

1
2
3
4
5
6
7
8
9
10 **UNITED STATES DISTRICT COURT FOR THE**
11 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

12 CAT BROOKS and RASHEED
13 SHABAZZ, individually and on behalf of
all others similarly situated,

14 Plaintiffs,

15 v.

16 THOMSON REUTERS CORPORATION,

17 Defendant.
18
19
20
21
22
23
24

Case No. 3:21-cv-1418-EMC-KAW

**DECLARATION OF LAYN R.
PHILLIPS IN SUPPORT OF
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

1 I, Layn R. Phillips, declare as follows under 28 U.S.C. § 1746:

2 1. I am filing this declaration in my capacity as the mediator of the above-
3 captioned action. As set forth herein, I submit this declaration in support of Plaintiffs'
4 motion for preliminary approval of the Settlement. I have personal knowledge of the
5 facts set forth below and if called as witnesses, could and would testify competently to
6 them.

7 **Relevant Professional Background and Experience**

8 2. I am a former United States Attorney, former United States District
9 Judge, and a former litigation partner with the firm Irell & Manella LLP. I currently
10 serve as a mediator and arbitrator with my own alternative dispute resolution
11 company, Phillips ADR Enterprises ("Phillips ADR") based in Corona Del Mar,
12 California. I am a member of the bars of Oklahoma, Texas, California and the District
13 of Columbia, as well as the U.S. Courts of Appeals for the Ninth and Tenth Circuits
14 and the Federal Circuit.

15 3. I served as the United States Attorney for the Northern District of
16 Oklahoma from 1984 to 1987. I personally tried many cases and oversaw the trials of
17 numerous other cases as a United States Attorney and, prior to my time as a United
18 States Attorney, as an Assistant United States Attorney in California and Florida.

19 4. While serving as the United States Attorney for the Northern District of
20 Oklahoma, I was nominated by President Reagan to serve as a District Judge for the
21 Western District of Oklahoma, where I served from 1987 to 1991. While on the bench, I
22 presided over a total of more than 140 federal trials and sat by designation on the
23

United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico, and Colorado.

5. I left the federal bench in 1991 and joined Irell & Manella, where for 23 years I specialized in alternative dispute resolution, complex civil litigation, and internal investigations. In 2014, I left Irell & Manella to found Phillips ADR. For more than 25 years I have devoted a considerable amount of my professional life to serving as a mediator and arbitrator in connection with large, complex cases such as this one.

6. I have successfully mediated numerous complex commercial cases involving Fortune 500 and other publicly traded companies. I have mediated hundreds of disputes referred by private parties and courts and have been appointed a Special Master by various federal courts in complex civil proceedings. I serve as a Fellow in the American College of Trial Lawyers, and I have been nationally recognized as a mediator by the Center for Public Resources Institute for Dispute Resolution (CPR), serving on CPR's National Panel of Distinguished Neutrals.

Negotiations Resulting in the Instant Settlement

7. The mediation process in this case, like the litigation itself, was hard fought on both sides. In addition to the mediation sessions, as described below, I oversaw the mediation of this matter through numerous telephone calls, emails, and written submissions by both sides. I have no doubt that the Settlement is the result of hard-fought, arm's-length negotiations among the Parties, and I believe preliminary approval of the Settlement to be in the best interests of the Class, as discussed herein.

8. On March 8, 2024, the Parties participated in a mediation session in-person in New York City, New York. Lead counsel for Plaintiffs and the Class, Andre

1 Mura and Geoffrey Graber, lead counsel for Defendant, Susan Fahringer, and Thomson
2 Reuters' corporate representative attended the mediation in person. Prior to that
3 mediation session, the Parties provided me with extensive briefing on the then-current
4 procedural history and factual status of the litigation, including briefing on Plaintiffs'
5 discovery efforts and providing me with both Parties' voluminous expert reports.
6 Among other things, I reviewed the Parties' mediation statements and exhibits,
7 including confidential discovery materials, the Parties' motion to dismiss briefing (and
8 the Court's Order on the same), the Parties' class certification briefing (and the Court's
9 Order on the same), and the Parties' briefing to the Ninth Circuit under Federal Rule
10 23(f).

11 9. Members of my mediation team, including Niki Mendoza and Ann Cook,
12 also assisted me in analyzing the legal and factual issues in this matter and facilitating
13 the Parties' negotiations, including holding several face-to-face sessions.

