UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

D. JOSEPH KURTZ, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. KIMBERLY-CLARK CORPORATION, et al., Defendants.	Civil Action No. 1:14-cv-01142-PKC-RML CLASS ACTION
GLADYS HONIGMAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. KIMBERLY-CLARK CORPORATION, Defendant.	Civil Action No. 2:15-cv-02910-PKC-RML CLASS ACTION

DECLARATION OF VINCENT M. SERRA IN FURTHER SUPPORT OF:
(1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT;
(2) CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES; AND
(3) CLASS REPRESENTATIVE PAYMENTS

I, VINCENT M. SERRA, declare as follows:

1. I, Vincent M. Serra, am an attorney duly licensed to practice in the States of New York and California, and in the District of Columbia, a partner of the law firm Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Class Counsel"), and I represent plaintiffs, Dr. D. Joseph Kurtz and Gladys Honigman ("Plaintiffs"), in these actions (the "Litigation"). I have been actively involved in the prosecution and resolution of the Litigation, am familiar with its proceedings, and have knowledge of the matters set forth herein based upon my involvement in this Litigation and supervision of or communications with other lawyers and staff assigned to this Litigation.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Declaration of Jeanne C. Finegan, APR in Connection with Proposed Notice to Settlement Class Members and its supporting exhibit.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the Declaration of Scott M. Fenwick of Kroll Settlement Administration LLC in Connection with Final Approval of Settlement and its supporting exhibits.

4. Attached hereto as **Exhibit 3** is a true and correct copy of the Declaration of Robert Villeé in Connection with Final Approval of Settlement and Class Counsel's Application for an Award of Attorneys' Fees and Litigation Expenses.

5. Attached hereto as **Exhibit 4** is a true and correct copy of a transcript taken in *In re American Realty Capital Properties, Inc. Litigation*, No. 1:15-MC-40 (AKH) (S.D.N.Y.) on January 23, 2019.

6. Attached hereto as **Exhibit 5** is a true and correct copy of a transcript taken in *Kaess v. Deutsche Bank AG*, No. 09-cv-01714 (GHW) (RWL) (S.D.N.Y.) on June 11, 2020.

Executed this 31st day of August, 2022.

/s/ Vincent M. Serra

VINCENT M. SERRA

EXHIBIT 1

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

D. JOSEPH KURTZ, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. KIMBERLY-CLARK CORPORATION, et al., Defendants.	:	Civil Action No. 1:14-cv-01142 CLASS ACTION
GLADYS HONIGMAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. KIMBERLY-CLARK CORPORATION, et al., Defendants.	:	Civil Action No. 1:15-cv-2910

DECLARATION OF JEANNE C. FINEGAN, APR IN CONNECTION WITH PROPOSED NOTICE TO SETTLEMENT CLASS MEMBERS

INTRODUCTION

1. I am the Managing Director and Head of Kroll Notice Media Solutions ("Kroll Media"),[1] a business unit of Kroll Settlement Administration LLC ("Kroll"). This declaration (the "Declaration") is based upon my personal knowledge as well as information provided to me by my associates and staff, including information reasonably relied upon in the fields of advertising media and communications.

2. Kroll has been designated by the Parties as the Claims Administrator to, among other tasks,[2] develop and implement a proposed publication Notice Plan as part of the Parties' proposed class action settlement in the above captioned case, as reflected in that certain Settlement Agreement and General Release (the "Settlement Agreement").

3. This Declaration describes my experience in designing and implementing notices and notice programs, as well as my credentials to opine on the overall adequacy of notice effort. This Declaration will also describe the Notice Plan and addresses how this comprehensive proposed program is consistent with other best practicable court-approved notice programs and the requirements of Fed. Civ. P. 23(c)(2)(B) and the Federal Judicial Center guidelines[3] for best practicable due process notice. This Declaration also provides a report concerning the successful implementation of the Notice Plan for this Settlement, which commenced on June 17, 2022 and was substantially completed on July 31, 2022.

4. The Notice Plan, due to Kroll's continued optimizations and active management, indeed, exceeded our original reach projections.[4] Utilizing Kroll's best-in-class tools and

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[1] Capitalized terms used but not defined herein have the meanings given to them in the Settlement Agreement (as defined below).

[2] Such other tasks are described in the declaration of my colleague, Scott M. Fenwick, filed contemporaneously herewith.

[3] FED. JUD. CTR., *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), *available at* https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf. The guide suggests that the minimum threshold for adequate notice is 70%. *See id.* at pp. 1, 3.

[4] The Notice Plan as described in the Settlement Agreement was estimated to reach at least 72% of the targeted Settlement Class.

technology, the Notice Plan reached an estimated 81% of the targeted Settlement Class members nationwide, by serving over 161,700,000 online display, search, social impressions with cross-device targeting on desktop and mobile, a press release, a settlement website, and a toll-free number.

QUALIFICATIONS

5. My credentials, expertise, and experience that qualify me to provide an expert opinion and advice regarding notice class action cases include more than 30 years of communications and advertising experience, specifically in class action and bankruptcy notice context. My Curriculum Vitae delineating my experience is attached hereto as **Exhibit A**.

6. In summary, I have served as an expert and have been directly responsible for the design and implementation of numerous notice programs, including some of the largest and most complex programs ever implemented in the United States as well as globally in over 140 countries and thirty-seven (37) languages. I have been recognized by numerous courts in the United States as an expert on notification and outreach.

7. During my career, I have planned and implemented over 1,000 complex notice programs for a wide range of class action, bankruptcy, regulatory, and consumer matters. The subject matters of which have included product liability, data breach, construction defect, antitrust, asbestos, medical, pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities, banking, insurance and bankruptcy.

8. I have provided testimony before the United States Congress on issues of notice.[5] I have lectured, published, and been cited extensively on various aspects of legal noticing, product

[5] *See*, *e.g.*, Report on the Activities of the Committee on the Judiciary of the House of Representatives: "Notice" Provision in the *Pigford v. Glickman* Consent Decree: Hearing Before Subcommittee on the Constitution, 108th Cong. 2nd Sess. 805 (2004) (statement of Jeanne C. Finegan); *Pigford v. Glickman & U.S. Dep't of Agric.*, 185 F.R.D. 82, 102 (D.D.C. Apr. 14, 1999) (J. Finegan provided live testimony and was cross-examined before Congress in connection with a proposed consent decree settling a class action suit against the U.S. Department of Agriculture. In the court opinion that followed, the Honorable Paul L. Friedman approved the consent decree and commended the notice program, stating, "The [c]ourt concludes that class members have received more than adequate notice . . . the timing and breadth of notice of the class settlement was sufficient . . . The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television stations.")

recall, and crisis communications. I have served the Consumer Product Safety Commission ("CPSC") as an expert to determine ways in which the CPSC can increase the effectiveness of its product recall campaigns. Additionally, I have published and lectured extensively on various aspects of legal noticing and taught continuing education courses for Jurists and lawyers alike on best practice methods for providing notice in various contexts.

9. I worked with the Special Settlement Administrator's team to assist with the outreach strategy for the historic Auto Airbag Settlement. *In re Takata Airbag Prods. Liab. Litig.*, No. 15-MD-2599-FAM (S.D. Fla.). I was extensively involved as a lead contributing author for *"Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions"* published by Duke University School of Law

10. Among others, my relevant experience includes *In re: Yahoo! Inc. Customer Data Security Breach Litigation*, Case No. 5:16-MD-02752 (N.D. Cal. 2016). Further, I have been recognized as being at the forefront of modern notice practices,[6] and I was one of the first notice experts to integrate digital media,[7] social media and influencers[8] into court-approved legal notice programs. My recent work includes:

- ***In re Purdue Pharma L.P.***, No. 19-23649 (Bankr. S.D.N.Y. 2019).
- ***In Re: PG&E Corporation***, No . 19-30088 Bankr. (N.D. Cal. 2019).
- ***Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation***, No. 19-MD-2887 (D. Kan. 2021).
- ***Pettit et al., v. Procter & Gamble Co.***, No. 15-cv-02150-RS (N.D. Cal. 2019).
- ***Cook et. al., v. Rockwell International Corp. and the Dow Chemical Co.,*** No. 90-cv-00181- KLK (D. Colo. 2017).

11. As further reference, in evaluating the adequacy and effectiveness of my notice programs, courts have repeatedly recognized my work as an expert. For example:

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[6] *See, e.g.*, Deborah R. Hensler et al., *Class Action Dilemmas, Pursuing Public Goals for Private Gain*, RAND (2000).

[7] *See In re Louisiana-Pacific Inner-Seal Siding Litig.*, Nos. 879-JE, 1453-JE (D. Or. 1995).

[8] *See In Re: PG&E Corporation*, No . 19-30088 Bankr. (N.D. Cal. 2019)

a. ***Yahoo! Inc. Customer Data Security Breach Litigation,*** No. 5:16-MD-02752 (N.D. Cal. 2010). In the Order of Preliminary Approval, dated July 20, 2019, para 21, the Honorable Lucy Kho stated:

> The Court finds that the Approved Notices and Notice Plan set forth in the Amended Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances.

b. ***Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation,*** Case No. 19-MD-2887 (D. Kan. 2021). In the Preliminary Approval Transcript, February 2, 2021 p. 28-29, the Honorable Julie A. Robinson stated:

> I was very impressed in reading the notice plan and very educational, frankly to me, understanding the communication, media platforms, technology, all of that continues to evolve rapidly and the ability to not only target consumers, but to target people that could rightfully receive notice continues to improve all the time.

c. ***In re Purdue Pharma L.P.,*** No. 19-23649 (Bankr. S.D.N.Y. 2019). Omnibus Hearing, Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I) Extending the General Bar Date for a Limited Period and (II) Approving the Form and Manner of Notice Thereof, June 3, 2020, transcript p. 88:10, the Honorable Robert Drain stated:

> The notice here is indeed extraordinary, as was detailed on page 8 of Ms. Finegan's declaration in support of the original bar date motion and then in her supplemental declaration from May 20th in support of the current motion, the notice is not only in print media, but extensive television and radio notice, community outreach, -- and I think this is perhaps going to be more of a trend, but it's a major element of the notice here -- online, social media, out of home, i.e. billboards, and earned media, including bloggers and creative messaging. That with a combined with a simplified proof of claims form and the ability to file a claim or first, get more information about filing a claim online -- there was a specific claims website -- and to file a claim either online or by mail. Based on Ms. Finegan's supplemental declaration, it appears clear to me that that process of providing notice has been quite successful in its goal in ultimately reaching roughly 95 percent of all adults in the United States over the age of 18 with an average frequency of message exposure of six times, as well as over 80 percent of all adults in Canada with an average message exposure of over three times.

d. ***In Re: PG&E Corporation,*** No. 19-30088 Bankr. (N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and

Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. June 26, 2019, Transcript of Hearing pp. 21:1, 201:20, the Honorable Dennis Montali stated:

> "…the technology and the thought that goes into all these plans is almost incomprehensible… Ms. Finegan has really impressed me today…"

SUMMARY OF NOTICE PROGRAM

12. Pursuant to the Court's Order Granting Preliminary Approval of Class Action Settlement, dated May 19. 2022 [Doc 439], Exhibit A ("Order"), the Notice Plan included:

- Online display banner advertising specifically targeted to reach the Settlement Class;
- Keyword search advertising;
- Social media through Facebook, Instagram, Pinterest and YouTube;
- An informational website on which the notices and other important Court documents will be posted; and

  A 24-hour toll-free interactive voice response ("IVR") telephone line that Settlement Class members can call for more information about the Settlement, including, but not limited to, requesting copies of the notice or Claim Forms.

ONLINE DISPLAY AND SEARCH

13. Online display ads targeted Cottonelle, Kotex, Pull-Ups, and Scott brand purchasers via purchase transactional data and keyword searches on Google Ads target topics including Kimberly Clark settlement, wipes class action, Cottonelle Fresh Care, Kotex Refresh wipes coupons, Scott wipes, and more.

SOCIAL MEDIA

14. Kroll purchased social media ads on Facebook, Instagram, Pinterest, and YouTube, targeting adults over the age of 18 who "like" and "follow" pages including Cottonelle, Cottonelle Fresh, U by Kotex, Poise, Pull-Ups, and Scott's content. Promoted pins (ads) on Pinterest targeted relevant terms including flushable wipes, Pull-Ups, moist wipes, and similar topics. On YouTube, ads targeted content related to flushable wipes. Further, social media ads retargeted those who

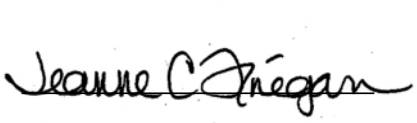
visited the Settlement Website.

CONCLUSION

15. In my opinion, the Notice Plan reflects a particularly appropriate, highly targeted, and contemporary way to provided notice to Settlement Class Members. Indeed, the Notice Plan exceeded our original estimated projections reached an estimated 81 percent of targeted Settlement Class Members, on average three times. In my opinion, the efforts undertaken in this proposed Notice Plan are of the highest modern communication standards, are reasonably calculated to provide notice, and are consistent with best practicable court-approved notice programs in similar matters and the Federal Judicial Center's guidelines concerning appropriate reach.

16. I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed on August 31, 2022, in Tigard, Oregon.



Jeanne C. Finegan

Exhibit A

JEANNE C. FINEGAN, APR

Jeanne Finegan, APR, is the Managing Director and Head of Kroll Notice Media. She is a member of the Board of Directors for the prestigious Alliance for Audited Media (AAM) and was named by *Diversity Journal* as one of the "Top 100 Women Worth Watching." She is a distinguished legal notice and communications expert with more than 30 years of communications and advertising experience.

She was a lead contributing author for Duke University's School of Law, *"Guidelines and Best Practices Implementing Amendments to Rule 23 Class Action Settlement Provisions."* And more recently, she has been involved with New York School of Law and The Center on Civil Justice (CCJ) assisting with a class action settlement data analysis and comparative visualization tool called the *Aggregate Litigation Project*, designed to help judges make decisions in aggregate cases on the basis of data as opposed to anecdotal information. Moreover, her experience also includes working with the Special Settlement Administrator's team to assist with the outreach strategy for the historic Auto Airbag Settlement, In re: *Takata Airbag Products Liability Litigation* MDL 2599.

During her tenure, she has planned and implemented over 1,000 high-profile, complex legal notice communication programs. She is a recognized notice expert in both the United States and in Canada, with extensive international notice experience spanning more than 170 countries and over 40 languages.

Ms. Finegan has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications. She has served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns. Further, she has planned and implemented large-scale government enforcement notice programs for the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

Ms. Finegan is accredited in Public Relations (APR) by the Universal Accreditation Board, which is a program administered by the Public Relations Society of America (PRSA),and is also a recognized member of the Canadian Public Relations Society (CPRS). She has served on examination panels for APR candidates and worked *pro bono* as a judge for prestigious PRSA awards.

Ms. Finegan has provided expert testimony before Congress on issues of notice, and expert testimony in both state and federal courts regarding notification campaigns. She has conducted numerous media audits of proposed notice programs to assess the adequacy of those programs under Fed R. Civ. P. 23(c)(2) and similar state class action statutes.

She was an early pioneer of plain language in notice (as noted in a RAND study,[1]) and continues to set the standard for modern outreach as the first notice expert to integrate social and mobile media into court approved legal notice programs.

In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include product liability, construction defect, antitrust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, government enforcement actions, securities, banking, insurance, mass tort, restructuring and product recall.

1 Deborah R. Hensler et al., CLASS ACTION DILEMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).

KROLL
NOTICE MEDIA

JUDICIAL COMMENTS AND LEGAL NOTICE CASES

In evaluating the adequacy and effectiveness of Ms. Finegan's notice campaigns, courts have repeatedly recognized her excellent work. The following excerpts provide some examples of such judicial approval.

***In re Purdue Pharma L.P.*,** No. 19-23649 (Bankr. S.D.N.Y. 2019). Omnibus Hearing, Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I)Extending the General Bar Date for a Limited Period and (II) Approving the Form and Manner of Notice Thereof, June 3, 2020, transcript p. 88:10, the Honorable Robert Drain stated:

> *"The notice here is indeed extraordinary, as was detailed on page 8 of Ms. Finegan's declaration in support of the original bar date motion and then in her supplemental declaration from May 20th in support of the current motion, the notice is not only in print media, but extensive television and radio notice, community outreach, -- and I think this is perhaps going to be more of a trend, but it's a major element of the notice here -- online, social media, out of home, i.e. billboards, and earned media, including bloggers and creative messaging. That with a combined with a simplified proof of claims form and the ability to file a claim or first, get more information about filing a claim online -- there was a specific claims website -- and to file a claim either online or by mail. Based on Ms. Finegan's supplemental declaration, it appears clear to me that that process of providing notice has been quite successful in its goal in ultimately reaching roughly 95 percent of all adults in the United States over the age of 18 with an average frequency of message exposure of six times, as well as over 80 percent of all adults in Canada with an average message exposure of over three times."*

In Re: PG&E Corporation Case No . 19-30088 Bankr. (N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1, the Honorable Dennis Montali stated:*

> *…the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 … Ms. Finegan has really impressed me today…*

Yahoo! Inc. Customer Data Security Breach Litigation, Case No. 5:16-MD-02752 (ND Cal 2016). In the Order Preliminary Approval, dated July 20, 2019, the Honorable Lucy Kho stated, para 21,

> *"The Court finds that the Approved Notices and Notice Plan set forth in the Amended Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances."*

Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation, Case No. 19-MD-2887 (U.S. District Court, District Kansas 2021). *In the Preliminary Approval Transcript, February 2, 2021 p. 28-29, the Honorable Julie A. Robinson stated:*

> *"I was very impressed in reading the notice plan and very educational, frankly to me, understanding the communication, media platforms, technology, all of that continues to evolve rapidly and the ability to not only target consumers, but to target people that could rightfully receive notice continues to improve all the time."*

In re: The Bank of New York Mellon ADR FX Litigation, 16-CV-00212-JPO-JLC (S.D.N.Y. 2019). In the Final Order and Judgement, dated June 17, 2019, para 5, the Honorable J. Paul Oetkin stated:

> *"The dissemination of notice constituted the best notice practicable under the circumstances."*

Simerlein et al., v. Toyota Motor Corporation, Case No. 3:17-cv-01091-VAB (District of CT 2019). In the Ruling and Order on Motion for Preliminarily Approval, dated January 14, 2019, p. 30, the Honorable Victor Bolden stated:

> *"In finding that notice is sufficient to meet both the requirements of Rule 23(c) and due process, the Court has reviewed and appreciated the high-quality submission of proposed Settlement Notice Administrator Jeanne C. Finegan. See Declaration of Jeanne C. Finegan, APR, Ex. G to Agrmt., ECF No. 85-8."*

Fitzhenry- Russell et al., v. Keurig Dr. Pepper Inc., Case No. :17-cv-00564-NC, (ND Cal). In the Order Granting Final Approval of Class Action Settlement, Dated April 10, 2019, the Honorable Nathanael Cousins stated:

> *"…the reaction of class members to the proposed Settlement is positive. The parties anticipated that 100,000 claims would be filed under the Settlement (see Dkt. No. 327-5 ¶ 36)—91,254 claims were actually filed (see Finegan Decl ¶ 4). The 4% claim rate was reasonable in light of Heffler's efforts to ensure that notice was adequately provided to the Class."*

Pettit et al., v. Procter & Gamble Co., Case No. 15-cv-02150-RS ND Cal**.** In the Order Granting Final Approval of the Class Action Settlement and Judgement, Dated March 28, 2019, p. 6, the Honorable Richard Seeborg stated:

> *"The Court finds that the Notice Plan set forth in the Settlement Agreement, and effectuated pursuant to the Preliminary Approval Order, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Settlement Class. …the number of claims received equates to a claims rate of 4.6%, which exceeds the rate in comparable settlements."*

Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc., Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016). In her Final Order and Judgment Granting Plaintiffs Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

> *"The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. …There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers… Thus the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. …The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members."*
>
> Additionally, in January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, noted:
>
> *"I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class."*

Cook et. al., v. Rockwell International Corp. and the Dow Chemical Co., *No. 90-cv-00181- KLK (D.Colo. 2017)., aka, Rocky Flats Nuclear Weapons Plant Contamination***.** In the Order Granting Final Approval, dated April 28, 2017, p.3, the Honorable John L. Kane said:

> *The Court-approved Notice Plan, which was successfully implemented by [HF Media- emphasis added] (see Doc. 2432), constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice Plan that was implemented, as set forth in Declaration of Jeanne C. Finegan, APR Concerning Implementation and Adequacy of Class Member Notification (Doc. 2432), provided for individual notice to all members of the Class whose identities and addresses were identified through reasonable efforts, … and a comprehensive national publication notice program that included, inter alia, print, television, radio and internet banner advertisements. …Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Notice Plan provided the best notice practicable to the Class.*

In re: Domestic Drywall Antitrust Litigation, MDL. No. 2437, in the U.S. District Court for the Eastern District of Pennsylvania. For each of the four settlements, Finegan implemented and extensive outreach effort including traditional, online, social, mobile and advanced television and online video. In the Order Granting Preliminary Approval to the IPP Settlement, Judge Michael M. Baylson stated:

> *"The Court finds that the dissemination of the Notice and summary Notice constitutes the best notice practicable under the circumstances; is valid, due, and sufficient notice to all persons… and complies fully with the requirements of the Federal rule of Civil Procedure."*

Warner v. Toyota Motor Sales, U.S.A. Inc., Case No 2:15-cv-02171-FMO FFMx (C.D. Cal. 2017). In the Order Re: Final Approval of Class Action Settlement; Approval of Attorney's Fees, Costs & Service Awards, dated May 21, 2017, the Honorable Fernando M. Olguin stated:

> *Finegan, the court-appointed settlement notice administrator, has implemented the multiprong notice program. …the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement. (See Dkt. 98, PAO at 25-28).*

Michael Allagas, et al., v. BP Solar International, Inc., et al., BP Solar Panel Settlement, Case No. 3:14-cv-00560- SI (N.D. Cal., San Francisco Div. 2016). In the Order Granting Final Approval, Dated December 22, 2016, The Honorable Susan Illston stated:

> *Class Notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and d. fully satisfied the requirements of the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.*

Foster v. L-3 Communications *EOTech*, Inc. et al (6:15-cv-03519), Missouri Western District Court.

