigation against companies is killing our economy.” Bobby Harrison, *Despite controversy over AG’s use of outside lawyers, most attorney general candidates would continue the practice*, MISS. TODAY (June 28, 2019) <https://tinyurl.com/tpk5bexf>. Fitch’s other opponent, Mississippi Andy Taggart,

didn't outright call for ending the use of third party attorneys but did criticize "the current practice of attorneys coming to the attorney general to shop cases," arguing a competitive bid process was needed. *Id.* Fitch's language was accommodative. *Id.*

17. Accordingly, Bernstein Litowitz poured money into Ms. Fitch's coffers. It gave \$37,000 in 2019 as she ascended to her new office. Ex. F at 4-5, 7-8 (pincites refer to pages in pdf). Since that first election, the firm has donated an additional \$30,000 in 2021 (*id.* at 20, 25), \$41,000 in 2022 (*id.* at 41-43), \$50,000 in 2023 (Ms. Fitch's re-election year, *id.* at 56), \$50,000 in 2024 (*id.* at 64, 68), and \$45,000 in 2025 (*id.* at 82, 84). By comparison, Ms. Fitch only expended \$535,325.88 the year she ran for re-election in 2023 (*id.* at 54), so these sums represent a substantial fraction of Ms. Fitch's campaign expenses.

18. Business hasn't slowed down under Ms. Fitch either: Bernstein Litowitz continued MissPERS litigation from Attorney General Hood's tenure and represented MissPERS in new litigation like *In re The Trade Desk, Inc. Securities Litigation*, 2:25-cv-01396-CAS-DFM (C.D. Cal. 2025), *In re Seagate Technology Holdings plc Sec. Litig.*, No. 23-cv-03431-VC (N.D. Cal. 2023), *In re Cerence Sec. Litig.*, No. 1:22-CV-10321-ADB (D. Mass. 2022), and this case.

19. Separately, Judge Alsup of the Northern District of California ordered Bernstein Litowitz to bring to the attention of any courts in which it seeks appointment as class counsel, an order finding that Bernstein Litowitz had provided a "misleading" explanation regarding allegations of pay-to-play with a different institutional fund. *Seb Inv. Mgmt. Ab v. Symantec Corp.*, 2021 U.S. Dist. LEXIS 77040, 2021 WL 1540996 (N.D. Cal. Apr. 20, 2021). Bernstein Litowitz escaped those obligations in this case because

the appointment motion in this Court preceded the *Seb Inv. Mgmt.* order by ten months, and its motion for settlement class certification falls outside of the three-year window for Judge Alsup's ordered disclosure. *Compare In re Amc Entm't Holdings*, 2023 WL 5165606, 2023 Del. Ch. LEXIS 329, *78 (Del. Ch. Ct. Aug. 11, 2023) (finding lack of Bernstein Litowitz's disclosure "unacceptable").

20. Not to be outdone, Bernstein Litowitz's co-counsel Kessler Topaz and its Mississippi counsel Davidson Bowie are also substantial and longtime donors to Attorney General Fitch. Davidson Bowie, through either the firm or the named partner John Davidson, gave her \$2,500 in 2021, \$10,000 in 2022, \$20,500 in 2024 and \$30,000 in 2025 (\$35,000 if you count the Ms. Marisa Davidson co-listed at the same address as Mr. Davidson). *See* Ex. F. Mr. Davidson is seemingly the same individual who was personally called out by *Mississippi Today* as a participant in Attorney General Hood's controversial pay-to-play scheme in 2019. Harrison, *Despite controversy over AG's use of outside lawyers, supra*. Separately, Kessler Topaz has donated at least \$35,000 to the Attorney General's campaigns since 2019. *See* Ex. F.

21. Collateral litigation between a former Bernstein Litowitz attorney and his firm allege a pay-to-play relationship between MissPERS, its current counsel, and the Attorney General's office. The attorney alleged that Bernstein Litowitz "engage[d] in a kickback scheme with the Mississippi Attorney General's Office," *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 143 (2d Cir. 2016), where the firm assigned unnecessary work and undisclosed fees to Mississippi attorneys with ties to the Attorney General's Office after settlements were already reached and without disclosure to the approving courts. *Id.* at 132, 137, 143. Specifically, after a settlement in principle

