No. 24-259

IN THE

Supreme Court of the United States

ERIC ALAN ISAACSON,

Petitioner,

v.

META PLATFORMS, INC.; PERRIN AKINS DAVIS; BRIAN K. LENTZ; CYNTHIA D. QUINN; MATTHEW J. VICKERY; RYAN UNG; CHI CHENG; ALICE ROSEN, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION OF META PLATFORMS, INC.

CHRISTOPHER CHORBA
DANIEL R. ADLER
GIBSON, DUNN & CRUTCHER LLP
333 S. Grand Avenue
Los Angeles, CA 90071
(213) 229-7000

AARON SMITH
OLIVIA GOLDBERG
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20005
(202) 955-8000

LAUREN R. GOLDMAN
Counsel of Record
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
(212) 351-4000
LGoldman@gibsondunn.com

Counsel for Respondent Meta Platforms, Inc.

QUESTIONS PRESENTED

1. May district courts approve payments from class-action settlement funds to named plaintiffs for serving as class representatives?

2. May district courts in common-fund cases approve attorneys' fees for plaintiffs' counsel that exceed the lodestar amount?

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel states that respondent Meta Platforms, Inc. is a publicly traded company and that no parent company or publicly traded corporation owns 10% or more of its stock.

RELATED PROCEEDINGS

Pursuant to this Court's Rules 14.1(b)(iii) and 15.2, respondent Meta Platforms, Inc. states that in addition to the related proceedings identified in the petition, this case is also directly related to the following proceedings:

In re Facebook, Inc. Internet Tracking Litigation, No. 17-17486 (9th Cir.). Judgment was entered on April 9, 2020.

Facebook, Inc. v. *Davis*, No. 20-727 (U.S.). Judgment was entered on March 22, 2021.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Rules

Page(s)

Other Authorities

BRIEF IN OPPOSITION

Respondent Meta Platforms, Inc. respectfully submits this brief in opposition to the petition for a writ of certiorari.

INTRODUCTION

After more than a decade of litigation that had not moved past the motion-to-dismiss stage, plaintiffs and Meta reached a classwide settlement in this data-privacy case. Without admitting liability, Meta agreed to pay $90 million and promised to delete data that plaintiffs alleged should not have been collected. The district court evaluated the Federal Rule of Civil Procedure 23 factors and approved that settlement. The Ninth Circuit unanimously affirmed in an unpublished memorandum disposition.

Petitioner Eric Alan Isaacson is a class member who raised a litany of objections to the settlement. He no longer challenges the underlying settlement amount or its reasonableness. Instead, he asks this Court to review the propriety of service awards of $3,000 to $5,000 for each of the seven named plaintiffs who litigated the case and represented the class. He also seeks review of the $26.1 million in attorneys' fees awarded to plaintiffs' counsel.

Meta takes no position on the merits of those questions at this stage. Both of them implicate only how the settlement fund is allocated on the other side of the "v" among named plaintiffs, class members, and plaintiffs' counsel. But Meta respectfully submits that petitioner has not presented questions that warrant this Court's review.

The first question seeks review based on a recent split in the courts of appeals regarding whether two nineteenth-century decisions by this Court categorically bar payments to named plaintiffs for their service as class representatives. But this Court has denied multiple petitions (including several filed by petitioner himself) presenting the same question.[1] Petitioner presents no reason why this latest petition should fare differently: The unpublished decision below relied on settled circuit precedent, and no other decision has deepened the split since this Court last considered and denied a request to review the issue. Now, as then, only one court of appeals has held that service awards are categorically impermissible. And the other four courts of appeals prohibit *unreasonable* service awards, making the split narrower and less important than petitioner contends.

The second question seeks review of the attorneys' fees awarded to plaintiffs' counsel. Unsurprisingly, the petition points to no circuit split on that fact-bound issue. Instead, petitioner seeks error correction, arguing that the "lodestar" amount of attorneys' fees—calculated by multiplying the number of reasonable hours expended by a reasonable hourly rate—is "presumptively" the appropriate amount of attorneys' fees. But there is no error to correct. Presumptions can be overcome. And the court of appeals here approved attorneys' fees that exceeded the lodestar amount because the litigation created new law and resulted in a settlement that gave class members substantial relief. At most, the petition quibbles with a fact-bound decision that purportedly misapplied settled law.

