

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

LISA HILL-GREEN, *on behalf of  
herself and all others similarly situated,*

Plaintiffs,

Civil Action No. 3:19-cv-708

v.

EXPERIAN INFORMATION SOLUTIONS,  
INC.,

Defendant.

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff moves the Court for approval of a class settlement that provides significantly expanded injunctive relief under Fed. R. Civ. P. 23(b)(2) and \$22,450,000 to compensate a narrower Rule 23(b)(3) class of consumers who may have suffered tangible damages. The Court has direct knowledge that the case has been hard fought and that negotiations that followed were arm's length. This is a strong result that resolves an important inaccuracy problem in Experian's credit reports.

The Parties have entered into a Settlement Agreement (attached as Exhibit 1 to the Motion and referred to as the "Agreement") that will benefit not only individual class members but also millions of American consumers going forward. This Agreement includes two separate class settlements with separate notices, separate settlement administrators, separate releases, and separate consideration. The first, the Rule 23(b)(2) Settlement Class, includes tens of millions of consumers in the United States for whom Experian, beginning two years before this case was filed reported a Fraud Shield Indicator inaccurately flagged that the consumer's address was either a

high-risk or non-residential address. The Rule 23(b)(2) Settlement Class gives a minimal release,<sup>1</sup> but receives significant additional injunctive relief through the benefits and practice changes outlined below.<sup>2</sup>

The second settlement, the Rule 23(b)(3) Settlement Class, is a group of about 565,000<sup>3</sup> consumers who either: (1) may have been damaged by Experian's reporting of certain Fraud Shield indicators from July 1, 2018 through July 31, 2021; or (2) contacted Experian to ask about or dispute a non-residential or high-risk address indicator from July 1, 2018 to July 31, 2021. In exchange for a release of all claims, Rule 23(b)(3) Settlement Class Members can submit a claim to receive a *pro rata* payment from a \$22,450,000 settlement fund.

## **I. HISTORY OF THE LITIGATION AND THE MEDIATION**

### **A. Nature of the Case**

Because Plaintiff previously briefed this case's procedural history in support of the prior Rule 23(b)(2) Settlement (ECF No. 87 at 2–4), she summarizes and updates it here. Plaintiff's Complaint, filed on September 27, 2019, alleged two FCRA class claims against Experian, both of which pertained to Experian's use of its Fraud Shield product. Essentially, Plaintiff alleged that

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<sup>1</sup> The Rule 23(b)(2) Settlement Class members do not release any individual claims for actual damages, statutory damages, punitive damages, or the extremely valuable fee-shifting afforded by the Fair Credit Reporting Act ("FCRA") against Experian, allowing class members to still vindicate any claims through individual litigation. They release only the right to litigate another class action for these past violations.

<sup>2</sup> The enlarged Rule 23(b)(2) Settlement is negotiated by the Parties as a novation of the original Rule 23(b)(2) settlement. Both sides have provided new consideration. If the Court does not approve this present proposed Settlement, the original settlement remains undisturbed. If this is approved, the original terms remain, but are then joined with separate new consideration and an expanded "class waiver" release.

<sup>3</sup> Class Counsel has already identified approximately 464,000 Class Members. Class Counsel anticipates receiving an additional data set that once analyzed will result in an additional 100,000 Class Members.

Experian incorrectly labeled consumers' home addresses as "high-risk" or "non-residential," without reasonable procedures to ensure that the applied labels were accurate. Plaintiff alleged that Experian also lacked procedures to ensure that outdated business address information was removed from its system, meaning that if a consumer's address had ever been linked to a business, that notation remained in the system forever, even if the business was defunct.

After a motion to transfer venue, discovery, and three full days of mediation, the Parties reached a Rule 23(b)(2) settlement, which addresses some issues regarding Experian's use of its Fraud Shield product. The Court approved the settlement on April 27, 2022. (ECF No. 112.) The Parties, however, failed to resolve the entire litigation, and the case continued with respect to Plaintiff's request for monetary damages.

After the first Rule 23(b)(2) settlement, the Parties kept litigating the case while they undertook mediation efforts. After the approval of the Rule 23(b)(2) settlement, the Parties engaged in significant meet-and-confer efforts, which resulted in Experian's production of over half a million new pages of discovery related to the use, advertising, and understanding of Fraud Shield. It also produced tens of millions of consumer application data to enable Plaintiff to ascertain and identify class membership, which Plaintiff examined with help from her expert. Plaintiff also sought third-party discovery from dozens of third parties, and the Parties worked to complete this Court's discovery dispute process. Along with these efforts, the Parties engaged in significant mediation efforts with help from Magistrate Judge Colombell. In short, after the April hearing, both sides were fully engaged and working with about a dozen lawyers between the two sides to simultaneously complete both the discovery and mediation goals necessary under the closing litigation window.

## **B. Negotiations Leading to the Settlement Agreement**

Along with the Parties' discovery efforts, they engaged in significant mediation efforts. After they reached the first Rule 23(b)(2) settlement, the parties participated in more mediation sessions with retired federal Magistrate Judge Diane M. Welsh of JAMS Philadelphia. During these sessions, it became obvious that despite the parties divide on the merits, the Parties' main obstacle to resolving the Rule 23(b)(3) class allegations was ascertaining and identifying the class. The Parties conducted additional discovery efforts, described above, largely aimed at resolving this issue. Magistrate Judge Colombell then helped the Parties resolve the case, which involved a formal mediation session, as well as dozens of formal and informal conferences and discussions. Outside of Judge Colombell's extensive assistance, the Parties continued settlement efforts among themselves, which required hours of negotiation. These negotiations were contentious and hard-fought, and both Parties made significant concessions to reach the Settlement.

## **II. THE TERMS OF THE PROPOSED SETTLEMENTS**

As a result of these mediation efforts, the Parties were able to resolve the remaining issues in this litigation, as set forth in the Settlement Agreement. The Settlement encompasses two classes, two sets of consideration, and substantially different releases. The expanded Rule 23(b)(2) Settlement obtains substantial and far-reaching new consideration. It provides extensive injunctive relief that goes beyond the original Rule 23(b)(2) Settlement in addressing Experian's use of "high risk" and "non-residential" Fraud Shield indicators, which will benefit millions of consumers without releasing class members' individual claims for actual or punitive damages. The second, the Rule 23(b)(3) Settlement, will include around 565,000 consumers who, for a release of all claims, are entitled to submit a claim for payment from a \$22,450,000 Settlement Fund. If three percent of the Rule 23(b)(3) Class Members submit a valid claim form, then they would receive a payment of around \$913.00 if the Court approves the proposed attorneys' fees, costs, expenses,

and service awards. If eight percent of the Rule 23(b)(3) Class Members submit a valid claim form, they would receive a payment of around \$342.00 if the Court approves the proposed attorneys' fees, costs, expenses, and service awards. Ex. 1, Kelly Decl. ¶ 18.

**A. The New Rule 23(b)(2) Class Settlement Provides Significant Injunctive Relief and Practices Changes Beyond What the Original Rule 23(b)(2) Settlement Provided.**

Plaintiff filed this case to address Experian's incorrect reporting of certain consumers' addresses as "high risk" or "non-residential." In the original Rule 23(b)(2) Settlement, Plaintiff obtained significant injunctive relief that addressed many of these issues. That settlement required Experian to reconfigure its update process for non-residential addresses so that Experian completely updated its address table each month. The original settlement also required Experian to suppress or remove any address from the Non-Residential Address data that had not been updated or verified in the last six years. And the original settlement required Experian to stop publishing certain Fraud Shield indicators altogether and reduce the number of codes that would return the Fraud Shield indicators still being used. Finally, the original settlement revised the messaging and descriptions of some Fraud Shield indicators to be more detailed. Plaintiff's counsel was—and remains—proud of these changes. They provided meaningful relief and addressed many issues raised by Plaintiff's Complaint.

**1. The Rule 23(b)(2) Class Members Obtain Significant New Consideration for a Very Narrow Release.**

This expanded Rule 23(b)(2) Settlement goes even further. Because of the new settlement terms, Experian will be providing consumers with critical new information about how these Fraud Shield indicators work and what they mean—both on Experian's consumer education website and on the free credit reports (consumer disclosures) consumers obtain to review and dispute information in their credit file. Agreement at 4.3.1.a; 4.3.1.b. Empowering consumers with this

information is significant because it will help consumers quickly identify and address any inaccuracies. Experian will also make it easier for consumers to ask about and dispute these Fraud Shield indicators and will tell consumers how to utilize this process directly on consumer disclosures. Agreement at 4.3.1.b; 4.3.1.c. Now, Experian will presume the consumer is correct when she makes a dispute, meaning that disputed Fraud Shield information will be presumptively removed from consumer credit reports. Ultimately, the injunctive relief addresses the specific alleged harm that Plaintiff suffered here and ensures that consumers are not prejudiced by similar inaccurate Fraud Shield reporting in the future.

The Settlement Agreement defines the Rule 23(b)(2) Settlement Class Members as:

All consumers in the United States for whom Experian, within two years prior to the filing of the Complaint in this action and during its pendency, furnished a consumer report to a third party containing an inaccurate Fraud Shield Indicator No. 10, 11, 16, or 17 indicating that the consumer's address was either a high-risk or non-residential address.

Agreement at 2.33.<sup>4</sup> This class is estimated to include over ten million consumers, but the injunctive relief will benefit even more consumers going forward. And in exchange for this sweeping injunctive relief, the Rule 23(b)(2) Class Members will give a narrow release. As detailed in Sections 2.34 and 4.5 of the Settlement Agreement, Rule 23(b)(2) Class Members are only releasing their ability to bring a class claim under any state or federal laws for the reporting of Fraud Shield indicators stating that the consumer's address was either a high-risk or non-residential address. They retain the right to bring any individual claims seeking their actual, statutory, or punitive damages, as well as their attorneys' fees and costs.

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<sup>4</sup> This is the same class certified in the existing Rule 23(b)(2) settlement.

2. Class Administration and Rule 23(b)(2) Notice Plan

While individual notice is not required for a class certified under Federal Rule of Civil Procedure 23(b)(2), the Settlement provides it. The Parties and the Settlement Administrator have developed an appropriate and reasonable Rule 23(b)(2) Notice Plan to provide notice to Rule 23(b)(2) Settlement Class Members before the final approval hearing. Agreement at 4.2. Experian will pay for this notice process. If, however, the cost of the notice exceeds \$350,000, Class Counsel will pay for the remaining costs, at no charge to class members. Experian will also pay for the notice required by the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. Agreement at 4.2.9.

The Agreement proposes that the Court appoint Kinsella Media (“Kinsella”) as Settlement Administrator for the Rule 23(b)(2) Settlement. Agreement at 4.2.2. The Parties’ proposed Rule 23(b)(2) Notice Plan, which Kinsella will administer, will employ four methods for circulating information about the Settlement to Rule 23(b)(2) Settlement Class Members. *Id.* § 4.2.1. First, Kinsella will establish the Rule 23(b)(2) Class Settlement Website that contains the Preliminary Approval Order, the Rule 23(b)(2) Internet Notice, the Settlement Agreement, and other relevant information about the Court-approval process as approved by the Parties. *Id.* §§ 4.2.1(a). The Rule 23(b)(2) Class Settlement Website will also include a section for frequently asked questions, and procedural information about the status of the Court-approval process, such as an announcement when the final approval hearing is scheduled, when the Rule 23(b)(2) Final Judgment and Order has been entered, and when the Effective Date is expected or has been reached. *See id.* § 4.2.4. Second, Kinsella will establish a toll-free telephone number with access to recorded information, in both English and Spanish, about the Settlement. *Id.* § 4.2.1(b). Third, Kinsella will develop and place digital online advertising over enough time to notify potential Rule 23(b)(2) Settlement Class

Members about the Settlement. *Id.* § 4.2.1(c). Fourth, Kinsella will place the Rule 23(b)(2) Publication Notice in traditional print media in TV Guide for one circulation period. *Id.* § 4.2.1(d).

3. **Class Counsel is Not Seeking Attorneys' Fees or a Service Award for Representation of the Rule 23(b)(2) Settlement Class**

The injunctive relief that Class Counsel achieved for the 23(b)(2) Settlement Class represents a significant expanded change in Experian's Fraud Shield reporting and provides the class members with far better substantive relief than the Court or a jury could provide even after Plaintiff's best day at trial.<sup>5</sup> As discussed above, the additional injunctive relief that this settlement provides to consumers is significant. It will allow consumers to more easily understand how these Fraud Shield indicators are generated and how to correct them if they are inaccurate. It will also reduce how often the Fraud Shield indicators are published. It also includes a robust notice program to ensure that consumers learn about these new changes. And, of course, as with any class settlement that they negotiate, Class Counsel will incur significant time in the future monitoring the settlement, speaking with class members, and possibly litigating any breaches of the injunctive relief. Class Counsel, however, are not seeking any attorneys' fees or service award for the Rule 23(b)(2) Settlement, as they are already to be paid for the previous Rule 23(b)(2) settlement, which would already impose much of this post-settlement responsibility.

**B. The Rule 23(b)(3) Class Settlement Provides an Opportunity for Class Members to Receive a Significant Cash Payment.**

The Rule 23(b)(3) Settlement provides consumers with the ability to submit a claim form to receive a pro rata payment from a \$22,450,000 Settlement Fund. There are two groups of consumers eligible to submit claims against the Settlement Fund. Agreement at 2.38. The first

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<sup>5</sup> Indeed, it is generally accepted that the FCRA does not provide injunctive relief. *See, e.g., Bumgardner v. Lite Cellular, Inc.*, 996 F. Supp. 525, 526 (E.D. Va. 1998).

group includes all consumers who, from July 1, 2018 to July 31, 2021, contacted Experian to ask about or dispute a non-residential or high-risk address indicator. The second group is a group of consumers who appear on a list compiled by Plaintiff, Plaintiff's expert, and Experian. These consumers meet the criteria listed in the settlement agreement, which was designed to capture consumers who were likely harmed by Experian's reporting of high-risk or non-residential Fraud Shield indicators from July 1, 2018 to July 31, 2021. This effort was one of the most challenging parts of the case and the one that delayed settlement more than any other. Through both the discovery and mediation processes, Experian produced different sets of data by which the Parties were then able to determine who met certain specific criteria indicative of inaccuracy and possible damage. *The first limiter was the imposition of the original injunctive relief to the data used to generate the triggering credit report.* Rule 23(b)(3) Class Members are those whose triggering credit report would not have included the challenged Fraud Shield result had the existing injunctive relief been in effect. Agreement §2.38(a) through (d).

*The second limiter necessary to be a class member is that the consumer be in a credit score range that would not have independent of FraudShield blocked approval for credit.* The consumer's historical Vantage Score as provided by Experian was 650 or greater. *Id.* at (e).

*The third limiter is that the triggering report have been provided for a purpose other than debt collection.* *Id.* at (f). Some Experian customers use consumer credit reports to locate targeted debtors. Inclusion of a FraudShield address warning would not harm consumers subject to such efforts.

*And lastly, the fourth limiter is that the consumer not have opened new credit during the 120 days after the triggering FraudShield report.* When Plaintiff took third-party discovery of Experian's top 40 customers, many would have testified that the FraudShield **address** indicator

was not a disqualifying result (unlike other unrelated indicators). If the consumer applied for, and then within 120 days received the credit sought, they were less likely to have been damaged.

There will be around 565,000 Rule 23(b)(3) Class Members, each of whom we know met these limitations and are on the class list.

1. Monetary Relief for 23(b)(3) Settlement Class Members

The Rule 23(b)(3) Settlement provides for a Settlement Fund of \$22,450,000 for Rule 23(b)(3) Settlement Class Members. Agreement §§ 2.48, 5.5. Each Rule 23(b)(3) Settlement Class Member who submits a valid claim form will receive a pro rata payment from the Settlement Fund, net any award of attorneys' fees, costs, and expenses to Class Counsel approved by the Court. Agreement § 5.9. The claim forms simply require Rule 23(b)(3) Class Members to check a box confirming, under penalty of perjury, that either: (1) the address listed on their notice—that is, the address Plaintiff's Expert matched to the Non-Residential Address Table—was in fact a residential address; or (2) for the Rule 23(b)(3) Class Members who contacted Experian to ask about or dispute a non-residential or high-risk address indicator, that they were harmed by a Fraud Shield indicator. The notice to each group is different to minimize confusion over the notice process, and Class Members need not submit any proof or documents to substantiate their claim. Rule 23(b)(3) Class Members will be able to submit a claim by mail or on the Settlement Website. Traditional claims rate usually vary from 3-8%, and the Settlement Administrators here have estimated a likely claim rate of between 4 and 8%. If the claims rate was three percent, and no Rule 23(b)(3) Settlement Class Member opts out or objects and the Court approves the requested attorneys' fees and service awards, Class Counsel estimates that claimants would receive a payment of around \$913.00. Similarly, if the claims rate was eight percent, and no Rule 23(b)(3) Settlement Class Member opts out, Class Counsel estimates that claimants would receive a payment of around \$342.00.

The Rule 23(b)(3) Settlement Administrator (identified below as JND Legal Administration) will remain any uncashed settlement checks to give class members an ample opportunity to cash their settlement checks. Any uncashed or undeliverable checks after this second mailing will be redistributed to the Rule 23(b)(3) Class Members who cashed their initial checks, so long as the amount of the second payment would be at least \$25.00. If there are not enough funds to mail a second payment to Rule 23(b)(3) Class Members, or if there are still funds remaining after the second payment, then any remaining money in the Settlement Fund will be paid in equal parts to the National Consumer Law Center and Public Justice *cy pres* award to support the protection of consumers relating to the claims alleged in the Litigation.

## 2. Rule 23(b)(3) Settlement Class Release

Sections 2.43 and 5.10 of the Settlement Agreement contain the release that Rule 23(b)(3) Settlement Class Members are providing to the Released Parties. The release includes claims that were brought in the litigation, could have been brought in the litigation, or relate to the “Covered Conduct” detailed in the Settlement Agreement. It does not include, however, any claims unrelated to the Covered Conduct or claims under 15 U.S.C. § 1681i or for allegations of inaccuracy other than regarding the Covered Conduct. The Rule 23(b)(3) Settlement Class Released Claims include claims for actual damages, statutory damages, punitive damages, attorneys’ fees, and all relief of any kind including claims asserted on a class, mass, or collective action basis and claims asserted on an individual, non-representative basis.

## 3. Rule 23(b)(3) Settlement Administration and Notice Plan

The Agreement proposes that JND Legal Administration (“JND”) will act as the Rule 23(b)(3) Settlement Administrator. Agreement § 5.2.3. JND will facilitate the notice and administration process set forth in the Settlement Agreement. *Id.* Section 5.2 of the Agreement sets forth the Parties’ plan for providing notice to Rule 23(b)(3) Settlement Class Members. The

costs of the notice plan will be paid out of the Settlement Fund, but Experian will send the CAFA notice at its own expense. Agreement at 5.2.6; 5.2.5.

The Parties, working with Plaintiff's expert, will prepare a class list. *Id.* § 5.2.1. After Preliminary Approval, JND will send individual mail notice to all Rule 23(b)(3) Settlement Class Members on the Class List. *Id.* § 5.2.4. And, for all Rule 23(b)(3) Settlement Class Members for whom JND can locate email addresses, all notices and reminder notices must be sent by both email and U.S. Mail. *Id.* The Mail Notice will be sent to the last known physical address reflected in the Class List, unless JND locates a more recent address for the Class Member by cross-checking the Class List against the National Change of Address Database and other publicly available databases for obtaining up-to-date mailing addresses. JND will re-mail the Mail Notice if it receives address change notifications from the U.S. Postal Service. Rule 23(b)(3) Settlement Class Members who do not submit a claim will also be sent a reminder notice either by mail or email to encourage a high claims rate.

JND will also prepare and publish the Rule 23(b)(3) Class Settlement Website using the following URL: [www.fraudshieldsettlement.com](http://www.fraudshieldsettlement.com). *Id.* The Rule 23(b)(3) Class Settlement Website will post important settlement documents, like the Settlement Agreement, the Mail Notice, the Rule 23(b)(3) Internet Notice, and the Preliminary Approval Order, as approved by the Parties or as may be ordered by the Court. *Id.* It will also describe the Settlement Fund, contain a section for frequently asked questions, and procedural information about the status of the Court-approval process, such as an announcement when the final approval hearing is scheduled, when the Final Judgment and Order has been entered, when the Effective Date is expected or has been reached, and when payment will likely be mailed. *Id.*

Both the Mail Notice and the Rule 23(b)(3) Settlement Website will include information on how Rule 23(b)(3) Settlement Class Members may opt out of the Settlement. S.A. § 5.2.4. Anyone wishing to opt out of the Rule 23(b)(3) Class Settlement must follow the procedures set out in Section 5.3 of the Settlement Agreement, including submitting their request no later than 90 days after the Notice Date. *Id.* § 5.3.1. JND will maintain a list of all valid opt-out requests. *Id.* § 5.3.2.

Any Rule 23(b)(3) Settlement Class Member wishing to object to the Settlement must follow the procedures in Section 5.4 of the Settlement Agreement. Objections must be filed with the Court at least thirty days before the Final Fairness Hearing. Agreement § 5.4.1. Unrepresented objectors' notice of objection must include the class member's name, address, and telephone number; the name of this Litigation, the case number; and a written statement detailing the specific basis for each objection. *Id.* § 5.4.2. Objectors represented by counsel must also the identity, mailing address, email address, fax number, phone number for the counsel representing the class member; a statement of whether the objecting class member intends to appear at the Final Fairness Hearing; and a written statement detailing the specific basis for each objection, including any legal and factual support, including any evidence, that the objecting class member wishes to bring to the Court's attention. *Id.* § 5.4.3. The Parties have agreed not to provide any payments to any person or counsel who files an objection in exchange for the withdrawal, dismissal, or release of the objection, except with approval of the Court. *Id.* § 5.4.4.

4. Attorneys' Fees and Service Awards for Representation of the Rule 23(b)(3) Settlement Class

Plaintiff and Class Counsel will ask the Court to approve the attorneys' fees and service award in the Settlement Agreement. The attorneys' fees and service awards were addressed in mediation only after the Parties had agreed to all other substantive elements of

the Settlement. The Settlement Agreement provides that Class Counsel may petition the Court for an award of attorneys' fees, costs, and expenses of up to 33% of the Rule 23(b)(3) Settlement Fund. Agreement § 5.7. Class Counsel will submit its fee petition to the Court at least 21 days before the Rule 23(b)(3) Settlement Class objection deadline. *Id.* The Settlement Agreement also permits Ms. Hill-Green to apply for a \$10,000 Service Award. *Id.* § 5.8. Again, the Parties' agreement on attorneys' fees, costs, and service award did not occur until after the substantive terms of the Settlement Agreement had been reached.

### **III. THE PROPOSED CLASSES SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES**

#### **A. The Proposed Settlement Classes Satisfy the Requirements of Rule 23(a)<sup>6</sup>**

In considering a settlement at the preliminary approval stage, the Court first considers whether a settlement class satisfies Rule 23 and its requirements for conditionally certifying a settlement class. *See Amchem*, 521 U.S. at 620 (trial court may disregard management issues in certifying a settlement class, but the proposed class must still satisfy the other requirements of Rule 23). Under Rule 23(a), one or more members of a class may sue as representative parties on behalf of a class if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

##### 1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." There is no question that the classes here meet the numerosity requirement. There

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<sup>6</sup> The Court has already certified the Rule 23(b)(2) Class on November 22, 2021. (ECF 88). This argument as to that Class is made to ensure a complete record.

are potentially millions in the Rule 23(b)(2) Settlement Class, and around 565,000 members of the Rule 23(b)(3) Settlement Class. These numbers are sufficient for Rule 23 numerosity.

## 2. Commonality

Rule 23(a)(2) requires that the court find that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “Commonality is satisfied where there is one question of law or fact common to the class, and a class action will not be defeated solely because of some factual variances in individual grievances.” *Jeffreys*, 212 F.R.D. at 322. And the common issue must be such that “determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* The standard is a liberal one that cannot be defeated by the mere existence of some factual variances in individual grievances among class members. *Id.*; *Mitchell-Tracey v. United Gen. Title Ins. Co.*, 237 F.R.D. 551, 557 (D. Md. 2006) (finding that factual differences among class members will not necessarily preclude certification “if the class members share the same legal theory”).

Here, by definition, members of the Settlement Classes share multiple questions of law and fact. They are alleged to be the victims of the same inaccurate Fraud Shield reporting by Experian. The Fraud Shield indicators challenged in this lawsuit were applied to each of the class members’ files using the same algorithm, which Plaintiff alleged violated the FCRA. The practices at issue for this claim are identical across Settlement Class Members. The theories of liability as to all Settlement Class Members therefore arise from the same practices and present basic questions of law and fact common to all members of the Settlement Class. *See* Fed. R. Civ. P. 23(a).

## 3. Typicality

In the typicality analysis, “[a] class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001). “Nevertheless, the class representatives and the class members need

not have identical factual and legal claims in all respects. The proposed class satisfies the typicality requirement if the class representatives assert claims that fairly encompass those of the entire class, even if not identical.” *Fisher v. Va. Elec. & Power Co.*, 217 F.R.D. 201, 212 (E.D. Va. 2003). “The typicality requirement mandates that [p]laintiffs show (1) that their interests are squarely aligned with the interests of the class members and (2) that their claims arise from the same events and are premised on the same legal theories as the claims of the class members.” *Jeffreys*, 212 F.R.D. at 322. Commonality and typicality tend to merge because both of them “serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 n.5 (2011).

