

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOSEPH ZIMMERMAN, ANTHONY
DEVITO, and SEAN DONNELLY,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PARAMOUNT GLOBAL, COMEDY
PARTNERS and DOES 1-10,

Defendants.

Case No. 1:23-cv-2409 (VSB)

Hon. Vernon S. Broderick

MICHAEL KAPLAN, an individual on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

COMEDY PARTNERS, a New York general
partnership,

Defendant.

Consolidated with:

Case No. 1:22-cv-09355 (VSB)

**DECLARATION OF BENJAMIN J. SWEET IN SUPPORT OF PLAINTIFFS' MOTION
FOR REASONABLE ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

I, Benjamin J. Sweet, declare as follows:

1. I am a member of good standing of the Bar of the Commonwealth of Pennsylvania and the Bar of the State of New York and the Managing Partner of the Pittsburgh office in the law firm of Nye, Stirling, Hale, Miller & Sweet, LLP ("NSHMS"). I have been admitted pro hac vice as counsel in this litigation. I am counsel for named Plaintiffs and proposed class representatives

Joseph Zimmerman, Anthony DeVito, and Sean Donnelly on behalf of themselves and all others similarly situated. (collectively “Zimmerman Plaintiffs”). I submit this Declaration in Support of Plaintiffs’ Motion for Reasonable Attorneys’ Fees, Costs, and Service Awards. I have personal knowledge of the facts set forth in this Declaration and could and would testify competently to them.

2. A true and correct copy of the fully executed Settlement Agreement for which Preliminary Approval was approved was filed at *Zimmerman* ECF No. 49-1 and is referred to herein as the “Settlement” or “Settlement Agreement.”

3. The compensation for services rendered by Nye, Stirling, Hale, Miller & Sweet LLP (“Counsel”) in this case has been wholly contingent on the success of this litigation.

4. Attached hereto as Exhibit A is a spreadsheet reflecting the hours spent by Counsel, and the costs on this case from inception through April 28, 2025.

5. All the hours reflected in Exhibit A were reasonable and necessary to the prosecution of this case.

HISTORY OF THE CASE

6. The *Zimmerman* Plaintiffs engaged in extensive pre-litigation, and pre-mediation, efforts to investigate and negotiate directly with defendant Paramount Global (“Paramount”).

7. Beginning on May 17, 2021, Mr. Zimmerman first contacted Defendants, through the assistance of legal counsel, to obtain royalty statements that had previously been withheld. Zimmerman received a statement, Invoice # CCR-JOZ123120A dated March 31, 2021. The statement was devoid of any clear allocation of revenue for the public performance of Zimmerman’s composition or Featured Artist Share of the master recording of his works recorded under his agreement with Comedy Central Records. Zimmerman later received an additional

statement, Invoice # CCR-JOZI123121A, dated March 31, 2022, calculating balances from the inception of Zimmerman's album recorded with Comedy Central Records through the end of 2021. Under the line item labeled "Sirius XM," Defendants calculated the value for the inception of his album through December 31, 2021, as "\$6,955.92." It was Zimmerman's position that Defendants thus conceded Zimmerman was owed something for the Featured Artist Share of royalties flowing from the use of his material on SiriusXM. The amount Zimmerman received, however, was substantially less than that to which he was entitled and separately did not account for the exploitation of his composition without his consent.

8. Prior to filing the complaint, NSHMS spent significant time reviewing the Exclusive Recording Agreement, analyzing and investigating the claims, and understanding whether the issues were common among the proposed class. This included speaking with other record labels, managers, and performing rights organizations to fully investigate the claims.

9. The May 17, 2021 letter demanded the Comedy Partners accounting statements or payments of the royalties generated from digital commercial radio play. When it was learned that the executive with which *Zimmerman* Plaintiffs were communicating, Comedy Partners' Senior Vice President Blossom Lefcourt, was no longer with the company, NSHMS sent a second letter on July 13, 2021—reiterating the same demands. The *Zimmerman* Plaintiffs and Defendant then engaged in extensive communications over the next couple of months.

10. In addition, the *Zimmerman* Plaintiffs properly registered their copyrights in their respective underlying works with the U.S. Copyright Office. *See Zimmerman* ECF No. 1-7, Exhibit G. This ensured that the *Zimmerman* Plaintiffs had standing to represent the entire class of individuals who failed to obtain full payment of royalties from Comedy Central on rights properly

transferred under the agreements with Comedy Central, and for infringement of rights not acquired yet exploited by Comedy Central.

11. Then, during a November 22, 2021 call with Andy Hughes and Ross Weston from Viacom, it was first disclosed to the *Zimmerman* Plaintiffs that there was a direct licensing deal with SiriusXM. While the *Zimmerman* Plaintiffs were not provided a copy of the terms of such agreement, NSHMS began the extensive investigation into the extent of the failures.

12. Ultimately, the *Zimmerman* Plaintiffs and Defendant exchanged months' worth of email and telephonic communications, including six letters detailing the parties' positions and demands.

