

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

Civil Action No. 20-cv-01057-RM-SKC

Consolidated for Pretrial:

20-cv-01158-RM-SKC

20-cv-01175-RM-SKC

20-cv-01186-RM-SKC

20-cv-01254-RM-SKC

20-cv-01347-RM-SKC

20-cv-01520-RM-SKC

20-cv-01583-RM-SKC

20-cv-01691-RM-SKC

20-cv-01699-RM-SKC

20-cv-02021-RM-SKC

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W. WALTER LAYMAN,  
BRADLEY BRIAR, and  
KERI REID, each individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ALTERRA MOUNTAIN COMPANY,  
ALTERRA MOUNTAIN COMPANY U.S. INC., and  
IKON PASS INC.,

Defendants.

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**PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND EXPENSES AND  
PLAINTIFFS' SERVICE AWARD**

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Plaintiffs and Class Representatives Goodrich, Mehnert, Farmer, Ernstrom, Layman, Briar, and Reid <sup>1</sup> (“Plaintiffs”) respectfully submit this memorandum in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Costs and Expenses.

**I. Background.**

**A. Litigation history.**

On March 15, 2020, Defendants suspended operations of their ski resorts in North America due to the COVID-19 pandemic. Twelve putative class actions were filed on behalf of purchasers of Defendants’ Ikon Passes, alleging damages stemming from the early closure of Defendants’ ski resorts and the associated inability to use those Ikon Passes over the course of a full ski “season.” In a series of Orders between May and October 2020, the Court consolidated the twelve actions. *See* ECF Nos. 23, 34, 38, 41, 45, 62, 64, 72.

On July 31, 2020, the Court appointed the law firms of Bursor & Fisher and Dovel & Luner as Interim Co-Lead Counsel. ECF No. 64. Plaintiffs filed a Consolidated Class Action Complaint on September 4, 2020. ECF No. 66.

On October 16, 2020, Defendants filed a Motion to Dismiss. ECF No. 73. On June 25, 2021, the Court granted in part and denied in part Defendants’ motion. ECF No. 94. The Court denied the motion to dismiss with respect to Plaintiffs’ claims for breach of contract, California CLRA (as to monetary relief), Illinois ICFA to the extent it sought relief under the ICFA, and the Wisconsin Deceptive Trade Practices Act. *Id.* at 30-31. The Court dismissed Plaintiffs’ remaining claims. *Id.* at 30. Defendants filed an Answer on July 19, 2021. ECF No. 102.

The Court held a Rule 16(b) Scheduling Conference on August 12, 2021, where it set the schedule for fact and expert discovery and class certification. ECF No. 105.

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<sup>1</sup> Plaintiff Panganiban is not a member of the Settlement Class.

The Parties began discovery in earnest in September 2021, exchanging initial disclosures, serving requests for production, interrogatories, and third-party subpoenas on the National Ski Areas Association, Inc., Powdr Corporation, and RRC Associates, LLC. *See* ECF No. 111 (Joint Status Report); Declaration of Yeremey Krivoshey (“Krivoshey Decl.”) ¶ 4.

The Parties conducted extensive discovery, both through formal exchanges and through mediation. Krivoshey Decl. ¶ 4. Defendants produced hundreds of thousands of Ikon Pass holder purchases and visitation records, responded to interrogatories, and produced information concerning revenue, sales, and customer renewal rates. *Id.* This information was critical to an analysis of damages, as Plaintiffs’ damages theory rested largely on the contention that Defendants prematurely ended the ski “season” without compensation or refunds. *Id.* Plaintiffs interviewed a number of experts, and retained and consulted with two of them to analyze both liability issues (*i.e.*, the amount of the season that was cut short) and damages. *Id.* Plaintiffs developed multiple alternative damages theories, using data on ski pass usage and season length. *Id.* This included theories for both legal damages and, alternatively, equitable restitution. *Id.*

**B. The settlement negotiations.**

Settlement negotiations were arduous, contentious, and well-informed. *Id.* ¶ 5. In late October 2021, the Parties booked a mediation before Jill R. Sperber, Esq., of Judicate West. Prior to the mediation, the parties conducted an extensive review of Defendants’ Class Member and revenue records, consulted with experts, and exchanged sober reviews of respective damages methodologies and analyses. *Id.*

The Parties participated in a full-day mediation before Ms. Sperber on January 24, 2022, and then continued those negotiations with the mediator throughout the months that followed. *Id.* The Parties negotiated the benefits due to Settlement Class Members through the mediator and were able to finalize those terms prior to any discussion of reasonable attorneys’ fees, costs, and

service awards to the Plaintiffs. *Id.* Only after reaching an agreement as to the Class benefit terms, the Parties began negotiations through the mediator regarding reasonable attorneys' fees, costs, and service awards to the Plaintiffs, which, as discussed below, do not derogate in any way from the benefits that are otherwise available to the Settlement Class Members under the Settlement. *Id.* The Parties executed a binding term sheet on June 5, 2022. *Id.* After finalizing and executing the term sheet, the Parties drafted and negotiated the terms of the full Settlement Agreement, including the contents of the notice plan and Claim Form. *Id.* The Settlement Agreement was executed on August 11, 2022. *Id.*; Franzini Decl. ¶ 27, *id.* Ex. 8 ("Agreement"). Plaintiffs filed a Motion for Preliminary Approval on August 17, 2022. ECF No. 125.

The Court preliminarily approved the Settlement Agreement on September 20, 2022. ECF. No. 132. The Court appointed Bursor & Fisher, P.A. and Dovel & Luner LLP as Class Counsel, appointed Plaintiffs as Class Representatives, certified the Settlement Class for settlement purposes under Rule 23(a) and 23(b)(3), appointed Angeion Group as Settlement Administrator, and approved the Notice Plan. The Court recognized that "the Settlement is the product of hard-fought litigation and arm's length negotiations," and delineated the discovery and settlement efforts that had occurred. *Id.* at 3-4.

### **III. The proposed settlement.**

#### **A. Payment to settlement class members.**

Defendants have agreed to pay over \$17.5 million to provide substantive relief to Class Members and over \$20 million when taking into account attorneys' fees, costs, expenses, and Settlement administration and notice costs. The Settlement allows Class Members to receive one of two forms of relief: a Pass Credit or a Lift Product Voucher. Agreement § IV.

**Pass Credits:** Pass Credits are provided to Class Members automatically without the requirement that they fill out a Claim Form, so long as they do not submit a Claim Form electing

to receive a Lift Product Voucher in lieu of a Pass Credit. Agreement § V(B). The value of the Pass Credit is tiered based on the number of times that Class Members used their 2019/20 Ikon Passes. The Pass Credits can be used for the purchase of any Ikon pass product during the 2023/24 or 2024/25 Ski Seasons that the Pass Credit recipient is eligible for and may be used with any other applicable discounts. *Id.* § IV(C). Further, the Pass Credits can be transferred to other Ikon pass holders associated with the same primary pass holder account. *Id.* § IV(D). And, because the Pass Credits are “stackable,” a parent that purchased season passes for his or her children will be able to aggregate the entire family’s Pass Credits and apply the Pass Credits toward the purchase of a heavily discounted, and perhaps completely free, Ikon pass during the 2023/24 or 2024/25 seasons. *Id.* §§ IV(D), I.

As the Court found at preliminary approval, the total value of the Pass Credits available to Class Members is approximately \$17.5 million. Agreement § IV(F); ECF No. 132 (“The Court finds, based on the Parties review of, and representations about, Settlement Class member data, that the aggregate total value of available Pass Credits is approximately \$17.5 million.”).

**Lift Product Vouchers:** Class Members also have the option of submitting a Claim Form to receive a Lift Product Voucher in lieu of a Pass Credit. Agreement § IV(G). A Lift Product Voucher entitles Settlement Class Members to a discount of between 20-50% of the purchase of a single-day lift ticket at any Alterra-operated resort, depending on the number of days that they used their 2019/20 Ikon Pass. *Id.* As with the Pass Credits, Class Members that used their 2019/20 Ikon Passes the least will receive a higher-valued Voucher, while those that used the passes the most will receive a lower-valued Voucher. *Id.* The Lift Product Vouchers can be used toward the purchase and use of a single-day ticket on or before July 31, 2025. *Id.* § IV(I), (J). And notably, for anyone that does not want to ski again at an Alterra resort, the voucher can be transferred or sold. *Id.* § IV(I), (J).

**B. Payment of attorneys' fees, costs, expenses, service awards, and administration and notice expenses.**

**Attorneys' Fees, Costs, and Expenses:** Defendants have agreed to pay Class Counsel reasonable attorneys' fees, costs, and expenses, as approved by the Court, of up to \$2,872,000, without reducing the Pass Credit and Lift Product Voucher benefits provided to Class members. Agreement § VIII(A). The anticipated fee is estimated to be about 14 percent of the overall value of the Settlement or less, far below benchmarks in consumer class action settlements. At preliminary approval, the Court noted that it "appears to the Court that the terms of the proposed award of attorney fees and expenses, and service awards, are fair and reasonable." ECF No. 132, at 17. The Parties have no "clear sailing" provision, and Defendants remain free to oppose the amounts sought by Class Counsel. *See id.* § VIII(B); Krivoshey Decl. ¶ 22.

**Service Awards:** For their services, work, and dedication on behalf of Settlement Class Members, Class Counsel may seek up to \$3,500 as the reasonable amount of Service Awards to be paid to each of the named Plaintiffs identified in the Settlement Agreement, subject to Court approval. Agreement § VIII(D).

Defendants shall pay any Court approved fees and expenses, as well as any Service Awards to the Plaintiffs, within 31 days of the Court's entry of judgment. *Id.* § VIII(E).

**Notice and Administration:** Defendants have agreed to pay all reasonable Administration and Notice Expenses. Agreement § V(B). The Court approved the Notice Plan at preliminary approval, and the Settlement Administrator and the parties have since administered the plan pursuant to the Court's Order. *See* ECF Nos. 132, 134, 136, 137.

**IV. The requested attorneys' fees are reasonable and should be approved.**

Class counsel expended substantial time and effort on this case. And they ultimately obtained a settlement that confers over \$20 million dollars in benefits on the class.

To compensate it for its efforts and results, Class Counsel requests \$2,853,149 in attorneys' fees. This amounts to approximately 14% or less of the total benefit conferred on the class—far less than the 33% benchmark that courts in this District routinely approve. Moreover, the *Johnson* factors support the reasonableness of Class Counsel's fee request. So too does a lodestar cross-check. The Court should grant Class Counsel's fee request in full.

**A. The Court should assess the reasonableness of the requested fees using the favored percentage-of-the-benefit method.**

Under both Tenth Circuit law and Colorado law<sup>2</sup>, there are two primary methods for determining attorney-fee awards: the “percentage-of-the-benefit” or “common fund” method, and the “lodestar” method. *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 458 (10th Cir. 2017).

“The Tenth Circuit favors the common fund approach, as opposed to the lodestar method, because a percentage of the common fund ‘is less subjective than the lodestar plus multiplier approach,’ matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis, as in this case.” *Lucken Family Limited Partnership, LLLP v. Ultra Res., Inc.*, 2010 WL 5387559, \*2 (D. Colo. Dec. 22, 2010); *see, e.g., Brody v. Hellman*, 167 P.3d 192, 204 (Colo. App. 2007) (“The percentage of the fund method rewards efficiency, not inefficiency, because inefficiently expended hours only serve to reduce

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<sup>2</sup> Because Plaintiffs' claims arise under state law, state law “governs both the propriety of an attorney's fee award and the method of calculating a reasonable fee.” *Wornicki v. Brokerpriceopinion.com, Inc.*, 2018 U.S. Dist. LEXIS 213990, \*15 (D. Colo. 2018); *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 861 F.3d 1182, 1189 (10th Cir. 2017). However, Colorado law and Tenth Circuit law are not materially different, and federal courts in this District routinely apply Tenth Circuit law to cases involving Colorado state law claims. *Wornicki v. Brokerpriceopinion.com, Inc.*, 2018 U.S. Dist. LEXIS 213990, at \*17 n.5 (D. Colo. Sep. 20, 2018) (“the Court finds it appropriate to look to federal district court cases evaluating the reasonableness of fee awards because the same analysis applies under both [Colorado] state and federal law.”); *see Brody v. Hellman*, 167 P.3d 192, 200 (Colo. App. 2007).

the per hour compensation of the attorneys working them.”); *Ashley v. Reg’l Transp. Dist.*, 2008 WL 384576, at \*24-25 (D. Colo. Feb. 11, 2008) (awarding percentage of the value of the settlement). Accordingly, courts in this District “generally award attorneys’ fees in common fund cases ‘based on a percentage of the common fund obtained for the benefit the class.’” *Rothe v. Battelle Mem. Inst.*, 2021 WL 2588873, at \*8 (D. Colo. June 24, 2021); see *Brody v. Hellman*, 167 P.3d 192, 198 (Colo. App. 2007) (“Typically, courts use the percentage method...”).

To determine the appropriate percentage, courts consider the following twelve factors—commonly known as the *Johnson* factors—to determine the appropriate percentage:

the time and labor required, the novelty and difficulty of the question presented by the case, the skill requisite to perform the legal service properly, the preclusion of other employment by the attorneys due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, any time limitations imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation and ability of the attorneys, the "undesirability" of the case, the nature and length of the professional relationship with the client, and awards in similar cases

*Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 458 (10th Cir. 2018). “The trial judge may exercise its judgment in assigning different relative weights to the factors, and may determine one factor is not applicable or give greater weight to one factor over another, where the bases for doing so are clearly reflected in the record.” *Farley*, 2014 WL 5488897, at \*3.

**B. The requested fees, which amount to approximately 14% or less of the benefit conferred on the Class, is fair and reasonable.**

“The customary fee to class counsel in a common fund settlement is approximately one-third of the economic benefit bestowed on the class.” *Shaw v. Interthinx, Inc.*, 2015 WL 1867861, at \*6 (D. Colo. Apr. 22, 2015); *Farley v. Family Dollar Stores, Inc.*, 2014 WL 5488897, at \*4 (D. Colo. Oct. 30, 2014) (Moore, D.J.) (approving 33% of the total settlement in

fees and cost and finding that they “fall within the range of what is reasonable in this District”).<sup>3</sup>

Here, the value of the economic benefit to the Class is over \$20 million. *See* §IV(B)1 below. And Class Counsel requests attorneys’ fees of \$2,853,149. So, Class Counsel’s fee request amounts to approximately 14% or less of the total benefits conferred. It is therefore presumptively reasonable. *See, e.g., Shaw*, 2015 WL 1867861, at \*6 (fees within the 20-50% range are “presumptively reasonable”) (fees within the 20-50% range are “presumptively reasonable”); *Vaszlavik v. Storage Tech. Corp.*, 2000 U.S. Dist. LEXIS 21140, at \*11 (D. Colo. Mar. 9, 2000) (“A 30% common fund fee award is in the middle of the ordinary 20%-50% range and is presumptively reasonable”).

Moreover, the *Johnson* factors confirm that the requested fees are reasonable.

**1. “the amount involved and the results obtained”**

“[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained.” *Aragon*, 2018 WL 6620724, at \*6; *Blanco v. Xtreme Drilling & Coil Servs.*, 2020 WL 4041456, at \*6 (D. Colo. July 27, 2020); *Wornicki v. Brokerpriceopinion.com, Inc.*, 2018 U.S. Dist. LEXIS 213990, at \*20 (D. Colo. 2018) (all citing *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)). Accordingly, “[c]ourts in this District have repeatedly found that when determining the amount of fees to be awarded, the ‘greatest weight should be given to the monetary results achieved for the benefits of the class.’” *Peace Officers’ Annuity & Ben. Fund of*

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<sup>3</sup> *See Lucken Family Ltd. P’ship*, 2010 WL 5387559, at \*5 (one-third of the total economic benefit is the “customary fee awarded to class counsel”); *Anderson v. Merit Energy Co.*, 2009 WL 3378526, at \*3 (D. Colo. Oct. 20, 2009) (same); *O’Dowd v. Anthem, Inc.*, 2019 WL 4279123, at \*17 (D. Colo. Sep. 9, 2019) (same); *Aragon v. Clear Water Prods. LLC*, 2018 WL 6620724, at \*5 (D. Colo. Dec. 18, 2018) (same); *Peace Officers’ Annuity & Ben. Fund of Ga. v. Davita Inc.*, 2021 WL 2981970, at \*7 (D. Colo. July 15, 2021) (same); *In re Crocs, Inc. Sec. Litig.*, 2014 WL 4670886, at \*3 (D. Colo. Sep. 18, 2014) (“Courts in the Tenth Circuit have noted that the typical fee award in complex cases is around one third of the common fund.”); *Diaz v. Lost Dog Pizza, LLC*, 2019 UWL 2189485, at \*5 (D. Colo. May 21, 2019) (noting that “a 33% fee award falls within the norm” and citing studies showing this).

*Ga.*, 2021 WL 2981970, at \*2 (quoting *Anderson v. Merit Energy Co.*, 2009 WL 3378526, at \*4 (D. Colo. Oct. 20, 2009)). In particular, in percentage-of-the-benefit cases like this one, the results obtained may be given more weight than the time and effort expended. *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988).

Here, the results that Class Counsel obtained for the Class are outstanding. The Settlement Agreement provides that, by default (i.e., if the class member does not even fill out a claim form), each Class member will receive Pass Credits in varying amounts depending on the number of days skied, as shown below:

<b>Number of Days Skied</b>	<b>Pass Credit Amount</b>
1	\$150
2	\$125
3	\$100
4	\$50
5-6	\$20
7+	\$10

Based on the number of Class members and the number of days they skied, if all Class Members elect to receive Pass Credits, the total value of this benefit is approximately \$17.5 million. Agreement §IV(F).

Moreover, as the chart above shows, each Class Member—even ones who skied a large number of days and so already received significant value from their 2019/2020 Season Passes—will receive meaningful sums. Anyone who skied 3 days or fewer will receive \$100 or more. Agreement §IV(A). And those who skied the least will receive \$150. *Id.* All-in-all, these recoveries are very high as compared to typical awards in class action settlements.

Furthermore, Pass Credits are distributed automatically to class members and will appear in their online Ikon pass accounts as Pass Credit, without the need for them to do anything. Accordingly, each Class Member—even ones who do not submit out claim forms—will benefit from the settlement. What’s more, as the confirmatory discovery that Alterra provided shows, in

recent years, the renewal rates for Ikon Passes and Ikon Base Passes exceeded [REDACTED] and were as high as [REDACTED].<sup>4</sup> Franzini Decl. ¶ 20. This means that [REDACTED] to [REDACTED] of class members will be able to apply the Pass Credits they receive towards a purchase they would have made anyway, immediately receiving the full benefit. Moreover, Pass Credits can be used toward the purchase of any Ikon Pass product available during the 2023/24 or 2024/25 ski season, ranging from full Ikon Season Passes to “Session” Passes entitling holders to 2-4 days of skiing at any Ikon resort. Agreement §IV(C); Franzini Decl. ¶ 22. So, Class members have the flexibility to use their Pass Credits toward 23/24 or 24/25 passes, and can use them towards either full season passes or (if they are in the minority of passholders who do not renew their season pass), Session passes.

In addition, Class Members also have the option to receive, in lieu of Pass Credits, Lift Product Vouchers entitling them to a discount on single-day lift tickets ranging from 20-50% (depending on the number of days skied). Settlement, §IV(H)-(G). The value of such Vouchers can far exceed the value of the corresponding Pass Credits. For example, a skier who skied 10 days could receive, in lieu of \$10 in Pass Credits, a 20% Lift Ticket Voucher. Applied to peak pricing at Steamboat last season, this Voucher would have resulted in over \$50 in savings; and ski pass prices are only going up. Franzini Decl. ¶ 21. Plus, importantly, Lift Product Vouchers are fully transferrable and may be resold for cash. Agreement §IV(J). So, Class members who do not wish to ski at Alterra resorts at all can sell their Lift Product Voucher and receive cash for it.

Finally, the Settlement Agreement provides that Alterra will be responsible for paying for attorneys’ fees, costs, and service awards up to \$2,874,00, and settlement administration, on top of other benefits. Agreement V(B) (Settlement Administration and Notice Expenses); VIII(A)

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<sup>4</sup> This excludes renewals for the 20/21 Season, which was impacted by COVID. In 20/21, the renewal rate was still almost [REDACTED] for Ikon Base Passes and [REDACTED] for Ikon Passes. Franzini Decl. ¶ 20.

(Fees); VIII(D) (Service Awards). This means that the fees, costs and settlement administration expenses will not reduce the value or amount of the other benefits to class members.

When all of this is factored in, the total economic benefit that the Settlement confers on the Class exceeds \$20 million.<sup>5</sup> What's more, all Class members will receive the benefits they are entitled to automatically. And they have the flexibility to use these benefits in numerous ways, including by selling them for cash. This is an outstanding result for the Class.

This result here is particularly outstanding when it is compared to what happened in *McCauliffe v. Vail Corp.*, 2021 WL 4820542 (D. Colo. Oct. 15, 2021). There, the plaintiffs asserted materially similar claims against the other large provider of multi-resort season passes, Vail Corporation, on behalf of a class of Vail's season pass holders. *Id.* But all of the claims asserted in that case were dismissed. *Id.* The case is now on appeal, and—unless the Tenth Circuit reverses—the class members in that case will receive nothing.

The result here is also particularly outstanding when both the stage of the case and the riskiness of going forward are considered. Although substantial work has been done to date, the path ahead is much longer than the path already travelled. Without a settlement, Plaintiffs will need to prevail on a contested class certification motion, defeat summary judgment, prevail at trial, and defend the resulting verdict on appeal before the Class can recover anything. If Plaintiffs are unsuccessful at any of those steps, the Class will obtain nothing. And, depending on how the appeal in *Vail* unfolds, the Tenth Circuit could issue a decision that substantially impairs the viability of the Class' claims. Franzini Decl. ¶ 23. By settling now, all of this uncertainty,

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<sup>5</sup> The value of attorney's fees, expenses, and costs, as well as notice and administration costs are included in the overall valuation of the Settlement. *See Herr, Ann. Manual for Complex Litigation* § 21.71, p. 525 (4th ed. 2008) (“the sum of the two amounts [class settlement and fees] ordinarily should be treated as a settlement fund for the benefit of the class”).

risk, and delay is avoided and Class members immediately obtain a substantial benefit.

In short, Class counsel obtained outstanding results for the Class. This factor weighs heavily in favor of the requested award.

**2. “the novelty and difficulty of the question presented by the case” and “the ‘undesirability’ of the case”<sup>6</sup>**

This case stems from an extraordinary episode in history: a global pandemic that resulted in unprecedented social and economic disruptions, including extensive stay-at-home orders and business closures. For this reason, prosecuting this case was both novel and difficult. Class Counsel had to apply both the relevant contract language and the laws of several states in completely novel, unforeseen, and unexpected ways to a situation that had not been contemplated. In short, Class Counsel was navigating through uncharted waters.

In addition, “[b]y their nature, class actions require counsel to expend substantial time and effort with no guarantee of success.” *Farley*, 2014 WL 5488897, at \*5 (addressing the “undesirability” factor). And, because this class action involved novel applications of the law to an unprecedented situation, the outcome of this class action was especially uncertain. There was no established body of law or similar cases for Class Counsel to look at to determine whether the case was likely to succeed.

Moreover, this case was also a particularly data and expert-intensive class action. The size of the putative class was very large. Franzini Decl. ¶ 24. There were numerous differences among Class members that had to be accounted for, including the number of days skied and the type of pass they bought (e.g., Base Pass v. Full Pass; Adult v. Student v. Child; and so forth). Franzini Decl. ¶ 24. And several key issues in the case required expert analysis to properly address. For example, the fraction of the season that was lost—and so the damages Class

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<sup>6</sup> To avoid unnecessary repetition, closely related factors are addressed together.

members suffered as a result of Defendants' early closures—was dependent on when each resort would have closed but-for the pandemic. Franzini Decl. ¶ 25. And answering that question required careful analysis from experts with expertise in meteorology and the ski industry. Franzini Decl. ¶ 25. For all these reasons, prosecuting this case properly required extensive expert analysis and input. Franzini Decl. ¶ 25. And so, from the beginning, Class Counsel had to retain and consult with damages and meteorology/snow condition experts. Franzini Decl. ¶ 25. Class Counsel had to pay, and did pay, those experts' fees out of pocket, with no guarantee that those fees would ever be reimbursed. Franzini Decl. ¶ 25. Through trial, expert fees alone would have amounted to hundreds of thousands of dollars out-of-pocket. Franzini Decl. ¶ 25

The very real risk that Class Counsel took on when they invested time and effort into this case is illustrated by what happened in other, similar cases. The most on point example is *McCauliffe v. Vail Corp.*, 2021 WL 4820542 (D. Colo. Oct. 15, 2021), the case mentioned above where the plaintiffs were pursuing claims substantially similar to the ones asserted in this case against Defendant's main competitor, Vail Corporation. After a contested leadership motion and motion to dismiss briefing, Judge Jackson granted Vail's motion to dismiss. *Id.* The case is currently on appeal, but absent a reversal, the putative class in *Vail* will receive nothing. As a result, the attorneys prosecuting the case will not be compensated for their work.

The same thing happened in many other class action cases seeking refunds from businesses as a result of COVID-related business interruptions. Many such cases were dismissed on the pleadings, meaning that class counsel in those cases did not receive any compensation for their work. *See, e.g. Chong v. Ne. Univ.*, 2021 WL 1857341, at \*3 (D. Mass. May 10, 2021) (dismissing case seeking tuition refund due to COVID closures); *Hickey v. Univ. of Pittsburgh*, 535 F. Supp. 3d 372, 381-82 (W.D. Pa. 2021) (same); *Ryan v. Temple Univ.*, 535 F. Supp. 3d 356, 372 (E.D. Pa. 2021) (same); *Fensterer v. Capital One Bank (USA), N.A.*, 2021 WL 838333,

at \*4 (D.N.J. Mar. 5, 2021) (dismissing case seeing airfare refund due to COVID closures); *Ajzenman v. Office of the Comm’r of Baseball*, 492 F. Supp. 3d 1067, 1081 (C.D. Cal. 2020) (ordering some claims seeking season ticket refunds into mandatory arbitration, and dismissing the rest). These cases illustrate concretely how risky it was for Class Counsel to expend time, energy, and costs in this case. Class Counsel could very well have walked away with no compensation for their considerable efforts.

In short, this case was novel and difficult. And although Class Counsel has always believed, and continues to believe, that this case has merit and would have succeeded, there is no denying that prosecuting it on a full contingency was an especially risky proposition—even for a class action. There was a very realistic chance that Class Counsel would expend thousands of hours, and pay hundreds of thousands of dollars in out-of-pocket costs, and recover nothing. These factors weigh in favor of the fees requested. *See, e.g., Vaszlavik v. Storage Tech. Corp.*, 2000 U.S. Dist. LEXIS 21140, \*8 (D. Colo. 2000) (“I find that the novelty and difficulty of the legal and factual issues presented by this case weighs heavily in favor of the fees requested.”).

**3. “the skill requisite to perform the legal service properly” and “the experience, reputation and ability of the attorneys”**

As just described, this case involved challenging, novel, and complex issues. Navigating these issues properly on behalf of the class necessitated highly skilled, highly experienced counsel. And Class Counsel who performed this work possessed the experience, reputation, and ability to do it, as reflected in the excellent result obtained and summarized in the attached declarations. Franzini Decl. ¶ 2-4; Krivoshey Decl. ¶6-9; *see* § IV.B.1 above. These factors weigh in favor of awarding the requested fees and costs.

**4. “the customary fee” and “awards in similar cases.”**

To determine the customary fee, courts look to the customary percentage of the benefit

that is awarded in other class action cases in the relevant district. *See, e.g., Shaw*, 2015 WL 1867861, at \*6.<sup>7</sup> In this District and in the Tenth Circuit, as explained above, the customary fee awarded for class action cases that result in a common benefit “is approximately one-third of the economic benefit bestowed on the class.” *Id.*; *see* §IV(A) above (collecting cases.). And “because applying an arbitrary sliding fee percentage scale in large settlements ‘fails to provide the proper incentive for counsel and is fundamentally at odds with the percentage-of-the-fund approach favored by the Tenth Circuit,’” this customary fee applies regardless of the size of the benefits provided. *Peace Officers' Annuity & Ben. Fund of Ga. v. Davita Inc.*, 2021 WL 2981970, \*3 (D. Colo. 2021) (noting that this customary fee applies even in so-called “megafund” settlements involving very large common benefit awards, and awarding \$40.5 million in fees, amounting to 30% of a \$135 million common fund).

Here, the total economic benefit obtained for the class exceeds \$20 million. *See* §IV(B)1 *above*. Class Counsel’s requested fee of \$2,853,149, therefore, amounts to approximately 14% or less of the total benefit obtained—less than half the customary amount. Because Class Counsel’s fee is much lower than the customary fee award in similar cases, these factors weigh strongly in favor of awarding the requested fees and costs.

##### **5. “whether the fee is contingent”**

“Courts have consistently found [a contingency fee] arrangement, under which counsel runs a significant risk of nonpayment, weighs in favor of the reasonableness of a requested fee award.” *Aragon*, 2018 WL 6620724, at \*6. Here, Class Counsel pursued this case on a fully contingent basis, advancing all case costs. Franzini Decl. ¶ 17; Krivoshey Decl. ¶ 19. Moreover,

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<sup>7</sup> “The ‘customary fee’ factor in a common fund case is the same as the factor suggesting consideration of awards in similar cases.” *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 455 (10th Cir. 1988).

as explained above, the risk of nonpayment was especially great here given the unprecedented nature of the claims. See § IV(B)(2) above. And prosecuting this case was particularly time and expert-intensive. *Id.* For these reasons, this factor weighs in favor of the reasonableness of the requested fee award—even more than is typical for class action cases.

**6. “the time and labor required” and “the preclusion of other employment by the attorneys due to acceptance of the case”**

The “time and labor required” factor looks at the amount of time and labor Class Counsel expended on the case. *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 458 (10th Cir. 2018). In common benefit cases such as this one, “although time and labor required are appropriate considerations, the ninth *Johnson* factor—the amount involved and the results obtained—may be given greater weight when, as in this case, the trial judge determines that the recovery was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class.” *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988). The “preclusion of other employment” factor is closely related and looks at whether taking on the case precluded Class Counsel from taking on other cases. *See, e.g., Wilson v. DFL Pizza, LLC*, 2019 WL 3002928, at \*11 (D. Colo. July 10, 2019) (treating these two factors together).

Here, to date, Class Counsel and their staff spent over two and a half years, and a total of 1093.3 hours, prosecuting this case. Franzini Decl. ¶ 7; Krivoshey Decl. ¶ 11. Class Counsel’s past work on the case included: developing the legal strategy and identifying the claims to assert in the Complaint, interviewing class members and selecting class representatives to best represent the class; successfully opposing a highly contested Motion to Dismiss; engaging in extensive document discovery; consulting with experts; and participating in a mediation and hotly contested, protected follow-up settlement discussion culminating in the Settlement

Agreement. Franzini Decl. ¶ 5; Krivoshey Decl. ¶ 3-5. Moreover, several other firms involved in the case also provided support to Class, spending an additional 106.4 hours on the case. Franzini Decl. ¶12; Krivoshey Decl. ¶23. Plus, Class Counsel anticipate spending approximately 100 to 300 additional hours on this case, depending on whether or not there is an appeal. Krivoshey Decl. ¶ 11; Franzini Decl. ¶14. When all of this is factored in, the total time spent on this case will be at least 1,299.7 hours, and as much as 1,499.7 hours. Franzini Decl. ¶ 14. <sup>8</sup>

Performing this work precluded (and will continue to preclude) Class Counsel from taking on other profitable cases, including other class action cases as well as other business cases. *Id* ¶ 6. Moreover, as explained above, Class Counsel’s efforts were highly successful and resulted in an outstanding result for the Class: a total benefit of over \$20 million, which will be distributed automatically to each Class member, without even the need to fill out a claim form.

Accordingly, these factors weigh in favor of granting the requested fee award. <sup>9</sup>

**C. The lodestar cross-check confirms that the requested fees are reasonable.**

“Courts evaluating the reasonableness of a percentage fee award will often crosscheck the requested fee with the lodestar amount.” *Wornicki v. Brokerpriceopinion.com, Inc.*, 2018 U.S. Dist. LEXIS 213990, \*23 (D. Colo. 2018). “[W]here, as here, the lodestar method is used as a mere cross-check of the percentage method, the court does not need to scrutinize exhaustively the hours documented by counsel.” *Brody v. Hellman*, 167 P.3d 192, 204 (Colo. App. 2007). Here, Class Counsel, and attorneys working at their direction, performed substantial work in this

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<sup>8</sup> “[I]n awarding attorneys’ fees in a common fund case, the ‘time and labor involved’ factor need not be evaluated using the lodestar formulation when, in the judgment of the trial court, a reasonable fee is derived by giving greater weight to other factors, the basis of which is clearly reflected in the record.” *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988). In any event, Class Counsel’s lodestar (set forth in section IV(C)below) further supports the reasonableness of the requested award.

<sup>9</sup> The remaining factors, “the nature and length of the professional relationship with the client” and “any time limitations imposed by the client or the circumstances,” are neutral.

case, totaling more than 1199.7 attorney and staff hours. Further, Class Counsel anticipates spending an extra 100-300 hours in securing final approval and judgment, including handling issues that may arise with the notice campaign, answering class member questions, responding to any objections, appearing at the final approval hearing, and handling any appeals, if applicable. See Franzini Decl. ¶ 14; Krivoshey Decl. ¶ 11. This future work should be considered in the initial lodestar calculation.<sup>10</sup>

In total, the lodestar for this case is \$784,788 for past work, and approximately \$850,203 to \$981,034 when future work is factored in. Franzini Decl. ¶¶13-14. Counsel's fee request of \$2,853,149, therefore, amounts to a multiplier of 2.91 to 3.36 (and 3.64 for past work only). This is well within the range that is routinely accepted in this District. See, e.g., *Mishkin v. Zynex, Inc.*, 2012 WL 4069295, at \*2 (D. Colo. Sep. 14, 2012) (collecting cases in this district approving lodestar multipliers ranging from 2.5 to 4.6); *Rothe*, 2021 WL 2588873, at \*9-11 (D. Colo. June 24, 2021)(approving a \$1,550,000 in attorneys' fees using a 3.61 multiplier); *In Re*

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<sup>10</sup> See *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.*, 746 Fed. Appx. 655, 659 (9th Cir. 2018) ("The district court did not err in including projected time in its lodestar cross-check; the court reasonably concluded that class counsel would, among other things, defend against appeals and assist in implementing the settlement"); *Perez v. Rash Curtis & Associate*, 2020 WL 1904533, at \*20 (N.D. Cal. Apr. 17, 2020) (including future time in lodestar analysis because "[t]he Court recognizes that class counsel will indeed incur continued fees in both the appeal of this case and the subsequent litigation"); *Reyes v. Bakery & Confectionery Union & Indus. Int'l Pension Fund*, 281 F. Supp. 3d 833, 856 (N.D. Cal. 2017) (including, over the defendants' objection, "125 anticipated future hours" to be spent on "communicating with the settlement administrator and responding to inquiries from class members" in the lodestar calculation); *Corzine v. Whirlpool Corp.*, 2019 WL 7372275, at \*11 (N.D. Cal. Dec. 31, 2019) (including "an estimate of 250 hours for future work to complete Settlement's claims process through 2026" in the lodestar calculation); *In re Equifax Inc. Customer Data Security Breach Litig.*, 2020 WL 256132, at \*39-40 (N.D. Ga. Jan. 13, 2020) (including in the lodestar calculation, over a class member's objection, class counsel's estimate of an anticipated 10,000 hours to be spent in the future to implement and administer a class action settlement because "[e]xcluding such time ... would misapply the lodestar methodology and needlessly penalize class counsel"); *Hausfeld v. Cohen Milstein Sellers & Toll, PLLC*, 2009 WL 4798155, at \*17 (E.D. Penn. Nov. 30, 2009) ("Where attorneys provide additional services post-settlement ... courts should award fees for those services").

*Oppenheimer Champion Income Fund Sec. Fraud Class Action*, slip op. (D. Colo. Sept. 30, 2011) (Franzini Decl. Ex. 7)(lodestar multiplier of 4.6); *In re Core Bond Fund*, 2011 WL 13223541, at\*2 (D. Colo. Sept. 30, 2011) (lodestar multiplier of 4.2); *Shaulis v. Falcon Subsidiary LLC*, 2018 WL 4620388, \*2 (D. Colo. Sept. 26, 2018) (noting that “Courts routinely approve similar or higher lodestar multipliers in comparable common fund cases” and citing with approval decisions approving lodestar multipliers as high as 9.3). Accordingly, the lodestar cross-check further supports the reasonableness of Class Counsel’s requested fees.

**VI. The requested costs are reasonable and should be approved.**

“As with attorney fees, the common fund doctrine allows for an award of costs so that the beneficiaries of the fund share the cost of creating the fund.” *In re Qwest Commc’n Int’l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1143, 1154 (D. Colo. 2009). Here, Class Counsel spent \$18,850.73 in costs prosecuting this case. *See* Franzini Decl. ¶ 15-16; Krivoshey Decl. ¶ 13. These expenses consist primarily of expert fees and mediation fees, as well as other reasonably necessary expenses such as filing fees, e-discovery costs, and so forth. *Id.* Because these expenses were reasonably necessary and not excessive, they should be allowed in full.

**VII. The requested service awards are reasonable and should be approved.**

“[I]ncentive awards are an efficient and productive way to encourage members of a class to become class representatives, and to reward the efforts they make on behalf of the class.” *Shaw*, 2015 WL 1867861, at \*8-9 (citation and internal quotation marks omitted). “The factors to consider in determining an incentive award include: (1) the actions that the class representative took to protect the interests of the class; (2) the degree to which the class has benefitted from those actions; and (3) the amount of time and effort the class representative expended in pursuing the litigation.” *Id.*

Here, Plaintiffs request service awards of \$3,500 each. The Settlement Agreement

provides that Alterra will pay these service awards on top of the other benefits that it will provide to Class Members, so the awards will not decrease the benefits to other class members.

Agreement §VIII(D). The service awards are well within the range of incentive awards approved in this district. *See, e.g., Lucken Family Ltd. P'ship*, 2010 WL 5387559, at \*6-7 (D. Colo. Dec. 22, 2010) (approving service awards between \$2,500 and \$10,000); *Shaw*, 2015 WL 1867861, at \*8 (approving \$10,000 service award); *Pliego v. Los Arcos Mexican Rests., Inc.*, 313 F.R.D. 117, 131 (D. Colo. 2016) (approving \$7,500 service award); *Droegemueller v. Petroleum Dev. Corp.*, 2009 WL 961539, at \*5-6 (D. Colo. Apr. 7, 2009) (approving service awards of \$5000 per plaintiff, for a total of \$25,000). And they are warranted in view of Plaintiffs' efforts in this case and the results obtained. *See* Franzini Decl. ¶ 25; Krivoshey Decl. ¶ 22.

### **VIII. Conclusion.**

In short, Plaintiff and Class Counsel obtained an exceptional result for the Class. They should be awarded the requested fees, costs, and incentive awards in full.

November 3, 2020

Respectfully submitted,

*s/ Simon Franzini*

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*Class Counsel*

**Certificate of Conferral**

I certify that, before filing this motion, Class Counsel conferred with counsel for Defendants in an attempt to resolve this matter. *See* D.C.COLO.LCivR 7.1. Alterra has indicated that it would oppose the motion.

*/s/ Simon Franzini*

**Certificate of Service**

I certify that all counsel of record were served November 3, 2022 with a copy of this document and attachments, via CM/ECF filing.

/s/ Simon Franzini

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

Civil Action No. 20-cv-01057-RM-SKC

Consolidated for Pretrial:

20-cv-01158-RM-SKC

20-cv-01175-RM-SKC

20-cv-01186-RM-SKC

20-cv-01254-RM-SKC

20-cv-01347-RM-SKC

20-cv-01520-RM-SKC

20-cv-01583-RM-SKC

20-cv-01691-RM-SKC

20-cv-01699-RM-SKC

20-cv-02021-RM-SKC

TIMOTHY GOODRICH,  
NOLTE MEHNERT,  
GEORGE T. FARMER  
JOSEPH PANGANIBAN,  
ERIK ERNSTROM,  
W. WALTER LAYMAN,  
BRADLEY BRIAR, and  
KERI REID, each individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ALTERRA MOUNTAIN COMPANY,  
ALTERRA MOUNTAIN COMPANY U.S. INC., and  
IKON PASS INC.,

Defendants.

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**DECLARATION OF SIMON FRANZINI IN SUPPORT OF MOTION FOR  
ATTORNEYS' FEES, COSTS AND EXPENSES AND PLAINTIFFS' SERVICE AWARD**

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I, Simon Franzini, declare as follows:

1. I am a partner with the law firm Dovel & Luner LLP (“Dovel”). I co-lead the firm’s class action practice, and I was appointed as Interim Co-Lead Class Counsel by the Court in this action on July 31, 2020. I submit this declaration in support of the Motion for Class Counsel Fees and Expenses (the “Motion”). I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. I graduated from Harvard Law School, *magna cum laude*, in 2012. I began my career at Dovel & Luner and became a partner in the firm in December 2018. Mr. Jacobson graduated from Stanford Law School, Order of the Coif, in 2009. After serving as a jury consultant for several years, Mr. Jacobson joined my firm in 2014 as an associate and was promoted to partner in December 2020.

3. Throughout our careers, both Mr. Jacobson and I have litigated numerous complex litigations including business disputes and class actions, and have each tried a number of complex disputes to verdict. In 2019, Mr. Jacobson and I tried a Telephone Consumer Protection Act class action in Oregon federal court, *Wakefield vs. ViSalus, Inc.*, No. 3:15-cv-1857-SI (D. Or.). The jury returned a \$925 million verdict for the class. Due to this success, Dovel was selected as a finalist for The National Law Journal’s 2020 Elite Trial Lawyers “Law Firm of the Year” award in Consumer Protection.

4. My firm’s resume, which provides additional detail regarding my firm and the qualifications of the other lawyers at my firm, is attached as Exhibit 1.

5. My firm was appointed as Interim Co-Lead Counsel, along with Burshor & Fisher P.A., on July 31, 2020. As set forth in greater detail in my co-counsel Mr. Krivoshey’s accompanying declaration, we conducted a diligent pre-filing investigation in this case,

successfully opposed a highly contested motion to dismiss, engaged in extensive discovery efforts, and took part in a mediation and protracted settlement discussions that culminated in the Settlement Agreement executed on August 11, 2022. *See* Krivoshey Decl. ¶¶5-6.

6. Attached as Exhibit 2 are my firm's detailed billing entries for this case. I have personally reviewed all of my firm's time entries, and have used billing judgment to ensure that duplicative or unnecessary time has been excluded and that only time reasonably devoted to the litigation has been included. The time and descriptions displayed in these records were regularly and contemporaneously recorded by me and the other timekeepers of the firm pursuant to firm policy and have been maintained in the computerized records of my firm. Performing work on this case precluded me and my firm from undertaking other profitable work in this case including other class actions and other business cases.

7. As of November 2, 2022, my firm expended 664 hours in this case. Dovel's lodestar fee based on hours spent to date in this case, based on current billing rates, is \$433,450.<sup>1</sup> Below is a summary of the attorney hours worked, the rates, and the total lodestar for the work my firm has performed on this case:

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<sup>1</sup> A lodestar cross-check is properly based on counsel's current (rather than historical rates) to compensate counsel for the time value of money and inflation. *Ramos v. Lamm*, 713 F.2d 546, 555 (10th Cir. 1983). Class Counsel's rates are commensurate with their experience and are well within the hourly rates used in lodestar calculations that were approved by Courts in this District in similar cases. *See, e.g., O'Dowd v. Anthem, Inc.*, 2019 WL 4279123, at \*18 (D. Colo. Sept. 9, 2019) (finding hourly rate of \$205-1,095 of class counsel reasonable); *Brody v. Hellman*, 167 P.3d 192, 201 (Colo. App. 2007) (affirming attorney fee award that came to approximately \$1,000 per hour per attorney or paralegal was reasonable); *In re Molycorp Inc. Sec. Litig.*, 2017 WL 11598681, at \*1-2 (D. Colo. June 16, 2017) (approving 30% fee request in a securities class action where attorney hourly rates ranged from \$435 to \$955 per hour); *see* Krivoshey Decl. ¶ 13 (summarizing rates approved in other cases and providing additional survey evidence showing that Class Counsel's rates are reasonable).

<b>Timekeeper</b>	<b>Position</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total at Local Hourly Rate</b>
Simon Franzini	Partner	124.3	\$850	\$105,655.00
Jonas Jacobson	Partner	295.2	\$800	\$236,160.00
Gabe Doble	Associate	20.9	\$650	\$13,585.00
Grace Bennett	Associate	5.5	\$550	\$3,025.00
Mazelle Etessami	Summer Associate	102.5	\$450	\$46,125.00
Zoey Ryu	Analyst	74.0	\$250	\$18,500.00
Jeane Khang	Analyst	0.5	\$250	\$125.00
Adam Trujillo-Hanson	Analyst	27.9	\$250	\$6,975.00
William Moise	Analyst	0.8	\$250	\$200.00
Roma Bhojwani	Analyst	12.4	\$250	\$3,100.00
<b>TOTALS:</b>		<b>664.0 HOURS</b>		<b>\$433,450.00</b>

8. Included within Exhibit 2 is a chart setting forth the hourly rates charged for lawyers and staff at my firm. Based on my knowledge and experience, the hourly rates charged by my firm are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. I have personal knowledge of the range of hourly rates typically charged by counsel in our field throughout the United States, both on a current basis and in the past. In determining my firm's hourly rates from year to year, my partners and I have consciously taken market rates into account and have aligned our rates with the market.

9. Through my practice, I have become familiar with the non-contingent market rates charged by attorneys in Los Angeles, California (where our offices are located) and other major legal markets. This familiarity came from the following: (1) reviewing declarations regarding prevailing market rates in fee applications in other cases; (2) discussing fees with other

attorneys; (3) reviewing surveys and articles on attorney's fees. My firm's rates are in line with the non-contingent market rates charged by attorneys of reasonably comparable experience, skill, and reputation for trial work. As set forth in the Krivoshey Declaration, comparable hourly rates have been found reasonable by various courts for reasonably comparable services. In addition, the reasonableness of my firm's hourly rates is confirmed by several surveys of legal rates, which are attached as Exhibits 4-14 of the Krivoshey Declaration.

10. No court has ever cut my firm's fee application by a single dollar on the ground that our hourly rates were not reasonable.

11. A summary and description of the time entries and billing for Bursor & Fisher and Reich Radcliffe & Hoover LLP is set forth in the accompanying Krivoshey Declaration, which I reviewed in preparing this declaration.

12. In addition to the time my firm and our co-counsel at Bursor & Fisher spent on the case, the following firms also spent time working on the case at our direction following our appointment as Interim Co-Lead Counsel: Cafferty Clobes Meriwether & Sprengel LLP, counsel for Plaintiff Farmer, and Hellmuth & Johnson, PLLC and Hagstrom Law, counsel for Plaintiff Reid, Plaintiff Briar, Plaintiff Layman, and Plaintiff Ernstrom. The approved entries supplied by these firms are attached as Exhibits 3-5. For the sake of consistency and efficiency, only time beginning on August 1, 2020, the day after the Court appointed Interim Lead Class Counsel that was spent on tasks performed at the direction of Class Counsel was approved. I have personally reviewed all of these time entries, and have used billing judgment to ensure that duplicative or unnecessary time have been excluded and that only time reasonably devoted to the tasks performed at the direction of Class Counsel have been included. The time and descriptions displayed in these records were regularly and contemporaneously recorded and submitted to

Class Counsel pursuant to the billing protocol we instituted for this case after our appointment as Interim Co-Lead Counsel. In total, according to those records, the other firms involved in this case expended 106.4 hours on this case, for a lodestar of \$76,590.50.

13. Based on the lodestar for my firm's work, the work of Bursor & Fisher (as described in Mr. Krivoshey's accompanying Declaration), and the work of all other firms that contributed to this case, the total lodestar for work expended to date is \$784,788, consisting of a blended hourly rate is \$654 per hour for 1199.7 hours of work, well within the local market's range of reasonableness.

14. In addition to the time enumerated above, I estimate that Class Counsel will collectively incur an additional 100-300 hours of future work handling issues that may arise with the notice campaign, answering class member questions, responding to any objections, briefing the final approval motion and appearing at the final approval hearing, and handling any appeals, if applicable. Indeed, some of the benefits under the Settlement do not expire until the 2024/2025 ski season, meaning that even if there were no appeals, Class Counsel would need to spend time overseeing the administration of the settlement for the next three years. When these additional hours are factored in, the total lodestar is \$850,203.35 to \$981,034.06 for 1,299.7 hours to 1,499.7 hours.

15. Attached hereto as Exhibit 6 is an itemized listing of each out-of-pocket expense my firm incurred in this case. These expenses are reflected in my firm's records, and were necessary to prosecute this litigation. All expenses were carefully and reasonably expended, and they reflect market (and in some cases, below-market) rates for various categories of expenses incurred. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

16. To date, my firm has expended \$8,290.82 in out-of-pocket expenses in connection with the prosecution of this action.

17. My firm undertook this representation on a wholly contingent basis recognizing that the risk of non-payment has been high throughout this litigation. There were substantial uncertainties in the viability of this case as a class action, as well as substantial uncertainties in the merits of the underlying claims, and the ability to collect on any judgment that might be obtained. Although we believed the case to be meritorious, a realistic assessment shows that the risks inherent in the resolution of the liability issues, protracted litigation in this action, as well as the probable appeals process, are great.

18. Had we not resolved this matter through settlement, we would have vigorously prosecuted the case through trial, if necessary, and appealed any determinations that may have been adverse to the Class's interests. We were therefore at great risk for non-payment. In addition, as described above, we have advanced significant expenses that would not have been reimbursed absent a successful result.

19. The Settlement Agreement does not have a "clear sailing" provision, and Class Counsel does not have any agreement as to attorneys' fees or expenses with Defendants. At no point has Class Counsel negotiated its attorney's fees with Defendant. Defendant is free to challenge the present fee application.

20. In connection with the Settlement, Alterra provided confirmatory discovery showing, among other things, the renewal rates for Ikon season passes in recent years. That discovery shows that the renewal rate of 18/19 passholders to 19/20 pass sales was [REDACTED] for the Ikon Pass and [REDACTED] for the Ikon Base Pass; that the renewal rate of 19/20 passholders to 20/21 pass sales was [REDACTED] for the Ikon Pass and [REDACTED] for the Ikon Base Pass; and that the renewal

rate of 20/21 passholders to 21/22 pass sales was [REDACTED] for the Ikon Pass, and [REDACTED] for the Ikon Base Pass; [REDACTED] for the Ikon Base Plus Pass.

21. Alterra's confirmatory discovery also provided information on Historic Ikon Pass and Peak Rates for Adult 1-Day Lift Tickets at Alterra operated resorts. That discovery showed that the peak pricing for Alterra's most expensive resort, Steamboat, for the 21/22 season was \$269. A 20% Lift Ticket Voucher applied to that peak pricing would result in over \$53 in savings.<sup>2</sup>

22. As reflected on Alterra's Ikon Pass website, for the 22/23 season, Alterra sells three season passes: the Ikon Pass, the Ikon Base Pass, the Ikon Base Plus pass.<sup>3</sup> These passes provide unlimited season-wide access to select destinations, with or without blackout dates (the locations and whether or not there are blackout dates depend on the pass).<sup>4</sup> In addition, Alterra sells three types of "session" Ikon passes (2-day, 3-day, and 4-day).<sup>5</sup> These session passes provide access for 2, 3, or 4 days total at 39 select destinations.<sup>6</sup>

23. In the *McCauliffe v. Vail Corp.*, Civil Action No. 1:20-cv-01121-RBJ (D. Colo.) case, the plaintiffs filed a putative class action against Defendant's main competitor, Vail Corporation, asserting claims substantially similar to the ones asserted in this case. Although I am not directly involved in that case, I have been following it because of its potential impact on the outcome of this case. That case is currently on appeal to the Tenth Circuit following an order dismissing all claims with prejudice. In my view, depending on how the appeal in *Vail* unfolds,

---

<sup>2</sup> Several other resorts have comparable peak pricing, including Deer Valley (\$249), Mammoth Mountain (\$229) and Winter Park (\$229).

<sup>3</sup> <https://www.ikonpass.com/en/shop-passes>

<sup>4</sup> <https://www.ikonpass.com/en/shop-passes/ikon-base-pass>;  
<https://www.ikonpass.com/en/shop-passes/ikon-pass>

<sup>5</sup> <https://www.ikonpass.com/en/shop-passes>

<sup>6</sup> <https://www.ikonpass.com/en/shop-passes/ikon-session-pass>

the Tenth Circuit could issue a decision that substantially impairs the value of the claims in this case.

24. The Class in this case exceeds [REDACTED]. In addition, there are numerous differences among Class members that had to be accounted for, including the number of days skied and the type of pass they bought (e.g., Base Pass v. Full Pass; Adult v. Student v. Child; and so forth).

25. Several key issues in the case required expert analysis to properly address. For example, the fraction of the season that was lost—and so the damages Class members suffered as a result of Defendants' early closures—depends on when each resort would have closed but-for the pandemic. And answering that question required careful analysis from experts in both meteorology and the ski industry. For all these reasons, prosecuting this case properly required extensive expert analysis and input. For this reason, from the very beginning of the case, my firm retained three experts: a damages expert and two meteorology/snow conditions experts. From the very beginning, my firm consulted with those experts as appropriate and had to pay, and did pay, those experts' hourly fees out of pocket. I have extensive experience working with experts through trial. Based on that experience, I estimate that the expert fees in this case through trial would have amounted to hundreds of thousands of dollars.

25. The Plaintiffs have vigorously prosecuted this action on behalf of themselves and the putative Settlement Class. Through my firm's, and co-counsel's (Bursor & Fisher) interaction with the Plaintiffs, I believe that they have been exemplary Class Representatives. They have participated on many phone calls and Zoom calls with counsel to discuss settlement, discovery, the allegations, and litigation strategy. They have each been attentive, very responsive to inquiries and requests by email and phone from Class Counsel, and have been

proactive in keeping abreast of developments in the litigation. Each of the Plaintiffs was willing to appear for a deposition and to testify at trial, had it been necessary. I believe that their vigorous pursuit and efforts in this litigation, on behalf of Settlement Class Members, should be rewarded with the full \$3,500 allowed by the Settlement Agreement.

26. Attached as Exhibit 7 are true and correct copies of the unpublished cases cited in Plaintiffs' memorandum that are not available on Westlaw.

27. Attached as Exhibit 8 is a copy of the parties' Settlement Agreement.

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

November 3, 2022

Respectfully submitted,

By: s/ Simon Franzini  
Simon Franzini





**DOVEL & LUNER**  
LLP

# A law firm **built to win**



**04** Who we are

**12** What we do

**14** How we do it

**26** Our reputation

**34** Case studies

**Dovel & Luner is a plaintiff's firm  
that litigates high-stakes cases  
in courts across the country.**



**We work on contingency and  
are paid only for success.**



## We win trials and arbitrations

## We get big settlements

**Bloomberg Law**

### Jury Reaches \$925 Million Verdict in Telemarketing Case

Posted April 15, 2019, 8:41 AM  

A federal jury has ordered a multi-level marketing company to pay \$925 million for making nearly 2 million unsolicited telemarketing calls to consumers promoting weight-loss products.

**COMPUTERWORLD** IDG — the world's largest technology media company

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[IDG News Service >](#)

### Defendants to pay up to \$112 million in Power-over-Ethernet patent case

Jim Duffy  
19.07.2010 11:20:38 | Network World (US) AAA

Network-1 Security Solutions, an acquirer and licensor of intellectual property, says it has settled its Power-over-Ethernet patent infringement case against Cisco and five other companies.

# Who we are

## Greg Dovel

greg@dovel.com



Twenty-five years ago, Greg gave up his partnership at a name-brand firm to create a firm dedicated at its core to training excellent lawyers to win cases. He wanted to build a firm that would not bill hours and would only be paid for success—a firm that was built to win cases.

Greg's cross-examinations suck the air from the courtroom, demoralize opposing lawyers, and win cases. In court, it feels like magic. But magic has nothing to do with it. Greg's crosses are the result of thousands of hours spent practicing his trial skills and teaching others to do the same. None of those hours were billable. This could only be done at a firm like Dovel & Luner.

For an example of one of Greg's crosses, turn to page 21.

- Law clerk to Supreme Court Justice Antonin Scalia (1987-88)
- Law clerk to Ninth Circuit Judge J. Clifford Wallace (1986-87)
- Harvard Law School (J.D., *magna cum laude*, 1986)
- Central Washington State University (B.A., *summa cum laude*, 1983)

“When you're not practicing, someone somewhere is. And when the two of you meet, the other person will win.” – Bill Bradley

## Sean Luner

sean@dovel.com



Sean is an expert in persuasion. He has been hired as a trial consultant to prepare opening statements and closing arguments in more than 100 trials by law firms such as O'Melveny & Myers, Irell & Manella, Paul Hastings, Winston & Strawn, and Greenberg Traurig. Sean uses that same skillset to persuade judges, juries and opposing parties that his own clients' claims are winners. This leads to exceptional results.

In one case that appeared to have an insurmountable problem, Sean was brought in weeks before trial. The client was facing a fraud claim for failing to disclose a troubling fact before the parties entered a business deal—that the client had pleaded guilty to drug smuggling and served years in prison. Through a series of focus groups, Sean developed an approach that turned that troubling fact in his client's favor. The jury came back with a fraud verdict, but not against Sean's client. It was against the other side:

- University of Southern California (J.D., Order of the Coif, 1992)
- University of Southern California (M.B.A., Beta Gamma Sigma, 1992)
- University of California at Los Angeles (B.S., 1988)

### Los Angeles Times

**Simon Firm Must Pay \$78 Million, Jury Rules**

“Success is peace of mind, which is a direct result of self-satisfaction in knowing you made the effort to become the best of which you are capable.” – John Wooden

## Julien Adams

julien@dovel.com



Julien came to Dovel & Luner after six years as an Assistant United States Attorney, prosecuting government fraud and public corruption. As a federal prosecutor, Julien tried 21 jury trials, won them all, and received commendations from the FBI, IRS, and NASA.

After more than 25 years as a trial lawyer, Julien has mastered the art of framing a case to achieve victory. For example, Julien represented a solo entrepreneur in a multi-million dollar breach of contract case against a Fortune 100 company. Our client claimed the contract was a two-page document titled “Letter of Intent.” The defendant asserted there was no contract. Our focus group testing showed that if jurors were asked to decide whether this document was a binding contract, they would hone in on the title, which said “Letter of Intent,” not “Contract,” and we would lose.

Julien reframed the issue. In his opening statement, he told jurors that they needed to decide whether the document was a “binding letter of intent” or a “non-binding letter of intent.” The title became irrelevant. While the jury was deliberating, the defendant capitulated and agreed to a favorable settlement.

- Assistant U.S. Attorney (1995-2001)
- UC Berkeley School of Law (J.D., 1991)
- University of Southern California (B.A., 1988)

“The pursuit of truth will set you free; even if you never catch up with it.” – Clarence Darrow

## Rick Lyon

rick@dovel.com



Rick is a fourth-generation lawyer. He is people savvy and especially adept at finding concrete details and turns of phrase that persuade judges and juries to find for our clients.

He is also adept at prevailing for his clients against seemingly difficult odds. He does this by deeply analyzing arguments, coming up with answers for all doubts, and crafting briefs and oral arguments that persuade judges and jurors.

For example, Mirror Worlds, a software startup, had a prior patent lawsuit against Apple that ended with a judgment of non-infringement. Then Dovel & Luner took the case. Rick filed a new lawsuit asserting that Apple continued to infringe the same patent. Naturally, Apple argued that the new case was barred: Apple's products had already been found not to infringe. Rick came up with a new infringement theory and convinced the district court that the earlier judgment did not bar the second lawsuit. Even more astounding, Rick persuaded the court that the earlier judgment did bar Apple's invalidity defenses. With no invalidity defense and facing a compelling infringement case, Apple settled the case on the eve of trial.

- Harvard Law School (J.D., *cum laude*, 2003)
- Stanford University (B.S., 2000)

"Truth, like gold, is to be obtained not by its growth, but by washing away from it all that is not gold." - Leo Tolstoy

## Christin Cho

christin@dovel.com



Christin has amassed a track record of success in all aspects of high-stakes litigation, from summary judgment motions to jury trials.

Christin excels at unpacking complex cases, finding a key point of vulnerability, and then creating a decisive attack on that point.

For example, in a case against a Silicon Valley giant, the defendant's key defense hinged on proving that "pattern matching" meant comparing wireless signal characteristics. Christin developed a cross-examination of the defendant's expert that included a series of simple questions that could only be answered one way. Christin walked the expert down this path, which ultimately led the expert to admit, unambiguously, that the defendant's key premise was false:

```
14           In the context of the claims, is it your
15 opinion that "pattern matching" means doing a
16 comparison of wireless signal characteristics?
17 A.      No
```

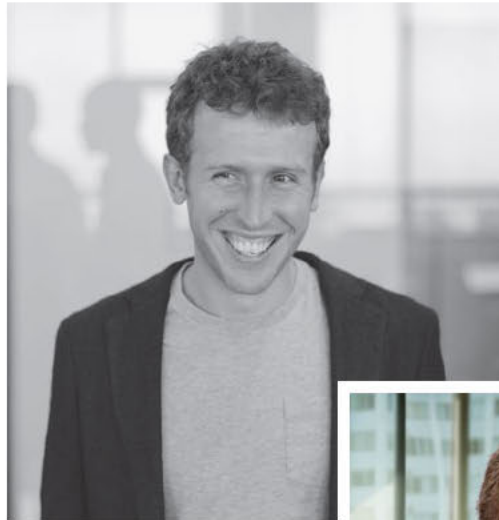
- Law clerk to Ninth Circuit Judge J. Clifford Wallace (2006-07)
- UC Berkeley School of Law (J.D., Order of the Coif, 2005)
- Amherst College (B.A., *cum laude*, 2001)

Victory for our client soon followed.

"Every day that you don't practice  
is a day you're getting worse." – Amy Chua

## Simon Franzini

simon@dovel.com



Simon excels at accurately analyzing complex facts and tangled legal issues and turning them into winning trial cases.

For example, our firm was brought in at the last minute to try a class action case in federal court in Oregon, alleging violations of consumer protection laws against robocalls. Because the case had been expected to settle, the deposition testimony was thin and no experts had been designated. The defendant became convinced it would win at trial and refused to settle.

Simon dove in and began stitching together evidence that would prove the case. For example, in the absence of a designated expert, he came up with a way to have a fact witness summarize the class-wide database evidence. And he took an old declaration offered by a defendant witness for a procedural issue, and used it as compelling proof that defendants made millions of illegal telemarketing calls. At trial, Simon delivered the closing argument on a Friday morning. That afternoon, the jury came back with a verdict:

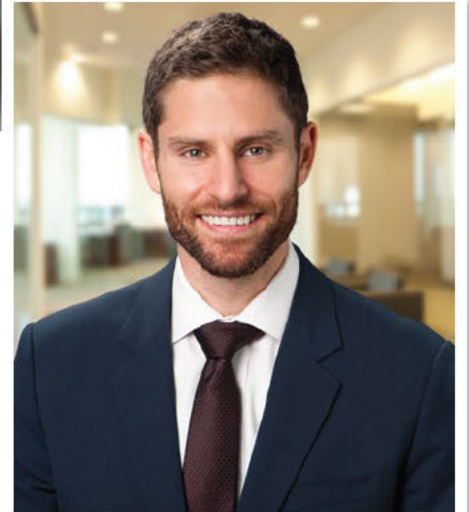
- Harvard Law School (J.D., *magna cum laude*, 2012)
- New York University (B.A., *summa cum laude*, Phi Beta Kappa, 2009)

**Jury Reaches \$925 Million Verdict in Telemarketing Case**

“Practice isn’t the thing you do once you’re good. It’s the thing you do that makes you good.” – Malcolm Gladwell

## Jonas Jacobson

jonas@dovel.com



Before joining Dovel & Luner, Jonas worked for five years as a jury consultant, conducting mock trials, witness preparation, and jury selection in cases ranging from securities fraud to patent infringement. He joined the firm because he wanted to do more than give advice to trial attorneys—he wanted to be one.

Since joining the firm, Jonas has excelled as an advocate. In his first three years, Jonas argued two appeals before the U.S. Court of Appeals for the Federal Circuit and won both. In another case, Jonas cross-examined the defendant's expert witness at trial and undermined each of the defendant's arguments. Jonas even got the expert to admit that one of the expert's main contentions was not only a "mistake," but that he had told the defendant's lawyers a "month or two" before trial that it "was false:"

18 Q I had to bring it out on cross, right, sir?  
19 A Well, yes, and I am telling you that was my mistake.  
20 Q When did you tell HP that what they had in this  
21 contention was false?  
22 A It may have been a month or two ago.

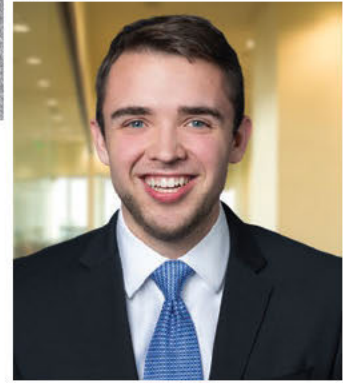
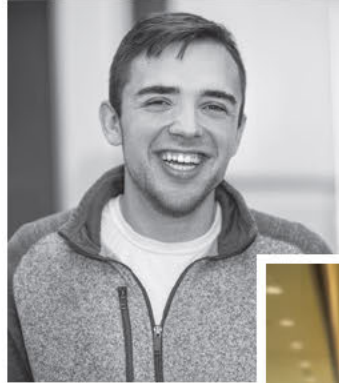
- Stanford Law School (J.D., Order of the Coif, 2009)
- Stanford University (M.A., psychology, 2009)
- Princeton University (B.A., *summa cum laude*, Phi Beta Kappa, 2005)

"The signal is the truth. The noise is what distracts us from the truth." - Nate Silver

## Alexander Erwig

alexander@dovel.com

- Harvard Law School  
(J.D., *magna cum laude*, 2020)
- University of Oregon Clark Honors College  
(B.A., *cum laude*, Phi Beta Kappa, 2016)



## Joey Bui

joey@dovel.com

- Harvard Law School  
(J.D., *cum laude*, 2021)
- NYU Abu Dhabi  
(B.A., *cum laude*, 2016)



## Grace Bennett

grace@dovel.com

- Harvard Law School  
(J.D., 2022)
- Georgetown University  
(B.A., *magna cum laude*, 2017)
- Bar application filed



# What we do

## **We build **winning** cases.**

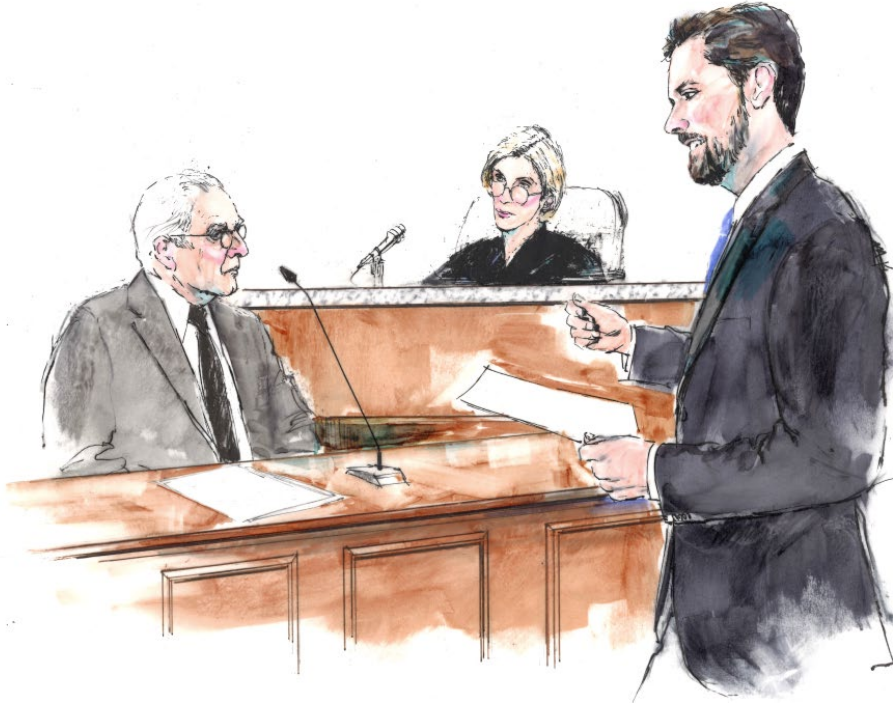
For every client, we build a winning case for trial. Because we build powerful cases, we often force large settlements shortly before or even during trial.

In our firm's 25-year history, we have obtained successful results for our clients in over 250 lawsuits.

## **We work on cases where more than \$25 million is at stake.**

## **We work on contingency.**

## We have expertise in:



### Business claims

- antitrust
- partnership and joint venture disputes
- complex contract disputes
- breach of fiduciary duty

### Bankruptcy claims

- contract and business tort claims
- claims against directors and officers
- preference claims
- fraudulent transfers

### Intellectual property

- trade secret theft
- patent infringement
- copyright infringement

### Arbitrations

- domestic
- international

### Class actions

- antitrust
- consumer class actions

### Other high-stakes claims

- real estate litigation
- insurance coverage

## How we do it

Our firm's primary advantage is that we are not designed to bill hours, we are **Built to Win**.



You are not going to get exceptional results if you hire a law firm that operates like every other law firm.

If you want exceptional results, you need to hire a firm that operates like no other law firm.

# There are eight key elements to our success



## Exceptional lawyers

Building a powerful case requires that each task and each decision come from an excellent lawyer, one with the highest skill levels in analysis, written and oral persuasion, and cross-examination.

We only have excellent lawyers.

We don't have a hiring quota for first-year lawyers that we have to fill each year. We only hire when a truly gifted lawyer comes along.



Calif. Firm Dovel & Luner Tops  
Cravath With Higher Pay

Greg Dovel



Sean Luner



Julien Adams



Rick Lyon



Christin Cho



Simon Franzini



Jonas Jacobson



Alexander Erwig



Joey Bui



Grace Bennett



“Whether you are comparing arguments, briefs, or lawyers, a single excellent is a heavy favorite against ten ordinaries.” – Sean Luner

# How we do it



## Deliberate practice

Mastering persuasion requires continuous improvement. The science of expert performance calls this “deliberate practice.”

Our attorneys regularly engage in deliberate practice to improve their trial skills. In our Trial Lab, we drill trial and persuasion fundamentals and experiment with new techniques. We use practice materials designed specifically for improving skills, taken from our current cases.

For example, before deposing an witness, we practice the cross-ex in our lab. This hones cross-exa skills. It also allows us to discover lines of inquiry and refine our ap to obtain key admissions that wi critical to our trial success.



“After I’d been a lawyer for 10 years, I was a very good cross-examiner. Ten years after that, after another decade of deliberate practice, I was even better. And today I am achieving my highest skill levels.”

– Greg Dovel



## Experience



We staff our cases with only partners or with at least two partners for every associate.

As a result, our partners are not insulated from the details of the case. They know all the legal and factual nuances. They can write a better brief, take a better deposition, and make better strategic decisions.

The average years of experience for lawyers in a typical litigation department is 7.1 years. At our firm, the average experience is 15.2 years.

# How we do it

## 4

### Principles of persuasion

We apply principles of persuasion.

A “principle of persuasion” is a fundamental truth with broad application that will eliminate or mitigate doubts, causing the decision-maker (whether judge, jury, or opposing side) to adopt a more favorable view of your case.

We have identified these principles through academic and practical research, and we have refined our understanding of them as trial lawyers and trial consultants. We apply them consistently and successfully to build strong settlement positions for our clients and to prove their cases at trial.

Applying principles of persuasion, we achieve extraordinary results:

**Google hit with \$85M infringement verdict**

*Texas jury awards the amount to patent licensing company SimpleAir Inc.*

By Fiona Smith  
Daily Journal Staff Writer

With the help of a Santa Monica-based law firm, patent licensing company SimpleAir Inc. has won an \$85 million jury verdict

months after a separate jury unanimously found that Google had infringed on two SimpleAir patents for technology sends “push notifications” from applications such as Face-

frey Eichmann, an attorney for SimpleAir with Dovel & Luner LLP.

“I think the jurors’ verdict shows they rejected a very low damages estimate set by

two inventors who patented the disputed technology in the mid 1990s, but who were unable to successfully commercialize the technology at the time, Eichmann said.

In response by email to the ruling, Google spokesman Matt Kallman wrote: “The jury awarded far less than SimpleAir’s excessive demand, but we continue to believe we do not infringe and are considering our options.”

Google’s attorneys from Kilpatrick Townsend & Stockton LLP did not respond to re-

The \$85 million in damages was for past infringement only and the company will be seeking future damages as well, Eichmann said.

... including cases where we are brought in a few weeks before trial:



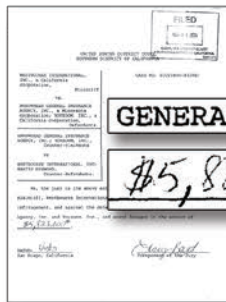
**SPECIAL VERDICT**

\$ 16,500,000



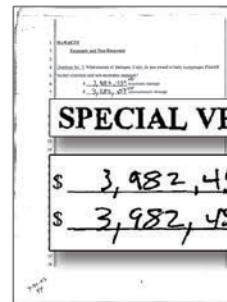
**SPECIAL VERDICT**

\$ 34,203,135.00



**GENERAL VERDICT**

\$5,823,000.00



**SPECIAL VERDICT**

\$ 3,982,459.00 economic damage  
\$ 3,982,459.00 non-economic damage



## How we do it



### Killer cross

For many lawyers, a successful cross-examination makes one or two points and avoids causing more harm than good. But that is not enough to achieve extraordinary results. Extraordinary results happen when a witness unequivocally gives up a key defense or the witness's credibility is destroyed to the extent that everyone in the courtroom knows the witness is lying.

We achieve extraordinary cross-examinations in every case, in depositions and at trial.



## An example:

In a patent infringement case, defendant Cisco argued that our client's patent (the Katzenberg '930 patent) was invalid because it was just an obvious variation of an existing Cisco device invented by senior engineer Karl Nakamura.

### Defendants' contentions

In summary, the Defendants contend as follows:

13. The '930 patent is invalid based on obviousness under 35 U.S.C. § 103.

On the third day of trial, the defendant called Mr. Nakamura to the stand to show how similar his idea was to the Katzenberg '930 patent. His testimony was persuasive. But then we got a chance to cross-examine him. Fifteen minutes later, Mr. Nakamura admitted:

12 Q And the approach of sending a low level  
13 current, as in the '930 patent, was not obvious,  
14 right?  
15 A That's correct.

16 Q And if the Ladies and Gentlemen of the Jury  
17 agree with you, then this patent is certainly valid,  
18 right?  
19 A Well, it's certainly valid.

## The result:

# COMPUTERWORLD

IDG — the world's largest technology media company

SEMINAR & CIO

IT-CAREER

IT-HEALTH

IT-COURSE

[IDG News Service >](#)

## Defendants to pay up to \$112 million in Power-over-Ethernet patent case

## How we do it

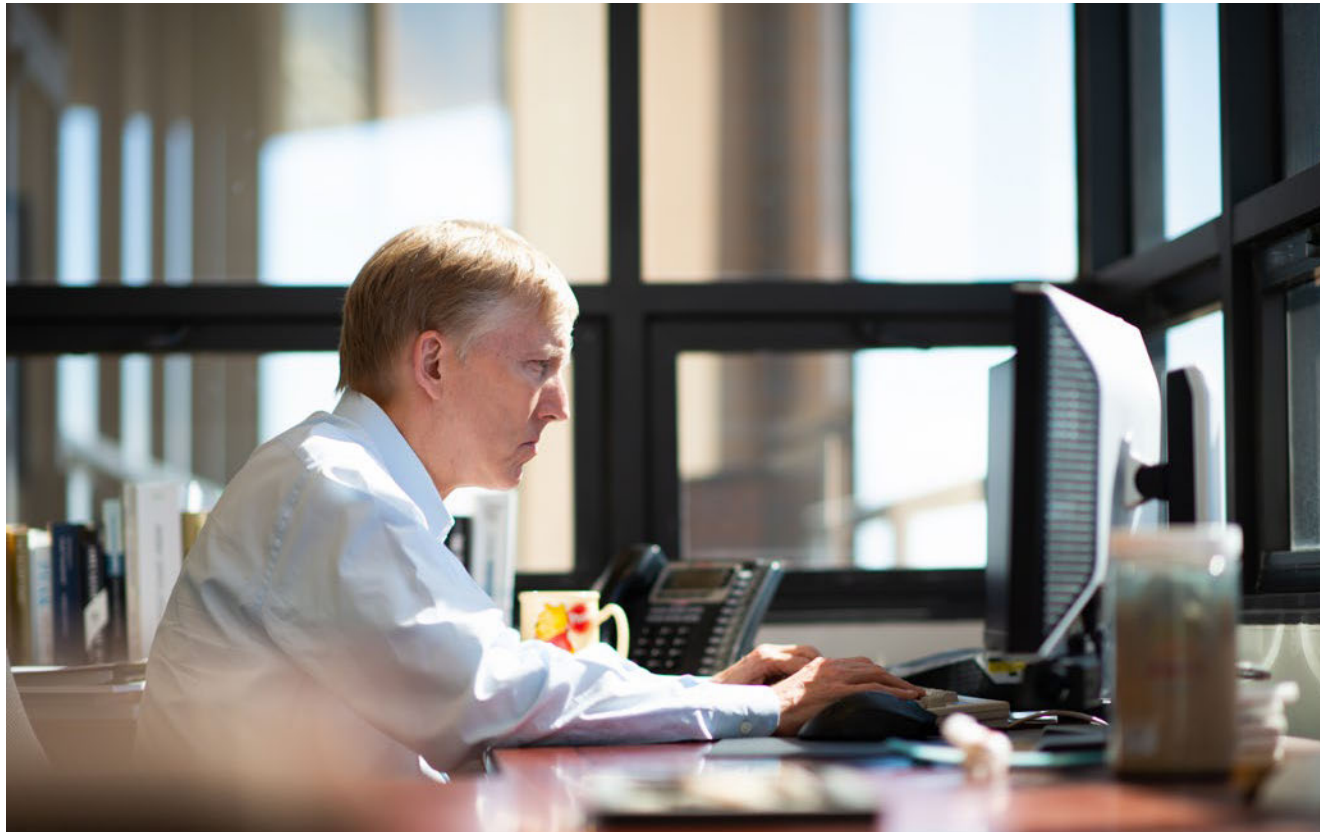
# 6

## Winning briefs

Our briefs directly take on our opponents' best arguments and destroy them with clear, powerful logic.

```
10         THE COURT: The judge made it with prejudice rather than
11 without prejudice.
12         MR. DOVEL: That's right. That's a very common...
13         THE COURT: But you're saying it has no other
14 significance beyond that?
15         MR. DOVEL: None, your Honor. None, your Honor. We
16 cite case after case in our brief from the Courts of Appeal that
17 hold that.
18         THE COURT: I thought your gray brief was particularly
19 clear and powerful on that point - even more than the blue brief.
20         MR. DOVEL: Yeah, we did hit it very hard your Honor.
```

Chief Judge Paul Michel, United States Court of Appeals for the Federal Circuit  
*Media Techs. v. Upper Deck Co.*, 334 F.3d 1366 (Fed. Cir. 2003)





“They’re smart and always prepared,” the judge said.  
“Their written work product was second to none.”

