UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 1:21-md-02989-CMA

IN RE:

JANUARY 2021 SHORT SQUEEZE
TRADING LITIGATION

May 17, 2021

11:55 a.m. to 4:10 p.m.

Pages 1 to 113

HEARING
BEFORE THE HONORABLE
UNITED STATES DISTRICT JUDGE CECILIA ALTONAGA

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(The following proceedings were had:)

THE COURT: Good morning. We have with us Mr. Assaad --

I can't hear you, Mr. Assaad.

You are muted, I believe.

You are not muted, but we can't hear you.

MR. ASSAAD: Good morning, Your Honor.

THE COURT: Good morning. We can now hear you. I apologize for these technical difficulties. We haven't had this issue with Zoom until now.

Can you all hear me okay?

ZOOM PANEL IN UNISON: Yes, your Honor.

THE COURT: Very good. Thank you. So, we'll start -- I think we are due to take a break in about half an hour. My apologies.

Why don't we begin with Mr. Assaad's application?

Mr. Assaad, I will hear from you briefly, and then I have some questions for you.

MR. ASSAAD: Thank you, your Honor. May it please the Court.

My name is Gabriel Assaad, and I thank you for this opportunity to be in front of you today, as well as my fellow colleagues.

Obviously, just looking at the attorneys on both sides of the aisle, I am very confident there will be some fantastic

lawyering throughout this MDL.

I plan on spending three to five minutes on a little bit of introducing myself and to answer any questions the Court my have.

Feel free to interrupt me if there are any questions during my presentation. I will begin with who I am. I am a first generation Coptic Egyptian. My parents came to this country in the late '60s, and I am the first of my family to attend law school and be an attorney.

I grew up in Rochester, New York, that we -- my parents immigrated to and, at my first opportunity, I left cold weather and came down to the University of Florida and got my mechanical engineering degree from the University of Florida.

I practiced in DC for about ten years, and then I met my wife, from Texas, and moved down to Texas, and have been practicing in Texas since 2011. My wife is currently an assistant district attorney with Harris County, and usually her presentations are much better because her cases are much more exciting than mine.

I would like to talk a little bit about my MDL personal experience. I have been involved with MDLs since 2013, and that time is on my application. But, I want to talk a little bit about the good and the bad that I have learned from the MDL process.

The good is fantastic lawyering, great issues. I got

to meet many great attorneys, some have become some of my best friends. But, being involved with some MDLs, I have also seen a little bit of negative MDLs; particularly, I see that a lot of MDLs, they start off strong and then, over time, people are not getting work, they are not getting gainful work, and there is a fall-out, and -- for the work they are getting, because they are not getting meaningful work. Maybe people are not engaged, there is a lack of communication and, after a period of time, they are so far behind the ball they can't get up to speed on the case anymore. And, I believe one of the reasons that occurs, your Honor, is there is no accountability.

We hear many things about the diversity, Let's spread the experience around, membership, inclusiveness, and these are great words we hear. We hear them on every single application from people that are lead- -- say they want to be inclusive on their mentorship. But, after the time -- after the time of leadership, no one is held accountable.

So yes, I propose a structure, and I am the only one that has proposed a structure and thought this out, how to make this MDL -- which is a very large MDL -- inclusive and to keep people engaged.

And, I also have a tremendous mentorship.

For example, I strongly believe that the younger attorneys, the lesser experienced attorneys should be involved with the experts, in meeting the experts, not just getting, you

know, paragraph summaries of what happened.

You know, you learn a lot from meeting experts and asking questions and learning about the case. Same thing with motion practice and depositions.

I have seen some courts that allow the younger attorneys to argue the motion and allow the more senior to come in later on to make -- do any cleanup or to add a little bit more argument.

And the same thing with depositions, not allowing more than one or two attorneys, you know, to take the depositions, and a senior attorney with more experience coming in.

And that is why this proposal -- what I think people are going to criticize later on, because this is -- basically, this is a leadership structure of about 55 to 57 members.

But, if we look at the defendants, there are over 30 defendants. And, there are going to be dozens, if not hundreds of attorneys on that side of the litigating this case.

And, this is a big case, with a lot of issues, a lot of defendants, and a lot of money. And, therefore, there will be a lot of money put before the case on the defendants' side.

But, at the same time, we have a ton of attorneys on the plaintiffs' side that are willing to work, that are experienced on all levels, and we have numerous firms that can staff and that have the attorney power to match the defendants' side.

So, as you have heard before, your Honor, what we are preparing -- I think a lot of the opportunities will be like three tranches. And, by having three tranches, we can split into basically three teams of people and, as I proposed in my application, 17 persons per tranche, and they are kind of intertwined. I will explain a little bit later.

But, one of my goals -- and I have been involved in the little -- a little bit involved in the litigation -- air quality litigation up in the Middle District of Florida.

And, Judge Schlesinger made a comment that because of the large leadership structure, that the Court was able to go from appointment to the first level of the trial, which was last month, in less than two years. And, that is -- having this many attorneys, we don't have to wait for the normal deadlines for those back to motions practices, discovery practices.

Many times, Judge Schlesinger would get a motion to compel and have a response in three days, one response in three days, and argument before the magistrate judge within five days.

And, having this -- and this is -- could be a heavy -- a lot of discovery issues. There are 30 defendants. There will be many motions to compel. And, I think, by having the larger structure, we can be efficient, speedy, and get this case to trial very quickly, and get this case resolved.

That's why I propose the leadership structure of seven co-leads. And, the way that is broken down is two co-leads per tranche. And, if the Court -- I have a PowerPoint I would kind of like to read, if I could share with the Court, if that would be okay.

THE COURT: Yes, thank you.

MR. ASSAAD: Can you see my screen, your Honor?

THE COURT: I can, yes.

MR. ASSAAD: So, the way I propose the structure from the leadership structure is having seven co-leads, two per tranche. And, one -- and one general, common benefit with having co-leads is what I am proposing.

And, the purpose of the contact person, the person being held accountable to the Court, is to oversee the application process, to make sure that diversity -- for people to go to, to say, "I'm not getting enough work," or, "I am being left behind," and, to be that person, the representative that everyone can go to, that is on the executive committee or the steering committee, to -- almost like managing the attorneys to make sure that everyone is getting work, and meaningful work.

I also propose to have 11 executive committee members. And, what I have highlighted in yellow are general leadership members. They are not assigned to any tranche.

So, I believe ESI is going to be one ESI order, so

someone should receive that, and liaison, one liaison.

And then also there is a state arbitration liaison because my understanding is there are state cases as well as there will be arbitrations, and there should be some type of coordination.

So, when you break it off per tranche, we have 17 members per tranche; two lead counsel, one of them will be chair of discovery, three executive committee members, and each one individual -- one will be chair.

You have an expert committee; one will be chair of discovery, one will be chair of law and briefing.

Judge Schlesinger thought the law and briefing committee was actually very effective, especially when we had, from the get-go, a lot of 12(b) motions, probably 30 or 40 12(b) motions for each defendant. And, I think law and briefing will be a very busy group. And, it is good to have dedicated people that like to do research and writing to be involved in law and briefing.

Second, your Honor, I also have a settlement committee, which is kind of a new trend in the MDLs nowadays. Not that they're talking numbers in the beginning, but they start talking about what's needed to get this case settled, what type of structure, what will it look like as the case goes on.

And also each tranche will have a common benefit member that oversees that tranche who is appointed to make sure that

those people are getting work and the wealth of work is spread.

What I see a lot of -- and what I'm trying to avoid -- in the case where you have a small sprawl or people appointed and, all of a sudden, the leadership are having five, 10, 15 people from their own firm working on a case, and people that have been appointed by this Court, for the Court, qualified to work on the case, are not getting work because no one is getting assigned work because it is all being held in-house.

And again, my proposed structure is going to take into account age, ethic, gender, and race.

And, I believe, unfortunately, this might take a little bit more time because I believe the Court should oversee it to make sure that leadership has appointed people, or has people controlling that -- that fall into what -- what are the goals of an MDL nowadays, of kind of having a diverse group, an inclusive group. And, therefore, I believe another application process should occur, to be sure, for executive members to get the Court's blessing. This is an actual approval by the Court that we have fulfilled our duty to make that diverse and inclusive.

And finally, your Honor, looking at the people that have applied for leadership, they all kind of fall in, follow the structure. If you look, Mr. Ellis and Ms. Salas have both applied for leadership for the contract and fourth tranche, the common law tranche.

You have experience with Mr. Ellis, who's fantastic, and Ms. Salas, who, as she mentioned, clerked for the Southern District of Florida. And, you have diversity there.

I think it would be a good fit there.

The same thing with Mr. Klafter and Mr. Willey. I think they are co-leads for the broker dealer for the Robinhood tranche. Again, it blends diversity with experience, as well as, you know, someone that is well-versed and has done many class actions. And, as someone that is younger, they could learn a lot from working with Mr. Klafter.

Finally, Mr. Saveri and Mr. Schirripa, they are both very experienced. But, the only diversity we are getting there is geographical; one is east coast and one is west coast.

So, to have geographical diversity is important in this case because it could affect the entire country.

And finally, Ms. Furst is the only person who applied for the liaison. But, besides that, your Honor, she has -- I spoke to her. She was at the top of her class in University of Florida Law School, business undergrad, clerked in the Southern District of Florida.

She is -- not just because she is the only person, but she is also well qualified to make the decision, and she also brings in diversity and difference of -- and difference in age and experience.

Finally, the last four or five people that applied --

they really didn't apply for a lead position. Mr. Pessah -- it changed here, I don't want to speak for him -- but he was more for an executive committee position.

And then the last four, Mr. Safirstein, Ms. Metcalf, Mr. Graifman and Ms. Emert, they only applied for leadership for TD Ameritrade. And, as a result, they kind of fall in maybe as executive member in the contract and fourth tranche because they only pursued common law claims in their application, as well as their complaint.

So, that's my proposal, your Honor.

That is the reason why I applied for leadership, was because during this whole process, everyone was discussing, you know, lead, lead, lead, and then we will figure out what we will do, how we will staff this case.

But, I think it is important, from the beginning, to discuss how we are going to staff this case and move forward in large litigation which will require a lot of funding and lot of people to move this case forward, especially with the dozens, or hundreds of attorneys on the defense side.

THE COURT: Mr. Assaad, thank you for your very thoughtful presentation.

I think you are one of those who has provided a structure -- well-thought-out structure, with reasons for your proposal. I had several questions for you. Your presentation has left me with about two minutes to ask the questions. So --

MR. ASSAAD: Sorry, your Honor.

THE COURT: So -- that's all right.

So, let me just jump in and ask you about your time commitment.

How can you assure the Court that you have enough time for this case, and those in your firm do, as well?

MR. ASSAAD: Your Honor, as an officer of the Court, that's my number one assurance, is that I have the time to work on this case. I am one of the first people that when this occurred back in January, I got the complaint on file within a day.

I -- I have the staff. I have -- we have a large firm, about 50 attorneys. But, if you look at my experience and my MDL experience, there will be no complaints that I never stepped up on or got the work done that was required. And, that goes from the -- your Honor, from the Verifund litigation to the Smith and Nephew case, where any time anyone asked anything of me, I always made time for cases. I live and breathe them. And, to be honest, I will make time for this case, and I will devote a hundred percent of my time to this case, as necessary.

THE COURT: If you were in a leadership position, Mr. Assaad, how many master complaints do you think should be filed?

MR. ASSAAD: That is a very good question, your Honor.