> *In the Court's Final Order, dated July 7, 2017, The Honorable Judge Brian Wimes stated: "The Court has determined that the Notice given to the Settlement Class fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable."*

In re: Skechers Toning Shoes Products Liability Litigation, No. 3:11-MD-2308-TBR (W.D. Ky. 2012). In his Final Order and Judgment granting the Motion for Preliminary Approval of Settlement, the Honorable Thomas B. Russell stated:

> … *The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.*

Brody v. Merck & Co., Inc., et al, No. 3:12-cv-04774-PGS-DEA (N.J.) (Jt Hearing for Prelim App, Sept. 27, 2012, transcript page 34). During the Hearing on Joint Application for Preliminary Approval of Class Action, the Honorable Peter G. Sheridan acknowledged Ms. Finegan's work, noting:

> *Ms. Finegan did a great job in testifying as to what the class administrator will do. So, I'm certain that all the class members or as many that can be found, will be given some very adequate notice in which they can perfect their claim.*

Quinn v. Walgreen Co., Wal-Mart Stores Inc., 7:12 CV-8187-VB (NYSD) (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti stated:

> *"The notice plan was the best practicable under the circumstances. … [and] "the proof is in the pudding. This settlement has resulted in more than 45,000 claims which is 10,000 more than the Pearson case and more than 40,000 more than in a glucosamine case pending in the Southern District of California I've been advised about. So the notice has reached a lot of people and a lot of people have made claims."*

In Re: TracFone Unlimited Service Plan Litigation, *No. C-13-3440 EMC (ND Ca).* In the Final Order and Judgment Granting Class Settlement, July 2, 2015, the Honorable Edward M. Chen noted:

> *"…[D]epending on the extent of the overlap between those class members who will automatically receive a payment and those who filed claims, the total claims rate is estimated to be approximately 25-30%. This is an excellent result...*

In Re: Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation, Case No. 4:14-MD-2562 RWS (E.D. Mo. 2015), (Hearing for Final Approval, May 19, 2016 transcript p. 49). During the Hearing for Final Approval, the Honorable Rodney Sippel said:

> *It is my finding that notice was sufficiently provided to class members in the manner directed in my preliminary approval order and that notice met all applicable requirements of due process and any other applicable law and considerations.*

DeHoyos, et al., v. Allstate Ins. Co., No. SA-01-CA-1010 (W.D.Tx. 2001). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

> *[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. … This program was vigorous and specifically structured to reach the African American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts. Specifically, in order to reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach which included national magazines; magazines specifically appropriate to the targeted audiences; and newspapers in both English and Spanish.*

In Re: Reebok Easytone Litigation, No. 10-CV-11977 (D. MA. 2011). The Honorable F. Dennis Saylor IV stated in the Final Approval Order:

> *The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and [Ms. Finegan's] Declaration and the notice dissemination methodology implemented pursuant to the Settlement Agreement and this Court's Preliminary Approval Order… constituted the best practicable notice to Class Members under the circumstances of the Actions.*

Bezdek v. Vibram USA and Vibram FiveFingers LLC, No 12-10513 (D. MA) The Honorable Douglas P. Woodlock stated in the Final Memorandum and Order:

> *…[O]n independent review I find that the notice program was robust, particularly in its online presence, and implemented as directed in my Order authorizing notice. …I find that notice was given to the Settlement class members by the best means "practicable under the circumstances." Fed.R.Civ.P. 23(c)(2).*

Gemelas v. The Dannon Company Inc., No. 08-cv-00236-DAP (N.D. Ohio). In granting final approval for the settlement, the Honorable Dan A. Polster stated:

> *In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, [Ms. Finegan] caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. … The distribution of Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.*

Pashmova v. New Balance Athletic Shoes, Inc., 1:11-cv-10001-LTS (D. Mass.). The Honorable Leo T. Sorokin stated in the Final Approval Order:

> *The Class Notice, the Summary Settlement Notice, the web site, and all other notices in the Settlement Agreement and the Declaration of [Ms Finegan], and the notice methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Actions, the terms of the Settlement and their rights under the settlement … met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.*

Hartless v. Clorox Company, No. 06-CV-2705 (CAB) (S.D.Cal.). In the Final Order Approving Settlement, the Honorable Cathy N. Bencivengo found:

> *The Class Notice advised Class members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.*

McDonough et al., v. Toys 'R' Us et al, No. 09:-cv-06151-AB (E.D. Pa.). In the Final Order and Judgment Approving Settlement, the Honorable Anita Brody stated:

> *The Court finds that the Notice provided constituted the best notice practicable under the circumstances and constituted valid, due and sufficient notice to all persons entitled thereto.*

In re: Pre-Filled Propane Tank Marketing & Sales Practices Litigation, No. 4:09-md-02086-GAF (W.D. Mo.) In granting final approval to the settlement, the Honorable Gary A. Fenner stated:

> *The notice program included individual notice to class members who could be identified by Ferrellgas, publication notices, and notices affixed to Blue Rhino propane tank cylinders sold by Ferrellgas through various retailers. ... The Court finds the notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process and provided to the Class the best notice practicable under the circumstances.*

Stern v. AT&T Mobility Wireless, No. 09-cv-1112 CAS-AGR (C.D.Cal. 2009). In the Final Approval Order, the Honorable Christina A. Snyder stated:

> *[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.*

In re: Processed Egg Prods. Antitrust Litig., MDL No. 08-md-02002 (E.D.P.A.). In the Order Granting Final Approval of Settlement, Judge Gene E.K. Pratter stated:

> *The Notice appropriately detailed the nature of the action, the Class claims, the definition of the Class and Subclasses, the terms of the proposed settlement agreement, and the class members' right to object or request exclusion from the settlement and the timing and manner for doing so.… Accordingly, the Court determines that the notice provided to the putative Class Members constitutes adequate notice in satisfaction of the demands of Rule 23.*

In re Polyurethane Foam Antitrust Litigation, 10- MD-2196 (N.D. OH). In the Order Granting Final Approval of Voluntary Dismissal and Settlement of Defendant Domfoam and Others, the Honorable Jack Zouhary stated:

> *The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. The Notice constituted the most effective and best notice practicable under the circumstances of the Settlement Agreements, and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice.*

Rojas v Career Education Corporation, No. 10-cv-05260 (N.D.E.D. IL) In the Final Approval Order dated October 25, 2012, the Honorable Virgina M. Kendall stated:

> *The Court Approved notice to the Settlement Class as the best notice practicable under the circumstance including individual notice via U.S. Mail and by email to the class members whose addresses were obtained from each Class Member's wireless carrier or from a commercially reasonable reverse cell phone number look-up service, nationwide magazine publication, website publication, targeted on-line advertising, and a press release. Notice has been successfully implemented and satisfies the requirements of the Federal Rule of Civil Procedure 23 and Due Process.*

***Golloher v Todd Christopher International, Inc. DBA Vogue International (Organix)**, No. C 1206002 N.D CA*. In the Final Order and Judgment Approving Settlement, the Honorable Richard Seeborg stated:

> *The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.*

Stefanyshyn v. Consolidated Industries, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:

> *The long and short form notices provided a neutral, informative, and clear explanation of the Settlement. … The proposed notice program was properly designed, recommended, and implemented … and constitutes the "best practicable" notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements. … The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.*

McGee v. Continental Tire North America, Inc. et al, No. 06-6234-(GEB) (D.N.J.).

> *The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.*

Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al., No. 04-2702 (JLL) (D.N.J.). The Court stated that:

> [A]*ll of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices. … By working with a nationally syndicated media research firm, [Finegan's firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). . . . The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).*

In Re: Nortel Network Corp., Sec. Litig., No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). Ms. Finegan designed and implemented the extensive United States and Canadian notice programs in this case. The Canadian program was published in both French and English, and targeted virtually all investors of stock in Canada. *See* www.nortelsecuritieslitigation.com. Of the U.S. notice program, the Honorable Loretta A. Preska stated:

> *The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement … constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.*

Regarding the B.C. Canadian Notice effort: *Jeffrey v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honourable Mr. Justice Groberman said:

> *The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages*

have been available through the worldwide web site nortelsecuritieslitigation.com on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.

Mayo v. Walmart Stores and Sam's Club, No. 5:06 CV-93-R (W.D.Ky.). In the Order Granting Final Approval of Settlement, Judge Thomas B. Russell stated:

According to defendants' database, the Notice was estimated to have reached over 90% of the Settlement Class Members through direct mail. The Settlement Administrator … has classified the parties' database as 'one of the most reliable and comprehensive databases [she] has worked with for the purposes of legal notice.'… The Court thus reaffirms its findings and conclusions in the Preliminary Approval Order that the form of the Notice and manner of giving notice satisfy the requirements of Fed. R. Civ. P. 23 and affords due process to the Settlement Class Members.

Fishbein v. All Market Inc., (d/b/a **Vita Coco**) No. 11-cv-05580 (S.D.N.Y.). In granting final approval of the settlement, the Honorable J. Paul Oetken stated:

"The Court finds that the dissemination of Class Notice pursuant to the Notice Program…constituted the best practicable notice to Settlement Class Members under the circumstances of this Litigation … and was reasonable and constituted due, adequate and sufficient notice to all persons entitled to such notice, and fully satisfied the requirements of the Federal Rules of Civil Procedure, including Rules 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable laws."

Lucas, et al. v. Kmart Corp., No. 99-cv-01923 (D.Colo.), wherein the Court recognized Jeanne Finegan as an expert in the design of notice programs, and stated:

The Court finds that the efforts of the parties and the proposed Claims Administrator in this respect go above and beyond the "reasonable efforts" required for identifying individual class members under F.R.C.P. 23(c)(2)(B).

In Re: Johns-Manville Corp. **(Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement)**, No 82-11656, 57, 660, 661, 665-73, 75 and 76 (BRL) (Bankr. S.D.N.Y.). The nearly half-billion dollar settlement incorporated three separate notification programs, which targeted all persons who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company. In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, slip op. at 47-48 (Aug. 17, 2004), the Honorable Burton R. Lifland, Chief Justice, stated:

As demonstrated by Findings of Fact (citation omitted), the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and far exceeded the minimum notice required. . . The results simply speak for themselves.

Pigford v. Glickman and U.S. Department of Agriculture**,** No. 97-1978. 98-1693 (PLF) (D.D.C.). This matter was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commended the parties with respect to the notice program, stating;

The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television

stations. . . The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree.

In Re: Louisiana-Pacific Inner-Seal Siding Litig., Nos. 879-JE, and 1453-JE (D.Or.). Under the terms of the Settlement, three separate notice programs were to be implemented at three-year intervals over a period of six years. In the first notice campaign, Ms. Finegan implemented the print advertising and Internet components of the Notice program. In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement…[through] a broad and extensive multi-media notice campaign.

Additionally, with regard to the third-year notice program for Louisiana-Pacific, the Honorable Richard Unis, Special Master, commented that the notice was:

…well formulated to conform to the definition set by the court as adequate and reasonable notice. Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs. Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to insure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).

In Re: Expedia Hotel Taxes and Fees Litigation, No. 05-2-02060-1 (SEA) (Sup. Ct. of Wash. in and for King County). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

The Notice of the Settlement given to the Class … was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.

Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation, No. 95-151-M (Cir. Ct., Choctaw County, Ala.). This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Ms. Finegan designed and implemented was national in scope and received the following praise from the Honorable J. Lee McPhearson:

The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program. … The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see id. ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign.

Wilson v. Massachusetts Mut. Life Ins. Co., No. D-101-CV 98-02814 (First Judicial Dist. Ct., County of Santa Fe, N.M.). This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. www.insuranceclassclaims.com. In granting preliminary approval to the settlement, the Honorable Art Encinias found:

[*T]he Notice Plan [is] the best practicable notice that is reasonably calculated, under the circumstances of the action. …[and] meets or exceeds all applicable requirements of the law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.*

Sparks v. AT&T Corp., No. 96-LM-983 (Third Judicial Cir., Madison County, Ill.). The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Ms. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States. In granting final approval to the settlement, the Court found:

> *The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements.*

In Re: Georgia-Pacific Toxic Explosion Litig., No. 98 CVC05-3535 (Ct. of Common Pleas, Franklin County, Ohio). Ms. Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-born toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement, the Honorable Jennifer L. Bunner stated:

> *[N]otice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).*

In Re: American Cyanamid, No. CV-97-0581-BH-M (S.D.Al.). The media program targeted Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

> *The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement.*

In Re: First Alert Smoke Alarm Litig., No. CV-98-C-1546-W (UWC) (N.D.Al.). Ms. Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class for Settlement Purposes, Preliminarily Approving Class Settlement, Appointing Class Counsel, Directing Issuance of Notice to the Class, and Scheduling a Fairness Hearing, the Honorable C.W. Clemon wrote that the notice plan:

> *…constitutes due, adequate and sufficient notice to all Class Members; and (v) meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law.*

In Re: James Hardie Roofing Litig., No. 00-2-17945-65SEA (Sup. Ct. of Wash., King County). The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment, the Honorable Steven Scott stated:

> *The notice program required by the Preliminary Order has been fully carried out… [and was] extensive. The notice provided fully and accurately informed the Class Members of all material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law.*

Barden v. Hurd Millwork Co. Inc., et al, No. 2:6-cv-00046 (LA) (E.D.Wis.)

"The Court approves, as to form and content, the notice plan and finds that such notice is the best practicable under the circumstances under Federal Rule of Civil Procedure 23(c)(2)(B) and constitutes notice in a reasonable manner under Rule 23(e)(1).")

Altieri v. Reebok, No. 4:10-cv-11977 (FDS) (D.C.Mass.)

"The Court finds that the notices … constitute the best practicable notice...The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices."

Marenco v. Visa Inc., No. CV 10-08022 (DMG) (C.D.Cal.)

"[T]he Court finds that the notice plan…meets the requirements of due process, California law, and other applicable precedent. The Court finds that the proposed notice program is designed to provide the Class with the best notice practicable, under the circumstances of this action, of the pendency of this litigation and of the proposed Settlement's terms, conditions, and procedures, and shall constitute due and sufficient notice to all persons entitled thereto under California law, the United States Constitution, and any other applicable law."

Palmer v. Sprint Solutions, Inc., No. 09-cv-01211 (JLR) (W.D.Wa.)

"The means of notice were reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provide3d with notice."

In Re: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation, No. 1:08-md-01982 RDB (D. Md. N. Div.)

"The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement."

Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation, No. 01043771 (Sup. Ct. Cal., County of Santa Barbara)

"Notice provided was the best practicable under the circumstances."

Deke, et al. v. Cardservice Internat'l, Case No. BC 271679, slip op. at 3 (Sup. Ct. Cal., County of Los Angeles)

"The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances."

Levine, et al. v. Dr. Philip C. McGraw, et al., Case No. BC 312830 (Los Angeles County Super. Ct., Cal.)

"[T]he plan for notice to the Settlement Class … constitutes the best notice practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class … and satisfies the requirements of California law and federal due process of law."

In re: Canadian Air Cargo Shipping Class Actions, Court File No. 50389CP, Ontario Superior Court of Justice, Supreme Court of British Columbia, Quebec Superior Court

"I am satisfied the proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate."

Fischer et al v. IG Investment Management, Ltd. et al, Court File No. 06-CV-307599CP, Ontario Superior Court of Justice.

In re: Vivendi Universal, S.A. Securities Litigation, No. 02-cv-5571 (RJH)(HBP) (S.D.N.Y.).

In re: Air Cargo Shipping Services Antitrust Litigation, No. 06-MD-1775 (JG) (VV) (E.D.N.Y.).

Berger, et al., v. Property ID Corporation, et al., No. CV 05-5373-GHK (CWx) (C.D.Cal.).

Lozano v. AT&T Mobility Wireless, No. 02-cv-0090 CAS (AJWx) (C.D.Cal.).

Howard A. Engle, M.D., et al., v. R.J. Reynolds Tobacco Co., Philip Morris, Inc., Brown & Williamson Tobacco Corp., No. 94-08273 CA (22) (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Royal Dutch/Shell Transport Securities Litigation, No. 04 Civ. 374 (JAP) (Consolidated Cases) (D. N.J.).

In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding, No. 4347 (Sup. Ct. of Cal., County of Los Angeles).

UAW v. General Motors Corporation, No: 05-73991 (E.D.MI).

Wicon, Inc. v. Cardservice Intern'l, Inc., BC 320215 (Sup. Ct. of Cal., County of Los Angeles).

In re: SmithKline Beecham Clinical Billing Litig., No. CV. No. 97-L-1230 (Third Judicial Cir., Madison County, Ill.).

Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

MacGregor v. Schering-Plough Corp., No. EC248041 (Sup. Ct. Cal., County of Los Angeles).

This nationwide notification program was designed to reach all persons who had purchased or used an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

In re: Swiss Banks Holocaust Victim Asset Litig., No. CV-96-4849 (E.D.N.Y.).

Ms. Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors. www.swissbankclaims.com.

In re: Exxon Valdez Oil Spill Litig., No. A89-095-CV (HRH) (Consolidated) (D. Alaska).

Ms. Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.

In re: Johns-Manville Phenolic Foam Litig., No. CV 96-10069 (D. Mass).

The nationwide multi-media legal notice program was designed to reach all Persons who owned any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns-Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

Bristow v Fleetwood Enters Litig., No Civ 00-0082-S-EJL (D. Id).

Ms. Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer, or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

In re: New Orleans Tank Car Leakage Fire Litig., No 87-16374 (Civil Dist. Ct., Parish of Orleans, LA) (2000).

This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.

Garria Spencer v. Shell Oil Co., No. CV 94-074(Dist. Ct., Harris County, Tex.).

The nationwide notification program was designed to reach individuals who owned real property or structures in the United States, which contained polybutylene plumbing with acetyl insert or metal insert fittings.

In re: Hurd Millwork Heat Mirror™ Litig., No. CV-772488 (Sup. Ct. of Cal., County of Santa Clara).

This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

Laborers Dist. Counsel of Alabama Health and Welfare Fund v. Clinical Lab. Servs., Inc, No. CV–97-C-629-W (N.D. Ala.)

Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.

In re: StarLink Corn Prods. Liab. Litig., No. 01-C-1181 (N.D. Ill)

Ms. Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

In re: MCI Non-Subscriber Rate Payers Litig., MDL Docket No. 1275, 3:99-cv-01275 (S.D.Ill.).

The advertising and media notice program, found to be “more than adequate” by the Court, was designed with the understanding that the litigation affected all persons or entities who were customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. www.rateclaims.com.

In re: Albertson’s Back Pay Litig., No. 97-0159-S-BLW (D.Id.).

Ms. Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

In re: Georgia Pacific Hardboard Siding Recovering Program, No. CV-95-3330-RG (Cir. Ct., Mobile County, Ala.)

Ms. Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements, which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

***In re: Diet Drugs* (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig**., Nos. 1203, 99-20593.

Ms. Finegan worked as a consultant to the National Diet Drug Settlement Committee on notification issues. The resulting notice program was described and complimented at length in the Court’s Memorandum and Pretrial Order 1415, approving the settlement.

Ms. Finegan designed the Notice programs for multiple state antitrust cases filed against the Microsoft Corporation. In those cases, it was generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal notice programs designed by Jeanne Finegan and listed below targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

In re: Florida Microsoft Antitrust Litig. Settlement, No. 99-27340 CA 11 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Montana Microsoft Antitrust Litig. Settlement, No. DCV 2000 219 (First Judicial Dist. Ct., Lewis & Clark Co., Mt.).

In re: South Dakota Microsoft Antitrust Litig. Settlement, No. 00-235(Sixth Judicial Cir., County of Hughes, S.D.).

In re: Kansas Microsoft Antitrust Litig. Settlement, No. 99C17089 Division No. 15 Consolidated Cases (Dist. Ct., Johnson County, Kan.)

> *"The Class Notice provided was the best notice practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3."*

In re: North Carolina Microsoft Antitrust Litig. Settlement, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln) (General Court of Justice Sup. Ct., Wake and Lincoln Counties, N.C.).

