

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTHONY D. KOLTON, S. DAVID)	
GOLDBERG, JEFFREY S. SCULLEY, and)	
HENRY C. KRASNOW, individually and on)	
behalf of classes of all others similarly situated,)	
)	
Plaintiffs,)	
v.)	No. 16-cv-3792
)	Hon. Charles P. Kocoras
)	
MICHAEL W. FRERICHS,)	
Treasurer of the State of Illinois,)	
)	
Defendant.)	

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE SUPPLEMENTAL DECLARATION
AND EXPERT REPORT IN SUPPORT OF PLAINTIFFS’ MOTION FOR AWARD OF
ATTORNEYS’ FEES**

Plaintiffs, by their attorneys, move this Court for leave to file (1) the Supplemental Joint Declaration of Terry Rose Saunders and Arthur Susman, attached as Appendix A, to address two questions that arose during the hearing before the Court on October 21, 2021 and (2) the Supplemental Expert Report of Professor Charles Silver, attached as Appendix B. In support of this Motion, Plaintiffs state as follows:

1. At the October 21st hearing, the Court expressed concern that Plaintiffs’ Counsel had not provided Defendant or the Court records supporting their lodestar. Plaintiffs’ Counsel should have provided this information prior to the hearing and apologize to the Court and Defendant’s Counsel for their failure to do so. Plaintiffs’ Counsel provide this information in the Exhibits attached to their Supplemental Declaration and submit Professor Silver’s Supplemental Report as support for the reasonableness of the fee request taking into account the lodestar cross-check.

2. The Parties agreed in Section 3.2.5 of the Settlement Agreement that any award of attorneys' fees should be paid out of the Unclaimed Property Trust Fund ("UPTF" or "Fund"). The Parties did not reach agreement on whether any attorneys' fees should be based on §1988's statutory fee provision or on the common law common fund doctrine. If §1988 were the basis for Plaintiffs' attorneys' fees, then the Defendant would be liable for fees. However, in his October 19, 2021 Response to Plaintiffs' Motion for an Award of Attorneys' Fees and Other Relief, Defendant for the first time stated that he agreed that this was a common fund case. As a result, none of the fees will be payable by the Treasurer and the Fund is the only source for payment of the fees. Defendant, however, has taken the position that the fee should be recovered from only certain members of the Classes, not from the UPTF as a whole and thus not from all beneficiaries of the Settlement. Because Defendant's Response was filed only two days before the Fairness Hearing, Plaintiffs' Counsel were not able to supplement their declarations in advance of the hearing to provide factual support for their position that paying attorneys' fees from the UPTF was consistent with the common fund doctrine and the Settlement Agreement. The Supplemental Joint Declaration of Ms. Saunders and Mr. Susman provides this support.

Wherefore, Plaintiffs request that this Court grant them leave to file the Supplemental Joint Declaration of Terry Rose Saunders and Arthur Susman and the Supplemental Expert Report of Professor Charles Silver.

Respectfully submitted,

Dated: November 4, 2021

/s/ Terry Rose Saunders

Terry Rose Saunders
THE SAUNDERS LAW FIRM
120 N. LaSalle Street, Suite 2000
Chicago, Illinois 60602
Tel: 312-444-9656
tsaunders@saunders-lawfirm.com

Arthur Susman
LAW OFFICES OF ARTHUR SUSMAN
55 West Wacker Drive, Suite 1400
Chicago, Illinois 60601
Tel: 847-800-2351
arthur@susman-law.com
*Counsel for Plaintiffs and the Rule 23(b)(2)
Class and the Rule 23(b)(3) Settlement Class*

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
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behalf of classes of all others similarly situated,)	
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Plaintiffs,)	
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MICHAEL W. FRERICHS,)	
Treasurer of the State of Illinois,)	
)	
Defendant.)	