At this time, I think that three, one for each tranche. However when, pen to paper, we start to compare the complaints, it might change. But, right now, my position is three. That way, each tranche has a working, live complaint that they can -- that they can go to the Court and file any potential motions to compel, with any issues, to see what the issues are for each tranche.

THE COURT: Last question: What is your biggest concern about the MDL, including challenges that we will face and have to overcome?

MR. ASSAAD: I believe one of the biggest challenges in this MDL is the amount of defendants in this case.

And, there is going to be a lot of discovery and motions to compel. Having that many different defendants coming from many large firms, it will need a lot of finance backing up.

And, these are big cases. So, I think organization and a streamlined discoveries processes, knowing -- one of my ideas, to settle our discovery requests, we have 30 days, I think, and usually after 30 days, we have a bunch of objections -- to maybe streamline that so that the defendants pose their objections after 15 days; vagueness, overbroadness.

So, that would streamline it and start the discovery responses because sometimes, they are overly broad and/or vague, and we can work together so the discovery moves faster.

I think that is going to be the bottleneck of this case, is having discovery with 30 different defendants.

THE COURT: Mr. Assaad, thank you very much.

MR. ASSAAD: Thank you, your Honor, very much. It was a pleasure speaking with you today.

THE COURT: Nice to see you, Mr. Ellis.

MR. ELLIS: Good morning, your Honor.

THE COURT: Good morning, Mr. Ellis.

MR. ELLIS: Thank you for allowing me time to present my position as to why I should be one of the leads for this MDL.

I would like to thank the other lawyers that have already supported our leadership group, with myself, Mr. Schirripa, and Ms. Salas. I do believe that we demonstrate the type of diversity, experience at all levels to lead.

The most important issue is representing the clients that have all come before the Court. A little bit about myself; I have been in practice for 25 years. I am not new to a small litigation boutique. I practiced 25 years, 24 years in all these things. And, through that, I was chair for more than a decade of its complex litigation practice group which specialized in class action work.

I have a -- have had a diverse practice throughout my career, both representing plaintiffs and defendants in litigation.

I am proud to say that I have had a case in one year, in 2006, where I was named to be Capital Lawyer of the Year. In that year, I defended a group on trial, for General Electric Company, successfully in Santa Barbara Superior Court.

And, in that same year, I actually won a $2.7 billion judgement for a client from Hong Kong in a case.

So, I have a diverse practice that has represented both plaintiffs and defendants. And, I actually have done -- I was trying to count them up, your Honor -- I don't know that I really can -- but, I have probably done at least 40 or so class actions. And I think you said 20 or so, that we had done as a team. But probably, myself, had been 40, including, actually having an MDL before Judge Cohn for the Southern District of Florida, at one point in time.

I think what I offer, individually, and our group offers, collectively, is diversity. But, I want to be clear. Our diversity, and my diversity, specifically, is not based on ethnicity, or gender, or anything else. It is based on experience.

And, if the Court believes that there is a nondiverse, ethnical person that is better to lead these clients, I urge the Court to appoint that person over me.

What I know is that you -- if you take all the issues the Court is required to consider for interim counsel or permanent counsel, during Rule 23(g), I believe that my history

and my experience shows that I could do that, and represent the mosaic of the client base that we are going to be charged with representing to the fullest of our abilities.

I was born in San Diego, California, and I was raised by a single parent. I watched my mom go to night school. When I was in high school, my mom became a lawyer, a district attorney, and now she is a judge.

But, I have gotten to see the effort and the work that that takes, because she was going to law school when I was in high school. She was becoming a attorney when I was in college. She was becoming a lawyer when I was going to law school, myself, and starting to do great things. And, through that, I know that dedication and that is needed to represent, and I always brought that to all of my cases.

There is obviously -- I think the headline for me is that I have a lot of experience, and I represented clients and in some of the biggest class action lawsuits and commercial cases this country has ever seen.

One of the things that I saw the Court said is that there are other considerations that are needed, and this is one of the things your Honor wrote, is that, from what I recall as the panoramic breast case, when you were appointing counsel, and you said it is -- one of the things that is important is the ability to gain the respect and work collaboratively with all of the other counsel on the plaintiffs' side, and also on

opposition, and also with the Court.

And, I think if you consider all of the things I have done in my 25 years of practice, that it -- I, along with me, Mr. Schirripa and Ms. Salas, could do that effectively.

I have represented clients against some of the biggest law firms in this country. I have gone to trial against Simpson Thacher. I have represented in the case -- I went to 26 million dollars, Simpson Thacher was on the other side.

I have represented plaintiffs' firms that are well-known, sophisticated in the commercial complex litigation; it was Viversa and -- Eraclides Gelman, and I represented all those people, and I -- against -- in those cases, and I do believe that if you ask them, they will tell you I told the truth, I fought hard for my clients, but I did it fair.

And, that's why I believe that I will bring to most of this. We won't get bogged down in the process. We won't get into the bickering and the defensibility.

If I am able to lead the team effectively, and that will be my goal, is to nominate the process, perfect the substance, and to bring forward people who, for the first time, just like they chose Robinhood, are venturing into our court system.

And, at the end of the day, those clients that we all represent need to believe that this process was fair. And, they can't see that if we use lawyers to delay their right to

present their case to this Court.

And, we all know that that can be a tactic in litigation, is to prevent the barriers for resolution. And, I think that will be our ultimate goal, is to prevent that from happening.

I am happy to answer any questions the Court has.

THE COURT: Thank you very much, Mr. Ellis.

Yes, I note that you, Ms. Salas, and Mr. Schirripa have proposals that the three of you be at the lead. Let me ask you about your time commitment for this case, and that of your -- the lawyers at your firm.

What can you tell me about the time you all have available to be on the leadership of this MDL?

MR. ELLIS: Well, your Honor, I must make full disclosure. I have an eight-month-old son. It is my first child. So --

THE COURT: Congratulations.

MR. ELLIS: -- other than that, other than the demands of my young son, we are ready to go.

And, I don't think we will have any problems. I know we won't have any problems meeting this -- and if -- some of my team, in that event, would take over.

Ms. Cathy Murray worked on this case with me. Cathy and I worked for more than 20 years together. She actually is from Miami, born and raised -- well, not born and raised. She

was not born here. She was born in Peru, but raised in Miami.

So, we are familiar there -- we actually are familiar with the MDLs down there. We worked on cases together. And, we just have always been able to get it done, somehow, some way, and to not have the time -- we do have the time. We have a 50-person law firm dedicating several lawyers to this particular matter.

And, I am just -- I'm just really excited about all of the talent we have on this case and all of the law firms.

I was actually getting ready for this, and I took a look at some of the work that Mr. Assaad has done. He is down the street from us, actually, in West Hollywood. I actually lived in West Hollywood for a long time, and I saw a youTube presentation recently he put together with a Let Us Trade. It was kind of a hashtag.

And I saw the mosaic of the clients that he represents, and I look forward to working with lawyers like that who have done so much already. Or, I read his complaint and he added to his comment, discussions about Wall Street taking advantage of Main Street, and, coincidentally, that is what I was thinking, is that we have to protect Main Street.

Robinhood decided to reach out to Main Street, and Joe Public, and David Investor. If you look at their website, they remind you of some of the cases we dealt with, with the consumer class action defense placed in some of the different

things. It is animated. It is -- it is -- it is colored. It is not -- does not have any of the facts. So, who are they attracting with that?

Who are they attracting with the animations?

The more subtle, young investor.

The pictures of people that are up there are 22. You don't have, obviously, other 60-year olds. They are 22, 27, 33.

So, those are the people who have to believe this process works. My mom is a judge, and I'm sure you will probably share this viewpoint, is that some people -- when they do deal with the government for the first time in our judicial system, they have to meet that process, believe it is fair. And, they can believe the process is fair when somebody who looks like them is representing them effectively.

And that's what we hope to do.

THE COURT: Mr. Ellis, how much of your time can you give this case if you were part of the leadership structure of plaintiffs' counsel?

MR. ELLIS: Well, let me answer it this way, your Honor.

One of the questions was if we have a weakness for something. I can be a little bit demanding about my own self being involved. So, I would want to do -- or I would want to be involved. I must be involved, I think, for things to do

well.

And, I hope that doesn't sound too conceited. So, I do have the time. I do intend to work. I do intend to take a personal involvement in the case.

I do want to know what's going on.

I do believe that I can do that, in coordination of efforts, both with the executive committee and then the other leads, relying on them; because, to answer your question, I have whatever time is required of me.

And, on all of the things that I have ever done, in every case I have ever worked on, I believe my clients would have -- always tell you, "If I have a question, or something needed to be done, I could call Dennis and he would know the answer, or get right back to me, and he would show up in all of the biggest moments in that case."

And, I hope to do that here, as well.

THE COURT: So, if you could, just be a little more precise. You know what's on your plate right now. If this was added to your plate, how much time could you devote to it? 20 percent of your time?

30 percent of your time?

You know, at the end of Friday, as you are writing down your billable time sheets and what work you accomplished, what more you can squeeze in -- so, if this was added to it, what percentage of that time would it be?

MR. ELLIS: Well, I'll use last week as an example. To get ready for this hearing, I think I spent 15 hours. And, I want to be about -- 35, 30 percent more of my time. I am doing -- we have an arbitration running right now. I have been the one representing -- it's got three more weeks, and it is kind of split up through July.

Fortunately, for me, I had two trials, or one trial that was set for June 21st -- that was my mom's birthday -- and that was with L'Oreal, we won summary judgment. So, that case has gone away.

There was another case that was looking at a retrial at the end of the year. However, we actually got a very strong suit -- in the decision -- in the Fifth Circuit, and I don't believe that is going to happen now.

So, I have the time to work on this particular matter. If you ask me for a percentage, your Honor, I could guarantee you it would be 30 percent, probably a little bit more. But, if it was more, as lead, it would be whatever it takes.

THE COURT: Thank you.

And can you -- what can you offer in terms of your insights about the overall structure of -- that you see in this MDL?

MR. ELLIS: In terms of the tranches, I do think that -- I agree, actually, with Mr. Assaad.

I think tranches -- I don't believe you need to split

up the defendants into two separate groups, into the contract and tort case, if you put them all together. It is one group of defendants. I think that would be appropriate.

I think that is just a logical direction, for the Court to take it.

There is also an antitrust case. And, I think that there should be a complaint for that one.

And, of course, that is a securities issue.

Of course, it works its way through. The third one, as well.

I do believe that our structure, as proposed, is good. It is one of the more neoclassical structures. I was undergrad business major and management. And so you have kind of a very flat structure. You don't have a bunch of tranches that -- where different people do different things like that.

That is more of a classical structure.

And, I think that's more along the lines of what Mr. Assaad was approaching. It was very successful for a long period of time, but I do believe we want to have more people involved in the process, working. It is more of this neoclassical, flat-triangle structure, where you have just a very small group of people in the lead, and you have a very broad aspect of people working on different projects, and different things.

And, I think the way to communicate with that is

through an executive committee. And, you can almost see it as part of our government. There is a small group of people, the House, that, you know, kind of represents the broader people, and then all the rest of the council below that is the government.

And so it is very flat-structured in terms of how it was managed from the plaintiffs' side.

But, what I don't think -- what I don't think that will be effective, in having been in defendants' position, and quite often, represented defendants, is for the defense counsel to want to talk, to get an answer for the group on a specific issue regarding discovery, or approach, or motion or timing, things like that -- they don't want to have, like, a Rolodex of people they have to call to get an answer. They want to know that if there is a person they are talking to -- if it is Mr. Schirripa or Ms. Salas or myself -- that we, in speaking, we are positioned and have the authority to really enter into a discussion where something could be resolved.