In re: ABS II Pipes Litig., No. 3126 (Sup. Ct. of Cal., Contra Costa County).

> The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe.

In re: Avenue A Inc. Internet Privacy Litig., No: C00-1964C (W.D. Wash.).

In re: Lorazepam and Clorazepate Antitrust Litig., No. 1290 (TFH) (D.C.C.).

In re: Providian Fin. Corp. ERISA Litig., No C-01-5027 (N.D. Cal.).

In re: H & R Block., et al Tax Refund Litig., No. 97195023/CC4111 (MD Cir. Ct., Baltimore City).

In re: American Premier Underwriters, Inc, U.S. Railroad Vest Corp., No. 06C01-9912 (Cir. Ct., Boone County, Ind.).

In re: Sprint Corp. Optical Fiber Litig., No: 9907 CV 284 (Dist. Ct., Leavenworth County, Kan).

In re: Shelter Mutual Ins. Co. Litig., No. CJ-2002-263 (Dist.Ct., Canadian County. Ok).

In re: Conseco, Inc. Sec. Litig., No: IP-00-0585-C Y/S CA (S.D. Ind.).

In re: Nat'l Treasury Employees Union, et al., 54 Fed. Cl. 791 (2002).

In re: City of Miami Parking Litig., Nos. 99-21456 CA-10, 99-23765 – CA-10 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Comm., No. L 1:01CV658 (E.D. Tx.).

Alsea Veneer v. State of Oregon A.A., No. 88C-11289-88C-11300.

INTERNATIONAL EXPERIENCE

In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. 2019).

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 20201

Bell v. Canadian Imperial Bank of Commerce*, et al, Court File No.: CV-08-359335 (Ontario Superior Court of Justice); (2016).*

In re: Canadian Air Cargo Shipping Class Actions *(Ontario Superior Court of Justice, Court File No. 50389CP, Supreme Court of British Columbia.*

In re: Canadian Air Cargo Shipping Class Actions (*Québec Superior Court).*

Fischer v. IG Investment Management LTD*., No. 06-CV-307599CP (Ontario Superior Court of Justice).*

In Re Nortel I & II Securities Litigation*, Civil Action No. 01-CV-1855 (RMB), Master File No. 05 MD 1659 (LAP) (S.D.N.Y. 2006).*

Frohlinger v. Nortel Networks Corporation *et al., Court File No.: 02-CL-4605 (Ontario Superior Court of Justice).*

Association de Protection des Épargnants et Investissuers du Québec v. Corporation Nortel Networks*, No.: 500-06-0002316-017 (Superior Court of Québec).*

Jeffery v. Nortel Networks Corporation *et al., Court File No.: S015159 (Supreme Court of British Columbia).*

Gallardi v. Nortel Networks Corporation*, No. 05-CV-285606CP (Ontario Superior Court).*

Skarstedt v. Corporation Nortel Networks*, No. 500-06-000277-059 (Superior Court of Québec).*

SEC ENFORCEMENT NOTICE PROGRAM EXPERIENCE

SEC v. Vivendi Universal, S.A., et al., Case No. 02 Civ. 5571 (RJH) (HBP) (S.D.N.Y.).
The Notice program included publication in 11 different countries and eight different languages.

SEC v. Royal Dutch Petroleum Company, No.04-3359 (S.D. Tex.)

FEDERAL TRADE COMMISSION NOTICE PROGRAM EXPERIENCE

FTC v. TracFone Wireless, Inc*.,* Case No. 15-cv-00392-EMC.

FTC v. Skechers U.S.A., Inc., No. 1:12-cv-01214-JG (N.D. Ohio).

FTC v. Reebok International Ltd., No. 11-cv-02046 (N.D. Ohio)

FTC v. Chanery and RTC Research and Development LLC [Nutraquest], No :05-cv-03460 (D.N.J.)

BANKRUPTCY EXPERIENCE

Ms. Finegan has designed and implemented hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

In Re: PG&E Corporation Case No . 19-30088 Bankr. N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures fr Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1,* the Honorable Dennis Montali stated:

> *…the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 … Ms. Finegan has really impressed me today…*

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 20201.

In re AMR Corporation [American Airlines], et al., No. 11-15463 (SHL) (Bankr. S.D.N.Y.)

> ***"****due and proper notice [was] provided, and … no other or further notice need be provided."*

In re Jackson Hewitt Tax Service Inc., et al., No 11-11587 (Bankr. D.Del.) (2011).

> The debtors sought to provide notice of their filing as well as the hearing to approve their disclosure statement and confirm their plan to a large group of current and former customers, many of whom current and viable addresses promised to be a difficult (if not impossible) and costly undertaking. The court approved a publication notice program designed and implemented by Finegan and the administrator, that included more than 350 local newspaper and television websites, two national online networks (24/7 Real Media, Inc. and Microsoft Media Network), a website notice linked to a press release and notice on eight major websites, including CNN and Yahoo. These online efforts supplemented the print publication and direct-mail notice provided to known claimants and their attorneys, as well as to the state attorneys general of all 50 states. The *Jackson Hewitt* notice program constituted one of the first large chapter 11 cases to incorporate online advertising.

In re: Nutraquest Inc., No. 03-44147 (Bankr. D.N.J.)

In re: General Motors Corp. et al, No. 09-50026 (Bankr. S.D.N.Y.)

> This case is the 4th largest bankruptcy in U.S. history. Ms. Finegan and her team worked with General Motors restructuring attorneys to design and implement the legal notice program.

In re: ACandS, Inc., No. 0212687 (Bankr. D.Del.) (2007)

> *"Adequate notice of the Motion and of the hearing on the Motion was given."*

In re: United Airlines, No. 02-B-48191 (Bankr. N.D Ill.)

> Ms. Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was published in 11 countries and translated into 6 languages. Ms. Finegan worked closely with legal counsel and UAL's advertising team to select the appropriate media and to negotiate the most favorable advertising rates. www.pd-ual.com.

In re: Enron, No. 01-16034 (Bankr. S.D.N.Y.)

> Ms. Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

In re: Dow Corning, No. 95-20512 (Bankr. E.D. Mich.)

> Ms. Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

In re: Harnischfeger Inds., No. 99-2171 (RJW) Jointly Administered (Bankr. D. Del.)

> Ms. Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

In re: Keene Corp., No. 93B 46090 (SMB), (Bankr. E.D. MO.)

Ms. Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

In re: Lamonts, No. 00-00045 (Bankr. W.D. Wash.)
Ms. Finegan designed an implemented multiple bankruptcy notice programs.

In re: Monet Group Holdings, Nos. 00-1936 (MFW) (Bankr. D. Del.)
Ms. Finegan designed and implemented a bar date notice.

In re: Laclede Steel Co., No. 98-53121-399 (Bankr. E.D. MO.)
Ms. Finegan designed and implemented multiple bankruptcy notice programs.

In re: Columbia Gas Transmission Corp., No. 91-804 (Bankr. S.D.N.Y.)
Ms. Finegan developed multiple nationwide legal notice notification programs for this case.

In re: U.S.H. Corp. of New York, et al. (Bankr. S.D.N.Y)
Ms. Finegan designed and implemented a bar date advertising notification campaign.

In re: Best Prods. Co., Inc., No. 96-35267-T, (Bankr. E.D. Va.)
Ms. Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

In re: Lodgian, Inc., et al., No. 16345 (BRL) Factory Card Outlet – 99-685 (JCA), 99-686 (JCA) (Bankr. S.D.N.Y).

In re: Internat'l Total Servs, Inc., et al., Nos. 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y).

In re: Decora Inds., Inc. and Decora, Incorp., Nos. 00-4459 and 00-4460 (JJF) (Bankr. D. Del.).

In re: Genesis Health Ventures, Inc., et al, No. 002692 (PJW) (Bankr. D. Del.).

In re: Tel. Warehouse, Inc., et al, No. 00-2105 through 00-2110 (MFW) (Bankr. D. Del.).

In re: United Cos. Fin. Corp., et al, No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D. Del.).

In re: Caldor, Inc. New York, The Caldor Corp., Caldor, Inc. CT, et al., No. 95-B44080 (JLG) (Bankr. S.D.N.Y).

In re: Physicians Health Corp., et al., No. 00-4482 (MFW) (Bankr. D. Del.).

In re: GC Cos., et al., Nos. 00-3897 through 00-3927 (MFW) (Bankr. D. Del.).

In re: Heilig-Meyers Co., et al., Nos. 00-34533 through 00-34538 (Bankr. E.D. Va.).

MASS TORT EXPERIENCE AND PRODUCT RECALL

In Re: PG&E Corporation Case No . 19-30088 Bankr. N.D. Cal. 2019).

***In re Purdue Pharma L.P.*,** No. 19-23649 (Bankr. S.D.N.Y. 2019).

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 2021.

Reser's Fine Foods. Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Ms. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Ms. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

***Gulf Coast Claims Facility Notice Campaign*.** Finegan coordinated a massive outreach effort throughout the Gulf Coast region to notify those who have claims as a result of damages caused by the Deep Water Horizon Oil spill. The notice campaign included extensive advertising in newspapers throughout the region, Internet notice through local newspaper, television and radio websites and media relations. The Gulf Coast Claims Facility (GCCF) was an independent claims facility, funded by BP, for the resolution of claims by individuals and businesses for damages incurred as a result of the oil discharges due to the Deepwater Horizon incident on April 20, 2010.

City of New Orleans Tax Revisions, Post-Hurricane Katrina. In 2007, the City of New Orleans revised property tax assessments for property owners. As part of this process, it received numerous appeals to the assessments. An administration firm served as liaison between the city and property owners, coordinating the hearing schedule and providing important information to property owners on the status of their appeal. Central to this effort was the comprehensive outreach program designed by Ms. Finegan, which included a website and a heavy schedule of television, radio and newspaper advertising, along with the coordination of key news interviews about the project picked up by local media.

ARTICLES/ SOCIAL MEDIA

Interview, "How Marketers Achieve Greater ROI Through Digital Assurance," Alliance for Audited Media ("AAM"), white paper, January 2021.

Tweet Chat: Contributing Panelist *#Law360SocialChat*, A live Tweet workshop concerning the benefits and pit-falls of social media, Lexttalk.com, November 7, 2019.

Author, "Top Class Settlement Admin Factors to Consider in 2020" Law360, New York, (October 31, 2019, 5:44 PM ET).

Author, "Creating a Class Notice Program that Satisfies Due Process" Law360, New York, (February 13, 2018 12:58 PM ET).

Author, "3 Considerations for Class Action Notice Brand Safety" Law360, New York, (October 2, 2017 12:24 PM ET).

Author, "What Would Class Action Reform Mean for Notice?" Law360, New York, (April 13, 2017 11:50 AM ET).

Author, "Bots Can Silently Steal your Due Process Notice." Wisconsin Law Journal, April 2017.

Author, "*Don't Turn a Blind Eye to Bots*. Ad Fraud and Bots are a Reality of the Digital Environment." LinkedIn article March 6, 2107.

Co-Author, "Modern Notice Requirements Through the Lens of *Eisen* and *Mullane"* – Bloomberg - BNA Class Action Litigation Report, 17 CLASS 1077, (October 14, 2016).

Author, “Think All Internet Impressions Are The Same? Think Again” – Law360.com, New York (March 16, 2016, 3:39 ET).

Author, “Why Class Members Should See an Online Ad More Than Once” – Law360.com, New York, (December 3, 2015, 2:52 PM ET).

Author, ‘Being 'Media-Relevant' — What It Means and Why It Matters - Law360.com, New York (September 11, 2013, 2:50 PM ET).

Co-Author, “New Media Creates New Expectations for Bankruptcy Notice Programs,” ABI Journal, Vol. XXX, No 9, (November 2011).

Quoted Expert, “Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist,” Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

Co-Author, with Hon. Dickran Tevrizian – “Expert Opinion: It’s More Than Just a Report…Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape,” BNA Class Action Litigation Report, 12 CLASS 464, May 27, 2011.

Co-Author, with Hon. Dickran Tevrizian, Your Insight, "Expert Opinion: It's More Than Just a Report -Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," TXLR, Vol. 26, No. 21, May 26, 2011.

Quoted Expert, “Analysis of the FJC’s 2010 Judges’ Class Action Notice and Claims Process Checklist and Guide: A New Roadmap to Adequate Notice and Beyond,” BNA Class Action Litigation Report, 12 CLASS 165, February 25, 2011.

Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, April, 9, 2010 Vol. 11, No. 7 p. 343.

Quoted Expert, “Communication Technology Trends Pose Novel Notification Issues for Class Litigators,” BNA Electronic Commerce and Law, 15 ECLR 109 January 27, 2010.

Author, “Legal Notice: R U ready 2 adapt?” BNA Class Action Report, Vol. 10 Class 702, July 24, 2009.

Author, “On Demand Media Could Change the Future of Best Practicable Notice,” BNA Class Action Litigation Report, Vol. 9, No. 7, April 11, 2008, pp. 307-310.

Quoted Expert, “Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty,” Warranty Week, warrantyweek.com/archive/ww20070228.html/ February 28, 2007.

Co-Author, “Approaches to Notice in State Court Class Actions,” For The Defense, Vol. 45, No. 11, November, 2003.

Citation, “Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior,” U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates, July 2003.

Author, “The Web Offers Near, Real-Time Cost Efficient Notice,” American Bankruptcy Institute, ABI Journal, Vol. XXII, No. 5., 2003.

Author, “Determining Adequate Notice in Rule 23 Actions,” For The Defense, Vol. 44, No. 9 September, 2002.

Author, “Legal Notice, What You Need to Know and Why,” Monograph, July 2002.

Co-Author, “The Electronic Nature of Legal Noticing,” The American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

Author, “Three Important Mantras for CEO’s and Risk Managers,” - International Risk Management Institute, irmi.com, January 2002.

Co-Author, “Used the Bat Signal Lately,” The National Law Journal, Special Litigation Section, February 19, 2001.

Author, “How Much is Enough Notice,” Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, “Monitoring the Internet Buzz,” The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, “High-Profile Product Recalls Need More Than the Bat Signal,” - International Risk Management Institute, irmi.com, July 2001.

Co-Author, “Do You Know What 100 Million People are Buzzing About Today?” Risk and Insurance Management, March 2001.

Quoted Article, “Keep Up with Class Action,” Kentucky Courier Journal, March 13, 2000.

Author, “The Great Debate - How Much is Enough Legal Notice?” American Bar Association – Class Actions and Derivatives Suits Newsletter, winter edition 1999.

SPEAKER/EXPERT PANELIST/PRESENTER

Chief Litigation Counsel Association (CLCA)	Speaker, “Four Factors Impacting the Cost of Your Class Action Settlement and Notice,” Houston TX, May 1, 2019
CLE Webinar	“Rule 23 Changes to Notice, Are You Ready for the Digital Wild, Wild West?” October 23, 2018, https://bit.ly/2RIRvZq
American Bar Assn.	Faculty Panelist, 4th Annual Western Regional CLE Class Actions, “Big Brother, Information Privacy, and Class Actions: How Big Data and Social Media are Changing the Class Action Landscape” San Francisco, CA June, 2018.
Miami Law Class Action Faculty & Complex Litigation Forum	Panelist, “ Settlement and Resolution of Class Actions,” Miami, FL December 2, 2016.
The Knowledge Group	Faculty Panelist, “Class Action Settlements: Hot Topics 2016 and Beyond,” Live Webcast, www.theknowledgegroup.org, October 2016.
ABA National Symposium	Faculty Panelist, “Ethical Considerations in Settling Class Actions,” New Orleans, LA, March 2016.
S.F. Banking Attorney Assn.	Speaker, “How a Class Action Notice can Make or Break your Client’s Settlement,” San Francisco, CA, May 2015.
Perrin Class Action Conf.	Faculty Panelist, “Being Media Relevant, What It Means and Why It Matters – The Social Media Evolution: Trends, Challenges and Opportunities,” Chicago, IL May 2015.
Bridgeport Continuing Ed.	Speaker, Webinar “Media Relevant in the Class Notice Context.” July, 2014.

Bridgeport Continuing Ed.	Faculty Panelist, "Media Relevant in the Class Notice Context." Los Angeles, California, April 2014.
CASD 5th Annual	Speaker, "The Impact of Social Media on Class Action Notice." Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.
Law Seminars International	Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable… What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011. ***Voted by attendees as one of the best presentations given.***
CASD 4th Annual	Faculty Panelist, "Reasonable Notice - Insight for practitioners on the FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*. Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, October 2011.
CLE International	Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California May, 2011.
CASD	Faculty Panelist, "21st Century Class Notice and Outreach." 3nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.
CASD	Faculty Panelist, "The Future of Notice." 2nd Annual Class Action Symposium CASD Symposium, San Diego California, October 2009.
American Bar Association	Speaker, 2008 Annual Meeting, "Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard." Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.
Women Lawyers Assn.	Faculty Panelist, Women Lawyers Association of Los Angeles "The Anatomy of a Class Action." Los Angeles, CA, February, 2008.
Warranty Chain Mgmt.	Faculty Panelist, Presentation Product Recall Simulation. Tampa, Florida, March 2007.
Practicing Law Institute.	Faculty Panelist, CLE Presentation, 11th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures – Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA, May 2006.
U.S. Consumer Product Safety Commission	Ms. Finegan participated as an invited expert panelist to the CPSC to discuss ways in which the CPSC could enhance and measure the recall process. As a panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.

Weil, Gotshal & Manges	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." New York, June 2003.
Sidley & Austin	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." Los Angeles, May 2003.
Kirkland & Ellis	Speaker to restructuring group addressing "The Best Practicable Methods to Give Notice in a Tort Bankruptcy." Chicago, April 2002.
Georgetown University Law	Faculty, CLE White Paper: "What are the best practicable methods to Center Mass Tort Litigation give notice? Dispelling the communications myth – A notice Institute disseminated is a notice communicated," Mass Tort Litigation Institute. Washington D.C.
American Bar Association	Presenter, "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits. Chicago, IL, August 6, 2001.
McCutchin, Doyle, Brown	Speaker to litigation group in San Francisco and simulcast to four other McCutchin locations, addressing the definition of effective notice and barriers to communication that affect due process in legal notice. San Francisco, CA, June 2001.
Marylhurst University	Guest lecturer on public relations research methods. Portland, OR, February 2001.
University of Oregon	Guest speaker to MBA candidates on quantitative and qualitative research for marketing and communications programs. Portland, OR, May 2001.
Judicial Arbitration & Mediation Services (JAMS)	Speaker on the definition of effective notice. San Francisco and Los Angeles, CA, June 2000.
International Risk Management Institute	Past Expert Commentator on Crisis and Litigation Communications. www.irmi.com.
The American Bankruptcy Institute Journal (ABI)	Past Contributing Editor – Beyond the Quill. www.abi.org.

BACKGROUND

Ms. Finegan's past experience includes working in senior management for leading Class Action Administration firms including The Garden City Group (GCG) and Poorman-Douglas Corp., (EPIQ). Ms. Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation's leading legal notice communication agencies.

Prior to that, Ms. Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.

Prior to Huntington Advertising, Ms. Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.

Additionally, Ms. Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJJ/KJIB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Ms. Finegan worked as an assistant television program/promotion manager for KPDX directing $50 million in programming. She was also the program/promotion manager at KECH-22 television.

Ms. Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.

MEMBERSHIPS, PROFESSIONAL CREDENTIALS

APR Accredited. Universal Board of Accreditation Public Relations Society of America

- **Member of the Public Relations Society of America**
- **Member Canadian Public Relations Society**

Board of Directors - Alliance for Audited Media
Alliance for Audited Media (“AAM”) is the recognized leader in cross-media verification. It was founded in 1914 as the Audit Bureau of Circulations (ABC) to bring order and transparency to the media industry. Today, more than 4,000 publishers, advertisers, agencies and technology vendors depend on its data-driven insights, technology certification audits and information services to transact with trust.

SOCIAL MEDIA

LinkedIn: *www.linkedin.com/in/jeanne-finegan-apr-7112341b*

EXHIBIT 2

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

D. JOSEPH KURTZ, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. KIMBERLY-CLARK CORPORATION, et al., Defendants.	:	Civil Action No. 1:14-cv-01142-PKC-RML CLASS ACTION
GLADYS HONIGMAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. KIMBERLY-CLARK CORPORATION, et al., Defendants.	:	Civil Action No. 1:15-cv-2910-PKC-RML

DECLARATION OF SCOTT M. FENWICK OF KROLL SETTLEMENT ADMINISTRATION LLC IN CONNECTION WITH FINAL APPROVAL OF SETTLEMENT

INTRODUCTION

1. I am a Senior Director at Kroll Settlement Administration LLC ("Kroll"),[1] the Claims Administrator appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with final approval.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

3. Kroll was appointed as the Claims Administrator to provide notification and administration services in connection with that certain Settlement Agreement and General Release (the "Settlement Agreement") entered into in connection with the above captioned class action matter. Kroll's duties under the Settlement Agreement have and will include: (a) preparing and mailing Class Action Fairness Act notices; (b) establishing the Settlement Website; (c) implementing the publication Notice Plan;[2] (d) establishing a toll-free number; (e) receiving and processing mail from the United States Postal Service ("USPS"); (f) receiving and processing Claim Forms; (g) receiving and processing opt outs; and (h) such other tasks as counsel for the Settling Parties or the Court request Kroll perform.

