No. 20-1349

In the Supreme Court of the United States

RACHEL THREATT,
Petitioner,
v.
RYAN THOMAS FARRELL, et al., on behalf of himself and all others similarly situated, et al.,
Respondents.

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

BRIEF FOR NATIONAL RETAIL FEDERATION AND RESTAURANT LAW CENTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

The National Retail Federation ("NRF") is the world's largest retail trade association and the voice of retail worldwide. The NRF's membership includes retailers of all sizes, formats and channels of distribution, as well as restaurants and industry partners from the United States and more than 45 countries abroad. In the United States, the NRF represents the breadth and diversity of an industry with more than 52 million employees and contributes $3.9 trillion annually to GDP. As the industry umbrella group, the NRF regularly submits *amicus curiae* briefs in cases raising significant legal issues that are important to the retail industry.

The Restaurant Law Center ("RLC") is a public policy organization affiliated with the National Restaurant Association, the largest foodservice trade association in the world. The foodservice industry is the second largest private sector employer in the United States. It is comprised of over one million restaurants and other foodservice outlets employing 15 million people—approximately 10 percent of the U.S. workforce. Through *amicus curiae* participation, the Restaurant Law Center provides courts with

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[1] Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae* or their counsel has made a monetary contribution toward the preparation or submission of this brief. Counsel of record for all parties received timely notice of the intent of *amici curiae* to file this brief and consented to its filing.

perspectives on legal issues that have the potential to significantly impact the foodservice industry.

SUMMARY OF ARGUMENT

As Justice Gorsuch and other jurists and scholars have recognized, when a district court fails to conduct a lodestar cross-check in making attorney's fees awards in class actions, it invites artificially inflated attorney's fees as well as widely disparate fee awards. Those awards give an undeserved windfall to the plaintiffs' bar and are unfair to everyone else. They also risk eroding public confidence in the federal judiciary by creating the perception that the judges are favoring some attorneys over others. That is why Rule 23(h) of the Federal Rules of Civil Procedure, which authorizes "reasonable" fee awards, should be construed to require district courts to conduct a lodestar cross-check. Until this Court so recognizes, inter-circuit conflict and confusion will bedevil attorney's fees awards in class actions nationwide.

The Ninth Circuit's decision in this case is an excellent candidate for this Court's review. The decision below typifies the dangers attending the lack of a lodestar cross-check. The difference between its lodestar figure (ranging between $539,500 and $1,726,400) and the attorney's fees the district court actually awarded ($14.5 million) is vast. The district court did not heed any of the attorney's fees principles this Court announced in *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), and related decisions.

Also importantly, Rule 23(h) should be interpreted to require a lodestar cross-check to avoid constitutional doubt. The district court's unreasonable fee award in this case is in tension with the Takings Clause of the Fifth Amendment because it takes the property of class members without compensation while conferring a purely private benefit on class counsel.

ARGUMENT

I. Awarding "Reasonable" Attorney's Fees Requires a Lodestar Cross-Check.

Under the "lodestar" method of calculating attorney's fees, "the number of hours worked [is] multiplied by the prevailing hourly rates." *Perdue,* 559 U.S. at 546. The Court has made it clear that the lodestar method is central to the calculation of reasonable attorney's fees. *See id.* at 546, 551-55.

Although *Perdue* involved 42 U.S.C. § 1988, its lessons apply just as readily to the materially indistinguishable Rule 23(h), insofar as both operate as exceptions to the default "American Rule," under which "[e]ach litigant pays his own attorney's fees, win or lose." *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 252-53 (2010) (cleaned up). Like Section 1988, Rule 23(h) authorizes a "reasonable attorney's fee." Fed. R. Civ. P. 23(h). As this Court has noted, attorney's fees that are "excessive, redundant, or otherwise unnecessary" (in relation to the lodestar figure) are, by definition, *unreasonable*. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). Although, with respect to both Section 1988 and Rule 23(h), "a

'reasonable attorney's fee' is a matter that is committed to the sound discretion of a trial judge," "th[at] judge's discretion is not unlimited." *Perdue*, 559 U.S. at 558. Otherwise, the term "reasonableness" would essentially be read out of the rule. When the judge devises an unreasonable fee award, she abuses her discretion.

