FULL FAITH AND CREDIT TO SETTLEMENTS IN OVERLAPPING CLASS ACTIONS: A REPLY TO PROFESSORS KAHAN AND SILBERMAN

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Professor Miller argues that there is a compelling case for a narrow reading of the Ninth Circuit's remand decision in Epstein v. MCA, Inc. (Matsushita II)*, such that the holding is neither as far-reaching nor as nefarious as Professors Kahan and Silberman suggest. In light of the extraordinary facts under which the litigation arose (and the court's own limiting construction),* Matsushita II *should not be interpreted as opening up all class actions to collateral attack in a subsequent forum. Rather, the holding requires that, in order for collateral attack to be permissible. Class counsel in the initial forum must have been disabled from litigating the basis of the claim in the second forum and other indicia that class counsel did not fairly and adequately represent class members must be present. With this narrow interpretation, and existing procedures for avoiding interjurisdictional conflict,* Matsushita II *can be defended as a reasonable balance of the costs of collateral attack and the benefits of deterring questionable settlements.*

One of the more troubling features of modern class action law is the frequency of "overlapping" litigation—class actions based on common facts or circumstances filed in more than one court. Because class action practice is dominated by entrepreneurial attorneys who need only supply the name of a class member as their key to the courthouse door,[1] multiple class action lawsuits are often filed in the wake of newsworthy events such as corporate takeovers or unexpected share price declines. These actions will often be litigated in different courts by competing teams of plaintiffs' attorneys. The question then becomes which of the competing lawsuits will generate a judgment—and the attendant fees for plaintiffs' attorneys.

Overlapping class actions present a difficult problem of social policy because two competing goals are at stake: efficient enforce-

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[1] See John C. Coffee, Jr., The Regulation of Entrepreneurial Litigation: Balancing Fairness and Efficiency in the Large Class Action, 54 U. Chi. L. Rev. 877, 879, 899 (1987); John C. Coffee, Jr., Rescuing the Private Attorney General: Why the Model of the Lawyer as Bounty Hunter Is Not Working, 42 Md. L. Rev. 215, 218-19 (1983); John C. Coffee, Jr., Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions, 86 Colum. L. Rev. 669, 677-84 (1986); Jonathan R. Macey & Geoffrey P. Miller, The Plaintiffs Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform, 58 U. Chi. L. Rev. 1, 7-11 (1991).

ment of the law, on the one hand, and, on the other, respect for the independent sovereignty of the jurisdictions in which litigation is brought.[2] These values are in tension: The goal of efficient enforcement of the law would suggest an *exclusive forum* model, in which the entire controversy is consolidated and resolved in a single proceeding, whereas the goal of jurisdictional respect suggests a *parallel litigation* model, under which all courts with jurisdiction and competence to hear aspects of the case can proceed to final judgment, even if parallel litigation is ongoing or has been completed in another jurisdiction.[3]

These competing models have recently come to the forefront of the public policy debate as a result of the Ninth Circuit's remarkable decision in *Epstein v. MCA, Inc.*[4] (*Matsushita II*), which held that a state court judgment approving a class action settlement was not entitled to full faith and credit in an overlapping federal class action because absent class members had not received "adequate" representation in the state court proceeding. A broad reading of the court's rationale would suggest that *all* class action settlements are subject to collateral attack in other fora on grounds of inadequate representation. Such a ruling would represent an extreme application of the parallel litigation model in the context of large-scale class actions—a result that would be both far-reaching in its scope and disturbing in its implications.

Marcel Kahan and Linda Silberman highlight the defects of the *Matsushita II* decision in their interesting and provocative critique.[5] Kahan and Silberman argue that a state court class action judgment should not be subject to collateral attack on grounds of inadequate representation so long as the initial forum makes a finding, based on appropriate procedures, that the class has received adequate representation.[6] They observe that the *Matsushita II* decision does little to control problems of plaintiff-shopping and forum-shopping, but does promise to upset the finality of judgments, and thereby to impede settlements and increase transaction costs.

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[2] See Geoffrey P. Miller, Overlapping Class Actions, 71 N.Y.U. L. Rev. 514, 516 (1996).

[3] See id. (describing exclusive forum and parallel litigation models).

[4] 126 F.3d 1235, 1251 (9th Cir. 1997), reh'g granted (9th Cir. 1998) [hereinafter *Matsushita II*].