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[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

[2] The implementation of the Notice Plan is described in the declaration of my colleague, Jeanne C. Finnegan, filed contemporaneously herewith.

4. As noted above, on behalf of the Defendant, Kroll provided notice of the proposed settlement pursuant to the Class Action Fairness Act 28 U.S.C. §1715(b) (the "CAFA Notice"). At Defense Counsel's direction, Kroll sent the CAFA Notice, attached hereto as **Exhibit A** (i) to the Attorney General of the United States and (ii) 50 state Attorneys General identified in the service list for the CAFA Notice, attached hereto as **Exhibit B,** via First-Class Certified Mail, on April 14, 2022. The CAFA Notice directed the Attorneys General to the website www.CAFANotice.com, a site that contains all the Settlement documents referenced in the CAFA Notice.

5. On May 16, 2022, Kroll created a dedicated website entitled www.flushablewipessettlement.com (the "Settlement Website"). The Settlement Website "went live" on June 2, 2022. The Settlement Website contains copies of the exclusion request form, Long Form Notice, Summary Notice, Claim Form, Settlement Agreement, the order of Preliminary Approval and allowed Class Members an opportunity to file a Claim Form online.

6. On May 16, 2022, Kroll established a toll-free number, 833-620-3583, for Settlement Class Members to call and obtain additional information regarding the Settlement through an Interactive Voice Response ("IVR") system. As of August 30, 2022, the IVR has received 530 calls.

7. On May 16, 2022, Kroll designated a post office box with the mailing address Kurtz/Honigman v. Kimberly-Clark c/o Kroll Settlement Administration, PO Box 5324, New York, NY 10150-5324, in order to receive requests for exclusion, Claim Forms, objections, and correspondence from Settlement Class Members.

8. Also on May 16, 2022, Kroll established an email address, info@flushablewipessettlement.com, to receive and reply to email inquiries from Settlement Class Members pertaining to the Settlement.

9. The required online media campaign commenced on June 17, 2022 and was substantially completed by July 31, 2022.

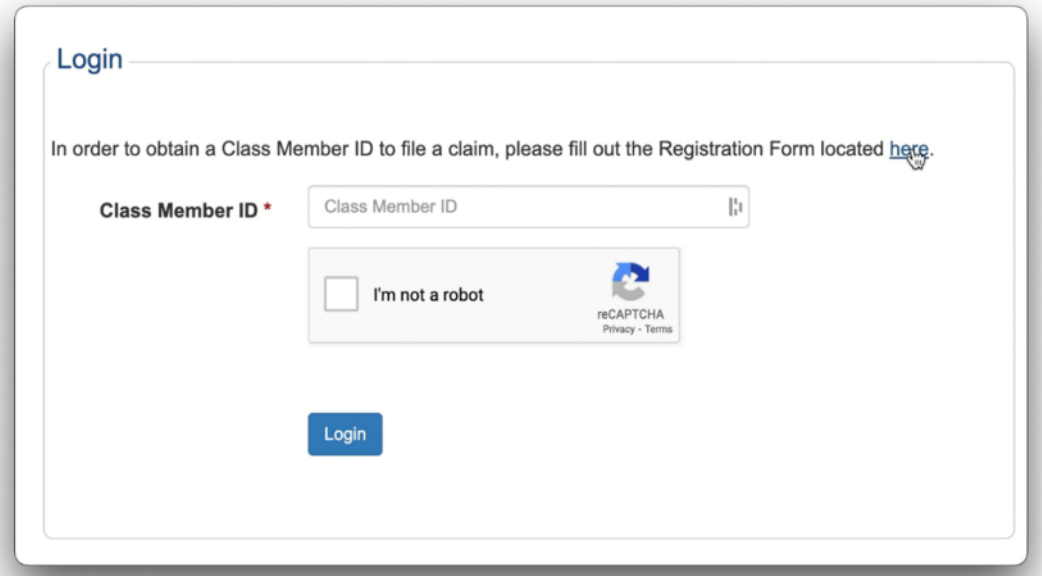
10. The last day to submit claims/opt-outs/objections was August 17, 2022. As of August 30, 2022, Kroll has received 808 Claim Forms through the mail and 184,546 Claim Forms filed electronically through the Settlement Website. Kroll is still in the process of reviewing and validating Claim Forms.

11. As of August 30, 2022, Kroll has received 21 late Claim Forms.

12. Kroll has received 27 timely exclusion requests and 1 objection to the Settlement. A list of the exclusions is attached hereto as **Exhibit C**.

13. I understand that Theodore H. Frank has filed an objection to approval of the Settlement. *See* Docket No. 446-1. A number of these objections implicate the processes employed by the Claims Administrator and are, therefore, addressed herein as follows:

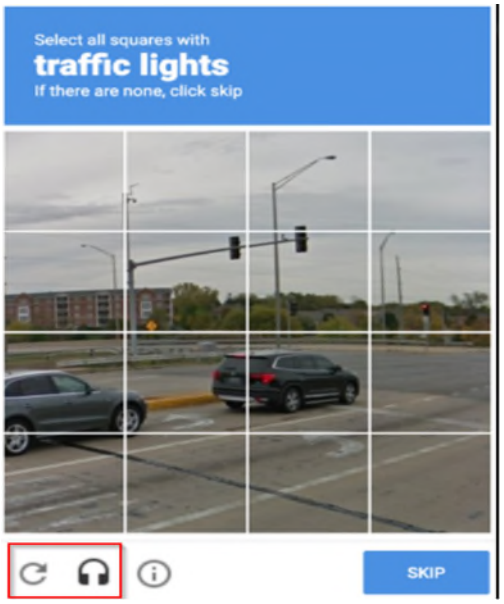
- Mr. Frank appears to object to the requirement to request a Class Member ID in order to file a claim. Frank Objection at ¶ 7. All potential Class Members were required to request a Class Member ID in order to file a Claim Form, which is a standard anti-fraud protection implemented by Kroll in administering class action settlements.
- Mr. Frank alleges that the link to request a Class Member ID was poorly identified, asserting that the text for the link was the same color as the rest of the text in that section. Frank Objection at ¶ 7. As shown in the image below, however, the link was in blue text in contrast to the remainder of the text which is in black text.



- Mr. Frank appears to object on grounds that it was difficult to use the CAPTCHA technology, asserting that the images were blurry. Frank Objection at ¶ 7. Kroll has implemented the widely adopted Google reCAPTCHA[3] technology on all claim forms across all settlements it administers as an anti-fraud protection targeted to limit or prevent claims being filed by software programs known as "bots". Kroll does not have control over the images presented to the user. However, reCAPTCHA provides the user with the ability to select different images. Additionally, in compliance with ADA accessible websites, reCAPTCHA provides

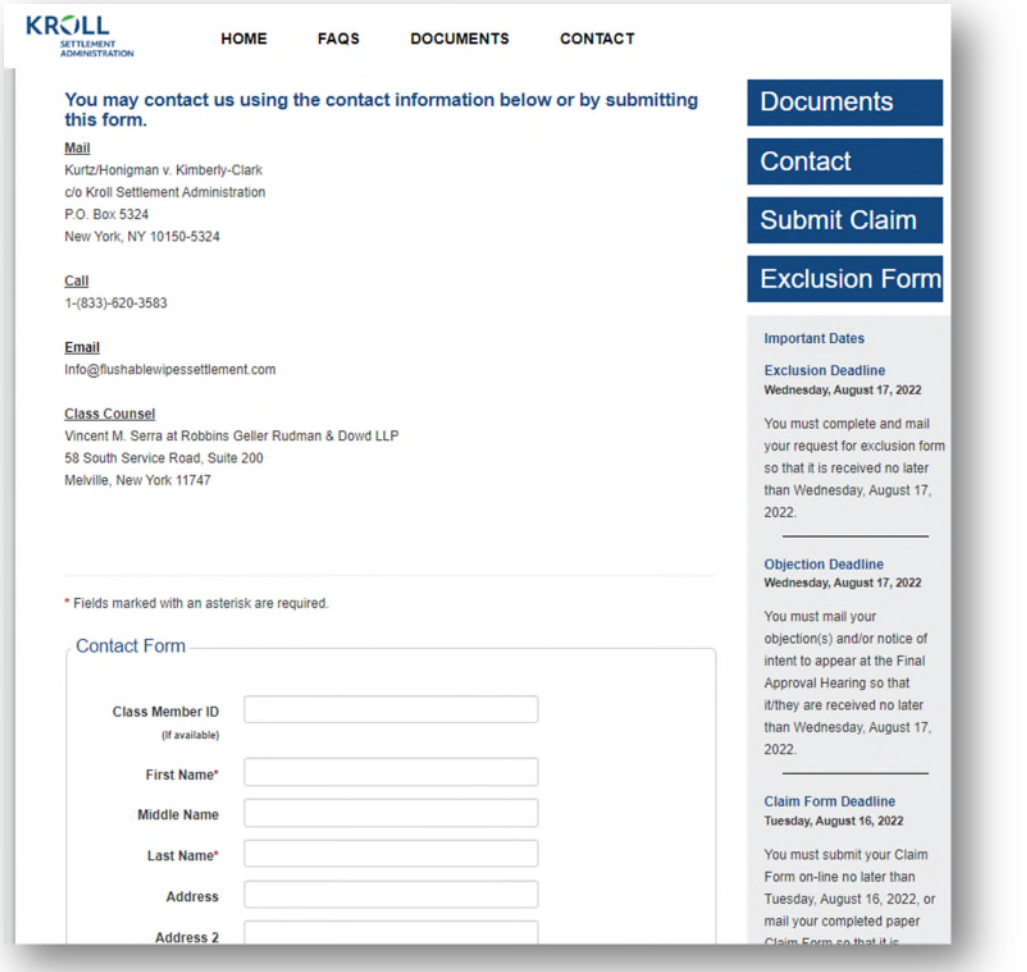
[3] Digital Trends reports that Google reCAPTCHA is utilized over 100 million times a day.

visually impaired users with the ability to select an audio challenge/response. See annotated screenshot below.



- Mr. Frank objects on grounds that he received a website error when attempting to file a claim. Frank Objection at ¶8. Without further details, we cannot determine what type of error Mr. Frank purports to have encountered. However, as noted above, during the claims filing period Kroll received over 184,000 online claims. Kroll has also reviewed its records and there was only one claimant inquiry regarding the functionality of the claim filing portal during the Claims Period.
- Mr. Frank objects on grounds that he telephoned the toll-free number and pressed "0" and was not routed to an operator or a message box. Frank Objection at ¶ 7. Kroll was not engaged to provide live call center agents nor call back functionality in this matter. Kroll did, however, provide a clear method for Class Members to contact Kroll for assistance using a website contact form and the email address info@flushablewipessettlement.com.
- Mr. Frank objects on grounds that the above contact email address is "hidden on a PDF." Frank Objection at ¶ 7. The "Contact" form is available from nearly every

page on the Settlement Website. As can be seen from the screenshot below, the email address for support is clearly visible. Moreover, a user can complete the user-friendly online contact form for assistance. Through this portal, Kroll received and responded to 1,062 requests for assistance. Kroll did not receive any messages or emails from visitors complaining of website errors on this Settlement.



14. I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on August 31, 2022, in Woodbury, Minnesota.

Scott M. Fenwick

Exhibit A

SIDLEY

SIDLEY AUSTIN LLP
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+1 212 839 8555
EJOYCE@SIDLEY.COM

April 15, 2022

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[attorney general's name
attorney general's address]

Re: Notice of Proposed Class Action Settlement
Kurtz v. Kimberly-Clark Corp., et al., 1:14-cv-01142-PKC-RML (E.D.N.Y.) and *Honigman v. Kimberly-Clark Corp.,* 2:15-cv-02910-PKC-RML (E.D.N.Y.).

Dear General [name]:

Pursuant to 28 U.S.C. § 1715, please be advised that a proposed class action settlement has been filed in the cases captioned as *Kurtz v. Kimberly-Clark Corp., et al.*, 1:14-cv-01142-PKC-RML (E.D.N.Y.) and *Honigman v. Kimberly-Clark Corp.*, 2:15-cv-02910-PKC-RML (E.D.N.Y.), currently pending in the United States District Court for the Eastern District of New York before the Honorable Pamela K. Chen (the "Litigation"). The proposed class of plaintiffs consists of all individuals over the age of 18 who purchased flushable wipes sold under the Cottonelle, Scott, Huggies Pull-Ups, Poise, and Kotex brand names in the United States not for the purpose of resale, during the Settlement Class Period (February 21, 2008 to the date of the Preliminary Approval Order). The proposed class action settlement is with one defendant, Kimberly-Clark Corporation ("Kimberly-Clark").

Compliance with 28 U.S.C. § 1715(b)

Subsection 1715(b) lists eight items that must be provided to appropriate State and Federal officials in connection with any proposed class action settlement. Each of these items is addressed below. In conjunction with this notice, please find copies of the following documents at the website: www.cafanotice.com under the "Kurtz / Honigman v. Kimberly-Clark Corp." folder.

- Exhibit 1: Complaint and Related Materials
- Exhibit 2: Notice of Any Scheduled Judicial Hearing

A motion for preliminary approval of the settlement was filed on April 5, 2022 [ECF No. 1352]. The motion, which is pending before the Honorable

Pamela K. Chen of the United States District Court for the Eastern District of New York, has not yet been noticed for hearing.

- Exhibit 3: Notification to Class Members; Proposed Class Action Settlement; Settlement or Other Agreement Contemporaneously Made Between Kimberly-Clark's Counsel and Class Counsel

  A copy of the Settlement Agreement attaches the Long Form Notice, Summary Form Notice, and Online Notice. No other contemporaneous agreements between Kimberly-Clark's Counsel and Class Counsel exist.

- Final Judgment or Notice of Dismissal

  There has been no final judgment or notice of dismissal. The hearing to determine whether to give final approval to the settlement has not yet been scheduled.

- 28 U.S.C. § 1715(b)(7)(A) and (B): Estimate of Class Members in Each State

  Because the class members are retail consumers that do not purchase directly from Kimberly-Clark, Kimberly-Clark currently does not know or have a means of reasonably determining how many settlement class members reside in each state.

  Kimberly-Clark believes it is probable that the proportion of class members in each state, and the benefits they will receive, is roughly the same as that state's share of the overall population of the 50 states (and District of Columbia).

- Judicial Opinions Related to the Settlement

  As of the date of this letter, there are no judicial opinions related to the proposed Settlement or Settlement Agreement.

Timeliness of this Notice

Section 1715 provides two deadlines for service of this CAFA notice, and Kimberly-Clark either has complied or will comply with both of these deadlines. First, 28 U.S.C. § 1715(b) provides that a defendant must serve this notice "not later than 10 days after a proposed settlement of a class action is filed in court." The proposed settlement was filed on April 5, 2022 [ECF No. 1352], and this letter is being sent by April 15, 2022. Second, 28 U.S.C. § 1715(d) provides that "[a]n order giving final approval of a proposed settlement may not be issued earlier

than 90 days after" service of the notice on the appropriate Federal official. The final approval hearing has not been set, and Plaintiff and Kimberly-Clark will request that any final approval not issue any earlier than 90 days after service of this notice.

Please contact me if you require any additional materials or further information about the above matter.

Very truly yours,

SIDLEY AUSTIN LLP
Attorney for Defendant Kimberly-Clark Corp.

Enclosure (1)

Exhibit B

Service List

Alabama Attorney General	Steve Marshall
Alaska Attorney General	Treg Taylor
Arizona Attorney General	Mark Brnovich
Arkansas Attorney General	Leslie Rutledge
California Attorney General	Rob Bonta
Colorado Attorney General	Phil Weiser
Connecticut Attorney General	William Tong
Delaware Attorney General	Kathy Jennings
District of Columbia Attorney General	Karl A. Racine
Florida Attorney General	Ashley Moody
Georgia Attorney General	Chris Carr
Hawaii Attorney General	Holly T Shikada
Idaho Attorney General	Lawrence Wasden
Illinois Attorney General	Kwame Raoul
Indiana Attorney General	Todd Rokita
Iowa Attorney General	Tom Miller
Kansas Attorney General	Derek Schmidt
Kentucky Attorney General	Daniel Cameron
Louisiana Attorney General	Jeff Landry
Maine Attorney General	Aaron Frey
Maryland Attorney General	Brian Frosh
Massachusetts Attorney General	Maura Healey
Michigan Attorney General	Dana Nessel
Minnesota Attorney General	Keith Ellison
Mississippi Attorney General	Lynn Fitch
Missouri Attorney General	Eric Schmitt
Montana Attorney General	Austin Knudsen
Nebraska Attorney General	Doug Peterson
Nevada Attorney General	Aaron Ford
New Hampshire Attorney General	John Formella
New Jersey Attorney General	Matthew J Platkin
New Mexico Attorney General	Hector Balderas
New York Attorney General	Letitia James
North Carolina Attorney General	Josh Stein
North Dakota Attorney General	Drew Wrigley
Ohio Attorney General	Dave Yost
Oklahoma Attorney General	John O'Connor
Oregon Attorney General	Ellen F. Rosenblum
Pennsylvania Attorney General	Josh Shapiro
Rhode Island Attorney General	Peter Neronha

South Carolina Attorney General	Alan Wilson
South Dakota Attorney General	Jason Ravnsborg
Tennessee Attorney General	Herbert H. Slatery III
Texas Attorney General	Ken Paxton
United States Attorney General	Merrick B Garland
Utah Attorney General	Sean Reyes
Vermont Attorney General	T.J. Donovan
Virginia Attorney General	Jason Miyares
Washington Attorney General	Bob Ferguson
West Virginia Attorney General	Patrick Morrisey
Wisconsin Attorney General	Josh Kaul
Wyoming Attorney General	Bridget Hill

Exhibit C

Exclusions

5351300MQX7V2	ARMSTRONG SUE
535130118T9Q2	KAVALA KEVIN
5351301V4885V	HELMS CHINA
53513027MN2FG	MESSER SONNIE
5351302T16GFF	JESTER JUNE
5351304ZD7VD1	DIXON DEANNA
53513060R0V15	FAULKNER SHERRY
5351306C5NRVM	BUCK JULIUS
535130779SK8V	REDD KENYETTA
5351307KVW22N	BOLDEN SHANNON
5351307PGVGNZ	MIDDLETON SUSIE
5351308W32YT9	DANIEL THERESA
535130BKWMKK4	TREVELYAN WILLIE
535130QDWDW68	WEATHERALL RHODA
5351318CSF2ZR	ADDISON BETTY
535131MRJ62J9	GREY EDWARD
5351321XVJS0P	MITCHELL NATASHIA
5351323BV57J6	WHEELER MYIQUEL
5351324390 7Z6	DAVIS REBA
535132612MSKK	GALANTY JACK
535132BJJ1RK6	BARBERA STACY
535132CFW15MQ	HARRELL ARIANNA
535132D987Y4S	RANKIN JASMINE
535132G3CJCWV	BURRELL PAMELA
535132G3WX2J2	WILSON PAUL
535132TW31GTP	HILL CHARDAE
535132XT1RGRX	WHEATLEY JESSICA

EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

D. JOSEPH KURTZ, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. KIMBERLY-CLARK CORPORATION, et al., Defendants.	Civil Action No. 1:14-cv-01142-PKC-RML CLASS ACTION
GLADYS HONIGMAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. KIMBERLY-CLARK CORPORATION, Defendant.	Civil Action No. 2:15-cv-02910-PKC-RML CLASS ACTION

DECLARATION OF ROBERT A. VILLÉE IN CONNECTION WITH FINAL APPROVAL OF SETTLEMENT AND CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

I, ROBERT A. VILLÉE, declare as follows:

1. I am a career wastewater professional. I have over 45 years' experience in the wastewater industry, including serving as Executive Director of the Plainfield Area Regional Sewerage Authority ("PARSA") in New Jersey for 24 years before my retirement in 2019. I have previously served as the chair of the Water Environment Federation ("WEF") Collection System Committee. I am a co-founder of the International Water Services Flushability Group ("IWSFG"), which developed the IWSFG flushability specifications that wastewater entities and officials use to determine whether a moist wipe is in fact "flushable."

2. I have consulted with the Federal Trade Commission and the Australian Consumer Competition Commission on wipes-related issues, worked with the U.S. Environmental Protection Agency on operational issues in the U.S. Virgin Islands, and presented on various operational topics including wipe-related issues, all over the world, including twice at the INDA (the Association of the Nonwoven Fabrics Industry), World of Wipes International Conference. I was a key representative of the U.S. wastewater industry, including through WEF and NACWA (the National Association of Clean Water Agencies), at the North American negotiations with the wipes manufacturers. In the ISO (International Organization for Standardization) Technical Committee 224, Workgroup 10 flushability specification effort I represented the U.S. wastewater on the ANSI (American National Standards Institute) committee.

3. I also worked with a collective group of manufacturers and retailers of "flushable" wipes and their trade group, INDA, along with other municipality and industry representatives, in an effort to establish a standard for the terms "flushable" or "flushability" that is acceptable to a reasonable consumer as well as for the wastewater industry. Through these efforts, I worked on the joint taskforce to help develop the fourth edition of INDA's flushability guidelines ("GD4").