An award defies "reasonableness" under Rule 23(h) if it fails to measure the percentage-of-recovery attorney's fees against the lodestar figure. Moreover, the absence of a lodestar cross-check incentivizes and enables abuses in the legal system. Notably, this encourages forum-shopping, transfers the class members' private property to class attorneys, discourages class members from litigating important elements of cases, generates "widely disparate awards," *id.*, and even incentivizes unscrupulous class action attorneys to string along unsuspecting class members to litigate for the faint chance of a large payout.

Moreover, attorney's fees awards that are unchecked by a lodestar cross-check may well be "influenced … by a [trial] judge's subjective opinion regarding particular attorneys or the importance of the case." *Id.* This imperils public confidence in the integrity of the federal courts. Even the *appearance* of judicial favoritism or bias—at the expense of "strict neutrality and independence"—"diminish[es] public confidence in judicial integrity." *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 445 (2015); *see also Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009) (stating that sustaining "public confidence in the fairness and

integrity of the nation's … judges" is paramount); *Offutt v. United States*, 348 U.S. 11, 14 (1954) ("justice must satisfy the appearance of justice.").

Furthermore, because Rule 23(h) does not distinguish between attorney's fees coming out of class members' recovery and those coming out of the defendants' pockets, the role of the lodestar in one governs the other. Accordingly, the fact that "defendants contemplating the possibility of settlement will have no way to estimate the likelihood of having to pay a potentially huge enhancement" injects an overpowering dose of unpredictability and arbitrariness that disincentivizes defendants from settling. *Perdue*, 559 U.S. at 558-59; *see also Marek v. Chesny*, 473 U.S. 1, 7 (1985). Therefore, this unpredictability exacerbates the bottleneck in the already-overworked federal district courts.

Understandably, then, this Court repeatedly has recognized the many "virtues" of the lodestar method. *Perdue*, 559 U.S. at 551-52; *see also Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Human Res.*, 532 U.S. 598, 609 (2001); *City of Burlington v. Dague*, 505 U.S. 557, 566 (1992); *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *Hensley*, 461 U.S. at 433. First, the lodestar looks to the "prevailing market rates in the relevant community." *Blum*, 465 U.S. at 895. Furthermore, "the lodestar method is readily administrable." *Perdue*, 559 U.S. at 551. Finally, because the lodestar method "is objective," it "cabins the discretion of trial judges, permits meaningful judicial review, and produces reasonably predictable results." *Id*. at 552.

A. The Difference Between the Attorney's Fees Awarded in This Case and the Lodestar Figure Is Staggering.

The consequences of failing to conduct a lodestar cross-check are most pernicious and corrosive of Rule 23(h)'s entire purpose. This case exemplifies those destructive consequences. The district court granted a windfall of an attorney's fees award—$14.5 million—just because it was 21.1% of the cash payments plus the reduction in the amount of uncollected debt. Pet. App. 6a, 9a, 36a, 37a, 39a. The district court failed to cross-check the $14.5 million against a lodestar calculation because it deemed the 21.1% to be "significantly below the benchmark rate of 25%." Pet. App. 29a.

Because class counsel billed 2,158 hours for this case, at a rate of $250 per hour, their aggregate fee would be $539,500 (or about 3.72% of the fees the district court awarded); and at a rate of $800 per hour, their aggregate fee would be $1,726,400 (or about 11.9% of the fees the district court awarded). Pet. App. 9a, 19a, 90a-91a, 94a-95a. Due to varied billing rates, the true lodestar figure will probably land somewhere between $539,500 and $1,726,400.

Compare that lodestar range with the $14.5 million in attorney's fees (amounting to a rate of over $6,700 per hour) awarded by the district court in this case. The two sets of attorney's fees are not in the same ballpark. Indeed, they are not even in the same sports league.