“Beyond Stellar,” *Daily Journal*, July 23, 2018  
(quoting former Magistrate Judge in the Eastern District of Texas)

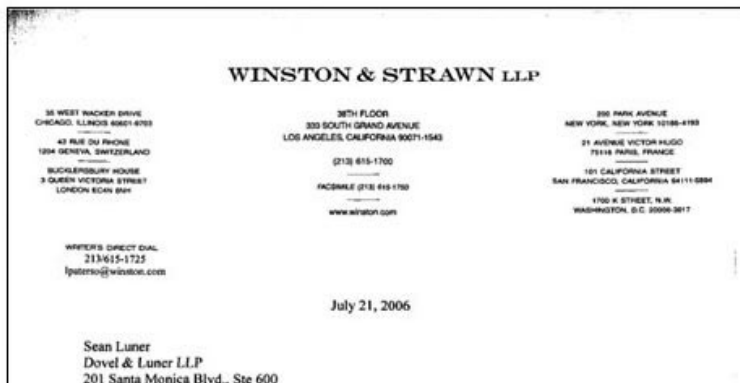
# How we do it



## Visual Victory

In a complex trial, a winning case is built with visuals.

We design our visuals in-house, so that we can seamlessly integrate our graphics with our arguments. Other litigators recognize our skill with visual strategies and hire our in-house trial consulting division, Visual Victory, for their cases.



There is no question that your work had a major impact on Judge Robert E. Jones. You will remember that at the end of the closing arguments, he asked us for a copy of our closing argument presentation. We found out later that he took the CD-Rom to the Oregon Bar Association's annual convention and presented it at a workshop on the use of cutting edge technology in the court room. We believe that he was particularly impressed with the way you set up the closing argument presentation so that we presented the law to him, then a summary of our evidence, and finally video out takes in which the plaintiffs made key admissions. You may not know that he later told us in open court that he had described our closing to other judges as a "Rhetorical Rembrandt." I may have been the orator but you are clearly the artist. Thank you.

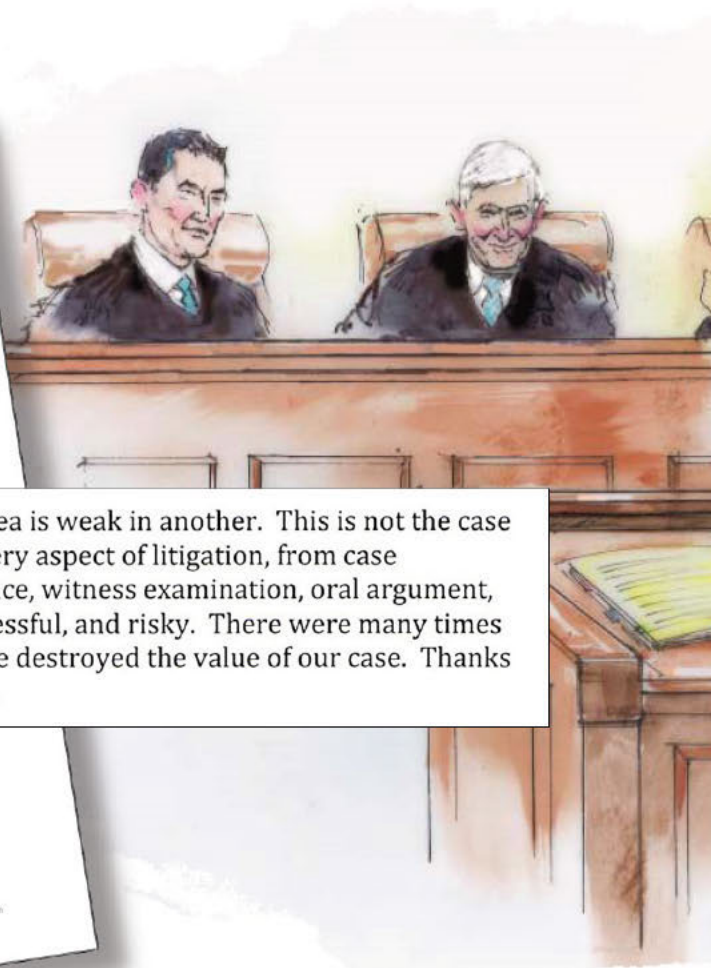
Lee V. Peterson

LTP:law

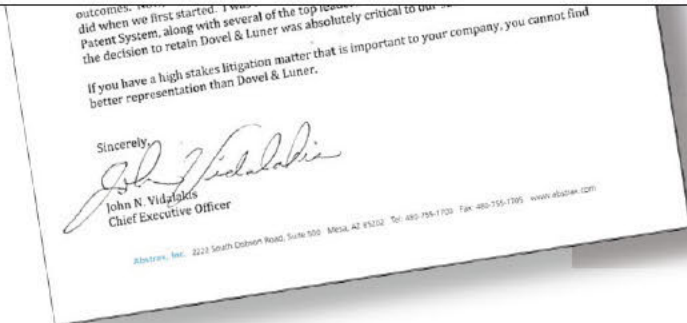


# Our reputation

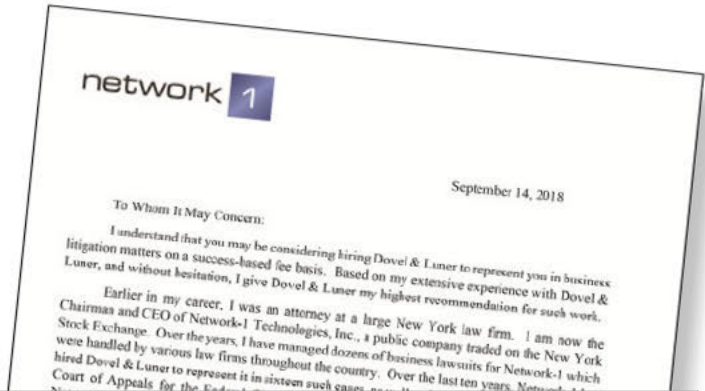
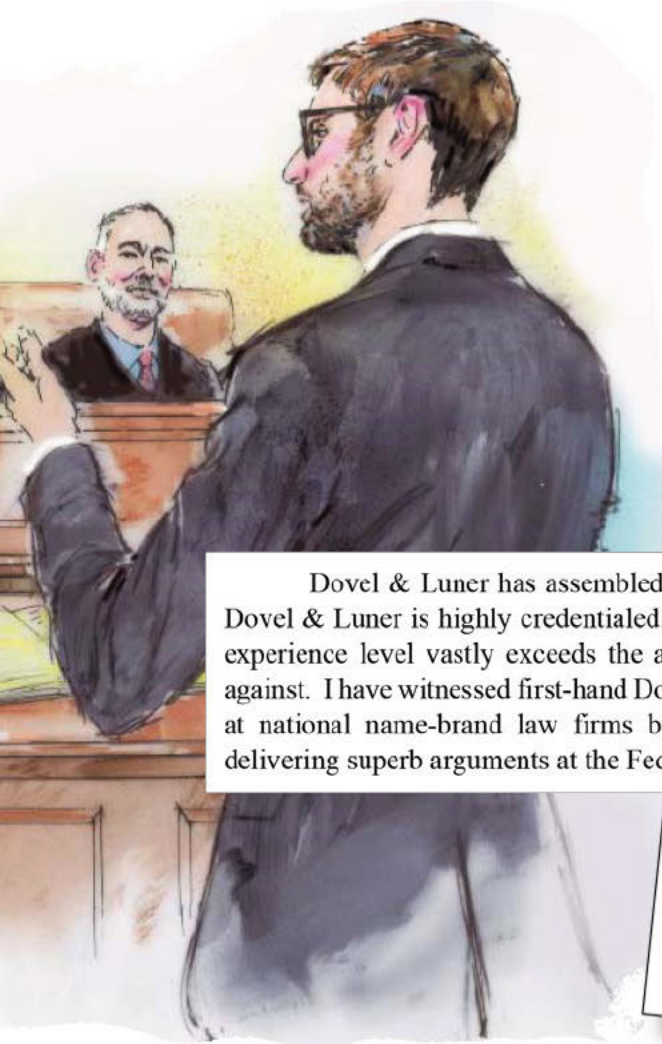
## What clients say:



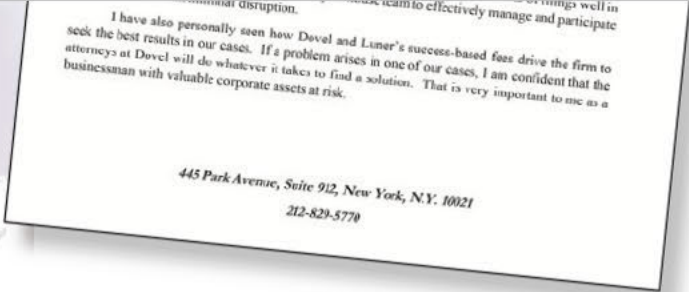
Usually a firm that is at the top of their field in one area is weak in another. This is not the case with Dovel & Luner—they are outstanding across every aspect of litigation, from case preparation and legal strategy, through motion practice, witness examination, oral argument, and negotiation. High-stakes litigation is intense, stressful, and risky. There were many times when if we had had lost a single motion, it would have destroyed the value of our case. Thanks to Dovel & Luner, we never lost one of those motions.



## What clients say:

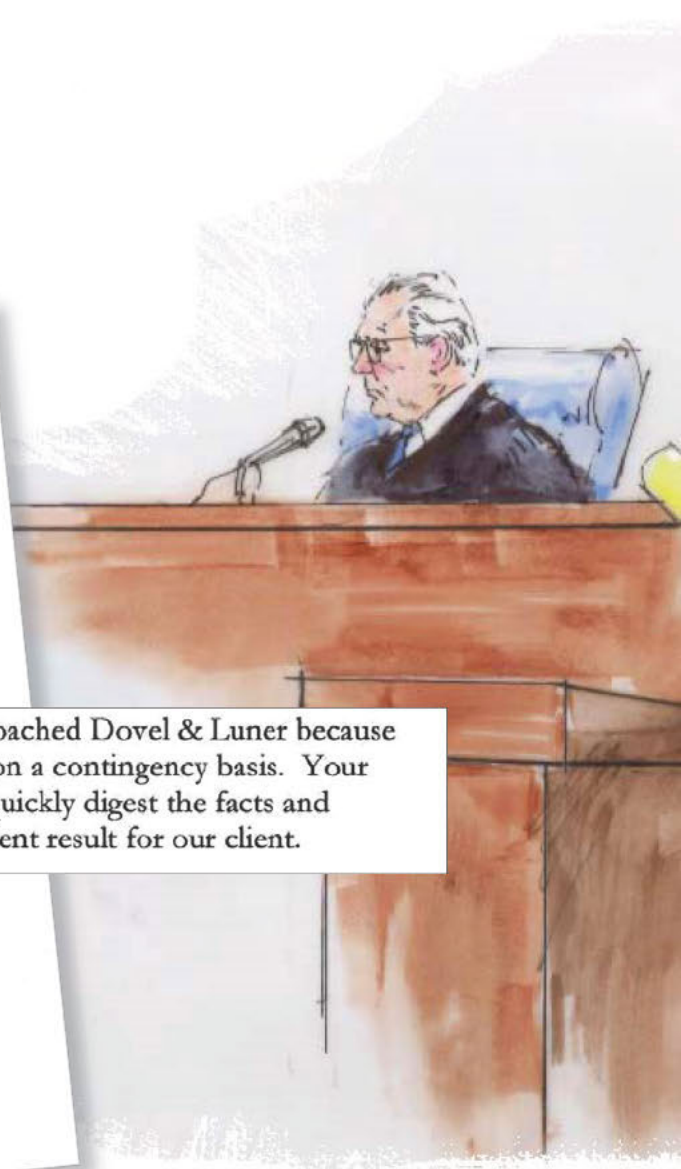


Dovel & Luner has assembled an elite 'special forces' team of attorneys. Each attorney at Dovel & Luner is highly credentialed. The firm has three partners for every associate and their experience level vastly exceeds the attorneys from opposing law firms that I see them go up against. I have witnessed first-hand Dovel & Luner's most junior lawyers out-perform top partners at national name-brand law firms by executing devastating cross examinations at trial and delivering superb arguments at the Federal Circuit and United States Patent Office.

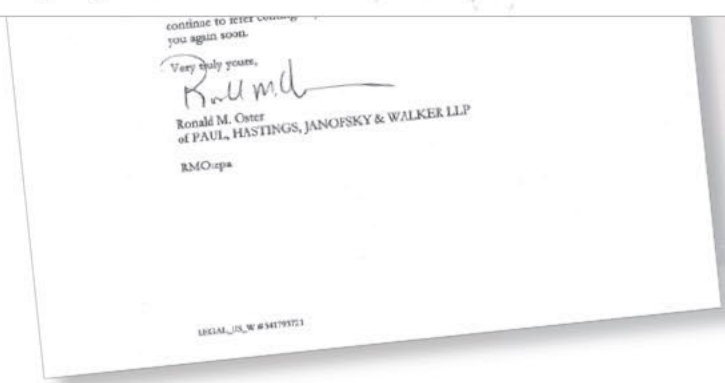


# Our reputation

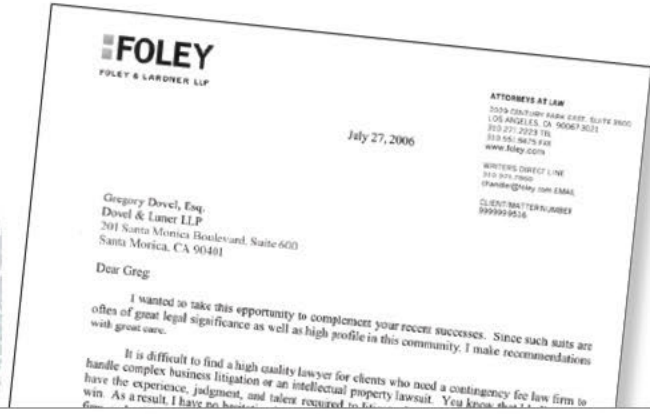
## What colleagues say:



As we stated in the employment application, we approached Dovel & Luner because of your firm's ability to effectively try complex cases on a contingency basis. Your firm lived up to our expectations – you were able to quickly digest the facts and develop arguments that allowed us to obtain an excellent result for our client.



## What colleagues say:



It is difficult to find a high quality lawyer for clients who need a contingency fee law firm to handle complex business litigation or an intellectual property lawsuit. You know that I believe you have the experience, judgment, and talent required to litigate these complex, big dollar cases and win. As a result, I have no hesitation in referring and have been happy to refer such matters to your firm, and will continue to do so in the future.



# Our reputation

## What jurors say:

TO: Don Rosen  
FROM: Gretchen Parker  
Foreperson  
RE: John Morrison vs Russell & Rusty West  
DATE: January 20, 2000  
FAX: 213-955-9886

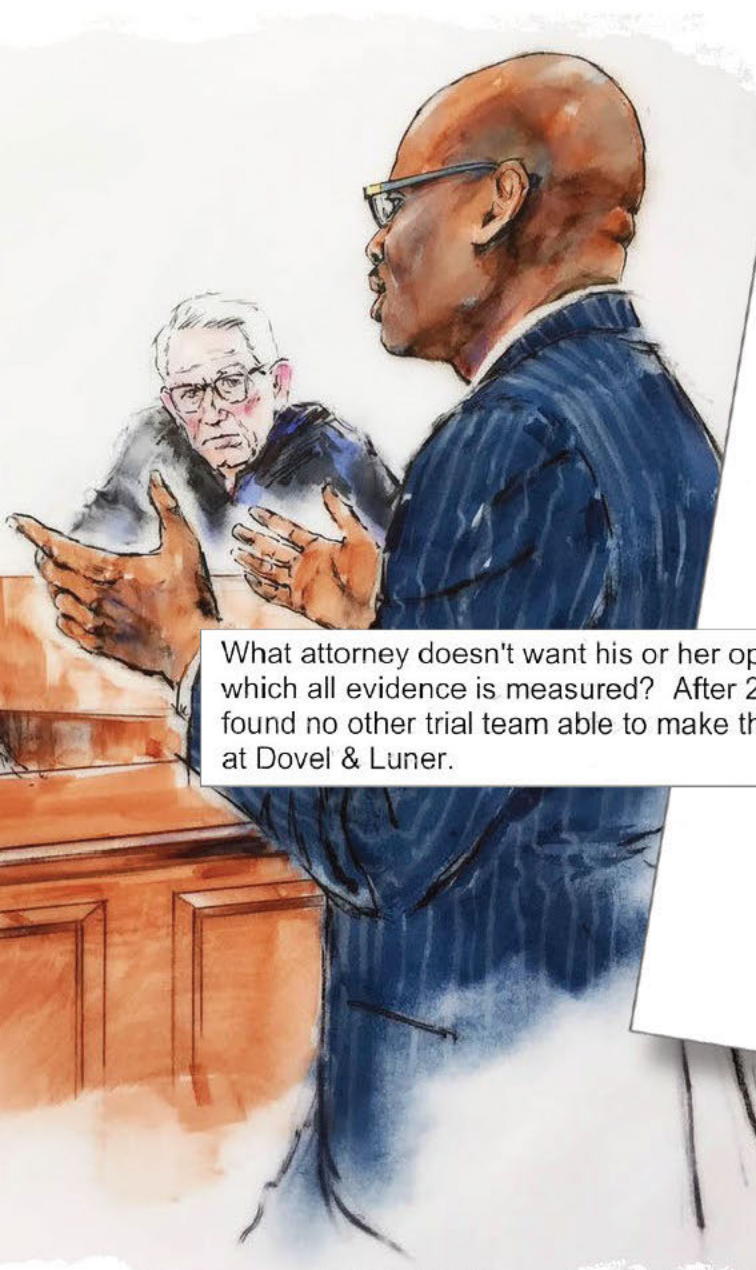
I have not been able to reach Linda or Ann so I'm just going to wing this. I must have destroyed all of my trial notes and names are fuzzy. I hope I'm not too

In our discussions the graphics were a blessing in putting thoughts into a perspective that could be easily understood. The APPLE TREE was most helpful in explaining what seemed to be an enormous amount of money to those jurors who were completely unfamiliar with sales, specifically commission sales. They could relate to apple trees having to form and grow before they bear fruit -- the fruit being the reward of careful preparation, nourishment and nurturing.

P.S. I'd love to see the Autodesk  
ever materialized.



## What jury experts say:



*Combats*  
**ACT OF COMMUNICATION**  
*in the Art*  
*of Advocacy*

May 2, 2006

Greg Dovel  
Sean Luner  
Dovel & Luner, LLP  
201 Santa Monica Blvd., Suite 600  
Santa Monica CA 90401

Dear Greg and Sean:

We wanted to take this opportunity to express our appreciation at once again being part of your team in effectively presenting cases at trial. The many successes we have obtained over the past several years are truly remarkable accomplishments.

What attorney doesn't want his or her opening statement to be the trial story against which all evidence is measured? After 28 years as a trial consulting firm, we have found no other trial team able to make this goal pay off as consistently as your trial team at Dovel & Luner.

What attorney doesn't want his or her opening statement to be the trial story against which all evidence is measured? After 28 years as a trial consulting firm, we have found no other trial team able to make this goal pay off as consistently as your trial team at Dovel & Luner.

...we believe provide the best results  
Sincerely yours,

*Katherine James*  
Katherine James  
Alan Blumenfeld  
ACT of Communication

5354 Ethelbelle Avenue  
Culver City, CA 90230  
Tel 310.318.9661  
Fax 310.390.9499

# Our reputation

## What opponents say:

1 Hats off to Mr. Dovel. That is by far and away the most superb graphical  
2 presentation I have ever seen. It is, obviously, something he put a great  
3 deal of work into, and I am impressed, as I am sure you folks were as well,

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THE CHAIRSMAN: ...  
MR. HANSON: ...  
MR. QUINN: I have done this before, of course, although ...  
Dovel. It is a great thing, a great tool because it allows you to focus your  
argument. It gives the listener both an oral and a visual source of  
information, but the bad news, you go second. The scripts don't always work  
out. You prepared this in advance and you go second. I will do a little bit  
of adding more than I would have done.  
Dovel. I take to the slides, let me address this concept of materiality  
first, yet what I think is not one of holding stronger arguments out of the  
way. That is the notion that, in fact, there is no materiality standard at  
work here. Mr. Dovel worked his way through provisions and read, in fact,  
the parenthetical he supposed that all of the language in the agreement  
dealing with materiality qualified their burden on the basis of materiality  
that all of that was pure surplusage, that, in fact, materiality plays no  
role in the analysis here, that, therefore, any literal breach no matter how  
inconsequential gives rise to a right of indemnification.

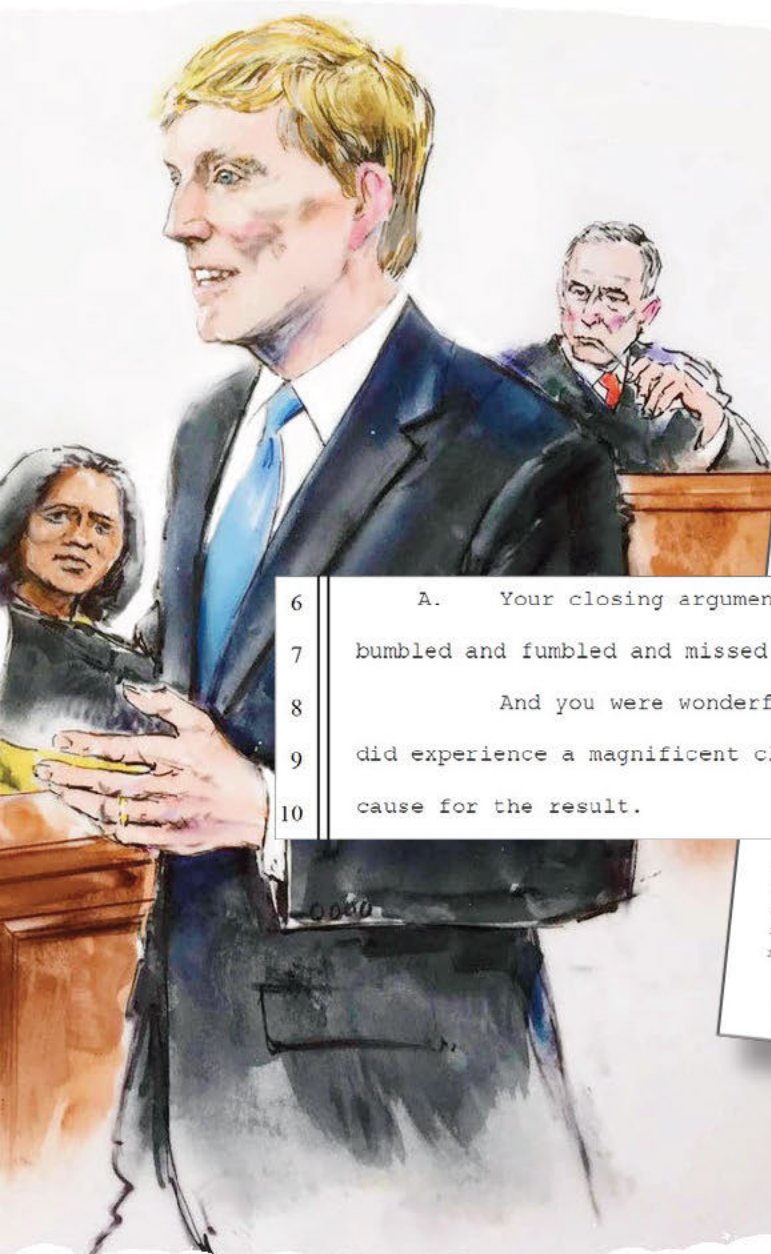
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THE CHAIRSMAN: ...  
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that all of that was pure surplusage, that, in fact, materiality plays no  
role in the analysis here, that, therefore, any literal breach no matter how  
inconsequential gives rise to a right of indemnification.



Defendant's closing argument  
*Sun Celebrity Holdings v. Celebrity, Inc.*

## What opponents say:



1 Q. Did you have a discussion with your son about whether he would be  
2 present when the jury verdict came back?  
3 A. I don't know that we did or not.  
4 Q. After the closing arguments, you were convinced that you were  
5 going to win?  
6 A. Your closing argument was absolutely brilliant. My attorney  
7 stumbled and fumbled and missed several opportunities.  
8 And you were wonderful. That's - I don't ever go to court, but I  
9 did experience a magnificent closing argument by you, which I'm sure  
10 cause for the result.

6 A. Your closing argument was absolutely brilliant. My attorney  
7 stumbled and fumbled and missed several opportunities.  
8 And you were wonderful. That's - I don't ever go to court, but I  
9 did experience a magnificent closing argument by you, which I'm sure  
10 cause for the result.

23 A. Right.  
24 Q. -- did you believe you were going to win the case?  
25 A. Yeah, I did.  
26 Q. Did you discuss with your son whether you thought you were going  
27 to win the case?  
28 A. Oh, I don't know what discussions we had.

Defendant's deposition testimony describing Dovel & Luner's closing argument in a previous case

# Case studies

## A key test of our abilities

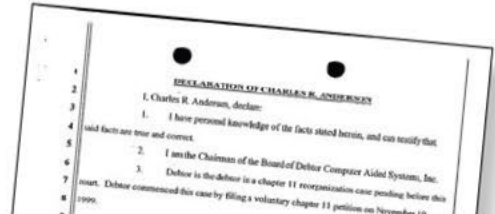
The acid test for a law firm is whether it can take over a case shortly before trial and win. Can the firm understand the nuances of the case, uncover new insights in the evidence and arguments, develop a solid damages analysis, finish any remaining depositions and expert reports, win the key motions, prepare winning trial examination outlines and visuals, and do so in only a very short period of time?

We can.

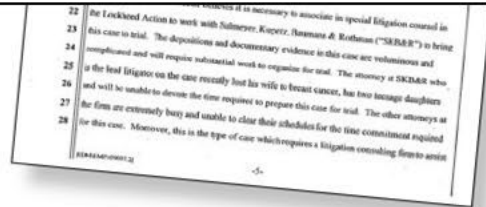


# Case study 1

The client (CASI) went into bankruptcy. Lockheed sued the client and the client responded with its own counterclaims. After intensive litigation, the client did not have the money to continue to pursue its claim on an hourly basis. The trial was rapidly approaching.



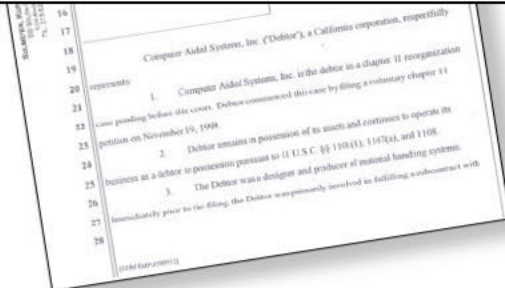
21 7. Debtor believes it is necessary to associate in special litigation counsel in  
22 the Lockheed Action to work with Sulmeyer, Kupetz, Baumann & Rothman (“SKB&R”) to bring  
23 this case to trial. The depositions and documentary evidence in this case are voluminous and  
24 complicated and will require substantial work to organize for trial.



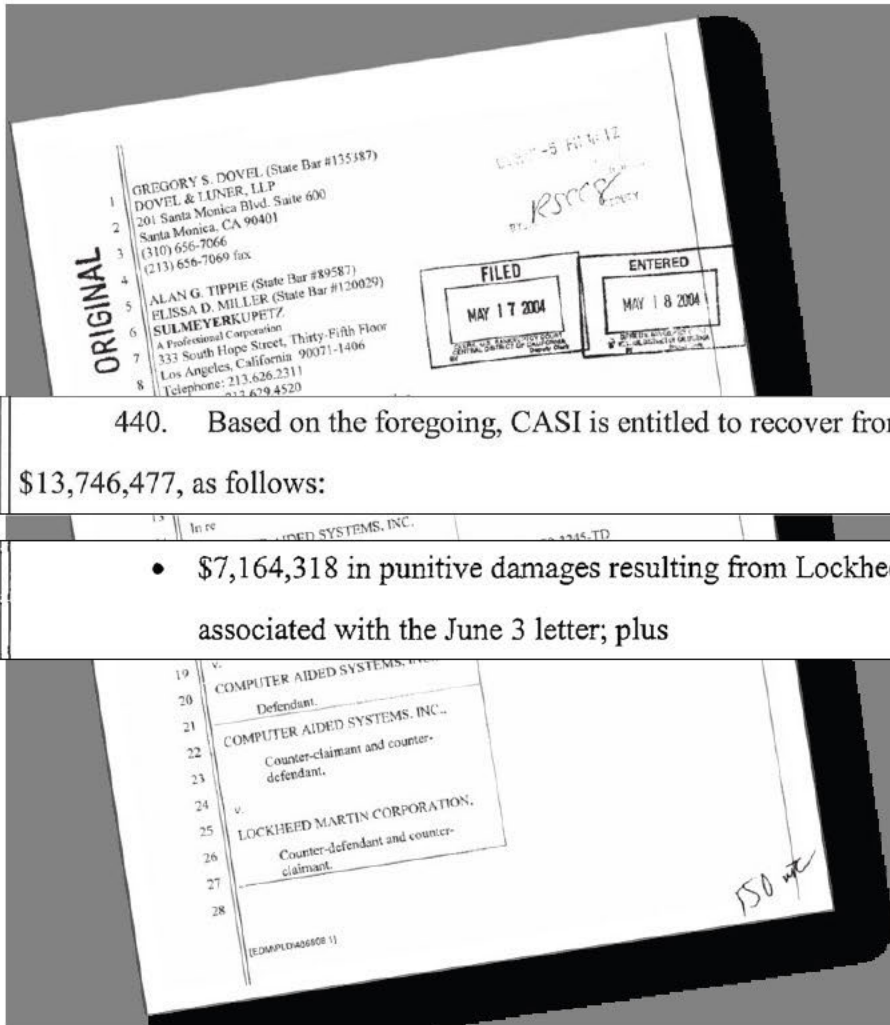
Who do you turn to as trial approaches?



20 6. CASI files this Application to retain Dovel & Luner (“Dovel”) to take the  
21 lead role. Dovel & Luner is a unique firm which specializes in involving itself in cases which are  
22 near trial. Its lawyers have extensive trial experience.



## The Result:



24 440. Based on the foregoing, CASI is entitled to recover from Lockheed a total of  
25 \$13,746,477, as follows:

- 1 • \$7,164,318 in punitive damages resulting from Lockheed's fraudulent conduct  
2 associated with the June 3 letter; plus

"Judges generally take away punitive damages awards. It takes exceptional lawyering for a judge to award punitive damages."

**Judge Robert M. Parker,**  
*U.S. Court of Appeals for the Fifth Circuit, retired.*



DAILY JOURNAL EXTRA

## LITIGATION FILES

# Judge Orders Lockheed to Pay \$16.2 Million

By Eron Ben-Yehuda

**A** Los Angeles bankruptcy judge rebuked the Lockheed Martin Corp. recently, ordering the company to pay \$7 million in punitive damages on a fraud claim.

In his written opinion after a bench trial, U.S. Bankruptcy Judge Thomas B.

nesses often appeared to be evasive and to give less than candid testimony," the April 29 opinion stated. "When challenged on cross-examination with evidence that contradicted their previous written declaration, Lockheed witnesses sometimes appeared to respond with new, unconvincing testimony that seemed to be an attempt to cover up the contradictions in

on litigation, Lockheed Martin intends to appeal this decision," Jan Gottfredsen says. "We have no further comment."

Computer Aided System's attorney Gregory S. Dovel says he's struck by the candor of Donovan's decision.

"He didn't pull punches," says Dovel of Santa Monica's Dovel & Lamer.

In 1998, Lockheed hired Computer

## Case study 2

A high-stakes class action case alleging that the defendant violated the Telephone Consumer Protection Act was two months away from trial.

Who do you turn to as trial approaches?

Scott F. Kocher, OSB#015388  
Stephen J. Voorhees, OSB#150595  
FUSCO LAW GROUP  
811 S.W. Naito Parkway, Suite 420  
Portland, Oregon 97204  
Tel: 503.445.2120  
Fax: 503.445.2120

4. In preparation for the upcoming trial and in order to better serve Plaintiff and the Robocall Class, Class Counsel began working with attorneys at Dovel & Luner who have a well-known record of winning complex cases at trial. (See generally, Declaration of Jonas Jacobson.) Subsequently, Plaintiff retained Dovel and Luner to assist Class Counsel in the pursuit of her claims. (*Id.* ¶ 2.)

9. Greg Dovel, Jonas Jacobson, and Simon Franzini all have extensive experience in preparing and trying complex litigation in federal court. (*Id.* ¶ 3.)

UNOPPOSED MOT. TO APPOINT  
CO-LEAD CLASS COUNSEL

1

## The Result:

**Bloomberg  
Law**

### **Jury Reaches \$925 Million Verdict in Telemarketing Case**

Posted April 15, 2019, 8:41 AM



A federal jury has ordered a multi-level marketing company to pay \$925 million for making nearly 2 million unsolicited telemarketing calls to consumers promoting weight-loss products.



# **We get excellent results**

If you know of someone with a high value matter who needs elite contingency-fee counsel, we would appreciate your referral.



**Dovel & Luner**

## Alterra Mountain Company Lodestar Calculation through 11/2/2022

<b>Timekeeper</b>	<b>Position</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total at Local Hourly Rate</b>
Simon Franzini	Parter	124.30	\$850	\$105,655.00
Jonas Jacobson	Partner	295.20	\$800	\$236,160.00
Gabe Doble	Associate	20.90	\$650	\$13,585.00
Grace Bennett	Associate	5.50	\$550	\$3,025.00
Mazelle Etessami	Summer Associate	102.50	\$450	\$46,125.00
Zoey Ryu	Analyst	74.00	\$250	\$18,500.00
Jeane Khang	Analyst	0.50	\$250	\$125.00
Adam Trujillo-Hanson	Analyst	27.90	\$250	\$6,975.00
William Moise	Analyst	0.80	\$250	\$200.00
Roma Bhojwani	Analyst	12.40	\$250	\$3,100.00
	Totals:	664.00		\$433,450.00

<b>Timekeeper: Simon Franzini</b>		
<b>Date</b>	<b>Description</b>	<b>Hours Billed</b>
5/12/20	review lead counsel memo	0.50
5/13/20	conversation with G. Dovel re: motion for interim lead counsel	0.10
5/13/20	correspond with J. Jacobson re: motion to consolidate	0.10
5/13/20	call with J. Jacobson re: lead plaintiff appointment	0.20
5/13/20	review motion to consolidate	0.30
5/14/20	call with potential co-counsel and J. Jacobson	0.20
5/14/20	discuss lead-counsel strategy with J. Jacobson	0.10
5/18/20	review amended complaint	0.80
5/18/20	call with J. Jacobson re: amended complaint	0.10
5/19/20	call with J. Jacobson	0.10
5/19/20	strategy call with J. Jacobson	0.20
5/23/20	case meeting with R. White, J. Jacobson and G. Dovel	0.40
5/25/20	review and comment on draft complaint	0.40
6/3/20	call with J. Jacobson re initial case schedule, including lead counsel motions	0.10
6/3/20	case meeting	0.20
6/9/20	email J. Jacobson re: proof of service	0.10
6/9/20	read email from J. Jacobson	0.10
6/9/20	case meeting with team	0.30
6/12/20	read Hagens brief; research appointment of lead counsel; email J. Jacobson re: same; read email from J. Jacobson re: fees	1.80
6/12/20	call with J. Jacobson and G. Dovel re: lead counsel motion	0.30
6/15/20	motion re: lead counsel appointment	0.70
6/18/20	correspond with J. Jacobson re: experts and lead counsel motion	0.10
6/18/20	call with J. Jacobson with G. Dovel post status conference re: consolidated complaint	0.20
6/24/20	case meeting	0.20
7/8/20	call with M. Etesami in reviewing edits on the tracker	0.50
7/10/20	review motion for lead, discuss same with J. Jacobson, emails with J. Jacobson re same, review co counsels feedback on it, email J. Jacobson about that	1.00
7/11/20	discuss lead counsel motion with J. Jacobson	0.20
7/15/20	Case meeting with Dovel team	0.20
8/3/20	case meeting with Dovel team	0.20
8/4/20	case meeting with Y. Krivoshey	0.40
8/12/20	Case meeting with Dovel team	0.20
8/18/20	call with J. Jacobson re state consumer protection law claim strategy.	0.20
8/24/20	call with J. Jacobson re Alterra	0.10
8/26/20	call with team re complaint	0.60
8/31/20	Bursor/Dovel strategy call	0.30
8/31/20	interview with B. Briar	0.40
9/1/20	research rescission	0.50
9/2/20	Bursor/Dovel strategy call	0.60
9/4/20	review complaint, email, comment on it	1.50
9/15/20	comments on rule 26 f report, read new draft of same, redline, emails w Y. Krivoshey re same	1.20
9/15/20	call with J. Jacobson re rule 26 f report	0.20
9/16/20	Dovel/Bursor call re case schedule	0.40

9/16/20	editing rule 26(f) report	1.30
9/16/20	Meet and confer with Alterra counsel and Dovel/Bursor team	0.30
9/16/20	Case meeting	0.40
9/16/20	Call with J. Jacobson re case schedule	0.30
9/17/20	Call with Z. Ryu re case admin	0.60
9/22/20	internal emails re rule 16 conference taken off calendar	0.10
9/23/20	emails with J. Jacobson re Rule 26f conference	0.10
9/28/20	edit update to clients, emails with J.Jacobson re same	0.30
9/30/20	review Terms of Use of Alterra website	0.20
9/30/20	case meeting	0.30
9/30/20	review screens re renewal passes.	0.20
10/14/20	case meeting	0.10
10/14/20	review email re motion to dismiss, scheduling emails re w/ R. Cooke re meet and confer re same	0.30
10/15/20	meet and confer w/ opposing counsel re motion to dismiss	0.30
10/15/20	email to Y. Krivoshey, J. Jacobson re meet and confer	0.20
10/15/20	review Judge Moore Practice standards	0.10
10/15/20	emails w/ opposing counsel re judicial notice, materials Ds want to rely on in their motion; emails with J. Jacobson and Y. Krivoshey re same	0.30
10/19/20	review motion to dismiss	0.50
10/27/20	draft opp to motion to dismiss	1.80
10/28/20	draft opp to motion to dismiss	7.00
10/29/20	draft opp to motion to dismiss	6.90
10/30/20	draft opp to motion to dismiss, email with co-counsel re same	1.50
11/2/20	draft opp to motion to dismiss, legal research re same	5.40
11/2/20	call with J. Jacobson re opp motion to dismiss	0.20
11/4/20	draft opp to motion to dismiss	6.40
11/5/20	review drafts of opposition to motion to dismiss; provide comments on same to Dovel and Bursor team.	7.00
11/6/20	draft opp to motion to dismiss	9.50
11/10/20	email to Z. Ryu re filing templates; fix filing templates	0.20
8/30/21	case analysis, emails with J. Jacobson re same	0.50
9/1/21	case meeting	0.40
9/1/21	review rogs and RFPs, discuss same w J. Jacobson	0.85
9/5/21	review rogs, email to J. Jacobson re same	0.25
9/5/21	emails with J. Jacobson re subpoenas	0.10
9/7/21	review ESI protocol, protective order	0.50
1/24/22	Mediation	10.00
1/25/22	modeling, settlement analysis re mediation	0.50
1/25/22	Call with J. Jacobson re mediation	0.90
1/25/22	Emails with J.Jacobson and Y.Krivoshey re mediation	0.50
1/31/22	call with co-counsel re mediation term sheet draft	0.80
2/1/22	Review and edit term sheet, email with YK and JJ re same	0.50
2/7/22	review Ds redlines to term sheet	0.40
2/9/22	review emails re terms sheet	0.10
2/9/22	review term sheet; email YK re same	0.40
2/15/22	review term sheet in advance of call with Ds; call with Ds	0.70
2/16/22	review correspondence re term sheet	0.10
2/17/22	correspondence with JJ and YK re settlement	0.10

3/4/22	review email from YK re settlement; send email to YK re mediation	0.10
3/9/22	correspondence with JJ re mediation, discovery	0.10
3/17/22	meeting with co-counsel re settlement; review correspondence re same	0.60
3/23/22	settlement emails with YK	0.20
3/30/22	emails with JJ, YK re settlement	0.10
3/30/22	conversation with JJ re settlement	0.10
3/30/22	call with YK and JJ re settlement	0.20
3/30/22	review emails re mediation f/u	0.10
4/14/22	email to YK re settlement	0.10
4/14/22	review settlement communication; discussion with JJ re settlement;	0.30
4/15/22	slack with JJ, email YK re settlement	0.30
5/4/22	discuss settlement with JJ, YK	0.30
5/13/22	emails with JJ and YK re class rep update	0.10
5/14/22	discuss class rep update with JJ	0.10
5/26/22	review draft term sheet; email YK re same	0.50
5/27/22	emails with JJ re settlment	0.10
6/28/22	slack JJ re settlement long form	0.10
7/6/22	Email with co-counsel re settlement agreement.	0.10
7/11/22	call with YK re discovery	0.20
7/11/22	emails with YK re discovery	0.10
7/18/22	Slack with J. Jacobson re settlement agreement.	0.10
7/18/22	Emails with co-counsel re settlement agreement.	0.10
8/3/22	review correspondence	0.10
8/9/22	review settlement correspondence	0.20
8/10/22	review emails re final settlement agreement; final review of settlement agreement; emails to YK re same	0.90
8/16/22	review draft of motion for preliminary approval; emails with JJ and YK re sam	1.00
9/20/22	slack with J. Jacobson re order re preliminary approval	0.10
9/20/22	review order re preliminary approval	0.50
9/26/22	review correspondence re upcoming deadlines	0.10
10/24/22	review draft of fee motion	0.20
10/24/22	slack with J. Jacobson re fee motion	0.10
10/24/22	email co-counsel re time to talk	0.10
10/24/22	email with co-counsel (YK) re fee motion	0.20
10/25/22	call with YK and JJ re fee motion	0.80
10/25/22	convo with GB re fee motion	0.20
10/26/22	review correspondence re time sheets from YK	0.10
10/26/22	begin drafting fee motion	0.50
10/27/22	draft fee motion	4.50
10/27/22	emails with co-counsel re fee motion	0.20
10/28/22	draft fee motion, slack with JJ re same	4.50
10/30/22	draft fee motion; review slack RB re same; slack JJ re same	3.30
10/31/22	draft fee motion, email to RB re same	3.70
11/1/22	motion for fees, declaration iso motion for fees, review hours iso motion for fe	2.80
11/1/22	motion for fees, declaration iso motion for fees	0.90
11/1/22	motion for fees	1.90
11/1/22	edit motion for fees, incorporate comments from co-counsel, slack with RB re same, slack with JJ re same	1.90

11/2/22	finalize declaration and supporting docs to my hours	0.90
11/2/22	review and finalize motion for fees	4.90
	<b>TOTAL</b>	124.30

Timekeeper: Jonas Jacobson		
Date	Description	Hours Billed
4/8/20	Draft complaint; legal research.	1.50
4/9/20	Draft complaint; legal research.	4.00
4/10/20	Draft complaint; legal research.	3.00
4/11/20	Call with client Kramer.	0.30
4/11/20	Revise draft complaint based on team feedback	1.00
4/13/20	Revise draft complaint; legal research.	6.00
4/14/20	Revise draft complaint; legal research.	9.00
4/14/20	Finalize complaint.	2.00
4/15/20	Correspond with local counsel re assigned magistrate	0.20
4/15/20	Research (a) opinions by assigned magistrate and (b) legal effects of magistrate consent	2.00
4/15/20	Correspond with legal assistant re serving summons and complaint	0.20
4/15/20	Review CO local rules and Magistrate rules	1.30
4/16/20	Calls with Ikon passholders	1.50
4/22/20	Respond to email inquiries from class members	2.00
4/21/20	Team meeting re case strategy	0.50
5/4/20	Case meeting with Simon Franzini and Greg Dovel	0.30
5/4/20	Email counsel in four other Ikon pass cases	0.50
5/4/20	Correspond with local counsel re deadline for response to complaint	0.30
5/5/20	Correspond with Timothy Goodrich and team	0.30
5/12/20	correspond with S. Franzini re T. Goodrich	0.30
5/12/20	correspond with plaintiff N. Mehnert	0.30
5/12/20	correspond with plaintiff D. Lang	0.30
5/12/20	revise case summary	3.00
5/13/20	correspond with S. Franzini re: motion to consolidate	0.10
5/13/20	call with S. Franzini re: lead plaintiff appointment	0.20
5/13/20	correspond with K. Fink re: snow condition photos	0.10
5/13/20	prepare amended complaint; legal research; factual investigation	4.30
5/13/20	email T. Goodrich	0.10
5/13/20	email D. Lang	0.10
5/13/20	email D. Mehnert	0.10
5/13/20	review motion to consolidate and email Alterra counsel	0.50
5/14/20	call with potential co-counsel and S. Franzini	0.20
5/14/20	discuss lead-counsel strategy with S. Franzini	0.10
5/14/20	send draft amended complaint to plaintiffs with explanatory email	0.30
5/14/20	correspond with Dovel team re: amended complaint status	0.10
5/17/20	legal research for amended complaint	1.50
5/17/20	email N. Mehnert	0.10
5/18/20	legal research for amended complaint	0.80
5/18/20	email S. Franzini and G. Dovel re: amended complaint	0.20
5/18/20	revise and finalize amended complaint	3.50
5/18/20	call with S. Kramer	0.20
5/18/20	call with Alterra/Epic case plaintiffs' counsel	0.60
5/18/20	email Dovel team re: plaintiffs' counsel call	0.20
5/18/20	call with S. Franzini re: amended complaint	0.10
5/18/20	email with class representative D. Lang re: pass purchase	0.10
5/18/20	emails to class representatives (N. Mehnert, S. Kramer, D. Lang and T. Goodrich) re filing of amended complaint and next steps	0.40
5/19/20	call with Bursor re: lead counsel	0.40
5/19/20	call with S. Franzini	0.10
5/19/20	call with Hagens Bermans re: lead counsel	0.30
5/19/20	strategy call with S. Franzini	0.20
5/20/20	review Hagens motion to be lead counsel	0.30
5/20/20	email Dovel team re: next lead counsel strategy	0.10
5/20/20	review Bursor joint prosecution agreement	0.20

5/20/20	email S. Franzini re: joint prosecution agreement	0.10
5/20/20	correspond with plaintiff T. Goodrich about local counsel retainer agreement	0.10
5/20/20	review Alterra proposal to file consolidated complaint and extend deadlines	0.30
5/20/20	research consolidated class action complaints	0.30
5/21/20	review joint prosecution agreement	0.70
5/23/20	case meeting with R. White, S. Franzini and G. Dovel	0.40
5/27/20	review pro hac vice template	0.20
5/27/20	research NJ local rules	0.50
5/27/20	email with plaintiff J. Schaal re case updates; send Joint Representation Agreement	0.20
5/27/20	correspond with R. Osborn and Bursor re correcting Ex. B of the complaint	0.20
5/27/20	correspond with Bursor re: Judge assignment	0.10
5/27/20	correspond with E. Noh re serving summons; review filled-out summons	0.20
5/29/20	review and revise pro hac vice application	0.40
5/29/20	research rules in NJ	0.90
5/29/20	email Dovel team re: contingency fee rules in NJ	0.20
5/29/20	analyze Red Sky denial letter justifications	0.80
5/29/20	email Dovel and Bursor team re: Red Sky denial letter justifications	0.10
6/2/20	discuss case status with class member that called in	0.10
6/3/20	call with S. Franzini re initial case schedule, including lead counsel motions	0.10
6/3/20	call with plaintiffs' counsel re initial case schedule, including lead counsel motions	0.40
6/3/20	case meeting	0.20
6/8/20	review proposed joint motion and email all plaintiffs' counsel re: pre-trial deadlines	0.10
6/9/20	case meeting	0.30
6/12/20	call with Haddon re: status conference and lead counsel motion	0.30
6/12/20	email with S. Franzini re: lead counsel motion	0.10
6/12/20	review Order re: videoconference procedure for status conference	0.10
6/12/20	call with S. Franzini and G. Dovel re: lead counsel motion	0.30
6/16/20	research lead counsel factors; tracker lead counsel motion	5.00
6/17/20	review 20/21 liability waiver for any issues related to 2019-2020	0.30
6/17/20	email G. Dovel re: status conference AV logistics	0.10
6/17/20	call with Bursor and Haddon re: scheduling conference	0.20
6/17/20	case meeting with Dovel team	0.20
6/17/20	draft email to send to potential snow conditions experts	0.30
6/17/20	email R. White and E. Noh instructions on identifying potential snow conditions experts	0.20
6/18/20	review list of potential experts and email 20 experts	1.50
6/18/20	correspond with potential expert N. Molotch	0.10
6/18/20	correspond with potential expert J. Schafer	0.10
6/18/20	correspond with S. Franzini re: experts and lead counsel motion	0.10
6/18/20	status conference before Judge Moore	0.40
6/18/20	correspond with G. Dovel and S. Franzini, in preparation for status conference	0.20
6/18/20	call with S. Franzini with G. Dovel post status conference re: consolidated complaint	0.20
6/19/20	correspond with potential experts on mountain snow conditions	0.20
6/19/20	call with potential expert J. Hendrijx	0.50
6/19/20	call with potential expert B. Geerts	0.50
6/23/20	call with potential expert A. Nolin	0.50
6/23/20	call with potential expert J. Schafer	0.50
6/24/20	call with potential expert D. Lerach	0.50
6/24/20	call with potential expert E. Borokowski	0.40
6/24/20	call with potential expert S. Faasnacht	0.50
6/24/20	case meeting	0.20
6/25/20	draft amended complaint	2.80
6/25/20	research consumer complaints online about claim denials	0.90

7/1/20	review expert interviews and select two snow condition experts to retain	0.30
7/5/20	Review draft expert retainers and send to D. Lerach and J. Shafer	0.30
7/6/20	Correspond with D. Learch re retainer	1.00
7/6/20	Correspond with E. Borawowski re being a consulting expert.	0.10
7/7/20	Correspond with expert D. Lerach re case schedule and cv	0.10
7/7/20	Correspond with expert J Shafer e case schedule and cv	0.20
7/7/20	correspond with S. Franzini re retaining Robert Mills	0.10
7/7/20	email non-selected potential snow experts to let them know we have retained others	0.20
7/7/20	draft lead counsel motion	2.20
7/8/20	draft lead class counsel motion	5.20
7/9/20	draft lead class counsel motion	7.10
7/10/20	draft lead counsel motion; review comments from Y. Krivoshey.	3.30
7/11/20	draft lead counsel motion	1.80
7/11/20	draft declarations for lead counsel motion	2.10
7/11/20	discuss lead counsel motion with S. Franzini	0.20
7/11/20	review lead counsel motions filed in Vail action	0.50
7/13/20	finalize and file motion for appointment of co-lead counsel and declarations	6.80
7/14/20	correspond with W. Moise re shipping courtesy copies of lead counsel briefing to Court	0.20
7/14/20	correspond with Z. Ryu re shipping courtesy copies of lead counsel briefing to counsel of record	0.20
7/15/20	Case meeting with Dovel team	0.20
8/3/20	case meeting with Dovel team	0.20
8/3/20	analyze to do items to file consolidated complaint	0.80
8/4/20	case meeting with Y. Krivoshey	0.40
8/4/20	review notes on consolidated complaint to prepare fur Bursor-Dovel strategy call	0.20
8/4/20	Call with S. Kramer re case status and next steps.	0.20
8/4/20	Correspond with N. Mehnert re case status and next steps	0.20
8/4/20	Correspond with T. Goodrich re case status and next steps	0.20
8/4/20	Correspond with D. Wayne Lang re case status and next steps	0.20
8/4/20	Email snow conditions experts D. Lerach re case status	0.10
8/4/20	Email snow conditions experts J. Shafter re case status	0.10
8/10/20	edit class representative questionnaire	1.90
8/11/20	email with Z. Ryu re creating plaintiffs service list	0.20
8/11/20	call with Z. Ryu re creating plaintiffs service list	0.10
8/11/20	finalize and distribute plaintiffs questionnaire and billing protocol	1.40
8/11/20	Email timekeeping protocol and plaintiff questionnaire to plaintiffs counsel	0.10
8/12/20	Case meeting with Dovel team	0.20
8/13/20	review Z. Ryu email about pulling case schedules	0.10
8/14/20	review scheduling orders in past class actions before Judge Moore and Judge Crews	0.70
8/14/20	correspond with Z. Ryu re updating analysis of past scheduling orders	0.20
8/17/20	Analyze consolidated complaint in light of Alterra's expected MTD arguments. Review Alterra materials for statements about length of access.	1.50
8/18/20	Review table of all claims asserted in 11 complaints. Research relevant state consumer class action claims.	2.70
8/18/20	call with S. Franzini re state consumer protection law claim strategy.	0.20
8/19/20	case meeting with Z. Ryu and E. Noh	0.10
8/19/20	research conversion claims	1.00
8/19/20	research how courts have construed "non-refundable" clauses when the defendant cannot perform	1.50
8/19/20	review plaintiff questionnaires.	0.80
8/19/20	correspond with Hagstrom firm re plaintiff questionnaires	0.10
8/19/20	correspond with Gustafson firm re plaintiff questionnaires	0.10
8/19/20	correspond with Bursor and Dovel team re plaintiff questionnaires	0.10

8/19/20	correspond with Cafferty firm re plaintiff questionnaire	0.10
8/21/20	draft analysis of claim selection strategy. Research consumer state law claims.	2.60
8/21/20	email S. Franzini re: claim selection strategy	0.30
8/24/20	email Z. Ryu re running plaintiff background checks	0.20
8/24/20	email Z. Ryu re analyzing resort opening and closing dates	0.10
8/24/20	email S. Franzini re call	0.10
8/24/20	call with S. Franzini re Alterra	0.10
8/24/20	review plaintiff questionnaires	1.30
8/24/20	email with Z. Ryu re updating summary of plaintiff questionnaires	0.20
8/24/20	annotate summary of plaintiff questionnaires	1.10
8/24/20	draft memo summarizing claim strategy	1.40
8/26/20	coordinate zoom calls with other plaintiffs	0.20
8/26/20	research state law consumer protection claims	0.30
8/26/20	email Dovel and Bursor team re election of rescission and restitution	0.10
8/26/20	draft strategy call agenda and circulate to Dovel & Bursor team	0.10
8/26/20	zoom with Dovel and Bursor team re complaint strategy.	0.60
8/26/20	correspond with other Ikon plaintiffs counsel (Cafferty and Hellmuth) re scheduling zoom interviews with ten potential class representatives	0.50
8/26/20	email plaintiffs questionnaire to N. Mehnert and T. Goodrich	0.10
8/26/20	updated strategy analysis for plaintiffs and claims to include in consolidated complaint	1.10
8/28/20	coordinate with Z. Ryu, Hellmuth counsel and Cafferty counsel to schedule interviews of potential named plaintiffs.	1.50
8/28/20	email Bursor/Dovel team re setting strategy call on Monday	0.10
8/28/20	email M. Reich re plaintiff questionnaires	0.10
8/28/20	analyze third-party Ikon pass sales.	0.50
8/28/20	review plaintiff questionnaires and update summary table	1.30
8/29/20	prepare for interview with potential class representative W. Layman	0.50
8/29/20	email Bursor team re CLRA notice letter	0.10
8/29/20	interview with W. Layman	0.80
8/30/20	prepare for interview with potential class representative C. Reed	0.40
8/30/20	interview with C. Reed	0.30
8/31/20	Prepare for interview with potential class rep R. Lombardini	0.40
8/31/20	Interview with R. Lombardini	0.20
8/31/20	Summarize notes from interviews	0.50
8/31/20	Prepare for interview with potential class rep J. Farrell	0.30
8/31/20	interview with J. Farrell	0.30
8/31/20	prepare strategy call agenda	0.20
8/31/20	Bursor/Dovel strategy call	0.30
8/31/20	prepare for G. Farmer interview	0.30
8/31/20	interview with G. Farmer	0.40
8/31/20	provide instructions to Z. Ryu re plaintiff background checks.	0.30
8/31/20	prepare for interview with P. Werner	0.30
8/31/20	review G. Farmer small claims court case docket	0.20
8/31/20	prepare for interview with E. Ernstrom	0.20
8/31/20	interview with E. Ernstrom	0.50
8/31/20	prepare for interview with B. Briar	0.20
8/31/20	interview with B. Briar	0.40
9/1/20	email M. Reiss re zoom with A. Gokal	0.10
9/1/20	draft consolidated complaint	2.10
9/1/20	prepare for interview with L. Bui	0.30
9/1/20	interview with L. Bui	0.50
9/1/20	prepare for interview with K. Reid	0.20
9/1/20	interview with K. Reid	0.20
9/1/20	prepare for interview with P. Werner	0.20
9/1/20	interview with P. Werner	0.30

9/1/20	review plaintiff questionnaire summary and analyze the best mix of potential plaintiffs	0.40
9/1/20	emails Dovel/Bursor team re adding class representatives with a full Ikon pass	0.10
9/1/20	draft consolidated complaint	2.90
9/2/20	draft consolidated complaint	3.40
9/2/20	email Dovel/Bursor team re draft status	0.10
9/2/20	prepare for interview with A. Gokal	0.20
9/2/20	prepare summary of final class representatives	0.70
9/2/20	email summary of class reps to Dovel/Bursor team	0.10
9/2/20	interview with A. Gokal	0.50
9/2/20	Bursor/Dovel strategy call	0.60
9/2/20	draft consolidated complaint	2.40
9/2/20	send consolidated complaint to each of 8 selected class reps (and counsel) for review	0.50
9/4/20	Call N. Mehnert re reviewing complaint	0.10
9/4/20	review emails from rep counsel re client reviewing complaint	0.20
9/4/20	email Dovel/Bursor team re consolidated complaint filing plan	0.10
9/4/20	email to all Ikon plaintiffs' counsel re draft complaint	0.20
9/4/20	revise and finalize draft complaint	4.90
9/4/20	correspond with Z. Ryu re filing complaint	0.20
9/4/20	emails to Dovel/Bursor team re complaint revisions	0.40
9/7/20	review orders re submission of schedule	0.20
9/7/20	email Dovel/Bursor team re schedule submission	0.10
9/15/20	review draft rule 26 report	0.40
9/15/20	call with S. Franzini re rule 26 report.	0.20
9/15/20	email z. Ryu re legal research on "non-refundable"	0.40
9/16/20	Dovel/Bursor call re case schedule	0.40
9/16/20	Meet and confer with Alterra counsel and Dovel/Bursor team	0.30
9/16/20	Call with S. Franzini re case schedule	0.30
9/16/20	Case meeting	0.40
9/21/20	review and approve draft joint scheduling order, correspond with Dovel/Bursor team	0.20
9/21/20	review updated Ikon pass waiver	0.50
9/21/20	review legal research on "nonrefundable"	0.30
9/22/20	internal emails re rule 16 conference taken off calendar	0.10
9/23/20	emails with S. Franzini re Rule 26f conference	0.10
9/23/20	review status of class rep document collection; email Z. Ryu re organizing class rep documents	0.50
9/23/20	emails to Z. Ryu re sending complaint to class reps; re case schedule	0.30
9/23/20	email to Z. Ryu re hours tracking	0.20
9/23/20	draft update to class reps	0.60
9/24/20	review letter to class reps re Consolidated Complaint	0.20
9/25/20	comments to Z. Ryu on legal research on "non-refundable"	0.80
9/26/20	emails with Z. Ryu re document and retainer organization; review collected class rep documents	0.70
9/28/20	revise class rep update; discuss with Y. Krivoshey	0.60
9/28/20	email to S. Franzini re Rule 26f conference	0.10
9/29/20	email Alterra counsel re Rule 26f conference.	0.10
9/30/20	case meeting	0.30
10/14/20	case meeting	0.10
10/15/20	emails re meet and confer on motion to dismiss	0.20
10/17/20	review motion to dismiss; email to S. Franzini re same	1.50
10/17/20	review S. Franzini email re motion to dismiss	0.10
10/27/20	email S. Franzini re motion to dismiss and pleaded definition of ski season	0.10
11/2/20	Call with S. Franzini re motion to dismiss	0.20
11/3/20	email to B. Reed with ideas and research on consumer protection claims, for motion to dismiss	0.50

11/4/20	research consumer protection laws and review draft of consumer protection section of MTD; review and comment on draft of breach of contract section.	5.50
11/5/20	review drafts of opposition to motion to dismiss; provide comments on same to Dovel and Bursor team.	7.50
11/6/20	review Dovel-Bursor team emails re motion to dismiss strategy	0.30
11/6/20	call with Z. Ryu re proofing	0.20
11/6/20	emails to Z. Ryu re proofing	0.20
11/6/20	calls with S. Franzini re MTD	0.30
11/6/20	review and comment on draft of MTD	1.00
11/9/20	Call and email with J. Pagliuca	0.20
11/12/20	call with class member who called inquiring about the case	0.20
11/16/20	respond to email from class member M. Knopf	0.10
11/24/20	review Alterra's reply in support of MTD	0.50
2/5/21	Review order rescheduling status conference	0.10
4/20/21	review example 2022 liability waiver to check for anything impacting plaintiffs' claims	0.20
5/4/21	calls with inquiring class members	0.30
6/25/21	review ruling on motion to dismiss; discuss with co-counsel and update clients	1.50
7/15/21	Review draft scheduling order	1.00
7/30/21	review edit pattern jury instructions for surviving claims	3.00
7/30/21	review Alterra redlines of draft scheduling order	1.00
8/3/21	Review draft scheduling order and send to Alterra	0.50
8/5/21	draft computation of damages for initial disclosures	0.30
8/5/21	finalize scheduling order	1.00
8/5/21	analyze breach of contract claims and evidence	2.50
8/5/21	review table of resorts owned by Alterra	0.20
8/6/21	analyze breach of contract claims and evidence	2.00
8/9/21	analyze breach of contract liability and evidence; analyze damages theories and evidence; emails with Dovel team re same	4.50
8/11/21	review and comment on initial disclosures. Serve final versions.	1.30
8/12/21	email to Haddon Morgan re scheduling conference and plan going forward	0.20
8/12/21	review scheduling order	0.50
8/12/21	Rule 16 conference.	0.40
8/12/21	email re Rule 16 conf. to Dovel-Bursor team	0.10
8/16/21	analyze common evidence for each claim	2.00
8/19/21	draft RFPs	1.20
8/19/21	analyze damages models	2.50
8/20/21	analyze damages models	2.80
8/20/21	emails to coordinate client interviews	0.20
8/23/21	analyze expected case value	0.70
8/23/21	emails to S. Franzini re damages theories	0.20
8/23/21	email to Alterra counsel re ESI and PO	0.20
8/25/21	call with S. Franzini re damages	0.50
8/25/21	review damages analysis	1.00
8/25/21	calls with T. Goodrich, B. Briar and K. Reid re case schedule and document collection	0.90
8/25/21	call with Y. Krivoshey re Plaintiffs calls and drafting discovery	0.20
8/27/21	research resort closure dates	1.50
8/27/21	review case meeting notes from S. Franzini	0.20
8/28/21	review S. Franzini revised case meeting notes	0.20
8/30/21	update expected value spreadsheet	1.20
8/31/21	draft RFPs, circulate interrogatory ideas	3.70
8/31/21	update case expected value analysis	0.30
9/1/21	Case Meeting	0.40
9/13/21	review Alterra comments on PO and ESI Order.	0.50
9/13/21	meet and confer re PO and ESI	0.50
9/13/21	revise and circulate damages analysis	1.00

9/14/21	review revised PO and ESI Order	0.50
9/15/21	update breach of contract and class certification analysis and RFAs, RFPs, and rogs for our next round of discovery	2.80
9/15/21	case meeting	0.50
9/15/21	revise meeting notes	0.20
9/22/21	review data collected on 5/7 day resort seasons.	0.60
9/22/21	draft subpoena to National Ski Area Association	0.80
9/27/21	update breach of contract and damages analysis	1.80
9/28/21	review list of 5/7 day resort opening and closing dates, provide feedback to legal assistants	0.30
9/28/21	draft chronology tracker	1.00
9/28/21	update chronology tracker	2.00
9/28/21	prepare for all with E. Borokowski; call with E. Borokowski	0.50
9/29/21	revise case meeting notes	0.20
9/29/21	case meeting	0.50
9/29/21	review NSAA 2019 Kottke survey data	0.50
10/6/21	review and update lost season analysis; emails to co-counsel re same	1.20
10/12/21	update settlement analysis; emails to S. Franzini re same	0.60
10/13/21	update settlement analysis	1.00
10/13/21	emails to Y. Krivoshey re settlement and survey expert	0.20
10/13/21	Case meeting	0.50
10/15/21	email R. Mills re signing onto protective order	0.10
10/15/21	review Vail case MTD order; discuss with Bursor-Dovel team	0.80
10/15/21	Call with NSAA re subpoena; summary email to team re same	0.30
10/15/21	review subpoena to RCC; serve on opposing counsel	0.20
10/20/21	review compilation of stay-at-home orders and provide feedback to Z. Ryu.	0.50
10/25/21	email third-parties re subpoena stay	0.20
10/25/21	call re mediation with Alterra counsel	0.50
10/27/21	case meeting	0.30
10/27/21	edit update to class reps; send to co-counsel for feedback	0.20
10/27/21	analyze damages models and data needed for mediation	1.20
10/27/21	update case meeting notes	0.30
10/27/21	edit joint status report	0.30
10/28/21	finalize and send update to class reps	0.10
10/28/21	email to co-counsel re Alterra's proposed schedule adjustment; review original scheduling order.	0.20
10/29/21	review updated lost season calculated spreadsheet	0.20
11/2/21	draft response to Alterra counsel re moving document production deadlines	0.40
11/3/21	Redline draft status report	0.30
11/3/21	read "Ski Inc." summary of Ikon Pass history and pricing	0.50
11/4/21	comment on season length calculation	0.50
11/12/21	review Alterra data	1.50
11/12/21	zoom with R. Mills re data analysis	0.50
11/15/21	Update Dovel-Bursor team re analysis of Alterra data; emails re settlement strategy	0.50
11/22/21	Update expected value analysis	1.00
11/23/21	Update credit model analysis	1.00
11/30/21	Review settlement strategy	1.00
11/30/21	Discuss settlement strategy with S. Franzini	0.20
12/1/21	Case meeting	0.80
12/1/21	Update Settlement Strategy Tracker	0.50
12/1/21	Settlement Strategy Tracker	0.50
12/2/21	Review Vail MTD to analyze appeal risk; email to S. Franzini re same	1.00
1/9/22	Analyze mediation strategy	0.30
1/10/22	Draft mediation brief (liability)	1.80
1/11/22	Draft mediation brief (liability and certification)	1.20



<b>Timekeeper: Gabe Doble</b>		
<b>Date</b>	<b>Description</b>	<b>Hours Billed</b>
9/1/21	Case Meeting	0.40
9/15/21	Legal research and analysis re motion to dismiss	0.80
9/15/21	Case Meeting	0.40
9/16/21	Legal research and analysis re motion to dismiss	1.40
9/17/21	Legal research and analysis re motion to dismiss	2.50
9/18/21	Legal research and analysis re motion to dismiss	3.20
9/27/21	Legal research and analysis re motion to dismiss	0.60
9/28/21	Legal research and analysis re motion to dismiss	2.20
9/29/21	Legal research and analysis re motion to dismiss	6.70
9/29/21	Call w/ J. Jacobson re motion to dismiss	0.30
9/30/21	Legal research and analysis re motion to dismiss	0.90
10/7/21	Legal research and analysis re election of remedies	1.00
10/13/21	Case meeting	0.50
<b>TOTAL</b>		20.90



Timekeeper: Mazelle Etesammi		
Date	Description	Hours Billed
6/24/20	intro meeting about non-refundable analysis with S. Franzini	0.10
6/24/20	review case documents	1.00
6/24/20	case research	4.50
6/24/20	Alterra case meeting	0.30
6/24/20	reviewed feedback on quarantine analysis from J. Jacobson	0.30
6/25/20	investigation of website structure	1.60
6/25/20	case research	2.00
6/25/20	tracker brainstorm	2.00
6/25/20	website close read and download	0.40
6/25/20	case research	1.00
6/28/20	research and outline for non-refundable tracker	4.00
6/28/20	document analysis of Ikon Pass website	1.00
6/28/20	Ikon Pass non-refundable caselaw research	2.00
7/1/20	Alterra non-refundable term research	2.00
7/2/20	nonrefundable meaning research for Ikon	4.00
7/6/20	non-refundable tracker outline	5.00
7/6/20	non-refundable tracker research	1.50
7/7/20	non-refundable tracker	4.00
7/7/20	non refundable case research	1.00
7/8/20	non-refundable2 tracker research	3.00
7/8/20	non refundable2 tracker outlining	1.50
7/8/20	review S. Franzini's edits on non-refundable term tracker draft	1.50
7/8/20	call with S. Franzini in reviewing edits on the tracker	0.50
7/8/20	making edits on non-refundable term tracker	1.50
7/9/20	draft edits on non-refundable term tracker	4.50
7/10/20	non-refundable outline edits	6.00
7/13/20	reorganizing non refundable tracker	6.00
7/13/20	talking through non refundable tracker with W. Moise	0.30
7/13/20	citation updates on non refundable tracker	1.00
7/13/20	non refundable case research	2.00
7/14/20	non refundable edits	0.70
7/14/20	non refundable unconcionability research	4.00
7/14/20	reviewing notes and emails with S. Franzini re non-refundable	0.30
7/17/20	non refundable unconscionability analysis	4.00
7/17/20	review and incorporate R.Lyon edits on quarantine tracker	2.00
7/20/20	unconscionable refund term tracker reformatting	1.00
7/20/20	unconscionable refund term tracker finalizing	3.00
7/20/20	review and incorporate R. Lyon quarantine tracker edits	3.00
7/21/20	non refundable unconcionability term tracker	4.00
7/22/20	quarantine tracker R. Lyon edits	4.00
7/22/20	quarantine tracker research	1.50
7/29/20	S. Franzini non refundable tracker edits	4.00

<b>7/30/20</b>	S. Franzini edits on non-refundable tracker	3.50
<b>7/31/20</b>	S. Franzini edits on non-refundable tracker	2.00
	<b>TOTAL</b>	102.50

<b>Timekeeper: Zoey Ryu</b>		
<b>Date</b>	<b>Description</b>	<b>Hours Billed</b>
6/24/20	case meeting	0.20
7/1/20	update turnover report	0.10
7/1/20	draft expert retainers for D. Lerach and J. Shafer	0.20
7/7/20	draft expert retainers for E. Burakowski	0.10
7/8/20	update turnover report	0.10
7/10/20	calculate Mazelle's hours for Alterra	0.10
7/10/20	help Julien apply to join Colorado District court bar	0.50
7/10/20	prepare Julien's NoA	0.50
7/13/20	add new Ikon pass holder to contact sheet	0.10
7/13/20	proof lead counsel motion	2.00
7/13/20	file lead counsel motion	0.20
7/14/20	update docket on internal server	0.20
7/14/20	correspond with J. Jacobson re shipping courtesy copies of lead counsel briefing to counsel of record	0.10
7/15/20	case meeting with Dovel team	0.20
7/15/20	update turnover report	0.10
7/15/20	update meeting notes	0.10
7/16/20	update docket on internal server	0.10
7/22/20	update turnover report	0.10
7/22/20	add new Ikon pass holder to contact sheet	0.10
7/29/20	update turnover report	0.10
8/3/20	case meeting with Dovel team	0.20
8/3/20	case meeting with Dovel team	0.20
8/3/20	calendar case deadline	0.10
8/3/20	calendar case meeting for Bursor & Dovel team	0.20
8/10/20	proof draft of plaintiff questionnaire	0.10
8/10/20	add new Ikon pass holder to contact sheet	0.10
8/11/20	create a list of all plaintiffs' counsel emails	0.50
8/11/20	revise list of all plaintiffs' counsel emails	0.50
8/11/20	call with J. Jacobson re creating plaintiffs service list	0.10
8/12/20	update turnover report	0.10
8/12/20	case meeting with Dovel team	0.20
8/13/20	create scheduling order research tracker	2.00
8/13/20	add new Ikon pass holder to contact sheet	0.10
8/14/20	read J. Jacobson's feedback on scheduling order research tracker	0.20
8/14/20	update scheduling order research tracker	2.00
8/17/20	summarize all the different claims in the different Alterra complaints	2.00
8/17/20	add new Ikon pass holder to contact sheet	0.10
8/17/20	update docket on internal server	0.10
8/18/20	tracker complaints against Alterra	4.00
8/19/20	update turnover report	0.10
8/19/20	check for Alterra complaints that mention regional Ikon passes	0.50

8/19/20	case meeting with J. Jacobson and E. Noh	0.10
8/19/20	create tracker for opening and closing dates of Alterra resorts	2.00
8/19/20	case meeting with J. Jacobson and E. Noh	0.10
8/19/20	update meeting notes	0.10
8/20/20	create tracker of 22 total claims against Alterra & note the various expressions of each claim	1.50
8/20/20	add new Ikon pass holder to contact sheet	0.10
8/23/20	add new Ikon pass holder to contact sheet	0.10
8/24/20	read J. Jacobson's instructions re plaintiff research	0.20
8/24/20	create tracker re plaintiff research	1.00
8/24/20	read plaintiffs' returned questionnaires	1.00
8/24/20	fill out Questionnaire Summary table	1.50
8/26/20	schedule zoom call re Consolidated Complaint Strategy	0.20
8/26/20	look for NY plaintiff from our contact list	0.20
8/26/20	verify that potential plaintiffs bought an Ikon pass and have retainer agreements	0.50
8/26/20	work on opening and closing dates tracker	1.00
8/27/20	update our excel plaintiffs' counsel service list	0.20
8/28/20	update plaintiff questionnaire summary table	1.00
8/28/20	schedule zoom call re Consolidated Complaint Strategy	0.20
8/28/20	fix formatting issue re plaintiff questionnaire	
8/28/20	schedule interviews of potential named plaintiffs	2.00
8/31/20	schedule interviews of potential named plaintiffs	0.20
8/31/20	research re potential named plaintiffs	2.00
9/1/20	update plaintiff background summary tracker	1.00
9/1/20	troubleshoot zoom for plaintiff interviews	0.50
9/2/20	listen to and transcribe parts of Alterra CEO R. Gregory's podcast episode	0.70
9/2/20	confirm J. Jacobson's description of Alterra resorts	0.20
9/2/20	schedule zoom call re discussion on named plaintiffs	0.20
9/2/20	record R. Gregory's podcast episode	0.20
9/3/20	add new Ikon pass holder to contact sheet	0.10
9/4/20	proof draft of Consolidated Amended Complaint	2.00
9/4/20	file Consolidated Amended Complaint	0.30
9/4/20	email a copy of the Consolidated Amended Complaint to Ikon Plaintiffs' Counsel	0.20
9/4/20	update docket on internal server	0.10
9/9/20	update turnover report	0.10
9/15/20	read J. Jacobson's email re legal research on "non-refundable"	0.50
9/15/20	update turnover report	0.10
9/16/20	proof S. Franzini's draft joint statement	1.00

9/16/20	edit S. Franzini's draft joint statement and send to Bursor counsel	0.20
9/16/20	create a class rep update list	0.60
9/16/20	case meeting	0.40
9/16/20	legal research re non refundable	2.00
9/16/20	update case meeting notes	0.10
9/16/20	calendar class rep update email dates	0.10
9/17/20	call with S. Franzini re calendaring	0.60
9/17/20	add new Ikon pass holder to contact sheet	0.10
9/21/20	week ahead email to Dovel counsel	0.10
9/21/20	update docket on internal server	0.10
9/21/20	calendar case deadline	0.20
9/21/20	legal research re non refundable	2.00
9/22/20	update turnover report	0.10
9/24/20	create cover letters for named plaintiffs' update mail	0.60
9/24/20	create case schedule excel spreadsheet	0.50
9/24/20	read J. Jacobson's feedback on non refundable research tracker	0.30
9/24/20	update document collection folder (and convert .msg files to .pdf)	2.00
9/24/20	create tracker of all the documents we have collected from named plaintiffs	0.80
9/30/20	coordinate with J. Englebert to send out copy of consolidated complaint + cover letter to named plaintiffs	0.50
9/30/20	update document collection folder	0.10
9/30/20	case meeting	0.30
9/30/20	update legal research tracker on non refundable	0.50
10/7/20	update turnover report	0.10
10/12/20	send out week ahead email to Dovel team	0.10
10/14/20	case meeting	0.10
10/14/20	update case meeting notes	0.10
10/14/20	check for turnover updates	0.10
10/19/20	call with Ikon pass holders re joining class action	0.20
10/21/20	update docket on internal server	0.40
10/21/20	update turnover report	0.10
10/26/20	week ahead email to Dovel counsel	0.10
10/27/20	check for turnover updates	0.10
11/3/20	update turnover report	0.10
11/4/20	edit filing template	0.50
11/4/20	look up local rules re S. Franzini's question about citations / certificate of service	0.30
11/5/20	tracker( opp to MTD) to brief	0.80
11/6/20	create a TOA for brief	3.00
11/6/20	call with J. Jacobson re proofing	0.20
11/6/20	correspond with B. Reed re West Law citations	0.50
11/6/20	proof draft of plaintiff's opp to MTD	3.00



	<b>TOTAL</b>	74.00











<b>Alterra Hours Summary</b>	
<b>Firm Name: Cafferty Clobes Meriwether &amp; Sprengel LLP</b>	
Total Hours:	23.60
Total Lodestar:	\$17,735