Unfortunately, INDA finalized and implemented the GD4 guidelines without my support and that of the wastewater industry.

4. I have remained active in the New Jersey Environment Association and the WEF Collection Systems Committee since my retirement, and continue to work on flushable wipes issues.

5. In 2018, my organization developed the 2018 IWSFG flushability specifications, a set of guidelines to ensure that wipes that do not pass wastewater industry-supported testing protocols are either removed from the market or relabeled as "non-flushable." In 2020, a revised set of specifications was released. As part of my mission to develop these guidelines, I have consulted and worked with the Plaintiffs' attorneys in this litigation and others, on an unpaid basis, since not long after the first consumer action (*Kurtz*) was brought in 2014. The consultations I have had with Robbins Geller attorneys include dozens of phone calls, numerous in-person meetings, and participation in testing of various wipes products for flushability, including at the PARSA facilities in New Jersey and twice at Kimberly-Clark facilities in Wisconsin in connection with settlement discussions in this and other litigation.

6. In addition to my consultations with counsel, I provided testimony at a July 21, 2015 "Science Day" hearing before Judge Weinstein in the *Kurtz* and related *Belfiore* matters (involving Procter & Gamble) regarding flushable wipes. I also submitted declarations in connection with this litigation in November 2016 and January 2017, in which I testified about flushability issues with respect to various flushable wipes products. In those declarations, while I stated that Kimberly-Clark's flushable wipes were in fact better than its competitors' products, I also stated that no product on the market at the time was in fact "flushable," as that term is used on labeling and advertising of flushable wipes products.

7. In addition to working with Robbins Geller attorneys in this litigation, I worked with them in *The Preserve at Connetquot Homeowners Association, Inc. v. Costco Wholesale Corporation, et al*., No. 2:17-cv-07050-JFB-AYS (E.D.N.Y.) and *Commissioners of Public Works of the City of Charleston v. Costco Wholesale Corp., et al.*, No. 2:21-cv-00042-RMG (D.S.C.), in an effort to obtain a commitment from Kimberly-Clark that its flushable wipes would fully comply with wastewater-approved flushable wipes standards, including eventually the 2020 IWSFG publicly available specification (PAS) documents, the wastewater industry's gold standard for flushability.

8. In my opinion, based on my experience, knowledge, and first-hand testing, while Kimberly-Clark wipes were not flushable at the beginning of this litigation in 2014, during the course of this eight-year litigation, Kimberly-Clark has succeeded in developing a flushable wipe that meets the IWSFG (wastewater industry-supported) flushability standards. That occurred in significant part due to this litigation and the flushability negotiations in which I played a part, and which extended from this litigation to the *Preserve* matter, and eventually, the *Charleston* matter. The efforts of counsel in bringing and litigating the *Kurtz* and *Honigman* actions has had a major and direct effect on, and I believe was the genesis of, Kimberly-Clark's development of wipes that meet the wastewater industry's flushability definition.

9. Based on my experience, including first-hand testing, Kimberly Clark flushable wipes are now in fact flushable and were the first wipes produced by a manufacturer available on a wide-scale that satisfied the IWSFG flushability standard, including the PAS 3 disintegration test (slosh box testing) – the most difficult test to pass. This opinion is based on confirmatory testing that I conducted as recently as June of this year in connection with *Charleston* settlement.

10. In contrast to the IWSFG flushability standards, the manufacturer and retail-industry supported INDA GD4 guidelines do not represent a flushability standard supported by the

wastewater industry. In other words, if a manufacturer passes the INDA GD4 guidelines but not the IWSFG specifications, those wipes are not considered "flushable" in my view or in the view of the wastewater industry. My knowledge of and/or review of flushability testing conducted as recently as 2021 indicate that flushable wipes manufactured and sold by Procter & Gamble did not at that time pass the IWSFG PAS 3 disintegration test, even if those wipes might have passed the INDA disintegration test guidelines.

11. Other manufacturers such as Nice-Pak, which supplies flushable wipes for retailers such as Costco, CVS, and Target, are now asserting that they are developing or have developed truly flushable wipes.[1]

12. It is fair to infer that this and related litigation have played a significant part in effecting the progress that many manufacturers and distributors have made (or are making) toward flushability over the past eight years. I base this conclusion not only upon my observations in connection with this litigation, but also upon my knowledge of the wastewater industry, and communications with professionals in the industry.

13. The strategy of counsel to continue this litigation until there was satisfactory evidence of flushability through valid testing, including by pursing separate flushable wipes litigation on behalf of sewage treatment plant operators (*i.e.*, the *Preserve* and *Charleston* matters), has clearly been a factor in the manufacturers' and distributors' progress. In my opinion, this litigation is also responsible in significant part for pressuring other manufacturers (such as Nice-Pak) to begin improving their flushable wipes.

14. It is also my opinion that this litigation, as well as the settlement provisions secured in the *Charleston* case, have been integral in achieving the labeling improvements for non-flushable

[1] https://www.nonwovens-industry.com/contents/view_breaking-news/2021-11-30/nice-pak-unveils-improved-flushable-wipe/.

wipes (*i.e.*, baby wipes) – which are also key to alleviating stress on municipal systems from improperly flushed wipes products.

15. In conclusion, the prosecution of this litigation and others such as the *Charleston* matter have achieved not only the settlement compensation negotiated for class members (through the *Kurtz* and *Honigman* actions), but also the public benefit of encouraging Kimberly-Clark and other manufacturers and distributors to work to improve the quality of their flushable products to the point where, at least with respect to Kimberly-Clark, independent testing now confirms that they are indeed flushable.

16. Other than reimbursement of limited travel-related expenses, I have not been compensated by Robbins Geller for any of the above-referenced work, nor am I being compensated for this declaration.

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

Executed this 3rd day of August, 2022
at Long Branch, NJ.

ROBERT A. VILLÉE

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

In Re:

15-MC-40 (AKH)

AMERICAN REALTY CAPITAL
PROPERTIES, INC. LITIGATION,

Fairness Hearing

----------x

New York, N.Y.
January 23, 2019
10:15 a.m.

Before:

HON. ALVIN K. HELLERSTEIN

District Judge

APPEARANCES

ROBBINS GELLER RUDMAN & DOWD LLP
Attorneys for TIAA and Class Plaintiffs
BY: DEBRA J. WYMAN, ESQ.
MICHAEL J. DOWD, ESQ.
ROBERT M. ROTHMAN, ESQ.
ELLEN GUSIKOFF-STEWART, ESQ.

GLANCY PRONGAY & MURRAY LLP
Attorneys for the Witchko Derivative
BY: MATTHEW M. HOUSTON, ESQ.

MILBANK LLP
Attorneys for Defendant ARCP
BY: SCOTT A. EDELMAN, ESQ.

THE COURT: Who is going to do the application for Robbins Geller?

MR. DOWD: I will, your Honor. Michael Dowd.

THE COURT: Good morning, Mr. Dowd.

MR. DOWD: Good morning, your Honor.

THE COURT: I've read your extensive declaration, that is, the declaration of Ms. Wyman.

I want to take up just your fees, your activities. The first to file the class action lawsuit were four firms, who don't seem to be involved: Pomerantz LLP, Wolf Popper LLP, Wolf Haldenstein LLP, and the Rosen Law Firm. Is it clear that they are making no claim?

MR. DOWD: They are making no claim, your Honor.

THE COURT: OK. Did they do anything in the lawsuit?

MR. DOWD: No, your Honor. I mean, I'm sure they filed complaints early on. But the Court, when it appointed us lead plaintiff, told us to work with other firms and form a working group, a global working group. And there were a group of firms, I believe it was nine firms, that agreed to be part of that working group and to work on the case. And we've submitted their time with our time. And those are the only attorneys that would be entitled to fees in this casement.

THE COURT: The second thing, I did not appreciate how many counsel there were. My impression was that there were three or four at the time that I said what you said.

MR. DOWD: Pardon me, your Honor?

THE COURT: I didn't know there were nine other law firms involved.

MR. DOWD: There were, your Honor. The Court --

THE COURT: I didn't know that, I said. When I asked you to coordinate services and organize the plaintiffs' group, I thought there were just two or three law firms.

MR. DOWD: No, they were not. And they each had clients in the case, except I believe there was one firm that did not. But they each had clients. They were all class reps. They were all either on our "may call" or "will call" witness list. And so they provided valuable service. And they did a lot of work in the case. We've limited it and tried to give them discrete projects or dealing with just their plaintiffs, you know, because that's what we thought the Court wanted with the working group, and we did do that. Their time is about 10 percent of our time. And I think that's fair considering what they did in the case.

THE COURT: You have a rather detailed description of the various things you were doing.

MR. DOWD: Yes, your Honor. That would be in Ms. Wyman's, the longer declaration.

THE COURT: The declaration in support of application for award of attorney's fees and expenses is what I'm looking at. I have the larger one as well.

Ms. Wyman's affidavit identifies the lawyers -- all your firm?

MR. DOWD: Yes. They're all our firm.

THE COURT: Why so many lawyers?

MR. DOWD: Well, your Honor, there are different people that helped with different tasks. When I looked at it, this is what struck me. We had a working group that I really thought were the people that were going to be responsible for trying this case. That group was about 15 people, 13 lawyers and the two forensic accountants that were involved in it from beginning to end. Those 15 people account for about 72 percent of our lodestar, $47 million, just those 15 people. They were all people that the Court would probably be familiar with or would have seen their names. Certainly most of us have been here in court.

And then if you add in the four people at our office, three of our internal staff attorneys and another associate, that were primarily responsible for the document review, so that would be another four people, bringing it to 19. I think those people together would account for about 82 percent of our entire lodestar.

So it may look like a lot of people because there were timekeepers that did individual things or who were on the case for a given period of time. But if you look at those people that really drove the case, you're talking about the 15 main

people that did everything. That's 72 percent of the time. And if you take in those other four that were responsible for a lot of the document work, that's, I think, about 82 percent of the lodestar.

THE COURT: 12 people billed more than a thousand hours.

MR. DOWD: Yes, your Honor.

THE COURT: How many people were involved in your firm, Mr. Edelman? Roughly.

MR. EDELMAN: Your Honor, I would bet a comparable number. This was complicated litigation in a big case.

THE COURT: I understand.

MR. EDELMAN: That doesn't sound at all outlandish to me. Their the core team.

THE COURT: OK. Then I pass that observation.

MR. DOWD: That's just Mr. Edelman's firm. There were also Grant Thornton's lawyers.

THE COURT: They had a separate job to do.

MR. DOWD: Well, and we had to do the job on the other side of them as well.

THE COURT: That's true.

MR. DOWD: They had, at summary judgment --

THE COURT: Mr. Dowd, I withdraw that implied criticism.

The hourly rates, for example, what did Jason Forge

do?

MR. DOWD: Jason Forge, your Honor? Jason Forge was a critical part of this team. He worked on the case primarily towards the end at summary judgment, when he got ready for trial. He did fantastic work with their damages experts. He was a former assistant U.S. attorney. He was an AUSA who did huge cases in LA and San Diego before I talked him into coming over to our firm. He's a great lawyer, your Honor. He's been in front of you. I don't think he argued in this case. He was certainly in the courtroom. He's argued in other cases that I've been on with him in front of this Court. So you've met him.

THE COURT: Now, the top billing rate of $1,150 of Samuel Rudman, $1,250, he only had 29 hours.

MR. DOWD: It's really, it's probably Mr. Coughlin, myself, and Mr. Robbins.

THE COURT: Several billing more than a thousand dollars. Those seem like New York rates rather than San Diego rates.

MR. DOWD: Well, Mr. Rudman is in New York. But I think you should look at the rates for lawyers that do this type of litigation. If you look, the *National Law Journal* said over a thousand dollars an hour is common now for partners. If you look at some of the firms on the other side of this case --

THE COURT: I wouldn't try.

MR. DOWD: We submitted a declaration showing that Weil Gotshal -- and they were on the other side of this case, good lawyers -- we showed that they filed an application in the Sears bankruptcy earlier last year, and they had nine lawyers, at $1500 an hour, and dozens at over a thousand dollars an hour. So higher than us.

THE COURT: The bankruptcy rates are out of sight, and that's often because the allowances are heavily discounted.

Tell me now how the other firms worked.

MR. DOWD: How did the other firms work? What did they do, your Honor?

THE COURT: What did they do, yes.

MR. DOWD: Well, I can tell you that, for example, if you just go down the list, if you start with Lowey Dannenberg, for example. They represented Corsair. And Corsair was a shareholder and class member for the Cole shares and also the May 2014 common stock offering. Corsair produced, I believe, 145,000 pages of documents, all of which had to be reviewed for privilege. They were on our "will call" witness list. They are on, I believe, also a "may call" witness list. Their client was deposed. They also assisted with the summary judgment briefing on the discrete project that Ms. Wyman gave them.

THE COURT: What project was that?

MR. DOWD: Do you remember which briefing it was?

MS. WYMAN: Your Honor, we needed some assistance with the research of some tricky issues, and we asked them to help us with that, and they prepared --

THE COURT: You what?

MS. WYMAN: We asked them to help us with some research and prepared an insert to one of the briefs.

MR. DOWD: So you're looking at, your Honor, document review, analysis of the claims, data collection, motion to dismiss, negotiation of discovery disputes. Ms. Wyman would have had to coordinate with them for what their --

THE COURT: You're taking it out of their declaration, what you just said.

MR. DOWD: Pardon me?

THE COURT: What you just read, is that from their declaration?

MR. DOWD: It's from their declaration, yes, your Honor, that was submitted.

THE COURT: Now, Motley Rice makes no description in its declaration. What did they do?

MR. DOWD: Motley Rice, your Honor, they had two clients in the case. They had the national sheet metal workers union. And they were on both the Cole and the May 2014 offering. They were on our "will call" witness list, Mr. Myers. They had also Union Asset Management, which was a German entity that was on the July and December 2013 bond

claims. They had two witnesses that they produced, Mr. Riechwald and Mr. Fischer, who came over from Germany, as I recall, to have their depositions taken. Similarly, Sheet Metal Workers had Mr. Myers, so they had three days of deposition testimony. And all three of those witnesses were on our "will call" witness list. They are coming.

They also assisted us, as I recall, with the motion to dismiss briefing that related, I think, to the Exxon exchange. They attended the first mediation. And they would have spent a lot of time on depo prep and the depositions. And they also would have interacted, I'm sure, with Ms. Wyman in terms of document production and disputes with the defendants, so that, you know, their views would be expressed to the defendants as well.

THE COURT: Johnson Fistel.

MR. DOWD: Johnson Fistel, your Honor, represented their client in the case. There was a class rep. It was Paul Matten. He was an ARCT IV shareholder. He was on our "may call" witness list, I believe. They also assisted, they gave us an associate who came to our office, I believe, in New York, and assisted with document review of the defendants' documents. They also produced documents for their client. And I believe Mr. Matten was also interviewed by the Department of Justice when they were insistent that they wanted one of our class reps, or a couple of our class reps, to be interviewed about

their case.

THE COURT: Cohen Milstein.

MR. DOWD: Cohen Milstein, your Honor, represented the New York City funds. They were in the July 2013 offering, the Cole offering, the May 2014 offering. They produced two witnesses on behalf of the New York City funds, Horan and Jeter. They were both deposed. They were both on our "will call" witness list. They had, your Honor, as I recall, produced 190,000 pages of documents, which had to be reviewed. And they would have been involved, I'm sure, in checking class cert issues. And I believe they assisted also with the motion to dismiss briefing as well, your Honor. So they provided a valuable service. A lot of their work was related to New York City funds. Obviously, if we were trying a case in front of your Honor, in front of a New York jury, it would certainly be helpful to have New York City funds here.

THE COURT: What would they testify on?

MR. DOWD: They would have testified about their purchases in all the different offerings as class reps.

THE COURT: Those would have come in by stipulation.

MR. DOWD: Your Honor, they don't come in by stipulation.

THE COURT: Well, it's a matter of record what they bought and when they bought.

MR. DOWD: Yes. And no one says, we're going to

stipulate to it, your Honor. I've tried a couple of these cases.

THE COURT: There would have been stipulations.

MR. DOWD: Well, I've tried cases, and there weren't stipulations.

THE COURT: You would not need any witnesses on this, and I don't know that the witnesses would have contributed anything.

I'm reacting because a million dollars for each of these law firms, given the $65 million of lodestar that you put into the case, seems excessive.

MR. DOWD: I don't think it was, your Honor. I think what they did, in terms of their clients and document production, producing the documents, defending them at depositions -- we didn't take their depositions. The defendants deposed them.

THE COURT: I understand. But the knowledge of a class member is derivative and really irrelevant. The knowledge is derivative of what the lawyer finds and irrelevant because it doesn't prove any proposition against the defendants. I understand that these depositions are taken as a matter of course by defendants, and they have to be, the clients have to be represented and there's a certain time of preparation, but over a million dollars for each, without time records showing anything, I haven't seen any time records for

them.

MR. DOWD: Well, your Honor, again, we started out from a different premise. We seek a percentage of the fee, a percentage of the fund, as our fee. And that's the trend in the Second Circuit. I know I've argued with your Honor about this in the past. But that's how we seek a fee. When my firm is working on a case --

THE COURT: I just don't do that, Mr. Dowd. I told you in the past, I believe that people who just do it on a basis of percentage do not want to go through the rigor of review and time. I'll award lodestar. And I'll be candid with you right now; you will get an award for your lodestar as well, not as much as you asked for, but you'll get an award. I'm not sure about those other firms. I don't know what they contributed. I don't have a justification of their time. I don't know what activities took up their time. I don't know how they distributed their work between partners and associates. I don't understand the substantial expense factors that they put into this case. It's hard questions.

MR. DOWD: They did break down their time by who the timekeepers were. And they also broke down their expenses. Those are attached to their declarations that they each submitted.

But, again, your Honor, when my firm goes into a case, we negotiated with TIAA. We negotiated for a percentage fee.

And we're not sitting there thinking, let's bring in 50 for attorneys to sit in a room reviewing documents so we can build up our lodestar. And that's the problem with the lodestar analysis. I'm just being honest with your Honor. It encourages lawyers to hire for people that do nothing to add value to the case. And we don't do that.

THE COURT: You don't do that.

MR. DOWD: No, we don't. We work for a percentage. That's what we asked for. If we put people on an assignment, it's because we needed it done. You know, at summary judgment the defendants had like 60 people in the courtroom.

THE COURT: You had expenses paid outside bankruptcy counsel, $171,000, so that they can file a motion in the bankruptcy court to get permission so that they could litigate in this court.

MR. DOWD: That's correct, your Honor.

THE COURT: That's a lot of money.

MR. DOWD: I understand that, your Honor. And when the Court ordered us to go protect those claims and get the stay lifted, we had to hire bankruptcy counsel. It's not like --

THE COURT: Did you pay them, or are they waiting to get paid?

MR. DOWD: No, we paid them.

THE COURT: You are out of pocket.

MR. DOWD: That's out of pocket for us.

And, again, you know, there was a court order saying, you know, go defend the thing in bankruptcy. I'm not a bankruptcy lawyer.

THE COURT: That's right. It is a large amount.

MR. DOWD: I understand.

THE COURT: One is a simple motion, to lift stay, which is ordinarily granted in relationship to a large case like this.

MR. DOWD: And then I think they also had to keep monitoring it, and I think they probably made other appearances. I'm not positive -- I know they did. Right?

THE COURT: It's too high a fee.

MR. DOWD: I understand, your Honor. And we paid out of pocket. We're not trying to give money away. I mean, if you cut it, it just cuts my money. I don't think they're going to give it back.

THE COURT: Why weren't they required to make an application?

MR. DOWD: Because we didn't consider them part of a contingent fee. They wanted to get paid hourly, and that's what we paid.

THE COURT: You paid over a million dollars to Crowninshield Financial Research, Inc.

MR. DOWD: We absolutely did, your Honor.

THE COURT: And you have people on in your firm who do the same work. No?

MR. DOWD: They do similar work. And frankly a lot of the partners at our firm know a lot about damages. I mean, that million dollars, your Honor, was, we had to spend it. I cannot tell you how much work they did.

THE COURT: Were they going to be witnesses?

MR. DOWD: Pardon me?

THE COURT: Were they going to be --

MR. DOWD: Yes. It's Dr. Feinstein. He also testified in front of you on class cert. He was going to testify again at trial, your Honor.

THE COURT: Was his deposition taken?

MR. DOWD: His deposition was taken four times, your Honor.

THE COURT: So this million dollars reflects that activity.

MR. DOWD: Absolutely. And the defendant has six experts, on just loss causation. And you throw in truth on the market, they had 12. And I guarantee you, because I've worked with some of them, they paid a lot more than a million dollars for their 12 guys or six people, whatever you want to call them.

THE COURT: They're not asking me to give them any allowances to have a law firm relationship with a client who

will or will not pay, I think, in advance. I will not give you that. You paid William H. Purcell Consulting over $350,000 --

MR. DOWD: We did.

THE COURT: -- for testimony concerning due diligence issues. I remarked that I did not see the due diligence issues as having experts. It was really a fact and a law issue.