13. When it became clear that pre-litigation resolution efforts would no longer be fruitful, Mr. Zimmerman, along with fellow comedians Sean Donnelly and Anthony DeVito, filed their class action lawsuit, on March 21, 2023. *See Zimmerman v. Paramount Global*, Case No. 1:23-cv-2409 (VSB). NSHMS expended significant time reviewing, researching, analyzing, and ultimately drafting, the class action complaint.

MEDIATION

14. Over the course of approximately eighteen months, the parties engaged in extensive settlement negotiations to resolve this matter.

15. On April 25, 2023, the *Zimmerman* Plaintiffs sent letter correspondence to Defendant regarding the settlement communications between the *Kaplan* Plaintiffs and Defendant. The correspondence noted the additional causes of action ((1) declaratory judgement re violation of 17 U.S.C.A. §§ 114(g)(2)(D); 17 U.S.C.A. § 106(6); (2) direction violation of 17 U.S.C.A. §§ 114(g)(2)(D); 17 U.S.C.A. § 106(6); (3) breach of fiduciary duty; and (4) accounting) included in

the *Zimmerman* Plaintiffs complaint, demand that any further settlement discussions be a global resolution of the matters and involve negotiations with both the *Kaplan* and *Zimmerman* Plaintiffs.

16. As a direct result of the *Zimmerman* Plaintiffs' April 25, 2023 letter, and after significant communications with both co-counsel and Defendant's counsel, the parties scheduled a joint mediation with the Honorable Louis Meisinger (Ret.), an experienced mediator with significant knowledge of the entertainment industry.

17. The parties continued their pre-mediation work by engaging in an informal discovery process that included the review of Defendant's documents, and analysis of the pro rata spins data, as well as engaging in numerous communications. To aid in the settlement negotiations, NSHMS retained national entertainment law expert Bernard Resnick, Esquire, who was prepared to present testimony at trial concerning the industry custom and practice for labels like Paramount expressly contracting for rights if they intend to exploit those rights. Mr. Resnick made a brief presentation to Defendant's counsel prior to the mediation and was available during the mediation, via Zoom, to address any issues related to this topic.

18. As part of the mediation process with the Honorable Louis Meisinger (Ret.), NSHMS drafted an extensive mediation brief detailing the legal and factual issues of the parties' respective claims and defenses—including the additional claims brought by the *Zimmerman* Plaintiffs—and settlement position.

19. Also prior to the mediation, NSHMS retained damages expert Jed Greene of Five Corners Group, who provided a calculation of the damages incurred by the Class. Mr. Greene's calculations informed the *Zimmerman* Plaintiffs' mediation brief, and Mr. Greene was available during the mediation, via Zoom, to address any issues related to damages.

20. On September 19, 2023, the parties, including both the *Zimmerman* Plaintiffs and Plaintiff Michael Kaplan, participated in a full-day, in-person mediation with the Honorable Louis Meisinger (Ret.) As the mediation occurred in Los Angeles, because they are based in New York, the *Zimmerman* Plaintiffs attended portions of the mediation via Zoom.

21. A substantial portion of the parties' early settlement efforts focused on an exchange and developing an understanding of (1) the strengths of their claims and defenses; (2) information regarding Defendants' accounting practices for paying royalties as it related to Plaintiffs' respective recording contracts; and (3) the amount of damages at issue in the litigation. To ensure the mediation would be fruitful, Defendant agreed to provide information and specific data for the purposes of the mediation. This data informed Plaintiffs' respective damages calculations.

22. The parties reached an agreement in principle during the September 19, 2023 mediation. Over the next several months, the parties actively negotiated the language of a settlement agreement and often engaged with Judge Meisinger to resolve issues and disputes. NSHMS took an active role in the editing and finalization of the settlement agreement, and communicating with the *Zimmerman* Plaintiffs to ensure that their additional claims had been resolved.

23. The agreement was ultimately executed on July 23, 2024.

PRELIMINARY APPROVAL AND CLASS NOTICE

24. On August 29, 2024, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement Agreement in this Court. *Zimmerman* ECF no. 47.

25. On October 24, 2024, defendant Paramount filed a letter with this Court affirming its compliance with the notice requirements of the Class Action Fairness Act. *See* 28 U.S.C. § 1715(b).

26. On March 11, 2025, this Court (1) granted preliminary approval of the Stipulation and Agreement of Settlement (the “Settlement Agreement”); (2) certified the class for settlement purposes; (3) appointed Class Counsel as counsel for the provisionally certified settlement class; (4) approved the proposed plan of notice and notice to the Settlement Class; (5) appointed Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator (“Epiq”); (6) set a schedule for disseminating notice to the Settlement Class as well as other deadlines related to the administration of the settlement, including deadlines to object to or opt-out of the settlement; and (7) scheduled a final approval hearing for July 22, 2025. *Zimmerman* ECF No. 61.