---

[1] *Bowes* v. *Melito*, No. 19-504; *Johnson* v. *Dickenson*, No. 22-389; *Carson* v. *Hyland*, No. 22-634.

The petition should be denied.

STATEMENT

1. In 2010, Meta—then called Facebook—launched a "Like" button plug-in that other websites could install. Ct. App. Dkt. 11 at 319.[2] When a Facebook user visited a website with a Facebook plug-in, the user's browser would send a request to Facebook to load information about the user to the browser. Ct. App. Dkt. 11 at 319. "Cookies"—small text files stored on a user's device—stored the data. For a period of 16 months, these cookies allegedly "inadvertent[ly]" continued to capture information after a user logged out of Facebook because of a "bug" in Facebook's systems. Ct. App. Dkt. 11 at 319, 652. After the bug was discovered, Facebook "immediately" ceased the practice, announced it publicly, and "did not use" the data. Ct. App. Dkt. 11 at 652.

In 2011, several lawsuits challenging this inadvertent data collection were centralized into multidistrict litigation. *See* Pet. App. 2a. After the district court dismissed all of plaintiffs' claims, the Ninth Circuit affirmed in part and reversed in part. *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589 (9th Cir. 2020). This Court denied Facebook's petition for certiorari. 141 S. Ct. 1684 (2021) (mem.).

2. The parties then reached a settlement agreement that resolved the claims of the four multidistrict litigation plaintiffs and similar claims brought by three plaintiffs in state court. Pet. App. 2a. The settlement provided both injunctive and

---

[2] "Ct. App. Dkt." citations refer to the Ninth Circuit's docket entries in Case No. 22-16904. Petitioner's record excerpts were filed at Ct. App. Dkt. 11. Meta's supplemental record excerpts were filed at Ct. App. Dkt. 30.

monetary relief to the class. Facebook (which by then had changed its name to Meta) committed to sequester and delete all the data at issue for all class members for the relevant time period. *See* Pet. App. 2a; Ct. App. Dkt. 11 at 167. Meta also agreed to pay $90 million into a settlement fund. Pet. App. 2a.

Plaintiffs asked the district court to approve the settlement. *See* Fed. R. Civ. P. 23(e). Class counsel also sought payments of $3,000 to $5,000 for each of the seven named plaintiffs, Pet. App. 2a-3a, which are typically called service awards because they reflect named plaintiffs' time serving as class representatives. Class counsel further sought $26.1 million in attorneys' fees. Pet. App. 2a.

The plaintiffs' motion explained that service awards and attorneys' fees, if approved, would be paid out of the settlement fund. Pet. App. 9a-10a. The remainder would be split equally among the approximately 1.5 million class members who did not opt out and who submitted approved claims. Pet. App. 11a.

3. Nine people objected to the settlement, including petitioner. *See* Pet. App. 18a. Petitioner objected on four grounds. First, he argued that the $90 million settlement fund was unreasonably low. Ct. App. Dkt. 11 at 70-73. Second, he argued that class members' due process and First Amendment rights were violated because the district court and the court of appeals had approved redactions to portions of the complaints on the public dockets. Ct. App. Dkt. 11 at 68-70. Third, he argued that service awards for named plaintiffs were unlawful. Ct. App. Dkt. 11 at 73-75. And fourth, he argued that plaintiffs' requested attorneys' fees were excessive. Ct. App. Dkt. 11 at 75-79.

4. The district court approved the settlement as fair and reasonable. *See* Pet. App. 14a-18a.

The district court also approved the service awards to named plaintiffs in recognition of the effort they spent representing the class's interests "for over a ten year period." Pet. App. 35a. The district court explained that the service awards did not treat unnamed class members inequitably because the "aggregate $29,000" awarded to the seven plaintiffs represented a "very small fraction" of the $90 million settlement fund. Pet. App. 35a-36a.