MR. DOWD: Yes. And then defendants --

THE COURT: I understand that, given defendants' insistence to have experts of that like, and a certain degree of uncertainty whether they will or will not be able to use them, you need to have your own.

MR. DOWD: Correct. And they had three.

THE COURT: What about Harvey Pitt?

MR. DOWD: Harvey Pitt, your Honor --

THE COURT: $200,000 to Harvey Pitt --

MR. DOWD: Like 198,000.

THE COURT: -- to trace securities.

MR. DOWD: Well, and he was also going to testify about the SEC regulatory framework.

THE COURT: I told you I wasn't going to allow that.

MR. DOWD: No, I think you said I could award for that. In fact, I'm pretty sure you awarded that --

THE COURT: No. When I commented, you said that he was going to trace shares, a job that an accountant could do.

MR. DOWD: I think you also said he could testify

about the SEC regulatory framework as well.

THE COURT: No, I did not.

MR. DOWD: I think you did, your Honor.

And, you know, your Honor, a lot of Mr. Pitt's bill is because the defendant showed up with between 15 and 20 lawyers in Washington, D.C., to take his deposition for two days. At the end of the first day, I walked out, because I said, this is a waste of time. And then defendants filed a letter brief complaining that I had walked out. And we had to go back for a second day.

I didn't want to have Harvey Pitt get deposed twice to talk about stuff that, you know, frankly I thought was not that remarkable.

THE COURT: You have almost $50,000 paid to John Barron and $384,000 to the firm that Barron went to.

MR. DOWD: Correct. Barron.

THE COURT: Barron.

MR. DOWD: We could have had several experts on accounting. And we found a REIT auditor and accountant who was going to testify to both, as to the company and as to Grant Thornton. I think his expenses are very reasonable.

THE COURT: I find your lodestar reasonable, the rates appropriate and, in relationship to the work that you did, reasonable. I'll go into lodestar a bit later.

The next firm I want to hear from is Lowey Dannenberg.

MR. SKELTON: Good morning, your Honor. Thomas Skelton of Lowey Dannenberg. Ms. Hart sends her apologies. She had a client meeting in California with a client who was in hospice care and may pass at any time and felt that she needed to keep that appointment.

THE COURT: Thank you.

MR. SKELTON: Your Honor, my firm represents the Corsair group of funds. They had a $19 million loss and were the second largest shareholder at the lead plaintiff stage. We were obviously not appointed lead counsel. Throughout the course of the case, we took our direction from Robbins Geller. We worked on numerous aspects of the case, including, as set forth in Ms. Hart's declaration, motions to dismiss, motions for class certification, motions for summary judgment.

THE COURT: What did you do on the motion to dismiss?

MR. SKELTON: We did discrete projects and we reviewed motion papers at the direction of lead counsel, particularly in any issues that might have related to Corsair. And they would apply throughout the case. Much of our work was specifically directed to issues that related to Corsair. For example, one of the issues that went throughout the case was the issue of tracing, as Mr. Dowd alluded to. We were able to find documents through our document platform that showed, in connection with the May 2014 offering, that Corsair purchased shares at the offering price on the date of the offering from

one of the underwriters at a price that was outside of the trading price on that given day.

THE COURT: That's an accountant's work for Corsair. Why was it your work?

MR. SKELTON: Corsair retained to us perform these services and to represent them in the case. And the issue was whether we could trace the shares to the offering. And our work, we did the work analyzing the documents and providing the information to --

THE COURT: But normally that work would be done internally within a company. Corsair is what, a management company?

MR. SKELTON: It's an investment manager, yes.

THE COURT: Investment manager.

MR. SKELTON: Yes.

THE COURT: An investment manager knows what he bought, what he sold, when he bought it, how much he paid.

MR. SKELTON: An investment manager would have had to find all the documents and analyze them. We analyzed them in the context of the arguments that the defendants were making regarding tracing. They argued that we couldn't trace the shares to the offering because shares are fungible and they're held electronically and therefore we couldn't recover on the Section 11 claims. And the client, this is --

THE COURT: You bought these shares on the offerings,

did you not?

MR. SKELTON: Corsair brought the shares on the offering, yes.

THE COURT: Which offering did you buy on?

MR. SKELTON: The May 2014 offering, as well as Cole merger shares. But the offering at issue was the May 2014 offering.

THE COURT: Did you buy from the underwriters?

MR. SKELTON: Yes.

THE COURT: So what was the big problem?

MR. SKELTON: The problem was that the defendants were arguing in the in limine motions and in summary judgment that we couldn't trace the shares to the offering because shares are fungible and, because we couldn't say that these particular shares did not exist before the offering, we couldn't recover on the Section 11 claim.

THE COURT: That's a legal issue.

MR. SKELTON: Yes. And we needed to argue that legal issue with supporting documents. And the documents we were able to find showed that Corsair purchased, on the date of the offering, at the offering price, from one of the underwriters. And we compared that to publicly available information that showed that the lowest trading price of the day was above the price at which Corsair purchased, so therefore they must have purchased on the offering. This is not a routine analysis that

Corsair would do. They didn't understand the nuances of Section 11, of the 1933 Act. We did. They retained us to do this, and that was part of what we did. And we were able to establish, through documentary evidence, that the shares were purchased on the offering. And ultimately, your Honor ruled in favor of the plaintiffs on that issue.

Other matters that we dealt with --

THE COURT: What was your contribution to the result?

MR. SKELTON: Corsair was a certified class representative. They purchased the shares on the open market. They purchased shares in the Cole offering. They purchased shares in the May secondary offering. All of our work, your Honor, was done either at the direction of lead counsel or in consultation with lead counsel, and consult --

THE COURT: Did you take any depositions of the defendants?

MR. SKELTON: We did not, your Honor. We were not asked to do that.

THE COURT: So all you did was represent your client.

MR. SKELTON: Well, we represented our client, who had issues relating to the various -- the offering and the merger and common shares. We were asked to perform tasks on the summary judgment motion, on class certification.

THE COURT: In relationship to your client.

MR. SKELTON: Well, generally, in relation -- in

relation to our client and other tasks that Ms. Wyman called me and asked me if we could do certain research projects related to omissions and related to the admissibility of the financial restatement, which was an earlier issue that came up during the case. Our client produced 145,000 pages of documents. We reviewed the documents for responsiveness and privilege. We dealt with issues relating to the ESI and follow-up questions from the defendants regarding the documents that were produced. Mr. Mishaan of Corsair was deposed. Mr. Rothman from Robbins Geller attended the prep sessions, worked with us to get ready for the deposition. He attended the deposition. And the deposition went very well, and Corsair was certified as a class representative by your Honor.

THE COURT: What did the interview with the Department of Justice and the Securities and Exchange Commission have to do with this lawsuit?

MR. SKELTON: Well, it involved parallel proceedings that the SEC and the U.S. Attorney's Office were contemplating bringing. They wanted to interview Corsair as a witness, and we prepared our client -- and he was the same person who was ultimately deposed.

THE COURT: So why should the class pay for that?

MR. SKELTON: Well, that was time that was spent learning facts that the government had, and they presented hypotheticals to us that helped us to understand some of the

issues that they were considering. And we recognized that the government has different burdens of proof and different elements, but the underlying facts and the approach that the government was taking helped to us understand better the underlying facts in this case.

THE COURT: Why shouldn't that be a fee chargeable to your client, rather than to the class?

MR. SKELTON: Well, the information that we learned and that the client provided to the government was very similar to the information that was being argued in the case. The adjusted funds from operations was one of the issues that was discussed at that meeting. And we believed that that helped sharpen our focus. And Mr. Mishaan, who was the witness at the SEC and DOJ meeting, was also the deponent that Corsair proffered for his deposition.

THE COURT: These interviews with the Department of Justice and with the SEC were not on the record, were they?

MR. SKELTON: No, your Honor.

THE COURT: They couldn't be used in the lawsuit.

MR. SKELTON: No, they could not be used to be submitted as evidence. But it was helpful to us in understanding the government's approach and learning facts about the case that helped us proceed.

Just to put a finer point on it, your Honor, the interview was a short interview. It lasted a couple hours. We

had a prep session the day before. It was not a lengthy period of time. But we do believe that the information that we learned during that process was helpful.

THE COURT: How much of your fees went into that?

MR. SKELTON: I could find it in our time sheets and submit this, your Honor, but it was probably six to eight hours of my time and a couple of hours of Ms. Hart's time.

MR. DOWD: Your Honor, could I just mention one thing? This happens in our cases sometimes, and it did here, where DOJ reaches out and says, we want a victim witness, and since you already have a lawsuit, we want your victim witness. And the first thing I say to them and I'm sure is what we said in this case -- I think Mr. Forge dealt with it -- is, get out of here, go find your own witnesses. And then they say, well, you know, if we want, we can subpoena your witnesses.

And so I think at times, you get stuck in this position with the U.S. Attorney's Office. And I say, you got to go in there and protect them because I don't know what they're going to write down, that your witness may or may not have said, and turn over in Jencks Act discovery before their trial.

And so you have to protect your witness. And it's not our fault, your Honor. We always tell them just go away, find your own witnesses, OK, you do your job, we'll do ours. It's not like they are going to help us.

And I say that with all due respect. I used to be an assistant U.S. attorney, so --

THE COURT: One last question. If I were to give a lesser bonus to your and to the other firms than I give to Robbins Geller, would that it be unjust?

MR. SKELTON: Well, as I understand it, your Honor, Robbins Geller as lead counsel has the discretion, unless your Honor orders otherwise, to distribute the fees in accordance with its discretion as to the contributions that were made by the firms. We believe that our contribution was valid and meritorious, but of course Robbins Geller, they did the lion's share of the work, they took the depositions, they did a phenomenal job and they got a phenomenal result.

THE COURT: My thought was that I would make awards to each of your firms so that Robbins Geller would not have the burden of redistribution.

MR. SKELTON: That is certainly within your discretion, your Honor, to do that and to award what you think our firms' contribution was. We do believe we contributed to the success of the case. I believe that Robbins Geller agrees with that. Obviously Robbins Geller did the lion's share of the work. They took the depositions. And they created a tremendous result. So I'm not going to sit here and tell you that your Honor has to award me the same multiplier that Robbins Geller gets. They were lead counsel. But we do

believe that our contribution was meritorious and that our time was valid and that our application should be granted.

THE COURT: Thank you.

MR. SKELTON: Thank you, your Honor.

THE COURT: Tell me your name again?

MR. SKELTON: Thomas Skelton from Lowey Dannenberg.

THE COURT: I'll hear Motley Rice next.

MR. DOWD: Your Honor, I'm not sure that all the co-counsel came. I mean, we were here to present for them, just like everything else in this case. We tried to keep a tight rein on everybody just so that there wouldn't be waste of time. And I'm pretty sure Cohen Milstein was here on Tuesday and they may have sent a different person today because they couldn't be here again today. But most of the people, we told them, we submitted your time and we'll argue for you. And that's typically the way we did things in this case. We didn't want ten firms showing up. I mean, the Court's order said, "As reported in yesterday's status conference, lead plaintiff's counsel, Robbins Geller, will work with and lead a working group of all interested plaintiff's counsel." And that's what we did.

THE COURT: I understand, Mr. Dowd. But I have to examine the reasonableness of all the constituent parts of your fee, of your fee request, notwithstanding that you're requesting for everybody.

I'm looking at Mr. Levin's declaration, Mr. Levin being a member of Motley Rice. That firm does not have offices in New York, does it?

MR. DOWD: I don't know whether they have an office in New York.

They do. Mr. Rothman says they do.

THE COURT: But the lawyers that worked on the case, were they from the New York office or another office?

MR. ROTHMAN: There was one lawyer who was either from Westchester or Kentucky, maybe from Connecticut, and the rest, Mr. Levin is in the South Carolina office.

THE COURT: It doesn't seem to be right to charge for transportation. I will disallow that charge.

I don't know what they did. What did they do in the case?

MR. DOWD: Well, I talked to you about that already, your Honor. They had the sheet metal workers. They produced Mr. Myers for his deposition. They also had Union Asset Management.

THE COURT: Tell me what they did to contribute to the victory.

MR. DOWD: Well, that does contribute to the victory, your Honor. You're producing deponents and witnesses who bought different offerings that contribute to the victory. I mean, they flew these guys over, as I understand it, from

Germany to have their depositions taken, which is probably part of the travel expenses in this case. They assisted with the motion to dismiss briefing on the Exxon exchange. They attended the first mediation. They did all that depo prep and depo work. They produced respectively about, between them, the two plaintiffs, over 26,000 pages of documents, your Honor.

THE COURT: Johnson Fistel.

MR. DOWD: Johnson Fistel we talked about as well. That was Paul Matten. He was one of the ARCT IV witnesses. They also assisted with the document review. They lent us an associate to assist with document review.

They also produced about 1100 pages of documents on behalf of Mr. Matten. I believe their client was also interviewed by the DOJ.

THE COURT: The Weiss law firm, are they here? Is Weiss here?

MR. DOWD: I don't believe so, your Honor. Again, we kept tight reins on everybody to try to keep the numbers down.

THE COURT: This is an interest in their fee, not a matter of -- they're not getting paid for coming here today. They just have an interest in getting paid.

What about the Weiss law firm? What did they do?

MR. DOWD: Their client was Simon Abadi. He was, I believe, in the Cole offering. And they produced documents for their client. Their client was deposed in the case. He was on

one of the "may call" witness lists. And so they did do work that related to their client in the case.

THE COURT: Stull Stull & Brody.

MR. DOWD: Stull Stull & Brody represented Dr. Esposito and another gentleman named Noah Bender. Esposito was one of the witnesses that really gave a standing on ARCT IV. He was together with Mr. Matten. But Dr. Esposito was deposed, and he was on our "will call" witness list because he gave a standing on the ARCT IV issue. And so they would have represented Dr. Esposito at his deposition and assisted with anything related to Dr. Esposito's briefing.

THE COURT: Gardy & Notis.

MR. DOWD: Gardy & Notis, your Honor, they had a client who was not named as a class rep in this case named Shenker. I think that he sought lead plaintiff appointment. However, because they were on the Cole exchange, they went down to Maryland because there had been a securities case against Cole, and they tried to make sure, their primary role was to make sure that our claims, our claims asserted in this case, didn't get cut out in the release in the Maryland Cole case. Not only did they argue below in this case, in the district court, but then I believe they also argued it on appeal as well, your Honor. And so that was their main role in the case, was objections and appeals in the Cole case to protect our clients to make sure their claims didn't get released in

Maryland, in sort of an end-around. And so that was the work we gave them to do, and they did it, and they did it well.

THE COURT: The Polaszek Law Firm.

MR. DOWD: The Polaszek Law Firm represented the City of Tampa funds. They were on the May 2014 offering. They produced their client, who was one of the class reps, was Ernest Carrera, on behalf of Tampa, obviously, and he was on our "may call" witness list at the end of the day. They produced documents. Their client was deposed.

Frequently, when I looked at their lodestar, I was thinking I would have thought it would have been higher. But that was just my view.

THE COURT: Cohen Milstein.

MR. DOWD: Cohen Milstein we discussed. They represented the New York City funds. They were on a host of offerings, I think three different offerings. They produced two witnesses, Mr. Horan and Mr. Jeter. They were both deposed. They were both on our "will call" witness list. They did significant work in the case. They produced 190,000 pages of documents that had to be reviewed for privilege and responsiveness. And they also assisted with the motion to dismiss briefing in the case, as I recall. And so I think that their work was very good, and they did a good job, and helped us with the case.

MR. LOMETTI: Your Honor, I'm sorry. It's Chris

Lometti from Cohen Milstein. Julie Reiser was here on Tuesday, is in court in California, had a mediation, actually, in California today. She couldn't be here. I'm here if you have any additional questions.

But I think there may have been four offerings that the New York City funds were involved with.

THE COURT: Did you take part in any depositions against defendants?

MR. LOMETTI: No, your Honor.

THE COURT: Or any motions?

MR. LOMETTI: I think the firm worked on the motion to dismiss, on class cert issues, and I believe -- Michael, correct me if I'm wrong -- but there was some work that the firm did in relation to the investment managers in general. New York City funds had five investment managers, and there was a time where the defendants were possibly wanting to depose some or all of them and we had to fight that, and which we did successfully. And we may have been involved with other investment manager-type issues as well in the case, your Honor.

MR. DOWD: That's correct, your Honor.

THE COURT: Thank you.

And Levi & Korsinsky.

MR. DOWD: They had clients Mitchell and Bonnie Ellis. They were on the ARCT IV offering. They were on our "may call" witness list. They produced documents. The defendants did not

take their depositions. I noted that their expenses were zero, which was consistent with that. But that would have been their primary role: protecting their client, producing documents, reviewing them, and responding to issues on motion to dismiss that dealt with their clients.

THE COURT: If I were to give you whatever I give you, as a fee for everyone, what would be the methodology of distribution?

MR. DOWD: What would be our process? I think we would have to --

THE COURT: Your theory of distribution.

MR. DOWD: We would have to look at what everyone did and then figure out how to divide it. A large part of it would be based on what the Court ordered and how much we got, and we would have to think that through and then talk to the firms and make a decision. That's what would happen. It's not like there's some mathematical equation that we use.

THE COURT: I feel I want to reward your law firm more than the others proportionally.

MR. DOWD: Your Honor, I will say this. In this case, we kept those co-counsel to 10 percent of our lodestar, basically. And they did work on the case. And they did good work, with everything they had to do. And they cooperated with us. And they worked with their witnesses. And it added value to the case. I don't think it's fair --

THE COURT: I'm sure they did. But the driving force in this case --

MR. DOWD: Absolutely.

THE COURT: -- and the reason that the result is uncommon, was the work of your firm.

MR. DOWD: I understand, your Honor. But I can't stand here and denigrate these other firms that I feel made a legitimate contribution to this case. And I won't do it.

THE COURT: OK. I'll take a short break and then I'll --

MR. DOWD: Your Honor, I would like to address some other issues too for the Court's consideration.

THE COURT: Go ahead.

MR. DOWD: Is that all right?

THE COURT: Yes, go ahead.

MR. DOWD: Because I know the Court goes with the lodestar approach. I understand. But, you know, in this case, TIAA, the lead plaintiff, did a great job. And the Court actually said they did an excellent job in this case. They held our feet to the fire. We had an ex ante negotiated fee agreement with them, before we were appointed lead plaintiff, calling for 12.4 percent of the fee.

THE COURT: How much?

MR. DOWD: 12.4 percent. You have to do some math on it. But that's what it comes out to. That's where the 127

million comes from, your Honor.

TIAA is one of the largest retirement systems in the world, your Honor. They have almost a trillion dollars in assets.

THE COURT: I'm familiar with that.

MR. DOWD: All I'm saying is, they're used to dealing with lawyers, and they drove a good bargain on behalf of themselves and the class at 12.4 percent. If you look at the Second Circuit law, it says an ex ante negotiated fee agreement, the Second Circuit has said, should be given serious consideration by the court. Other judges in this court have said it's entitled to a presumption of reasonableness or correctness, starting with Judge Lynch, back in the *Global Crossing* case, probably almost 15 years ago.

THE COURT: From the point of view of a client wanting to litigate, there's a choice of paying as you go on a time basis, but the model for defendants is, the client takes each bill that comes and looks at it and says, well, I don't need this service or that service or you billed me too much on that, and you make adjustments. And at the end of the day, when you have a recovery, if the client has been paying you on a time basis and you want a bonus, the client will often say, well, I hired you because you're good, and I hired you because I'm willing to pay the high rates that you charge. So why should I also pay a bonus?

You're getting a percentage from TIAA in lieu of pay as you go. Therefore you've had to wait. And therefore, from the perspective of TIAA, which is one of the beneficiaries of many in this lawsuit, it's not really arm's-length bargaining.

MR. DOWD: It is, though, your Honor.

THE COURT: It's an indication.

MR. DOWD: I understand.

THE COURT: I accept it as an indication.

MR. DOWD: I'll telling you just what some other courts have said.

THE COURT: I understand.

MR. DOWD: That 12.4 --

THE COURT: I understand some give lodestar and some give percentages.

MR. DOWD: Right.

THE COURT: I give lodestar. I don't give percentages.

MR. DOWD: But the negotiated fee agreement is given a presumption of reasonableness in courts. And that 12.4 percent, your Honor, it's lower, lower than what a lot of people get. It is a contingent fee. We're not getting paid by the hour. It's contingent-fee litigation. And people do it on a percentage basis. That's how it works. And in this courthouse last year somebody got 25 percent on 250 million. The Second Circuit in November affirmed 13 percent on 2.3

billion, your Honor, in a case.

THE COURT: The Court of Appeals does not want to substitute itself for my judgment in the case. It's tough work. There are very few legal principles involved.

MR. DOWD: Your Honor, can I just ask you to consider two other issues?

The defendants, in connection with the audit committee investigation and, you know, our suit, as well as other issues, totaled $264 million that they spent. Now, that's not just our case.

THE COURT: Say that again.

MR. DOWD: 264 million.

THE COURT: Who?

MR. DOWD: The defendants. That's what ARCP paid for everything that resulted from the audit committee investigation, a lot of which we had to duplicate and a lot of which was probably directly on our case. They spent $69 1/2 million just in the first three quarters of 2019. In the first three quarters of 2019 I know the lion's share of that money had to be defending our case. 69 1/2 million, that's more than my lodestar, just for three quarters last year.