27. Since then, NSHMS has supervised the dissemination of notice to the Class and the claims process.

28. Class Notice began on March 31, 2025, when Epiq Class Action & Claims Solutions, Inc. (the “Settlement Administrator”) started to send emails to all 163 class members. As of April 9, 2025, 128 emails were successfully delivered. The remaining 35—individuals who were unreachable by email—were sent first-class mail.

29. As of April 9, 2025, the website had a total of 193 hits, and the toll-free line received two calls. In addition, four (4) items of correspondence were received by the Settlement Administrator—all of which have been responded to and resolved.

30. My partner Jonathan Miller has engaged in multiple phone calls with Class Members, resolving any questions that they have regarding the settlement and the claims process.

31. To date, there has been no objections to the settlement, and no Class Members have objected to Class Counsel’s requested fee award.

32. Finally, NSHMS was responsible for drafting Plaintiffs’ motion for reasonable attorneys’ fees, costs, and expenses and related documents. In doing so, NSHMS conducted legal research regarding the standards under Second Circuit caselaw.

BACKGROUND AND EXPERIENCE OF NSHMS

33. NSHMS is a nationwide civil law firm committed to finding solutions to our clients’ legal challenges. With 12 active attorneys and offices in Santa Barbara, California and Pittsburgh, Pennsylvania, our firm’s attorneys handle complex disputes on behalf of both individual and institutional clients across an array of legal areas including education, employment, civil rights, intellectual property, consumer fraud, catastrophic personal injury and sexual abuse.

34. Throughout our history spanning more than 30 years, NSHMS has championed “cases with causes,” deploying our extensive civil litigation and trial experience to advance cases of national importance.

35. I graduated, *cum laude*, from University Scholars Program (now the Schreyer Honors College) of The Pennsylvania State University in 1997 and graduated, *cum laude*, from the Dickinson School of Law of The Pennsylvania State University in 2001. While at Dickinson, I served as Articles Editor for *The Dickinson Law Review*.

36. Following graduation from law school in 2001, I began my legal career with Reed Smith LLP as an associate attorney, where I focused on antitrust, securities and employment litigation.

37. During my more than 23 years of practice, I have had extensive experience in class actions and other complex litigation. I have served as lead counsel, co-lead counsel, or class counsel in more than 100 class action lawsuits throughout federal and state courts in the United States.

38. Earlier in my career, I was a partner at Kessler, Topaz, Meltzer & Check, LLP in Philadelphia, one of the largest and most prestigious plaintiffs' firms in the country, where I concentrated my practice exclusively on class action litigation with an emphasis on federal securities litigation. I helped to obtain significant recoveries on behalf of class members in numerous nationwide class actions including, to cite just a few examples:

- *In re Tyco Int'l Sec. Litig.*, No. 02-1335- B (D.N.H.) (\$3.2 billion total recovery for class members, the largest ever recovery from a single corporate defendant in a federal securities action)
- *In re Wachovia Preferred Securities and Bond/Notes Litig.*, No. 09-Civ. 6351 (RJS), (S.D.N.Y.) (\$627 million recovery for class members)
- *In re CVS, Inc. Sec. Litig.*, No. 01-11464-JLT (D. Mass.) (\$110 million recovery for class members)

39. In addition, my partners at Nye, Stirling, Hale, Miller & Sweet, LLP have also litigated numerous class action cases over the course of their careers including: representing through trial a class of legally blind individuals who were discriminated against under the ADA. (*Julian Vargas et al v. Quest Diagnostics Clinical Laboratories, Inc. et al.* [Central District of California Case No. 2:19-cv-08108-DMG-MRW]); representing through two certifications and a Rule 23(f) appeal to the Ninth Circuit a class of legally blind individuals who were discriminated against under the ADA, Rehabilitation Act, Affordable Care Act, and Unruh Act. (*Davis v. Laboratory Corporation of America Holdings, et al.* [Central District of California Case No. 2:20-CV-00893-FMO-KS]); representing a class of mobility disabled individuals who claim they were discriminated against under the ADA. (*Kouri v. FedEx* [Central District of California Case No. 2:21-CV-08066-SPG-JEM]); representing a class of consumers who purchased vehicles with