Here, there is a sufficient link between Plaintiff’s claims and those of absent class members in both settlement classes because Plaintiff alleges that Experian violated the FCRA by willfully failing to employ reasonable procedures to assure the maximum possible accuracy of the information it included in consumer reports prepared about class members. *See* 15 U.S.C. § 1681e(b). Plaintiff’s success on essential elements of her claims, including whether Experian’s Fraud Shield product is regulated by the FCRA and whether Experian’s conduct constituted a willful violation of the FCRA, would advance the claims of the members of the proposed classes. As a result, the typicality requirement is met.

#### 4. Adequacy of Representation

“Finally, under Rule 23(a)(4), the class representatives must adequately represent the interests of the class members, and legal counsel must be competent to litigate for the interests of the class.” *Jeffreys*, 212 F.R.D. at 323. “Basic due process requires that the named plaintiffs

possess undivided loyalties to absent class members.” *Fisher*, 217 F.R.D. at 212 (citing *Broussard v. Meineke Disc. Muffler Shops*, 155 F.3d 331, 338 (4th Cir. 1998)).

The adequacy of representation requirement is met here. Plaintiff understands and has accepted the obligations of a class representative, has adequately represented the interests of the putative class, and has retained experienced counsel who have handled many consumer-protection class actions. Plaintiffs’ lead counsel has effectively handled several consumer-protection and complex class actions, typically as lead or co-lead counsel. *See, e.g., Berry*, 807 F.3d at 617–19; *White v. Experian Info. Solutions*, No. 05-01070, 2014 WL 1716154, at \*\*13, 19, 22 (C.D. Cal. May 1, 2014), *aff’d sub nom. Radcliffe v. Experian Info. Solutions, Inc.*, 818 F.3d 537, 548 (9th Cir. 2016) (appointing firm and its team as interim class counsel over objections from a competing national law firm because their team’s “credentials and experience [we]re significantly stronger in class action and FCRA litigation”); *Soutter v. Equifax Info. Services, LLC*, 3:10-cv-107, 2011 WL 1226025 (E.D. Va. Mar. 30, 2011) (“[T]he Court finds that Soutter’s counsel is qualified, experienced, and able to conduct this litigation. Counsel is experienced in class action work, as well as consumer protection issues, and has been approved by this Court and others as class counsel in numerous cases.”).

For example, in approving Kelly Guzzo and Consumer Litigation Associates as class counsel, Judge Novak described Class Counsel as “the all-star team of consumer litigation.” *Turner v. Zestfinance, Inc.*, 3:19-cv-293 (E.D. Va.). Other judges in this Court also have repeatedly recognized Kelly Guzzo’s and Consumer Litigation Associates’ quality and skill in consumer class-action litigation, and in FCRA litigation in particular. *See, e.g., Clark v. Trans Union, LLC*, 3:15-cv-391, 2017 WL 814252, at \*13 (E.D. Va. 2017) (Lauck, J.) (collecting cases and stating, “This Court has repeatedly found that [proposed Class Counsel] is qualified to conduct such

litigation. . . . This Court echoes the sentiments previously stated about [proposed Class Counsel] because they pertain here with equal vigor.” (citations omitted)); *Galloway v. Williams, Jr.*, No. 3:19-cv-470, 2020 WL 7482191, at \*8 (E.D. Va. Dec. 18, 2020) (“Class Counsel and their firms have extensive backgrounds in complex and class action litigation and consumer protection litigation” (citing, e.g., *Hayes, et al. v. Delbert Servs. Corp.*, No. 3:14-cv-00258-JAG, ECF No. 193 ¶ 4, 14 (Jan. 20, 2017)); *Dreher v. Experian Info. Sols., Inc.*, No. 3:11-cv-00624-JAG, 2014 WL 2800766, at \*2 (E.D. Va. June 19, 2014) (“Dreher’s counsel is well-experienced in the arena of FCRA class action litigation.”); *Manuel v. Wells Fargo Bank, Nat’l Ass’n*, No. 3:14-cv-238, 2016 WL 1070819, at \*3 (E.D. Va. Mar. 15, 2016) (stating that “this Court would have difficulty overstating Class Counsel’s experience”)); *see also* Exs. 1, 2.

Courts have also recognized Berger Montague’s extensive class-action experience, including in FCRA cases. *See, e.g., Gambles v. Sterling Infosystems, Inc.*, No. 15-cv-9746 (S.D.N.Y.) (FCRA class action, alleging violations by consumer reporting agency, resulting in a gross settlement of \$15 million, one of the largest FCRA settlements to date); *In re: JUUL Labs, Inc. Mktg., Sales Practices & Prod. Liab. Litig.*, No. 19-md-2913 (N.D. Cal.) (appointed to Plaintiffs’ Steering Committee in multi-district litigation consolidated class action, regarding the marketing and sales practices of dangerous e-cigarettes to consumers); *In re: American Medical Collection Agency, Inc. Customer Data Security Breach Litig.*, No. 19-md-2904 (D.N.J.) (appointed to the Plaintiff’s Quest Track Steering Committee in multi-district litigation consolidated class action, regarding the breach of consumers’ medical information); *In re: TransUnion Rental Screening Sols., Inc. FCRA Litig.*, No. 1:20-md-02933-JPB (N.D. Ga.) (appointed as Interim Lead Counsel for the classes in multi-district litigation consolidated class action, regarding violations of the Fair Credit Reporting Act); *Thomas v. Equifax Info. Services,*

*LLC*, No. 18-cv-684 (E.D. Va.) (FCRA class action, alleging violations by credit bureau, providing nationwide resolution of class action claims asserted across multiple jurisdictions, including injunctive relief, and an uncapped mediation program for millions of consumers); *Clark v. Experian Info. Sols., Inc.*, No. 16-cv-32 (E.D. Va.); (FCRA class action, alleging violations by credit bureau, providing a nationwide resolution of class action claims asserted by 32 plaintiffs in 16 jurisdictions, including injunctive relief and an uncapped mediation program, for millions of consumers); *Clark/Anderson v. Trans Union, LLC*, No. 15-cv-391 & No. 16-cv-558 (E.D. Va.) (FCRA consolidated class action, alleging violations by credit bureau, providing groundbreaking injunctive relief, and an opportunity to recover monetary relief, for millions of consumers); *Rilley v. MoneyMutual, LLC*, No. 16-cv-4001 (D. Minn.) (court certified a litigation class alleging that MoneyMutual violated Minnesota payday lending regulations, resulting in \$2,000,000 settlement with notable injunctive relief); *see also* Ex. 3.

**B. The Rule 23(b)(2) Settlement Class Satisfies the Requirements of Rule 23(b)(2)**<sup>7</sup>

If the requirements of Rule 23(a) are met, the proposed class must then fall into one of the categories set out in Rule 23(b) to warrant certification. *Berry*, 807 F.3d at 608. The Rule 23(b)(2) Settlement Class is an injunctive-relief-only settlement class under Rule 23(b)(2), which applies when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief . . . is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2); *Berry*, 807 F.3d at 608–09 (citing *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 329 (4th Cir. 2006)). Simply, Rule 23(b)(2) certification is proper “if members of the proposed class would benefit from the injunctive relief.” *Cuming v. S.C. Lottery Comm’n*,

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<sup>7</sup> The Court has already certified the Rule 23(b)(2) Class on November 22, 2021. (ECF 88). This argument as to that Class is made to ensure a complete record.

No. 3:05-cv-03608-MBS, 2008 WL 906705, at \*6 (D.S.C. March 31, 2008) (citing *Thorn*, 445 F.3d at 331). In addition, any request for monetary relief by the class must be “incidental” to the injunctive relief before certification under Rule 23(b)(2) is appropriate. *Berry*, 807 F.3d at 609. The Rule 23(b)(2) Settlement Class here satisfies both requirements.

For the Rule 23(b)(2) Settlement Class, Plaintiff alleges that Experian’s practices and procedures failed to satisfy § 1681e(b)’s “reasonable procedures” requirement. Here, the Settlement Agreement treats all Rule 23(b)(2) Settlement Class Members the same because it gives each Settlement Class Member the same substantial benefits of the injunctive relief practice changes discussed above. While Experian maintains that it has always acted in compliance with the law, the fact that the Settlement modifies Experian’s conduct for the Rule 23(b)(2) Settlement Class as a whole makes it appropriate for certification under Rule 23(b)(2). *Dukes*, 564 U.S. at 360 (“The key to the (b)(2) class is ‘the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.’” (citation omitted)). The injunctive relief will provide a direct benefit to the Rule 23(b)(2) Settlement Class Members going forward because the policy changes enacted through the Rule 23(b)(2) settlement will make it less likely that the class members are the subject of an inaccurate Fraud Shield report in the future.

The Rule 23(b)(2) Settlement Class continues to meet Rule 23(b)(2)’s second requirement—that any request for monetary relief be merely “incidental” to the injunctive relief provided in the settlement—because the Settlement does not provide for monetary relief for Rule 23(b)(2) Settlement Class Members unless they are also members of the Rule 23(b)(3) Settlement Class. Rule 23(b)(2) Settlement Class Members retain their ability to bring individual claims for actual damages, statutory damages, punitive damages, and attorneys’ fees, and release only their

ability to bring a class action for the limited “covered conduct” listed in the Settlement Agreement. This retained right to bring further litigation “mak[es] class-wide representation possible and opt-out rights unnecessary.” *Id.* at 612–13 (preservation of rights to bring actual damages claims preserves due process rights of absent class members).

**C. The Rule 23(b)(3) Settlement Class Satisfies the Requirements of Rule 23(b)(3)**

The Rule 23(b)(3) Settlement Class provides for the automatic payment of a monetary settlement to its members and therefore, along with meeting the requirements of Rule 23(a), must meet the requirements of Rule 23(b)(3), namely, that (1) “the questions of law or fact common to the members of the class predominate over any questions affecting only individual members,” and (2) “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). The Rule 23(b)(3) Settlement Class meets these requirements.

**1. Common Questions of Law and Fact Predominate over Individual Ones**

Resolution of the common issues of fact and law here will not only promote the efficient adjudication of these matters, but it will dispose of them entirely. For the Rule 23(b)(3) Class, Plaintiff alleges that Experian violated the FCRA, § 1681e(b) because it did not follow reasonable procedures to assure maximum possible accuracy of certain Fraud Shield indicators that it published about the class members. Experian’s policies for Fraud Shield reporting and the algorithm used to generate these indicators are generally common to all Rule 23(b)(3) Settlement Class Members.

Plaintiff also alleges that Experian’s alleged failure to comply with the FCRA was “willful,” *i.e.*, that there is no objectively reasonable interpretation of the FCRA that supports Experian’s view that its Fraud Shield procedures were reasonable in the face of the FCRA’s

stringent “maximum possible accuracy” requirement. 15 U.S.C. § 1681e(b). The possible complications that Plaintiff might encounter at trial and how the procedures were applied to individual class members is not at issue since the class is being certified for settlement purposes and not for trial. *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”).

2. A Class Action Settlement Is the Superior Method for Resolving Class Members’ Claims

As to superiority, class settlement is the most efficient means of adjudicating the disputes raised here. Separately litigating the common issues that bind the classes would be a practical impossibility, even assuming consumers had notice of their claims and it were economically feasible to pursue these claims on their own. Simply put, “there is a strong presumption in favor of a finding of superiority” where, as here, “the alternative to a class action is likely to be no action at all for the majority of class members.” *Cavin v. Home Loan Ctr., Inc.*, 236 F.R.D. 387, 396 (N.D. Ill. 2006). Furthermore, even if just a small fraction of the class members were to bring individual suits, the resolution of common issues in a single proceeding here would be far more efficient than would be the separate adjudication of individual claims in potentially millions of separate lawsuits across the country.

**IV. THE SETTLEMENTS ARE FAIR AND ADEQUATE**

After the analysis of the Rule 23(a) and (b) elements, the Court should then decide whether the proposed settlements are fair, reasonable, and adequate. Although pretrial settlement of class actions is favored, “Rule 23(e) provides that ‘a class action shall not be dismissed without the approval of the court.’” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991) (citations omitted). “To this end, ‘the role of the Court reviewing the proposed settlement of a class action

under Fed. R. Civ. P. 23(e) is to assure that the procedures followed meet the requirements of the Rule and . . . to examine the settlement for fairness and adequacy.” *In re MicroStrategy*, 148 F. Supp. 2d at 663.

“[T]he Fourth Circuit [has] adopted a bifurcated analysis, separating the inquiry into a settlement’s ‘fairness’ from the inquiry into a settlement’s ‘adequacy.’” *Id.* These safeguards ensure that “a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives.” *Amchem*, 521 U.S. at 621; *see also In re Jiffy Lube*, 927 F.2d at 158 (“The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations.”). In this case, each set of factors supports approving both of the Settlements.

#### **A. The Settlements are Fair**

The Fourth Circuit has set forth the factors to be used in analyzing a class settlement for fairness: (1) the posture of the case when the proposed settlement was reached, (2) the extent of discovery that had been conducted, (3) the circumstances of the settlement negotiations, and (4) counsel’s experience in the type of case at issue. *Jiffy Lube*, 927 F.2d at 158–59.

The Settlement reached resulted from a fair process. The Parties exchanged extensive written discovery, including over half a million pages of ESI and tens of millions of data files on individual consumers that Plaintiff analyzed to determine class membership. This data was also analyzed by Plaintiff’s expert. The Parties also conducted several depositions and engaged in many meet-and-confer conferences, and subpoenaed dozens of third parties. Outside the formal discovery process, the Parties also informally exchanged documents and information to facilitate the mediation sessions and ultimate settlement. As discussed above, the Parties attended at least six formal mediation sessions with Judge Welsh and Judge Colombell and conducted robust, informal communications regarding settlement. With Magistrate Judge Colombell’s substantial

assistance, the Parties had dozens of conferences and were ultimately able to reach a settlement in principle in July 2022, which they have continued to finalize over the last several weeks. This process has involved the exchange of more data to ascertain and identify the Rule 23(b)(3) class members. Simply put, this claims and defenses at issue were fully discovered, and the Parties' positions were contentiously negotiated when the Settlement was finally reached.

Courts have found that, where a settlement results from genuine arm's-length negotiations, there is a presumption that it is fair. *See, e.g., City P'ship Co. v. Atlantic Acquisition Ltd. P'Ship*, 100 F.3d 1041, 1043 (1st Cir. 1996); *Rolland v. Cellucci*, 191 F.R.D. 3, 6 (D. Mass. 2000).

The discovery discussed above was sufficient to support the Parties' position that the Settlement is the best and most appropriate means for resolving this case. The extensive written discovery, document production, depositions, and expert work provided each side with the necessary insight to evaluate the merits, and laid the groundwork for the arm's-length, contentious negotiations that resulted in the Settlement.

Finally, Class Counsel is highly experienced in consumer class action litigation and endorse the settlement as fair and adequate under the circumstances. *See generally* Ex. 1-3. Courts recognize that the opinion of experienced and informed counsel in favor of settlement should be afforded substantial consideration in determining whether a class settlement is fair and adequate. *See, e.g., In re MicroStrategy*, 148 F. Supp. 2d at 665; *Stewart v. Rubin*, 948 F. Supp. 1077, 1087 (D.D.C. 1996); *Rolland*, 191 F.R.D. at 6.

#### **B. The Settlement Terms Are Adequate and Reasonable**

In analyzing the adequacy of a proposed settlement, the Court should consider: (1) the relative strength of the case on the merits, (2) any difficulties of proof or strong defenses the plaintiff and class would likely encounter if the case were to go to trial, (3) the expected duration and expense of additional litigation, (4) the solvency of the defendants and the probability of

recovery on a litigated judgment, and (5) the degree of opposition to the proposed settlement, (6) the posture of the case when settlement was proposed, (7) the extent of discovery that had been conducted, (8) the circumstances of the negotiations, and (9) the experience of counsel in the substantive area and class action litigation. *See In re Jiffy Lube*, 927 F.2d at 159.

1. Plaintiff's Claims Are Disputed and Would Encounter Substantial Defenses

Experian has disputed Plaintiff's claims since this case began. Because Ms. Hill-Green seeks statutory and punitive damages, any recovery requires a finding that Experian willfully violated the FCRA. *See* 15 U.S.C. § 1681n(a). Although a reckless violation of the FCRA satisfies the willfulness prerequisite for statutory and punitive damages, *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47 (2007), class members still face the burden of proving that Defendants' conduct was indeed reckless. The final resolution of that issue, regardless of which party prevails at the trial level, would require several more years of protracted adversarial litigation and appeals at substantial risk and expense. In addition, if Plaintiff chose to litigate her claims, she would face the harder task of certifying the class for trial purposes. As the Court has summarized in another FCRA settlement, “[g]iven these difficulties with the willfulness claim, the benefit of the substantial relief provided by the settlement without the risk of litigation demonstrates the adequacy of the Settlement Agreement.” *Manuel v. Wells Fargo Bank, Nat’l Ass’n*, No. 3:14-cv-238-DJN, 2016 WL 1070819, at \*4 (E.D. Va. Mar. 15, 2016). And it is doubtful that Plaintiff could have obtained injunctive relief for the class members if she had proceeded to trial. The Fourth Circuit has expressed doubt that the FCRA allows for injunctive relief outside the settlement context:

We may assume, as did the district court, that the FCRA, which does not provide expressly for a private right of action for injunctive relief, does not permit consumers to seek injunctive remedies. But like the district court, we think that is beside the point: “[I]n the settlement context, ‘it is the parties’ agreement that serves as the source of the court’s authority to enter any judgment at all.’”

*Berry*, 807 F.3d at 610 (citations omitted). This weighs heavily in favor of finding that this settlement is adequate.

2. Continuing This Litigation Will Result in Significant Additional and Unjustifiable Burdens on the Classes, Defendant, and the Court

Aside from the potential that either side will lose at trial, the Parties anticipate incurring many other costs in pursuing this litigation further. The level of additional costs would expand as Plaintiffs began their preparations contested class certification and trial, as well as likely appeals. Thus, the likelihood of substantial future costs favors approving the Settlement.

3. Data Concerning Class Members' Reaction to the Settlement Is Not Yet Available

Because class members have yet to receive notice of the Settlement, their reaction cannot yet be gauged. In any event, despite the size of the Rule 23(b)(2) Settlement Class, to date no consumer has filed or is pursuing his or her own individual claim for the claims resolved here.

4. This Case Was at a Proper Posture for Settlement

The Parties have litigated and negotiated these claims for years. Plaintiff had a complete understanding from formal and informal discovery about what process and procedures were used and what defenses would be faced. As argued above, each of the remaining elements of "adequacy" under *Jiffy Lube* are more than met. The negotiations were self-evidently arm's-length, with settlement made possible only through the considerable efforts of three experienced mediators. Finally, Plaintiff's counsel is as experienced and accomplished in this field as likely any team in the nation. Given this analysis and the possibility that Plaintiff and the class members ultimately will not prevail on their claims at trial or on appeal, the *Jiffy Lube* factors weigh heavily in favor of the Settlement's adequacy and reasonableness.

**V. THE PROPOSED NOTICE PLANS SATISFY THE REQUIREMENTS OF RULE 23(e)(1)**

Rule 23(e)(1) requires that the court “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). The manner of the settlement notice need only comply with due-process “reasonableness” requirements, which will vary based on the circumstances of the case. *See Fowler v. Birmingham News Co.*, 608 F.2d 1055, 1059 (5th Cir. 1979).

The Parties have retained and consulted Kinsella and JND, both of which are highly regarded and experienced class-action notice and administration firms, about the most reasonable and appropriate means to provide notice to the Rule 23(b)(2) and Rule 23(b)(3) Settlement Classes. The Parties have agreed to a proposed notice plan for the Rule 23(b)(2) Settlement Class that employs a combination of the latest high tech as well as more traditional media methods for publicly circulating information about a settlement to class members. The Rule 23(b)(3) Notice Plan provides for individual, direct mail notice to each class member, a means of notice that courts have universally accepted as an appropriate form of notice for class action settlements involving a monetary fund.

**A. The Rule 23(b)(2) Class Notice Program Satisfies Rule 23 and Due Process**

Neither Rule 23 nor the case law requires individualized, mailed notice for a Rule 23(b)(2) settlement class, where class members do not have the opportunity to opt out of the settlement and are not required to take any affirmative action to receive the benefits of the settlement. Federal Rule of Civil Procedure 23(c)(2)(A) is explicit that even a litigated Rule 23(b)(2) class does not require any notice. Fed. R. Civ. P. 23(c)(2)(A) (“For any class certified under Rule 23(b)(1) or (2), the court may direct appropriate notice to the class.”). Unlike class actions certified under Rule 23(b)(3), which require individual notice to class members and the opportunity to opt out of the

settlement, class actions certified under Rule 23(b)(2) ordinarily do not require individual notice to class members because there is greater cohesion of interests in a (b)(2) class, as individual damage claims are not at stake. *See Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457,466 (S.D. Fla. 2002) (“Notice (and exclusion opportunity) is not required in Rule 23(b)(2) actions.”); 7B Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 1793 (3d ed. 2006) (stating that while Rule 23(b)(3) classes require mandatory notice, notice is not as important for Rule 23(b)(2) classes “because the class typically will be more cohesive”); Fed. R. Civ. P. 23 advisory committee’s note (2003 Amendments) (explaining that “[t]he authority to direct notice to class members in a (b)(1) or (b)(2) class should be exercised with care” because there is no right to request exclusion and because of the potentially “crippl[ing]” cost of providing notice).

Here, expecting that notice is appropriate here, the Parties have developed a comprehensive publication notice program to notify the Rule 23(b)(2) Settlement Class of the proposed settlement. *See* Ex. 4, Wheatman Decl. Use of a combination of traditional print and online media, as does the Parties’ proposed program, meets the reasonable notice requirement of Rule 23(e) when providing notice to a large, nationwide Rule 23(b)(2) class. *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 532 (S.D.N.Y. 1996) (“Notice under Rule 23(b)(2) is flexible, and may consist entirely of published notice in appropriate circumstances.”).

In consultation with the Settlement Administrator and based on the successful Rule 23(b)(2) notice programs in previous consumer class settlements, the Parties developed a publication notice program that will reach around 75% of the Rule 23(b)(2) Settlement Class members. Ex. 4 Decl. ¶ 33. The notice program will use extensive digital advertisement, through Conversant, Facebook and Google, because over 94% of adults over twenty-five use the internet each month. *Id.* ¶ 15. Notice will also be published in TV Guide magazine, which will reach older

Class Members who may not spend time online. *Id.* ¶¶ 12-14. This reach and frequency easily meets the requirement that the class receive reasonable notice under Rule 23(e).

**B. The Rule 23(b)(3) Class Notice Program Satisfies Rule 23 and Due Process**

To meet the due process requirements that apply when settling a claim for monetary damages, a more rigorous—but still flexible—standard applies when directing notice to a Rule 23(b)(3) class. Rule Advisory Committee Notes to Fed. R. Civ. P. 23, 39 F.R.D. 69, 107 (mandatory notice under subdivision (c)(2) “is designed to fulfill requirements of due process to which the class action procedure is of course subject”).

The Court must direct “the best notice that is practicable under the circumstances” to a Rule 23(b)(3) class, which includes “individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Thus, where the names and addresses of individual class members are available or can be found without imposing an excessive burden or cost, due process requires that those class members receive direct notice.

The content of the notice “must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” *Id.*

Here, the notice plan for the Rule 23(b)(3) Settlement Class combines individual, direct mail notice to all class members, as well as email notices to class members whose email address can be identified, and a reminder notice for class members who do not submit a claim form. *See* Ex 5, Keogh Decl. Courts in the Fourth Circuit have held that similar notice plans meet all the requirements of Rule 23 and due process for class action settlements involving a monetary fund.

*See, e.g., Brunson v. Louisiana- Pac. Corp.*, 81 F. Supp. 2d 922, 925–26 (D.S.C. 2011) (mailed and published notice were the “best notice practicable under the circumstances,” satisfying both state and federal class-action rules of procedure and constitutions); *In re MicroStrategy*, 148 F. Supp. 2d at 669–70 (mail and publication notice program was “tailored to reach as many members of the class as practicable and therefore meets the due process requirements of Rule 23”).

### **C. Request for Approval of Notice Plans**

The Notice Plans for the Rule 23(b)(2) Settlement Class and Rule 23(b)(3) Settlement Class described above amply satisfy the Rule 23(e)(1)(B) requirement that notice be directed in a “reasonable manner.” For these reasons, the Court, after reviewing each of the forms of proposed notices and the specific terms of the Notice Plans, should find that they are sufficient and provide the reasonable notice that Fed. R. Civ. P. 23(e) requires. The Court, in its preliminary approval order, is requested to establish the procedures and deadlines set forth in the proposed Notice Plans for (i) objecting to the settlement or, in the case of the Rule 23(b)(3) Settlement, opting out of the settlement, and (ii) entering a written notice of appearance if a class member intends to appear at the final approval hearing.

## **VI. CONCLUSION**

For these reasons, Plaintiff requests that the Court issue an Order that: (1) grants preliminary approval to the Proposed Settlement; (2) approves of the Proposed Notices filed concurrently with this Motion; (3) orders that the Proposed Notice Plan be immediately implemented; (4) approves the appointment of Kinsella and JND as the Settlement Administrators; and (5) sets the date of the Final Fairness Hearing at the Court’s earliest availability, but no sooner than 120 days from the date of the granting of this Motion.

Respectfully submitted,  
**LISA HILL-GREEN,**  
*individually and on behalf of all  
others similarly situated*

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# Exhibit 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

LISA HILL-GREEN, *on behalf of  
herself and all others similarly situated,*

Plaintiff,

Civil Action No. 3:19-cv-708

v.

EXPERIAN INFORMATION SOLUTIONS,  
INC.,

Defendant.

