APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDERS

ARBITRATION DECISIONS

CO-COUNSEL CONTRACTS

MEMORANDUM* OPINION, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (FEBRUARY 23, 2023)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT RADCLIFFE, CHESTER CARTER,
MARIA FALCON, CLIFTON C. SEALE III,
ARNOLD LOVELL, JR.,

Plaintiff-Appellants,

and

CHARLES JUNTIKKA AND ASSOCIATES LLP,
Counsel for Plaintiffs,

Appellant,

and

JOSE HERNANDEZ, KATHRYN PIKE,
LEWIS MANN, ROBERT RANDALL,
BERTRAM ROBISON,

Plaintiff-Appellees,

and

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

CADDELL & CHAPMAN, Counsel for Plaintiffs; LIEFF, CABRASER, HEIMANN & BERNSTEIN LLP, Counsel for Plaintiffs; FRANCIS MAILMAN SOUMILAS, P.C., Counsel for Plaintiffs; NATIONAL CONSUMER LAW CENTER, Counsel for Plaintiffs; CONSUMER LITIGATION ASSOCIATES, P.C., Counsel for Plaintiffs; CALLAHAN, THOMPSON, SHERMAN & CAUDILL LLP, Counsel for Plaintiffs; PUBLIC JUSTICE, P.C., Counsel for Plaintiffs,

Appellees,

v.

EQUIFAX INFORMATION SERVICES, LLC; EXPERIAN INFORMATION SOLUTIONS, INC.; TRANS UNION LLC,

Defendants.

No. 21-56284

D.C. No. 8:05-cv-01070-DOC-MLG

Appeal from the United States District Court for the Central District of California David O. Carter, District Judge, Presiding

Submitted February 17, 2023**
San Francisco, California

Before: WARDLAW, NGUYEN, and KOH, Circuit Judges.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

MEMORANDUM

Counsel Charles Juntikka (Juntikka) appeals the district court's denial of his motion to vacate an arbitration award that allocated attorneys' fees among class counsel from a class action against three credit-reporting companies. Juntikka contends that the arbitrator exceeded her powers in violation of the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16, when she relied on equitable considerations to fashion her final fee award instead of applying the terms of the class counsels' fee allocation agreements.

We review a district court's decision to confirm an arbitration award by "accepting findings of fact that are not clearly erroneous but deciding questions of law *de novo*." *Aspic Eng'g & Constr. Co. v. ECC Centcom Constructors LLC*, 913 F.3d 1162, 1165-66 (9th Cir. 2019) (internal quotation marks and citation omitted). Exercising jurisdiction under 9 U.S.C. § 16(a)(3) and 28 U.S.C. § 1291, we affirm.

The district court properly denied Juntikka's motion to vacate the arbitration award. "The [FAA] enumerates limited grounds on which a federal court may vacate, modify, or correct an arbitral award." *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 994 (9th Cir. 2003) (en banc). Arbitrators "exceed their powers" under § 10(a)(4) of the FAA "not when they merely interpret or apply the governing law incorrectly, but when the award is 'completely irrational' or exhibits a 'manifest disregard of the law.'" *Id.* at 997 (citations omitted). Thus, a court may vacate an arbitration decision pursuant to § 10(a)(4) only if the arbitrator "strays from interpretation and application of the agreement and effectively dispense[s] h[er] own brand of industrial justice." *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001) (first alteration in original) (internal quotation marks and citation omitted).

Here, the arbitrator did not show manifest disregard of the law when she applied equitable considerations in arriving at the fee award. The arbitrator relied on our precedent in *In re FPI/Agretech Securities Litigation*, 105 F.3d 469 (9th Cir. 1997), and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002), to conclude that a court may reject a fee allocation agreement if it "rewards an attorney in disproportion to the benefits that attorney conferred upon the class," *Agretech*, 105 F.3d at 473. The arbitrator provided copious evidence that Juntikka and his partner, Dan Wolf, failed to confer a net benefit on the class from their pre-objection efforts. Because the arbitrator relied on *Agretech* and *Vizcaino* in determining the ultimate award, she did not "dispense[] h[er] own brand of industrial justice," *Major League Baseball*, 532 U.S. at 509 (citation omitted), and therefore did not exceed her powers in violation of § 10(a)(4).

Juntikka argues that the arbitrator's reliance on *Agretech* is misplaced because it merely recognizes a district court's authority to override a fee arrangement, not that of an arbitrator. However, "[m]anifest disregard . . . requires something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand and apply the law." *HayDay Farms, Inc. v. FeeDx Holdings, Inc.*, 55 F.4th 1232, 1240 (9th Cir. 2022) (citation omitted). Even if the arbitrator incorrectly applied *Agretech*, "we may not reverse an arbitration award even in the face of an erroneous interpretation of the law." *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 879 (9th Cir. 2007); *see also E. Associated Coal Corp. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000) ("[T]he fact that a court is convinced [an arbitrator] committed serious error does not suffice to overturn [her] decision." (internal quotation marks and citation omitted)).

Juntikka maintains that, even if the arbitrator did not manifestly disregard the law, the arbitrator exceeded her powers because her decision "fail[ed] to draw its essence from the agreement." *Aspic*, 913 F.3d at 1166 (citation omitted). To be sure, we have vacated arbitration awards where the arbitrator blatantly disregards express terms of the parties' agreements. *See Aspic*, 913 F.3d at 1168; *Pac. Motor Trucking Co. v. Auto. Machinists Union*, 702 F.2d 176, 177 (9th Cir. 1983); *see also Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682-83 (2010). But in those cases, the arbitrator "underst[oo]d and correctly state[d] the law, but proceed[ed] to disregard the same." *Bosack v. Soward*, 586 F.3d 1096, 1104 (9th Cir. 2009) (alterations in original) (citation omitted); *see Aspic*, 913 F.3d at 1167-68. Here, the arbitrator understood the relevant law as permitting her to override the contract and allocate fees in proportion to the benefit Juntikka and Wolf conferred upon the class. Accordingly, the district court properly denied the motion to vacate the fee award.

AFFIRMED.

MINUTES ORDER, U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA (OCTOBER 21, 2021)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

TERRI WHITE ET AL.

v.

EXPERIAN INFORMATION SOLUTIONS, INC.

Date: October 21, 2021

Case No. SA CV 05-1070-DOC (KS)

Before: The Honorable David O. CARTER, Judge.

PROCEEDINGS (IN CHAMBERS): ORDER DENYING WHITE PLAINTIFFS' COUNSEL'S MOTION TO VACATE ARBITRATOR'S FINAL AWARD [1202]

Before the Court is Movant White Plaintiffs' Counsel Charles Juntikka and Associates LLP's ("Juntikka") Motion to Vacate Arbitrator's Final Award ("Motion" or "Mot.") (Dkt. 1202). The Court finds this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15. After reviewing the papers, the Court DENIES the Motion.

I. Background

A. Facts

This case began in 2006 as several class action lawsuits against three major credit bureaus, which were consolidated in the Central District of California. Ex. B to Juntikka Decl. ("Final Award") at 4 (Dkt. 1202-3).

The various class counsel signed a Joint Prosecution Agreement on June 6, 2006. Mot. at 4. That agreement split fees between groups of counsel by percentage based on relative lodestar contributions. *Id.* at 4-5. The groups specified included the "Lieff Group," which was comprised of Lieff Cabraser, Wolf, and Juntikka. *Id.* Counsel in the Lieff Group signed a Co-Counsel Agreement on October 25, 2005. *Id.* at 4. That Agreement also divided the group's allocation to each firm based on relative lodestar contribution. *Id.* at 10.

After several years of litigation, the parties entered into a settlement of their injunctive relief claims in March 2008 (Dkt. 288), and the Court awarded $5,671,778.68 in attorneys' fees (Dkt. 775). Final Award at 5. The Wolf Team, which included Juntikka, received 25% of those fees. *Id.*

The relationship between counsel began to sour as the case proceeded into the financial recovery stage of the class action, largely due to the Wolf Team's demands for substantially greater settlement figures than other counsel considered to be reasonable and adequate. *Id.* at 6. Counsel participated in seven unsuccessful mediation sessions, at which the mediator advised that the value of the case was around $80-100 million. *Id.* This Court subsequently discussed the case value with the parties and admonished counsel that the ongoing mediation was likely their best chance at settlement in the range projected by the mediator. *Id.* at 6-7. Counsel could not agree on a unified settlement offer, so the chance of a settlement in the $80-100 million range was lost. *Id.* at 7.

The parties again attempted multiple mediation sessions in late 2008 and early 2009, when this Court's ruling on class certification was imminent. *Id.* Defendants offered a $63 million settlement, but the Wolf Team would not agree to that figure. This Court then tentatively denied class certification (Dkt. 369), resulting in defendants lowering their settlement offer substantially. *Id.* at 8.

In January 2009, Class Counsel agreed to a $45 million settlement, with the Wolf Team becoming objector counsel. *Id.* The objection led to several years of litigation as the Wolf Team objected to the settlement and class counsel and appealed decisions to the Ninth Circuit three times. *Id.* at 8-10. In the third appeal, the Ninth Circuit affirmed this Court's approval of the settlement but remanded for reconsideration of the attorneys' fee award. *Id.* at 10 (citing *Radcliffe v. Hernandez*, 794 F. App'x 605, 607-08 (9th Cir. 2019) ("*Radcliffe III*")). This Court ordered, pursuant to the various counsel's stipulations, that the Wolf Team was "entitled to reimbursement for the reasonable pre-objection fees and costs they incurred" and that the allocation would "be submitted to arbitration in accordance with any applicable terms of the parties Joint Prosecution Agreement and any applicable terms of any applicable Co-Counsel Agreements." Dkt. 1187 ¶ 4.

The parties first asked the Arbitrator to decide as a threshold matter whether the two fee sharing agreements mandated the allocation of fees. Ex. A to Juntikka Decl. ("Preliminary Ruling") at 3 (Dkt. 1202-2). The Arbitrator ruled that fee sharing agreements were subject to equitable considerations. *Id.* at 13. After hearings and briefing, the Arbitrator found that the Wolf Team's objections and strategy had cost the class at least $18 million, which far outweighed the Wolf Team's work benefitting the class. Final Award at 27. However, the Arbitrator awarded $628,053.43 in post-appeal re-notice costs to the Wolf Team. *Id.* at 34.

B. Procedural History

On March 28, 2021, the Arbitrator entered a Preliminary Ruling on attorneys' fees. On June 27, 2021, the Arbitrator entered a Final Award regarding the allocation of attorneys' fees. Juntikka notified Class Counsel that he intended to move to vacate the award on July 15. On September 27, 2021, Juntikka filed the instant Motion, which the other members of the Wolf Team (Boies Schiller and Wolf) do not join. On October 4, 2021, Class Counsel opposed ("Opp'n") (Dkt. 1204). Juntikka filed his Reply on October 8, 2021 (Dkt. 1205).

II. Legal Standard

"The [Federal Arbitration Act] gives federal courts only limited authority to review arbitration decisions, because broad judicial review would diminish the benefits of arbitration." *Lifescan, Inc. v. Premier Diabetic Servs*., Inc., 363 F.3d 1010, 1012 (9th Cir. 2004). The party seeking to vacate an award bears the burden of establishing grounds to vacate. *U.S. Life Ins. v. Super. Nat. Ins. Co.*, 591 F.3d 1167, 1173 (9th Cir. 2010). "[M]otions to vacate will be granted only in very unusual circumstances to prevent arbitration from becoming merely a prelude to a more cumbersome and time-consuming judicial review process." *In re Sussex*, 781 F.3d 1065, 1072 (9th Cir. 2015) (internal quotations omitted). An award can be vacated:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a).

"An arbitration decision may be vacated under FAA § 10(a)(4) on the ground that the arbitrator exceeded his powers, only when [an] arbitrator strays from interpretation and application of the agreement and effectively dispense[s] his own brand of industrial justice." *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001). "'[A]s long as [an honest] arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,' the fact that 'a court is convinced he committed serious error does not suffice to overturn his decision.'" *E. Assoc. Coal Corp. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000) (quoting *Paperworkers v. Misco, Inc.*, 484 U.S. 29, 38 (1987)).

III. Discussion

Juntikka challenges the Arbitrator's decision to award no fees for the Wolf Team's pre-objection work on two grounds: that the Arbitrator exceeded her powers and that the award is against public policy. The Court considers each argument in turn.

A. Whether the Arbitrator Exceeded Her Powers

Arbitrators exceed their powers when the award is "completely irrational" or in "manifest disregard of the law." *See Comedy Club, Inc. v. Improv West Assocs.*, 553 F.3d 1277, 1288 (9th Cir. 2009). An award is "completely irrational" when it "fails to draw its essence from the agreement." *Id.* An "arbitration award draws its essence from the agreement if the award is derived from the agreement, viewed in light of the agreement's language and context, as well as other indications of the parties' intentions." *Lagstein v. Certain Underwriters at Lloyd's, London*, 607 F.3d 634, 642 (9th Cir. 2010) (quoting *Bosack v. Soward*, 586 F.3d 1096, 1106 (9th Cir. 2009)). However, an arbitrator's "interpretation of a contract must be sustained if it is plausible." *Employers Ins. of Wausau v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 933 F.2d 1481, 1486 (9th Cir. 1991) (internal quotation marks omitted). The question for the court on plausibility "is a simple binary one: Did the arbitrator look at and construe the contract, or did he not?" *Sw. Regional Council of Carpenters v. Drywall Dynamics, Inc.*, 823 F.3d 524, 532 (9th Cir. 2016). In addition, an award is in "manifest disregard of the law" only when it is "clear from the record that the arbitrators recognized the applicable law and then ignored it." *Comedy Club*, 553 F.3d at 1290. "Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award." *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 994 (9th Cir. 2003) (en banc).

Juntikka argues that the Arbitrator exceeded her powers by ignoring two agreements, the Joint Prosecution Agreement of June 6, 2006 and the Co-Counsel Agreement of October 25, 2005. Mot. at 1-2. Juntikka asserts that while those two agreements divided fees based on lodestar computations, the Arbitrator instead applied a cost/benefit analysis of counsel's work using the framework of *In re FPI/Agretech Securities Litig.*, 105 F.3d 469 (9th Cir. 1997). *Id.* at 2-3.

Class Counsel respond that the Arbitrator was not ordered to follow the agreements, but instead was ordered to proceed "in accordance with <u>any applicable terms</u> of the parties' Joint Prosecution Agreement and <u>any applicable terms</u> of <u>any applicable</u> Co-Counsel Agreements." Opp'n at 10-11 (quoting Order ¶ 4, Dkt. 1187). Class Counsel argue that the Court's language committed the decision on whether any terms are applicable to the Arbitrator. *Id.* at 11. Class Counsel further note that Juntikka acknowledged this during arbitration proceedings: the arbitration case management order notes "one threshold issue that both parties seek to be decided [is] [w]hether the parties co-counsel agreements are determinative of the fee allocation among them," and Juntikka relied on the *Agretech* case in briefing to the Arbitrator about fee allocation. *Id.* at 11-12. More importantly, Class Counsel note that the Arbitrator interpreted the Joint Prosecution Agreement's termination provision to require counsel's right to equitable reimbursement, even after withdrawing from the agreement. *Id.*

Juntikka's key attack on the award is that the Arbitrator concluded she had the power to apply equitable considerations to the fee sharing agreements, while Juntikka asserts that the caselaw supports such power only for district courts. Reply at 7-8. However, "[t]he governing law alleged to have been ignored by the arbitrators must be well defined, explicit, and clearly applicable," *Collins v. D.R. Morton, Inc.*, 505. F3d. 874, 879-80 (9th Cir. 2007), and "erroneous legal conclusions" are not sufficient to overturn an arbitral award, *Kyocera*, 341 F.3d at 994. There is no question that the Arbitrator considered and analyzed the fee sharing agreements in her consideration of appropriate fee allocation, or that she considered and analyzed Ninth Circuit caselaw on interpreting such agreements. As the Ninth Circuit has noted, "AAA Commercial Arbitration Rule R-43 allows an arbitrator to craft an award that is just and equitable." *The Thomas Kinkade Co. v. Hazlewood*, 336 F. App'x 629, 630 (9th Cir. 2009) (unpublished). Even if the arbitrator were wrong or ambiguous on the interpretation, that is insufficient for this Court to overturn her award. A reviewing court must defer to the arbitrator's choice of legal authorities and cannot vacate an award simply for failing to rely on contrary authority. *Local Joint Executive Bd. of Las Vegas v. Riverboat Casino, Inc.*, 817 F.2d 524, 528 (9th Cir. 1987). As such, the Court finds that the Arbitrator did not exceed her power in ordering the Final Award.