defective engines (*In re Kia Engine Litigation* [Central District of California Case No. 8:17-cv-00838-JLS-JDE]); representing a class of consumers who purchased defective car seats (*Julian v. Evenflo Co., Inc.* [Central District of California Case. No. 2:14-CV-01774 RKG-AS]); representing a class of consumers alleging false advertising and unfair competition against Doctor's Best. (*Thomas Flowers, et al v. Doctor's Best, Inc.*, [Central District of California Case No. 2:13-cv-08174-DMG-JCG]); representing a class of consumers alleging false advertising claims against Pharmavite for its marketing of Vitamin E supplements (*Weintraub v. Pharmavite, LLC* [Central District of California Case No. 2:14-cv-03218]); representing a class of consumers alleging false advertising claims against Walmart to the Ninth Circuit (*Boris v. Walmart* [Ninth Circuit Case No. 14-55752]); representing a class of consumers who purchased mascara fraudulently marketed as all-natural (*Schmitt, et al. v. Younique* [Central District of California Case No. 8:17-cv-01397-JVS-JDE]); and representing a class of consumers harmed by Kia/Hyundai's deceptive and fraudulent engine issues (*In re Hyundai and Kia Engine Litigation* [Central District of California Case No. 8:17-cv-00838-JLS-JDE]); defending The Regents of the University of California against class claims alleging failure to discharge ministerial duties under California's Penal Code. (*Mascovich v. The Regents of the University of California* [Santa Barbara Superior Court Case No. 1401677]); defending Cellular Sales of California against class claims of wage and hour violations [*Knapp v. Cellular Sales of California* [Santa Barbara Superior Court Case No. 17CV03596]]; defending Mercury Casualty Insurance Company against class claims of illegal recording of telephone calls (*Zamar v. Mercury* [Los Angeles Superior Court Case No. C469266]); and defending *Renaud's Bakery & Bistro* against class claims of wage and hour violations (*Johnson v. Renaud's Bakery & Bistro, Inc.* [Los Angeles Superior Court Case No.

19STCV35046])). The firm and its lawyers have represented plaintiffs at all levels of state and federal courts.

40. I am a member in good standing of the following courts: United States Supreme Court, United States Court of Appeals for the First, Second, Third, Fifth, Ninth and Tenth Circuits; United States District Court for the Western District of Pennsylvania, United States District Court for the Western District of New York, United States District Court for the Northern District of New York, United States District Court for the Western District of Michigan, United States District Court for the District of Colorado, United States District Court for the Northern District of Illinois, United States District Court for the Central District of Illinois, United State District Court for the Southern District of Illinois, United States District Court for the Eastern District of Wisconsin, United States District Court for the Northern District of Indiana and the United States District Court for the Southern District of Indiana; and the state courts of the Commonwealth of Pennsylvania and the State of New York.

41. My work on this case is detailed below.

**NSHMS' REPRESENTATION OF THE PLAINTIFF CLASS AND REASONABLE
HOURLY RATES**

42. Together with my partner and our lead trial counsel Jonathan Miller, I supervised a team of attorneys and paralegals from NSHMS in doing the work necessary to prepare this case for trial. In general, when our firm determines to take on a large-scale class action case like this one, we deploy a trial team that includes Mr. Miller and myself, along with appropriate associate and staff assistance as required. Experience has taught us that a dedicated trial team approach yields the best results for our clients. I believe this approach was especially helpful in achieving an outstanding result in this litigation.

43. To date, we have received no payment for any of the more than 801.9 hours of services performed or the \$41,012.44 in out-of-pocket costs and expenses that we committed to the case. For four years, we have faced the real risk of no payment at all if we were not successful, as well as the loss of the tens of thousands of dollars advanced for out-of-pocket costs.

44. Combined with our co-counsel, we have received no payment for any of the more than 1,500.9 hours of services or the \$78,073.50 in out-of-pocket expenses that we committed to the case.

45. My qualifications and hourly-rate information is described above. Working with me on this matter were the following NSHMS partners, associates, and paralegals:

Jonathan D. Miller

46. Jonathan D. Miller - Mr. Miller is in his twentieth year of practice and fifteenth year as a partner at Nye, Stirling, Hale, Miller & Sweet, LLP. He served as the managing partner of the firm from 2011 through 2024. Mr. Miller's practice focuses on handling complex civil litigation in cases involving entertainment disputes, copyright and trademark infringement, equity in sports under Title IX, civil rights, wrongful termination, consumer class actions, unfair business practices, and catastrophic personal injury. Mr. Miller also serves as outside general counsel for institutional clients, overseeing and coordinating compliance and litigation defense. In his civil litigation practice, Mr. Miller has served as lead class, trial, and appellate counsel in numerous cases in state and federal courts across the country representing both individual and institutional clients. In the area of entertainment and sports, Mr. Miller has handled matters involving Grammy Winning recording artists, NBA Hall of Fame athletes, "A-list" celebrities, and institutions in a variety of business and related disputes, including copyright infringement. (See e.g. *Young Money Entertainment, LLC, et al. v. Digerati Holdings, LLC, et al.* [Central District of California Case