[5] See Marcel Kahan & Linda Silberman, The Inadequate Search for "Adequacy" in Class Actions: A Critique of *Epstein v MCA, Inc.*, 73 N.Y.U. L. Rev. 765 (1998) [hereinafter Kahan & Silberman, The Inadequate Search]. This is a sequel to an earlier article by the same authors on the ability of state courts to release exclusively federal claims in class action litigation. See generally Marcel Kahan & Linda Silberman, *Matsushita* and Beyond: The Role of State Courts in Class Actions Involving Exclusive Federal Claims, 1996 Sup. Ct. Rev. 219.

[6] See Kahan & Silberman, The Inadequate Search, supra note 5, at 788-89.

Kahan's and Silberman's analysis is persuasive to the degree one accepts their characterization of the scope and consequences of the *Matsushita II* decision. However, the decision may not be as pathological as the authors suggest. *Matsushita II* is subject to a narrowing construction that would limit its application to egregious cases; indeed, the majority opinion in *Matsushita II* specifically said as much,[7] and there is no reason not to take the court at its word. Moreover, the dangers of collateral attack of class action settlements can be substantially mitigated if courts adopt appropriate strategies to avoid jurisdictional conflict and to recognize the value of the exclusive forum model in managing large-scale social litigation. So interpreted and administered, *Matsushita II* might be defensible as a means for policing questionable settlements that present circumstantial evidence of collusion or other undesirable tactics by the settling parties. I will deal with these issues in the pages that follow.

I
INTERPRETING *MATSUSHITA II*

The case for a narrow reading of *Matsushita II* is compelling. As Kahan and Silberman observe, if *Matsushita II* is read broadly, its effect would be to destabilize the conduct of class action litigation in the United States.[8] All class action settlements, however generous to the class, however competently litigated, and however much the product of adversarial, arm's-length negotiations between the parties, would be open to collateral attack in a subsequent forum. There is nothing the parties in the first forum can do to prevent this danger: Under a broad reading of *Matsushita II*, an absent class member could sit on her hands during the initial fairness hearing, challenge the adequacy of the representation in another forum, and not be held accountable for failing to object to the settlement in the first forum. The effect would be to undermine class action litigation in general, to interfere with the policies favoring settlement of litigation, and to contravene the basic values underlying the principle of full faith and credit.

For this very reason, however, the *Matsushita II* case cannot signal such a disturbing and perverse result. The majority opinion in *Matsushita II* itself took pains to offer reassurances on this point:

> The reality of the matter is that it is the rare exception for representation in a class action even to approach the point where an absen-

[7] See *Matsushita II*, 126 F.3d at 1255 (noting that decision is "the product of an extraordinary set of circumstances" in that Delaware counsel could not litigate Exchange Act claims, could not extinguish those claims through issue preclusion, and were in direct competition with parallel federal class action).

[8] See Kahan & Silberman, The Inadequate Search, supra note 5, at 766.

> tee will have a colorable claim for inadequacy. The small handful of cases that have come to our attention in which absentees have successfully challenged adequacy of representation bears this observation out. The paucity of such cases is to be expected. With rare exceptions, trial judges do their jobs and certify class representatives capable of representing the interests of absent class members. And, again with rare exceptions, the class representatives (including their counsel) faithfully discharge their fiduciary duties to the class. This case presents one of those rare exceptions.[9]

Given the court's own interpretation, we should not readily conclude that the court was actually hiding the import of its decision and intended to formulate a rule with unsettling consequences for the conduct of class action litigation. It is more likely, as the court itself observed in *Matsushita II*, that the outcome was a function of the "extraordinary circumstances" of the case.[10]

Those circumstances included the following. Matsushita's takeover bid for MCA generated two class actions: In Delaware, plaintiffs' attorneys filed a state law class action against MCA's directors for failing to maximize shareholder value;[11] and subsequently, a competing plaintiffs' group brought a class action in federal district court in California, alleging violations of rules of the Securities and Exchange Commission.[12] The securities law claims were under the exclusive jurisdiction of the federal courts and could not have been litigated in the state court action.[13]

At this point, the litigation had the posture of overlapping class actions. Both lawsuits arose out of the Matsushita tender offer for MCA. Although the bases for relief claimed in the complaints were different—state law in the Delaware case and federal law in the California case—the lawsuits were mutually threatening because resolution of either lawsuit could, in theory, have extinguished the other. The federal class action complaint could have been amended to allege violations of state law, under the federal court's supplemental jurisdiction; or the plaintiff class in the federal lawsuit could have released the defendants from liability to the class on state law issues even if state law causes of action had not been alleged in the complaint. The state class action could not have been revised to include the claims under the exclusive jurisdiction of the federal courts, but the parties could nevertheless have agreed to a global release of the federal claims as

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[9] *Matsushita II*, 126 F.3d at 1256.