B. Whether the Arbitral Award Violates Public Policy

In the alternative, Juntikka argues that the Arbitrator's award violates public policy, since it creates a conflict between class counsel's interest in fees for work and their duty to reject a settlement not in the class's best interest. Mot. at 3. Juntikka argues that Federal Rule of Civil Procedure 23 mandates that class counsel "must act in the best interests of the class as a whole," and "must seek a settlement that is fair, reasonable, and adequate for the class." Fed. R. Civ. P. 23, Committee Notes on 2003 Amendments. Since the Wolf Team believed the offered settlements were inadequate, Juntikka argues they had a duty to oppose them, and as such it would be against public policy to deny the team fees because of their opposition. Mot. at 19. Class Counsel responds that the Arbitrator determined that the Wolf Team's actions were not only not in the class's best interests, but actively harmed the class by causing it to lose out on several much larger settlement offers. Opp'n at 15-16.

"[C]ourts should be reluctant to vacate arbitral awards on public policy grounds." *Arizona Elec. Power Co-op., Inc. v. Berkeley*, 59 F.3d 988, 992 (9th Cir. 1995). To vacate an arbitration award on public policy grounds, the court must find (1) "that an explicit, well defined and dominant policy exists," and (2) "that the policy is one that specifically militates against the relief ordered by the arbitrator." *Aramark Facility Servs. v. Serv. Employees Int'l Union*, 530 F.3d 817, 823 (9th Cir. 2008). In evaluating a public policy argument, the court "must focus on the award itself, not the behavior or conduct of the party in question." *S. Cal. Gas Co. v. Utility Workers Union of Am.*, 265 F.3d 787, 795 (9th Cir. 2001).

The Arbitrator analyzed the Wolf team's pre-objection conduct and benefit to the class and concluded that the net benefit was negative, meriting an award of zero dollars. This award itself is not against public policy and it does not require class counsel to put their interests ahead of the interests of the class as a whole. On the contrary, this award reiterates that class counsel must seek a fair and reasonable settlement for their class, rather than focusing on their own "increasingly futile" goals of reaching an unprecedented settlement amount. Final Award at 22. This award is not against public policy.

IV. Disposition

For these reasons, the Court **DENIES** Juntikka's Motion.

The Clerk shall serve this minute order on all parties to the action. The motion hearing scheduled for October 25, 2021 is accordingly **VACATED**.

ORDER DENYING REHEARING, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (APRIL 4, 2023)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT RADCLIFFE, CHESTER CARTER,
MARIA FALCON, CLIFTON C. SEALE III,
ARNOLD LOVELL, JR.,

Plaintiff-Appellants,

and

CHARLES JUNTIKKA AND ASSOCIATES LLP,
Counsel for Plaintiffs,

Appellant,

and

JOSE HERNANDEZ, KATHRYN PIKE,
LEWIS MANN, ROBERT RANDALL,
BERTRAM ROBISON,

Plaintiff-Appellees,

and

CADDELL & CHAPMAN, Counsel for Plaintiffs;
LIEFF, CABRASER, HEIMANN & BERNSTEIN
LLP, Counsel for Plaintiffs; FRANCIS MAILMAN
SOUMILAS, P.C., Counsel for Plaintiffs; NATIONAL
CONSUMER LAW CENTER, Counsel for Plaintiffs;

CONSUMER LITIGATION ASSOCIATES, P.C., Counsel for Plaintiffs; CALLAHAN, THOMPSON, SHERMAN & CAUDILL LLP, Counsel for Plaintiffs; PUBLIC JUSTICE, P.C., Counsel for Plaintiffs,

Appellees,

v.

EQUIFAX INFORMATION SERVICES, LLC; EXPERIAN INFORMATION SOLUTIONS, INC.; TRANS UNION LLC,

Defendants.

No. 21-56284

D.C. No. 8:05-cv-01070-DOC-MLG
Central District of California, Santa Ana

Before: WARDLAW, NGUYEN, and KOH, Circuit Judges.

The panel has voted to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. 35.

The petition for rehearing en banc is DENIED.

RULING ON PRELIMINARY MOTION (MARCH 28, 2021)

AMERICAN ARBITRATION ASSOCIATION

CHARLES JUNTIKKA ET AL.,

Claimants,

v.

MICHAEL A. CADDELL ET AL.,

Respondents.

No. 01-20-0010-8997

Before: Hon. Faith S. HOCHBERG, Arbitrator.

Ruling on Preliminary Motion Regarding Contractual Fee Sharing Agreements

This arbitration concerns a class action attorney fee allocation dispute between former co-counsel: the "Juntikka/Wolf Team"[1] and "the Caddell Team."[2] The

1 "The Wolf/Juntikka Team" refers to Claimants CHARLES JUNTIKKA & ASSOCIATES, LLP; THE LAW OFFICE OF DANIEL WOLF; AND BOIES SCHILLER FLEXNER, LLP.

2 "The Caddell Team" refers to Respondents: MICHAEL A. CADDELL; CYNTHIA B. CHAPMAN; AMY E. TABOR; CADDELL & CHAPMAN; MICHAEL W. SOBOL; LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP; JAMES A. FRANCIS; DAVID A. SEALES; FRANCIS MAILMAN SOUMILAS, PC; STUART T. ROSSMAN; CHARLES M. DELBAUM; LEONARD A.

Wolf/Juntikka Team seeks a pre-hearing finding as a matter of law that the "Co-Counsel Agreements govern the determination of the Wolf/Juntikka Team's fee share from the inception of this matter to the date the *White* Plaintiffs objected to the proposed settlement."[3] The Caddell Team argues that the Fee Sharing Agreements are not determinative, and that fees should be distributed equitably.

In the instant motion, the parties submitted extensive briefing about the impact of certain joint-representation agreements ("the Fee Sharing Agreements" or "Agreements") between and among them. The Arbitrator has reviewed all of the briefs, as well as ample case law authority submitted by both parties in support of their respective positions on this motion.

I. Background

In October 2005, Caddell & Chapman, representing the Hernandez Plaintiffs, commenced class litigation against Experian Information Services, LLP, Equifax Information Services, LLP, and TransUnion, LLC in the Northern District of California.[4] Around the same time, Daniel Wolf, Charles Juntikka, and Lieff, Cabraser, Heimann & Bernstein, LLP filed a similar class action, representing the White Plaintiffs,

---

BENNETT; MATTHEW ERAUSQUIN; CONSUMER LITIGATION ASSOCIATES, PC; LEE A. SHERMAN; O. BRANDT CAUDILL; CALLAHAN, THOMPSON, SHERMAN & CAUDILL; F. PAUL BLAND; PUBLIC JUSTICE, PC.

[3] Wolf Moving Br. 11.

[4] *Hernandez v. Equifax Info. Services*, Case No. 05-cv-03996 (N.D. Cal.).

in the Central District of California.[5] The *Hernandez* and *White* cases were consolidated in the Central District of California.

In October 2005, when Wolf, Juntikka, and Lieff began working together on the *White* litigation, they entered into a Co-Counsel Agreement ("CCA"). The CCA divides fees among these parties on a lodestar basis. In May 2006, the *White* and *Hernandez* counsel entered into a Joint Prosecution Agreement ("JPA"). The JPA addresses fee allocation among: 1) the Lieff Group (including Lieff, Wolf, and Juntikka), 2) the Caddell Group,[6] and 3) the NCLC. The JPA (¶ 13) allocates fees according to two "Buckets." "Bucket A" allocates fifty percent (50%) of the total fees in fixed ratios among the Lieff Group (42%), the Caddell Group (42%), and the NCLC (16%). Bucket B allocates the other half (50%) of the total fees between the Lieff Group, on the one hand, and the Caddell Group, on the other, based on their lodestar contributions.

The Wolf/Juntikka Team and the Caddell Team both state that there came a time when they stopped working jointly.[7] The earliest temporal reference to

---

[5] *White v. Experian Information Solutions*, Case No. 05-1070 (C.D. Cal.).

[6] For purposes of the JPA, the "Caddell Group" consists of Caddell & Chapman, Consumer Litigation Associates, P.C., and Weller Green, Toups and Terrell, LLP. The "Caddell Group," as defined in the JPA, is distinct from the "Caddell Team" for purposes of this Arbitration. The "Caddell Team" includes Lieff Cabraser Heimann & Bernstein, LLP.

[7] Wolf Moving Br. 15 ("[A] contractual determination must be made as to the Wolf/Juntikka team's proportionate fee share under the Agreements as of the date of their separation from the broader team."); Caddell Resp. Br. 9 ("At that juncture, Wolf

the split is stated by the Caddell Team to be a *de facto* cessation of joint working goals in 2007; at the latest, the split occurred on March 9, 2009, when the Wolf/Juntikka Team formally objected to the settlement. If it becomes necessary to decide upon a precise date of the cessation of joint work, that is a factual issue about which the parties can submit testimony at the hearing, and they can identify any legal conclusions therefrom in their hearing briefs.

The *White* and *Hernandez* litigation proceeded for over a decade, with increasingly bitter relationships between the Teams in this Arbitration. The parties now dispute the allocation of attorney fees, which is at issue in this Arbitration. The parties to this Arbitration have asked the Arbitrator to decide as a threshold matter, through motion briefing in advance of the Hearing, whether the Fee Sharing Agreements mandate the allocation of fees.

II. The Parties' Briefing

The Wolf/Juntikka Team submitted their moving brief on February 2, 2021. In their moving brief, the Wolf/Juntikka Team argue that the "decision to oppose the settlement did not violate their obligations under the Agreements."[8] They argue that they were "permitted and required by the ethical rules to part ways with their former team."[9] They further contend that the JPA's termination provision, ¶ 20, would have

---

and Juntikka overtly recast themselves as objectors' counsel, though they had been working at cross-purposes with the White/Hernandez counsel team since August 2007.").

[8] Wolf Moving Br.16.

[9] *Id.*

entitled them to a contractual fee share if they had simply withdrawn from representing the plaintiffs, and that objecting did not alter their entitlement to the claimed contractual fee share. Finally, the Wolf/ Juntikka Team argue that construing the JPA's termination provision to allow only for recovery in *quantum meruit* would create a conflict of interest. The conflict of interest alleged is that "co-counseling agreements cannot be construed to make a party's contractual entitlement to a share of the fee award contingent on their not opposing a class settlement that they believe is contrary to the class's interests."[10]

The Caddell Team submitted its Response Brief on February 16, 2021. The Caddell Team responds that, as a matter of contract law, Juntikka and Wolf cannot benefit from the terms of the JPA because they "repeatedly breached" the Agreement. They further argue that "Ninth Circuit law requires that equity . . . must always be the primary consideration in allocating class action fee awards";[11] therefore, the Fee Sharing Agreements cannot be determinative here. The Caddell Team's third argument is that under the plain language of the JPA's termination provision, withdrawing counsel are not entitled to contractual fees because "the language must be construed to be consistent with the Ninth Circuit standard."[12] Finally, the Caddell Team argues that Wolf and Juntikka have waived any right to contractual fees.

---

[10] *Id.* at 2.

[11] Caddell Resp. Br. 25.

[12] *Id.* at 31.

The Juntikka/Wolf Team submitted its Reply Brief on March 3, 2021. First, the Reply Brief contests the Caddell Team's reading of Ninth Circuit precedent, *In re: FPI/Agretech Securities Litigation* ("*Agretech*").[13] Juntikka/Wolf argue that *Agretech* holds that "the allocation provisions of fee sharing agreements are fully enforceable where . . . the dispute at issue is a private one among counsel, the resolution of which cannot even potentially impact the class."[14] To support this point, they introduce a line of cases where federal district courts have refused to exercise ancillary jurisdiction over fee disputes. Second, Juntikka/Wolf reply that fee-sharing agreements are fully enforceable where they provide for an equitable distribution of fees. The Juntikka/Wolf Team Reply Brief also raises new arguments that the plain text of the JPA's termination provision entitles a withdrawing counsel to contractual fee shares. Finally, the Juntikka/Wolf Team argues, as a matter of disputed fact, that they did not breach the Fee Sharing Agreements nor waive their rights to contractual fee shares under the Agreements.

Because the Reply brief included new arguments, the Arbitrator allowed the Caddell Team to file a short Sur-Reply Brief. The Caddell Team did so on March 10, 2021. In pertinent part, the Sur-Reply responds to the Wolf/Juntikka Team's reading of *Agretech*. The Sur-Reply also attaches fact declarations, as did both parties' prior briefs. Following the Sur-Reply, the Juntikka/Wolf Team moved to strike what they contended were new arguments by the Caddell Team

---

[13] 105 F.3d 469 (9th Cir. 1997).

[14] Wolf Reply Br. 2.

in the Sur-Reply brief, and they sought to file another brief.

The Arbitrator then convened a conference with counsel on short notice: the Arbitrator denied the motion to strike on the ground that both parties had raised new arguments in their respective responsive briefing, and that there was no need for further briefing on this point. The Arbitrator made this ruling orally and asked if either party wished to have it memorialized in a written ruling. Neither party made such a request. During the conference, the Arbitrator then explained that material fact disputes based on cross-declarations must be resolved through witness testimony that is cross-examined at the Hearing. This motion ruling in advance of the Hearing will not rely on facts that the Arbitrator deems to be material and disputed. To the extent that any legal argument made by counsel on either side is premised on such disputed facts, that legal determination will be deferred until the conclusion of testimony at the Hearing.

III. Legal Analysis

Having read all briefs of parties and declarations associated therewith, and case law submitted by each party, the Arbitrator analyzes the motion in the following manner.

A. The Evidence Presented as to Waiver is Premised upon Disputed Fact Evidence and is Therefore Deferred Until the Conclusion of the Hearing.

The Caddell Team argues that this motion can be decided based on the Wolf/Juntikka Team's own stipulations about the applicability of the Fee Sharing

Agreements. According to the Caddell Team, Wolf and Juntikka agreed that they are entitled to only a "reasonable" fee based on their contribution to the class. To substantiate this claim, the Caddell Team references four specific instances:[15]

1. An email exchange from April 29–30, 2009.
2. An email that Mr. Caddell sent on December 7, 2009.
3. Juntikka & Wolf's acceptance of an Injunctive Relief Fee Settlement.
4. A stipulation agreement from June 2018. [Dkt. 1158].

Mr. Wolf provided the April 29–30 email exchange as Exhibit L to his Reply Declaration. On April 29, 2009, Mr. Caddell emailed Mr. Wolf and Mr. Juntikka stating, "Since you have rejected our Joint Prosecution Agreement, we are no longer bound to its terms or those of any other agreements regarding the allocation of fees among White/Hernandez counsel."[16] The Caddell Team is correct that Mr. Wolf did not directly contest this statement. However, the Wolf Team correctly points out that "[s]ilence alone never constitutes a waiver unless a party has an obligation to speak,"[17] and the Caddell Team responds that Mr. Wolf's silence is evidence that all parties shared the under-

---

[15] Ex. L to the Wolf Reply Declaration shows the email exchange from April 29–30, 2009. The other documents were not provided with the motions.

[16] Ex. L to Wolf Reply Decl.

[17] Wolf Reply Br. 25 (quoting *Landover Corp. v. Bellevue Master, LLC*, 252 Fed. Appx. 800, 803 (9th Cir. 2007)).

standing that the JPA does not apply.[18] This issue is one of fact, which depends on the circumstances at the time and the credibility of the witnesses' testimony on this issue at the hearing.

Mr. Wolf further argues that he did respond to the email and reserved all rights to challenge the Injunctive Relief Fee Agreement, which was sufficient to voice his objection. In his declaration, he makes additional fact-based arguments about his response. All of these fact-based arguments are deferred to the Hearing.

Therefore, the Arbitrator cannot determine at this time, without further development of the fact evidence, whether the Wolf/Juntikka Team waived its claim that the JPA governs fee allocation.

B. The Arguments that Juntikka and Wolf "Repeatedly Breached" the Fee-Sharing Agreements are Likewise Fact-Based; Those Facts, to the Extent Necessary to any Legal Argument, Will be Deferred Until the Hearing.

