

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Deepak Gupta (*Pro Hac Vice*)
deepak@guptawessler.com
GUPTA WESSLER LLP
2001 K Street, NW, Suite 850 North
Washington, DC 20036
Tel: (202) 888-1741

Attorneys for Plaintiff and others similarly situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CINNAMON MILLS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

TARGET CORPORATION, a
Minnesota Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 5:20-CV-01460-JGB-KK
[Assigned to Hon. Jesus G. Bernal]

FRCP RULE 23 CLASS ACTION

**DECLARATION OF DEEPAK
GUPTA, ESQ. IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL**

Complaint filed: June 10, 2020

1 I, Deepak Gupta, state and declare:

2 1. I am the founding principal of the law firm of Gupta Wessler LLP, an attorney
3 licensed to practice in the District of Columbia, and one of the attorneys of record for the
4 plaintiff in this case, Cinnamon Mills.

5 2. I am fully familiar with the facts of this case and submit this declaration in
6 support of Ms. Mills' motion for preliminary of approval of the settlement in this case. The
7 facts set forth in this declaration are based upon my personal knowledge. If called as a
8 witness, I would give competent testimony reciting the same facts. For the sake of brevity,
9 this declaration does not discuss the settlement, the litigation's procedural background, the
10 claims and investigation by my firm and co-counsel, or why the settlement is fair and
11 reasonable. Those topics are covered in detail in the concurrently filed Declaration of Brian
12 Mankin. This declaration simply provides information as to why I am adequate class
13 counsel.

14 QUALIFICATION OF COUNSEL

15 3. I am the founding principal of Gupta Wessler LLP, a boutique law firm that
16 focuses on Supreme Court, appellate, and complex litigation on behalf of plaintiffs and
17 public-interest clients. I am also a Lecturer on Law at Harvard Law School, where I teach the
18 Harvard Supreme Court Litigation Clinic and regularly teach courses on the American civil-
19 justice system and class actions. I am an elected member of the American Law Institute and a
20 public member of the Administrative Conference of the United States and a member of the
21 board of directors of several legal organizations, including the Lawyers' Committee for Civil
22 Rights Under Law. For over two decades, I have led high-stakes litigation before the U.S.
23 Supreme Court, all thirteen federal circuits, and numerous state and federal courts
24 nationwide. Much of my advocacy has focused on ensuring access to justice for workers,
25 consumers, and communities injured by corporate or governmental wrongdoing. My
26 advocacy on behalf of plaintiffs has been recognized with several national awards, including
27 the 2022 Appellate Advocacy Award from the National Civil Justice Institute, which
28 "recognizes excellence in appellate advocacy in America," the Steven J. Sharpe Award for

1 Public Service from the American Association for Justice, and the President's Award from the
2 National Conference of Bankruptcy Judges. Among other things, I was the first Asian-
3 American invited by the U.S. Supreme Court to argue a case (in support of a judgment that
4 was abandoned by the Solicitor General). I have also testified before the U.S. Senate, the
5 U.S. House of Representatives, and the Presidential Commission on the Supreme Court. I
6 graduated from Georgetown Law in 2002. My complete law firm biographical page is
7 attached as Exhibit A.

8 4. Class actions are a particular focus of my work and my firm's work. I have
9 argued numerous appeals arising out of class actions as at all levels of the federal courts,
10 including the U.S. Supreme Court and the Ninth Circuit, and much of our firm's docket is
11 occupied by such cases. Our firm also initiates select class-action cases on behalf of workers,
12 consumers, and other plaintiffs from the ground up—typically in collaboration with other
13 experienced plaintiffs' firms, as in this case. Among other things, I am the lead class counsel
14 in *National Veterans Legal Services Program v. United States*, the first ever-certified class action
15 against the federal judiciary for damages. In that case, I recently obtained a landmark \$125
16 million nationwide settlement that refunds the average PACER user, 100 cents on the dollar,
17 for overcharges on fees to access court records. In another one-of-a-kind class action, I
18 represented all of the nation's federal bankruptcy judges as class counsel, recovering \$56
19 million in back pay for Congress's violation of the Judicial Compensation Clause in a
20 nationwide class action against the United States government. I was selected by a committee
21 of experienced federal bankruptcy judges as lead class counsel. The *American Lawyer*
22 observed at the time: "it's hard to imagine a higher compliment than being hired to represent
23 federal judges."