The district court also approved plaintiffs' counsel's request for $26.1 million in attorneys' fees. The district court cross-checked that number against two benchmarks. First, the district court noted that 25 percent of a settlement fund is a typical fee award for plaintiffs' counsel. Pet. App. 30a-31a. Second, the district court calculated a "lodestar" amount by multiplying the number of hours reasonably expended by the reasonable hourly rate. Pet. App. 31a. The $29.1 million requested by plaintiffs' counsel was higher than both benchmarks, representing 29 percent of the settlement fund and 3.28 times the lodestar amount. Pet. App. 29a-32a. The district court reasoned that the above-benchmark attorneys' fees award was justified because, among other reasons, plaintiffs' partial win in their appeal to the Ninth Circuit had created a "change in the law" regarding the pleading standard for injury in data-privacy cases. Pet. App. 33a.

5. The Ninth Circuit panel unanimously affirmed, rejecting all of petitioner's objections (and those of two other objectors who do not seek review in this Court). Pet. App. 2a-5a. The panel affirmed the "modest" service awards of $3,000 to $5,000 to each named

plaintiff, and cited circuit precedent holding such payments do not violate this Court's precedents. Pet. App. 5a (citing *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 785-87 (9th Cir. 2022)). The panel also affirmed the award of attorneys' fees, finding it "well within the permissible bounds" of the district court's discretion. Pet. App. 4a.

ARGUMENT

I. THIS COURT HAS RECENTLY AND REPEATEDLY DENIED REVIEW OF THE SERVICE-AWARDS ISSUE, AND THIS PETITION SHOULD FARE NO DIFFERENTLY.

Petitioner is correct that one court of appeals recently concluded that two of this Court's cases—*Trustees* v. *Greenough*, 105 U.S. 527 (1882), and *Central Railroad & Banking Co.* v. *Pettus*, 113 U.S. 116 (1885)—bar "incentive" or "service" payments to class-action representatives. But four other courts of appeals have held that such payments are permissible so long as they are not unreasonable. This Court has denied three petitions filed or supported by petitioner presenting the same question.[3] The Court should deny this petition as well.

A. Class-action settlements sometimes include payments for named plaintiffs for going to the time and trouble of serving as class representatives. Petitioner argues that two of this Court's precedents foreclose such payments. In *Greenough*, this Court held that a bondholder could be reimbursed by fellow bondholders for reasonable costs, counsel fees, charges, and expenses incurred in prosecuting a

---

[3] *Bowes* v. *Melito*, No. 19-504; *Johnson* v. *Dickenson*, No. 22-389; *Carson* v. *Hyland*, No. 22-634.

successful suit—but not a personal salary and travel expenses worth about $1.3 million total in today's dollars. 105 U.S. at 537-38; *see id.* at 530 (describing an "allowance of $2,500 a year for ten years of personal services" and $15,000 for "railroad fares and hotel bills"); 5 *Newberg & Rubenstein on Class Actions* § 17:4 (6th ed. 2022) (calculating present-day dollar value). In *Pettus*, this Court reaffirmed that distinction and concluded that attorneys could be paid from client funds. 113 U.S. at 127-28.

The First, Second, Seventh, and Ninth Circuits have concluded that *Greenough* and *Pettus* do not categorically prohibit service awards to class representatives. *See Murray* v. *Grocery Delivery E-Servs. USA Inc.*, 55 F.4th 340, 352-54 (1st Cir. 2022); *Melito* v. *Experian Mktg. Sols., Inc.*, 923 F.3d 85, 96 (2d Cir. 2019); *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992); Pet. App. 5a (affirming "modest service awards" and adhering to the Ninth Circuit's earlier decision in *In re Apple Inc. Device Performance Litigation*, 50 F.4th 769, 785-87 (9th Cir. 2022)).

The Eleventh Circuit alone has departed from this consensus view. *Johnson* v. *NPAS Sols., LLC*, 975 F.3d 1244, 1258-29 (11th Cir. 2020), *pet. for reh'g en banc denied*, 43 F.4th 1138 (11th Cir. 2022). In the Eleventh Circuit's view, service awards are "part salary and part bounty," and thus barred by *Greenough* and *Pettus*. 975 F.3d at 1258.

B. Regardless of the merits of that dispute, this Court's review is not warranted at this juncture. This is the fourth time the Court has been asked to review this issue:

- In *Bowes* v. *Melito*, the petitioner, represented by Isaacson, asked this Court to decide

whether *Greenough* and *Pettus* prohibit service awards to class representatives. Pet. i, No. 19-504 (Oct. 16, 2019).