This matters because class-wide settlements are zero-sum games. Class counsel are getting a disproportionately high payout for the hours worked. The upshot is that class members, like Petitioner, are being forced to underwrite the difference to the tune of $13,960,500 (using the $539,500 lodestar base) to $12,773,600 (using the $1,726,400 lodestar base). The windfall is the payment to Paul, having robbed from Peter's $37.5 million settlement with Bank of America. Pet. App. 8a, 9a, 14a.

B. Vast Fee Differentials Violate This Court's Attorney's Fees Jurisprudence.

None of this sits comfortably with this Court's precedents. The Court has developed "six important rules" that reinforce the essential character of the lodestar. *Perdue*, 559 U.S. at 552. These rules guide district courts when they are conducting lodestar cross-checks in various attorney's fees contexts.

First, a reasonable fee is one that is enough "to attract competent counsel, but that does not produce windfalls to attorneys." *Blum*, 465 U.S. at 897 (cleaned up); *see also Perdue*, 559 U.S. at 552. In an adversarial system that prides itself on the fairness of its judges, *see Williams-Yulee*, 575 U.S. at 445-46, the fairness of its lawyers—certainly as to fees—is no less important. As the Second Circuit has articulated,

> unless time spent and skill displayed be used as a constant check on applications for fees[,] there is a grave danger that the bar and bench will be brought into disrepute, and there will be prejudice to those whose substantive interests are at stake and who are

> unrepresented except by the very lawyers who are seeking compensation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 470-71 (2d Cir. 1974).

Second, the lodestar method is "presumptively sufficient" to ensure the fees draw competent counsel. *Perdue*, 559 U.S. at 552. Nothing more than the lodestar method is necessary to arrive at a reasonable fee; by the same token, nothing less than the lodestar method is sufficient for doing so. That is why the lodestar presumption "is a strong one." *Id.*; *see also Dague*, 505 U.S. at 562; *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986). It follows that any increase to the lodestar figure carries a strong presumption of being unjustified. And the complete failure to use a lodestar cross-check at all *is* unjustified.

The third rule is that increases to the lodestar figure must be justified by "rare and exceptional circumstances." *Perdue*, 559 U.S. at 552; *see also id.* at 553-54. While saying that "in some cases of exceptional [attorney] success an enhancement award may be justified," the Court has yet to uphold such an increase. *Hensley*, 461 U.S. at 435. This is some evidence of how rare and exceptional the success need be in order to justify an enhancement. *See Perdue*, 559 U.S. at 552.

Fourth, because the "lodestar figure includes most, if not all, of the relevant factors constituting a reasonable attorney's fee," "factors subsumed in the lodestar calculation cannot be used as a ground for

increasing an award above the lodestar." *Id.* at 546, 553 (cleaned up). In other words, "double counting" is forbidden. *Blum*, 465 U.S. at 899. That explains why the Court has rejected efforts to increase the lodestar on the basis of "the quality of an attorney's performance or the results obtained." *Perdue*, 559 U.S. at 554. Such considerations *already* "are reflected in the reasonable hourly rate." *Del. Valley*, 478 U.S. at 566. The same thing is true of "the novelty and complexity of a case" because "these factors presumably [are] fully reflected in the number of billable hours recorded by counsel." *Perdue*, 559 U.S. at 553 (cleaned up).

Fifth, the fee applicant, *i.e.*, class counsel, bears the "burden of proving that an enhancement is necessary." *Id.* Relatedly, the sixth rule is that "a fee applicant seeking an enhancement must produce specific evidence that supports the award." *Id.* This means that an increase to the lodestar must be based on "evidence that enhancement was necessary to provide fair and reasonable compensation." *Blum*, 465 U.S. at 901. Without this requirement, the Court cautioned in *Perdue*, the lodestar method would be unable to "provid[e] a calculation that is objective and capable of being reviewed on appeal." 559 U.S. at 553.

