



Action Settlement entitled “The Settlement Agreement” and “Litigation and Settlement Efforts.” They provide in part the basis for my opinions set forth below.

### **EXPERIENCE AND QUALIFICATIONS**

4. I have been practicing complex commercial litigation for 33 years, including 28 years bringing class actions on behalf of injured individuals and companies. During that time, I have worked on approximately 35 class actions cases which have settled, the highlights of which are listed in my C.V. attached hereto as Exhibit 1. In those cases, and many more, I have briefed and argued motions to dismiss, class certification motions and summary judgment motions, interlocutory appeals of class certification and appeals of decisions on the merits. I successfully tried one class action to the jury.

5. In the last 28 years, I have read literally thousands of decisions in class action cases addressing their merits, class certification and settlement. I have also written on and lectured on those topics numerous times. I have also read significant amounts of empirical research on class action outcomes and settlements.

6. Based upon the foregoing, I have very significant experience in evaluating the risks, duration, costs and likely outcomes of class action cases. I likewise have very significant experience in evaluating the merits of class action settlements. I believe based upon the foregoing, that I would qualify as an expert on the fairness, reasonableness and adequacy of class action settlements.

### **OPINIONS**

7. In my opinion, this Settlement was the outcome of vigorous, lengthy hard-fought negotiation. The Parties negotiated the Settlement over multiple months involving scores of emails and telephone calls. Negotiation of the exact wording of the Memorandum of Understanding

memorializing the settlement terms alone took approximately a month. And further negotiations were required to turn the MOU into a Settlement Agreement. This strongly favors approval of the Settlement.

8. In my opinion, my co-counsel Eric Zukoski and I had more than sufficient information to assess the merits of the case and the Settlement. We conducted exhaustive legal research of every conceivable legal issue on the merits and related to class certification. We conducted extensive informal discovery, including interviewing the former director of the Fund. Through formal discovery, we obtained documents that gave us a complete picture of the Fund's performance during the Class period, its policies and practices for identifying and locating and paying NFPs and its marketing/advertising efforts. This included the minutes of all the Trustees' meetings, internal Fund documents and internal and external Fund emails. We also reviewed Fund financial statements, reports and analyses. We obtained a spreadsheet of the 60,000 plus Class members on the Unclaimed Royalties List and performed a variety of statistical and other analyses on it relevant to both class certification and the merits. We extensively consulted with a music industry business and technology expert and a music industry marketing expert/consultant, going so far as to create a preliminary plan as to what would constitute an adequate marketing campaign for the Fund. Between my experience with complex class actions and legal issues and Mr. Zukoski's great knowledge of music and royalty law and of the music industry, we had a great ability to analyze the voluminous data available to us. This factor strongly favors approval of the settlement.

9. The percentage of the damages or injunctive relief pled for by the plaintiffs or calculated by their experts typically recovered by approved settlements in class actions is very low. One study of securities class actions showed the settlements on average recovered less than 15%

of the potential damages. In my experience, large consumer and breach of contract class actions (involving potentially tens of millions of dollars in damages), typically recover less than 50% of the potential damages. Accordingly, a settlement of that type of case which recovers 50% to 80% of potential damages is considered exceptional.

10. Cases seeking injunctive relief are harder to judge. In many cases, the plaintiffs seek the change of just one policy, practice or rule of the defendant and obtain that in settlement, which would constitute a 100% victory. On the other hand, in my experience, where plaintiffs seek far reaching changes to the entire manner in which a defendant conducts its business, including core practices, settlement usually involve very significant compromise and the injunctive relief falls far short of the fundamental change originally requested.

11. Against this backdrop, in my opinion, the Settlement is well beyond exceptional. It is extraordinary. Plaintiffs sought to force the Defendants and the Fund to make great change to every aspect of their core operations in identifying, locating and paying NFPs. During the course of the litigation, Defendants did some of what Plaintiffs sought, significantly increasing their research and marketing efforts, but not nearly enough. In the very near term, under the terms of the Settlement, the Fund will engage in very specific enhanced research efforts. Within the next year, pursuant to the Settlement, the Fund will be consulting with business and marketing consultants to examine and develop plans to improve every single aspect of their core operations and then implement them. This represents virtually 100% of the injunctive relief sought by Plaintiffs and potentially achievable through continued litigation, and such sweeping change to core business practices are virtually unprecedented in my experience.