24 5. My colleague Neil Sawhney also played a critical role in this litigation. At all
25 times relevant here, Mr. Sawhney was an associate at Gupta Wessler LLP. He graduated
26 from Stanford Law School in 2014 and served as a law clerk to the Honorable Marsha
27 Berzon on the U.S. Court of Appeals for the Ninth Circuit and the Honorable Goodin Liu
28 of the California Supreme Court. Mr. Sawhney has represented plaintiffs and public-interest

clients at all levels of the federal judiciary, including the U.S. Supreme Court. He has presented oral argument in multiple federal courts of appeals and federal district courts and has been the principal author of dozens of appellate briefs on a wide range of legal issues. His law firm biography is attached as Exhibit B. (Since this case settled, Mr. Shawney has assumed a new position as the Director of Appellate Advocacy for the Northern California ACLU).

6. For these reasons, as well as the facts and information presented in the other concurrently filed declarations, it is respectfully requested that the Court: (1) grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, (2) appoint Plaintiff as the Class Representative, (3) appoint Brian J. Mankin and Peter Carlson of Lauby, Mankin & Lauby LLP, and Deepak Gupta of Gupta Wessler LLP as Class Counsel, and (4) preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed on October 13, 2023, in Washington, DC.

/s/ Deepak Gupta

Deepak Gupta, Esq.

EXHIBIT “A”



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DEEPAK GUPTA

deepak@guptawessler.com

202.888.1741 | 2001 K Street, NW, Suite 850 North, Washington, DC 20006

Legal Assistant: [Mahek Ahmad](#), mahek@guptawessler.com



Deepak Gupta is the founding principal of Gupta Wessler, where his practice focuses on Supreme Court, appellate, and complex litigation on behalf of plaintiffs and public-interest clients. He is also a Lecturer at Harvard Law School, where he teaches the Harvard Supreme Court Litigation Clinic and

seminars on forced arbitration, the civil justice system, and public interest entrepreneurship.

Over more than two decades, Deepak has led high-stakes litigation before the U.S. Supreme Court, all thirteen federal circuits, and state supreme courts from Alaska to West Virginia. He has also testified before the U.S. Senate, the U.S. House of Representatives, and the Presidential Commission on the Supreme Court. Much of Deepak's advocacy has focused on ensuring access to justice for consumers, workers, and communities injured by corporate or governmental wrongdoing. His varied clients have included national nonprofits, labor unions, state and local governments, public officials ranging from federal judges to members of Congress, professional athletes, distinguished artists and scientists, and people from all walks of life.

Deepak is “known as a skilled appellate lawyer” (*New York Times*) and “an all-star progressive Supreme Court litigator” (*Washington Post*) and has been described as “one of the emerging giants of the appellate and the Supreme Court bar,” a “heavy hitter,” a “principled” and “incredibly talented lawyer” (*Law 360*), and a “progressive legal rock star.” (*New York Law Journal*). *Chambers USA* cites his “impressive” and “highly rated appellate practice,” describing him as “an incredible oral advocate” who “writes terrific briefs” and maintains a “vibrant appellate practice focused on public interest cases and plaintiff-side representations.” Deepak is consistently ranked as one of the “Best Lawyers” for Supreme Court cases by *Washingtonian* magazine; he is the only non-corporate lawyer on that list. Fastcase has honored Deepak as “one of the country’s top litigators,” noting that “what sets him apart” is his legal creativity. The *National Law Journal* has singled out Deepak’s “calm, comfortable manner that conveys confidence” in oral argument. And *Empirical SCOTUS* cited one of Deepak’s briefs as the single most readable in a recent U.S. Supreme Court term.

Deepak’s Supreme Court and appellate advocacy has been recognized with several national awards, including the 2022 Appellate Advocacy Award from the National Civil Justice Institute, which “recognizes excellence in appellate advocacy in America,” the Steven J. Sharpe Award for Public Service from the American Association for Justice, and the President’s Award from the National Conference of Bankruptcy Judges.

Deepak is a veteran advocate before the U.S. Supreme Court, where he has filed over one hundred briefs and regularly presents oral argument. Highlights include:

- Deepak recently **argued** and won a landmark victory for access to justice in *Ford Motor Co. v. Montana Eighth Judicial District*, 141 S. Ct. 1017 (2021), in which the Supreme Court ruled that people injured by mass-market products can establish personal jurisdiction to sue out-of-state corporations where their injury occurred, bucking a trend of jurisdiction-limiting decisions stretching back four decades.
- In *Smith v. Berryhill*, 139 S.Ct. 1285 (2019), Deepak **argued** at the Court’s invitation in support of a judgment left undefended by the Solicitor General. He is the first Asian-American to be appointed by the U.S. Supreme Court to argue a case.