<b>Firm Name:</b>	Cafferty Clobes Meriwether & Sprengel LLP					
<b>Last Name, First Name</b>	<b>Date of Service</b>	<b>Detailed Description of Work Performed</b>	<b>Name of Co-Lead Counsel Who Approved Work</b>	<b>Billing Rate</b>	<b>Time spent (by 0.1 increments)</b>	<b>Fees Total</b>
Clobes, Bryan	8/11/2020	Review client questionnaire from co-lead counsel.	J. Jacobson	\$ 900.00	0.4	\$360.00
Clobes, Bryan	8/11/2020	Correspond with N. Rasche, client and co-lead counsel re client questionnaire and	J. Jacobson	\$ 900.00	0.6	\$540.00
Rasche, Nyran	8/11/2020	Review named plaintiff questionnaire and confer with B. Clobes re: same.	J. Jacobson	\$ 825.00	0.4	\$330.00
Rasche, Nyran	8/12/2020	Review and analyze timekeeping protocol and communicate with S. Nyland re: processes for creating initial report, etc.	J. Jacobson	\$ 825.00	0.3	\$247.50
Clobes, Bryan	8/14/2020	Correspond and discuss with client, referring counsel, N. Rasche and other plaintiffs' counsel re clients serving as named plaintiffs and completing client questionnaires.	J. Jacobson	\$ 900.00	0.8	\$720.00
Schefflow, John	8/17/2020	Respond to N. Hagman email regarding the client questionnaire; search my email for the email addresses of the client and his father to send to N. Hagman	J. Jacobson	\$ 550.00	0.2	\$110.00
Rasche, Nyran	8/17/2020	Respond to B. Clobes questions about client status and strategy.	J. Jacobson	\$ 825.00	0.2	\$165.00
Clobes, Bryan	8/19/2020	Discuss and correspond with client, referring counsel, N. Rasche, N. Hagman and staff re client serving as named plaintiff and completing client questionnaire, and status and strategy.	J. Jacobson	\$ 900.00	1.3	\$1,170.00
Clobes, Bryan	8/19/2020	Review draft completed client questionnaire.	J. Jacobson	\$ 900.00	0.3	\$270.00
Hagman, Nickolas	8/19/2020	Review and analyze the Timekeeping Protocol and the Client Questionnaire	J. Jacobson	\$ 575.00	0.7	\$402.50
Hagman, Nickolas	8/19/2020	Draft the Client Questionnaire regarding the client	J. Jacobson	\$ 575.00	0.6	\$345.00
Hagman, Nickolas	8/19/2020	Communications with the client regarding the questionnaire	J. Jacobson	\$ 575.00	0.2	\$115.00
Rasche, Nyran	8/19/2020	Review incoming time reporting spreadsheet from lead counsel and communicate internally re: process for completing same.	J. Jacobson	\$ 825.00	0.2	\$165.00
Rasche, Nyran	8/19/2020	Gather and provide materials to N. Hagman for completion of questionnaire circulated by lead counsel.	J. Jacobson	\$ 825.00	0.3	\$247.50
Clobes, Bryan	8/20/2020	Discuss and correspond with client, referring counsel, N. Rasche, and N. Hagman re client serving as named plaintiff and completing client questionnaire, and status and strategy.	J. Jacobson	\$ 900.00	0.7	\$630.00
Clobes, Bryan	8/20/2020	Review revised draft of completed client questionnaire.	J. Jacobson	\$ 900.00	0.4	\$360.00
Hagman, Nickolas	8/20/2020	Draft and review emails to and from the client and counsel regarding the draft of the client questionnaire	J. Jacobson	\$ 575.00	0.6	\$345.00
Hagman, Nickolas	8/20/2020	Telephone conference with the client regarding the client questionnaire	J. Jacobson	\$ 575.00	0.4	\$230.00
Hagman, Nickolas	8/20/2020	Revise the client questionnaire	J. Jacobson	\$ 575.00	0.4	\$230.00
Hagman, Nickolas	8/20/2020	Draft and review emails to and from lead counsel regarding the client questionnaire	J. Jacobson	\$ 575.00	0.2	\$115.00
Rasche, Nyran	8/20/2020	Locate and forward client communications per request of N. Hagman, and briefly review completed client questionnaire.	J. Jacobson	\$ 825.00	0.3	\$247.50
Hagman, Nickolas	8/26/2020	Draft and review emails to and from lead counsel regarding interviewing the client	J. Jacobson	\$ 575.00	0.3	\$172.50
Hagman, Nickolas	8/26/2020	Telephone conference with the client regarding the interview with lead counsel	J. Jacobson	\$ 575.00	0.3	\$172.50
Hagman, Nickolas	8/28/2020	Correspondence with the client regarding the interview with lead counsel	J. Jacobson	\$ 575.00	0.2	\$115.00
Hagman, Nickolas	8/28/2020	Draft and review emails to and from lead counsel regarding interviewing the client	J. Jacobson	\$ 575.00	0.3	\$172.50
Clobes, Bryan	8/31/2020	Discuss and correspond with N. Rasche and N. Hagman re call with client and co-lead counsel to discuss serving as class plaintiff.	J. Jacobson	\$ 900.00	0.5	\$450.00
Hagman, Nickolas	8/31/2020	Prepare for and attend the conference call with lead counsel and Plaintiff Farmer	J. Jacobson	\$ 575.00	0.5	\$287.50
Hagman, Nickolas	8/31/2020	Draft and review internal emails regarding the call with lead counsel and Plaintiff Farmer	J. Jacobson	\$ 575.00	0.3	\$172.50

Hagman, Nickolas	8/31/2020	Draft and review emails to and from lead counsel regarding Plaintiff Farmer	J. Jacobson	\$ 575.00	0.3	\$172.50
Clobes, Bryan	9/2/2020	Review draft amended consolidated complaint	J. Jacobson	\$ 900.00	0.6	\$540.00
Clobes, Bryan	9/2/2020	Correspond and discuss with N. Hagman, N. Rasche and referring counsel regarding draft consolidated amended complaint and serving as a named class plaintiff	J. Jacobson	\$ 900.00	0.4	\$360.00
Rasche, Nyran	9/3/2020	Review email from J. Jacobson re: selection of client Farmer for consolidated complaint, and confer internally re: same.	J. Jacobson	\$ 825.00	0.4	\$330.00
Hagman, Nickolas	9/3/2020	Draft and review emails to and from lead counsel regarding the consolidated complaint	J. Jacobson	\$ 575.00	0.3	\$172.50
Hagman, Nickolas	9/3/2020	Correspondence with the client regarding the consolidated complaint	J. Jacobson	\$ 575.00	0.3	\$172.50
Hagman, Nickolas	9/4/2020	Legal research regarding the Illinois Deceptive Trade Practices Act and the Illinois consumer Fraud Act	J. Jacobson	\$ 575.00	0.4	\$230.00
Rasche, Nyran	9/4/2020	Review timekeeping guidance from lead counsel and confer internally re: same.	J. Jacobson	\$ 825.00	0.5	\$412.50
Hagman, Nickolas	9/4/2020	Review and revise the draft of the consolidated complaint	J. Jacobson	\$ 575.00	1.3	\$747.50
Hagman, Nickolas	9/4/2020	Draft and review emails to and from lead counsel regarding the revisions to the draft of the consolidated complaint	J. Jacobson	\$ 575.00	0.3	\$172.50
Hagman, Nickolas	9/4/2020	Correspondence with the client regarding the draft of the consolidated complaint	J. Jacobson	\$ 575.00	0.3	\$172.50
Clobes, Bryan	9/21/2020	Read proposed scheduling order and court orders re same and scheduling conference	J. Jacobson	\$ 900.00	0.3	\$270.00
Clobes, Bryan	9/30/2020	Correspond and discuss with co-lead counsel, N. Rasche, N. Hagman, referring counsel and client re buying season pass and status and strategy re same	J. Jacobson	\$ 900.00	0.8	\$720.00
Hagman, Nickolas	9/30/2020	Draft and review emails to and from lead counsel and B. Clobes regarding the client	J. Jacobson	\$ 575.00	0.4	\$230.00
Clobes, Bryan	10/1/2020	Discuss and correspond with client, referring lawyer, N. Hagman and co-lead counsel regarding client serving as named plaintiff, purchase and use of future Ikon passes, and status and strategy regarding same	J. Jacobson	\$ 900.00	1.4	\$1,260.00
Hagman, Nickolas	10/1/2020	Draft and review emails to and from co-counsel regarding the client's pass	J. Jacobson	\$ 575.00	0.4	\$230.00
Clobes, Bryan	10/2/2020	Continued discussions and correspondence with N. Hagman, client, referring lawyer and co-lead counsel regarding client serving as named plaintiff, purchase and use of future Ikon passes, and status and strategy regarding same	J. Jacobson	\$ 900.00	0.7	\$630.00
Hagman, Nickolas	10/2/2020	Draft and review emails to and from lead counsel regarding the client	J. Jacobson	\$ 575.00	0.3	\$172.50
Clobes, Bryan	10/8/2020	Correspond with client, referring lawyer, N. Rasche, N. Hagman and co-lead counsel regarding client serving as named plaintiff, client's question about next year's passes, and status and strategy regarding same	J. Jacobson	\$ 900.00	1	\$900.00
Rasche, Nyran	10/8/2020	Review material from B. Clobes regarding client's question about next year's passes and confer with him regarding response	J. Jacobson	\$ 825.00	0.8	\$660.00
Hagman, Nickolas	10/8/2020	Draft and review internal emails regarding the plaintiff	J. Jacobson	\$ 575.00	0.3	\$172.50
Hagman, Nickolas	7/13/2021	Draft and review emails to and from the client regarding the status of the case	J. Jacobson	\$ 600.00	0.2	\$120.00
<b>TOTAL</b>					<b>23.60</b>	<b>\$17,735.00</b>



<b>Alterra Hours Summary</b>	
<b>Firm Name: Hellmuth &amp; Johnson, PLLC</b>	
Total Hours:	39.40
Total Lodestar:	\$20,108

<b>Firm Name:</b> Hellmuth & Johnson, PLLC						
Last Name, First Name	Date of Service	Detailed Description of Work Performed	Name of Co-Lead Counsel Who Approved Work	Billing Rate	Time spent (by 0.1 increments)	Fees Total
Hagstrom, Richard	08/11/2020	Review communication from co-lead counsel and communicate with team re update from co-lead counsel pertaining to Plaintiff vetting.		\$980.00	0.20	\$196.00
Asiedu, Daniel	08/12/2020	Draft email to clients regarding the appointment of lead counsel and information and documents requested by lead counsel.		\$330.00	0.40	\$132.00
Asiedu, Daniel	08/12/2020	Review documents already submitted from clients to determine documents still needed to be submitted to lead counsel.		\$330.00	0.80	\$264.00
Hagstrom, Richard	08/12/2020	Communication with J Jacobson re client questionnaires.		\$980.00	0.10	\$98.00
Hagstrom, Richard	08/12/2020	Forward questionnaire to team and edit draft email to clients re same and case status. Indicate information that should be pre-filled for clients.		\$980.00	0.50	\$490.00
Asiedu, Daniel	08/14/2020	Review all documents received by clients and provided answers to lead counsel questionnaire prior to sending to clients.		\$330.00	5.30	\$1,749.00
Hagstrom, Richard	08/14/2020	Communications with D. Asiedu re partially completed forms per client and approval of forwarding to client.		\$980.00	0.30	\$294.00
Hagstrom, Richard	08/15/2020	Review responses of clients Fuller and Batt.		\$980.00	0.30	\$294.00
Asiedu, Daniel	08/17/2020	Review questionnaire and documents from client A. Batt to be provided to lead counsel.		\$330.00	0.30	\$99.00
Asiedu, Daniel	08/17/2020	Review questionnaire and documents from client D. Fuller to be provided to lead counsel.		\$330.00	0.30	\$99.00
Asiedu, Daniel	08/17/2020	Review questionnaire and documents from client K. Kurpjuweit to be provided to lead counsel. Request additional information from client.		\$330.00	0.40	\$132.00
Asiedu, Daniel	08/17/2020	Review questionnaire and documents from client W. Layman to be provided to lead counsel. Request additional information from client.		\$330.00	0.40	\$132.00
Asiedu, Daniel	08/17/2020	Review additional documents provided by client K. Kurpjuweit to be provided to lead counsel.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/17/2020	Review questionnaire and documents from client R. Lombardini to be provided to lead counsel.		\$330.00	0.20	\$66.00
Hagstrom, Richard	08/17/2020	Communications with D. Asiedu re contacts with our clients for completion of questionnaires per request of co-lead counsel.		\$980.00	0.20	\$196.00
Asiedu, Daniel	08/18/2020	Internal discussions, analysis re documents to be provided to lead counsel.		\$330.00	0.30	\$99.00
Asiedu, Daniel	08/18/2020	Review questionnaire and documents from client S. McNamara to be provided to lead counsel. Request additional information from client.		\$330.00	0.30	\$99.00
Asiedu, Daniel	08/18/2020	Review documents from client L. Bui to be provided to lead counsel. Email client to send questionnaire in word or pdf document.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/18/2020	Review final documents of A. Batt, D. Fuller and K. Kurpjuweit to be provided to lead counsel. Update team re the same.		\$330.00	0.40	\$132.00
Asiedu, Daniel	08/18/2020	Email from client W. Layman providing additional requested documents.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/18/2020	Review final documents of W. Layman to be provided to lead counsel.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/18/2020	Follow up emails to ten clients re questionnaire and documents requested from lead counsel.		\$330.00	1.30	\$429.00
Hagstrom, Richard	08/18/2020	Communications with D. Asiedu re questions raised by clients concerning the questionnaires.		\$980.00	0.20	\$196.00
Asiedu, Daniel	08/19/2020	Review questionnaire from client L. Bui to be provided to lead counsel.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/19/2020	Review questionnaire and documents from client J. Farrell to be provided to lead counsel. Request additional information.		\$330.00	0.30	\$99.00
Asiedu, Daniel	08/19/2020	Review questionnaire and documents from client C. Reed to be provided to lead counsel.		\$330.00	0.30	\$99.00
Asiedu, Daniel	08/19/2020	Review questionnaire and documents from client B. Briar to be provided to lead counsel.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/19/2020	Email to and from client S. McNamara. Review document provided by client.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/19/2020	Review questionnaire and documents including marketing materials from client E. Ernststrom. Email client re the same.		\$330.00	0.50	\$165.00
Asiedu, Daniel	08/19/2020	Emails to and from client P. Werner re questionnaire and documents requested.		\$330.00	0.20	\$66.00

Asiedu, Daniel	08/19/2020	Review questionnaire and documents from clients C. Kofoid and K. Reid to be provided to lead counsel. Email to and from client K. Reid re additional documents.	\$330.00	0.40	\$132.00
Asiedu, Daniel	08/19/2020	Review final documents of E. Ernstrom, S. McNamara, B. Briar, L. Bui, and W. Layman to be provided to lead counsel.	\$330.00	0.50	\$165.00
Asiedu, Daniel	08/19/2020	Update team re the status of outstanding questionnaire and documents to be provided to lead counsel.	\$330.00	0.30	\$99.00
Hagstrom, Richard	08/19/2020	Review time and expense protocol circulated by co-lead counsel and forward to team.	\$980.00	0.10	\$98.00
Asiedu, Daniel	08/20/2020	Email from client J. Farrell with requested document to be provided to lead counsel.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/20/2020	Review questionnaire from client P. Werner.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/20/2020	Update team re outstanding questionnaire and documents requested from clients.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/20/2020	Telephone call to J. Marshall re questionnaire and documents requested by lead counsel.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/20/2020	Telephone call to E. Gifford re questionnaire and documents requested by lead counsel.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/20/2020	Telephone call to R. Collins re questionnaire and documents requested by lead counsel.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/20/2020	Follow up email to client J. Sutcliffe re questionnaire and documents requested by lead counsel.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/20/2020	Email lead counsel J. Jacobson re questionnaire and documents from clients.	\$330.00	0.10	\$33.00
Hagstrom, Richard	08/20/2020	Review questionnaire responses of clients. Communicate with D. Asiedu re information gaps and need for follow-up. Communication with J Jacobson re same.	\$980.00	1.20	\$1,176.00
Hagstrom, Richard	08/20/2020	Contact E McQuillin.	\$980.00	0.10	\$98.00
Hagstrom, Richard	08/21/2020	Communications with D. Asiedu re providing further client information to J Jacobson.	\$980.00	0.20	\$196.00
Asiedu, Daniel	08/24/2020	Email to and from client L. Bui regarding questionnaire and her participation as class representative.	\$330.00	0.20	\$66.00
Asiedu, Daniel	08/24/2020	Email to and from client S. McNamara regarding questionnaire and her participation as class representative.	\$330.00	0.20	\$66.00
Asiedu, Daniel	08/24/2020	Email to client K. Kurpuweit regarding questionnaire and her participation as class representative.	\$330.00	0.20	\$66.00
Hagstrom, Richard	08/24/2020	Communications with D Asiedu regarding follow-up communications with clients at the request of co-lead counsel. Provide information to clients regarding what is expected as a class representative.	\$980.00	0.30	\$294.00
Otsuka, Gregory	08/24/2020	Draft e-mail to Plaintiff re duties of Class Representative in connection with requests from lead counsel.	\$760.00	0.30	\$228.00
Asiedu, Daniel	08/25/2020	Email to and from client K. Krupjuweit re the role and duties of class representatives.	\$330.00	0.20	\$66.00
Asiedu, Daniel	08/25/2020	Email to and from client R. Collins re the questionnaire and requested documents.	\$330.00	0.20	\$66.00
Hagstrom, Richard	08/25/2020	Communicate with G. Otsuka and D. Asiedu regarding information to be provided to clients.	\$980.00	0.20	\$196.00
Otsuka, Gregory	08/25/2020	Draft e-mail to Plaintiff re duties of Class Representative in connection with requests from lead counsel.	\$760.00	0.30	\$228.00
Asiedu, Daniel	08/26/2020	Email from client K. Kurpuweit re willingness to act as class representative.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/26/2020	Email from client J. Sutcliffe with questionnaire and requested document. Review the same and request additional information from client.	\$330.00	0.20	\$66.00
Asiedu, Daniel	08/26/2020	Update team re status of questionnaire and requested documents from clients.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/26/2020	Email to and from client R. Lombardini re requested document from lead counsel.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/26/2020	Emails to and from lead counsel J. Jacobson re documents needed from client R. Lombardini and coordinating zoom interviews with certain clients.	\$330.00	0.20	\$66.00
Hagstrom, Richard	08/26/2020	Communications with D. Asiedu re telephone conferences with co-lead counsel and clients' answers in amended questionnaires agreeing to be a Class Representatives.	\$980.00	0.40	\$392.00
Asiedu, Daniel	08/27/2020	Email to client A. Batt re interview requested by lead counsel.	\$330.00	0.10	\$33.00
Asiedu, Daniel	08/27/2020	Email to and from client B. Briar re interview requested by lead counsel.	\$330.00	0.20	\$66.00
Asiedu, Daniel	08/27/2020	Email to client C. Reed re interview requested by lead counsel.	\$330.00	0.10	\$33.00

Asiedu, Daniel	08/27/2020	Email to and from client E. Ernstrom re interview requested by lead counsel.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/27/2020	Email to and from client J. Farrell re interview requested by lead counsel.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/27/2020	Email to and from client L. Bui re interview requested by lead counsel.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/27/2020	Email to client P. Werner re interview requested by lead counsel.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/27/2020	Email to and from client R. Lombardini re interview requested by lead counsel.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/27/2020	Email to client W. Layman re interview requested by lead counsel.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/27/2020	Email to lead counsel J. Jacobson with clients availability for zoom interview.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/28/2020	Email to and from client P. Werner re interview requested by lead counsel. Update lead counsel J. Jacobson re teh same.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/28/2020	Email to lead counsel with copies of notice letter for CLRA claims in California sent on behalf of the California clients.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/28/2020	Email to and from client R. Lombardini re zoom interview date.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/28/2020	Email to and from client B. Briar re zoom interview date.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/28/2020	Email to and from client L. Bui re zoom interview date and time. Email lead counsel re the same.		\$330.00	0.30	\$99.00
Asiedu, Daniel	08/28/2020	Email to client J. Farrell with zoom interview date and time.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/28/2020	Email to client P. Werner with zoom interview date and time.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/28/2020	Email to E. Ernstrom with zoom interview date and time.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/28/2020	Email to and from client C. Reed re his availability for a zoom interview with lead counsel. Email lead counsel re the same.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/28/2020	Email to and from client W. Layman re his availability for zoom interview with lead counsel. Email lead counsel re the same.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/29/2020	Participate in interview with client W. Layman and lead counsel J. Jacobson.		\$330.00	0.70	\$231.00
Asiedu, Daniel	08/29/2020	Email to client K. Reid re her availability for a zoom interview with lead counsel.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/30/2020	Email from client L. Bui re her zoom interview with lead counsel.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/31/2020	Emails to and from client P. Werner re rescheduling zoom interview with lead counsel.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/31/2020	Emails to and from client A. Batt re his availability for zoom interview. Email lead counsel re the same.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/31/2020	Emails to and from client K Reid re her availability for zoom interview. Email lead counsel re the same.		\$330.00	0.20	\$66.00
Asiedu, Daniel	08/31/2020	Participate in interview with client R. Lombardini, attorney G. Otsuka and lead counsel J. Jacobson.		\$330.00	0.40	\$132.00
Asiedu, Daniel	08/31/2020	Participate in interview with client J. Farrell, attorney G. Otsuka and lead counsel J. Jacobson and Y. Krivoshey.		\$330.00	0.40	\$132.00
Asiedu, Daniel	08/31/2020	Email from client R. Lombardini with pass documentation. Email lead counsel re the same.		\$330.00	0.10	\$33.00
Asiedu, Daniel	08/31/2020	Participate in interview with client E. Ernstrom and lead counsel J. Jacobson.		\$330.00	0.50	\$165.00
Asiedu, Daniel	08/31/2020	Participate in interview with client B. Briar with lead counsel J. Jacobson and S. Franzini.		\$330.00	0.40	\$132.00
Asiedu, Daniel	08/31/2020	Emails from client B. Briar with copies for email communications from defendants.		\$330.00	0.10	\$33.00
Otsuka, Gregory	08/31/2020	Email the same to lead counsel.		\$330.00	0.10	\$33.00
Otsuka, Gregory	08/31/2020	Participate in lead counsel's interview of plaintiffs.		\$760.00	1.00	\$760.00
Asiedu, Daniel	9/1/2020	Emails to and from client A. Batt re availability for zoom interview with lead counsel.		\$330.00	0.30	\$99.00
Asiedu, Daniel	9/1/2020	Participate in interview with client L. Bui and lead counsel J. Jacobson.		\$330.00	0.40	\$132.00
Asiedu, Daniel	9/1/2020	Participate in interview with client K. Reid and lead counsel J. Jacobson.		\$330.00	0.30	\$99.00
Asiedu, Daniel	9/1/2020	Participate in interview with client P. Werner and lead counsel J. Jacobson.		\$330.00	0.40	\$132.00
Asiedu, Daniel	9/1/2020	Follow-up email to client R. Collins re questionnaire and documents requested from lead counsel.		\$330.00	0.10	\$33.00
Asiedu, Daniel	9/1/2020	Follow-up email to client E. McQuillin re questionnaire and documents requested from lead counsel.		\$330.00	0.10	\$33.00
Asiedu, Daniel	9/1/2020	Follow-up email to client E. Gifford re questionnaire and documents requested from lead counsel.		\$330.00	0.10	\$33.00
Asiedu, Daniel	9/1/2020	Follow-up email to client J. Marshall re questionnaire and documents requested from lead counsel.		\$330.00	0.10	\$33.00
Hagstrom, Richard	9/1/2020	Communication with client D. Fuller re recent communication re Ikon Pass.		\$980.00	0.10	\$98.00
Hagstrom, Richard	9/1/2020	Communication with D. Asiedu re follow-up with our clients re questionnaires.		\$980.00	0.10	\$98.00

Hagstrom, Richard	9/2/2020	Pursuant to co-lead counsel request, attempt contacts to E. McQuillin. Research contact information.		\$980.00	0.20	\$196.00
Hagstrom, Richard	9/2/2020	Communications with client D. Fuller re information he received from Alterra.		\$980.00	0.10	\$98.00
Asiedu, Daniel	9/3/2020	Email to client K. Reid re reviewing consolidated complaint.		\$330.00	0.10	\$33.00
Asiedu, Daniel	9/3/2020	Email to client E. Ernstrom re reviewing consolidated complaint.		\$330.00	0.10	\$33.00
Asiedu, Daniel	9/3/2020	Email to client W. Layman re reviewing consolidated complaint.		\$330.00	0.10	\$33.00
Asiedu, Daniel	9/3/2020	Email to client B. Briar re reviewing consolidated complaint.		\$330.00	0.10	\$33.00
Hagstrom, Richard	9/3/2020	Communication with team re draft complaint circulated by co-lead counsel.		\$980.00	0.10	\$98.00
Hagstrom, Richard	9/3/2020	Attempt to contact client E. McQuillin.		\$980.00	0.10	\$98.00
Hagstrom, Richard	9/4/2020	Review draft consolidated complaint and communicate with client and team members.		\$980.00	0.40	\$392.00
Hagstrom, Richard	9/8/2020	Communication with D. Asiedu re consolidated complaint and request to be circulated to clients. Communications re wording of communication with clients.		\$980.00	0.20	\$196.00
Asiedu, Daniel	9/11/2020	Emails to and from client A. Batt re Consolidated Class Action Complaint.		\$330.00	0.20	\$66.00
Hagstrom, Richard	9/11/2020	Communications with D. Asiedu re format of communication to update our clients.		\$980.00	0.20	\$196.00
Hagstrom, Richard	9/17/2020	Review scheduling order.		\$980.00	0.10	\$98.00
Kuhlmann, Nicholas	8/24/2021	Review correspondence from Lead Counsel re update meetings with class representatives; discuss matter with M. Cashman and B. Nelson.	J. Jacobson	\$740.00	0.80	\$592.00
Kuhlmann, Nicholas	8/25/2021	J. Jacobson for status update.	J. Jacobson	\$740.00	1.60	\$1,184.00
Kuhlmann, Nicholas	8/25/2021	Review and analyze Scheduling Order and plaintiff questionnaires.	J. Jacobson	\$740.00	0.50	\$370.00
Kuhlmann, Nicholas	8/26/2021	Draft email to R. Hagstrom re summary of phone calls with class representatives.	J. Jacobson	\$740.00	0.50	\$370.00
Kuhlmann, Nicholas	8/26/2021	Phone call to plaintiff W. Layman re case update.	J. Jacobson	\$740.00	0.10	\$74.00
Kuhlmann, Nicholas	8/26/2021	Draft email to plaintiff W. Layman re case update, per Lead Counsel J. Jacobson.	J. Jacobson	\$740.00	0.20	\$148.00
Kuhlmann, Nicholas	8/26/2021	Review and edit client list for sending communications.	J. Jacobson	\$740.00	0.40	\$296.00
Kuhlmann, Nicholas	8/28/2021	Review recent correspondence; draft email to W. Layman re conference call with J. Jacobson.	J. Jacobson	\$740.00	0.30	\$222.00
Kuhlmann, Nicholas	8/30/2021	Review file materials for clients; draft email to clients re case update.	J. Jacobson	\$740.00	1.30	\$962.00
Kuhlmann, Nicholas	8/31/2021	Draft emails re availability and phone conferences.	J. Jacobson	\$740.00	0.20	\$148.00
Kuhlmann, Nicholas	9/1/2021	Review correspondence from lead counsel re plaintiff meetings and document collection. Draft email to R. Hagstrom re same.	J. Jacobson	\$740.00	0.20	\$148.00
Kuhlmann, Nicholas	9/1/2021	Phone calls with our class clients and lead counsel.	J. Jacobson	\$740.00	0.20	\$148.00
<b>TOTAL</b>					<b>39.40</b>	<b>\$20,108.00</b>



<b>Alterra Hours Summary</b>	
<b>Firm Name: Hagstrom Law</b>	
Total Hours:	8.5
Total Lodestar:	\$8,330

Firm Name: Hagstrom Law

DATE	ATTY	DESCRIPTION	TIME	RATE	TOTAL
6/26/2021	RMH	Review decision denying in part the MTD and communicate with co-lead counsel.	0.7	980.00	\$686.00
6/28/2021	RMH	Prepare draft communication to clients to update them on case status.	0.2	980.00	\$196.00
8/12/2021	RMH	Review scheduling order entered.	0.1	980.00	\$98.00
8/20/2021	RMH	Communications from and to team regarding conference calls to be set up with our clients per lead counsel.	0.2	980.00	\$196.00
8/21/2021	RMH	Internal communications regarding assembling the information regarding our clients for co-lead counsel.	0.3	980.00	\$294.00
8/24/2021	RMH	Communications with J. Jacobson and others regarding setting up zoom interviews with our clients.	0.2	980.00	\$196.00
8/25/2021	RMH	Communications with J. Jacobson and N Kuhlmann regarding clients K Reid and E Ernstrom.	0.2	980.00	\$196.00
8/26/2021	RMH	Communications with J. Jacobson and N Kuhlmann regarding contacts with our clients and receive update from N Kuhlmann re client interviews.	0.3	980.00	\$294.00
8/27/2021	RMH	Communications with client W Layman and N Kuhlmann re client interview.	0.1	980.00	\$98.00
9/1/2021	RMH	Communications with N Kuhlmann to meet by telephone with clients Briar, Reid and Layman.	0.2	980.00	\$196.00
11/3/2021	RMH	Draft and send case update email to clients.	0.4	980.00	\$392.00
11/5/2021	RMH	Review filed status report.	0.2	980.00	\$196.00
3/3/2022	RMH	Communication with Dovel lawyers regarding status to respond to clients' inquiries about the mediation.	0.2	980.00	\$196.00
3/4/2022	RMH	Communication with J Jacobson regarding mediation and respond to client Lombardini's inquiries about the mediation.	0.2	980.00	\$196.00
4/15/2022	RMH	Review motion to stay deadlines for purposes of pursuing settlement.	0.2	980.00	\$196.00
4/22/2022	RMH	Review order granting motion to stay.	0.1	980.00	\$98.00
4/26/2022	RMH	Communication from and to J Jacobson regarding mediation status and communication with client Ernstrom in response to his inquiry.	0.2	980.00	\$196.00
5/16/2022	RMH	Communication from J Jonas re potential settlement.	0.1	980.00	\$98.00
5/18/2022	RMH	Communication with clients regarding potential settlement and setting up follow up phone calls.	0.3	980.00	\$294.00
5/20/2022	RMH	Telecom with client Ernstrom regarding the proposed settlement and send follow up email requesting his agreement.	0.6	980.00	\$588.00
5/20/2022	RMH	Telecom with client Briar regarding the proposed settlement and send follow up email confirming client agreement.	0.5	980.00	\$490.00
5/20/2022	RMH	Telecom with client Reid regarding the proposed settlement and send follow up email confirming client agreement.	0.4	980.00	\$392.00
5/20/2022	RMH	Communication with J Jonas regarding approval of proposed settlement from three clients.	0.1	980.00	\$98.00
5/27/2022	RMH	Telecom with client Ernstrom regarding the settlement terms and request follow up from him concerning his approval.	0.4	980.00	\$392.00
5/30/2022	RMH	Call (voicemail) and email to client Ernstrom regarding the settlement terms and request any questions and/or approval by 5/31.	0.4	980.00	\$392.00
5/31/2022	RMH	Communication to and from W Layman re his approval of settlement terms and communicate same to J Jacobson.	0.2	980.00	\$196.00
5/31/2022	RMH	Ernstrom approval and communicate to lead counsel.	0.1	980.00	\$98.00
6/16/2022	RMH	Communication from J Jonas re potential settlement details.	0.1	980.00	\$98.00
7/19/2022	RMH	Receive and review order regarding status report on proposed settlement.	0.1	980.00	\$98.00
7/20/2022	RMH	Receive and review the parties' joint status report.	0.1	980.00	\$98.00
7/21/2022	RMH	Receive and review the court's order setting deadlines	0.1	980.00	\$98.00
7/23/2022	RMH	Communication with J. Jacobson regarding the status of the settlement agreement draft.	0.1	980.00	\$98.00
8/7/2022	RMH	Communications from and to Y Krivoshey regarding the clients' need to sign the settlement agreement.	0.2	980.00	\$196.00
8/10/2022	RMH	Communications from and to Y Krivoshey regarding the status of clients signing the settlement agreement.	0.2	980.00	\$196.00
8/10/2022	RMH	Review settlement agreement forwarded by Y Krivoshey.	0.4	980.00	\$392.00
8/10/2022	RMH	Receive and review joint status report.	0.1	980.00	\$98.00
<b>TOTAL</b>			<b>8.5</b>		<b>\$8,330.00</b>



**DOVEL & LUNER, LLP**  
201 Santa Monica Blvd., Suite 600  
Santa Monica, CA 90401

## **Alterra Class Action Expenses**

### **In Reference To: Alterra Mountain Co Class Action (Expenses)**

<b>Date</b>	<b>Expenses</b>	<b>Amount</b>
04/14/2020	U.S. District Court of Colorado. Bar admission fee for J. Jacobson.	\$ 216.00
04/15/2020	U.S. District Court of Colorado. Bar admission fee for S. Franzini.	\$ 216.00
04/30/2020	Haddon, Morgan & Foreman. Westlaw charges for April. Statement no. 316456.	\$ 44.48
05/11/2020	Mailform. Document service. (R. White).	\$ 11.96
07/10/2020	U.S. District Court of Colorado. Bar admission fee for J. Adams.	\$ 216.00
07/14/2020	FedEx. Shipping briefs for lead counsel motion. Transaction 940269280569, shipped by W. Moise.	\$ 94.55
07/15/2020	FedEx. Shipping briefs for lead counsel motion. Transactions 394869319882, 394868631072, shipped by W. Moise.	\$ 139.75
09/25/2020	U.S. District Court of Colorado. Biennial fees for G. Dovel, J. Adams, and J. Jacobson.	\$ 150.00
09/30/2020	U.S. District Court of Colorado. Biennial fee for S. Franzini.	\$ 50.00
09/29/2021	NSAA. End of season and demographic report.	\$ 400.00
11/02/2021	Ace Attorney Service. Invoice no. 409369.	\$ 848.50
12/21/2021	Micronomics. Fee for professional services. Invoice no. 1008024.	\$ 5,232.50
03/08/2022	In house black and white photocopies for the months of January and February.	\$ 0.90
03/08/2022	In house color photocopies for the months of January and February.	\$ 19.68
09/27/2022	PACER. Document retrieval.	\$ 2.50
09/27/2022	PACER. Document retrieval.	\$ 2.90
09/27/2022	PACER. Document retrieval.	\$ 3.00

09/27/2022	PACER. Document retrieval.	\$ 2.10
10/04/2022	U.S. District Court of Colorado. Bar renewal fees for S. Franzini, J. Jacobson, G. Dovel, and J. Adams.	\$ 240.00
11/02/2022	David G. Lerach, Ph.D. Consulting services.	\$ 400.00
<b>Total Expenses</b>		<b>\$ 8,290.82</b>



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge John L. Kane**

Civil Action No. **09-cv-386-JLK-KMT** (consolidated with **09-cv-525-JLK-KMT**)

IN RE OPPENHEIMER CHAMPION INCOME FUND  
SECURITIES FRAUD CLASS ACTIONS

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**ORDER APPROVING CLASS COUNSEL'S MOTION FOR  
AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

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THIS MATTER having come before the Court for a hearing on September 30, 2011, on the Motion for Final Approval of Proposed Class Settlement, Approval of Distribution Plan, and Award of Attorneys' Fees and Expenses; Lead Counsel Labaton Sucharow LLP and Hagens Berman Sobol Shapiro LLP ("Class Counsel") having requested an award of attorneys' fees and reimbursement of expenses, including reimbursement of Lead Plaintiffs' lost wages and expenses; and the Court, having considered all papers filed and proceedings conducted herein, and otherwise being fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Amended and Restated Stipulation and Agreement of Settlement, dated August 11, 2011 (the "Stipulation").

2. This Court has jurisdiction to enter this Order awarding attorneys' fees and litigation expenses and over the subject matter of the Consolidated Class Action Complaint and all Parties to the consolidated Action including all Class Members.

3. Class Counsel, on behalf of all plaintiffs' counsel, are entitled to a fee paid out of the common fund created for the benefit of the Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Tenth Circuit recognizes the propriety of the percentage-of-the fund method when awarding fees. *See Gottlieb v. Barry*, 43 F.3d 474, 484 (10th Cir. 1994).

4. Notice of Class Counsel's request for attorneys' fees and reimbursement of expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the request for attorneys' fees and litigation expenses met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure and Section 27 of the Securities Exchange Act of 1933, 15 U.S.C. § 77z-1(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. Class Counsel have moved for an award of attorneys' fees of 18.5% of the Settlement Fund, or \$9,712,500, plus interest at the same rate as that earned by the Settlement Fund. Class Counsel's fee and expense application has the support of Lead Plaintiffs.

6. This Court concludes that the percentage-of-recovery method is appropriate for awarding attorneys' fees in this Action and hereby adopts said method for purposes of this Action.

7. The Court finds that a fee award of 18.5% of the Settlement Fund is consistent with awards made within this District and in similar cases. *See, e.g., In re Spectranetics Corp. Sec. Litig.*, No. 08-02048 (D. Colo. April 4, 2011) (Blackburn, J.) (fee equal to 28% of recovery); *In re Rhythms Sec. Litig.*, No. 02-35 (D. Colo. April 3, 2009) (Kane, J.) (fee equal to 30% of settlement fund).

8. Accordingly, the Court hereby awards attorneys' fees of 18.5% of the Settlement Fund, or \$9,712,500, plus interest at the same rate as that earned by the Settlement Fund. The Court finds the fee award to be fair and reasonable. Said fees shall be allocated among plaintiffs' counsel in a manner in which Class Counsel believe reflects each counsel's contribution to the prosecution and resolution of the Action.

9. In making this award of attorneys' fees and expenses, the Court has analyzed the factors considered within the Tenth Circuit as set forth in *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454-455 (10th Cir. 1988) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)). In evaluating these factors, the Court finds that:

- a) Class Counsel have conferred a substantial benefit to the Class.
- b) Class Counsel faced several novel and difficult legal and factual issues relating, in part, to the inherent complexities of a mutual-fund case as well as legal hurdles posed by Defendants' defenses of truthful disclosures to the factual intricacies of the investments at issue. Furthermore, Class Counsel faced the considerable risk of no

recovery given the possibility that the claims would be dismissed in whole or in part for failure to adequately plead loss causation pursuant to the recent ruling in *In re State Street Bank*, 2011 U.S. Dist. LEXIS 35857, at \*35, 2011 WL 1206070, at \*10. Despite the novelty and difficulty of the issues raised, Class Counsel secured an excellent result for the Class.

c) Class Counsel are very experienced and skilled practitioners in the securities litigation field, and have considerable experience and capabilities as class action specialists and with claims involving mutual funds. Their efforts in efficiently and expeditiously bringing the Action to a successful conclusion against the Defendants conferred a substantial benefit to the Class.

d) Class Counsel have expended considerable time and labor over the course of the Action investigating, analyzing and prosecuting the claims. This is evidenced by the Class Counsel's practice before the Court and Class Counsel's representations that they have: thoroughly investigated the claims asserted, including a review of all relevant public information, and engaged in extensive research of the applicable law with respect to the claims and defenses asserted by Defendants; filed a detailed and particularized consolidated class action complaint; pursued a Freedom of Information Act request with the Oregon Department of Justice and the Oregon Treasurer; requested, reviewed and analyzed almost 80,000 pages of key documents produced by Defendants, despite the PSLRA stay of discovery; retained and consulted with portfolio experts concerning a complete forensic analysis of the Fund portfolio as well as analysis of key documents produced by Defendants; vigorously defended motions to dismiss; retained and consulted

with damages experts in order to analyze Fund transaction data and documents produced by Defendants; engaged in extensive settlement negotiations with Defendants, including three formal in-person mediation sessions before Judge Phillips; worked with wholly independent counsel to resolve the allocation issues between the Actions, culminating in an allocation mediation session before Judge Phillips; and advocated for a substantial settlement for the Class. Counsel's total lodestar is reported to be \$2,109,323.45 based upon 4,466.81 hours of work. Additional work was done in preparation for the hearing and Counsel anticipates that more work will be done with respect to the administration and distribution of the Settlement.

c) The services provided by Class Counsel appear to have been successful and efficient, resulting in a very significant recovery for the Class without the substantial expense, risk and delay of continued litigation and trial. Such efficiency and effectiveness supports the requested fee percentage.

f) Although there have been objections to the fee and expense application, none of the objections raise an issue about the actual fee application, why it is not supported by existing law, or why the request for reimbursement of expenses is not reasonable, and they are rejected.

10. Class Counsel have also requested reimbursement of litigation expenses in the amount of \$382,143.39, plus interest at the same rate as that earned by the Settlement Fund, and awards of \$9,000 and \$7,500, respectively, to Lead Plaintiffs Thomas H. Goodman and Errol G. O'Steen for reimbursement of lost wages and expenses pursuant to the PSLRA related to their active participation in this Action. Such a request for lost wages is reasonable under the

circumstances of this case. *See e.g., In re Marsh & McLennan Co. Inc. Sec. Litig.*, 2009 U.S. Dist. LEXIS 120953, at \*61, 2009 WL 5178546, at \*21 (S.D.N.Y. Dec. 23, 2009).

11. Having reviewed the expense information submitted by Class Counsel, the Court hereby approves the requested amount of litigation expenses and awards Class Counsel expenses of \$382,143.39, plus interest at the same rate as that earned by the Settlement Fund.

12. The Court hereby awards Lead Plaintiff Thomas H. Goodman the amount of \$9,000 in lost wages and expenses and Lead Plaintiff Errol G. O'Steen the amount of \$7,500 in lost wages and expenses, to be paid on entry of this Order.

13. The awarded attorneys' fees and expenses of Class Counsel shall be paid within ten (10) calendar days of entry of this Order and entry of the Final Judgment, subject to the terms, conditions and obligations of the Stipulation, which terms, conditions and obligations are incorporated herein.

14. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

15. Any appeal or any challenge affecting this Court's approval of the attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

16. In the event that the Settlement is terminated or does not become Final in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

17. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED.

DATED: September 30, 2011

John L. Kane  
THE HONORABLE JOHN L. KANE  
UNITED STATES DISTRICT JUDGE

# Vaszlavik v. Storage Tech. Corp.

United States District Court for the District of Colorado

March 9, 2000, Decided ; March 9, 2000, Filed

Civil Action No. 95-B-2525

## Reporter

2000 U.S. Dist. LEXIS 21140 \*

JOHN VASZLAVIK, et al., Plaintiffs, v.  
STORAGE TECHNOLOGY CORPORATION, a  
Delaware Corporation, doing business in Colorado,  
Defendant.

**Disposition:** [\*1] CLASS COUNSEL'S  
PETITION FOR ATTORNEYS' FEES AND  
COSTS GRANTED.

## Core Terms

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settlement, costs, cases, attorney's fees, fee award,  
lodestar, counsel's request, common fund

## Case Summary

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### Procedural Posture

Class counsel petitioned the court to compensate them for their role in obtaining a settlement of class claims under the Age Discrimination in Employment Act and the Employee Retirement Income Security Act. Specifically, class counsel asked the court to award them a fee of 30 percent of the monetary settlement obtained or \$ 1.5 million, and costs of \$ 309,252.

### Overview

Applying the 12 Johnson factors, the court found the award of 30 percent of the common fund was reasonable and warranted. The litigation required class counsel to commit vast amounts of time and labor in order to obtain a favorable settlement. The case presented numerous difficult, complex, and uncertain legal and factual issues, which required a high degree of specialized skill and entailed significant opportunity costs. The 30 percent

contingent fee was well within the normal range of fee awards. Counsel's experience, reputation, and ability was exceptional. Through counsel's efforts, the court certified two classes. One achieved a \$ 5 million settlement; the other benefitted from the implementation of significant alternative relief. Given the considerable risk that plaintiffs might have recovered nothing for their efforts, this result supported the requested fee. The court also found that, given the magnitude and inherent expense of the action, the request for costs was also fair and reasonable.

### Outcome

The court approved counsel's petition for attorney's fees and costs.

## LexisNexis® Headnotes

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Civil Procedure > ... > Attorney Fees &  
Expenses > Basis of Recovery > American Rule

Civil Procedure > Remedies > Costs &  
Attorney Fees > General Overview

### **HNI** **Basis of Recovery, American Rule**

Attorneys' fees are awarded to class counsel under the common benefit doctrine.

Civil Procedure > Remedies > Costs &  
Attorney Fees > General Overview

**HN2[[↓](#)] Remedies, Costs & Attorney Fees**

When a settlement yields a fund for class members, attorneys' fees must be paid from the recovery.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > American Rule

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees

**HN3[[↓](#)] Basis of Recovery, American Rule**

Courts apply one of two methods for determining attorneys' fee awards in common fund cases: (1) by a percentage of the fund; or (2) by the lodestar plus multiplier or enhanced lodestar, which multiplies the reasonable hours expended by a reasonable hourly rate, and finally by an additional percentage to compensate for risk. While enhanced lodestar cases remain instructive, the United States Court of Appeals for the Tenth Circuit expresses a preference for the percentage of the fund method in common fund cases.

Civil Procedure > Special Proceedings > Class Actions > Compromise & Settlement

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees

**HN4[[↓](#)] Class Actions, Compromise & Settlement**

Fees for class action settlements generally range from 20 percent to 50 percent.

Civil Procedure > Special Proceedings > Class Actions > Compromise & Settlement

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable

Fees

**HN5[[↓](#)] Class Actions, Compromise & Settlement**

Regardless of whether a percentage of the fund or enhanced lodestar approach is used, class action fee awards are typically 30 percent of the fund created by the settlement.

Civil Procedure > Special Proceedings > Class Actions > Compromise & Settlement

Civil Procedure > ... > Class Actions > Class Attorneys > General Overview


Civil Procedure > ... > Class Actions > Class Attorneys > Fees

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees

**HN6[[↓](#)] Class Actions, Compromise & Settlement**

The United States Court of Appeals for the Tenth Circuit concludes that whichever method for fee calculation is employed, the district court must consider the 12 factors articulated in Johnson when determining attorneys' fees for class action settlements. The Johnson factors include: (1) the time and labor required; (2) the novelty and difficulty of the question presented by the case; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorneys due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.


Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > Reasonable Fees

**HN7**  **Attorney Fees & Expenses, Reasonable Fees**

Courts in common fund cases regularly award multipliers of two to three times the lodestar or more to compensate for risk and to reflect the quality of the work performed.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > American Rule

Civil Procedure > ... > Costs & Attorney Fees > Costs > General Overview

**HN8**  **Basis of Recovery, American Rule**

As with attorneys' fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred. Costs are awarded in addition to the attorney fee percentage.

**Counsel:** For JOHN VASZLAVIK, WALTER PERDUE, CAROL HILL, BOB COTTON, DAVID WEE, MIKE MCCOY, HOWARD VALENTINE, PATRICK L. ELLIS, ARTHUR J. GERCKEN, LANETTE STEWART, BILL STEVENS, plaintiffs: Gilbert M. Roman, John A. Culver, Seth J. Benezra, Roman, Benezra & Culver, LLC, Lakewood, CO USA.

For JOHN VASZLAVIK, WALTER PERDUE, CAROL HILL, BOB COTTON, DAVID WEE, MIKE MCCOY, HOWARD VALENTINE, PATRICK L. ELLIS, ARTHUR J. GERCKEN, LANETTE STEWART, BILL STEVENS, plaintiffs: Todd J. McNamara, Todd J. McNamara, P.C., Denver, CO USA.

For STORAGE TECHNOLOGY CORPORATION, defendant: Nancy J.

Gegenheimer, Katherine J. Peck, Holme Roberts & Owen LLP, Michael E. Lindsay, Ballard, Spahr, Andrews & Ingersoll, LLP, Kathryn S. Young, Cohen, Brame & Smith, P.C., Denver, CO U.S.A.

For STORAGE TECHNOLOGY CORPORATION, defendant: Dwight C. Seeley, Storage Technology Corporation, Office Of Corporate Counsel, Louisville, CO U.S.A.

For STORAGE TECHNOLOGY CORPORATION, defendant: Richard Len Bland, Richard Bland, Esq., Lafayette, CO USA.

**Judges:** Honorable Lewis T. Babcock.

**Opinion by:** Lewis T. Babcock

## Opinion

### **ORDER GRANTING CLASS COUNSEL'S PETITION [\*2] FOR ATTORNEYS' FEES AND COSTS**

**BABCOCK, Judge**

#### **I. INTRODUCTION**

THIS MATTER is before the Court in connection with Class Counsel's Petition for Attorneys' Fees and Costs. In their Petition, class counsel, the law firm of Roman, Benezra & Culver, L.L.C., assisted by Todd J. McNamara, P.C., has asked this Court to compensate them for their role in obtaining a settlement of class claims under the Age Discrimination in Employment Act ("ADEA") and the Employee Retirement Income Security Act ("ERISA"). The settlement provides a \$ 5 million monetary recovery for the 417 member ADEA collective action, as well as significant affirmative relief for the approximately 1,226-member ERISA class.

Specifically, class counsel has asked this Court to award them a fee of 30% of the monetary settlement obtained or \$ 1.5 million. Class counsel

has also asks this Court to award it \$ 309,252.41 for outstanding costs.

In a court approved notice regarding the terms of the ADEA settlement, collective action members were advised of class counsel's request and were given an opportunity to object. No objections were received regarding class counsel's request for fees and costs.

On March 8, 2000, this [\*3] Court conducted a hearing regarding the Stipulation for Approval of Class Settlement, as well as class counsel's fee Petition. Based upon my observation of counsel's conduct during this litigation, my knowledge of the difficult legal issues facing the Plaintiffs, and a review of class counsel's Petition for Attorneys' Fees and Costs and Supplemental Information and Authority In Support of its Petition, I granted counsel's request. This Order explains my findings and conclusion that counsel's fee and cost request is reasonable and merited.

## II. FINDINGS AND CONCLUSIONS

### A. Class Counsel's Request For Attorneys' Fees

**HN1** [↑] Attorneys' fees are awarded to class counsel under the common benefit doctrine. ( *Hall v. Cole*, 412 U.S. 1, 5, 36 L. Ed. 2d 702, 93 S. Ct. 1943 (1973).) **HN2** [↑] When a settlement yields a fund for class members, fees must be paid from the recovery. ( *Boeing Co. v. VanGemert*, 444 U.S. 472, 481, 62 L. Ed. 2d 676, 100 S. Ct. 745 (1980)).

**HN3** [↑] Courts have applied one of two methods for determining attorneys' fee awards in common fund cases: (1) by a "percentage of the fund"; or (2) by the "lodestar plus multiplier" or "enhanced lodestar", which [\*4] multiplies the reasonable hours expended by a reasonable hourly rate, and finally by an additional percentage to compensate for risk. ( *Useton v. Commercial Loveless Motor Freight, Inc.*, 9 F.3d 849, 853 (10th Cir. 1993); *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995).) While enhanced lodestar cases

remain instructive, the Tenth Circuit has expressed "a preference for the percentage of the fund method" in common fund cases. ( *Rosenbaum*, 64 F.3d at 1445, quoting *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994).)

**HN4** [↑] Fees for class action settlements generally range from 20%-50%. ( *Maywalt v. Parker and Parsley Petroleum Co.*, 963 F. Supp. 310 (S.D. N.Y. 1997); *In re Rio Hair Naturalizer Prods. Liab. Litig.*, 1996 U.S. Dist. LEXIS 20440, 1996 WL 780512, p. \*14 (E.D. Mich. 1996); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1132.) **HN5** [↑] Regardless of whether a percentage of the fund or enhanced lodestar approach is used, class action fee awards are typically 30% of the fund created by the settlement. ( *In re Activision Securities Litigation*, 723 F. Supp. 1373, 1375-78 (N.D. Cal. 1989) [\*5] (30% should be awarded "absent exceptional circumstances").)

**HN6** [↑] The Tenth Circuit has concluded that whichever method for fee calculation is employed, the District Court must consider the 12 factors articulated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). ( *Gottlieb*, 43 F.3d at 483; *Rosenbaum*, 64 F.3d at 1445). The *Johnson* factors include: (1) the time and labor required; (2) the novelty and difficulty of the question presented by the case; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorneys due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. (*Id.*)

Applying the *Johnson* factors to this case, I find that an award of 30% of the common fund is reasonable [\*6] and warranted.

## 1. Time And Labor Required

This litigation required class counsel to commit vast amounts of time and labor in order to obtain a favorable settlement. A Complaint on behalf of three named Plaintiffs alleging class-wide discrimination was filed on October 2, 1995. In the more than four years this case was litigated, Plaintiffs' counsel invested, at least, 6,043.90 hours, incurring attorneys' fees of \$ 977,517.75. I find that this fee was reasonable. In fact, based on my knowledge of fees charged in complex litigation nationally, I find that the hourly rates charged by class counsel were on the low side, even in the District of Colorado.<sup>1</sup>

[\*7] Counsel's considerable investment of time and labor was reasonable and necessary in such a complex case. Plaintiffs' claims arose out of the layoff of more than 2,000 employees, and involved two certified classes. Both parties aggressively litigated the case. Plaintiffs produced 28,693 pages of documents, while Defendant produced 150,158 pages of documents. Plaintiffs' counsel took 91 depositions and defended 74 depositions taken by Defendant. There are 239 pleadings in Plaintiffs' files, including 66 motions filed by Plaintiffs and 48 filed by Defendant. Plaintiffs' counsel interviewed approximately 250 witnesses and secured affidavit testimony from 63 of those witnesses. The parties designated a total of nine expert witnesses. At the time of settlement, discovery had been completed, a Pretrial Order entered, trial exhibits exchanged, and with the exception of dispositive motion rulings, the parties were ready for trial.

A 30% fee, or \$ 1.5 million, is highly appropriate

<sup>1</sup> The fees were incurred as follows:

John A. Culver: 2001.05 hours x \$ 185.00 = \$ 370,194.25  
 Seth J. Benezra: 977 hours x \$ 205.00 = \$ 200,285.00  
 Gilbert M. Roman: 847 hours x \$ 195.00 = \$ 165,165.00  
 Todd J. McNamara: 639.2 hours x \$ 210.00 = \$ 134,232.00  
 Kristina Martinez: 24 hours x \$ 110.00 = \$ 2,640.00  
 Associate/Contract Attorneys: 735.3 hours x \$ 75.00 = \$ 55,185.00  
 Paralegal Sandy Thomas: 778.15 hours x \$ 60.00 = \$ 46,689.00  
 Paralegal Bettye Gadison: 41.7 hours x \$ 75.00 = \$ 3,127.50

given the time and labor expended. A 30% award only constitutes a 1.53 multiplier of the lodestar. *HN7* [↑] Courts in common fund cases regularly award multipliers of two to three times the lodestar or more to compensate [\*8] for risk and to reflect the quality of the work performed. ( *Ressler v. Jacobson*, 149 F.R.D. 651, 653 fn. 4 (M.D. Fla. 1992) (compiling cases); *In re Combustion, Inc.*, 968 F. Supp. at 1133-34) (compiling cases); *Mister, et al. v. Illinois Central Gulf R.R.*, No. 81-3006 (S.D. Ill. August 5, 1993), (compiling cases).)

## 2. Novelty And Difficulty Of The Question Presented By The Case

As discussed in my Order Approving Class Settlement and Dismissing Class Claims With Prejudice, there were numerous difficult, complex, and uncertain legal and factual issues presented in this case. The law regarding pattern and practice ADEA and ERISA cases is particularly uncertain. In this case, there were numerous unresolved legal issues regarding the validity of Plaintiffs' statistical proof, the weight to be given the anecdotal evidence, and the propriety of maintaining class certification status. I find that the novelty and difficulty of the legal and factual issues presented by this case weighs heavily in favor of the fees requested.

## 3. The Skill Requisite To Perform The Legal Services Properly

As discussed, this case involved numerous extremely complex [\*9] and difficult legal and factual issues, many of which have not been fully resolved by the Courts. Litigating such complex issues required a high degree of specialized skill in employment law and complex litigation.

## 4. The Preclusion Of Other Employment By The Attorneys Due To Acceptance Of The Case

Class litigation of this magnitude inherently entails

significant opportunity costs. In this case, the opportunity costs were particularly significant, given that Plaintiffs' counsel was comprised of a small three-attorney law firm with the assistance of one other attorney and limited associate support. Class counsel's obligation to zealously pursue this enormous case no doubt cost them significant opportunities to earn other compensation through the litigation of less burdensome cases. The opportunity costs incurred by class counsel also weigh heavily in favor of the requested fee.

### **5. The Customary Fee**

Based on my experience with common fund fee awards, I conclude that a 30% contingent fee is well within the normal range of fee awards.

### **6. Whether The Fee Is Fixed Or Contingent**

Class counsel pursued this case on a contingent fee, whereby they would receive no compensation [\*10] for their labor if they did not obtain a successful outcome, either through settlement or judgment. Given the risk of non-recovery, this factor weighs heavily in favor of the requested fee.

### **7. Time Limitations Imposed By The Client Or The Circumstances**

I find that the size and magnitude of this case clearly imposed significant time limitations on the small civil rights law firm representing the class. The time limitations were particularly significant given the prospect for a two-month liability trial, subsequent appeals, and remedial proceedings for individual damages.

### **8. The Amount Involved And The Results Obtained**

Through the efforts of class counsel, two classes were certified by this Court, one of which will

divide a settlement of \$ 5 million and a second which will benefit from the implementation of significant affirmative relief. Given the considerable risk that the Plaintiffs would recover nothing for their efforts, this result supports the requested fee.

### **9. The Experience, Reputation, And Ability Of The Attorneys**

Based on my observation of their prosecution of this case, I find that Roman, Benezra & Culver, L.L.C. pursued this litigation in a tenacious [\*11] and articulate manner. Their experience, reputation, and ability is exceptional.

### **10. The Undesirability Of The Case**

I find that this was an undesirable case for counsel to undertake given the risk of no recovery and the uncertainty of the governing law.

### **11. The Nature And Length Of The Professional Relationship With The Client**

Class counsel's only relationship with the class was in the context of this litigation.

### **12. Awards In Similar Cases**

I find that the requested fee of 30% of the settlement is well within the ordinary range of common fund fee awards. A 30% common fund fee award is in the middle of the ordinary 20%-50% range and is presumptively reasonable.

#### **B. The Requested Costs**

*HN8* [↑] As with attorneys' fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred. (*See e.g. Blum v. Stenson*, 465 U.S. 886, 79 L. Ed. 2d 891, 104 S. Ct. 1541). Costs are awarded in addition to the attorney fee percentage. (*In re Business Land Security Litigation*, 1991 U.S. Dist. LEXIS 8962, Fed. Sec. L. Rep. (CCH) P96,059 (N.D. Cal. June 14, 1991) (cases collected).)

Given my experience with actions of this magnitude [\*12] and the inherent expense of pattern and practice employment discrimination actions, particularly with respect to the essential statistical expert analysis, I conclude that class counsel's request that it be reimbursed for \$ 309,252.41 in outstanding costs is fair and reasonable.

### III. CONCLUSION

After consideration of counsel's Petition, I conclude that the requested attorneys' fees and cost reimbursements are fair and merited. Accordingly, it is

**ORDERED** that the requested 30% attorneys' fee, or \$ 1.5 million is **APPROVED**. It is

**FURTHER ORDERED** that the requested reimbursement of \$ 309,252.41 in outstanding costs is **APPROVED**

DATED this *9Th* day of *March*, 2000.

BY THE COURT:

The Honorable Lewis T. Babcock

# Wornicki v. Brokerpriceopinion.com, Inc.

United States District Court for the District of Colorado

September 20, 2018, Decided; September 20, 2018, Filed

Civil Action No. 13-cv-03258-PAB-KMT

## Reporter

2018 U.S. Dist. LEXIS 213990 \*

KATHY WORNICKI and EDWARD LAINE, on behalf of themselves and all others similarly situated, Plaintiffs, v.

BROKERPRICEOPINION.COM, INC., FIRST VALUATION, LLC, FIRST VALUATION SERVICES, LLC, FIRST VALUATION TECHNOLOGY, LLC, and CARTEL ASSET MANAGEMENT, LLC, WALTER COATS, and VALUTECH, INC., Defendants.

**Prior History:** Wornicki v.

Brokerpriceopinion.com, Inc., 2015 U.S. Dist. LEXIS 36985, 2015 WL 1403814 (D. Colo., Mar. 23, 2015)

## Core Terms

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settlement, class member, notice, costs, class action, attorney's fees, defendants', plaintiffs', courts, lodestar, factors, cases, requested fee, discovery, weighs, brokers, lawsuit, parties, settlement agreement, proposed settlement, negotiated, expenses, due process, multiplier, approving, awards, final approval, crosscheck, injunctive, motions

**Counsel:** [\*1] For Kathy Wornicki, Plaintiff: Beth Ellen Terrell, Jennifer Rust Murray, Terrell Marshall Law Group, Seattle, WA; Stefan L. Coleman, Stefan Coleman, Law Offices of, Lakewood, NJ; Jeffrey Allen Berens, Berens Law LLC, Denver, CO.

For Edward Laine on behalf of themselves and all others similarly situated, Plaintiff: Jennifer Rust Murray, Beth Ellen Terrell, Terrell Marshall Law Group, Seattle, WA.

For Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, Walter Coats, ValuTech, Inc., Defendants: Glenn W. Merrick, LEAD ATTORNEY, Joseph Taylor Bernstein, G.W. Merrick & Associates, LLC, Centennial, CO.

**Judges:** PHILIP A. BRIMMER, United States District Judge.

**Opinion by:** PHILIP A. BRIMMER

## Opinion

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### ORDER

This matter comes before the Court on Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Response to Objection [Docket No. 161] and Plaintiffs' Motion and Memorandum of Law in Support of An Award of Attorneys' Fees and Litigation Costs [Docket No. 159]. The Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332(d).

### I. BACKGROUND

This case arises out of defendants' alleged failure to pay for real estate evaluations performed [\*2] on behalf of Brokerpriceopinion.com, Inc. ("Brokerpriceopinion"). Docket No. 98 at 2, ¶ 2. Defendants operate Brokerpriceopinon.com, which uses licensed real estate brokers and appraisers to provide real estate valuation services. *Id.* at 5, ¶ 19.

Real estate professionals can register on defendants' website to provide broker price opinions in exchange for a set fee ranging from \$25 to \$100. *Id.*, ¶ 20. Under the terms of payment, defendants are required to pay real estate brokers within sixty days after submitted work orders are shipped to clients. *Id.*, ¶ 21. Plaintiffs allege that defendants have fallen behind on those payments and owe the real estate brokers amounts ranging from several hundred to several thousand dollars. *Id.* at 6-7, ¶¶ 26-28.

Plaintiffs filed a class action complaint on December 2, 2013. Docket No. 1. In their operative complaint, which was filed on January 20, 2016, plaintiffs assert claims for breach of contract, promissory estoppel, unjust enrichment, fraudulent inducement, and negligent misrepresentation. Docket No. 98 at 12-16. Plaintiffs further request a declaratory judgment that defendants' actions are unlawful. *Id.* at 16.

On September 20, 2016, the Court granted plaintiffs' motion [\*3] for class certification in part, certifying a class of

all persons and entities who provided broker price opinions on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, Inc. between December 2, 2007 and the date of final disposition of this action and who have not been paid for their services in accordance with Defendants' terms of payment.

Docket No. 133 at 30. On November 3, 2016, the Court approved the parties' proposed notice plan. Docket No. 138. On March 10, 2017, plaintiffs filed an unopposed motion for preliminary approval of a class action settlement. Docket No. 149. The Court granted plaintiff's motion on August 2, 2017 and approved plaintiffs' plan to disseminate notice of the settlement to class members. *See* Docket No. 155. On October 3, 2017, plaintiffs filed a motion requesting an award of attorney's fees and costs.

Docket No. 159. On November 27, 2017, plaintiffs moved for final approval of the parties' class action settlement. Docket No. 161. The Court held a final fairness hearing regarding the proposed settlement on May 18, 2018. Docket [\*4] No. 168.

## II. FINAL APPROVAL OF CLASS ACTION SETTLEMENT

### A. Overview of the Settlement Agreement

The proposed settlement agreement defines "Settlement Class Members" as:

All persons preparing broker price opinions (BPOs), who on or after December 7, 2007 entered into agreements with Defendants for BPOs and who were not paid all monies owed them by Defendants under such agreements who do not request to be excluded from the Settlement.

Docket No. 149-3 at 7, ¶ 33. Under the terms of the settlement, defendants agree to pay a total of \$1,571,676.00 (the "Total Settlement Payment") over a roughly four-year period for the benefit of approximately 24,353 class members. *Id.* at 7-8, 11-14, ¶¶ 37, 41; *see also* Docket No. 149 at 7 n.1 (revising estimate of notice and administration expenses to \$41,676); Docket No. 161 at 5 (noting that settlement requires defendants to pay \$1,571,676 for the benefit of approximately 24,353 class members). The Total Settlement Payment is to be distributed as follows: (1) \$1,020,000.00 to settlement class members who file timely claims, with individual payments calculated on a pro rata basis; (2) \$500,000.00 to class counsel for fees and costs incurred during the litigation; (3) \$41,676 [\*5] to the settlement administrator for the costs of sending class notice; and (4) a \$5,000.00 incentive payment to each of the two class representatives. *Id.*; *see also* Docket No. 149 at 7 n.1.

The settlement also provides for substantial injunctive relief. Docket No. 149-3 at 9-11, ¶ 40.

Specifically, the agreement requires Brokerpriceopinion to, among other things: (1) "maintain a cash reserve in the amount of \$240,000 dedicated to the payment of persons completing and delivering BPOs"; (2) "pay in full within 90 days all amounts as agreed under the standard form agreement for BPOs"; (3) "train the employees in its Accounting, Quality Control and Production departments to make full payment to persons completing and delivering BPOs within 90 days"; and (4) "make a bi-annual report to Class Counsel outlining its compliance with the injunction and any issues that may have arisen." *Id.* at 10. If Brokerpriceopinion fails to make any payment required under the terms of the settlement agreement, the agreement is null and void. *Id.* at 9, ¶ 38.

### **B. Notice to the Settlement Class**

Under Rule 23(e)(1), a district court approving a class action settlement "must direct notice in a reasonable manner to all class members who would be [\*6] bound by the proposal." Fed. R. Civ. P. 23(e)(1). Rule 23(c)(2)(B) provides, in relevant part, that for "any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). In addition to the requirements of Rule 23, the Due Process Clause also guarantees unnamed class members the right to notice of a settlement. *DeJulius v. New England Health Care Emps. Pension Fund*, 429 F.3d 935, 943-44 (10th Cir. 2005). However, due process does not require that each class member receive actual notice to be bound by the adjudication of a representative action. *Id.* Instead, the procedural rights of absent class members are satisfied so long as "the best notice practicable under the circumstances [is given] including individual notice to all members who can be identified through reasonable effort." *In re Integra Realty Resources, Inc.*, 262 F.3d 1089, 1110 (10th

Cir. 2001) (citation omitted). Thus, "[t]he legal standards for satisfying Rule 23(c)(2)(B) and the constitutional guarantee of procedural due process are coextensive and substantially similar." *DeJulius*, 429 F.3d at 944.

The Court finds that the parties complied with the notice plan that was approved by this Court in its ruling on plaintiffs' motion for preliminary approval of the class action settlement. *See* Docket No. 155 at 8-10. The settlement administrator [\*7] emailed notice of the settlement to 23,803 class members for whom an email address was provided in defendants' records. Docket No. 161-2 at 3, ¶ 9. The settlement administrator also mailed a postcard notice to 7,117 class members whose email notice was returned or for whom only a mailing address had been provided. *Id.* at 3-4, ¶ 11. Of those postcard notices, 1,358 were initially returned as undeliverable. *Id.* at 4, ¶ 13. After conducting advanced address research, the settlement administrator re-mailed 248 notices of the undelivered notices to new addresses. *Id.* Plaintiffs state that, of the 23,906 class members identified in the electronic files provided by counsel, 22,665 — or 94.8% — received notice of the class action settlement. *Id.* at 4, ¶ 14.

Consistent with its prior order, *see* Docket No. 155 at 9-10, the Court finds that the parties made reasonable efforts to identify and provide notice to all class members who would be bound by the settlement. *See* Fed. R. Civ. P. 23(e)(1) (requiring court to "direct notice in a reasonable member to all class members who would be bound by the proposal"); *Tennille v. W. Union Co.*, 785 F.3d 422, 438-39 (10th Cir. 2015) (finding that mailing of settlement notice to addresses updated through post office's change-of-address database was sufficient under Rule 23 and [\*8] Due Process); *DeJulius*, 429 F.3d at 944 (noting that Due Process inquiry "focuses upon whether the district court gave the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort" (internal quotation marks omitted)). Moreover, the notice

itself contained information regarding the nature of the lawsuit, the definition of the class, class members' anticipated recovery under the settlement, the amount of attorneys' fees and costs sought, and a summary of the class members' legal rights, including the right to object or exclude themselves from the settlement. *See* Docket No. 161-2 at 16-22; *see also* Fed. R. Civ. P. 23(c)(2)(B) (describing information to be included in notice). The notice also directed class members to a toll-free number and a settlement website for additional information regarding the settlement. *See* Docket No. 161-2 at 19, 22; *see also Tennille*, 785 F.3d at 437 (finding that "notice satisfied due process by informing class members of several ways they could obtain information about the claims they would be releasing if they joined the settlement"). The fact that there were 17,457 visits to the settlement website as of November 17, 2017 and 8,910 claim forms filed [\*9] is further evidence that the notice was sufficient to apprise class members of their rights and obligations under the settlement. *See* Docket No. 161-2 at 5, ¶¶ 18, 20.

Based on the foregoing, the Court is satisfied that the notice provided to class members met the requirements of Rule 23(e) and Due Process.

### **C. Analysis of Rule 23 Factors**<sup>1</sup>

Rule 23(e) provides that a proposed settlement may only be approved after a "finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In this process, "trial judges bear the important responsibility of protecting absent class members," and must be "assur[ed] that the settlement represents adequate compensation for the release of the class claims." *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 349 (3d Cir. 2010); *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997) (noting that the Rule 23(e) inquiry "protects

unnamed class members from unjust or unfair settlements affecting their rights when the representatives become fainthearted before the action is adjudicated or are able to secure satisfaction of their individual claims by a compromise") (citations omitted). To determine whether a proposed settlement is fair, reasonable, and adequate, courts consider the following factors: "(1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, [\*10] placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable." *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002). If the settling parties can establish these factors, courts usually presume that the proposed settlement is fair and reasonable. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) (applying an "initial presumption of fairness" to a proposed settlement where: (1) it was the result of arm's length negotiations; (2) it was based on sufficient discovery; (3) "the proponents of the settlement [were] experienced in similar litigation; and (4) only a small fraction of the class objected").

With regard to the first factor, the Court finds no evidence of collusion. This case has been pending for nearly five years, during which time the parties have briefed several motions and engaged in extensive discovery regarding defendants' financial condition. *See* Docket No. 161 at 9; Docket No. 159-1 at 11, ¶¶ 14-15; Docket No. 149-2 at 12, ¶¶ 17-18. while the parties participated in a settlement conference on December 6, 2016, plaintiffs did not agree to settle their claims until [\*11] after defendants had provided additional documentation showing that they would be unable to pay a large judgment. *See* Docket No. 161 at 9; Docket No. 149-2 at 12-13, ¶ 20. As class counsel explained at the final fairness hearing, plaintiffs faced a "Hobson's choice" of pursuing their claims and putting defendants out of business, or agreeing to a

<sup>1</sup> This Court previously found that certification of the proposed class was appropriate for purposes of the parties' settlement. Docket No. 155 at 5. The Court incorporates that finding herein.

structured settlement that would allow for some recovery by class members. Based on the information provided, the Court is satisfied that the parties' settlement is the product of fair and honest negotiations between the parties. *See Reiskin v. Reg'l Transp. Dist. Colo.*, No. 14-cv-03111-CMA-KLM, 2017 U.S. Dist. LEXIS 204242, 2017 WL 5990103, at \*2 (D. Colo. July 11, 2017) (finding that class settlement was fairly and honestly negotiated where "case involved intensive discovery," "expert witness reports," depositions, and "[n]umerous motions"); *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006) (finding that settlement was fairly and honestly negotiated where the case was "litigated over the course of six years, during which time both parties engaged in extensive written and deposition discovery, filed a number of contested discovery motions, and filed more than a dozen briefs").

The Court also finds that there are serious questions of law and fact in this case that likely would [\*12] have affected plaintiffs' chance at recovery. As class counsel explained at the fairness hearing, the financial information disclosed by defendants during discovery indicated that defendants would not have been able to pay a large lump sum judgment. Plaintiffs further aver in their motion for final settlement approval that they would have had to undertake the difficult task of piercing the corporate veil in order to obtain any recovery at all for the plaintiff class. *See* Docket No. 161 at 10. Given the real prospect that plaintiffs would not have obtained any recovery had the case proceeded to trial, the Court finds that this factor weighs in favor of approving the parties' settlement agreement.

The Court next considers whether the value of immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation. Under the parties' settlement agreement, class members will receive a pro rata share of \$1,020,000. *See* Docket No. 149-3 at 7-8, 11-14, ¶¶ 37, 41. The settlement also provides for meaningful injunctive relief, including a requirement that

defendants "pay in full within 90 days all amounts as agreed under the standard form agreement for BPOs" [\*13] and "maintain a cash reserve in the amount of \$240,000 dedicated to the payment of persons completing and delivering BPOs." *Id.* at 10, ¶ 40(c)-(d). Given the uncertainty surrounding class members' ability to recover on a lump sum judgment, the Court finds that the immediate recovery provided for in the parties' settlement agreement outweighs the possibility of greater future relief.

The fourth factor also weighs in favor of final approval of the parties' settlement. "Counsel's judgment as to the fairness of the agreement is entitled to considerable weight." *Hapka v. CareCentrix, Inc.*, 2018 U.S. Dist. LEXIS 68185, 2018 WL 1871449, at \*5 (D. Kan. Feb. 15, 2018) (quoting *Lucas*, 234 F.R.D. at 695). Here, class counsel has extensive experience representing plaintiffs in class actions. *See* Docket No. 159-1 at 5-8, 10-11, ¶¶ 8, 10, 12-13; Docket No. 159-2 at 5; Docket No. 159-3 at 6-7. At the fairness hearing, counsel for both sides expressed their judgment that the settlement is fair, adequate, and reasonable.

Finally, only seven class members requested exclusion from the settlement, and only one class member submitted what could be construed as an objection to the settlement. *See* Docket No. 161 at 5. Class members' largely positive response to the settlement is further evidence that it is fair, adequate, and reasonable. [\*14] *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (noting that the fact that "only a small number of objections are received . . . can be viewed as indicative of the adequacy of the settlement" (internal quotation marks omitted)).

#### **D. Objection**

Only one individual has filed a letter that could be construed as an objection to the parties' settlement. On October 30, 2017, Mr. Donald Oneida filed a letter with the Court stating that he was not informed of the lawsuit until August 2, 2017 and

indicating a belief that the lawsuit caused defendants to stop making payments on his BPOs. *See* Docket No. 160 at 1. He further expresses frustration that "the attorneys are getting paid for their work" while class members are "get[ting] pennies on the dollar" and "taking losses." *Id.* The Court finds Mr. Oneida's objections misplaced. As plaintiffs explain in their motion, defendants have a long history of failing to pay brokers for work performed on behalf of Brokerpriceopinion. *See* Docket No. 161 at 14. Thus, defendants' failure to compensate Mr. Oneida for his BPOs is not attributable to the parties' settlement agreement. In fact, the settlement will benefit class members like Mr. Oneida by requiring defendants to pay their brokers within ninety [\*15] days.

Mr. Oneida also notes that the settlement will not fully compensate class members for their losses. While Mr. Oneida is correct, this is a common reality of settlement. *See, e.g., Tennille*, 785 F.3d at 434-35 (finding settlement fair and reasonable despite possibility that class members would not recover the full amount owed to them); *see also Antrim v. Burlington N., Inc.*, 847 F.2d 375, 378 (7th Cir. 1988) ("[A]ny settlement is a compromise in which each side gets less than its maximum objective."). Moreover, the Court has already determined that the settlement is reasonable in light of the substantial possibility that class members would not obtain any recovery at all were this case to proceed to trial. For these reasons, Mr. Oneida's objections are overruled.

### III. ATTORNEY'S FEE AWARD

Class counsel request an award of attorney's fees and costs in the amount of \$500,000, which is 32% of the total settlement amount. *See* Docket No. 159 at 2. Because plaintiffs' claims arise under Colorado law,<sup>2</sup> Colorado law governs both the

propriety of an attorney's fee award and the method of calculating a reasonable fee. *See Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 462 (10th Cir. 2017) (holding that, in a class action lawsuit asserting state law claims, state law governs "the propriety of granting a fee award" and "how the amount of the fee is [\*16] to be calculated").

Colorado law generally prohibits the recovery of attorney's fees "in the absence of an express statute, court rule, or private contract to the contrary." *Hawes v. Colo. Div. of Ins.*, 65 P.3d 1008, 1015 (Colo. 2003). The common fund doctrine is an exception to this rule. *Id.* Under that doctrine, which "is grounded in equitable principles of quantum meruit and unjust enrichment[,] . . . a court needs no legislative support to award fees" to attorneys who obtain a common fund for the benefit of others. *Brody v. Hellman*, 167 P.3d 192, 198 (Colo. App. 2007) (internal quotation marks omitted).

Like federal courts in this Circuit, Colorado courts recognize two methods for calculating attorney's fees in a common fund case: the lodestar method and the percentage method. *Id.* at 201.<sup>3</sup> In 2007, however, the Colorado Court of Appeals noted a "recent trend . . . toward using the percentage method in common fund cases." *Id.* at 201 (citing *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994)). The Court will therefore "use the percentage method and then crosscheck the adequacy of the resulting fee by applying the lodestar method." *Id.*<sup>4</sup>

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claims are subject to the three-year statute of limitations under Colo. Rev. Stat. § 13-80-101); Docket No. 51 at 5 (arguing that claims are governed by six-year statute of limitations under Colo. Rev. Stat. § 13-80-103.5(1)(a)).

<sup>3</sup>Under the lodestar method, "the court multiplies the number of hours the attorneys reasonably worked by the reasonable hourly rate for that work" to determine a reasonable fee. *Id.*

<sup>4</sup>Because the lodestar method will be "used as a mere crosscheck of the percentage method," the Court "does not need to scrutinize exhaustively the hours documented by counsel." *Id.* at 204 (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d. Cir. 2000).