12. Plaintiffs sought to force the Fund to make enhanced efforts to distribute the Unclaimed Royalties and then after exhausting those efforts to pay the remaining amount pro rata

to the Class members. As a result, the Fund will be paying 100% of those Unclaimed Royalties from 2011, to 2016, over \$45 million, to over 60,00 Class members by April 30, 2022. In addition, the injunctive relief will ensure that a much higher percentage of over \$150 million in royalties collected from 2017 to 2019 will be distributed to the NFPs to whom they are owed and will ultimately be paid out 100% rather than held indefinitely by the Fund as occurred in the past. This represents recovery of 100% of the monetary relief Plaintiffs sought and potentially could have recovered.

13. Of course, Defendants were vigorously defending this case and had multiple legal and factual defenses to both certification and the merits. They were defended by very able counsel from one of the country's largest and best-known firms, Jenner & Block. Between class certification practice, a certain attempt at an interlocutory appeal of certification summary judgment practice, trial, post-verdict motions and appeal, Plaintiffs faced a significant risk of recovering less than the Settlement recovers or nothing at all and taking 3 to 5 years to finalize whatever recovery they made.

14. In my opinion, for these reasons, the Settlement is undoubtedly fair, reasonable and adequate and should be approved by the Court.

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

Executed March 20, 2020.

/s/Roger L. Mandel  
Roger L. Mandel

# Exhibit 1

***Education:***

University of Texas School of Law,  
J.D. with honors, 1986

- Order of the Coif
- Board of Advocates
- Benton Moot Court Team, 1986
- ABA Moot Court Team, 1986
- Dean's Award of Distinction  
(highest grade in class) in  
Bankruptcy, Constitutional Law,  
Advanced Constitutional Law and  
Evidence

University of Texas at Austin,  
B.B.A. with high honors, 1984

- Phi Eta Sigma, Beta Gamma  
Sigma and Golden Key Honor  
Societies

***Admissions:***

State of Texas, 1987

Board Certified--Civil Appellate  
Law, Texas Board of Legal  
Specialization, 1998

United States District Courts

Northern District of Texas

Southern District of Texas

Eastern District of Texas

Western District of Texas

Eastern District of Wisconsin

United States Court of Appeals for  
the Second Circuit

United States Court of Appeals for  
the Fourth Circuit

United States Court of Appeals for  
the Fifth Circuit

United States Court of Appeals for  
the Sixth Circuit

United States Court of Appeals for  
the Seventh Circuit

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Roger L. Mandel is a prominent Dallas business litigation and class-action lawyer. Mr. Mandel holds the distinction of successfully trying one of only two class-action cases in Texas state court history known to have been tried to a jury.

Mr. Mandel has been named as a *Texas Super Lawyer* in the Class Action/Mass Torts category by *Texas Monthly Magazine* since the inception of the ratings in 2003, as a Top 100 Trial Lawyer and Top 25 Class Action Trial Lawyer by The National Trial Lawyers since the inception of the honor in 2013, and as one of the Best Lawyers in Dallas in the Class Action category by *D Magazine* since the inception of the category in 2014. He also has earned Martindale-Hubbe's coveted top AV® Preeminent rating.

Mr. Mandel currently sits on the Board of Directors of the Dallas Trial Lawyers Association and the Public Justice Foundation and is a past board member of the Texas Trial Lawyers Association. He is a past president of the Dallas Trial Lawyers Association and a fellow of both the Texas Bar Foundation (Top 1/3 of 1% of Texas lawyers) and the Dallas Bar Foundation. Additionally, Mr. Mandel was the co-chair of the AAJ Class Action Litigation Group.

A member of the Texas State Bar, Mr. Mandel is also admitted to practice in the Eastern, Northern, Southern and Western Federal Districts of Texas, the Eastern District of Wisconsin, the

United States Court of Appeals for the Eighth Circuit

United States Court of Appeals for the Ninth Circuit

United States Court of Appeals for the Eleventh Circuit

United States Supreme Court

***Memberships and Affiliations:***

Dallas Trial Lawyers Association  
- Past president 2011-2012  
- President 2010-2011  
-- President elect 2009-2010  
- Vice president 2008-2009  
- Board of directors, 1997-2020

Texas Trial Lawyers Association  
- Board of directors, 2002-2016

American Association of Justice  
- Class Action Litigation Group  
- Co-chair 2010-2011  
- Vice-chair 2009-2010

Public Justice Foundation  
- Board of Directors, 2001-2020  
- Executive Committee, 2016-2017

National Association of Consumer Attorneys

State Bar of Texas

Fellow of the Texas Bar Foundation (Top 1/3 of 1% of Texas lawyers)

Dallas Bar Association

Fellow of the Dallas Bar Foundation

American Bar Association  
- Tort and Insurance Practice Section  
- Commercial Torts Committee, Vice-chairman, 1994-2002

Section of Litigation  
Class Action & Derivative Suits Committee

United States Courts of Appeals for the Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Eleventh Circuits, and the United States Supreme Court.