The Caddell Team argues that, as a matter of contract law, Juntikka and Wolf cannot benefit from the terms of the JPA because they "repeatedly breached" the Agreement. Specifically, the Caddell Team asserts that Juntikka and Wolf refused to honor the majority vote and abandoned the JPA's purpose

[18] Caddell Sur-Reply Br. 6, n.5 ("Objector Counsel misconstrue Class Counsel's argument regarding this email as being an argument that Objector Counsel waived their claim to contractual fees . . . their silence is evidence that all parties shared the correct understanding that [the JPA] did not [apply].")

to coordinate prosecution. Moreover, they allege that "Wolf and Juntikka obstructed multiple, valuable settlement opportunities" by threatening to withdraw from the Team and object.[19]

Respondents point to several instances of this conduct:

1. March 4, 2008 (at a mediation with Judge Baird)
2. ~April 7, 2008 (telephone conference)
3. April 16, 2008 (telephone conference)
4. Late 2008/Early 2009 (When Mr. Wolf consulted Mr. Wolfman at Public Citizen)
5. January 22, 2009 (at a mediation)

At this stage, however, Respondents' proffered evidence of these allegations are disputed. As the Arbitrator has informed the parties, the Arbitrator cannot conduct fact finding based on declarations before the testimony is subject to cross examination. The Arbitrator will conduct fact finding at the hearing and weigh the parties' evidence accordingly. This ground for a ruling on the instant motion is fact-intensive and is therefore deferred to the Hearing.

C. The Law Regarding Whether the CCA and JPA Dispositively Govern the Allocation of Fees Between Counsel.

Ninth Circuit substantive law governs this arbitration.[20] Both parties rely on *In re: FPI/Agretech*

---

[19] Caddell Resp. Br. 6–8.

[20] Order #1: Case Management & Report of Preliminary Hearing ¶ 5.

Securities Litigation ("*Agretech*")[21] as the leading Ninth Circuit precedent that adjudicates the distribution of attorney fees in class action cases. However, the parties interpret *Agretech* quite differently. The Wolf/Juntikka Team argues that, under *Agretech*, fee sharing agreements are "fully enforceable where . . . the resolution . . . cannot even potentially impact the class" and that this determination is to be made ex-ante.[22]

While *Agretech* does contain this language, the case, when read in its entirety, does not so hold as a matter of law. *Agretech* holds that judges have broad discretion to reject fee agreements and are not limited solely by the impact—or potential impact—on the class. The *Agretech* court cited *Smiley v. Sincoff* for the proposition that "[a] district court's exercise of [its] broad discretion to review and modify a fee agreement is not limited to situations in which it finds windfall, adverse class impact, or other irregularity. *Whenever* a court finds good reason to do so, it may reject an agreement."[23] *Agretech* further cites with approval a line of District Court cases which hold that, "a court may reject a fee allocation agreement

---

[21] 105 F.3d 469 (9th Cir. 1997).

[22] Wolf Reply Br. 2, 4, 6. The Wolf Team also relies, in part, on *In re Community Bank of Northern Virginia Mortgage Lending Practices Litigation* ("*Community Bank*"), 911 F.3d 666 (3d Cir. 2018). *Community Bank* is, however, a Third Circuit case that was primarily concerned with federal courts' ancillary jurisdiction over fee disputes. More significantly, the Third Circuit expressly distinguished *Agretech* because in *Community Bank*, unlike in *Agretech*, "[n]either the District Court nor the Arbitration Panel was involved in the allocation of fees among plaintiffs' counsel." *Id.* at 672.

[23] 958 F.2 498, 501 (2d Cir., 1992) (emphasis added).

where it finds that the agreement rewards an attorney in disproportion to the benefits that attorney conferred upon the class—even if the allocation in fact has no impact on the class."[24] And in a number of cases, district courts following *Agretech* have rejected the terms of fee-sharing arrangements, even where the arrangements would not have impacted the class.[25] Thus, other courts have also interpreted the holding of *Agretech* differently than the legal argument made by the Juntikka/Wolf Team.

Agretech's analysis therefore teaches that "fee-sharing arrangements among class counsel are not enforceable contracts."[26] They stand on a different footing than private contracts. District courts have broad supervisory authority over the allocation of fees among counsel in class actions, and may "refuse to accept a fee allocation agreement whenever there is good cause to do so."[27] The Tribunal "is not obliged to enforce the fee-sharing arrangement, and should not do so if it would produce a result that is disproportionate to the amount of work and contribution each firm made to the class recovery."[28] Such an inquiry is to be undertaken at the Hearing.

---

[24] *Agretech*, 105 F.3d at 473.

[25] *See, e.g.*, *In re: TFT-LCD (Flat Panel) Antitrust Litigation*, 2012 WL 12918720 at *11 (N.D. Cal. Dec. 18, 2012), *report and recommendation adopted*, 2013 WL 1365900 (N.D. Cal. Apr. 3, 2013).

[26] *In re: TFT-LCD*, 2012 WL 12918720 at *11.

[27] *Agretech*, 105 F.3d at 473.

[28] *In re: TFT-LCD*, 2012 WL 12918720 at *10.

D. The Effect of the JPA's Termination Provision.

The above discussion of *Agretech* makes clear that a fee-sharing agreement is not entitled to strict contract enforcement. It can be viewed as a contract subject to a condition subsequent—the condition being a Tribunal's evaluation of what equity requires. If the Tribunal determines that the fee-allocation contract rewards an attorney disproportionately to the benefits that such attorney conferred upon the class, then the Tribunal may "allocate fees in accordance with the relative contributions that each firm made to obtaining the class recovery."[29]

A termination provision does not alter this analysis; it is merely a provision within a non-dispositive private agreement among counsel. The termination provision can be informative to the Tribunal, but it does not turn a non-binding contract into a binding contract. Put differently, since the Fee Sharing Agreement itself is not a contract that is binding upon the court, but rather is subject to the court's view of the value conferred by the attorney on the class, the termination clause likewise stands on no firmer footing.

Even so, the JPA's termination provision, taken at face value, does not mandate a particular measurement of compensation. The termination provision of the JPA, ¶ 20, provides that withdrawing counsel can "seek reimbursement . . . for all work performed prior to . . . withdrawal." It ensures that counsel who has done valuable work for the class prior to withdrawal

---

29 *Id.*

does not walk away empty handed, and it would preclude other counsel from arguing against paying the withdrawing attorney for the value of work done on behalf of the class. The fact that equitable reimbursement might be equally available if a motion were made without the language of ¶ 20 does not give that paragraph superpowers. Contracts often state rights that the law would otherwise permit even without such contract language: due process hearing rights, fee shifting rights, etc. are often stated in contracts, even though the law also provides for such rights.

And again, to the extent both parties argue that the termination provision's "silence" about how to allocate fees when one party withdraws cuts in their favor, they are focused on the leaves of the trees to the exclusion of the forest. This is but one provision in an attorney-to-attorney agreement that is itself subject to a Tribunal's supervisory authority to evaluate the value of the work done.

The ultimate issue for the Tribunal will be what is the fair amount to allocate to a withdrawing partner to reimburse him for his pre-withdrawal work to benefit the class.

E. Limiting Withdrawing Counsel to a *Quantum Meruit* Recovery does not Create a Disabling Conflict.

The Wolf/Juntikka Team's main argument is that objecting to a settlement cannot alter an attorney's entitlement to a contractual fee share because this would discourage ethically mandated lawyering. For that reason, they argue that "co-counseling agreements cannot be construed to make a party's contractual entitlement to a share of the fee award contingent on their not opposing a class settlement that they believe is contrary to the class's interests."[30]

All counsel are expected to keep ethical provisions uppermost in their minds in all of their actions, and this is certainly no less true with class actions. However, limiting withdrawing counsel to equitable fees does not "require a party to refrain from objecting."[31] Equitable fees are not a punishment; objecting counsel are not inherently disadvantaged by objecting and withdrawing from the Fee Sharing Agreement. As long as both teams contributed significant value to the class prior to the objection, the attorney fees under a *quantum meruit* analysis would not disadvantage the attorney who later withdraws based upon ethics grounds. And if objecting counsel had sufficient grounds to disqualify the class counsel and step into their shoes, objecting counsel could in fact *benefit* by withdrawing on this basis.[32]

To be clear, the Arbitrator agrees that when the Wolf/Juntikka Team objected to the settlement, they did not relinquish their "entitlement to fees for [their] pre-objection work."[33] The Wolf Team is also

---

[30] Wolf Moving Br. 2.

[31] *Id.* at 17.

[32] The Arbitrator rejects the Wolf Team's analogy to giving class plaintiffs an "incentive to support [a] settlement and a promise of no reward if they oppose[] it." Wolf Moving Br. 19. Whereas the latter causes an unsophisticated party to face the possibility of "no reward," the former allows a sophisticated attorney remuneration for all services performed—and the law ensures that this remuneration will be equitable.

[33] Wolf Reply Br. 21.

correct that attorneys should not be "punish[ed] . . . for the exercise of their independent judgment on behalf of their named plaintiff clients and the putative class."[34] The JPA expressly allows a party to "terminate its participation in the litigation . . . for any just reason as permitted or required by any applicable Code of Professional Conduct."[35] Objecting (in good faith) would be a just reason to withdraw and, therefore, Wolf and Juntikka *retain* whatever rights they have to fees as a good-faith withdrawing party. But that does not answer the question of what rights good-faith withdrawing parties have to fees in the first place. Rights to attorneys' fees from class actions, as discussed, turn on the Tribunal's equitable analysis. If courts granted all withdrawing/objecting parties rights to contractual fees so as not to deter ethical objections, then courts would be interpreting attorney-fee agreements in a manner that is contra to the Ninth Circuit precedent discussed above. Rather, class action fee-sharing agreements are always subject to the court's supervisory equitable review.

Finally, the Wolf/Juntikka Team raises hypothetical situations to argue that if a counsel's withdrawal "for whatever reason . . . and at whatever time" renders the Agreements inoperative, that counsel will be subject to "absurd and manifestly unfair results."[36] For example, the Wolf/Juntikka Team notes that, if a party gets sick and withdraws "even days before the successful conclusion of the litigation," that party could

---

[34] Wolf Moving Br. 21.

[35] JPA ¶ 20.

[36] Wolf Reply Br. 18.

receive *quantum meruit* recovery far below what the Agreements would provide. The answer to such a hypothetical is that the court's supervisory authority to allocate fees fairly, based upon the benefit conferred on the class, is the best way to ensure that there is neither a windfall nor a forfeiture to the amount of fees awarded to the attorney who withdraws.

As the Arbitrator has reiterated, it is premature to conduct fact finding at this stage of the arbitration, especially based upon declarations and without opportunity for cross-examination. Ruling that the Fee Sharing Agreements are not determinative ensures that the Arbitrator has flexibility, in line with Ninth Circuit precedent, to ensure that the fee allocation is equitable.

IV. Disposition

For the aforestated reasons, the CCA and the JPA will not mandate the distribution of attorneys' fees between the Wolf/Juntikka Team and the Caddell Team as a matter of law. All fact-based arguments are deferred to the Hearing. If either counsel wishes to re-argue this issue based upon facts to be found at the hearing, it may do so. The motion is DENIED on the purely legal grounds presented.

SO ORDERED

/s/ Hon. Faith S. Hochberg
Arbitrator

March 28, 2021

FINAL AWARD
(JUNE 27, 2021)

Commercial Arbitration Under AAA Commercial Rules and Mediation Procedures Amended and Effective October 1, 2013

AMERICAN ARBITRATION ASSOCIATION

CHARLES JUNTIKKA ET AL.,

Claimants,

v.

MICHAEL A. CADDELL ET AL.,

Respondents.

No. 01-20-0010-8997

Final Award

The undersigned Arbitrator, having been designated in accordance with the arbitration Agreement ("Joint Prosecution Agreement") executed in May and June 2006 entered into by the above-named parties and the parties' June 2018 Court-approved Stipulation Regarding Attorneys' Fees and Costs [Dkt. 1158 ¶ 5], and having been duly sworn and having duly heard proofs and allegations of the parties, and having heard the testimony of the witnesses via their Witness Statements during the hearing held on

May 11, 2021 and May 12, 2021, hereby render this Final Award, as follows:

The claims in this arbitration arise from an attorney-fee allocation dispute more than fifteen years in the making. Claimants Daniel Wolf, Charles Juntikka, and Boies, Schiller Flexner, LLP ("The Wolf Team")[1] seek a share of the attorneys' fees awarded by the U.S. District Court for the Central District of California in connection with the settlement of the *White/Hernandez* class action litigation. The Respondents, The Caddell Team,[2] were appointed the Settlement Counsel in the class action by Hon. David O. Carter and hold the sum of the attorneys' fees awarded by the Court, which ruled that the allocation of any portion of these fees to the Wolf Team was to be decided in this Arbitration.[3] [Dkt. 1187 ¶ 4].

The Wolf Team seeks an allocation of the attorneys' fees for several time periods in which the Wolf Team served as either counsel in the case, or as objectors in the case. Specifically, those time periods

---

[1] Mr. Carpinello of Boies Schiller Flexner, LLP joined the Wolf Team after Mr. Wolf and Mr. Juntikka repositioned themselves as objectors.

[2] The Caddell Team includes: Michael A. Caddell; Cynthia B. Chapman; Amy E. Tabor; Caddell & Chapman; Michael W. Sobol; Lieff, Cabraser, Heimann & Bernstein, LLP; James A. Francis; David A. Seales; Francis Mailman Soumilas, PC; Stuart T. Rossman; Charles M. Delbaum; Leonard A. Bennet; Matthew Erqusquin; Consumer Litigation Associates, PC; Lee A. Sherman; O. Brandt Caudill; Callahan, Thompson, Sherman & Caudill; F. Paul Bland; Public Justice, PC.

[3] The District Court made this ruling pursuant to the parties' Stipulation Regarding Attorneys' Fees and Costs [Dkt. 1158 ¶ 5].

cover: (1) Mr. Wolf and Mr. Juntikka's work as co-counsel with Respondents, the Caddell Team, before Mr. Wolf and Mr. Juntikka became objectors; (2) the Wolf Team's objection to the original class settlement ("*Radcliffe I* objections"); and (3) the Wolf Team's objection to the amended class settlement ("*Radcliffe III* objections").

I. Procedural History and Prior Rulings

On March 28, 2021, the Arbitrator issued a preliminary ruling on the Motion Regarding Contractual Fee Sharing Agreements, which addressed the legal effect of the initial co-counsel agreements between the parties. That ruling is not restated herein, because the parties are fully familiar with it, and it remains part of the record of this Arbitration.

On April 14, 2021, the Parties submitted simultaneous pre-hearing briefing, witness declarations, and exhibits. The witnesses are the counsel themselves, as well as other counsel who worked on the matter or were otherwise involved in the *White/Hernandez* case. On April 28, 2021, they submitted simultaneous pre-hearing responses, responsive witness declarations, and exhibits. Both parties stipulated that the witness declarations would serve as direct testimony, and they jointly waived their right to cross-examination of opposing witnesses, which the Arbitrator granted. The Hearing took place via the remote access platform known as Zoom on May 11-12, 2021.

While the Arbitrator duly cautioned the parties about the advisability of having a transcript of the hearing, the parties jointly desired to proceed without a court reporter to transcribe the hearing; they further agreed that the sound recording of the hearing was not to be used later as a transcription. The Arbitrator therefore did not have access to any transcript of the hearing, because none was made. To the extent that certain findings are based upon the statements made at the hearing, they have no citation. The parties both understood and agreed to proceed in this manner.

Having reviewed the parties' extensive briefs, declarations, supporting exhibits, and cited case law, and having considered both parties' oral arguments, the Arbitrator rules as follows.

II. Factual Background

The parties jointly filed a stipulated chronology of events ("Chronology"), of which the following provides an overview. The Tribunal makes the following findings of fact based upon the evidence presented, both oral and written, which the Tribunal find as true, relevant, and material to the issues presented. The Arbitrator finds these facts to be ample and sufficient to enable her to decide the issues presented and the claims made in this Arbitration and to render the Award. The Tribunal does not attempt to state the facts verbatim, nor comment on every fact adduced, as they were presented either orally or in written form. Rather, the facts found herein constitute the Tribunal's understanding, interpretation, and construction of the evidence, including the findings of the Tribunal about the materiality, credibility, relevance and weight to be accorded to the collective evidence in the case. The Arbitrator has considered and weighed all of the evidence, whether or not specifically mentioned herein, in accordance with each party's respective burden of proof for each claim.