**SUPPLEMENTAL JOINT DECLARATION OF TERRY ROSE SAUNDERS
AND ARTHUR SUSMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES**

Terry Rose Saunders and Arthur Susman, as Counsel for the above Plaintiffs and the Classes, submit this Supplemental Joint Declaration in response to the Court's Minute Order of October 21, 2021, and in further support of Plaintiffs' Counsel's Motion for Award of Attorneys' Fees. We have actively participated in all aspects of this litigation and are personally familiar with the facts set forth in this Declaration.

1. Our educational background, professional experience and involvement in the prosecution of this case are set forth in the Declarations we filed on September 22, 2021 in support of Plaintiffs' Motion for Award of Attorneys' Fees and Other Relief (Doc. 126-3 and 126-4). The statements in those Declarations are reaffirmed and incorporated in this Supplemental Declaration.

2. Plaintiffs' Memorandum in Support of Motion for Preliminary Approval also describes the course of this litigation and the activities in which Plaintiffs' Counsel engaged to

bring this case to a successful conclusion. (Doc. 114-1 at 3-7). Those descriptions are accurate to the best of our knowledge, information, and belief.

3. Plaintiffs' Counsel devoted more than 1,700 hours to this case, representing a combined lodestar of \$1,314,530.00 at the rates charged at the time services were provided. Attached as Exhibits 1, 2 and 3 are declarations from the Plaintiffs' three law firms whose lawyers litigated this action as to their respective hours devoted to the case, hourly rates and lodestar. Plaintiffs' Counsel's daily time records are being produced to Defendant's Counsel. The lodestar in this case reflects the fact that the case did not require teams of lawyers to review an extensive factual record or engage in waves of discovery. Rather it required the skills of a lawyer able to make a sophisticated constitutional legal analysis and develop a successful strategy in a case where there was (i) no real precedent, (ii) an unfavorable ruling of the state's highest court and (iii) a prior ruling of the Seventh Circuit Court of Appeals that could be – and was – construed to limit the value of this case to a minimal recovery for the classes. The lawyers in this case had the skill and expertise to achieve an outstanding result efficiently, and without conducting unnecessary discovery or litigation or hiring, training and supervising a team of younger lawyers simply to increase billable hours, through a settlement that benefitted past, present and future unclaimed property owners.

4. This information should have been provided to the Court and Defendant's counsel in advance of the October 21 hearing, and we apologize for our failure to do so. The settlement negotiations in this case extended over a long period of time, and the Parties did not discuss attorneys' fees until all other terms had been agreed to and the settlement had been preliminarily approved by the Court. When we turned to attorneys' fees, there was immediate disagreement over the appropriate standard for determining fees. Plaintiffs' Counsel saw this settlement as

creating a common benefit and that therefore, under Seventh Circuit law, the award should be based on a percentage of the estimated \$47 million to \$70 million benefit or fund the settlement created for the Classes. Defendant's Counsel at that time disagreed, taking the position that 42 U.S.C. §1988 governed any fee award and requesting that we provide all our work records as specified in Local Rule 54.3(d) so Defendant could make an offer based on lodestar. Because the Local Rule does not pertain to a common fund fee award and we did not believe negotiations based solely on a §1988 fee award would be fruitful, we again provided our lodestar – which had previously been disclosed in Plaintiffs' Preliminary Approval Memorandum-- but did not produce our work records at that time. No discussion of fees took place after August 17, 2021. Unfortunately, we were focused on the disagreement between the Parties as to whether this was a common fund or statutory fee case and lost sight of our obligation to provide the Court and Defendant's Counsel with the hourly rates and hours expended by each of the three attorneys working on the case.

5. Turning to the second question as to whether attorneys' fee should be paid directly from the Unclaimed Property Trust Fund ("UPTF" or "Fund"), as requested by Class Counsel, or somehow apportioned among individual Class Members as their claims are paid, as the Treasurer proposes, only Class Counsel's proposal is consistent with the common fund doctrine and the terms of the settlement, is fair and equitable to all Class Members and makes sense administratively.