**DECLARATION OF KRISTI C. KELLY**

I, Kristi C. Kelly declare:

1. My name is Kristi C. Kelly. I am over 21 years of age, of sound mind, capable of executing this declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

2. I am one of the attorneys working on behalf of the Plaintiff in the above-styled litigation, and I am a founder and a partner of Kelly Guzzo, PLC, a law firm located at 3925 Chain Bridge Road, Suite 202, Fairfax, Virginia 22030. Prior to January 15, 2014, I was an attorney and equity partner at Surovell Isaacs Petersen & Levy, PLC, a nineteen-attorney law firm with offices in Fairfax, Virginia. My primary office was 4010 University Drive, Suite 200, Fairfax, Virginia 22030. I also worked for Legal Services of Northern Virginia, focusing exclusively on housing and consumer law for approximately three years prior to Surovell Isaacs Petersen & Levy, PLC.

3. Since 2006, I have been and presently am a member in good standing of the Bar of the highest court of the Commonwealth of Virginia, where I regularly practice law. Since 2007, I have been and presently am a member in good standing of the Bar of the highest courts of the

District of Columbia and since 2014 of Maryland. I am also admitted in the United States District Courts for the District of Columbia and Maryland.

4. My law firm is committed to representing the most vulnerable—and often overlooked—consumers. We work with various legal aid organizations to help identify areas of need, where our firm can “step up” and meet those needs through class action litigation or pro bono work. Many of these cases include seeking remedies for credit reporting errors or lending abuses. Kelly Guzzo was the co-recipient of the 2019 Frankie Muse Freeman Organizational Pro Bono Award by the Virginia State Bar Association.

5. I have taught numerous Continuing Legal Education programs for other attorneys in the areas of consumer law, including mortgage servicing abuses, landlord tenant defense, dealing with debt collectors, credit reporting, defenses to foreclosure, discovery in federal court, resolving cases, and internet lending. I have taught these courses for various legal aid organizations, state and local bar associations, the National Consumer Law Center, the Consumer Federation of America, the National Council of Higher Education, and the National Association of Consumer Advocates at its various conferences. I was also a panelist for the Consumer Financial Protection Bureau and Federal Trade Commission on the issue of credit reporting.

6. My peers have recognized me as a Super Lawyer and Rising Star consistently for the past ten years. Additionally, I was selected to be a member of the Virginia Lawyers Weekly “Leader in the Law,” class of 2014, and Influential Women in the Law, class of 2020. I serve on the Board of Directors for the Legal Aid Justice Center and Virginia Poverty Law Center. I am a former State Chair for Virginia of the National Association of Consumer Advocates and am currently a member of the Partners’ Council for the National Consumer Law Center and Board of Directors of the National Association of Consumer Advocates.

7. I have also been appointed to the Merit Selection Panel for recommendation for the Magistrate Judge by the United States District Court Eastern District of Virginia, in both the Richmond and Alexandria Divisions.

8. I have significant experience representing consumers in litigation under the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 *et seq.*, and in particular the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 *et seq.*, and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*

9. My firm has litigated hundreds of consumer protection lawsuits in courts across the country. Several courts have recognized Kelly Guzzo's skill in the consumer protection arena. *See, e.g.,* Final Approval Hr'g Tr., *Campos-Carranza v. Credit Plus, Inc.*, No. 16-cv-120, at 5:3–7 (E.D. Va. Feb. 17, 2017) (“I think this is an extremely, as I say, extremely fair, reasonable, and adequate settlement. Again, the claims – and I think being generous on the time limit for the claims was also appropriate. So I have no difficulty in signing this order.”); *Ceccone v. Equifax Info. Servs. LLC*, No. 13-1314, 2016 WL 5107202, at \*6 (D.D.C. Aug. 29, 2016) (“Given these qualifications, and in light of Class Counsel's conduct in court and throughout these proceeding, this Court concludes that Class Counsel is qualified to prosecute the interests of this class vigorously.”); *Dreher v. Experian Info. Sols., Inc.*, No. 11-00624, 2014 WL 2800766, at \*2 (E.D. Va. June 19, 2014) (“Dreher's counsel is well- experienced in the arena of FCRA class action litigation.”); Fairness Hr'g Tr., *Burke v. Seterus, Inc.*, No. 16-cv-785, at 9:19–22 (E.D. Va. 2017) (“Experience of counsel on both sides in this case is extraordinary. Ms. Kelly and Ms. Nash and their colleagues are here in this court all the time with these kinds of cases and do a good job on them.”).

10. In each of the class cases where I have represented plaintiffs in a consumer protection case, including cases such as the instant case, the Court found me to be adequate class counsel. See *Tsvetovat, v. Segan, Mason, & Mason, PC*, No. 1:12-cv-510 (E.D. Va.); *Conley v. First Tennessee Bank*, No. 1:10-cv-1247 (E.D. Va.); *Dreher v. Experian Information Solutions, Inc.*, No. 3:11-cv-624 (E.D. Va.); *Shami v. Middle East Broadcast Network*, No. 1:13-cv-467 (E.D. Va.); *Goodrow v. Friedman & MacFadyen*, No. 3:11-cv-20 (E.D. Va.); *Kelly v. Nationstar*, Case No. 3:13-cv-311 (E.D. Va.); *Thomas v. Wittstadt*, No. 3:12-cv-450 (E.D. Va.); *Fariasantos v. Rosenberg & Associates, LLC*, No. 3:13-cv-543 (E.D. Va.); *Morgan v. McCabe Weisberg & Conway, LLC*, No. 3:14-cv-695 (E.D. Va.); *Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14-cv-838 (E.D. Va.); *Bartlow, et al., v. Medical Facilities of America, Inc.*, No. 3:16-cv-573 (E.D. Va.); *Blocker v. Marshalls of MA, Inc.*, No. 1:14-cv-1940 (D.D.C.); *Ceccone v. Equifax Info. Servs., LLC*, No. 1:13-cv-1314 (D.D.C.); *Jenkins v. Equifax Info. Servs., LLC*, No. 1:15-cv-443 (E.D. Va.); *Ridenour v. Multi-Color Corporation*, No. 2:15-cv-41 (E.D. Va.); *Hayes v. Delbert Services Corp.*, No. 3:14-cv-258 (E.D. Va.); *Campos-Carranza v. Credit Plus, Inc.*, No. 1:16-cv-120 (E.D. Va.); *Jenkins v. Realpage, Inc.*, No. 2:15-cv-1520 (E.D. Pa.); *Kelly v. First Advantage Background Services, Corp.*, No. 3:15-cv-5813 (D.N.J.); *Burke v. Seterus, Inc.*, No. 3:16-cv-785 (E.D. Va.); *Williams v. Corelogic Rental Property Solutions, LLC*, No. 8:16-cv-58 (D. Md.); *Clark v. Trans Union, LLC*, No. 3:15-cv-391 (E.D. Va.); *Clark v. Experian Information Solutions, Inc.*, No. 3:16-cv-32 (E.D. Va.); *Thomas v. Equifax Info. Servs., LLC*, No. 3:18-cv-684 (E.D. Va.); *Heath v. Trans Union, LLC*, No. 3:18-cv-720 (E.D. Va.); *Turner, v. ZestFinance, Inc.*, No. 3:19-cv-293 (E.D. Va.); *Galloway v. Williams*, No. 3:19-cv-470, 2020 WL 7482191, at \*4 (E.D. Va. Dec. 18, 2020); *Gibbs v. TCV V, LP*, No. 3:19-cv-789 (E.D. Va.); *Gibbs v. Rees*, No. 3:20-cv-717 (E.D. Va.); *Pang v. Credit Plus, Inc.*, No. 1:20-cv-122 (D. Md.); *Brown v. RP On-Site, LLC*, No. 1:20-cv-482 (E.D. Va.); and *Brown v. Corelogic Rental Property Solutions, LLC*, No. 3:20-cv-363 (E.D. Va.).

11. As this Court is aware, there has already been a Rule 23(b)(2) injunctive relief settlement in this case, which provided millions of class members with significant policy changes to Experian's Fraud Shield product. I am very proud of that settlement, which will continue to benefit millions of consumers for years to come.

12. That settlement, however, did not resolve all the claims at issue in this case. Instead, Ms. Hill-Green's Rule 23(b)(3) claims and request for monetary relief were left unresolved. After reaching the first injunctive relief settlement, we quickly worked to re-engage with Experian to resolve the rest of the case.

13. After several negotiations, however, it became clear that resolving this case was going to be difficult. Experian strongly believed that Plaintiff would not be able to identify and ascertain class members, which would leave us unable to obtain class certification. In addition, Experian believed that it had strong merits defenses, including that any FCRA would not be considered willful because of the previous *Price-Grimm* decision, which held that Experian's Fraud Shield product was not covered by the FCRA, albeit in the context of a 1681g claim. And Experian also believed that, even if Plaintiff was successful at both contested class certification and trial, it would ultimately prevail at the Fourth Circuit.

14. Experian's strong belief in its defenses made the negotiations in this case contentious and hard fought. We participated in numerous all-day mediations with retired Magistrate Judge Welsh, before ultimately determining that more discovery was necessary for fruitful settlement discussions.

15. Plaintiff, therefore, focused on discovery efforts, which culminated in Experian producing significant documents and data, mostly regarding class membership issues. We hired a document review team so that we could quickly process Experian's large document production and use the information in subsequent mediations and, if necessary, trial. We also conducted

several depositions of Experian's employees, and we hired an expert to help us process Experian's class member data to determine the best way to ascertain and identify class members.

16. As this discovery developed, the Parties worked with Magistrate Judge Colombell to continue efforts to resolve the case. We had two settlement conferences with Judge Colombell. As he does in many cases, Judge Colombell remained engaged with the Parties outside of these formal mediation sessions and held calls and conferences with all Parties and individual Parties to keep the settlement discussions moving. Judge Colombell was instrumental in keeping all Parties engaged in the process and moving the settlement forward. Without Judge Colombell's diligence and resolve to assist the Parties, this case may not have settled as quickly as it did.

17. In tandem with his assistance, the Parties also worked independently to negotiate the Settlements and finalize the documents that are now before the Court. I estimate that I spent hundreds of hours negotiating internally and with Experian's counsel to reach the settlement, and I know my co-counsel at Consumer Litigation Associates and Berger Montague also spent a considerable amount of time working to negotiate with Experian to reach the settlement that is now before the Court for approval.

18. I am very proud of the settlement that we were able to negotiate in this case. We achieved a \$22,450,000 cash fund to distribute to class members who were personally affected by Experian's Fraud Shield reporting. We estimate that there will be approximately 565,000 Class Members eligible for payment. With a standard claims rate of between three to eight percent, each Class Member who submits a claim will receive hundred of dollars. For example, if three percent of Class Members submit a claim, then they would receive a payment of approximately \$913.00 if the Court approves the proposed attorneys' fees, costs, expenses, and service awards. If eight percent of Class Members submit a claim, they would receive payments of approximately \$342.00 each if the Court approves the proposed attorneys' fees, costs, expenses, and service awards.

19. We were also able to add additional injunctive relief, which goes far beyond what we were able to accomplish in the first settlement. These additional injunctive relief terms will make it significantly easier for consumers to learn about and correct Fraud Shield information in the future.

20. I can also say that the negotiations in this case left nothing on the table—each side made substantial concession, despite each side’s strong belief in the strengths of their positions. Again, Judge Colombell deserves a huge amount of credit for pushing each side to reach a resolution in this case.

21. There was significant work left to do in this case, including a contested class certification motion, expert witness practice, dispositive motions, and trial preparation. The Settlement avoids the time and expense of that work. Given the significant consideration that the Settlement provides, especially considering Experian’s strong belief in its defenses, the outcome is outstanding. It solves a problem that had affected millions of consumers, including when they sought to obtain credit. In Ms. Hill-Green’s case, it ultimately led to the denial of her home loan modification and resulted in the foreclosure of her home. Because of the changes implemented by this Settlement, millions of class members will avoid facing similar harm in the future. As a result, I endorse the settlement as fair and adequate and would urge the Court to preliminarily approve the settlement.

I declare under penalty of perjury of the laws of the United States that the foregoing is correct.

Signed this 19th day of August, 2022.

/s/ Kristi C. Kelly  
Kristi C. Kelly



# Exhibit 2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

LISA HILL-GREEN, individually and  
on behalf of others similarly situated,

Plaintiff,

v.

Civil Action No. 3:19-cv-00708-MHL

EXPERIAN INFORMATION SOLUTIONS, INC.,

Defendant.

**DECLARATION OF LEONARD A. BENNETT IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Leonard A. Bennett, hereby declare the following:

1. My name is Leonard A. Bennett. I am over 21 years of age, of sound mind, capable of executing this Declaration in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, and have personal knowledge of the facts stated herein, and they are all true and correct.

**Consumer Litigation Associates, P.C.**

2. I am one of the attorneys working on behalf of the Plaintiffs and the Class in the above-styled litigation, and I am an attorney and principal of the law firm of Consumer Litigation Associates, P.C., a six-attorney law firm with offices in Hampton Roads, Richmond, Harrisonburg and Alexandria, Virginia. My primary office is at 763 J. Clyde Morris Boulevard, Suite 1-A, Newport News, Virginia 23601. I submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

3. Since 1994, I have been and presently am a member in good standing of the Bar of the highest court of the Commonwealth of Virginia, where I regularly practice law. Additionally, since 1995, I have been a member in good standing of the Bar of the highest court of the State of North Carolina.

4. I have also been admitted to practice before and am presently admitted to numerous other federal courts. I have also been admitted to or by *pro hac vice* in United States District Courts including Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia.

5. I was selected as the 2017 Consumer Lawyer of the Year by the National Association of Consumer Advocates.

6. Since 1996, my practice has been limited to consumer protection litigation. While my experience representing consumers has come within several areas, with nearly all of my litigation experience in Federal court.

7. Since 2001, I have been asked to and did speak at numerous CLE programs, seminars and events in the area of Consumer Protection litigation.<sup>1</sup>

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<sup>1</sup> PLI Representing the Pro Bono Client: Consumer Law Basics, San Francisco August 12, 2022; NACA Spring Training 2022, National Landscape in FCRA, May 2022; NCLC 2021 Mortgage Conference, Credit Reporting Issues in Mortgage Cases, June 25, 2021; NACA Online Spring Training 2021, COVID and Post-COVID Issues in FCRA Litigation, April 30, 2021; NCLC 2020 Consumer Rights Litigation Conference, Discovery in FCRA Cases, November 18, 2020; NACA Webinar, Understanding the Metro 2 Reporting Format, September 24, 2020; NCLC 2021 Mortgage Conference, Credit Reporting Issues in Mortgage Cases, June 25, 2021; NACA Online Spring Training 2020, Dealing with FCRA Paradigm Shifts: New Equifax Defense and COVID-19 Challenges, May 11, 2020; NACA Webinar, Virtual Depositions, March 31, 2020; National Consumer Law Center, Consumer Rights Conference, Denver, Colorado (November 2018); Military U.S. Navy Legal Assistance, Consumer Awareness, Buying, Financing and Owning an Automobile (July 2018); Practicing Law Institute (PLI), 23rd Annual Consumer Financial Services Institute, April 2018; National Consumer Law Center, Consumer Rights Conference, Washington, D.C., Speaker (November 2017); National Consumer Law Center, Consumer Rights Conference, Anaheim, California, Speaker for

8. I testified before the United States House Financial Services Committee on multiple occasions. In 2014, I spoke before the Consumer Financial Protection Bureau Consumer Advisory Board.

9. I have also served on a Federal Trade Commission Round Table and Governor Kaine's Virginia Protecting Consumer Privacy Working Group all within this field. I was recently on the Board of Directors of the National Association of Consumer Advocates, and am on the Partners Council of the National Consumer Law Center, on the Board of Directors for Public

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Multiple Sessions (October 2016); Fair Debt Collection Practices Act/Fair Credit Reporting Act, Norfolk and Portsmouth, VA Bar Association (October 29, 2015); National Consumer Law Center, Consumer Rights Conference, Washington, D.C., Speaker for Multiple Sessions (November 2013); National Consumer Law Center, Fair Debt Collection Practices Act Conference, Fair Credit Reporting Act Claims Against Debt Buyers, March 2013; National Association of Consumer Advocates, Webinar CLE: FCRA Dispute Process, December 2012; Rossdale CLE, Fair Credit Reporting Act (August 2012); Virginia Trial Lawyers Association, Advocacy Seminar - October, 2011; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference - Memphis, TN, May 2011; Stafford Publications CLE, National Webinar, "FCRA and FACTA Class Actions: Leveraging New Developments in Certification, Damages and Preemption" (April 2011); National Consumer Law Center, National Consumer Rights Conference, Boston, Speaker for Multiple Sessions, November, 2010; Virginia State Bar, Telephone and Webinar Course, Virginia, 2009; "What's Going On Here? Surging Consumer Litigation - Including Class Actions in State and Federal Court"; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, Chicago, IL, May 2009; National Consumer Law Center, National Consumer Rights Conference, Philadelphia, Speaker for Multiple Sessions, November 2009; National Consumer Law Center, National Consumer Rights Conference, Portland, OR, Speaker for Multiple Sessions, November 2008; Washington State Bar, Consumer Law CLE, Speaker, September 2008; Washington State Bar, Consumer Law CLE, Speaker, July 2007; House Financial Services Committee, June 2007; National Consumer Law Center, National Consumer Rights Conference, Washington, D.C., Speaker for Multiple Sessions, November 2007; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference; Denver, Colorado, May 2007, Multiple Panels; U.S. Army JAG School, Charlottesville, Virginia, Consumer Law Course Instructor, May 2007; Georgia State Bar, Consumer Law CLE, Speaker, March 2007; Contributing Author, Fair Credit Reporting Act, Sixth Edition, National Consumer Law Center, 2006; National Consumer Law Center, National Consumer Rights Conference, Miami, FL, Speaker for Multiple Sessions, November 2006; Texas State Bar, Consumer Law CLE, Speaker, October 2006 Federal Claims in Auto fraud Litigation; Santa Clara University Law School, Course, March 2006 Fair Credit Reporting Act; Widener University Law School, Course, March 2006 Fair Credit Reporting Act; United States Navy, Navy Legal Services, Norfolk, Virginia, April 2006 Auto Fraud; Missouri State Bar CLE, Oklahoma City, Oklahoma; Identity Theft; National Consumer Law Center, National Consumer Rights Conference, Boston, Mass, Multiple panels; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, New Orleans, Louisiana (May 2005), Multiple Panels; United States Navy, Naval Justice School (JAG Training), Newport, Rhode Island, Consumer Law; American Bar Association, Telephone Seminar; Changing Faces of Consumer Law, National Consumer Law Center, National Consumer Rights Conference, Boston, Mass; Fair Credit Reporting Act Experts Panel; and ABCs of the Fair Credit Reporting Act; National Association of Consumer Advocates, Fair Credit Reporting Act National Conference, Chicago, Illinois; Multiple Panels; Oklahoma State Bar CLE, Oklahoma City, Oklahoma, Identity Theft; Virginia State Bar, Telephone Seminar, Identity Theft; United States Navy, Naval Justice School (JAG Training), Newport, Rhode Island, Consumer Law; United States Navy, Navy Legal Services, Norfolk, Virginia, Auto Fraud; Virginia State Bar, Richmond and Fairfax, Virginia, Consumer Protection Law; Michigan State Bar, Consumer Law Section, Ann Arbor, Michigan, *Keynote Speaker*.

Justice and the Advisory Council of the Virginia Poverty Law Center.

10. I have been named as a multi-year Super Lawyer, a Law Dragon Top 500 Plaintiffs' Attorney, to Best Lawyers in America (including Lawyer of the Year) and a Virginia Leader in the Law.

11. In 2019 and 2020, my firm earned the National Law Journal's Elite Trial Lawyers Award for top firm in Financial Products class action litigation.

12. In 2019, our firm, Consumer Litigation Associates, was the co-recipient of the Virginia State Bar's Frankie Muse Freeman Organizational Pro Bono Award.

13. My firm has been selected by U.S. NEWS & WORLD REPORT Best Law Firm, First Tier Nationwide.

14. I was and am one of the contributing authors of the leading and comprehensive treatises published by National Consumer Law Center and used by judges and advocates nationally.

#### **Consumer Litigation Associates, P.C.'s Experience**

15. I have substantial experience in complex litigation, including class action cases, prosecuted in Federal court.

16. I have litigated scores of class action cases based on consumer protection claims in the past two decades. In each of the class cases, when asked to do so by either contested or uncontested motion, the court found me to be adequate class counsel. In each of these, I served in a lead or executive committee counsel role.

17. I have extensive experience litigating class actions in the Eastern District of Virginia. As this Court is well aware, practicing in this district requires an intimate knowledge of the rules and procedures unique to the district. The ABA's Committee on Commercial and

Business Litigation advises that the “‘Rocket Docket’ is a potential trap for the uninitiated” and recommends that “visiting litigants and lawyers alike would be well advised to retain experienced lead or local counsel to help them safely navigate the Rocket Docket.” *A Winning Motions Practice in the Rocket Docket*, Vol. 10, No. 4 (Summer 2009). Having practiced in this division and district for over 20 years, and having appeared in over 900 cases in this district, I am well versed in the rules and procedures unique to this district. In addition to the sheer volume of cases I have handled, I have also appeared in numerous complex class action cases brought in this district.

18. Craig C. Marchiando, a partner at my Firm, also practices exclusively in the field of consumer protection litigation. He is among the most experienced attorneys in the nation in this highly-specialized field of Fair Credit Reporting Act class action litigation. Mr. Marchiando graduated from South Texas College of Law *cum laude* in 2004, served a one-year appellate clerkship before moving to private practice, and was named a Texas Super Lawyers Rising Star in class action and mass tort litigation in 2013 and 2014. He is licensed to practice in California, Florida, Texas, and Virginia.

19. Mr. Marchiando joined Consumer Litigation Associates in 2015. Since joining CLA, Mr. Marchiando has focused his practice on federal consumer protection law and class actions, representing consumers in cases against banks, mortgage companies, consumer reporting agencies, and debt collectors. He is a member of the National Association of Consumer Advocates and a member in good standing of the bars of multiple federal district and appellate courts. He has represented consumers in more than 100 federal cases, including more than thirty class actions.

20. Kevin Dillon, an attorney at my firm, also practices exclusively in the field of Kevin A. Dillon, an attorney at my firm, also practices exclusively in the field of consumer protection litigation with a focus on debt collection abuses. Mr. Dillon graduated from Northeastern

University School of Law in 2018. Mr. Dillon clerked for the Honorable Justice Cleo E. Powell of the Virginia Supreme Court. He served as a member of Law Review and was a founding member of the Law and Information Society as well as a member of the National Lawyers Guild. He is licensed to practice in Virginia.

21. Drew D. Sarrett joined our law firm in August 2021. Prior to that time Mr. Sarrett was a sole practitioner at The Sarrett Law Firm, PLLC from October 12, 2016 to August 1, 2021. Mr. Sarrett's practice has as primarily been focused on representing consumers under the FCRA, FDCPA, VCPA, and other consumer protection statutes. In both 2019 and 2020, Mr. Sarrett earned the National Law Journal's Elite Trial Lawyers Award for top firm in Financial Products class action litigation. Prior to that time Mr. Sarrett was employed by the Law Office of Henry McLaughlin, P.C. from June 2011 through October 2017 with a primary caseload of consumer law cases including the FCRA. Mr. Sarrett graduated with high honors from the Honors College of the College of Charleston in South Carolina. Mr. Sarrett also graduated with honors from George Mason University School of Law.

22. The Settlement in this case was reached only after the following events, each of which independently supports the conclusion that the posture of the action and the discovery conducted is such that the proposed settlement is fair.

- Substantive and contested briefing and motions practice on procedural and discovery grounds;
- Production, obtaining and handling of significant discovery, including depositions, written party discovery and just less than 50 third party subpoenas;
- Negotiation and obtaining of Experian's database productions, both before and after mediation, processing and analyzing same and work with an expert retained

by Plaintiff's counsel to assist in those efforts; and

- Numerous all-day mediations with Retired United States Magistrate Judge Diane Welch with JAMS, followed by multiple formal settlement conferences and many more informal efforts.

23. My firm participated in and helped lead the negotiation of this settlement. At most of the mediations, I served as lead, and sometimes co-lead. We approached settlement negotiations as we always do, focusing on achieving the best benefit possible for our clients and the Class.

24. In this case, all Parties face the prospect of continued litigation through the completion of a trial, jury deliberations, followed by appeals. We also had extended the length of the litigation process as far as the Court would permit and had substantial pressure from multiple stakeholders to resolve the matter.

25. Taken as a whole, there is little doubt that the decision to settle was as informed as it possibly could have been. This action has been substantively litigated by the Parties and sufficient discovery has been obtained by both Plaintiff and Defendant to assess the strength of their respective claims and defenses. Class counsel endorses the Settlement as fair and adequate under the circumstances.

26. Settlements like the one achieved here are significant and meaningful to Class Members. The Parties have already settled a separate Rule 23(b)(2) settlement which will bring important and impactful changes in the Defendant's reporting practices. The expanded injunctive relief is even more substantial and includes additional consideration as follows:

- (a.) Disclosure Rights. Experian will now be required to provide significant information to consumers to allow them to understand and as appropriate dispute incorrect FraudShield information in their credit report. This will be done through additional

and clearer language in the disclosure reports that consumers themselves request and receive, the Experian website informational blog that explains credit issues to consumers and of course in the national notice program required as part of this settlement.

(b.) Dispute Rights. Experian is required to change its dispute procedures. After the Settlement is approved and ordered, when a consumer disputes the accuracy of a high-risk or non-residential address label, Experian will accept the consumer's representation that the address is residential and not a business, and will change the status of the address at issue in the non-residential address table within FileOne

27. The expanded Rule 23(b)(2) relief is obtained with very little sacrifice by the Class. The Rule 23(b)(2) Class gives up only a limited release of the right to re-bring another class action on the same covered conduct by the same consumers for the same past violations. The present action is the only one we believe to have been filed.