And, you can't have a structure where they are literally trying to figure out who to talk to about a particular issue, to define the issue, for example, ESI -- what is going to be the approach?

Documents, or what are we going to do about that?

They don't want to know, "Let me figure out, who within the group can do that."

I want them to know they could call me and I would have the answer to that.

And, to go back to your question, your Honor, about well, how much time can you do -- you have to be committed in terms of time, if you are going to do that, you are going to make yourself available.

They cannot be looking for you. And so myself, I, on my own card and I -- probably, that is probably not a big deal in the Zoom world, but anybody can call me at any time, whether it be in our group, the defense side, or anybody else. I think that's what I will try to do, is try to make sure that we get answers and solve issues.

It is not about -- for me, the departing from Federal Rules of Civil Procedure. It is just about using those rules and using them effectively.

THE COURT: Thank you very much, Mr. Ellis.

I appreciate all of the information that you have given me. Thank you so much.

MR. ELLIS: Thank you.

THE COURT: Ms. Furst?

MS. FURST: Good afternoon, your Honor.

Rachel Furst from Grossman, Roth here in Coral Gables. We thank you for your time.

I am applying for the position of the liaison counsel, which I hope would have a seat for either on an executive

committee or steering committee, depending on the leadership structure implemented.

As Mr. Assaad mentioned, I am the only attorney who has applied for this position. No counsel has opposed my appointment. And, several have expressly suggested that I fill this role in their own filing and at the last status conference with the Court, which I appreciate.

And, I think there is a reason for that, in that I have already undertaken some of the work, in coordinating plaintiffs' counsel and sort of serving in a liaison counsel-type role; most recently, facilitating the filing of the consolidated leadership applications which bring us all here today.

Throughout that process, I have had the opportunity to speak with nearly all of the attorneys who are applying for leadership, many of them, at length, and many times.

And, I think there is a consensus around the idea that this case does need a liaison counsel, would benefit from one.

There is -- there is agreement, more or less, that there will be several tranches, whether it is three or four, maybe there is some dispute over it, including PSRA cases, and yet, there can't be four phone calls every time, to and from plaintiffs' counsel, every time there's a scheduling issue that needs to be coordinated, either from defense counsel or from the Court.

So, I really think that, you know, you need somebody, liaison counsel here in the District, in the same time zone as the Court, which plaintiffs can call and defense counsel can call and know the necessary coordination and communication will be done in a timely and professional and reliable manner.

So, I do think this will add some efficiency to the MDL.

And, I believe that I am the right person for the job. I clerked in this District for Judge Ursula Ungaro. I was one of her civil clerks for over a year.

And, the entirety of my practice has really been spent here. I started my career at White and Case, where I worked for nearly five years as a commercial litigation associate. There, I did some MDL experience, and certainly have experience with the substantive claims that are brought in this lawsuit; breach of contract, negligence, deceptive trade practices, and breach of fiduciary duty.

I also have a says pa sample experience in the eight years I spent at Grossman Roth Yaffa Cohen here in Miami. When I began at Grossman Roth, I did a bank hold and rescue for underwriters in front of Judge King, the MDLs. And, I watched and learned from my colleagues, Bob Gillberg and Stuart Grossman, who were appointed as leadership positions in that case.

And, since then, I have also worked on class actions on

behalf of -- on behalf of plaintiffs at Grossman Roth Yaffa Cohen.

Right, now, I'm a partner. Currently, I am working on the Allergan MDL in the District Court in New Jersey, working alongside cocounsel Julie Kane at Colson Hicks.

So, I have familiarity with class actions and MDLs, and cases, and I have an intimate, I think, knowledge of the local rules and court and the way things are done in this District which I can bring to bear on lead counsel.

Nearly all of the attorneys who are involved in this case are from elsewhere. They will be litigating remotely, which has been made easier now we have Zoom. But, it still presents some challenges. So, I think my aid would be to make litigation from afar a seamless experience for the plaintiffs' counsel. And, I think I can do that.

And, I also have had the pleasure of, again, speaking with most or nearly all of the plaintiffs' attorneys who are applying for the leadership, and honestly, I would be honored to work with all of them. There is an enormous amount of talent and enthusiasm, and I would be very pleased to serve in the role as liaison counsel and assist the Court, really make the Court's administration of these cases easier in that role. So, I welcome the opportunity, and I welcome your questions.

THE COURT: Thank you very much, Ms. Furst.

You and I first interacted many years ago when you were

at White and Case, and you were very gracious when I was at the firm presenting.

MS. FURST: I remember.

THE COURT: Why are you the only one who wants this position?

Do you know?

MS. FURST: Well, I mean, I would like to think it is not a thankless job.

But, you know, I think that from the onset, really, from our first plaintiffs' call and when the coordination of these cases began, I kind of made my interest in this role known, and sort of took on the responsibility.

So, I think -- I mean, I would like to think that's why. Some consensus has been formed around my serving in this role, and I have shown I have the ability to do so.

I think I also have the stability and diligence it takes, and diplomatic skill set that will enable me to work with the various personalities who will be involved on the plaintiffs' side. And, I think that has been apparent in this process, and I have successfully navigated just on the leadership applications, so far. So, I think that's why.

THE COURT: Have you served as the liaison counsel in any other MDL?

MS. FURST: I have not, your Honor. And so in that respect, I would be a new intern, as I suppose the term is

used, and I feel that appointing me to that role would further the aim of inclusivity and -- by promoting younger attorneys to take on leadership positions.

But, that doesn't mean that because I haven't served my term, my name in the law -- that I have not watched and learned from others at my law firm, like Stuart Grossman, who have been named to executive positions of leadership in MDLs.

And also, as part of my research for this case, I reached out to liaison counsel serving in other cases in this District. My cocounsel, as liaison attorney in the Zantac right now -- Bobby Gillberg, who is a former lawyer of the Grossman law firm -- he is serving as liaison counsel in the panoramic breast case; Julie Kane, who is serving as liaison counsel in the Monet case in front of Judge Gayles, an MDL there.

So, I raise their names simply to say I have an extensive network of friends and attorneys who -- from whom I can sort of glean best practices. So I am confident that I can handle the responsibility.

THE COURT: You mentioned being on the same time zone as the Court. But, there are a number of lawyers who are not. If they needed to communicate with you, would they be available during hours that we are normally closed over here?

MS. FURST: Certainly. And that has already -- you know, over the last two months, sort of the coordination has

been, has been going on, on the plaintiffs' side. I have got accustomed to taking calls, you know, after 8:00 P.M., and certainly after seven P.M.

And, I currently serve as cocounsel with a Seattle firm on perhaps several class actions. So, I am comfortable working with California counsel, and I have that experience, and I am used to it.

THE COURT: Well, I won't keep you for the full 15 minutes. Given that you are the only applicant who wants this position, I think we can safely say that you have got it. But, one last question.

Are you amenable to serving in this role, regardless of which of these fine lawyers I select to be on the committee, the leadership committee?

MS. FURST: Yes, your Honor, I am. Certainly.

THE COURT: Thank you very much.

MS. FURST: Thank you.

THE COURT: So, we started late, for the reasons you are all quite familiar with.

I am going to pick up with Mr. Klafter for the next presentation. We will take a 45-minute lunch break. It might be breakfast for those of you on the west coast. I am not sure. And then we will continue at 1:20.

(Whereupon, there was a recess at 12:56 p.m., after which the following proceedings were had at 1:32 p.m.:)

THE COURT: Good afternoon. I think our next presenter at this hearing is Mr. Klafter.

MR. KLAFTER: Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. KLAFTER: I have some limited opening remarks because I certainly want to allow enough time for your Honor to ask questions. So, I will get through them as quickly as possible.

First, I believe my application for lead counsel primary responsibility with the Robinhood charge -- which is something I want to address as to what that tranche is, because --

THE COURT: I'm sorry. Mr. Klafter, my court reporter and I are both having trouble hearing you. So, if you could perhaps speak closer to the microphone --

MR. KLAFTER: I will try. Can you hear me?

THE COURT: Better. Thank you.

MR. KLAFTER: Okay. Okay. So, I believe my application as lead counsel with primary responsibility for the Robinhood tranche -- and that's a tranche which I think we need to clarify, in light of some of the comments earlier today -- that demonstrates that the interest of the class of Robinhood customers would be best served with me in the leadership, based upon my experience in class actions, but as well as my specific experience in the breach of fiduciary duty, breach of contract

claims, and negligence/fraudulent types of claims that will be the ones that are primarily asserted against Robinhood in this MDL, aside from the antitrust.

Now, first, Mr. Assaad talked about his experience in MDLs. I will be frank with your Honor. I have led many class actions, but I have not led an MDL. I have participated in MDLs. I have been on committees. I have even been on committees.

But, my experience in leading cases and in being a rank and file or committee member of an MDL is that I was always treated fairly, and when I was willing to step up and commit resources and work in the case, that lead counsel always welcomed that.

So, what Mr. -- the fears that Mr. Assaad puts forth are very foreign to me, and I don't think that you -- if I am in the lead, that that would not happen.

And, the second thing I want to mention is that -- is that about tranches, that Mr. Assaad sort of separated Robinhood from the contract and tort tranche. That makes no sense to me. The claims that will be asserted against Robinhood are breach of contract, breach of fiduciary, negligence, and maybe some aid and abetting claims. So I'm not sure what they are leaving for Robinhood, but that makes no sense.

And, even Mr. Ellis, in his papers, talked about he and

Ms. Salas presiding over the state law contract and tort-based claims. So, they are mushing them all together and leaving Mr. Schirripa for the antitrust claims.

Just a flashback to the -- the initial conference before your Honor, I think that there was general acceptance of the view that there would be an antitrust tranche, there would be a Robinhood tranche, which would have all these common law claims, and then there would be another broker tranche, such as eTrade. And the other brokers are TD Bank, Schwab, eTrade, and Webull.

And, I think that makes good sense to split them up that way, and not to conflate the other brokers in with Robinhood for a couple of reasons: One, that -- I think 95 percent of the cases only assert claims against Robinhood. There is a unique story with regard to Robinhood, with unique players. They are all relationships with the depository trust company; Citadel, Nomad Capital, perhaps other entities.

None of those entities are involved in the TD trade -- TD Ameritrade. For example, if you look at the TD Ameritrade complaints that were filed in the MDLs, no one is sued other that the TD Ameritrade.

If you push them all together in one solid complaint, it would be like book one and book two.

And so -- and also, the -- we also think it is sort of like -- Robinhood is sort of a big tiger, and maybe the other

brokers are sort of the tail. And -- but they don't deserve, if we put them together, they would be the tail.

And, the investors in TD Ameritrade -- which my clients are not, or Schwab, or eTrade -- they deserve to be their own tiger and not be the tail of the Robinhood situation.

Okay. The next point is -- is that the structure that Mr. Assaad talks about, from the combat ear plug, arms ear plug, your Honor, this case has been billed as the largest MDL in history. There are over two hundred thousand individual cases that are part of that MDL. They are all individual cases, no class actions.

So, it is the biggest mass tort, you know, MDL in the history of the cases. So, out of 200,000, they had 40 some-odd attorneys.

But, to put all of the -- almost all of the attorneys in this case into a leadership structure, which I think turns -- and I agree with Mr. Ellis that the structure should be more of a triangle, it inverts the triangle. It doesn't make any sense.

And also, the idea of having a common benefit committee -- well, you have those in mass tort committees because there is interest of people representing their own individual clients, or whether they are doing something for the common good -- so, you need a police for them.