6. Class Counsel represent all of the Class Members and have provided a benefit to all of them. Under the common fund doctrine, each class member is responsible for a share of the expenses of litigation and theoretically fees could be apportioned among all of them. We recognize, however, that apportioning the fees among all Class Members would result in an

administrative nightmare. According to information provided by the Treasurer, in June 2019, there were approximately 29 million properties in the UPTF. We assume that any decrease in the number would not be material. If the attorneys' fees were apportioned, each Class Member would be responsible for a miniscule amount of the interest earned on the property, and the bookkeeping would be mindboggling. Instead, we request that the fee be paid from the Fund.

7. This would be fair and equitable to all Class Members because there is more than adequate money in the \$3.5 billion Fund to pay any fee award without affecting the rights of current or future unclaimed property owners. For example, the Treasurer is holding more than \$900 million in assets in the UPTF that are classified as "unknown aggregates". This is property that is unlikely to be claimed by a Class Member. In addition, according to the estimate of Defendant's expert, the amount of interest that will be paid to Class Members will be less than half of the interest earned on the property in the Fund as a whole (Doc. 126-2 at 3, *Kolton Liability Analysis* 13 May 21). Plaintiffs' expert expects the return rate to be much higher, but, even if it is 60 percent or 70 percent, there will be more than enough interest earned and left in the Fund to cover the payment of an attorneys' fee award.

8. Nor will payment of the attorneys' fees adversely affect Future Claimants—who are not bound by the settlement or responsible for fees in this case—because in the short term the payment of attorneys' fees is not going to affect adversely the UPTF, and in the long term the Future Claimants' money will be delivered to the Fund after the fees are paid. Their money will not be used to pay fees.

9. On the other hand, under the Treasurer's proposal, only Rule 23(b)(3) and some Rule 23(b)(2) Class Members—those whose claims are approved earliest until fees have been paid -- will be charged for the fees. This is neither equitable to Class Members nor consistent

with the common fund doctrine's requirement that all class members share in the payment of expenses. Moreover, Defendant's proposal would have the perverse result of taking money from its owners, that is the Class Members, to preserve it for the benefit of the state, which does not have any ownership interest in the money in the Fund or the earnings on that money, and should not be preferred over the owners of the property whose constitutional rights have been violated.

10. For the above reasons, any award of attorneys' fees should be paid directly from the UPTF as requested by Plaintiffs' Counsel.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 4th day of November, 2021.

/s/ Terry Rose Saunders

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 4th day of November, 2021.

/s/ Arthur T. Susman

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTHONY D. KOLTON, S. DAVID)	
GOLDBERG, and JEFFREY S. SCULLEY,)	
individually and on behalf of a class of all others)	
similarly situated,)	
)	
Plaintiffs,)	
v.)	No. 16-cv-3792
)	Hon. Charles P. Kocoras
)	
MICHAEL W. FRERICHS,)	
Treasurer of the State of Illinois,)	
)	
Defendant.)	

**SUPPLEMENTAL DECLARATION OF TERRY ROSE SAUNDERS IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES**

I, Terry Rose Saunders, declare as follows:

1. I am one of the attorneys for Plaintiffs and the Classes in the above-captioned matter. I submit this Declaration in response to the Court's Minute Order of October 21, 2021.
2. I have actively participated in all aspects of this litigation and am personally familiar with the facts set forth in this Declaration.
3. In preparing this Supplemental Declaration, I have reviewed the time and expense reports of my firm, The Saunders Law Firm, with respect to this case.
4. From March 10, 2016 through October 21, 2021, I recorded 921 hours to the prosecution of this case. In my judgment, these hours were reasonably necessary and properly expended on behalf of Plaintiffs and the Classes. I have included in this total the 103.25 hours that includes work related to Plaintiffs' petition for an award of attorneys' fees and other relief because the time spent included work on class issues and it was not feasible to separate out work

that was for the benefit of Plaintiffs and all Class Members. My total hours were compiled from the contemporaneous daily time records that I regularly prepared and maintained, with the exception of nine hours of time during the period April 21, 2020 through July 6, 2020 when I was required to work remotely and without office services or support personnel because of COVID-19. I recorded this time conservatively after-the-fact based on the records of the work that I was doing at the time, including emails and notes.