Counsel in this case began working jointly between May and August 2006, when their respective class action lawsuits against Experian Information Services, LLP, Equifax Information Services, LLP, and Trans-Union, LLC ("the Credit Bureaus") were consolidated in the Central District of California.[4] Under a joint prosecution agreement ("JPA"), counsel established a five-member Executive Committee consisting of: Michael Sobol of LCHB, Michael Caddell of Caddell & Chapman, Leonard Bennett of CLA, Stuart Rossman of NCLC, and Daniel Wolf. [W-3, JPA ¶ 4]. The agreement stated that the Executive Committee would make "all significant decisions . . . common to both the White and Hernandez litigation." *Id.*

The early stages of the *White/Hernandez* litigation were largely successful. In October 2006, the *White/Hernandez* Team defeated TransUnion's motion to dismiss. *White v. TransUnion, LLC*, 462 F. Supp. 2d 1079 (C.D. Cal. 2006). In March 2007, the *White /Hernandez* Team defeated a proposed settlement in a parallel class action against Trans Union and Equifax

---

[4] Daniel Wolf, Charles Juntikka, and Lieff, Cabraser, Heimann & Bernstein, LLP ("LCHB") had represented the Hernandez plaintiffs in *Hernandez v. Equifax Info. Services, LLC*, No. 05-cv-03996 (N.D. Cal.), while Caddell & Chapman, Consumer Litigation Associates ("CLA"), National Consumer Law Center ("NCLC"), and Weller, Green, Toups & Terrell ("Weller Green") had represented the White plaintiffs in *White v. Equifax Info. Servs., LLC*, 05-cv-7821 (C.D. Cal.). Weller Green is not part of the Arbitration as this firm is not seeking any fees for the monetary relief settlement. LCHB has since aligned with *Hernandez* counsel and is a member of the Caddell Team. Boies Schiller Flexner, LLP joined the Wolf Team when Mr. Wolf and Mr. Juntikka became objectors. Public Justice, PC and Francis Mailman Soumilas, PC joined the Caddell Team in 2013.

("the *Acosta/Pike* cases"),[5] and in August 2007, the District Court issued a tentative decision denying Experian's motion for summary judgment, prompting Experian to withdraw the motion. [Dkts. 169, 170, 171].

In March 2008 [Dkt. 288], the parties in the class action entered into a settlement of the claims for injunctive relief, which the District Court approved in August 2008. [Dkt. 338]. In connection with that injunctive relief settlement, the District Court ultimately awarded $5,671,778.68 in attorneys' fees. [Dkt. 775]. By agreement of the group of plaintiffs' counsel, Mr. Wolf and Mr. Juntikka received 25% of the attorneys' fees awarded for the injunctive relief settlement, totaling $1,156,301.00. [Caddell Br. 32; Caddell Interrogatory Answer No. 8].

At approximately the time that the *White/Hernandez* counsel achieved injunctive relief in 2008, the relationship between Mr. Wolf and Mr. Juntikka, on the one hand, and the rest of the *White/Hernandez* Team, on the other hand, began to sour as the case proceeded into the financial recovery phase of the class action. The Wolf Team advocated for demanding that the litigation defendants pay

---

[5] The Callahan firm represented the plaintiffs in *Acosta v. Trans Union*, No. 06-cv-5060 (C.D. Cal.), and *Pike v. Equifax Information Services, LLC*, No. 05-cv-1172 (C.D. Cal.). In April 2007, after the *White/Hernandez* Team defeated the *Acosta/Pike* Team's motion for preliminary approval, the *White/Hernandez* cases were consolidated with the *Acosta/Pike* cases. *Acosta v. Trans Union, LLC*, 240 F.R.D. 564 (C.D. Cal. 2007). Since the consolidation of the *White/Hernandez* litigation and the *Acosta/Pike* litigation, Lee Sherman of the Callahan Firm has become a member of the Caddell Team.

exponentially higher monetary relief before a settlement could be reached, and the sums that the Wolf Team insisted upon were far greater than a settlement figure that the Caddell Team considered to be fair, reasonable, and adequate.

Dissension within the groups of plaintiffs' attorneys became divisive. Striving to keep a unified front vis-a-vis the defendants was becoming more and more difficult. The Caddell Team worked to avoid the bitter litigation that would ensue if part of the plaintiffs' counsel team split off and filed objections to any settlement reached with the defendants, due to the unwelcome prospect of delay, expense, and a public display of disunity that the defendants could exploit.

This dissension caused the settlement negotiations with the defendants for monetary relief to hit the shoals. Between October 2007 and May 2008, *White/Hernandez* counsel attended a record seven unsuccessful mediations with the Honorable Lourdes Baird, who valued the case around $80-100 million, at the same time that Wolf and Juntikka were insisting on a settlement of many multiples of that sum, despite Judge Baird's advice to make an offer in the $80-$100M range. [Exs. J-20; J-22]. Despite seven days of mediation, the plaintiffs' group was so divided that it was impossible to agree upon a unified demand for financial settlement that had any prospect of reaching fruition. Therefore, the mediation effort failed.

On March 12, 2008, Judge Carter held a hearing at which he issued a continuance of the motion for class certification due to the pending settlement discussions. At that time, he sternly warned the *White/Hernandez* counsel not to be "greedy little pigs" and admonished that greedy little pigs end up getting hurt. That was a clear warning that the parties had a good shot at achieving a settlement with mediator Judge Baird, if they could propose financial terms that were reasonable. However, Judge Carter's blunt warning went unheeded, because the Caddell Team could not get the Wolf Team to agree to negotiate a settlement in the range projected by Judge Baird. And they needed unity to prevent the cost and delay of an implied threat of a secession and objection by the Wolf Team. Therefore, the chance of any settlement in the $80-$100M range died.

Starting about six months later, and continuing for several months, plaintiffs' counsel again tried to mediate a settlement with the litigation defendants. *White/Hernandez* counsel attended three additional mediations with esteemed mediator Randall Wulff between October 2008 and January 2009. Mr. Wulff informed the parties on January 22, 2009, that the defendants were willing to settle for $63 million, capped. (This offer by the defendants was made after they had rejected the plaintiffs' demand for a $60M fund that was uncapped. An uncapped fund has virtually no certain limit, and this was a non-starter with the defendants). The urgency of the disunity was serious, because a ruling on class certification by Judge Carter was imminent, and if the plaintiffs lost the motion to certify the class, the settlement value of the case would drop significantly.

Between January 22, and January 26, 2009, the Caddell Team urged the plaintiffs to agree to this settlement proposal by the defendants, in order to avoid the risk of loss of class certification and further erosion of the settlement value of the case. Mr. Caddell hoped to be able to tell Judge Carter that a settlement in principle was either agreed, or was imminent, and therefore to hold off ruling on the motion for class certification. But he could not get assent from the Wolf Team, and therefore could not make that representation to Judge Carter.

On January 26, 2009, realizing that the parties had still failed to reach a settlement in principle, Judge Carter issued a tentative ruling denying class certification [Dkt. 369]. When that happened, the defendants lowered their offer substantially, reflecting the weakness of plaintiffs' class action, especially in light of the deferential standard applied by the Ninth Circuit to District Court denials of class certification.

On January 29, 2009, the parties attended a fourth failed mediation with Randall Wulff (the eleventh attempted mediation of the case), and on February 5, 2009, Judge Carter convened a mandatory settlement conference in Court. At that time, the Caddell Team agreed, on behalf of the Hernandez plaintiffs, to a settlement with Equifax and Experian for $15 million per defendant. [Chronology No. 37]. TransUnion agreed to the same amount on February 18, 2009, [*id.* No. 39], for a total financial sum of $45 million. The settlement reflects the decline in value of the case after plaintiffs' counsel were unable to present a unified acceptance of the $63 million offer that was on the table until Judge Carter's class certification tentative ruling. The White Plaintiffs opposed the $45 million settlement and the Wolf Team formally repositioned themselves as objector counsel.

As the Caddell Team had feared, once the objectors announced themselves and split off the plaintiffs' counsel group, years of bitter litigation ensued. The District Court approved the proposed monetary relief settlement in July 2011. [Dkt. 837]. The Wolf Team appealed, raising numerous objections, most of which were directed to disqualifying the Caddell Team as class counsel and seeking to appoint themselves to that role. *See Radcliffe v. Experian,* 715 F.3d 1157, 1162 (9th Cir. 2013) ("*Radcliffe I*") ("Objecting Plaintiffs give several arguments as to why the settlement was not fair, reasonable and adequate."). While the majority of the Wolf Team's appeal issues failed, they did score some points in the appeal. In *Radcliffe I*, the Ninth Circuit agreed with the Wolf Team that, because the incentive provision for class representatives was conditioned upon their acceptance of the settlement, it created a conflict of interest for the settling plaintiffs and their counsel. *Id.* at 1168. The Ninth Circuit noted, however, in overturning the District Court's approval of the settlement, that the case should "not go back to square one." *Id.*

Following *Radcliffe I*, the Wolf Team filed motions in the District Court to disqualify the Caddell Team as class counsel and replace them. The District Court refused to disqualify the Caddell Team, finding "no bad faith or improper motives behind the incentive provision." [Dkt. 956 at 29]. To the contrary, the District Court found that the Caddell Team's "experience, diligence, and good faith effort up to this point has been excellent," and that their "credentials and experience are significantly stronger [than the Wolf Team's] in class action and FCRA litigation." *Id.* at 32. In addition, the District Court took into account that the Caddell Team "had taken extraordinary steps to neutralize the effect of the ethical violation, including associating new counsel, disclaiming any fees for the conflicted representation, and agreeing to accept the costs of re-notice." *Id.* at 30.

The Wolf Team appealed this ruling to the Ninth Circuit, seeking to disqualify the Caddell Team as class counsel for a second time. In *Radcliffe v. Hernandez,* 818 F.3d 537, 546 (9th Cir. 2016) ("*Radcliffe II*") the Ninth Circuit affirmed the District Court, stating, "[A]lthough we did not address or consider the issue of disqualification in our first decision in this case, it is clear we did not believe the district court would be required to disqualify Hernandez Counsel as a result of our holding." The *Radcliffe II* court also quoted the District Court's language noting the "extraordinary steps" the Caddell Team had taken, including "agreeing to accept the costs of re-notice." *Id.* at 549.

In November 2016 the plaintiffs reached a new settlement with the defendant Credit Bureaus, and in April 2018 the District Court approved the new settlement over the Wolf Team's objections. [Dkt. 1135]. The District Court valued the financial settlement fund at approximately $44.2 million [*Id.* at 40]. Of the Caddell Team's $11,161,163.06 requested attorneys' fee, the District Court approved $8,262, 848.33. [*Id.* at 38].

Thereupon the Wolf Team made its third appeal to the Ninth Circuit. This time the Wolf Team argued that the new settlement was inadequate and that the Caddell Team had "created a conflict of interest by opting to 'repay' its debt to the class in new benefits rather than deducting the costs of re-notice from the fee award." *Radcliffe v. Hernandez*, 794 F. App'x 605, 607-08 (9th Cir. 2019) ("*Radcliffe III*"). The Ninth Circuit affirmed the District Court's approval of the settlement but remanded for reconsideration of the attorneys' fee award. *Id.* While the Ninth Circuit held that the settlement was fair and that the Caddell Team had "ably represented the class," it also "specifically note[d] *Radcliffe II*'s insistence that Settling Counsel pay the full cost of re-notice." [*Id.* at 608]. On remand, the District Court approved a base fee award of $11,161,163.06—the original amount the Caddell Team had requested—but subtracted $5,024, 427.40 to account for the costs of re-notice and an additional $567,284.91 for the costs of supplemental notice in 2009. [Dkt. 1187 at 3]. This left a net fee award of $5,569,450.75. *Id.* The Court ordered that any share of the fee to be allocated to the Wolf Team would be determined in this Arbitration. *Id.*

The Parties to this Arbitration have stipulated that any fees to which the Wolf Team is entitled will come from the monetary relief fee award rather than the fund reserved for providing financial relief to the class. [Dkt. 1158]. It is thus for this Tribunal to determine what percentage of the fee award, if any, the Wolf Team is entitled to receive—both for Mr. Wolf and Mr. Juntikka's pre-objection work, and for the Wolf Team's subsequent work as objectors.

III. Legal Analysis

As the Arbitrator wrote in the Preliminary Ruling on March 28, 2021, attorneys' fees in a class action derive from principles of equity. *In re FPI/Agretech Sec. Litig.*, 105 F.3d 469, 474 (9th Cir. 1997). In keeping with Ninth Circuit precedent, the Arbitrator will grant the Wolf Team's fee requests to the extent that Team "increase[d] the fund or otherwise substantially benefit[ted] the class members." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002). In doing so, the Arbitrator considers both the Wolf Team's contribution to the class and any harm the Wolf Team caused to the class.

A. The Wolf Team's Pre-Objection Contribution to the Class

The Arbitrator begins by acknowledging the positive contributions that Daniel Wolf and Charles Juntikka made to the class. First, Mr. Wolf worked extensively on substantive briefing at the early stages of litigation. In addition to identifying and preparing expert John Ulzheimer for his testimony, second chairing six depositions, and conducting research, Mr. Wolf substantially drafted several briefs and memoranda: opposing TransUnion's motion to dismiss; opposing the Acosta/Pike plaintiffs' motion to disqualify *White/Hernandez* counsel; opposing preliminary approval of the *Acosta/Pike* settlement; opposing Experian's motion for summary judgment; and supporting class certification. Mr. Wolf deserves recognition for his contributions to the briefing, and his other assistance, which clearly benefitted the class.

Having noted Mr. Wolf's laudable contributions, the Arbitrator finds that Mr. Wolf nonetheless overstates his role as "the architect of the *White/ Hernandez* Plaintiffs' legal theories and arguments." [Wolf Br. 2]. The members of the Caddell Team also clearly contributed substantially to the legal theories and the briefing. [*See, e.g.*, Caddell Decl. ¶¶ 33-35 (testifying that the Caddell Team provided much of the substance for Mr. Wolf's briefs)]. More important than counsel's own views of their contributions is the District Court's assessment: Judge Carter noted that Mr. Wolf and Mr. Juntikka "represent[ed] a small part of the legal team." [Rule 23(g) Order, Dkt. 956 at 30 (May 1, 2014)].

Mr. Wolf also argues that he was instrumental in convincing the plaintiffs' steering committee to oppose a settlement with Experian for injunctive relief only. Mr. Wolf provides evidence that he strongly opposed this deal with Experian. He wrote a memorandum explaining why the *White/Hernandez* Team could defeat the *Acosta/Pike* settlement without accepting Experian's offer, and he later implemented aspects of that memorandum in a motion, which he successfully argued in Court in January 2007. Mr. Wolf deserves credit for this work benefitting the class.

Nevertheless, Mr. Wolf oversells the narrative that he independently saved the class from an injunctive-relief only settlement. First, whereas Mr. Wolf argues that he took on "every member of the Group," as assessment of the full facts and circumstances reveal that some other members of the Group had decided against the Experian offer before Mr. Wolf sent his memo to the Group. The Group carefully considered its options, both before and after Mr. Wolf's memo, and the Group reached the decision not to entertain this offer from Experian.

At the arbitration hearing, Mr. Sobol candidly explained that, when the *Acosta/Pike* case was on the verge of settling, *White/Hernandez* counsel were in a stressful position and had to quickly and seriously consider their own settlement offer from Experian. In the Arbitrator's estimation, the Team's deliberations in 2006 proceeded as such conversations should among class counsel. Mr. Wolf's memorandum focused on whether "entering into the proposed non-cash settlement with Experian . . . would be a mistake"; he did not state that the Team would be breaching its fiduciary duties to the class by accepting a settlement with Experian, nor did he mention "objections" to the potential course of action. [Ex. J-6, Wolf Memorandum re: Proposed Experian Settlement (Nov. 28, 2006)]. And Mr. Sobol, despite raising concerns that Judge Carter would approve the *Acosta/Pike* settlement if he thought Judge Trotter "blessed" it, made clear that he would not let his own concerns interfere with the Team's tactics. [Ex. J-2, Sobol email to Wolf (Sept. 21, 2006) ("Well I disagree [that we don't have to worry about Judge Carter approving the *Acosta/Pike* settlement], but I am not going to flinch because of my view.")].

In short, the Arbitrator believes that, at the early stages of litigation, Mr. Wolf acted as a valuable member of a well-functioning Team.

Mr. Juntikka seeks the vast majority of his fees for his work conducting "the Juntikka Study" in 2004-2005, before litigation began. In conducting this study, Mr. Juntikka initiated requests for his bankruptcy clients' consumer reports, identified errors in the reports, and created databases logging the errors. [Juntikka Decl. ¶ 16].

The Arbitrator acknowledges and respects Mr. Juntikka's initiative to help his bankruptcy clients and finds that Mr. Juntikka's study provided at least some benefit in the early stages of the litigation. As the Wolf Team's brief points out, the District Court referenced Mr. Juntikka's study in three opinions: its decision denying TransUnion's motion to dismiss, its decision rejecting preliminary approval of the *Acosta/Pike* settlement, and its tentative order denying

Experian's motion for summary judgment. [Wolf Br. 20-21].