Philanthropic, caring and immersed in Dallas community social action, Mr. Mandel values the importance of improving the world. Mr. Mandel previously served on the board of directors of the Dallas-based Vogel Alcove, an organization whose mission is to provide free quality childcare development and social services to young homeless children. Mr. Mandel is also a strong supporter of the Jewish Federation of Dallas and Jewish Family Services, United Way agencies.

**Verdicts and Settlements - Class-Action Accomplishments**

Settlement of a nationwide class-action suit against American Airlines under ERISA related to pension benefits of its former AirCal pilots.

Settlement of a nationwide class-action suit against Wells Fargo Bank for violations of RESPA.

Settlement of statewide class-action suit against State Farm Insurance Cos., Allstate Insurance Cos., Farmers Insurance Cos. and GEICO Insurance Cos. for violations of the Texas Insurance Code relating to claims procedures for automobile policyholders.

Settlement (along with multiple cocounsel) of major nationwide class-action suit litigation involving General Motors pickup trucks.

Settlement following summary judgment of a statewide class action for breach of contract and deceptive trade practices against Southwestern Bell Mobile Systems.

Settlement of a statewide class-action suit on behalf of customers of Southwestern Bell Telephone Company for violations of the Texas Finance Code.

Settlement of a statewide class-action suit on behalf of persons who entered into lease agreements with UDR Western

Residential, Inc., and other of its affiliates, arising out of claims under the Texas Water Code, regulations of the Texas Natural Resources Conservation Commission, the Texas Utility Code, regulations of the Public Utility Commission and the Texas Debt Collection Practices Act.

Settlement of a nationwide class-action suit on behalf of customers of Ticketmaster Group, Inc., and certain of its affiliates, who purchased tickets with a credit card and were charged illegal surcharges.

Settlement of a nationwide class-action suit against First USA Bank for violations of the Truth in Lending Act.

Obtained judgment (following summary judgment and jury trial) against the Dallas County Community College District on behalf of a class of current and former students as a result of the District's charging of a technology fee that the trial court found was not authorized by state law. This is one of only two class-action cases known by Mr. Mandel to have been tried in the Texas state courts.

Settlement of a nationwide class-action suit against Sears Roebuck & Co. representing a landmark and virtually unprecedented settlement of a consumer class-action case. Under the settlement, Sears installed, free of charge, for a class of almost four million customers, anti-tip brackets to prevent tipping of its freestanding electric and gas ranges that frequently caused severe burns, crushing and death. Those customers who had already paid to have anti-tip brackets installed received reimbursement. Furthermore, Sears agreed to install anti-tip brackets on all sales of new ranges for at least three years, now believed by Mr. Mandel to be a permanent practice of Sears. By, in effect, obtaining a recall, this settlement actually obtained better relief than likely could have been obtained through trial and accomplished what the Consumer Product Safety Commission refused to do for more than twenty years.

Settlement against Nationwide Insurance Company on behalf of a national class related to overcharges on life insurance

premiums. Notably, the settlement was achieved after obtaining a contested certification of a nationwide class under the laws of all 50 states.

A settlement in a class-action suit over the purchase of TXU, one of the largest purchases of a publicly traded company in United States history.

A settlement in a derivative case against officers and directors of Affiliated Computer Systems related to options backdating.

A settlement in a securities class-action suit against officers and directors of the investment manager of the Cushing MLP Total Return Fund.

A settlement of a nationwide class action on behalf of a class of 401(k) plans against their investment provider, Nationwide Insurance, for paying the mutual funds it offered as investments, thought to be one of the three largest ERISA settlements in history.

A settlement of a nationwide class action against the insurers, brokers and promoters responsible for offering illegal group and blanket insurance policies.

