

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JONATHAN CORRENTE, CHARLES
SHAW, and LEO WILLIAMS, each
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

THE CHARLES SCHWAB CORPORATION,

Defendant.

Case No. 4:22-cv-470-ALM

Hon. Amos L. Mazzant, III

**DECLARATION OF YAVAR BATHAE IN SUPPORT
OF PLAINTIFFS' COUNSEL'S MOTION FOR AN AWARD
OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS**

Pursuant to 28 U.S.C. § 1746, I, Yavar Bathaee, hereby declare as follows:

1. I am one of the Court-appointed co-lead class counsel in this matter and am currently a partner at Bathaee Dunne LLP. I submit this Declaration in support of Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees, Litigation Expenses, and Service Awards. I have personal knowledge of the facts set forth

2. I am an attorney admitted to practice in the United States District Court for the Eastern District of Texas as well as the highest courts of New York and California, among other jurisdictions. I am over the age of 18 and am personally familiar with and have personal knowledge of the facts contained herein, which I could and would testify competently thereto. I have personally spent considerable time on this case and have been involved in nearly every aspect of the case.

3. My firm's investigation of this case began in March 2021, well before the complaint was filed on June 2, 2022. The investigation involved an exhaustive analysis of the retail order

flow market and the Schwab-TD Ameritrade merger, customer complaints related to the selling of equities or equity options both before and after the Merger, reviewing public information and disclosures about the Merger, and reviewing industry publications and relevant case law concerning the Merger in general.

4. Following an approximately fifteen-month investigation, on June 2, 2022, my firm filed the 103-page, 488 paragraph complaint in this case on behalf of named plaintiffs and class representatives Jonathan Corrente, Charles Shaw, and Leo Williams (the “Class Representatives”)—alleging a violation of Section 7 of the Clayton Act stemming from the Schwab-TD Ameritrade merger, which, as alleged, substantially lessened competition in the Retail Order Flow Market. Plaintiffs brought their claim on behalf of a putative class of “[a]ll persons, entities, and/or corporations in the United States who purchased or sold equities or equity options through TD Ameritrade, Schwab, or any of their affiliates from October 26, 2020, through the present.” *Id.* ¶ 464.

5. Plaintiffs allege that the Merger, which was completed on October 26, 2020, consolidated more than half of the Retail Order Flow Market (“ROFM”) in the United States into one entity, resulting in a significantly higher market concentration in the ROFM. Compl. ¶¶ 284-86. This higher market concentration has reduced competition among brokerages to maximize price improvement to retail clients. *Id.* ¶¶ 372-73. The Merger also has the effect of allowing market makers to contract with fewer firms to obtain a substantial portion of all retail order flow. *Id.* ¶¶ 381-85. For these reasons, Plaintiffs allege the Merger caused retail investors to experience antitrust injury in the form of, among other things, less payment for order flow remitted to retail customers, higher transactions costs in the form of wider bid-ask spreads from market makers, and diminished choice on how their trades are executed. *Id.* ¶¶ 385, 449-55, 485.

6. After Plaintiffs filed their Complaint on June 2, 2022, Schwab filed a motion to dismiss on August 29, 2022, Dkt. No. 18, which the Court denied in its entirety on February 24, 2023, Dkt. No. 40.

7. Discovery opened following the parties' Rule 26(f) conference on October 12, 2022. Every step of discovery was hard-fought, including extensive negotiations on a Protective Order and ESI Order.

8. On December 1, 2022, Plaintiffs served their First Set of Interrogatories and Requests for Admission on Schwab. On March 15, 2023, Plaintiffs deposed Schwab through its Rule 30(b)(6) designee, a Senior Vice President. Plaintiffs also noticed and scheduled the depositions of seven key Schwab and Ameritrade executives. Before settlement discussions began, Plaintiffs deposed four of these executives: Schwab's Managing Director of Market and Execution Services; Managing Director of Corporate Development; Managing Director of Trading Order Management and Risk; and Managing Director of Trading Operation, Equity, Options and Futures Trading Operations. All deposition testimony was taken via videoconference, which eliminated costs that otherwise would have been spent on travel. In addition, Schwab has produced approximately 218,319 documents comprising 950,021 pages, of which Plaintiffs have conducted a thorough review.