I would ask the Court to consider that. These numbers are not crazy.

When you look at what happened in this case, your Honor, I mean, the quality of the representation, I can tell

you, your Honor --

THE COURT: I'm not going to cut your lodestar, if that's what you're worrying about.

MR. DOWD: No, no, I'm not worried about that. I'm worried about trying to get more than my lodestar.

THE COURT: You'll get more.

MR. DOWD: I would like to get as much as I could.

THE COURT: I could give you all 12.2 percent, but I'm not going to give you that much.

MR. DOWD: All right, your Honor. Just consider this. Bloomberg News, 2017, had an analyst that said this case would settled for between 33 and 117 million dollars. We got 1.052 billion. Last summer, JPMorgan said, based on what they paid the opt-out litigants in this case, which were huge funds, huge funds -- Vanguard, PIMCO, BlackRock -- they said that we get 450. And we got 1.025 billion, your Honor.

I just, I can't sit down before I tell you that. I mean, we did a remarkable job. And we should benefit from that -- for not taking the 450 and coming in and getting the same lodestar award, for saying, no, we're going to roll the dice on summary judgment and make this case worth more for the class, your Honor. And that's what we did. And we should be rewarded for taking that risk.

That's all I ask the Court to consider. I know the Court wants to rule, and I don't want to belabor it, but I ask

you to consider that.

THE COURT: What did you perceive to be the risk, the probability, of my granting summary judgment to the defendant?

MR. DOWD: I don't know. To be honest, your Honor, I thought that we could very possibly get thrown out on Grant Thornton, who ended up paying 50 million --

THE COURT: What did you think that?

MR. DOWD: I don't know. Because I think that auditors get out of these cases an awful lot. I think they did a study and only like 2 percent --

THE COURT: They were not responsible for the AFFO --

MR. DOWD: Exactly.

THE COURT: But they were responsible to know how their numbers were being used.

MR. DOWD: No, I understand that.

THE COURT: And their numbers were being used in a way that you considered and you were likely to prove to be false and misleading.

MR. DOWD: But it was a risk. And you look at some of these other people that filed opt-out cases, they weren't taking that risk.

THE COURT: I don't mean to denigrate what you did. Because I think what you did was very good. A 50 percent discount of proveable damage is a much lower figure than that, because the number of over $2 billion ascribable to the overall

damage is subject to many, many pitfalls, failures of claims and the like. So your achieving over a billion dollars is highly significant.

MR. DOWD: Thank you.

THE COURT: And I don't want to take away from it. I think you did outstanding work. I think you have to be rewarded for your persistence and your stubbornness and for your leadership in the case. You stood up to the most powerful law firms in the City of New York and were their equal.

MR. DOWD: Thank you, your Honor.

THE COURT: However, your lodestar rates for partners are pretty high.

MR. DOWD: They're also lower than the rates of the firms on the other side.

THE COURT: Yes. But they had to get it on a pay-as-you-go basis, and you're getting it from me.

MR. DOWD: Well, that's even better, your Honor.

THE COURT: You have a significantly lower expense.

MR. DOWD: They're $1500 an hour, your Honor.

THE COURT: I know.

MR. DOWD: They got it in 2014 and 2015, some of these firms. That money is worth 50 percent more now, because they got it then and they had higher rates than us. You know, I mean, it's not -- our rates are not high, you know what. I mean --

THE COURT: We have an imperfect world.

MR. DOWD: I understand that. But, you know, my world isn't much different from theirs when it comes to, you know, meeting salary obligations and funding expenses and everything else. I don't get paid on the 30th day of every month like they do.

THE COURT: Is the transportation from San Diego -- you're in San Diego, right?

MR. DOWD: Yes, your Honor.

THE COURT: And Ms. Wyman is in San Diego.

MR. DOWD: Yes.

THE COURT: Are your transportation costs chargeable as an expense?

MR. DOWD: Yes, it is an expense.

THE COURT: You're taking advantage of a lower cost structure in San Diego, significantly lower structure. Charging the transportation cost and asking to be paid New York rates, that's significant.

MR. DOWD: Your Honor, our transportation costs were significantly higher because we cut out a lot of the airline fees. So out of pocket I'm losing about 130 grand on that, your Honor.

THE COURT: I'll take a short recess.

(Recess)

THE COURT: I've considered the arguments, read the

fee justifications and the expense itemizations. I find the lodestars of each of the firms reasonable and appropriate and the expenses reasonable as well.

My award for all of the counsel who will be sharing this fee is $100 million, plus allowance of expenses of $5,164,539.91.

It comes out to a multiplier of 1.376, but regardless of the accuracy of my arithmetic, the number is $100 million of fee and $5,164,539.91.

I believe that, in this case, as I said before, the services delivered by the Robbins Geller firm were outstanding, that Ms. Wyman, Mr. Dowd, and your colleagues, Mr. Rothman, did outstanding work. I think in the fees of some of the other firms it was hard for me to see the same amount of productivity, in terms of obtaining the result, and in some cases whether or not all the fees that were presented were fees that should be allowed. But it's very hard to pierce through this, as Mr. Dowd has suggested that everything went into the final result, and so I determined that each of the firms would be considered as having had a full lodestar, and that the add-on, the bonus, would be done in the aggregate for all firms.

How the fees are ultimately allocated is something, I guess, the firms are going to have to work out for themselves. As I understand it, I have no continuing jurisdiction, should

there be any dispute.

There's no interest to be awarded on this amount. It will be paid, how did you say, about third, Mr. Dowd, one third on when?

MR. DOWD: Yes, your Honor. There's a third now, a third in 90 days, and a third on the initial distribution, the big distribution.

THE COURT: OK. And it will be payable by the funds that have already been paid by the defendants.

MR. DOWD: Yes, your Honor. The money, we got the money in October, your Honor.

THE COURT: All the money.

MR. DOWD: Yes. And that actually, if we had awaited the final approval like a lot of firms do -- they don't fight for that. We've made the class about $4 million on that alone, just by standing, holding out for that.

THE COURT: That's not unusual. Payment on the agreement.

MR. DOWD: A lot of people won't fight for it anymore, your Honor.

THE COURT: OK. That's my award. And I congratulate all of you. Thank you very much.

MR. DOWD: Thank you, your Honor.

MS. WYMAN: Thank you, your Honor.

MS. GUSIKOFF STEWART: Thank you, your Honor.

MR. HOUSTON: Your Honor --

THE COURT: Two minutes.

MR. DOWD: Your Honor, we have an order that we adjusted, I think we filed it yesterday, to reflect a third, a third, a third. And I think our expenses went down about $9,000.

THE COURT: Hand it up. Then I'll talk to Mr. Houston.

MR. DOWD: Oh, it has a percentage in it. So if you want us to just submit one later?

THE COURT: Yes.

MR. DOWD: Or I can write it in now, whichever you prefer.

THE COURT: You can write it in now.

Meanwhile, I'll hear from Mr. Houston.

MR. HOUSTON: Your Honor, very briefly. We had a couple issues with process on the submissions in the derivative matter. We have asked for, with counsel for VEREIT, that we be given the opportunity to file a reply statement once they have gone through our time records and identified their issues. We think this will create the greatest and clearest record.

THE COURT: I think this is what you do. Without giving me anything, give Mr. Edelman what you propose. Mr. Edelman will then give you his objections. You will negotiate to whatever extent you feel appropriate. And then

there will be a filing on a joint basis, just the way you do with a 2(e) letter, so I don't get separate filings. So just give me the outside date by which you can accomplish all that. Discuss it with Mr. Edelman. And then we'll issue an order.

MR. HOUSTON: Your Honor, that was the second issue. We have discussed some dates. We had asked for a month to put together the records in accordance with your Honor's directive on Tuesday.

THE COURT: How much time do you want?

MR. HOUSTON: OK. So we'll take that month. Mr. Edelman, how long do you want? Do you want your two weeks that you suggested, or longer than that, to review what we are submitting?

MR. EDELMAN: Your Honor, so as I understand it, you want us to do a joint letter.

THE COURT: At the end.

MR. EDELMAN: At the end?

THE COURT: Outlining the positions.

MR. EDELMAN: And do you want us to be limited to the page limits? Because as I understand it, Mr. Houston is planning on now submitting a different set of time records.

THE COURT: What do you propose?

MR. EDELMAN: I would propose that Mr. Houston submit whatever he wants to submit. To the extent that there was stuff in the time records that shouldn't have been in there,

take them out, put them in a letter responding to our position. We put in a letter responding to that. And then your Honor is in a position to decide. And we do it as quickly as we can. We've already had extensive briefing and argument on this.

MR. HOUSTON: The only problem with that is that we never did get the chance to respond to the initial issues. And Mr. Edelman has already said that, on review of the next submission of records, there may be additional issues.

THE COURT: Mr. Houston, February 21, you file with the Court your submission, backed up by whatever supporting data you think is appropriate.

Mr. Edelman, on March 13, you respond.

MR. EDELMAN: Thank you, your Honor.

THE COURT: And Mr. Houston, another week, March 20, to reply. And I'll endeavor to decide on the papers or, if I need to see you, I'll do that as well.

OK? Are those dates satisfactory?

MR. EDELMAN: Thank you, your Honor.

MR. HOUSTON: Yes. Thank you, your Honor.

THE COURT: All right.

Anything further?

MR. EDELMAN: Yes. Your Honor, on behalf of VEREIT and, I think, all the counsel, we want to thank you for all your work and your attention and your good humor throughout what was a very contentious fight. Thank you.

MR. DOWD: Thank you, your Honor. And I would also thank your staff as well. They were fabulous too.

THE COURT: Yes. The staff is fantastic and they make people look good, to the extent I look good. Metaphorically speaking.

It's been a pleasure to have you. It's not common to have a case this well argued, this well presented. There were lots of discovery issues throughout. Your ability to cooperate in this procedure that I have facilitated my work enormously, and where I couldn't resolve it, we had hearings on a short basis. My goal in this, which I don't suppose was accomplished, was to reduce transaction costs as much as possible and move the case along as much as I could. You'll judge me whether I succeeded or not, but that was my goal. And I think it was facilitated by the way you cooperated with each other, while at the same time representing your respective clients most zealously. So I thank you.

MR. DOWD: Thank you.

MR. EDELMAN: Thank you, your Honor.

MS. WYMAN: Thank you, your Honor.

THE COURT: When is finality, Mr. Dowd?

MR. DOWD: Well, there's no objection, so it should be 30 days from judgment, which I believe the Court entered yesterday.

THE COURT: What about my not giving a fee award yet?

I've done everything in the class action.

MR. DOWD: Oh, no, they are separate cases. They weren't even consolidated ever. They were coordinated for discovery but not consolidated, so my case is down right now, and it will be final in 30 days because there are no objections.

MR. EDELMAN: Also, it's our understanding that the derivative judgment makes that case final and the fee issue is separate.

THE COURT: Will be supplementary to the judgment.

MR. HOUSTON: Yes. That's right, your Honor.

THE COURT: OK. Thank you.

MR. DOWD: Thank you.

MR. EDELMAN: Thank you again, your Honor.

(Adjourned)

EXHIBIT 5

K6BKDEUC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

NORBERT G. KAESS, et al,

Plaintiffs,

v. 09 CV 1714 (GHW)(RWL)
Telephone Conference

DEUTSCHE BANK AG, et al.,

Defendants.

----------x

New York, N.Y.
June 11, 2020
4:30 p.m.

Before:

HON. GREGORY H. WOODS,

District Judge

APPEARANCES

GLANCY PRONGAY & MURRAY LLP
Attorneys for Plaintiffs
BY: BRIAN P. MURRAY
-and-
ROBBINS GELLER RUDMAN & DOWD LLP
BY: THEODORE J. PINTAR
ERIC NIEHAUS
KEVIN LAVELLE

CAHILL GORDON & REINDEL LLP
Attorneys for Deutsche Bank Defendants
BY: DAVID JANUSZEWSKI
SAMUEL MANN

SKADDEN ARPS SLATE MEAGHER & FLOM LLP
Attorneys for Underwriter Defendants
BY: WILLIAM J. O'BRIEN
ANDREW BEATTY

(The Court and all parties appearing telephonically)

THE COURT: This is Judge Woods.

Is there a court reporter on the line?

(Pause)

THE COURT: Let me just say a few words at the outset of today's conference.

First, you should conceive of this conference as if it was happening in the courtroom. As you know, the dial-in information for this call is publicly available; members of the public and the press are welcome to dial in.

Second, let me ask you to all keep your phones on mute at all times when you're not speaking on the phone. I can hear some background noise right now, shuffling some paper. We should not hear any background noise during the course of the conference. Please keep your phones on mute at all times when you are not speaking during the conference. That will help us to keep a clear record of what we say today.

Third, I'd like to ask each of the people who will speak during this conference to please identify themselves each time that they speak during this conference. So, if you speak during this conference, you should say your name each time that you speak. You should do that regardless of whether or not you've spoken previously during the conference. That will help us to keep a clear record of today's conference.

Last, as you've heard, there is a court reporter on

the line. You should not be surprised if he chimes in at any point. If he does, and if he asks you to do something to help him to hear or understand what you're saying, please do what he asks. That will help us to, again, keep a clear record of the conference today.

Because there is a court reporter on the line transcribing the conference, I'm ordering that there be no recordings or rebroadcasts of any portion of the conference.

So, with those introductory remarks in hand, let me turn to the parties.

I'd like to ask for counsel for each side to identify counsel who are on the line for each of the parties and any representatives for each of the parties. What I'm going to ask is that, if you can, that one person from each side identify herself and the members of her team; that way, we won't have to hear many people chiming in at a time.

So let me begin with counsel for plaintiffs.

Who's on the line for plaintiffs?

MR. PINTAR: Good afternoon, your Honor. It's Ted Pintar, and I'm here with Eric Niehaus and Kevin Lavelle, from Robbins Geller Rudman & Dowd, for plaintiffs.

THE COURT: Good. Thank you very much.

Who is on the line for defendants?

MR. MURRAY: Excuse me. I hate to interrupt, but this is also for plaintiffs, Brian Murray, from Glancy Prongay &

Murray. Sorry to interrupt you.

Now the defendants.

THE COURT: Fine.

Counsel for defendants?

MR. JANUSZEWSKI: Good afternoon, your Honor. This is David Januszewski, and I have my colleague, Samuel Mann. We are both from Cahill Gordon & Reindel, representing Deutsche Bank and the Deutsche Bank defendants. And on the line, we also have, from Deutsche Bank, Stella Tipi, in-house counsel at Deutsche Bank.

THE COURT: Good. Thank you very much.

So, counsel --

MR. O'BRIEN: I'm sorry. Good afternoon, your Honor. I just wanted to introduce myself and my colleagues. William J. O'Brien and Andrew Beatty, from the firm of Skadden Arps Slate Meagher & Flom, on behalf of the underwriter defendants.

THE COURT: Good. Thank you very much.

So, counsel, first, let me thank you all for being on the call. I scheduled this conference as a settlement hearing or approval hearing with respect to the proposed resolution of this case. I have reviewed all of the materials that have been submitted on the docket to date in connection with this matter. I'd like to hear, however, from each of the parties, to hear, in particular, if there's anything that any of you would like to add to any of your written submissions in connection with

the proposed resolution of the case.

Let me begin with counsel for plaintiffs.

Counsel?

MR. PINTAR: Again, good afternoon, your Honor. Ted Pintar, for plaintiffs.

I had a number of things I wanted to mention just at the outset. Obviously, we're here on the final approval of an $18.5 million settlement. We are very proud of that result. As we have indicated, and I won't repeat all of what's in the papers, but it represents a very significant percentage of reasonably recoverable damages.

On February 27, 2020, this Court entered its preliminary approval order. Pursuant to that order, notice was disseminated. The claims administrator mailed over 112,000 notice packages, published the summary notice in the Wall Street Journal and Business Wire, and set up a settlement website where the notice and other settlement-related documents were posted.

And, as a result, there was one objection. It's not clear to me whether that has been withdrawn. I won't attempt to characterize Mr. Agay's email. We submitted it to the Court. He indicates, however, that he would not be participating today. There were only four opt-outs. And I do have some information on claims to date. Over 11,000 claims have been submitted, and they are still processing claims --

the mailed claims, so that number is likely to rise even from there.

So, we believe that not only is it a good settlement, that the class has reacted very positively to it, and, as you know, today we're asking the Court to enter three orders: The final judgment, the order approving plan of allocation, and the order awarding attorneys' fees and expenses and award to class plaintiffs. Other than that, your Honor, I certainly don't have anything to add to our papers. I'm happy to address any questions the Court may have, though.

THE COURT: Good. Thank you very much, counsel.

Let me hear from each of the groups of defendants.

First, counsel for the Deutsche defendants.

MR. JANUSZEWSKI: Yes, your Honor. Again, this is David Januszewski, from Cahill Gordon.

We have nothing to add to what was submitted, which was designed to address the objection that my friend just addressed. We have nothing to add to that.

THE COURT: Good. Thank you very much.

Counsel for the remaining defendants, anything that you'd like to add to your written submissions?

MR. O'BRIEN: Yes. William O'Brien, from the firm of Skadden Arps Slate Meagher & Flom, on behalf of the underwriter defendants.

And like Mr. Januszewski, we have nothing further to

add.

THE COURT: Good. Thank you very much.

Is there anyone else on the line who wishes to be heard?

So, hearing none, counsel, I'm going to approve the proposed resolution of this action, or series of actions. What I'd like to do is to ask you to place your phones, again, on mute, if you would, please. I'd like to review the reasoning for my decision. I'm going to do so now orally. At the end, I'll take up the two orders and judgment that the parties have proposed. Let me begin with, first, an overview.

So, I. Overview:

Plaintiffs brought this securities class action in February 2009 on behalf of all persons who purchased the 7.35 percent Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust X and/or the 7.60 percent Trust Preferred Securities of Deutsche Bank Contingent Capital Trust III securities from Deutsche Bank AG pursuant to public offerings from November 6, 2007, to February 14, 2008. Plaintiffs allege that defendants violated Sections 11, 12(a)(2), and 15 of the Securities Act (the "Securities Act") and (15, U.S.C., Section 77k, 771(a)(2), and 77o) by omitting material facts from the offering documents. See declaration of Eric I. Niehaus ("Niehaus dec."), Docket No. 308, paragraph 3.

Since then, plaintiffs have extensively litigated this

case. The parties have engaged in significant motion practice, and have completed fact discovery. Niehaus declaration paragraphs 3-4. Now, plaintiffs seek final approval of the class action settlement and approval of their plan for allocating the net proceeds of the settlement. Plaintiffs' counsel also seek an award of attorneys' fees and litigation costs, and the lead plaintiffs seek an award for expenses incurred while representing the class.

Judge Batts presided over this case for almost the entire time that it has been pending in this court. The case was reassigned to me on February 20, 2020, after Judge Batts' untimely death.

II. Class Certification:

On October 2, 2018, pursuant to Rule 23 of the Federal Rules of Civil Procedure, Judge Batts granted plaintiffs' motion to certify a class defined as: All persons or entities who purchased or otherwise acquired the 7.35 percent Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust X ("7.35 percent Preferred Securities"), and/or the 7.60 percent Trust Preferred Securities of Deutsche Bank Contingent Capital Trust III ("7.60 percent Preferred Securities"), pursuant or traceable to the public offerings that commenced on or about November 6, 2007, and February 14, 2008. Excluded from the class are defendants, the officers and directors of Deutsche Bank, and the underwriter defendants at

all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns and any entity in which defendants have or had a controlling interest. Docket No. 224 at 10.

III. Approval of the Settlement Agreement:

Rule 23(e) requires court approval for a class action settlement to ensure that it is procedurally and substantively fair, reasonable, and adequate. Federal Rule of Civil Procedure 23(e). To determine procedural fairness, courts examine the negotiating process leading to the settlement. Wal-Mart Stores, Inc. v. Visa USA, Inc., 396 F.3d 96, 116 (2d Cir. 2005). To determine substantive fairness, courts analyze whether the settlement's terms are fair, adequate, and reasonable according to the factors set forth in City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974).

The court examines procedural and substantive fairness in light of the “strong judicial policy favoring settlements” of class action suits. Wal-Mart Stores, 396 F.3d at 116. A “presumption of fairness, adequacy, and reasonableness may attach to a class action settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." Id. "Absent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." In re EVCI Career Colls. Holding Corp. Sec. Litig., 2007 WL 2230177, at *4

(S.D.N.Y. July 27, 2007).

A. Procedural Fairness:

The settlement is procedurally fair, reasonable, adequate and not a product of collusion. The settlement was reached after the parties had conducted a thorough investigation and evaluated the claims and defenses; the agreement in principle was reached after sessions with the Honorable Judge Layn R. Phillips, a former United States District Judge and an experienced mediator of securities class actions and other complex litigation. Niehaus declaration paragraph 6, 129. In advance of the mediation, the parties exchanged detailed mediation statements addressing both liability and damages. Id. The parties reached a final resolution on September 12, 2019, with the assistance of Judge Phillips, after formal mediation. Id.