Nevertheless, the benefits of Mr. Juntikka's study extended only so far. At the summary judgment stage, which is the latest time the District Court referenced the study, evidence is viewed in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007). For a court to rule in the movant's favor, there must be "no genuine dispute as to any material fact." Fed. R. Civ. P. 56. Accordingly, Judge Carter's early references to the Juntikka study cited it as one factor that helped to create a dispute of material fact.

Judge Carter's statement in *Acosta v. TransUnion*, 240 F.R.D 564 (C.D. Cal. 2007), is somewhat revealing as to the weight of the Juntikka Study's benefits. In his twenty-four-page opinion, Judge Carter references Mr. Juntikka's study in a footnote on page 578. Although the Wolf Team's brief accurately quotes Judge Carter as stating, in reliance on the study, "it is eminently feasible that a jury could conclude Defendants' procedures were unreasonable," the Wolf brief omits the first half of the sentence.[6] [Wolf Br. 21]. In its entirety, the sentence reads, "At this juncture, the Court does not draw any conclusions of fact or of law from the Juntikka study, but merely notes that based on the only data the parties have produced on this issue, it is eminently feasible that

[6] The Tribunal has patiently let several instances of incorrect partial quotes and misstatements of case holdings by Mr. Wolf pass without comment. However, it has happened too often. Brief writing is persuasive advocacy only when the reader has confidence in the author's careful respect for legal authority cited as support.

a jury could conclude Defendants' procedures were unreasonable." *Acosta*, 240 F.R.D at 578, n.3. In other words, during early stages of litigation when Mr. Juntikka's data was the only data available, and when the court was not tasked with scrutinizing the study, it was a modestly helpful addition to the *White /Hernandez* Team's motions.[7]

B. The Wolf Team's Reasonable Pre-Objection Fees

After asserting their contributions to the class, Mr. Wolf and Mr. Juntikka argue that they should be compensated from the attorneys' fee fund an amount based upon simple arithmetic computations of comparative lodestar hours. In other words, the Wolf Team asks this Tribunal to add their reported lodestar hours, multiply those hours by their $900 per hour rate, and compare their lodestar to the Caddell Team's lodestar to derive a split of the attorneys' fees. Based on the history of this fifteen-year dispute, the Tribunal cannot fulfill its mandate to determine

[7] The Caddell Team, particularly Len Bennett, casts doubt on the value that Mr. Juntikka's study provided the class beyond these initial stages of litigation. Mr. Bennett argues that Mr. Juntikka misread many of the reports and failed to organize them coherently, and that Mr. Bennett's firm had to "re-review, reanalyze, and re-tabulate every single one of these reports" without the involvement of Mr. Juntikka or Mr. Wolf. [Bennett Decl. ¶ 31]. Additionally, Mr. Bennett argues that, even after his firm corrected all of the errors in Mr. Juntikka's study, the information had limited value because Mr. Juntikka could not provide examples of clients who had suffered demonstrable harm. According to Mr. Bennett, the Team "never turned any of the information from his study over to the Defendants, because it simply was not helpful." [Bennett Decl. ¶ 33].

how much Mr. Wolf and Mr. Juntikka benefitted the class simply by adopting their lodestar calculations.

First, and most importantly, this is an exceptional case in which the lodestar does not represent the parties' reasonable fees. The Tribunal has already decided that this fee will be based primarily on the benefit of counsels' actions to their client: the class. The number of lodestar hours that counsel have been required to expend because of the dissension in their ranks has been staggering. When questioned during the arbitration hearing, Mr. Wolf estimated that, over the fifteen-year duration of this litigation, the combined plaintiffs' counsel had expended $35-40 million in lodestar time in the underlying litigation. In comparison, the District Court valued the entire monetary settlement for the class (including three million in non-monetary benefits) at $44.2 million. [Dkt. 1187]. The total lodestar in this case, in other words, before subtracting time that did not benefit the class, nearly equals the entire value of the monetary judgment for the class.

Second, the Wolf Team's lodestar was not submitted to the District Court for any purpose in deciding the monetary settlement's attorneys' fee award, thus negating its value as a cross-check on the percentage of class recovery method of computing attorneys' fees.

And third, the Wolf Team did not deduct from its lodestar an allocation of the lodestar time that it has already been paid in the Injunctive Relief Settlement attorneys' fee distribution. Thus, comparison with the Caddell Team's lodestar figures, which did adjust for this prior payment, are an improper comparison. The Claimant bears the burden of proof, and the decision not to introduce evidence of its lodestar hours compensated in the Injunctive Relief Settlement attorneys' fee award, and thus adjust its lodestar hours for this prior payment, further reduces the persuasive value of the Wolf Team's lodestar in this matter.

In unfortunate reality, what the lodestar numbers actually do show is how much time was squandered throughout fifteen years of this bitter intra-counsel litigation. Counting hours in this case does not have the meaning that it usually does; it cannot provide the typical cross check on the counsel fee as a percentage of a fund when determining the value of counsel time in benefiting the class.

After carefully weighing all of the evidence in the record, the Arbitrator finds that the Wolf Team took some acts that benefitted the class and other actions that harmed the interests of the class. The Arbitrator's focus has been to weigh both beneficial and detrimental actions, to determine the net value to the class provided by the Wolf Team in deciding what portion of the attorneys' fee should be allocated to that Team. The benefits and detriments are most easily thought of as a ledger sheet, reflecting the benefits as pluses and the detriments as minuses. (The entitlement to objector fees after the class counsel committee fractured into Class Counsel and Objectors' Counsel will be separately evaluated below.)

On the plus side of the value ledger is the aggregate of Mr. Wolf and Mr. Juntikka's work on multiple briefs, contributions to the analysis of the *Acosta/Pike* settlement, and significant role in explaining to the Executive Committee of class counsel why an injunctive-relief-only settlement with one defendant was not wise. On the minus side of the value ledger, as will be set forth below, was the Wolf Team's determination to pursue an extremely low-odds effort at an extreme dollar win, which obstructed a unified approach to negotiation of a far more valuable settlement than was ultimately obtained, despite judicial warnings not to do so. This myopic focus ultimately harmed the class, and does not represent the exercise of fiduciary duty to the class.

The documents and testimony show a picture of Mr. Wolf as recognizing the low odds of this "big dollar focus," but choosing to do it anyway. As the Court found, the Wolf Team had far less experience in class action representation than the Caddell Team, and this may have led to the "damn the torpedoes" approach. Experienced litigators understand that a fiduciary duty to the class is not to swing for the fences, as a gamble for a big win, but rather to evaluate the risks of such an approach and instead negotiate prudently when settlement opportunities arise. While the words "fiduciary duty to the class" appear in Mr. Wolf's memoranda, he seemed to misunderstand the concept. "Fiduciary duty" embodies the concept of prudence, but Wolf used that phrase instead as a rallying cry for his risky approach to litigation, ignoring the warnings from the Judge and entreaties from Class Counsel to join with them in negotiating a good settlement when the time was ripe to do so.

From the earliest stages of the litigation, Mr. Wolf and Mr. Juntikka had stars in their eyes about the value of the case, compared with the more realistic approach to value shown by the Caddell Team. There is nothing inherently wrong with attorneys having different views. For example, a constructive dialogue among differing opinions helped the White/Hernandez plaintiffs to defeat the *Acosta/ Pike* settlement as a Team and achieve groundbreaking injunctive relief. That work by the Wolf Team benefitted the class; and it was largely compensated in the $1.25M in attorneys' fees distributed to the Wolf Team in connection with the injunctive relief settlement.

But when it came to the monetary demand, by contrast, the Wolf Team's determination to insist upon absurdly high dollars, despite knowing that they had low odds of winning them, harmed the class. As Judge Carter stated bluntly, Wolf and Juntikka were "unwilling to entertain any alternative." [Dkt. 956 at 31]. Judge Carter first warned plaintiffs' counsel orally "not to be little pigs." For counsel not to heed such strong language is naive, and does not serve the class. Later, Judge Carter wrote that the Wolf Team was not "willing to investigate all avenues to serve the class's best interests," in denying the Wolf Team's motion to disqualify the Caddell Team as class counsel and have themselves named to that role. [Dkt. 956 at 31]. And as the Ninth Circuit recognized, Judge Carter "knew more about the parties' litigating positions than anybody." *Radcliffe III,* 794 F. App'x at 607.

The evidence in the record underscores the accuracy of Judge Carter's assessment of the Wolf Team's stubborn insistence on pursuing absurdly high dollars at the risk of no settlement at all. In total, due almost entirely to this position of the Wolf Team, settlement efforts failed despite an unprecedented <u>eleven</u> mediations, as the dollar offers to the class shrank dramatically. And when the Wolf Team split off and became objectors, the years of continued litigation costs, with three trips to the Ninth Circuit and back to the District Court, served to delay the monetary relief needed by the class.

The mediators were highly experienced: seven mediations were conducted by the Honorable Lourdes G. Baird, and another four mediations were handled by esteemed mediator Randall Wulff. Throughout this time, before officially becoming objectors, the Wolf Team remained steadfast in ignoring the case valuation from the Caddell Team, the recommendations of the esteemed mediators, and even the unusually pointed words of District Judge Carter, who was presiding over the case.

The record demonstrates that Judge Baird told counsel that, in her estimation, the case could settle for $80-100 million. Ms. Chapman's handwritten notes reveal that Judge Baird presented this estimate on March 4, 2008 at the sixth mediation [Ex. J-20]. And Mr. Niño's emails to Mr. Caddell and Ms. Chapman in March and April 2008 further relayed Judge Baird's valuation of the case and demonstrate that Mr. Niño had told that information to Mr. Wolf. [Exs. J-22; J-26].

The Caddell Team urged the Wolf Team to work with Judge Baird to reach this settlement. Caddell & Chapman, in particular, had unique insight into the value of this FCRA case. In April 2008, Mr. Caddell and Ms. Chapman worked on a different FCRA case that, in their estimation, was a stronger case than the *White/Hernandez* litigation. The magistrate judge overseeing that settlement valued it at $50-$70 million.[8] [Caddell Br. 15-16]. From that experience,

---

[8] Ultimately, that case settled for $75 million, which to the Caddell Team's knowledge, is the largest settlement in FCRA

the Caddell Team understood that a *White/ Hernandez* settlement for $80-100 million would be an outstanding result for the class. And, as stated above, Judge Carter had urged all plaintiffs' counsel to heed the advice of Judge Baird, when he bluntly admonished them to avoid being greedy.

But, rather than accepting guidance from Judge Baird, even in the face of Judge Carter's harsh reprimand, Mr. Wolf thought he knew better, calling Judge Baird "a woman who exhibited little grasp of the substance and strength of our claims." [Ex. J-30, Email from Daniel Wolf to Michael Sobol (Sept. 28, 2008)]. This epitomizes the Wolf Team's lack of reality and stubborn refusal to comprehend the quintessential component of fiduciary duty to the class: prudence. Instead, Mr. Wolf penned an extensive memorandum arguing that a settlement in the range of $20-$30 million per defendant (totaling $60-$90 million) would be a breach of their "fiduciary responsibilities to the class." [Ex. J-23, Wolf Settlement Memo at 5 (Apr. 7, 2008)].[9] And when Mr. Wolf's memorandum

history. [Caddell Br. 15]. The *White/Hernandez* Settlement, at $45 million, is the second largest. [*Id.* at 2].

[9] At the arbitration hearing, Mr. Wolf argued that his issue was not with the total value of the settlement but with the value per plaintiff, and that he wanted to reduce the size of the class to lower the total settlement value. While at different times in the early stages of the litigation, Mr. Wolf argued for different class structures, including a smaller class, his later words make it quite clear that his real basis for scuttling the chances to settle at $80-100M was that he wanted a vastly bigger pot of money. Mr. Wolf's email to outside counsel on January 27, 2009 states, "Off the record, [Judge Carter] chastised us for not [reducing the size of the class], but there is really no principled basis for dividing the class up." [Ex. J-38]. And in the attached memo-

failed to convince his co-counsel to ignore their valuations of the case, Judge Baird's valuation of the case, and Judge Carter's valuation of the case, he contacted other counsel known for working with objectors, without the permission or knowledge of the Executive Committee, and shared confidential settlement information with them. Mr. Wolf reiterated in his email and memorandum to outside counsel that he had "objections to the proposed settlement" [Ex. J-29, Wolf Email and Memorandum to Deepak Gupta at 2 (Apr. 22, 2008)]. He insisted that it was counsels' "fiduciary duty" to "roll the dice" because no one "could value [their] chances [of winning the case] at below 25%." *Id.* at 8. This is simply <u>not</u> what honoring one's fiduciary duty means. Rolling dice and scuttling settlements by implicitly threatening to become an objector, in order to attempt to be named class counsel and proceed with litigation that has low odds of success at achieving high dollars—-only to actually yield a much worse result—is not an exercise of proper fiduciary duty. Rather, it is an incantation of a bold phrase to make oneself appear righteous, but divorced from its true meaning.

Because the $80-100 million settlement range died before it could be embodied in a real offer, the Arbitrator notes, but does not quantify, the harm that the Wolf Team caused the class by obstructing that settlement opportunity. However, the Wolf Team's conduct not only led to the loss of that potential opportunity to settle, but also forced the Team to continue

---

randum, Mr. Wolf wrote that he found it "hard to put a settlement value on these cases of below $200 million each." [Ex. J-29, Wolf Email and Memorandum to Deepak Gupta at 8 (Apr. 22, 2008)].

the expense of litigation for another year, and even then to lose a later firm offer for $63 million.

Every member of the Caddell Team testified that, on January 22, 2009, the defendants offered to settle the case for $63 million at a mediation with Randall Wulff—the tenth mediation overall. They testified that every member of the Team wished to accept the offer except for Mr. Wolf and Mr. Juntikka. And Mr. Sherman testified that, on the morning of January 26, 2009, before Judge Carter issued his tentative decision denying class certification, Mr. Sherman urged Mr. Wolf at the courthouse to reconsider. [Sherman Decl. ¶ 14].

In briefing, the Wolf Team argues that "no such 'firm' offer was ever made." [Wolf Br. 29]. The Arbitrator does not find that statement to be either correct or persuasive. The Wolf Team also urges that they thought the offer was for $60 million rather than $63 million, which is immaterial. Denying that there ever was a firm capped offer is not credible, in light of the totality of the evidence. It is also inconsistent with the Wolf Team's responses to Respondents' Requests for Admissions. There, the Wolf Team admitted that "Wolf and Juntikka refused to accept an offer that they understood was for $60 million." [Ex. J-45, No. 11; *see also* Wolf Arbitration Slides from March 12, 2021, Slide 2]. The Wolf Team further admitted that "Sherman urged them to accept an offer that Wolf and Juntikka understood was for $60 million." [Ex. J-45, No. 13].

After hearing all of the evidence, the Arbitrator finds that the Caddell Team urgently tried to present a unified agreement to accept the $63M firm offer before Judge Carter issued his tentative opinion on class certification, to avoid the risk of losing that motion, because that loss would kill that settlement offer. The Arbitrator further finds that the defendants' offer of a capped fund in the amount of $63 million was told to the Wolf Team at a time when their acceptance of it would have resulted in class financial recovery of that amount. The Caddell Team tried in vain to convince the Wolf Team to agree with the majority so that they could tell Judge Carter that this settlement offer was agreed in principle, and thus deter a potentially adverse ruling on class certification.

Once again, the Wolf Team exhibited the same intransigence that has characterized this litigation: it caused the loss of the second settlement opportunity, this time at $63M. Undeterred by the loss of the class certification motion, and the resulting diminution in the settlement value of the case, the Wolf Team focused only on its own increasingly futile hope of litigating to a big payday. Wolf's reaction to the adverse ruling was that the denial of class certification would be "vulnerable on appeal." [Ex. J-38, Wolf Email to Wolfman (Jan. 27, 2009)]. This view was itself naive, because, as co-counsel warned them, and as the Ninth Circuit eventually wrote, "rulings on class certification and other issues . . . would be reviewable only on a deferential standard of review." *Radcliffe III,* 794 F. App'x at 606. With the issuance of Judge Carter's tentative ruling denying class certification, the $63M offer collapsed. Another settlement opportunity—this one a firm offer—was lost by the class that the Wolf Team represented.