28. Plaintiff has agreed to serve as Class Representative in this lawsuit after Class Counsel explained to her the responsibilities required of an individual serving in this role. Plaintiff understands her role as a class representative and was responsive to counsel during the prosecution of the case. We previously represented Ms. Hill-Green, and she has, then and through this case, been an exemplary representative, immediately responding to our requests for information and assistance, asking questions and insisting on obtaining her own understanding of the stages of the case, and now the settlement.

29. Ms. Hill-Green, as Class Representative, has had the opportunity to review and comment on the proposed Settlement and agrees that it is in the best interest of the Class. She asks that the Court approve the settlement.

30. With these realities in mind, I believe that settlement to be fair, reasonable and adequate, and in the best interests of the Class Members. They will receive a genuine benefit, in cash, and may use the money as they choose. And obtaining their benefits takes little effort, as most will recover large payments automatically and only a narrow category need to provide any other information. I therefore strongly believe that the settlement is an excellent result for Class Members, and the Court should approve it.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

DATED: August 19, 2022, Newport News, Virginia



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Leonard A. Bennett, Esq.

# Exhibit 3

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division

LISA HILL-GREEN,

Civil Action No. 3:19-cv-00708-MHL

Plaintiff,

v.

EXPERIAN INFORMATION SOLUTIONS, INC.,

Defendant.

**DECLARATION OF E. MICHELLE DRAKE**  
**IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL**

I, E. Michelle Drake, hereby declare as follows:

1. I am one of Plaintiff's Counsel.

2. I submit this Declaration in support of the Motion for Preliminary Approval.

3. I am an Executive Shareholder at Berger Montague PC. I have been practicing law since 2001 and am a graduate of Harvard College, Oxford University, and Harvard Law School. In 2016, I joined Berger Montague as a Shareholder, prior to that I was a partner at Nichols Kaster, PLLP, and ran that firm's consumer protection group.

4. Berger Montague specializes in class action litigation and is one of the preeminent class action law firms in the United States. The firm currently consists of over 60 attorneys who primarily represent plaintiffs in complex civil litigation, and class action litigation, in federal and state courts. Berger Montague has played lead roles in major class action cases for over 50 years, and has obtained settlement and recoveries totaling well over \$30 billion for its clients and the classes they have represented. A copy of the firm's resume is attached hereto as **Exhibit A**.

5. I serve as co-chair of the firm's Consumer Protection & Mass Tort Department, and as chair of the Background Checks and Credit Reporting Department. My practice focuses on

protecting consumers' rights when they are injured by improper credit reporting, and other illegal business practices. I currently serve as lead or co-lead counsel in dozens of class action consumer protection cases in federal and state courts across the country, including numerous cases brought pursuant to the Fair Credit Reporting Act. A copy of my personal resume is attached hereto as **Exhibit B.**

6. I serve on the Board of the Southern Center for Human Rights and Public Justice, am a member of the Partner's Council of the National Consumer Law Center, and am a former Co-Chair of the Consumer Litigation Section for the Minnesota State Bar Association, and a former Board Member of the National Association of Consumer Advocates. I have previously served as a member of the Ethics Committee for the National Association of Consumer Advocates, and as Treasurer and At-Large Council Member for the Consumer Litigation Section of the Minnesota State Bar Association. I was also an appointee to the Federal Practice Committee in 2010 by the U.S. District Court for the District of Minnesota.

7. I was named to the LawDragon 500 Leading Plaintiff Financial Lawyers List for 2019 and 2022, and a 2020 Elite Woman of the Plaintiffs Bar by the National Law Journal. I am consistently named to the annual lists of The Best Lawyers of America, Top 50 Women Minnesota Super Lawyers, and Super Lawyers. I have been quoted in the New York Times, and the National Law Journal, and have had prior cases named as "Lawsuits of the Year" by Minnesota Law & Politics.

8. I present frequently at national and local conferences on class actions, consumer protection, and Fair Credit Reporting Act-related topics, and I co-authored a book chapter on background checks and related issues, "Financial and Criminal Background Checks," Job Applicant Screening: A Practice Guide, Minnesota Continuing Legal Education Publication, May

2014, and the forthcoming 2d. ed. I was a contributing author to “Consumer Law,” The Complete Lawyer’s Quick Answer Book, Minnesota Continuing Legal Education Publication, 2d. ed., 2019, and “Chapter 1: Case and Claims Selection, Other First Considerations,” Consumer Class Actions, National Consumer Law Center, 10th ed., 2019. My recent speaking engagements have included:

- “National Fair Credit Reporting Act Landscape” National Association of Consumer Advocates Spring Training, May 2022.
- “Evidentiary Challenges in Certifying Class Actions,” Class Action Symposium, Consumer Rights Litigation Conference, National Consumer Law Center, December 2021.
- “COVID and Post-COVID Issues in FCRA Litigation,” National Association of Consumer Advocates Spring Training, Virtual, April 2021.
- “Consumer Law: Overview of the Fair Credit Reporting Act,” Minnesota Continuing Legal Education, Virtual, December 2020.
- “The Role of the Lawyer in Class Actions,” Panel Chair, Global Class Actions Symposium 2020, Virtual, November 2020.
- “Hunting the Snark: Finding & Effectively Using Data to Certify Classes,” Class Action Symposium, National Consumer Law Center Consumer Rights Litigation Conference, Virtual, November 2020.
- “Specialty CRAs Part 1: Conviction Histories, Expungement, and FCRA: Keeping up with Developments in a Changing Legal Landscape,” National Consumer Law Center Consumer Rights Litigation Conference, Virtual, November 2020.

- “Conducting Financial & Criminal Background Checks – Applicant Rights and Employer Best Practices,” Minnesota Continuing Legal Education, Minneapolis, MN, October 2020.
- “Current Accuracy Topics for Traditional Credit Reporting,” Accuracy in Consumer Reporting, FTC/CFPB Workshop, Washington, DC, December 2019.
- Plaintiffs’ Food Fraud Litigation Forum, Cambridge Forums, Manalapan, FL, November 2019.
- “Sealing, Expungement and FCRA: Criminal Records Reporting in a New Era,” Consumer Rights Litigation Conference, National Consumer Law Center, Boston, MA, November 2019.
- “Stop Stealing the Microphone! Amped-Up Judicial Scrutiny of Class-Action Settlements,” Class Action Institute, American Bar Association, Nashville, TN, October 2019.
- “The Complete Lawyer: Consumer Law,” Minnesota Continuing Legal Education, Minneapolis, MN, June 2019.
- “Fair Credit Reporting Act/Debt Collection Issues,” 24th Annual Consumer Financial Services Institute, Practising Law Institute, Chicago, IL, May 2019.
- “Ethics Session: Referrals and Fee-Sharing,” Fair Credit Reporting Act Conference, National Association of Consumer Advocates, Long Beach, CA, May 2019.
- “Consumer Law: Recent Trends and Hot Topics in FCRA Litigation,” Minnesota Continuing Legal Education, Minneapolis, MN, January 2019.

- “Diamonds in the Rough: Identifying Good Class Claims,” Mass Torts Made Perfect Fall Seminar, Las Vegas, NV, October 2018.
- “Nationwide Settlement Classes – The Impact of the Hyundai/Kia Litigation,” Class Action Symposium, Consumer Rights Litigation Conference, National Consumer Law Center, Denver, CO, October 2018.
- “Developments in Public Records Litigation,” Consumer Rights Litigation Conference, National Consumer Law Center, Denver, CO, October 2018.
- “Big Challenges in the City of BIG Shoulders, Electronic Discovery’s Rise to Prominence,” ABA 22nd Annual National Institute on Class Actions, Chicago, IL, October 2018.
- “Jurisdiction Issues Post *Bristol-Myers*,” Bridgeport 2018 Class Action Litigation Conference, San Francisco, CA, September 2018.
- “New Developments in the Law of Personal Jurisdiction in the Aftermath of the Supreme Court’s Decisions in *BNSF Railway Co. v. Tyrrell* and *Bristol Myers* and the Strategies,” Plaintiffs’ Class Action Roundtable, Rancho Palos Verdes, CA, April 2018.
- “New Developments in Personal Jurisdiction,” Litigator’s Short Course, Minnesota Continuing Legal Education, Minneapolis, MN, February 2018.
- “Game Changing Blindspots that Create Privacy Liabilities – a Plaintiff-Side Litigator’s Insights,” Midwest Legal Conference on Privacy & Data Security, Minneapolis, MN, January 2018.

9. I litigate cases throughout the United States and have been admitted to, and am a member in good standing with, the following courts:

- United States Supreme Court, 2017
- State Bar of Georgia, 2001
- Georgia Supreme Court, 2006
- Minnesota Supreme Court, 2007
- U.S. Court of Appeals for the Eighth Circuit, 2010
- U.S. Court of Appeals for the First Circuit, 2011
- U.S. Court of Appeals for the Seventh Circuit, 2014
- U.S. Court of Appeals for the Ninth Circuit, 2015
- U.S. Court of Appeals for the Tenth Circuit, 2018
- U.S. Court of Appeals for the Third Circuit, 2019
- U.S. District Court for the Northern District of Georgia, 2007
- U.S. District Court for the District of Minnesota, 2007
- U.S. District Court for the Eastern District of Wisconsin, 2011
- U.S. District Court for the Western District of Texas, 2011
- U.S. District Court for the Western District of Wisconsin, 2015
- U.S. District Court for the Eastern District of Michigan, 2015
- U.S. District Court for the Central District of Illinois, 2016
- U.S. District Court for the Southern District of Texas, 2017
- U.S. District Court for the District of Colorado, 2017
- U.S. District Court for the Western District of New York, 2017
- U.S. District Court for the Western District of Michigan, 2018
- U.S. District Court for the Northern District of Illinois, 2020

10. I have served as lead, or co-lead, class counsel in numerous notable consumer protection matters, including, but not limited to, the following:

*Gambles v. Sterling Infosystems, Inc.*, No. 15-cv-9746 (S.D.N.Y.) FCRA class action, alleging violations by consumer reporting agency, resulting in a gross settlement of \$15 million, one of the largest FCRA settlements to date.

*In re: JUUL Labs, Inc. Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 19-md-2913 (N.D. Cal.). Appointed to Plaintiffs' Steering Committee in multi-district litigation consolidated class action, regarding the marketing and sales practices of dangerous e-cigarettes to consumers.

*In re: American Medical Collection Agency, Inc. Customer Data Security Breach Litig.*, No. 19-md-2904 (D.N.J.). Appointed to the Plaintiff's Quest Track Steering Committee in multi-district litigation consolidated class action, regarding the breach of consumers' medical information.

*In re: TransUnion Rental Screening Sols., Inc. FCRA Litig.*, No. 1:20-md-02933-JPB (N.D. Ga.). Appointed as Interim Lead Counsel for the classes in multi-district litigation consolidated class action, regarding violations of the Fair Credit Reporting Act.

*Thomas v. Equifax Info. Services, LLC*, No. 18-cv-684 (E.D. Va.). FCRA class action, alleging violations by credit bureau, providing nationwide resolution of class action claims asserted across multiple jurisdictions, including injunctive relief, and an uncapped mediation program for millions of consumers.

*Clark v. Experian Info. Sols., Inc.*, No. 16-cv-32 (E.D. Va.). FCRA class action, alleging violations by credit bureau, providing a nationwide resolution of class action claims asserted by 32 plaintiffs in 16 jurisdictions, including injunctive relief and an uncapped mediation program, for millions of consumers.

*Clark/Anderson v. Trans Union, LLC*, No. 15-cv-391 & No. 16-cv-558 (E.D. Va.). FCRA consolidated class action, alleging violations by credit bureau, providing groundbreaking injunctive relief, and an opportunity to recover monetary relief, for millions of consumers.

*Rilley v. MoneyMutual, LLC*, No. 16-cv-4001 (D. Minn.). Court certified a litigation class of over 20,000 Minnesota consumers alleging that MoneyMutual violated Minnesota payday lending regulations, resulting in \$2,000,000 settlement with notable injunctive relief.

*Lee v. The Hertz Corp.*, No. CGC-15-547520 (Cal. Super. Ct., San Fran. Cnty.). FCRA class action, alleging violations by employer, resulting in \$1.619 million settlement.

*Rubio-Delgado v. Aerotek, Inc.*, No. 16-cv-1066 (S.D. Ohio). FCRA class action, alleging violations by employer, resulting in a \$15 million settlement.

*Knights v. Publix Super Markets, Inc.*, No. 14-cv-720 (M.D. Tenn.). FCRA class action, alleging violations by employer, resulting in a \$6.75 million settlement.

*Hillson v. Kelly Services, Inc.*, No. 15-cv-10803 (E.D. Mich.). FCRA class action, alleging violations by employer, resulting in a \$6.749 million settlement.

*Ernst v. DISH Network, LLC & Sterling Infosystems, Inc.*, No. 12-cv-8794 (S.D.N.Y.). FCRA class action, alleging violations by employer and consumer reporting agency, resulting in a \$4.75 million settlement with consumer reporting agency, and a \$1.75 million settlement with employer.

*Howell v. Checkr, Inc.*, No. 17-cv-4305 (N.D. Cal.). FCRA class action, alleging violations by consumer reporting agency, resulting in a \$4.46 million settlement.

*Brown v. Delhaize America, LLC*, No. 14-cv-195 (M.D.N.C.). FCRA class action, alleging violations by employer, resulting in \$2.99 million settlement.

*Nesbitt v. Postmates, Inc.*, No. CGC-15-547146 (Cal. Super. Ct., San Fran. Cnty.). FCRA class action, alleging violations by employer, resulting in a \$2.5 million settlement.

*Singleton v. Domino's Pizza, LLC*, No. 11-cv-1823 (D. Md.). FCRA class action, alleging violations by employer, resulting in a \$2.5 million settlement.

*Heaton v. Social Finance, Inc.*, No. 14-cv-5191 (N.D. Cal.). FCRA class action, alleging violations by lender, resulting in a \$2.5 million settlement.

*Terrell v. Costco Wholesale Corp.*, No. 10-2-33915-9 (Wash. Super. Ct., King Cnty.). FCRA class action, alleging violations by employer, resulting in a \$2.49 million settlement.

*Halvorson v. TalentBin, Inc.*, No. 15-cv-5166 (N.D. Cal.). FCRA class action, alleging violations by online data aggregator, resulting in a \$1.15 million settlement.

*Legrand v. IntelliCorp Records, Inc.*, No. 15-cv-2091 (N.D. Ohio). FCRA class action, alleging violations by consumer reporting agency, resulting in a \$1.1 million settlement.

*In re Target Corp. Customer Data Security Breach Litig.*, MDL No. 14-2522 (D. Minn.). Data security breach class action, resulting in a \$10 million settlement for consumers.

11. My litigation efforts and experience have received judicial acknowledgement and praise throughout the years of my practice. Examples of such recognition include:

From Judge Paul A. Engelmayer, United States District Court, Southern District of New York:

I know the diligence of counsel and dedication of counsel to the class...Thank you, Ms. Drake. As always I appreciate the—your extraordinary dedication to your – to the class and the very obvious backwards and forwards familiarity you have with the case and level of preparation and articulateness today. It’s a pleasure always to have you before me...Class counsel [] generated this case on their own initiative and at their own risk. Counsel’s enterprise and ingenuity merits significant compensation...Counsel here are justifiably proud of the important result that they achieved.

Sept. 22, 2020, Final Approval Hearing, *Gambles v. Sterling Info., Inc.*, No. 15-cv-9746.

From Judge Harold E. Kahn, Dep’t 302, Superior Court of Cal., San Fran. Cnty.:

You’re very articulate on this issue. ... Obviously, you’re very thoughtful and you have given it a great deal of thought. ... And I appreciate your ability to respond to my questions off the cuff. ... It shows that you have given these issues a lot of thought ... I have to say that your thoughtfulness this morning has somewhat diminished my concerns [regarding high multiplier on attorney fees]... You’re demonstrating credibility by a mile as you go....You are extraordinarily impressive. And I thank you for being here, and for your candid, noninvasive [sic] response to every question I have. I was extremely skeptical at the outset this morning. You have allayed all of my concerns and have persuaded me that this is an important issue, and that you have done a great service to the class. And for that reason, I am going to approve your settlement in all respects... And I congratulate you on your excellent work.

Nov. 7, 2017, Final Approval Hearing, *Nesbitt v. Postmates, Inc.*, No. CGC-15-547146.

From Judge Laurie J. Michelson, United States District Court, E.D. Mich.:

Counsel’s quality of work in this case was high. The Court has been impressed with counsel’s in-court arguments. And counsel has provided the Court with quality briefing as well.

Aug. 11, 2017, Opinion & Order on Mtn. for Atty. Fees, and Mtn. for Final Approval, *Hillson v. Kelly Services, Inc.*, No. 15-cv-10803.

From Magistrate Judge Terence P. Kemp, United States District Court, S.D. Ohio:

The parties in this case are represented by counsel with substantial experience in class action litigation, and FCRA cases in particular. ... Class Counsel are experienced and knowledgeable in FCRA litigation, are skilled, and are in good standing.

June 30, 2017, Report & Recomm'n. on Final Approval, *Rubio-Delgado v. Aerotek, Inc.*, No. 16-cv-1066.

From Judge Paul A. Magnuson, United States District Court, D. Minn.:

[T]he class representatives and their counsel more than adequately protected the class's interests. ... [T]he comprehensive nature of the settlement in turn, reflects the adequacy, indeed the superiority, of the representation the class received from its named Plaintiffs and from class counsel.

May 17, 2017, Mem. & Order on Mtn. to Certify Class, *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 14-2522.

From Judge Paul A. Engelmayer, United States District Court, S.D.N.Y.:

The high quality of [plaintiffs' counsel]'s representation strongly supports approval of the requested fees. The Court has previously commended counsel for their excellent lawyering. ... The point is worth reiterating here. [Plaintiffs' counsel] was energetic, effective, and creative throughout this long litigation. The Court found [Plaintiffs' counsel]'s briefs and arguments first-rate. And the documents and deposition transcripts which the Court reviewed in the course of resolving motions revealed the firm's far-sighted and strategic approach to discovery. ... Further, unlike in many class actions, plaintiffs' counsel did not build their case by piggybacking on regulatory investigation or settlement. ... The lawyers [] can genuinely claim to have been the authors of their clients' success.

Sept. 22, 2015, Final Approval Order, *Hart v. RCI Hospitality Holdings, Inc.*, No. 09-cv-3043.

From Magistrate Judge Laurel Beeler, United States District Court, N.D. Cal.:

Counsel have worked vigorously to identify and investigate the claims in this case, and, as this litigation has revealed, understand the applicable law and have represented their clients vigorously and effectively.

June 13, 2014, Order Granting Mtn. for Class Cert., *Ellsworth v. U.S. Bank, N.A.*, No. 12-cv-2506.

From Judge Richard H. Kyle, United States District Court, D. Minn.:

Well, I think you did a great job on this. I mean, I really do. ... it seems to me you folks have gotten it done the right way.

Jan. 6, 2014, Prelim. Approval Hearing, *Bible v. General Revenue Corp.*, No. 12-cv-1236.

From Judge Deborah Chasanow, United States District Court, D. Md.:

[plaintiffs' counsel] are qualified, experienced, and competent, as evidenced by their background in litigating class-action cases involving FCRA violations. ... As noted above, Plaintiffs' attorneys are experienced and skilled consumer class action litigators who achieved a favorable result for the Settlement Classes.

Oct. 2, 2013, Final Approval Order, *Singleton v. Domino's Pizza, LLC*, No. 11-cv1823.

From Judge Lorna G. Schofield, United States District Court, S.D.N.Y.:

[Plaintiffs' Counsel] has demonstrated it is able fairly and adequately to represent the interests of the putative class.

July 23, 2013, Order Appointing Interim Lead Counsel, *Ernst v. DISH Network, LLC*, No. 12-cv-8794.

From Judge Susan M. Robiner, Minnesota District Court, Henn. Cnty.:

Plaintiffs' counsel are adequate legal representatives for the class. They have done work identifying and investigating potential claims, have handled class actions in the past, know the applicable law, and have the resources necessary to represent the class. The class will be fairly and adequately represented.

Oct. 16, 2012, Order Granting Mtn. for Class Cert., *Spar v. Cedar Towing & Auction, Inc.*, No. 27-CV-411-24993.

12. In the litigation of this matter, my firm was in charge of data analysis. In particular, I worked to obtain data from Experian, both at the meta-level (i.e. statements about data, where it is housed and organized and how it can be retrieved) and also samples of data at the micro level, which were used for purposes of estimating class size and identifying class members. Class Counsel received numerous data sets from Defendant during the course of the litigation and mediation of this matter. These sets were complicated to analyze, in large part due to their

voluminous size, but also due to the historical nature of the data and the need to develop mechanisms to compare data sets that categorize and store data in different ways, and are updated using different mechanisms including the Allout data and Experian's Non-Residential Address Table.

13. Throughout this litigation, I worked closely with both Experian's counsel and our retained data analysis expert to estimate the class size, analyze different data points in Experian's possession to evaluate liability, and, ultimately, to ascertain and identify members of the Rule 23(b)(3) Settlement Class. This work was extensive. In order to minimize the burden on Experian, Plaintiffs agreed to process Experian's data in multiple rounds of telescoping analysis, first identifying potential class members from a very broad but limited data set, and then obtaining additional information from Experian only about individuals from the initial data set(s) who were not eliminated from class membership based on what was initially produced. These different data sets had to be routinely "married" to one another using unique identifiers, such as transaction IDs and PINs, before being transmitted back and forth.

14. In addition to leading the data analysis during litigation and settlement negotiations, my firm was in charge of developing and negotiating the notice plan. My firm handled the process of requesting and reviewing multiple bids and proposals for notice in this case.

15. My firm contacted and consulted with three separate notice administrators, each of whom has offered testimony regarding notice in federal court, and each of whom we have worked with and been satisfied with in other matters. We solicited ideas from each about how we could best effectuate notice in this case, given the hybrid 23(b)(2) and (b)(3) structure, and the previously approved (b)(2) injunctive relief settlement.

16. My firm negotiated the selection of JND and Kinsella as the Administrators with opposing counsel. I worked closely with both JND and Kinsella to develop the ultimate notice plans, and led the negotiations between the Parties regarding the content of the notices and the mechanisms for disseminating notices.

17. The notice plans selected here are best-in-class for (b)(2) and (b)(3) settlements. For the Rule 23(b)(2) class, the notice plan involves plain-language publication notice which will be presented to class members through online advertisements targeted to the demographics of the settlement class, a settlement website which will provide all notices in both English and Spanish, and traditional print publication in a publication that has maintained high levels of circulation among individuals who are less likely to use the Internet.

18. The notice plan goes above and beyond the requirements of Rule 23 and is projected to reach at least 75% of class members, with an average frequency of over three-times each. That means that, on average 75% of likely class members (adults over age 25) will see notices about the settlement. Additional reach will be achieved through the dedicated toll-free number and the settlement website.

19. The online component of the notice program accounts for the fact that peoples' online behaviors have shifted during the pandemic, and ensures that current and up-to-date data is used to identify likely class members. The data relied on pertains to both the demographics of the class, and also to the vehicles that will be used to deliver the impressions. In other words, the technologies that the notice administrator will employ ensure that information about the settlement reaches the right people by accounting for both *who* those people are and *where* they can be found when online. The data used to identify class members and present ads to them is voluminous, including look-a-like modeling, predictive targeting, audience targeting, site retargeting and geo-

targeting. This notice plan is truly technology-forward, and represents an elevation in the standard for electronic notice.

20. With respect to the Rule 23(b)(3) Class, the notice procedures chosen were more straightforward, namely direct mail and email to class members. However, even Rule 23(b)(3) notice benefits from careful consideration.

21. The substance of the notices for both the Rule 23(b)(2) and Rule 23(b)(3) classes is also optimal. We ensured that all class notices were drafted using best practices, and in accordance with the model notices promulgated by the Federal Judicial Center. The notices all include summaries of key points, are written using plain language, and will be available to class members in both English and Spanish. Every notice includes information about class counsel, including an email address that class members can use to contact class counsel directly.

22. We have also taken steps to ensure that the mailed notices will actually be delivered to the intended recipients. JND has agreed to update the address list provided by Defendant prior to mailing by utilizing the National Change of Address database. This ensures that people who have moved since the time Defendant obtained their address will receive notice at the new address on file with the United States Postal Service.

23. For mail that is returned, JND will also provide both forwarding service and skip-tracing (individual-level address searches in databases designed to assist with locating individuals that draw on a variety of public records and other sources) to ensure that any notices that are returned are promptly re-mailed to the intended recipients. Rule 23(b)(3) class members will also have a separate section of the Settlement Website dedicated to their claims, as well as a dedicated section of the toll-free hotline.

24. Moreover, in addition to sending notice to Rule 23(b)(3) Settlement Class Members by U.S. Mail, we have also taken the additional step of performing an email append search, whereby JND will locate email addresses for Rule 23(b)(3) Settlement Class members and will also send such class members email notice. The email notices will contain hyperlinks to the Settlement Website where class members can make claims online.

25. Finally, the Settlement provides the Administrator with discretion to send reminder notices to Settlement Class Members throughout the claims period, in order to ensure that Settlement Class Members do not unwittingly fail to exercise their right to make claims. Reminder notices have repeatedly been shown to be an effective way to improve claims rates in class action settlements, and incorporating this feature here also renders the notice process best in class.

26. Finally, class counsel has ensured that no class members will be confused by the fact that two settlements are proceeding simultaneously, or about the fact that the Rule 23(b)(2) settlement represents an expansion of the previous settlement. We have taken care to use plain language when describing unfamiliar legal concepts (such as a “novation”) and to ensure that all class members are informed about the entire scope of the settlement. While each settlement has its own notice plan and its own notice documents, the settlement notices for both the Rule 23(b)(2) and the Rule 23(b)(3) Settlements each include appropriate information about one another, ensuring that class members are informed about the specific benefits of the settlements that apply to them.