Everyone has a common class action. We don't need a

common benefits leader, a committee or anything like that.

I think I want to mention adversity and inclusiveness, as that has been a focus of this morning's interviews. And, in light of your Honor's questions, that I feel compelled to -- and I have really never done this before -- to tell the truth, that I do represent adversity as a lead.

I have a physical disability. I have had it for my entire life, and I have never had to raise it. And, had I been in court, you would not even have seen me -- and no one would -- by either overtly or by my negative implications suggest that I not be the first candidate. But, because we are in the Zoom world, I just feel compelled to put it on tape.

And that, your Honor, are the totality of my comments. I do have other ideas about how to promote other diversity in the leadership structure. But, I know your Honor has questions for me, so I will turn it over to you.

THE COURT: Mr. Klafter, I appreciate your very insightful observations shared, and the proposals that we have heard thus far.

How do you envision the overall structure of leadership in this MDL, besides agreeing with Mr. Ellis that it should be more of a triangular than an inverted triangle?

MR. KLAFTER: It was my view, your Honor, that there are -- and putting aside securities -- but other than the securities, there should be three tranches and three impacts;

one for antitrust counsel, one for Robinhood, and all the state law claims, including statutory claims that might -- state statutory claims that might be asserted against Robinhood -- and then the other brokers.

I then see -- and I would suggest, your Honor, that we have -- to promote diversity, additional diversity into the case, that we have sort of a diverse second chair for each lead counsel, that we would -- lead counsel would propose, or your Honor could take applications for it -- that would work closely with the lead counsel and learn what it takes to lead a case like this.

And, one of the things that I looked at, your Honor, in the preparing for this is that George Washington Law School put out a whole extensive paper on what judges should look at in promoting diversity. And, one of the things they said is that when lawyers, who are -- when they are lieutenants, when they are lieutenants, that they often go on to become leaders, themselves.

And, we have people which are, obviously, experienced, but don't have the experience of prosecuting a class action, from end to end, and dealing with all of the issues that are involved in getting class certification.

And also taking discovery, which -- which I think is different than being a defendant. Where you are more putting up obstacles, slap things down, try to slow the train down --

us plaintiffs are working on a contingency fee. We want to get to the finish line as reasonably, quickly as possible.

I also think that your Honor could require each of the lead counsel, in terms of their staffing of their -- within their offices to have, you know, one or two diverse attorneys. I have been working with Amir Alimehri. He is a first generation Iranian. His parents escaped from Iran, and he is very active in diversity.

And, I know, your Honor, Mr. Saveri also has diverse candidates. So, we can increase the pool.

So, the idea is that even though there may not be as many diverse candidates in the top that have the experience to do this, let's -- let's grow them, in different levels, from all different levels, so that in the near future, we have more diversity, more qualified candidates. And, I think that's an approach that your Honor might embrace.

And, I also believe that there should be, lastly, a steering committee, executive committee. I believe it should be per tranche.

And then perhaps -- we have heard a lot about how complicated that case is, of all of the defendants. Well, your Honor, there are only all these defendants in the antitrust tranche. For the Robinhood tranche, you have three Robinhood entities; maybe Citadel, Melvin Capital, maybe something else. And so the very limited number of defendants in the other

broker and Robinhood tranches -- they are all in the massive conspiracy alleged in the antitrust.

So, I think that you can have a relatively small executive committee, you know, four or five, six lawyers, which also can be diverse, that supports each tranche, but perhaps should be over -- it should be much larger than for the antitrust tranche, because that's where you have all of the defendants.

That is -- and that's where, again, we have to see whether they are all included in a consolidated regular complaint, whether they will survive a motion to dismiss.

So, it is -- the idea that this case is going to have 20 defendants, or all these different defense counsel, and there is going to be thermonuclear war -- I don't think it is necessarily so.

And, your Honor, I subscribe to the KISS principle -- which is Keep It Simple Stupid.

I believe that if I am the lead, I am going to navigate this case in the most efficient way to get to the finish line, which is to get the class certified, get the discovery we need so we put this case in a position to be tried.

THE COURT: So, you mentioned an interest, obviously, in the Robinhood tranche. And, you are proposing that there be three lead counsel, one for each.

Could you speak to the possibility of having two colead

counsel for each?

MR. KLAFTER: Okay. I think that, again, if we focus on the claims against Robinhood and the claims against the other brokers, I'm not sure that it would warrant that.

But -- I'm not opposed to it.

But, what I am opposed to -- what I am opposed to -- what -- I think Mr. Assaad put that forth in his written submission, or his slide presentation today, which is to have two leads where one is experienced and one is less experienced -- I think that that doesn't work as well.

I think that -- that the less-experienced person has to earn their title to be a lead, and that -- and that's why I proposed first chair, or designated chair from the executive committee. And, they could be done a lot of different ways. But, the idea is that would be the mentoring that I would propose.

But, I am not opposed to there being two lead counsel. I have worked many cases with colead counsel, and I think I can do that efficiently, as well.

THE COURT: And what is your time commitment?

How much time would you envision devoting to this case, if you were selected to lead the Robinhood tranche?

MR. KLAFTER: Well, since I was -- learned of this situation, I was retained back in January, I have been devoting as much time as I possibly can to this case, which there has

been some fortuitous circumstances of cases settling.

I have been able to devote a significant amount of time.

I have listened to all the impression hearings. I downloaded all the written statements. I drilled down on the DEC Capital algorithms and the like because they claimed, you know, there were a lot of issues in this case about the size of the Capital defaults.

I have not stopped focusing on this case.

I already worked out a plan for how to draft the complaint. I have reviewed all of the pleadings in the Robinhood outage case because there are a lot of comparisons between the Robinhood outage case and -- which is out of the Northern District of California, and this one, where there are breaches of contract, breaches of fiduciary duty, and negligence-type claims and gross negligence claims.

And, Robinhood didn't even move to dismiss the individual claims in that case because -- I don't know why, but I think it is because they were so well pled. And, this could provide a roadmap.

But, to answer your question, your Honor, I have cleared the deck so that I can make this my primary responsibility. And, it will continue to be my primary responsibility, which is over 50 percent of my time. And, if I need to spend a hundred percent of my time in a given week or

two weeks, a month, I will do that.

I have the support of my firm to commit whatever resources of my own time and of the firm to do what it takes to bring this case to resolution.

THE COURT: Mr. Klafter, thank you very much for your very thoughtful observations and suggestions. Thank you.

Mr. Oberlin?

MR. SAFIRSTEIN: It is Peter Safirstein on behalf of Michael Oberlin.

Can you hear me?

THE COURT: We can.

MR. SAFIRSTEIN: Good afternoon, your Honor; Peter Safirstein. And, thank you very much for the opportunity to appear before you today.

I am also speaking for my cocounsel on this litigation, Melissa Emert and Gary Graifman of Kantrowitz, Goldhamer and Graifman. They are on the line, as well, your Honor, and they are available for any questions that the Court may have.

Your Honor, our application for a lead position is focused on the claims in this MDL that are supposedly or so-called the broker-dealer claims, and our specific claim, it is with regard to TD Ameritrade. And, we were applying for lead with regard to ensuring that those claims are prosecuted as vigorously as possible.

Our client, your Honor, is Michael Oberlin. He is a

Miramar Beach, Florida resident. He is an individual trader who traded in a large volume of stock at TD Ameritrade, and was blocked from making trades that he wanted to make at TD Ameritrade in a timely manner. We are concerned that these very important allegations are vigorously pursued in this MDL.

I know that your Honor has heard much about Robinhood. We understand this is a Robinhood-centric MDL. But, Robinhood is not the only defendant, and there are other broker dealers involved here, as well. And, as we understand from the previous appearances before your Honor, that your Honor is aware of that and is diligent in making sure that those interests are protected as well.

I will be brief in describing my background.

I have been a litigator for more than 35 years. I was an Assistant United States Attorney in this judicial district, in the Southern District of Florida. I specialized in the investigation of and prosecution of white collar crime.

Before that, I was a special assistant for the United States Attorney in the Southern District of New York, where I was assigned to the Commodities and Securities Fraud division and was very active there, as well.

And, before that, I was with the enforcement division of the SEC.

I have years and years of securities experience. And, I have tried federal cases.

After I left the Justice Department, your Honor, I went into the plaintiffs' bar, more specifically, into the class action bar, and I was a longtime partner in the securities class action Powerhouse case where, for years, I served as the day-to-day lead counsel and coordinating attorney in the IPO securities, the IPO antitrust cases, which is actually the largest securities case that has ever been prosecuted. It involved 312 coordinated cases before a single judge. It was against more than 60 financial institutions, against over 300 issuers of securities, and more than a thousand individual defendants, as well.

There were more than 60 plaintiff law firms involved; countless defense firms involved. And, as the leader of the day-to-day prosecution of that case, I have deep personal knowledge in coordinating and running massive financial fraud cases.

In 2016, together with my partner, Liz Metcalf, I formed -- we formed our own firm. We have been very successful in prosecuting and leading securities, antitrust, and consumer cases.

My colleagues, as I have mentioned to you earlier on the call, are Melissa Emert and Gary Graifman. Melissa Emert is a partner, and she is co-chair of Kantrowitz, Goldhamer and Graifman, which is a class action practice. She has represented consumers and investors for more than 30 years,

both at her current firm and her previous firm.

Ms. Emert hold prominent positions in a number of large MDLs. And, she was actually recently named as one of two women attorneys in the country who received the highest number of appointments to leadership structures in nationwide MDLs.

My other cocounsel, also from the same firm, Kantrowitz, Goldhamer and Graifman -- Gary Graifman is also on the line. Mr. Graifman has chaired for consumer class actions, a partner in his firm for years; litigated many, many cases for many years. We have worked together for many years. He brings practical experience, litigation experience, and recently completed a retrial in civil Graco matters.

The entire nature of my firm -- my firm has a nationwide practice, and we have a lot of experience in -- and as I said, there is a specific area in this case that -- that -- you know, we don't believe the Court has heard too much about today, which is the nonRobinhood, TD Ameritrade part of the case.

And, we would appreciate consideration for being appointed lead for that tranche.

Thank you, your Honor.

THE COURT: Thank you very much, Mr. Safirstein.

You mentioned and in your application materials highlighted that Ms. Emert has been recognized for leadership in MDLs, and she was just court-appointed colead counsel rather

recently in Carter versus Graco Children's Products. So, can you speak to the time that she can devote, if she were part of this group that you put forward of your firm and the Kantrowitz firm?

MR. SAFIRSTEIN: Sure. We would all be working collaboratively, and Ms. Emert -- we would certainly see to it that she devoted a substantial part of her time to this case, as well -- as well as the other MDL case that she has.

She also has, as we have indicated, the support of her firm that she -- support of our firm, and collaboratively, you know, we are a task-oriented group. We have deep experience. We know exactly what is required in terms of the pleadings, the motion practice, the discovery, and Ms. Emert would devote a significant amount of her time to this case, as would we all.

THE COURT: So, what you are putting forward is a group of four of you; correct?

MR. SAFIRSTEIN: Well, we are putting forward a group -- well, we are. We are putting up a group of four.

We believe that, you know, the other so-called tranches are being represented by many, many lawyers, and many law firms. We think it is reasonable that the two firms here work collaboratively and work together with regard to the TD Ameritrade, or the broker-dealer part of this case that's not centered on Robinhood.

THE COURT: I can certainly -- I call this sort of like

the Oberlin -- where it would be the four of you, and you would seek to have a leadership position in this broker-dealer tranche; correct?

MR. SAFIRSTEIN: That's correct.