5. My hourly billing rate during the period this case has been pending has been \$800.00, and my total lodestar is \$737,000.00. This hourly rate was my usual and customary rate in effect at the time the services were performed and is the rate I used for similar complex litigation at those times. My current hourly rate has been accepted and approved most recently in *In re Automotive Parts Antitrust Litigation*, No. 12-md-02311 (E.D. Mich.).

6. Attached as Exhibit A is a chart setting forth my total hours and lodestar as well as the total hours, hourly rates and lodestar of the other lawyers working on this case. My firm's daily time records are being produced to Defendant's Counsel and will be provided to the Court if requested. Attached as Exhibit B is a schedule of the unreimbursed expenses incurred in this case by my firm and the Law Offices of Arthur Susman.

7. I make the foregoing statements based on my experience in this case as a litigation attorney for the past 48 plus years, participation in the presentation, drafting and defending of fee petitions in such cases, the setting of my firm's and former firms' rates over the years, and conferring with other attorneys who practice in the relevant legal areas. As a result, I am familiar with the hourly and contingent fee rates charged in legal markets in Chicago and other major metropolitan areas by qualified complex case litigators. I am also relying on the

Supplemental Expert Report of Professor Charles Silver, a leading expert on attorney's fees in contingent fee cases, as to the reasonableness of my billing rates and lodestar multiplier.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 4th day of November, 2021.

/s/ Terry Rose Saunders

EXHIBIT B

**The Saunders Law Firm and Law Offices of Arthur Susman
Unreimbursed Expenses Incurred on *Kolton v. Frerichs***

CATEGORY	AMOUNT
Court Costs & Filing Fees	\$ 337.00
Transcripts	\$ 176.00
Experts Fees	\$17,400.00
Total	\$17,913.00

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTHONY D. KOLTON, S. DAVID)	
GOLDBERG, and JEFFREY S. SCULLEY,)	
individually and on behalf of a class of all others)	
similarly situated,)	
)	
Plaintiffs,)	
v.)	No. 16-cv-3792
)	Hon. Charles P. Kocoras
)	
MICHAEL W. FRERICHS,)	
Treasurer of the State of Illinois,)	
)	
Defendant.)	

**SUPPLEMENTAL DECLARATION OF ARTHUR T. SUSMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES**

I, Arthur T. Susman, declare as follows:

1. I am one of the attorneys for Plaintiffs and the Classes in the above-captioned matter. I submit this Declaration in response to the Court's Minute Order of October 21, 2021.
2. I have actively participated in all aspects of this litigation and am personally familiar with the facts set forth in this Declaration.
3. I am a sole practitioner and in preparing this Supplemental Declaration, I have reviewed the time and expense reports of my law firm, Law Offices of Arthur T. Susman, with respect to this case.
4. From February 6, 2016 through October 23, 2021, I recorded 426.25 hours to the prosecution of this case. In my judgment, these hours were reasonably necessary and properly expended on behalf of Plaintiffs and the Classes. My total hours were compiled from the

contemporaneous daily time records that I regularly prepared and maintain. However, I am certain that I spent more hours on this cause which I have not recorded.

5. I have practiced law for over 60 years. Based upon the market as I understand it, my hourly billing rate during the period this case has been pending is \$800, and my total lodestar is \$341,000.00.

6. Attached as Exhibit A is a chart setting forth my total hours and lodestar as well as the total hours, hourly rates and lodestar of the other lawyers working on this case. My firm's daily time records are being produced to Defendant's Counsel and will be provided to the Court if requested. Attached as Exhibit B is a schedule of the unreimbursed expenses incurred in this case by my firm and The Saunders Law Firm.