- In *Johnson* v. *Dickenson*, which arose from the Eleventh Circuit decision creating the relevant circuit split, the petitioner also asked this Court to review the propriety of "incentive payments in Rule 23 class-action settlements." Pet. i, No. 22-389 (Oct. 21, 2022). The respondent, represented by Isaacson, even agreed that this Court should grant review. Br. in Supp. 4-5, No. 22-389 (Dec. 21, 2022).

- And most recently, in *Carson* v. *Hyland*, the petitioner, represented by Isaacson, asked this Court to review the circuit split over whether "payments in common-fund class actions to compensate representative plaintiffs" are unlawful. Pet. i, No. 22-634 (Jan. 5, 2023); *see also id.* at 12.

This Court denied all those petitions. *Carson*, 143 S. Ct. 1747 (2023); *Johnson*, 143 S. Ct. 1745 (2023); *Bowes*, 140 S. Ct. 677 (2019). And nothing has changed: The decision below did not deepen the circuit split or improve the issue's ripeness for this Court's review. The court of appeals affirmed the service awards at issue in a single sentence based on prior circuit precedent in a brief, unpublished memorandum disposition. Pet. App. 5a (citing *Apple Inc.*, 50 F.4th at 785-87). And even *Apple Inc.* did not change the law since the last petition raising the service-awards issue. As the petition in *Carson* stated, the Ninth Circuit's position was "settled" at that time. Pet. 13, No. 22-634; *see also id.* at 12 (citing *Apple Inc.*, 50 F.4th at 787).

The First and Second Circuits' positions were likewise settled when petitioner last sought this Court's review. Pet. 13, *Carson*, No. 22-634 (citing *Murray*, 55 F.4th 340, and *Melito*, 923 F.3d 85). Although petitioner now points (at 20) to *Scott* v. *Dart*, 99 F.4th 1076 (7th Cir. 2024), that case merely followed circuit precedent rather than deepening the split. As the panel explained, it was "not the first time we have rejected the argument that the Supreme Court's common-fund-doctrine cases prohibit incentive awards." *Id.* at 1086 (citing *In re Cont'l Ill. Sec. Litig.*, 962 F.2d at 571); *see also id.* at 1085 (citing *Cook* v. *Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

Further still, the split is narrower and less important than petitioner contends. He asserts that service awards might cause representative plaintiffs to prioritize their own interests over class members' interests. Pet. 27; *see also* Pet. 13 (similar). But courts already have an obligation to review whether class-action settlements are "fair, reasonable, and adequate" based in part on whether the "class representatives" have "adequately represented the class" and whether the settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(A), (D). Courts therefore must scrutinize service awards to class representatives and reject settlements that include unreasonable service awards. *See Murray*, 55 F.4th at 353; *Apple Inc.*, 50 F.4th at 786-87. So the circuit split concerns only whether courts may approve service awards that are otherwise reasonable.

Finally, if service awards are as routine as petitioner asserts, *see* Pet. 27, then this Court will no doubt have additional opportunities to consider this question at a later date—and likely with the benefit of

additional reasoned decisions, rather than the short, unpublished decision below, which is devoid of any reasoning or analysis.

II. THE ATTORNEYS' FEES ISSUE IS FACT-BOUND AND SPLITLESS.

Petitioner also asks this Court to review the $29.1 million in attorneys' fees awarded to plaintiffs' counsel. That amount was higher than the typical fee award of 25 percent of a settlement fund and higher than the lodestar amount of fees. Pet. App. 30a-31a; *see supra*, at 5. Petitioner does not address the percentage-of-fund methodology, and argues that the Ninth Circuit incorrectly approved the attorneys' fees because the "unenhanced lodestar" amount should have been treated as "the presumptively reasonable fee." Pet. 25. The petition's request for error correction of a fact-bound, splitless award of attorneys' fees should be denied.

First, petitioner does not identify a circuit split regarding the correct legal standard or how that standard can be applied. *See* Rule 10(a); Pet. 24-27.