<sup>2</sup>Although the complaint does not specifically allege that plaintiffs' claims arise under Colorado law, *see generally* Docket No. 98, the parties' briefing on defendants' motion to dismiss indicates that Colorado law applies. *See* Docket No. 50 at 4 (arguing that plaintiffs'

In determining the reasonableness of a percentage award in a common fund case, Colorado courts apply the *Johnson* factors, which are:

(1) the time and labor involved; (2) the novelty and difficulty of the questions; [\*17] (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

*Id.* at 200 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974), *abrogated in part on other grounds by Blanchard v. Bergeron*, 489 U.S. 87, 109 S. Ct. 939, 103 L. Ed. 2d 67 (1989)); *see also Finkel v. Am. Oil & Gas, Inc.*, No. 10-cv-01808-CMA-MEH, 2012 U.S. Dist. LEXIS 6770, 2012 WL 171038, at \*2 n.7 (D. Colo. Jan. 20, 2012) (noting that Colorado Courts apply the *Johnson* factors in determining the reasonableness of attorney's fees in class actions). The Court finds that the factors relevant in this case weigh in favor of approving the requested fee award.<sup>5</sup>

### **A. Time and Labor Required**

Class counsel represent that they have spent four years and over 2,085 hours litigating this case. *See* Docket No. 159 at 6; Docket No. 159-1 at 4-5, ¶ 7;

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<sup>5</sup>Class counsel has not provided any argument on the fourth, seventh, and eleventh *Johnson* factors. The Court agrees that the seventh and eleventh factors are not relevant in this case. *See Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 455-56 (10th Cir. 1988) ("[R]arely are all of the *Johnson* factors applicable; this is particularly so in a common fund situation."). With regard to the remaining factors, the Court finds it appropriate to look to federal district court cases evaluating the reasonableness of fee awards because the same analysis applies under both state and federal law.

Docket No. 159-2 at 2, ¶ 4; Docket No. 159-3 at 2-3, ¶ 4. They have filed many motions and engaged in extensive discovery involving nine sets [\*18] of written discovery requests, seven depositions, and a review of thousands of pages of documents pertaining to defendants' financial condition. *See* Docket No. 159 at 6; Docket No. 159-1 at 11, ¶ 14. In attempting to assess defendants' ability to satisfy a large judgment, counsel consulted a database expert and forensic accountant. Docket No. 159-1 at 11, ¶¶ 14-15. Finally, class counsel took the lead in drafting a settlement agreement that would allow defendants to stay solvent while providing class members with monetary and injunctive relief. *See id.* at 12, ¶ 17. Given the substantial amount of time invested in this case by class counsel, the Court finds that the time and labor factor weighs in favor of plaintiffs' requested fee award.

### **B. Novelty and Difficulty of the Questions Presented**

Class counsel represented at the fairness hearing that, while there was clear liability on the part of defendants, the real issue in the case was plaintiffs' ability to collect on a large judgment. In evaluating the risks of proceeding to trial, class counsel had to navigate difficult issues regarding the business relationships between the various defendants and the likelihood of piercing the corporate veil. [\*19] *See* Docket No. 159 at 9. This factor therefore weighs in favor of the requested award. *See In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1143, 1150 (D. Colo. 2009) (noting that, although the area of law was not novel, the difficulty and complexity of the issues in the case supported a "generous award of attorney fees").

### **C. Skill Required and Experience of Plaintiffs' Counsel**

The Court will consider the third and ninth *Johnson* factors together. *See, e.g., id.* (noting that the second, third, and ninth *Johnson* factors are closely related). As evidenced by their declarations, class

counsel have extensive experience representing plaintiffs in class action lawsuits. *See* Docket No. 159-1 at 5-8, 10-11, ¶¶ 8, 10, 12-13; Docket No. 159-2 at 5; Docket No. 159-3 at 6-7. Accordingly, class counsel was well equipped to address the unique challenges that defendants' financial condition and business relationships posed to plaintiffs' ability to recover in this case. Not only did class counsel overcome defendants' opposition to class certification, but they also negotiated a structured settlement that provides meaningful recovery for the plaintiff class. The "skill" and "experience" factors therefore weigh in favor of the requested fee award.

#### **D. Preclusion of Other Employment [\*20]**

Because counsel does not address the issue, the fourth *Johnson* factor does not weigh heavily in the Court's analysis.

#### **E. The Customary Fee/Awards in Similar Cases**

The Court considers factors five and twelve together. Courts in this District have recognized that "[t]he customary fee to class counsel in a common fund settlement is approximately one-third of the economic benefit bestowed on the class." *Anderson v. Merit Energy Co.*, No. 07-cv-00916-LTB-BNB, 2009 U.S. Dist. LEXIS 100681, 2009 WL 3378526, at \*3 (D. Colo. Oct. 20, 2009); *see also Shaw v. Interthinx, Inc.*, No. 13-cv-01229-REB-NYW, 2015 U.S. Dist. LEXIS 52783, 2015 WL 1867861, at \*6 (D. Colo. Apr. 22, 2015) (citing cases holding that fees within the 20-50% range are "presumptively reasonable"); *Brody*, 167 P.3d at 203 (collecting cases approving percentage fees ranging from 24% to 36% of the common fund). Plaintiffs in this case seek \$500,000 in attorney's fees and costs, or 32% of the total settlement amount. The Court finds this amount to be in line with the customary fees and awards in similar cases. The fifth and twelfth *Johnson* factors therefore weigh in favor of approval.

#### **F. Fixed or Contingent Nature of the Fee**

While the parties have not presented any evidence of a prearranged fee, class counsel undertook the representation on a contingency basis. Docket No. 159-1 at 16, ¶ 35. Courts have consistently found that [\*21] this type of fee arrangement, under which counsel runs a significant risk of nonpayment, weighs in favor of the reasonableness of a requested fee award. *See, e.g., Shaw*, 2015 U.S. Dist. LEXIS 52783, 2015 WL 1867861, at \*8; *Farley v. Family Dollar Stores, Inc.*, No. 12-cv-00325-RM-MJW, 2014 U.S. Dist. LEXIS 154059, 2014 WL 5488897, at \*4 (D. Colo. Oct. 30, 2014).<sup>6</sup>

#### **G. Amount Involved and the Results Obtained**

"[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Farrar v. Hobby*, 506 U.S. 103, 114, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992) (internal quotation marks omitted). Here, class counsel recovered \$1,020,000 on behalf of 24,353 settlement class members. *See* Docket No. 161 at 5, 11. This amount will be distributed, on a pro rata

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<sup>6</sup> While courts have consistently interpreted this factor as an inquiry into the fixed or contingent nature of the fee arrangement, the Supreme Court has indicated that "a careful reading of *Johnson* shows that the contingency factor was meant to focus judicial scrutiny solely on the existence of any contract for attorney's fees which may have been executed between the party and the attorney." *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 483 U.S. 711, 723, 107 S. Ct. 3078, 97 L. Ed. 2d 585 (1987) (plurality op.), *abrogated in part on other grounds by City of Burlington v. Dague*, 505 U.S. 557, 112 S. Ct. 2638, 120 L. Ed. 2d 449 (1992). However, even if this factor is interpreted as focusing on the specific fee quoted to plaintiffs at the outset of the litigation, the Court finds that the apparent absence of any prearranged fee weighs in favor of the requested award. *See id.* ("The fee quoted to the client or the percentage of the recovery agreed to is helpful in demonstrating the attorney's fee expectations when he accepted the case." (internal quotation marks omitted)); *Johnson*, 488 F.2d at 718 (indicating that fee amount agreed upon at outset of litigation is a factor to be considered in determining reasonableness of requested fee); *Brody*, 167 P.3d at 200-01 (finding that *Johnson* factors weighed in favor of fee award where "there was no prearranged fee other than an understanding the fee would be contingent on the outcome").

basis, among those class members who file timely claims. *Id.* at 11. In addition, the settlement requires defendants to pay brokers within ninety days of a completed BPO, maintain a fund dedicated to such payment, and train staff in timely payment practices. At the fairness hearing, counsel for both sides agreed that there was a real possibility plaintiffs would not have obtained any recovery had the case proceeded to trial. Given that risk, the Court finds that the combination of monetary and injunctive relief provided by the settlement represents an excellent result [\*22] for the settlement class. *See Brown*, 838 F.2d at 456 (finding that the results obtained by the settlement "may be given greater weight [in the *Johnson* analysis] when . . . the trial judge determines that the recovery was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class"); *Tennille v. W. Union Co.*, No. 09-cv-00938-JLK-KMT, 2014 U.S. Dist. LEXIS 133413, 2014 WL 5394624, at \*4 (D. Colo. Oct. 15, 2014) (recognizing that prospective relief contributes to the "real and actual value" of a settlement). Accordingly, the eighth *Johnson* factor strongly supports the requested fee award.

#### **H. The Undesirability of the Case**

Class counsel states that, "[a]lthough this [was] not a securities case that would require counsel to pay potentially hundreds of thousands of dollars in upfront litigation costs, the costs were not insubstantial." Docket No. 159 at 12. Among other expenses, class counsel consulted two experts during the litigation, one of whom assisted in the class certification process. The Court agrees that counsel's \$34,000 in out-of-pocket costs was not an insubstantial financial burden, given the significant risk that plaintiffs would be unable to obtain any recovery from defendants even if they prevailed on the merits. The relative [\*23] undesirability of this case therefore weighs in favor of the requested fee award. *See In re Qwest*, 625 F. Supp. 2d at 1152-53 (finding that risk borne by lead counsel was key factor in assessing desirability of the case).

#### **I. Lodestar Crosscheck**

Courts evaluating the reasonableness of a percentage fee award will often crosscheck the requested fee with the lodestar amount. *See, e.g., Shaw*, 2015 U.S. Dist. LEXIS 52783, 2015 WL 1867861, at \*8; *see also Brody*, 167 P.3d at 201 (noting that, "[t]ypically, courts use the percentage method and then crosscheck the adequacy of the resulting fee by applying the lodestar method"). Class counsel seek \$500,000 in attorney's fees and costs for approximately 2,085 hours spent on the litigation. The requested fee reflects a 0.81 negative multiplier on counsel's \$619,891.50 lodestar amount.<sup>7</sup>

The Court finds the number of hours expended on this case to be reasonable given that the litigation has been ongoing since 2014 and has involved multiple motions, extensive discovery, and settlement negotiations.<sup>8</sup> The hourly rates charged by the attorneys and staff members, which range from \$75 to \$595 an hour, are also generally consistent with the rates charged in other cases in this District. *See Shaw*, 2015 U.S. Dist. LEXIS 52783, 2015 WL 1867861, at \*8 (approving of hourly rates ranging from \$150 to \$675 per hour for attorneys and staff [\*24] members involved in litigation); *Lucas*, 2006 U.S. Dist. LEXIS 51420, 2006 WL 2729260, at \*5 (finding hourly rates of \$330 and \$275 for attorneys and blended average rate of \$110 per hour for paralegals to be consistent with prevailing rates in the Denver community). Even if some of the rates are slightly higher than the rates customarily charged in this area, the negative 0.81 multiplier is far lower than the lodestar multipliers that have been approved in

<sup>7</sup> While class counsel calculated the lodestar multiplier based on the requested award of attorney's fees and costs, the attorney's fee alone — \$466,000 — reflects a negative multiplier of 0.75.

<sup>8</sup> Although class counsel has not submitted detailed billing records, the Colorado Court of Appeals has stated that, when "the lodestar method is used as a mere crosscheck of the percentage method, the court does not need to scrutinize exhaustively the hours documented by counsel." *Brody*, 167 P.3d at 204.

other class action cases in this District. *See, e.g., Shaw*, 2015 U.S. Dist. LEXIS 52783, 2015 WL 1867861, at \*8 (finding lodestar multiplier of 1.37 to be "significantly lower than lodestar multipliers that Colorado federal courts and other courts consistently have approved in other class action cases"); *Mishkin v. Zynex, Inc.*, No. 09-cv-00780-REB-KLM, 2012 U.S. Dist. LEXIS 132405, 2012 WL 4069295, at \*2 (D. Colo. Sep. 14, 2012) (collecting Colorado federal district court cases approving lodestar multipliers ranging from 2.5 to 4.6). Accordingly, the lodestar crosscheck supports the reasonableness of the requested fee.<sup>9</sup>

#### IV. COSTS

Class counsel's requested fee award includes \$34,000 in out-of-pocket litigation expenses. *See* Docket No. 159 at 3; Docket No. 159-1 at 16-17. While counsel states that they are not seeking "separate reimbursement for the out-of-pocket litigation costs they incurred during this litigation," Docket No. [\*25] 159-1 at 16, and the Court finds a \$500,000 total fee to be reasonable under the percentage method, the Court also concludes that \$34,000 in litigation expenses is independently reasonable in the context of this case.

"Expenses are compensable in a common fund case if the particular costs are the type typically billed by attorneys to paying clients in the marketplace." *Brody*, 167 P.3d at 205-06 (citing *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42 of Stephens Cty., Okla.*, 8 F.3d 722, 725-26 (10th Cir. 1993)). Here, the requested costs include \$34.50 for computer research, \$1,001.27 in process/ mailing expenses, \$4,328.65 in electronic document production costs, \$13,937.50 in expert costs, \$472.00 in filing fees, \$4,576.82 in travel, lodging, and meals, \$1,631.25

in mediation costs, \$125 in professional fees, \$7,854.65 for transcripts, and \$122.46 for reproductions. Docket No. 159-1 at 16-17, ¶ 37.<sup>10</sup> Class counsel avers that these costs are based on contemporaneous expense records and are of the type "customarily charged to and paid by hourly clients." *Id.* at 16-17, ¶¶ 37-38. The Court agrees. *See In re Crocs, Inc. Sec. Litig.*, No. 07-cv-02351-PAB-KLM, 2014 U.S. Dist. LEXIS 134396, 2014 WL 4670886, at \*5 (D. Colo. Sept. 18, 2014) (finding fees for computer research, investigation, and experts/consultants to be "of the type normally billed to clients"). The Court also finds that [\*26] there have been no objections to counsel's request for costs and that the costs are reasonable given the nature and duration of this lawsuit. *See Shaw*, 2015 U.S. Dist. LEXIS 52783, 2015 WL 1867861, at \*8 (awarding \$62,388.58 in litigation expenses in wage-and-hour class action lawsuit).

#### V. INCENTIVE FEES<sup>11</sup>

Plaintiffs request approval of a \$5,000 incentive fee for each of the two class representatives. Docket No. 161 at 12. "[C]ourts regularly give incentive awards to compensate named plaintiffs for the work they performed — their time and effort invested in the case." *Chieftain Royalty Co.*, 888 F.3d at 468. "The award should be proportional to the contribution of the plaintiff." *Id.* Here, class counsel states that the representatives (1) "assisted with the investigation and provided key factual information for the Complaint," (2) "responded to Defendants' extensive written discovery requests,"

<sup>10</sup> Counsel's out-of-pocket litigation expenses actually total \$34,484.10. *See* Docket No. 159-1 at 17, ¶ 37; Docket No. 159-3 at 4, ¶ 6.

<sup>11</sup> As with the attorney's fee award, the Court must apply Colorado law to determine the reasonableness of the requested incentive fees. *See Chieftain Royalty Co.*, 888 F.3d at 468. However, because the Court has not found any Colorado state court cases addressing the reasonableness of incentive fees, the Court will look "to other state court decisions, federal decisions, and the general weight and trend of authority" to predict how the Colorado Supreme Court would rule. *Id.* (internal quotation marks omitted).

<sup>9</sup> Class counsel's fee petition was also filed well in advance of the objection deadline. *See* Docket No. 155 (setting October 31, 2017 as class members' deadline to object to settlement agreement); Docket Nos. 157, 159 (motion for attorney's fees and costs initially filed on October 2, 2017). The fact that only one individual filed an objection is further evidence that the requested fees are reasonable.

and (3) "reviewed the Settlement Agreement and asked important questions about its terms." Docket No. 159-1 at 18, ¶ 42. Based on the information provided by class counsel and the fact that this case has been pending for almost five years, the Court predicts that the Colorado Supreme Court would find a \$5,000 incentive award reasonable compensation for the class representatives' [\*27] active participation in the lawsuit. *See Pliego v. Los Arcos Mexican Restaurants, Inc.*, 313 F.R.D. 117, 131 (D. Colo. 2016) (finding that \$7500 service award was "appropriate and . . . commensurate with awards in similar cases").

## VI. CONCLUSION

For the foregoing reasons, it is

**ORDERED** that Plaintiffs' Motion and Memorandum of Law in Support of an Award of Attorneys' Fees and Litigation Costs [Docket No. 159] and Unopposed Motion for Final Approval of Class Action Settlement [Docket No. 161] are **GRANTED**. The Court will issue a separate order setting forth the terms of the judgment.

DATED September 20, 2018.

BY THE COURT:

/s/ Philip A. Brimmer

PHILIP A. BRIMMER

United States District Judge



## CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement”) is made and entered into as of this \_\_\_ day of August 2022, by Timothy Goodrich, Nolte Mehnert, George T. Farmer, Erik Ernstrom, W. Walter Layman, Bradley Briar, and Keri Reid (“Plaintiffs”), on behalf of themselves and the Settlement Class, as defined below, and Defendants Alterra Mountain Company, Alterra Mountain Company U.S. Inc., and Ikon Pass Inc. (together, “Alterra”), to settle, fully and finally, all of the claims that have been or could have been brought in the 12 consolidated putative class-action lawsuits (defined in Section I(A) below) against Alterra relating to 2019/20 Ikon passes, as described below.

1. A dispute has arisen between the Parties concerning 2019/20 Ikon passes and the COVID-19-related closures of Ikon network resorts around March 2020;

2. Plaintiffs filed 12 putative class-action lawsuits, which have since been consolidated, alleging the 2019/20 ski season was ended prematurely by Alterra due to COVID-19 and that 2019/20 Ikon Pass holders are entitled to damages stemming from their pass purchases;

3. Alterra categorically denies Plaintiffs’ allegations; denies that it has committed or engaged in any misconduct, wrongdoing, or other actionable conduct; denies that 2019/20 Ikon Pass holders are entitled to partial refunds or other compensation; denies all liability; and asserts many defenses to Plaintiffs’ allegations;

4. The Parties to this Agreement, after engaging in extensive motion practice in the consolidated cases, and after engaging in confirmatory discovery—which included collecting and analyzing thousands of Ikon Pass holder purchase and visitation records; responding to several interrogatories; producing highly relevant, targeted, and sufficient data by Alterra; and consulting with various experts—and after conducting a formal

mediation, engaging in substantial settlement negotiations over a period of 5 months with the help and oversight of a highly experienced mediator, now wish to resolve all claims, disputes, and differences among them;

5. Class Counsel has reviewed and analyzed the data and documents produced by Alterra and those obtained via their own investigation; consulted with experts; examined and considered the benefits to be provided to the Settlement Class Members under the Settlement provided for in this Agreement; considered the applicable laws of the several states potentially at issue, including Colorado, California, Illinois, Wisconsin, and others, and the claims that could be asserted under those laws regarding 2019/20 Ikon Passes; considered the risks, costs, and time associated with prosecuting this case through one or more trials and appeals; and believe the Agreement to be in the best interest of the Settlement Class Members, taking into account the risks and costs of continued litigation, and the length of time that would be required to complete the litigation and any appeals;

6. Alterra has at all times disputed, and continues to dispute, Plaintiffs' allegations in the Lawsuits and denied any liability for any of the claims that have or could have been raised regarding the 2019/20 Ikon Passes by Plaintiffs or Settlement Class Members, but believes that the comprehensive resolution of the issues in the Lawsuits as provided in this Agreement will avoid the substantial costs and disruptions of continued litigation, is in the best interest of the Settlement Class, and is in the best interests of Alterra, its employees, and its trade partners, and is the most effective and least costly resolution of the Lawsuits;

7. The Parties understand, acknowledge, and agree that this Agreement constitutes the compromise of disputed claims and that it is their mutual desire and intention that the Lawsuits be settled and dismissed, on the merits and with prejudice,

and that the Released Claims be finally and fully settled and dismissed, subject to and according to the below terms and conditions.

NOW, THEREFORE, the Parties agree and covenant as follows:

## I. DEFINITIONS

As used in this Agreement, the following definitions shall apply:

- A. “Actions” or “Lawsuits”** means the following twelve putative class-action lawsuits: (1) *Kramer v. Alterra Mountain Co. and Ikon Pass Inc.*, Case No. 1:20-cv-01057-RM-SKC (D. Colo.); (2) *Eckert v. Alterra Mountain Co. and Ikon Pass, Inc.*, Case No. 1:20-cv-01158-RM-SKC (D. Colo.); (3) *Farmer v. Alterra Mountain Co. U.S. Inc. and Ikon Pass Inc.*, Case No. 1:20-cv-01175-RM-SKC (D. Colo.); (4) *Cleaver v. Alterra Mountain Co. and Ikon Pass Inc.*, Case No. 1:20-cv-01186-RM-SKC (D. Colo.); (5) *Werner et al. v. Alterra Mountain Company and Ikon Pass Inc.*, Case No. 1:20-cv-01254-RM-SKC (D. Colo.); (6) *Steijn et al. v. Alterra Mountain Co. U.S. Inc.*, Case No. 1:20-cv-01347-RM-SKC (D. Colo.); (7) *Blum v. Alterra Mountain Co.*, Case No. 1:20-cv-01520-RM-SCK (D. Colo.); (8) *Kress v. Alterra Mountain Co. U.S. Inc.*, Case No. 1:20-cv-01583-RM-SKC (D. Colo.); (9) *Simpson v. Alterra Mountain Co.*, Case No. 1:20-cv-01691-RM-SKC (D. Colo.); (10) *Du v. Alterra Mountain Co. U.S. Inc.*, Case No. 1:20-cv-01699-RM-SKC (D. Colo.); (11) *Christiansen v. Alterra Mountain Co.*, Case No. 1:20-cv-02021-RM-SKC (D. Colo.); and (12) *Goldsmith v. Alterra Mountain Co.*, Case No. 1:20-cv-02907-RM-SKC (D. Colo.).
- B. “Administration and Notice Expenses”** means reasonable fees and expenses incurred for (1) preparing, emailing, and, if necessary, mailing the Summary Notice and FAQ; (2) receiving and adjudicating claims submitted

by Settlement Class Members to elect Vouchers under this Settlement, including the costs of administering a Settlement Website for the review of the Settlement Notice and submission of claims; (3) receiving and processing Objections to the Settlement and Opt-Out Forms submitted by Settlement Class Members who wish to exclude themselves from the Class; (4) preparing status reports to the Parties and the Court; (5) preparing tax returns for any Settlement bank accounts; and (6) other costs of notice and administration of the Settlement that may be mutually-agreed upon by Alterra and Class Counsel.

- C. **“Agreement” or “Settlement Agreement”** means this Class Action Settlement Agreement and Release and the exhibits attached hereto.
- D. **“Attorney Fees and Expenses”** means the amount of any attorney fees and reimbursement of litigation expenses awarded to Class Counsel pursuant to their Fee Petitions.
- E. **“Claims Deadline”** means 90 days after the Notice Date.
- F. **“Claim Form”** means the forms attached as **Exhibit A**, to be approved by the Court and to be submitted to the Settlement Administrator by Settlement Class Members who wish to make an election to receive a Voucher instead of a Credit.
- G. **“Class Counsel”** means the law firms of Bursor & Fisher, P.A. and Dovel & Luner LLP.

- H. **“Class Ikon Pass(es)” or “2019/20 Ikon Pass(es)”** means all forms of Ikon Passes (including Ikon Base Passes) sold by Alterra for the 2019/2020 Ski Season.
- I. **“Class Representatives” or “Plaintiffs”** means Timothy Goodrich, Nolte Mehnert, George T. Farmer, Erik Ernstrom, W. Walter Layman, Bradley Briar, and Keri Reid.
- J. **“Court”** means the United States District Court for the District of Colorado.
- K. **“Customer ID”** means each Class Member’s unique alphanumeric code, which will be communicated to each Class Member along with the Summary Notice.
- L. **“Defendants” or “Alterra”** means Alterra Mountain Company, Alterra Mountain Company U.S. Inc., and Ikon Pass Inc., and each of their subsidiaries, successors, predecessors, assigns, affiliates, shareholders, officers, directors, agents, insurers, attorneys, and employees.
- M. **“Ikon Resorts”** means all resorts that were or are participating resorts within the Ikon network, meaning they were or are accessible with qualifying Ikon Pass products.
- N. **“Effective Date”** means the first date that is three business days after all of the following have occurred: (i) the Court has entered an order granting final approval of the Settlement Agreement in accordance with the terms of this Agreement; (ii) the time for any challenge to the Settlement, both in the Court and on appeal, has elapsed; and (iii) the Settlement has become final, either because no timely challenge was made to it or because any timely

challenge has been finally adjudicated and rejected. For purposes of this Section, an “appeal” shall not include any appeal that concerns solely the issue of Class Counsel’s Attorney Fees and Expenses or the Service Awards to the Class Representatives.

- O.** “**Fairness Hearing**” means the final hearing, to be held after notice has been provided to the Settlement Class in accordance with this Agreement to: (1) determine whether to grant final approval, and (a) re-affirm certification of the Settlement Class, (b) designate Class Representatives, (c) designate Class Counsel as counsel for the Settlement Class, and the Settlement; (2) consider whether to enter the Final Approval Order; and (3) rule on Class Counsel’s Fee Petitions and Class Representative Service Awards.
- P.** “**FAQ**” means the long-form notice to the Settlement Class in the form of Frequently Asked Questions and Answers attached as **Exhibit B**, to be approved by the Court and posted on the Settlement Website in accordance with this Agreement.
- Q.** “**Fee Petition**” means the application to be filed by Class Counsel by which they will seek an award of attorney fees and reimbursement of litigation expenses incurred by them in prosecuting the Lawsuits, and all aspects of the settlement of them, as well as a Service Award to be paid to Plaintiffs.
- R.** “**Final Approval Order**” means the proposed Order Granting Final Approval to the Settlement, to be entered by the Court with terms to be agreed upon by the Parties and consistent with this Agreement.

- S.** “**Notice Date**” means the date on which the Settlement Administrator launches the Settlement Website and completes the initial e-mailing of Summary Notices to Class Members.
- T.** “**Notice of Claim Denial**” means the form that the Settlement Administrator will send, by email or first-class United States Mail, depending on the form of notice successfully provided to said Person, to each Person who has submitted a Claim Form that the Settlement Administrator has determined, subject to review and approval by Class Counsel, to not be a Valid Election.
- U.** “**Opt-Out**” means the process by which a member of the Settlement Class may submit a request for exclusion in the manner and time prescribed by the Court in the Preliminary Approval Order.
- V.** “**Pass Credit(s)**” means a credit that may be used at any time during the standard applicable sales period toward the purchase of any Ikon pass product available for use during the 2023/24 or 2024/25 Season, including an Ikon pass at an already discounted price or in conjunction with other available discounts (e.g., renewal credit, nurses discount, college discount, etc.). Pass Credits are subject to additional terms and conditions, as set forth in Section IV(A)–(F) below.
- W.** “**Lift Product Voucher(s)**” or “**Voucher(s)**” means a voucher that may be applied toward the purchase and use on or before July 31, 2025 of one single-day lift ticket at any single Alterra-owned or -operated resort (“Alterra Resort(s)”). Lift Product Vouchers are subject to additional terms and conditions, as set forth in Section IV(G)–(J) below

- X. **“Parties”** means Plaintiffs and Alterra, collectively.
- Y. **“Pass ID”** means the unique code present on each Class Member’s physical Ikon Pass.
- Z. **“Person”** means any natural person.
- AA. **“Preliminary Approval Order”** means the proposed Order Granting Preliminary Approval to Class Action Settlement, to be entered by the Court with terms to be agreed upon by the Parties and consistent with this Agreement.
- BB. **“Released Claims”** means all claims released by Plaintiffs and all Settlement Class Members pursuant to the release and waiver set forth in Section IX of this Agreement.
- CC. **“Releasees”** means (i) Alterra, together with its predecessors and successors in interest, parents, subsidiaries, affiliates, and assigns; (ii) each of Alterra’s past, present, and future officers, directors, agents, representatives, servants, employees, attorneys, and insurers; and (iii) all Ikon Resorts and their owners and operators; all of whom will be parties to the releases set forth in Section IX.
- DD. **“Service Award”** means a reasonable payment, subject to Court approval, made to a Plaintiff as compensation for his or her efforts in pursuing these Actions.
- EE. **“Settlement”** means the settlement provided for in this Agreement.
- FF. **“Settlement Administrator”** means Angeion Group.

**GG. “Settlement Class”** means all persons in the United States and its territories who (a) purchased any form of Ikon pass for the 2019/20 season; or (b) received as a gift, from a donor meeting those requirements, any form of Ikon pass not used by the donor or by anyone else after the donor purchased the Ikon pass and before the donor gave the Ikon pass to the Settlement Class Member; and who used their Ikon pass for mountain access to any Ikon Resort on one or more days on or before March 15, 2020.

Each Settlement Class Member must have been either (c) a primary Ikon pass holder; or (d) an Ikon pass holder associated with a primary Ikon pass holder’s account (e.g., family or other household member), on or before March 15, 2020.

Excluded from the Settlement Class are (e) purchasers of any form of Ikon pass for the 2019/20 season or (f) recipients of a gift, from a donor meeting those requirements, of any form of Ikon pass not used by the donor or by anyone else after the donor purchased the Ikon pass and before the donor gave the Ikon pass to the Settlement Class Member, who did not use their Ikon pass for mountain access to any Ikon Resort on or before March 15, 2020.

Also excluded from the Settlement Class are (g) all persons who previously received a 2019/20 Ikon pass as a complimentary gift from Alterra.

**HH. “Settlement Class Member”** means all Persons who are members of the Settlement Class who do not Opt-Out.

- II. “Settlement Website”** means a website created by the Settlement Administrator to facilitate notice and claims administration, as detailed in Section III(A)(5)(b) of this Agreement.
- JJ. “Ski Season.”** For purposes of this Agreement, the 2023/24 Ski Season means the period Ikon Resorts are open, operating, and accessible with a 2023/24 Ikon Pass for skiing and riding. For purposes of this Agreement, the 2024/25 Ski Season means the period Ikon Resorts are open, operating, and accessible with a 2024/25 Ikon Pass for skiing and riding.
- KK. “Summary Notice”** means the proposed email and supplemental mail notice attached as **Exhibit C**, to be approved by the Court and to be emailed by the Settlement Administrator to each email address of record in Alterra’s databases, and mailed to each Settlement Class Member whose email notice is undelivered to the address of record in Alterra’s databases (after being run through the National Change of Address database).
- LL. “Valid Election”** means a Claim Form for the election of a Lift Product Voucher, in lieu of a Pass Credit, that (i) is timely submitted by a Settlement Class Member in accordance with the requirements of this Agreement and the Preliminary Approval Order, (ii) is signed with a certification that the information is true and correct to the best of the claimant’s knowledge and recollection, and (iii) contains all of the attestations, certifications, information, and documentation required for that Settlement Class Member to be eligible to receive one or more of the benefits provided in Section IV of this Agreement.

## II. CONDITIONAL CERTIFICATION OF NATIONWIDE SETTLEMENT CLASS

For purposes of implementing this Agreement, and for no other purpose, Alterra stipulates to the conditional certification of the nationwide Settlement Class. If, for any reason, this Agreement should fail to become effective, Alterra's stipulation to certifying the nationwide Settlement Class shall be null and void, and the Parties shall return to their prior positions in the Lawsuits.

## III. REQUIRED EVENTS

A. As soon as practicable after executing this Agreement, and in no event later than August 10, 2022, Plaintiffs shall take all necessary steps to file with the Court in the Lawsuits a motion seeking entry of the Preliminary Approval Order, which by its terms shall accomplish all of the following:

1. Preliminarily approve the Settlement and this Agreement as fair and reasonable to the Settlement Class;
2. Conditionally certify the Settlement Class as a nationwide class for purposes of effectuating the Settlement;
3. Designate Plaintiffs as the Class Representatives;
4. Designate Class Counsel as counsel for the Settlement Class;
5. Designate Angeion Group as the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement and the Preliminary Approval Order:
  - a. Disseminate the Summary Notice by email, and where email is undelivered, by first-class United States Mail;

- b. Establish the Settlement Website with the Settlement Agreement, FAQ, and other information that Alterra and Class Counsel jointly agree to post concerning the nature of the case and the status of the Settlement, including relevant pleadings such as the operative Complaint, papers in support of preliminary and final approval of the Settlement, and Class Counsel's Fee Petition, plus relevant orders of the Court;
- c. Prior to emailing the Settlement Notice, establish a toll-free telephone number that Class Members can call to request hard copies of the Claim Forms and FAQ be sent to them by mail and obtain additional information regarding the Settlement;
- d. Receive, evaluate, and either approve completed Claim Forms sent by Persons seeking to elect a Lift Product Voucher in lieu of a Pass Credit as meeting the requirements of the Agreement or disapprove as failing to meet those requirements;
- e. Subject to the provisions of Section V of this Agreement, 21 days before mailing Notices of Claim Denial, provide to Alterra and Class Counsel (i) a list of the names and addresses of all Settlement Class Members who have submitted Claim Forms and whose Claim Forms the Settlement Administrator has determined to be Valid Elections; and (ii) a separate list of the names and addresses of all Persons who have submitted Claim Forms and whose Claim Forms the Settlement

Administrator has determined not to be Valid Elections, by category of benefit. Alterra and Class Counsel shall then have an opportunity to review the Valid Elections and the Notices of Claim Denial and request a meet and confer should they decide to challenge any Valid Elections or Notices of Claim Denial. In the event Class Counsel challenges a Notice of Claim Denial, that Notice shall not be sent to the Class Member until Class Counsel and counsel for Defendants meet and confer to arrive at a resolution, which must occur within at least 14 days of the Settlement Administrator's provision of the lists described above to Class Counsel and counsel for Defendants. Legitimate grounds for Alterra and Class Counsel to challenge a claim shall include, but are not limited to, inadequate documentation and inconsistency with Alterra's records, all of which is subject to Section V(D) below discussing the Class Member's opportunity to cure a deficiency with their claim;

- f. Send, by email if available or first-class United States Mail if email is not available, to each Person who has submitted a Claim Form that the Settlement Administrator has determined not to be a Valid Election, and which has not been challenged by Class Counsel, a Notice of Claim Denial or a notice of claim deficiency;
- g. Process requests for exclusion from the Settlement in accordance with this Agreement;

- h. Process objections to the Settlement in accordance with this Agreement;
  - i. Within 14 days after the close of the Notice Period, provide to Alterra and Class Counsel, under penalty of perjury, a statement of the total number of claims submitted, the total number of claims adjudicated as Valid Elections (in total and by category of Voucher amount), and a statement of the number of Class Members to receive a Pass Credit (in total and by category of Pass Credit amount); and
- 6. Approve the form, contents, and methods of notice to be given to the Settlement Class and direct the Settlement Administrator to provide and cause to be provided such notices and to file with the Court a declaration detailing the scope, methods, and results of the notice program;
- 7. Establish procedures and schedule deadlines for Settlement Class Members to object to the Settlement or certification of the Settlement Class, to exclude themselves from the Settlement, and to submit Claim Forms to the Settlement Administrator, all consistent with the terms of this Agreement;
- 8. Schedule the Fairness Hearing; and
- 9. Schedule deadlines for the filing of (1) papers in support of final approval of the certification of the Settlement Class, the designation of Plaintiffs as representatives of the Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class,

and the Settlement; (2) Class Counsel's Petition for Fees and Service Awards for Class Representatives; and (3) objections to certification of the Settlement Class, to the designation of Plaintiffs as the representatives of the Settlement Class, to the appointment of Class Counsel as counsel for the Settlement Class, or to the Settlement.

- B.** At the Fairness Hearing, Alterra and Class Counsel will jointly request the Court to enter a Final Approval Order that (1) certifies the Settlement Class, designates Plaintiffs as Class Representatives, and designates Class Counsel as counsel for the Settlement Class; (2) grants final approval of the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class Members; (3) finds that the Class Notice complied with all laws, including, but not limited to Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States Constitution; (4) provides for the release of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (5) orders the dismissal with prejudice of all claims, causes of action, and counts alleged in the Lawsuits, and incorporates the releases and covenant not to sue stated in this Agreement, with each of the Parties to bear its, his, or her own costs and attorney fees, except as provided in Section VIII, below; (6) authorizes the provision by Alterra of Pass Credits and Lift Product Vouchers, including Claim Forms approved by the Settlement Administrator as Valid Elections, and otherwise reviewed by Class Counsel and Counsel for Alterra and determined to be Valid Elections, in accordance with the terms of the Agreement; and (7) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of this Agreement.

In addition, Class Counsel will move the Court for entry of a separate order approving the following: (1) Service Awards to Plaintiffs as described in this Agreement, and (2) attorney fees and costs to Class Counsel in an amount as approved by the Court and consistent with the terms of this Agreement.

- C. Alterra, Plaintiffs, and Class Counsel will cooperate and take all reasonable actions to accomplish the above. If the Court fails to enter either the Preliminary Approval Order or the Final Approval Order, Alterra, Plaintiffs, and Class Counsel will use all reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not enter the Preliminary Approval Order and Final Approval Order, the Parties will return to their positions in the Lawsuits as they were immediately before the execution of the Settlement Agreement.

#### **IV. SETTLEMENT BENEFITS**

Settlement Class Members may receive one of two forms of potential relief: a Pass Credit or a Lift Product Voucher.

- A. **Pass Credit Amounts.** For any Settlement Class Member who used their 2019/20 Ikon Pass to access an Ikon Resort a total of one or more days on or before March 15, 2020, the following Pass Credits are available:

1. A single \$150 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 1 day;
2. A single \$125 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 2 days;

3. A single \$100 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 3 days;
4. A single \$50 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 4 days;
5. A single \$20 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 5 or 6 days; and
6. A single \$10 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort 7 or more days.

**B. Pass Credit Delivery.** Unless a Settlement Class Member submits a Valid Election for a Lift Product Voucher in lieu of a Pass Credit, the appropriate Pass Credit amount will automatically be applied to each Settlement Class Member's Ikon pass holder profile without any requirement to fill out a claim form or take any other affirmative action. The appropriate Pass Credit amount will be loaded into the online Ikon pass holder account of the primary pass holder associated with the Settlement Class Member's profile as of the date of disbursement of the Pass Credit.

**C. Pass Credit Scope of Use.** Each Pass Credit must be used in full in a single transaction, and may be used at any time during the standard applicable sales period toward the purchase of any Ikon pass product available for use during the 2023/24 or 2024/25 Ski Seasons that the Pass Credit recipient is eligible for. A Pass Credit may be applied toward the purchase of an Ikon pass product at an already discounted price or be applied with other

available discounts (e.g., renewal credit, nurses discount, college discount, and so on).

- D. Pass Credit Transferability.** The Pass Credit amount is not transferrable except to another Ikon pass holder associated with the same primary pass holder account (an “Affiliate Ikon Pass Holder”). To request a qualifying transfer to an Affiliate Ikon Pass Holder (that is, someone within the same primary pass holder account), the primary pass holder must contact Alterra’s standard call center.
- E. Pass Credit Stack-ability.** Upon transfer, Affiliate Ikon Pass Holder Pass Credits may be used in combination, to purchase one or more Ikon Pass Product(s) as described above for anyone who is an Affiliate Ikon Pass Holder. Each Pass Credit, however, may only be used toward the purchase of a single qualifying Ikon Pass product, and any unused remaining portion of said Pass Credit will be forfeited.
- F. Pass Credit Valuation.** The Parties agree based on their review of Settlement Class Member data, that the aggregate value of the Pass Credits (assuming no Settlement Class member takes the Lift Product Voucher in lieu of the Pass Credits) is approximately \$17.5 million.
- G. Lift Product Voucher Amounts.** For any Settlement Class Member who used their 2019/20 Ikon Pass to access an Ikon Resort a total of one or more days prior to March 15, 2020, the following Lift Product Vouchers are available to elect in lieu of a Pass Credit:

1. Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 1 day, may elect to receive one 50% Lift Product Voucher;
2. Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 2 days, may elect to receive one 40% Lift Product Voucher;
3. Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 3 days, may elect to receive one 30% Lift Product Voucher;
4. Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 4 days, may elect to receive one 25% Lift Product Voucher; and
5. Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 5 or more days, may elect to receive one 20% Lift Product Voucher.

**H. Lift Product Voucher Election and Delivery.** If a Settlement Class Member submits a Claim Form and makes a Valid Election (in lieu of a Pass Credit), the Lift Product Voucher will be applied to the individual Ikon pass holder profile and placed in the account of the primary pass holder associated with the Class Member's profile as of the date of disbursement of the Lift Product Voucher. To make a Valid Election, a Settlement Class Member must submit a properly completed claim form by the Court-approved deadline that includes, among other information, the name, address, email address, and

unique Customer ID or Pass ID associated with their Ikon pass holder account.

- I. **Lift Product Voucher Scope of Use.** The Lift Product Voucher may be applied toward the purchase and use on or before July 31, 2025 of one single-day lift ticket at any single Alterra Mountain Company-owned or operated resort. The Lift Product Voucher may be redeemed and applied toward the purchase of a single day lift ticket online through the applicable Alterra Mountain Company-owned or operated resort's website or at the walk-up window. A Lift Product Voucher may be applied toward the purchase of a single day lift ticket at the posted full or Advance Purchase rate, but may not be applied to an already discounted rate or combined with other available discounts.
  
- J. **Lift Product Voucher Transferability.** The Lift Product Voucher is fully transferrable and may be resold once by each Settlement Class Member recipient. To complete a transfer, a Settlement Class Member will, using their online Ikon pass holder account, enter the email address of the transferee. The transferee will then receive an email prompting them to accept or decline the transfer. To accept the transfer, the transferee must have or create an online Ikon account, though they need not make any purchase. A Lift Product Voucher may not be transferred or resold a second time.

## V. SETTLEMENT ADMINISTRATION AND NOTICE EXPENSES

- A. All notice, publication, and claims administration activities shall be carried out exclusively by the Settlement Administrator, including the evaluation

of documentary proof submitted by Settlement Class Members in support of a Lift Product Voucher Election.

- B.** Alterra agrees to pay for reasonable Administration and Notice Expenses, and shall enter into a separate agreement with the Settlement Administrator to pay those expenses. Alterra shall not be responsible for any additional administration expenses that may be incurred by Plaintiffs or Class Counsel in (1) responding to inquiries about the Agreement, the Settlement, or the Lawsuits; (2) defending the Agreement or the Settlement against any challenge to it; or (3) defending against any challenge to any order or judgment entered pursuant to the Agreement, unless otherwise specifically agreed.
- C.** The Settlement Administrator shall process all claims made by Settlement Class Members who submit a claim form to elect a Lift Product Voucher.
- D.** Before denying any claim to elect a Lift Product Voucher on the basis of ineligibility or lack of required information, the Settlement Administrator shall send by email if available or first-class United States Mail if email is not available a written notice of deficiency to the Settlement Class Member identifying the inadequacies that may cause the claim to be denied and giving the Settlement Class Member no more than 30 days to cure the deficiency.
- E.** If any Settlement Class Member disputes the Settlement Administrator's denial of a claim to elect a Lift Product Voucher, the Settlement Administrator shall send the claim to Alterra for Alterra to determine the claim's validity. Alterra's determination shall be final and binding unless

Class Counsel, within 30 days of notification of Alterra's determination, contests Alterra's determination by first attempting to resolve the claim in dispute directly with Defendants' counsel and, if those efforts are unsuccessful, by presenting the matter for determination by the Court within 30 days of the completion of Alterra's and Class Counsel's conferral.

- F. The Parties agree that Angeion Group will serve as the Settlement Administrator, subject to the Court's approval.
- G. With the exception of decisions regarding claims adjudication, for which the respective rights and responsibilities of Alterra, Class Counsel, the Settlement Administrator, and the Court are addressed elsewhere in this Agreement, all decisions regarding notice and settlement administration, unless otherwise delineated or specified in this Agreement or by the Court, shall be made jointly between Alterra and Class Counsel. Class Counsel and counsel for Alterra shall have the ability to communicate with the Settlement Administrator without the need to include each other in each of those communications. Disputes, if any, shall be resolved by the Court.
- H. The Settlement Administrator will provide the Summary Notice by email to all members of the Settlement Class for whom valid email addresses are known to Alterra. Subject to approval by the Settlement Administrator, for all Settlement Class Members for whom Alterra only has a physical mailing address, or whose email notice bounced back from an undeliverable address, the Settlement Administrator will utilize a reverse look-up service to obtain additional email addresses, and email the Summary Notice to all members of the Settlement Class for whom an email can be identified through the reverse look-up service. The Settlement Administrator will

mail a Summary Notice to each member of the Settlement Class for whom an address can be found in Alterra's databases but who do not have an identifiable email address. The Settlement Administrator will perform a national change of address search and forward notice packages that are returned by the U.S. Postal Service with a forwarding address.

- I. The Settlement Administrator may also provide publication notice to the Settlement Class using appropriate media outlets, and media notices shall be approved by Alterra and Class Counsel before the notices are published, approval for which shall not be unreasonably withheld.
- J. The Settlement Administrator will create a Settlement Website that will include all necessary and pertinent information for Settlement Class Members, including the Claim Form, the FAQ, and information relating to relevant deadlines. The Settlement Website will also permit Settlement Class Members to submit claims online. The Settlement Website will also include information concerning the nature of the case and the status of the Settlement, including relevant pleadings such as the operative Complaint, papers in support of preliminary and final approval of the Settlement, Class Counsel's Fee Petition, plus relevant orders of the Court.
- K. The Settlement Administrator will provide to Class Counsel and Alterra periodic status reports regarding claims.
- L. The Parties agree that the Summary Notice, FAQ, Claim Form, and Settlement Website provide information sufficient to inform Settlement Class Members of the essential terms of this Agreement, appropriate means for obtaining additional information regarding the Agreement and the

Lawsuits, appropriate information about the procedure for challenging or excluding themselves from the Settlement, if they should wish to do so, and appropriate means for and information about submitting a claim for compensation pursuant to the Settlement. The Parties also agree that the dissemination of notice of the Settlement in the manner specified in this Agreement and on the Settlement Website satisfies the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, subject to Court approval.

- M. The Parties will jointly request the Court to approve, in the Preliminary Approval Order, the method of notice described in this Agreement.
- N. As soon as practicable, but no later than ten (10) days after the Parties file this Agreement with the Court, Alterra shall comply with the notice provisions of the Class Action Fairness Act, 28 U.S.C. section 1715.
- O. Notwithstanding anything else in this Agreement, Alterra may, with the permission of the Settlement Administrator and after consultation with Class Counsel, carry out some or all of the Settlement Administrator's duties to support the notice and administration of the Settlement.

## **VI. PROCEDURES FOR SETTLEMENT APPROVAL**

- A. The Parties shall use their best efforts to effectuate this Agreement, including cooperating in drafting the preliminary approval documents and securing the prompt, complete, and final dismissal, with prejudice, of the Lawsuits.

## **B. Preliminary Approval**

1. As soon as practicable, **and in no case later than August 17, 2022**, the Parties shall jointly move the Court for preliminary approval of the Settlement; for authorization to disseminate the Summary Notice contemplated by this Agreement to all members of the Settlement Class; and for a stay of all proceedings in the consolidated Lawsuits, except in connection with this Agreement as set forth herein (the “Motion”). The Motion shall include the proposed Preliminary Approval Order, proposed forms of the Summary Notice, and Claim Form, and the methods and proposed dates of their dissemination to the Settlement Class, and the proposed schedule through final approval of the Agreement
2. The deadlines established in the proposed Preliminary Approval Order are as follows:
  - a. The Parties will request that the Court rule on the Motion as soon as practicable after filing, and in no instance later than October 10, 2022.
  - b. Within 14 days after entry of the Preliminary Approval Order: (on the Notice Date) The Settlement Administrator shall email the Summary Notice. Following the Notice Date, the Settlement Administrator shall promptly mail, if necessary, the Summary Notice to Settlement Class Members whose email bounces back and whose address is available to Alterra.

- c. 14 days after emailing the Summary Notice: The Settlement Administrator shall file with the Court a declaration of compliance with the notice requirements, including a statement of the number of persons to whom the Summary Notice was emailed and mailed.
- d. 30 days after the Notice Date: Class Counsel shall file their Fee Petition, which shall also be posted on the settlement website.
- e. 45 days after the Notice Date: Any objections to the Settlement Agreement, together with all supporting memoranda and other material, must be either postmarked by the U.S. Postal Service (in the case of mailed objections) or actually received by the Settlement Administrator (in the case of electronically submitted objections). This includes objections to: certification of the Settlement Class, the designation of Plaintiffs as Class Representatives, the appointment of Class Counsel, the Settlement, the Agreement, and Class Counsel's Fee Petition. Objections must comply with Section VII of this Agreement to be valid.
- f. 45 days after the Notice Date: Requests by Settlement Class Members to be excluded from the Settlement must be either postmarked by the U.S. Postal Service (in the case of mailed exclusions) or actually received by the Settlement Administrator (in the case of electronically submitted exclusions). Exclusion requests must comply with Section VII of this Agreement to be valid.

- g. 45 days after the Notice Date: Any Person or attorney seeking to appear at the Fairness Hearing must file with the Court an entry of appearance in the consolidated Lawsuits and notice of intention to appear at the Fairness Hearing. This includes any person objecting to any or all of the certification of the Settlement Class, designation of Plaintiffs as Class Representatives, appointment of Class Counsel, the Settlement, the Agreement, or Class Counsel's Fee Application. This notice of intention to appear must comply with Section VII of this Agreement to be valid.
- h. 60 days after the Notice Date: The Settlement Administrator must file a list of all exclusions with the Court.
- i. 60 days after the Notice Date: Class Counsel shall file their reply, if any, in support of their Fee Application.
- j. 60 days after the Notice Date: Class Counsel shall file the proposed Final Approval Order and memorandum in support of Final Approval. Defendants may separately file a memorandum in support of Final Approval by this deadline.
- k. 90 days after the Notice Date: All claims by Settlement Class Members to the Settlement Administrator to elect a Lift Product Voucher in lieu of a Pass Credit shall be postmarked by the U.S. Postal Service (in the case of mailed Claim Forms) or received (in the case of electronic Claim Forms). Claims received after this date shall not be valid claims. The Claims

Deadline is a material term of the Settlement, without which Defendants would not have entered into this Agreement.

- l. The Parties will request that the Court hold a final fairness hearing and rule on the motion for final approval and Fee Application as soon as practicable after filing.
- m. For the purpose of computing deadlines, the Parties incorporate Federal Rule of Civil Procedure 6(a)(1).

### **C. Final Approval**

1. At the Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order, which (i) grants final approval of the certification of the Settlement Class, designation of the Class Representatives, and designation of Class Counsel, all as conditionally approved in the Preliminary Approval Order; (ii) grants final approval to the Settlement and this Agreement as fair, reasonable, and adequate to the Settlement Class; (iii) provides for the release of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (iv) orders the dismissal with prejudice of all claims, causes of action, and counts alleged in the Lawsuits, and incorporates the releases and covenant not to sue stated in this Agreement; (v) authorizes the payment by Alterra of Pass Credits and Lift Product Vouchers, where validly elected, in accordance with the terms of the Agreement; and (vi) preserves the

Court's continuing jurisdiction over the administration of the Settlement and enforcement of the Agreement.

2. In addition, Class Counsel will move the Court for entry of a separate order approving: (1) Service Awards as set forth herein, and (2) attorney fees and costs to Class Counsel consistent with this Agreement.

## **VII. REQUESTS FOR EXCLUSION & OBJECTIONS**

- A. Any Class Member shall have the right to be excluded by providing a written request postmarked no later than 45 days following the Notice Date, which deadline shall be set forth in the Summary Notice and FAQ. These Notices shall provide instructions to Class Members who wish to exclude themselves from the Settlement Class regarding the Exclusion Procedure that must be followed to be excluded from the Settlement Class. Each Settlement Class Member wishing to be excluded from the settlement shall submit to the Settlement Administration a Request for Exclusion where the Settlement Class Member shall include their name, email address, mailing address. To be valid, Requests for Exclusion must include all of the information listed above, must be individually signed by each Settlement Class Member wishing to be excluded, and must be submitted to the Settlement Administrator individually. No "class" or "mass" exclusions shall be permitted. The Settlement Administrator shall assign a unique identifier to each properly-submitted Request for Exclusion to individually track those individuals who shall be reported to the Court as having been excluded from the Settlement Class.

- B. Within 7 days after the Court-ordered Exclusion deadline, the Settlement Administrator shall provide to counsel for Defendants and Class Counsel a list of the names and addresses of the members of the Settlement Class who have requested to be excluded.
- C. If the number of Settlement Class Members who properly request exclusion totals 10,000 or more, Alterra, in its sole option, shall have the right to withdraw from the settlement and terminate this Agreement.
- D. The Notices also shall state that any Class Member who wishes to appear to oppose the reasonableness and fairness of the Settlement at the Fairness Hearing shall provide a written objection, with all supporting materials, no later than 45 days following the entry of the Preliminary Approval Order. The objection shall be either postmarked by the U.S. Postal Service (in the case of mailed objections) or actually received by the Settlement Administrator (in the case of electronically submitted objections). Any objections must include (i) the Class Member's full name and current address and telephone number; (ii) a description of all of the Class Member's objections, the specific reasons therefore, and any and all supporting papers, including, without limitation, all briefs, written evidence, and declarations; and (iii) the Class Member's signature.
- E. Class Members submitting objections who wish to appear either personally or through counsel at the Fairness Hearing and present their objections to the Court orally must include a written statement of intent to appear at the Fairness Hearing in the manner prescribed by the Notice.

- F. Any Class Member who does not so object by the timely delivery of an objection (pursuant to the procedures set forth in the Notice), shall be deemed to have waived, and shall forever be foreclosed from raising, any objection to the Settlement.

**VIII. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEY FEES AND COSTS AND SERVICE AWARDS TO PLAINTIFFS**

- A. As part of this Settlement, Alterra has agreed to pay Class Counsel reasonable attorney fees and costs, as approved by the Court, of up to \$2,872,000, without reducing the amount of money available to pay valid claims or the amount of money to be paid for work performed by the Settlement Administrator.
  
- B. The amount of attorney fees and costs to be paid to Class Counsel shall be determined by the Court. After the Court preliminarily approves the Settlement, Class Counsel may submit a Fee Application to the Court requesting attorney fees, costs, and other expenses not to exceed \$2,872,000. Class Counsel shall not seek, and Alterra shall not pay, supplemental attorney fees, costs, or other expenses for any work performed in the Lawsuits, the settlement of them, the administration of the Settlement, or in any appeal, after the date of the Fee Application. Class Counsel may include as part of its initial Fee Application, however, a calculation of hours they anticipate will be spent in effectuating or administering the Settlement and any appeal thereof. Alterra may request that the Court award less than \$2,872,000 in attorney fees, costs, and other expenses. If the Court awards the full \$2,872,000, however, Alterra is obligated to pay the full amount.

- C. Should the Court award less than \$2,872,000 for Class Counsel's Fee Award, the delta between \$2,872,000 and the amount awarded by the Court shall be divided and distributed in equal amounts to eligible Settlement Class Members who did not elect the Lift Product Voucher in the form of Pass Credits regardless of the number of days skied during the 2019/20 Ski Season.
- D. The amount of Service Awards to be paid to Plaintiffs shall be determined by the Court. Class Counsel may in their Fee Application to the Court seek Service Awards for Plaintiffs. Class Counsel agree to request, and Defendants agree not to oppose, up to \$3,500 as the reasonable amount of Service Awards to be paid by Alterra to each of the named Plaintiffs (identified above), subject to Court approval. Class Counsel shall not seek and Alterra shall not pay supplemental service awards for any work performed in the Lawsuits, the settlement of them, the administration of the Settlement, or in any appeal, after the date of the Fee Application.
- E. Alterra shall pay the Court-approved amount of attorney fees, costs, and expenses up to \$2,872,000.00, and Service Awards (up to \$3,500 per named Plaintiff) by wire transfer to Bursor & Fisher, P.A. within 31 days of the Court's entry of judgment on its order approving the Settlement and Fee Award, subject to Class Counsel providing a stipulated undertaking that is substantively identical to the stipulated undertaking approved by the Court in *Taylor v. Trusted Media Brands, Inc.*, S.D.N.Y., Case No. 16-cv-01812-KMK (Dkt. No. 70-1, Ex. E). The stipulated undertaking is attached as **Exhibit D** to this Agreement. Under no circumstances will Defendants pay more than \$2,872,000.00 to Class Counsel for attorney fees, costs, and expenses.

- F. Class Counsel shall have the authority to determine and make an allocation of their respective awards of attorney fees and costs to any counsel representing any of the Settlement Class who claim an entitlement to share in any fees or costs approved by the Court and paid by Alterra. Such allocations shall be made consistent with any agreements between and among those counsel. Any disputes regarding such allocations shall be resolved by the Court.
- G. Any issues relating to attorney fees and costs or to any Service Award are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of this Agreement and the Settlement. The Court's or an appellate court's failure to approve, in whole or in part, any award of attorney fees and costs to Class Counsel, or any Service Award, shall not affect the validity or finality of the Settlement, nor shall such non-approval be grounds for rescission of the Agreement, as such matters are not the subject of any agreement among the Parties other than as set forth above. In the event the Court declines to approve, in whole or in part, the payment of attorney fees or costs to Class Counsel or the payment of any Service Award in the amount sought by Class Counsel, the remaining provisions of this Agreement shall remain in full force and effect.

## **IX. RELEASES**

- A. Plaintiffs and all Settlement Class Members who do not timely exclude themselves from the Settlement do forever release, acquit, and discharge Releasees from all manner of actions, causes of action, administrative claims, demands, debts, damages, costs, attorney fees, obligations, judgments, expenses, or liabilities for economic loss, in law or in equity,

whether now known or unknown, contingent or absolute, including all claims that Plaintiffs or Settlement Class Members now have or, absent this Agreement, may in the future have had, against Releasees, by reason of any act, omission, harm, matter, cause, or event whatsoever that has occurred from the beginning of time up to and including the Effective Date of this Agreement, and that arise from or relate to the 2019/20 Ikon Passes, or the closure of any Ikon Resorts for the 2019/20 Season, or to any act, omission, damage, matter, cause, or event whatsoever arising out of the initiation, defense, or settlement of the Lawsuits or the claims or defenses asserted in the Lawsuits, including without limitation all claims for out-of-pocket expense, diminution-in-value, benefit-of-the-bargain, statutory, or premium-price damages or restitution (the “**Released Claims**”).

- B. Notwithstanding anything in this Agreement, Plaintiffs and all Settlement Class Members will not by virtue of this Settlement release any claims they may have against Arch Insurance Company or Out of Towne, LLC, d/b/a Red Sky Travel Insurance or any other claims—other than claims against Alterra Released Parties—at issue in *In re: Arch Insurance Company Ski Pass Insurance Litigation*, MDL No. 2955 (W.D. Missouri) or arising out of Arch Insurance Company or Out of Towne, LLC, d/b/a Red Sky Travel Insurance’s failure to pay out insurance claims resulting from the early termination of the 2019-2020 ski season
  
- C. By executing this Agreement, the Parties acknowledge that, upon entry of the Final Approval Order by the Court, the Lawsuits shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims shall thereby be conclusively settled, compromised,

satisfied, and released as to the Releasees. The Final Approval Order shall provide for and effect the full and final release, by Plaintiffs and all Settlement Class Members, of all Released Claims.

**D. Future or Unknown Harm and Waiver of Statutory Rights:** It is possible, although unlikely, that other injuries, damages, losses, or future consequences or results of the sale, purchase, use, or non-use of the Class Ikon Passes are not currently known by Plaintiffs and Settlement Class Members and will develop or be discovered. The Release in this Agreement, and the compromise on which it is based, is expressly intended to cover and include a release by Plaintiffs and each Settlement Class Member of all such future injuries, damages, losses, or future consequences or results, and including a release and waiver of all rights, causes of actions, claims, and lawsuits against the Releasees that may exist or arise in the future because of such future injuries, damages, losses, or future consequences or results of known or unknown injuries arising out of or relating to the Class Ikon Passes.

**E.** Plaintiffs individually, though not Settlement Class Members generally, hereby expressly, knowingly, and voluntarily, waive any right conferred on him or her by Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code and of all similar laws of other States, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, Plaintiffs hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, that they have against Releasees. In furtherance of such intention, the release herein given by Plaintiffs to the Releasees shall be and remain in effect as a full and complete general release of all claims arising out of or relating to the 2019/20 Ikon Passes notwithstanding the discovery of existence of any such additional or different claims or facts.

- F. Plaintiffs and the Settlement Class Members expressly consent that this release shall be given full force and effect according to each of its terms and provisions, including those relating to unknown and unspecified claims, injuries, demands, rights, lawsuits, or causes of action as referenced above. Plaintiffs and the Settlement Class Members acknowledge and agree that this waiver is an essential and material term of this release and the compromise settlement that led to it, and that without this waiver the compromise settlement would not have been accomplished. Plaintiffs have been advised by their attorneys with respect to this waiver and, being of competent mind, understand and acknowledge its significance.

- G.** Each Party hereto expressly accepts and assumes the risk that if facts with respect to matters covered by this Agreement are found hereafter to be other than or different from the facts now believed or assumed to be true, this Agreement shall nevertheless remain effective. It is understood and agreed that this Agreement shall constitute a general release and shall be effective as a full and final accord and satisfaction and is a bar to all actions, causes of action, costs, expenses, attorney fees, damages, claims, and liabilities whatsoever, whether or not now known, suspected, claimed or concealed, pertaining to the Released Claims of this Agreement.
- H.** Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the Agreement with respect to the future performance of the terms of the Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made.

**X. COVENANT NOT TO SUE**

Plaintiffs (i) covenant and agree that neither they, nor anyone authorized to act on their behalf, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against the Releasees, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by the Releasees, or any of them, in connection with the Released Claims; (ii) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of them or any putative class of 2019/20 Ikon Pass owners arising out of or relating to the 2019/20 Ski Season; and (iii) agree that this Agreement shall be a complete bar to any such action by Plaintiffs.

## **XI. REPRESENTATIONS AND WARRANTIES**

Each of the Parties represents and warrants to, and agrees with, each of the other Parties as follows:

- A.** Each Party has had the opportunity to receive, and has received, independent legal advice from his, her, or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income-tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.
- B.** Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against any of the Releasees that Plaintiffs have or may have arising out of the Lawsuits or pertaining to 2019/20 or otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Plaintiffs may be entitled, have been assigned, transferred, or conveyed by or for Plaintiffs in any manner; and no Person or entity other than Plaintiffs has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiffs themselves.
- C.** None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of the other Party (or any officer, agent, employee, representative, or attorney for the other Party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.

- D. Each of the Parties has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that Party and his, her, or its attorneys.
- E. Each of the Parties has carefully read, knows, and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with, his, her, or its attorneys.
- F. Each term of this Agreement is contractual and not merely a recital.

## **XII. NO ADMISSION OF LIABILITY**

It is understood and agreed that the Settlement sums and the benefits provided in this Agreement, and this Settlement and release, are for the compromise of disputed claims and are not to be construed as or deemed to be an admission of any liability, fault, or responsibility on the part of any of the Releasees, by whom liability and fault are, and always have been, expressly and completely denied.

## **XIII. ADDITIONAL TERMS**

- A. *Cooperation.* The Parties agree that they will abide by this Agreement and do all such acts, and prepare, execute, and deliver all such documents, as may reasonably be required to carry out the stated objectives of this Agreement.
- B. *Interpretation and Construction.* Each Party has participated in the negotiation and drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider with his, her, or its own counsel the effect of the language of this Agreement, and has agreed to its terms. Accordingly, the legal maxim that “ambiguity shall be interpreted

against the drafter” has no relevance to the interpretation or construction of this Agreement.

**C. *Conditional nature of Agreement:***

1. At Plaintiffs’ option, expressed in written notice to Alterra’s counsel, this Agreement shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court materially alters any of the terms of this Agreement to the detriment of Plaintiffs or the Settlement Class, or fails to enter the Preliminary Approval Order or the Final Approval Order in substantially the form submitted by the Parties.

2. At Alterra’s option, expressed in written notice to Class Counsel, this Agreement shall become null and void, and no obligation on the part of any of the Parties will accrue, if (a) the Court declines to certify the Settlement Class as provided in the Preliminary Approval Order; or (b) the Court materially alters any of the terms of this Agreement to the detriment of Alterra, or fails to enter the Preliminary Approval Order or the Final Approval Order in substantially the form submitted by the Parties.

**D. *Severance/Severability.*** With the exception of the provision for attorney fees and costs to Class Counsel and Service Awards to Plaintiffs, none of the terms of this Agreement is severable from the others. If the Court or an appellate court should rule that any term is void, illegal, or unenforceable for any reason, however, Alterra, in its sole discretion, and Plaintiffs, in their sole discretion (but acting in accord with their duties and obligations

as Class Representatives), may elect to waive any such deficiency and proceed with the Settlement under the terms and conditions ultimately approved by the Court.

- E. ***Return or Destruction of Confidential Documents.*** Within 30 days of the Effective Date, the Parties agree to return to the producing Party or destroy (with written confirmation of such destruction) all documents marked confidential pursuant to the Protective Order entered in the Lawsuits.
- F. ***Governing Law.*** This Agreement has been, and shall for all purposes be deemed to have been, negotiated, executed, and delivered within the State of Colorado, and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Colorado.
- G. ***Entire Agreement of the Parties.*** This Agreement constitutes and comprises the entire agreement between the Parties with respect to the subject matter hereof. It supersedes all prior and contemporaneous oral and written agreements and discussions. It may be amended only by an agreement in writing, signed by the Parties.
- H. ***Binding on Agents, Successors, and Assigns.*** This Agreement is binding on, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, subsidiaries, assigns, heirs, executors, administrators, insurers, and predecessors and successors in interest.

- I. *Draft by All Parties.* Each Party has participated in, and in any construction to be made of this Agreement shall be deemed to have equally participated in, the negotiating, drafting, and execution of this Agreement.
- J. *Court Approval.* The parties agree to seek approval of this proposed Settlement in the United States District Court for the District of Colorado in *Kramer v. Alterra Mountain Co. and Ikon Pass Inc.*, Case No. 1:20-cv-01057-RM-SKC (D. Colo.).

*Timothy Goodrich*

Timothy Goodrich (Aug 10, 2022 12:41 PDT)

Dated: August 10, 2022

Plaintiff Timothy Goodrich

Dated: August \_\_, 2022

Plaintiff Nolte Mehnert

Dated: August \_\_, 2022

Plaintiff George T. Farmer

Dated: August \_\_, 2022

Plaintiff Erik Ernstrom

Dated: August \_\_, 2022

Plaintiff W. Walter Layman


Dated: August \_\_, 2022

Plaintiff Bradley Briar

Dated: August \_\_, 2022

Plaintiff Keri Reid

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Timothy Goodrich

  
Nolte Mehnert (Aug 10, 2022 15:05 PDT)  
\_\_\_\_\_ Dated: August 10, 2022  
Plaintiff Nolte Mehnert

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff George T. Farmer

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Erik Ernstrom


\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff W. Walter Layman

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Bradley Briar

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Keri Reid

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Timothy Goodrich

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Nolte Mehnert

  
George Farmer (Aug 11, 2022 09:02 GMT+10)  
\_\_\_\_\_ Dated: August <sup>10</sup>\_\_, 2022  
Plaintiff George T. Farmer

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Erik Ernstrom

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff W. Walter Layman

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Bradley Briar

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Keri Reid

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Timothy Goodrich

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Nolte Mehnert

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff George T. Farmer

*Erik Ernstrom*  
[Erik Ernstrom \(Aug 10, 2022 10:31 MDT\)](#) Dated: August 10, 2022  
Plaintiff Erik Ernstrom

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff W. Walter Layman

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Bradley Briar

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Keri Reid

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Timothy Goodrich

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Nolte Mehnert

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff George T. Farmer

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Erik Ernstrom

*W. Walter Layman* Dated: August <sup>10</sup>, 2022  
W. Walter Layman (Aug 10, 2022 10:31 MDT)  
Plaintiff W. Walter Layman

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Bradley Briar

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Keri Reid


\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Timothy Goodrich

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Nolte Mehnert

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff George T. Farmer

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Erik Ernstrom

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff W. Walter Layman

  
Bradley Briar (Aug 10, 2022 10:22 EDT) \_\_\_\_\_ Dated: August 10, 2022  
Plaintiff Bradley Briar

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Keri Reid

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Timothy Goodrich


\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Nolte Mehnert

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff George T. Farmer

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Erik Ernstrom

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff W. Walter Layman

\_\_\_\_\_ Dated: August \_\_, 2022  
Plaintiff Bradley Briar

  
[Keri Reid \(Aug 10, 2022 11:14 CDT\)](#) Dated: August 10, 2022  
\_\_\_\_\_ Plaintiff Keri Reid

Alterra Mountain Company,  
Alterra Mountain Company U.S. Inc., and  
Ikon Pass Inc.

DocuSigned by:  
By: Jane Esigmond \_\_\_\_\_  
0B85006DF8C440...  
Authorized Representative

READ AND APPROVED:

By: \_\_\_\_\_  
[Bursor & Fisher]  
Class Counsel

By: \_\_\_\_\_  
[Dovel Luner]  
Class Counsel

By: \_\_\_\_\_  
[Wheeler Trigg]  
Counsel for Defendants

Alterra Mountain Company,  
Alterra Mountain Company U.S. Inc., and  
Ikon Pass Inc.

By: \_\_\_\_\_  
Authorized Representative

READ AND APPROVED:

By: *Jeremy Krivoshey*  
[Bursor & Fisher]  
Class Counsel

By: \_\_\_\_\_  
[Dovel Luner]  
Class Counsel

By: \_\_\_\_\_  
[Wheeler Trigg]  
Counsel for Defendants

Alterra Mountain Company,  
Alterra Mountain Company U.S. Inc., and  
Ikon Pass Inc.

By: \_\_\_\_\_  
Authorized Representative

READ AND APPROVED:

By: \_\_\_\_\_  
[Bursor & Fisher]  
Class Counsel

By: *Simon Franzini*  
Simon Franzini (Aug 10, 2022 10:09 PDT)  
\_\_\_\_\_  
[Dovel Luner]  
Class Counsel

By: \_\_\_\_\_  
[Wheeler Trigg]  
Counsel for Defendants


Alterra Mountain Company,  
Alterra Mountain Company U.S. Inc., and  
Ikon Pass Inc.

By: \_\_\_\_\_  
Authorized Representative

READ AND APPROVED:

By: \_\_\_\_\_  
[Bursor & Fisher]  
Class Counsel

By: \_\_\_\_\_  
[Dovel Luner]  
Class Counsel

By:  \_\_\_\_\_  
[Wheeler Trigg]  
Counsel for Defendants

# Claim Form - Instructions

## Instructions for Completing the Enclosed Claim Form

The Parties have reached a settlement agreement in a class action lawsuit against Alterra Mountain Company and related companies seeking money back for 2019-2020 Ikon Passes and Ikon Base Passes (“2019/20 Ikon Passes”) because of ski resort closures in March 2020 due to COVID-19. The Settlement Class includes all persons in the United States who purchased or received as a gift any form of Ikon pass for the 2019/20 season, subject to some conditions described in the full Settlement Agreement. If Alterra’s records indicated that you are a member of this class, you should have received an email or mail notice of this settlement. Please check the email address associated with your Ikon Pass account if you believe you are a member of this Class and are not sure if you have received notice.

**If you believe you are a member of this class, and wish to elect to receive a Lift Product Voucher instead of an Ikon Pass Credit, then you must complete and submit the enclosed Claim Form online or by U.S. Mail at the addresses provided below. If you wish to receive the Ikon Pass Credit instead of the Ikon Pass Credit, there is no need to fill out this Claim Form, as it will be provided automatically if the Court approves the Settlement.**

Detailed information about qualifying 2019-20 Ikon Pass and Ikon Base Pass Holders, as well as benefits available under the terms of the settlement, can be found at [[www.WEBSITE.com](http://www.WEBSITE.com)].

**WEB:** [[www.WEBSITE.com](http://www.WEBSITE.com)]

**MAIL:** *Goodrich v. Alterra Mountain Company Settlement*  
Class Action Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

**Important Deadlines:** Claim Forms for 2019/20 Ikon Passes must be submitted online or postmarked [**90 DAYS AFTER NOTICE DATE**].

**Potential Benefit:** If you purchased or received as a gift any form of Ikon Pass for the 2019/20 ski season, and used your 2019/20 Ikon Pass for mountain access to any Ikon Resort on one or more days on or before March 15, 2020, then you may be eligible for a Pass Credit toward the purchase of any Ikon Pass product available for the 2023/24 or 2025/25 Ski Season, as follows:

- A single \$150 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 1 day;
- A single \$125 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 2 days;
- A single \$100 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 3 days;
- A single \$50 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 4 days;
- A single \$20 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 5 or 6 days; and
- A single \$10 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort 7 or more days.

**If you are eligible, then the appropriate Pass Credit amount will automatically be applied to your individual Ikon pass holder profile, without your needing to fill out a Claim Form or take any other affirmative action.**

If you are eligible for a Pass Credit, you may instead elect in this Claim Form to receive a Lift Product Voucher, which may be applied toward the purchase of one single day lift ticket at any single Alterra-owned or operated resort (“Alterra Resort”) to be used on or before July 31, 2025, as follows:

- Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 1 day, may elect to receive one 50% Lift Product Voucher;
- Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 2 days, may elect to receive one 40% Lift Product Voucher;
- Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 3 days, may elect to receive one 30% Lift Product Voucher;
- Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 4 days, may elect to receive one 25% Lift Product Voucher; and
- Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 5 or more days, may elect to receive one 20% Lift Product Voucher.

**The above benefits are subject to additional terms and conditions set out in the Settlement Agreement and Long-Form FAQ Notice, both of which are available online at [www.WEBSITE.com].**

**Making a Claim:** If you believe you are an eligible Class Member, and you wish to elect a Lift Product Voucher instead of accepting the Pass Credit, then you must complete this entire Claim Form and submit the completed Claim Form by U.S. Mail or online at [www.WEBSITE.com] [90 DAYS AFTER NOTICE DATE].

\*\*If you have questions about completing the Claim Form, please visit [www.WEBSITE.com], or contact the Claims Administrator at [EMAIL] or [PHONE].

### **CLAIM FORM CHECKLIST**

**Before submitting this Claim Form, check that you have done the following:**

- Completed all fields in Section A (Name and Contact Information).
- Complete all fields in Section B (Information About Your 2019/20 IKON Pass).
- If you wish to elect a Lift Product Voucher instead of a Pass Credit**, make that selection in Section C.
- Signed the Certification in Section D.

Your claim must be submitted online or postmarked by: XXXX XX, XXXX

2019-2020 Ikon Pass Class Action Litigation Settlement Claim Form

IKON-CA PART ONE

SECTION A: NAME AND CONTACT INFORMATION

Provide your name and contact information below. It is your responsibility to notify the Claims Administrator of any changes to your contact information after submitting your Claim Form.

Input boxes for First Name and Last Name

First Name

Last Name

Input box for Street Address

Street Address

Input box for City

City

Input box for State

State

Input box for Zip Code

Zip Code

Input box for Phone Number

Phone Number

Input box for E-Mail Address

E-Mail Address

SECTION B: INFORMATION ABOUT YOUR 2019/20 IKON PASS

Input box for Ikon Customer ID or Ikon Pass ID

Ikon Customer ID or Ikon Pass ID

Input box for Mailing Address

Mailing Address Associated With Ikon Pass Account Used to Purchase 2019/20 Ikon Pass

Input box for Email Address

Email Address Associated With Ikon Pass Account Used to Purchase 2019/20 Ikon Pass

Note: Your Ikon Customer ID is contained in the email notice you received from the settlement administrator. If you did not receive an email or cannot locate your Customer ID, your Ikon Pass ID is located on the front of your physical Ikon Pass card, underneath the bar code. Alterra will make a good faith effort to locate your Ikon Pass Account based on the information you provide. If Alterra cannot locate your Ikon Pass Account based on the information you provide, then your Claim Form may be deemed invalid.

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**SECTION C: ELECTION OF LIFT PRODUCT VOUCHER INSTEAD OF PASS CREDITS**

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The Settlement allows class members to elect whether to receive a Pass Credit or a Lift Product Voucher. To receive the Pass Credit, you do not need to fill out this Claim Form and will receive it automatically. However, to receive a Lift Product Voucher, you must select the Lift Product Voucher on this Claim Form instead of the Pass Credit. **You may only select one option below. If you select both options, you will receive the Pass Credits instead of the Lift Product Voucher.**

I wish to receive the following benefits under the Settlement:

**A Lift Product Voucher instead of Pass Credits**

**Pass Credits instead of the Lift Product Voucher**

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**SECTION D: CERTIFICATION STATEMENT**

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**CERTIFICATION STATEMENT** (*Please note that you will not be eligible to receive a Lift Product Voucher (if selected) unless you sign and date this statement.*): I declare under the penalty of perjury of the laws of the United States that I qualify for membership in the class because I either purchased or received as a gift a 2019/2020 Ikon Pass or Ikon Base Pass and used it for mountain access to any Ikon Resort on one or more days on or before March 15, 2020. I declare under penalty of perjury of the laws of the United States that all information provided in this Claim Form is true and accurate.

Signature

Date

Print Name

# If you purchased or received a 2019–2020 Ikon Pass, you may be entitled to benefits from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- A Settlement has been reached in a class action lawsuit against Alterra Mountain Company, Alterra Mountain Company U.S. Inc., and Ikon Pass Inc. (together “Alterra” or “Defendants”) seeking money back for 2019-2020 Ikon Passes and Ikon Base Passes (“2019/20 Ikon Passes”) because of ski resort closures in March 2020 due to COVID-19.
- If you are included in the Settlement, you may qualify for a Pass Credit toward the purchase of a 2023/24 or 2024/25 Ikon Pass product, or a Lift Product Voucher toward the purchase and use on or before July 31, 2025 of one single-day lift ticket at any single Alterra-owned or operated resort (“Alterra Resort”).
- **Your legal rights are affected whether you act or don’t act. Read this notice carefully.**

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<b>Do NOTHING</b>	If you do not object to the settlement, exclude yourself from the settlement, or submit a Claim Form, you will give up your right to ever be part of another lawsuit against Defendants about the legal claims resolved by this Settlement.  <b>However, if you do nothing</b> , you will still automatically receive in your online Ikon Pass account the Pass Credit to which you are eligible under the settlement.
<b>SUBMIT A CLAIM FORM</b> Deadline: [DATE]	Submitting a Claim Form is the only way to elect to receive a Lift Product Voucher instead of a Pass Credit. A Claim Form is not required to receive a Pass Credit if you are otherwise eligible.  The deadline to submit a Claim Form is <b>[90 DAYS AFTER NOTICE DATE]</b> .
<b>EXCLUDE YOURSELF</b> Deadline: [DATE]	Exclude yourself by <b>[45 DAYS AFTER NOTICE DATE]</b> and get no award from the proposed settlement. This is the only choice that allows you to participate in another lawsuit against Defendants about the claims at issue in this case covered by the Class Period.
<b>OBJECT</b> Deadline: [DATE]	You can write to the Court by <b>[45 DAYS AFTER NOTICE DATE]</b> about why you don’t like the Settlement.
<b>ATTEND THE FAIRNESS HEARING</b> [DATE] at [TIME]	You may request an opportunity to speak in Court about the fairness of the Settlement.

- These rights and options are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. If the Court approves the Settlement and you submit a valid claim, benefits will be issued after any appeals are resolved. Please be patient.