7. I make the foregoing statements based on my experience in this case as a litigation attorney for the past 60 plus years, participation in the presentation, drafting and defending of fee petitions in such cases, the setting of my and my former firm's rates over the years, and conferring with other attorneys who practice in the relevant legal areas. As a result, I am familiar with the hourly and contingent fee rates charged in legal markets in Chicago and other major metropolitan areas by qualified complex case litigators. I am also relying on the Supplemental Expert Report of Professor Charles Silver, a leading expert on attorney's fees in contingent fee cases, as to the reasonableness of my billing rates and lodestar multiplier.

8. Because of the pandemic and having to work from home without the benefit of office help, I can assuredly testify that my recorded hours are the minimum number of hours expended on this litigation.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 4th day of November, 2021.

/s/ Arthur T. Susman

EXHIBIT B

**The Saunders Law Firm and Law Offices of Arthur Susman
Unreimbursed Expenses Incurred on *Kolton v. Frerichs***

CATEGORY	AMOUNT
Court Costs & Filing Fees	\$ 337.00
Transcripts	\$ 176.00
Experts Fees	\$17,400.00
Total	\$17,913.00

EXHIBIT 3

Declaration of Thomas A. Doyle

I, Thomas A. Doyle, state under oath, as follows:

1. During the period from 2016 through August of 2019, I worked as one of the co-lead counsel for the plaintiffs in the lawsuit captioned *Kolton v. Frerichs* (16 CV 3792 in the United States District Court for the Northern District of Illinois). During that time, I was with the firm of Wexler Wallace, LLP, as Of Counsel. At all relevant times, I have been admitted to the General Bar and the Trial Bar in the Northern District. (Since September of 2019, I have not worked on the *Kolton v. Frerichs* matter, because I have been employed by the Board of Education of the City of Chicago. At the Board of Education, I am the principal appellate counsel in the Law Department, and my job title is Senior Associate General Counsel.)
2. I submit this Declaration to set forth details of my time and expenses during the period between March 1, 2016, and August 31, 2019. I intend for this Declaration to support the pending motion for attorneys' fees in the case.
3. I make this Declaration based on my personal knowledge. If called as a witness, I could and would competently testify to the matters stated herein.
4. In connection with my work on the case, I worked on all aspects of the case, including investigating the facts, researching applicable law, drafting pleadings and briefs, assisting with appeals, and assisting with motion practice.
5. Attached hereto as **Exhibit A** is a chart setting my total hours and lodestar, computed at current and at historical rates, for the period from March 1, 2016, through August 31, 2019.

- a. During that time, I spent 358.9 hours on this matter.
- b. Using my billing rate that was in effect for 2019 -- my last billing rate at Wexler Wallace -- the lodestar is \$323,010.00.
- c. Alternatively, using my historical billing rates that were in effect when the hours were incurred, the lodestar is \$236,530.00.

The summary in Exhibit A was prepared from the contemporaneous, daily time records that I regularly prepared and maintained. I have tendered the daily time records that reflect the work shown above.

6. At all times, my time was recorded at hourly rates that reflected the usual and customary hourly rates charged by my firm in similar complex litigation matters.

7. During the period involved, Wexler Wallace expended a total of \$3,368.14 in unreimbursed costs and expenses in connection with the prosecution of this matter. These costs and expenses are set forth in the chart attached as **Exhibit B** and are reflected on the books and records for Wexler Wallace. The expenses were incurred on behalf of plaintiffs and have not been reimbursed.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on November 3, 2021, in Chicago, Illinois.

/s/ Thomas A. Doyle

EXHIBIT A*Kolton v. Frerichs*

Reported Hours and Lodestar, Using the Last Billing Rate in Effect
(All Hours Charged between 3/1/16 through 8/31/19)

Timekeeper	Hours	Last Rate	Lodestar
Thomas A. Doyle	358.9	\$900	\$323,010.00

Kolton v. Frerichs

Reported Hours and Lodestar, Using Historical Rates

Timekeeper	Hours	Historical Rate	Lodestar
Thomas A. Doyle			
3/1/16 to 12/31/17	211.0	\$600	\$126,600.00
1/1/18 to 12/31/18	115.9	\$700	\$81,130.00
1/1/19 to 8/31/19	32.0	\$900	\$28,800.00
Total	358.9		\$236,530.00