### **Complex Business Litigation Accomplishments**

Settlement with a medical malpractice insurer in an insurance coverage/bad faith case following a medical malpractice jury verdict and a coverage verdict.

Settlement of business tort litigation on behalf of the former owner of a major league sports franchise against a national bank relating to the sale of the franchise.

Settlement of tortious interference with business contract litigation on behalf of a large independent electrical supplier/contractor following a jury verdict.

Jury verdict and judgment against Henry S. Miller Commercial Company based upon fraud and negligent misrepresentation.

## **Professional Background**

Jeeves Mandel Law Group, P.C., Dallas Texas  
Partner, August 1, 2018 to present.

Lackey Hershman L.L.P., Dallas, Texas  
Partner, July 1, 2011 - January 3, 2018.

Beckham & Mandel, Dallas, Texas  
Founding Shareholder, January 1, 2010-June 30, 2011

Stanley, Mandel & Iola, L.L.P., Dallas, Texas  
Founding Partner, 1997-2009

Stanley, Mandel & Kleinman, P.C., Dallas, Texas  
Founding Shareholder, August 1992-1997

Hale, Spencer, Stanley, Pronske & Trust, P.C., Dallas, Texas  
Associate, 1987-1992

## **Honors**

Best Lawyers in America 2016 and 2017-Mass Tort  
Litigation/Class Actions-Plaintiffs

Best Lawyers in Dallas, Class Action, 2014-2020 (*DMagazine*)

Top 100 Trial Lawyers, 2013-2020 (The National Trial Lawyers)

Top 25 Class Action Trial Lawyers, 2013-2020 (The National  
Trial Lawyers)

Texas Super Lawyer, Class Action/Mass Torts, 2003-2020  
(*Texas Monthly Magazine*)

AV Preeminent Rated, Martindale-Hubbell

## **Publications and Speeches**

Speaker: "The Nexium Conundrum: Class Action Standing  
Under Article III," National Consumer Law Center, 23rd Annual  
National Consumer Rights Conference, Class Action  
Symposium (November 2014)

Speaker and Author: "Post-Concepcion Enforcement of  
Arbitration Clauses Containing Class Bans," *American  
Association of Justice Tele-Seminar* (March 6, 2012)

Speaker and Author: "Certification of Multi-State Classes and Related Choice of Law Issues," *American Association of Justice* (Vancouver, July 2010)

Speaker: "Shady Grove and Naked Class Action Bans: The Emerging Conflicts Between Federal and State Laws on Class Certification, Multistate Classes and Choice of Law Issues," NCLC Class Action Symposium (Philadelphia, 2009)

Co-moderator: "New Developments in Class Actions," American Association of Justice (San Francisco, July 2009)

Coauthor: "Navigating the Rough Terrain: Class Actions in Texas after HB4 and CAFA," *The Advocate* (The State Bar Litigation Section Report) (Fall 2008)

Author: "Arbitration: Should It Be Sought Rather Than Fought," Consumer Law & Policy Blog (December 3, 2006)

Speaker: "Arbitration of Consumer Class-Action Cases," NCLC Consumer Class Action Symposium (Miami, 2006)

Speaker: "Credit Card Developments," 10th Annual Consumer Financial Services Litigation Institute (PLI, Dallas, TX, 2005)

Author: "The Class Action Unfairness Act of 2005," Dallas Bar Headnotes, April 1, 2005

Speaker: "Where Will the Big Cases Come From After H.B. 4," Conference on State and Federal Appeals, University of Texas Continuing Legal Education Department, June 2004

Speaker: "Class Action Update," Advanced Personal Injury Seminar, State Bar of Texas, Austin, 2003

Coauthor and Speaker: "Summaries of Significant Class Action Opinions in Texas State and Federal Courts: 2001-2002," Texas Trial Lawyers Association, July 2002

Author: High Court: "Class Action Standards Too Strict," *Texas Lawyer*, June 2002

Coauthor and Speaker: "Resolving Class Actions in the Plaintiffs Favor: Settlements and Contested Final Judgments," Federal Bar Association, April 2001

Coauthor: "Dealing With Attorney's Fees and Objections in Class Action Settlements," National Institute on Class Actions, American Bar Association, 1997

Author: "Abstracts of Recent State and Lower Federal Court Decisions on Consumer Class Actions," Consumer and Personal Rights Litigation Newsletter, American Bar Association, May 1995.