## BASIC INFORMATION

### 1. Why was this notice issued?

A federal court authorized this notice because you have a right to know about the proposed Settlement and about all of your options before it decides whether to approve the Settlement. This notice explains the Lawsuits, the Settlement, your legal rights, the benefits that are available, and who may qualify for those benefits.

Judge Raymond P. Moore of the United States District Court, District of Colorado is overseeing the Settlement, which resolves twelve similar cases, known as (1) *Kramer v. Alterra Mountain Co. and Ikon Pass Inc.*, Case No. 1:20-cv-01057-RM-SKC (D. Colo.); (2) *Eckert v. Alterra Mountain Co. and Ikon Pass, Inc.*, Case No. 1:20-cv-01158-RM-SKC (D. Colo.); (3) *Farmer v. Alterra Mountain Co. U.S. Inc. and Ikon Pass Inc.*, Case No. 1:20-cv-01175-RM-SKC (D. Colo.); (4) *Cleaver v. Alterra Mountain Co. and Ikon Pass Inc.*, Case No. 1:20-cv-01186-RM-SKC (D. Colo.); (5) *Werner et al. v. Alterra Mountain Co. and Ikon Pass Inc.*, Case No. 1:20-cv-01254-RM-SKC (D. Colo.); (6) *Steijn et al. v. Alterra Mountain Co. U.S. Inc.*, Case No. 1:20-cv-01347-RM-SKC (D. Colo.); (7) *Blum v. Alterra Mountain Co.*, Case No. 1:20-cv-01520-RM-SCK (D. Colo.); (8) *Kress v. Alterra Mountain Co. U.S. Inc.*, Case No. 1:20-cv-01583-RM-SKC (D. Colo.); (9) *Simpson v. Alterra Mountain Co.*, Case No. 1:20-cv-01691-RM-SKC (D. Colo.); (10) *Du v. Alterra Mountain Co. U.S. Inc.*, Case No. 1:20-cv-01699-RM-SKC (D. Colo.); (11) *Christiansen v. Alterra Mountain Co.*, Case No. 1:20-cv-02021-RM-SKC (D. Colo.); and (12) *Goldsmith v. Alterra Mountain Co.*, Case No. 1:20-cv-02907-RM-SKC (D. Colo.) (the “Lawsuits”).

The people who sued are called the “Plaintiffs,” and the companies sued, Alterra Mountain Company, Alterra Mountain Company U.S. Inc., and Ikon Pass Inc. are together called “Alterra” or “Defendants”.

### 2. Why did I receive this notice?

If you received a notice by email or mail, the Defendants’ records indicate that you purchased or received an Ikon Pass or Ikon Base Pass that was purchased on your behalf for the 2019-2020 ski season. These specific passes are referred to as the “Class Ikon Passes” or “2019/20 Ikon Passes” throughout this notice.

### 3. What is the lawsuit about?

The Lawsuits allege the 2019/20 ski season was ended prematurely by Alterra due to COVID-19 and that 2019/20 Ikon Pass holders are entitled to damages stemming from their pass purchases.

Alterra denies that the 2019/20 Ikon Passes promised or guaranteed a season of any particular length, or that 2019/20 Ikon Pass holders are entitled to refunds because COVID-19 caused ski resorts to close. Alterra also denies that it violated any law or engaged in any wrongdoing.

### 4. Why is this a class action?

In a class action, one or more people called “Class Representatives” sue for all people who have similar claims. Together, these people with similar claims are called a “Settlement Class” or “Class Members.” One court resolves the legal issues for all Class Members, except for those who exclude themselves from the Settlement Class.

### 5. Why is there a Settlement?

**The Court did not decide which side was right or whether the 2019/20 Ikon Pass holders are entitled to refunds.** Instead, both sides agreed to the Settlement to avoid the costs and risks of further litigation and to provide benefits to Class Members. The Settlement does not mean that the Court found that Defendants broke any laws or did anything wrong. The Class Representatives and the lawyers representing them (called “Class Counsel”) believe that the Settlement is in the best interests of all Class Members.

## THE SETTLEMENT CLASS—WHO IS INCLUDED

### 6. Who is included in the Settlement?

The Settlement Class includes all residents of the United States and its territories who: (a) purchased any form of Ikon pass for the 2019/20 season; or (b) received as a gift, from a donor meeting those requirements, any form of Ikon pass not used by the donor or by anyone else after the donor purchased the Ikon pass and before the donor gave the Ikon pass to the Settlement Class Member; **and** who used their Ikon pass for mountain access to any resort accessible with a 2019/20 Ikon Pass (“Ikon Resort”) on one or more days on or before March 15, 2020.

### 7. Who is not included in the Settlement Class?

The following are not included in the Settlement Class: (1) 2019/20 Ikon Pass holders **who did not use** their Ikon pass for mountain access to any Ikon Resort on or before March 15, 2020; (2) officers, directors, and employees of Defendants and their parents and subsidiaries; (3) insurers of Class Members; (4) subrogees (someone who has assumed the rights of another person) or all entities that claim to be subrogated to the rights of a 2019/20 Ikon Pass purchaser, a 2019/20 Ikon Pass holder, or a Class Member; (5) all third-party issuers or providers of insurance for the 2019/20 Ikon Passes, and (6) all persons who previously received a 2019/20 Ikon pass as a complimentary gift from Alterra.

## THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

### 8. What benefits does the Settlement provide?

The Settlement provides for a **Pass Credit** toward the purchase of a 2023/24 or 2024/25 Ikon Pass product, or a **Lift Product Voucher** toward the purchase and use on or before July 31, 2025 of one single-day lift ticket at any single Alterra Resort.

### 9. Tell me more about the Pass Credits and Lift Vouchers provided by the Settlement

#### Pass Credits

- A. **Pass Credit Amounts.** For any Settlement Class Member who used their 2019/20 Ikon Pass to access an Ikon Resort a total of one or more days on or before March 15, 2020, the following Pass Credits are available:
1. A single \$150 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 1 day;
  2. A single \$125 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 2 days;
  3. A single \$100 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 3 days;
  4. A single \$50 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 4 days;
  5. A single \$20 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 5 or 6 days; and
  6. A single \$10 Pass Credit for Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort 7 or more days.
- B. **Pass Credit Delivery.** Unless a Settlement Class Member submits a Valid Election for a Lift Product Voucher in lieu of a Pass Credit, the appropriate Pass Credit amount will automatically be applied to each Settlement Class Member’s Ikon pass holder profile without any requirement to fill out a claim form or take any other affirmative action. The appropriate Pass Credit amount will be loaded into the online Ikon pass holder account of the primary pass holder associated with the Settlement Class Member’s profile as of the date of disbursement of the Pass Credit.
- C. **Pass Credit Scope of Use.** Each Pass Credit must be used in full in a single transaction, and

**QUESTIONS? CALL [1-800-NUMBER] OR GO TO [WWW.WEBSITE.COM]**

may be used at any time during the standard applicable sales period toward the purchase of any Ikon pass product available for use during the 2023/24 or 2024/25 Ski Seasons that the Pass Credit recipient is eligible for. A Pass Credit may be applied toward the purchase of an Ikon pass product at an already discounted price or be applied with other available discounts (e.g., renewal credit, nurses discount, college discount, and so on).

- D. **Pass Credit Transferability.** The Pass Credit amount is not transferrable except to another Ikon pass holder associated with the same primary pass holder account (an “Affiliate Ikon Pass Holder”). To request a qualifying transfer to an Affiliate Ikon Pass Holder (that is, someone within the same primary pass holder account), the primary pass holder must contact Alterra’s standard call center.
- E. **Stack-ability.** Upon transfer, Affiliate Ikon Pass Holder Pass Credits may be used in combination, to purchase one or more Ikon pass product(s) as described above for anyone who is an Affiliate Ikon Pass Holder. Each Pass Credit, however, may only be used toward the purchase of a single qualifying Ikon pass product, and any unused remaining portion of said Credit will be forfeited.

### **Lift Product Voucher**

- A. **Lift Product Voucher Amounts.** For any Settlement Class Member who used their 2019/20 Ikon Pass to access an Ikon Resort a total of one or more days prior to March 15, 2020, the following Lift Product Vouchers are available to elect **instead of** a Pass Credit:
  - 1. Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 1 day, may elect to receive one 50% Lift Product Voucher;
  - 2. Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 2 days, may elect to receive one 40% Lift Product Voucher;
  - 3. Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 3 days, may elect to receive one 30% Lift Product Voucher;
  - 4. Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 4 days, may elect to receive one 25% Lift Product Voucher; and
  - 5. Settlement Class Members who used their 2019/20 Ikon Pass to access an Ikon Resort exactly 5 or more days, may elect to receive one 20% Lift Product Voucher.

- B. **Lift Product Voucher Election and Delivery.** If a Settlement Class Member submits a Claim Form and makes a Valid Election (in lieu of a Pass Credit), the Lift Product Voucher will be applied to the individual Ikon pass holder profile and placed in the account of the primary pass holder associated with the Settlement Class Member's profile as of the date of disbursement of the Lift Product Voucher. To make a Valid Election, a Settlement Class Member must submit a properly completed claim form by the Court-approved deadline that includes, among other information, the name, address, email address, and unique Customer ID or Pass ID associated with their Ikon pass holder account.
- C. **Lift Product Voucher Scope of Use.** The Lift Product Voucher may be applied toward the purchase and use on or before July 31, 2025 of one single-day lift ticket at any single Alterra Mountain Company-owned or operated resort. The Lift Product Voucher may be redeemed and applied toward the purchase of a single day lift ticket online through the applicable Alterra Mountain Company-owned or operated resort's website or at the walk-up window. A Lift Product Voucher may be applied toward the purchase of a single day lift ticket at the posted full or Advance Purchase rate, but may not be applied to an already discounted rate or combined with other available discounts.
- D. **Lift Product Voucher Transferability.** The Lift Product Voucher is fully transferrable and may be resold once by each Settlement Class Member recipient. To complete a transfer, a Settlement Class Member will, using their online Ikon pass holder account, enter the email address of the transferee. The transferee will then receive an email prompting them to accept or decline the transfer. To accept the transfer, the transferee must have or create an online Ikon account, though they need not make any purchase. A Lift Product Voucher may not be transferred or resold a second time.

#### 10. What is the deadline to submit a Claim Form?

You will have until [90 DAYS AFTER NOTICE DATE] to submit a Claim Form to receive a Lift Product Voucher instead of a Pass Credit.

### HOW TO GET BENEFITS—SUBMITTING A CLAIM FORM

#### 11. How many benefits can I receive?

If you qualify, you may receive one benefit for each 2019/20 Ikon Pass issued to you.

#### 12. How do I get a Settlement benefit to which I may be entitled?

**You do not need to do anything** to receive in your online Ikon Pass account the Pass Credit to which you are eligible.

**If you wish to receive a Lift Product Voucher instead of a Pass Credit, you must submit a Claim Form**, either on-line or via U.S. Mail within [90 DAYS AFTER NOTICE DATE].

Claim Forms are available for download and submission at [www.WEBSITE.com]. You can also contact the Settlement Administrator by telephone at [1-800-NUMBER], by email at [EMAIL@WEBSITE.com], or by writing to [Settlement Administrator], Goodrich v. Alterra Mountain Company Settlement, Attn: Class Action Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103, to request a Claim Form.

#### 13. What rights am I giving up by getting benefits and staying in the Settlement Class?

Unless you exclude yourself, you are staying in the Settlement Class. If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. Generally, that means you won't be able to sue, continue to sue, or be part of any other lawsuit against Defendants or other released parties ("Releasees") for the legal issues and claims resolved by this Settlement. The specific rights you are giving up are called Released Claims (see Question 14).

#### 14. What are the Released Claims?

**QUESTIONS? CALL [1-800-NUMBER] OR GO TO [WWW.WEBSITE.COM]**

The claims that you are releasing, the “Released Claims,” are all claims for economic loss or damages relating to the 2019/20 Ikon Passes, 2019/20 Ski Season, or the closure of any resorts participating within the Ikon network for the 2019/20 Season. The released parties, also called “the Releasees,” are (i) Defendants, together with their predecessors and successors in interest, parents, subsidiaries, affiliates, and assigns; (ii) each of Defendants’ past, present, and future officers, directors, agents, representatives, servants, employees, attorneys, and insurers; and (iii) all Ikon Resorts and their owners and operators. The Settlement is expressly intended to cover and include all such claims, actions, and causes of action for economic losses or damages dealing whatsoever with the 2019/20 Ikon Passes.

The complete Settlement Agreement describes the Released Claims in necessary legal terminology. Please read it carefully. A copy of the Settlement Agreement is available at [\[www.WEBSITE.com\]](http://www.WEBSITE.com).

## THE LAWYERS REPRESENTING YOU AND THE SETTLEMENT CLASS

### 15. Do I have a lawyer in this case?

Yes. The Court appointed Yeremey Krivoshey and Scott Bursor of Bursor & Fisher, P.A.; and Jonas Jacobson, Simon Franzini, Gregory Dovel, and Julien Adams of Dovel & Luner LLP as Class Counsel, to represent you and other Class Members. You will not be charged for the services of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 16. How will these lawyers be paid?

Class Counsel will ask the Court to award them up to \$2,872,000 for attorney fees and reimbursement of the litigation expenses and costs they incurred and/or advanced. They will also ask for service awards of \$3,500.00 to be paid to Class Representatives Timothy Goodrich, Nolte Mehnert, George T. Farmer, Erik Ernstrom, W. Walter Layman, Bradley Briar, and Keri Reid. If approved, Alterra will separately pay these fees, costs, expenses, and service awards. **These amounts will not reduce the amount of benefits available to Class Members.** In addition, Defendants have also agreed to pay the Settlement Administrator’s fees and expenses, including the costs of mailing the Settlement Notices and distributing any payments owed to Class Members as part of the Settlement.

## EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

If you want to keep the right to sue or continue to sue Defendants about the legal claims in this lawsuit, and you don’t want to receive benefits from this Settlement, you must take steps to exclude yourself from the Settlement. This is sometimes called “opting out” of the Settlement Class.

### 17. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send by U.S. mail a letter or written request to the Settlement Administrator. Your request must include all of the following: your name, your current email address and mailing address, and the email address and mailing address associated with your online Ikon Pass account. To be valid, your Request for Exclusion must include all of the information requested, must be individually signed, and must be individually sent to the Settlement Administrator at the address below with a postmark no later than **[DATE 45 DAYS AFTER NOTICE DATE]**.

#### ***Goodrich v. Alterra Mountain Company Settlement***

Attn: Class Action Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

### 18. If I exclude myself, can I still get benefits from this Settlement?

No. If you exclude yourself, you are telling the Court that you don’t want to be part of the Settlement Class in this Settlement. You can only get Settlement benefits if you stay in the Settlement Class and, if necessary, submit a valid Claim Form for benefits as described above.

### 19. If I don't exclude myself, can I sue Defendants for the same claims later?

No. Unless you exclude yourself, you are giving up the right to sue Defendants for the claims that this Settlement resolves and releases (see Question 14). You must exclude yourself from this Settlement Class to start or continue with your own lawsuit or be part of any other lawsuit involving the same claims.

## OBJECTING TO THE SETTLEMENT

You can tell the Court if you don't agree with the Settlement or with any part of it.

### 20. How do I tell the Court if I don't like the Settlement?

If you do not exclude yourself from the Settlement, you may object to it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views before making a decision. To object, you or your attorney must mail and cause to be postmarked a written objection and supporting papers to the Settlement Administrator. Your objection must contain: (1) the name of the Lawsuit (*Kramer v. Alterra Mountain Co. and Ikon Pass Inc.*, Case No. 1:20-cv-01057-RM-SKC (D. Colo.)); (2) your full name and current address and telephone number; (3) the specific reasons for your objection; (4) any evidence and supporting papers (including, but not limited to, all briefs, written evidence, and declarations) that you want the Court to consider in support of your objection; and (5) your signature.

You must mail your written objection to the Settlement Administrator at the address listed in response to Question 17.

Your written objection must be mailed with a postmark no later than **[DATE 45 DAYS AFTER NOTICE DATE]**.

### 21. What is the difference between objecting and asking to be excluded from the Settlement?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class (do not exclude yourself). Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you cannot object because the Settlement no longer affects you.

## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak at the hearing, but you don't have to.

### 22. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on **[DATE]** at **[TIME]**, at the U.S. District Court for the District of Colorado, located at the Alfred A. Arraj United States Courthouse, 901 19<sup>th</sup> Street, Denver, CO 80294, Courtroom A601, to consider whether the Settlement is fair, adequate, and reasonable, and whether it should be finally approved. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing (see Question 24). The Court may also decide the amount of fees, costs and expenses to award Class Counsel and the payment amount to the Class Representatives. This hearing may be continued or rescheduled by the Court without further notice to the Settlement Class.

### 23. Do I have to come to the hearing?

No. Class Counsel is working on your behalf and will answer any questions the Court may have about the Settlement. However, you are welcome to come at your own expense. If you mail an objection to the Settlement, you don't have to come to Court to talk about it. As long as you mail your written objection on time, sign it, and provide all of the required information (see Question 20) the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

### 24. May I speak at the hearing?

Yes. You may ask the Court to speak at the Fairness Hearing. To do so, you must mail or file a written request to the Court stating that it is your "Notice of Intent to Appear at the Fairness Hearing in *Kramer v. Alterra Mountain Co. and Ikon Pass Inc.*, Case No. 1:20-cv-01057-RM-SKC". You must include your name, address, telephone number, and signature. If you plan to have your own attorney speak for you at the hearing, you must also include the name, address, and telephone number of the attorney who will appear on your behalf. Your written Notice of Intent to Appear must be mailed or filed with the Court by **[DATE 45 DAYS AFTER NOTICE DATE]**.

## **IF YOU DO NOTHING**

### **25. What happens if I don't do anything?**

**If you received notice from the [Settlement Administrator] that you are an eligible Class Member**, and do nothing, you will automatically receive in your online Ikon Pass account the Pass Credit to which you are eligible, and you will give up your right to ever be part of another lawsuit against Defendants about the legal claims resolved by this Settlement.

**If you did not receive notice from the [Settlement Administrator] that you are an eligible Class Member**, but are an eligible member of the Class, and do nothing, you will not receive any settlement benefits, and you will give up your right to ever be part of another lawsuit against Defendants about the legal claims resolved by this Settlement.

In either event, if the Court approves the Settlement, you will be bound by its terms, and you will give up your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants and the other Releaseses about the legal issues or claims resolved and released by this Settlement.

## GETTING MORE INFORMATION

### 26. What if I feel like I need more information about what I should or should not do?

This Notice summarizes the Settlement. More details are in the Settlement Agreement, available online at [www.WEBSITE.com]. If you have questions, you may contact the Settlement Administrator at the address listed in response to Question 17, [EMAIL@WEBSITE.com], or [PHONE], or visit Class Counsel's website (website) for their contact information should you wish to communicate with them directly.

**DO NOT WRITE OR CALL THE COURT, ALTERRA, OR ANY ALTERRA OR IKON RESORT FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.**

**QUESTIONS? CALL [1-800-NUMBER] OR GO TO [WWW.WEBSITE.COM]**

**You may be eligible  
for a benefit as part  
of a class action  
settlement about  
2019-2020 Ikon  
Passes and Ikon  
Base Passes**

For more information on the proposed settlement, to file a claim or objection, or to exclude yourself, visit [\[www.WEBSITE.com\]](http://www.WEBSITE.com) or contact the Settlement Administrator or Class Counsel.

**Do not contact the Court, Alterra, or any resort for information about the settlement.**

*Goodrich v. Alterra Mountain Company Settlement*  
Class Action Administrator  
1650 Arch Street, Suite 2210  
Philadelphia, PA 19103

«ScanString»

Postal Service: Please do not mark barcode

Claim#: PQ12345678

Random #:

«FirstName» «LastName»

«Address1»

«Address2»

«City», «StateCd» «Zip»

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

A proposed settlement has been reached in a class action against Alterra seeking money back for 2019-2020 Ikon Passes and Ikon Base Passes ("2019/20 Ikon Passes") because of ski resort closures in March 2020 due to COVID-19. This notice summarizes your legal rights. You should visit [\[www.WEBSITE.com\]](http://www.WEBSITE.com) to obtain more complete information about covered models, the proposed settlement, and your rights. You also can write to the Settlement Administrator at the address on the reverse side, or call [\[1-800-NUMBER\]](tel:1-800-NUMBER), to have a Claim Form mailed to you.

**What is the class action about?** Plaintiffs allege the 2019/20 ski season was ended prematurely by Alterra due to COVID-19 and that 2019/20 kon Pass holders are entitled to damages stemming from their pass purchases.

**What are my rights?** The settlement class includes all persons in the United States and its territories who (a) purchased any form of kon Pass for the 2019-2020 season, or (b) received as a gift, from a donor meeting those requirements, any form of Ikon Pass not used by the donor or by anyone else after the donor purchased the kon Pass and before the donor gave the kon Pass to the settlement class member, who used their kon Pass for mountain access to any Ikon resort on one or more days on or before March 15, 2020. Alterra's records show that you may be a member of the settlement class and, subject to additional terms, eligible for (i) a Pass Credit toward the purchase of a 2023-24 or 2024-25 Ikon Pass or Ikon Base Pass; or (ii) a Lift Product Voucher to be used toward the purchase of one single day lift ticket at any single Alterra Mountain Company-owned or operated resort to be used on or before July 31, 2025. If you qualify for a Pass Credit, that Credit will automatically be added to the account of the primary pass holder associated with your kon Pass profile. If, however, you are eligible and wish to receive the Lift Product Voucher instead of the Pass Credit, you must submit a Claim Form to the Settlement Administrator online at [www.WEBSITE.com](http://www.WEBSITE.com) or by mail at the address on the reverse side postmarked [90 DAYS AFTER NOTICE DATE] and make that election.

**How to request exclusion from the class.** If you do not wish to participate in this class action, visit [www.WEBSITE.com](http://www.WEBSITE.com) to submit a Request for Exclusion. You also can write to the Settlement Administrator at the address on the reverse side, or call [1-888-000-0000], to have a Request for Exclusion mailed to you. All requests for exclusion shall be individually submitted or postmarked [45 DAYS AFTER NOTICE DATE], and must include all required information to be valid. If you do not exclude yourself, you will lose your right to sue Alterra and obtain any compensation from them other than through this settlement.

**How to make objections.** If you remain in the class, you can comment on or object to the proposed settlement, Class Counsel's fees, or Plaintiffs' service awards by mailing a written objection to the Settlement Administrator at the address on the reverse side. The fairness hearing will be held at the Court on [DATE / TIME]. You or your attorney (if you choose to hire one) may appear at the hearing by filing or mailing a notice and entry of appearance with the Court [45 DAYS AFTER NOTICE DATE].

**Class Counsel's attorney fees.** If the settlement is approved, the lawyers for Plaintiffs and the class (Class Counsel) will request an award of attorney fees, reimbursement of litigation expenses not to exceed the total amount of \$2,872,000, to be paid by Alterra separately from and in addition to the benefits to the Class. In addition, the named Plaintiffs may seek service or incentive awards up to \$3,500.

**EXHIBIT D TO TERM SHEET FOR PROPOSED CLASS SETTLEMENT**

***Goodrich, et al. v. Alterra Mountain Co., et al.,*  
Case No. 1:20-cv-01057 (D. Colo.)**

**WHEREAS**, Bursor & Fisher, P.A. (“Plaintiffs’ Counsel”), along with its principal Scott A. Bursor, Esq. (“Bursor”), desire to give an undertaking for repayment of their award of attorney fees and costs (“Undertaking”), as is required by the Settlement Agreement entered into by the Parties to *Goodrich, et al. v. Alterra Mountain Co., et al.*, Case No. 1:20-cv-01057 (D. Colo.);

**NOW, THEREFORE**, Bursor, on behalf of himself as an individual and as agent for his law firm, Bursor & Fisher, P.A., by making this Undertaking, hereby submits himself and his law firm to the jurisdiction of the Court, for the purpose of enforcing the provisions of this Undertaking. Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement. The obligations of Bursor and his law firm created herein are joint and several.

Plaintiffs’ Counsel and Bursor understand and agree that, in the event the Final Approval Order and/or Final Judgment, or any part thereof, are vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Plaintiffs’ Counsel shall, within thirty (30) days of the Court of Appeal’s vacating, overturning, reversing, or voiding the Final Approval Order and/or Final Judgment (or any part thereof) or of the termination of the Settlement Agreement, repay to Defendants the full amount of the attorney’s fees, costs, and expenses paid by Defendants to Plaintiffs’ Counsel.

In the event the attorney’s fees, costs, and expenses are awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Plaintiffs’ Counsel shall, within thirty (30) days of the Court of Appeal’s vacating, modifying, reversing, or voiding the attorney’s fees, costs, and expenses repay to Defendants the attorney’s fees, costs, and expenses paid by Defendants to Plaintiffs’ Counsel and/or Class Representatives in the amount vacated or modified. Those sums shall be repaid pursuant to the terms herein. If on appeal the settlement is approved but the Fee and Expense Award is reduced, then the sums to be repaid will be returned to Defendants. If the settlement is disapproved along with the Fee and Expense Award, then the sums to be repaid will be returned to Defendants.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Approval Order and Final Judgment, including and up until any petition to the United States Supreme Court.

In the event Plaintiffs’ Counsel fails to repay to Defendants any attorney’s fees, costs, and expenses that are owed to them pursuant to this Undertaking, the Court shall, upon application of Defendants, and notice to Plaintiffs’ Counsel, summarily issue orders, including but not limited to judgments and attachment orders against Bursor, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulates, warrants and represents that he has both actual and apparent authority to enter into this stipulation, agreement, and Undertaking on behalf of his law firm and himself as an individual. This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures by facsimile shall be as effective as original signatures. The undersigned declares under penalty of perjury under the laws of the United States of America that he has read and understood the foregoing and that it is true and correct.

SCOTT A. BURSOR  
BURSOR & FISHER, P.A.

DATED: 8/10/22

*Scott Bursor*  
Scott Bursor (Aug 10, 2022 14:35 EDT)

\_\_\_\_\_  
Scott A. Bursor  
on behalf of himself and Bursor & Fisher, P.A.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

Civil Action No. 20-cv-01057-RM-SKC

Consolidated for Pretrial:

20-cv-01158-RM-SKC;	20-cv-01175-RM-SKC
20-cv-01186-RM-SKC;	20-cv-01254-RM-SKC
20-cv-01347-RM-SKC;	20-cv-01520-RM-SKC
20-cv-01583-RM-SKC;	20-cv-01691-RM-SKC
20-cv-01699-RM-SKC;	20-cv-02021-RM-SKC
20-cv-02907-RM-SKC	

TIMOTHY GOODRICH, NOLTE MEHNERT, GEORGE T. FARMER JOSEPH PANGANIBAN, ERIK ERNSTROM, W. WALTER LAYMAN, BRADLEY BRIAR, and KERI REID, each individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ALTERRA MOUNTAIN COMPANY, ALTERRA MOUNTAIN COMPANY U.S. INC., and IKON PASS INC.,

Defendants.

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**DECLARATION OF YEREMEY KRIVOSHEY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS AND EXPENSES AND PLAINTIFFS' SERVICE AWARDS**

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I, Yeremey Krivoshey, declare:

1. I am a partner in the law firm of Bursor & Fisher, P.A., appointed as Interim Co-Lead Class Counsel by the Court in this action on July 31, 2020. I make this declaration in support of the Motion for Attorneys' Fees, Costs and Expenses and Plaintiffs' Service Awards (the "Motion").

2. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

**I. DISCOVERY**

3. As discussed when Bursor & Fisher and Dovel & Luner sought appointment as Interim Co-Lead Class Counsel, the firms conducted a diligent investigation of the potential claims arising from Defendants' breach of contract, false and misleading marketing and

omissions, and related wrongs. Prior to appointment, the firms: (a) investigated potential legal claims arising from Defendants' misrepresentation of its 2019-2020 ski passes as described in the complaints; (b) investigated Defendants' refund policies; (c) analyzed Defendants' representations on its website, terms of use, press releases, and emails; (d) analyzed Defendants' COVID-19 refund policy and announcements; (e) researched Defendants' corporate structure; (f) investigated the potential damages model necessary for the claims in this action; (g) interviewed dozens of class members and potential clients and analyzed and compiled consumer complaints; (h) investigated potential claims of class members that purchased ski pass insurance and filed separate claims against the insurers; and (i) evaluated the adequacy of the named plaintiffs.

4. After appointment, the Parties began discovery in earnest in September 2021, exchanging initial disclosures, serving requests for production, interrogatories, and third-party subpoenas on the National Ski Areas Association, Inc., Powdr Corporation, and RRC Associates, LLC. The Parties conducted extensive discovery, both through formal exchanges and through mediation. Defendants produced hundreds of thousands of Ikon Pass holder purchase and visitation records, responded to interrogatories, and produced information concerning revenue, sales, and customer renewal rates. This information was critical to an analysis of damages, as Plaintiffs' damages theory rested largely on the contention that Defendants prematurely ended the ski "season" without compensation or refunds. Plaintiffs retained three experts to analyze both liability issues (*i.e.*, the amount of the season that was cut short) and damages. Plaintiffs developed multiple damages theories, using data on ski pass usage and season length. This included theories for both legal damages and, alternatively, equitable restitution.

## II. SETTLEMENT NEGOTIATIONS

5. Settlement negotiations were arduous, contentious, and well-informed. In late October 2021, the Parties booked a mediation before Jill R. Sperber, Esq., of Judicate West. Prior the mediation, the parties conducted an extensive review of Defendants' Class Member and revenue records, consulted with experts, and exchanged sober reviews of respective damages methodologies and analyses. The Parties participated in a full-day mediation before Ms. Sperber

on January, 24 2022, and then continued those negotiations with the mediator throughout the months that followed. The Parties negotiated the benefits due to Settlement Class Members through the mediator and were able to finalize those terms prior to any discussion of reasonable attorneys' fees, costs, and service awards to the Plaintiffs. Only after reaching an agreement as to the Class benefit terms, the Parties began negotiations through the mediator regarding reasonable attorneys' fees, costs, and service awards to the Plaintiffs, which, as discussed below, do not derogate in any way from the benefits that are otherwise available to Settlement Class Members under the Settlement. The Parties executed a binding term sheet on June 5, 2022. After finalizing and executing the term sheet, the Parties drafted and negotiated the terms of the full Settlement Agreement, including the contents of the notice plan and Claim Form. The Settlement Agreement was executed on August 11, 2022.

### **III. THE BACKGROUND AND EXPERIENCE OF INTERIM CO-LEAD CLASS COUNSEL (BURSOR & FISHER, P.A.)**

6. I received my Juris Doctor from New York University School of Law in 2013, and my Bachelor of Arts in Political Science and Psychology from Vanderbilt University in 2010, *cum laude*. I started working at Bursor & Fisher, P.A. right out of law school, in 2013, as an associate, and was promoted to partner in December 2018. While in law school, I also worked as a Law Clerk at the United States Department of Justice, the American Civil Liberties Union, and at Vladeck, Waldman, Elias & Engelhard, P.C., focusing on employment discrimination and wage and hour disputes.

7. Class actions are rarely brought to trial. However, the partners at Bursor & Fisher have served as trial counsel for class action plaintiffs in six jury trials and have won all six, with recoveries ranging from \$21 million to \$299 million.

- i. In 2007, Mr. Bursor and Mr. Fisher served as lead trial counsel in *Thomas v. Global Vision Products* (Alameda County Superior Court), representing a class of approximately 150,000 California consumers who had purchased the Avacor hair regrowth system, asserting claims for violations of California's consumer protection statutes. After a four-week trial the jury returned a \$37 million verdict for the class. The trial judge increased the award to \$40 million.

- ii. In 2008, Mr. Bursor and Mr. Fisher served as lead trial counsel in *Ayyad v. Sprint Spectrum L.P.* (Alameda County Superior Court), representing a class of 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under Civil Code § 1671(d), as well as other statutory and common law claims. After a five-week trial, the jury returned a verdict in June 2008, and the Court issued a Statement of Decision in December 2008 awarding the class more than \$299 million in cash and debt cancellation. The class prevailed on six of six counts asserted in the complaint and was awarded 100% of the relief sought.
- iii. In 2008, Mr. Bursor and Mr. Fisher served as lead trial counsel in *White v. Verizon Wireless* (Alameda County Superior Court), representing a class of 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under Civil Code § 1671(d), as well as other statutory and common law claims. After Mr. Bursor presented the class's case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.
- iv. In 2009, Mr. Bursor and Mr. Fisher served as lead trial counsel in a second trial in *Thomas v. Global Vision Products*, in which the class asserted claims against a minority shareholder in the company. After another four-week trial the jury returned a verdict awarding more than \$50 million to the class. The legal trade publication VerdictSearch reported this was the second largest jury verdict in California in 2009.
- v. In 2013, Mr. Bursor and Mr. Fisher served as lead trial counsel in a second trial in *Ayyad v. Sprint Spectrum L.P.* (Alameda County Superior Court). After we had prevailed on the class claims challenging Sprint's termination fees in 2008, Sprint asserted a \$1.06 billion cross-claim against the class for breach of contract. See *Garrett v. Coast & Southern Federal Sav. & Loan Ass'n*, 9 Cal. 3d 731, 740-41 (1973) (holding that invalidation of a liquidated damages provision does not permit the breaching party to "escape[] unscathed," because he "remains liable for the actual damages resulting from his default"). After a four-week trial, the jury returned a verdict awarding only 2% of Sprint's claimed damages. This verdict secured the Class's net cash recovery of at least \$55 million after a setoff for Sprint's actual damages.
- vi. In 2019, I, along with Mr. Bursor, and Mr. Fisher, served as lead counsel in *Perez v. Rash Curtis & Associates* (N.D. Cal.), representing a nationwide class of 40,420 people that received autodialed and prerecorded messages on their cellular telephones without their prior

express consent, asserting that the phone calls violated the Telephone Consumer Protection Act (“TCPA”). After a one-week trial, the jury returned a verdict in May of 2019 finding that Defendant made 534,712 calls that violated the TCPA. Pursuant to the TCPA, each of the 534,712 calls entitled class members to a minimum of \$500 per unlawful phone call, entitling class members to a \$267 million judgment. The District Court entered Judgment for \$267 million in September 2019.

8. In addition to the \$267 million trial victory in *Perez* in 2019, I have been counsel to class action plaintiffs in dozens of cases in jurisdictions throughout the United States. Since 2017, I have secured over \$200 million for class members in consumer class settlements. Since December 2010, Bursor & Fisher has won appointment as Class Counsel or Interim Class Counsel in:

- i. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
- ii. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
- iii. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
- iv. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,
- v. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,
- vi. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
- vii. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
- viii. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
- ix. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
- x. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,

- xii. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
- xiii. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
- xiv. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
- xv. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
- xvi. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
- xvii. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
- xviii. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
- xix. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
- xx. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
- xxi. *Moeller v. American Media, Inc.,* (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- xxii. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellents,
- xxiii. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,
- xxiv. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,
- xxv. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- xxvi. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
- xxvii. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
- xxviii. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,

- xxviii. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- xxix. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
- xxx. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
- xxxi. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
- xxxii. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- xxxiii. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
- xxxiv. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
- xxxv. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- xxxvi. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
- xxxvii. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- xxxviii. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
- xxxix. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,
- xl. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines due to the novel coronavirus, COVID-19, and whose tickets were not refunded,
- xli. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
- xlii. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,

- xliv. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- xliv. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
- xlv. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
- xlvi. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
- xlvii. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
- xlviii. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
- xliv. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
  - l. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
  - li. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
  - lii. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,
  - liii. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,
  - liv. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
  - lv. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
  - lvi. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 201), to represent a certified nationwide

- class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
- lvii. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
  - lviii. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
  - lix. *Frederick v. Examsoft Worldwide, Inc.*, (Cir. Ct. DuPage Cnty. Jan. 6, 2022) to represent a certified class of exam takers who used virtual exam proctoring software, in alleged violation of the Illinois Biometric Information Privacy Act,
  - lx. *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, (Cir. Ct. Will Cnty. Jan. 18, 2022) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
  - lxi. *Goldstein v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard antiperspirants that were allegedly contaminated with benzene,
  - lxii. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of who laundry card purchasers who were allegedly subjected to deceptive practices by being denied cash refunds,
  - lxiii. *Lewis v. Trident Manufacturing, Inc.*, (Cir. Ct. Kane Cnty. Mar. 16, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
  - lxiv. *Croft v. Spinx Games Limited, et al.*, (W.D. Wash. Mar. 31, 2022) to represent a certified class of Washington residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Washington law,
  - lxv. *Fischer v. Instant Checkmate LLC*, (N.D. Ill. Mar. 31, 2022) to represent a certified class of Illinois residents whose identities were allegedly used without their consent in alleged violation of the Illinois Right of Publicity Act,
  - lxvi. *Rivera v. Google LLC*, (Cir. Ct. Cook Cnty. Apr. 25, 2022) to represent a certified class of Illinois residents who appeared in a photograph in Google Photos, in alleged violation of the Illinois Biometric Information Privacy Act,
  - lxvii. *Loftus v. Outside Integrated Media, LLC*, (E.D. Mich. May 5, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
  - lxviii. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19.

9. A copy of my firm's resume, which includes more detailed information about our practice and the qualifications of the other Bursor & Fisher lawyers who worked on this case, is attached as **Exhibit 1**.

#### **IV. BURSOR & FISHER'S LODESTAR AND EXPENSES**

10. Attached as **Exhibit 2** are my firm's detailed billing diaries for this case. I have personally reviewed all of my firm's time entries, and have used billing judgment to ensure that duplicative or unnecessary time has been excluded and that only time reasonably devoted to the litigation has been included. The time and descriptions displayed in these records were regularly and contemporaneously recorded by me and the other timekeepers of the firm pursuant to firm policy and have been maintained in the computerized records of my firm.

11. As of November 2, 2022, Bursor & Fisher expended 429.3 hours in this case. Bursor & Fisher's lodestar fee based on hours spent to date in this case, based on current billing rates, is \$274,747.50. In addition to the time enumerated above, I estimate that Interim Co-Lead Class Counsel will collectively incur an additional 100-300 hours of future work handling issues that may arise with the notice campaign, answering class member questions, responding to any objections, briefing the final approval motion and appearing at the final approval hearing, and handling any appeals, if applicable. Indeed, some of the benefits under the Settlement do not expire until the 2024/2025 ski season, meaning that even if there were no appeals, Interim Co-Lead Class Counsel would need to spend time overseeing the administration of the settlement for the next three years.

12. Attached hereto as **Exhibit 3** is an itemized listing of each out-of-pocket expense my firm incurred in this case. These expenses are reflected in the records of Bursor & Fisher, and were necessary to prosecute this litigation. All expenses were carefully and reasonably expended, and they reflect market rates for various categories of expenses incurred. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

13. To date, Bursor & Fisher has expended \$10,559.91 in out-of-pocket expenses in connection with the prosecution of this action.

14. Included within **Exhibit 2** is a chart setting forth the hourly rates charged for lawyers and staff at my firm. Based on my knowledge and experience, the hourly rates charged by my firm are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. These are the same hourly rates that we actually charge to our regular hourly clients who have retained us for non-contingent matters, and which are actually paid by those clients. As a matter of firm policy, we do not discount our regular hourly rates for non-contingent hourly work, which has historically comprised approximately 10% of our revenue. I have personal knowledge of the range of hourly rates typically charged by counsel in our field in New York, California, Colorado, Florida, and throughout the United States, both on a current basis and in the past. In determining my firm's hourly rates from year to year, my partners and I have consciously taken market rates into account and have aligned our rates with the market.

15. Through my practice, I have become familiar with the non-contingent market rates charged by attorneys in New York, California, Florida, Colorado, and elsewhere (my firm's offices are in New York City, Walnut Creek, California, and Miami, Florida). This familiarity has been obtained in several ways: (1) by litigating attorneys' fee applications; (2) by discussing fees with other attorneys; (3) by obtaining declarations regarding prevailing market rates filed by other attorneys seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as surveys and articles on attorney's fees in the legal newspapers and treatises. The information I have gathered shows that my firm's rates are in line with the non-contingent market rates charged by attorneys of reasonably comparable experience, skill, and reputation for reasonably comparable class action work. In fact, comparable hourly rates have been found reasonable by various courts for reasonably comparable services, including:

- i. *Brody v. Hellman*, 167 P.3d 192, 201 (Colo. Ct. of App. July 12, 2007), approving as far back as 2007, hourly rates of "approximately \$1,000 per hour per attorney or paralegal" in a shareholder class action.
- ii. *Peace Officers' Annuity and Benefit Fund of Ga. V. DaVita Inc.*, 2021 WL 2981970, at \*3 (D. Colo. July 15, 2021), a PSLRA class action, in which

- the court found hourly rates “ranging from \$365 to \$895 for attorneys, and \$250 to \$275 for support staff – *are lower than hourly rates previously approved by this Court and others within the District.*” (emphasis added).
- iii. *In re Animation Workers Antitrust Litig.*, 2016 WL 6663005, at \*6 (N.D. Cal. Nov. 11, 2016), an employment antitrust class action, in which the court found hourly rates between \$845 and \$1,200 per hour to be reasonable for the lead class counsel.
  - iv. *Dawson v. Hitco Carbon Composites, Inc.*, 2019 WL 7842550, at \*9 (C.D. Cal. Nov. 25, 2019), an employment wage and hour class action, where the court noted that in Los Angeles in 2018, “partners have an hourly rate ranging from \$450 to \$955, and associates from \$382 to \$721.”
  - v. *Nitsch v. DreamWorks Animation SKG Inc.*, 2017 WL 2423161, at \*9 (N.D. Cal. June 5, 2017), an employment antitrust class action, in which the court found hourly rates between \$870 and \$1,200 per hour to be reasonable for the lead class counsel.
  - vi. *Roberti v. OSI Sys., Inc.*, 2015 WL 8329916, at \*7 (C.D. Cal. Dec. 8, 2015), a securities class action, in which the court found that rates “between \$525 to \$975-are reasonable.”
  - vii. *Rainbow Bus. Solutions v. MBF Leading LLC*, 2017 WL 6017884, at \*1 (N.D. Cal. Dec. 5, 2017), a class action concerning credit card fraud, in which the court found hourly rates between \$275 and \$950 per hour to be reasonable.
  - viii. *In re TFT-LCD (Flat Panel) Antitrust Litigation*, No. M 07 1827 SI, MDL, No. 1827 (N.D.Cal. 2013), an antitrust class action, in which the court found blended hourly rates of \$1000, \$950, \$861, \$825, \$820, and \$750 per hour reasonable for the lead class counsel.

16. The reasonableness of my firm's hourly rates are also supported by several surveys of legal rates, including the following:
- a. In an article entitled "Big Law Rates Topping \$2,000 Leave Value 'In Eye of Beholder,'" written by Roy Strom and published by Bloomberg Law on June 9, 2022, the author describes how Big Law firms have crossed the \$2,000-per hour rate. The article also notes that law firm rates have been increasing by just under 3% per year. A true and correct copy of this article is attached hereto as **Exhibit 4**.
  - b. The CounselLink Enterprise Management Trends Report for June 2022 states that the median partner rate in New York was \$1,030. The report also notes that median partner rates have grown by 4.0% in San Francisco and 4.3% in New York. A true and correct copy of this article is attached hereto as **Exhibit 5**.
  - c. In an article entitled "On Sale: The \$1,150-Per Hour Lawyer," written by Jennifer Smith and published in the Wall Street Journal on April 9, 2013, the author describes the rapidly growing number of lawyers billing at \$1,150 or more revealed in public filings and major surveys. The article also notes that in the first quarter of 2013, the 50 top-grossing law firms billed their partners at an average rate between \$879 and \$882 per hour. A true and correct copy of this article is attached hereto as **Exhibit 6**.
  - d. In an article published April 16, 2012, the Am Law Daily described the 2012 Real Rate Report, an analysis of \$7.6 billion in legal bills paid by corporations over a five-year period ending in December 2011. A true and correct copy of that article is attached hereto as **Exhibit 7**. That article confirms that the rates charged by experienced and well-qualified attorneys have continued to rise over this five-year period, particularly in large urban areas like the San Francisco Bay Area. It also shows, for

example that the top quartile of lawyers bill at an average of “just under \$900 per hour.”

- e. Similarly, on February 23, 2011, the Wall Street Journal published an on-line article entitled “Big Law’s \$1,000-Plus an Hour Club.” A true and correct copy of that article is attached hereto as **Exhibit 8**. That article notes that in 2011 partner rates at some firms were as high as \$1,250 per hour and that associate rates were as much as \$700 per hour.
- f. On February 22, 2011, the ALM’s Daily Report listed the 2006-2009 hourly rates of numerous San Francisco attorneys. A true and correct copy of that article is attached hereto as **Exhibit 9**. Even though rates have increased significantly since that time, my firm’s rates are well within the range of rates shown in this survey.
- g. The Westlaw CourtExpress Legal Billing Reports for May, August, and December 2009 (attached hereto as **Exhibit 10**) show that as far back as 2009, attorneys with as little as 19 years of experience were charging \$800 per hour or more, and that the rates requested here are well within the range of those reported. Again, current rates are significantly higher.
- h. The National Law Journal’s December 2010, nationwide sampling of law firm billing rates (attached hereto as **Exhibit 11**) lists 32 firms whose highest rate was \$800 per hour or more, eleven firms whose highest rate was \$900 per hour or more, and three firms whose highest rate was \$1,000 per hour or more.
- i. On December 16, 2009, The American Lawyer published an online article entitled “Bankruptcy Rates Top \$1,000 in 2008-2009.” That article is attached hereto as **Exhibit 12**. In addition to reporting that several attorneys had charged rates of \$1,000 or more in bankruptcy filings in

Delaware and the Southern District of New York, the article also listed 18 firms that charged median partner rates of from \$625 to \$980 per hour.

j. According to the National Law Journal's 2014 Law Firm Billing Survey, law firms with their largest office in New York have average partner and associate billing rates of \$882 and \$520, respectively. Karen Sloan, \$1,000 Per Hour Isn't Rare Anymore; Nominal Billing Levels Rise, But Discounts Ease Blow, National Law Journal, Jan. 13, 2014. The survey also shows that it is common for legal fees for partners in New York firms to exceed \$1,000 an hour. A true and correct copy of this survey is attached hereto as **Exhibit 13**.

k. On February 8, 2016, the ABA Journal published an article entitled "Top Partner Billing Rates at BigLaw Firms Approaching \$1,500 per hour." A true and correct copy of this article is attached hereto as **Exhibit 14**.

17. Given Bursor & Fisher's unique experience and track record of success winning 6 of 6 class action trials – including my \$267 million trial victory in 2019 in *Perez* – my hourly rate is set at \$725.00 and the senior partner's rate (that of L. Timothy Fisher and Scott A. Bursor) is set at \$1,000.00, which is the same rate that my firm charges to clients who retain us on an hourly basis, and which we never discount.

18. No court has ever cut my firm's fee application by a single dollar on the ground that our hourly rates were not reasonable.

19. My firm undertook this representation on a wholly contingent basis recognizing that the risk of non-payment has been high throughout this litigation. There were substantial uncertainties in the viability of this case as a class action, as well as substantial uncertainties in the merits of the underlying claims, and the ability to collect on any judgment that might be obtained. Although we believed the case to be meritorious, a realistic assessment shows that the risks inherent in the resolution of the liability issues, protracted litigation in this action as well as the probable appeals process, are great.

20. Had we not resolved this matter through settlement, we would have vigorously prosecuted the case through trial, if necessary, and appealed any determinations that may have been adverse to the Class's interests. We were therefore at great risk for non-payment. In addition, as described above, we have advanced significant expenses that would not have been reimbursed absent a successful result.

21. The Settlement Agreement does not have a "clear sailing" provision, and Class Counsel does not have any agreement as to attorneys' fees or expenses with Defendants. At no point has Class Counsel negotiated its attorney's fees with Defendant. Defendant is free to challenge the present fee application.

#### **V. CLASS REPRESENTATIVES' ROLE IN THIS LITIGATION**

22. The Plaintiffs have vigorously prosecuted this action on behalf of themselves and the putative Settlement Class. Through my, and my cocounsel's (Dovel & Luner) interaction with the Plaintiffs, I believe that they have been exemplary Class Representatives. They have participated on many phone calls and Zoom calls with counsel to discuss settlement, discovery, the allegations, and litigation strategy. They have each been attentive, very responsive to inquiries and requests by email and phone from Class Counsel, and have been proactive in keeping abreast of developments in the litigation. Each of the Plaintiffs was willing to appear for a deposition and to testify at trial, had it been necessary. I believe that their vigorous pursuit and efforts in this litigation, on behalf of Settlement Class Members, should be rewarded with the full \$3,500 allowed by the Settlement Agreement.

#### **VI. REVIEW OF OTHER FIRM'S LODESTAR AND EXPENSES**

23. In addition to the time my firm and our co-counsel at Dovel & Luner spent on the case, other firms involved in the case also spent time working on the case at our direction following our appointment as Interim Co-Lead Counsel. I was personally responsible for supervising and reviewing the time entries and billing of Reich Radcliffe & Hoover LLP, who are counsel for Plaintiffs Milan Steijn, Abbas Gokal, and Joseph Pandaniban, and have worked with my firm as co-counsel from the outset of the litigation. For the sake of consistency and

efficiency, I have only approved Reich Radcliffe & Hoover LLP's time beginning on August 1, 2020, the day after the Court appointed Interim Lead Class Counsel. The approved entries supplied by Reich Radcliffe & Hoover LLP is attached as **Exhibit 15**. I have personally reviewed all of these entries, and have used billing judgment to ensure that duplicative or unnecessary time have been excluded and that only time reasonably devoted to the tasks performed at the direction of Class Counsel have been included. The time and descriptions displayed in these records were regularly and contemporaneously recorded. In total, according to these records, Reich Radcliffe & Hoover LLP expended 34.9 hours on this case, for a lodestar of \$30,417.50. They have also expended \$266.00 in costs on this case, which are attached hereto as **Exhibit 16**.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed November 3, 2022, at Louisville, Kentucky.

/s/ Yeremey Krivoshey  
Yeremey Krivoshey





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## **FIRM RESUME**

With offices in Florida, New York, and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million-dollar verdicts or recoveries in six of six class action jury trials since 2008. Our most recent class action trial victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector found to have violated the Telephone Consumer Protection Act.

In August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel, we won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Honda, Verizon Wireless, AT&T Wireless, Sprint, Haier America, and Michaels Stores as well as purchasers of Avacor™, Hydroxycut, and Sensa™ products. Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,
5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,

6. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
7. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
8. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
9. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
10. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
11. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
12. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
13. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
14. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
15. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
16. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
17. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
18. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
19. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
20. *Moeller v. American Media, Inc.,* (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
21. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellers,
22. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,
23. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,

24. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
25. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
26. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
27. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,
28. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
29. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
30. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
31. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
32. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
33. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
34. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
35. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
36. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
37. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
38. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
39. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,
40. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines

due to the novel coronavirus, COVID-19, and whose tickets were not refunded,

41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,
53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,
54. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a

- fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
55. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
  56. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 201), to represent a certified nationwide class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
  57. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
  58. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
  59. *Frederick v. Examsoft Worldwide, Inc.*, (Cir. Ct. DuPage Cnty. Jan. 6, 2022) to represent a certified class of exam takers who used virtual exam proctoring software, in alleged violation of the Illinois Biometric Information Privacy Act,
  60. *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, (Cir. Ct. Will Cnty. Jan. 18, 2022) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
  61. *Goldstein v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard antiperspirants that were allegedly contaminated with benzene,
  62. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of who laundry card purchasers who were allegedly subjected to deceptive practices by being denied cash refunds,
  63. *Lewis v. Trident Manufacturing, Inc.*, (Cir. Ct. Kane Cnty. Mar. 16, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
  64. *Croft v. Spinx Games Limited, et al.*, (W.D. Wash. Mar. 31, 2022) to represent a certified class of Washington residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Washington law,
  65. *Fischer v. Instant Checkmate LLC*, (N.D. Ill. Mar. 31, 2022) to represent a certified class of Illinois residents whose identities were allegedly used without their consent in alleged violation of the Illinois Right of Publicity Act,
  66. *Rivera v. Google LLC*, (Cir. Ct. Cook Cnty. Apr. 25, 2022) to represent a certified class of Illinois residents who appeared in a photograph in Google Photos, in alleged violation of the Illinois Biometric Information Privacy Act,
  67. *Loftus v. Outside Integrated Media, LLC*, (E.D. Mich. May 5, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
  68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their

classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19.

### **SCOTT A. BURSOR**

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Bursor served as lead trial counsel, the jury returned a verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Bursor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Bursor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Bursor's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Bursor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Bursor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Bursor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

### **Representative Cases**

Mr. Bursor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Bursor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Bursor's practice:

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to

third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial, Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested

motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

### **L. TIMOTHY FISHER**

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind. In 2019, Mr. Fisher served as trial counsel with Mr. Bursor and his partner Yeremey Krivoshey in *Perez v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

### Representative Cases

*Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

*In re Cellphone Termination Fee Cases - Handset Locking Actions* (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

*In re Cellphone Termination Fee Cases - Early Termination Fee Cases* (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

### Selected Published Decisions

*Melgar v. Zicam LLC*, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff's expert witnesses).

*Salazar v. Honest Tea, Inc.*, 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

*Dei Rossi v. Whirlpool Corp.*, 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

*Bayol v. Zipcar, Inc.*, 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

*Forcellati v. Hyland's, Inc.*, 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

*Bayol v. Zipcar, Inc.*, 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).

*Forcellati v. Hyland's Inc.*, 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

*Hendricks v. StarKist Co.*, 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

*Dei Rossi v. Whirlpool Corp.*, 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

*Forcellati v. Hyland's Inc.*, 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

*Clerkin v. MyLife.com*, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants' motion to dismiss in case alleging false and misleading advertising by a social networking company).

*In re Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

*Gatton v. T-Mobile USA, Inc.*, 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

#### **Selected Class Settlements**

*Melgar v. Zicam* (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

*Gastelum v. Frontier California Inc.* (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late fees.

*West v. California Service Bureau, Inc.* (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

*Gregorio v. Premier Nutrition Corp.* (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

*Morris v. SolarCity Corp.* (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

*Retta v. Millennium Products, Inc.* (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

*Forcellati v. Hyland's* (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

*Dei Rossi v. Whirlpool* (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

*In Re NVIDIA GTX 970 Graphics Chip Litigation* (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and

misleading representations concerning its specifications and performance.

*Hendricks v. StarKist Co.* (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

*In re Zakskorn v. American Honda Motor Co.* Honda (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

*Correa v. Sensa Products, LLC* (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

*In re Pacific Bell Late Fee Litigation* (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

*In re Haier Freezer Consumer Litigation* (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

*Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

*Guyette v. Viacom, Inc.* (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

### **JOSEPH I. MARCHESE**

Joseph I. Marchese is a Partner with Bursor & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, data breach claims, and violations of the Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan, as well as the United States Court of Appeals for the Second Circuit.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

**Selected Published Decisions:**

*Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

*Boelter v. Hearst Communications, Inc.*, 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*In re Michaels Stores Pin Pad Litigation*, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer's motion to dismiss its customers' state law consumer protection and privacy claims in data breach putative class action.

**Selected Class Settlements:**

*Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*In re Scotts EZ Seed Litigation*, Case No. 12-cv-4727-VB (S.D.N.Y. 2018) – final approval granted for \$47 million class settlement to resolve false advertising claims of purchasers of combination grass seed product.

*In Re: Blue Buffalo Marketing And Sales Practices Litigation*, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

*Rodriguez v. Citimortgage, Inc.*, Case No. 11-cv-4718-PGG (S.D.N.Y. 2015) – final approval granted for \$38 million class settlement to resolve claims of military servicemembers for alleged foreclosure violations of the Servicemembers Civil Relief Act, where each class member was entitled to \$116,785 plus lost equity in the foreclosed property and interest thereon.

*O'Brien v. LG Electronics USA, Inc., et al.*, Case No. 10-cv-3733-DMC (D.N.J. 2011) – final approval granted for \$23 million class settlement to resolve claims of Energy Star refrigerator purchasers for alleged false advertising of the appliances' Energy Star qualification.

### **JOSHUA D. ARISOHN**

Joshua D. Arisohn is a Partner with Bursor & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh's practice continues to focus on terrorism-related matters as well as class actions.

Josh is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the District Court for the District of Columbia, and the United States Courts of Appeals for the Second and Ninth Circuits.

Josh previously practiced at Dewey & LeBoeuf LLP and DLA Piper LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002. Josh has been honored as a 2015, 2016 and 2017 Super Lawyer Rising Star.

### **Selected Published Decisions:**

*Fields v. Syrian Arab Republic*, Civil Case No. 18-1437 (RJL), entering a judgment of approximately \$850 million in favor of the family members of victims of terrorist attacks carried out by ISIS with the material support of Syria.

*Farwell v. Google LLC*, 2022 WL 1568361 (C.D. Ill. Mar. 31, 2022), denying social media defendant's motion to dismiss BIPA claims brought on behalf of Illinois school students using Google's Workspace for Education platform on laptop computers.

*Weiman v. Miami University*, Case No. 2020-00614JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Smith v. The Ohio State University*, Case No. 2020-00321JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Waitt v. Kent State University*, Case No. 2020-00392JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Duke v. Ohio University*, Case No. 2021-00036JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Keba v. Bowling Green State University*, Case No. 2020-00639JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Kirkbride v. The Kroger Co.*, Case No. 2:21-cv-00022-ALM-EPD, denying motion to dismiss claims based on the allegation that defendant overstated its usual and customary prices and thereby overcharged customers for generic drugs.

**Selected Class Settlements:**

*Morris v. SolarCity Corp.*, Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

*Marquez v. Google LLC*, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing in photos on the Google Photos platform.

**JOEL D. SMITH**

Joel D. Smith is a Partner with Bursor & Fisher, P.A. Joel is a trial attorney who has practiced in lower court and appeals courts across the country, as well as the U.S. Supreme Court.

Prior to joining Bursor & Fisher, Joel was a litigator at Crowell & Moring, where he represented Fortune 500 companies, privately held businesses, and public entities in a wide variety of commercial, environmental, and class action matters. Among other matters, Joel served as defense counsel for AT&T, Enterprise-Rent-A-Car, Flowers Foods, and other major U.S. businesses in consumer class actions, including a class action seeking to hold U.S. energy companies accountable for global warming. Joel represented four major U.S. retailers in a case arising from a devastating arson fire and ensuing state of emergency in Roseville, California, which settled on the eve of a trial that was expected to last several months and involve several dozen witnesses. Joel also was part of the trial team in a widely publicized trial over the death of a contestant who died after participating in a Sacramento radio station's water drinking contest.

More recently, Joel's practice focuses on consumer class actions involving automotive and other product defects, financial misconduct, false advertising, and privacy violations.

Joel received both his undergraduate and law degrees from the University of California at Berkeley. While at Berkeley School of Law, he was a member of the California Law Review, received several academic honors, externed for the California Attorney General's office and published an article on climate change policy and litigation.

Joel is admitted to the State Bar of California, as well as the United States Courts of Appeals for the Second, Third and Ninth Circuits; all California district courts; the Eastern District of Michigan; and the Northern District of Illinois.

**Selected Published Decisions:**

*Javier v. Assurance IQ, LLC*, --- Fed App'x --- 2022 WL 1744107 (9th Cir. May 31, 2022), reversing dismissal in a class action alleging surreptitious monitoring of internet communications.

*Revitch v. DIRECTV, LLC*, 977 F.3d 713 (9th Cir. 2020), affirming denial of motion to compel arbitration in putative class action alleging unlawful calls under the Telephone Consumer Protection Act.

*Kaupelis v. Harbor Freight Tools USA, Inc.*, 2020 WL 5901116 (C.D. Cal. Sept. 23, 2020), granting class certification of consumer protection claims brought by purchasers of defective chainsaws.

**Selected Class Settlements:**

*Crandell et al. v. Volkswagen Group of America*, Case No. 2:18-cv-13377-JSA (D.N.J.) – final approval granted for a settlement providing relief for Volkswagen Touareg owners to resolve allegations that defects in Touareg vehicles caused the engines to ingest water when driving in the rain.

*Isley et al. v. BMW of N. America, LLC*, Case No. 2:19-cv-12680-ESK (D.N.J.) – final approval granted for settlement providing BMW owners with reimbursements and credit vouchers to resolve allegations that defects in the BMW N63TU engine caused excessive oil consumption.

*Kaupelis v. Harbor Freight Tools USA, Inc.*, 8:19-cv-01203-JVS-DFM (C.D. Cal.) – final approval granted for a settlement valued up to \$40 million to resolve allegations that Harbor Freight sold chainsaws with a defective power switch that could prevent the chainsaws from turning off.

*Morris v. SolarCity Corp.*, Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

**NEAL J. DECKANT**

Neal J. Deckant is a Partner with Bursor & Fisher, P.A., where he serves as the firm's Head of Information & e-Discovery. Neal focuses his practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Neal counseled low-income homeowners facing foreclosure in East Boston.

Neal is admitted to the State Bars of California and New York, and is a member of the bars of the United States District Court for the Northern District of California, the United States District Court for the Eastern District of California, the United States District Court for the Central District of California, the United States District Court for the Southern District of California, the United States District Court for the Southern District of New York, the United

States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

Neal received his Juris Doctor from Boston University School of Law in 2011, graduating cum laude with two Dean's Awards. During law school, Neal served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two published articles about securitization reforms, both of which were cited by the New York Court of Appeals, the highest court in the state. Neal was also awarded Best Oral Argument in his moot court section, and he served as a Research Assistant for his Securities Regulation professor. Neal has also been honored as a 2014, 2015, 2016, and 2017 Super Lawyers Rising Star. In 2007, Neal graduated with Honors from Brown University with a dual major in East Asian Studies and Philosophy.

**Selected Published Decisions:**

*Martinelli v. Johnson & Johnson*, 2019 WL 1429653 (N.D. Cal. Mar. 29, 2019), granting class certification of false advertising and other claims brought by purchasers of Benecol spreads labeled with the representation "No Trans Fats."

*Dzielak v. Whirlpool Corp.*, 2017 WL 6513347 (D.N.J. Dec. 20, 2017), granting class certification of consumer protection claims brought by purchasers of Maytag Centennial washing machines marked with the "Energy Star" logo.

*Duran v. Obesity Research Institute, LLC*, 204 Cal. Rptr. 3d 896 (Cal. Ct. App. 2016), reversing and remanding final approval of a class action settlement on appeal, regarding allegedly mislabeled dietary supplements, in connection with a meritorious objection.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

**Selected Class Settlements:**

*In Re NVIDIA GTX 970 Graphics Chip Litigation*, Case No. 15-cv-00760-PJH (N.D. Cal. Dec. 7, 2016) – final approval granted for \$4.5 million class action settlement to resolve claims that a computer graphics card was allegedly sold with false and misleading representations concerning its specifications and performance.

*Hendricks v. StarKist Co.*, 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016) – final approval granted for \$12 million class action settlement to resolve claims that 5-ounce cans of tuna were allegedly underfilled.

*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – class action claims resolved for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy, following claims that its olive oil was allegedly sold with false and misleading representations.

### **Selected Publications:**

Neal Deckant, *X. Reforms of Collateralized Debt Obligations: Enforcement, Accounting and Regulatory Proposals*, 29 Rev. Banking & Fin. L. 79 (2009) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)).

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at \*1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

### **YITZCHAK KOPEL**

Yitzchak Kopel is a Partner with Bursor & Fisher, P.A. Yitz focuses his practice on consumer class actions and complex business litigation. He has represented corporate and individual clients before federal and state courts, as well as in arbitration proceedings.

Yitz has substantial experience in successfully litigating and resolving consumer class actions involving claims of consumer fraud, data breaches, and violations of the telephone consumer protection act. Since 2014, Yitz has obtained class certification on behalf of his clients five times, three of which were certified as nationwide class actions. Bursor & Fisher was appointed as class counsel to represent the certified classes in each of the cases.

Yitz is admitted to the State Bars of New York and New Jersey, the bar of the United States Court of Appeals for the Second, Eleventh, and Ninth Circuits, and the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, Eastern District of Missouri, Eastern District of Wisconsin, Northern District of Illinois, and District of New Jersey.

Yitz received his Juris Doctorate from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Yitz served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Yitz graduated *cum laude* from Queens College with a B.A. in Accounting.

**Selected Published Decisions:**

*Bassaw v. United Industries Corp.*, --- F. Supp. 3d ---, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

*Poppiti v. United Industries Corp.*, 2020 WL 1433642 (E.D. Mo. Mar. 24, 2020), denying motion to dismiss claims in putative class action concerning citronella candles.

*Bakov v. Consolidated World Travel, Inc.*, 2019 WL 6699188 (N.D. Ill. Dec. 9, 2019), granting summary judgment on behalf of certified class in robocall class action.

*Krumm v. Kittrich Corp.*, 2019 WL 6876059 (E.D. Mo. Dec. 17, 2019), denying motion to dismiss claims in putative class action concerning mosquito repellent.

*Crespo v. S.C. Johnson & Son, Inc.*, 394 F. Supp. 3d 260 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding Raid insect fogger.

*Bakov v. Consolidated World Travel, Inc.*, 2019 WL 1294659 (N.D. Ill. Mar. 21, 2019), certifying a class of persons who received robocalls in the state of Illinois.

*Bourbia v. S.C. Johnson & Son, Inc.*, 375 F. Supp. 3d 454 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding mosquito repellent.

*Hart v. BHH, LLC*, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellents.

*Hart v. BHH, LLC*, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellents.

*Penrose v. Buffalo Trace Distillery, Inc.*, 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

*West v. California Service Bureau, Inc.*, 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of "wrong-number" robocall recipients.

*Hart v. BHH, LLC*, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellents.

*Browning v. Unilever United States, Inc.*, 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

*Brenner v. Procter & Gamble Co.*, 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

*Hewlett v. Consolidated World Travel, Inc.*, 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer's motion to dismiss TCPA claims in putative class action.

*Bailey v. KIND, LLC*, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

*Hart v. BHH, LLC*, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellents.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients' motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Brady v. Basic Research, L.L.C.*, 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers' motion to dismiss its purchasers' allegations for breach of express warranty in putative class action.

*Ward v. TheLadders.com, Inc.*, 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board's motion to dismiss its subscribers' allegations of consumer protection law violations in putative class action.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

#### **Selected Class Settlements:**

*Hart v. BHH, LLC*, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellents.

*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014), resolving class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

*West v. California Service Bureau*, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

### **FREDERICK J. KLORCZYK III**

Frederick J. Klorczyk III is a Partner with Bursor & Fisher, P.A. Fred focuses his practice on complex business litigation and consumer class actions.

Fred has substantial experience in successfully litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, and privacy violations. In 2019, Fred certified both a California and a 10-state express warranty class on behalf of purchasers of a butter substitute. In 2014, Fred served on the litigation team in *Ebin v. Kangadis Food Inc.* At class certification, Judge Rakoff adopted Fred's choice of law fraud analysis and research directly into his published decision certifying a nationwide fraud class.

Fred is admitted to the State Bars of California, New York, and New Jersey, and is a member of the bars of the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, the Southern, Eastern, and Northern Districts of New York, the District of New Jersey, the Northern District of Illinois, the Eastern District of Missouri, the Eastern District of Wisconsin, and the Eastern District of Michigan, as well as the bars of the United States Court of Appeals for the Second and Ninth Circuits.

Fred received his Juris Doctor from Brooklyn Law School in 2013, graduating *magna cum laude* with two CALI Awards for the highest grade in his classes on conflict of laws and criminal law. During law school, Fred served as an Associate Managing Editor for the Brooklyn Journal of Corporate, Financial and Commercial Law and as an intern to the Honorable Alison J. Nathan of the United States District Court for the Southern District of New York and the Honorable Janet Bond Arterton of the United States District Court for the District of Connecticut. In 2010, Fred graduated from the University of Connecticut with a B.S. in Finance.

### **Selected Published Decisions:**

*Revitch v. New Moosejaw, LLC*, 2019 WL 5485330 (N.D. Cal. Oct. 23, 2019), denying defendants' motions to dismiss consumer's allegations of state privacy law violations in putative class action.

*In re Welspun Litigation*, 2019 WL 2174089 (S.D.N.Y. May 20, 2019), denying retailers' and textile manufacturer's motion to dismiss consumers' allegations of false advertising relating to purported "100% Egyptian Cotton" linen products.

*Martinelli v. Johnson & Johnson*, 2019 WL 1429653 (E.D. Cal. Mar. 29, 2019), granting class certification of California false advertising claims and multi-state express warranty claims brought by purchasers of a butter substitute.

*Porter v. NBTY, Inc.*, 2016 WL 6948379 (N.D. Ill. Nov. 28, 2016), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to whey protein content.

*Weisblum v. Prophase Labs, Inc.*, 88 F. Supp. 3d 282 (S.D.N.Y. 2015), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to a homeopathic cold product.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

*Ebin v. Kangadis Food Inc.*, Case No. 13-4775 (2d Cir. Apr. 15, 2015), denying olive oil manufacturer's Rule 23(f) appeal following grant of nationwide class certification.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

#### **Selected Class Settlements:**

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

*Ruppel v. Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*In Re: Blue Buffalo Marketing And Sales Practices Litigation*, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – resolved class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

#### **YEREMEY O. KRIVOSHEY**

Yeremey O. Krivoshey is a Partner with Bursor & Fisher, P.A. Mr. Krivoshey has particular expertise in COVID-19 related consumer litigation, unlawful fees and liquidated

damages in consumer contracts, TCPA cases, product recall cases, and fraud and false advertising litigation. He has represented clients in a wide array of civil litigation, including appeals before the Ninth Circuit.

Mr. Krivoshey served as trial counsel with Mr. Bursor in *Perez v. Rash Curtis & Associates*, where, in May 2019, the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act. Since 2017, Mr. Krivoshey has secured over \$200 million for class members in consumer class settlements. Mr. Krivoshey has been honored multiple times as a Super Lawyers Rising Star.

Mr. Krivoshey is admitted to the State Bar of California. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, as well as the District of Colorado.

Mr. Krivoshey graduated from New York University School of Law in 2013, where he was a Samuel A. Herzog Scholar. Prior to Bursor & Fisher, P.A., Mr. Krivoshey worked as a Law Clerk at Vladeck, Waldman, Elias & Engelhard, P.C, focusing on employment discrimination and wage and hour disputes. In law school, he has also interned at the American Civil Liberties Union and the United States Department of Justice. In 2010, Mr. Krivoshey graduated *cum laude* from Vanderbilt University.

#### **Representative Cases:**

*Perez v. Rash Curtis & Associates*, Case No. 16-cv-03396-YGR (N.D. Cal. May 13, 2019). Mr. Krivoshey litigated claims against a national health-care debt collection agency on behalf of people that received autodialed calls on their cellular telephones without their prior express consent. Mr. Krivoshey successfully obtained nationwide class certification, defeated the defendant's motion for summary judgment, won summary judgment as to the issue of prior express consent and the use of automatic telephone dialing systems, and navigated the case towards trial. With his partner, Scott Bursor, Mr. Krivoshey obtained a jury verdict finding that the defendant violated the Telephone Consumer Protection Act ("TCPA") 534,712 times. Under the TCPA, class members are entitled to \$500 per each call made in violation of the TCPA – in this case, \$267 million for 534,712 unlawful calls.

#### **Selected Published Decisions:**

*Goodrich, et al. v. Alterra Mountain Co., et al.*, 2021 WL 2633326 (D. Col. June 25, 2021), denying ski pass company's motion to dismiss its customers' allegations concerning refunds owed due to cancellation of ski season due to COVID-19.

*Bayol v. Zipcar, Inc.*, 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014), denying enforcement of forum selection clause based on public policy grounds.

*Bayol v. Zipcar, Inc.*, 78 F. Supp. 3d 1252 (N.D. Cal. Jan. 29, 2015), denying car-rental company's motion to dismiss its subscriber's allegations of unlawful late fees.

*Brown v. Comcast Corp.*, 2016 WL 9109112 (C.D. Cal. Aug. 12, 2016), denying internet service provider's motion to compel arbitration of claims alleged under the Telephone Consumer Protection Act.

*Chaisson, et al. v. University of Southern California* (Cal. Sup. Ct. Mar. 25, 2021), denying university's demurrer as to its students' allegations of unfair and unlawful late fees.

*Choi v. Kimberly-Clark Worldwide, Inc.*, 2019 WL 4894120 (C.D. Cal. Aug. 28, 2019), denying tampon manufacturer's motion to dismiss its customer's design defect claims.

*Horanzy v. Vemma Nutrition Co.*, Case No. 15-cv-298-PHX-JJT (D. Ariz. Apr. 16, 2016), denying multi-level marketer's and its chief scientific officer's motion to dismiss their customer's fraud claims.

*McMillion, et al. v. Rash Curtis & Associates*, 2017 WL 3895764 (N.D. Cal. Sept. 6, 2017), granting nationwide class certification of Telephone Consumer Protection Act claims by persons receiving autodialed and prerecorded calls without consent.

*McMillion, et al. v. Rash Curtis & Associates*, 2018 WL 692105 (N.D. Cal. Feb. 2, 2018), granting plaintiffs' motion for partial summary judgment on Telephone Consumer Protection Act violations in certified class action.

*Perez v. Indian Harbor Ins. Co.*, 2020 WL 2322996 (N.D. Cal. May 11, 2020), denying insurance company's motion to dismiss or stay assigned claims of bad faith and fair dealing arising out of \$267 million trial judgment.

*Perez v. Rash Curtis & Associates*, 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020), upholding constitutionality of \$267 million class trial judgment award.

*Salazar v. Honest Tea, Inc.*, 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015), denying manufacturer's motion for summary judgment as to customer's false advertising claims.

*Sholopa v. Turk Hava Yollari A.O., Inc. (d/b/a Turkish Airlines)*, 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying airline's motion to dismiss its customers claims for failure to refund flights cancelled due to COVID-19.

#### **Selected Class Settlements:**

*Perez v. Rash Curtis & Associates*, Case No. 16-cv-03396-YGR (N.D. Cal. Oct. 1, 2021) granting final approval to a \$75.6 million non-reversionary cash common fund settlement, the largest ever consumer class action settlement stemming from a violation of the Telephone Consumer Protection Act.

*Strassburger v. Six Flags Theme Parks Inc., et al.* (Ill. Cir. Ct. 2022) granting final approval to \$83.6 million settlement to resolve claims of theme park members for alleged wrongful charging of fees during the COVID-19 pandemic.

*Juarez-Segura, et al. v. Western Dental Services, Inc.* (Cal. Sup. Ct. Aug. 9, 2021) granting final approval to \$35 million settlement to resolve claims of dental customers for alleged unlawful late fees.

*Moore v. Kimberly-Clark Worldwide, Inc.* (Ill. Cir. Ct. July 22, 2020) granting final approval to \$11.2 million settlement to resolve claims of tampon purchasers for alleged defective products.

*Retta v. Millennium Prods., Inc.*, 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) granting final approval to \$8.25 million settlement to resolve claims of kombucha purchasers for alleged false advertising.

*Cortes v. National Credit Adjusters, L.L.C.* (E.D. Cal. Dec. 7, 2020) granting final approval to \$6.8 million settlement to resolve claims of persons who received alleged autodialed calls without prior consent in violation of the TCPA.

*Bayol et al. v. Health-Ade LLC, et al.* (N.D. Cal. Oct. 11, 2019) – granting final approval to \$3,997,500 settlement to resolve claims of kombucha purchasers for alleged false advertising.

### **PHILIP L. FRAIETTA**

Philip L. Fraietta is a Partner with Bursor & Fisher, P.A. Phil focuses his practice on data privacy, complex business litigation, consumer class actions, and employment law disputes. Phil has been named a “Rising Star” in the New York Metro Area by Super Lawyers<sup>®</sup> every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act, the Illinois Biometric Information Privacy Act, and Right of Publicity statutes. Since 2016, Phil has recovered over \$100 million for class members in privacy class action settlements. In addition to privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York, New Jersey, Illinois, and Michigan, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the Northern District of Illinois, the Central District of Illinois, and the United States Court of Appeals for the Second, Third, and Ninth Circuits. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

### **Selected Published Decisions:**

*Fischer v. Instant Checkmate LLC*, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022), certifying class of Illinois residents for alleged violations of Illinois' Right of Publicity Act by background reporting website.

*Kolebuck-Utz v. Whitepages Inc.*, 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant's motion to dismiss for alleged violations of Ohio's Right to Publicity Law.

*Bergeron v. Rochester Institute of Technology*, 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020), denying university's motion to dismiss for failure to refund tuition and fees for the Spring 2020 semester in light of the COVID-19 pandemic.

*Porter v. NBTY, Inc.*, 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer's motion for summary judgment on consumers' allegations of false advertising relating to whey protein content.

*Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

#### **Selected Class Settlements:**

*Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Ruppel v. Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Benbow v. SmileDirectClub, LLC*, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2021) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

*Taylor v. Trusted Media Brands, Inc.*, Case No. 16-cv-01812-KMK (S.D.N.Y. 2018) – final approval granted for \$8.225 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. American Media, Inc.*, Case No. 16-cv-11367-JEL (E.D. Mich. 2017) – final approval granted for \$7.6 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Rocchio v. Rutgers, The State University of New Jersey*, Case No. MID-L-003039-20 (Sup. Ct. Middlesex Cnty. 2022) – final approval granted for \$5 million class settlement to resolve claims for failure to refund mandatory fees for the Spring 2020 semester in light of the COVID-19 pandemic.

*Heigl v. Waste Management of New York, LLC*, Case No. 19-cv-05487-WFK-ST (E.D.N.Y. 2021) – final approval granted for \$2.7 million class settlement to resolve claims for charging allegedly unlawful fees pertaining to paper billing.

*Frederick v. Examsoft Worldwide, Inc.*, Case No. 2021L001116 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$2.25 million class settlement to resolve claims for alleged BIPA violations.

### **SARAH N. WESTCOT**

Sarah N. Westcot is a Partner with Bursor & Fisher, P.A. Ms. Westcot focuses her practice on complex business litigation, consumer class actions, and employment law disputes. She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Ms. Westcot served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Ms. Westcot also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida).

Ms. Westcot is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California and the Southern and Middle Districts of Florida.

Ms. Westcot received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, Ms. Westcot was a law clerk with the Cook County State's Attorney's Office in Chicago and the Santa Clara County District Attorney's Office in San Jose, CA. She graduated with honors from the University of Florida in 2005.

**ALEC M. LESLIE**

Alec Leslie is a Partner with Bursor & Fisher, P.A. He focuses his practice on consumer class actions, employment law disputes, and complex business litigation.

Alec is admitted to the State Bar of New York and is a member of the bar of the United States District Courts for the Southern and Eastern Districts of New York. Alec was a Summer Associate with Bursor & Fisher prior to joining the firm.