- In 2017, Deepak's firm was counsel for parties in three argued merits cases before the Court; he was lead counsel in two, prevailing in both. In *Expressions Hair Design v. Schneiderman*, 137 S.Ct. 1144 (2017), he successfully argued a First Amendment challenge to a law designed to keep consumers in the dark about the cost of credit cards. And in *Hernández v. Mesa*, 137 S.Ct. 2003 (2017), he represented the family of a Mexican teenager killed in a cross-border shooting by a border patrol agent, successfully obtaining reversal of the Fifth Circuit's 15-0 en banc ruling that the officer was entitled to qualified immunity.
- Deepak argued *AT&T Mobility v. Concepcion*, 131 S.Ct. 1740 (2011), a watershed case on corporations' use of forced arbitration to prevent consumers and workers from banding together to seek justice.

As an appellate advocate, Deepak is frequently sought out by trial lawyers to defend their most consequential victories or resurrect worthy claims on appeal—often after years of hard-fought litigation. He is currently defending several nine-figure and eight-figure verdicts on appeal, including \$275-million and \$185-million verdicts against Monsanto (over toxic chemical exposure), and a \$200-million verdict against UnitedHealth (over insurance bad faith). He also serves as outside counsel to the American Association for Justice.

In addition to his appellate advocacy, Deepak designs and prosecutes class actions and other legal challenges from the ground up. Highlights include:

- In *National Veterans Legal Services Program v. United States*, Deepak is lead counsel in a nationwide class action in which he persuaded the Federal Circuit that the federal judiciary has been charging people millions of dollars in unlawful fees for online access to court records. The case recently culminated in a \$125 million settlement that reimburses the majority of PACER users by 100 cents on the dollar.
- In another one-of-a-kind class action, Deepak represented all of the nation's bankruptcy judges, recovering \$56 million in back pay for Congress's violation of the Judicial Compensation Clause. *The American Lawyer* observed: "it's

hard to imagine a higher compliment than being hired to represent federal judges.”

Deepak also frequently leads high-stakes administrative and constitutional cases involving the federal government. In recent years, he has:

- persuaded the D.C. Circuit to issue a rare emergency injunction halting an attempted government takeover of the Open Technology Fund, an internet-freedom nonprofit;
- represented environmental groups in a successful procedural challenge to a midnight rule that would have crippled the ability of the incoming EPA leadership to rely on science in setting public-health standards;
- obtained a ruling striking down the Trump Administration’s decision to halt IRS collection of nonprofit donor information by dark-money groups;
- established that the Acting Director of the Bureau of Land Management had been serving unlawfully for 424 days; and
- persuaded the Second Circuit, in *Citizens for Responsibility and Ethics v. Trump*, that President Trump’s competitors in the hotel and restaurant industry had standing to sue him for accepting payments in violation of the Constitution’s Emoluments Clauses.

Before founding his law firm in 2012, Deepak was Senior Counsel for Litigation and Senior Counsel for Enforcement Strategy at the newly created Consumer Financial Protection Bureau. As the first appellate litigator hired under Elizabeth Warren’s leadership, he launched the new agency’s amicus program, defended its regulations, and worked with the Solicitor General’s office on Supreme Court cases.

For seven years previously, Deepak was an attorney at Public Citizen Litigation Group, where he founded and directed the Consumer Justice Project and was the Alan Morrison Supreme Court Assistance Project Fellow. Before that, Deepak worked on voting rights at the Civil Rights Division of the U.S. Department of Justice; prisoners’ rights at the ACLU’s National Prison Project; and religious freedom at Americans United for Separation of Church and State. He clerked for Judge Lawrence K. Karlton of the

U.S. District Court for the Eastern District of California and studied law at Georgetown, Sanskrit at Oxford, and philosophy at Fordham.

Deepak is a member of the American Law Institute and the Administrative Conference of the United States. He sits on the boards of the National Consumer Law Center, the Alliance for Justice, the Open Markets Institute, the Lawyers' Committee for Civil Rights Under Law, the People's Parity Project, the Civil Justice Research Initiative at UC Berkeley, the Biden Institute, and the Institute for Consumer Antitrust Studies. He is a judge of the American Constitution Society's Annual Richard D. Cudahy Writing Competition on Regulatory and Administrative Law.