In this case, the Ninth Circuit and the district court got their attorney's fees analysis backwards. *Perdue* and its predecessors notwithstanding, they assumed that the lodestar method is optional to the attorney's fees computation because the 25% benchmark cut suffices. Pet. App. 6a. On the contrary, the lodestar is not a mere appendage or afterthought to the

attorney's fees analysis. It is the entire foundation, the *fons et origo*, and the most indispensable part of that analysis.

Ignoring the lodestar cross-check altogether creates practical, legal, and constitutional problems. The teaching of *Perdue* and its predecessors is simple: It is impermissible to exclude the lodestar from an attorney's fees computation *and* increases to the lodestar are rarely permissible. 559 U.S. at 552-53.

Despite all these warning signs, the decisions below ignored the lodestar cross-check altogether. The district court failed to adhere to any of *Perdue's* instructions:

- Award *only* attorney's fees that are necessary to attract competent counsel—and nothing more. *Id*. at 552.

- Apply the lodestar method in a manner that is "presumptively sufficient" to ensure that the fees draw competent counsel. *Id.* at 552.

- Ensure that the circumstances are "rare and exceptional" enough to justify a departure. *Id*. at 552.

- Smoke out any double-counting between the determinants of the lodestar figure and the enhancement factors. *See id*. at 546, 553-54.

- Require that the class counsel meet their burden of justifying such a departure. *See id.* at 553.

- Justify with "specific evidence" any departure from the lodestar figure. *Id.* at 553.

This was clearly erroneous.

C. Conflict and Confusion in the Lower Courts Warrant This Court's Intervention.

Judge Kleinfeld in dissent below correctly observed that a lodestar cross-check "probably should" be required. Pet. App. 17a. As the petition for certiorari points out, the lower courts are split and confused because they do not know what the appropriate lodestar cross-check standard is: Is it mandatory? Strongly Recommended? Moderately Recommended? Not Recommended? Forbidden? *See* Pet. 11-18; *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 n.42 (5th Cir. 2012) (using a mandatory and *per se* cross-checking system that is "more searching" than even the lodestar cross-check); *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009) (requiring district court to provide its "reasons for adopting a particular methodology and the factors considered in arriving at the fee," which often should include the lodestar figure); *In re AT & T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006) (recommending that "district courts use the lodestar method to cross-check the reasonableness of a percentage-of-recovery fee award"); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (strongly encouraging a lodestar cross-check).

The time, therefore, has come for this Court to explicitly and formally require that district courts nationwide apply a lodestar cross-check when computing Rule 23(h) attorney's fees. So long as the Court leaves the *status quo* intact, class counsel will flock to the Ninth Circuit to take advantage of its windfall regime. Rent-seeking counsel will game federal jurisdiction through forum-shopping. And it will continue to hand class members' private property over to class counsel, generate significantly disparate fee awards, erode public confidence in the federal courts, incentivize unscrupulous class attorneys to take advantage of class members, and unduly skew class members' incentives for pursuing class actions.

II. Jurists and Scholars Have Shown That the Lodestar Cross-Check Is Indispensable to Determining Reasonable Attorney's Fees.

A. Justice Gorsuch Has Demonstrated Lodestar's Advantages.

In 2005, Justice Gorsuch accurately noted that "the lodestar method can provide an important safeguard against attorney over-billing through a closer review of counsels' hours, rates, and other charges." Neil M. Gorsuch & Paul B. Matey, *Settlements in Securities Fraud Class Actions: Improving Investor Protection* 22-23 (Wash. Legal Found., Critical Legal Issues Working Paper No. 128, 2005). He pinpointed an important rationale undergirding attorney's fees in "common fund settlement[s]" involving class actions: "[C]ompensat[ing] attorneys for the *fair market value*

of their time in successfully prosecuting the class claims." *Id.* (emphasis added).