THE COURT: And how many master complaints do you envision in this MDL?

MR. SAFIRSTEIN: Well, I -- I think our position is a little bit different from maybe what you have heard earlier in that it is -- if you put aside what I think, which is not just being considered today, which is a 10b-5 master complaint, if that is to decide, I think realistically, for efficiency purposes, the Court would be well-served with two master complaints; one is an antitrust case, and one is a securities case.

At the end of the day, if it is one or two cases, where Robinhood is in one complaint, or TD Ameritrade is in a different complaint, I don't think it makes a real difference because the Court is going to have to consider all those in any event, those are all coordinated. It is just a question of whether or not they are consolidated, I believe.

And, the reason that we are so vociferously speaking on behalf of the TD Ameritrade part is there are distinct issues there that need to be considered separately.

But, whether or not -- so they need to have real estate space, so to speak. But, whether or not that real estate space

is in one master complaint, together with Robinhood, or it is a separate complaint, I don't think, at the end of the day, it makes that much of a difference.

And, I think that perhaps for -- convenience, but for efficiency purposes, it might make more sense to put all of these securities-type issues, so -- and, we understand it is not a 10b-5 case. When I say "securities," I -- we are talking about in this case, either the statutory, as Mr. Klafter was referring to, the common law claims, the breach of state law claims, all those claims. So, they would have the distinction between those claims and the antitrust.

I think the antitrust case is a different case. In fact, the very large IPO litigation that I was deeply involved in -- that, too, was split between the IPO securities case, which, as I said, was 312 coordinated cases -- and the -- the IPO antitrust case. And, those cases were -- were distinct cases in front of the same judge out of the Southern District of New York.

THE COURT: So, how do you envision the leadership of this MDL?

MR. SAFIRSTEIN: Well, I think that the leadership -- the leadership that makes the most sense would be an executive committee where there is an executive committee that is in charge of however many tranches the Court decides, that then would be subspecialties, if you will, with regard to the

Robinhood tranche, and then also with regard to the TD Ameritrade broker-dealer tranche.

And, you know, our firms have moved to the leadership position with regard to the nonRobinhood part of it, and they would have, you know, diligent representation because there are going to be issues at the end of the day with regard to -- to pleadings, litigation strategy, discovery.

It -- they are all going to be similar, and they are all going to have distinctions.

So, I think that a leadership that takes into account that the antitrust case is different, I think is, is -- at least, from our perspective -- seems clear.

And, the real question with regard to everything else is -- is how to put those two together. And, they should certainly have their own distinct leadership. So the only question is whether or not there is only one pleading.

THE COURT: Only question is what?

Sorry. Repeat that.

MR. SAFIRSTEIN: Whether or not that is on one complaint or two complaints, in our view.

So, if it is on one complaint, you have distinct leadership for that part of the case, the TD Ameritrade, as part of the large consolidated action.

And, if the Court decides that -- the Court prefers the separate master complaint, then you would have leadership on

that separate master complaint.

But, I think the -- one of the issues -- I think one of the reasons that we would speak to having one master complaint is that invariably, you are going to need coordination from a prosecutorial point of view between the TD Ameritrade part of the case and the Robinhood part of the case, because there are -- while there are differences, there are also similarities, and there are commonalities.

So, it all needs to be, you know, thought through carefully and work together. And, as I said, I believe there are efficiencies in having one complaint, but certainly, it is distinct claims.

THE COURT: Can you speak to the proposal that the Ferraro Firm has put forward through Ms. Salas?

MR. SAFIRSTEIN: Well, I think that the -- the proposal of having, you know, those firms in a leadership position, you know, I -- I am sure that they are all, you know, very able firms in terms of the actual -- in terms of the structure.

THE COURT: Right.

MR. SAFIRSTEIN: We agree with the notion that there be a structure that contemplates separate leadership for the Robinhood part of the case, for the -- what we will call the nonRobinhood broker-deal parts of the case and the antitrust part of the case. We do agree with that, conceptually.

THE COURT: So, but -- in what you have put forward,

you had omitted sort of a separate, third antitrust tranche. Right?

MR. SAFIRSTEIN: No, no, no. We are not omitting that.

What we are saying is that we are -- we are seeking a limited position to be appointed to the leadership of what I think your Honor is going to view as a broker-dealer tranche.

We -- we are not applying for a position with regard to the antitrust or with regard to the Robinhood tranche. And, we support the notion of three distinct tranches, and believe that that is the proper way to go forward.

But, we are concerned that the tranche that has been given the least amount of attention, if you will, is the so-called broker dealer tranche, or the TD Ameritrade tranche. And, we have put forward an application that says that we believe that we are well-suited to lead that tranche, and are seeking a leadership position with regard to that very specific part of the case.

THE COURT: So, if you were given that, who, from the four of you, would be the point person?

MR. SAFIRSTEIN: I would be.

And, your Honor, we have spoken -- when we made the application, we -- we have had those discussions. We have applied jointly, but it would be my very person here, and I would be the lead of our group.

THE COURT: What amount of time could you commit in

that capacity?

MR. SAFIRSTEIN: Well, hearing what Mr. Klafter just said, I, too, am fortunate in that I have had a number of cases just recently settle. So, I have more time on my hands right now.

And I would certainly -- you know, I have been spending a lot of time on this recently. You know, once this case wraps up -- and that will be very soon -- I will be spending a substantial part of my time, certainly 50 percent of my time -- I can spend on it on an as-needed basis; or, more than that.

And, particularly with my cocounsel, we have the bandwidth to do that. But, my anticipation is to spend a substantial part of my time to make sure this important litigation is prosecuted.

THE COURT: Thank you very much, Mr. Safirstein.

Mr. Pessah?

MR. PESSAH: Yes. Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. PESSAH: Thank you for the opportunity to address the Court and the Court's request that I prepare a brief statement guided by your Honor, with some questions, and I will be addressing some of those in my introductory remarks today.

The fact that we are meeting via videoconference is a terrific example of how the events of last year have contributed to our reliance on technology.

While the tools we use to interact with the justice system have changed, the law remains a priority. And, our laws continue, and should continue to govern and guide us.

Never once did the obstacles of this new normal cause us to abandon longstanding principles of law that govern our commercial relationships and, where necessary, remediate the wrongs committed by large institutions.

The same pertains to securities brokers.

Online brokers and, in particular, Robinhood, have dramatically re-imagined a relationship between the public markets and retail investors. Millions of people can now communicate online about investments, make decisions and trade securities and derivatives on an app with a push of a button from their mobile device.

But, these innovations did not come at the expense of well-settled and legally recognized duties that govern brokers in the public markets. And, we believe Robinhood ran afoul of those duties, as did some other brokers. This is why we filed this lawsuit and why, since filing, we have sought to investigate and gather as much information as possible about what drove the events of January 28, 2021, and how those who were hurt by such events can access justice.

As we outlined in our application, our firm has been retained by and collected information from over 4,600 demographically diverse plaintiffs from all walks of life.

These victims run the gamut and include college students, young professionals, women and men from around the country who trust that their broker is going to honor their fiduciary duties.

And, to hear, firsthand, the stories of these people has been a life-changing experience for me, personally, and I know I can say the same for members of my firm and our counsel. And, to be part of their path to justice would certainly be the honor of a lifetime.

I know Mr. Ellis mentioned a video that we created. And, the reason why we created this video was like -- that was really to garner support and awareness for what had gone on, and to give a voice to our clients.

There was a lot of, obviously, media attention and scrutiny around the events of January 28, 2021, and we wanted to give the perspective of these potential class members and give them a voice.

We have tried to articulate that in aspects in relationships with counsel, and I am prepared to answer any questions the Court has. I know we have outlined quite a bit of where we feel we can be helpful in our application, and I am happy to answer your Honor's questions.

THE COURT: Thank you very much.

You don't want to be lead counsel. You want a position on a committee.

Can you elaborate on that?

Tell me what role you envision playing, contributing.

MR. PESSAH: Certainly, your Honor.

Just a brief note about -- and I'm assuming I did put a footnote in our application. It wasn't our intention to disregard what the Court's intentions were for this process, and certainly not to overburden the Court.

The reason why we see ourselves well suited to serve on a committee is because we just really want to be honest about our capabilities and our level of experience.

Some of our experienced attorneys here have served on MDLs. I have done some class action work, and I have run my litigation practice for seven years, and have been practicing litigation for ten. So, that was sort of the reason we wanted to make sure the Court understands who we are, and knows how many people we represent.

And, I think where we can be most helpful -- and I sort of narrow it down to three potential categories -- one is, obviously, organizing and analyzing information.

I think that there will be some need for us to collaborate with, obviously, leadership in terms of how they would like this information organized, analyzed.

Certainly, there is plenty of software and digital tools that we have looked into already to dissect this information.

We also feel we can be very helpful in law and motion

practice and advocacy in the study of the cases, counsel in those cases, in I think there is somewhat of a roadmap -- not exactly the same, but somewhat of a roadmap of how certain defendants are going to behave just procedurally in this litigation.

We are, obviously, going to have a slew of motions to dismiss as Mr. Ursini has been -- very candidly outlined for us on April 19th.

And then there is the question of how we can assist in terms of what type of information to ask for, the information that we have already received, which I want to be careful about discussing that too much because a lot of that is just privileged information coming to our firm from our clients.

But, I think that level of -- and that -- that volume of information has given us a lot of clues about where we should look. And, obviously, we want to collaborate with leadership about, you know, how we can tailor discovery, not only in terms of efficiencies, but in terms of substance, as well.

THE COURT: So, you mentioned organizing and analyzing the information, motion practice, and advocacy -- and what was the third?

MR. PESSAH: The third was tailoring discovery briefs and really being, both on substance and in terms of efficiencies -- what to ask for and how to ask for it.

I was speaking with Mr. Safirstein on Friday. I know he has some unique ideas about how to make discovery more efficient. We are certainly open to those. And, obviously, that is going to require coordination with defendants, as well.

I know Mr. Assaad mentioned that he felt strongly that there would be a lot of motions to compel. Certainly, that is a possibility, and that's what happens in most litigation.

But, I hope there will be an opportunity to avoid that and really engage in coordination, not only with leadership on the plaintiffs' side, but with defendants' counsel, as well, to determine if there is any way to structure our discovery in this case; what we can all agree on -- at least, a baseline of what is needed.

THE COURT: What substantive areas of expertise do you think you would bring to the case?

MR. PESSAH: Well, I have been practicing law for ten years. And, we have, I think, very qualified attorneys and, of course, of counsel in this law firm.

My specialty has been litigation throughout my practice. I have litigated these specific claims before; I litigate against large banks in a class action context before. So, certainly, and -- I and my associates have MDL experience; the opioid litigation, the RoundUp litigation, the Volkswagen and diesel MDL -- so, both on the class action side and on the MDL side. And, also in terms of just specific expertise and

focusing on litigation in the commercial context, I think it will contribute to our role here.

THE COURT: So, you do not envision being or occupying the position of lead counsel for any of the tranches, is that right?

MR. PESSAH: We are -- our complaint is against three Robinhood defendants. So, we would like to focus on the Robinhood-centric tranche, if there is one. That's what most of our clients were using, the Robinhood platform.

But, that is not to say that some of that information won't be useful to the other tranches. And, we are certainly open to collaborating and sharing, obviously, with the other tranches.

But, our focus has been very Robinhood-centric, and that's where we -- we are hoping we can play a role and focus on. But we are -- have not applied for a top level leadership position, if you will. We are looking for a seat on an executive committee that is specific to the Robinhood-centric tranche.