EXHIBIT B**Wexler Wallace's Unreimbursed Expenses Incurred on *Kolton v. Frerichs***

Category	Amount
Court Costs & Filing Fees (\$1,410 minus 337.00)	\$1,003.00
Outside Printing Charges	\$809.81
Telephone	\$154.56
Postage	\$28.52
Messengers	\$48.00
Online Legal Research (e.g., LEXIS)	\$1,254.25
Total	\$3,368.14

APPENDIX B

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Plaintiffs,)	
v.)	No. 16-cv-3792
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MICHAEL W. FRERICHS,)	
Treasurer of the State of Illinois,)	
)	
Defendant.)	

**SUPPLEMENTAL EXPERT REPORT OF PROFESSOR CHARLES SILVER ON THE
REASONABLENESS OF CLASS COUNSELS’ REQUEST FOR AN AWARD OF
ATTORNEYS’ FEES FOCUSING SOLELY ON THE LODESTAR METHOD**

I, Charles Silver, state as follows:

I. SUMMARY OF OPINIONS

1. Class Counsel’s requested hourly rates and lodestar multiplier are reasonable.

II. CREDENTIALS

2. My credentials are described in my original declaration.

III. DOCUMENTS REVIEWED

3. The documents I reviewed are identified in my original declaration. Additional sources that I consulted when preparing this supplemental declaration are identified below in the text.

IV. FACTS

4. The facts I take as given are set out in my original declaration.

V. LODESTAR CROSS-CHECK

5. Table 1 summarizes the information Class Counsel provided concerning the time they expended, their professional status, and their hourly charges. It also shows the blended hourly rate for all work performed (\$770), the requested fee (\$9.5 million), and the requested lodestar multiplier (7.23). In the following sections I show that the requested hourly rates and multiplier are reasonable.

TABLE 1. SUMMARY OF CLASS COUNSEL'S TIME EXPENDED AND HOURLY RATES

Timekeeper	Professional Status	Hours	Historical Rate	Total Lodestar
Terry Rose Saunders	Partner/Owner	921.00	\$800	\$736,800.00
Arthur T. Susman	Partner/Owner	426.25	\$800	\$341,000.00
Thomas A. Doyle (3/1/16-12/31/17)	Partner	211.00	\$600	\$126,600.00
Thomas A. Doyle (1/1/18-12/31/18)	Partner	115.90	\$700	\$81,130.00
Thomas A. Doyle (1/1/19/8/31/19)	Partner	32.00	\$900	\$28,800.00
TOTAL		1706.15		\$1,314,330.00
BLENDED HOURLY RATE			\$770	
REQUESTED FEE				\$9,500,000.00
REQUESTED MULTIPLIER				7.23

VI. CLASS COUNSEL'S HOURLY RATES ARE REASONABLE

6. As the Court knows, the lawyers for the class are senior members of the bar with decades of experience representing plaintiffs. They also pioneered litigation involving unclaimed funds and may be the best-suited lawyers in the country to handle cases of this type. Consequently, they are entitled to charge hourly rates at the high end of the market.

7. In fact, Class Counsel's rates are ordinary for senior lawyers who handle class actions. The table below displays the results of a survey conducted by the National Association for Legal Fee Analysis (NALFA) of lawyers in the country's 16 largest markets who represent

plaintiffs or defendants in class actions. NALFA asked the respondents to indicate the range in which their fees fell. As is apparent, the rates reported by the most experienced lawyers NALFA surveyed almost exactly equal those that the lawyers serving as Class Counsel charge.