Second, petitioner does not show that the Ninth Circuit decided an important federal question in a way that conflicts with this Court's decisions or that otherwise should be settled by this Court. *See* Rule 10(c). Petitioner asserts that the Ninth Circuit should not have approved attorneys' fees exceeding the lodestar amount because, under fee-shifting statutes entitling prevailing parties to reasonable attorneys' fees, an "unenhanced lodestar provides a presumptively reasonable and sufficient fee." Pet. 24. Even assuming that principles for winning parties under fee-shifting statutes apply to an order approving a settlement under Rule 23, petitioner

acknowledges that the lodestar amount is just a "presumpti[on]." Pet. 24. Courts can depart from presumptions. Here, the court of appeals reasoned that an above-benchmark attorneys' fees award was permissible because the litigation "creat[ed] ... new law in the Ninth Circuit" and the settlement provided "substantial monetary and injunctive relief for the class." Pet. App. 4a. Petitioner does not meaningfully engage with the court's explanation. Nor does that fact-bound conclusion warrant this Court's review. At best, the second question presented challenges a purported "misapplication of a properly stated rule of law." Rule 10.

III. THE SETTLEMENT'S VALIDITY IS NOT PRESENTED BY THE PETITION.

The petition does not challenge the validity of the underlying settlement. Even if this Court is inclined to grant review, therefore, Meta respectfully submits that the Court should not broaden the questions presented to include that issue.

"Only the questions set out in the petition, or fairly included therein, will be considered by the Court." Rule 14.1(a); *see Yee* v. *City of Escondido*, 503 U.S. 519, 537 (1992) (questions "*complementary*" to those presented by the petition are not "fairly included therein"). Petitioner challenges only how the $90 million settlement fund is allocated on plaintiffs' side of the case—*i.e.*, among plaintiffs' counsel (who will receive attorneys' fees), named plaintiffs (who will receive service awards), and unnamed class members (who will receive the rest of the settlement fund). His two questions presented are thus expressly limited to the propriety of "service" payments to representative plaintiffs and "attorney's fees." Pet. i. He does not argue that the entire settlement must be thrown out

because of these purported flaws. He also abandoned the argument that the settlement was improper because the settlement fund was unreasonably small. *See* Pet. App. 3a-4a.

A decision in petitioner's favor with respect to service awards or attorneys' fees should not disturb the underlying settlement. When a petitioner challenges part of a judgment, this Court regularly affirms or reverses with respect to that part of the judgment while leaving the rest undisturbed. *E.g.*, *Rimini Street, Inc.* v. *Oracle USA, Inc.*, 586 U.S. 334, 337 (2019) ("revers[ing] in relevant part" a $12.8 million award for litigation expenses but leaving intact other awards petitioner did not challenge). Moreover, the parties' settlement agreement is a binding contract, *see Kokkonen* v. *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994), and it provides that the settlement does not depend on courts approving either the service awards or a request for attorneys' fees, Ct. App. Dkt. 11 at 164, 181 (§§ 3.6, 10.4). In these circumstances, courts of appeals frequently hold that it is "unnecessary to reverse the entire settlement approval in conjunction with [the] vacatur of [an attorneys'] fee award." *In re Easysaver Rewards Litig.*, 906 F.3d 747, 762 (9th Cir. 2018); *see also, e.g.*, *In re Lumber Liquidators Liab. Litig.*, 952 F.3d 471, 492 (4th Cir. 2020); *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 290, 346 (3d Cir. 1998). Likewise, when service awards are unjustified, courts of appeals can affirm the underlying settlement and reverse "on the incentive awards alone." *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1257 (11th Cir. 2021); *see also, e.g.*, *Chieftain Royalty Co.* v. *Enervest Energy Inst. Fund*, 888 F.3d 455, 470 (10th Cir. 2017).

Accordingly, even if this Court were to decide to review the questions presented, the Ninth Circuit's affirmance of the district court's approval of the settlement need not be considered and should not be disturbed.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHRISTOPHER CHORBA
DANIEL R. ADLER
GIBSON, DUNN & CRUTCHER LLP
333 S. Grand Avenue
Los Angeles, CA 90071
(213) 229-7000

MICHAEL G. RHODES
KYLE C. WONG
COOLEY LLP
3 Embarcadero Center
20th Floor
San Francisco, CA 94111-4004
(415) 693-2000

LAUREN R. GOLDMAN
Counsel of Record
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
(212) 351-4000
LGoldman@gibsondunn.com

AARON SMITH
OLIVIA GOLDBERG
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20005
(202) 955-8000

Counsel for Respondent Meta Platforms, Inc.

December 20, 2024