No. CV 12-07663-0DW (1Cx); *Krause v. QD3 Entertainment, et al.* [Los Angeles County Superior Court Case No. EC057893]; *Young Money Entertainment, LLC, et al. v. Digerati Holdings, LLC, et al.* [Los Angeles County Superior Court Case No. EC 049512] – represented the co-producer of Lil Wayne’s Carter III documentary film in state and federal court lawsuits involving claims and counter-claims arising out of the creation and distribution of the film.) In the area of civil rights, Mr. Miller has prosecuted and defended claims arising under 42 U.S.C section 1983, Title II and Title III of the Americans with Disabilities Act, the Rehabilitation Act, the Affordable Care Act, and Title VII and Title IX of the Civil Rights Act. He also advises his clients on Department of Education regulations and guidance through the Office of Civil Rights. This includes Clery Act compliance and privacy issues arising under FERPA. Mr. Miller enjoys an AV® Preeminent™ rating from Martindale-Hubbell, the highest rating given practicing attorneys by their peers in terms of both professional competence and ethics. Mr. Miller currently serves as a member of the Local Rules Advisory Committee for the United States District Court, Central District of California. He has also been appointed by California State courts to serve as a discovery referee. Mr. Miller is a graduate of The Pennsylvania State University, where he received his undergraduate and law degrees. He volunteers his time with several non-profit organizations, including serving as a Board member on the Smith-Magenis Syndrome Research Foundation (“SMSRF”). Mr. Miller has also previously served as the Chair of the Santa Barbara Region Chamber of Commerce, and as an adjunct professor at the Santa Barbara College of Law teaching Intellectual Property.

Margaret Parker

47. Margaret (Meg) Parker is a ninth-year associate who handles complex civil litigation in state and federal court. Her practice focuses on employment issues such as wrongful

termination, discrimination, and civil rights violations, as well as advocacy work on disability discrimination issues under statutes such as the ADA and Rehabilitation Act, and entertainment issues including copyright and trademark infringement. Prior to joining Nye, Stirling, Hale, Miller & Sweet, LLP, Meg worked as an associate at the Los Angeles office of Littler Mendelson, P.C., where her practice focused on representation of employers in both single-plaintiff and wage and hour class action matters. She also counseled and advised clients on day-to-day employment issues regarding employee discipline and termination, wage and hour law compliance, leaves of absence, and independent contractor versus employee classification. Ms. Parker is a graduate of the University of California, Berkeley, where she received her undergraduate degrees in Rhetoric and French, and of Georgetown University Law Center, where she received her juris doctorate. While in law school, Ms. Parker was an extern for Chief Judge Beryl A. Howell of the United States District Court for the District of Columbia. She also served as the Editor-in-Chief for the Georgetown Journal of Legal Ethics and received the St. Thomas More Award for Outstanding Student Work in Legal Ethics.

D. Robert Barthelmess

48. D. Robert (Rob) Barthelmess is a eighth-year associate with experience in complex civil litigation and appeals in both state and federal courts (including ADA cases). Prior to joining NSHMS in 2023, Mr. Barthelmess was a litigation associate at O'Melveny & Myers LLP in the firm's downtown Los Angeles office where he conducted internal investigations, and represented individuals and companies in fraud litigation, anti-SLAPP litigation, and government investigations. In 2018, Mr. Barthelmess took leave from O'Melveny to serve as a law clerk for the Honorable Ryan D. Nelson of the U.S. Court of Appeals for the Ninth Circuit. Mr. Barthelmess graduated *cum laude* from the Georgetown University Law Center in 2017, where he was on the

Dean's List and served as the Executive Notes Editor of the Journal of National Security Law & Policy, as an extern for the United States Senate Committee on the Judiciary's the Judiciary's Subcommittee on Competition Policy, Antitrust, and Consumer Rights, and as an Honors Program intern with the U.S. Securities and Exchange Commission's Division of Enforcement. While at O'Melveny, Mr. Barthelmess's 2022 hourly rate, which was included in a fees application in a California state court filing, was \$940 per hour.

Callum Appleby

49. Callum Appleby is a fifth-year associate at Nye, Stirling, Hale, Miller & Sweet LLP. During his time with the firm, Mr. Appleby has managed briefing and discovery in multiple complex national class actions and handled other civil litigation in both state and federal courts. His practice focuses on civil rights violations of Title III of the Americans with Disabilities Act, the Rehabilitation Act, the Affordable Care Act and litigation representing sexual abuse survivors. While in law school, Mr. Appleby worked as an extern at the Allegheny County Public Defender's Office.

Chloe Lucado

50. Chloe Lucado is a senior paralegal with seven years of civil litigation experience. She is a 2014 University of California, Santa Barbara graduate, and recent graduate of the Santa Barbara College of Law where she received awards for academic excellence in Torts, Legal Writing, and Legal Research. Ms. Lucado has passed the California bar exam.

Jeffrey Castello

51. Jeffrey Castello has been a full-time senior paralegal for the past five years. Prior to that, Mr. Castello was a part-time Legal Assistant for over a decade. A graduate, *summa cum laude*, of Pennsylvania Western University (formerly California University of Pennsylvania), with

a B.A. in Legal Studies, and a current law student at the University of Dayton School of Law, Mr. Castello has been a Paralegal at NSHMS since April 2023.

Daniel Styslinger

52. Dan Styslinger is a paralegal at NSHMS. Mr. Styslinger earned his Associate's Degree in Paralegal Studies from the Community College of Allegheny County where he graduated with high honors. Mr. Styslinger has worked for Nye, Stirling, Hale, Miller & Sweet since 2021, first as a legal assistant, before being promoted to a junior paralegal in 2022.

