

In the Supreme Court of the United States

THEODORE H. FRANK and MELISSA ANN HOLYOAK,

Petitioners,

v.

PALOMA GAOS, on behalf of herself and
all others similarly situated, et al.,

Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit**

**PETITIONERS' UNOPPOSED APPLICATION FOR
LEAVE TO FILE A REPLY BRIEF
IN EXCESS OF WORD LIMITS**

Pursuant to Rules 22 and 33.1(d) of the Rules of this Court, Petitioners Theodore H. Frank and Melissa Ann Holyoak respectfully request that Petitioners be granted leave to file a reply brief in excess of the word limits established by this Court's Rule 33.1(g)(vii). Petitioners request leave to file a reply brief not to exceed 8,000 words. The reply brief is due September 28, 2018, and this application is filed more than fifteen days before the filing date. Respondents do not object to Petitioners' application.

1. Petitioners are objecting class members who challenge an \$8.5 million class settlement negotiated between class counsel and the defendant that pays the class no money, but instead directs millions to class counsel and funnels the remainder to third parties, including class counsel's *alma maters* and nonprofits to

which the defendant already contributes. Petitioners contend that the settlement is not “fair, reasonable, and adequate” and does not meet the class certification requirements of Federal Rule of Civil Procedure 23 and ask the Court whether, or in what circumstances, a class-action settlement that provides a *cy pres* award of class-action proceeds but no direct relief to class members comports with those legal requirements. Respondents are the plaintiff class and defendant that entered the settlement in the underlying litigation. The district court approved the settlement, and the Ninth Circuit affirmed.

2. On April 30, 2018, this Court granted Petitioners’ petition for a writ of certiorari. Petitioners filed their opening merits brief on July 9, 2018. On August 29, 2018, each of the two sets of Respondents filed a response brief through their separate and respective counsel. The briefs collectively total over 29,800 words, and reflect, as stated in Respondents’ Joint Motion for Divided Argument (at 3), their “different—and in some instances opposing—perspectives and interests.” As “opposing parties in this litigation,” *id.* at 2, Respondents focus on different issues and arguments that, in turn, necessitate different responses from Petitioners. The Respondent plaintiff class also argues for the first time that a potential jurisdictional question raised by the United States as amicus in support of neither party supports dismissing the petition as improvidently granted. *See id.* at 3-4; Class Resp. Br. 54; U.S. Br. 13-15.

3. Because Petitioners will be addressing in a single reply brief two separate full-length response briefs that address several issues from “dramatically” different vantage points—and therefore require different responses, as well as

jurisdictional arguments that were not previously briefed, plus thirteen amicus briefs in support of respondents, plus four amicus briefs in support of neither party, the word limits provided by this Court's Rules would be inadequate to allow for a thorough airing of the issues. *See* Resp. Joint Mot. 3. Petitioners therefore respectfully request leave to file a reply brief in excess of the 6,000-word limit imposed by Rule 33.1(g)(vii), not to exceed 8,000 words.

4. Counsel for the Respondents do not oppose this application. As Rule 33.1(d) requires, this application is being submitted more than 15 days before the date on which Petitioners' reply brief is due, which is September 28, 2018.

CONCLUSION

For these reasons, Petitioners' application for leave to file a reply brief in this case of no more than 8,000 words should be granted.

September 7, 2018

Respectfully submitted,

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