9. Korein Tillery began working on this case as co-counsel with Bathaee Dunne LLP in early 2023.

10. In addition to documents, Schwab also produced 6.5 terabytes of financial data, comprising approximately 6.4 billion individual trades placed by Schwab and Ameritrade customers between 2019 and 2023. Plaintiffs retained expert econometricians and industrial organization economists who were in the process of using this financial data to construct a

multivariate regression model that would estimate the impact of the Merger on the prices that Plaintiff class members paid for their trades. This model would also permit Plaintiffs' experts to estimate the trade prices "but for" the Merger, allowing for the calculation of both aggregated and individual-specific damages during the class period. Plaintiffs have also retained a renowned finance professor specializing in securities trading and the structure of securities market, who conducted an extensive study of market microstructure relevant to this case, including how the structure, design, and operation of the relevant market affect price formation and transaction costs of investors.

11. During discovery, Plaintiffs filed two motions to compel against Schwab. Dkt Nos. 80, 109. On September 8, 2023, Plaintiffs moved to compel Schwab to produce documents it had withheld under a purported privilege for "confidential supervisory information" based on regulations promulgated by the Federal Reserve Board and other banking regulators. Dkt. No. 80. Plaintiffs argued that this purported privilege is without statutory authority and therefore invalid. *Id.* On December 20, 2023, Plaintiffs moved to compel Schwab to produce the entire file from the U.S. Department of Justice's review of the Schwab-Ameritrade merger under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, including the approximately 15 million pages of documents produced to the DOJ by Schwab and TD Ameritrade. Dkt. No. 109. In June 2023, attorneys from Korein Tillery PC entered their appearance as co-counsel.

12. Schwab also served extensive discovery requests on Plaintiffs, including requests for admission and two sets of interrogatories. The Class Representatives participated in discovery, including working with my firm to identify and produce detailed financial records from all retail brokerages where they had accounts over a multi-year period, responding to one set of interrogatories and one set of requests for admission, and preparing responses to a second set of

interrogatories that ultimately were not served due to the standstill on discovery prior to settlement. The Class Representatives reviewed pleadings, motions, and other documents; and frequently communicated with Plaintiffs' Counsel concerning the status of the case, court documents, strategy, and settlement over the three years that this case has been litigated.

13. Bathaee Dunne and Korein Tillery reviewed and analyzed nearly one million pages of discovery produced by Schwab, as well as public filings and reports lodged with the United States Securities and Exchange Commission. Staff attorneys were principally assigned the role of document review, with more senior lawyers reviewing their work.

14. Plaintiffs' Counsel collaborated extensively with leading experts in the financial services field throughout this case. They engaged Professor Jonathan Macey, a highly regarded economist from Yale University, to serve as their expert on the Retail Order Flow Market. Throughout discovery, counsel frequently consulted with Professor Macey on key issues, including the documents and deposition testimony needed to support Plaintiffs' definition of the relevant antitrust market. Counsel held regular calls and video meetings with him, reviewed and provided input on drafts of his expert analysis, and helped identify relevant materials—ranging from internal documents to public sources—for use in his report. By the time the parties reached a settlement, Professor Macey had already made significant progress toward completing a final expert report in support of class certification.

15. Plaintiffs' Counsel also retained Professor Hal Singer of the University of Utah and Ted Tatos, a consultant at Econ One Research and Director of Empirical Analytics, to assist in building a model of antitrust injury, impact, and damages for purposes of class certification and, eventually, for the merits stage of the case. Professor Singer and Mr. Tatos worked on developing a multivariate regression model that would, controlling for possible confounding factors, test and

prove the hypothesis that the merger between Schwab and TD Ameritrade reduced price improvement for customers below the levels that would have prevailed or resulted absent the merger. This model would then permit Plaintiffs' experts to estimate the trade prices in a "but-for" world where the merger did not close, and facilitate the calculation of class-wide and individual damages. As with Professor Macey, Plaintiffs' Counsel worked closely with Professor Singer and Mr. Tatos during document discovery and the deposition process to identify and secure the evidence necessary to build their liability and damages model. This model and its preliminary results developed by Plaintiffs' experts was key in successfully achieving the settlement. Plaintiffs' counsel also worked with their experts to provide opinions in support of settlement regarding the benefits of the injunctive relief to class members.