While the lodestar method can be both "burdensome and fact intensive," *id.*, this is no reason to deviate from it since the principle at stake was compensating attorneys accurately for their time in light of their billing rate. A windfall is the diametrical opposite of the "fair market value" of an attorney's contribution. *Id.* A necessary corollary is that a contrary approach is unfair to both class attorneys and class members.

Justice Gorsuch pointed to a contemporary example that is instructive in this case. He observed that "when Bank of America paid $490 million to settle a securities fraud class action in 2002, plaintiffs' lawyers pocketed $28.1 million dollars in fees." *Id.* (citing Peter Shinkle, *Deal Was Just the Beginning in Class-Action Suit*, ST. LOUIS POST DISPATCH, Jan. 16, 2005). Indeed, "the plaintiffs' lawyers actually earned $2,007 per hour" in that case. *Id.* Adjusted for inflation, that hourly rate would be approximately $2,955.02 today. The class attorneys' hourly billing rates in that earlier Bank of America litigation were in the overall ballpark of the same in our case.

If the difference between that hourly windfall rate and hourly billing rates is objectionable (and it is), then so is the far more staggering difference here: hourly windfall rate of $6,700—more than twice the hourly windfall rate in Justice Gorsuch's example—and hourly billing rate in the range of $250-800. Consequently, Justice Gorsuch's justifiable skepticism of that differential is amplified in this case.

B. Other Jurists Have Supported Mandatory Lodestar Cross-Checks.

Other jurists have echoed Justice Gorsuch's view. Former United States District Judge Vaughn Walker has long advocated in favor of a mandatory lodestar cross-check. *See* Vaughn R. Walker & Ben Horwich, *The Ethical Imperative of a Lodestar Cross-Check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases*, 18 GEO. J.L. ETHICS 1453, 1469-70 (2005). "Not only will th[is] process force courts to confront the actual number of hours worked by class counsel, but it should also tend to push percentage-based fee awards down to the level of their lodestar-based brethren." *Id*. at 1470.

The lodestar cross-check approach, Judge Walker explained, has obvious advantages. To start, it is equitable to the class members "whose common funds will not be depleted by unreasonably high attorney fee awards computed using the percentage method." *Id*. In addition, the lodestar cross-check "treats similarly situated cases similarly" and does not confuse apples with oranges. *Id*. It minimizes factors that "bear no relation to the intrinsic value of the class members' claims or the difficulty or risk of the litigation." *Id*.

True, as Judge Walker recognized, "the lodestar cross-check process is effective only if it actually leads to [a rigorous] revision of fee awards, a revision [some] courts seem somewhat reluctant to make." *Id*. at 1470, 1471. But unless a mandatory lodestar cross-check is put in place, the fee award process in class actions will remain hopelessly broken down. Should district

courts objectively apply the lodestar cross-check, it is likely to produce accurate results that elicit public confidence in the bench and the bar alike. *See Grinnell Corp.*, 495 F.2d at 470-71.

C. Respected Scholars and Academics Agree With This View.

Esteemed scholars and academics have also concurred in this view. For example, Professors Brian Wolfman and Alan Morrison have recommended that "if a percentage-of-recovery calculation is made, it is essential that it be backed up by a lodestar determination to assure that class counsel's fee is not excessive." Brian Wolfman & Alan B. Morrison, *Representing the Unrepresented in Class Actions Seeking Monetary Relief*, 71 N.Y.U. L. REV. 439, 503 (1996).

Professors Wolfman and Morrison provided the following example that broadly resembles this case: "[I]f the percentage approach translated to a $500 per hour rate for attorney time (which could properly be explained as a reasonable hourly rate, including a multiplier), such a fee might be entirely appropriate." *Id.* Yet "if that same calculation translated to $1500 per hour, a reduction in the percentage would be necessary." *Id.* Without conducting a lodestar cross-check, a district court could not ascertain whether such a reduction should happen. *See id.*

That would risk foisting on the class members, to their detriment, an excessively high attorney's fees award. As Judge Kleinfeld noted in dissent, without

the lodestar cross-check district courts may continue to "overvalue[]"attorney's fees. Pet. App. 19a. Until this Court requires lodestar cross-checks, many district courts nationwide will either ignore the lodestar figure (as the district court did here) or they will merely pay lip-service to it (as many others have).