was reached in a securities class action, a Bernstein Litowitz partner allegedly “assigned two unnecessary legal research projects” to an attorney in Mississippi, which resulted in a \$112,500 payment to the Mississippi attorney for “ridiculous” work that “contained no meaningful analysis.” *Id.* at 137. When confronted about the payment, another Bernstein Litowitz partner allegedly asked “Do you ever want us to work with Mississippi again?” *Id.* The whistleblower learned that the Mississippi attorney had no relevant experience but was “married to a Special Assistant Attorney General in the Mississippi AG’s Office.” *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 2016 U.S. Dist. LEXIS 35385, at *5 (S.D.N.Y. 2016). Neither this Mississippi attorney nor the fees paid were ever disclosed to the relevant court. *Id.* at *5 n.4. Nor were there disclosures of fees paid to three additional undisclosed Mississippi law firms. *Id.* The whistleblower alleged that “he developed ‘similar concerns’ related to other cases in which the firm assigned work to friends or relatives of members of the Mississippi Attorney General’s Office.” *Id.* at *5. He further alleged that Bernstein Litowitz ultimately “forced him to resign because he voiced concerns regarding a ‘kickback scheme’ whereby the firm was retained ... in exchange for the firm’s paying legal fees to friends and relatives of employees of the Mississippi Attorney General’s Office for unnecessary, irrelevant, poor quality legal work.” *Id.* at *1.

22. Bernstein Litowitz did not deny these allegations. *Cambridge Ret. Sys. v. Mednax, Inc.*, 2018 U.S. Dist. LEXIS 207064, at *39 (S.D. Fla. 2018). Instead it presented a warning letter from an Assistant Attorney General with the Mississippi Attorney General’s office which remarked “it is a policy of the State of Mississippi and its agencies to engage local counsel in litigation” and “in particular, a policy of this office

to provide work to qualified minority attorneys.” *See* Ex. C, Letter from George W. Neville, at 3.

23. At the time the Attorney General retained Bernstein Litowitz for this litigation, on June 24, 2020, the retention agreement included fee provisions nearly identical to those discussed by the Seventh Circuit. *In re Stericycle Sec. Litig.*, 35 F.4th 555, 560 (7th Cir. 2022). This original agreement does not appear to be available on the Attorney General’s website, but an archived copy is attached as Ex. G. In particular, Exhibit B to the 2020 agreement caps attorneys’ fees as follows:

Twenty-five percent (25%) of any recovery up to Ten Million Dollars (\$10,000,000.00); plus

Twenty percent (20%) of any portion of such recovery between Ten Million Dollars (\$10,000,000.00) and Fifteen Million Dollars (\$15,000,000.00); plus

Fifteen percent (15%) of any portion of such recovery between Fifteen Million Dollars (\$15,000,000.00) and Twenty Million Dollars (\$20,000,000.00); plus

Ten percent (10%) of any portion of such recovery between Twenty Million Dollars (\$20,000,000.00) and Twenty-Five Million Dollars (\$25,000,000.00); plus

Five percent (5%) of any portion of such recovery exceeding Twenty-five Million Dollars (\$25,000,000.00).

In this schedule, “recovery” refers to the estimated recovery that Mississippi PERS is awarded as its share of the recovery achieved for the class.

24. While the last term of this fee schedule arguably only applies to fees on MissPERS’s own individual recovery—an argument that Bernstein Litowitz advanced to the Seventh Circuit—the panel found that “the limitation is improbable, arbitrary,

unreasonable, and not consistent with a class representative's fiduciary duty to class members." *Stericycle*, 35 F.4th at 561. "Class representatives owe fiduciary duties to class members." *Id.* at 562 (citing *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 549-50, (1949)). "It is hard to see how those class members would be well served by an agreement where they recover less if the Mississippi fund's share of the losses is, for example, 20 percent rather than 50 percent." *Id.* Thus, the panel remanded for the district court to give the agreement "substantial weight in assessing the reasonableness of the proposed award."

25. In this case, the recommended fee would be slightly less than \$6.5 million or 10.8% of a \$60 million fund (slightly less because the fee is to be set as "a percentage of the recovery achieved for the class, *net of expenses*"). Ex. G at 2.