16. Plaintiffs' Counsel engaged in extensive, multi-month negotiations with Schwab to obtain the data required to complete the expert work in this case. Ultimately, the parties reached an agreement for Schwab to produce certain confidential customer trading records from 2019 to 2023. The negotiations culminated in the production of approximately 6.5 terabytes of data from across 379 different files, containing approximately 6.4 billion trades. Plaintiffs' experts analyzed this data to prepare models for class certification and anticipated summary judgment motions.

17. Due to the sensitivity of Schwab's customer data, Schwab insisted on re-negotiating the scope of the protective order, which again required extensive negotiations over many months. In conjunction with its experts, Plaintiffs' Counsel had to review security and safety protocols related to the safe handling of these trading records, secure relevant cybersecurity audit protections, and ensure compliance with the terms of the eventually agreed-upon Protective Order.

18. Analyzing Schwab's production of trading records was, likewise, an iterative and time-intensive process that required months of correspondence between experts, Plaintiffs'

Counsel, and counsel for Schwab. Plaintiffs' Counsel worked diligently with its experts to identify gaps in the trade data production, and then subsequently engaged in multiple rounds of negotiations and correspondence with Schwab counsel regarding the production of Schwab's trading records, identified gaps in the data produced, understanding the fields in the data, and ensuring that all relevant data had been produced for the 2019-2023 period.

19. As discovery progressed, Plaintiffs' Counsel continued to perform extensive research on their anticipated class certification motion, all of which required careful analysis of complex financial information and the applicable law.

20. Beginning in May 2024, Plaintiffs and Schwab discussed and ultimately agreed to a mediation before Hon. Nancy Atlas (Ret.), which was ultimately conducted on July 9, 2024. As part of that mediation process, Plaintiffs' Counsel conducted numerous videoconferences with Judge Atlas and/or Schwab counsel to arrange for the mediation and discuss scheduling. Plaintiffs' Counsel drafted a comprehensive mediation statement, which set forth the merits of the case, potential remedies, and other relevant information for Judge Atlas. These efforts included legal and factual research, drafting, editing, cite checking, and proofing of the mediation statement.

21. During a full day mediation on July 9, 2024, both sides engaged in hard fought advocacy, zealous representation, and fair negotiations, ably facilitated by Judge Atlas. While considerable progress was made, the parties were unable to resolve the dispute at that time. The parties did agree to continue the mediation process, working with Judge Atlas.

22. Over the next three months, Plaintiffs' Counsel, Schwab, and Judge Atlas continued to mediate the dispute via regular correspondence and videoconferences. These considerable efforts ultimately resulted in settlement, and the drafting and negotiation of a term sheet that was signed on September 20, 2024. This settlement was reached without any discussion of the

attorney's fees, costs, and expenses that Plaintiffs' Counsel now seeks; those fees were agreed upon separately, in a separate mediation before Judge Atlas on January 24, 2025. No time or costs related to the separate fee mediation is included in my firm or any other firm's application for attorney's fees or litigation expenses.

23. Once the parties reached an agreement on terms—and executed a term sheet—Plaintiffs' Counsel worked with Schwab to negotiate the Settlement Agreement, finalize and execute the Settlement Agreement on December 12, 2024, and then draft the motion for preliminary settlement approval and its supporting documents on February 4, 2025. Part of the negotiations included the process of selecting Bernard A. Nigro, Jr., Aleksandr Livshits, and Nihal Patel of Fried, Frank, Harris, Shriver & Jacobson LLP, to serve as the Consultants who will be designing the antitrust compliance program for Schwab that is the center of this Rule 23(b)(2) class settlement.

24. Following execution of the Stipulation of Settlement, the parties mediated the issue of attorneys' fees and litigation expenses before Judge Atlas on January 24, 2025. As a result, they reached an agreement whereby Plaintiffs' Counsel would seek an award of attorneys' fees not to exceed \$8,250,000, and reimbursement of litigation expenses not to exceed \$700,000. This agreement is reflected in the notice provided to the Class and on the settlement website.

25. Subsequent to reaching a settlement with Schwab, Plaintiffs' counsel worked with the notice administrator, Ankura and Schwab, to develop a direct notice campaign to reach over 24 million class members. Plaintiffs' counsel responded to scores of telephone and email inquiries from class members seeking additional information.

26. Plaintiffs' Counsel's work will not be done even after final approval. As set forth in the Settlement Agreement, Plaintiffs' Counsel will remain involved with Schwab's antitrust

compliance program, in consultation with the Consultants. Plaintiffs' Counsel anticipates spending a considerable amount of time reviewing recommendations, communicating with the Consultants and Schwab, and providing feedback into the design and implementation of the antitrust compliance program. Plaintiffs' Counsel will not seek any attorney's fees related to its future work monitoring and reviewing the design and implementation of the antitrust compliance program on behalf of the Class.