The 2020 Average Hourly Rate Range in Class Actions		
	Plaintiffs' Rate	Defense Rate
Senior Partner (20+ Years in Practice)	\$801-\$900	\$801-\$900
Partner (16-19 Years in Practice)	\$701-\$800	\$601-\$700
Junior Partner (12-15 Years in Practice)	\$501-\$600	\$401-\$500
Senior Associate (9-11 Years in Practice)	\$401-\$500	\$301-\$400
Associate (5-8 Years in Practice)	\$201-\$300	\$201-\$300
Junior Associate (2-4 Years in Practice)	\$201-\$300	\$201-\$300
Estimated Margin of Error: +/- \$25.00		

Source: News Blog, *Survey: Class Action Defense Rates Keep Pace with Plaintiffs' Rates in 2020*, National Association of Legal Fee Analysis, March 4, 2020, <http://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in-2020/>

8. Other sources of information confirm the reasonableness of Class Counsel's rates. For example, in fee applications submitted in bankruptcy proceedings, lawyers file sworn affidavits regarding their rates, which are also reviewed by judges. I have reviewed many of these applications and can attest that bankruptcy lawyers who practice in metropolitan areas regularly charge rates higher than those Class Counsel requests. Consider a few examples.

9. In the Sears bankruptcy proceeding, the fee application submitted in 2019 by Weil, Gotshal & Manges LLP, the debtors' attorneys, includes dozens of lawyers whose hourly charges exceed \$1,000, with nine lawyers charging \$1,500 per hour or more. Unlike Class Counsel, these lawyers did not work on contingency and did not advance costs. Even so, the bankruptcy judge approved the fee request in full. *See* Summ. Sheet for Second Appl., *In re Sears Holdings Corp.*, No. 18-23538-rdd (Bankr. S.D.N.Y Aug. 15, 2019), ECF No. 4860.

10. Even higher hourly rates were sought in the Toys R' Us bankruptcy, in which Kirkland & Ellis LLP served as debtors' counsel. There, in the fee application filed in 2019, the highest hourly rate was \$1,795, the blended rate for all partners, of which there were dozens, was \$1,227, and the blended rate for all timekeepers, including paralegals and support staff, was \$901. *See* Summ. Cover Sheet to the Final Fee Appl. of Kirkland & Ellis, In re Toys "R" Us, Inc., No. 17-34665 (Bankr. E.D. Va. Mar. 18, 2019), ECF No. 6729.

11. The rates sought by the law firm of Davis Polk & Wardwell LLP in the ongoing Purdue Pharm bankruptcy proceeding provide a third anecdotal example. In late November of 2019, the firm sought rates that included \$1,645 per hour for seven partners, \$1,445-\$1,585 for four more partners, and \$1,225 for six lawyers described as being "of counsel." Davis Polk also sought rates exceeding \$1,000 per hour for fifteen associates and rates exceeding \$900 per hour for many more. *See* Decl. of Marshall S. Huebner in Support of the Appl. of Debtors for Entry of an Order Authorizing the Debtors to Employ and Retain Davis Polk & Wardwell LLP as Att'ys for the Debtors at 10, In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. Nov. 5, 2019), ECF No. 419-1,

12. As a last example, in the ongoing PG&E Bankruptcy proceedings, PG&E was charged \$1,640 per hour for litigation attorneys with over 30 years of experience \$1,535–1,640 for some 20–29 year attorneys, \$1,190 for a 16-year attorney, \$915 for a three-year litigation associate, and up to \$455 per hour for paralegal work. *See* Summ. Sheet to Third Interim Appl. of Simpson Thacher & Bartlett LLP for Allowance and Payment of Compensation and Reimbursement of Expenses for the Period of Sept. 1, 2019 through Dec. 31, 2019, In re PG&E Corp., No. 19-30088 (N.D. Cal. Bankr. Mar. 16, 2020), ECF No. 6331

13. Looking at bankruptcy cases more broadly, a survey published in 2016 of almost 3,000 fee requests found that, “[i]n major markets, bankruptcy partners make \$1,000 an hour or more.” Katelyn Polantz, *In Bankruptcy, Flat is Fine; Median Rates at Large Firms Ran \$595 Per Hour*, *The Nat’l Law J.*, May 16, 2016.