THE COURT: And can you give me assurances of the time commitment that you can make to this case?

MR. PESSAH: Of course. We have been fully committed to this case since we filed our lawsuit on January 29th. This case gets litigated, certainly gets addressed in our offices every single day.

Certainly, more than 50 percent of our time and our associates' time will be devoted to this case, on an as-needed basis; more, if that's required.

But, we have really cleared our schedules to address this case, and we are fully committed to litigating and participating in this case.

THE COURT: What is your biggest concern about this MDL, including any problems or challenges that you will be facing?

MR. PESSAH: It is a sensitive area to discuss challenges. I know there are people listening today. But, I think that, you know, there is a challenge -- there is going to be a challenge that needs to be addressed in terms of really communicating with class members. They have a lot of questions. We get inquiries every single day from our class members. And, I think that needs to be something that everyone looks at, because people want to know what's going on.

So, I think that has to be something that is streamlined and that people pay attention to.

Obviously, there are a lot of defendants in this case, and counsel will have their own ideas about what they want to focus on and what the viable legal theories are.

So, I think one notable challenge is going to be building consensus around that. But, I think that is possible. In speaking to all plaintiffs' counsel, I think it going to be

possible to achieve a consensus about what we focus on in each tranche.

THE COURT: Thank you very much, Mr. Pessah.

MR. PESSAH: Thank you, your Honor.

THE COURT: Ms. Salas?

MS. SALAS: Good afternoon, your Honor.

Thank you for the opportunity to be interviewed with respect to my application for a leadership position in this case.

In your Honor's first pre-trial order, the Court stated, that -- and this is my --

THE COURT: Ms. Salas, my court reporter is still having difficulty hearing you.

MS. SALAS: I will speak up.

In your Honor's first pre-trial order, the Court stated that "The added demand and burden of this type of litigation places a premium on professionalism, and requires counsel to fulfill their obligations as advocates in a manner that postures and sustains good working relations among fellow counsel and the Court."

I could not agree with your Honor more.

I initiated collaboration in this case from the moment that our motion was granted and the case was transferred to this District.

The best test of my leadership is the support I have

and the respect I have from my peers. That support is on the record. And, the majority of the support for my application as a lead counsel is not a product of any dealmaking. And, instead, it is the organic product of demonstrated leadership over the last several months that includes Zoom meetings, countless phone calls, and emails.

Now, thankfully, the Court does not have to choose here between professionalism, civility, and cooperation on the one hand and competence on the other.

I stand before the Court on my own two feet, confident in my ability, and ready, willing, and able to prosecute this case on behalf of the putative class that I represent.

I may not have been on every single signature block in every MDL action.

I certainly have not filed the largest class action on behalf of plaintiffs in any case that happens, and particularly, with young lawyers who have been trained at top defense law firms.

But, I have been appointed by a senior judge in this court as the designated MDL clerk, and have worked on the inside of a complex consumer class action MDL. And, I have worked in the trenches with prominent law firms and institutions; most recently having served as assistant general counsel to the University of Miami in the midst of a global pandemic.

I have served in all these roles on a strategic level and, importantly, I have substantive experience over the state law tranche claims that I seek to lead.

My first, ever, jury trial to verdict was a negligence. That is, of course, one of the primary claims at issue in the state law tranche that I have asked to lead.

I did the voir dire, as the third-year lawyer, voir dire on the economy experts and the closing. I won the full amount for my client.

My first year at Foley and Lardner, I tried to verdict a conspiracy claim, one of the other claims at issue in this case.

I represented the plaintiffs against the largest developer in the state of Florida, and also one of the most well-connected and most ably represented in a case that few lawyers would have been able to see through to the finish line.

While both at Coffey Burlington and Foley and Lardner, I was on the other side, the defense side of a high stakes, billion-dollar securities action.

I have successfully defended those actions, and can anticipate all of those issues here, and work with specialists on those tranches.

I was specifically recruited to the plaintiffs' side, Ferraro, by a former colleague which, again, speaks to the respect that I have from fellow practitioners.

A fellow colleague at Foley Lardner, who is also a former law clerk to Judge Leslie Rothenberg, is also part of our firm.

And, I have worked thus far as counsel in a putative class action on behalf of current black McDonald's owner operators, franchisees, for racial discrimination under Section 1981, in what really is a modern-day equivalent of sharecropping and redlining.

I am being tasked with a growing consumer class action practice and MDL group.

Now, I am confident in my ability. But, I am very aware that a case of this size, and in an MDL, in particular, it takes a village to see that case through.

So, standing behind me in support is the full force of the Ferraro Law Firm. I am, of course, not a sole practitioner. I have the Ferraro firm and the assistance of lawyers such as Jim Ferraro, who has served the needs in the leadership position in mass tort cases, who has more seven-figure verdicts than any other plaintiffs' mass tort firm, and whose work, both as a trial and appellate lawyer, which includes close to a hundred cases to verdict, has really helped to shape the landscape of Florida tort law.

His son, who is a cocounsel in this case, was a former trader on Wall Street. So, he brings industry-level expertise. And, he also has significant MDL experience, having worked with

Zantac, opioids actions.

I am also fortunate enough that the firm has committed a significant amount of financial and human resources to this case.

We are not a small firm or a firm that is at risk of being inundated here. We been have been around for more than 30 years. We never seek litigation funding. We are staffed in Miami with over 20 attorneys, both trial and appellate lawyers, at the trial and appellate levels.

And, also, if you include our affiliate law firm, Kelley and Ferraro, we have over 50 lawyers on our team.

So, we have what it takes to see a case of this nature through to the end.

I am also proud to have the support of Professor Bruce Rogow, who is here today, and whose reputation precedes him. It also speaks to my work in the overtime litigation in which Mr. Rogow, Professor Rogow served as lead counsel, and dealing with such interface directly on class certification issue; scheduling orders, all of the issues that have been set out in this record here today.

He will not only help round out our team, but really will help us here for the benefit of the class, and brings in knowledge and experience as special counsel, should we need him, for the class.

And, finally, my cocounsel, Sean Burstyn, who is not

able to be here today -- it's a Jewish holiday -- but who is a recent clerk for Judge Scola, who also has been on the defense side of class actions, working in New York at Skadden Arps, who brings his energetic view and a real passion for the facts of this case, which are also going to be a huge benefit in this case.

I am humbled by all of the support, and thank the Court for having me here before you to answer questions.

And, with that, I am available to the Court for questions.

THE COURT: Thank you, Ms. Salas.

Would you speak to the leadership structure that you're proposing and compare it to the structure that Mr. Klafter proposed?

MS. SALAS: Yes, your Honor.

I am proposing a three-total lead structure; that the lion's share of the work in this case -- and this -- this is really guided by the chart that was filed with the Court, a case chart that was filed in the case initial conference -- that chart lays out that the lion's share of the work in the case is going to be in the Robinhood tranche, which is how Mr. Klafter named it. And, I am naming it, instead of by the defendants, I am naming it by the type of action, which is more in the line of state law tranche. That is where the lion's share of the work, in our opinion, will be in this case.

So, we would propose a full lead structure.

So, I would -- I would seek to lead that tranche, alongside Mr. Ellis. It is a state law cause of action. Also, substantively, as I just mentioned, these are the claims that I feel that I can represent most substantively.

THE COURT: Don't the -- don't the broker dealers also involve state law claims?

Would you address Mr. Safirstein's remarks that essentially, you have two tranches that deal with state law claims, right?

MS. SALAS: Yes, your Honor. We have two different views of the tranches. Our view is that the tranches should be divided in terms of the nature of the claims.

And, the view that -- that Mr. Safirstein and Mr. Klafter have put forth is more towards the type of defendant involved.

So, in this case, you have 50 cases that involve TD Ameritrade, out of 55. I agree with Mr. Ellis that these issues can be addressed in the complaints through, you know, the rules you'll find under the joinder.

I don't think that there needs to be a division of the leadership level with respect to defendants.

Instead, I think that that if you confine the claims, that you have two coleads for state law causes of actions, and that includes the Robinhood entities, and the other entities,

and a special designation can be addressed at the executive committee, but at the PSE level.

And then you have a third, which is the antitrust, and a fourth, which is securities.

So, essentially, you are looking at four leads.

And, underneath each of those leads, an executive committee. And, what we propose is an executive committee of approximately three each, for a total of 17, as far as the leads and the executive committee, instead of what was addressed earlier, which is 17 total leads.

So, we are looking at three total leads, setting aside securities.

And, I think -- and the important point here is that as far as the representation of counsel, I think -- of the class -- which I keep coming back to -- and also for efficiency, which is -- should be our guiding principle in the Court is that the class needs to be heard with one voice.

So, I am a proponent of having mass hearings as to the total leads at the top. But, again, with respect to the endorsements on my application, I think that that speaks to my ability to work with others at the executive committee level so that everyone's voice would be heard, including the TD Ameritrade and other broker dealers clients.

THE COURT: Can you describe the time commitment you can make to this role that you are proposing to have in this

case?

MS. SALAS: Yes, your Honor.

I am committed to devoting over 50 percent, but up to a hundred percent of my time on this case. It is an important case and, thankfully, I have the whole support of my firm behind me. And, I am able to reallocate any work that I may have to devote a hundred percent of my time to this case.

I understand the MDL scope and nature because I have been on the inside of it. It takes a lot of time to manage the day-to-day management. So, my firm has -- has supported my application, and I am willing to commit as much time that it takes, up to a hundred percent of my time.

THE COURT: What is your biggest concern about the problems or challenges we are going to face in this MDL, Ms. Salas?

MS. SALAS: We see some of them, we previewed some of them here today. There is -- the nexus of this case really involved Robinhood, and some of the more -- we can call it coconspirators, we have a lot of other defendants in some of these cases that may also feel like -- like they are victims in the case as much as our putative case.

So, I think there could be an overcomplication of some of the legal issues, if you look -- if you try to look at it at a triangular level, instead of high level.

And, I think if we can just go back to the arguments

that were made before the judicial panel where we saw the reason why these cases are before your Honor is because you have a discrete set of operative facts, that this occurred over a short period of time, such that, you know, those concerns, as far as the large number of defendants, in my view, shouldn't be of concern in that it needs to be addressed by scheduling orders, and through consolidated complaints in this case.

THE COURT: Thank you. Thank you, Ms. Salas.

MS. SALAS: Thank you.

THE COURT: Mr. Saveri?

You are muted, Mr. Saveri.

MR. SAVERI: Is that better?

THE COURT: Much better, thank you.

MR. SAVERI: I said good morning from San Francisco, where I -- I am this morning, and it is a pleasure to be here.

I'm speaking on behalf of myself and my firm, including Steve Williams, Anupama Reddy, Chris Young -- we provided our biographies of the team we proposed along with the materials that we submitted. So, we are grateful for the opportunity to be here today.

Let me -- let me try to just jump in and answer a question about time commitment, your Honor.

I and my firm are well experienced in having cases of this size. I will be personally involved in the day-to-day management and organizations of the case. It is the way I have

handled every case in which I have been appointed lead.

We have significant experience in MDL litigation, other class actions. And, any antitrust cases and complex litigation, we take these cases from inception to trial.

Indeed, our firm appears to have the most numerous team devoted to this case, including Mr. Williams, Ms. Reddy, Chris Young, our paralegals, our investigators, our professional staff.

Mr. Williams and I are two of the most experienced and accomplished plaintiffs' lawyers in the United States. We have extensive experience managing and resolving cases of this type.

I also note that we are close right now to wrapping up a jury trial in a large multidistrict case.