14 10. The initial mediation session was not successful as the Parties maintained
15 highly divergent views on the settlement value of the litigation. Nevertheless, I found
16 the discussions engaged in by the Parties during the mediation session to be extremely
17 valuable in helping me—and the Parties—to understand the relative merits of each
18 party's position in the action, and to identify the issues that were likely to serve as the
19 primary drivers and obstacles to achieving a settlement. Plaintiffs' counsel and
20 Defendant's counsel each presented significant arguments regarding their clients'
21 positions, and it was apparent to me that both sides possessed strong, non-frivolous
22 arguments, that their views on the merits and value of the case diverged drastically,
23 and that neither side was assured of victory. While I am bound by confidentiality with
24

1 regard to the content of the Parties' discussions and negotiations during this mediation
2 session, I can say that the arguments and positions asserted by all involved were
3 complex and the product of much hard work.

4 11. Following the mediation, I believed that this would be a difficult and
5 adversarial process through which all involved would hold strong to their convictions
6 that they had the better legal and substantive arguments, and that a resolution
7 without further litigation was by no means certain.

8 12. On March 22, 2024, the Parties returned for a second day of mediation in
9 person in Corona Del Mar, California. These negotiations, like those in New York
10 previously, were highly complex and fiercely contested. The second session was also
11 ultimately unsuccessful.

12 13. Over the following weeks, I, along with Niki Mendoza and Ann Cook,
13 continued to supervise the Parties' negotiations across numerous video and telephone
14 conferences. On May 13, 2024, following many more conversations with the parties and
15 during which I supervised the parties' exchange of additional offers and counter-
16 proposals, I made a "double-blind" Mediator's Proposal to settle the Action, whereby
17 each side's response would remain confidential unless both sides agreed to the
18 Mediator's Proposal. On May 15, 2024, I informed the Parties that both sides accepted
19 the Mediator's Proposal, such that there was agreement to settle the action for a \$27.5
20 million cash payment for the benefit of the class, along with the negotiated prospective
21 relief.

22 14. Without discussing specifics of the negotiations, the Mediator's Proposal
23 reflected my assessment that \$27.5 million was the most that the Settling Defendant
24

1 would pay and the least that Plaintiffs would accept to settle the action at that time. It
2 also reflected my assessment of an amount that would be fair, reasonable, and in the
3 best interests of Plaintiffs and the Class.

4 15. Moreover, by the time of the Mediator's Proposal, the Parties had
5 significantly developed the record, the Court having granted Plaintiffs' motion for class
6 certification and resolved all *Daubert* motions related thereto, the Parties having
7 completed fact discovery, and both Parties having disclosed their primary merits
8 experts for trial. Thus, at the time the Settlement was reached, the Parties had
9 thoroughly developed the record and were keenly aware of their respective strengths,
10 weaknesses, and risks that would be presented by additional litigation.

11 16. Following the Parties' acceptance of the Mediator's Proposal, they
12 executed a term sheet memorializing the agreement in principle. Subsequently, the
13 Parties negotiated the terms of the long form Settlement Agreement and related
14 documents.

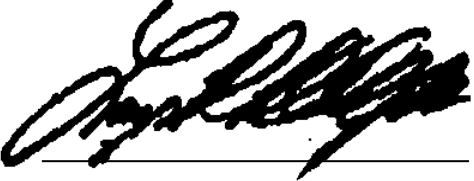
15 **Endorsement of the Settlement**

16 17. After presiding over the mediation process in this case, it is my
17 professional opinion that the Settlement is the product of vigorous and independent
18 advocacy and arm's-length negotiation conducted in good faith by the Parties. The
19 Parties were represented by highly skilled and experienced counsel, who were
20 extremely knowledgeable and had clearly spent a considerable amount of time
21 developing the law and facts in this complex litigation. I believe the Settlement reflects
22 Lead Counsel's well-informed assessment of the best interests of the Plaintiffs and the
23 Class.

1 18. The \$27.5 million Settlement provides the Class with a significant
2 recovery in the face of a challenging trial and inevitable appeal. The Settlement thus
3 provides the Class with an excellent recovery that avoids the significant risk, expense,
4 and delay of further litigation to achieve and recover upon a judgment and avoids the
5 significant risk of recovering nothing at all. Moreover, the Settlement also provides the
6 Class with prospective relief that was the product of intensive arm's-length
7 negotiations and similarly avoids the significant risk of achieving weakened injunctive
8 relief—or no injunctive relief at all—at trial.

9 19. Based on my experience as a litigator, former federal judge, and a
10 mediator, and based on my knowledge of the issues in dispute, my review of the
11 materials and advocacy presented in connection with the two in-person mediation
12 sessions and the many telephonic and virtual sessions, the rigor of the negotiations,
13 and the benefits that will be conferred by the Settlement, I believe that the terms of
14 the Settlement are fair, adequate, reasonable, and in the best interests of the Class.
15 Therefore, I respectfully endorse preliminary approval of the Settlement by the Court.

16 I declare under penalty of perjury that the foregoing is true and correct to the
17 best of my knowledge. Executed on August 26, 2024.

18
19
20
21
22
23
24


Hon. Layn R. Phillips (Fmr.)