27. I will continue in my present role of leading all aspects of the settlement related to data, notice and settlement administration. This will involve, *inter alia*, continuing to work with Experian, our data expert, and the settlement administrators to ensure that the data we obtain from Experian regarding class members is accurate and loaded properly for purposes of sending notice

and monitoring claims, monitoring the reach and impressions achieved and delivery rate for direct notice by the administrators, monitoring the settlement administrators' responses to inquiries from class members, communicating with the settlement administrator to ensure all deadlines are met, monitoring the claims rate, ensuring that regular case updates and case-related documents are promptly posted to the website, and directing the preparation of a report to the court, in conjunction with final approval, about the success of our notice efforts.

28. I endorse the settlement as fair, reasonable, and adequate.

The foregoing statement is made under penalty of perjury, and is true and correct to the best of my knowledge and belief.

Date: August 18, 2022

/s/E. Michelle Drake

E. Michelle Drake

**Exhibit A**



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## About Berger Montague

Berger Montague is a full-spectrum class action and complex civil litigation firm, with nationally known attorneys highly sought after for their legal skills. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the firm has played a principal or lead role.

The *National Law Journal* selected Berger Montague in 12 out of 14 years (2003-2005, 2007-2013, 2015-2016) for its "Hot List" of top plaintiffs-oriented litigation firms in the United States. The select group of law firms recognized each year had done "exemplary, cutting-edge work on the plaintiffs' side." The *National Law Journal* ended its "Hot List" award in 2017 and replaced it with "Elite Trial Lawyers," which Berger Montague has won from 2018-2021. The firm has also achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell* and was ranked as a 2021 "Best Law Firm" by *U.S. News - Best Lawyers*.

Currently, the firm consists of 76 lawyers; 16 paralegals; and an experienced support staff. Few firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

## History of the Firm

Berger Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm's complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger Montague has established new law and forged the path for recovery.

The firm has been involved in a series of notable cases, some of them among the most important in the last 50 years of civil litigation. For example, the firm was one of the principal counsel for

plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately \$2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980's. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of \$5 billion against Exxon, later reduced by the U.S. Supreme Court to \$507.5 million. Berger Montague was lead counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered in excess of \$200 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger Montague was also lead class counsel and lead trial counsel in the *Cook v. Rockwell International Corporation* litigation arising out of a serious incident at the Rocky Flats nuclear weapons facility in Colorado.

Additionally, in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a \$1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm also played an instrumental role in bringing about a \$4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

### **Diversity, Equity and Inclusion Initiatives**

Berger Montague not only supports the idea of its Diversity, Equity and Inclusion (“DEI”) initiatives, it is a part of the DNA and fabric of the firm—internally amongst the Berger Montague family and in the way we practice law with co-counsel, opposing counsel, the courts, and with our clients. Through our DEI initiatives, Berger Montague actively works to increase diversity at all levels of our firm and to ensure that professionals of all races, religions, national origins, gender identities, ethnicities, sexual orientations, and physical abilities feel supported and respected in the workplace.

Berger Montague has a DEI Task Force with the leadership of the DEI Coordinator, Camille Fundora Rodriguez, and including, Candice J. Enders, Caitlin G. Coslett, Sophia Rios, and Reginald L. Streater. Berger Montague has enacted a broad range of diversity and inclusion projects, including successful efforts to hire and retain attorneys and non-attorneys from diverse backgrounds and to foster an inclusive work environment, including through firmwide trainings on implicit bias issues that may impact the workplace.

Additionally, at Berger Montague women lead. Women comprise over 30% of Berger Montague's shareholders, well above the national average as reported by the National Association of Women Lawyers. Moreover, women at the firm are encouraged and have taken advantage of professional development support to bolster their trajectories into key participation and leadership roles, both within and outside the firm, including mentoring, networking, and educational opportunities for women across all career levels. As a result of these intentional policies and initiatives, women attorneys at Berger Montague are managing departments, running offices, overseeing major

administrative programs, generating new business, serving as first chair in trials, handling large matters, and holding numerous other leadership positions firmwide.

Berger Montague's commitment to DEI activities extends beyond our firm. For example, DEI Task Force members are involved in numerous community and professional activities outside of the firm. Representative activities include membership in and/or board or leadership positions with the Hispanic Bar Association, the Barristers' Association of Philadelphia, the Philadelphia Public School Board of Education, Court Appointed Special Advocates (CASA) of Philadelphia, Philadelphia Bar Association's Business Law Section's Antitrust Committee, Community Legal Services of Philadelphia, the Greater Philadelphia Chapter of the Pennsylvania ACLU, AccessMatters, After School Activities Partnerships, and Leadership Council on Legal Diversity. As such, Berger Montague's commitment to DEI has created an atmosphere in which the attorneys can share their gifts with the legal and greater communities from which they come.

### **Commitment to *Pro Bono***

Berger Montague attorneys commit their most valuable resource, their time, to charities, nonprofit organizations, and *pro bono* legal work. For over 50 years, Berger Montague has encouraged its attorneys to support charitable causes and volunteer in the community. Our lawyers understand that participating in *pro bono* representation is an essential component of their professional and ethical responsibilities.

Berger Montague is strongly committed to numerous charitable causes. Over his lengthy career, David Berger, the firm's founding partner, was prominent in a great many philanthropic and charitable enterprises, including serving as Honorary Chairman of the American Heart Association; a Trustee of the American Cancer Society; and a member of the Board of Directors of the American Red Cross. This tradition continues to the present.

Community Legal Services of Philadelphia, an organization that provides free legal advice and representation to low-income residents of Philadelphia, honored Berger Montague with its 2021 Champion of Justice Award for the firm's work leading a case against the IRS that succeeded in getting unemployed people their rightful benefits during the COVID-19 pandemic.

In prior years, Berger Montague received the Chancellor's Award presented by the Philadelphia Volunteers for the Indigent Program ("VIP"), which provides crucial legal services to more than 1,000 low-income Philadelphia residents each year. VIP relies on volunteer attorneys to provide *pro bono* representation for families and individuals. In 2009 and 2010, Berger Montague also received an award for our volunteer work with the VIP Mortgage Foreclosure Program.

Today, Berger Montague attorneys engage in *pro bono* work for many organizations, including:

- Public Interest Law Center of Philadelphia ("PILCOP")
- Community Legal Services of Philadelphia ("CLS")
- Philadelphia Legal Assistance
- Education Law Center

- Legal Clinic for the Disabled
- Support Center for Child Advocates
- Veterans Pro Bono Consortium
- AIDS Law Project of Philadelphia
- Center for Literacy
- National Liberty Museum
- Philadelphia Volunteers for the Indigent Program
- Philadelphia Mortgage Foreclosure Program

We are proud of our written *pro bono* policy that encourages and strongly supports our attorneys to get involved in this important and rewarding work. Many attorneys at Berger Montague have been named to the First District of Pennsylvania's Pro Bono Honor Roll.

Berger Montague also makes annual contributions to the Philadelphia Bar Foundation, an umbrella charitable organization dedicated to promoting access to justice for all people in the community, particularly those struggling with poverty, abuse, and discrimination.

The firm also has held numerous clothing drives, toy drives, food drives, and blood drives. Through these efforts, Berger Montague professional and support staff have donated thousands of items of clothing, toys, and food to local charities including the Salvation Army, Toys for Tots, and Philabundance, a local food bank. Blood donations are made to the American Red Cross. Berger Montague attorneys also volunteer on an annual basis at MANNA, which prepares and delivers nourishing meals to those suffering with serious illnesses.

## **Practice Areas and Case Profiles**

### **Antitrust**

In antitrust litigation, the firm has served as lead, co-lead or co-trial counsel on many of the most significant civil antitrust cases over the last 50 years, including *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (settlement of approximately \$5.6 billion), *In re Namenda Direct Purchaser Antitrust Litigation* (recovery of \$750 million), *In re Loestrin 24 Fe Antitrust Litigation* (recovery of \$120 million), and *In re Domestic Drywall Antitrust Litigation* (settlements totaling \$190.7 million).

Once again, Berger Montague has been selected by *Chambers and Partners* for its 2021 *Chambers USA* Guide as one of Pennsylvania's top antitrust firms. *Chambers USA 2021* states that Berger Montague's antitrust practice group is "a preeminent force in the Pennsylvania antitrust market, offering expert counsel to clients from a broad range of industries."

*The Legal 500*, a guide to worldwide legal services providers, ranked Berger Montague as a Top Tier Law Firm for Antitrust: Civil Litigation/Class Actions: Plaintiff in the United States in its 2021 guide and states that Berger Montague's antitrust department "has a flair for handling high-stakes plaintiff-side cases, regularly winning high-value settlements for clients following antitrust law violations."

- ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation:*** Berger Montague served as co-lead counsel for a national class including millions of merchants in the *Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* against Visa, MasterCard, and several of the largest banks in the U.S. (e.g., Chase, Bank of America, and Citi). The lawsuit alleged that merchants paid excessive fees to accept Visa and MasterCard cards because the payment cards, individually and together with their respective member banks, violated the antitrust laws. The challenged conduct included, *inter alia*, the collective fixing of interchange fees and adoption of rules that hindered any competitive pressure by merchants to reduce those fees. The lawsuit further alleged that defendants maintained their conspiracy even after both Visa and MasterCard changed their corporate forms from joint ventures owned by member banks to publicly-owned corporations following commencement of this litigation. On September 18, 2018, after thirteen years of hard-fought litigation, Visa and MasterCard agreed to pay as much as approximately \$6.26 billion, but no less than approximately \$5.56 billion, to settle the case. This result is the largest-ever class action settlement of an antitrust case. The settlement received preliminary approval on January 24, 2019. The settlement received final approval on December 16, 2019, for approximately \$5.6 billion.
- ***Contant, et al. v. Bank of America Corp., et al.:*** Berger Montague served as lead class counsel in the multistate indirect purchaser antitrust class action *Contant, et al. v. Bank of America Corp., et al.*, against 16 of the world's largest dealer banks. Plaintiffs alleged that the defendants colluded to manipulate prices on foreign currency ("FX") instruments, using a number of methods to carry out their conspiracies, including sharing confidential price and order information through electronic chat rooms, thereby enabling the defendants to coordinate pricing and eliminate price competition. As with prior bank rigging scandals involving conspiracies to manipulate prices on other financial instruments, the defendants' alleged conspiracy to manipulate FX prices was the subject of numerous governmental investigations as well as direct purchaser class actions brought under antitrust federal law. However, the *Contant* action was the first of such cases to bring claims under state indirect purchaser antitrust laws on behalf of state-wide classes of retail investors of those financial instruments and whose claims have never been redressed. On July 29, 2019, U.S. District Judge Lorna G. Schofield granted preliminary approval of a \$10 million settlement with Citigroup and a \$985,000 settlement with MUFG Bank Ltd. On July 17, 2020, the Court granted preliminary approval of three settlements with all remaining defendants for a combined \$12.695 million. Each of the five settlements, totaling \$23.63 million, received final approval on November 19, 2020.
- ***In re Dental Supplies Antitrust Litigation:*** Berger Montague served as co-lead counsel for a class of dental practices and dental laboratories in *In re Dental Supplies Antitrust Litigation*, a suit brought against Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company, the three largest distributors of dental supplies in the United States. On September 7, 2018, co-lead counsel announced that they agreed with defendants to settle on a classwide basis for \$80 million. The settlement received final

approval on June 24, 2019. The suit alleged that the defendants, who collectively control close to 90 percent of the dental supplies and equipment distribution market, conspired to restrain trade and fix prices at anticompetitive levels, in violation of the Sherman Act. In furtherance of the alleged conspiracy, plaintiffs claimed that the defendants colluded to boycott and pressure dental manufacturers, dental distributors, and state dental associations that did business with or considered doing business with the defendants' lower-priced rivals. The suit claimed that, because of the defendants' anticompetitive conduct, members of the class were overcharged on dental supplies and equipment. In the 2019 Fairness Hearing, Judge Brian M. Cogan of the U.S. District Court for the Eastern District of New York said: "This is a substantial recovery that has the deterrent effect that class actions are supposed to have, and I think it was done because we had really good Plaintiffs' lawyers in this case who were running it."

- ***In re Domestic Drywall Antitrust Litigation:*** Berger Montague served as co-lead counsel on behalf of a class of direct purchasers of drywall, in a case alleging that the dominant manufacturers of drywall engaged in a conspiracy to fix drywall prices in the U.S. and to abolish the industry's long-standing practice of limiting price increases for the duration of a construction project through "job quotes." Berger Montague represented a class of direct purchasers of drywall from defendants for the period from January 1, 2012 to January 31, 2013. USG Corporation and United States Gypsum Company (collectively, "USG"), New NGC, Inc., Lafarge North America Inc., Eagle Materials, Inc., American Gypsum Company LLC, TIN Inc. d/b/a Temple-Inland Inc., and PABCO Building Products, LLC were named as defendants in this action. On August 20, 2015, the district court granted final approval of two settlements—one with USG and the other with TIN Inc.—totaling \$44.5 million. On December 8, 2016, the district court granted final approval of a \$21.2 million settlement with Lafarge North America, Inc. On February 18, 2016, the district court denied the motions for summary judgment filed by American Gypsum Company, New NGC, Inc., Lafarge North America, Inc., and PABCO Building Products. On August 23, 2017, the district court granted direct purchaser plaintiffs' motion for class certification. On January 29, 2018, the district court granted preliminary approval of a joint settlement with the remaining defendants, New NGC, Inc., Eagle Materials, Inc., American Gypsum Company LLC, and PABCO Building Products, LLC, for \$125 million. The settlement received final approval on July 17, 2018, bringing the total amount of settlements for the class to \$190.7 million.
- ***In re Currency Conversion Fee Antitrust Litigation:*** Berger Montague, as one of two co-lead counsel, spearheaded a class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of \$336 million was approved in October 2009, with a Final Judgment entered in November 2009. Following the resolution of eleven appeals, the District Court, on October 5, 2011, directed distribution of the settlement funds to more than 10 million timely filed claimants, among the largest class of claimants in an antitrust consumer class action. A subsequent settlement with American Express increased the settlement amount to \$386 million. (MDL No. 1409 (S.D.N.Y)).

- ***In re Marchbanks Truck Service Inc., et al. v. Comdata Network, Inc.***: Berger Montague was co-lead counsel in this antitrust class action brought on behalf of a class of thousands of Independent Truck Stops. The lawsuit alleged that defendant Comdata Network, Inc. had monopolized the market for specialized Fleet Cards used by long-haul truckers. Comdata imposed anticompetitive provisions in its agreements with Independent Truck Stops that artificially inflated the fees Independents paid when accepting the Comdata's Fleet Card for payment. These contractual provisions, commonly referred to as anti-steering provisions or merchant restraints, barred Independents from taking various competitive steps that could have been used to steer fleets to rival payment cards. The settlement for \$130 million and valuable prospective relief was preliminary approved on March 17, 2014, and finally approved on July 14, 2014. In its July 14, 2014 order approving Class Counsel's fee request, entered contemporaneously with its order finally approving the settlement, the Court described this outcome as "substantial, both in absolute terms, and when assessed in light of the risks of establishing liability and damages in this case."
- ***Ross, et al. v. Bank of America (USA) N.A., et al.***: Berger Montague, as lead counsel for the cardholder classes, obtained final approval of settlements reached with Chase, Bank of America, Capital One and HSBC, on claims that the defendant banks unlawfully acted in concert to require cardholders to arbitrate disputes, including debt collections, and to preclude cardholders from participating in any class actions. The case was brought for injunctive relief only. The settlements remove arbitration clauses nationwide for 3.5 years from the so-called "cardholder agreements" for over 100 million credit card holders. This victory for consumers and small businesses came after nearly five years of hard-fought litigation, including obtaining a decision by the Court of Appeals reversing the order dismissing the case, and will aid consumers and small businesses in their ability to resist unfair and abusive credit card practices. In June 2009, the National Arbitration Forum (or "NAF") was added as a defendant. Berger Montague also reached a settlement with NAF. Under that agreement, NAF ceased administering arbitration proceedings involving business cards for a period of three and one-half (3.5) years, which relief is in addition to the requirements of a Consent Judgment with the State of Minnesota, entered into by the NAF on July 24, 2009.
- ***Johnson, et al. v AzHHA, et al.***: Berger Montague was co-lead counsel in this litigation on behalf of a class of temporary nursing personnel, against the Arizona Hospital and Healthcare Association, and its member hospitals, for agreeing and conspiring to fix the rates and wages for temporary nursing personnel, causing class members to be underpaid. The court approved \$24 million in settlements on behalf of this class of nurses. (Case No. 07-1292 (D. Ariz.)).

The firm has also played a leading role in cases in the pharmaceutical arena, especially in cases involving the delayed entry of generic competition, having achieved over \$2 billion in settlements in such cases over the past decade, including:

- ***In re: Namenda Direct Purchaser Antitrust Litigation:*** Berger Montague is co-lead counsel for the class in this antitrust action brought on behalf of a class of direct purchasers of branded and/or generic Namenda IR and/or branded Namenda XR. It settled for \$750 million on the very eve of trial. The \$750 million settlement received final approval on May 27, 2020, and is the largest single-defendant settlement ever for a case alleging delayed generic competition. (Case No. 15-cv-7488 (S.D.N.Y.)).
- ***King Drug Co. v. Cephalon, Inc.:*** Berger Montague played a major role (serving on the executive committee) in this antitrust class action on behalf of direct purchasers of the prescription drug Provigil (modafinil). After nine years of hard-fought litigation, the court approved a \$512 million partial settlement, then the largest settlement ever for a case alleging delayed generic competition. (Case No. 2:06-cv-01797 (E.D. Pa.)). Subsequent non-class settlements pushed the total settlement figure even higher.
- ***In re Aggrenox Antitrust Litigation:*** Berger Montague represented a class of direct purchasers of Aggrenox in an action alleging that defendants delayed the availability of less expensive generic Aggrenox through, *inter alia*, unlawful reverse payment agreements. The case settled for \$146 million. (Case No. 14-02516 (D. Conn.)).
- ***In re Asacol Antitrust Litigation:*** The firm served as class counsel for direct purchasers of Asacol HS and Delzicol in a case alleging that defendants participated in a scheme to block generic competition for the ulcerative colitis drug Asacol. The case settled for \$15 million. (Case No. 15-cv-12730-DJC (D. Mass.)).
- ***In re Celebrex (Celecoxib) Antitrust Litigation:*** The firm represented a class of direct purchasers of brand and generic Celebrex (celecoxib) in an action alleging that Pfizer, in violation of the Sherman Act, improperly obtained a patent for Celebrex from the U.S. Patent and Trademark Office in a scheme to unlawfully extend patent protection and delay market entry of generic versions of Celebrex. The case settled for \$94 million. (Case No. 14-cv-00361 (E.D. VA.)).
- ***In re DDAVP Direct Purchaser Antitrust Litigation:*** Berger Montague served as co-lead counsel in a case that charged defendants with using sham litigation and a fraudulently obtained patent to delay the entry of generic versions of the prescription drug DDAVP. Berger Montague achieved a \$20.25 million settlement only after winning a precedent-setting victory before the United States Court of Appeals for the Second Circuit that ruled that direct purchasers had standing to recover overcharges arising from a patent-holder's misuse of an allegedly fraudulently obtained patent. (Case No. 05-2237 (S.D.N.Y.)).
- ***In re K-Dur Antitrust Litigation:*** Berger Montague served as co-lead counsel for the class in this long-running antitrust litigation. Berger Montague litigated the case before the Court of Appeals and won a precedent-setting victory and continued the fight before the Supreme Court. On remand, the case settled for \$60.2 million. (Case No. 01-1652 (D.N.J.)).

- ***In re Loestrin 24 Fe Antitrust Litigation:*** Berger Montague served as co-lead counsel for the class of direct purchasers of brand Loestrin, generic Loestrin, and/or brand Minastrin. The direct purchaser class alleged that defendants violated federal antitrust laws by unlawfully impairing the introduction of generic versions of the prescription drug Loestrin 24 Fe. The case settled shortly before trial for \$120 million (Case No. 13-md-2472) (D.R.I.).
- ***Meijer, Inc., et al. v. Abbott Laboratories:*** Berger Montague served as co-lead counsel in a class action on behalf of pharmaceutical wholesalers and pharmacies charging Abbott Laboratories with illegally maintaining monopoly power and overcharging purchasers in violation of the federal antitrust laws. Plaintiffs alleged that Abbott had used its monopoly with respect to its anti-HIV medicine Norvir (ritonavir) to protect its monopoly power for another highly profitable Abbott HIV drug, Kaletra. This antitrust class action settled for \$52 million after four days of a jury trial in federal court in Oakland, California. (Case No. 07-5985 (N.D. Cal.)).
- ***Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Ltd. Co.:*** Berger Montague served as co-lead counsel in a case challenging Warner Chilcott's alleged anticompetitive practices with respect to the branded drug Doryx. The case settled for \$15 million. (Case No. 2:12-cv-03824 (E.D. Pa.)).
- ***In re Oxycontin Antitrust Litigation:*** Berger Montague served as co-lead counsel on behalf of direct purchasers of the prescription drug Oxycontin. The case settled in 2011 for \$16 million. (Case No. 1:04-md-01603 (S.D.N.Y)).
- ***In re Prandin Direct Purchaser Antitrust Litigation:*** Berger Montague served as co-lead counsel and recovered \$19 million on behalf of direct purchasers of the diabetes medication Prandin. (Case No. 2:10-cv-12141 (E.D. Mich.)).
- ***Rochester Drug Co-Operative, Inc. v. Braintree Labs., Inc.:*** Berger Montague served as co-lead counsel on behalf of direct purchasers alleging sham litigation led to the delay of generic forms of the brand drug Miralax. The case settled for \$17.25 million. (Case No. 07-142 (D. Del.)).
- ***In re Skelaxin Antitrust Litigation:*** Berger Montague was among a small group of firms litigating on behalf of direct purchasers of the drug Skelaxin. The case settled for \$73 million. (Case No. 2:12-cv-83 / 1:12-md-02343) (E.D. Tenn.)).
- ***In re Solodyn Antitrust Litigation:*** Berger Montague served as co-lead counsel representing a class of direct purchasers of brand and generic Solodyn (extended-release minocycline hydrochloride tablets) alleging that defendants entered into agreements not to compete in the market for extended-release minocycline hydrochloride tablets in violation of the Sherman Act. With a final settlement on the eve of trial, the case settled for a total of more than \$76 million. (Case No. 14-MD-2503-DJC (D. Mass.)).

- ***In re Tricor Antitrust Litigation:*** Berger Montague was one of a small group of counsel in a case alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Tricor. The case settled for \$250 million. (No. 05-340 (D. Del.)).
- ***In re Wellbutrin XL Antitrust Litigation:*** Berger Montague served as co-lead counsel for a class of direct purchasers of the antidepressant Wellbutrin XL. A settlement of \$37.5 million was reached with Valeant Pharmaceuticals (formerly Biovail), one of two defendants in the case. (Case No. 08-cv-2431 (E.D. Pa.)).

### **Commercial Litigation**

Berger Montague helps business clients achieve extraordinary successes in a wide variety of complex commercial litigation matters. Our attorneys appear regularly on behalf of clients in high stakes federal and state court commercial litigation across the United States. We work with our clients to develop a comprehensive and detailed litigation plan, and then organize, allocate and deploy whatever resources are necessary to successfully prosecute or defend the case.

- ***Robert S. Spencer, et al. v. The Arden Group, Inc., et al.:*** Berger Montague represented an owner of limited partnership interests in several commercial real estate partnerships in a lawsuit against the partnerships' general partner. The terms of the settlement are subject to a confidentiality agreement. (Aug. Term, 2007, No. 02066 (Pa. Ct. Com. Pl., Phila. Cty. - Commerce Program)).
- ***Forbes v. GMH:*** Berger Montague represented a private real estate developer/investor who sold a valuable apartment complex to GMH for cash and publicly-held securities. The case which claimed securities fraud in connection with the transaction settled for a confidential sum which represented a significant portion of the losses experienced. (No. 07-cv-00979 (E.D. Pa.)).

### **Commodities & Financial Instruments**

Berger Montague ranks among the country's preeminent firms for managing and trying complex Commodities & Financial Instruments related cases on behalf of individuals and as class actions. The firm's commodities clients include individual hedge and speculation traders, hedge funds, energy firms, investment funds, and precious metals clients.