On that note, we were preparing that case for trial when this case started. So, we have demonstrated our ability to manage and lead and prosecute more than one case at a time.

During that period, we did the investigation. We filed the antitrust complaint. I think, if you look at that 51-page complaint, it reveals substantial work product.

Indeed, it was copied by many of the other counsel in this case, and has become a model in this case.

During that period, we also moved the JPML Panel to initiate the JPML proceedings. During that time, we have been involved in expert work. We have taken affirmative steps to preserve records from third parties.

We have been involved in extensive discussions regarding leadership in Item 35 in front of your Honor at the last hearing.

So, if there are any concerns or questions about our commitment to the case, I would just refer the Court to those items.

You know, indeed, it is my observation that in this case, many of the lawyers and law firms have taken advantage of the work we have done and used that as a platform, themselves, as they filed their cases.

You know, I think it is also important, too, to talk about the Rule 23(g) requirements. Under Rule 23(g), there are a set of specific factors that the Court should cover in appointing lead counsel; one is the work done to investigate and identify the potential case.

As I have noted, we were -- while not the first to the courthouse, we moved with remarkable dispatch to investigate and develop these claims.

We have taken numerous affirmative steps to advance the case during that period. The second would be our credentials and experience. No firm applying for leadership in this case has the same credentials as myself or my partner, Steve Williams.

Mr. Williams and I have over 55 years of experience in the field leading antitrust and other complex class actions.

We have organized cases as sole lead counsel or serving as committees with other lead counsel.

We have taken these cases from inception to trial.

I would also note that our junior lawyers, Ms. Reddy and Mr. Young have already had, in their careers, important substantive experience, which includes taking depositions, it includes working with experts, it includes conducting witness examinations in a complex antitrust trial.

Third, knowledge of the applicable law -- I and the firm has substantial area expertise, not only in the area of antitrust law, but also in managing complex litigation. It includes putting together a team of lawyers, managing discovery, preparing the case for trial, handling class certification.

In terms of resources, this firm has the resources to represent the class. This includes the professional resources of the firm, but also the financial resources of the firm.

I know a case of this type can cost many millions of dollars with respect to -- and I know that because we -- we have incurred those expenses on behalf of our clients in a number of other cases -- and we are prepared to do that here.

In terms of efficiency, your Honor, I think it is important to note that we are the only firm in San Francisco -- with an office in San Francisco and New York.

And, we would envision that the pandemic will unwind,

there will be in-person discovery depositions, and we are the only firm that has offices in both San Francisco and New York. And, I think that that's going to be a way of obtaining substantial efficiencies here.

I guess I would also just stop for a moment on our commitment to professionalism. Our firm's commitment to the values of civility and professionalism are very important. We are organized, we are accountable, we have developed a reputation for working collaboratively and collegially, not only with members of the Plaintiffs' Bar, but also with other opponents, as well. That is how we interact with each other, our opponents in the Court.

And, recently, Judge Donato has recognized that, as well.

So, maybe, your Honor, I will stop right there and pause, and answer any questions that you have.

Thank you very much.

THE COURT: You have a presence on the west coast and on the east. And, you are proposing yourself, Mr. Williams, Mr. Davis, Ms. Reddy, and Mr. Young. Which of those are on the east coast?

MR. SAVERI: All of those lawyers right now are based in offices in San Francisco exclusively. Mr. Williams spends time, plans on spending time post pandemic in the New York office. But, our principal office of each of those lawyers is

in San Francisco, your Honor.

THE COURT: And you are proposing to be interim lead counsel over the antitrust tranche, is that right?

MR. SAVERI: Yes, your Honor.

THE COURT: And, I understand that your competitor for this is Mr. Schirripa, who is going to speak next. He is being proposed, I believe, by the Ferraro Law Firm to head the antitrust tranche.

And, since there has been some discussion of having colead counsel for each, could you speak to your ability to work with Mr. Schirripa in that capacity?

MR. SAVERI: Sure, your Honor. I -- I am happy to work with Mr. Schirripa in that capacity. We have been in some cases together. Even during this case, we have had a collegial, collaborative communication about the case. I don't anticipate any particular issues with that, and I think that would be fine, to me.

Ultimately, your Honor, it is a choice, which is your choice, about how many jobs are created and who fills those jobs. I certainly have a preference for smaller and leaner structures. Certainly, it is my experience that courts prefer nimble and agile leadership structures, and that would certainly call for smaller groups.

Having said that, I worked in much larger groups. And, it is really your decision, your Honor, and what makes the most

sense for this case, given what we know about this case right now. And, I am happy to work with anybody who is part of this group.

THE COURT: How many master complaints do you envision, Mr. Saveri?

MR. SAVERI: I envision four, right now. And, one would be -- I think the easy ones are kind of -- I don't know if they are the alpha and omega or the bookends of this case. This is -- the antitrust and the securities case, it seems to me there is a general agreement that those cases should have their own complaint.

There is -- and I have heard the discussion today about how one is to group or organize the Robinhood or broker-dealer cases.

My -- the idea of tranches, by the way, your Honor, is largely my idea in this case. This is something that I have suggested in socializing with the group some months ago.

And, I have always felt like four seems the right number. I do think there are a couple of issues floating around in that, that probably should be kind of unpacked; one is how you organize the case, for pleading purposes, in a law practice, and how you deal with the motions to dismiss.

But, I think it is also important to think ahead to a class certification in a Rule 23 practice.

I think one of the things that is important about the

tranches is that to the extent there are claims that deserve or merit separate representation, in the class action context, that those have their own counsel, or own designated counsel, because there will have to be decisions made about those cases; how to proceed, how to define the classes and, ultimately, how to try those cases, and perhaps settle them. And, giving some thought to how that develops, I think, is important.

For pleading purposes, I -- I actually think I am agnostic about whether we have two separate complaints or one really big one. And, it is really your decision, your Honor, about how best to organize the pleading.

I suspect that whatever will happen will be a long way from Rule 8. There will be a lot more than a short claim statement. But, that really is a discussion for another day, your Honor.

So, I don't know if that answers your question, but -- or if that is helpful. But, those are my thoughts.

Excuse me, your Honor. I would also just generally say that what Mr. Klafter describes is, I think, a proposal that was submitted to your Honor when we first -- last appeared. I think that made sense at the time, and I still think it makes sense.

THE COURT: And what time can you commit to this case, Mr. Saveri?

MR. SAVERI: Well, your Honor, I think certainly in the

short term, if I am going to be appointed, this may be my biggest commitment because -- because -- and that, when I say biggest commitment, I say virtually all of my time and the time of my team, because we are going to have important work to do, including the organizing the pleadings and addressing the issues that we were just talking about.

And again, we -- a week ago, I would have said I have a trial set to start in June, in San Francisco. But, the Court couldn't get the folks as part of the venire for the jury. So, that has been postponed.

So, in a lot of ways, this is perfect. We really have an opening in our schedule. We have been preparing a big antitrust case to trial and we can -- we have been working on this case, at the same time. This will be our -- if appointed, it will really be our full -- get our full attention.

THE COURT: Thank you, Saveri.

MR. SAVERI: Thank you, your Honor.

THE COURT: Mr. Schirripa.

MR. SCHIRRIPA: Good afternoon, your Honor, Frank Schirripa on behalf of --

THE COURT: You need to speak louder. We can't hear you, Mr. Schirripa.

MR. SCHIRRIPA: Good afternoon, your Honor. Frank Schirripa from the law firm of Hach, Rose, Schirripa and Cheverie.

Can you hear me now?

THE COURT: Not much better.

MR. SCHIRRIPA: I would like to start out thanking the Court for the opportunity to present and speak to you today, speak to your Honor about my qualifications, my firm's qualifications.

I am a second generation Italian lawyer.

My parents were civil workers in New York City.

I was born and raised, grew up in New York City, just a stone's throw from Wall Street.

So, I have been -- I have always been drawn towards the law. So, upon graduation from law school, I started litigating and working in securities litigation at the Seyfarth firm, predominantly in securities class actions.

I worked there for about seven years with another firm which branched out and gave me more experience in consumer -- financial consumer cases and antitrust cases.

In 2011, I started my own firm, and we have consistently grown and added to our attorney base.

I have associates that have been with me since the beginning. I have an attorney that I have worked with over the last 20 years and, in the past, other law firms, and brought them on with me.

We have a diverse group of attorneys, male, female, ranging in experiences, having been defense counsel,

plaintiffs' counsel, and as much as 40 years' experience to complement my 20, 30, plus another attorney.

And, we have litigated predominantly securities and antitrust, consumer class action cases, a large number of MDL matters in which we have had an executive position, in a steering position, or been in a position where we were able to contribute significantly to the case.

Sorry, are you having a hard time hearing me?

THE COURT: I am. You are coming in very faintly, yes.

MR. SCHIRRIPA: I apologize. I am calling from a hotel room in the Bahamas. I am here speaking at an investor conference. We did lose power earlier, and I am doing my best with the wifi we have here.

So, my thought towards this litigation -- and obviously, as your Honor pointed out earlier, I have been focused on the antitrust components. I do know Mr. Saveri. I do respect him very well, his law firm.

I worked a case previously, a Bank of New York FX litigation with his partner, Steve Williams, and I respect the work that they have done in the antitrust law and other consumer and securities cases. I would welcome the opportunity to work with him in whichever capacity the Court does deem to assign leadership. And, I think I reached out to Mr. Saveri a few weeks back, and we kind of spoke about that briefly.

However, my application, in what I presented, I do

believe my firm has the resources and the experience, both in human capital and financial capital, to lead the antitrust involved in the case.

Having litigated in these cases over the last 20 years, I have developed a reputation of being a fair, honest, inclusive attorney. And, I would like to bring in other attorneys to work in these cases.

I have trained and mentored the associates within my firm to take key roles and assume responsibility in the cases that we have been part of. And, most recently, in the generic price fixing antitrust case, one of my associates, who has been with me for about seven years now, he was handling discovery for two of the defendants in that case, point person, under my leadership, of discovery issues there, to enable him to develop his skills as an attorney. He learned from other attorneys outside of our firm.

I think that is a key component in MDL litigation, in large class action litigation. There is so much you can learn from your immediate mentors and who you work with on a daily basis. But, when you combine attorneys from other firms together, accomplished attorneys working with younger attorneys, you get to develop, both as a mentor and as a mentee. And -- more and more, and engage more in this process.

So, I do enjoy litigating class action, MDL-related matters because of that camaraderie and mentorship ability that

it provides both younger attorneys as well as older attorneys to really polish and practice their technique.

Are there are any particular questions your Honor has at the moment?

THE COURT: Thank you, Mr. Schirripa.

You heard Mr. Saveri make a commitment to investing the time necessary in this case, were you appointed and/or his law firm appointed in a leadership role.

In your application materials, you -- you describe how your firm is serving on the plaintiffs' executive committee in the Eastern District of Pennsylvania, and in an antitrust litigation that is also working with the plaintiffs' steering committee in another antitrust case there, as well, a series of complex cases alleging price fixing.

So, what time commitment can you make, if you are given a leadership role over the antitrust tranche in this MDL?

MR. SCHIRRIPA: My role in these particular cases are supervisory of our attorneys in my office. And, I am able to dedicate more than 50 percent of my time to this litigation.

I am fortunate to be in a position where we have resolved a few matters through mediation and settlement right now, kind of clearing my calendar.

I met with my partners, and we started to refocus some of the cases that I am actively involved in to them, in the event that your Honor does place me in a leadership role here.

So, I would be really making this case my number one priority.