Alec received his Juris Doctor from Brooklyn Law School in 2016, graduating *cum laude*. During law school, Alec served as an Articles Editor for Brooklyn Law Review. In addition, Alec served as an intern to the Honorable James C. Francis for the Southern District of New York and the Honorable Vincent Del Giudice, Supreme Court, Kings County. Alec graduated from the University of Colorado with a B.A. in Philosophy in 2012.

**Selected Class Settlements:**

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for class settlement to resolve claims of protein shake purchasers for alleged false advertising.

*Wright v. Southern New Hampshire Univ.*, Case No. 1:20-cv-00609-LM (D.N.H. 2021) – final approval granted for class settlement to resolve claims over COVID-19 tuition and fee refunds to students.

*Mendoza et al. v. United Industries Corp.*, Case No. 21PH-CV00670 (Phelps Cnty. Mo. 2021) – final approval granted for class settlement to resolve false advertising claims on insect repellent products.

*Kaupelis v. Harbor Freight Tools USA, Inc.*, Case No. 8:19-cv-01203-JVS-DFM (C.D. Cal. 2021) – final approval granted for class settlement involving allegedly defective and dangerous chainsaws.

*Rocchio v. Rutgers Univ.*, Case No. MID-L-003039-20 (Middlesex Cnty. N.J. 2021) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

*Malone v. Western Digital Corporation*, Case No. 5:20-cv-03584-NC (N.D. Cal.) – final approval granted for class settlement to resolve false advertising claims on hard drive products.

*Frederick et al. v. ExamSoft Worldwide, Inc.*, Case No. 2021L001116 (DuPage Cnty. Ill. 2021) – final approval granted for class settlement to resolve claims over alleged BIPA violations with respect to exam proctoring software.

**STEPHEN BECK**

Stephen is an Associate with Bursor & Fisher, P.A. Stephen focuses his practice on complex civil litigation and class actions.

Stephen is admitted to the State Bar of Florida and is a member of the bars of the United States District Courts for the Southern and Middle Districts of Florida.

Stephen received his Juris Doctor from the University of Miami School of Law in 2018. During law school, Stephen received an Honors distinction in the Litigation Skills Program and was awarded the Honorable Theodore Klein Memorial Scholarship for excellence in written and oral advocacy. Stephen also received the CALI Award in Legislation for earning the highest grade on the final examination. Stephen graduated from the University of North Florida with a B.A. in Philosophy in 2015.

### **BRITTANY SCOTT**

Brittany Scott is an Associate with Bursor & Fisher, P.A. Brittany focuses her practice on data privacy, complex civil litigation, and consumer class actions. Brittany was an intern with Bursor & Fisher prior to joining the firm.

Brittany has substantial experience litigating consumer class actions, including those involving data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, the Fair Credit Reporting Act, and the Michigan Preservation of Personal Privacy Act. In addition to data privacy claims, Brittany has significant experience in litigating class action claims involving false and misleading advertising.

Brittany is admitted the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the Eastern District of Wisconsin, and the Northern District of Illinois.

Brittany received her Juris Doctor from the University of California, Hastings College of the Law in 2019, graduating cum laude. During law school, Brittany was a member of the Constitutional Law Quarterly, for which she was the Executive Notes Editor. Brittany published a note in the Constitutional Law Quarterly entitled “Waiving Goodbye to First Amendment Protections: First Amendment Waiver by Contract.” Brittany also served as a judicial extern to the Honorable Andrew Y.S. Cheng for the San Francisco Superior Court. In 2016, Brittany graduated from the University of California Berkeley with a B.A. in Political Science.

### **Selected Class Settlements:**

*Morrissey v. Tula Life, Inc.*, Case No. 2021L0000646 (18th Judicial Circuit Court DuPage County 2021) – final approval granted for \$4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.

**MAX ROBERTS**

Max Roberts is an Associate with Bursor & Fisher, P.A. Max focuses his practice on complex civil litigation, data privacy, and class actions. Max was a Summer Associate with Bursor & Fisher prior to joining the firm.

Max is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Northern, Southern, and Eastern Districts of New York, the Northern and Central Districts of Illinois, the Eastern District of Michigan, the District of Colorado, and the United States Court of Appeals for the Ninth Circuit.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham's Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled *Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis*. In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

**Selected Published Decisions:**

*Javier v. Assurance IQ, LLC*, 2022 WL 1744107 (9th Cir. May 31, 2022), reversing district court and holding that the California Invasion of Privacy Act § 631 requires prior consent to wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

*Soo v. Lorex Corp.*, 2020 WL 5408117 (N.D. Cal. Sept. 9, 2020), denying defendants' motion to compel arbitration and denying in part motion dismiss consumer protection claims in putative class action concerning security cameras.

*Salerno v. Florida Southern College*, 488 F. Supp. 3d 1211 (M.D. Fla. 2020), denying motion to dismiss student's allegations that university committed a breach of contract by failing to refund students after it shifted to online learning during the COVID-19 pandemic.

*Saleh v. Nike, Inc.*, --- F. Supp. 3d ---, 2021 WL 4437734 (C.D. Cal. Sept. 27, 2021), denying in part motion to dismiss alleged violations of California Invasion of Privacy Act.

*Bugarin v. All Nippon Airways Co.*, 2021 WL 4974978 (N.D. Cal. Oct. 26, 2021), denying motion to compel arbitration of airline passenger's breach of contract claims.

*Sholopa v. Turk Hava Yollari A.O., Inc. d/b/a Turkish Airlines*, 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying motion to dismiss passenger's allegations that airline committed a breach of contract by failing to refund passengers for cancelled flights during the COVID-19 pandemic.

**Selected Class Settlements:**

*Miranda v. Golden Entertainment (NV), Inc.*, Case No. 2:20-cv-534-AT (D. Nev. 2021) – final approval granted for class settlement valued at over \$4.5 million to resolve claims of customers and employees of casino company stemming from data breach.

*Malone v. Western Digital Corp.*, Case No. 5:20-cv-3584-NC (N.D. Cal. 2021) – final approval granted for class settlement valued at \$5.7 million to resolve claims of hard drive purchasers for alleged false advertised.

*Frederick v. ExamSoft Worldwide, Inc.*, Case No. 2021-L-001116 (18th Judicial Circuit Court DuPage County, Illinois 2021) – final approval granted for \$2.25 million class settlement to resolve claims of Illinois students for alleged violations of the Illinois Biometric Information Privacy Act.

**CHRISTOPHER R. REILLY**

Chris Reilly is an Associate with Bursor & Fisher, P.A. Chris focuses his practice on consumer class actions and complex business litigation.

Chris is admitted to the State Bar of Florida and is a member of the bar of the United States District Courts for the Southern and Middle Districts of Florida.

Chris received his Juris Doctor from Georgetown University Law Center in 2020. During law school, Chris clerked for the Senate Judiciary Committee, where he worked on antitrust and food and drug law matters under Senator Richard Blumenthal. He has also clerked for the Mecklenburg County District Attorney's Office, the ACLU Prison Project, and the Pennsylvania General Counsel's Office. Chris served as Senior Editor of Georgetown's Journal of Law and Public Policy. In 2017, Chris graduated from the University of Florida with a B.A. in Political Science.

**JULIA VENDITTI**

Julia Venditti is an Associate with Bursor & Fisher, P.A. Julia focuses her practice on complex civil litigation and class actions. Julia was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julia is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern and Southern Districts of California.

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section.

In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

### **SEAN L. LITTERAL**

Sean L. Litteral is an Associate with Bursor & Fisher, P.A. Sean focuses his practice on complex business litigation, consumer class actions, and employment law disputes. He holds degrees from Berea College, the London School of Economics and Political Science, and Berkeley Law.

Sean has represented clients in a variety of matters, including survivors against the Boy Scouts of America for covering up decades of sexual abuse; warehouse workers against Walmart for failing to comply with COVID-19 health and safety guidelines; and drivers against Corinthian International Parking Services for systematically violating California's wage and hour laws.

Sean clerked for the Alaska Supreme Court and served as a fellow for the U.S. House Committee on Education and Labor and the Atlanta City Council. He previously externed for the Special Litigation Section, Civil Rights Division of the U.S. Department of Justice; the Berkeley Environmental Law Clinic; and the Corporate Sustainability Program at the Pontificia Universidad Católica de Chile.

He has published in the UC Davis Environmental Law & Policy Journal, the Harvard Latinx Law Review, and the Stanford Law and Policy Review on a broad scope of matters, including corporate sustainability, international trade, and national security.

### **JULIAN DIAMOND**

Julian Diamond is an Associate with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

### **MATTHEW GIRARDI**

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving product defects, financial misconduct, false advertising, and privacy violations. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt is admitted to the State Bar of New York, and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Prior to law school, Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division.



**Alterra Mountain Company Lodestar through 11/2/2022**

<b>ATTY</b>	<b>HOURS</b>	<b>RATE</b>	<b>TOTAL</b>
L. Timothy Fisher (LTF), Partner (1997)	0.2	\$ 1,000.00	\$200.00
Yeremey Krivoshey (YOK), Partner (2013)	323.4	\$ 725.00	\$234,465.00
Blair Reed (BER), Associate (2017)	63.7	\$ 425.00	\$27,072.50
Brittany Scott (BSS), Associate (2019)	0.9	\$ 375.00	\$337.50
Emily Horne (EAH), Law Clerk	18.6	\$ 325.00	\$6,045.00
Debbie Schroeder (DLS), Litigation Support	7.7	\$ 300.00	\$2,310.00
Rebecca Richter (RSR), Litigation Support	0.7	\$ 300.00	\$210.00
Erin Wald (EMW), Litigation Support	0.2	\$ 300.00	\$60.00
Molly Sasseen (MCS), Litigation Support	9.0	\$ 300.00	\$2,700.00
Judy Fontanilla (JMF), Litigation Support	2.5	\$ 275.00	\$687.50
Teresa Clark (TEC), Litigation Support	0.8	\$ 275.00	\$220.00
Amy Michel-Arce (ASM), Litigation Support	0.6	\$ 275.00	\$165.00
Alexander Riggsby (AJR), Litigation Support	1.0	\$ 275.00	\$275.00
	429.3		\$274,747.50
		Expenses:	\$10,559.91
		<b>Total:</b>	<b>\$285,307.41</b>

Bursor Fisher, P.A. - Alterra Mountain Company Billing Diaries

DATE	MATTER	ATTY	DESCRIPTION	TIME	RATE	AMOUNT
2020.04.14	Alterra Mountain Company	YOK	Email with Marc Reich re case	0.2	\$725.00	\$145.00
2020.04.15	Alterra Mountain Company	YOK	Call with Marc Reich re case idea, PSI w/ BER re same. Call with class member case.	3.3	\$725.00	\$2,392.50
2020.04.15	Alterra Mountain Company	BER	Discussed case with YOK and M. Reich	0.6	\$425.00	\$255.00
2020.04.15	Alterra Mountain Company	BER	Researched claims and information regarding defendant	2.3	\$425.00	\$977.50
2020.04.15	Alterra Mountain Company	BER	Drafted complaint and demand letter	5.9	\$425.00	\$2,507.50
2020.04.16	Alterra Mountain Company	YOK	Reviewed and edited complaint, and corresponded with BER and Molly Sasseen re same	2.4	\$725.00	\$1,740.00
2020.04.16	Alterra Mountain Company	BER	Drafted complaint and discussed with YOK and M. Reich	1.8	\$425.00	\$765.00
2020.04.16	Alterra Mountain Company	BER	Worked with DLS to file complaint	0.3	\$425.00	\$127.50
2020.04.16	Alterra Mountain Company	DLS	Finalized and filed complaint	0.9	\$300.00	\$270.00
2020.04.16	Alterra Mountain Company	MCS	Sent demand letter to Amy for mailing, finalized complaint, drafted and finalized initialing docs	4.3	\$300.00	\$1,290.00
2020.04.16	Alterra Mountain Company	ASM	Mail out demand letter via certified mail	0.2	\$275.00	\$55.00
2020.04.17	Alterra Mountain Company	YOK	Emails with Marc Reich and BER re related case	0.1	\$725.00	\$72.50
2020.04.17	Alterra Mountain Company	BER	Reviewed emails from M. Reich regarding initialing documents and responded	0.3	\$425.00	\$127.50
2020.04.17	Alterra Mountain Company	BER	Reviewed emails from YOK and M. Reich regarding related suit and responded	0.3	\$425.00	\$127.50
2020.04.17	Alterra Mountain Company	MCS	Found sent demand letter and forwarded to DLS	0.3	\$300.00	\$90.00
2020.04.18	Alterra Mountain Company	BER	Reviewed related suit complaint	0.8	\$425.00	\$340.00
2020.04.20	Alterra Mountain Company	YOK	Emailed Marc Reich re retention agreements and redlined same	0.5	\$725.00	\$362.50
2020.04.20	Alterra Mountain Company	ASM	Answer questions from callers re their memberships and case info. Communicate to attys	0.3	\$275.00	\$82.50
2020.04.22	Alterra Mountain Company	YOK	Emailed Marc Reich re insurance issue	0.1	\$725.00	\$72.50
2020.04.30	Alterra Mountain Company	BER	Reviewed MDL motion (.8) and discussed with YOK and BSS (.3)	1.1	\$425.00	\$467.50
2020.05.01	Alterra Mountain Company	YOK	Email with Marc Reich re next steps	0.1	\$725.00	\$72.50
2020.05.01	Alterra Mountain Company	JMF	Served complaint.	1	\$275.00	\$275.00
2020.05.04	Alterra Mountain Company	LTF	Discussed MDL with Marc Reich, Brittany Scott and Yeremey Krivoshey.	0.2	\$1,000.00	\$200.00
2020.05.04	Alterra Mountain Company	YOK	Call with Marc Reich, BSS, and LTF re MDL strategy	0.7	\$725.00	\$507.50
2020.05.05	Alterra Mountain Company	YOK	Reviewed deadlines and calendaring	0.1	\$725.00	\$72.50
2020.05.06	Alterra Mountain Company	YOK	Call with Dovel & Luner re JPML strategy w. Marc Reich, BSS, and BER (.3), prepped for call (.2), call with Marc Reich after call re same (.1).	0.6	\$725.00	\$435.00
2020.05.06	Alterra Mountain Company	YOK	Emailed SAB re defense counsel email.	0.1	\$725.00	\$72.50
2020.05.06	Alterra Mountain Company	BSS	Conf. w/ Dovel & Lunar, BER, YOK, and M. Reich re: MDL (0.4)	0.4	\$375.00	\$150.00
2020.05.07	Alterra Mountain Company	YOK	Emails with defense counsel re scheduling introductory call	0.2	\$725.00	\$145.00
2020.05.07	Alterra Mountain Company	MCS	Filed proof of service.	1	\$300.00	\$300.00
2020.05.11	Alterra Mountain Company	YOK	Emails with Bryan Clobes re plan to transfer case to CO and the JPML petition (.3), reviewed stipulation to transfer and proposed order and emailed defendant re same (.2)	0.5	\$725.00	\$362.50
2020.05.13	Alterra Mountain Company	YOK	Reviewed motion to consolidate and emailed defense counsel re same.	0.3	\$725.00	\$217.50
2020.05.13	Alterra Mountain Company	BSS	Drafted notice of appearance (0.2); Conf. w/ MCS re: same (0.1)	0.3	\$375.00	\$112.50
2020.05.14	Alterra Mountain Company	YOK	Reviewed notice of appearance and emailed Debbie Schroeder re same	0.2	\$725.00	\$145.00
2020.05.14	Alterra Mountain Company	BSS	Emailed YOK re: notice of appearance (0.1); Revised notice of appearance (0.1)	0.2	\$375.00	\$75.00
2020.05.15	Alterra Mountain Company	DLS	Made edits; finalized and filed notice of appearance	0.5	\$300.00	\$150.00
2020.05.18	Alterra Mountain Company	BER	Attended call with plaintiffs' counsel regarding MDL and next steps (.4) and discussed same with YOK and BSS (.3)	0.7	\$425.00	\$297.50
2020.05.19	Alterra Mountain Company	YOK	Call with Dovel & Luner and discussed JPA with Blair Reed	0.4	\$725.00	\$290.00
2020.05.19	Alterra Mountain Company	BER	Prepared for and attended call with plaintiffs' counsel and discussed same with YOK	0.4	\$425.00	\$170.00
2020.05.19	Alterra Mountain Company	BER	Reviewed dockets in related cases	1.1	\$425.00	\$467.50
2020.05.19	Alterra Mountain Company	BER	Prepared JPA and discussed same with YOK	0.8	\$425.00	\$340.00
2020.05.20	Alterra Mountain Company	YOK	Reviewed and edited JPA and emailed BER re same	0.4	\$725.00	\$290.00
2020.05.20	Alterra Mountain Company	BER	Reviewed email exchange with clients and co-counsel	0.3	\$425.00	\$127.50
2020.05.20	Alterra Mountain Company	BER	Reviewed dockets in related cases	0.6	\$425.00	\$255.00
2020.05.21	Alterra Mountain Company	YOK	Emailed defense counsel re response deadline (.1). Call with Dovel & Luner re 23(g), jpa, and case strategy (.4). Worked on finalizing and executing JPAs with Dovel & Luner and Marc Reich (1.3).	1.8	\$725.00	\$1,305.00
2020.05.21	Alterra Mountain Company	BER	Reviewed MDL motion (.5) and drafted response (1.6)	2.1	\$425.00	\$892.50
2020.05.22	Alterra Mountain Company	YOK	Call with plaintiffs' counsel re scheduling (.4) and prepped for call (.2).	0.6	\$725.00	\$435.00
2020.05.22	Alterra Mountain Company	YOK	Emails with plaintiffs' counsel in related cases re case strategy	0.3	\$725.00	\$217.50
2020.05.26	Alterra Mountain Company	YOK	Emailed Jonas Jacobson re local counsel issue	0.2	\$725.00	\$145.00

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2020.05.26	Alterra Mountain Company	BER	Exchanged emails with YOK regarding next steps	0.3	\$425.00	\$127.50
2020.05.28	Alterra Mountain Company	YOK	Reviewed client JPA signatures and email from cocounsel re same	0.1	\$725.00	\$72.50
2020.06.03	Alterra Mountain Company	YOK	Call with plaintiffs' counsel re next steps and reviewed email re same.	0.5	\$725.00	\$362.50
2020.06.04	Alterra Mountain Company	YOK	Reviewed emails re proposal for joint report and emailed plain iffs counsel re same.	0.2	\$725.00	\$145.00
2020.06.08	Alterra Mountain Company	YOK	Emailed plaintiffs counsel re joint statement and reviewed same.	0.2	\$725.00	\$145.00
2020.06.09	Alterra Mountain Company	YOK	Emails wi h plaintiffs counsel in related cases re case strategy	0.2	\$725.00	\$145.00
2020.06.12	Alterra Mountain Company	YOK	Emailed BER re 23(g)	0.1	\$725.00	\$72.50
2020.06.17	Alterra Mountain Company	YOK	Call with Dovel & Luner re case management conference strategy and prepped for same.	0.4	\$725.00	\$290.00
2020.06.17	Alterra Mountain Company	BER	Reviewed related cases and researched regarding 23(g).	3.1	\$425.00	\$1,317.50
2020.06.18	Alterra Mountain Company	YOK	Prepped for and participated in video case management conference. Discussed same with BER.	1.8	\$725.00	\$1,305.00
2020.07.09	Alterra Mountain Company	YOK	Emailed cocounsel re 23(g) and worked on same.	0.9	\$725.00	\$652.50
2020.07.10	Alterra Mountain Company	YOK	Edited 23(g) motion and emailed cocounsel re same.	1.6	\$725.00	\$1,160.00
2020.07.11	Alterra Mountain Company	YOK	Reviewed updated 23(g) docs and emailed cocounsel re same.	0.3	\$725.00	\$217.50
2020.07.13	Alterra Mountain Company	YOK	Worked on 23(g) motion and Krivoshey declaration, and emails with cocounsel and BER re same. Discussions re same with BER.	2.8	\$725.00	\$2,030.00
2020.07.14	Alterra Mountain Company	YOK	Analyzed competing 23(g) filings.	1	\$725.00	\$725.00
2020.07.31	Alterra Mountain Company	YOK	Reviewed 23(g) order, emailed cocounsel re same, and discussed with BER. Strategized re next steps.	1	\$725.00	\$725.00
2020.07.31	Alterra Mountain Company	BER	Reviewed 23(g) order, discussed with YOK, and calendared dates.	0.8	\$425.00	\$340.00
2020.08.03	Alterra Mountain Company	YOK	Emails wi h cocounsel and BER re scheduling call.	0.1	\$725.00	\$72.50
2020.08.04	Alterra Mountain Company	BER	Prepared for and attended call wi h YOK and co-counsel regarding FAC.	0.6	\$425.00	\$255.00
2020.08.11	Alterra Mountain Company	YOK	Reviewed revisions re plaintiff questionnaires and emailed cocounsel re same.	0.3	\$725.00	\$217.50
2020.08.18	Alterra Mountain Company	YOK	Created billing template/protocol and sent to cocounsel.	0.3	\$725.00	\$217.50
2020.08.19	Alterra Mountain Company	BER	Reviewed emails from co-counsel and plaintiff questionnaires and time keeping protocols.	1.1	\$425.00	\$467.50
2020.08.21	Alterra Mountain Company	BER	Reviewed plaintiff forms.	0.5	\$425.00	\$212.50
2020.08.25	Alterra Mountain Company	YOK	Emails wi h cocounsel re plaintiff questionnaires and consolidated complaint strategy. Reviewed memo re same.	0.3	\$725.00	\$217.50
2020.08.26	Alterra Mountain Company	YOK	Call with cocounsel and BER re consolidated amended complaint, and emailed Jonas Jacobson re same.	0.7	\$725.00	\$507.50
2020.08.26	Alterra Mountain Company	BER	Prepared for and attended call wi h YOK and co-counsel regarding FAC.	0.7	\$425.00	\$297.50
2020.08.27	Alterra Mountain Company	BER	Reviewed client questionnaires.	0.4	\$425.00	\$170.00
2020.08.28	Alterra Mountain Company	YOK	Multiple emails with cocounsel and messages with Marc Reich re consolidated complaint and plaintiff vetting.	0.6	\$725.00	\$435.00
2020.08.28	Alterra Mountain Company	BER	Reviewed emails to M. Reich and drafted email to YOK and M. Reich re: Clients.	0.2	\$425.00	\$85.00
2020.08.31	Alterra Mountain Company	YOK	Zoom call with Jeffrey Farrell and cocounsel re consolidated complaint (.3). Call with cocounsel re consolidated complaint strategy (.2).	0.5	\$725.00	\$362.50
2020.08.31	Alterra Mountain Company	BER	Prepared for and attended call wi h YOK and co-counsel regarding FAC.	0.8	\$425.00	\$340.00
2020.08.31	Alterra Mountain Company	ASM	Send docs re CLRA letter and tracking to BER and YOK	0.1	\$275.00	\$27.50
2020.09.01	Alterra Mountain Company	YOK	Emails wi h cocounsel re rescission claim and research re same. Emails re consolidated complaint with cocounsel.	0.5	\$725.00	\$362.50
2020.09.02	Alterra Mountain Company	YOK	Worked on consolidated complaint and participated in zoom call with cocounsel re same. Messages with BER re same.	2	\$725.00	\$1,450.00
2020.09.03	Alterra Mountain Company	BER	Reviewed claims for consolidated amended complaint.	1.4	\$425.00	\$595.00
2020.09.04	Alterra Mountain Company	YOK	Reviewed consolidated complaint, and emails with cocounsel and BER re same.	0.9	\$725.00	\$652.50
2020.09.04	Alterra Mountain Company	BER	Reviewed consolidated complaint and exchanged emails and messages with co-counsel and YOK regarding the same.	2.2	\$425.00	\$935.00
2020.09.07	Alterra Mountain Company	YOK	Reviewed email re next steps from cocounsel.	0.1	\$725.00	\$72.50
2020.09.08	Alterra Mountain Company	YOK	Emails wi h cocounsel re 26(f) conference and report.	0.2	\$725.00	\$145.00
2020.09.11	Alterra Mountain Company	YOK	Emails wi h cocounsel and discussion with BER re joint report.	0.2	\$725.00	\$145.00
2020.09.14	Alterra Mountain Company	YOK	Emails wi h cocounsel re scheduling call and draft joint report.	0.2	\$725.00	\$145.00
2020.09.14	Alterra Mountain Company	BER	Drafted scheduling report.	2.2	\$425.00	\$935.00
2020.09.15	Alterra Mountain Company	YOK	Discussed draft joint statement with BER, and edited her draft. Emails with cocounsel re same.	2	\$725.00	\$1,450.00
2020.09.15	Alterra Mountain Company	BER	Drafted scheduling report and exchanged messages with co-counsel and YOK regarding same.	1.8	\$425.00	\$765.00
2020.09.16	Alterra Mountain Company	YOK	Call with cocounsel, and call with defense counsel re joint statement and next steps. Discussed same with BER. Reviewed updated joint statement.	2.2	\$725.00	\$1,595.00
2020.09.16	Alterra Mountain Company	BER	Attended call with co-counsel regarding 26(f) and discussed same with YOK.	0.7	\$425.00	\$297.50
2020.09.18	Alterra Mountain Company	YOK	Reviewed draft joint proposed pretrail schedule and emails with cocounsel re same.	0.3	\$725.00	\$217.50

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2020.09.21	Alterra Mountain Company	YOK	Emails re joint pretrial schedule order. Emails with cocounsel re discovery requests and emailed them samples.	0.4	\$725.00	\$290.00
2020.09.28	Alterra Mountain Company	YOK	Emails with cocounsel re plaintiff updates.	0.2	\$725.00	\$145.00
2020.09.30	Alterra Mountain Company	YOK	Emails with cocounsel re Defendant's new language for next season's passes and effects on case, as well as plaintiff issues.	0.5	\$725.00	\$362.50
2020.10.01	Alterra Mountain Company	YOK	Emails with cocounsel re plaintiff issue.	0.2	\$725.00	\$145.00
2020.10.15	Alterra Mountain Company	YOK	Emails with cocounsel re MTD/RJN and strategized re same.	0.3	\$725.00	\$217.50
2020.10.22	Alterra Mountain Company	YOK	Drafted JPA and emailed cocounsel re same.	0.5	\$725.00	\$362.50
2020.10.26	Alterra Mountain Company	YOK	Emails with cocounsel re JPA and reviewed edits to same. Reviewed draft and worked on motion for appointment of lead counsel.	1.5	\$725.00	\$1,087.50
2020.10.30	Alterra Mountain Company	YOK	Messages with cocounsel and BER re MTD opposition and strategized re same.	0.4	\$725.00	\$290.00
2020.10.31	Alterra Mountain Company	BER	Exchanged messages with YOK regarding MTD opposition.	0.2	\$425.00	\$85.00
2020.11.02	Alterra Mountain Company	BER	Drafted MTD opposition.	6.2	\$425.00	\$2,635.00
2020.11.03	Alterra Mountain Company	BER	Drafted MTD opposition and exchanged messages with YOK and co-counsel regarding the same.	7.8	\$425.00	\$3,315.00
2020.11.04	Alterra Mountain Company	BER	Drafted MTD opposition.	3.4	\$425.00	\$1,445.00
2020.11.05	Alterra Mountain Company	YOK	Call with BER re MTD opposition. Worked on portions of MTD opposition and emailed cocounsel re same.	7.4	\$725.00	\$5,365.00
2020.11.05	Alterra Mountain Company	BER	Worked on MTD opposition and exchanged messages with YOK regarding same.	3.2	\$425.00	\$1,360.00
2020.11.05	Alterra Mountain Company	MCS	Fixed headings on draft doc for YOK.	0.5	\$300.00	\$150.00
2020.11.06	Alterra Mountain Company	YOK	Edited MTD opposition and worked with cocounsel on finalizing and filing same.	8.6	\$725.00	\$6,235.00
2020.11.06	Alterra Mountain Company	BER	Worked on MTD opposition and discussed same with YOK and co-counsel.	6.7	\$425.00	\$2,847.50
2020.11.07	Alterra Mountain Company	YOK	Emailed BER re ECF issues.	0.1	\$725.00	\$72.50
2020.12.02	Alterra Mountain Company	YOK	Emailed cocounsel re issues with 2021 ski season, and research re same.	0.3	\$725.00	\$217.50
2021.02.23	Alterra Mountain Company	YOK	Reviewed and emailed cocounsel exemplar discovery requests.	0.2	\$725.00	\$145.00
2021.03.15	Alterra Mountain Company	YOK	Emailed Sharon Nyland re billing issue.	0.1	\$725.00	\$72.50
2021.05.12	Alterra Mountain Company	YOK	Reviewed order re biennial fee, messaged cocounsel and Debbie Schroeder re same.	0.4	\$725.00	\$290.00
2021.05.13	Alterra Mountain Company	DLS	Emailed Colorado attorney services re YOK admission	0.4	\$300.00	\$120.00
2021.06.25	Alterra Mountain Company	YOK	Reviewed Order re MTD and emailed cocounsel re same.	0.6	\$725.00	\$435.00
2021.06.28	Alterra Mountain Company	YOK	Emails with cocounsel re next steps, and emailed defense counsel re status conference and next steps.	0.3	\$725.00	\$217.50
2021.06.30	Alterra Mountain Company	YOK	Call with defense counsel re next steps, and emails re status conference. Discussed admission to D. Colorado and notice of appearance with Debbie Schroeder.	0.5	\$725.00	\$362.50
2021.06.30	Alterra Mountain Company	DLS	Assisted with Krivoshey admission and filed no ice of appearance	0.9	\$300.00	\$270.00
2021.07.02	Alterra Mountain Company	YOK	Reviewed motion to schedule CMC and emailed defense counsel re same.	0.2	\$725.00	\$145.00
2021.07.07	Alterra Mountain Company	YOK	Emails with cocounsel and defense counsel re conferral for cmc statement	0.2	\$725.00	\$145.00
2021.07.08	Alterra Mountain Company	YOK	Emails with cocounsel re next steps and leave	0.2	\$725.00	\$145.00
2021.07.28	Alterra Mountain Company	YOK	Messaged cocounsel re status update	0.1	\$725.00	\$72.50
2021.07.29	Alterra Mountain Company	YOK	Reviewed defendant's redlines to cmc statement	0.3	\$725.00	\$217.50
2021.08.02	Alterra Mountain Company	YOK	Reviewed D's redlines to case management statement and emailed cocounsel re same.	0.5	\$725.00	\$362.50
2021.08.04	Alterra Mountain Company	YOK	Analyzed CMC statement and messages with cocounsel re same.	0.4	\$725.00	\$290.00
2021.08.10	Alterra Mountain Company	YOK	Drafted initial disclosures, reviewed cocounsel's edits re same, and emails with cocounsel re same. Reviewed defendant's initial disclosures.	1.5	\$725.00	\$1,087.50
2021.08.11	Alterra Mountain Company	YOK	Messages with cocounsel re CMC and reviewed statement.	0.4	\$725.00	\$290.00
2021.08.12	Alterra Mountain Company	YOK	Reviewed case management order and emailed cocounsel re same.	0.3	\$725.00	\$217.50
2021.08.25	Alterra Mountain Company	YOK	Call with cocounsel re plaintiff meetings and discovery issues, and strategized re discovery requests.	0.5	\$725.00	\$362.50
2021.09.01	Alterra Mountain Company	YOK	Drafted and circulated Interrogatories, and provided redlines and comments to RFPs. Emails with cocounsel re same.	2.5	\$725.00	\$1,812.50
2021.09.02	Alterra Mountain Company	YOK	Reviewed revised interrogatories and messaged cocounsel re same.	0.4	\$725.00	\$290.00
2021.09.09	Alterra Mountain Company	YOK	Reviewed expert candidates proposed by cocounsel and emails re same. Strategized re discovery issues and messaged cocounsel re same.	1	\$725.00	\$725.00
2021.09.13	Alterra Mountain Company	YOK	Prepped for and participated on call re ESI Protocol and Protective Order. Conferred with cocounsel re expert retention and continued investigation re same.	2.2	\$725.00	\$1,595.00
2021.09.13	Alterra Mountain Company	YOK	Reviewed amended complaint and messaged Stephen Beck re same.	0.5	\$725.00	\$362.50
2021.09.14	Alterra Mountain Company	YOK	Reviewed memo re damages and research re same, and emailed cocounsel re same.	0.5	\$725.00	\$362.50
2021.09.15	Alterra Mountain Company	YOK	Zoom meeting with cocounsel and prepped for same. Emailed cocounsel memo re MSJ issue, and calls with potential expert re retention, and research re same.	4.2	\$725.00	\$3,045.00
2021.09.21	Alterra Mountain Company	YOK	Research re damages issues and messages with cocounsel re same.	2.5	\$725.00	\$1,812.50

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2021.09.29	Alterra Mountain Company	YOK	Call with cocounsel re case strategy. Emailed defense counsel re settlement.	0.5	\$725.00	\$362.50
2021.10.11	Alterra Mountain Company	YOK	Messaged with cocounsel re subpoena	0.2	\$725.00	\$145.00
2021.10.11	Alterra Mountain Company	YOK	Prepped for and participated on prep call with AJO/MSR and Bratcher re depo.	0.5	\$725.00	\$362.50
2021.10.13	Alterra Mountain Company	YOK	Messages with cocounsel re survey expert issue and research re same. Call with cocounsel re mediation and discovery issues.	1.3	\$725.00	\$942.50
2021.10.14	Alterra Mountain Company	YOK	Messaged cocounsel re mediation and strategized re same.	0.7	\$725.00	\$507.50
2021.10.15	Alterra Mountain Company	YOK	Reviewed MTD Order in Vail, and discussed impact on Alterra case with cocounsel. Messaged Bryan Clobes re same. Strategized re next steps and impact on media ion. Call with Mike Dennis re reten ion.	2.5	\$725.00	\$1,812.50
2021.10.18	Alterra Mountain Company	YOK	Continued internal discussions re impact of Vail ruling and messaged Clobes firm re same.	1	\$725.00	\$725.00
2021.10.20	Alterra Mountain Company	YOK	Emails with defense counsel and cocounsel re mediation issues and timing. Call to Jill Sperber and staff re availability and emails re same. Call and email to Judge Andersen re mediation availability. Strategized re mediation issues.	2	\$725.00	\$1,450.00
2021.10.22	Alterra Mountain Company	YOK	Messaged mediator	0.1	\$725.00	\$72.50
2021.10.25	Alterra Mountain Company	YOK	Call with defense counsel re settlement and discovery issues, and call with cocounsel re same. Strategized re next steps.	1	\$725.00	\$725.00
2021.10.27	Alterra Mountain Company	YOK	Call with cocounsel re mediation and discovery issues, and reviewed draft status report. Calendared dates re Vail appeal and strategized re same.	0.5	\$725.00	\$362.50
2021.11.04	Alterra Mountain Company	YOK	Reviewed and provided comments re joint status report, and reviewed emails re same.	0.5	\$725.00	\$362.50
2021.11.05	Alterra Mountain Company	YOK	Reviewed filed status report and communications re same.	0.2	\$725.00	\$145.00
2021.11.09	Alterra Mountain Company	YOK	Messages Bryan Clobes re appeal in Vail	0.1	\$725.00	\$72.50
2021.11.15	Alterra Mountain Company	YOK	Reviewed email from cocounsel re settlement issues and strategized re same.	1	\$725.00	\$725.00
2021.12.01	Alterra Mountain Company	YOK	Strategized re media ion, reviewed docs re same, and call with cocounsel re same.	4.2	\$725.00	\$3,045.00
2021.12.17	Alterra Mountain Company	YOK	Emailed Jonas Jacobson re status report	0.1	\$725.00	\$72.50
2022.01.03	Alterra Mountain Company	YOK	Messages with cocounsel re mediation briefing and worked on same.	1.7	\$725.00	\$1,232.50
2022.01.04	Alterra Mountain Company	YOK	Worked on damages portion of mediation brief. Emails with cocounsel re same.	2	\$725.00	\$1,450.00
2022.01.05	Alterra Mountain Company	YOK	Worked on mediation brief	3.6	\$725.00	\$2,610.00
2022.01.06	Alterra Mountain Company	YOK	Worked on mediation brief and circulated draft to cocounsel	6.1	\$725.00	\$4,422.50
2022.01.10	Alterra Mountain Company	YOK	Discussed damages issues and mediation with cocounsel, and prepped for mediation. Finalized damages brief and sent to defense counsel.	2.6	\$725.00	\$1,885.00
2022.01.12	Alterra Mountain Company	YOK	Worked on mediation brief and messaged cocounsel re same.	3.3	\$725.00	\$2,392.50
2022.01.13	Alterra Mountain Company	YOK	Reviewed updated mediation brief and messaged cocounsel re same.	0.2	\$725.00	\$145.00
2022.01.21	Alterra Mountain Company	YOK	Prepped for mediation	3.1	\$725.00	\$2,247.50
2022.01.24	Alterra Mountain Company	YOK	Prepared for and attended media ion with Jill Sperber	13.9	\$725.00	\$10,077.50
2022.01.25	Alterra Mountain Company	YOK	Call with Jill Sperber. Emails with cocounsel re media ion. Research re settlement issues.	5.2	\$725.00	\$3,770.00
2022.01.26	Alterra Mountain Company	YOK	Continued research re settlement, emails with cocounsel and Marc Reich re same.	2.4	\$725.00	\$1,740.00
2022.01.27	Alterra Mountain Company	YOK	Messages with mediator and cocounsel, reviewed and strategized re settlement strategy	1.6	\$725.00	\$1,160.00
2022.01.31	Alterra Mountain Company	YOK	Reviewed term sheet and strategized re revisions. Call with cocounsel re same.	3.1	\$725.00	\$2,247.50
2022.02.01	Alterra Mountain Company	YOK	Redlined term sheet and discussed same with cocounsel	5.8	\$725.00	\$4,205.00
2022.02.04	Alterra Mountain Company	YOK	Strategized re next mediation steps and term sheet.	1.3	\$725.00	\$942.50
2022.02.09	Alterra Mountain Company	YOK	Worked on term sheet, messages with cocounsel re same, and messages with defense counsel re same.	5.2	\$725.00	\$3,770.00
2022.02.11	Alterra Mountain Company	YOK	Research re settlement issues in Colorado and the term sheet.	2.2	\$725.00	\$1,595.00
2022.02.15	Alterra Mountain Company	YOK	Prepped for and participated on settlement call, and messages with defense counsel and cocounsel re same. Strategized re next steps.	1.4	\$725.00	\$1,015.00
2022.02.16	Alterra Mountain Company	YOK	Analyzed term sheet, conferred with cocounsel re same, and messaged defense counsel re same.	2	\$725.00	\$1,450.00
2022.02.17	Alterra Mountain Company	YOK	Conferral re term sheet and research re same.	3.1	\$725.00	\$2,247.50
2022.02.23	Alterra Mountain Company	YOK	Reviewed settlement communications and emailed defense counsel re same.	0.4	\$725.00	\$290.00
2022.02.25	Alterra Mountain Company	YOK	Email correspondence re fees, call with Jonas Jacobson re same. Strategized re next steps.	1.2	\$725.00	\$870.00
2022.02.28	Alterra Mountain Company	YOK	Messages with mediator	0.1	\$725.00	\$72.50
2022.03.02	Alterra Mountain Company	YOK	Emailed cocounsel re media ion and messaged mediator re same.	0.2	\$725.00	\$145.00
2022.03.03	Alterra Mountain Company	YOK	Messages with mediator and RR re billing. Emails with cocounsel re next steps.	0.4	\$725.00	\$290.00
2022.03.04	Alterra Mountain Company	YOK	Call with mediator. Emails with cocounsel re same.	0.6	\$725.00	\$435.00
2022.03.10	Alterra Mountain Company	YOK	Call and messages with mediator. Emailed defense counsel re mediation. Messages with cocounsel re same. Strategized re next steps.	2.6	\$725.00	\$1,885.00
2022.03.11	Alterra Mountain Company	YOK	Emails with defense counsel re mediation and discovery deadlines.	0.1	\$725.00	\$72.50
2022.03.14	Alterra Mountain Company	YOK	Research re settlement issues.	2.8	\$725.00	\$2,030.00

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2022.03.15	Alterra Mountain Company	YOK	Continued research re settlement/preliminary approval	0.4	\$725.00	\$290.00
2022.03.18	Alterra Mountain Company	YOK	Strategized re next mediation steps.	0.8	\$725.00	\$580.00
2022.03.28	Alterra Mountain Company	YOK	Call with Jill Sperber re settlement, and discussed same with cocounsel	0.6	\$725.00	\$435.00
2022.03.30	Alterra Mountain Company	YOK	Call with Jill Sperber, call with cocounsel, messages with Sperber and cocounsel re settlement.	1.2	\$725.00	\$870.00
2022.04.08	Alterra Mountain Company	YOK	Email re settlement	0.1	\$725.00	\$72.50
2022.04.09	Alterra Mountain Company	YOK	Emailed defense counsel re settlement.	0.1	\$725.00	\$72.50
2022.04.15	Alterra Mountain Company	YOK	Call with defense counsel, and call with mediator, and emails with defense counsel and cocounsel re mediation issues. Strategized re same. Reviewed motion to stay and messaged defense counsel re same.	3.2	\$725.00	\$2,320.00
2022.04.20	Alterra Mountain Company	YOK	Call with defense counsel and strategized re next steps.	1	\$725.00	\$725.00
2022.04.21	Alterra Mountain Company	YOK	Conferred with cocounsel re mediation and strategized re same.	0.5	\$725.00	\$362.50
2022.04.29	Alterra Mountain Company	YOK	Call with defense counsel re settlement, emails with cocounsel and defendant re same. Strategized re next steps.	1	\$725.00	\$725.00
2022.05.04	Alterra Mountain Company	YOK	Call with defense counsel re settlement, call with cocounsel re same, messaged mediator re same, strategized re next steps.	1.7	\$725.00	\$1,232.50
2022.05.05	Alterra Mountain Company	YOK	Call with cocounsel re settlement and strategized re same.	1.2	\$725.00	\$870.00
2022.05.06	Alterra Mountain Company	YOK	Call with cocounsel re settlement, and call with defense counsel re settlement, and strategized re same. Reviewed draft status report and messaged defense counsel re same.	1.8	\$725.00	\$1,305.00
2022.05.12	Alterra Mountain Company	YOK	Call with defense counsel and calls and emails with cocounsel re settlement. Reviewed draft term sheet.	1	\$725.00	\$725.00
2022.05.13	Alterra Mountain Company	YOK	Calls with defense counsel re settlement and joint statement, call with Marc Reich re settlement. Strategized re next steps. Emails with cocounsel re term sheet.	2	\$725.00	\$1,450.00
2022.05.15	Alterra Mountain Company	YOK	Messaged cocounsel re settlement	0.1	\$725.00	\$72.50
2022.05.18	Alterra Mountain Company	YOK	Sent undertaking to defense counsel.	0.2	\$725.00	\$145.00
2022.05.24	Alterra Mountain Company	YOK	Reviewed term sheet and messaged cocounsel re same.	0.2	\$725.00	\$145.00
2022.05.31	Alterra Mountain Company	YOK	Reviewed term sheet, call with SAB re settlement, and messages with defense counsel re same.	0.7	\$725.00	\$507.50
2022.06.01	Alterra Mountain Company	YOK	Reviewed term sheet and call with defense counsel re same, messaged cocounsel re same.	0.6	\$725.00	\$435.00
2022.06.04	Alterra Mountain Company	YOK	Reviewed revised term sheet and executed same, messaged cocounsel re same.	0.8	\$725.00	\$580.00
2022.06.13	Alterra Mountain Company	YOK	Messages re full settlement agreement with cocounsel and reviewed communications with defense counsel re same.	0.3	\$725.00	\$217.50
2022.06.25	Alterra Mountain Company	YOK	Messaged defense counsel re settlement progress	0.1	\$725.00	\$72.50
2022.06.26	Alterra Mountain Company	YOK	Messaged mediator and discussed mediation with MSR	0.5	\$725.00	\$362.50
2022.07.06	Alterra Mountain Company	YOK	Message with defense counsel re settlement update	0.1	\$725.00	\$72.50
2022.07.07	Alterra Mountain Company	YOK	Research re prelim approval issues.	1.5	\$725.00	\$1,087.50
2022.07.11	Alterra Mountain Company	YOK	Discussed confirmatory discovery issue with Simon Franzini and left voicemail for defense counsel re same. Investigation re same.	0.8	\$725.00	\$580.00
2022.07.12	Alterra Mountain Company	YOK	Discussed confirmatory discovery with defense counsel and email re same.	0.4	\$725.00	\$290.00
2022.07.18	Alterra Mountain Company	YOK	Worked on settlement agreement	1.7	\$725.00	\$1,232.50
2022.07.19	Alterra Mountain Company	YOK	Continued working on full settlement agreement.	1.6	\$725.00	\$1,160.00
2022.07.20	Alterra Mountain Company	YOK	Continued working on settlement agreement. Revised joint statement re settlement and messages with defense counsel and cocounsel re same.	3.7	\$725.00	\$2,682.50
2022.07.20	Alterra Mountain Company	DLS	Finalized and filed status report	0.3	\$300.00	\$90.00
2022.07.21	Alterra Mountain Company	YOK	Continued working on settlement agreement.	0.8	\$725.00	\$580.00
2022.07.22	Alterra Mountain Company	YOK	Reviewed cocounsel's revisions, finalized draft settlement agreement, and sent draft to defense counsel.	2.1	\$725.00	\$1,522.50
2022.07.22	Alterra Mountain Company	YOK	Worked on motion for preliminary approval	2.8	\$725.00	\$2,030.00
2022.07.27	Alterra Mountain Company	YOK	Continued working on preliminary approval motion	3	\$725.00	\$2,175.00
2022.07.28	Alterra Mountain Company	YOK	Messaged defense counsel re settlement update and continued working on preliminary approval motion.	4.4	\$725.00	\$3,190.00
2022.07.29	Alterra Mountain Company	YOK	Continued working on motion for preliminary approval	0.5	\$725.00	\$362.50
2022.08.03	Alterra Mountain Company	YOK	Revised settlement agreement, long form notice, summary notice, claim form, and proposed preliminary approval order and sent back to defense counsel with redlines. Continued working on motion for preliminary approval.	7.1	\$725.00	\$5,147.50
2022.08.03	Alterra Mountain Company	MCS	Read local rules, created prelim approval brief template. Sent to YOK.	1.5	\$300.00	\$450.00
2022.08.04	Alterra Mountain Company	YOK	Continued working on motion for preliminary approval	4.8	\$725.00	\$3,480.00
2022.08.05	Alterra Mountain Company	YOK	Reviewed confirmatory discovery and continued working on motion for preliminary approval. Messaged cocounsel re same.	2.3	\$725.00	\$1,667.50
2022.08.08	Alterra Mountain Company	YOK	Worked on motion for preliminary approval	1.1	\$725.00	\$797.50
2022.08.09	Alterra Mountain Company	YOK	Reviewed settlement docs and worked on finalizing docs.	1.8	\$725.00	\$1,305.00

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2022.08.10	Alterra Mountain Company	YOK	Worked on getting fully executed settlement agreement and attention to last minute issues. Calls with defense counsel re same. Worked on and filed joint statement re status of discovery and settlement.	4.7	\$725.00	\$3,407.50
2022.08.10	Alterra Mountain Company	DLS	Finalized and filed joint status report	0.5	\$300.00	\$150.00
2022.08.10	Alterra Mountain Company	EMW	Put together SAB's signature page re settlement agreement (.2)	0.2	\$300.00	\$60.00
2022.08.10	Alterra Mountain Company	MCS	Spoke with YOK re signature pages. Fixed pages and uploaded to Box.	0.4	\$300.00	\$120.00
2022.08.10	Alterra Mountain Company	TEC	Sent settlement agreement for signature to 7 plaintiffs, co counsel, SAB, YOK. Saved pages to Box.	0.8	\$275.00	\$220.00
2022.08.11	Alterra Mountain Company	YOK	Continued working on motion for preliminary approval	2.7	\$725.00	\$1,957.50
2022.08.11	Alterra Mountain Company	DLS	Finalized and filed joint status report	0.4	\$300.00	\$120.00
2022.08.12	Alterra Mountain Company	YOK	Worked on motion for preliminary approval	7.2	\$725.00	\$5,220.00
2022.08.12	Alterra Mountain Company	DLS	Reviewed restricted document procedure and call with YOK	0.3	\$300.00	\$90.00
2022.08.15	Alterra Mountain Company	YOK	Worked on preliminary approval motion and declaration	8.4	\$725.00	\$6,090.00
2022.08.16	Alterra Mountain Company	YOK	Continued working on preliminary approval motion	7.3	\$725.00	\$5,292.50
2022.08.17	Alterra Mountain Company	YOK	Worked on, finalized, and filed motion for preliminary approval and all associated docs. Many calls with defense counsel and staff regarding the motion and filing.	11.1	\$725.00	\$8,047.50
2022.08.17	Alterra Mountain Company	DLS	Prepared TOA/TOC; made edits; finalized and filed preliminary approval motion; restricted document	2.5	\$300.00	\$750.00
2022.08.17	Alterra Mountain Company	MCS	Assembled and finalized declaration ISO preliminary approval	1	\$300.00	\$300.00
2022.08.17	Alterra Mountain Company	AJR	Filed motion for preliminary approval w/ DLS	1	\$275.00	\$275.00
2022.08.24	Alterra Mountain Company	YOK	Emailed defense counsel re restrictions re motion for preliminary approval and CAFA notice.	0.2	\$725.00	\$145.00
2022.09.06	Alterra Mountain Company	YOK	Reviewed Defendant's statement re non-opposition to motion for preliminary approval and discussed same with cocounsel. Emails with Ms. Bianco re proposed order and revised settlement agreement. Worked on revised settlement agreement with exhibits with Debbie Schroeder and sent revised agreement and proposed order to Ms. Bianco.	1.9	\$725.00	\$1,377.50
2022.09.06	Alterra Mountain Company	DLS	Prepared exhibit for filing; re-filed exhibit 1 to settlement agreement	1	\$300.00	\$300.00
2022.09.20	Alterra Mountain Company	YOK	Reviewed order granting preliminary approval and messaged cocounsel re same.	0.5	\$725.00	\$362.50
2022.09.21	Alterra Mountain Company	YOK	Analyzed preliminary approval order, calendared dates, worked on notice docs per order. Messaged defense counsel re privilege issue.	2.6	\$725.00	\$1,885.00
2022.09.22	Alterra Mountain Company	YOK	Messaged notice administrator re revised notice docs and reviewed notice docs.	1.8	\$725.00	\$1,305.00
2022.09.23	Alterra Mountain Company	YOK	Reviewed and approved updated notice docs	1.1	\$725.00	\$797.50
2022.10.04	Alterra Mountain Company	YOK	Call with class member re class settlement.	0.2	\$725.00	\$145.00
2022.10.13	Alterra Mountain Company	YOK	Reviewed status report from Angeion and messaged Ryan Chumley re same.	0.3	\$725.00	\$217.50
2022.10.17	Alterra Mountain Company	YOK	Messaged claims administrator re question	0.2	\$725.00	\$145.00
2022.10.17	Alterra Mountain Company	YOK	Research re fee brief	3.3	\$725.00	\$2,392.50
2022.10.17	Alterra Mountain Company	EAH	Discussed assignment (motion for attorney's fees) with YOK (0.2); drafted motion for attorney's fees (2)	2.2	\$325.00	\$715.00
2022.10.17	Alterra Mountain Company	JMF	Reviewed local rules for D. Co. and prepared template for fee motion.	1.5	\$275.00	\$412.50
2022.10.18	Alterra Mountain Company	YOK	Reviewed notice of compliance and Angeion declaration, and messaged Angeion and defense counsel re same.	0.5	\$725.00	\$362.50
2022.10.18	Alterra Mountain Company	EAH	Researched and drafted motion for attorney's fees (8.8)	8.8	\$325.00	\$2,860.00
2022.10.19	Alterra Mountain Company	YOK	Reviewed updated notice of compliance and messaged Ryan Cooke re same.	0.3	\$725.00	\$217.50
2022.10.19	Alterra Mountain Company	EAH	Researched and drafted motion for attorney's fees (1.8)	1.8	\$325.00	\$585.00
2022.10.21	Alterra Mountain Company	YOK	Reviewed objection and messaged defense counsel re same.	0.2	\$725.00	\$145.00
2022.10.24	Alterra Mountain Company	YOK	Worked on motion for fees, and messages with cocounsel re same.	5.6	\$725.00	\$4,060.00
2022.10.24	Alterra Mountain Company	EAH	Researched lodestar multipliers within the 10th Cir. and CO (2.3)	2.3	\$325.00	\$747.50
2022.10.25	Alterra Mountain Company	YOK	Call with cocounsel re fees motion. Call with plaintiffs counsel in related Alterra case re settlement questions. Worked on fees motion. Messaged Marc Reich re lodestar and cost information and reviewed same.	5.2	\$725.00	\$3,770.00
2022.10.26	Alterra Mountain Company	YOK	Worked on fee motion	4.1	\$725.00	\$2,972.50
2022.10.27	Alterra Mountain Company	YOK	Continued working on fee motion materials	6.1	\$725.00	\$4,422.50
2022.10.27	Alterra Mountain Company	EAH	Researched reasonable attorney fees within the 10th Cir. and CO (3.5)	3.5	\$325.00	\$1,137.50
2022.10.28	Alterra Mountain Company	YOK	Worked on fee motion	2.3	\$725.00	\$1,667.50
2022.10.31	Alterra Mountain Company	YOK	Continued working on fee motion and emails with cocounsel re same.	4.4	\$725.00	\$3,190.00
2022.10.31	Alterra Mountain Company	YOK	Prepared for and participated on deposition prep call with Plaintiff Hill and cocounsel. Prepped for other depositions.	3.4	\$725.00	\$2,465.00
2022.10.31	Alterra Mountain Company	RSR	Prepared time and expenses for fee brief (.7)	0.7	\$300.00	\$210.00
2022.11.01	Alterra Mountain Company	YOK	Worked on fee brief and associated documents.	3.1	\$725.00	\$2,247.50
2022.11.02	Alterra Mountain Company	YOK	Worked on fee brief and Krivoshey declaration.	3	\$725.00	\$2,175.00



<b>Bursor &amp; Fisher, P.A. - Alterra Mountain Company Expenses</b>			
		\$400.00	Filing Expenses
		\$9,850.00	Mediation Expenses
		\$249.00	Service of Process Expenses
		\$60.91	Catering & Meal Expenses
		<b>\$10,559.91</b>	<b>Total Expenses</b>
<b>Filing Expenses</b>			
<b>DATE</b>	<b>MATTER</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
2020.04.16	Alterra Mountain Company	\$400.00	Courts/USDC-CA-C
		<b>\$400.00</b>	<b>Total Filing Expenses</b>
<b>Mediation Expenses</b>			
<b>DATE</b>	<b>MATTER</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
2021.11.09	Alterra Mountain Company	\$6,250.00	Judicate West
2022.03.03	Alterra Mountain Company	\$3,600.00	Judicate West
		<b>\$9,850.00</b>	<b>Total Mediation Expenses</b>
<b>Service of Process Expenses</b>			
<b>DATE</b>	<b>MATTER</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
2020.05.20	Alterra Mountain Company	\$249.00	First legal - Complaint Service
		<b>\$249.00</b>	<b>Total Service of Process Expenses</b>
<b>Catering &amp; Meal Expenses</b>			
<b>DATE</b>	<b>MATTER</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
2022.01.25	Alterra Mountain Company	\$60.91	Banana Leaf
		<b>\$60.91</b>	<b>Total Service of Process Expenses</b>



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Business & Practice

# Big Law Rates Topping \$2,000 Leave Value ‘In Eye of Beholder’

By Roy Strom

Column

June 9, 2022, 2:30 AM

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*Welcome back to the Big Law Business column on the changing legal marketplace written by me, Roy Strom. Today, we look at a new threshold for lawyers' billing rates and why it's so difficult to put a price on high-powered attorneys. Sign up to receive this column in your inbox on Thursday mornings. Programming note: Big Law Business will be off next week.*

Some of the nation's top law firms are charging more than \$2,000 an hour, setting a new pinnacle after a two-year burst in demand.

Partners at Hogan Lovells and Latham & Watkins have crossed the threshold, according to court documents in bankruptcy cases filed within the past year.

Other firms came close to the mark, billing more than \$1,900, according to the documents. They include Kirkland & Ellis, Simpson Thacher & Bartlett, Boies Schiller Flexner, and Sidley Austin.

Simpson Thacher & Bartlett litigator Bryce Friedman, who helps big-name clients out of jams, especially when they're accused of fraud, charges \$1,965 every 60 minutes, according to a court document.

In need of a former acting US Solicitor General? Hogan Lovells partner Neal Katyal bills time at \$2,465 an hour. Want to hire famous litigator David Boies? That'll cost \$1,950 an hour (at least). Reuters was first to report their fees.

Eye-watering rates are nothing new for Big Law firms, which typically ask clients to pay higher prices at least once a year, regardless of broader market conditions.

"Value is in the eye of the beholder," said John O'Connor, a San Francisco-based expert on legal fees. "The perceived value of a good lawyer can reach into the multi-billions of dollars."

Kirkland & Ellis declined to comment on its billing rates. None of the other firms responded to requests to comment.

## Charge It Up

Big Law firms are crossing the \$2,000-an-hour threshold after two years of surging rates driven by an increase in demand for lawyers.

Firm	Highest Billing Rate
Hogan Lovells	\$2,465
Latham & Watkins	\$2,075
Kirkland & Ellis	\$1,995
Simpson Thacher & Bartlett	\$1,965
Boies Schiller Flexner	\$1,950
Sidley Austin	\$1,900

Source: Court documents

Bloomberg Law

Law firms have been more successful raising rates than most other businesses over the past 15 years.

Law firm rates rose by roughly 40 percent from 2007 to 2020, or just short of 3 percent per year, Thomson Reuters Peer Monitor data show. US inflation rose by about 28% during that time.

The 100 largest law firms in the past two years achieved their largest rate increases in more than a decade, Peer Monitor says. The rates surged more than 6% in 2020 and grew another 5.6% through November of last year. Neither level had been breached since 2008.

The price hikes occurred during a once-in-a-decade surge in demand for law services, which propelled profits at firms to new levels. Fourteen law firms reported average profits per equity partner in 2021 over \$5 million, according to data from The American Lawyer. That was up from six the previous year.

The highest-performing firms, where lawyers charge the highest prices, have outperformed their smaller peers. Firms with leading practices in markets such as mergers and acquisitions, capital markets, and real estate were forced to turn away work at some points during the pandemic-fueled surge.

Firms receive relatively tepid pushback from their giant corporate clients, especially when advising on bet-the-company litigation or billion-dollar deals.

The portion of bills law firms collected—a sign of how willingly clients pay full-freight—rose during the previous two years after drifting lower following the Great Financial Crisis. Collection rates last year breached 90% for the first time since 2009, Peer Monitor data show.

Professional rules prohibit lawyers from charging “unconscionable” or “unreasonable” rates. But that doesn’t preclude clients from paying any price they perceive as valuable, said Jacqueline Vinaccia, a San Diego-based lawyer who testifies on lawyer fee disputes.

Lawyers’ fees are usually only contested when they will be paid by a third party.

That happened recently with Hogan Lovells’ Katyal, whose nearly \$2,500 an hour fee was contested in May by a US trustee overseeing a bankruptcy case involving a Johnson & Johnson unit facing claims its talc-based powders caused cancer.

The trustee, who protects the financial interests of bankruptcy estates, argued Katyal’s fee was more than \$1,000 an hour higher than rates charged by lawyers in the same case at Jones Day and Skadden Arps Slate Meagher & Flom.

A hearing on the trustee’s objection is scheduled for next week. Hogan Lovells did not respond to a request for comment on the objection.

Vinaccia said the firm’s options will be to reduce its fee, withdraw from the case, or argue the levy is reasonable, most likely based on Katyal’s extensive experience arguing appeals.

Still, the hourly rate shows just how valuable the most prestigious lawyers’ time can be—even compared to their highly compensated competitors.

“If the argument is that Jones Day and Skadden Arps are less expensive, then you’re already talking about the cream of the crop, the top-of-the-barrel law firms,” Vinaccia said. “I can’t imagine a case in which I might argue those two firms are more reasonable than the rates I’m dealing with.”

### **Worth Your Time**

**On Cravath:** Cravath Swaine & Moore is heading to Washington, opening its first new office since 1973 by hiring former heads of the U.S. Securities and Exchange Commission and Federal Deposit Insurance Corporation. Meghan Tribe reports the move comes as Big Law firms are looking to add federal government expertise as clients face more regulatory scrutiny.

**On Big Law Promotions:** It’s rare that associates get promotions to partner in June, but Camille Vasquez is now a Brown Rudnick partner after she shot to fame representing Johnny Depp in his defamation trial against ex-wife Amber Heard.

**On Working From Home:** I spoke this week with Quinn Emanuel’s John Quinn about why he thinks law firm life is never going back to the office first culture that was upset by the pandemic. Listen to the podcast here



*That's it for this week! Thanks for reading and please send me your thoughts, critiques, and tips.*

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## Documents

[Trustee's Objection](#)

## Related Articles

[Overworked Big Law Can't Find Enough Lawyers With Demand Surging](#) Dec. 9, 2021, 3:00 AM

[Never Underestimate Big Law's Ability to Raise Billing Rates](#) Aug. 12, 2021, 3:00 AM

## Law Firms

Simpson Thacher  
Hogan Lovells  
Jones Day  
Skadden  
Sidley Austin  
Quinn Emanuel  
Cravath Swaine & Moore  
Latham & Watkins  
Kirkland & Ellis  
Boies Schiller Flexner

## **Topics**

expert fees  
compensation of bankruptcy attorney  
acquisitions  
U.S. trustees  
financial markets  
client-paid legal fees  
data breaches

## **Companies**

Johnson & Johnson  
Thomson Reuters Corp



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# Enterprise Legal Management Trends Report

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INSIGHT INTO

# 7 KEY METRICS

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JUNE 2022

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## Enterprise Legal Management Trends Report

INSIGHTS ARE BASED ON DATA DERIVED FROM

OVER  
\$49 Billion  
IN LEGAL SPENDING

MORE THAN  
350,000  
TIMEKEEPERS

MORE THAN  
1.2 Million  
MATTERS



# Executive Highlights

Insights are based on data derived from over \$49 billion in legal spending, more than 350,000 timekeepers, and more than 1.2 million matters. The key metrics are based on 2021 charges billed by outside counsel.

## 2021 RECORD SETTING YEAR FOR MERGERS & ACQUISITIONS

LexisNexis® CounselLink® data aligns with reports of 2021 being a record setting year for global mergers and acquisitions. Mergers & Acquisitions (M&A) related legal fees processed through CounselLink in 2021 represented 7.4% of total legal billing, a significant increase from 4.3% in 2020. The data also reflects that greater demand for M&A legal expertise resulted in material price increases. The median partner rate billed for M&A work in 2021 was \$878, a 6.1% increase over the prior year median.

## HOURLY RATE INCREASES SHOW NO SIGNS OF SLOWING

Consistent with what we observed in 2020, despite pandemic-related and other pressures for legal departments to reduce outside counsel spending, hourly rate increases paid to US firms showed no signs of slowing. On average, 2021 partner hourly rates increased by 3.4% relative to 2020. This compares to 3.5% growth in 2020 versus 2019.

## USE OF ALTERNATIVE FEE ARRANGEMENT CONTINUES TO INCREASE

In 2021, 14.8% of matters had at least a portion of their billing under an arrangement other than hourly billing. Non-hourly fees billed accounted 9.6% of all billings. Use of alternative fee arrangements (AFAs) has been slowly rising over the years, showing an increased appetite by corporate counsel for AFAs, and a willingness by law firms to provide them.

## THE “LARGEST 50” FIRMS ACCOUNT FOR LARGEST SHARE OF SPENDING

The “Largest 50” firms (those with more than 750 lawyers) continue to account for the largest share of U.S. legal spending. In 2021, 46% of outside counsel fees were paid to these firms, consistent with recent year results. Further, the largest firms are continuing to gain share of wallet for the highest rate work. The three practices commanding the highest partner rates are Mergers & Acquisitions; Finance, Loans & Investments; and Regulatory & Compliance. Combining these types of matters, the “Largest 50” firms had a 61% share of legal billings in 2021. Several sub-categories of other matter categories with high partner rates follow the same pattern. For example, those firms had a 77% share of IP Litigation and a 78% share of Corporate Antitrust work.

# Introduction

The first edition of the annual CounselLink Enterprise Legal Management Trends Report was published in October 2013. That report established a set of six key metrics based on data available via the CounselLink Enterprise Legal Management platform and provided insights that corporate law departments and law firms could use to guide their decisions and subsequent actions. Beginning with the 2021 edition, a seventh key metric has been added to highlight hourly rates billed by law firm partners located in countries outside of the United States.

With the volume of data available for analysis growing with each passing year, the 2022 edition of the Trends Report represents the most up-to-date and detailed picture of how legal market dynamics are evolving over time.

As always, information about the methodologies used, definitions, and expert contributors conducting the analysis are presented at the end of the report.

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# Update on seven key metrics

Each annual update of the CounselLink Enterprise Legal Management Trends Report covers a standard set of key metrics related to hourly legal rates and the corporate procurement of legal services.

# 1A

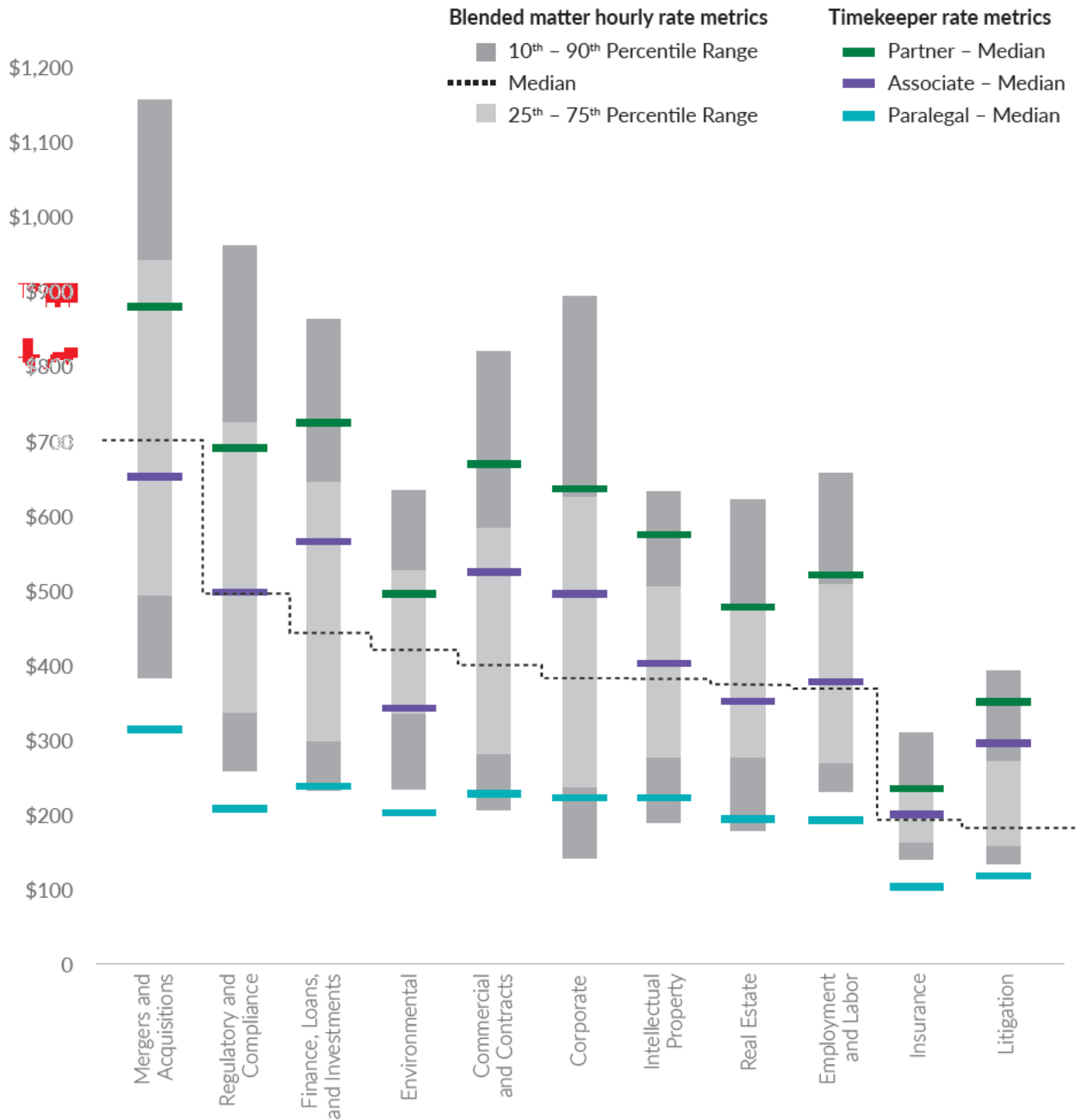
KEY METRIC

## Blended Hourly Rate for Matters by Practice Area

**BLENDED HOURLY RATES AND RATE VOLATILITY DIFFER BY TYPE OF WORK**

All analysis is based on data through December 31, 2021

Practice areas ordered by median blended matter rates



## Volatility Rate

5

7

7

3

6

10

5

4

5

3

5

Volatility is a calculated indicator of blended rate variability. Higher numbers suggest better possibilities for negotiating rates and/or changing the assigned timekeeper mix.

See page 9 for guidance on interpreting all blended hourly rates charts.

# 1B

KEY METRIC

## Blended Hourly Rate for Matters – by Subcategory

**BLENDED HOURLY RATES AND RATE VOLATILITY DIFFER BY SUBCATEGORY OF WORK**

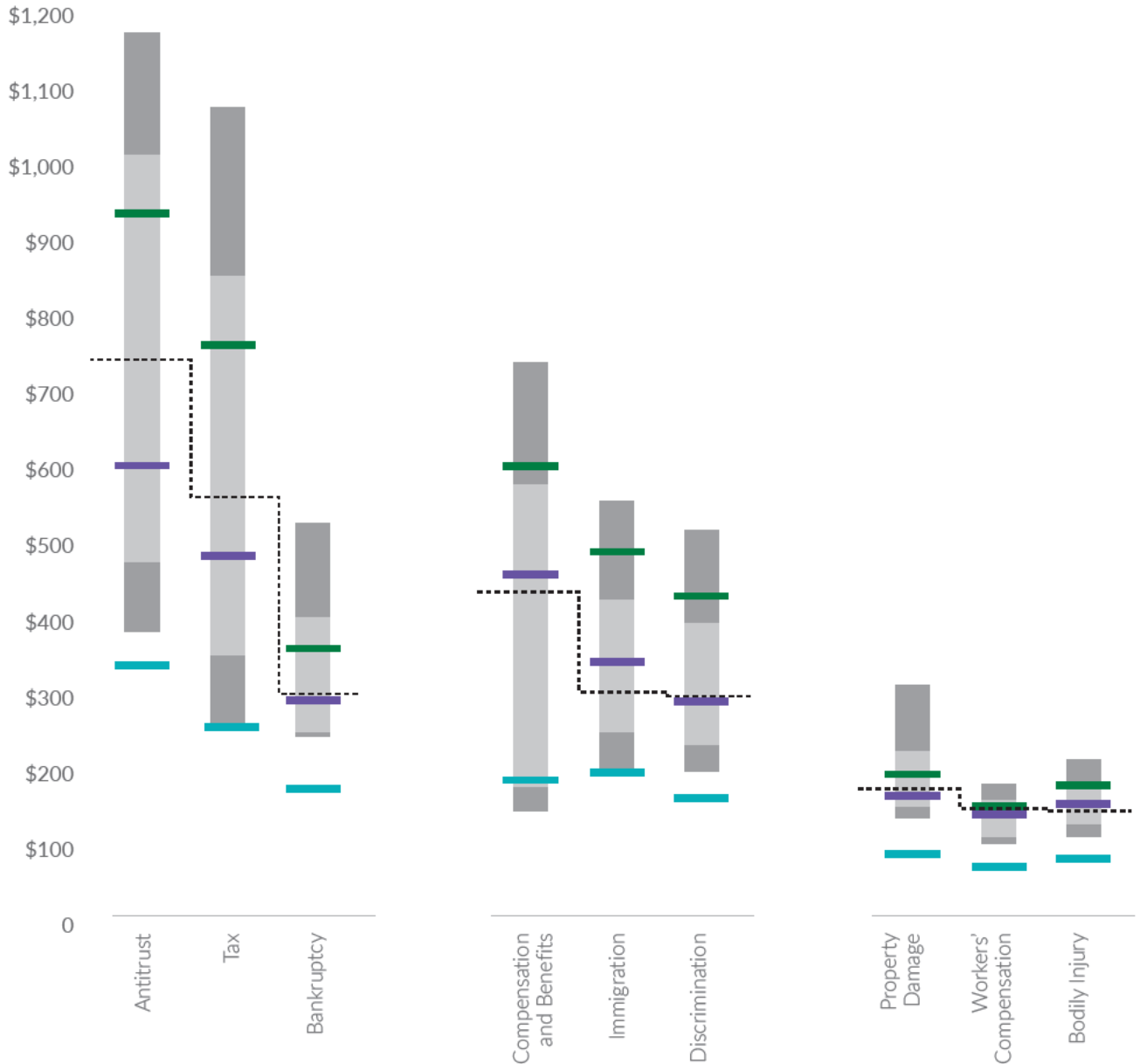
All analysis is based on data through December 31, 2021

Practice areas ordered by median blended matter rates

### CORPORATE

### EMPLOYMENT AND LABOR

### INSURANCE



Volatility Rate

6

8

3

10

4

4

3

3

2

Blended matter hourly rate metrics

■ 10<sup>th</sup> - 90<sup>th</sup> Percentile Range

● Median

■ 25<sup>th</sup> - 75<sup>th</sup> Percentile Range

Timekeeper rate metrics

■ Partner - Median

■ Associate - Median

■ Paralegal - Median

# 1B

KEY METRIC

## Blended Hourly Rate for Matters – by Subcategory

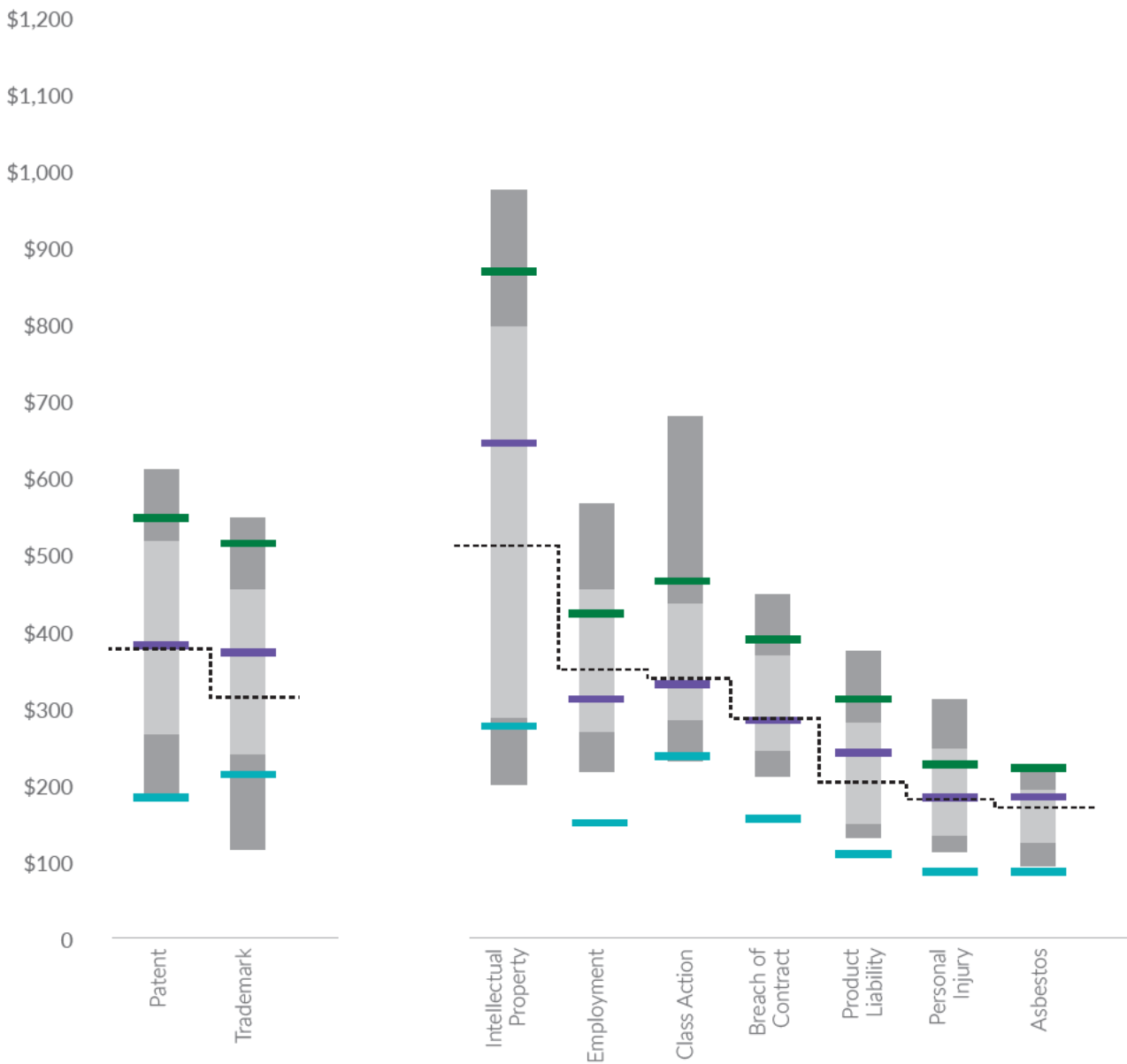
BLENDED HOURLY RATES AND RATE VOLATILITY DIFFER BY SUBCATEGORY OF WORK

All analysis is based on data through December 31, 2021

Practice areas ordered by median blended matter rates

### INTELLECTUAL PROPERTY

### LITIGATION



Volatility Rate

5

5

10

4

3

3

5

5

3

Blended matter hourly rate metrics

■ 10<sup>th</sup> - 90<sup>th</sup> Percentile Range

⋯ Median

■ 25<sup>th</sup> - 75<sup>th</sup> Percentile Range

Timekeeper rate metrics

■ Partner - Median

■ Associate - Median

■ Paralegal - Median

### **Interpreting the Charts:**

*The charts on the previous pages capture matter level benchmarks. It's important to distinguish that Metric 1 is not benchmarking individual timekeeper rates, but rather the blended rates that result from the multiple timekeepers that work on a given matter. As a guide to interpreting the output, compare the two categories Corporate and Employment & Labor. These two categories have very similar median blended average matter rate (\$376 and \$366, respectively). But note that Corporate matters have a median partner rate of \$636, considerably higher than that of Employment & Labor (\$520). This indicates that relative to Corporate work, Employment & Labor matters are staffed more significantly with non-partners, whose hourly rates bring down the overall blended average matter rates.*

*The Volatility Index provided in this section is a calculated marker that shows the variability in blended matter rates. Using a 10-point scale, the Index highlights the broad spread between the 25<sup>th</sup> and 75<sup>th</sup> percentiles of hourly rates. High volatility scores indicate greater variance in prices paid based on the mix of timekeepers and individual hourly rates.*

Although individual lawyer rates are the focus of considerable industry attention, it is equally, or arguably more important, to look at the bigger picture: the blended average rate of the different timekeepers that work on a matter. The chart shows that the median blended hourly rate is highest for Mergers and Acquisitions, which often involve the most expensive firms and require significant partner engagement.