- ***In re Peregrine Financial Group Customer Litigation:*** Berger Montague served as co-lead counsel in a class action which helped deliver settlements worth more than \$75 million on behalf of former customers of Peregrine Financial Group, Inc., in litigation against U.S. Bank, N.A., and JPMorgan Chase Bank, N.A., arising from Peregrine's collapse in July 2012. The lawsuit alleges that both banks breached legal duties by allowing Peregrine's owner to withdraw and put millions of dollars in customer funds to non-customer use. (No. 1:12-cv-5546)

- ***In re MF Global Holdings Ltd. Investment Litigation:*** Berger Montague is one of two co-lead counsel that represented thousands of commodities account holders who fell victim to the alleged massive theft and misappropriation of client funds at the former major global commodities brokerage firm MF Global. Berger Montague reached a variety of settlements, including with JPMorgan Chase Bank, the MF Global SIPA Trustee, and the CME Group, that collectively helped to return approximately \$1.6 billion to the class. Ultimately, class members received more than 100% of the funds allegedly misappropriated by MF Global even after all fees and expenses. (No. 11-cv-07866 (S.D.N.Y.)).
- ***In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation:*** Berger Montague is one of two co-lead counsel representing traders of gold-based derivative contracts, physical gold, and gold-based securities against The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank AG, HSBC Bank plc, Société Générale and the London Gold Market Fixing Limited. Plaintiffs allege that the defendants, members of the London Gold Market Fixing Limited, which sets an important benchmark price for gold, conspired to manipulate this benchmark for their collective benefit. (1:14-md-02548 (S.D.N.Y.)).
- ***In re Libor-Based Financial Instruments Antitrust Litigation:*** Berger Montague represents exchange-based investors in this sprawling litigation alleging a conspiracy among many of the world's largest banks to manipulate the key LIBOR benchmark rate. LIBOR plays an important role in valuing trillions of dollars of financial instruments worldwide. The case, filed in 2011, alleges that the banks colluded to misreport and manipulate LIBOR rates for their own benefit. The banks' conduct damaged, among others, exchange-based investors who transacted in Eurodollar futures and options on the CME between 2005 and 2010. Eurodollar futures and options are keyed to LIBOR and are the world's most heavily traded short-term interest rate contracts. Following years of hotly contested litigation on behalf of these exchange-based investors, Berger Montague and its co-counsel achieved settlements with seven banks totaling more than \$180 million. In September 2019, the Court granted preliminary approval of a plan of distribution for these settlement funds. A final approval hearing on the settlement is scheduled in September 2020. (No. 1:11-md-02262-NRB (S.D.N.Y.)).

### **Consumer Protection**

Berger Montague's Consumer Protection Group protects consumers when they are injured by false or misleading advertising, defective products, data privacy breaches, and various other unfair trade practices. Consumers too often suffer the brunt of corporate wrongdoing, particularly in the area of false or misleading advertising, defective products, and data or privacy breaches.

- ***In re Public Records Fair Credit Reporting Act Litigation:*** Berger Montague is class counsel in three class action settlements involving how the big three credit bureaus, Experian, TransUnion, and Equifax, report public records, including tax liens and civil judgments. The settlements provide groundbreaking injunctive relief valued at over \$100 billion and provide a streamlined process for consumers to receive uncapped monetary payments for claims related to inaccurate reporting of public records.
- ***In re: CertainTeed Fiber Cement Siding Litigation:*** The firm, as one of two Co-Lead Counsel firms obtained a settlement of more than \$103 million in this multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class. (MDL No. 2270 (E.D. Pa.)).
- ***Countrywide Predatory Lending Enforcement Action:*** Berger Montague advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a landmark law enforcement proceeding against *Countrywide* (and its parent, Bank of America) culminating in 2008 in mortgage-related modifications and other relief for borrowers across the country valued at some \$8.6 billion.
- ***In re Experian Data Breach Litigation:*** Berger Montague served on the Executive Committee of this class action lawsuit that arose from a 2015 data breach at Experian in which computer hackers stole personal information including Social Security numbers and other sensitive personal information for approximately 15 million consumers. The settlement is valued at over \$170 million. It consisted of \$22 million for a non-reversionary cash Settlement Fund; \$11.7 million for Experian's remedial measures implemented in connection with the lawsuit; and two years of free credit monitoring and identity theft insurance. The aggregate value of credit monitoring claimed by class members during the claims submission process exceeded \$138 million, based on a \$19.99 per month retail value of the service.
- ***In re Pet Foods Product Liability Litigation:*** The firm served as one of plaintiffs' co-lead counsel in this multidistrict class action suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food. The case settled for \$24 million. Many terms of the settlement are unique and highly beneficial to the class, including allowing class members to recover up to 100% of their economic damages without any limitation on the types of economic damages they may recover. (1:07-cv-02867 (D.N.J.), MDL Docket No. 1850 (D.N.J.)).
- ***In re TJX Companies Retail Security Breach Litigation:*** The firm served as co-lead counsel in this multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history. The breach involved more than 45 million credit and debit card numbers and 450,000 customers' driver's license numbers. The case was settled for benefits valued at over \$200 million. Class members whose driver's license numbers were at risk were entitled to 3 years of credit monitoring and identity theft insurance (a value of \$390 per person based

on the retail cost for this service), reimbursement of actual identity theft losses, and reimbursement of driver's license replacement costs. Class members whose credit and debit card numbers were at risk were entitled to cash of \$15-\$30 or store vouchers of \$30-\$60. (No. 1:07-cv-10162-WGY, (D. Mass.)).

- ***In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation:*** The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement of cash and injunctive relief for a class of 130 million credit card holders whose credit card information was stolen by computer hackers. The breach was the largest known theft of credit card information in history. (No. 4:09-MD-2046 (S.D. Tex. 2009)).
- ***In re: Countrywide Financial Corp. Customer Data Security Breach Litigation:*** The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement for a class of 17 million individuals whose personal information was at risk when a rogue employee sold their information to unauthorized third parties. Settlement benefits included: (i) reimbursement of several categories of out-of-pocket costs; (ii) credit monitoring and identity theft insurance for 2 years for consumers who did not accept Countrywide's prior offer of credit monitoring; and (iii) injunctive relief. The settlement was approved by the court in 2010. (3:08-md-01998-TBR (W.D. Ky. 2008)).
- ***In re Educational Testing Service Praxis Principles of Learning and Teaching: Grades 7-12 Litigation:*** The firm served on the plaintiffs' steering committee and obtained an \$11.1 million settlement in 2006 on behalf of persons who were incorrectly scored on a teacher's licensing exam. (MDL No. 1643 (E.D. La.)).
- ***Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.:*** The firm served as co-lead counsel in litigation brought on behalf of a nationwide class alleging that defendants failed to disclose that its vehicles contained defectively designed timing belt tensioners and associated parts and that defendants misrepresented the appropriate service interval for replacement of the timing belt tensioner system. After extensive discovery, a settlement was reached. (Docket No. ATL-1461-03 (N.J. Sup. Ct. 2007)).

### **Corporate Governance and Shareholder Rights**

Berger Montague protects the interests of individual and institutional investors in shareholder derivative actions in state and federal courts across the United States. Our attorneys help individual and institutional investors reform poor corporate governance, as well as represent them in litigation against directors of a company for violating their fiduciary duty or provide guidance on shareholder rights.

- ***Emil Roszdeutscher and Dennis Kelly v. Viacom:*** The firm, as lead counsel, obtained a settlement resulting in a fund of \$14.25 million for the class. (C.A. No. 98C-03-091 (JEB) (Del. Super. Ct.)).

- ***Fox v. Riverview Realty Partners, f/k/a Prime Group Realty Trust, et al.***: The firm, as lead counsel, obtained a settlement resulting in a fund of \$8.25 million for the class.

### **Employee Benefits & ERISA**

Berger Montague represents employees who have claims under the federal Employee Retirement Income Security Act. We litigate cases on behalf of employees whose 401(k) and pension investments have suffered losses as a result of the breach of fiduciary duties by plan administrators and the companies they represent. Berger Montague has recovered hundreds of millions of dollars in lost retirement benefits for American workers and retirees, and also gained favorable changes to their retirement plans.

- ***Diebold v. Northern Trust Investments, N.A.***: As co-lead counsel in this ERISA breach of fiduciary duty case, the firm secured a \$36 million settlement on behalf of participants in retirement plans who participated in Northern Trust's securities lending program. Plaintiffs alleged that defendants breached their ERISA fiduciary duties by failing to manage properly two collateral pools that held cash collateral received from the securities lending program. The settlement represented a recovery of more than 25% of alleged class member losses. (No. 1:09-cv-01934 (N.D. Ill.)).
- ***Glass Dimensions, Inc. v. State Street Bank & Trust Co.***: The firm served as co-lead counsel in this ERISA case that alleged that defendants breached their fiduciary duties to the retirement plans it managed by taking unreasonable compensation for managing the securities lending program in which the plans participated. After the court certified a class of the plans that participated in the securities lending program at issue, the case settled for \$10 million on behalf of 1,500 retirement plans that invested in defendants' collective investment funds. (No. 1:10-cv-10588-DPW (D. Mass)).
- ***In re Eastman Kodak ERISA Litigation***: The firm served as class counsel in this ERISA breach of fiduciary duty class action which alleged that defendants breached their fiduciary duties to Kodak retirement plan participants by allowing plan investments in Kodak common stock. The case settled for \$9.7 million. (Master File No. 6:12-cv-06051-DGL (W.D.N.Y.)).
- ***Lequita Dennard v. Transamerica Corp. et al.***: The firm served as counsel to plan participants who alleged that they suffered losses when plan fiduciaries failed to act solely in participants' interests, as ERISA requires, when they selected, removed and monitored plan investment options. The case settled for structural changes to the plan and \$3.8 million monetary payment to the class. (Civil Action No. 1:15-cv-00030-EJM (N.D. Iowa)).

### **Employment & Unpaid Wages**

The Berger Montague Employment & Unpaid Wages Department works tirelessly to safeguard the rights of employees and devotes all of their energies to helping the firm's clients achieve their goals. Our attorneys' understanding of federal and state wage and hour laws, federal and state civil rights and discrimination laws, ERISA, the WARN Act, laws protecting whistleblowers, such

as federal and state False Claims Acts, and other employment laws, allows us to develop creative strategies to vindicate our clients' rights and help them secure the compensation to which they are entitled.

Berger Montague is at the forefront of class action litigation, seeking remedies for employees under the Fair Labor Standards Act, state wage and hour law, breach of contract, unjust enrichment, and other state common law causes of action.

Berger Montague's Employment & Unpaid Wages Group, which is chaired by Executive Shareholder Shanon Carson, is repeatedly recognized for outstanding success in effectively representing its clients. In 2015, *The National Law Journal* selected Berger Montague as the top plaintiffs' law firm in the Employment Law category at the Elite Trial Lawyers awards ceremony. Portfolio Media, which publishes *Law360*, also recognized Berger Montague as one of the eight Top Employment Plaintiffs' Firms in 2009.

Representative cases include the following:

- ***Fenley v. Wood Group Mustang, Inc.***: The firm served as lead counsel and obtained a settlement of \$6.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 2:15-cv-326 (S.D. Ohio)).
- ***Sanders v. The CJS Solutions Group, LLC***: The firm served as co-lead counsel and obtained a settlement of \$3.24 million on behalf of a class of IT healthcare consultants who allegedly did not receive overtime premiums for hours worked in excess of 40 per week. (Civil Action No. 17-3809 (S.D.N.Y.)).
- ***Gundrum v. Cleveland Integrity Services, Inc.***: The firm served as lead counsel and obtained a settlement of \$4.5 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 4:17-cv-55 (N.D. Okl.)).
- ***Fenley v. Applied Consultants, Inc.***: The firm served as lead counsel and obtained a settlement of \$9.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 2:15-cv-259 (W.D. Pa.)).
- ***Acevedo v. Brightview Landscapes, LLC***: The firm served as co-lead counsel and obtained a settlement of \$6.95 million on behalf of a class of landscaping crew members who allegedly did not receive proper overtime premiums for hours worked in excess of 40 per week. (Civil Action No. 3:13-cv-02529 (M.D. Pa.)).
- ***Jantz v. Social Security Administration***: The firm served as co-lead counsel and obtained a settlement on behalf of employees with targeted disabilities ("TDEs") alleged

that SSA discriminated against TDEs by denying them promotional and other career advancement opportunities. The settlement was reached after more than ten years of litigation, and the Class withstood challenges to class certification on four separate occasions. The settlement includes a monetary fund of \$9.98 million and an unprecedented package of extensive programmatic changes valued at approximately \$20 million. (EEOC No. 531-2006-00276X (2015)).

- ***Ciamillo v. Baker Hughes, Incorporated***: The firm served as lead counsel and obtained a settlement of \$5 million on behalf of a class of oil and gas workers who allegedly did not receive any overtime compensation for working hours in excess of 40 per week. (Civil Action No. 14-cv-81 (D. Alaska)).
- ***Salcido v. Cargill Meat Solutions Corp.***: The firm served as co-lead counsel and obtained a settlement of \$7.5 million on behalf of a class of thousands of employees of Cargill Meat Solutions Corp. alleging that they were forced to work off-the-clock and during their breaks. This is one of the largest settlements of this type of case involving a single plant in U.S. history. (Civil Action Nos. 1:07-cv-01347-LJO-GSA and 1:08-cv-00605-LJO-GSA (E.D. Cal.)).
- ***Chabrier v. Wilmington Finance, Inc.***: The firm served as co-lead counsel and obtained a settlement of \$2,925,000 on behalf of loan officers who worked in four offices to resolve claims for unpaid overtime wages. A significant opinion issued in the case is *Chabrier v. Wilmington Finance, Inc.*, 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant's motion to decertify the class). (No. 06-4176 (E.D. Pa.)).
- ***Bonnette v. Rochester Gas & Electric Co.***: The firm served as co-lead counsel and obtained a settlement of \$2 million on behalf of a class of African American employees of Rochester Gas & Electric Co. to resolve charges of racial discrimination in hiring, job assignments, compensation, promotions, discipline, terminations, retaliation, and a hostile work environment. (No. 07-6635 (W.D.N.Y.)).

### **Environment & Public Health**

Berger Montague lawyers are trailblazers in the fields of environmental class action litigation and mass torts. Our attorneys have earned their reputation in the fields of environmental litigation and mass torts by successfully prosecuting some of the largest, most well-known cases of our time. Our Environment & Public Health Group also prosecutes significant claims for personal injury, commercial losses, property damage, and environmental response costs. In 2016, Berger Montague was named an Elite Trial Lawyer Finalist in special litigation (environmental) by *The National Law Journal*.

- ***Cook v. Rockwell International Corporation***: In February 2006, the firm won a \$554 million jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium from the former Rocky Flats nuclear weapons site northwest of Denver, Colorado. Judgment in the case was entered by the court in June 2008 which, with

interest, totaled \$926 million. Recognizing this tremendous achievement, the Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award for 2009 on Merrill G. Davidoff, David F. Sorensen, and the entire trial team for their “long and hard-fought” victory against “formidable corporate and government defendants.” (No. 90-cv-00181-JLK (D. Colo.)). The jury verdict in that case was vacated on appeal in 2010, but on a second trip to the Tenth Circuit, Plaintiffs secured a victory in 2015, with the case then being sent back to the district court. A \$375 million settlement was reached in May 2016, and final approval by the district court was obtained in April 2017.

- ***In re Exxon Valdez Oil Spill Litigation:*** On September 16, 1994, a jury trial of several months duration resulted in a record punitive damages award of \$5 billion against the Exxon defendants as a consequence of one of the largest oil spills in U.S. history. The award was reduced to \$507.5 million pursuant to a Supreme Court decision. David Berger was co-chair of the plaintiffs’ discovery committee (appointed by both the federal and state courts). Harold Berger served as a member of the organizing case management committee. H. Laddie Montague was specifically appointed by the federal court as one of the four designated trial counsel. Both Mr. Montague and Peter Kahana shared (with the entire trial team) the 1995 “Trial Lawyer of the Year Award” given by the Trial Lawyers for Public Justice. (No. A89-0095-CVCHRH (D. Alaska)).
- ***Drayton v. Pilgrim’s Pride Corp.:*** The firm served as counsel in a consolidation of wrongful death and other catastrophic injury cases brought against two manufacturers of turkey products, arising out of a 2002 outbreak of *Listeria Monocytogenes* in the Northeastern United States, which resulted in the recall of over 32 million pounds of turkey – the second largest meat recall in U.S. history at that time. A significant opinion issued in the case is *Drayton v. Pilgrim’s Pride Corp.*, 472 F. Supp. 2d 638 (E.D. Pa. 2006) (denying the defendants’ motions for summary judgment and applying the alternative liability doctrine). All of the cases settled on confidential terms in 2006. (No. 03-2334 (E.D. Pa.)).
- ***In re Three Mile Island Litigation:*** As lead/liaison counsel, the firm successfully litigated the case and reached a settlement in 1981 of \$25 million in favor of individuals, corporations and other entities suffering property damage as a result of the nuclear incident involved. (C.A. No. 79-0432 (M.D. Pa.)).

### **Insurance Fraud**

When insurance companies and affiliated financial services entities engage in fraudulent, deceptive or unfair practices, Berger Montague helps injured parties recover their losses. We focus on fraudulent, deceptive and unfair business practices across all lines of insurance and financial products and services sold by insurers and their affiliates, which include annuities, securities and other investment vehicles.

- ***Spencer v. Hartford Financial Services Group, Inc.:*** The firm, together with co-counsel, prosecuted this national class action against The Hartford Financial Services Group, Inc. and its affiliates in the United States District Court for the District of Connecticut (*Spencer*

*v. Hartford Financial Services Group, Inc.*, Case No. 05-cv-1681) on behalf of approximately 22,000 claimants, each of whom entered into structured settlements with Hartford property and casualty insurers to settle personal injury and workers' compensation claims. To fund these structured settlements, the Hartford property and casualty insurers purchased annuities from their affiliate, Hartford Life. By purchasing the annuity from Hartford Life, The Hartford companies allegedly were able to retain up to 15% of the structured amount of the settlement in the form of undisclosed costs, commissions and profit - all of which was concealed from the settling claimants. On March 10, 2009, the U.S. District Court certified for trial claims on behalf of two national subclasses for civil RICO and fraud (256 F.R.D. 284 (D. Conn. 2009)). On October 14, 2009, the Second Circuit Court of Appeals denied The Hartford's petition for interlocutory appeal under Federal Rule of Civil Procedure 23(f). On September 21, 2010, the U.S. District Court entered judgment granting final approval of a \$72.5 million cash settlement.

- ***Nationwide Mutual Insurance Company v. O'Dell***: The firm, together with co-counsel, prosecuted this class action against Nationwide Mutual Insurance Company in West Virginia Circuit Court, Roane County (*Nationwide Mutual Insurance Company v. O'Dell*, Case No. 00-C-37), on behalf of current and former West Virginia automobile insurance policyholders, which arose out of Nationwide's failure, dating back to 1993, to offer policyholders the ability to purchase statutorily-required optional levels of underinsured ("UIM") and uninsured ("UM") motorist coverage in accordance with West Virginia Code 33-6-31. The court certified a trial class seeking monetary damages, alleging that the failure to offer these optional levels of coverage, and the failure to provide increased first party benefits to personal injury claimants, breached Nationwide's insurance policies and its duty of good faith and fair dealing, and violated the West Virginia Unfair Trade Practices Act. On June 25, 2009, the court issued final approval of a settlement that provided a minimum estimated value of \$75 million to Nationwide auto policyholders and their passengers who were injured in an accident or who suffered property damage.

### **Predatory Lending and Borrowers' Rights**

Berger Montague's attorneys fight vigorously to protect the rights of borrowers when they are injured by the practices of banks and other financial institutions that lend money or service borrowers' loans. Berger Montague has successfully obtained multi-million-dollar class action settlements for nationwide classes of borrowers against banks and financial institutions and works tirelessly to protect the rights of borrowers suffering from these and other deceptive and unfair lending practices.

- ***Coonan v. Citibank, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Citibank and its affiliates in the United States District Court for the Northern District of New York concerning alleged kickbacks Citibank received in connection with its force-placed insurance programs. The firm obtained a settlement of \$122 million on behalf of a class of hundreds of thousands of borrowers.

- ***Arnett v. Bank of America, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Bank of America and its affiliates in the United States District Court for the District of Oregon concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of \$31 million on behalf of a class of hundreds of thousands of borrowers.
- ***Clements v. JPMorgan Chase Bank, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against JPMorgan Chase and its affiliates in the United States District Court for the Northern District of California concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of \$22,125,000 on behalf of a class of thousands of borrowers.
- ***Holmes v. Bank of America, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Bank of America and its affiliates in the United States District Court for the Western District of North Carolina concerning alleged kickbacks received in connection with its force-placed wind insurance program. The firm obtained a settlement of \$5.05 million on behalf of a class of thousands of borrowers.

### **Securities & Investor Protection**

In the area of securities litigation, the firm has represented public institutional investors – such as the retirement funds for the States of Pennsylvania, Connecticut, New Hampshire, New Jersey, Louisiana and Ohio, as well as the City of Philadelphia and numerous individual investors and private institutional investors. The firm was co-lead counsel in the *Melridge Securities Litigation* in the Federal District Court in Oregon, in which jury verdicts of \$88.2 million and a RICO judgment of \$239 million were obtained. Berger Montague has served as lead or co-lead counsel in numerous other major securities class action cases where substantial settlements were achieved on behalf of investors.

- ***In re Merrill Lynch Securities Litigation***: Berger Montague, as co-lead counsel, obtained a recovery of \$475 million for the benefit of the class in one of the largest recoveries among the recent financial crisis cases. (No. 07-cv-09633 (S.D.N.Y.)).
- ***In re: Oppenheimer Rochester Funds Group Securities Litigation***: The firm, as co-lead counsel, obtained a \$89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc. (No. 09-md-02063-JLK (D. Col.)).
- ***In re KLA Tencor Securities Litigation***: The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of \$65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.)).
- ***In re NetBank, Inc. Securities Litigation***: The firm served as lead counsel in this certified class action on behalf of the former common shareholders of NetBank, Inc. The \$12.5

million settlement, which occurred after class certification proceedings and substantial discovery, is particularly noteworthy because it is one of the few successful securities fraud class actions litigated against a subprime lender and bank in the wake of the financial crisis. (No. 07-cv-2298-TCB (N.D. Ga.)).

- ***The City Of Hialeah Employees' Retirement System v. Toll Brothers, Inc.***: The firm, as co-lead counsel, obtained a class settlement of \$25 million against Home Builder Toll Brothers, Inc. (No. 07-cv-1513 (E.D. Pa.)).
- ***In re Alcatel Alsthom Securities Litigation***: The firm, as co-lead counsel, obtained a class settlement for investors of \$75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.)).
- ***Qwest Securities Action***: The firm represented New Jersey in an opt-out case against Qwest and certain officers, which was settled for \$45 million. (C.A. No. L-3838-02 (Superior Court New Jersey, Law Division)).

#### **Whistleblower, Qui Tam, and False Claims Act**

Berger Montague has represented whistleblowers in matters involving healthcare fraud, defense contracting fraud, IRS fraud, securities fraud, and commodities fraud, helping to return more than \$3 billion to federal and state governments. In return, whistleblower clients retaining Berger Montague to represent them in state and federal courts have received more than \$500 million in rewards. Berger Montague's time-tested approach in whistleblower/*qui tam* representation involves cultivating close, productive attorney-client relationships with the maximum degree of confidentiality for our clients.

#### **Judicial Praise for Berger Montague Attorneys**

Berger Montague's record of successful prosecution of class actions and other complex litigation has been recognized and commended by judges and arbitrators across the country. Some remarks on the skill, efficiency, and expertise of the firm's attorneys are excerpted below.

#### **Antitrust Cases**

From **Judge Lorna G. Schofield**, of the U.S. District Court for the Southern District of New York:

"I'm not sure I've ever seen a case without a single objection or opt-out, so congratulations on that."

Transcript of the November 19, 2020 Hearing in ***Contant, et al. v. Bank of America Corp., et al.***, No. 1:17-cv-03139 (S.D.N.Y.).

From **Judge William E. Smith**, of the U.S. District Court for the District of Rhode Island:

“The degree to which you all litigated the case is – you know, I can’t imagine attorneys litigating a case more rigorously than you all did in this case. It seems like every conceivable, legitimate, substantive dispute that could have been fought over was fought over to the max. So you, both sides, I think litigated the case as vigorously as any group of attorneys could. The level of representation of all parties in terms of the sophistication of counsel was, in my view, of the highest levels. I can’t imagine a case in which there was really a higher quality of representation across the board than this one.”

Transcript of the August 27, 2020 Hearing in *In re Loestrin 24 Fe Antitrust Litigation*, No. 13-md-02472 (D.R.I.).

From **Judge Margo K. Brodie**, of the U.S. District Court for the Eastern District of New York:

“Class counsel has without question done a tremendous job in litigating this case. They represent some of the best plaintiff-side antitrust groups in the country, and the size and skill of the defense they litigated against cannot be overstated. They have also demonstrated the utmost professionalism despite the demands of the extreme perseverance that this case has required...”

*In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 1:05-md-01720 (E.D.N.Y. 2019) (Mem. & Order).

From **Judge Brian M. Cogan**, of the U.S. District Court of the Eastern District of New York:

“This is a substantial recovery that has the deterrent effect that class actions are supposed to have, and I think it was done because we had really good Plaintiffs’ lawyers in this case who were running it.”

Transcript of the June 24, 2019 Fairness Hearing in *In re Dental Supplies Antitrust Litigation*, No. 16-cv-696 (E.D.N.Y.).

From **Judge Michael M. Baylson**, of the U.S. District Court of the Eastern District of Pennsylvania:

“[C]ounsel...for direct action plaintiffs have done an outstanding job here with representing the class, and I thought your briefing was always very on point. I thought the presentation of the very contentious issues on the class action motion was very well done, it was very well briefed, it was well argued.”

Transcript of the June 28, 2018 Hearing in *In re Domestic Drywall Antitrust Litigation*, No. MD-13-2437 at 11:6-11.

From **Judge Madeline Cox Arleo**, of the U.S. District Court for the District of New Jersey praising the efforts of all counsel:

“I just want to thank you for an outstanding presentation. I don’t say that lightly . . . it’s not lost on me at all when lawyers come very, very prepared. And really, your clients should be very proud to have such fine lawyering. I don’t see lawyering like this every day in the federal courts, and I am very grateful. And I appreciate the time and the effort you put in, not only to the merits, but the respect you’ve shown for each other, the respect you’ve shown for the Court, the staff, and the time constraints. And as I tell my law clerks all the time, good lawyers don’t fight, good lawyers advocate. And I really appreciate that more than I can express.”

