

EXHIBIT D

**TO DECLARATION OF
MICHAEL G. RHODES
IN SUPPORT OF JOINT MOTION
FOR
PRELIMINARY APPROVAL
OF REVISED SETTLEMENT**



Commercial Class Action Litigation

The prevalence of commercial class actions (those not involving securities violations) has dramatically increased over the past several years and has become a growing threat to many businesses. The stakes are high and potential exposure is significant, particularly in cases with potentially large classes of plaintiffs.

Cooley's Commercial Class Action Litigation practice has in-depth experience representing companies, across a wide array of industries, in various types of commercial class actions. In both state and federal courts, including the Judicial Panel on Multidistrict Litigation (MDL Panel), members of our Commercial Class Action Litigation group have litigated matters involving consumer protection, fraud, wage and hour, RICO, healthcare, finance and banking, copyright, products liability, Internet transactions and payment processing, privacy, antitrust, mass torts and statutory violations.

Our practitioners are very experienced in class certification procedures, the negotiation and creative structuring of class action settlements and, when necessary, trial of these class actions. In multi-district class action litigation, we have successfully moved to transfer commercial class actions pending in district courts around the country to a single district court for coordinated or consolidated proceedings and have served as lead counsel after transfer.

The members of Cooley's Commercial Class Action Litigation practice work closely with our clients to obtain favorable resolutions as early and as efficiently as possible under the circumstances of each unique case, whether by obtaining pre-certification or post-certification dismissals, defeating class certification motions, negotiating favorable settlements before or after class certification or litigating cases through trial and appeal.

Recent representations include:

- Defending numerous consumer fraud and financial class actions for **E*TRADE FINANCIAL Corporation** and its subsidiaries, including obtaining dismissals and defeating class certification motions in cases that alleged violation of the Truth-in-Lending Act and California's consumer protection statute (Business & Professions Code section 17200).
- On behalf of **Nvidia Corporation**, defeating certification of nationwide classes of indirect and direct purchasers in multi-district antitrust litigation involving federal and state price-fixing and consumer claims for computer graphics processing units (GPUs).
- In multi-district class action litigation seeking billions in damages, winning a complete victory on summary judgment for **PacifiCare HealthSystems** in HMO class action where most other defendants paid billions of dollars to settle. In the course of the litigation, also achieved unanimous victory in United States Supreme Court.
- Handling more than a dozen class actions for **eBay** and its subsidiaries involving state auction laws, consumer fraud and protection statutes, online payment processing and ticket re-sales.
- Defending over 25 different California Song Beverly Credit Card Act and federal Fair and Accurate Credit Transaction Act ("FACTA") class actions for retailers and online businesses arising from credit card

transactions, including the defeating of class certification for **StubHub, Inc.**, an eBay company, in an action brought under the Fair Credit Reporting Act (FCRA) for the alleged violation of FACTA, which was the first such action filed against an online business.

- On behalf of **Mayer Roofing, Inc.**, defeating class certification in two union-sponsored actions asserting overtime and meal and rest period violations in an action involving thousands of employees.
- Obtaining a major victory for our client **The TJX Companies, Inc.** (T.J. Maxx and Marshalls stores) and retailers doing business in California in a published appellate decision in a class action brought under California Civil Code section 1747.08 of the Song Beverly Credit Card Act, which limited the statute's reach to purchase transactions and a one-year limitations period. (*TJX Companies, Inc. v. Superior Court* (2008) 163 Cal.App.4th 80)
- Obtaining dismissal for **Covidien** at the pleading stage of all federal and state claims in an antitrust class action relating to sales of medical devices across the nation.

Related Practices

- Antitrust & Trade Regulation
- Commercial Litigation
- Crisis Management
- eDiscovery & Document Retention
- Employment & Labor
- Food Litigation
- Privacy
- Securities Litigation
- Trials
- White Collar & Regulatory Defense

Related Industries

- Digital Media & Entertainment
- Health Care
- Health Care Litigation
- Internet
- Retail & Consumer Products

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