The remaining argument raised by the Wolf Team is that the Caddell Team shares responsibility for the evaporation of the $63 million offer. The Wolf

Team argues that the Executive Committee could have outvoted Mr. Wolf—and, moreover, that the Caddell Team had a fiduciary duty to outvote him 4-1 if the Caddell Team felt that a settlement was in the best interests of the class. While the Caddell Team had the votes to do so, they cannot be faulted for seeking to find consensus to keep the plaintiffs' counsel team from fracturing; as sophisticated class counsel, their testimony is persuasive that they foresaw that outvoting the Wolf Team would surely lead to that schism, followed by slow, endless and costly objector litigation. The

Caddell Team's effort to prevent an objection from within the plaintiffs' counsel ranks did not cause, in whole or in part, the loss of the settlement offers. Unity was highly valuable to the class. Wolf had repeatedly raised "objections" to settlements even as high as $100 million; had argued that agreeing to a settlement below $100 million would be a "breach of fiduciary duty to the class"; and had gone behind the Caddell Team's back to disclose the confidential settlement information to outside counsel known to work with objectors. The Caddell Team saw all the signs that the Wolf Team was considering seceding from the plaintiffs' counsel group to object to settlement. And while everything appears clearer in hindsight, the Arbitrator would be hard-pressed to say that the Caddell Team was unreasonably fearful of the prospect of objector litigation, now that three objections and three appeals have dragged on for twelve years, and driven the lodestar to astounding levels for a case of this value.

Even if the Caddell Team thought that they could defend the $63 million settlement over the

Wolf Team's objections, the Caddell Team also had to account for the time value of money to the members of the class, who were their clients. As Mr. Bland explained at the hearing, short-term money has special value for low-earning class members who are recovering from bankruptcy. Therefore, quick and uncontested settlements provide real value to the class, by providing money at the time when the clients really need those funds to regain their footing financially. The Caddell Team's duty to the class, in other words, was not only a matter of how much money they could obtain for the class, but also a matter of how efficiently they could obtain it. Bringing Mr. Wolf and Mr. Juntikka on board was part of the Caddell Team's necessary calculus, and their inability to convince the Wolf Team to stay with the plaintiffs' counsel group and agree to the $63M settlement does not lay blame for the loss of this settlement opportunity at their feet.

To be clear, all counsel had a fiduciary duty to exercise independent judgment in the best interests of the class. The flaw here was the Wolf Team's insistence on a huge dollar settlement, without the prudent judgment to listen to the signals from the District Judge—not to mention highly experienced mediators in a dozen mediations. As the Ninth Circuit wrote, the Wolf Team's "optimistic valuation . . . was undercut by substantial litigation risks." *Id.* And the harm that clinging to this "optimistic valuation" would cause the class was foreseeable to everyone, except perhaps Mr. Wolf and Mr. Juntikka. The Caddell Team properly recognized that "rolling the dice" with low odds, at the expense of the second largest FCRA settlement in history, is hardly an exercise of fiduciary duty. Nor is relying on overturning a district court under an "abuse of discretion" standard of review.

The Arbitrator is not punishing the Wolf Team for exercising independent judgment that differs from former co-counsel, the mediators, and the District Court. The Arbitrator does not question their ethics. Rather, it is the pursuit of an imprudent strategy—one that elevated dollars over the likelihood of winning anything—that is at the heart of the issue in this case. The question in this fee dispute is not whether the Wolf Team acted ethically; the question is whether the Wolf Team's decisions—regardless of motives—benefitted the class.

The Arbitrator considers the weight of the evidence. That evidence has persuaded the Arbitrator that defendants made a firm settlement offer for $63 million, prior to Judge Carter's issuance of a tentative decision on class certification. The evidence is persuasive that Caddell Team members begged Wolf and Juntikka to join them in accepting it at a time when this information could have been conveyed to Judge Carter before he issued his tentative denial of class certification. And the inference drawn from this evidence is that Judge Carter's receipt of this information on January 22, 2009 would have prevented the issuance of the adverse decision. Yet Mr. Wolf's individual demands dictated a Hobson's choice for class counsel: either settle without the Wolf Team and face years of objector litigation or have no settlement in principle to inform Judge Carter about, and thus face the risk of an adverse decision on class certification.

As a result, on January 26, 2009, in keeping with his prior admonition that "greedy little pigs" can get hurt, Judge Carter issued a tentative order denying class certification. Then the defendants lowered their offer from $63 million to $45 million, which is about where the case settled. This loss of $18 million dollars directly harmed the *White/ Hernandez* class. No matter how much pre-objection work the Wolf Team performed, there is simply no way for the Wolf Team's positive contributions to make up for that $18 million loss. And this loss does not even include the lost opportunity to settle for between $80-$100 million, one year earlier.

C. The Wolf Team's Appraisal of its Pre-Objection Lodestar

As stated above, the lodestar in this case is not a good measure of the Wolf Team's contributions to the class. Moreover, even if this Tribunal sought to use the Claimant's lodestar as a cross check, the Claimants have failed to present the Tribunal with a reasonable lodestar valuation. *See Ellerd v. County of Los Angeles,* No. 05-cv-1211 (C.D. Cal. Feb 4, 2010) at 10 ("the attorneys bear the burden of proof in establishing the reasonableness of their fees").

Most of the valuable work done by Wolf and Juntikka was in the early stages of the case, and prior to the injunctive relief settlement. And the record shows that the injunctive relief settlement has already remunerated Mr. Juntikka and Mr. Wolf for a great many of their hours, as the District Court had noted. It is undisputed that, of the $5,671,778.68 granted to plaintiffs' attorneys for their fees pertaining to the injunctive-relief settlement, Mr. Wolf and Mr. Juntikka received $1,156,301.00, which was the largest payout to any single firm. Yet, the Claimant never submitted an allocation of its lodestar hours to show the hours remunerated by the injunctive relief attorney fee already paid to them. Thus, the lodestar hours submitted as evidence lack an essential allocation method, where a significant part of the case has already been compensated. The Wolf Team argues that its contributions added both to injunctive relief and monetary relief for the class. While this may be true, it does not allow Claimants to double-count their hours and obtain reimbursement twice for the same lodestar hours. They did not present any method of even partial allocation.

In this dispute about the monetary-relief attorneys' fees, the Caddell Team subtracted over $5 million for lodestar work allocated to the injunctive relief settlement. [Ex. J-44]. After subtracting this number, the Caddell Team submitted $13,077,980.21 in lodestar to the District Court to cross check its monetary relief fees [Dkt. 1187], and the District Court found that the Caddell Team's hours were "reasonable, necessary and greatly benefited the Class." [Dkt. 1135 at 37].[10] By contrast, Mr. Wolf stated at the Arbitration hearing that, when the District Court conducted a lodestar cross check for the injunctive-relief settlement, the Wolf Team submitted "all" or "almost all" of its hours; yet the Wolf Team did not

---

[10] The Wolf Team asks the Arbitrator to deduct from the Caddell Team's lodestar. Addressing the Caddell Team's lodestar would have no impact on the fee allocation, and in any event, the Tribunal is loath to second-guess work that the District Court expressly approved after "each of the Class Counsel firms submitted declarations including summaries breaking down the time expended by each individual timekeeper for whom compensation is sought." [Dkt. 1135 at 34].

submit any hours for the lodestar cross check with respect to the monetary relief settlement. [Dkt. 1187]. In light of these facts, the logical inference is that the Wolf Team had already received remuneration for its pre-objection lodestar. The Arbitrator should have received a submission with a properly reasoned method of allocation of lodestar hours that had already been submitted to the District Court to support injunctive relief compensation. Regardless of the reasons why this was not done, it is the Claimant's burden of proof to support a claim for lodestar-based attorneys' fees. The Wolf Team has failed to meet its burden to prove the number of hours that can fairly be allocated to the monetary-relief settlement, without double counting hours that were already submitted to the District Court in seeking attorneys' fees for the injunctive relief settlement.

After accounting for the $18M harm the Wolf Team caused to the class by obstructing a $63 million settlement before it dived down to $45 million—and taking solace in the fact that the Wolf Team already received over $1 million for the value of its pre-objection hours toward the injunctive relief settlement —the ledger sheet of benefits to the class minus costs to the class stay firmly in negative value to the class. The Arbitrator does not award the Wolf Team further pre-objection fees beyond those already paid in the prior settlement because its work that benefitted the class was worth less than the $18 million it cost the class, even without applying a monetary deduction for the loss of the potential settlement in the $80-$100 million range that had been recommended by Judge Baird. The Arbitrator's North Star is benefit to the class, and unfortunately, the Wolf Team's strategy led to a monetary loss to their clients that far outweighed their work's monetary benefits. This is unfortunately what happens when an imprudent strategy is chosen and never reevaluated as events unfold.

D. Radcliffe I Objector Fees

The Arbitrator begins the discussion of objector fees by noting that the $18 million harm that the Wolf Team caused to the class could be fairly held to obviate these fees as well. The Arbitrator has decided, nevertheless, to analyze objector fees on a blank slate, so that the Wolf Team—including new counsel Boies, Schiller, Flexner, LLP—can be fairly and independently compensated for their work as objectors. Because the parties are fully familiar with the procedural history of the three separate appeals to the Ninth Circuit, the full history will not be set forth in detail. Rather, the primary focus will be the value provided to the class as a result of these appeals.

The Ninth Circuit vacated the initial class settlement in *Radcliffe I,* ruling in favor of the Boies-Wolf objectors on one of their multiple arguments. That appeal was clearly motivated by the goal of disqualifying the Caddell Team as class counsel and being appointed as replacement class counsel. When the case was remanded to the District Court, Judge Carter used strong language in retaining the Caddell Team as class counsel. The Court was impressed with the experience of the Caddell Team, was not favorably impressed by the Wolf Team, and did not feel that the conflict of interest was of sufficient magnitude to disqualify the Caddell Team.

However, the one issue on which the Boies-Wolf Team won in that first appeal did indirectly result in some benefit to the class. Once it was clear that the Caddell Team were retained as class counsel, the parties returned to the negotiating table and reached an amended settlement that the District Court valued at $4 million more than the original settlement. The additional value includes $1 million in monetary value and $3 million in non-monetary value. [Dkt. 1135]. Mr. Wolf, Mr. Juntikka, and Mr. Carpinello now seek a share of the attorneys' fees to reflect this added value.

The Caddell Team responds that the Wolf Team waived its right to attorney fees for this added value after their "conflict of interest" objection was sustained by the Ninth Circuit. According to the Caddell Team,

> Wolf represented that he had discussed the issue with George Carpinello, and they did not anticipate filing a motion for objectors' fees. Mr. Caddell then stated in open court that the parties, in their negotiations over their Stipulation to arbitrate attorneys' fee disputes, had discussed "whether there would be a petition for fees with respect to the original objection." He noted that 14 days after the Court entered the Amended Judgment "would be the deadline for any further attorneys' fee motions."

[Caddell Br. 40-41]. In addition, the Caddell Team argues that "Mr. McLoon, counsel for Experian, advised that Boies Schiller also agreed to the Stipulation's provisions regarding objectors' fees." [*Id.* at 41].

The Wolf Team's responsive brief in this Arbitration does not dispute that they made such a representation. Rather, the Wolf Team argues that their stipulation not to seek objector fees was limited to the initial judgment entered by the District Court, and then focuses its argument on the filing deadline for objector fees after the amended judgment. The Wolf Team argues that the District Court's final fee award on July 17, 2020 was an amended judgment, to which the prior stipulation did not apply. They further argue that the Wolf Team had 14 days from the 2020 order (rather than the 2018 order) to seek its *Radcliffe I* objection fees—regardless of their prior representation that no objector fees would be sought for the *Radcliffe* I objection, as Mr. Caddell had earlier stated in open court.[11]

The Tribunal need not reach the issue of whether the 2020 order restarted the period for filing *Radcliffe I* objections. This argument elides the most basic principle of good faith and honesty in counsel's representations made to co-counsel and to the Court, by sitting quietly when Mr. Caddell informed the Court that the Wolf Team was not seeking objector fees for this same objection. The question is not about counting days from the judgment entered in 2020. Rather, the issue is whether the Wolf Team was entitled to rescind its representation that no objector fees would be sought for the same value add that it had earlier foresworn, and whether the Wolf Team

---

[11] The Boies Team cites to Fed. R. Civ. P. 54 and the corresponding Advisory Committee Notes for the proposition that a "new period for filing will automatically begin if a new judgment is entered following a reversal or remand by the appellate court," and that a "judgement" includes "any order from which an appeal lies." [Wolf Resp. Br. 23-24]. The Caddell Team disputes that the 2020 attorney fee award was an "amended judgment." [Caddell Resp. Br. 40].

ever informed the Caddell Team that it no longer stood by its representation, on which the Caddell Team had relied. Based on the evidence in the record, the Arbitrator finds that the Wolf-Boies Team represented that they would abstain from seeking *Radcliffe I* objector fees and never altered that representation. If the Wolf Team felt that it had a basis to rescind the representation, on which co-counsel had relied, it had an affirmative duty to so state at a time when the Court could have decided whether it had the right to do so. The Boies-Wolf Team remained silent on this issue for two years. Having never sought leave to rescind its representation to the Caddell Team, and implicitly to the Court, that no objector fees would be sought for the first objection, the Boies-Wolf Team waived its right to seek such fees and is estopped to do so now.[12]

---

[12] There is a second and independent basis for denying attorneys' fees to the Wolf Team for the small increase in the settlement after the first objection. The Wolf Team cannot fairly claim that they added monetary value to a settlement's non-monetary terms that they themselves described as adding no value to the class. [Caddell Br. 44; Caddell Resp. Br. 45]. As the Wolf Team admits, in 2018 the Team "did not wish to dilute its argument that the non-monetary benefits of the Amended Settlement had no monetary value by arguing, in the alternative, that it was entitled to a percentage of any value those benefits might ultimately be assigned." [Wolf Resp. Br. 25, n.9]. That was a perfectly logical decision for the Wolf Team to make. Mr. Carpinello argued before the Ninth Circuit in *Radcliffe III* that the Caddell Team had fabricated the additional relief in the Amended Settlement for its own monetary gain, creating a conflict with the class and warranting the Caddell Team's disqualification. The Boies-Wolf Team chose the argument that they hoped would win them the role of class counsel, and they argued that the increase in settlement value was illusory as a way of trying to portray the Caddell Team as seeking self-

E. *Radcliffe III* Objector Fees

In its final claim, the Wolf Team requests 25% of approximately $5 million in re-notice costs that the Ninth Circuit, in *Radcliffe III*, found the Caddell Team was responsible for bearing. *Radcliffe III*, 794 F. App'x at 608.

For objecting counsel to qualify for fees, the objector must "confer a direct financial benefit for the class." *Eisen v. Porsche Cars N. Am., Inc.,* 2014 WL 439006 (C.D. Cal. Jan. 30, 2014). Therefore, the Arbitrator must determine whether the Wolf Team's objections directly brought about the reduced attorney fee award, "substantially benefit[ting]" class members by saving the class from paying re-notice costs. *Vizcaino*, 290 F.3d at 1051.

This issue is the closest issue before the Tribunal, because it has such a convoluted causation. In chronological order, the following events happened:

---

enrichment by according value to the non-monetary terms. To ask for a portion of those fees for themselves would have undermined their argument. But having argued extensively that the Caddell Team contrived the additional value in the Amended Settlement, the Wolf Team cannot now say that its own words to the Ninth Circuit are not true, in order to take advantage of the Caddell Team's and the District Court's added valuation. Finally, the Boies-Wolf Team's $1.35M demand is excessive. The objection to a conditional incentive provision in the original settlement was only one of nine objections that it raised—the primary objection being that the fee award provided unlawfully inadequate relief. And after the district court vacated the settlement, it was the Caddell Team, not the Boies-Wolf Team, that negotiated with the defendants to achieve the additional value.

(1) When the District Court rejected the Wolf Team's efforts to disqualify the Caddell Team as class counsel, the District Court noted that the Caddell Team "had taken extraordinary steps to neutralize the effect of the ethical violation, including . . . agreeing to accept the costs of re-notice." [Dkt. 956 at 30]. When the Ninth Circuit affirmed the District Court's ruling, it quoted that language. *Radcliffe II,* 818 F.3d at 549.

(2) After being reappointed class counsel and reaching a settlement with the defendants, the Caddell Team requested $11.161 million in fees from the District Court. The Wolf Team objected that the Caddell Team had broken a commitment to "pay any notice costs associated with this Settlement out of their attorneys' fees." [Dkt. 1135 at 27]. Judge Carter, however, after reviewing the hearing transcripts, found that the Caddell Team had never made such an unconditional promise. [Dkt. 1135 at 27-28]. He awarded $8,262, 848.33 in fees, which accounted for only some of the re-notice costs. [Dkt. 1135 at 38].

