

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

DAVID LOWERY; VICTOR  
KRUMMENACHER; GREG  
LISHER; DAVID FARAGHER,  
individually and behalf of themselves  
and all others similarly situated,

*Plaintiffs-Appellees,*

v.

RHAPSODY INTERNATIONAL,  
INC., a Delaware corporation,

*Defendant-Appellant.*

No. 22-15162

D.C. No.  
4:16-cv-01135-  
JSW

ORDER AND  
AMENDED  
OPINION

Appeal from the United States District Court  
for the Northern District of California  
Jeffrey S. White, District Judge, Presiding

Argued and Submitted December 9, 2022  
Pasadena, California

Filed June 7, 2023  
Amended August 2, 2023

Before: Milan D. Smith, Jr., Daniel P. Collins, and  
Kenneth K. Lee, Circuit Judges.

Order;  
Opinion by Judge Lee

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### SUMMARY\*

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#### Copyright / Attorneys' Fees

The panel reversed the district court's award of attorneys' fees to plaintiffs' counsel in a copyright action and remanded.

Counsel filed a class action lawsuit on behalf of copyright holders of musical compositions and recovered a little over \$50,000 for the class members from defendant Rhapsody International, Inc. (now rebranded as Napster), a music streaming service. The class members obtained no meaningful injunctive or nonmonetary relief in the settlement of their action. The district court nonetheless authorized \$1.7 in attorneys' fees under the "lodestar" method.

Reversing, the panel held that the touchstone for determining the reasonableness of attorneys' fees in a class action under Federal Rule of Civil Procedure 23 is the benefit to the class. Here, the benefit was minimal. The panel held that the district court erred in failing to calculate the settlement's actual benefit to the class members who

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\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

submitted settlement claims, as opposed to a hypothetical \$20 million cap agreed on by the parties.

The panel held that district courts awarding attorneys' fees in class actions under the Copyright Act must still generally consider the proportion between the award and the benefit to the class to ensure that the award is reasonable. The panel recognized that a fee award may exceed the monetary benefit provided to the class in certain copyright cases, such as when a copyright infringement litigation leads to substantial nonmonetary relief or provides a meaningful benefit to society, but this was not such a case.

The panel instructed that, on remand, the district court should rigorously evaluate the actual benefit provided to the class and award reasonable attorneys' fees considering that benefit. In determining the value of the "claims-made" class action settlement, the district court should consider its actual or anticipated value to the class members, not the maximum amount that hypothetically could have been paid to the class. The district court should also consider engaging in a "cross-check" analysis to ensure that the fees are reasonably proportional to the benefit received by the class members.

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### COUNSEL

Karin Kramer (argued), Quinn Emanuel Urquhart & Sullivan LLP, San Francisco, California; William B. Adams, Quinn Emanuel Urquhart & Sullivan LLP, New York, New York; Thomas C. Rubin, Quinn Emanuel Urquhart & Sullivan LLP, Seattle, Washington; for Defendant-Appellant.

Reuben A. Ginsburg (argued), Michelman & Robinson LLP, Los Angeles, California; Sanford L. Michelman, Michelman & Robinson LLP, Encino, California; Mona Z. Hanna and Jennifer A. Mauri, Michelman & Robinson LLP, Irvine, California; for Plaintiffs-Appellees.

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### **ORDER**

Judges Smith, Collins, and Lee have voted to deny Appellees' Petition for Rehearing En Banc (Dkt. No. 36), filed June 21, 2023. The full court has been advised of the Petition for Rehearing En Banc, and no judge of the court has requested a vote. Appellees' Petition for Rehearing En Banc is DENIED. No future petitions for rehearing or rehearing en banc will be accepted.

The opinion filed June 7, 2023 (Dkt. No. 34) is amended, and the amended version has been filed concurrently with this order.

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### **OPINION**

LEE, Circuit Judge:

This case will likely make the average person shake her head in disbelief: the plaintiffs' lawyers filed a class action lawsuit on behalf of copyright holders of musical compositions and ended up recovering a little over \$50,000 for the class members. The lawyers then asked the court to award them \$6 million in legal fees. And the court

authorized \$1.7 million in legal fees—more than thirty times the amount that the class received.

We reverse and remand. The touchstone for determining the reasonableness of attorneys’ fees in a class action is the benefit to the class. It matters little that the plaintiffs’ counsel may have poured their blood, sweat, and tears into a case if they end up merely spinning wheels on behalf of the class. What matters most is the result for the class members. Here, the benefit from this litigation was minimal: the class received a measly \$52,841.05 and obtained no meaningful injunctive or nonmonetary relief.

On remand, the district court should rigorously evaluate the actual benefit provided to the class and award reasonable attorneys’ fees considering that benefit. In determining the value of this “claims-made” class action settlement, the court should consider its actual or anticipated value to the class members, not the maximum amount that hypothetically could have been paid to the class. The court should also consider engaging in a “cross-check” analysis to ensure that the fees are reasonably proportional to the benefit received by the class members.

## BACKGROUND

### **I. Rhapsody faces hurdles navigating the pre-Music Modernization Act compulsory licensing copyright regime.**

Rhapsody International (now rebranded as Napster) offers music for digital streaming. Rhapsody—like other online music services such as Apple Music or Spotify—must pay royalties both to the owners of the copyrighted musical compositions (as in this case) and to the owners of the copyright in the particular sound recording of that

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