NSHMS BILLING RATES

53. NSHMS periodically establishes hourly rates for the firm's billing personnel. NSHMS establishes these rates based on prevailing market rates for attorneys and law firms in the Southern District of New York that have attorneys and staff of comparable skill, experience, and qualifications. My firm obtains information concerning market rates from other attorneys in the area that have similar experience doing similar work, from information that occasionally appears in the local press and national bar publications, and in orders awarding attorney fees in similar cases.

54. In nationwide class action cases like this one, law firms like mine must often advance tens of thousands of dollars in expenses and costs and defer all payment of our fees for potentially several years, with no guarantee that any of the fees we incurred or costs we advanced will ever be recovered.

55. I have calculated our attorneys' fees in this matter using my firm's current noncontingent hourly rate charged by comparable attorneys in the Southern District of New York. The following chart calculates the lodestar for NSHMS in this matter.

Name	Position	Grad. Year	Hours	Current Rates	Total
Benjamin Sweet	Partner	2001	201.1	\$1,200	\$241,320.0
Jonathan Miller	Partner	2001	227.3	\$1,200	\$272,760.0
Meg Parker	Senior Associate	2015	281.6	\$850	\$239,360.0
Robert Barthelmess	Associate	2017	9.6	\$850	\$8,160.00
Callum Appleby	Associate	2020	18.7	\$675	\$12,622.5
Chloe Lucado	Senior Paralegal	2014	49.5	\$325	\$16,087.5
Jeff Castello	Senior Paralegal	2022	13.1	\$300	\$3,930.0
Daniel Styslinger	Paralegal	2022	1.0	\$250	\$250

56. As discussed above, NSHMS expended 801.9 hours on this matter. Consequently, NSHMS turned down meritorious hourly work—which unquestionably would have generated substantial fees on a much shorter timeframe—if it had not been consumed with this matter.

57. Combined with our co-counsel at KamberLaw, Pearson Warshaw LLP and Johnson & Johnson, LLP, counsel expended a total of 1,500.9 hours on this matter. This amounts to total lodestar of \$1,627,315.

NSHMS' REASONABLE TIME SPENT

58. NSHMS' representation of the Class was performed on a wholly contingent basis. The firm devoted substantial resources to this matter, and we have received no payment for any of

the more than 801.9 hours of services performed or the \$41,012.44 in out-of-pocket costs and expenses that my firm committed to the litigation of this case.

59. NSHMS made every effort to litigate this matter efficiently by coordinating the work of NSHMS' attorneys and paralegals, minimizing duplication, and assigning tasks in a time and cost-efficient manner, based on the timekeepers' experience levels and talents. In particular, myself and Mr. Miller regularly assigned work to the associate or paralegal with the lowest billing rate commensurate with the skill required for the task.

60. NSHMS will spend additional time responding to Class Member communications and objections (if any), continuing to supervise the claims process, and preparing for and attending the Fairness Hearing on July 22, 2025.

METHOD OF RECORDING TIME

61. The practice of both me and the attorneys at my firm is to record time in tenth of an hour increments and to do so as contemporaneously as possible.

62. I personally reviewed the records of all time that all NSHMS timekeepers billed to this matter. I exercised billing judgment by deleting time entries that were duplicative, inefficient, vague, administrative, or otherwise non-compensable.

INCENTIVE AWARD FOR CLASS REPRESENTATIVES

63. We also request that the Court order a Class Representatives incentive awards in the amount of \$20,000—\$5,000 per Plaintiff. The Plaintiffs Michael Kaplan, Joseph Zimmerman, Anthony DeVito, and Sean Donnelly, agreed to serve as a class representative, and held the best interests of the class at every step of the litigation.

64. Through this litigation, Plaintiffs have demonstrated that they are willing and suitable class representatives through their active participation in the litigation— (1) searching for

documents related to this lawsuit; (2) reviewing and approving court-filings, including the operative Class Action Complaint and Settlement Agreement; (3) staying informed and communicating with Class Counsel regarding the status and progress of this lawsuit; (4) attending the mediation in this case; and (5) participating in lengthy conversations about the terms of the agreement. See Dkt. 51, Declaration of Plaintiff Michael Kaplan, ¶¶ 2, 4 & 5; Dkt. 57, Declaration of Plaintiff Joseph Zimmerman, ¶¶ 3, 5 & 6; Dkt. 55, Declaration of Plaintiff Anthony DeVito, ¶¶ 3, 5 & 6; Dkt. 56, Declaration of Plaintiff Sean Donnelly, ¶¶ 3, 5 & 6.

NSHMS' REASONABLE COSTS AND EXPENSES

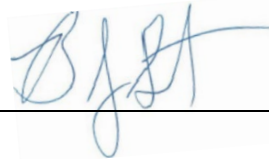
65. NSHMS is seeking reimbursement of its reasonable out-of-pocket expenses incurred in this matter as permitted under law.

66. The items we have included in our costs and expenses are billed separately and are not included in my firm's lodestar. For accounting purposes and to ensure that all costs and expenses are accurately assigned to the appropriate case, it is my firm's practice to assign a unique billing code for each case that we litigate. This case had a unique billing code, and all expense records, receipts and billing statements reflecting costs associated with this case were assigned to that billing code.