(3) In its appeal of Judge Carter's rulings, the Wolf Team did not argue to the Ninth Circuit that the Caddell Team had promised to pay the full cost of re-notice. [*Radcliffe III* Oral Argument (Nov. 7, 2019)]. Rather, Mr. Carpinello argued that the Caddell Team had created a conflict with the class because the Caddell Team's promise to pay re-notice costs was <u>contingent</u> on improving the settlement, and that the only adequate remedy was to

disqualify the Caddell Team as class counsel. This argument reflects the true goal of the Boies-Wolf Team—to become class counsel and take over the litigation, not to reduce the fee award.

(4) A judge on the Ninth Circuit asked whether the Caddell Team should shoulder re-notice costs, if the Ninth Circuit deemed it necessary to finalize the settlement. In response to that query, Mr. Carpinello argued that a fee reduction was insufficient to cure the alleged conflict.[13] It was Mr. Bland, arguing for the Caddell Team, who answered that the Caddell Team would bear those costs.

(5) The *Radcliffe III Court*, *sua sponte*, "specifically note[d] *Radcliffe II*'s insistence that Settling Counsel pay the full cost of re-notice." *Radcliffe III*, 794 F. App'x at 608. Even if *Radcliffe II* relied on an erroneous statement by the District Court, or an incorrect understanding of what the District Court had ruled, *Radcliffe II* made an unequivocal statement and *Radcliffe III* invoked it as the final ruling of the Ninth Circuit on this issue.

---

[13] The Caddell Team further argues that Mr. Carpinello, at the *Radcliffe III* hearing, protested *against* a reduction of attorney fees. Having listened to the argument, the Arbitrator believes that Mr. Carpinello's argument was that a fee reduction was insufficient to cure the alleged conflict. Nevertheless, Mr. Carpinello's argument highlights that the Wolf Team's ultimate goal was not to reduce the attorney fee award, but rather to disqualify class counsel.

In considering these facts, the Tribunal is guided by *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948 (9th Cir. 2009) ("*Rodriguez I*"). There, the district court had denied fees to Objector counsel, noting that "Objectors' counsel 'did not add anything' to its decision to deny incentive awards." *Id.* at 963. The Ninth Circuit reversed and remanded "for the district court to reconsider the extent to which Objectors added value," noting that the "court was not focused on the incentive awards before Objectors took exception to them." *Id.* Subsequently, in *Rodriguez v. Disner*, 688 F.3d 645, 660 (9th Cir. 2012) ("*Rodriguez II*"), the Ninth Circuit clarified that objectors should not be denied fees merely because "the court relied on its own analysis."

To be sure, *Rodriguez* is not entirely analogous to this case. In *Rodriguez*, the district court agreed with objectors, whereas here, the District Court did not accept the objectors' argument and the objectors subsequently modified their argument on appeal. Nevertheless, like the objectors in *Rodriguez*, the Wolf Team did cause the Ninth Circuit to "focus[] on" the re-notice cost issue—the fact that the "court relied on its own analysis" notwithstanding. *Rodriguez I*, 563 F.3d at 963; *Rodriguez II*, 688 F.3d at 660. And although the Caddell Team did offer to reduce its fees, the Caddell Team admits that it was "sensitive to White Objectors' insistence that all costs of notice must be absorbed by Class Counsel based on an alleged prior commitment." [Caddell Br. 30]. Therefore, while the causal pathway is somewhat circuitous, the Arbitrator finds that the Wolf Team should receive an appropriate allocation of attorneys' fees for the final ruling of the Ninth Circuit that holds the class monetary fund harmless from the re-notice costs.

What remains is to determine how much to award the Wolf Team. The Arbitrator is not persuaded by the Wolf Team's argument that objector fees are presumptively 25%. To be sure, there are passages in the *Rodriguez* series of cases to the effect that "objectors may claim entitlement to fees on the same equitable principles as class counsel," *Rodriguez II*, 688 F.3d at 658, and the Ninth Circuit has "decline[d] to create a distinction between class and objector's counsel on fee calculation." *Rodriguez v. West Publ. Corp.*, 602 F. App'x. 385, 386 n.1 (9th Cir. 2015). The Arbitrator is, by this ruling, applying the same principle: value to the class.

However, no case has been brought to the Arbitrator's attention in which a court in the Ninth Circuit has found that 25% is the presumptive benchmark for objector fees. On the contrary, the Caddell Team has submitted evidence that nearly all objector fee awards in the Ninth Circuit are significantly lower than 25%. [Ex. J-25]. In *Rodriguez v. West Publishing Corp.*, No. 05-cv-3222, Dkt. 563 (C.D. Cal. August 7, 2009), for example, the district court awarded objectors 5% of "consequent savings" to the class.[14]

---

[14] The additional cases the Wolf Team cites for the proposition that the "25% of the common fund benchmark" is presumptively appropriate for objector fees, including *Jasper v. C.R. England, Inc.*, No. 08-cv-5266, 2014 WL 12577426 (C.D. Cal. Nov. 3, 2014), likewise do not substantiate that proposition. The Arbitrator notes this is not the only time in the course of the arbitration that the Wolf Team has overstated the holdings of cases. The same issue was noted in a prior ruling. While zealous advocacy

Here, the Arbitrator awards the Wolf Team $628,053.43 of the $5,024,427.40 in re-notice costs, inclusive of an appropriate allocation of costs. When one considers that the Caddell Team already paid $70,000 to the Wolf Team from the monetary relief attorneys fee fund for pre-objection expenses, (beyond the $1.156 million already recompensed by the Injunctive Relief Settlement), the total value allocated to the Wolf Team from the monetary relief attorneys' fee fund is actually larger than the amount awarded in this arbitration. It leaves the Caddell Team with slightly under $5 million since the Caddell Team has additionally paid for re-notice costs. The Arbitrator hopes that all counsel move forward from here, with lessons learned, to other cases where clients' interests are considered with prudent judgment. To that end, the Arbitrator takes note of Mr. Carpinello's submission of information about the several other cases in which Mr. Juntikka teamed up with the Boies firm to obtain recoveries on behalf of clients who are rebuilding their lives after bankruptcy.

F. Conclusion and Award

For the foregoing reasons, the Arbitrator, having been duly sworn, hereby enters an Award in the amount of $628,053.43, from the attorneys' fee fund arising from the monetary relief settlement, which shall be due and payable by the Caddell Team to the Wolf Team within 14 days of the date of this Award. All counsel will bear their own attorneys' fees and costs for this Arbitration.

---

is appropriate, the boundaries of what can be argued should certainly be known to counsel.

The administrative fees and expenses of the American Arbitration Association totaling $16,925.00 shall be borne as incurred, and the compensation and expenses of the arbitrator totaling $239,344.25 shall be borne as incurred.

This Final Award constitutes a full and final determination of all claims and requests for relief submitted in this Arbitration. Any facts adduced as evidence, as well as all legal positions asserted, were duly considered by the Arbitrator whether or not specifically mentioned in this Final Award. Nothing in this Final Award is intended to adjudicate or settle any claim of the parties not subject to the Arbitrator's jurisdiction, nor any claim by or against any person or entity not party to this arbitration. The Final Award will be enforceable to the full extent whether signed electronically or by hand.

So Ordered by the Tribunal on this 27th day of June, 2021.

/s/ Hon. Faith S. Hochberg
Arbitrator

I, Hon. Faith S. Hochberg, so hereby affirm upon my oath as an Arbitrator, that I am the individual described herein and who executed this instrument, which is the FINAL AWARD.

/s/ Hon. Faith S. Hochberg

6/27/2021
Date

CO-COUNSEL AGREEMENT (OCTOBER 25, 2005)

1. Pursuant to this CO-COUNSEL AGREEMENT ("Agreement"), Lieff Cabraser Heimann & Bernstein, LLP ("LCHB"), Charles Juntikka & Associates ("CJA") and Daniel Wolf (collectively, with any other lawyers or law firms that may sign this Agreement at a later date, referred to hereinafter as the "Firms") agree to associate to provide for the representation of all named plaintiffs and the class(es) they will seek to represent with respect to their claims against three credit reporting agencies—Equifax, Experian and Trans Union—arising out of the failure of those agencies to comply with the Fair Credit Reporting Act ("FCRA") in relation to credit reporting on individuals who have filed for bankruptcy.

Roles of Each Firm

2. The Firms agree to form an Executive Committee that shall be responsible for making all significant decisions regarding the prosecution of the case or cases including, but not limited to, decisions concerning pleadings and other court filings, discovery, selection of expert witnesses, trial issues, scheduling matters, the division and assignment of work, the addition of other firms to jointly represent the named plaintiffs and the class(es), and settlement' negotiations. The Executive Committee shall consist of two attorneys from LCHB, one of whom shall serve as Lead Counsel for the litigation, Charles Juntikka of CJA, and Daniel Wolf. It is the intention of the Firms that, to the extent possible, all significant decisions shall be made by consensus. In the event that consensus cannot be

reached on a particular matter, the decision shall be made by majority vote and, in the event of a deadlock, by Lead Counsel. In the event of a deadlock with respect to decisions concerning any brief-writing assignment, Lead Counsel shall act in good faith to assign work equitably among the Firms. No settlement of any lawsuit governed by this agreement shall be made without each of the Firm's respective consent.

Fees and Expenses

3. Each Firm agrees to keep detailed, contemporaneous records of all billable time expended and all necessary costs, disbursements and expenses incurred in these cases, and maintain separate records of such time and costs for each matter. Each Firm will submit to Lead Counsel copies of summaries of time and costs records within twenty (20) days following the conclusion of each calendar quarter (*i.e.*, January 20, April 20, July 20 and October 20) in which the time and/or costs were expended or incurred, for any entitlement to be reimbursed and/or paid for such time or costs from a court award, a common fund or the clients. Lead Counsel will distribute to CJA and Wolf a summary report of the last quarter and case-to-date fees and expenses for all Firms.

4. LCHB shall advance all Common Expenses relating to the investigation and prosecution of the lawsuits, including all filing fees, reporter fees and transcript costs, costs of copying of documents produced in the case(s), costs of mailings to class or potential class members, costs of acquiring credit reports, witness fees and expenses, investigative costs, expert fees and expenses, computerized research, expenses associated with preparation of demonstrative exhibits including

trial exhibits. All such Common Expenses will be identified on the cost records submitted by the firms pursuant to paragraph 3. Additionally, each Firm will advance its own general office overhead, travel, lodging, meals-away, telephone, fax, copying (miscellaneous only, see above), mailing (miscellaneous only, not mailings to class or potential class members, see above), word processing, and clerical support. Each Firm may advance expenses consistent with the direction of the Court or to comply with local rules or applicable ethical rules.

5. The Firms agree to fully cooperate and support each other's motions for fees and expenses in accordance with applicable law, if necessary.

6. For purposes of calculating each Firm's lodestar contribution, advancing Common Expenses and dividing fees in the event of a successful recovery, attorneys and other timekeepers will bill their time according to LCHB's regular hourly billing rates. Notwithstanding any specific award of fees and expenses to any particular Firm, the Firms agree that the recovery of all fees and expenses shall be distributed among the Firms as follows. First, each Firm shall recover its Common Expenses and then other case related individual firm expenses. If the total recovery is not sufficient to reimburse such expenses, then each Firm shall recover such expenses in proportion to the amount of expenses it has actually advanced. Second, with respect to the portion of any recovery exceeding the amount of expenses advanced, all fees shall be allocated in proportion to each Firm's relative lodestar, calculated by multiplying the hours worked by each member or employee of the Firm times his or her billing rate.

7. For purposes of reimbursing expenses and distributing fees between the Firms, all claims and cases prosecuted under this Agreement shall be regarded as a single matter. Notwithstanding, each of the Firms shall maintain contemporaneous time records for each separate matter. Accordingly, all time and expenses that have been billed to any one of these cases shall be treated as if they had been billed in all of them. For instance, if separate lawsuits are filed against Equifax, Experian and Trans Union, respectively, and, if at the time of recovery in all three, LCHB had billed $1.5 million to Equifax, $1 million to Experian, and $500,000 to Trans Union, while CJA had billed $500,000 to Equifax, $700,000 to Experian and $800,000 to Trans Union, LCHB's share of the fees in each case would be 60 percent and CJA's share would be 40 percent. Similarly, if a fee award pursuant to settlement or judgment is first obtained in the case against Equifax in the amount of $5 million and, at the time of such recovery, LCHB and CJA had billed the amounts set forth above, LCHB's share of the recovery would be 60 percent or $3 million and CJA's share would be 40 percent or $2 million.

8. Adjustment Of Fee Division For Claims And Cases Resolved At Different Times. If, subsequent to the recovery in one case, a recovery is later obtained in another case, the division of fees shall be adjusted to reflect the relative lodestar shares of the Firms as of the date of the subsequent recovery. For instance, in addition to the fee award from Equifax described in paragraph 7 above, if subsequent fee award pursuant to settlement or judgment is obtained against Trans Union for $20 million and, at the time of such recovery, LCHB had, in addition to the $3 million it had billed

earlier, billed an additional $1 million to Experian and another $1 million to Trans Union, while CJA had, in addition to the $2 million it had billed earlier, billed an additional $300,000 to Experian and an additional $200,000 to Trans Union, LCHB's share of the total fee award would be 66.67 percent and CJA's share would be 33.33 percent. Accordingly, LCHB's absolute share of the total fee award pursuant to settlement or judgment of $25 million from the Equifax and Trans Union cases would be $16.67 million and CJA's share would be $8.33 million. In order to obtain this distribution of shares from the fees recovered against Trans Union, account would have to be taken of the $3 million in fees that had previously been distributed to LCHB and the $2 million in fees that had been distributed to CJA at the time of the Equifax recovery. As a result of that offset, LCHB's distribution from the $20 million in fees obtained in the Trans Union recovery would be $13.67 million and CJA's distribution would be $6.33 million. The offset provisions of this paragraph notwithstanding, no recoupment shall be required or made of fees paid in connection with a recovery obtained in any of the cases covered by this Agreement, regardless of the relative lodestar contributions made by the Firms in connection with the prosecution of other cases covered hereunder, subsequent to the date of such recovery.

9. Notwithstanding any of the forgoing provisions of paragraphs 7 and 8, above, in those circumstances where LCHB's proportionate lodestar is less than thirty-percent (30%) of the aggregate lodestar of all of the Firms as of the date of any recovery, LCHB shall nonetheless be entitled to a division of any fee award pursuant to settlement or judgment in any

matter of no less than forty-percent (30%) or six (6) times LCHB's lodestar, which ever is less.

10. Expenses incurred and billable time expended as of the date of this Agreement shall be treated in the same manner as are expenses incurred and time expended subsequent to its execution. It is agreed that as of the date of this Agreement, CJA has incurred $68,440 in Common Expenses and has expended $901, 200 in billable time in connection with the investigation and prosecution of the cases covered hereunder. It is further agreed that as of the date of this Agreement, Wolf has incurred $0 in Common Expenses and has expended $55,550 in billable time in connection with these cases.

Miscellaneous

11. Any dispute between the parties to this Agreement shall be subject to arbitration before a single arbitrator in accordance with the rules of the American Arbitration Association. Any hearing or session concerning this arbitration shall take place in New York. The arbitrator's fees and any other common expense shall be shared equally by the parties, except the arbitrator shall order that the reasonable expenses (other than attorneys' fees) of the prevailing party, if any, be borne by the other parties.

IT IS SO AGREED:

LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP

By: /s/ Michael W. Sobol
275 Battery Street, Suite 3000
San Francisco, CA 94111-3339

Dated: October 25, 2005

CHARLES JUNTIKKA &
ASSOCIATES

By: /s/ Charles W. Juntikka
11 W. 42nd Street, 12th Floor
New York, NY 10036

Dated: October 26, 2005

DANIEL WOLF

By: /s/ Daniel Wolf
1220 N Street, N.W., PH2
Washington, D.C. 20005

Dated: October 27, 2005

JOINT PROSECUTION AGREEMENT (MAY 9, 2006)

The law firms of Lieff Cabraser Heimann & Bernstein, LLP ("Lieff"), Charles Juntikka & Associates ("Juntikka"), the Law Office Of Daniel Wolf ("Wolf), Caddell & Chapman ("C&C"), Consumer Litigation Associates, P.C. ("CLA") and Weller Green, Toups and Terrell, LLP ("WGTT"), and the National Consumer Law Center ("NCLC"), collectively, "the Parties"), hereby enter into this Joint Prosecution Agreement ("Agreement"):

WHEREAS, Lieff, Juntikka and Wolf (collectively, "the Lieff Group"), are / counsel for plaintiffs in three class action suits, captioned *White et al. v. Experian Information Solutions, Inc.,* Case No. CV05-1070 (S.D. Cal.), *White et al. v. Trans Union, LLC,* Case No. CV05-1073 (S.D. Cal.), and *White et al. v. Equifax Information Services, Inc.*, CV05-7821 (C.D. Cal.), (collectively, the *White* suits); and

Whereas C&C, CLA, and WGTT (collectively, the "Caddell Group") are counsel for plaintiff in a class action suit, captioned *Hernandez v. Equifax information Services, Inc., Trans Union, LLC and Experian Information Solutions, Inc.,* Case No. 05-CV-03996 (N.D. Cal).