[10] Id.; see also supra note 7.

[11] See Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 370 (1996) [hereinafter *Matsushita I*].

[12] See id.

[13] See id.; see also Securities Exchange Act of 1934 § 27, 15 U.S.C. § 78aa (1994).

part of a settlement of the Delaware action. Each group of attorneys thus could poach on the other's turf by settling the cause of action that formed the basis for the lawsuit in the other forum; by the same token, each group had reason to fear that the other would poach on its turf and thus take away a potentially lucrative case.

Both groups of plaintiffs' attorneys were well aware of the threat posed to their lawsuits by the overlapping action in the other jurisdiction. The plaintiffs' attorneys in Delaware repeatedly denigrated the value of the federal cause of action.[14] The goal was apparently to convince the Delaware court to push ahead with the state court litigation notwithstanding the presence of an overlapping action in federal court where the whole case could be resolved, and to persuade the court of the fairness of a settlement in the state case that included only minimal compensation for the release of the federal claims. Plaintiffs' counsel in Delaware, moreover, displayed haste in negotiating a settlement that released the state as well as the federal claims, reaching an initial agreement fifteen days after the competing class action was filed in California.[15]

Class counsel in the federal action, for their part, were also acting strategically. They could easily have participated in the Delaware litigation by filing their own class action based on state law causes of action, but they neglected to do so, perhaps because they believed that they would have to share any fee in the state court proceeding whereas they could appropriate the entire fee in the federal lawsuit. They had the option, moreover, to appear at the state court fairness hearing to contest the adequacy of representation or the fairness of the settlement but did not do so.[16] Counsel for the federal plaintiffs admitted at oral argument before the U.S. Supreme Court that the failure to appear was based on strategic considerations: If they stayed home, they could collaterally attack the state court judgment in the federal court on due process grounds.[17] Instead of appearing themselves, they seem to have enlisted the aid of a proxy, an ostensibly "independent" objector whose challenge to the adequacy of represen-

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[14] See *Matsushita II*, 126 F.3d at 1251 (describing Delaware counsel's "vigorous *disparagement* of the federal claims" and stating that Delaware counsel "consistently sought to convince, not only their own clients, but their adversaries and the Chancery Court itself that the federal claims had no merit").

[15] See id.

[16] See id. at 1259 (O'Scannlain, J., dissenting) (finding that federal plaintiffs had "full and fair opportunity" to participate in settlement hearing but did not appear).

[17] See Oral Argument, *Matsushita I*, No. 94-1809, 1995 WL 699203, at *47 (Nov. 27, 1995).

tation in the state court proceeding was originally drafted by counsel for the federal plaintiffs.[18]

For the defendant, the presence of overlapping lawsuits was a boon. The competing lawsuits allowed the defendant to play the competing groups of plaintiffs' attorneys off against one another, creating what Professor Jack Coffee terms a "reverse auction": The defendant attempts to settle all its liabilities with the team of plaintiffs' attorneys that offers the best deal.[19] The circumstances of *Matsushita II* suggest that the defendant may have been engaging in such a reverse auction strategy between the competing federal and state lawsuits.

In and of itself, the presence of competing teams of plaintiffs' attorneys seeking to prosecute overlapping class litigation in different forums is not particularly unusual. But *Matsushita II* had other features that are not ordinarily found to the same extent in other overlapping class actions. For example, as noted above, class counsel in Delaware repeatedly disparaged the federal claims they were ostensibly pressing on behalf of their clients during settlement negotiations.[20] It is surely extraordinary for an attorney to downplay the strength of his or her client's case, especially when—as turned out to be the case—the claims were not as weak as counsel claimed. One possible explanation for this conduct by Delaware counsel was their wish to obtain a settlement in Delaware, notwithstanding the existence of the overlapping federal case.