The risk and damage potential are particularly high since class actions, even when settled, frequently lead to windfalls. Professor Lester Brickman's research shows that in "class actions, effective hourly rates of tens of thousands of dollars an hour are not uncommon." Lester Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 WASH. U. L.Q. 653, 664 (2003). In about eighty percent of cases, the requested fee was awarded. *See* Theodore Eisenberg et al., *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937, 954 (2017). And because the payoff is so minimal, few objectors want to litigate over it. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997). Thus the trend of exorbitantly high fee awards continues unimpeded. Until this Court intervenes to require a lodestar cross-check, not much will change.

Requiring this cross-check will not adversely affect the supply of competent class attorneys. On the contrary, it will reduce economic inefficiency: Even though, as this brief already has noted, the goal of fee awards is to attract counsel who are competent (not ones that will require windfalls), *see Blum*, 465 U.S. at 897. The thousands of dollars that class counsel take home these days *far exceed* the price at which they ably would represent class members. *See* Pet. 19-20.

An illuminating case in point is that when attorneys bid to become lead counsel in class-action suits, even well-respected and expensive law firms almost invariably bid for a mere fraction of the attorney's fees that district courts eventually award. *See* Laural L. Hooper & Marie Leary, *Auctioning the Role of Class Counsel in Class Action Cases: A Descriptive Study* 7-8 (Fed. Jud. Ctr. 2001) (reprinted at 209 F.R.D. 519); *see also* John C. Coffee, *The PSLRA and Auctions*, N.Y.L.J., May 17, 2001, at 5 ("[A] series of antitrust class action auctions demonstrated that qualified counsel would generally offer to represent the class for fee awards in the *10-15%* range.") (emphasis added); Pet. 19-20.

Consequently, academic and scholarly literature advocates in favor of mandating a lodestar cross-check in attorney's fees computations for class actions.

III. Requiring a Lodestar Cross-Check Would Avoid a Substantial Issue Under the Takings Clause.

This $37.5 million settlement belongs to the class members. The funds are their private property. By transferring an exorbitant portion of that property—the attorney's fees exceeding a "reasonable" award—from the class members to the class attorneys under the aegis of Rule 23(h), the district court's fees award is in no small amount of tension with the Takings Clause of the Fifth Amendment, which states that "private property [shall not] be taken for public use, without just compensation." U.S. CONST. amend. V. Accordingly, a saving construction—interpreting the

guarantee of "reasonable attorney's fees" to require a lodestar cross-check—is appropriate.

When the government takes private property, "th[at] taking must be for a 'public use' and 'just compensation' must be paid to the owner." *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 231-32 (2003). Here, awarding unreasonable attorney's fees from the class members' settlement advances no obvious public purpose. The district court's fee award in this case gives the class attorneys purely "private benefit[s]" at the cost of the class members. *Kelo v. City of New London, Conn.,* 545 U.S. 469, 477-78 (2005); *see Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 245 (1984) ("A purely private taking could not withstand the scrutiny of the public use requirement."). And even if this taking of private property were for a public use, just compensation clearly has not been paid.

Legal texts must be interpreted, "if fairly possible, so as to avoid not only the conclusion that [they are] unconstitutional, but also grave doubts upon that score." *United States v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916); Adrian Vermeule, *Saving Constructions*, 85 GEO. L.J. 1945, 1948-49, 1959-60 (1997). Since the Ninth Circuit's interpretation of Rule 23(h) is in considerable tension with the Takings Clause, the Court should construe Rule 23(h) to require lodestar cross-checks. Not only is it the best interpretation of Rule 23(h), it is also the only one that avoids grave doubts about the constitutionality of unreasonable fee awards such as the one at issue here.

CONCLUSION

For the foregoing reasons, as well as those stated in the petition, the petition for certiorari should be granted.

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