Transcript of the September 9 to 11, 2015 Daubert Hearing in *Castro v. Sanofi Pasteur*, No. 11-cv-07178 (D.N.J.) at 658:14-659:4.

From **Judge William H. Pauley, III**, of the U.S. District Court of the Southern District of New York:

“Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression.”

\* \* \*

“Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues . . . The law firms of Berger Montague and Coughlin Stoia were indefatigable. They represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar.”

*In re Currency Conversion Fee Antitrust Litigation*, 263 F.R.D. 110, 129 (2009).

From **Judge Faith S. Hochberg**, of the United States District court for the District of New Jersey:

“[W]e sitting here don’t always get to see such fine lawyering, and it’s really wonderful for me both to have tough issues and smart lawyers . . . I want to congratulate all of you for the really hard work you put into this, the way you presented the issues, . . . On behalf of the entire federal judiciary I want to thank you for the kind of lawyering we wish everybody would do.”

*In re Remeron Antitrust Litig.*, Civ. No. 02-2007 (Nov. 2, 2005).

From U.S. District **Judge Jan DuBois**, of the U.S. District Court of the Eastern District of Pennsylvania:

“[T]he size of the settlements in absolute terms and expressed as a percentage of total damages evidence a high level of skill by petitioners ... The Court has repeatedly stated that the lawyering in the case at every stage was superb, and does so again.”

*In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at \*5-\*6 (E.D. Pa. 2004).

From **Judge Nancy G. Edmunds**, of the U.S. District Court of the Eastern District of Michigan:

“[T]his represents an excellent settlement for the Class and reflects the outstanding effort on the part of highly experienced, skilled, and hard working Class Counsel....[T]heir efforts were not only successful, but were highly organized and efficient in addressing numerous complex issues raised in this litigation[.]”

*In re Cardizem CD Antitrust Litig.*, MDL No. 1278 (E.D. Mich., Nov. 26, 2002).

From **Judge Charles P. Kocoras**, of the U.S. District Court for the Northern District of Illinois:

“The stakes were high here, with the result that most matters of consequence were contested. There were numerous trips to the courthouse, and the path to the trial court and the Court of Appeals frequently traveled. The efforts of counsel for the class has [sic] produced a substantial recovery, and it is represented that the cash settlement alone is the second largest in the history of class action litigation. . . .There is no question that the results achieved by class counsel were extraordinary [.]”

Regarding the work of Berger Montague in achieving more than \$700 million in settlements with some of the defendants in *In Re Brand Name Prescription Drugs Antitrust Litigation*, 2000 U.S. Dist. LEXIS 1734, at \*3-\*6 (N.D. Ill. Feb. 9, 2000).

From **Judge Peter J. Messitte**, of the U.S. District Court for the District of Maryland:

“The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt, the plaintiffs’ counsel are at the top of the profession in this regard and certainly have used their expertise to craft an extremely favorable settlement for their clients, and to that extent they deserve to be rewarded.”

Settlement Approval Hearing, Oct. 28, 1994, in ***Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.***, CA No. PJM-92-3624 (D. Md.).

From **Judge Donald W. Van Artsdalen**, of the U.S. District Court for the Eastern District of Pennsylvania:

“As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs’ counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure.”

***Bogosian v. Gulf Oil Corp.***, 621 F. Supp. 27, 31 (E.D. Pa. 1985).

From **Judge Krupansky**, who had been elevated to the Sixth Circuit Court of Appeals:

“Finally, the court unhesitatingly concludes that the quality of the representation rendered by counsel was uniformly high. The attorneys involved in this litigation are extremely experienced and skilled in their prosecution of antitrust litigation and other complex actions. Their services have been rendered in an efficient and expeditious manner, but have nevertheless been productive of highly favorable result.”

***In re Art Materials Antitrust Litigation***, 1984 CCH Trade Cases ¶65,815 (N.D. Ohio 1983).

From **Judge Joseph Blumenfeld**, of the U.S. District Court for the District of Connecticut:

“The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions.”

***In re Master Key Antitrust Litigation***, 1977 U.S. Dist. LEXIS 12948, at \*35 (Nov. 4, 1977).

## **Securities & Investor Protection Cases**

From **Judge Brantley Starr** of the U.S. District Court for the Northern District of Texas, Dallas Division:

“I think y’all have been a model on how to handle a case like this. So I appreciate the diligence y’all have put in separating the fee negotiations until after the main event is resolved...Everything I see here is in great shape, and really a testament to y’all’s diligence and professionalism. So hats off to y’all...So thanks again for your professionalism in handling this case and handling the stipulated settlement. Y’all are model citizens, and so I wish I could send everyone to y’all’s school of litigation management.”

***Howell Family Trust DTD 1/27/2004 v. Hollis Greenlaw, et al.***, No. 3:18-cv-02864-X (N.D. Tex., March 25, 2021).

From **Judge Jed Rakoff** of the U.S. District Court for the Southern District of New York:

Court stated that lead counsel had made “very full and well-crafted” and “excellent submissions”; that there was a “very fine job done by plaintiffs’ counsel in this case”; and that this was “surely a very good result under all the facts and circumstances.”

***In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation***, Master File No. 07-cv-9633(JSR)(DFE) (S.D.N.Y., July 27, 2009).

From **Judge Michael M. Baylson** of the U.S. District Court for the Eastern District of Pennsylvania:

“The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive.”

***In re CIGNA Corp. Sec. Litig.***, 2007 U.S. Dist. LEXIS 51089, at \*17-\*18 (E.D. Pa. July 13, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

“The quality of lawyering on both sides, but I am going to stress now on the plaintiffs’ side, simply has not been exceeded in any case, and we have had some marvelous counsel appear before us and make superb arguments, but they really don’t come any better than Mrs. Savett... [A]nd the arguments we had on the motion to dismiss [Mrs. Savett argued the motion], both sides were fabulous, but plaintiffs’ counsel were as good as they come.”

***In re U.S. Bioscience Secs. Litig.***, No. 92-0678 (E.D. Pa. April 4, 1994).

From **Judge Wayne Andersen** of the U.S. District Court for the Northern District of Illinois:

“[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases...in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here...I would say this has been the best representation that I have seen.”

***In re: Waste Management, Inc. Secs. Litig.***, No. 97-C 7709 (N.D. Ill. 1999).

From **Chancellor William Chandler, III** of the Delaware Chancery Court:

“All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case. And I think that’s a testimony – Mr. Valihura correctly says that’s what they are supposed to do. I recognize that; that is their job, and they were doing it professionally.”

***Ginsburg v. Philadelphia Stock Exchange, Inc.***, No. 2202 (Del. Ch., Oct. 22, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

“Thanks to the nimble class counsel, this sum, which once included securities worth \$149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received \$145,754,922.00. The class also received \$14,435,104 in interest on the Notes.”

“Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over \$1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here.”

***In re Rite Aid Corp. Securities Litigation***, 269 F. Supp. 2d 603, 605, n.1, 611 (E.D. Pa. 2003).

From **Judge Helen J. Frye**, United States District Judge for the U.S. District Court for the District of Oregon:

“In order to bring about this result [partial settlements then totaling \$54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District.”

\* \* \*

“Throughout the course of their representation, the attorneys at Berger Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence.”

***In Re Melridge, Inc. Securities Litigation***, No. CV 87-1426-FR (D. Ore. April 15, 1996).

From **Judge Marvin Katz** of the U.S. District Court for the Eastern District of Pennsylvania:

“[T]he co-lead attorneys have extensive experience in large class actions, experience that has enabled this case to proceed efficiently and professionally even under short deadlines and the pressure of handling thousands of documents in a large multi-district action... These counsel have also acted vigorously in their clients’ interests...”

\* \* \*

“The management of the case was also of extremely high quality.... [C]lass counsel is of high caliber and has extensive experience in similar class action litigation.... The submissions were of consistently high quality, and class counsel has been notably diligent in preparing filings in a timely manner even when under tight deadlines.”

Commenting on class counsel, where the firm served as both co-lead and liaison counsel in ***In re Ikon Office Solutions, Inc. Securities Litigation***, 194 F.R.D. 166, 177, 195 (E.D. Pa. 2000).

From **Judge William K. Thomas**, Senior District Judge for the United States District Court for the Northern District of Ohio:

“In the proceedings it has presided over, this court has become directly familiar with the specialized, highly competent, and effective quality of the legal services performed by Merrill G. Davidoff, Esq. and Martin I. Twersky, Esq. of Berger Montague....”

\* \* \*

“Examination of the experience-studded biographies of the attorneys primarily involved in this litigation and review of their pioneering prosecution of many class actions in antitrust, securities, toxic tort matters and some defense representation in antitrust and other litigation, this court has no difficulty in approving and adopting the hourly rates fixed by Judge Aldrich.”

Commenting in *In re Revco Securities Litigation*, Case No. 1:89CV0593, Order (N.D. Oh. September 14, 1993).

### **Consumer Protection Cases**

From **Judge Paul A. Engelmayer** of the U.S. District Court for the Southern District of New York:

“I know the diligence of counsel and dedication of counsel to the class...Thank you, Ms. Drake. As always I appreciate the – your extraordinary dedication to your – to the class and the very obvious backwards and forwards familiarity you have with the case and level of preparation and articulateness today. It’s a pleasure always to have you before me...Class Counsel [] generated this case on their own initiative and at their own risk. Counsel’s enterprise and ingenuity merits significant compensation...Counsel here are justifiably proud of the important result that they achieved.”

Sept. 22, 2020, Final Approval Hearing, *Gambles v. Sterling Info., Inc.*, No. 15-cv-9746.

From **Judge Joel Schneider** of the U.S. District Court for the District of New Jersey:

“I do want to compliment all counsel for how they litigated this case in a thoroughly professional manner. All parties were zealously represented in the highest ideals of the profession, legitimately and professionally, and not the usual acrimony we see in these cases...I commend the parties and their counsel for a very workmanlike professional effort.”

Transcript of the September 10, 2020 Final Fairness Hearing in *Somogyi, et al. v. Freedom Mortgage Corp.*

From **Judge Harold E. Kahn** of the Superior Court of California County of San Francisco:

“You are extraordinarily impressive. And I thank you for being here, and for your candid, non-evasive response to every question I have. I was extremely skeptical at the outset of this morning. You have allayed all of my concerns and have persuaded me that this is an important issue, and that you have done a great service to the class. And for that reason, I am going to approve your settlement in all respects, including the motion for attorneys’ fees. And I congratulate you on your excellent work.”

Transcript of the November 7, 2017 Hearing in **Loretta Nesbitt v. Postmates, Inc.**, No. CGC-15-547146

### **Civil/Human Rights Cases**

From **Deputy Treasury Secretary Stuart E. Eizenstat**:

“We must be frank. It was the American lawyers, through the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them.... For this dedication and commitment to the victims, we should always be grateful to these lawyers.”

In his remarks at the July 17, 2000, signing ceremony for the international agreements which established the German Foundation to act as a funding vehicle for the payment of claims to Holocaust survivors.

### **Insurance Litigation**

From **Judge Janet C. Hall**, of the U.S. District Court of the District of Connecticut:

Noting the “very significant risk in pursuing this action” given its uniqueness in that “there was no prior investigation to rely on in establishing the facts or a legal basis for the case....[and] no other prior or even now similar case involving parties like these plaintiffs and a party like these defendants.” Further, “the quality of the representation provided to the plaintiffs ... in this case has been consistently excellent.... [T]he defendant[s] ... mounted throughout the course of the five years the case pended, an extremely vigorous defense.... [B]ut for counsel’s outstanding work in this case and substantial effort over five years, no member of the class would have recovered a penny.... [I]t was an extremely complex and substantial class ... case ... [with an] outstanding result.”

Regarding the work of Berger Montague attorneys Peter R. Kahana and Steven L. Bloch, among other co-class counsel, in **Spencer, et al. v. The Hartford Financial Services Group, Inc., et al.**, in the Order approving the \$72.5 million final settlement of this action, dated September 21, 2010 (No. 3:05-cv-1681, D. Conn.).

### **Customer/Broker Arbitrations**

From **Robert E. Conner**, Public Arbitrator with the National Association of Securities Dealers, Inc.:

“[H]aving participated over the last 17 years in 400 arbitrations and trials in various settings, ... the professionalism and the detail and generally the civility of everyone involved has been not just a cause for commentary at the end of these proceedings but between ourselves [the arbitration panel] during the course of them, and ... the detail and the intellectual rigor that went into the documents was fully reflective of the effort that was made in general. I wanted to make that known to everyone and to express my particular respect and admiration.”

About the efforts of Berger Montague shareholders Merrill G. Davidoff and Eric L. Cramer, who achieved a \$1.1 million award for their client, in ***Steinman v. LMP Hedge Fund, et al.***, NASD Case No. 98-04152, at Closing Argument, June 13, 2000.

### **Employment & Unpaid Wages Cases**

From **Judge Timothy R. Rice**, United States Magistrate Judge for the U.S. District Court for the Eastern District of Pennsylvania:

Describing Berger Montague as “some of the finest legal representation in the nation,” who are “ethical, talented, and motivated to help hard working men and women.”

Regarding the work of Berger Montague attorney Camille F. Rodriguez in ***Gonzalez v. Veritas Consultant Group, LLC, d/b/a Moravia Health Network***, No. 2:17-cv-1319-TR (E.D. Pa. March 13, 2019).

From **Judge Malachy E. Mannion**, United States District Judge for the U.S. District Court for the Middle District of Pennsylvania:

“At the final approval hearing, class counsel reiterated in detail the arguments set forth in the named plaintiffs’ briefing. ... The court lauded the parties for their extensive work in reaching a settlement the court deemed fair and reasonable.

\* \* \*

“The court is confident that [class counsel] are highly skilled in FLSA collective and hybrid actions, as seen by their dealings with the court and the results achieved in both negotiating and handling the settlement to date.”

***Acevedo v. Brightview Landscapes, LLC***, No. 3:13-cv-2529, 2017 WL 4354809 (M.D. Pa. Oct. 2, 2017).

From **Judge Joseph F. Bataillon**, United States District Judge for the U.S. District Court for the District of Nebraska:

[P]laintiffs' counsel succeeded in vindicating important rights. ... The court is familiar with "donning and doffing" cases and based on the court's experience, defendant meat packing companies' litigation conduct generally reflects "what can only be described as a deeply-entrenched resistance to changing their compensation practices to comply with the requirements of FLSA." (citation omitted). Plaintiffs' counsel perform a recognized public service in prosecuting these actions as a 'private Attorney General' to protect the rights of underrepresented workers.

The plaintiffs have demonstrated that counsel's services have benefitted the class. ... The fundamental policies of the FLSA were vindicated and the rights of the workers were protected.

Regarding the work of Berger Montague among other co-counsel in ***Morales v. Farmland Foods, Inc.***, No. 8:08-cv-504, 2013 WL 1704722 (D. Neb. Apr. 18, 2013).

From **Judge Jonathan W. Feldman**, United States Magistrate Judge for the U.S. District Court for the Western District of New York:

"The nature of the instant application obliges the Court to make this point clear: In my fifteen years on the bench, no case has been litigated with more skill, tenacity and legal professionalism than this case. The clients, corporate and individual, should be proud of the manner in which their legal interests were brought before and presented to the Court by their lawyers and law firms."

and

"...the Court would be remiss if it did not commend class counsel and all those who worked for firms representing the thousands of current and former employees of Kodak for the outstanding job they did in representing the interests of their clients. For the last several years, lead counsel responsibilities were shared by Shanon Carson .... Their legal work in an extraordinarily complex case was exemplary, their tireless commitment to seeking justice for their clients was unparalleled and their conduct as officers of the court was beyond reproach."

**Employees Committed For Justice v. Eastman Kodak**, (W.D.N.Y. 2010) (\$21.4 million settlement).

#### **Other Cases**

From **Stephen M. Feiler, Ph.D.**, Director of Judicial Education, Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts, Mechanicsburg, PA *on behalf of the Common Pleas Court Judges (trial judges) of Pennsylvania*:

“On behalf of the Supreme Court of Pennsylvania and AOPC’s Judicial Education Department, thank you for your extraordinary commitment to the *Dealing with Complexities in Civil Litigation* symposia. We appreciate the considerable time you spent preparing and delivering this important course across the state. It is no surprise to me that the judges rated this among the best programs they have attended in recent years.”

About the efforts of Berger Montague attorneys Merrill G. Davidoff, Peter Nordberg and David F. Sorensen in planning and presenting a CLE Program to trial judges in the Commonwealth of Pennsylvania.

## **Our Founding Partner and Attorneys**

### **Founding Partner**

#### **David Berger – 1912-2007**

David Berger was the founder and the Chairman of Berger Montague. He received his A.B. *cum laude* in 1932 and his LL.B. *cum laude* in 1936, both from the University of Pennsylvania. He was a member of The Order of the Coif and was an editor of the *University of Pennsylvania Law Review*. He had a distinguished scholastic career including being Assistant to Professor Francis H. Bohlen and Dr. William Draper Lewis, Director of the American Law Institute, participating in the drafting of the first Restatement of Torts. He also served as a Special Assistant Dean of the University of Pennsylvania Law School. He was a member of the Board of Overseers of the Law School and Associate Trustee of the University of Pennsylvania. In honor of his many contributions, the Law School established the David Berger Chair of Law for the Improvement of the Administration of Justice.

David Berger was a law clerk for the Pennsylvania Supreme Court. He served as a deputy assistant to Director of Enemy Alien Identification Program of the United States Justice Department during World War II.

Thereafter he was appointed Lt.j.g. in the U.S. Naval Reserve and he served in the South Pacific aboard three aircraft carriers during World War II. He was a survivor of the sinking of the U.S.S. Hornet in the Battle of Santa Cruz, October 26, 1942. After the sinking of the Hornet, Admiral Halsey appointed him a member of his personal staff when the Admiral became Commander of the South Pacific. Mr. Berger was ultimately promoted to Commander. He was awarded the Silver Star and Presidential Unit Citation.

After World War II, he was a law clerk in the United States Court of Appeals. The United States Supreme Court appointed David Berger a member of the committee to draft the Federal Rules of Evidence, the basic evidentiary rules employed in federal courts throughout the United States.

David Berger was a fellow of the American College of Trial Lawyers, the International Society of Barristers, and the International Academy of Trial Lawyers, of which he was a former Dean. He was a Life Member of the Judicial Conference of the Third Circuit and the American Law Institute.

A former Chancellor (President) of the Philadelphia Bar Association, he served on numerous committees of the American Bar Association and was a lecturer and author on various legal subjects, particularly in the areas of antitrust, securities litigation, and evidence.

David Berger served as a member of President John F. Kennedy's committee which designed high speed rail lines between Washington and Boston. He drafted and activated legislation in the Congress of the United States which resulted in the use of federal funds to assure the continuance of freight and passenger lines throughout the United States. When the merger of the Pennsylvania Railroad and the New York Central Railroad, which created the Penn Central Transportation Company, crashed into Chapter 11, David Berger was counsel for Penn Central and a proponent of its reorganization. Through this work, Mr. Berger ensured the survival of the major railroads in the Northeastern section of the United States including Penn Central, New Jersey Central, and others.

Mr. Berger's private practice included clients in London, Paris, Dusseldorf, as well as in Philadelphia, Washington, New York City, Florida, and other parts of the United States. David Berger instituted the first class action in the antitrust field, and for over 30 years he and the Berger firm were lead counsel and/or co-lead counsel in countless class actions brought to successful conclusions, including antitrust, securities, toxic tort and other cases. He served as one of the chief counsel in the litigation surrounding the demise of Drexel Burnham Lambert, in which over \$2.6 billion was recovered for various violations of the securities laws during the 1980s. The recoveries benefitted such federal entities as the FDIC and RTC, as well as thousands of victimized investors.

In addition, Mr. Berger was principal counsel in a case regarding the Three Mile Island accident near Harrisburg, Pennsylvania, achieving the first legal recovery of millions of dollars for economic harm caused by the nation's most serious nuclear accident. As part of the award in the case, David Berger established a committee of internationally renowned scientists to determine the effects on human beings of emissions of low-level radiation.

In addition, as lead counsel in *In re Asbestos School Litigation*, he brought about settlement of this long and vigorously fought action spanning over 13 years for an amount in excess of \$200 million.

David Berger was active in Democratic politics. President Clinton appointed David Berger a member of the United States Holocaust Memorial Council, in which capacity he served from 1994-2004. In addition to his having served for seven years as the chief legal officer of Philadelphia, he was a candidate for District Attorney of Philadelphia, and was a Carter delegate in the Convention which nominated President Carter.

Over his lengthy career David Berger was prominent in a great many philanthropic and charitable enterprises some of which are as follows: He was the Chairman of the David Berger Foundation and a long time honorary member of the National Commission of the Anti-Defamation League. He was on the Board of the Jewish Federation of Philadelphia and, at his last place of residence, Palm Beach, as Honorary Chairman of the American Heart Association, Trustee of the American Cancer Society, a member of the Board of Directors of the American Red Cross, and active in the Jewish Federation of Palm Beach County.

David Berger's principal hobby was tennis, a sport in which he competed for over 60 years. He was a member of the Board of Directors of the International Tennis Hall of Fame and other related organizations for assisting young people in tennis on a world-wide basis.

## **Firm Chair**

### **Eric L. Cramer – Chairman**

Mr. Cramer is Chairman of the Firm and Co-Chair of the Firm's antitrust department. He has a national practice in the field of complex litigation, primarily in the area of antitrust class actions. He is currently co-lead counsel in multiple significant antitrust class actions across the country in a variety of industries and is responsible for winning numerous significant settlements for his clients totaling well over \$3 billion. Most recently, he has focused on representing workers claiming that anticompetitive practices have suppressed their pay, including cases on behalf of mixed-martial-arts fighters, luxury retail workers, and chicken growers.

In 2020, *Law360* named Mr. Cramer a Titan of the Plaintiffs Bar, and *Who's Who Legal* identified him as a Global Elite Thought Leader, stating that he "comes recommended by peers as a top name for antitrust class action proceedings." In 2019, *The National Law Journal* awarded Mr. Cramer the 2019 Keith Givens Visionary Award, which was developed to honor an outstanding trial lawyer who has moved the industry forward through his or her work within the legal industry ecosystem, demonstrating excellence in all aspects of work from client advocacy to peer education and mentoring. In 2018, he was named Philadelphia antitrust "Lawyer of the Year" by *Best Lawyers*, and in 2017, he won the American Antitrust Institute's Antitrust Enforcement Award for Outstanding Antitrust Litigation Achievement in Private Law Practice for his work in *Castro v. Sanofi Pasteur Inc.*, No. 11-cv-07178 (D.N.J.). In that case, Mr. Cramer represented a national class of physicians challenging Sanofi Pasteur with anticompetitive conduct in the market for meningitis vaccines, resulting in a settlement of more than \$60 million for the class. He has also been identified as a top tier antitrust lawyer by *Chambers & Partners* in Pennsylvania and nationally. In 2020, *Chambers & Partners* observed that Mr. Cramer is "a fantastic lawyer...He has real trial experience and is very capable and super smart." He has been highlighted annually since 2011 by *The Legal 500* as one of the country's top lawyers in the field of complex antitrust litigation and repeatedly deemed one of the "Best Lawyers in America," including for 2021. In 2014 and 2018, Mr. Cramer was selected by *Philadelphia Magazine* as one of the top 100 lawyers in Philadelphia.

Mr. Cramer is also a frequent speaker at antitrust and litigation related conferences and a leader of multiple non-profit advocacy groups. He is President of the Board of Directors of Public Justice, a national public interest advocacy group and law firm; a Senior Fellow and Vice President of the Board of Directors of the American Antitrust Institute; a past President of COSAL (Committee to Support the Antitrust Laws), a leading industry group; and a member of the Advisory Board of the Institute of Consumer Antitrust Studies of the Loyola University Chicago School of Law. He was the only Plaintiffs' lawyer selected to serve on the American Bar Association's Antitrust Section Transition Report Task Force delivered to the incoming Obama Administration in 2012.

He has written widely in the fields of class certification and antitrust law. Among other writings, Mr. Cramer has co-authored *Antitrust, Class Certification, and the Politics of Procedure*, 17 *George Mason Law Review* 4 (2010), which was cited by both the First Circuit in *In re Nexium Antitrust Litig.*, 777 F.3d 9, 27 (1st Cir. 2015), quoting Davis & Cramer, 17 *Geo. Mason L. Rev.* 969, 984-85 (2010), and the Third Circuit in *Behrend v. Comcast Corp.*, 655 F.3d 182, 200, n.10 (3d Cir. 2011), *rev'd on other grounds*, 133 S. Ct. 1426 (2013). He has also co-written a number of other pieces, including: *Of Vulnerable Monopolists?: Questionable Innovation in the Standard for Class Certification in Antitrust Cases*, 41 *Rutgers Law Journal* 355 (2009-2010); *A Questionable New Standard for Class Certification in Antitrust Cases*, published in the ABA's *Antitrust Magazine*, Vol. 26, No. 1 (Fall 2011); a Chapter of American Antitrust Institute's *Private International Enforcement Handbook* (2010), entitled "*Who May Pursue a Private Claim?*"; and a chapter of the American Bar Association's *Pharmaceutical Industry Handbook* (July 2009), entitled "Assessing Market Power in the Prescription Pharmaceutical Industry."

Mr. Cramer is a *summa cum laude* graduate of Princeton University (1989), where he earned membership in *Phi Beta Kappa*. He graduated *cum laude* from Harvard Law School with a J.D. in 1993.

## Executive Shareholders

### **Sherrie R. Savett – Executive Shareholder, Chair *Emeritus***

Sherrie R. Savett, Chair *Emeritus* of the Firm, Co-Chair of the Securities Litigation Department and *Qui Tam*/False Claims Act Department, and member of the Firm's Management Committee, has practiced in the areas of securities litigation, class actions, and commercial litigation since 1975.