The relief requested was also atypical. Delaware counsel initially presented a proposed settlement to the court that was so egregious the court rejected the proposal as unfair[21]—an uncommon action for courts to take given the evident advantages of accepting a settlement proffered by counsel of both plaintiffs and defendants as serving the best interests of the class. The fees sought by Delaware counsel also raised red flags: The initial settlement proposal called for a one million dollar fee, a sum the Chancery Court characterized as generous;[22] and when the parties came back with a sweetened settlement with a reduced fee request, the Chancery Court slashed the fee still more.[23]

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18 See *Matsushita II*, 126 F.3d at 1259 (O'Scannlain, J., dissenting) (stating that federal plaintiffs' objections "were ably litigated through their surrogates").

19 See John C. Coffee, Jr., Class Wars: The Dilemma of the Mass Tort Class Action, 95 Colum. L. Rev. 1343, 1370-72 (1995).

20 See supra note 7 and accompanying text.

21 See In re MCA, Inc. Shareholders Litig., 598 A.2d 687, 695-96 (Del. Ch. 1991) (rejecting settlement as unfair, as it would confer no real monetary benefit on class members).

22 See id. at 695.

23 See In re MCA, Inc. Shareholders Litig., Civ.A. No. 1174, 1993 WL 43024, at *5-6 (Del. Ch. Feb. 16, 1993), reprinted in 18 Del. J. Corp. L. 1053, 1063-64 (awarding plaintiffs' attorneys $250,000 in fees and expenses, instead of $691,057.68 requested).

The timing of the initial settlement agreement in Delaware was also suspect: The parties rushed to hammer out a deal just days after the Securities Act case was filed in California.[24] Finally, class counsel in Delaware lacked bargaining power with respect to the federal claims, since they could not litigate the claims in the Delaware action if negotiations broke down.[25] The facts of *Matsushita II*, in short, indicate several reasons for concern about whether class counsel in Delaware were, in fact, acting to further the best interests of the class when they settled the federal claims.

In light of the facts, I suggest the following interpretation of the scope of *Matsushita II*. First, it is noteworthy that the court in *Matsushita II* ruled that the issue of fairness had not been adequately disclosed in the notice of settlement, and therefore that the courts in Delaware had not provided a full and fair opportunity to the class members to litigate this issue at the settlement hearing.[26] Because the issue of adequacy was not actually litigated in the Delaware courts, the Ninth Circuit held that the settlement would not be entitled to preclusive effect under Delaware law, and therefore was not entitled to full faith and credit in federal court.[27] This is an application of the standard principle that a judgment is not entitled to full faith and credit if the party to be bound did not have a full and fair opportunity to litigate the issue in the first forum.[28] The court's ruling that the Delaware fairness hearing was procedurally defective because of lack of notice was sufficient to support the judgment refusing full faith and credit to the Delaware settlement. Technically, the remainder of the Ninth Circuit's opinion could be read as dictum, since it was not necessary to the result.

Apart from the issue of notice, the *Matsushita II* court's decision appears to require the presence of two additional factors before a sec-

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[24] See *Matsushita II*, 126 F.3d 1235, 1251 (9th Cir. 1997) ("Barely fifteen days after the Epstein Counsel filed a class action in federal court on the exclusively federal claims, Delaware counsel negotiated the release of those claims.").

[25] The analysis of bargaining power is somewhat complex, however. Class counsel was not completely "disabled" from bargaining over the federal securities law claims because they did have the power to release them. They were, however, impaired in their ability to bargain because they did not hold the trump card of proceeding to trial in the event settlement negotiations proved unsuccessful.

[26] See *Matsushita II*, 126 F.3d at 1240.

[27] See id. at 1240-41. In addition, the Ninth Circuit held that the settlement would not be entitled to preclusive effect under Delaware law because the Vice Chancellor had failed to make the requisite finding that the prerequisites of Delaware's class action rule were satisfied. See id. at 1241 n.6.

[28] This is essentially the rule recommended by Kahan and Silberman. See Kahan & Silberman, The Inadequate Search, supra note 5, at 788-89.

ond forum could deny full faith and credit to a class action settlement on adequacy grounds.