27. The settlement as constructed reflects significant prospective relief to Schwab customers, designed to reduce the future likelihood of any harmful antitrust conduct by Schwab or the market makers providing liquidity as part of its payment-for-order-flow model, and should lead to meaningful competitive efforts by Schwab and its market makers to reduce costs and increase price improvement on trades for Schwab customers. Furthermore, this Rule 23(b)(2) class settlement preserves any right that absent class members have to bring damages claims on behalf of themselves or on behalf of a class.

28. This suit is one of only two successful post-merger Section 7 challenges this century—and also appears to be the only antitrust class action with an outcome favorable to a plaintiff in the Fifth Circuit in at least the last twenty years, as well as the first successful class action challenging practices related to payment for order flow. There do not appear to be any analogous challenges to a merger of this size.

29. As of June 30, 2025, Bathaee Dunne has expended 7,068.5 hours prosecuting this case. The total lodestar is \$6,605,368.50. Plaintiffs' Counsel collectively expended 14,774.5 hours prosecuting the claims in this action and the total lodestar value of that time is \$10,803,933.50.

30. The schedule in Exhibit A is prepared from contemporaneous electronic time records maintained by the firm in the ordinary course of business, at the rates in place as of June

30, 2025. Time entries associated with the January 24, 2025 fee mediation before Judge Atlas, as well as those related to the preparation of the application for attorneys' fees and reimbursement of litigation expenses, have been excluded. Additionally, all time after June 30, 2025—including anticipated time related to assisting Settlement Class Members and overseeing the design and implementation of Schwab's antitrust compliance program—has been omitted.

31. I was responsible for overseeing all work that my firm did on this case. On top of supervising all substantive work, I ensured that staffing was done efficiently, with more junior attorneys taking responsibility for much of the preliminary stages discovery and document review, with more senior attorneys reviewing that work and addressing many of the more nuanced issues in this case.

32. As detailed in Exhibit B, my firm has incurred a total \$31,100.46 in litigation expenses in connection with this action through June 30, 2025. Plaintiffs' Counsel collectively advanced \$686,492.60 in litigation expenses in this action.

33. The expenses incurred in connection with this Action are documented in my firm's books and records, which are prepared based on bank statements, check records, and other source materials. These records accurately reflect the expenses incurred.

34. My firm has reviewed the underlying time and expense records supporting this declaration to identify and correct any billing errors.

I certify under penalty of perjury under the laws of the United States of American that the foregoing is true and correct. Executed July 17, 2025 in New York, New York.

/s/ Yavar Bathaee

EXHIBIT A

Bathae Dunne LLP – Lodestar by Timekeeper as of June 30, 2025

Timekeeper	Title	Hourly Rate	Hours	Total
Yavar Bathae	Partner	\$1,295.00	1,148.0	\$1,486,660.00
Adam Ernette	Associate	\$650.00	579.4	\$376,610.00
Brian Dunne	Partner	\$1,295.00	934.3	\$1,209,918.50
Priscilla Ghita	Associate	\$650.00	416.6	\$270,790.00
Edward Grauman	Partner	\$1,150.00	523.0	\$601,450.00
Chang Hahn	Associate	\$650.00	573.7	\$372,905.00
Kaki Johnson	Of Counsel	\$900.00	36.7	\$33,030.00
Felipa Quiroz	Staff Attorney	\$500.00	1,048.0	\$524,000
Bryce Talbot	Associate	\$650.00	21.9	\$14,235.00
Allison Watson	Associate	\$650.00	207.4	\$134,810.00
Andrew Williamson	Of Counsel	\$850.00	606.5	\$515,525.00
Andrew Wolinsky	Partner	\$1,095.00	973.0	\$1,065,435.00
Total			7,068.5	\$6,605,368.50

EXHIBIT B

Bathae Dunne LLP – Expenses as of June 30, 2025

Expense Type	Amount
Court Fees	\$ 1,715.74
Depositions/Transcripts	\$ 145.80
E-Discovery	\$ 17,232.90
Miscellaneous	\$ 7,000.00
Travel/Lodging	\$ 5,006.02
Grand Total	\$31,100.46