26. However, after the *Stericycle* opinion issued in 2022, MissPERS, under the direction of the Attorney General then engaged in her reelection campaign, entered a superseding retention agreement with Bernstein Litowitz on July 21, 2023. Ex. H. Apart from minor stylistic changes, this superseding agreement is verbatim with the 2020 original—except for Exhibit B. The brackets for increasingly large recovery have been eliminated in favor of a single presumptive fee of 25% regardless of the size of recovery:

The Law Firm shall be entitled to request Court approval of a contingency fee that will in no event exceed 25% of the total recovery achieved for the class, net of expenses, and will be consistent with Section 7-5-8 (2) Miss. Code Ann as it applies to the individual pro rata recovery achieved for Mississippi PERS. Consistent with applicable law, the contingency fee that the Law Firm ultimately will be permitted to request following the conclusion of the litigation shall be subject to the consent of the Attorney General, who shall consider the risks of the litigation, the

fees awarded in similar securities class action litigation, the result achieved, the skill required and the quality of work performed, and other relevant factors, in approving any request for an award of attorneys' fees submitted to the Court. At the conclusion of the litigation, the Law Firm is required to submit to the Attorney General relevant factual and legal support justifying their requested contingency fee and the Attorney General will consider that submission in determining the percentage contingency fee that the Law Firm will be permitted to request as it relates to the total class recovery.

Center for Class Action Fairness

27. I founded the non-profit public-interest law firm Center for Class Action Fairness (“CCAF”), 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 (“HLLI”), a new non-profit public-interest law firm I co-founded in 2018. I am the current acting president of HLLI.

28. The last two presidents have nominated Hamilton Lincoln Law Institute alumni for three appointments requiring Senate confirmation. In March 2026, the Senate confirmed the previous president of HLLI, Anna St. John, for an Article III lifetime appointment as a district court judge in the Eastern District of Louisiana.

29. CCAF’s mission is to litigate on behalf of class members against unfair class action procedures and settlements. *See, e.g., In re Stericycle Sec. Litig.*, 35 F.4th 555, 572, 572 n.11 (7th Cir. 2022) (citing cases in response to Bernstein Litowitz personal attack on me); *Pearson v. NBTY, Inc.*, 772 F.3d 778, 787 (7th Cir. 2014) (praising

CCAF's work). The Center has won over 200 million dollars for class members and 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).

30. The Center has been successful, winning reversal or remand in dozens of federal appeals. *E.g.*, *Frank v. Gaos*, 139 S. Ct. 1041 (2019); *In re Broiler Chicken Antitrust Litig.*, 142 F.4th 568 (7th Cir. 2025); *Kurtz v. Kimberly-Clark Corp.*, 142 F.4th 114 (2d Cir. 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. Oresback*, 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.

31. This court has experience with CCAF's work, and stated that it "appreciat[ed] [CCAF's client's] thoughtful objection." *In re All-Clad Metalcrafters, LLC*, 2023 WL 2071481, 2023 U.S. Dist. LEXIS 27868, *20 (W.D. Pa. Feb. 17, 2023) (Ranjan, J.). Judges of the Eastern District have similarly complimented CCAF's work and have awarded CCAF attorneys' fees for our success in improving the class recovery. *See McDonough v. Toys "R" Us, Inc.*, 80 F. Supp. 3d 626, 661 (E.D. Pa. 2015) ("CCAF's time was 'judiciously spent to increase the value of the settlement' to class members.");

Rougvie v. Ascena Retail Group, Inc., 2016 WL 6069968, at *4 (E.D. Pa. Oct. 14, 2016) (finding CCAF counsel’s “experienced” and its objections “among the strongest”).

32. 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).

33. HLLI pays me 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.

Pre-empting *Ad Hominem* Attacks

34. In my experience, class counsel often responds to CCAF objections by making a variety of *ad hominem* attacks, often wildly false. *See, e.g.*, *Stericycle*, 35 F.4th at 572 (criticizing *ad hominem* attack by Bernstein Litowitz on me). The vast majority of district court judges do not fall for such transparent and abusive tactics. And the Third Circuit has long held that the motives of class objectors are irrelevant to the merits of the objections that they raise. *In re Paper Antitrust Litig.*, 751 F.2d 562, 587 (3d Cir. 1984). But because the objection deadline is so close to the fairness hearing, we might not have a chance to supplement the record if class counsel engages in such tactics to distract from the merits of the objection. 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 *ad*

hominems below. If the Court is inclined to disregard the *ad hominem* attacks, it can avoid these collateral disputes entirely and the discussion below will be irrelevant.