67. My firm's costs and expenses in this matter through April 28, 2025 total \$41,012.44. For these costs, we received invoices and already have paid them. The expenses incurred by NSHMS are reflected in the books and records of the firm and are available for the Court's *in camera* inspection upon request.

68. Combined with our co-counsel, the total reasonable costs that we are seeking to recover totals \$78,073.50. This sum includes an estimated \$10,000 for travel and lodging to and from the final fairness hearing to be held in Manhattan on July 22, 2025.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed on May 5, 2025, in Pittsburgh, Pennsylvania.

A handwritten signature in blue ink, appearing to read 'BJS', is positioned above a solid black horizontal line.

BENJAMIN J. SWEET

*Counsel for Plaintiffs Joseph Zimmerman,
Anthony Devito and Sean Donnelly and the
Settlement Class*

Exhibit A



Benjamin J. Sweet
 Partner
 T (412) 857-5348 x101
 E ben@nshmlaw.com

Nye, Stirling, Hale, Miller & Sweet				
Timekeeper	Role	Rate	Total Time	Total Fees
Jonathan D. Miller (JDM)	Partner	1200.0	227.3	\$272,760.0
Benjamin J. Sweet (BJS)	Partner	1200.0	201.1	\$241,320.0
Margaret A. Parker (MAP)	Associate	850.0	281.6	\$239,360.0
D. Robert Barthelmess (DRB)	Associate	850.0	9.6	\$8,160.0
Callum T. Appleby (CTA)	Associate	675.0	18.7	\$12,622.5
Chloe M. Lucado (CML)	Paralegal	325.0	49.5	\$16,087.5
Jeffrey T. Castello (JTC)	Paralegal	300.0	13.1	\$3,930.0
Daniel R. Styslinger (DRS)	Paralegal	250.0	1.0	\$250.0
	TOTALS		801.9	\$794,490.00

Nye, Stirling, Hale, Miller & Sweet	
Category	Total Costs
E108 Postage	\$373.21
E109 Local travel	\$42.00
E111 Meals	\$40.96
E112 Court fees	\$400.00
E119 Experts	\$24,670.00
E121 Arbitrators/mediators	\$12,116.66
E123 Other professionals	\$760.00
E124 Other	\$2,609.61
TOTAL	\$41,012.44

Exhibit B



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With a national reputation for achieving results and a sustained focus on community partnerships, Nye, Stirling, Hale, Miller & Sweet LLP, (“NSHMS”) is a civil law firm committed to finding solutions to our clients’ legal challenges. Our firm’s attorneys handle complex disputes on behalf of both individual and institutional clients across an array of legal areas including education, employment, civil rights, intellectual property, consumer fraud, catastrophic personal injury and sexual abuse. Throughout our history spanning over 30 years, NSHMS has championed “cases with causes.” Whether representing whistleblowers, individuals with disabilities, or survivors of sexual abuse, we continue to deploy our extensive civil litigation and trial experience to advance cases of national importance, securing meaningful and lasting change on behalf of our clients.

NSHMS and its predecessor firms have a long history of extensive litigation in complex matters. NSHMS has litigated and resolved some of the most important civil cases in the nation. Our attorneys possess a diverse range of professional skills and come from a wide variety of backgrounds.

A. CASE PROFILES

1. Federal Securities Litigation

Prior to joining NSHMS, Benjamin J. Sweet concentrated his practice exclusively in class action litigation, with an emphasis on federal securities litigation. During this time, Ben served as counsel in over 100 federal securities actions and helped to obtain significant recoveries on behalf of class members in nationwide class actions, including:

***In re Tyco, Int’l Sec. Litig.*, No. 02-1335-B (D.N.H.)** (\$3.2 billion total recovery for class members, the largest ever recovery from a single corporate defendant in a federal securities action).

***In re Wachovia Preferred Securities and Bond/Notes Litig.*, No. 09-Civ. 6351 (RJS), (S.D.N.Y.)** (\$627 million recovery for class members)

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***In re CVS, Inc. Sec. Litig.*, No. 01-11464-JLT (D. Mass.)** (\$110 million recovery for class members).