First, class counsel in the first case must be "disabled" from litigating the issue that forms the basis of the lawsuit in the second forum. In *Matsushita II*, counsel was disabled from litigating the federal claims because the state court had no subject matter jurisdiction over them.[29] In other cases, class counsel might be disabled from litigating claims for different reasons. For example, counsel could deliberately have foregone the opportunity to assert the claims in the first forum and suffered a loss of the right to raise them under the applicable rules of civil procedure; or counsel could have entered into a stipulation or other concession that removed the issues from the first forum. In most class actions, however, counsel would not be disabled from asserting claims in the first forum. If counsel is not so disabled, *Matsushita II* would not apply.

Merely being disabled from litigating a claim, and therefore from effectively negotiating a release, however, does not form a sufficient basis to deny full faith and credit in the second forum. If it were, the Supreme Court would not have decided *Matsushita Electric Industrial Co. v. Epstein*[30] *(Matsushita I)* the way it did. In *Matsushita I*, the Court held that the Delaware court had the power to release claims that it could not adjudicate—thereby implicitly recognizing that representation could be adequate even if class counsel were disabled from litigating certain claims.[31] Something more is needed.

The second requirement of *Matsushita II*—the "something more"—is that there must be other indicia that class counsel did not fairly and adequately represent the absent class members.[32] In *Matsushita II* itself, as we have seen, there were numerous warnings: counsel's apparent rush to settle the Delaware case in the wake of the filing of a federal court complaint in California; the apparently outlandish attorney's fee request; the paucity of relief obtained for the class; the Delaware court's own misgivings about the initial settlement; and class counsel's efforts to downplay and denigrate the value of the federal claims. These additional factors established the presence of

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[29] See *Matsushita II*, 126 F.3d at 1249 ("[Delaware plaintiffs] could not litigate the federal claims because Congress has said that Exchange Act claims may not be litigated in the state courts.").

[30] 516 U.S. 367 (1996).

[31] See id. at 372-86.

[32] See *Matsushita II*, 126 F.3d at 1251-55 (describing conduct of Delaware counsel as falling "well below the level of representation that is required to bind absentees" and giving numerous examples).

"something more" that entitled the Ninth Circuit to refuse full faith and credit to the Delaware judgment.

Accordingly, even if *Matsushita II*'s discussion of the adequacy of representation is taken as part of the holding of the case, it should not be interpreted as opening all class action settlements to collateral attack in a subsequent forum. Rather, *Matsushita II* sets forth a three-part test for determining when full faith and credit should be given. First, the court must inquire whether class members were afforded a full and fair opportunity to challenge the adequacy of representation in the fairness hearing. If they did not have this opportunity, a second forum can refuse to recognize the first forum's judgment. Second, if class members did have a full and fair opportunity to challenge the adequacy of representation, the court asks whether class counsel was disabled from litigating the claims that form the basis for litigation in the second forum. If class counsel was not so disabled, the first forum's judgment is entitled to recognition in the second forum. If counsel was disabled from litigating the claims, the court proceeds to the third step, whether there are additional indicia that counsel did not fairly and adequately represent the interests of absent class members in the first forum. If such indicia are absent, the judgment is recognized; if they are present, the second forum can refuse to recognize the judgment—as happened in *Matsushita II*. This interpretation limits the scope of *Matsushita II*, restricting it to the kind of extraordinary cases for which the Ninth Circuit itself said the holding was designed.

Not only is this test limited in itself, but it can also be used by counsel in future cases to reduce the danger that a settlement will subsequently be challenged on adequacy of representation grounds. In light of *Matsushita II*, class counsel would be well-advised to eschew behavior that raises red flags about adequacy, such as rushing to settle a case when it is evident that the haste is intended to head off a competing class action. Once a settlement is reached, counsel can reduce the danger of it being attacked later by drafting the notice of settlement. Any notice should specify that adequacy of representation is an issue in the fairness hearing (as it is in all fairness hearings) and should provide reasonable information to class members about the nature of the claims to be released by the proposed settlement. An enhanced notice of this sort should obviate the objections lodged by the *Matsushita II* court against the notice in the Delaware proceeding. Counsel for all parties should also take pains to establish a full record on adequacy in the fairness hearing. The record should contain evidence that counsel for plaintiff and defendant have acted as adversaries throughout the litigation and in the settlement negotiations. Details of the settlement bargaining process might be introduced to substanti-

ate a showing that the representation was adversarial and not collusive. If mediators or other third parties have been involved, they could testify to the procedures used. Expert witnesses can testify as to the fairness, adequacy, and reasonableness of the settlement, and to the adequacy of class counsel's representation. All objectors should be allowed a full opportunity to present their arguments against adequacy of representation, including the chance to put on appropriate witnesses or other evidence and to cross-examine witnesses for parties supporting the settlement.