35. Class counsel often try to tar CCAF as “professional objectors” or “serial 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 tar CCAF are inapposite. See Edward Brunet, *Class Action Objectors: Extortionist Free Riders or Fairness Guarantors*, 2003 U. Chi. Legal F. 403, 437 n. 150 (public interest groups are not professional objectors); 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, it 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 and fee requests it sees.

36. 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.

37. 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 allegation made by the district court is false. I continue to believe that our objection in *Equifax* was meritorious, similar to successful objections we’ve made elsewhere that have won millions of dollars for class members, and supported on appeal by an amicus brief by a prominent plaintiffs’ attorney that agreed with our analysis. 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). As to the derogatory findings levied at Frank (and other appealing objectors), the Eleventh Circuit held that such findings were “largely unrelated to the merits of this appeal and may be dicta in any event” and so did not review them. *Id.* at 1260 n.5.

38. In *Manhart v. WESPAC Foundation, Inc., et al.*, No. 24-cv-08209 (N.D. Ill.), my firm and I filed a complaint on behalf of the putative class to remedy defendants’ intentional blockading of a highway for their political advocacy. The case relied on novel but good-faith applications of Illinois tort law, but the district court granted Plaintiffs’ motion to dismiss and motion for Rule 11 sanctions. In its memorandum granting plaintiffs’ motions, the district court accused our lawsuit of having an “improper purpose,” making “false representations of law,” and also admonished us for our argument that a relevant Seventh Circuit decision “hinted its skepticism of” the law at issue’s “validity” and misattributing a quote to the Illinois Supreme Court in that discussion. The district court was correct that our brief misattributed a quote to the Illinois Supreme Court, which on subsequent investigation appears should have been a “*see*” citation using that case to justify our logical conclusion and was likely caused by poor and hasty, but unintentional, editing. Beyond this error, our suit is meritorious. Eleven state attorneys general signed onto an *amicus* brief in support of our case before the Seventh Circuit. The district court opinion contains material legal errors in its analysis, including several instances where it directly misstates the relevant Illinois law or misquotes precedent in its analysis. It also sanctioned us for reasons that were not argued in defendants’ motions and did not give us notice to respond to its *sua sponte*

reasoning—for example, the district court had a novel interpretation of the the Illinois Vehicle Code that permits drivers to park their cars on an interstate highway for “at least a week” without adverse consequence, and then sanctioned us for arguing otherwise. Our purpose in bringing this lawsuit was to cure real economic and non-pecuniary harms as a result of the defendants’ unlawful actions—innocent third parties have a right to not be held captive by others’ political activities. I believe we will succeed on appeal for the merits and, if necessary, in a future appeal on the sanctions, which remain non-final and are not yet on appeal.

39. In *Exum v. National Tire and Battery*, No. 9:19-cv-80121 (S.D. Fla.), Melissa Holyoak (who is now the pending nominee for U.S. Attorney for the District of Utah) 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.”

40. 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.

41. Before I joined CEI, 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.” 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 accept a

substantial sum of money to accede to a Lief 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. 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. 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.

42. Firms whose fees we have objected to have previously cited to *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.

43. Adversaries frequently cite a 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 In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011) (agreeing that reversionary clauses are a problematic sign of self-dealing); *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.

44. 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, such as freedom of speech and regulatory abuse. *See, e.g., Greenberg v. Haggerty*, 491 F. Supp. 3d 12 (E.D. Pa. 2020) (preliminarily enjoining rule of professional conduct that would chill free speech, which the defendant subsequently amended).

45. 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 nearly 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 briefing in *Frank v. Gaos*. On multiple occasions, successful objections brought by CCAF have resulted in new class-action settlements where the defendants pay substantially more money to the plaintiff class without CCAF objecting to the revised settlement. HLLI has brought several class actions in the last few years, including *Manhart*. And I was the putative class representative in a federal class action, represented by a prominent plaintiffs' firm. *Frank v. BMO Corp., Inc.*, No. 4:17-cv-870 (E.D. Mo.).

46. 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.

47. CEI was willing to merge with CCAF because it supported 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.

48. CCAF has since left CEI, and is now part of the Hamilton Lincoln Law Institute, which receives no corporate funding. We did not consult any of our donors in advance about our objection to this fee request.

49. 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.

50. 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.

51. 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 of America that the foregoing is true and correct.

Executed on May 14, 2026, in Houston, Texas.



Theodore H. Frank