***In re PNC Fin. Svcs. Group Inc. Sec. Litig.*, No. 02-CV-271 (W.D. Pa.)** (\$39 million recovery for class members)

***In re McLeod USA Inc. Sec. Litig.*, No. C02-0001-MWB (N.D. Iowa)** (\$30 million recovery for class members)

***In re Wireless Facilities, Inc., Sec. Litig.*, 04-CV-1589 (S.D. Cal.)** (\$16.5 million recovery for class members)

***In re Solectron Corp. Sec. Litig.*, No. C-03-0986-CRB (N.D. Cal.)** (\$15 million recovery for class members)

***In re Zomax Inc. Sec. Litig.*, No. 04-1155 (DWF/SRN) (D. Minn.)** (\$9 million recovery for class members)

***In re Michael Baker Corp. Sec. Litig.*, No. 08-cv-00370 (JFC) (W.D. Pa.)** (\$4.5 million recovery for class members)

***In re DDi Corp. Sec. Litig.*, No. 03-7063-SGL (C.D. Cal.)** (\$4.4 million recovery for class members)

***In re Flextronics Int, Ltd. Sec. Litig.*, No. C-03-2102-PJH (N.D. Cal.)** (\$4.25 million recovery for class members)

***In re Thornburg Mortgage Inc. Sec. Litig.*, No. 07-815JB/WD, (D.N.M.)** (\$2 million recovery for class members)

2. Civil Rights Class Actions

NSHMS has been a national leader in the area of federal class action disability rights litigation. To list a few recent examples, we have recently represented classes of individuals in the following actions:

***Kouri v. Federal Express Corp.*, No. 2:21-cv-08066-SPG-JEM (C.D. Cal.)** (representing a class of mobility-disabled individuals alleging ADA violations at FedEx drop-boxes)

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***Heinzl v. Cracker Barrel Old Country Store, Inc.*, No. 14-cv-1455-RCM (W.D. Pa.)** (representing a class of mobility-disabled consumers injured by excessive sloping in parking lots, in violation of the ADA)

***Chapman v. Tasty Hut, LLC*, Case No. 1:22-CV-208 (M.D.N.C.)** (representing a class of mobility-disabled consumers injured by excessive sloping in parking lots, in violation of the ADA)

***Dieter v. Aldi, Inc.*, No. 2:18-cv-00846-JFC (W.D. Pa.)** (representing a class of mobility-disabled consumers injured by excessive sloping in parking lots, in violation of the ADA)

We are additionally lead class counsel in two currently pending certified national class actions:

***Davis v. LabCorp*, No. 2:20-cv-0893-FMO-KS (C.D. Cal.); No. 22-55873 (9th Cir.); No. 24-304 (S. Ct.)** (representing a class of legally blind consumers injured by inaccessible services offered through kiosks, in violation of the ADA)

***Vargas v. Quest Diagnostics*, No. 2:19-cv-08108-DMG (C.D. Cal.); Nos. 23-3189, 23-3436 (9th Circ.)** (representing a class of legally blind consumers injured by inaccessible services offered through kiosks, in violation of the ADA)

3. Consumer Protection Class Actions

NSHMS partners, including Benjamin Sweet and Jonathan Miller, also have significant experience in litigating complex consumer protection class action matters. Examples of those matters include:

***Schmitt, et al. v. Younique*, No. 8:17-cv-01397-JVS-JDE (C.D. Cal.)** (representing a class of consumers who purchased mascara fraudulently marketed as all natural)

***Julian v. Evenflo Co., Inc.*, No. 2:14-CV-01774 RKG-AS (C.D. Cal.)** (representing a class of consumers who purchased defective car seats)

***Hyle, et al. v. FRS, et al.*, No. CV 13-01456 BRO (C.D. Cal.)** (representing a class of consumers alleging false advertising claims against FRS, who marketed health care products based on Lance Armstrong's use of such products, when in fact it was Armstrong's use of anabolic steroids that contributed to his success)

***Weintraub v. Pharmavite, LLC*, No. 2:14-cv-03218 (C.D. Cal.)** (representing a class of consumers alleging false advertising claims against Pharmavite for its marketing of Vitamin E supplements)

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***Boris v. Walmart*, No. 14-55752 (9th Cir.)** (represented a class of consumers alleging false advertising claims against Walmart to the Ninth Circuit)

B. RELEVANT FIRM BIOGRAPHY

1. Partners

BENJAMIN J. SWEET, admitted to practice in Pennsylvania, 2001, and New York, 2022; admitted to practice before the United States Court of Appeals for the First, Second, Third, Fifth, Ninth, and Tenth Circuit Courts; United States District Court for the Western District of Pennsylvania; United States District Court for the Western and Northern Districts of New York; United States District Court for the Northern District of New York; United States District Court for the Western District of Michigan; United States District Court for the District of Colorado; United States District Court for the Northern, Central, and Southern Districts of Illinois; United States District Court for the Eastern District of Wisconsin; United States District Court for the Northern and Southern Districts of Indiana. *Education*. The Pennsylvania State University School of Law, J.D., cum laude; University Scholars Program (now the Schreyer Honors College) of The Pennsylvania State University, B.A., cum laude.

JONATHAN D. MILLER, admitted to practice in California; admitted to practice before the United States Court of Appeals for the Fourth and Ninth Circuit Courts; United States District Court for the Central and Northern Districts of California; United States District Court for the District of Colorado; United States District Court for the Northern and Central Districts of Illinois; United States District Court for the Western District of Pennsylvania; and United States District Court for the Western and Northern Districts of New York. *Education*. The Pennsylvania State University School of Law, J.D.; The Pennsylvania State University, B.A. Jonathan Miller focuses on handling complex civil litigation.