If class counsel is, in fact, providing adequate representation for the absent class members, these measures will not prove unduly burdensome. Counsel who follow procedures such as those recommended above should be able to obtain a high degree of protection against subsequent successful collateral attack in another proceeding.

II
ALTERNATIVE MEANS FOR AVOIDING INTERCLASS CONFLICT

There is another reason to entertain somewhat less concern about the *Matsushita II* case than Kahan and Silberman display. Courts already have available to them a number of strategies by which they can avoid interjurisdictional confrontation in overlapping class action cases. If these procedures are properly applied, in most cases, the unseemly and costly conflict between jurisdictions that troubles Kahan and Silberman could be avoided.

There are two principal mechanisms for dealing with overlapping class actions to achieve the benefits of the exclusive forum model. First, a court could defer to an overlapping class action in another court by voluntarily staying its own hand. As I have discussed elsewhere,[33] a number of different deference strategies are already available: The court may dismiss the action on grounds of comity or *forum non conveniens*, or may retain jurisdiction but delay going forward through the exercise of various forms of abstention. The court might also use its powers over substance as a means for indirectly avoiding conflict with another jurisdiction.[34]

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33 See Miller, supra note 2, at 528-33.

34 One may infer that the trial courts involved in the *Matsushita II* case attempted to engage in a form of implicit deference in their initial handling of the cases. The competing lawsuits were not particularly well received by the judges before whom they were brought. The Delaware Chancery court rejected the initial settlement proposal on the grounds that the class members received only "illusionary" value and the requested class counsel fees were excessive in light of the relief obtained. See In re MCA, Inc. Shareholders Litig., 598 A.2d 687, 696 (Del. Ch. 1991). Meanwhile, the federal court judge was even less receptive,

Alternatively, instead of deferring, a court may attempt to take a case away from the competing jurisdiction. Available mechanisms for gaining control of a case include issuing an anti-suit injunction, removing the case (if the forum court is federal and the competing jurisdiction is a state court), or simply being the first court to issue a final judgment which will then be entitled to full faith and credit in the other jurisdiction.[35]

If courts utilize procedures such as these, they should be able in most cases to avoid the sort of problems of overlap that eventually plagued the litigation arising from the Matsushita takeover of MCA. Overall, in the context of large-scale class actions, the better approach is to centralize the litigation in a federal court which can completely resolve the controversy, and which is not as vulnerable as a state court to the problem of jurisdiction-shopping.

III
MATSUSHITA II TAMED

We may hope that Kahan and Silberman's predictions about the effects of *Matsushita II* do not come to pass. If the case does provide a far-reaching avenue for upsetting class action settlements, as these authors suppose, they are entirely correct in arguing that the case requires correction from a higher authority.

However, there is reason to suppose that *Matsushita II* is neither as far-reaching nor as nefarious as Kahan and Silberman suggest. I have argued that the *Matsushita II* case should not be read so broadly, and that the adverse effects of the decision can be mitigated if courts utilize available procedures for enhancing exclusive forum values in overlapping class action contexts.

What remains of *Matsushita II*, after the completion of this process, is a relatively modest mechanism for deterring questionable settlements. In those rare cases where a court does apply *Matsushita II* to open up a judgment, the result may be beneficial. The possibility of collateral attack can protect class members from truly egregious settlements and deter class counsel from attempting such settlements in the first place. These advantages must be weighed against the costs of collateral attack in terms of reducing the finality of judgments and increasing transaction costs. If *Matsushita II* is suitably limited, it can

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rejecting the motion for class certification and granting summary judgment to the defendant on the securities law claim. See Epstein v. MCA, Inc., 50 F.3d 644, 648-49 (9th Cir. 1995). One cannot help suspecting that both trial court judges well understood the nature of the strategic game that the parties were playing out in their respective jurisdictions, and that they attempted to police the situation through the doctrinal means at their disposal.

[35] See Miller, supra note 2, at 523-27, 530-32, 533-39.

be defended as representing a reasonable weighing of these costs and benefits: The vast majority of class action settlements will be protected against collateral attack by full faith and credit principles, while successful collateral attacks may be justified as offering net benefits to both the class and the legal system.