Comparing the Corporate category to Insurance as an example, the spread between the 25<sup>th</sup> and 75<sup>th</sup> percentiles of blended hourly rates for Corporate work is broader than the spread for Insurance. On a 10-point scale, Corporate has a Volatility Index of 10 while Insurance has an Index of three, which indicates that the mix of timekeepers and rates paid on Corporate matters vary significantly compared to the timekeeper mix and rates paid for Insurance matters. A high Volatility Index could also indicate that a category represents a wide range of matter types.

The 2020 data revealed that three matter categories have relatively low Volatility Indices (lower than 5), which means rates are consistent and less subject to negotiations between corporations and their firms:

- Insurance
- Real Estate
- Environmental

The two matter categories with the greatest change relative to the prior year are Mergers & Acquisitions and Commercial & Contracts. The median blended average matter rate for these categories increased 7% relative to 2020.

Legal departments can compare their own data against these rates and ranges for help managing costs. If departments are paying at or near the top of the range for more volatile matter types, there may be opportunities to negotiate lower rates or request a different mix of timekeepers to reduce costs. Note, however, that when looking at trends, it is important to evaluate the entire range of rates rather than focusing solely on the median rate.

### **Key Metric 1B: Blended Hourly Rates and Rate Volatility Differ by Legal Work Subcategories**

Key Metric #1 measures average billing rates for high-level categories of legal work. Beginning in 2021, the Trends Report expanded upon this to include benchmarks for more granular categories of work to continue to provide more meaningful data points for decision-making in the legal industry.

Note that several of the sub-categories have Volatility Indices that are lower than that of their parent categories. For example, refer to the Corporate practice area in Key Metric #1 which had a Volatility Index of 10.

The three sub-categories of Corporate reflected in Key Metric #1B include Antitrust, Bankruptcy, and Tax. These areas have volatility scores of 6, 3, and 8 respectively. This can be interpreted to mean that as we narrow down to more granular/similar types of work, there is less variability between the 25<sup>th</sup> and 75<sup>th</sup> percentile blended average rates paid for these specific types of legal work relative to the broader category of Corporate. For example, there is greater consistency in the staffing and/or negotiated rates for these types of work, particularly for Antitrust and Bankruptcy.



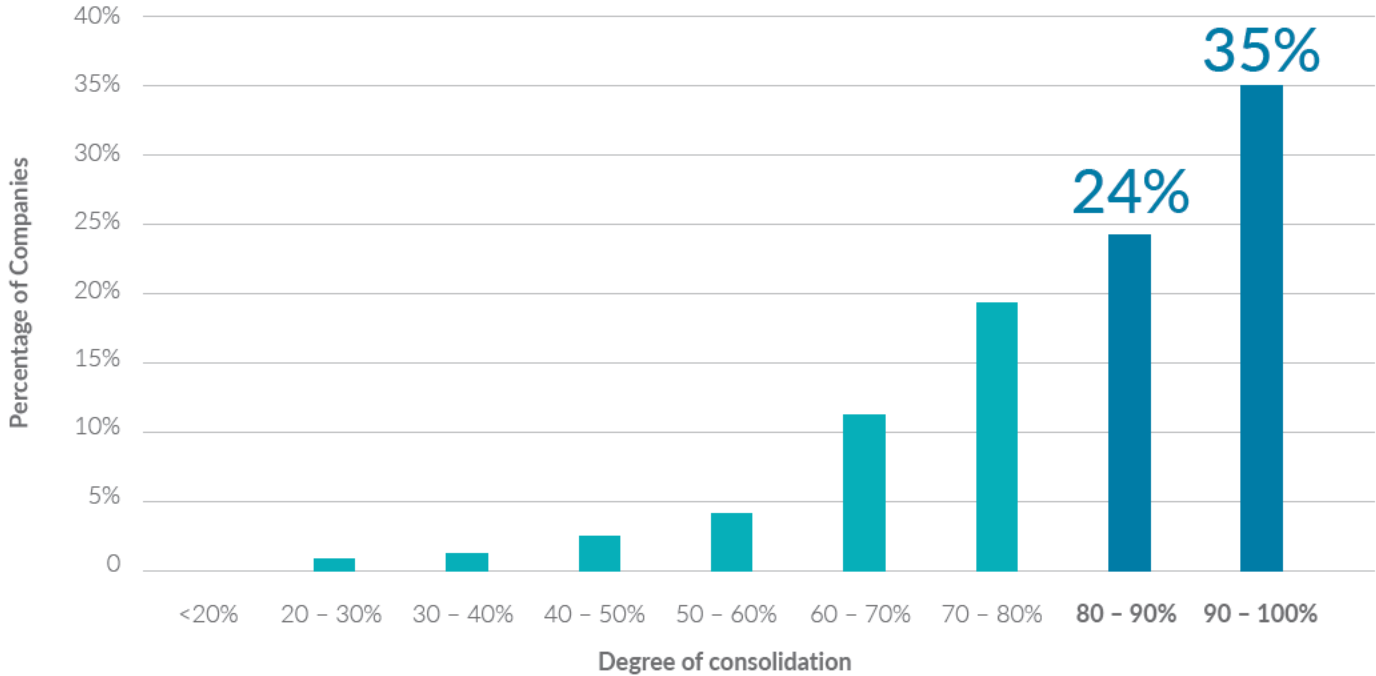
# 2

## KEY METRIC

### Law Firm Consolidation: Number of Legal Vendors Used by Corporations

**HALF OF COMPANIES IN THE COUNSELLINK DATA POOL HAVE 10 FIRMS OR FEWER THAT ACCOUNT FOR AT LEAST 80% OF THEIR OUTSIDE COUNSEL FEES**

All analysis is based on data through December 31, 2021



#### Interpreting the Chart:

This chart shows the degree of law firm consolidation among companies whose outside counsel legal billings are processed through CounselLink. The horizontal axis separates participating companies into nine segments representing different degrees of consolidation. For example, the bar on the far right shows that 35% of participating companies have 90 - 100% of their legal billings with 10 or fewer vendors; these are the most consolidated legal departments. The far left bar shows that just 1% of companies have 20 - 30% of their legal billings with 10 or fewer firms. In 2020, we noted a subtle shift of law departments that had dropped from between 80-90% on the chart to the 70-80% bucket. That shift has reversed itself, and we see 59% of companies with high levels of law firm consolidation, consistent with consolidation levels noted in the last five years (excepting 2020).

Industry type plays a significant role in consolidation.

#### HIGH DEGREES OF CONSOLIDATION:

- 88% Transportation and Warehousing
- 83% Information Companies
- 78% Retail Trade
- 74% Manufacturing

#### LOW DEGREES OF CONSOLIDATION:

- 40% Finance Insurance
- 36% Utilities

# 3A

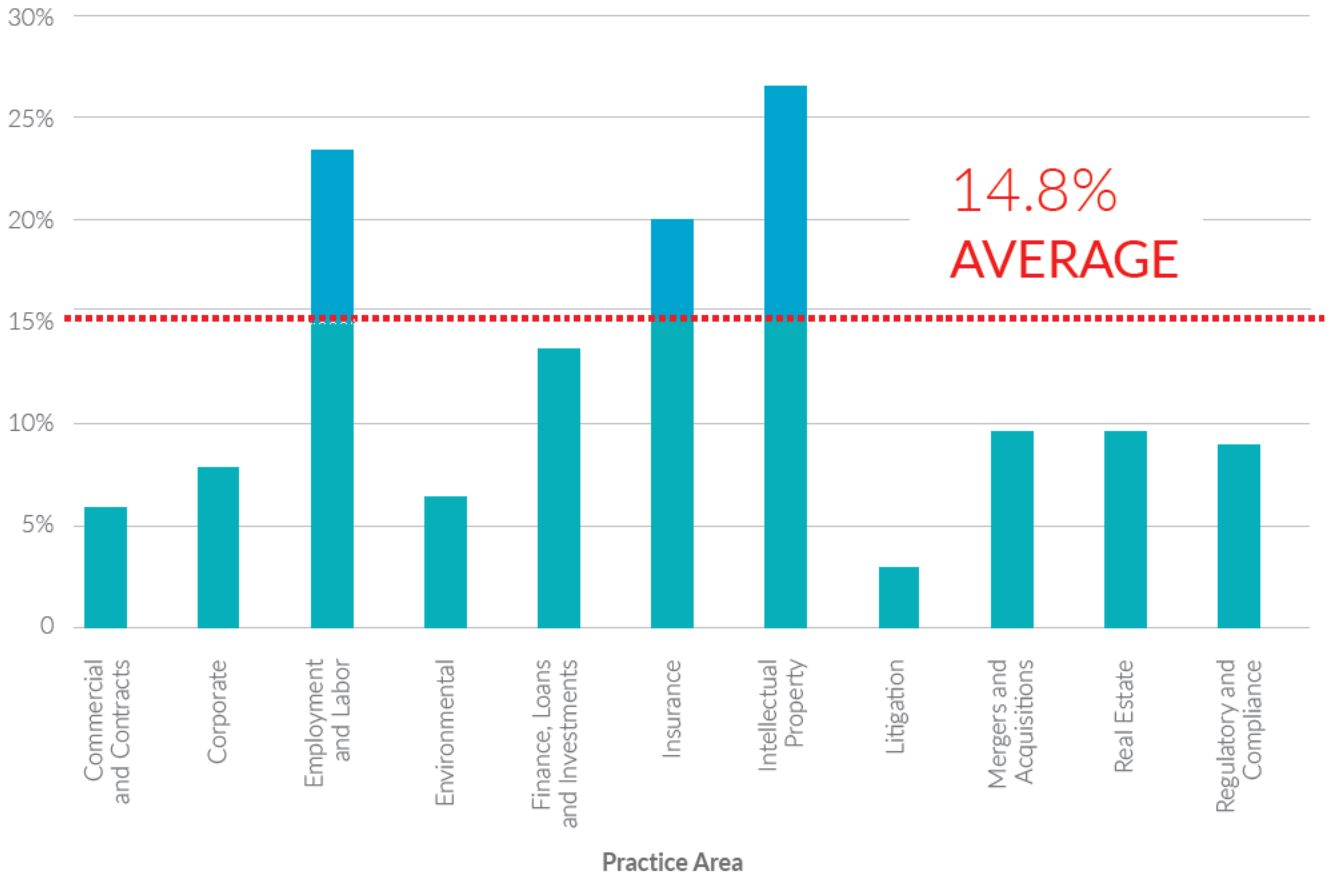
KEY  
METRIC

## Alternative Fee Arrangement (AFA) Usage by Matter

SOME FORM OF AFAs WERE USED IN 14.8% OF MATTERS

Based on 12 months of data ending December 31, 2021

### PERCENTAGE OF MATTERS UTILIZING AFAs



The use of AFAs to govern legal service payments varies considerably by legal matter type. High volume, predictable work included in Intellectual Property, Insurance, and the Employment and Labor categories continue to have the highest volume of matters billed under AFAs.

**INTELLECTUAL PROPERTY | INSURANCE | EMPLOYMENT & LABOR**  
utilized AFAs for at least **20%** of matters

Other matter categories are gaining in use of alternative billing. Mergers and Acquisitions, Real Estate, and Regulatory and Compliance have nearly 10% of matters with non-hourly billing.

# 3B

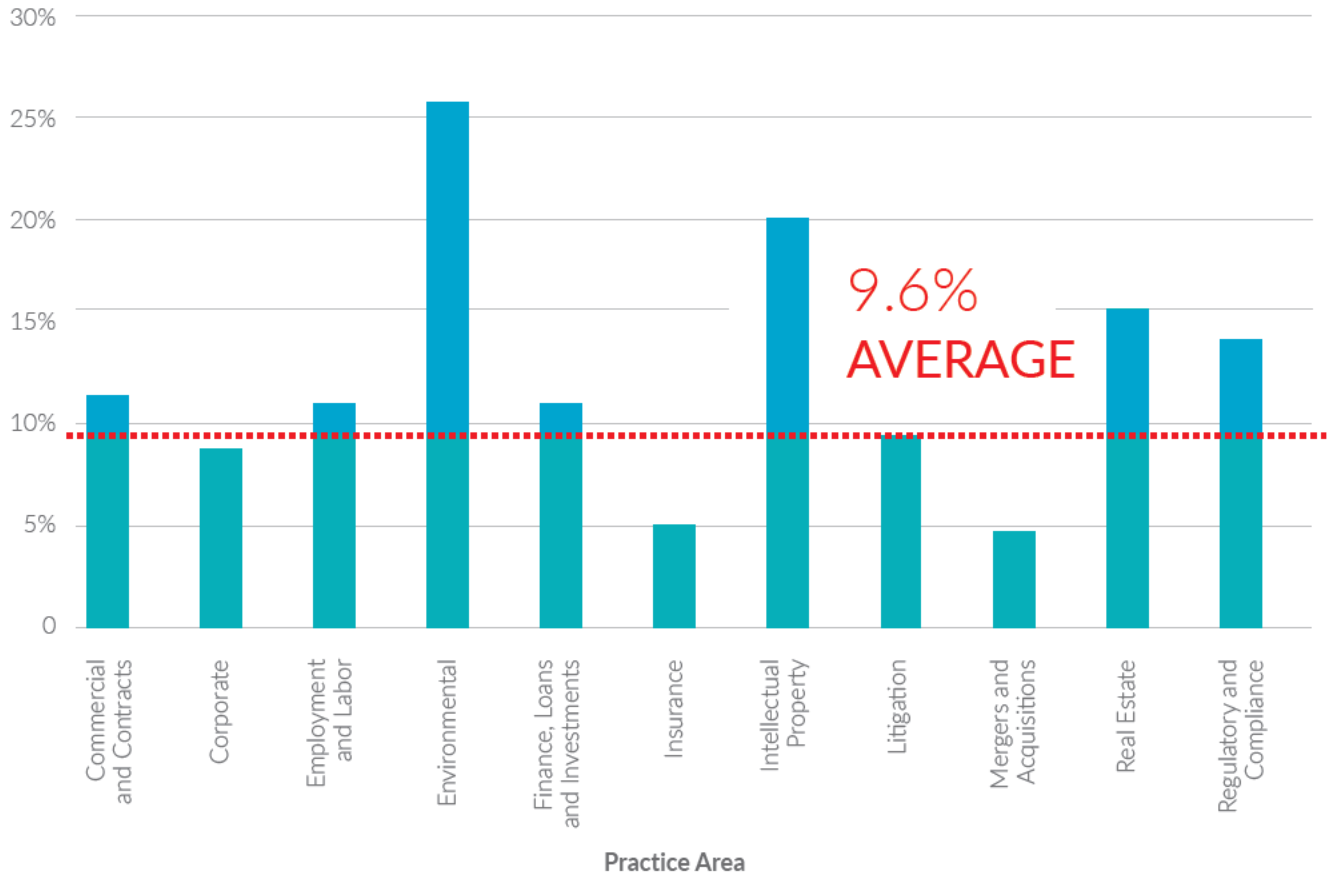
KEY METRIC

## Alternative Fee Arrangement (AFA) Usage by Billings

SOME FORM OF AFAs WERE USED IN 9.6% OF BILLINGS

Based on 12 months of data ending December 31, 2021

### PERCENTAGE OF BILLINGS UTILIZING AFAs



The use of Alternative Fee Arrangements has been gradually increasing as the industry slowly moves in the direction of not relying solely on hourly billing as the mechanism for payment of legal services. When CounselLink first started reporting on these key metric ten years ago, AFAs were used in approximately 12% of matters and 7% of fees and billings.

# 4

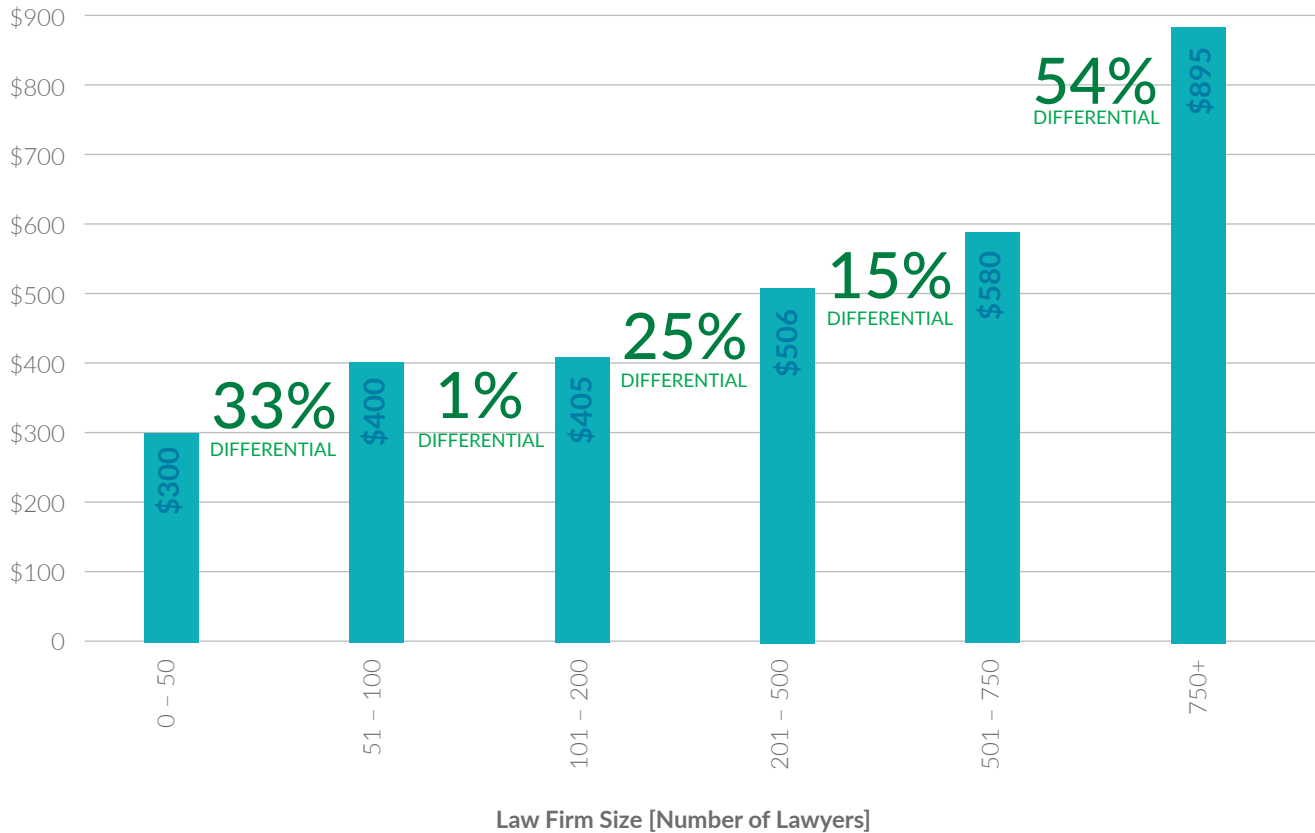
## KEY METRIC

### Partner Hourly Rate Differences by Law Firm Size

#### MEDIAN RATES ACROSS PRACTICE AREAS, EXCLUDING INSURANCE

Based on 12 months of data ending December 31, 2021

#### MEDIAN PARTNER HOURLY RATES BY LAW FIRM SIZE



The size of a law firm is highly correlated to the rates billed by its lawyers. This progression is especially notable for the largest category of firms, those with 750 or more lawyers. The median hourly billing rate for partners in firms with more than 750 lawyers (\$895) is 54% higher than the median hourly billing rate billed by partners in the next smaller tier of firms (\$575).

Relative to prior years, the 54% differential for the largest firms compared to the next tier of firms is the largest in all the years we have tracked this metric. The differential was 47% for 2020.

Additionally, relative to prior years, the gap between mid-sized firm rates has narrowed. The median partner rate for firms with 51-100 lawyers (\$400) is nearly the same as that for firms with 101-200 lawyers (\$405).

The average partner growth rate for the largest firms was 4.6% in 2021 relative to 2020—the largest increase of the various law firm bands.

#### AVERAGE PARTNER GROWTH RATE FOR THE LARGEST FIRMS

# 4.6%

2021 RELATIVE TO 2020

# 5A

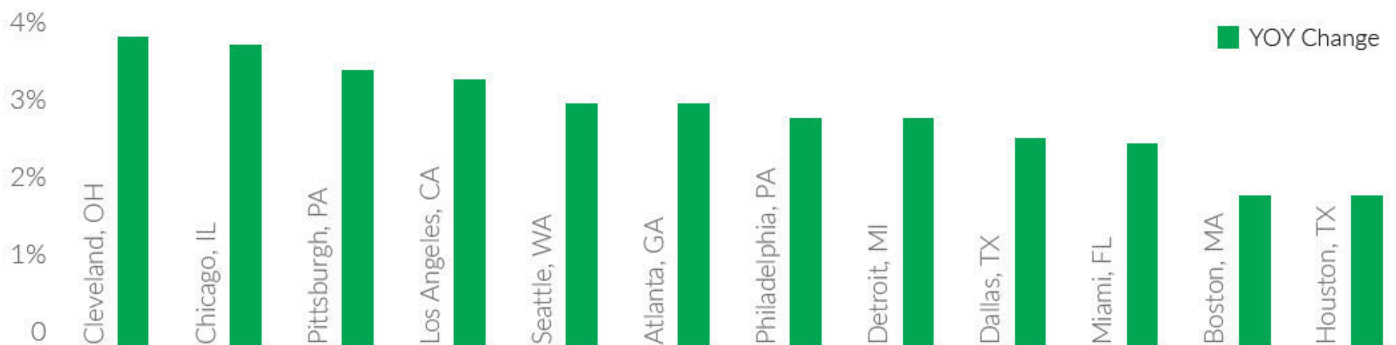
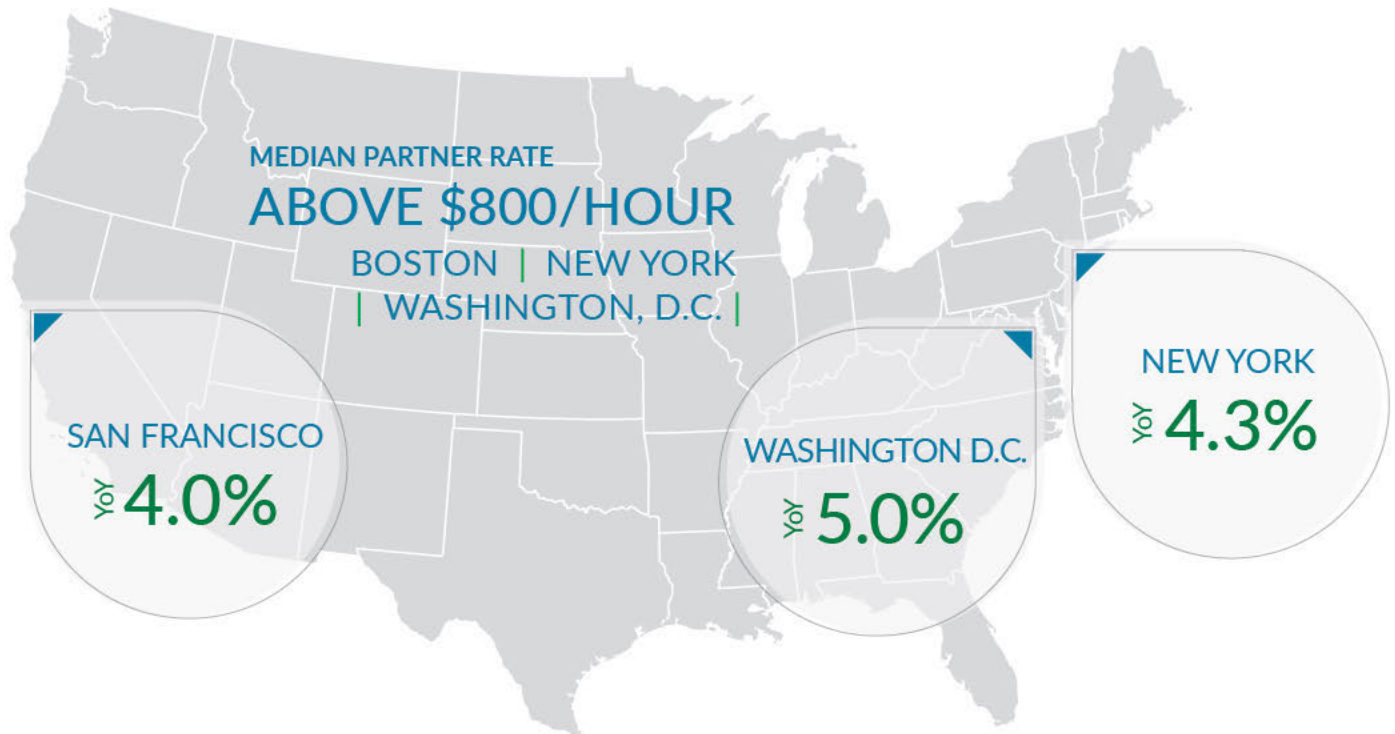
KEY METRIC

## Partner Hourly Rate Growth by City

**FOUR MAJOR METROPOLITAN AREAS SHOW MEDIAN PARTNER RATE GROWTH OF MORE THAN 4.0%**

Based on 12 months of data ending December 31, 2021

### PARTNER RATE GROWTH IN THREE MAJOR CITIES



#### Interpreting the Chart:

Across the United States, partner hourly rates grew 3.4% on average in 2021.

The biggest growth spurts in attorney rates for the last year occurred in Washington D.C., New York, and San Francisco. Each of these four cities saw average attorney rates grow more than 4.0% relative to 2020.

On the opposite side of the spectrum, two cities saw hourly growth rate below 2%: Boston and Houston.

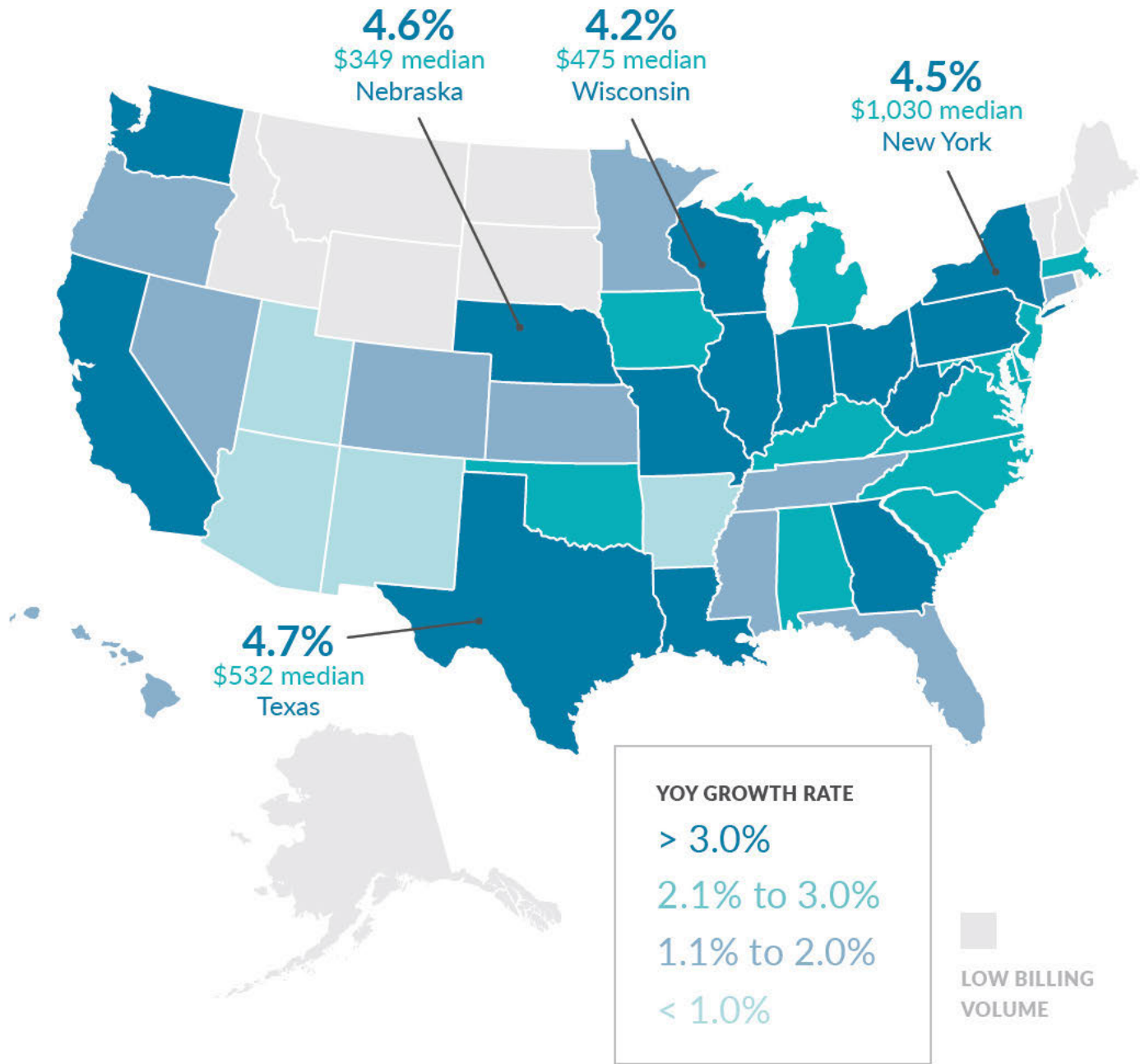
5B

KEY METRIC

## Partner Hourly Rate Growth by State

GROWTH IN MEDIAN PARTNER RATES VARIES BY STATE, AVERAGING 3.4% YEAR-OVER-YEAR INCREASE

Based on 12 months data ending December 31, 2021



## 3.4% AVERAGE GROWTH IN PARTNER RATES ACROSS STATES

The average growth in partner rates across states is 3.4%, in line with prior year increases.

# 6A

KEY METRIC

## Median Partner Hourly Rate by Practice Area

**MEDIAN PARTNER RATES IN FIVE PRACTICE AREAS ABOVE \$600 AN HOUR**

Based on 12 months of data ending December 31, 2021

Mergers and Acquisitions 

**\$878**

\$668


Commercial and Contracts

\$636

Corporate

\$575

Intellectual Property

Finance, Loans, and Investments 

**\$725**

\$520

Employment and Labor

\$495

Environmental

Regulatory and Compliance 

**\$690**

\$477

Real Estate

\$350

Litigation

\$234

Insurance

Aggregate statistics based on legal work performed in 2021 identify Mergers and Acquisition as the practice area with the highest median partner rate of \$878. Additionally, the other practices with median partner rates over \$600 per hour have such high medians in large part because companies often use larger firms for these kinds of matters. In 2021, the “Largest 50” firms handled 66% of Merger and Acquisition work, and 62% of Finance, Loans & Investment work. With regard to the other high rate practices of Regulatory and Compliance, Commercial and Contracts, and Corporate, the “Largest 50” firms had a 47%, 52%, and 53% share of the wallet.

Conversely, at the lower end of the hourly rate spectrum is insurance work. Insurance carriers demand and negotiate aggressively for low rates on their high-volume defense matters. Law firms with fewer than 100 lawyers handled 69% of insurance work in 2021.

6B

KEY METRIC

## Median Partner Rates by Subcategory of Work

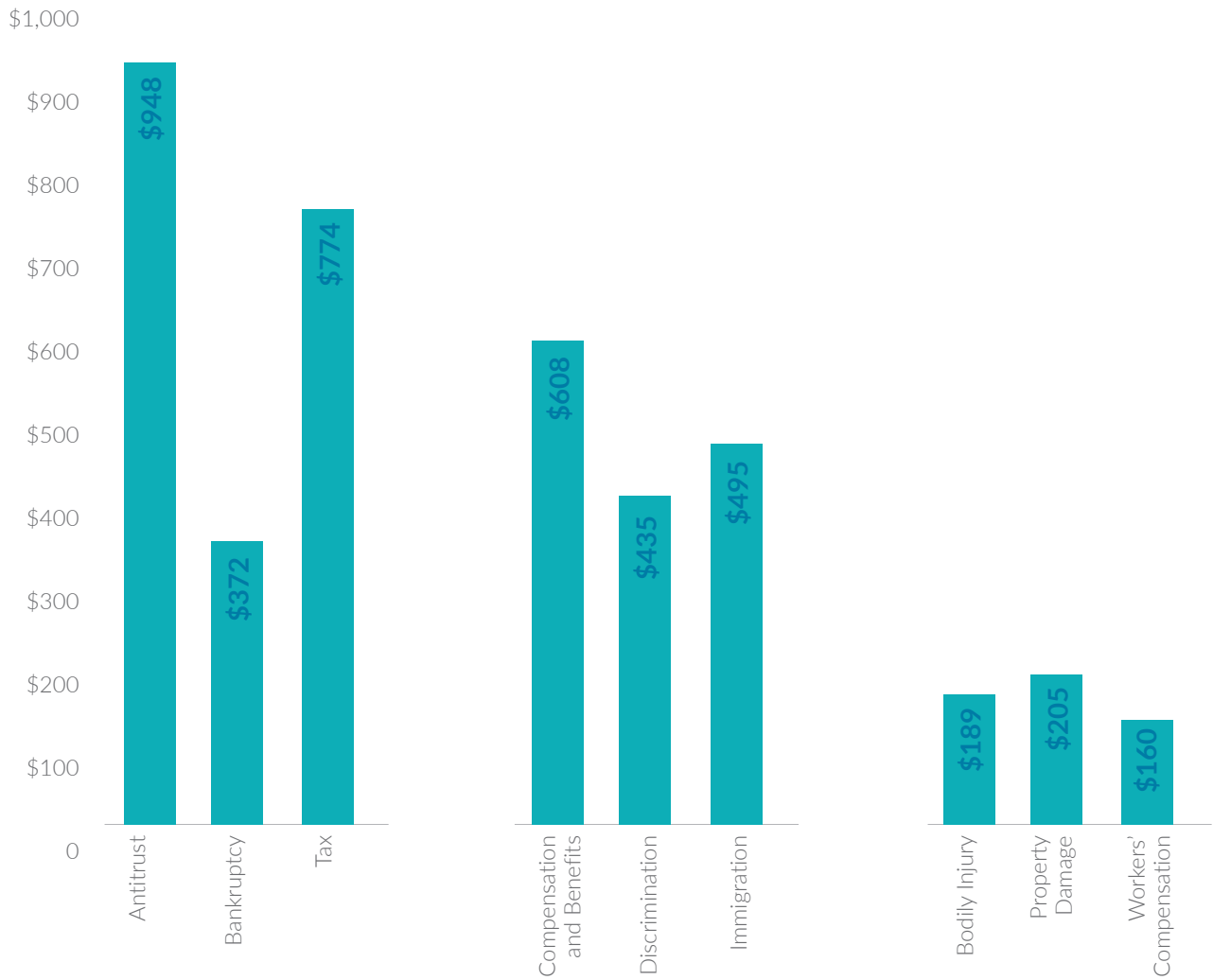
**WITHIN PRACTICE AREAS, SUBCATEGORY RATES VARY CONSIDERABLY**

Based on 12 months of data ending December 31, 2021

### CORPORATE

### EMPLOYMENT AND LABOR

### INSURANCE



# 6B

KEY METRIC

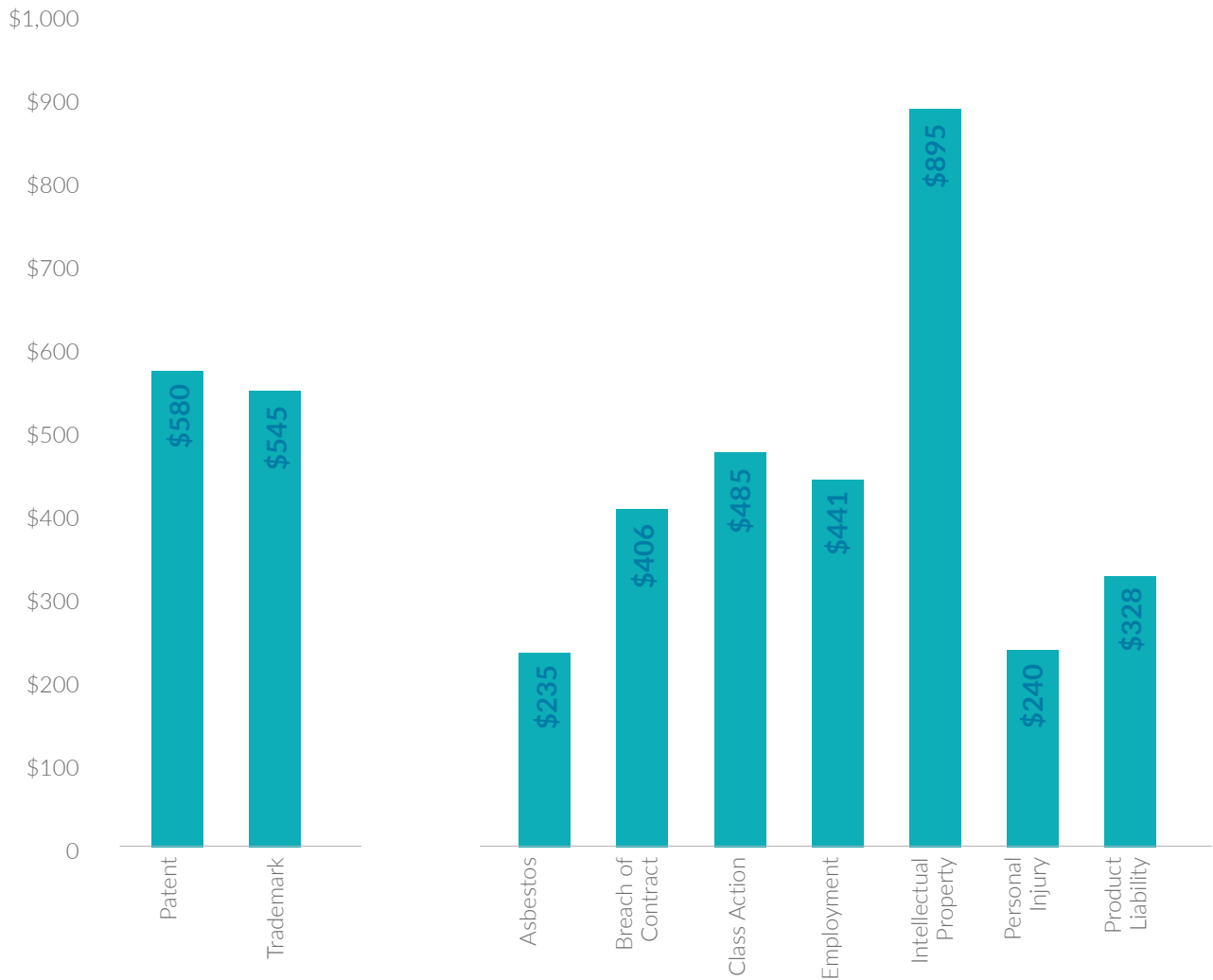
## Median Partner Rates by Subcategory of Work

**WITHIN PRACTICE AREAS, SUBCATEGORY RATES VARY CONSIDERABLY**

Based on 12 months of data ending December 31, 2021

### INTELLECTUAL PROPERTY

### LITIGATION



New since the 2021 Trends Report, benchmarks are available for more granular categories of legal work. Litigation work, for example, encompasses a wide variety of practices that command very different rates. At the high end, Intellectual Property Litigation had a median partner hourly rate of \$895 in 2020, whereas Asbestos Litigation work was billed at a median partner hourly rate of \$235.

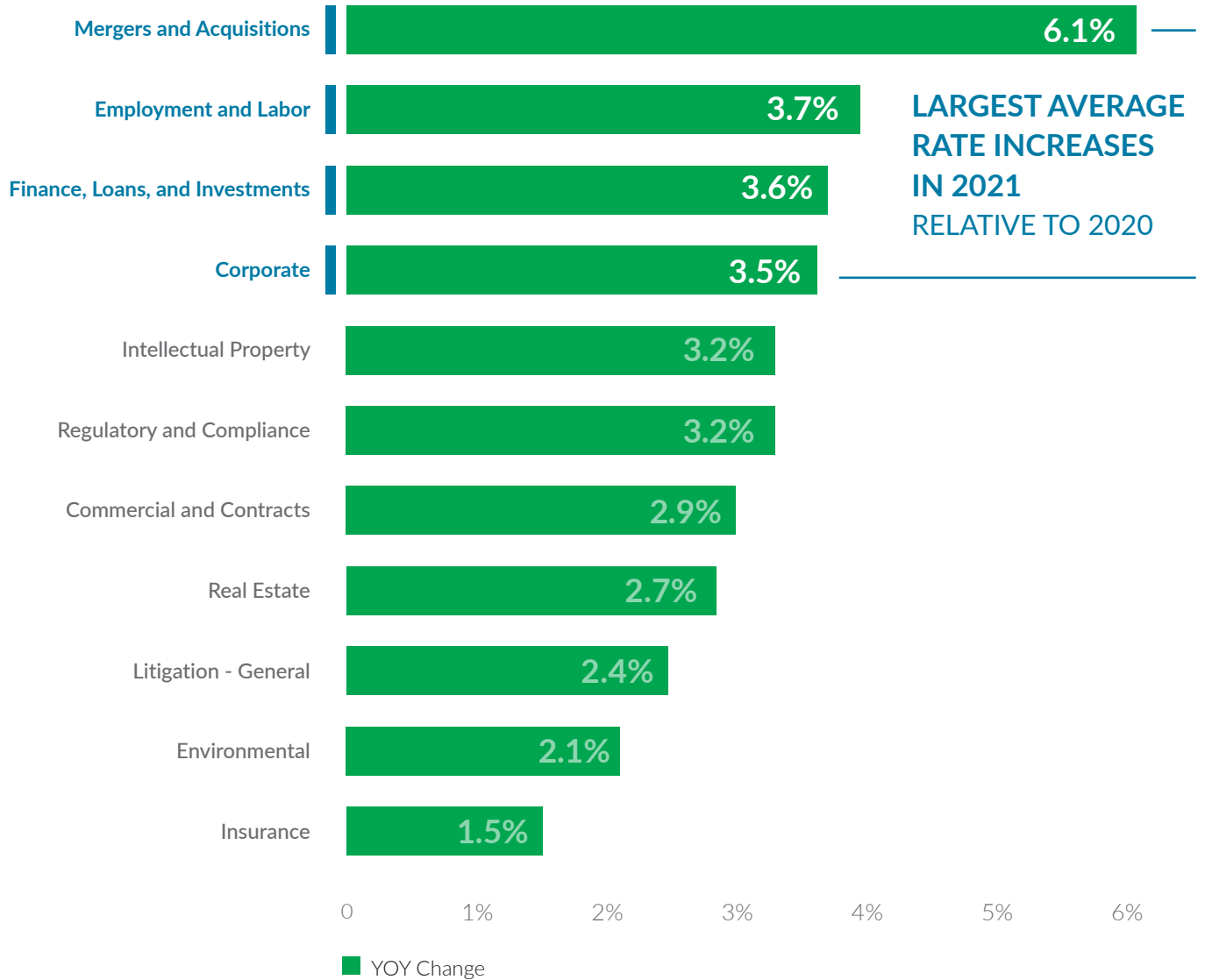
6C

KEY  
METRIC

## Partner Hourly Rate Growth by Practice Area

FOUR PRACTICE AREAS LEAD PARTNER RATE GROWTH IN 2021

Based on 12 months of data ending December 31, 2021



Turning to partner rate growth by practice area, Mergers and Acquisitions was the area that far and away saw the largest increases in rates in 2021. The average rate change for Mergers and Acquisitions partners was 6.1%. Note that three of the types of work that command median hourly rates above \$600 (see Metric 6A) are at or near the top of this list. They are: Mergers and Acquisitions, Finance, Loans, and Investments, and Corporate.

Partner rates for Insurance work increased notably less than rates in other practice areas.

# 7A

KEY METRIC

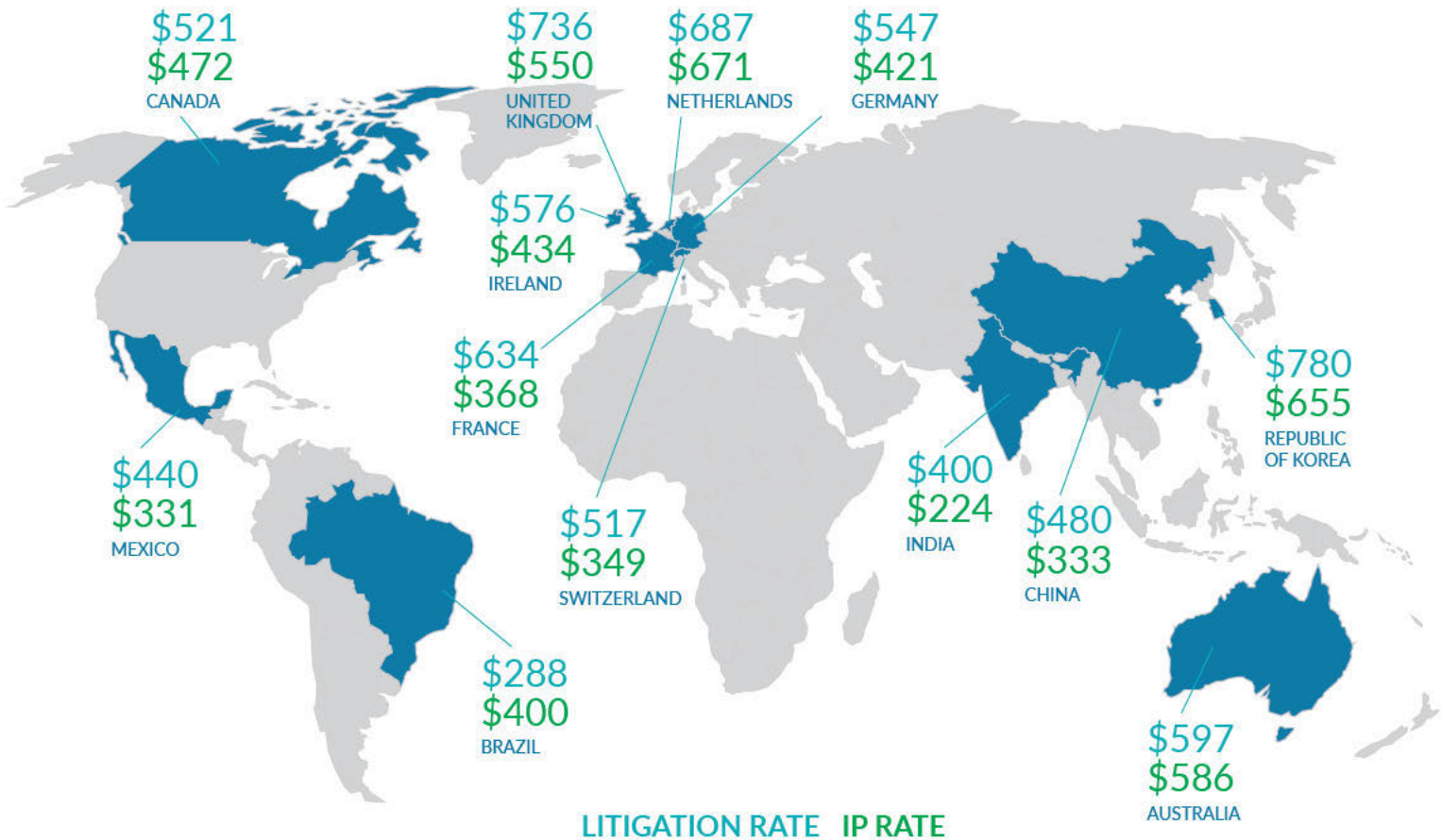
## International Partner Rates for Litigation and Intellectual Property (non-Litigation)

CORPORATIONS HIRED INTERNATIONAL OUTSIDE COUNSEL FOR BOTH LITIGATION AND IP WORK

Based on 12 months data ending December 31, 2021

EXPANDED FOR 2021

### MEDIAN PARTNER HOURLY RATES IN 13 INTERNATIONAL MARKETS RATES IN \$USD



Corporations headquartered outside of the United States as well as U.S. corporations with international interests look to firms in many countries to handle their legal needs. Key Metric 7 provides benchmarks of partner hourly rates for countries where outside counsel is most often engaged for Litigation, Intellectual Property, Employment and Labor, and Corporate work.

In 2021, median hourly partner rates were among the highest in the Republic of Korea across all four practice areas. (See page 22 for Employment and Labor, and Corporate work.)

UK partner rates are relatively high particularly in Litigation and Corporate work.

In all matter categories, India and Brazil had partners billing at considerably lower rates.

7B

KEY METRIC

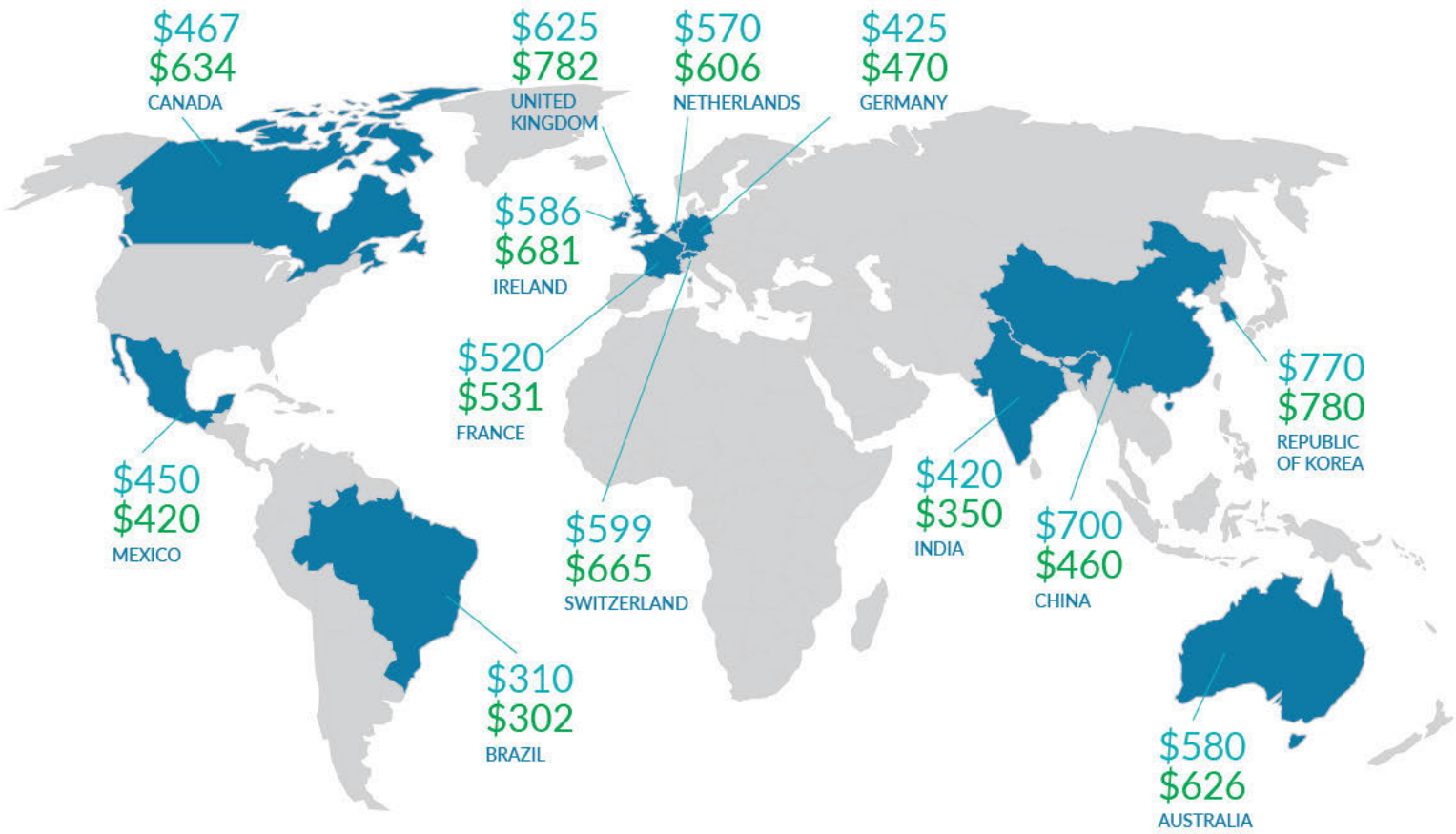
# International Partner Rates for Employment and Labor and Corporate

CORPORATIONS HIRED INTERNATIONAL OUTSIDE COUNSEL FOR BOTH EMPLOYMENT & LABOR AND CORPORATE WORK

Based on 12 months data ending December 31, 2021

EXPANDED FOR 2021

## MEDIAN PARTNER HOURLY RATES IN 13 INTERNATIONAL MARKETS RATES IN \$USD



EMPLOYMENT & LABOR CORPORATE

# About the Enterprise Legal Management Trends Report

## TERMINOLOGY:

**Matter Categorization:** Counsellink solution users define the types of work associated with various matters that were analyzed and categorized into legal practice areas. For this analysis, all types of litigation matters are classified as Litigation regardless of the nature of the dispute.

**Company Size:** Based on revenue cited in public sources, companies were grouped into these three size categories:

- > \$10 Billion Plus
- > \$1 - 10 Billion
- > < \$1 Billion



## Expert Contributor

Since the inception of the CounselLink Enterprise Legal Management Trends Report, Kris Satkunas has been the principal author. She has made notable contributions to this latest Enterprise Legal Management Trends Report in the analysis of CounselLink data and in preparing the surrounding narrative.

### Author

#### **KRIS SATKUNAS – DIRECTOR OF STRATEGIC CONSULTING**

As Director of Strategic Consulting at LexisNexis CounselLink, Kris brings over 20 years of experience consulting in the legal industry to advise corporate legal department managers on improving operations with data-driven decisions. Kris is an expert in managing the business of law and in data mining, with specific expertise in matter pricing and staffing, practice area metrics, and scorecards.

Prior to joining CounselLink, Kris served as Director of the LexisNexis® Redwood Think Tank, which she also established. For five years, Kris worked closely with thought leaders in large law firms conducting unbiased data-based research studies focused on finding solutions to legal industry management issues. Before that, she led the business of law consulting practice for large law firms. During that time she worked with key management at over a hundred law firms to improve the financial models and analyses developed for large law firms.

Kris has authored numerous articles and spoken at many legal industry conferences and events. She came to LexisNexis in 2000 after honing her finance skills as a Senior Vice President in Strategic Finance at SunTrust Bank. She holds a B.B.A. in Finance from The College of William and Mary.

Kris may be reached at [kristina.satkunas@lexisnexis.com](mailto:kristina.satkunas@lexisnexis.com).

**LinkedIn**



LexisNexis CounselLink is the leading cloud-based legal management solution designed to help corporate legal departments gain 100% visibility into all matters and invoices so they can control costs, maximize productivity, and make better decisions. For nearly 30 years, LexisNexis has been providing innovative solutions to corporate law departments based on insight from thought leaders, industry expertise, and customer feedback.

Here's how CounselLink supports your legal department:

- Financial Management improves the predictability of legal spend with complete visibility and oversight of every penny spent by the department.
- Work Management helps you collect, organize, track, audit, and report on all the work done within the legal department to increase productivity and drive better outcomes for your business.
- Vendor Management strengthens your relationships with law firms while measuring their performance, so you can select the best mix for your needs.
- Analytics provides you with full visibility over workloads and legal data analytics to make informed, data-driven decisions.

If you have questions or comments about the CounselLink Enterprise Legal Management Trends Report or want to learn more about CounselLink software and services, visit [CounselLink.com](https://CounselLink.com), or contact us via email: [LNCounselLink@LexisNexis.com](mailto:LNCounselLink@LexisNexis.com).

For media inquiries, please contact: [eric@plat4orm.com](mailto:eric@plat4orm.com).

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# On Sale: The \$1,150-Per-Hour Lawyer

Lawyer Fees Keep Growing, But Don't Believe Them. Clients Are Demanding, and Getting, Discounts

*By Jennifer Smith*

Updated April 9, 2013 4:48 pm ET

Top partners at leading U.S. law firms are charging more than ever before, yet those hourly rates aren't all they appear to be.

Having blown past the once-shocking price tag of \$1,000 an hour, some sought-after deal, tax and trial lawyers are commanding hourly fees of \$1,150 or more, according to an analysis of billing rates compiled from public filings.

But, as law firms boost their standard rates, many are softening the blow with widespread discounts and write-offs, meaning fewer clients are paying full freight. As a result, law firms on average are actually collecting fewer cents on the dollar, compared with their standard, or "rack," rates, than they have in years.

Think of hourly fees "as the equivalent of a sticker on the car at a dealership," said legal consultant Ward Bower, a principal at Altman Weil Inc. "It's the beginning of a negotiation.... Law firms think they are setting the rates, but clients are the ones determining what they're going to pay."



Star lawyers still can fetch a premium, and some of them won't budge on price. The number of partners billing \$1,150-plus an hour has more than doubled since this time last year, according to Valeo Partners, a consulting firm that maintains a database of legal rates pulled from court filings and other publicly disclosed information. More than 320 lawyers in the firm's database billed at that level in the first quarter of 2013, up from 158 a year earlier.

That gilded circle includes tax experts such as Christopher Roman of King & Spalding LLP and Todd Maynes of Kirkland & Ellis LLP, intellectual-property partner Nader A. Mousavi of Sullivan & Cromwell LLP, and deal lawyers such as Kenneth M. Schneider of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

Those lawyers and their firms either declined to comment or didn't reply to requests for comment.

When corporate legal departments need a trusted hand to fend off a hostile takeover or win a critical court battle, few general counsels will nitpick over whether a key lawyer is charging \$900 an hour or \$1,150 an hour. But for legal matters where their future isn't on the line, companies are pushing for—and winning—significant price breaks.

"We almost always negotiate rates down from the rack rates," said Randal S. Milch, general counsel for phone giant Verizon Communications Inc. The result, he said, is a "not-insignificant discount."

For the bread-and-butter work that many big law firms rely on, haggling has become the norm. Many clients grew accustomed to pushing back on price during the recession and continue to demand discounts.

Some companies insist on budgets for their legal work. If a firm billing by the hour exceeds a set cap, lawyers may have to write off some of that time.

Other clients refuse to work with firms who don't discount, lopping anywhere from 10% to 30% off their standard rates. Some may grant rate increases to individual partners or associates they deem worthy. Another tactic: locking in prices with tailored multiyear agreements with formulas governing whether clients grant or refuse a requested rate increase.

In practical terms, that means the gap between law firms' sticker prices and the amount of money they actually bill and collect from their clients is wider than it has been in years.

According to data collected by Thomson Reuters Peer Monitor, big law firms raised their average standard rate by about 9.3% over the past three years. But they weren't able to keep up on the collection side, where the increase over the same period was just 6%. Firms that used to collect on average about 92 cents for every dollar of standard time their lawyers worked in 2007, before the economic downturn, now are getting less than 85 cents. "That's a historic low," said James Jones, a senior fellow at the Center for the Study of the Legal Profession at Georgetown Law.

To be sure, things have certainly picked up some since the recession, when some clients flat-out refused to pay rate increases.

In the first quarter of 2013, the 50 top-grossing U.S. law firms boosted their partner rates by as much as 5.7%, billing on average between \$879 and \$882 an hour, according to Valeo Partners. Rates for junior lawyers, whose labors have long been a profit engine for major law firms, jumped even more.

While some clients resisted using associate lawyers during the downturn, refusing to pay hundreds of dollars an hour for inexperienced first- or second-year attorneys, the largest U.S. law firms have managed to send the needle back up again. This year, for the first time, the average rate for associates with one to four years of experience rose to \$500 an hour, according to Valeo.

The increases continue the upward trend of 2012, when legal fees in general rose 4.8% and associate billing rates rose by 7.4%, according to a coming report by TyMetrix Legal Analytics, a unit of Wolters Kluwer, and CEB, a research and advisory-services company. Those numbers are based on legal-spending data from more than 17,000 law firms.

More than a dozen leaders at major law firms declined to discuss rate increases on the record, though some said privately that the increase in associate rates could be caused in part by step increases as junior lawyers gain in seniority.

Joe Sims, an antitrust partner at Jones Day and former member of the firm's partnership committee, said clients don't mind paying for associates, as long as they feel they are getting their money's worth.

Sophisticated clients, he said, tend to focus on the overall price tag for legal work, not on individual rates. "They are more concerned about how many people are working on the

project and the total cost of the project," Mr. Sims said. "Clients want value no matter who is on the job."

While a handful of elite lawyers have successfully staked out the high end—the deal teams at Wachtell, Lipton, Rosen & Katz, for example—legal experts say that client pressure to control legal spending means most law firms must be considerably more flexible on price.

"There will always be some 'bet the company' problem where a client will not quibble about rates," said Mr. Jones, the Georgetown fellow. "Unfortunately, from the law firms' standpoint, that represents a small percentage of the work."

**Write to Jennifer Smith at [jennifer.smith@wsj.com](mailto:jennifer.smith@wsj.com)**




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April 16, 2012 5:20 PM

### **When It Comes to Billing, Latest Rate Report Shows the Rich Keep Getting Richer**

Posted by Sara Randazzo

Hourly rates just keep rising—and the best-paid lawyers are raising their rates faster than everyone else.

Those are two of the key findings contained in the [2012 Real Rate Report](#), an analysis of \$7.6 billion in legal bills paid by corporations over a five-year period ending in December 2011. The report, released Monday, is the second such collaboration between TyMetrix, a company that manages and audits legal bills for corporate legal departments, and the Corporate Executive Board.

Many of the new rate report's findings echo those contained in the 2010 study, including the fact that rates keep going up, almost across the board, and that the cost of a given matter can vary dramatically depending on a law firm's size and location and its relationship with a particular client.

At the same time, this year's study shows that the legal sector is becoming increasingly bifurcated, with top firms raising rates faster than those at the bottom of the market and large firms charging a premium price based purely on their size.

"What it's really showing is that there's an increased premium being paid for experience and expertise," says Julie Peck, vice president of strategy and market development at TyMetrix. "Some parts of the lawyer market are able to raise rates much more quickly, and are more impervious to economic forces than others."

To compile the current rate report, TyMetrix received permission from its clients to examine legal fees billed to 62 companies across 17 industries including energy, finance, retail, technology, insurance, and health care. The bills, which represent the amount actually paid by the companies in

question rather than the amount initially charged, came from more than 4,000 firms in 84 metropolitan areas around the country. Every firm on the 2011 Am Law 100 is represented in the data.

The report's key data points include:

**A Widening Gap:** Hourly rates charged by lawyers in the legal sector's upper echelon grew faster between 2009 and 2011 than those charged by lawyers toiling on the lower rungs. Particularly striking was the jump in associate rates billed by those falling in the report's top quartile: 18 percent on average, to just over \$600 per hour. Rates billed by top quartile partners, meanwhile, rose 8 percent, to just under \$900 per hour. In the bottom quartile, associate rates rose 4 percent and partner rates rose 3 percent during the same period.

**The Recession's (Minor) Toll:** Even amid the economic downturn, the cost of an hour of a lawyer's time continued to rise faster than key measures of inflation. That said, the legal industry wasn't completely immune to the broader economy's slowdown. After rising 8.2 percent between 2007 and 2008, hourly rates rose just 2.3 percent in 2009. Law firms bounced back a bit last year, with rates climbing 5.1 percent, to an average of \$530 an hour.

**Location Counts:** Not surprisingly, lawyers working in major metropolitan areas—where, as the rate report notes, rents are typically higher—are the priciest. An address in Boston, Chicago, Los Angeles, San Francisco, or Washington, D.C., alone adds about \$161 to the hourly rate charged by an individual lawyer. Those six cities and Baltimore, Houston, Philadelphia, and San Jose are the ten U.S. markets with the highest hourly rates. With an average partner rate topping \$700 per hour and average associate rate of more than \$450 per hour, New York is the most expensive market in the country. The least expensive? Riverside, California, where the average partner bills at under \$250 per hour and associates bill at just over \$300 an hour.

**In the Minority:** A small group of lawyers—12 percent—bucked the trend toward higher fees and actually lowered rates between 2009 to 2011—and 3 percent trimmed rates by \$50 or more per hour. (Most of those in the rate-cutting camp were based outside the big six markets identified above.) At the other end of the spectrum, 52 percent of lawyers increased rates by between \$25 and \$200 or more per hour. Another 18 percent increased rates by less than \$25 per hour, and the final 18 percent held rates steady.

**First-Year Blues:** Even before the recession hit, clients balked at paying for what they considered on-the-job training for first-year associates. The latest rate report is likely to reinforce that reluctance, given its finding that using entry-level lawyers adds as much as 20 percent to the cost of a legal matter. The report offers evidence that firms may be accommodating clients on this front: The percentage of bills attributed to entry-level associates dropped from 7 percent in 2009 to 2.9 percent last year.

**Ties That Bind:** The more work one firm handles for a client—and the longer the client relationship extends—the higher the average rate the firm charges. For companies that paid one firm \$10 million or more in a single year, the average hourly rate paid was \$553 in 2011. By comparison, clients that limited their spending on an individual firm to \$500,000 paid that firm an average of \$319 per hour.

**Four-Digit Frontier:** Data has consistently shown that many lawyers hesitate to charge more than \$1,000 an hour, and in 2011 just under 3 percent of the lawyers covered by the rate report had broken that barrier. Of those, the vast majority were working in the six main legal markets identified above and 60 percent of the time, they billed in increments of one hour or less.

**Playing Favorites:** Across all practice areas, 90 percent of lawyers charged different clients different rates for similar types of work. (The figure for mergers and acquisitions lawyers was 100 percent.) The differences from client to client can be extreme, and were even more pronounced in the current report than in the 2010 edition. Rates charged by intellectual property specialists, for instance, had a median variance of 23.1 percent, while lawyers doing commercial and contract work showed a 18.7 percent median difference.

**Who's Doing What?** A closer look at law firm bills for work performed on litigation and intellectual property assignments shows that the kind of timekeeper billing on a matter varies by practice type. On patent matters, the report shows, 47 percent of hours billed on average are attributed to paralegals, and 37 percent by partners. By comparison, paralegals account for just 8 percent of the work done on labor and employment litigation hours, while partners handle 45 percent.

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# Big Law's \$1,000-Plus an Hour Club

By *Vanessa O'Connell*

Updated Feb. 23, 2011 12:01 am ET

Leading attorneys in the U.S. are asking as much as \$1,250 an hour, significantly more than in previous years, taking advantage of big clients' willingness to pay top dollar for certain types of services.

A few pioneers had raised their fees to more than \$1,000 an hour about five years ago, at the peak of the economic boom. But after the recession hit, many of the rest of the industry's elite were hesitant, until recently, to charge more than \$990 an hour.

While companies have cut legal budgets and continue to push for hourly discounts and capped-fee deals with their law firms, many of them have shown they won't skimp on some kinds of legal advice, especially in high-stakes situations or when they think a star attorney might resolve their problem faster and more efficiently than a lesser-known talent.

Harvey Miller, a bankruptcy partner at New York-based Weil, Gotshal & Manges, said his firm had an "artificial constraint" limiting top partners' hourly fee because "\$1,000 an hour is a lot of money." It got rid of the cap after studying filings that showed other lawyers surpassing that barrier by about \$50.

Today Mr. Miller and some other lawyers at Weil Gotshal ask as much as \$1,045 an hour. "The underlying principle is if you can get it, get it," he said.

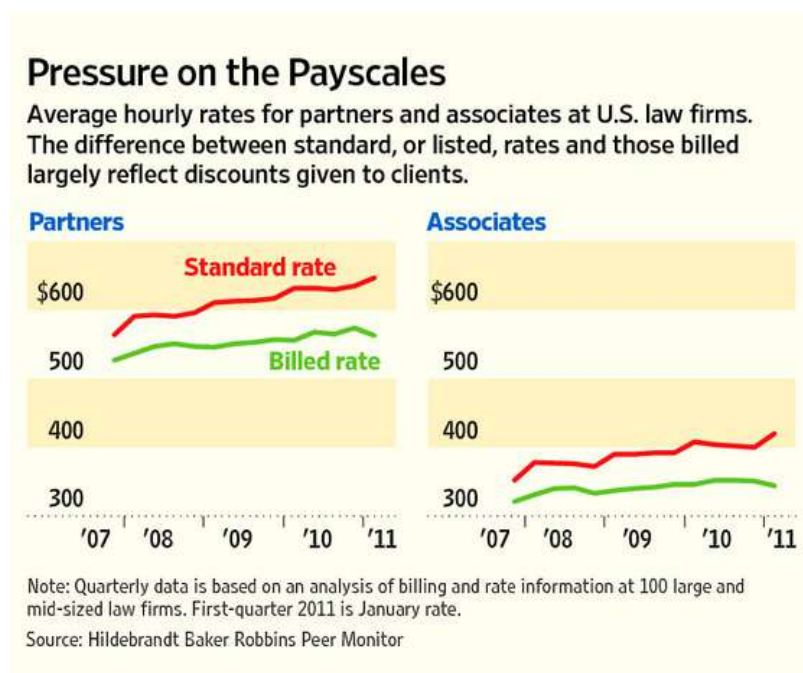
"Not many attorneys can command four figures hourly, and I do have trouble swallowing that," said Thomas L. Sager, general counsel at chemical maker DuPont Co. Still, he added, DuPont pays more than \$1,000 an hour to a "select few," particularly for mergers-and-acquisitions advice.

Janine Dascenzo, associate general counsel of General Electric Co., [GE -0.03%](#) ▼ said that her company is willing to pay what it must when it needs a lawyer with "unique" expertise. "We'll keep paying them a lot of money, because they're worth that," she added.

Industrywide, attorneys in finance-related practices such as M&A, bankruptcy law and taxes, tend to command a premium to their peers in other specialties.

One of the priciest attorneys over the past year, according to court filings, has been Kirk A. Radke, whose specialty at Kirkland & Ellis LLP in New York is advising clients on leveraged buyouts and forming private-equity funds. As of early 2010, Mr. Radke, whose clients include private-equity firm Avista Capital Partners, had an hourly fee of \$1,250.

Mr. Radke and Kirkland & Ellis declined to comment, as did Avista Capital.



Such rates are contributing to inflation across the \$100 billion-a-year global corporate-law industry as the slow economic recovery has left many law firms struggling to finance the hefty pay packages they award their stars. Since most law partners bill roughly 2,000 hours, those asking \$1,100 hourly will bring in \$2.2 million, a few million short of the \$3 million or \$4 million in annual compensation star attorneys get at many big firms.

To help fill the gap, the firms rely on the profit they often reap on the work of junior attorneys, or associates. Dozens of associates at a time can work on a single case, and some firms bill as much as \$700 an hour for their time, according to Valeo Partners, a Washington consulting firm that maintains a database of hourly legal rates in fields such as litigation, corporate law and intellectual property.

That strategy can fuel tensions with clients. "We are much less willing to pay an army of associates at the ever-increasing rate," said GE's Ms. Dascenzo.

"Plenty of clients say to me, 'I don't have any problems with your rate,' " said William F. Nelson, a Washington-based tax partner at Bingham McCutchen, who commands \$1,095 an hour, up from \$1,065 last year. "But there is price pressure for associates, especially junior lawyers.

A small but growing number of top lawyers are using other arrangements in place of hourly billing. David Boies, chairman of Boies, Schiller & Flexner and a prominent trial lawyer, charges \$960 an hour, a spokeswoman for the firm said. But just a third of his time is devoted to matters that are billed hourly. More often his deals with clients involve alternatives such as pegging fees to his success, she said.

More typically, big law firms' managing partners dictate hourly rates annually, often studying what their rivals charge, according to disclosures in their attorney-fee filings in corporate-bankruptcy cases, which provide a rare public peek at the industry. Such cases involve more than just bankruptcy lawyers; they frequently draw in a range of attorneys, including specialists in such areas as taxes, product liability and environmental and intellectual-property law.

This year, top litigators at Morgan, Lewis & Bockius LLP, a Philadelphia-based firm, are asking as much as \$1,200 an hour. A spokeswoman for the firm said "less than 1% of our partners are at rates of \$1,000 or more."



Gregory B. Craig, a former counsel to the Obama White House who joined Skadden, Arps, Slate, Meagher & Flom LLP a year ago as a Washington-based litigation partner, is asking \$1,065 an hour, according to a court filing last month. Skadden Arps declined to comment. Mr. Craig didn't respond to a request for comment

M&A lawyer John M. Reiss, from White & Case in New York, started billing \$1,100 an hour last year. "Some clients do focus on the hourly rate, but in the end what really matters is their total cost and whether they got a fair price," said Mr. Reiss.

In recent years, pressure from clients for discounts has made it increasingly difficult for law firms to increase their lawyers' fees across the board. Hourly rates for partners rose by an average 3% in 2009 and 2010, and 2.3% this year, compared with an 8% increase in 2008, according to Hildebrandt Baker Robbins. The average law-firm partner now asks \$635 an hour and bills \$575, the firm said. But a small group of attorneys in some specialties command significantly more.

Nearly 2.9% of partners at a group of 24 large U.S. and British law firms asked for \$1,000 an hour or more in U.S. cases last year, up from 1.5% in 2009, according to Valeo.

London-based lawyers have tended to charge higher per-hour rates than their U.S.-based counterparts. However, London attorneys typically don't bill as many hours on a case as do U.S. attorneys, some lawyers say.

"A thousand dollars an hour was a choke point for some clients," said Peter Zeughauser, a consultant to law firms. "I don't think there will be another significant psychological barrier until rates reach \$2,000 an hour, which they will do, probably in five to seven years."

**Write to Vanessa O'Connell at [vanessa.o'connell@wsj.com](mailto:vanessa.o'connell@wsj.com)**

### **Corrections & Amplifications**

Thomas L. Sager is general counsel at DuPont Co. A previous version of this story incorrectly said he was assistant general counsel.