Whereas plaintiffs in the *White* and *Hernandez* suits are asserting certain similar claims under federal and state consumer protection laws on behalf of certain overlapping classes of individuals against the same three defendants; and

Whereas it is in the interest of judicial economy and of all concerned to coordinate the prosecution of these cases,

The Parties agree as follows:

1. Pursuant to this Agreement, the Lieff Group, the Caddell Group and the NCLC agree to coordinate representation of all named plaintiffs and the class(es) they will seek to represent with respect to their claims in the *White* and *Hernandez* suits.

Roles of Each Firm

2. Promptly following the execution of this Agreement, the Lieff Group, the Caddell Group and NCLC shall work together to coordinate the *White* and *Hernandez cases* for all purposes and shall cooperate in filing a motion to transfer the *Hernandez* case.

3. NCLC shall appear on behalf of the plaintiffs in both the *White* and *Hernandez* suits.

4. The Parties agree to form an Executive Committee that shall be responsible for making all significant decisions regarding the prosecution of all factual and legal issues common to both the *White* and *Hernandez* suits including, but not limited to, decisions concerning pleadings and other court filings, discovery, selection of expert witnesses, trial issues in the event of an order providing that they be tried together, scheduling matters, the division and assignment of work, the addition of other firms to this Agreement, and settlement negotiations. The Executive Committee shall consist of two attorneys from the Lieff Group, one of whom shall serve as Co-Lead Counsel for the litigation, two attorneys from the Caddell Group, one of whom shall serve as Co-Lead Counsel for the litigation,

and one attorney from NCLC. The Parties agree that Lieff shall be designated as Liaison Counsel and be responsible for making initial work flow and strategic proposals subject to the approval of the Executive Committee. It is the intention of the Parties that, to the extent possible, all significant decisions shall be made by consensus. In the event that consensus cannot be reached on a particular matter, the decision shall be made by majority vote.

5. Paragraph 4 of this Agreement notwithstanding, NCLC shall be primarily responsible for publicizing this case and the public interest issues it addresses. The other Parties will cooperate fully with all publicity and public education efforts and may publicize this case through their own publications, websites and organizational memberships. All Parties must approve all press releases and press conferences, in advance.

6. The Lieff Group, together with NCLC, shall be solely responsible for the prosecution of individual issues that are particular to the *White* plaintiffs. The Caddell Group, together with NCLC, shall be solely responsible for the prosecution of individual issues that are particular to the *Hernandez* plaintiffs. Nothing in this Agreement is intended to, or shall be construed, as making the Caddell Group co-counsel in the *White* suits or the Lieff Group co-counsel in the *Hernandez* suit.

7. The Lieff Group shall ensure that copies of all pleadings, correspondence and other materials in the *White* suits are promptly forwarded or provided to the Caddell Group, and shall keep the Caddell Group informed of any deadlines, hearings, depositions, meetings or other dates. The Caddell Group shall ensure that copies of all pleadings, correspondence and other

materials in the *Hernandez* suits are promptly forwarded or provided to the Lieff Group, and shall keep the Lieff Group informed of any deadlines, hearings, depositions, meetings or other dates:

8. The Parties anticipate that following the execution of this Agreement that going forward the Lieff Group will perform fifty percent of the work, the Caddell Group will perform forty percent of the work, and NCLC will perform ten percent of the work required in order to bring the claims asserted in the *Hernandez* and *White* suits to completion. Co-Lead Counsel shall endeavor to ensure that the Groups and NCLC are, in fact, given a full opportunity to do so.

9. All work product generated by the Parties in connection with the coordinated proceedings in the *White* and *Hernandez* suits shall be for the common benefit of those coordinated proceedings and no Party may share or disseminate such work product without the express agreement of all of the Parties to this Agreement.

Fees and Expenses

10. Each Party agrees to keep detailed, contemporaneous records of all billable time expended and all necessary costs, disbursements and expenses incurred in these cases, and maintain separate records of such time and costs for each matter. Each Party will submit to Co-Lead Counsel copies of summaries of time and costs records within twenty (20) days following the conclusion of each calendar quarter (*i.e.*, January 20, April 20, July 20 and October 20) in which the time and/or costs were expended or incurred, for any entitlement to be reimbursed and/or paid for such

time or costs from a court award, a common fund or the clients. Co-Lead Counsel will distribute to each Party a summary report of the last quarter and case-to-date fees and expenses for all Parties.

11. The Lieff Group shall advance fifty-five percent of Common Expenses, the Caddell Group shall advance forty-five percent of Common Expenses, and NCLC shall not be required to advance Common Expenses. Common Expenses shall consist of those relating to the investigation and prosecution of the lawsuits, including, but not limited to, all filing fees, reporter fees and transcript costs, costs of copying of documents produced in the case(s), costs of mailings to class or potential class members, costs of acquiring credit reports, witness fees and expenses, investigative costs, expert fees and expenses, computerized research, expenses associated with preparation of demonstrative exhibits including trial exhibits. All such Common Expenses will be identified on the cost records submitted by the firms as set forth above. Additionally, both of the Groups and NCLC will advance their own general office overhead, travel, lodging, meals-away, telephone, fax, copying (miscellaneous only, see above), mailing (miscellaneous only, not mailings to class or potential class members, see above), word processing, and clerical support. Each Group may advance expenses consistent with the direction of the Court or to comply with local rules or applicable ethical rules.

12. The Groups agree to fully cooperate and support each other's motions for fees and expenses in accordance with applicable law, if necessary.

13. The Groups will seek to recover compensation for services rendered in accordance with normal class action procedures, through a fee award approved by

the court and/or obtained through settlement The fee award will be based on the appropriate factors permissible under applicable law and, unless otherwise required by law or court order, will be allocated on the following basis:

(a) fifty percent of the Net Fees recovered by the Groups (*i.e.* fees recovered by the Groups after deducting any fees payable to other counsel) will be split as follows: forty-two percent for the Lieff Group; forty-two percent for the Caddell Group; and sixteen percent for NCLC.

(b) Fifty percent of the Net Fees recovered by the Groups will be allocated between the Lieff Group and the Caddell Group in proportion to their relative lodestar contributions. The relative lodestar of the Lieff and Caddell Groups shall be based on Common Benefit Hours, which shall consist of all hours contributed prior to the date of this Agreement, as reported in paragraph 19 below, and all hours contributed to the prosecution of the *White* and *Hernandez* suits subsequent to the date of this Agreement. Any disputes relating to such hours shall be resolved by co-lead Counsel and, in the event they are unable to resolve such dispute, by arbitration in accordance with paragraph 21 below.

14. For purposes of calculating each Group's lodestar contribution, advancing Common Expenses and dividing fees in the event of a successful recovery, attorneys and other timekeepers will bill their time according to the hourly billing rates set forth in

Attachment A-see attached "A". Notwithstanding any specific award of fees and expenses to any particular Party, the Parties agree that the recovery of all fees and expenses shall be distributed between the two Groups as follows. First, each Group shall recover its Common Expenses and then other case related individual firm expenses. If the total recovery is not sufficient to reimburse such expenses, then each Group shall recover such expenses in proportion to the amount of expenses it has actually advanced. Second, with respect to the portion of any recovery exceeding the amount of expenses advanced, all fees shall be allocated as described in paragraph 13.

15. For purposes of reimbursing expenses and distributing fees among the Parties, all claims and cases prosecuted under this Agreement shall be regarded as a single matter. Notwithstanding, each Party shall maintain contemporaneous time records for each separate matter. Accordingly, all time and expenses that have been billed to any one of these cases shall be treated as if they had been billed in all of them. For instance, if the claims against Equifax, Experian and Trans Union, are resolved at the same time, and, if at the time of recovery, the Lieff Group had billed $500,000 to Equifax, $500,000 to Experian, and $200, 000 to Trans Union (for a total of $1,200, 000); the Caddell Group had billed $300,000 to Equifax, $300,000 to Experian and $200,000 to Trans Union (for a total of $800,000), and NCLC had billed $75,000 to Equifax, $75,000 to Experian, and $50,000 to Trans Union (for a total of $200,000); then the Lieff Group's share of the fees allocable by relative lodestar contribution in accordance with paragraph 13b above would be 60 percent and the Caddell Group's share would be 40

percent.[1] To further illustrate, if a fee award pursuant to settlement or judgment is first obtained in the case against Equifax in the amount of $5 million and, at the time of such recovery, the Lieff and Caddell Groups had billed the amounts set forth above, the Lieff Group's share of the recovery would be its 21 percent fixed share *(i.e.,* 42 percent of the 50 percent fixed share under paragraph 13a) plus 60 percent of the 50 percent lodestar share under paragraph 13b for a combined total of 51 percent or $2,550,000, the Caddell Group's share would be its 21 percent fixed share under paragraph 13a plus 40 percent of the 50 percent lodestar share under paragraph 13b for a combined total of 41 percent or $2,050,000, and NCLC's share would be its 8 percent fixed share *(i.e.,* 16 percent of the 50 percent fixed share under paragraph 13a) or $400,000.

16. Adjustment Of Fee Division For Claims And Cases Resolved At Different Times. If, subsequent to the recovery in one case, a recovery is later obtained in another case, the division of fees shall be adjusted to reflect the relative lodestar shares of the Lieff and Caddell Groups as of the date of the subsequent recovery. For instance, in addition to the fee award from Equifax described in paragraph 15 above, if a subsequent fee award pursuant to settlement or judgment is obtained against Trans Union for $5 million and, at the time of such recovery, the Lieff Group had, in addition to the $1,200,000 it had billed earlier, billed an additional $500,000 to Experian and an additional

---

[1] As NCLC derives its entire fee from the fixed shares set forth in paragraph 13a above, its lodestar contribution does not count for purposes of calculating the division of fees allocable by relative lodestar under paragraph 13b.

$300,000 to Trans Union; the Caddell Group had, in addition to the $800,000 it had billed earlier, billed an additional $600,000 to Experian and another $600,000 to Trans Union; and NCLC had, in addition to the $200,000 it had billed earlier, billed another $100,000 to Experian, and another $100,000 to Trans Union; then the Lieff Group's share of the fees allocable by relative lodestar contribution in accordance with paragraph 13b would be 50 percent and the Caddell Group's share would also be 50 percent. Accordingly, the Lieff Group's absolute share of the total fee award pursuant to settlement or judgment of $10 million from the Equifax and Trans Union cases would be its 21 percent fixed share plus 50 percent of the lodestar share under paragraph 13b for a total share of 46 percent or $4,600,000, the Caddell Group's share would likewise be $4,600,000, and NCLC's share would be its fixed 8 percent fixed share or $800,000. In order to obtain this distribution of shares from the fees recovered against Trans Union, account would have to be taken of the fees that had previously been distributed at the time of the Equifax recovery. As a result of that offset, from the $5 million in fees obtained in the Trans Union recovery, the Lieff Group's distribution would be $2,050,000, the Caddell Group's distribution would be $2,550,000, and NCLC's distribution would be $400,000.

17. Notwithstanding any of the foregoing, with respect to the portion of any fee and cost recovery exceeding the amount of expenses advanced, NCLC shall be entitled to a minimum of eight percent of the total of fees recovered. Also notwithstanding any of the foregoing, in the event the court awards attorneys' fees based upon a lodestar/multiplier analysis, then

the parties agree that if the court acts to reduce the lodestar amount by reducing any group's hourly rates or time entries, then such action by the court shall have no effect on the parties' agreement to share the attorneys' fees awarded by the court in accordance with paragraph 13, above.

18. Further notwithstanding any of the foregoing, no recoupment shall be required or made of fees paid in connection with a recovery obtained in any of the cases covered by this Agreement, regardless of the relative lodestar contributions made by the Groups in connection with the prosecution of other cases covered hereunder, subsequent to the date of such recovery.

19. Expenses incurred and billable time expended as of the date of this Agreement shall be treated in the same manner as are expenses incurred and time expended subsequent to its execution. It is agreed that as of April 15, 2006, the Lieff Group has incurred $78,383.26 in Common Expenses and has expended $1,383,506.52 in billable time in connection with the investigation and prosecution of the cases covered hereunder. It is further agreed that as of the date of this Agreement, the Caddell Group has incurred $15,124.00 in Common Expenses and has expended $261,200.00 in billable time in connection with these cases.

Termination

20. Each of the Parties reserves the right to terminate its participation in the litigation covered by this Agreement and to seek withdrawal of representation of any or all of the plaintiff representatives and/or the putative class for any just reason as permitted

or required by any applicable Code of Professional Conduct or as permitted by rule of court. Said counsel will provide the other Parties with advance notice of its decision to seek withdrawal prior to any filing with the Court. Said counsel also retains the right to seek reimbursement of attorney fees or evens= foam any court award or settlement for all work performed prior to the termination of this Agreement or withdrawal.

Dispute Resolution

21. Any dispute between the parties to this Agreement shall be subject to arbitration before a single arbitrator in accordance with to rules of the American Arbitration Association. Any hearing or session concerning this arbitration shall take place in Washington, D.C. The arbitrator's few and any other common expertise shall be shared equally by the parties, except the arbitrator shall order that the reasonable expenses (other than attorneys' <u>fees</u>) of the prevailing party, if any be borne by the other parties.

IT IS SO AGREED:

LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP

BY:____________________________
MICHAEL W. SOBOL
275 Battery Street, Suite 3000
San Francisco, CA 94111-3339

Dated: May ___, 2006

Subject to corrections in paragraph 19.

CHARLES JUNTIKKA &
ASSOCIATES

By: /s/ Charles W. Juntikka
11 W. 42nd Street, 12th Floor
New York, NY 10036

Dated: May ___, 2006

LAW OFFICE OF DANIEL WOLF

By:________________________________
DANIEL WOLF
1220 N Street, N.W., PH2
Washington, D.C. 20005

Dated: May ___, 2006

CADDELL & CHAPMAN

By: /s/ Michael. A. Caddell
1331 Lamar, Suite 1070
Houston, Texas 77010

Dated: May ___, 2006

CONSUMER LITIGATION ASSOCIATES

By: /s/ Leonard Bennett
12515 Warwick Boulevard
Suite 201
Newport News VA 23606

Dated: June 5, 2006

WELLER, GREEN, TOUPS AND TERREL, LLP

By: ______________________________
MITCH TOUPS
Post Office Box 350
Beaumont TX 77704

Dated: May ___, 2006

NATIONAL CONSUMER LAW CENTER

By: /s/ Stuart Rossman
77 Summer Street, 10th Fl.
Boston, MA 02110

Dated: June 6, 2006

CADDELL & CHAPMAN

By: /s/ Michael A. Caddell
1331 Lamar, Suite 1070
Houston, Texas 77010

Dated: May ___, 2006

CONSUMER LITIGATION ASSOCIATES

By: ______________________
LEN BENNETT
12515 Warwick Boulevard
Suite 201
Newport News VA 23606

Dated: May ___, 2006

WELLER, GREEN, TOUPS
AND TERREL, LLP

By: /s/ Mitch Toups
Post Office Box 350
Beaumont, TX 77704

Dated: May 9, 2006

NATIONAL CONSUMER LAW
CENTER

By:______________________________
STUART ROSSMAN

Dated: May ___, 2006

ATTACHMENT A: BILLING RATES

Attorneys (with more than 25 years experience)	$650 per hour
Attorneys (with more than 20 to 25 years experience)	$600 per hour
Attorneys (with more than 15 to 20 years experience)	$550 per hour
Attorneys (with more than 10 to 15 years experience)	$475 per hour
Attorneys (with more than 5 to 10 years experience)	$400 per hour
Attorneys (with more than 2 to 5 years experience)	$340 per hour
Attorneys (with less than 2 years experience)	$275 per hour
Summer Associates and Law Clerks	$230 per hour
Senior Paralegals (paralegals with more than five years experience)	$190 per hour
Junior Paralegals (paralegals with less than five years experience)	$155 per hour