14. One can also examine opinions containing lodestar cross-checks to learn what hourly rates courts find reasonable. Having reviewed many such opinions, I can confidently report that judges have often approved rates of \$800 or more for senior attorneys. For example, in *Pantelyat v. Bank of Am., N.A.*, No. 16-cv-8964 (AJN), 2019 WL 402854, at *10 (S.D.N.Y. Jan. 31, 2019), the judge accepted without question an affidavit that “point[ed] to contemporaneous class actions in which courts ha[d] approved rates of over \$800 for counsel with 20 to 30 years of experience and identified] industry reports roughly confirming these figures.” That rates in this range are frequently granted is not controversial.

15. Finally, one can consult surveys of law firms’ billing rates, such as those taken by the National Law Journal (“NLJ”). The number of firms participating in the NLJ surveys varies from year to year, but always exceeds 100. The NLJ surveys are often cited to courts as evidence supporting hourly rates in fee applications. *See, e.g., Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1172-73 (C.D. Cal. 2010) (admitting into evidence and relying upon expert report by Professor William Rubenstein which was based in part on NLJ surveys).

16. Since at least 2014, NLJ surveys have reported that senior partners at large law firms often charge \$1000 per hour or more. *See Karen Sloan, \$1,000 Per Hour Isn’t Rare Anymore; Nominal billing levels rise, but discounts ease blow*, *The Nat’l Law J.* Jan. 13, 2014. Reading the text of the article, one learns that “[n]early 20 percent of the firms included in The National Law Journal’s annual survey of large law firm billing rates [in 2014] had at least one

partner charging more than \$1,000 an hour.” Today, the *median* hourly rate for partners at large law firms exceeds \$800 per hour. Justin Wise, *Billing Rates Continue Upward Climb, Especially in BigLaw*, Law360, June 30, 2021.

VII. THE REQUESTED MULTIPLIER IS REASONABLE

17. I turn now to the multiplier portion of the lodestar. As shown in Table 1, Class Counsel’s application for \$9.5 million in fees entails a multiplier of 7.23. Although the multiplier falls at the high end of the range, courts have awarded similar or larger multipliers in other cases.

- *Am.’s Mining Corp. v. Theriault*, 51 A.3d 1213, 1252 (Del. 2012) (multiplier of 66)
- *In re Merry-Go-Round Enters., Inc.*, 244 B.R. 327, 335, 345 (D. Md. 2000) (multiplier of 19.6)
- *Health Republic Ins. Co. v. U.S.*, Case 1:16-cv-00259-KCD (Ct. of Fed. Claims 2021) (multiplier of 18-19)
- *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926, at *18 (E.D. Pa., May 19, 2005) (multiplier of 15.6)
- *In re Buspirone*, 01-md-1410 (S.D.N.Y. Apr. 11, 2003) (multiplier of 8.46)
- *In re Credit Default Swaps Antitrust Litig.*, No. 13MD2476 DLC, ECF No. 554 (S.D.N.Y. April 18, 2016) (multiplier of 6.36)
- *Spartanburg Regional Health Servs. District, Inc. v. Hillenbrand Indus., Inc.*, No. 03-DV-2141, ECF No. 377 (D.S.C. Aug. 15, 2006) (multiplier of 6)

18. These examples show that judges do not adhere to fixed rules when performing cross-checks. They award fees that, in their informed judgment, are justified in light of the effort lawyers expend, the risks incurred, and the results obtained. In this case, the lawyers applied their unique skills for the benefit of the class and recovered an enormous sum that justifies a common

fund award of \$9.5 million. The multiplier needed to support the award is appropriate because it falls within the range judges have discretion to approve and rewards the lawyers for applying their talent for the benefit of the Class.

19. I conclude that a lodestar cross-check confirms that Plaintiffs' Counsel's fee request is in line with the market and with awards in comparable cases and thus is reasonable.

VIII. CONCLUSION

20. For the reasons set out above, I believe that Class Counsel's request for a fee award in the amount of \$9.5 million is reasonable.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 4th day of November, 2021 at Austin, Texas.

A handwritten signature in black ink, appearing to read 'CS', is positioned above a horizontal line. The signature is written in a cursive, stylized font.

CHARLES SILVER