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Adkins, Elm A.	Partner	Litigation	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Agarwal, Aron L.	Associate	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	260	260	260	260
Alford, Frank	Associate	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Baker, James P.	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Bass, Eric	Associate	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Bennett, Peter J.	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Berling, Scott M.	Associate	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Bocanegra, David M.	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Borucki, Matthew	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Borucki, Jeffrey	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Brown, David W.	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Bryant, J. Taylor	Associate	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Burrows, Joseph H.	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Carson, Rich Ann	Associate	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Chapman, C. Bishop	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Christie, Ryan M.	Associate	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Carnes, Michelle	Associate	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Casady, Peter J.	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Chen, David	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Chen, Sam	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Chen, Benjamin	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Chen, Morgan	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Chen, Daniel T.	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Chen, Scott	Partner	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420
Chen, Heather	Associate	Employee Benefits and Exit Counil	Kornblum and Ellis Jones Day	San Francisco	CA	United States		1980	420	420	420	420

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Name	Title	Practice Area	Firm	City	State	Country	Graduated Law School	2008 Rating	2007 Rating	2006 Rating	2005 Rating
Elliott, Charlotte C.	Associate Partner	Trial	Jones Day	San Francisco	CA	United States	2008	2008	2007	2006	2005
Engel, Robin L.	Partner	Bankruptcy Reorganization and Restructuring	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Engel, G. Lary	Partner	Bankruptcy Reorganization and Restructuring	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Expansive, Chayal	Associate Partner	Label and Employment	Ford, Brown and Neppel	San Francisco	CA	United States	1975	1975	330		535
Ford, Robert	Partner	Label and Employment	Ford, Brown and Neppel	San Francisco	CA	United States	1975	1975	330		535
Franc, Matthew	Partner	Label and Employment	Ford, Brown and Neppel	San Francisco	CA	United States	1975	1975	330		535
Franc, Joshua M.	Partner	Label and Employment	Ford, Brown and Neppel	San Francisco	CA	United States	1975	1975	330		535
Frederick, John E.	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Gannett, Richard P.	Associate	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Gardner, Tyler	Associate	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Gibson, Deane	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Ginsberg, Neil	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Gross, John	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Hart, Sean	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Hart, Brian	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Hedden, Foster L.L. Co.	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Humphrey, Lynn M.	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Hu, Marc	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Isaac, Mark	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Kaufman, Scott D.	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Kaufman, Christopher W.	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Kelly, Tobias S.	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Kim, Whitney	Associate	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Kirschick, Carl	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005
Rodstein, Sam	Partner	Bankruptcy and Creditors Rights	Quinn-Goldward Kuzlich Morrison and Fichter	San Francisco	CA	United States	2008	2008	2007	2006	2005

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Name	Title	Practice Area	Firm	City	State	Country
Landis, Justin	Partner	Corporate Finance	OMM & Myers	San Francisco	CA	United States
Mandel, Robin G.	Partner	Employment	Jones Day	San Francisco	CA	United States
Mason, Dary	Partner	Banking and Finance	Francis Bruner and Minter	San Francisco	CA	United States
Morham, Mark	Partner	Banking and Finance	Winston and Strain	San Francisco	CA	United States
McDonnell, Brian D.	Partner	Banking and Finance	Jones Day	San Francisco	CA	United States
McKee, Mark E.	Partner	Banking and Finance	Kirkland and Ellis	San Francisco	CA	United States
Myers, William A.	Partner	Banking and Finance	McGuire, Naisa and Rockwell	San Francisco	CA	United States
Myers, Martin H.	Partner	Banking and Finance	Jones Day	San Francisco	CA	United States
Nagesh, Ashi	Partner	Banking and Finance	Francis Bruner and Minter	San Francisco	CA	United States
Nelson, Casey M.	Partner	Banking and Finance	Kirkland and Ellis	San Francisco	CA	United States
Olson, James C.	Partner	Banking and Finance	Jones Day	San Francisco	CA	United States
Oso, Andrew M.	Partner	Banking and Finance	Lowell Day	San Francisco	CA	United States
Owens, Michael G.E.	Partner	Banking and Finance	Kirkland and Ellis	San Francisco	CA	United States
Palmer, Robert	Partner	Banking and Finance	McGuire, Naisa and Rockwell	San Francisco	CA	United States
Palmer, Karen H.	Partner	Banking and Finance	McGuire, Naisa and Rockwell	San Francisco	CA	United States
Ponick, Thomas R.	Partner	Banking and Finance	Francis Bruner and Minter	San Francisco	CA	United States
Portnoy, Alex	Partner	Banking and Finance	Francis Bruner and Minter	San Francisco	CA	United States
Reynolds, Eleanor	Partner	Banking and Finance	Francis Bruner and Minter	San Francisco	CA	United States
Richter, Katherine S.	Partner	Banking and Finance	Jones Day	San Francisco	CA	United States
Rosen, Peter	Partner	Banking and Finance	OMM & Myers	San Francisco	CA	United States
Roth, Laura	Partner	Banking and Finance	Francis Bruner and Minter	San Francisco	CA	United States
Rosenberg, Noel	Partner	Banking and Finance	Jones Day	San Francisco	CA	United States
Salas, Cheryl	Partner	Banking and Finance	King and Spalding	San Francisco	CA	United States
Schubert, Yvonne	Partner	Banking and Finance	Francis Bruner and Minter	San Francisco	CA	United States
Selling, Judith	Partner	Banking and Finance	Francis Bruner and Minter	San Francisco	CA	United States

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Name	Title	Practice Area	Firm	City	State	Country	Graduated Law School	Practicing Since	2000 Rank	2007 Rank	2010 Rank	2011 Rank
Shaw, Michael	Associate	Securities Litigation	Huber Strom	San Francisco	CA	United States	2006	2008	750	375	780	
Staff, Susan	Associate	Labor and Employment	Healy, Neal Williams & Associates	San Francisco	CA	United States		2008	200	375	390	
Sproull, Leah	Associate	Commercial Litigation	Healy, Neal Williams & Associates	San Francisco	CA	United States		2008	430	410	385	
Spencer, Lori	Associate	Business Transactions	Angelo, J. and Neal	San Francisco	CA	United States						
Stephens, Eric	Associate	Litigation	Angelo, J. and Neal	San Francisco	CA	United States						
Stewart, Nichola L.	Associate	Labor and Employment	Family, Divorce and Marital	San Francisco	CA	United States						
Teare, Alexander (Sasha)	Associate	Real Estate	Paul, Finkbeiner, Jacobson and Walker	San Francisco	CA	United States			325			
Thompson, Brent	Associate	Real Estate	Paul, Finkbeiner, Jacobson and Walker	San Francisco	CA	United States						
Tropell, Christie D.	Associate	Real Estate	Paul, Finkbeiner, Jacobson and Walker	San Francisco	CA	United States						
Trotter, Robert A.	Partner	Business Restructuring and Reorganization	Finns Bruun and Marlowe	San Francisco	CA	United States	1999		295	725	820	600
Ulland, Suzanne	Partner	Finance, Corporate and Bankruptcy	Finns Bruun and Marlowe	San Francisco	CA	United States						
Vogel, Gary D.	Senior Legal Assistant	Litigation	Cheney and Myers	San Francisco	CA	United States						
Wagner, Katherine	Associate	Business Transactions	Cheney and Myers	San Francisco	CA	United States						
Wall, Gregory E.	Senior Attorney	Business Transactions	Cheney and Myers	San Francisco	CA	United States						
Wassels, Kelly	Associate	Litigation	Kirkland and Ellis	San Francisco	CA	United States						
Whalen, Joe	Partner	Insurance and Risk Management	Kirkland and Ellis	San Francisco	CA	United States						
Wicks, Jack L.	Associate	Bankruptcy and Reorganization	Kirkland and Ellis	San Francisco	CA	United States						
Wilson, Barbara	Counsel	Bankruptcy and Reorganization	Kirkland and Ellis	San Francisco	CA	United States						
Woodruff, Kelly	Partner	Bankruptcy and Reorganization	Kirkland and Ellis	San Francisco	CA	United States						
Zwolsman, Michael	Partner	Bankruptcy and Reorganization	Kirkland and Ellis	San Francisco	CA	United States						

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**Westlaw CourtExpress**

**LEGAL BILLING REPORT**

VOLUME 11, NUMBER 1

MAY 2009

**BY BILLING RATE**

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
P Kelly, Jr, Dennis	Davis Polk & Wardwell (CA)	1980	1986	CA	\$ 900.00	4.50	4,132.00
P Collins, Julie	Davis Polk & Wardwell (CA)	1980	1990	CA	955.00	17.00	16,335.00
P Quinzler, Scott	O'Mahoney & Myers LLP (CA)	1975	1975	CA	880.00	1.00	946.00
P Tuchin, Michael	Rice, Tuchin, Bogardner & Stern, LLP	1990	1990	CA	450.00	0.50	475.00
P Ballock, Karen	Ward, Gohbel & Menzel LLP (CA)	1996	1996	CA	789.00	0.50	639.00
P Arnold, Dennis	Shannon Dunn & Cautcher, LLP (CA)	1976	1978	CA	750.00	4.50	3,555.00
QC Morris, Richard	Herrington Bennett & Herrington LLP	1979	1979	CA	760.00	6.50	48,852.00
P Averch, Craig	White & Case LLP (CA)	1984	1984	CA	750.00	1.20	96,078.00
P Partridge, Ira D.	Partridge Stern Zimm Young Jones & Weintraub (CA)	1982	1992	CA	725.00	2.90	2,175.00
P Kronfeld, Alan	Partridge Stern Zimm Young Jones & Weintraub (CA)	1987	1987	CA	725.00	0.60	500.00
A Leach, Peter	Davis Polk & Wardwell (CA)	2005	2005	CA	880.00	0.60	68.00
P Jorjic, Joanne E.	Herrington Bennett & Herrington LLP	1978	1978	CA	680.00	10.10	6,868.00
P Kevata, Henry	Prichard Stern Zimm Young Jones & Weintraub (CA)	1980	1988	CA	675.00	15.10	12,892.50
A Gossick, Ronald	White & Case LLP (CA)	2001	2001	CA	665.00	176.20	117,123.00
P Ripstein, Kenneth H.	Prichard Stern Zimm Young Jones & Weintraub (CA)	1977	1981	CA	650.00	27.30	17,745.00
P Fisher, David	Rice, Tuchin, Bogardner & Stern, LLP	1997	1998	CA	650.00	23.10	15,015.00
P Weiskranz, Henry	Munger Tolles & Olson LLC	1987	1987	CA	650.00	0.50	328.00
E Sternthal, David N.	Partridge Stern Zimm Young Jones & Weintraub (CA)	1989	1993	CA	645.00	35.60	22,952.00
P Montgomery, Cromwell	Shannon Dunn & Cautcher, LLP (CA)	1997	1997	CA	635.00	9.80	509.80
E Brown, Dennis	Munger Tolles & Olson LLC	1970	1970	CA	625.00	17.80	11,125.00
A Newman, Samuel	Shannon Dunn & Cautcher, LLP (CA)	2001	2001	CA	610.00	13.50	8,235.00
A Deragan, Steve	White & Case LLP (CA)	2000	2003	CA	600.00	183.70	110,270.00
A Vincent, Garth	Munger Tolles & Olson LLC	1988	1988	CA	600.00	1.20	72.00
A Scott, Melanie	White & Case LLP (CA)	2004	2004	CA	600.00	20.90	12,540.00
P Buchstein, Laura	Kroe, Torkan, Bogardner & Stern, LLP	1991	1991	CA	590.00	4.20	118.00
A Giel, Kyung-chun, B	Ward, Gohbel & Menzel LLP (CA)	2003	2003	CA	570.00	2.50	1,652.00
E Hahn, Jeffrey	Munger Tolles & Olson LLC	1984	1994	CA	550.00	35.10	19,305.00
P Fried, Joshua	Prichard Stern Zimm Young Jones & Weintraub (CA)	1995	1995	CA	435.00	21.40	11,448.00
A Ruffin, James	Munger Tolles & Olson LLC	1997	1997	CA	525.00	35.80	19,546.00
A Morris, Anthony	Herrington Bennett & Herrington LLP	2000	2000	CA	505.00	13.10	6,615.00
A Mariani, Michael	Ward, Gohbel & Menzel LLP (CA)	2005	2005	CA	500.00	38.50	18,250.00
A Barthelemy, Melissa	Shannon Dunn & Cautcher, LLP (CA)	2006	2006	CA	470.00	14.00	6,580.00
A Liu, Leslie	Ward, Gohbel & Menzel LLP (CA)	2006	2006	CA	465.00	45.50	21,343.50
A Kaufman, David	Munger Tolles & Olson LLC	2005	2005	CA	450.00	50.30	228,755.00
A Hochstetler, Brian	Munger Tolles & Olson LLC	2002	2002	CA	435.00	0.30	190.50
A Nathan, Joseph	Ward, Gohbel & Menzel LLP (CA)	2007	2007	CA	415.00	25.20	10,458.00
A Jessper, M. L. Joyce	Munger Tolles & Olson LLC	2005	2006	CA	400.00	96.20	38,482.00
A Eckhardt, Ganey	Munger Tolles & Olson LLC	2005	2006	CA	400.00	8.80	3,520.00
A Ruffin, Emelinda E.	O'Mahoney & Myers LLP (CA)	2006	2006	CA	395.00	8.40	3,318.00

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	\$	TOTAL
A. Schneider, Bradley	Munger, Jones & Olson LLC	2004	2004	CA	\$ 395.00	1.30		518.50
A. Reardon, Matthew	Wright, Gotsdiner & Nanning LLP (CA)	2008	2008	CA	355.00	13.80		4,792.50
A. Garzon, Terry	Chakravarty & Myers LLP (CA)	2007	2007	CA	330.00	2.90		828.00
FP Mendle, Ross	Chakravarty & Myers LLP (CA)				250.00	6.20		1,512.00
Finlayson, Kathie	Pachulski Strong Zehn Young Jones & Weinbaum (CA)				225.00	27.60		6,210.00
FP Pearson, Sandra	Pachulski Strong Zehn Young Jones & Weinbaum (CA)				225.00	0.40		90.00
Jaffres, Patricia J.	Pachulski Strong Zehn Young Jones & Weinbaum (CA)			CA	215.00	1.90		408.50
FP Floyd, Kevin	Klein, Tuckler, Bogdanoff & Stern, LLP				210.00	0.30		63.00
FP Knorr, Cheryl	Pachulski Strong Zehn Young Jones & Weinbaum (CA)				205.00	2.20		431.00
CMA Fineman, Stacey	Pachulski Strong Zehn Young Jones & Weinbaum (CA)				125.00	2.60		325.00

**Westlaw CourtExpress**

**LEGAL BILLING REPORT**

VOLUME 11, NUMBER 2

August 2009

**BY BILLING RATE**

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
P Tolles, Stephen L.	Gibson Dunn & Crutcher, LLP (CA)	1982	1982	CA	\$ 880.00	0.10	\$ 88.00
P Palmarson, Thomas	Klee, Tuchin, Bogdanoff & Stern, LLP	1984	1984	CA	850.00	223.00	181,290.00
P Tuchin, Michael	Klee, Tuchin, Bogdanoff & Stern, LLP	1980	1980	CA	850.00	74.80	63,240.00
P Stern, David	Klee, Tuchin, Bogdanoff & Stern, LLP	1975	1975	CA	850.00	32.80	27,860.00
P Isser, Paul S.	Gibson Dunn & Crutcher, LLP (CA)	1986	1985	CA	840.00	6.35	5,394.06
P Arnold, Dennis	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1976	1976	CA	840.00	4.10	3,444.00
P Thompson, Brian	Well, Gotshall & Gardner, LLP (CA)	1981	1981	CA	820.00	72.80	59,680.00
P Barack, Karen	Well, Gotshall & Gardner, LLP (CA)	1986	1985	CA	810.00	40.40	32,724.00
P Ziahi, Dean A.	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1978	1978	CA	775.00	20.30	16,138.50
P Gilmore, Danielle	White & Case LLP (CA)	1983	1984	CA	775.00	9.50	7,562.50
P Averch, Craig	Jones Day (CA)	1984	1984	CA	750.00	189.20	141,900.00
P Keller, Tobias	Jones Day (CA)	1980	1980	CA	750.00	1.50	1,425.00
P Bauer, James	Jones Day (CA)	1980	1980	CA	750.00	0.20	180.00
P Whiston, Eric D.	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1989	1989	CA	740.00	2.10	5,254.00
P Ohl, Johannes Y.	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1987	1987	CA	740.00	6.30	4,662.00
P Korte, Alan	Practising Group Zehi Young Jones & Weintraub (CA)	1987	1987	CA	725.00	10.10	7,322.50
A Bick, Jeffrey E.	Staley Austin Brown & Wood LLP (CA)	1987	1988	CA	700.00	110.90	77,639.00
P Myers, Mark	Jones Day (CA)	1987	1987	CA	700.00	28.50	18,550.00
P Grossman, David I.	Practising Group Zehi Young Jones & Weintraub (CA)	1981	1982	CA	695.00	3.50	3,822.50
A Gristalen, Mark E.	White & Case LLP (CA)	1988	1988	CA	685.00	117.70	80,924.50
P Arush, David	Gibson Dunn & Crutcher, LLP (CA)	1985	1985	CA	675.00	29.40	28,898.00
A Gershtalkin, Robert	White & Case LLP (CA)	2001	2001	CA	675.00	221.50	147,297.50
P Montomery, Cromwell	Gibson Dunn & Crutcher, LLP (CA)	1987	1987	CA	635.00	2.50	1,587.50
A Narmann, Samuel	Gibson Dunn & Crutcher, LLP (CA)	2001	2001	CA	610.00	11.50	7,015.00
A Deratim, Shava	White & Case LLP (CA)	2003	2003	CA	600.00	217.50	130,500.00
A Scott, Melanie	White & Case LLP (CA)	2004	2004	CA	600.00	74.80	44,840.00
P Tardella, Robert	Jones Day (CA)	1985	1985	CA	600.00	58.30	31,180.00
A Goe Young-Kohy, B.	Well, Gotshall & Gardner, LLP (CA)	2003	2003	CA	590.00	54.20	31,438.00
OC Medical, Brian	Klee, Tuchin, Bogdanoff & Stern, LLP	1989	1989	CA	575.00	12.40	7,138.00
A Engel, David	Gibson Dunn & Crutcher, LLP (CA)	2003	2003	CA	570.00	0.50	285.00
G Crosby IV, Peter	Jones Day (CA)	1984	1984	CA	565.00	19.30	1,514.50
A Martin, Mi	White & Case LLP (CA)	2006	2006	CA	550.00	45.80	25,190.00
A Carter, Katherine	Jones Day (CA)	2001	2001	CA	525.00	1.70	892.50
OC Brandt, Sara F.	Practising Group Zehi Young Jones & Weintraub (CA)	1979	1979	CA	525.00	1.30	682.50
A Malachuk, Michael	Well, Gotshall & Gardner, LLP (CA)	2005	2005	CA	500.00	175.30	87,650.00
A Roderberger, Noel	Jones Day (CA)	2003	2003	CA	500.00	47.80	20,908.00
A Hays, Matthew	Klee, Tuchin, Bogdanoff & Stern, LLP	2003	2003	CA	495.00	111.80	55,341.00
A Barnhill, Melissa	Gibson Dunn & Crutcher, LLP (CA)	2006	2006	CA	470.00	4.10	1,927.00
A Liu, Leslie	Well, Gotshall & Gardner, LLP (CA)	2006	2006	CA	465.00	302.70	140,756.50
A Chun, Sebyul	White & Case LLP (CA)	2008	2008	CA	460.00	182.10	74,566.00

California rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
A Morrison, Kelley M	Whele & Case LLP (CA)	2008	2008	CA	\$ 480.00	105.60	\$ 48,530.00
A Kevik, Jonathan	Whele & Case LLP (CA)	2007	2007	CA	480.00	20.38	9,338.00
P Philbo, Laurence	McKenna Long & Aldridge LLP (CA)	1987	1987	CA	450.00	15.00	6,750.00
P Larsen, J David	McKenna Long & Aldridge LLP (CA)	1987	1987	CA	480.00	10.00	4,800.00
A Guesst, David	Klee, Turchin, Boardmanoff & Stern, LLP	2005	2005	CA	430.00	386.78	157,881.00
A Puzmanberg, Courtney	Klee, Turchin, Boardmanoff & Stern, LLP	2005	2005	CA	430.00	23.29	9,976.00
A Dickerson, Matthew	Sidley Austin Brown & Wood LLP (CA)	2007	2007	CA	425.00	25.30	10,752.50
A Trani, William	Sidley Austin Brown & Wood LLP (CA)	2005	2008	CA	425.00	5.40	2,295.00
A Nathan, Joseph	Weil, Gotshel & Mander LLP (CA)	2007	2007	CA	415.00	61.50	25,522.50
A Wilson, Lorita S.	Gibson Dunn & Crutcher, LLP (CA)	2008	2008	CA	400.00	4.00	1,600.00
A Simonds, Alesia	Sidley Austin Brown & Wood LLP (CA)	2008	2008	CA	375.00	49.30	18,487.50
A Dannerhan, Kevin	Klee, Turchin, Boardmanoff & Stern, LLP	2008	2008	CA	300.00	4.70	1,410.00
A Elliot, Kevin	Klee, Turchin, Boardmanoff & Stern, LLP	2008	2008	CA	300.00	2.10	630.00
LIB Fgrressier, Leslie A.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				250.00	4.90	1,225.00
PP Harris, Denise A.	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				225.00	8.50	1,912.50
PP Granzinger, Michelle	McKenna Long & Aldridge LLP (CA)			CA	215.00	40.90	8,729.00
PP Fairson, Sarah	Idea, Turchin, Boardmanoff & Stern, LLP			CA	215.00	36.00	7,740.00
PP Brown, Thomas J	Pachulski Stang Ziehl Young Jones & Weintraub (CA)				195.00	2.00	390.00
LIB Jones, Carter H.	Gibson Dunn & Crutcher, LLP (CA)				185.00	0.50	92.50

**Westlaw CourtExpress**

**LEGAL BILLING REPORT**

VOLUME 11, NUMBER 3

December 2009

**BY BILLING RATE**

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
P Pachulski, Richard M	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1978	1979	CA	\$ 685.00	287.50	5 287,410.00
P Patterson, Thomas	Kira, Tsuchi, Bogdanoff & Stern, LLP	1984	1984	CA	850.00	392.50	538,740.00
P Tsuchi, Michae	Kira, Tsuchi, Bogdanoff & Stern, LLP	1990	1990	CA	850.00	201.40	171,190.00
P Stern, David	Kira, Tsuchi, Bogdanoff & Stern, LLP	1975	1975	CA	850.00	98.50	58,480.00
P Pachulski, Richard M	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1979	1978	CA	850.00	68.00	57,800.00
P Arnold, Dennis	Gibson Dunn & Crutcher, LLP (CA)	1975	1976	CA	840.00	1.00	840.00
P Zeln, Dean A	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1978	1978	CA	823.00	250.75	311,405.25
P Timmons, Brian	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1991	1991	CA	820.00	240.50	197,282.00
P Lyons, Dennis	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1986	1986	CA	820.00	90.20	74,053.50
P Ongel, Robert E	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1981	1981	CA	795.00	367.30	284,053.50
P Richards, January	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1980	1981	CA	795.00	158.50	126,007.50
P Zeln, Dean A	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1978	1978	CA	795.00	94.00	74,740.00
P Zeln, Dean A	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1978	1978	CA	785.00	20.30	16,136.50
P Weinstein, Eric D	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1989	1989	CA	740.00	54.00	39,800.00
P Ong, Johanna Y	Quinn Emanuel Urquhart Oliver & Hedges, LLP	1997	1997	CA	740.00	11.20	8,298.00
P Kornfeld, John	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1987	1987	CA	723.00	10.10	7,322.50
P Grassberger, Dabrya I	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1981	1992	CA	695.00	6.50	3,822.50
C Galina, Andrew	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1983	1983	CA	656.00	3.40	2,261.00
P Parker, Day V	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1980	1970	CA	675.00	60.80	41,040.00
P Malhotra, James	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1980	1987	CA	675.00	16.60	11,295.00
P Aronh, Doris	Gibson Dunn & Crutcher, LLP (CA)	1995	1995	CA	675.00	14.80	9,990.00
P Davids, Ryan	Kira, Tsuchi, Bogdanoff & Stern, LLP	1985	1986	CA	650.00	1.40	810.00
A Newman, Samuel	Gibson Dunn & Crutcher, LLP (CA)	2001	2001	CA	610.00	3.70	2,287.00
C Hochman, Henry	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1987	1987	CA	585.00	100.50	59,976.00
A Newman, Victoria	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1986	1997	CA	594.00	32.50	18,387.50
C Cho, Shirley	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1987	1997	CA	585.00	18.40	11,563.00
A Hochman, Henry	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1989	1987	CA	575.00	57.60	33,120.00
A Drexlerman, Jennifer	Kira, Tsuchi, Bogdanoff & Stern, LLP	1989	1989	CA	575.00	1.40	805.00
OC Metcalf, Brian	Kira, Tsuchi, Bogdanoff & Stern, LLP	1990	1990	CA	575.00	0.70	402.50
OC Baroff, Gina F	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1976	1876	CA	525.00	1.30	682.50
A Heyn, Matthew	Kira, Tsuchi, Bogdanoff & Stern, LLP	2003	2003	CA	495.00	108.78	54,301.50
P Bryant, Brian	Pachulski Shang Zhen Young Jones & Weintraub (CA)	1999	1998	CA	485.00	0.50	247.50
A Barabson, Melissa	Gibson Dunn & Crutcher, LLP (CA)	2006	2008	CA	470.00	2.10	897.00
A Liu, Leslie	Wahl, Goshima & Manning, LLP (CA)	1997	2006	CA	465.00	9.80	4,567.00
P Phillip, Lawrence	Wahl, Goshima & Manning, LLP (CA)	1997	1997	CA	450.00	2.70	1,215.00
A Guess, David	Wahl, Goshima & Manning, LLP (CA)	2005	2005	CA	430.00	402.50	173,247.00
PP Sarda, Joseph C	Kira, Tsuchi, Bogdanoff & Stern, LLP	2008	2008	CA	380.00	4.00	1,548.00
PP Etkin, Kevin	Quinn Emanuel Urquhart Oliver & Hedges, LLP	2008	2008	CA	380.00	16.60	4,890.00
PP Lacker, Margus	Quinn Emanuel Urquhart Oliver & Hedges, LLP	2008	2008	CA	290.00	20.30	5,076.00
LIB Forrester, Leslie A	Pachulski Shang Zhen Young Jones & Weintraub (CA)				250.00	4.00	1,225.00

California Rate Report

PROFESSIONAL	FIRM	GRADUATED	ADMITTED	STATE	RATE	HOURS	TOTAL
LIB Fomberger, Leslie A.	Pachnisk Stang Ziehl Young Jones & Weintraub (CA)				\$ 250.00	1.80	450.00
PP Harris, Denise A.	Pachnisk Stang Ziehl Young Jones & Weintraub (CA)				225.00	47.80	10,717.50
PP Harris, Denise A.	Pachnisk Stang Ziehl Young Jones & Weintraub (CA)				225.00	8.50	1,912.50
PP Hantson, Felicit	Pachnisk Stang Ziehl Young Jones & Weintraub (CA)				225.00	0.40	90.00
PP Ginter, Michelle	McKenna Long & Aldridge LLP (CA)				215.00	60.40	12,816.00
PP Patton, Sarah	Klein Tschira, Bogdanoff & Stern, LLP				215.00	57.40	11,267.00
PP Brown, Thomas J.	Pachnisk Stang Ziehl Young Jones & Weintraub (CA)				195.00	89.75	11,651.25
PP Brown, Mike	Pachnisk Stang Ziehl Young Jones & Weintraub (CA)				195.00	5.00	1,170.00
PP Brown, Thomas J.	Pachnisk Stang Ziehl Young Jones & Weintraub (CA)				195.00	2.00	390.00
LS Ewerhard, Christine	McKenna Long & Aldridge LLP (CA)				190.00	3.00	540.00
PP Salin, Arthur	Pachnisk Stang Ziehl Young Jones & Weintraub (CA)				190.00	18.80	2,535.00
PP Bass, John	Pachnisk Stang Ziehl Young Jones & Weintraub (CA)				190.00	0.80	150.00





**2010 NLJ Billing Survey**

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Fiscal Year	Firm Name	Location	Firmwide Average	Partner High	Partner Low	Partner Average	Associate High	Associate Low	Associate Average
2010	Adams and Reese	New Orleans	\$265	\$550	\$250	\$344	\$280	\$155	\$229
2010	Akerman Senterfitt	Miami							
2010	Akin Gump Strauss Hauer & Field	Washington							
2010	Allen Mathews Leck	Los Angeles							
2010	Camble Mallory & Natale	Atlanta	\$535	\$665	\$450	\$627	\$590	\$270	\$405
2010	Auston & Bird	Houston		\$560	\$305		\$340	\$175	
2010	Andrews Kurth	Haddonfield, NJ							
2010	Archer & Greiner	Washington		\$765	\$400		\$475	\$240	
2010	Arent Fox	St Louis		\$475	\$300		\$325	\$200	
2010	Armstrong Teasdale	Washington							
2010	Arnold & Porter	Indianapolis							
2010	Baker & Daniels	Cleveland							
2010	Baker & Hostetler	Houston							
2010	Baker Botts LLP	Memphis, TN	\$317	\$595	\$255	\$357	\$320	\$185	\$231
2010	Bearman, Caldwell & Berkowitz	Philadelphia							
2010	Ballard Spahr	Indianapolis	\$367	\$613	\$298	\$416	\$365	\$225	\$261
2010	Barnes & Thornburg	Nashville, TN							
2010	Bass, Berry & Sims	Cleveland	\$375	\$575	\$350	\$335	\$360	\$195	\$245
2010	Baresch, Friedlander, Gopalan & Aronoff	Riverdale, Cal		\$560	\$310		\$395	\$225	
2010	Best Best & Krieger	if							

Fiscal Year	Firm Name	Location	Flintwise Average	Partner High	Partner Low	Partner Average	Associate High	Associate Low	Associate Average
2010	Bingham McCutchen	Boston	\$510	\$656	\$440	\$618	\$360	\$280	\$361
2010	Blank Rome	Philadelphia	\$260	\$475	\$220	\$309	\$280	\$160	\$208
2010	Bond, Schoenack & King	Syracuse, NY							
2010	Briggs and Morgan	Minneapolis	\$373	\$600	\$280	\$437	\$315	\$210	\$240
2010	Brinks Hofer Gilson & Lyone	Chicago	\$435	\$725	\$345	\$541	\$420	\$195	\$308
2010	Broad and Cassel	Orlando, FL	\$307	\$475	\$260	\$372	\$350	\$175	\$242
2010	Brown Rudnick	Boston							
2010	Brownstein Hyatt Farber Schreck	Denver	\$391	\$810	\$295	\$463	\$360	\$200	\$268
2010	Bryan Cave	St. Louis	\$464	\$790	\$370	\$553	\$500	\$185	\$344
2010	Buchalter Nemer	Los Angeles	\$415	\$625	\$270	\$490	\$450	\$185	\$328
2010	Buchanan Ingersoll & Rooney	Pittsburgh		\$800	\$310		\$465	\$210	
2010	Burr & Forman	Birmingham, AL	\$328	\$500	\$210	\$361	\$335	\$200	\$250
2010	Butzel Long	Detroit		\$750	\$390		\$375	\$200	
2010	Caewalder, Wickersham & Teft LLP	New York							
2010	Cahill Gordon Reindel LLP	New York							
2010	Carlton Fields	Tampa, FL	\$368	\$775	\$325	\$455	\$375	\$195	\$268
2010	Chadbourne & Parke	New York	\$456	\$985	\$390	\$769	\$625	\$130	\$442
2010	Chapman and Cutler	Chicago							
2010	Clerk Hill	Detroit							
2010	Cooley	Palo Alto, CA							
2010	Covington & Burling	Washington							
2010	Cozen O'Connor	Philadelphia	\$422	\$680	\$310	\$497	\$585	\$225	\$326
2010	Crowell & Moring	Washington							
2010	Curtis, Mallet-Prevost, Colt & Mosie	New York	\$488	\$785	\$675	\$658	\$575	\$290	\$365
2010	Davis Wright Tremaine	Seattle	\$355	\$795	\$320	\$486	\$435	\$210	\$304
2010	Day Pitney	Florham Park, NJ							

Fiscal Year	Firm Name	Location	Firmwide Average	Partner High	Partner Low	Partner Average	Associate High	Associate Low	Associate Average
2010	Dewey & Lebeouf LLP	New York							
2010	Dickinson Wright	Detroit		\$575	\$355	\$666	\$275	\$185	\$222
2010	Dickstein Shapiro	Washington	\$546	\$950	\$525	\$630	\$265	\$426	\$222
2010	Dinsmore & Shohi	Cincinnati	\$392	\$596	\$220	\$360	\$175	\$175	\$222
2010	DLA Piper	Chicago							
2010	Dorsey & Whitney	Minneapolis	\$410	\$795	\$290	\$440	\$180	\$285	\$285
2010	Duane Morris	Philadelphia	\$483	\$850	\$240	\$680	\$185	\$349	\$349
2010	Dykema Gossett	Detroit	\$445	\$695	\$360	\$455	\$225	\$325	\$325
2010	Eckert Seamans Chertin & Mellott	Pittsburgh		\$625	\$250		\$320	\$150	
2010	Edwards Angel Palmer & Dodge	Boston	\$451	\$780	\$345	\$571	\$810	\$200	\$323
2010	Eastin Becker & Green	New York	\$429	\$850	\$350	\$520	\$450	\$180	\$325
2010	Faegre & Benson LLP	Minneapolis							
2010	Finnegan, Henderson, Farabow, Garrett & Dunner	Washington							
2010	Fish & Richardson	Boston							
2010	Fisher & Phillips	Atlanta		\$689	\$340		\$360	\$220	
2010	Fitzpatrick, Cella, Harper & Schilo	New York		\$730	\$460		\$440	\$275	
2010	Foley & Lardner	Milwaukee	\$554	\$1,035		\$664		\$255	\$420
2010	Foley Hoag	Boston							
2010	Ford & Harrison	Atlanta		\$820	\$375		\$390	\$250	
2010	Fowler White Boggs	Tampa, FL	\$350	\$575	\$325	\$400	\$315	\$205	\$250
2010	Fox Rothschild	Philadelphia	\$407	\$680	\$315	\$473	\$475	\$235	\$298
2010	Frost Brown Todd	Cincinnati	\$279	\$515	\$200	\$326	\$250	\$150	\$189
2010	Fulbright & Jaworski	Houston							
2010	Gardere Wynne Sewell	Dallas	\$445	\$815	\$380	\$531	\$445	\$195	\$311
2010	Gibbons	Newark, NJ	\$404	\$790	\$390	\$479	\$450	\$250	\$289
2010	Gibson, Dunn & Crutcher LLP	Los Angeles							
2010	Godfrey & Kahn	Milwaukee		\$495	\$325		\$340	\$180	
2010	Goodwin Procter	Boston							

Fiscal Year	Firm Name	Location	Partner Average	Partner High	Partner Low	Partner Average	Associate High	Associate Low	Associate Average
2010	Gordon & Rees	San Francisco, CA							
2010	GrayRobinson	Orlando, FL	\$750	\$225	\$225		\$315	\$150	
2010	Greenberg Traurig	New York	\$675	\$355	\$355	\$650	\$610	\$200	\$332
2010	Harris Beach	Rochester, NY	\$500	\$275	\$275		\$250	\$140	
2010	Haynes and Boone	Dallas							
2010	Hinshaw & Culbertson	Chicago							
2010	Hiscock & Barclay	Syracuse, NY	\$650	\$195	\$195	\$348	\$440	\$150	\$234
2010	Hodgson Russ	Buffalo, NY	\$665	\$230	\$230	\$374	\$410	\$175	\$238
2010	Hogan Lovells	Washington							
2010	Holland & Hart LLP	Washington	\$418	\$300	\$300	\$499	\$490	\$195	\$288
2010	Holland & Knight	Washington	\$855	\$435	\$285	\$415	\$530	\$170	\$295
2010	Horne Roberts & Owen	Denver							
2010	Honigman Miller Schwartz and Cohn	Detroit							
2010	Hughes Hubbard & Reed LLP	New York							
2010	Hunton & Williams	Richmond, VA							
2010	Husch Blackwell	St. Louis	\$804	\$230	\$230	\$357	\$415	\$171	\$220
2010	Ice Miller LLP	Indianapolis	\$320						
2010	Irell & Manella	Los Angeles							
2010	Jackson Kelly	Charleston, WV	\$495	\$245	\$245		\$275	\$155	
2010	Jackson Lewis	White Plains, NY	\$384	\$260	\$260	\$425	\$440	\$150	\$282
2010	Jones Day	Washington							
2010	Jones, Walker, Waechter, Poffavant, Carrara & Depeyre	New Orleans	\$620	\$195	\$195		\$273	\$140	
2010	K&L Gates	Pittsburgh							
2010	Kelley Drye & Warren	New York	\$900	\$465	\$465		\$555	\$275	
2010	Kenyon & Kenyon LLP	New York							

Fiscal Year	Firm Name	Location	Timecode Average	Partner High	Partner Low	Partner Average	Associate High	Associate Low	Associate Average
2010	Kilpatrick Stockton	Atlanta	\$425	\$730	\$375	\$527	\$465	\$225	\$320
2010	Kirkland & Ellis	Chicago							
2010	Knobbe, Martens, Olson & Bear	Irvine, CA	\$432	\$710	\$395	\$611	\$450	\$285	\$332
2010	Kramer Levin Naftalis & Frankel	New York							
2010	Lane Powell	Seattle	\$349	\$600	\$310	\$431	\$350	\$230	\$278
2010	Lathrop & Gage	Kansas City		\$490	\$255		\$265	\$180	
2010	LeClairRyan, Professional Corporation	Richmond, VA							
2010	Leonard, Street and Deardorf	Minneapolis							
2010	Lewis and Roca	Phoenix, AZ							
2010	Lewis Brisbois Bisgaard & Smith	Los Angeles							
2010	Lewis, Rice & Fingersh	St. Louis		\$460	\$250		\$345	\$150	\$235
2010	Lindquist & Vennum	Minneapolis	\$330			\$415			\$296
2010	Littler Mendelson	San Francisco	\$372	\$650	\$290	\$445	\$180	\$210	\$320
2010	Locke Lord Bissell & Liddell	Dallas	\$480	\$1,120	\$400	\$689	\$525	\$215	\$320
2010	Loeb & Loeb	New York		\$975	\$475		\$575	\$275	
2010	Lowenstein Sandler	Roseland, NJ		\$825	\$440		\$575	\$395	
2010	Luce, Forward, Hamilton & Setpps	San Diego		\$670	\$350		\$445	\$245	
2010	Manatt, Phelps & Phillips	Los Angeles	\$568	\$850	\$525	\$651	\$525	\$200	\$405
2010	Marshall, Dennehey, Warner, Coleman & Guggin	Philadelphia		\$410	\$145		\$320	\$190	
2010	Maynard, Cooper & Gale	Birmingham, AL		\$600	\$325		\$295	\$235	
2010	McAndrews, Held & Malloy	Chicago		\$675	\$260		\$350	\$225	

Fiscal Year	Firm Name	Location	Firmwide Average	Partner High	Partner Low	Partner Average	Associate High	Associate Low	Associate Average
2010	McCarter & English	Newark, NJ	\$355	\$825	\$360	\$498	\$405	\$215	\$313
2010	McElroy, Deutsch, Mulvaney & Carpenter	Morristown, N.J.	\$210	\$550	\$295	\$280	\$275	\$150	\$190
2010	McGuireWoods	Richmond, Va.	\$355	\$630	\$325	\$543	\$500	\$220	\$355
2010	McKenna Long & Aldridge	Atlanta	\$455	\$775	\$375	\$540	\$490	\$220	\$366
2010	Michael Best & Friedrich	Milwaukee	\$345	\$650	\$235	\$410	\$290	\$190	\$239
2010	Miles & Stockbridge	Baltimore	\$695	\$895	\$325	\$370	\$370	\$220	\$218
2010	Miller & Martin	Chattanooga, TN	\$328	\$610	\$235	\$361	\$275	\$180	\$218
2010	Miller, Canfield, Paddock and Stone	Detroit							
2010	Montgomery, McCracken, Walker & Rhoads	Philadelphia		\$625	\$380	\$461	\$395	\$205	\$284
2010	Moore & Van Allen	Charlotte, N.C.	\$664	\$735	\$265	\$441	\$350	\$180	\$257
2010	Morgan, Lewis & Bockius	Philadelphia							
2010	Morris, Manning & Martin	Atlanta	\$424	\$780	\$425	\$492	\$345	\$225	\$353
2010	Morrison & Foarster	San Francisco, CA							
2010	Munger, Tolles & Olson	Los Angeles							
2010	Neal, Gerber & Eisenberg	Chicago							
2010	Nelson Mullins Riley & Scarborough	Columbia, SC	\$327	\$650	\$245	\$389	\$335	\$185	\$248
2010	Nexsen Pruet	Columbia, SC		\$625	\$230		\$250	\$160	
2010	Nixon Peabody	New York	\$429	\$605	\$375	\$513	\$580	\$195	\$386
2010	O'Melveny & Myers	Los Angeles							
2010	Ogletree, Deakins, Nash, Smoak & Stewart	Greenville, S.C.	\$351	\$575	\$300	\$389	\$390	\$195	\$285

Class Year	Firm Name	Location	Firmwide Average	Partner High	Partner Low	Partner Average	Associate High	Associate Low	Associate Average
2010	Orrick, Herrington & Sutcliffe	San Francisco, CA							
2010	Parker Poe Adams & Bernstein LLP	Charlotte N.C.							
2010	Patton Boggs	Washington	\$482	\$990	\$355	\$645	\$550	\$245	\$399
2010	Paul, Hastings, Janofsky & Walker	New York							
2010	Paul, Weiss, Rifkind Wharton & Garrison LLP	New York							
2010	Pepper Hamilton	Philadelphia	\$325	\$825	\$420	\$647	\$465	\$230	\$329
2010	Perkins Cole	Seattle	\$447	\$825	\$275	\$534	\$570	\$200	\$354
2010	Phelps Dunbar	New Orleans	\$226	\$385	\$180	\$272	\$240	\$145	\$183
2010	Phillips Lytle	Buffalo, NY	\$255	\$535	\$260	\$352	\$450	\$150	\$283
2010	Pillsbury Winthrop Shaw Pittman	New York							
2010	Poisinelli Shughart	Kansas City, MO		\$600	\$250		\$325	\$185	
2010	Quarles & Brady	Milwaukee	\$364	\$680	\$290	\$438	\$400	\$210	\$260
2010	Reed Smith	Pittsburgh							
2010	Reinhart Boerner Van Doren	Milwaukee							
2010	Roetzel & Andress	Akron, OH	\$317	\$325	\$225	\$267	\$325	\$165	\$243
2010	Rutan & Tucker	Costa Mesa, CA		\$650	\$355		\$450	\$225	
2010	Saul Ewing	Philadelphia	\$412	\$800	\$320	\$491	\$475	\$225	\$310
2010	Schiff Hardin LLP	Chicago							
2010	Schnader Harrison Segal & Lewis	Philadelphia							
2010	Schulte Roth & Zabel	New York		\$600	\$735		\$590	\$275	
2010	Schwabe, Williamson & Wyatt	Portland, OR	\$350	\$640	\$310	\$415	\$450	\$200	\$260
2010	Sedgwick, Detert, Moran & Arnold	San Francisco							
2010	Seyfarth Shaw	Chicago	\$377	\$770	\$335	\$505	\$535	\$185	\$325

Fiscal Year	Firm Name	Location	Partner Average	Partner High	Partner Low	Partner Average	Associate High	Associate Low	Associate Average
2010	Sheppard Mullin	Los Angeles		\$820	\$495		\$620	\$270	
2010	Shennan & Howard	New York							
2010	Shook, Hardy & Bacon	Kansas City, MO							
2010	Shumaker, Loop & Kendrick	Toledo, OH	\$331	\$549	\$260	\$315	\$315	\$185	\$246
2010	Skadden, Arps, Slate, Meagher & Flom	New York							
2010	Smith, Gambrell & Russell	Atlanta		\$740	\$325		\$440	\$165	
2010	Snell & Wilmer	Pittsburgh	\$338	\$795	\$515	\$488	\$550	\$175	\$282
2010	Squire, Sanders & Dempsey	Cleveland							
2010	Stetson & Johnson LLP	Washington							
2010	Stevens & Lee	Reading, PA							
2010	Stinson Morrison Hecker	Kansas City, MO							
2010	Stites & Harbison	Louisville, KY							
2010	Steel Rives	Portland, OR	\$361	\$600	\$315	\$441	\$390	\$190	\$270
2010	Strasburger & Price	Dallas	\$326	\$617	\$250	\$372	\$306	\$194	\$243
2010	Sullivan & Worcester	Boston	\$337	\$830	\$475	\$547	\$535	\$290	\$393
2010	Sutherland Asbill & Brennan	Atlanta							
2010	Taft, Stettinius & Hollister	Cincinnati	\$315	\$500	\$220	\$358	\$365	\$165	\$227
2010	Thompson & Knight	Dallas		\$925	\$410		\$440	\$265	
2010	Thompson Coburn	St. Louis		\$610	\$360		\$305	\$190	
2010	Townsend and Townsend and Crew	San Francisco, CA	\$320	\$750	\$470	\$553	\$460	\$250	\$345
2010	Troutman Sanders	Atlanta							
2010	Ulmer & Berne	Cleveland		\$365	\$200		\$375	\$165	
2010	Vedder Price	Chicago	\$425	\$720	\$370	\$483	\$365	\$255	\$326
2010	Venable	Washington	\$484	\$958	\$445	\$590	\$500	\$280	\$353

Year	Firm Name	Location	Firmwide Average	Partner High	Partner Low	Partner Average	Associate High	Associate Low	Associate Average
2010	Vorys, Sater, Seymour and Pease	Columbus, OH							
2010	Wachtell, Lipton, Rosen & Katz	New York							
2010	Weil, Gotshal & Manges LLP	New York							
2010	White and Williams	Philadelphia							
2010	Wirdman, Harrold, Allen & Dixon LLP	Chicago							
2010	Wiley Rein	Washington							
2010	Williams Mullen	Richmond, Va.	\$360	\$645	\$315	\$370	\$230		\$279
2010	Wilkie Farr & Gallagher LLP	New York							
2010	Wilmer Cutler Pickering Hale and Dorr	Washington							
2010	Winstead	Dallas	\$395	\$635	\$340	\$390	\$215		\$291
2010	Winston & Strawn	Chicago	\$486	\$1,075	\$475	\$610	\$260		\$393
2010	Womble Carlyle Sandridge & Rice	Winston Salem, NC	\$372	\$625	\$300	\$445	\$210		\$291
2010	Wyatt, Tarant & Combs	Louisville, KY		\$500	\$245	\$285	\$180		



**2010 NLJ Associate Class Billing Survey**

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Year	Firm Name	1st year	2nd year	3rd year	4th year	5th year	6th year	7th year	8th year
2010	Alston & Bird	\$270 - \$345	\$330 - \$395	\$365 - \$440	\$395 - \$470	\$420 - \$515	\$445 - \$550	\$470 - \$570	
2010	Berneski, Friedlander, Coplan	\$195	\$200	\$215	\$230	\$240	\$250	\$275	
2010	Blank Rome	\$250 - \$275	\$280 - \$290	\$280 - \$300	\$325 - \$380	\$345 - \$400	\$370 - \$435	\$380 - \$460	\$410 - \$480
2010	Banks Hofer Gilson & Lione	\$240	\$285	\$285	\$310	\$340	\$365	\$390	\$410
2010	Brownstein Hyatt Farber Schreck	\$200							
2010	Bryan Cave	\$185 - \$300	\$215 - \$390	\$250 - \$385	\$275 - \$395	\$300 - \$420	\$275 - \$460	\$330 - \$480	\$340 - \$510
2010	Curtis, Mallett Prevost, Colt &	\$290	\$335	\$375	\$415	\$455	\$495	\$535	\$575
2010	Davis Wright	\$190 - \$285	\$205 - \$295	\$225 - \$325	\$235 - \$345	\$245 - \$365	\$265 - \$380	\$285 - \$405	\$295 - \$415
2010	Tremaine Dickinson Wright	\$190	\$165	\$205	\$220	\$230	\$240	\$250	
2010	Dickstein Shapiro	\$265 - \$290	\$325 - \$375	\$375 - \$425	\$375 - \$425	\$425 - \$475	\$425 - \$475	\$475 - \$530	\$475 - \$530
2010	Dinsmore & Shohi	\$180	\$190	\$205	\$220	\$230	\$240	\$250	260
2010	Edwards Angell Palmer & Dodge	205	275						
2010	Fitzpatrick, Cella, Harper & Scinto	\$275	\$300	\$325	\$350	\$370	\$385	\$405	\$420

Fiscal Year	Firm Name	Assessable Class											
		1st year	2nd year	3rd year	4th year	5th year	6th year	7th year	8th year				
2010	Frost Brown Todd	\$150											
2010	Gardere Wynne Sawell	195	210	260	280	300	315						
2010	Harris Beach	\$155	\$170	\$200	\$230	\$230	\$230	\$250	\$250	\$250	\$250	\$250	\$250
2010	Miscock & Barclay	\$150 - \$340	\$150-340	\$165 - \$360	\$185 - \$360	\$165 - \$360	\$175 - \$380	\$175 - \$380	\$175 - \$380	\$175 - \$380	\$175 - \$380	\$175 - \$380	\$175 - \$380
2010	Kalley Diye & Warren	\$305	\$340	\$370	\$410	\$435	\$453	\$485	\$485	\$485	\$485	\$485	\$485
2010	Kipatnick Stockton	250	275	310	325	335	360	375					
2010	Knothe Martens Olson & Bear	\$285	\$310	\$335	\$360	\$385							
2010	Lindquist & Vermont	\$200	\$210	225	235	245	260	265					
2010	Locke Lord Bissell & Lidfall	\$215	\$230	\$253	\$270	\$300	\$321	\$349					
2010	Loeb & Loeb	\$350 - \$375											
2010	Maynard, Cooper & Gale	\$235	\$235	\$245	\$255	\$270	\$280	\$285					
2010	McEroy, Dattisich, Mullerney &	\$150	\$175	\$185	\$195	\$200	\$205	\$210					
2010	McKenna Long & Aldridge	279	312	325	340	353	361	382					
2010	Montgomery, McCracken, Walker	\$205	\$215	\$235	\$235	\$275	\$295	\$315					
2010	Morris, Manning & Marin	\$200	\$265	\$310	\$340	\$365	\$390	\$415					

Year	Firm Name	1st year	2nd year	3rd year	4th year	5th year	6th year	7th year	8th year
2010	Frost Brown Todd	\$150							
2010	Gardere Wynne Sewell	195	210	260	280	300	315	355	385
2010	Harris Beach	\$155	\$170	\$200	\$230	\$230	\$230	\$250	\$250
2010	Miscock & Barclay	\$150 - \$340	\$150 - \$340	\$165 - \$360	\$165 - \$360	\$165 - \$360	\$175 - \$380	\$175 - \$380	\$185 - \$440
2010	Kelley Dye & Warren	\$305	\$340	\$370	\$410	\$435	\$455	\$485	510
2010	Kilpatrick Stockton	250	275	310	325	335	360	375	385
2010	Knobbe Martens Olson & Bear	\$285	\$310	\$335	\$360	\$385			
2010	Lindquist & Vennum	\$200	\$210	225	235	245	260	265	280
2010	Locke Lord Bissell & Luttrell	\$215	\$230	\$255	\$270	\$300	\$321	\$349	\$386
2010	Loeb & Loeb	\$350 - \$375							
2010	Mejnard, Cooper & Gale	\$235	\$235	\$245	\$255	\$270	\$280	\$295	
2010	McElroy Deutsch, Mullaney &	\$150	\$175	\$185	\$195	\$200	\$205	\$210	\$220
2010	McKenna Long & Auldridge	279	312	325	346	363	381	382	415
2010	Montgomery, McCracken, Walker	\$205	\$215	\$235	\$255	\$275	\$295	\$315	\$336
2010	Morris, Manning & Marin	\$200	\$265	\$310	\$340	\$365	\$390	\$415	\$425

Fiscal Year		Associative Classes									
Team Name		1st year	2nd year	3rd year	4th year	5th year	6th year	7th year	8th year		
2010	Patton Boggis	\$250	\$315	\$340	\$370	\$400	\$425	\$450	\$480		
2010	Pepper Hamilton	\$230	\$275	\$300	\$330	\$355	\$370	\$395	\$395		
2010	Perkins Cole	272	290	306	337	345	372	391	436		
2010	Phillips Lyle	\$160	\$170	\$190	\$195	\$210	\$225	\$220	236		
2010	Quantes & Brady	\$210 - \$235	\$220 - \$240								
2010	Saut Ewing	\$225 - \$235	\$230 - \$260	\$255 - \$275	\$240 - \$315	\$260 - \$285	\$285 - \$300	\$295 - \$425	\$275 - \$320		
2010	Schulte Roth & Zabel	\$375	\$445	\$495	\$540	\$580	\$580	\$605	\$625		
2010	Schwabe										
2010	Williamson & Wyatt	\$200									
2010	Sheppard, Mullin, Richter & Hampton	\$270 - \$335	\$330 - \$430	\$365 - \$475	\$395 - \$610	\$420 - \$540	\$445 - \$565	\$470 - \$595	\$490 - \$620		
2010	Snell & Wilmer	\$185	\$200	\$225	\$260	\$285	\$315	\$350	\$365		
2010	Stratburger & Price	\$200	\$220	\$240	\$260	\$280	\$300	\$320	\$340		
2010	Sullivan & Worcester	\$290	\$305	\$330	\$350	\$370	\$390	\$425			
2010	Thompson & Knight	\$265	\$300	\$330	\$365	\$385	\$405	\$425	\$440		
2010	Townsend and	260	290	325	370	390	420	450	460		
2010	Townsend and Crew										
2010	Wedder Price	225	270	290	310	325	345	360	380		

Fiscal Year	Firm Name	Associate Class							
		1st year	2nd year	3rd year	4th year	5th year	6th year	7th year	8th year
2010	Williams Mullen	\$230	\$250	\$265	\$295	\$295	\$310	\$345	\$345
2010	Winstead	\$215	215	227	260	280	300	325	350
2010	Winston & Strawn	\$285 - \$320	\$305 - \$335	\$325 - \$365	\$350 - \$400	\$380 - \$440	\$420 - \$480	\$455 - \$520	\$490 - \$555



## Bankruptcy Rates Top \$1,000 Per Hour Mark in 2008-09

New York Law Journal (Online)

December 18, 2009 Friday

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### New York Law Journal

**Length:** 765 words

**Byline:** Amy Kolz,, web-editor@nylj.com, , Special to the new york law journal

### Body

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A review of bankruptcy rates in Delaware and the Southern District of New York shows that a handful of U.S.-based partners at Am Law 200 firms have inched above the \$1,000 rate barrier, making bankruptcy work as lucrative as it was plentiful in 2008 and 2009.

Over a 12-month period ending August 2009, there were more than 13,000 billing rate entries submitted by law firms in the nation's two busiest bankruptcy courts, according to a new database compiled by ALM Media, the Law Journal's parent.

Among U.S.-based lawyers at Am Law 200 firms, Shearman & Sterling tax partner Bernie J. Pistillo topped the rate chart with an hourly fee of \$1,065 for his work on the bankruptcy of Stock Building Supply Holdings LLC, a building products supplier, in Delaware. (One solo practitioner in Pleasantville, N.Y., Alan Harris, surpassed Mr. Pistillo's rate, charging \$1,200 an hour for his work as special real estate litigation counsel on the bankruptcy of Digital Printing Systems in the Southern District of New York.)

Eleven other U.S.-based Am Law 200 partners were in the \$1,000-plus club, according to the database. Cadwalader, Wickersham & Taft financial restructuring co-chair Deryck Palmer, a former Weil, Gotshal & Manges partner, billed Lyondell Chemical Co. at a rate of \$1,050 for work on its 2009 bankruptcy. Greenberg Traurig bankruptcy co-chair Bruce Zirinsky, who left Cadwalader last January, billed \$1,050 an hour as debtor's counsel for TH Agriculture and Nutrition LLC, as did White & Case global restructuring head Thomas Lauria for WCI Communities Inc., and Robert Pincus, the head of the corporate practice in Skadden, Arps, Slate, Meagher & Flom's Wilmington office, for Hayes Lemmerz International Inc., an automotive wheel supplier.

Neal Stoll, a Skadden antitrust partner, and Sally Thurston, a Skadden tax partner, billed \$1,035 for work on the bankruptcies of VeraSun Energy Corp. and Hayes Lemmerz, respectively, while Latham & Watkins corporate finance chair Kirk Davenport billed at \$1,025 an hour for Dayton Superior Corp.'s filing. Paul, Weiss, Rifkind, Wharton & Garrison partners Carl Reisner and Richard Bronstein billed at \$1,025 for the Buffets Inc., bankruptcy. (Mr. Reisner is co-head of the firm's M&A practice and Mr. Bronstein is co-chair of its tax practice.) Simpson

## Bankruptcy Rates Top \$1,000 Per Hour Mark in 2008-09

Thacher & Bartlett partners Lee Meyerson and litigator Michael Chepiga charged Lehman Brothers \$1,000 an hour on the sale of its brokerage to Barclays Bank PLC.

Absent from the \$1,000 club are Weil, Gotshal & Manges restructuring partners Harvey Miller and Marcia Goldstein. Both clocked rates of \$950 an hour for their work on the Lehman Brothers and BearingPoint Inc. bankruptcies, respectively. Also, Kirkland & Ellis' James Sprayregen billed \$965 an hour for work on the bankruptcies of Lear Corp. and The Reader's Digest Association. And Jones Day partner Corinne Ball charged \$900 an hour for her work on Chrysler's filing.

Comparing the median partner rates among Am Law 200 firms in the database demonstrated there are few bargains when it comes to Chapter 11 work. Among those charging median partner rates of more than \$900 an hour were: Cadwalader; Cleary Gottlieb Steen & Hamilton; Davis Polk & Wardwell; Milbank, Tweed, Hadley & McCloy; Paul Weiss; Shearman & Sterling; Simpson Thacher; and Skadden.

Firms with median partner billing rates between \$800 and \$900 were Gibson Dunn, Fried Frank, Latham, Paul Hastings, Weil Gotshal, and White & Case. Firms billing \$700 or below were Akin Gump Strauss Hauer & Feld, Kirkland, Sidley Austin, and Sonnenschein Nath & Rosenthal. (Medians can be deceiving, since some firms, such as Kirkland, had a difference of more than \$500 between its highest- and lowest-rate partners.)

The bankruptcy case with one of the highest median partner rates was Nortel Networks. The phone equipment maker paid firms such as Cleary and Kirkland a median partner rate of \$940. Firms working on the Lehman filing billed a median partner rate of \$810 during the time period, while firms working on the filing of Tribune Co. billed a median of \$690, according to the database.

Associate rates occasionally topped \$700 an hour on bankruptcies including Lehman and Nortel Networks, as well as that of the lesser-known Sportsman's Warehouse. Discovery attorneys, research specialists and benefits consultants sometimes billed between \$500 and \$800 on cases such as Nortel, Charter Communications and Graphics Properties Holdings Inc.

**@|Amy Kolz is a reporter at The American Lawyer, an ALM affiliate of the New York Law Journal. She can be reached at [akolz@alm.com](mailto:akolz@alm.com).**

**Load-Date:** September 19, 2011



\$1,000 Per Hour Isn't Rare Anymore; Nominal billing levels rise, but discounts ease blow. The National Law Journal January 13, 2014 Monday

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THE NATIONAL  
LAW JOURNAL

The National Law Journal

January 13, 2014 Monday

**SECTION:** NLJ'S BILLING SURVEY; Pg. 1 Vol. 36 No. 20

**LENGTH:** 1860 words

**HEADLINE:** \$1,000 Per Hour Isn't Rare Anymore;  
Nominal billing levels rise, but discounts ease blow.

**BYLINE:** KAREN SLOAN

**BODY:**

As recently as five years ago, law partners charging \$1,000 an hour were outliers. Today, four-figure hourly rates for indemand partners at the most prestigious firms don't raise eyebrows-and a few top earners are closing in on \$2,000 an hour.

These rate increases come despite hand-wringing over price pressures from clients amid a tough economy. But everrising standard billing rates also obscure the growing practice of discounts, falling collection rates, and slow march toward alternative fee arrangements.

Nearly 20 percent of the firms included in The National Law Journal's annual survey of large law firm billing rates this year had at least one partner charging more than \$1,000 an hour. Gibson, Dunn & Crutcher partner Theodore Olson had the highest rate recorded in our survey, billing \$1,800 per hour while representing mobile satellite service provider LightSquared Inc. in Chapter 11 proceedings.

Of course, few law firm partners claim Olson's star power. His rate in that case is nearly the twice the \$980 per hour average charged by Gibson Dunn partners and three times the average \$604 hourly rate among partners at NLJ 350 firms. Gibson Dunn chairman and managing partner Ken Doran said Olson's rate is "substantially" above that of other partners at the firm, and that the firm's standard rates are in line with its peers.

"While the majority of Ted Olson's work is done under alternative billing arrangements, his hourly rate reflects his stature in the legal community, the high demand for his services and the unique value that he offers to clients given his extraordinary experience as a former solicitor general of the United States who has argued more than 60 cases before the U.S. Supreme Court and has counseled several presidents," Doran said.

In reviewing billing data this year, we took a new approach, asking each firm on the NLJ 350-our survey of the nation's 350 largest firms by attorney headcount-to provide their highest, lowest and average billing rates for associates and partners. We supplemented those data through public records. All together, this year's survey includes information for 159 of the country's largest law firms and reflects billing rates as of October.

The figures show that, even in a down economy, hiring a large law firm remains a pricey prospect. The median among the highest partner billing rates reported at each firm is \$775 an hour, while the median low partner rate is \$405. For associates, the median high stands at \$510 and the low at \$235. The average associate rate is \$370.

Multiple industry studies show that law firm billing rates continued to climb during 2013 despite efforts by corporate counsel to rein them in. TyMetrix's 2013 Real Rate Report Snapshot found that the average law firm billing rate increased by 4.8 percent compared with 2012. Similarly, the Center for the Study of the Legal Profession at the Georgetown University Law Center and Thomson Reuters Peer Monitor found that law firms increased their rates by an average 3.5 percent during 2013.

Of course, rates charged by firms on paper don't necessarily reflect what clients actually pay. Billing realization rates-which reflect the percentage of work billed at firms' standard rates- have fallen from 89 percent in 2010 to nearly 87 percent in 2013 on average, according to the Georgetown study. When accounting for billed hours actually collected by firms, the realization rate falls to 83.5 percent.

"What this means, of course, is that- on average-law firms are collecting only 83.5 cents for every \$1.00 of standard time they record," the Georgetown report reads. "To understand the full impact, one need only consider that at the end of 2007, the collected realization rate was at the 92 percent level."

In other words, law firms set rates with the understanding that they aren't likely to collect the full amount, said Mark Medice, who oversees the Peer Monitor Index. That index gauges the strength of the legal market according to economic indicators including demand for legal services, productivity, rates and expenses. "Firms start out with the idea of, 'I want to achieve a certain rate, but it's likely that my client will ask for discounts whether or not I increase my rate,'" Medice said.

Indeed, firms bill nearly all hourly work at discounts ranging from 5 percent to 20 percent off standard rates, said Peter Zeughauser, a consultant with the Zeughauser Group. Discounts can run as high as 50 percent for matters billed under a hybrid system, wherein a law firm can earn a premium for keeping costs under a set level or for obtaining a certain outcome, he added. "Most firms have gone to a two-tier system, with what is essentially an aspirational rate that they occasionally get and a lower rate that they actually budget for," he said.

Most of the discounting happens at the front end, when firms and clients negotiate rates, Medice said. But additional discounting happens at the billing and collections stages. Handling alternative fee arrangements and discounts has become so complex that more than half of the law firms on the Am Law 100-NLJ affiliate The American Lawyer's ranking of firms by gross revenue-have created new positions for pricing directors, Zeughauser said.

## THE ROLE OF GEOGRAPHY

Unsurprisingly, rates vary by location. Firms with their largest office in New York had the highest average partner and associate billing rates, at \$882 and \$520, respectively. Similarly, TyMetrix has reported that more than 25 percent of partners at large New York firms charge \$1,000 per

hour or more for contracts and commercial work.

Washington was the next priciest city on our survey, with partners charging an average \$748 and associates \$429. Partners charge an average \$691 in Chicago and associates \$427. In Los Angeles, partners charge an average \$665 while the average associate rate is \$401.

Pricing also depends heavily on practice area, Zeughauser and Medice said. Bet-the-company patent litigation and white-collar litigation largely remain at premium prices, while practices including labor and employment have come under huge pressure to reduce prices.

"If there was a way for law firms to hold rates, they would do it. They recognize how sensitive clients are to price increases," Zeughauser said. But declining profit margins—due in part to higher technology costs and the expensive lateral hiring market—mean that firms simply lack the option to keep rates flat, he said.

#### BILLING SURVEY METHODOLOGY

The National Law Journal's survey of billing rates of the largest U.S. law firms provides the high, low and average rates for partners and associates.

The NLJ asked respondents to its annual survey of the nation's largest law firms (the NLJ 350) to provide a range of hourly billing rates for partners and associates as of October 2013.

For firms that did not supply data to us, in many cases we were able to supplement billing-rate data derived from public records.

In total, we have rates for 159 of the nation's 350 largest firms.

Rates data include averages, highs and low rates for partners and associates. Information also includes the average full-time equivalent (FTE) attorneys at the firm and the city of the firm's principal or largest office.

We used these data to calculate averages for the nation as a whole and for selected cities.

#### Billing Rates at the Country's Priciest Law Firms

Here are the 50 firms that charge the highest average hourly rates for partners.

#### Billing Rates at the Country's Priciest Law Firms

FIRM NAME	LARGEST U.S. OFFICE*	AVERAGE FULL-TIME EQUIVALENT ATTORNEYS*	PARTNER HOURLY RATES	ASSOCIATE HOURLY RATES	AVERAGE	HIGH	LOW	AVERAGE	HIGH	LOW
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\* Full-time equivalent attorney numbers and the largest U.S. office are from the NLJ 350 published in April 2013. For complete numbers, please see [NLJ.com](http://NLJ.com).

\*\* Firm did not exist in this form for the entire year.

Debevoise & Plimpton	New York	615	\$1,055	\$1,075	\$955	\$490	\$760	\$120		
Paul, Weiss,	New York	803	\$1,040	\$1,120	\$760	\$600	\$760	\$250		

Rifkind, Wharton & Garrison									
Skadden, Arps, Slate, Meagher & Flom	New York	1,735	\$1,035	\$1,150	\$845	\$620	\$845	\$340	
Fried, Frank, Harris, Shriver & Jacobson	New York	476	\$1,000	\$1,100	\$930	\$595	\$760	\$375	
Latham & Watkins	New York	2,033	\$990	\$1,110	\$895	\$605	\$725	\$465	
Gibson, Dunn & Crutcher	New York	1,086	\$980	\$1,800	\$765	\$590	\$930	\$175	
Davis Polk & Wardwell	New York	787	\$975	\$985	\$850	\$615	\$975	\$130	
Willkie Farr & Gallagher	New York	540	\$950	\$1,090	\$790	\$580	\$790	\$350	
Cadwalader, Wickersham & Taft	New York	435	\$930	\$1,050	\$800	\$605	\$750	\$395	
Weil, Gotshal & Manges	New York	1,201	\$930	\$1,075	\$625	\$600	\$790	\$300	
Quinn Emanuel Urquhart & Sullivan	New York	697	\$915	\$1,075	\$810	\$410	\$675	\$320	
Wilmer Cutler Pickering Hale and Dorr	Washington	961	\$905	\$1,250	\$735	\$290	\$695	\$75	
Dechert	New York	803	\$900	\$1,095	\$670	\$530	\$735	\$395	
Andrews Kurth	Houston	348	\$890	\$1,090	\$745	\$528	\$785	\$265	
Hughes Hubbard & Reed	New York	344	\$890	\$995	\$725	\$555	\$675	\$365	
Irell & Manella	Los Angeles	164	\$890	\$975	\$800	\$535	\$750	\$395	
Proskauer Rose	New York	746	\$880	\$950	\$725	\$465	\$675	\$295	
White & Case	New York	1,900	\$875	\$1,050	\$700	\$525	\$1,050	\$220	
Morrison & Foerster	San Francisco	1,010	\$865	\$1,195	\$595	\$525	\$725	\$230	
Pillsbury Winthrop Shaw Pittman	Washington	609	\$865	\$1,070	\$615	\$520	\$860	\$375	
Kaye Scholer	New York	414	\$860	\$1,080	\$715	\$510	\$680	\$320	
Kramer Levin Naftalis & Frankel	New York	320	\$845	\$1,025	\$740	\$590	\$750	\$400	
Hogan Lovells	Washington	2,280	\$835	\$1,000	\$705	-	-	-	

Kasowitz, Benson, Torres & Friedman	New York	365	\$835	\$1,195	\$600	\$340	\$625	\$200
Kirkland & Ellis	Chicago	1,517	\$825	\$995	\$590	\$540	\$715	\$235
Cooley	Palo Alto	632	\$820	\$990	\$660	\$525	\$630	\$160
Arnold & Porter	Washington	748	\$815	\$950	\$670	\$500	\$610	\$345
Paul Hastings	New York	899	\$815	\$900	\$750	\$540	\$755	\$335
Curtis, Mallet- Prevost, Colt & Mosle	New York	322	\$800	\$860	\$730	\$480	\$785	\$345
Winston & Strawn	Chicago	842	\$800	\$995	\$650	\$520	\$590	\$425
Bingham McCutchen	Boston	900	\$795	\$1,080	\$220	\$450	\$605	\$185
Akin Gump Strauss Hauer & Feld	Washington	806	\$785	\$1,220	\$615	\$525	\$660	\$365
Covington & Burling	Washington	738	\$780	\$890	\$605	\$415	\$565	\$320
King & Spalding	Atlanta	838	\$775	\$995	\$545	\$460	\$735	\$125
Norton Rose Fulbright	N/A**	N/A**	\$775	\$900	\$525	\$400	\$515	\$300
DLA Piper	New York	4,036	\$765	\$1,025	\$450	\$510	\$750	\$250
Bracewell & Giuliani	Houston	432	\$760	\$1,125	\$575	\$440	\$700	\$275
Baker & McKenzie	Chicago	4,004	\$755	\$1,130	\$260	\$395	\$925	\$100
Dickstein Shapiro	Washington	308	\$750	\$1,250	\$590	\$475	\$585	\$310
Jenner & Block	Chicago	432	\$745	\$925	\$565	\$465	\$550	\$380
Jones Day	New York	2,363	\$745	\$975	\$445	\$435	\$775	\$205
Manatt, Phelps & Phillips	Los Angeles	325	\$740	\$795	\$640	-	-	-
Seward & Kissel	New York	152	\$735	\$850	\$625	\$400	\$600	\$290
O'Melveny & Myers	Los Angeles	738	\$715	\$950	\$615	-	-	-
McDermott Will & Emery	Chicago	1,024	\$710	\$835	\$525	-	-	-
Reed Smith	Pittsburgh	1,468	\$710	\$945	\$545	\$420	\$530	\$295
Dentons	N/A**	N/A**	\$700	\$1,050	\$345	\$425	\$685	\$210
Jeffer Mangels Butler & Mitchell	Los Angeles	126	\$690	\$875	\$560	-	-	-
Sheppard,	Los	521	\$685	\$875	\$490	\$415	\$535	\$275

Mullin, Richter Angeles  
& Hampton

Alston & Bird	Atlanta	805	\$675	\$875	\$495	\$425	\$575	\$280
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#### THE FOUR-FIGURE CLUB

These 10 firms posted the highest partner billing rates.

#### THE FOUR-FIGURE CLUB

Gibson, Dunn & Crutcher	\$1,800
Dickstein Shapiro	\$1,250
Wilmer Cutler Pickering Hale and Dorr	\$1,250
Akin Gump Strauss Hauer & Feld	\$1,220
Kasowitz, Benson, Torres & Friedman	\$1,195
Morrison & Foerster	\$1,195
Skadden, Arps, Slate, Meagher & Flom	\$1,150
Baker & McKenzie	\$1,130
Bracewell & Giuliani	\$1,125
Paul, Weiss, Rifkind, Wharton & Garrison	\$1,120

Contact Karen Sloan at [ksloan@alm.com](mailto:ksloan@alm.com)

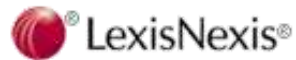
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Home / Daily News / Top partner billing rates at BigLaw firms...

## BUSINESS OF LAW

# Top partner billing rates at BigLaw firms approach \$1,500 per hour

BY MARTHA NEIL ([HTTP://WWW.ABAJOURNAL.COM/AUTHORS/5/](http://www.abajournal.com/authors/5/))

POSTED FEBRUARY 8, 2016, 4:00 PM CST

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Despite efforts by corporate clients to curtail legal expenses over the past decade, rates have risen steadily at many of the nation's BigLaw firms.

Although a billable rate of \$1,000 per hour was newsworthy only five years ago, top partners at the nation's biggest and best-known corporate law firms are now billing at rates nudging \$1,500 per hour, according to the Wall Street Journal

([http://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708?](http://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708?cb=logged0.10928983175737395)  
cb=logged0.10928983175737395) (sub. req.).

With the help of public filings in Chapter 11 bankruptcy cases, the newspaper was able to confirm hourly fees of as much as \$1,475 at Proskauer Rose, \$1,450 at Ropes & Gray and \$1,445 at Kirkland & Ellis. Rates at Akin Gump Strauss Hauer & Feld and Skadden Arps Slate Meagher & Flom topped out at \$1,425.

John Altorelli of DLA Piper tells the newspaper that his own billable rate exceeds \$1,500 per hour. However, more than half of his matters involve a fixed-fee arrangement, he said.

"We just raise them every year," Altorelli said of his firm's hourly charges for attorneys' work, adding: "Using hourly rates is really anachronistic, but we still do it."

A Wall Street Journal Bankruptcy Beat ([http://blog ws j com/bankruptcy/2016/02/08/bankruptcy provide window into law firm billing practice /](http://blog.wsj.com/bankruptcy/2016/02/08/bankruptcy-provide-window-into-law-firm-billing-practice/)) (sub req ) article says some lawyers charge as much as \$2,000 per hour, but doesn't offer any specific examples

**Related coverage:**

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## Class-FP

Reich Radcliffe & Hoover LLP Loadstar From 8/1/20 Through 10/25/22  
In Alterra Class Action

Atty	Time	Rate	Value	Date	Description
MGR	0.60	\$875.00	\$525.00	8/1/2020	Telephone call with Andrea Cannon re: her Ikon situation. .5 Draft email to Yeremey re same. .1
MGR	0.40	\$875.00	\$350.00	8/1/2020	Review papers filed by Dovel and Bursor Firms for appointment as Lead Counsel.
MGR	0.50	\$875.00	\$437.50	8/6/2020	Review District Court Local Rules. .3. Apply for admission. .2
MGR	0.50	\$875.00	\$437.50	8/25/2020	Research Local Rule requirements for entering an appearance. Draft email to ATH re same.
ATH	0.60	\$775.00	\$465.00	8/25/2020	Draft notice of appearance for MGR.
MGR	3.60	\$875.00	\$3,150.00	8/26/2020	Review client questionnair with Joe Panganiban and prepare responses.
ATH	0.60	\$775.00	\$465.00	8/26/2020	Exchange emails with MGR re: Notice of Appearance; edits to same and file.
MGR	2.30	\$875.00	\$2,012.50	8/27/2020	Work on questionnaire for Milan
MGR	2.10	\$875.00	\$1,837.50	8/27/2020	Work on questionnaire for Gokal
MGR	0.30	\$875.00	\$262.50	8/27/2020	Revise answers to Panganiban Questionnaire and draft email to Blair re same.
MGR	0.60	\$875.00	\$525.00	8/27/2020	Review and respond to emails from Panganiban re: retainer agreement and Ikon Pass pictures. .2 Draft email to Jonas Jacobson attaching completed client questionnaires and related documents. .4
MGR	0.40	\$875.00	\$350.00	8/28/2020	Review and respond to email from Milan re: him potentially having been sued. Research local court records re same.
MGR	0.30	\$875.00	\$262.50	8/28/2020	Review Order Appointing Lead Counsel. Draft email to clients re same.
MGR	0.70	\$875.00	\$612.50	8/28/2020	Exchange texts and have calls with Yeremey re: having a student named class member. .2 Telephone call with Andrea Cannon re: her questionnaire. .3 Draft email to her re: same . .2
MGR	0.60	\$875.00	\$525.00	8/29/2020	Exchange several emails with Jonas re: setting up zoom meetings with clients. .2 Exchange several emails with Pang re same. .2 Exchange several emails with Mian re same. .2

## Class-FP

					Exchange emails with Jonas's firm re: tomorrow's client zoom meetings. .1 Telephone call with Yeremey re: same. .1 Telephone call with Joe Panganiban re: same.
MGR	0.60	\$875.00	\$525.00	8/31/2020	.2 Telephone call with Milan re: same. .2 Draft emails to Joe and Milan re today's zoom meetings. .2 Draft emails to them re: their
MGR	0.40	\$875.00	\$350.00	9/1/2020	questinonaires. .2 Zoom meetings with Jonas and Milan and then
MGR	0.90	\$875.00	\$787.50	9/1/2020	with Jonas and Pang Review files for previous depo tr of Pang.
MGR	1.80	\$875.00	\$1,575.00	9/1/2020	Review is depo tr.
					Exchange texts with Robert and Jonathon Shapiro re: case and desire for a NY named P. .3 Telephone call with Tom Mcmanus re: same. .3 Exchange texts with Larry Fredella re: same. .2 Exchange emails with Mark Cooper re: same. Exchange texts with Rob Asen re same. .2
MGR	1.10	\$875.00	\$962.50	9/2/2020	Draft email to Tumelty re: same. .1
					Exchange to emails with Abbas Gokal about today's zoom meeting. .2 Exchange emails with Jonas Jacobson re: same .1 Telephone call with Abbas re same. .2 Zoom meeting with Abbas and Jonas. .4 Zoom session with Jonas after Abbas dropped off. .1
MGR	1.00	\$875.00	\$875.00	9/2/2020	
					Exchange emails with Jonas re consolidated comppl. .2 Exchange emails with Pang re: same. .2 Exchange emails with Milan re: same. .2 Telephone call with him re: same. .1 Exchange emails with Gokal re: same. .1. Telephone call with re same. .2 Review and
MGR	2.60	\$875.00	\$2,275.00	9/3/2020	revise draft compl. 1.6 Review article in the Points Guy re: Ikon. Draft
MGR	0.20	\$875.00	\$175.00	9/3/2020	email to lead counsel re: same. Travel to and from and meet with Joe
MGR	1.30	\$875.00	\$1,137.50	9/3/2020	Panganiban to review complaint. Review final version of complaint and compare it to the redlines I made to a prior version. Telephone call with Jonas re: error with
MGR	0.60	\$875.00	\$525.00	9/4/2020	footnote 3.
MGR	0.10	\$875.00	\$87.50	9/21/2020	Review 68 - Proposed Joint Sched Order

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					Review and respond to email from Jonas re: communications with class reps. .1 Review emails Joe recently received from Alterra and
MGR	0.30	\$875.00	\$262.50	9/22/2020	draft email to lead counsel re same. .2 Review Order setting status conf for 2/18 and
MGR	0.10	\$875.00	\$87.50	9/22/2020	cal. same.
MGR	0.30	\$875.00	\$262.50	10/16/2020	Quickly review MTD.
MGR	0.30	\$875.00	\$262.50	11/10/2020	Quickly review opp to MTD.
MGR	0.40	\$875.00	\$350.00	11/22/2020	Review Reply ISO MTD
MGR	0.80	\$875.00	\$700.00	7/1/2021	Review Order on Motion to Dismiss
					Review and respond to email from Jonas re: desire of Ds to depose Joe Panganiban's wife. .2 Telephone call with Joe re: same. .2 Telephone
MGR	0.60	\$875.00	\$525.00	8/18/2021	call with Joe's wife re: same. .2
MGR	0.30	\$875.00	\$262.50	8/20/2021	Review Sched Order.
MGR	0.20	\$875.00	\$175.00	8/20/2021	Review and respond to email from Zoey Ryu re: setting up zoom with client.
MGR	0.20	\$875.00	\$175.00	8/21/2021	Telephone call with client to arrange for zoom with lead counsel.
MGR	0.20	\$875.00	\$175.00	8/23/2021	Draft email to Zoey Ryu re: setting up zoom with client.
MGR	0.50	\$875.00	\$437.50	8/27/2021	Prepare for zoom meeting with Joe and Jonas. .3. Zoom meeting. .2
MGR	0.10	\$875.00	\$87.50	10/28/2021	Review and respond to email from Jonas re: 1/24/22 mediation.
MGR	0.20	\$875.00	\$175.00	5/13/2022	Telephone call with Yeremey re: settlement terms.
MGR	0.10	\$875.00	\$87.50	5/14/2022	Review Joint Status Report re settlement
					Review order (doc no 119) issued by court last week. .1 Review Joint status report filed last week (doc no 120) .1 Review order (doc no 121) stating dismissal papers are due by 8/10.
MGR	0.40	\$875.00	\$350.00	7/26/2022	.1 Draft email to Yeremey re: same. .1 Review joint status report filed yesterday and draft email to Yeremey re: settlement
MGR	0.20	\$875.00	\$175.00	8/11/2022	agreement.
MGR	0.10	\$875.00	\$87.50	8/16/2022	Review minute order issued today re: deadline to file motion for settl approval.
MGR	0.50	\$875.00	\$437.50	9/7/2022	Review docs filed over past few weeks
MGR	0.60	\$875.00	\$525.00	9/22/2022	Review order granting prelim approval to settlement.

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MGR	0.30	\$875.00	\$262.50	10/4/2022	Review and respond to email from Joe Panganiban re: whether he himself needs to make any claim under the class action settlement.
MGR	1.40	\$875.00	\$1,225.00	10/4/2022	Review and respond to email from Joe Panganiban re: whether he can make a claim for his family under the class settlement. .3 Research re: how family members of account holders can make claims under the class settlement and exchange further emails with Joe re: same. .8 Telephone call with Joe re: same. .3
MGR	1.20	\$875.00	\$1,050.00	10/17/2022	Travel to and from and meet with Milan regarding settlement agreement options
MGR	0.20	\$875.00	\$175.00	10/18/2022	Review doc 134 - notice of compliance and supporting decl. .2
MGR	0.50	\$875.00	\$437.50	10/19/2022	Draft email to Milan regarding settlement agreement options
MGR	0.20	\$875.00	\$175.00	10/19/2022	Review doc 136 - Order to correct claim form. Review doc 137 - notice of compliance and supporting decl.
Total			\$30,417.50		



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Reich Radcliffe & Hoover LLP Costs From 8/1/20 Through 10/25/22  
In Alterra Class Action

Quantity	Price	Amt.	Date	Description
1	\$216.00	\$216.00	8/6/2020	Court fee for being admitted to bar.
1	\$50.00	\$50.00	10/1/2020	Court Biennial fee
Total		\$266.00		