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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: OPTICAL DISK DRIVE  
PRODUCTS ANTITRUST LITIGATION,

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INDIRECT PURCHASER CLASS,

Plaintiff-Appellee,

v.

CONNER ERWIN,

Objector-Appellant,

v.

SAMSUNG ELECTRONICS CO., LTD.;  
et al.,

Defendants-Appellees.

No. 21-16291

D.C. No. 3:10-md-02143-RS

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Richard Seeborg, Chief District Judge, Presiding

\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted April 19, 2022  
Seattle, Washington

Before: GOULD, BEA, and CHRISTEN, Circuit Judges.  
Dissent by Judge CHRISTEN.

This case concerns attorneys' fees awarded to Hagens Berman Sobol Shapiro, LLP (HB), class counsel for a class of Indirect Purchaser Plaintiffs (IPP) in a lengthy multidistrict antitrust suit. We previously vacated the district court's decisions awarding a total of \$52,780,000 in attorneys' fees and expenses to HB and remanded for the recalculation of the award. *See In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 926 (9th Cir. 2020) (*ODD I*) (vacating and remanding first- and second-round attorneys' fees and litigation expense awards); *In re Optical Disk Drive Prods. Antitrust Litig.*, 804 F. App'x 443, 444 (9th Cir. 2020) (*ODD II*) (unpublished) (vacating third-round attorneys' fees award and remanding "for further findings consistent with the standard set forth in the concurrently filed opinion" in *ODD I*). On remand, the district court awarded HB \$31,026,000 in attorneys' fees. Erwin now appeals the district court's order granting these attorneys' fees and denying his motion to "Enforce Settlement, Return Class Funds, and Disgorge Fees."<sup>1</sup>

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<sup>1</sup> Because the parties are familiar with the factual and procedural history of the case, we recount it only where necessary.

Erwin challenges the newly entered award on three grounds. First, he alleges that violations of the settlement agreements and breaches of ethical and fiduciary duties by HB require forfeiture of the fee award. Second, Erwin argues that the district court miscalculated HB’s initial fee bid, rendering the court’s calculation of the overall fee award unreasonable. Finally, Erwin contends that the district court abused its discretion by relying upon impermissible grounds to justify its upward departure from HB’s bid amount.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. For the reasons set forth below, we **AFFIRM in part, VACATE in part, and REMAND** for further proceedings consistent with this memorandum.

## I.

In common fund class action cases like the one at bar, we “review for abuse of discretion the district court’s award of attorney’s fees and costs to class counsel as well as its method of calculating the fees. The factual findings underlying these decisions are reviewed for clear error.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (en banc) (citation omitted). “Any element of legal analysis which figures in the district court’s decision is reviewed de novo.” *In re Mercury Interactive Corp. Secs. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010) (quoting *Fischer v. SJB–P.D., Inc.*, 214 F.3d 1115, 1118 (9th Cir.2000)).

“Although a district court has broad discretion to determine attorneys’ fees, it abuses that discretion if it makes an error of law,” *id.* at 993 (citing *Koon v. United States*, 518 U.S. 81, 100 (1996)), or if it fails to “provide a concise but clear explanation of its reasons for the fee award’ . . . . [including] not only the grounds on which it relied, but also how it weighed the various competing considerations,” *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 739 (9th Cir. 2016) (per curium) (first quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); then citing *Powers v. Eichen*, 229 F.3d 1249, 1257–58 (9th Cir. 2000)).

“We review de novo a district court’s conclusion that an attorney’s conduct violated court rules. A district court’s exercise of its supervisory powers is reviewed under an abuse-of-discretion standard.” *United States v. Carona*, 660 F.3d 360, 364 (9th Cir. 2011) (citation omitted).

## II.

Erwin first challenges HB’s treatment of the funds it received as a result of the district court’s original fee awards. He makes two arguments: (1) that the settlement agreements required HB to return immediately the fees to the settlement fund after this court vacated the awards in *ODD I* and *ODD II*; and (2) that California’s ethical rules required HB to place immediately the fees into a client trust account following vacatur. We reject these arguments and affirm the district

court’s denial of Erwin’s motion to “Enforce Settlement, Return Class Funds, and Disgorge Fees.”

The applicable local rule provides that attorneys’ practicing before the district court must “[b]e familiar and comply with the standards of professional conduct required of members of the State Bar of California.” N.D. Cal. Local Rule 11-4(a)(1). Each of the settlement agreements at issue include provisions requiring HB to return promptly funds approved as part of attorneys’ fees awards “[i]n the event . . . the order making the Fee and Expense Award is reversed or modified.” Because we did not reverse or modify—but rather vacated—the fee award orders,<sup>2</sup> the district court did not err in determining that HB was under no clear obligation per the terms of the settlement agreements to refund immediately the fees.

Erwin further argues that the district court erred by declining to order disgorgement for purported breaches of ethical and fiduciary obligations. We disagree. We have held that, “[i]n determining what fees are reasonable, a district court may consider a lawyer’s misconduct, which affects the value of the lawyer’s services.” *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir. 2012) (citing *Image Tech. Serv., Inc. v. Eastman Kodak Co.*, 136 F.3d 1354, 1358 (9th Cir. 1998)). We have further made clear that district courts have “broad equitable power to deny

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<sup>2</sup> See *ODD I*, 956 F.3d at 926; *ODD II*, 804 F. App’x at 443.

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