B. Substantive Fairness:

The settlement is also substantively fair. The factors set forth in Grinnell provide the analytical framework for evaluating the substantive fairness of a class action settlement. The Grinnell factors are: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the

ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a recovery in light of all of the attendant risks of litigation. Grinnell 295 F.2d at 463. Litigation here through trial will be complex, expensive, and long. It has been complex, expensive, and long. Thus, the first Grinnell factor weighs in favor of final approval. See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig., 330 F.R.D. 11, 36 (E.D.N.Y 2019) ("Settlement is favored if settlement results in substantial and tangible present recovery, without the attendant risk and delay of trial.").

With respect to the second factor, the class members' reaction to the settlement has been overwhelmingly positive. Of the 112,397 notice packets mailed to potential members of the settlement class, four exclusion requests were received. Supplemental declaration of Ross D. Murray (Supplemental Murray Dec.") Docket No. 324, Paragraphs 4, 6. Only one class member, Mr. Richard Agay, objected. See Richard Agay letter ("Agay letter") Docket No. 320-21.

That objection did not challenge the settlement, the resolution of this case, the reasons for the settlement, the manner in which class plaintiffs and lead counsel prosecuted the litigation, the work lead counsel performed, or lead

counsel's fee and expense application. Instead, the objection asserted only that Mr. Agay received his copy of the notice late, and that he was confused by certain aspects of the submission, and that the claims administrator did not sufficiently respond to Mr. Agay's telephonic inquiry. On June 5, 2020, Mr. Agay emailed lead counsel in an email that I construe as him withdrawing his objections, perhaps because he recognized that he was apparently persuaded by the response of the parties showing that he was not entitled to recovery in the suit. See Docket No. 329. While Mr. Agay received his notice later than expected, he received it with enough time to submit objections, and the delay was caused by a failure at his broker. His objection does not suggest that the overall distribution or notice program was ineffective in design or execution.

The absence of objections, with the exception of one retail investor, who literally withdrew his objection, coupled with the minimal number of requests for exclusion, strongly supports the finding that the settlement plan of allocation and fee and expense requests are fair, reasonable, and adequate. See In re Citigroup, Inc. Sec. Litig., 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013); In re Bisys Sec. Litig., 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007); In re Veeco instruments Inc. Sec. Litig., 2007 U.S. Dist. LEXIS 85629, at *40.

In sum, the overall favorable response demonstrates

that the class approves of the settlement and supports final approval.

The plaintiffs completed fact discovery, so counsel "had an adequate appreciation of the merits of the case before negotiating." Beckman v. KeyBank, N.A., 293 F.R.D. 467, 475 (S.D.N.Y. 2013)(quoting In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 537 (3rd Cir. 2004); see also Niehaus declaration paragraph 5. Lead plaintiffs spent significant time and resources analyzing and litigating the legal and factual issues of this case, including an extensive factual and legal investigation into the settlement class's claims and engaging in the detailed formal mediation process. Niehaus declaration paragraph 5.

Turning to the fourth and fifth factors, the risk of establishing liability and damages further weighs in favorable of final approval. "Litigation inherently involves risks." In re PaineWebber Ltd. Partnerships Litig., 171 F.R.D. 104, 126 (S.D.N.Y. 1997). Indeed, the primary purpose of settlement is to avoid the uncertainty of a trial on the merits. See Velez v. Majik Cleaning Serv., Inc., 2007 WL 7232783, at *6 (S.D.N.Y. June 25, 2007). Here, plaintiffs face significant risks as to both liability and damages; defendants challenged the premise that the allegedly omitted information was material and the notion that plaintiffs could prove that the drop in price was related to the allegedly omitted information. See Niehaus

declaration paragraphs 106, 115 to 17. The proposed settlement eliminates these uncertainties. These factors, therefore, weigh in favor of final approval.

The risk of obtaining class certification is nonexistent here. Therefore, the sixth Grinnell factor weighs in favor of final approval. Settlement generally eliminates the risk, expense, and delay inherent in the litigation process as a whole.

Turning to the seventh factor, there is nothing to suggest that Deutsche Bank or the underwriter defendants would be unable to withstand a greater judgment than the settlement amount. "But a defendant is not required to empty its coffers before a settlement can be found adequate." Shapiro v. JP Morgan & Co., 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014)(quotation omitted).

Deutsche Bank's financial circumstances -- or I should say the defendants' financial circumstances do not ameliorate the force of the other Grinnell factors, which lead to the conclusion that the settlement is fair, reasonable, and adequate.

Finally, the amount of the settlement, in light of the best possible recovery and the attendant risks of litigation, weighs in favor of final approval. The determination of whether a settlement amount is reasonable "is not susceptible of a mathematical equation yielding a particularized sum." In

re Austrian & German Bank Holocaust Litig., 80 F.Supp. 2d 164, 178 (S.D.N.Y. 2000). Instead, "There is a range of reasonableness with respect to a settlement - a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972).

Here, lead plaintiffs assert that the settlement would constitute 47 percent of the estimated recoverable damages. Niehaus declaration paragraph 19. This is a reasonable result when compared to the median ratio of settlement to investor losses of 2.1 percent for securities class action settlements in 2019. Id. Therefore, the amount of this immediate recovery is reasonable, and this factor weighs in favor of final approval.

Weighing the Grinnell factors, I find that the settlement is substantively fair and weigh in favor of final approval.

IV. Plan of Allocation:

"To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized - namely, it must be fair and adequate...an allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." In Re WorldCom, Inc. Sec. Litig., 388 F. Supp. 2d

319, 344 (S.D.N.Y. 2005)(citation and quotation omitted). "A plan of allocation need not be perfect," in re EVCI Career Colleges Holding Corp. Sec. Litig., 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007)(collecting cases), or "tailored to the rights of each plaintiff with mathematical precision," PaineWebber, 171 F.R.D. at 133; see also RMed International, Inc. v. Sloan's Supermarkets, Inc., 2000 WL 420548, at *2 (S.D.N.Y. April 18, 2000) (recognizing that "aggregate damages in securities fraud cases are generally incapable of mathematical precision"). Thus, "In determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel." In re EVCI Career Colleges Holding Corp. Sec. Litig., 2007 WL 2230177, at *11.

Lead counsel, who are experienced and competent in complex class actions, prepared the plan of allocation in connection with plaintiffs' damages expert. Niehaus declaration paragraphs 100, 134. The settlement fund, minus attorneys' fees and expenses, will be allocated on a pro rata basis according to the relative size of class members' "Recognized claims." Id. at paragraphs 9, 10. The expert has calculated an estimated individual class members' claim based on (i) allegations when the alleged concealed facts and trends became known (i.e., realization events); (ii) an event study that estimates price changes in the securities as a result of realization events; and (iii) the statutory formula used to

calculate recoverable damages during the settlement class period. Declaration of Steven P. Feinstein ("Feinstein dec"), Docket No. 177-1, paragraphs 29-42.

Because the plan of allocation has a clear rational basis, equitably treats the class members, and was devised by experienced and estimable class counsel, the Court finds it fair and adequate. See In re Telik, Inc. Sec. Litig., 576 F.Supp. 2d, 570, 581 (S.D.N.Y. 2008).

V. Dissemination of Notice:

On February 27, 2020, the Court entered an order granting preliminary approval of the settlement as "fair, reasonable and adequate" to class members. In accordance with that order, lead counsel retained Gilardi & Co. LLC ("Gilardi") as claims administrator to supervise and administer the notice procedure in connection with the settlement and to process all claims. Declaration of Ross D. Murray ("Murray dec"), Docket No. 310, paragraph 2.

Gilardi sent a copy of the notice to potential members of the settlement class. First, Gilardi mailed, by first class mail, the notice packet to 283 nominees - banks, brokerage companies, and other institutions - that Gilardi had in its proprietary database. Id. at paragraph 5.

Next, Gilardi mailed the notice packet to 4,643 additional institutions or entities on the U.S. Securities and Exchange Commission's ("SEC") list of active brokers and

dealers. Id. paragraph 5.

Gilardi also delivered electronic copies of the notice packet to 381 registered electronic filers, primarily institutions and third-party filers, and to the depository trust company ("DTC") on the DTC legal notice system ("LENS"), which enables bank and broker nominees to contact Gilardi for copies of the notice for their beneficial holders. Id. paragraph 7. Gilardi received multiple responses and additional names of potential settlement class members from individuals or other nominees, with requests for over 64,000 notice packets to be forwarded directly to nominees' customers. Id. paragraph 9. Gilardi also published the summary notice in the Wall Street Journal and transmitted it over Business Wire. Id. paragraph 11. Gilardi also posted the date and time of the hearing on the settlement website. Id. paragraph 12.

Gilardi ultimately mailed a total of 112,397 notice packets, including mailing notice packets to persons a second time when the first set were returned as undeliverable. Supplemental Murray declaration paragraph 4.

These notices apprised settlement class members, among other things, of: (i) the amount of the settlement; (ii) the reasons why the parties are proposing the settlement; (iii) the maximum amount of attorneys' fees and expenses that will be sought; (iv) the identity and contact information for representatives of lead counsel available to answer questions

concerning the settlement; (v) the right of settlement class members to object to the settlement; (vi) the right to request exclusion from the settlement class; (vii) the binding effect of a judgment on settlement class members; (viii) the dates and deadlines for certain settlement-related events; and (ix) the way to obtain additional information about the action and the settlement by contacting lead counsel and the settlement administrator. See Federal Rule of Civil Procedure 23(c)(2)(B).

I find that these efforts fairly and adequately advised class members of the terms of the settlement, as well as the right of Rule 23 class members to opt out of, or to object to the settlement, and to appear at the final fairness hearing today. I find that the notice and its distribution comported with all constitutional requirements, including those of due process.

VI. Attorneys' Fees, Costs and Expenses:

Lead counsel requests attorneys' fees in the amount of what the Court calculates to be $6,166,666.67 plus interest earned at the same rate as the settlement fund. This amounts to one-third of the settlement fund, or 33.3 percent of the settlement fund. Lead counsel also seeks reimbursement of: (i) $1,203,502.39 in litigation expenses in total, with Robbins Geller Rudman & Dowd LLP ("Robbins Geller") seeking $1,170,981.31, Glancy Prongay & Murray seeking $28,740.22, and

Murray Frank LLP seeking $3,780.86; and (ii) to approve the award to the lead plaintiffs, or class plaintiffs, of "20,000 in the aggregate pursuant to 15, U.S.C., Section 77Z-1(a)(4) in connection with their representation of the class." Niehaus declaration paragraph 17.

Now, the trend in the Second Circuit is to use the percentage of the fund method to compensate attorneys in common fund cases, although the Court has discretion to award attorneys' fees based on the lodestar method or the percentage of recovery method. See Fresno County Employees' Ret. Association v. Isaacson/Weaver Family Trust, 925 F.3d 63, 68 (2d Cir. 2019).

The notice provided to class members advised that class counsel would apply for attorneys' fees for up to 33.3 percent of the settlement fund, in addition to litigation costs not to exceed 1.3 million. See Gilardi declaration Exhibit A Notice at 2. No class member objected to the request.

A. Goldberger Factors:

Reasonableness is the touchstone when determining whether to award attorneys' fees. In Goldberger v. Integrated Resources, Inc., 209 F.3d 43 (2d Cir. 2000), the Second Circuit set forth the following six factors to determine the reasonableness of a fee application: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the

litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. Id at 50.

1. Class Counsel's Time and Labor:

Plaintiffs' counsel have expended more than 26,000 hours of attorney time in total over the course of this action, the vast majority of which was time expended by of counsel at Robbins Geller. Declaration of Eric Niehaus in support of lead counsel's motion for an award of attorneys' fees ("Niehaus fee declaration"), Docket No. 311 paragraph 5. Niehaus declaration paragraph 135.

2. Magnitude and Complexity of the Litigation:

The size and difficulty of the issues in a case are significant factors to be considered in making a fee award. In re Prudential Sec, Inc. Ltd. Partnership Litig., 912 F. Supp. 97, 100 (S.D.N.Y. 1996). "In evaluating the settlement of a securities class action, federal courts, including this Court, have long recognized that such litigation is notably difficult and notoriously uncertain." In re Flag Telecom Holdings Ltd. Sec. Litig., 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010) (quotation omitted). This case is one of substantial magnitude. In addition to all of the complications that are attendant to any large securities class action, this matter involved events that happened over ten years ago, extensive discovery, and litigation. The amount sought by plaintiffs'

counsel is commensurate with the magnitude and complexity of this litigation.

3. The Risk of Litigation:

As discussed, lead counsel faced significant risk in prosecuting this action and proving the merits of the claims. All of the fact-finding has concluded. Given the complexity of the case, the risk at summary judgment and trial is significant. Defendants adamantly denied any wrongdoing, and, in the event that litigation had continued, would have continued to aggressively litigate their defenses through summary judgment, Daubert motions, trial, and any appeals.

4. Quality of Representation:

Lead counsel has considerable expertise in securities litigation. See Robbins Geller resume, Niehaus fee declaration, Exhibit G; see also declaration of Brian P. Murray filed on behalf of Glancy Prongay & Murray LLP in support of application for award of attorneys' fees and expenses ("Murphy fee declaration"). Robbins Geller attorneys are currently "lead or [are] named counsel in hundreds of securities class action or large institutional-investor cases" and are "responsible for the largest securities class action in history." Niehaus fee declaration, Exhibit G. RiskMetrics Group has recognized Glancy Prongay & Murray as one of the top plaintiffs' law firms in the United States in its securities class action services report for every year since the inception

of the report in 2003. See Murphy fee declaration, Exhibit I.

The high quality of defense counsel opposing plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the settlement. Cahill Gordon & Reindel and Skadden Arps Slate Meagher & Flom are two prominent defense firms, and "the ability of plaintiffs' counsel to obtain a favorable settlement for the class in the face of such formidable opposition confirms the quality of their representation of the class." In re Marsh ERISA Litig., 265 F.R.D. 128, 148 (S.D.N.Y. 2010).

Accordingly, the Court finds that this Goldberger factor weighs in favor of the requested fee award.

5. The Requested Fee in Relation to the Settlement:

Generally, courts consider the size of a settlement to ensure that the percentage awarded does not constitute a windfall. In this case, the requested fee is 33.3 of the settlement, within the range of reasonableness, in light of other class action settlements in this circuit. See Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar, 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009)("Class counsel's request for 33 percent of the settlement fund is typical in class action settlements in the Second Circuit.").

6. Public Policy Considerations:

When determining whether a fee award is reasonable, courts consider the social and economic value of the class

action "and the need to encourage experienced and able counsel to undertake such litigation." In re Sumitomo Copper Litig., 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999). "Courts have, as a generic matter, frequently observed that the public policy of vigorously enforcing the federal securities laws must be considered in calculating an award." In re BioScrip, Inc. Sec. Litig., 273 F.Supp. 3d 474, 502 (S.D.N.Y. 2017)(quotation omitted) affirmed sub nom. Fresno County Employees Retirement Association v. Isaacson/Weaver Family Trust, 925 F.3d 63 (2d Cir. 2019).

Vigorous, private enforcement of the federal securities laws can only occur if private investors can obtain some parity in representation with that available to large corporate defendants. Accordingly, public policy favors granting lead plaintiffs' fee request.

After considering all of the Goldberger factors, the requested fee award appears to be reasonable.

B. Lodestar "Cross Check":

In Goldberger, the Second Circuit "encouraged the practice of requiring documentation of hours as a 'cross check' on the reasonableness of the requested percentage." Goldberger, 209 F.3d at 50. "Of course, where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." Id.

As of April 17, 2020, plaintiffs' counsel have

expended over 26,000 hours in total in this case, resulting in a total lodestar of $16,069,646. Niehaus fee declaration paragraph 4, Exhibit A; Murphy fee declaration, Exhibit A. Robbins Geller expended 17,356.85 hours with a lodestar of $12,021,477, Glancy Prongay & Murray LLP expended 8,097.8 hours with a lodestar of $3,639,826.50, the Frank Murray LLP expended 562.2 hours with a lodestar of $355,902.50. Id. Plaintiffs' counsel submitted declarations and time reports in support of their motion for attorneys' fees. Id. Counsel submitted a summary time records detailing the billable rate and hours worked by each attorney and professional support staff in this case. I find that these billable rates based on the timekeeper's title, specific years of experience, and market rates for similar professionals in their fields nationwide and in New York, where Robbins Geller LLP is based, to be reasonable in this context.

Based on plaintiffs' counsel's requested fee - one-third of the settlement, or by the Court's calculation, $6,166,666.67 - the lodestar yields a negative "cross-check" multiplier of about 0.38; therefore, the fee is well below the typically awarded multipliers in this circuit. "Courts regularly award lodestar multipliers from 2 to 6 times lodestar in this circuit." Fleisher v. Phoenix Life Insurance Company, 2015 WL 10847814, at *18 (S.D.N.Y. Sept. 9, 2020)(quotation omitted)(collecting cases). Thus, the lodestar

"cross-check" confirmation that plaintiffs' counsel requested fee is reasonable.

The Court therefore finds that, based on the Goldberger factors and the lodestar "cross-check," that plaintiffs' counsel's requested fees are reasonable.

C. Litigation Expenses:

Plaintiffs' counsel requests $1,203,502.39 total in litigation expenses, including filing fees, process service, mailing expenses, document management and hosting services, investigative and expert witnesses, legal research, travel and mediation. See Niehaus fee declaration paragraph 5, Exhibit B. Robbins Geller seeks $1,170,981.31, Glancy Prongay & Murray seeks $28,740.22, and Murray Frank LLP seeks $3,780.86. The largest component of plaintiffs' counsel's expenses was the cost of experts and consultants, amounting to $750,458, or approximately 62 percent of total expenses. Niehaus fee declaration paragraph 6. The next largest components of plaintiffs' counsel's expenses were for transportation, hotels, and meals ($227,852.66), court transcripts and deposition materials ($68,030.54), and mediation ($27,210). See Niehaus fee declaration, Exhibit B. The notice disclosed that lead counsel would seek up to $1,300,000 in litigation expenses. No objection to these expenses was received.

"It is well-established that counsel who create a common fund are entitled to the reimbursement of expenses that

they advance to a class." In re Giant Interactive Group, Inc., 279 F.R.D. 151, 165 (S.D.N.Y. 2011); see also In re Indep. Energy Holdings, 302 F.Supp. 2d 180, 183 Note 3 (S.D.N.Y. 2003). "Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients as long as they were 'incidental and necessary to the representation of those clients.'" (quotation omitted). The expenses for which lead counsel seeks payment are the type of expenses that courts typically approve. See In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 468 (S.D.N.Y. 2004). Therefore, the Court finds that the requested litigation expenses are reasonable and necessary to the representation of the class and are appropriately reimbursed to class counsel.

D. Lead Plaintiffs' Expenses:

Lead plaintiffs seek an award of $20,000 for both of them in recognition of the time and expense that they incurred on behalf of the class. Motion in support, Docket No. 307, at 31; see also Niehaus declaration paragraph 17. 15, U.S.C., Section 77Z-1(a)(4) allows "the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class."

As set forth in their declaration, lead plaintiffs dedicated a significant amount of time to the successful

prosecution of this action, including by reviewing pleadings and motions, discussing strengths and risks of the case, and consulting with lead counsel regarding settlement. Kaess and Farrugio declaration paragraphs 2 through 12. These are the kinds of activities which regularly are found to support awards to class representatives.

As set forth in their declaration, lead plaintiffs assert that the value of their time and resources invested in this case is substantially in excess of the $20,000 award that they seek here. Id. And the application here is consistent with the notice, which disclosed that "Class plaintiffs may seek an award pursuant to 15, U.S.C., Section 77z-1(a)(4) in connection with their representation of the class in an amount not to exceed $20,000 in the aggregate." Murphy fee declaration, Exhibit A notice.

Thus, I find that the requested award of $20,000 to lead plaintiffs is reasonable.

VII. Conclusion:

In conclusion, I approve the class action settlement for $18,500,000 and approve the plan for allocating the net proceeds of the settlement. I also award plaintiffs' counsel attorneys' fees in the amount of what the Court calculates to be $6,166,666.67, plus interest earned at the same rate as the settlement fund. This amounts to one-third of the settlement fund, or 33.3 percent of the settlement fund. I am also

awarding $1,203,502.39 in litigation expenses to be divided as outlined by lead counsel. Finally, I award lead plaintiffs $20,000 in the aggregate for time and expenses incurred while representing the class.

So, counsel, thank you very much for your patience as I got through the reasoning for my decision to approve the settlement here.

I received the proposed orders and judgment, and I expect to act on those promptly after today's conference.

Is there anything else that we should take up now, before we adjourn?

First, counsel for plaintiffs?

MR. PINTAR: Not for plaintiffs, your Honor. Again, Ted Pintar. Thank you very much.

THE COURT: Thank you.

Counsel for the Deutsche Bank defendants?

MR. JANUSZEWSKI: Your Honor, David Januszewski.

Nothing else from us.

THE COURT: Good. Thank you.

Counsel for the underwriter defendants?

MR. O'BRIEN: Yes. William O'Brien, from Skadden Arps Slate Meagher & Flom LLP.

Nothing further from us as well.

THE COURT: Good. Thank you, all.

COUNSEL: Thank you. * * *