And, I do have the support of my partners and associates within the firm to make sure that we can make commitments to take on a case of this size. I have mitigated many of these cases over the years. So, we know what that takes.

THE COURT: What can you offer in terms of your insights about the overall structure of leadership in this MDL?

MR. SCHIRRIPA: I think it is important, having litigated antitrust consumer and securities cases in five cases, I have an intimate knowledge of the PSR-related antitrust consumer matters, and I can see how there is an interplay and how it will play out.

I do think it is important to have distinct leadership over obviously PSR securities cases. There, let's put that to the side, because that is -- that is a separate issue.

But, here, with the antitrust, and as well as the state law claims, you want to have leadership that is working together.

There is significant overlap in a case like this. And, in my complaint, Mr. Saveri's complaint, they do have the state law claims in there, as well. It is not just drafts of these complaints as an antitrust-only complaint, and then there is a state law complaint elsewhere.

So,derivatively, looking at this case, how does it get

litigated?

It is important to realize there is tremendous overlap in the issues.

In the Bank of New York FX litigation, I had the -- I represented the plaintiff in that case, and it was -- we had a consumer claim case, a breach of implied good faith and breach of contract claim.

And there, it was simultaneously litigated with a securities case, an ERISA case. We had combined efforts to do combined discovery and overlapping issues. So, the structure there -- it is important to have dedicated attorneys in each particular discipline. But, it is important to also have a good view of the entire case and the interplay to make sure that they all work together.

There is -- there was discussion amongst the plaintiffs on this call about one lead, two lead, three lead, and a cochair, which is a -- may be a shadowing in the sense, something that I have seen in other cases where there is -- two or three or four court-appointed leads, and then there is shadow leads that operate almost with the same level of authority as the lead, but they are not given that title.

I think, in the right circumstances, that does work. If there is an executive committee that -- with each individual grouping, you could have more attorneys in the driver's seat, making sure that everything is being covered; but, also not a

bloated structure that you have too many people that -- with titles but no real responsibility.

And I think, particularly, in the generic drugs price fixing case, which is -- it was being run by Roberta Liebenberg, the liaison counsel there, overseeing a committee of eleven plaintiffs' firms who were named as plaintiffs' executive committee, then, below that were plaintiffs' firms that were not specifically named as executive committee, but they have been a given substantial amount of work to do in the case.

And there -- you know, there is the financial commitment being given to the litigation, assessments. It is to help fund the litigation.

But, also, they are putting the money where their mouth is. They are working the case, providing real support.

And, this is a structure that I see working here, where you will have large firms specifically assigned to the discovery-related issues with a particular defendant, getting involved with meet and confers, obviously, document review, and some of the briefing issues.

So, I do think a leader-type level that will allow for other people to come below, certainly. And, I have experienced that, on both ends. I was leader and also in a lower level, you know, nonlead position in cases. I think that works if everyone is working together.

THE COURT: How many master complaints do you envision?

MR. SCHIRRIPA: I think antitrust should have its own separate complaint. The legal issues there, possibly stand -- and I say stand alone, in the securities complaint, I do think the state law claims -- it could be -- possibly, it could be one master complaint with the antitrust and the state law issues. And, because that is how we drafted it initially.

It possibly could be divided into two separate complaints, the state law and antitrust complaint, and state law complaint, with TD and the others, grouping with Robinhood. Many of the legal issues are going to be the same, the briefing is going to be the same.

Perhaps, as Mr. Saveri mentioned earlier, these are class certification issues with subclasses, and you can have assigned counsel to be responsible for representing a particular subclass to make sure that you are fully, you know, vetting subclass issues and issues that relate to those specific group of investors and those defendants.

So -- and obviously, the securities case will be off on its own. So, you have a securities complaint, and really, it would be something we work through without really getting too far into the work product and work strategies.

THE COURT: Thank you very much, Mr. Schirripa.

MR. SCHIRRIPA: Thank you.

THE COURT: And Mr. Willey, you are the last one.

MR. WILLEY: May it please the Court.

THE COURT: Yes.

MR. WILLEY: Your Honor, Roy Willey. I represent David Moody and his wife, Julie Moody in cases brought against five defendants, Robinhood and Citadel defendants, from the Anastopoulo Law Firm in Charleston, South Carolina.

And this case appeals to me because I am the typical Robinhood user. I am a 34-year-old, and the first generation of my family to spend at least the latter part of my childhood in the middle class. I was raised by a single mother who attended night school to get her associate's degree, which led her to a good job and decent living, and allowed her the opportunity to have access to the market.

I was the first in my family to graduate from a four-year college and, certainly, law school. In fact -- which I never knew a lawyer until college.

It is this experience, through my mom and then through my origin story, where I witnessed, firsthand, the power of the free market, the power of capitalism, and where access is often the differentiator between the haves and the have-nots.

And, that's why this case is extremely important and personal to me. It is not just another case. But, it is a case about a whole generation of Americans and a whole class of Americans that have had the free market opened up to them by Robinhood and other traders and apps, and then taken away

simply because of the power of collective masses in that market, they claim, were too much for it to bear.

But, we know what was really going on. And, what was going on is the collective power of the masses began to accumulate more wealth and more power than those who traditionally had, the hedge funds and those that invest in them.

And so it is that experience, that life experience that brought me to this case and made this case appeal to me.

And, it is through a combination of frankly, good fortune, foresight, timing, and hard work, that that experience aligns very well with the needs of this case because I have had significant class action trial litigation and complex litigation experience, despite my age.

I currently serve as lead of a class action in this District in a case in front of Judge Singhal. I have been nominated and elected as chair of the Business Interruption Litigation Task Force by hundreds of plaintiffs' lawyers for the American Association of Justice, which I currently lead in coordinating hundreds of members through multiple MDL processes, class actions, and individual actions arising out of the business interruption losses.

And, in addition to that, I have significant trial experience. In fact, on the very first day that I was sworn in as a lawyer, I picked a jury in the morning, drove to get sworn

in, and then came back for the opening statements the following day. And, since then, I haven't stopped trying cases.

I enjoy trying cases because I truly believe that the courtroom is the one place in this country where simple people like Mr. and Mrs. Moody can bring Robinhood and its billions of dollars in revenue and profits, the hedge funds and the investors from Wall Street into the same room and sit across the aisle and actually be on a level playing field.

And, that's what this case is about. And, that is why my life experience, combined with my experience in the courtroom and in leading class actions, which is what these cases are, and in trial experience and complex litigation, will significantly benefit the putative classes in this case.

And, I would point out that I have worked tirelessly on this case since the beginning, both on the merits of the case and discussing the merits.

I have discussed the case several times with lawyers on this call. And, although Ms. Furst and I, for example, are in the same time zone, we have spoken after-hours before taking our evening run about the case.

And, I have spoken with lawyers in California, after-hours on the case, as well. And, I would note that if we do go back to a pandemic where flights are limited, Charleston is roughly halfway between the New York and Miami. So, it is a good stopover point, and we have plenty of transfers.

But, I would say, in all candor, your Honor, that I do believe that the structure of this case should be relatively simple. I coordinated with the lawyers on this call early on, on the tranche system with Mr. Saveri, with Mr. Klafter, Ms. Furst and others, and I believe that the four-tranche system is the most efficacious way for the case and would provide the most efficiencies.

And, I think that the tranches should be divided by defendants, not by claims, because it is still unclear to me how you would have complaints with individual defendants that would stretch across tranches when you are attempting to do discovery and motions practice.

I would also point out for the Court that the lawyers on this case, for the most part, have worked well together, and that I -- I do believe that any lawyers that are appointed in the case will work hard for the putative classes. And, in fact, we did have earlier consensus on structures. But, I do not believe, personally, that a structure that has 12 or 17 or 20 members of an executive committee per tranche is in the benefit of the classes. And, that is really what I am most concerned with in this case.

I -- I, of course, would like for the lawyers in all of the cases to be rewarded for their work. But, I also think, and I know, because I know several of these people, that there are individual class members that have their life savings tied

up into this case and into the outcome of this case.

And, it is incumbent upon us, as their advocates and upon the Court, to ensure that we bring this case to as efficient and quick a resolution as possible.

And, anything done in committee, in general, slows things down. When you start talking about 40 and 50-member committees, we have calls much like we have had in this case, which, while they have been productive, have not really garnered a lot of progress, which brings us before your Honor today.

And, I would just simply close my remarks with this, which is a quote from President Bush, which simply says, "Free market capitalism is far more than economic theory. It is the engine of social mobility, the highway to the American dream."

And, that is what this case is about; somebody got in the way of ordinary Americans who were trying to take advantage of that highway to the American dream, and this case, largely, will decide whether or not, in this country, that is okay.

THE COURT: Thank you very much, Mr. Willey.

That was an excellent presentation.

You envisioned a similar structure to the case than some of the proposals that we have read and heard about today.

Tell me how you would structure it.

MR. WILLEY: Well, I am not so sure it is different than all the structures you have heard about, but I think that

the four-tranche structure, with a lead and additional cochair or colead, is really the best way to proceed.

And I think, of course, I also -- and I said this in my paper, support Ms. Furst as liaison counsel. I think it is important that we have that. And, she has done a phenomenal job thus far in that regard, which, by the way, although she was humble -- and why no one else would apply.

And, I would also, you know, just note for the Court that I do think that there is some room beyond that for a committee structured around discovery and some of the other issues.

But, I think, largely, the co-leads need to look at each case and, more importantly, as far as what the Court wants, as far as a consolidated complaint, and then determine exactly what that would look like.

You know, I was not willing to commit myself to 17 or 20 other firms and supporting, you know, the applications and doing the political because I don't know what the case is going to look like, at this point. And, I think this is the first step towards getting us there.

Of course, I wish we could have done it by consensus, but that wasn't to be, and so we are here. And, you know, it is really my interest to make sure that we get the actual case underway and move it forward for the members of the classes.

THE COURT: So, you are willing to serve as cochair, or

on a steering committee, ideally.

If you were appointed to some leadership position, what would you have it be?

MR. WILLEY: I would like to be the cochair, the colead on the Robinhood tranche. That is the case that I filed. That is the case that I and my associates have dedicated five lawyers at our firm that have been working on this case, have been -- they have been doing research on and really working towards this.

Having said that, I think all of the cases are important. And, at the end of the day, how the plaintiffs get their remedy is of less import to me than that they get a remedy. And so if the Court saw it suitable for me to serve in some other case or in some other capacity, I would be willing to do that for the benefit of the classes, just as I have been all along.

THE COURT: And what time could you commit to, if you were given a leadership position?

MR. WILLEY: This case will be my primary case responsibility. As I noted, we have a team of lawyers in our law firm that have been working on this case. I have a team of lawyers on every case that I am assigned to in the law firm. And, we are prepared to shift responsibilities in those cases accordingly so that I can give this case my primary attention.

THE COURT: Thank you very much, Mr. Willey.

MR. WILLEY: Thank you.

THE COURT: I think we covered everyone who wanted to present and who submitted a -- an application to be considered.

I want to thank everyone for their fine written presentations, as well as the oral presentations today.

Again, my apologies for the technical difficulties we encountered this morning. You would think by now we would have it right, and we didn't. So, my apologies.

I hope to have my decision for you this week to move the case along.

And you all have a good day.

And, for those on the west coast, have a nice lunch.

ZOOM PANEL IN UNISON: Thank you, your Honor.

(Proceedings concluded at 4:10 p.m.)

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

Please note: This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of reporting remotely.

May 19, 2021
DATE

/s/SHARON VELAZCO
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Official Court Reporter
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/s/SHARON [1] - 96:13

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