Deepak's publications include *Arbitration as Wealth Transfer*, 5 Yale L. & Pol'y Rev. 499 (2017) (with Lina Khan), *Leveling the Playing Field on Appeal: The Case for a Plaintiff-Side Appellate Bar*, 54 Duq. L. Rev. 383 (2016), and *The Consumer Protection Bureau and the Constitution*, 65 Admin L. Rev. 945 (2013), as well as shorter pieces for *The New York Times*, SCOTUSblog, and *Trial* magazine. He has appeared in broadcast and print media including CNN, MSNBC, FOX News, ABC's *World News* and *Good Morning America*, NPR's *All Things Considered* and *Marketplace*, and *The New York Times*, *Washington Post*, *Los Angeles Times*, *Wall Street Journal*, and *USA Today*.

EXHIBIT “B”



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NEIL K. SAWHNEY

neil@guptawessler.com

415-573-0336 | 505 Montgomery Street, Suite 625, San Francisco, CA 94111



Neil K. Sawhney is an associate at Gupta Wessler LLP's San Francisco office, where he focuses on public-interest and plaintiffs'-side appellate and complex litigation. He was also the firm's inaugural Fellow in Appellate and Constitutional Litigation from 2015 to 2016.

While at the firm, Neil has represented plaintiffs and public-interest clients at all levels of the federal and California judiciary, including the U.S. Supreme Court. He has presented oral argument in multiple federal courts of appeals and federal district courts, and has been the principal author of dozens of appellate briefs on a wide range of legal issues.

Neil is a committed advocate for economic justice, and regularly handles appeals for consumers and workers fighting to hold corporations accountable for misconduct. Recently, Neil argued and briefed an appeal in the Ninth Circuit defending a California law prohibiting corporate defendants from using forced arbitration to deprive consumers and workers of any forum to bring legal claims. He also successfully argued a Seventh Circuit appeal clarifying how and when companies should be held vicariously liable for their telemarketers' illegal conduct. And he has authored briefs successfully opposing petitions for certiorari in a number of high-profile consumer class actions, including multi-district product-liability litigation against 3M and data-privacy litigation against Facebook. In 2021, the National Consumer Law Center

recognized Neil's efforts on behalf of consumers by awarding him its Rising Star Award.

In addition, Neil has significant experience representing plaintiffs in cutting-edge constitutional litigation. He represented Miyoko's Kitchen, a plant-based food company, in its groundbreaking First Amendment case against the State of California, in which Neil successfully obtained an injunction preventing California from censoring the company's ability to describe its products as "butter" and "dairy." He presented oral argument on behalf of Montana Governor Steve Bullock in a successful challenge to President Trump's unconstitutional appointment of the Acting Director of the Bureau of Land Management. And he represented leading public-health scholars, scientists, and organizations as amici before the U.S. Supreme Court and federal courts of appeals in defense of Covid-19 vaccination and testing rules. Neil also has a longstanding interest in civil rights issues, and recently worked on appeals challenging the California and Michigan prison systems' failure to adequately protect incarcerated people from the coronavirus pandemic.

Before rejoining the firm in 2020, Neil was a Senior Staff Attorney at the Southern Poverty Law Center's Economic Justice Project, where he litigated impact cases on behalf of low-income communities throughout the Southeast. He was part of the legal team that successfully prevented Arkansas and Kentucky from implementing unprecedented Medicaid work requirements, preserving hundreds of thousands of individuals' access to medical care. He also worked on a groundbreaking case representing New Orleans consumers against predatory for-profit bail companies and their underwriters, and he developed litigation challenging wealth-based detention of immigrants in Georgia. At SPLC, Neil also advocated for systemic policy reform to protect consumers and low-income communities by testifying at the state legislature and submitting comments to state and federal agencies.

Neil graduated from Stanford Law School, after which he clerked for Judge Marsha Berzon on the U.S. Court of Appeals for the Ninth Circuit and Justice Goodwin Liu on the California Supreme Court. During law school, Neil spent two quarters in Stanford's Supreme Court Clinic and received the Thelton Henderson Prize for outstanding performance in the Clinic. He also served as the student notes editor of the Stanford Law Review, a board member of Stanford's American Constitution Society chapter, and a co-founder of the Iraqi Legal Education Initiative. Neil received his

B.A. in Social Studies and Near Eastern Languages & Civilization, magna cum laude, from Harvard University. He lives in Berkeley, California with his partner, daughter, and dog Karl Barx.

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