Ms. Savett serves or has served as lead or co-lead counsel or as a member of the executive committee in a large number of important securities and consumer class actions in federal and state courts across the country, including:

- ***In re Alcatel Alsthom Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement for investors of \$75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.);
- ***In re CIGNA Corp. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of \$93 million for the benefit of the class. (Master File No. 2:02-cv-8088 (E.D. Pa.);

- ***In re Fleming Companies, Inc. Securities Litigation:*** The firm, as lead counsel, obtained a class settlement of \$94 million for the benefit of the class. (No. 5-03-MD-1530 (TJW) (E.D. Tex.));
- ***In re KLA Tencor Securities Litigation:*** The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of \$65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.));
- ***Medaphis/Deloitte & Touche*** (class settlement of \$96.5 million) (No. 1:96-CV-2088-FMH (N.D. GA));
- ***In re Rite Aid Corp. Securities Litigation:*** The firm, as co-lead counsel, obtained settlements totaling \$334 million against Rite Aid's outside accounting firm and certain of the company's former officers. (No. 99-cv-1349) (E.D. Pa.);
- ***In re Sotheby's Holding, Inc. Securities Litigation:*** The firm, as lead counsel, obtained a \$70 million settlement, of which \$30 million was contributed, personally, by an individual defendant (No. 00-cv-1041 (DLC) (S.D.N.Y.));
- ***In re Waste Management, Inc. Securities Litigation:*** In 1999, the firm, as co-lead counsel, obtained a class settlement for investors of \$220 million cash, which included a settlement against Waste Management's outside accountants. (No. 97-cv-7709 (N.D. Ill.)); and
- ***In re Xcel Inc. Securities, Derivative & "ERISA" Litigation:*** The firm, as co-lead counsel in the securities actions, obtained a cash settlement of \$80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (No. 02-cv-2677 (DSD/FLN) (D. Minn.)).

Ms. Savett has helped establish several significant precedents. Among them is the holding (the first ever in a federal appellate court) that municipalities are subject to the anti-fraud provisions of SEC Rule 10b-5 under § 10(b) of the Securities Exchange Act of 1934, and that municipalities that issue bonds are not acting as an arm of the state and therefore are not entitled to immunity from suit in the federal courts under the Eleventh Amendment. *Sonnenfeld v. City and County of Denver*, 100 F.3d 744 (10th Cir. 1996).

In the *U.S. Bioscience* securities class action, a biotechnology case where critical discovery was needed from the federal Food and Drug Administration, the court ruled that the FDA may not automatically assert its administrative privilege to block a subpoena and may be subject to discovery depending on the facts of the case. *In re U.S. Bioscience Secur. Litig.*, 150 F.R.D. 80 (E.D. Pa. 1993).

In the *CIGNA Corp. Securities Litigation*, the Court denied defendants' motion for summary judgment, holding that a plaintiff has a right to recover for losses on shares held at the time of a corrective disclosure and his gains on a stock should not offset his losses in determining legally recoverable damages. *In re CIGNA Corp. Securities Litigation*, 459 F. Supp. 2d 338 (E.D. Pa. 2006).

Additionally, Ms. Savett has become increasingly well-known in the area of consumer litigation, achieving a groundbreaking \$24 million settlement in 2008 in the *Menu Foods* case brought by pet owners against manufacturers of allegedly contaminated pet food. (*In re Pet Food Products Liability Litigation*, MDL Docket No. 1850 (D.N.J. 2007).

In the data breach area, she was co-lead counsel in *In re TJX Retail Securities Breach Litigation*, MDL Docket No. 1838 (D. Mass.), the first very large data breach case where hackers stole personal information from 45 million consumers. The settlement, which became the template for future data breach cases, consisted of providing identity theft insurance to those whose social security or driver's license numbers were stolen, a cash fund for actual damages and time spent mitigating the situation, and injunctive relief.

Ms. Savett also litigated a case on behalf of the City of Philadelphia titled *City of Philadelphia v. Wells Fargo & Co.*, No. 17-cv-02203 (E.D. Pa.), involving alleged violations of the Fair Housing Act. The case was resolved in 2019 with a settlement providing \$10 million to go to citizens of Philadelphia for down payment assistance, to local agencies to assist homeowners in foreclosure, and for greening and cleaning foreclosed properties in Philadelphia which blight neighborhoods.

In the past decade, she has also actively worked in the False Claims Act arena. She was part of the team that litigated over more than a decade and settled the Average Wholesale Price *qui tam* cases, which collectively settled for more than \$1 billion.

Ms. Savett speaks and writes frequently on securities litigation, consumer class actions and False Claims Act litigation. She is a lecturer and panelist at the University of Pennsylvania Law School on the subjects of Securities Law and the False Claims Act/*Qui Tam* practice from the whistleblower's perspective. She has also lectured at the Wharton School of the University of Pennsylvania and at the Stanford Law School on prosecuting shareholder class actions and on False Claims Act Litigation. She is frequently invited to present and serve as a panelist in American Bar Association, American Law Institute/American Bar Association and Practising Law Institute (PLI) conferences on securities class action litigation and the use of class actions in consumer litigation. She has been a presenter and panelist at PLI's Securities Litigation and Enforcement Institute annually from 1995 to 2010. She has also spoken at major institutional investor and insurance industry conferences, and DRI – the Voice of the Defense Bar. In February 2009, she was a member of a six-person panel who presented an analysis of the current state of securities litigation before more than 1,000 underwriters and insurance executives at the PLUS (Professional Liability Underwriting Society) Conference in New York City. She has presented at the Cyber-Risk Conference in 2009, as well as the PLUS Conference in Chicago on November 16, 2009 on the subject of litigation involving security breaches and theft of personal information.

Most recently, in April 2019, she spoke as a panelist at PLI's Securities Litigation 2019: From Investigation to Trial program. Her panel was titled "Commencement of a Civil Action: Filing the Complaint, Preparing the Motion to Dismiss, Coordinating Multiple Securities Litigation Actions." Ms. Savett also co-authored an article for the program that was published in PLI's *Corporate Law and Practice Court Handbook Series*. The article is titled "After the Fall—A Plaintiff's Perspective."

In 2015 and 2016, she served as a panelist in American Law Institute programs held in New York City called "Securities and Shareholder Litigation: Cutting-Edge Developments, Planning and Strategy." Ms. Savett also spoke at the 2013 ABA Litigation Section Annual Conference in Chicago on two panels. One program on securities litigation was entitled "The Good, The Bad, and The Ugly: Ethical Issues in Class Action Settlements and Opt Outs." The other program focused on consumer class actions in the real estate area and was entitled "The Foreclosure Crisis Puzzle: Navigating the Changing Landscape of Foreclosure."

In May 2007, Ms. Savett spoke in Rome, Italy at the conference presented by the Litigation Committee of the Dispute Resolution Section of the International Bar Association and the Section of International Law of the American Bar Association on class certification. Ms. Savett participated in a mock hearing before a United States Court on whether to certify a worldwide class action that includes large numbers of European class members.

Ms. Savett has written numerous articles on securities and complex litigation issues in professional publications, including:

- "After the Fall – A Plaintiff's Perspective," with Phyllis M. Parker, *PLI Corporate Law and Practice Course Handbook Series No. B-2475*, pg. 73-105, April 2019
- "Plaintiffs' Vision of Securities Litigation: Current Trends and Strategies," 1762 *PLL* October 2009
- "Primary Liability of 'Secondary' Actors Under the PSLRA," I *Securities Litigation Report*, (Glasser) November 2004
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," 1442 *PLI Corp. 13*, September – October 2004
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," SJ084 ALI-ABA 399, May 13-14, 2004
- "The 'Indispensable Tool' of Shareholder Suits," *Directors & Boards*, Vol. 28, February 18, 2004
- "Plaintiffs Perspective on How to Obtain Class Certification in Federal Court in a Non-Federal Question Case," 679 *PLI*, August 2002
- "Hurdles in Securities Class Actions: The Impact of Sarbanes-Oxley From a Plaintiffs Perspective," 9 *Securities Litigation and Regulation Reporter* (Andrews), December 23, 2003
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," SG091 ALI-ABA, May 2-3, 2002
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," SF86 ALI-ABA 1023, May 10, 2001
- "Greetings From the Plaintiffs' Class Action Bar: We'll be Watching," SE082 ALI-ABA739, May 11, 2000
- "Preventing Financial Fraud," B0-00E3 *PLJB0-00E3* April – May 1999
- "Shareholders Class Actions in the Post Reform Act Era," SD79 ALI-ABA 893, April 30, 1999

- “What to Plead and How to Plead the Defendant’s State of Mind in a Federal Securities Class Action,” with Arthur Stock, *PLI*, ALI/ABA 7239, November 1998
- “The Merits Matter Most: Observations on a Changing Landscape Under the Private Securities Litigation Reform Act of 1995,” 39 *Arizona Law Review* 525, 1997
- “Everything David Needs to Know to Battle Goliath,” ABA Tort & Insurance Practice Section, *The Brief*, Vol. 20, No.3, Spring 1991
- “The Derivative Action: An Important Shareholder Vehicle for Insuring Corporate Accountability in Jeopardy,” *PLIH4-0528*, September 1, 1987
- “Prosecution of Derivative Actions: A Plaintiffs Perspective,” *PLIH4-5003*, September 1, 1986

Ms. Savett is widely recognized as a leading litigator and a top female leader in the profession by local and national legal rating organizations.

In 2019, *The Legal Intelligencer* named Ms. Savett a “Distinguished Leader,” and in 2018 she was named to the *Philadelphia Business Journal’s* 2018 Best of the Bar: Philadelphia’s Top Lawyers.

*The Legal Intelligencer* and *Pennsylvania Law Weekly* named her one of the “56 Women Leaders in the Profession” in 2004.

In 2003-2005, 2007-2013, and 2015-2016, Berger Montague was named to the *National Law Journal’s* “Hot List” of 12-20 law firms nationally “who specialize in plaintiffs’ side litigation and have excelled in their achievements.” The firm is on the *National Law Journal’s* “Hall of Fame,” and Ms. Savett’s achievements were mentioned in many of these awards.

Ms. Savett was named a “Pennsylvania Top 50 Female Super Lawyer” and/or a “Pennsylvania Super Lawyer” from 2004 through 2021 by Thomson Reuters after an extensive nomination and polling process among Pennsylvania lawyers.

In 2006 and 2007, she was named one of the “500 Leading Litigators” and “500 Leading Plaintiffs’ Litigators” in the United States by *Lawdragon*. In 2008, Ms. Savett was named as one of the “500 Leading Lawyers in America.” Also in 2008, she was named one of 25 “Women of the Year” in Pennsylvania by *The Legal Intelligencer* and *Pennsylvania Law Weekly*, which stated on May 19, 2008 in the *Women in the Profession* in *The Legal Intelligencer* that she “has been a prominent figure nationally in securities class actions for years, and some of her recent cases have only raised her stature.” In June 2008, Ms. Savett was named by *Lawdragon* as one of the “100 Lawyers You Need to Know in Securities Litigation.”

Unquestionably, it is because of Ms. Savett, who for decades has been in the top leadership of the firm, that the firm has a remarkably high proportion of women lawyers and shareholders.

Ms. Savett has aggressively sought to hire women, without regard to age or whether they are “right out of law school.” Several of the women who have children are able to continue working at

the firm because Ms. Savett has instituted a policy of flexible work time and fosters an atmosphere of cooperation, teamwork and mutual respect. As a result, the women attorneys stay on and have long and productive careers while still maintaining a balanced life. Ms. Savett has a personal understanding of the challenges and satisfactions that women experience in practicing law while raising a family. Ms. Savett has three children and five grandchildren. One of her daughters and her daughter-in-law are lawyers.

Ms. Savett has taught those around her more than good lawyering. She places great emphasis in her own life on devotion to family, community service and involvement in charitable organizations. She teaches others by her example and her obvious interest in their efforts and achievements.

Ms. Savett is a well-known leader of the Philadelphia legal, business, cultural and Jewish community. She is an exemplary citizen who spends endless hours of her after-work time helping others in the community.

From 2011 – 2014, Ms. Savett served as President and Board Chair of the Jewish Federation of Greater Philadelphia (JFGP), a community of over 215,000 Jewish people. She is only the third woman to serve as the President, the top lay leader of the Federation, in the 117 years of its existence.

Ms. Savett also serves on the Board of the National Liberty Museum, The National Museum of American Jewish History, and the local and national boards of American Associates of Ben Gurion University of the Negev. She had previously served as Chairperson of the Southeastern Pennsylvania State of Israel Bonds Campaign and has served as a member of the National Cabinet of State of Israel Bonds. In 2005, Ms. Savett received The Spirit of Jerusalem Medallion, the State of Israel Bonds' highest honor.

Ms. Savett has used her positions of leadership in the community to identify and help promote women as volunteer leaders. Ms. Savett has selected a few worthy causes to which she tirelessly dedicates herself. According to leaders of The Jewish Federation of Greater Philadelphia, Ms. Savett is viewed by many women in the philanthropic world as a role model.

Ms. Savett earned her J.D. from the University of Pennsylvania Law School and a B.A. *summa cum laude* from the University of Pennsylvania. She is a member of Phi Beta Kappa.

Ms. Savett has three married children, four grandsons, and two granddaughters. She enjoys tennis, biking, physical training, travel, and collecting art, especially glass and sculpture.

**Merrill G. Davidoff – Executive Shareholder, Chair *Emeritus***

Merrill G. Davidoff is Chairman *Emeritus* and an Executive Shareholder, in addition to his continuing work as Co-Chairman of the Antitrust Department and Chairman of the Environmental

Group. Mr. Davidoff has litigated and tried a wide range of antitrust, commodities, securities and environmental class actions.

In *In re Currency Conversion Fee Antitrust Litigation*, MDL No. 1409, Mr. Davidoff was co-lead counsel in class actions that resulted in settlements of \$386 million.

In a long-running environmental class action on behalf of property owners whose land was contaminated by plutonium from a neighboring nuclear weapons facility (Rocky Flats near Denver, Colorado), Mr. Davidoff served as lead counsel and lead trial counsel in a 2005-2006 trial that resulted in a \$554 million jury verdict, third largest of 2006. In 2009 the Rocky Flats trial team, led by Mr. Davidoff, received the prestigious Public Justice Award for "Trial Lawyer of the Year." A 2010 decision by the 10th Circuit Court of Appeals reversed the judgment that had been won in the district court, but Berger Montague persevered and sought entry of judgment under alternative state law grounds. After losing this battle in the district court, plaintiffs appealed to the 10th Circuit again, and, after an appeal argued by Mr. Davidoff, the Court of Appeals (by then-judge, now Justice, Neil Gorsuch) reversed and held that plaintiffs could proceed on state law nuisance grounds. Just before competing petitions for certiorari were to be decided by the Supreme Court, a settlement of \$375 million was announced in May 2016. The settlement received final approval on April 28, 2017.

Mr. Davidoff also concentrates his practice in representation for commodities futures and options traders as well as derivatives matters. He was co-lead counsel for the customer class in *In re MF Global Holdings Limited Investment Litigation*, which settled for well over a billion dollars and resulted in the recovery and return of 100% of lost customer funds after MF Global's October 31, 2011 collapse.

Mr. Davidoff has represented diverse clients, including many companies, sports organizations, trading firms and governmental entities. In the *Qwest* securities litigation, Mr. Davidoff represented New Jersey, securing a \$45 million "opt-out" settlement, and also represented New Jersey in "opt-out" litigation against the former public accounting firm for Lehman Brothers Inc.

Mr. Davidoff served as co-lead and trial counsel for a plaintiff class in the first mass tort class action trial in a federal court which resulted in a precedent-setting settlement for class members, *In re Louisville Explosions Litigation*. In the Canadian Radio-Television and Telecommunications Commission ("CRTC") Decisions (*Challenge Communications, Ltd. v. Bell Canada*), Mr. Davidoff was lead counsel for Applicant (plaintiff) in three evidentiary hearings before the CRTC. The hearings resulted in the first precedent-breaking Bell Canada's monopoly over the telecommunications equipment which was connected to its telephone network. He was lead counsel in the *Revco Securities Litigation*, an innovative "junk bond" class action, which settled for \$36 million. Mr. Davidoff was lead plaintiffs' counsel and lead trial counsel in *In re Melridge Securities Litigation* tried to jury verdicts for \$88 million (securities fraud) and \$240 million (RICO). He was co-lead counsel for the class in *In re Graphite Electrodes Antitrust Litigation*, an international price-fixing case which yielded settlements ranging from 18% to 32% of the plaintiffs' and class' purchases from the defendants (aggregate settlements totaled \$134 million). He was

one of co-lead counsel in the *Ikon Securities Litigation*, in which a settlement of \$111 million was obtained. He was co-lead counsel and designated lead trial counsel in the *In Re Sunbeam Securities Litigation*, where settlements of \$142 million were reached. One of his areas of concentration is representation in commodities futures and options matters, and expertise in derivatives. He has represented market-makers on the Philadelphia Stock Exchange, where he owned a member firm in the 1990s, as well as broker-dealers and market-makers on other exchanges.

### **Daniel Berger – Executive Shareholder**

Daniel Berger graduated with honors from Princeton University and Columbia Law School, where he was a Harlan Fiske Stone academic scholar. He is a senior member and Executive Shareholder. Over the last two decades, he has been involved in complicated commercial litigation including class action securities, antitrust, consumer protection and bankruptcy cases. In addition, he has prosecuted important environmental, mass tort and civil rights cases during this period. He has led the Firm's practice involving improprieties in the marketing of prescription drugs and the abuse of marketing exclusivities in the pharmaceutical industry, including handling landmark cases involving the suppression of generic competition in the pharmaceutical industry. For this work, he has been recognized by the *Law360* publication as a "titan" of the plaintiffs' Bar ("Titan of the Plaintiffs Bar: Daniel Berger" *Law360*, September 23, 2014).

In the civil rights area, he has been counsel in informed consent cases involving biomedical research and human experimentation by federal and state governmental entities. He also leads the firm's representation of states and other public bodies and agencies.

Mr. Berger has frequently represented public institutional investors in securities litigation, including representing the state pension funds of Pennsylvania, Ohio and New Jersey in both individual and class action litigation. He also represents Pennsylvania and New Jersey on important environmental litigation involving contamination of groundwater by gasoline manufacturers and marketers.

Mr. Berger has a background in the study of economics, having done graduate level work in applied microeconomics and macroeconomic theory, the business cycle, and economic history. He has published law review articles in the *Yale Law Journal*, the *Duke University Journal of Law and Contemporary Problems*, the *University of San Francisco Law Review* and the *New York Law School Law Review*. Mr. Berger is also an author and journalist who has been published in *The Nation* magazine, reviewed books for *The Philadelphia Inquirer* and authored a number of political blogs, including in *The Huffington Post* and the Roosevelt Institute's *New Deal 2.0*. He has also appeared on MSNBC as a political commentator.

Mr. Berger has been active in city government in Philadelphia and was a member of the Mayor's Cultural Advisory Council, advising the Mayor of Philadelphia on arts policy, and the Philadelphia Cultural Fund, which was responsible for all City grants to arts organizations. Mr. Berger was also a member of the Pennsylvania Humanities Council, one of the State organizations through which

the NEA makes grants. Mr. Berger also serves on the board of the Wilma Theater, Philadelphia's pre-eminent theater for new plays and playwrights.

### **Shanon J. Carson – Executive Shareholder**

Shanon J. Carson is an Executive Shareholder of the firm. He Co-Chairs the Employment & Unpaid Wages, Consumer Protection, Defective Products, and Defective Drugs and Medical Devices Departments and is a member of the Firm's Commercial Litigation, Employee Benefits & ERISA, Environment & Public Health, Insurance Fraud, Predatory Lending and Borrowers' Rights, and Technology, Privacy & Data Breach Departments.

Mr. Carson has achieved the highest peer-review rating, "AV," in Martindale-Hubbell, and has received honors and awards from numerous publications. In 2009, Mr. Carson was selected as one of 30 "Lawyers on the Fast Track" in Pennsylvania under the age of 40. In both 2015 and 2016, Mr. Carson was selected as one of the top 100 lawyers in Pennsylvania, as reported by Thomson Reuters. In 2018, Mr. Carson was named to the *Philadelphia Business Journal's* "2018 Best of the Bar: Philadelphia's Top Lawyers."

Mr. Carson is often retained to represent plaintiffs in employment cases, wage and hour cases for minimum wage violations and unpaid overtime, ERISA cases, consumer cases, insurance cases, construction cases, automobile defect cases, defective drug and medical device cases, product liability cases, breach of contract cases, invasion of privacy cases, false advertising cases, excessive fee cases, and cases involving the violation of state and federal statutes. Mr. Carson represents plaintiffs in all types of litigation including class actions, collective actions, multiple plaintiff litigations, and single plaintiff litigation. Mr. Carson is regularly appointed by federal courts to serve as lead counsel and on executive committees in class actions and mass torts.

Mr. Carson is frequently asked to speak at continuing legal education seminars and other engagements and is active in nonprofit and professional organizations. Mr. Carson currently serves on the Board of Directors of the Philadelphia Trial Lawyers Association (PTLA) and as a Co-Chair of the PTLA Class Action/Mass Tort Committee. Mr. Carson is also a member of the American Association for Justice, the American Bar Foundation, Litigation Counsel of America, the National Trial Lawyers - Top 100, and the Pennsylvania Association for Justice.

While attending the Dickinson School of Law of the Pennsylvania State University, Mr. Carson was senior editor of the Dickinson Law Review and clerked for a U.S. District Court Judge. Mr. Carson currently serves on the Board of Trustees of the Dickinson School of Law of the Pennsylvania State University.

### **Todd S. Collins – Executive Shareholder**

Todd S. Collins has led scores of securities and ERISA litigations over his 38 years at the firm, winning recoveries in the hundreds of millions of dollars on behalf of plaintiffs and the classes

they represent. He chairs the firm's ERISA practice, and he serves on the firm's Executive Committee and as the firm's Chief Counsel. Mr. Collins, a graduate of the University of Pennsylvania Law School, won the 1978 Henry C. Laughlin Prize for Legal Ethics.

Mr. Collins has served as lead counsel or co-lead counsel in numerous cases that have achieved significant benefits on behalf of the Class. These cases include: *In re AMF Bowling Securities Litigation* (S.D.N.Y.) (\$20 million recovery, principally against investment banks, where defendants asserted that Class suffered no damages); *In re Aero Systems, Inc. Securities Litigation* (S.D. Fla.) (settlement equal to 90 percent or more of Class members' estimated damages); *Price v. Wilmington Trust Co.* (Del. Ch.) (in litigation against bank trustee for breach of fiduciary duty, settlement equal to 70% of the losses of the Class of trust beneficiaries); *In re Telematics International, Inc. Securities Litigation* (S.D. Fla.) (settlements achieved, after extensive litigation, following 11th Circuit reversal of dismissal below); *In re Ex-Cell-O Securities Litigation* (E.D. Mich.); *In re Sequoia Systems, Inc.* (D. Mass.); *In re Sapiens International, Inc. Securities Litigation* (S.D.N.Y.); *In re Datastream Securities Litigation* (D.S.C.); *Copland v. Tolson* (Pa. Common Pleas) (on eve of trial, in case against corporate principals for breach of fiduciary duty, settlement reached that represented 65% or more of claimants' losses, with settlement funded entirely from individual defendants' personal funds); and *In re IKON Office Solutions, Inc. Securities Litigation* (E.D. Pa.). In *IKON*, where Mr. Collins was co-lead counsel as well as the chief spokesman for plaintiffs and the Class before the Court, plaintiffs' counsel created a fund of \$111 million for the benefit of the Class.

In addition, Mr. Collins has served as lead or co-lead counsel in several of the leading cases asserting the ERISA rights of 401(k) plan participants. Mr. Collins has served as co-lead counsel in *In re Lucent Technologies, Inc. ERISA Litigation* (D.N.J.); *In re Nortel Networks Corp. ERISA Litigation* (M.D. Tenn.); *In re SPX Corporation ERISA Litigation* (W.D. N.C.); and *King v. Wal-Mart Stores, Inc.* (D. Nev.). In *Lucent*, Mr. Collins and his team achieved a settlement consisting of \$69 million for the benefit of plan participants, as well as substantial injunctive relief with respect to the operation of the 401(k) plans.

Mr. Collins is at the forefront of litigation designed to achieve meaningful corporate governance reform. Recently, he brought to a successful conclusion two landmark cases in which corporate therapeutics are at the core of the relief obtained. In *Oorbeek v. FPL Group, Inc.* (S.D. Fla.), a corporate derivative action brought on behalf of the shareholders of FPL Group, plaintiffs challenged excessive "change of control" payments made to top executives. In the settlement, plaintiffs recovered not only a substantial cash amount but also a range of improvements in FPL's corporate governance structure intended to promote the independence of the outside directors.

Similarly, in *Ashworth Securities Litigation* (S.D. Cal.), a Section 10(b) fraud case, in which Mr. Collins was co-lead counsel, plaintiffs again have been successful in recovering millions of dollars and also securing important governance changes. In this case, the changes focused on strengthening the accounting function and improving revenue recognition practices.

In corporate acquisition cases, Mr. Collins has served as co-lead counsel in cases such as *In re Portec Rail Products, Inc. Shareholders Litig.* (C.P. Allegheny County, Pennsylvania) (tender offer enjoined), *Silberman v. USANA Health Sciences, Inc. et. al.* (D. Utah) (offer enjoined on plaintiffs' motion).

### **Michael Dell'Angelo – Executive Shareholder**

Michael Dell'Angelo is an Executive Shareholder in the Antitrust, Commercial Litigation, Commodities & Financial Instruments practice groups and Co-Chair of the Securities department. He serves as co-lead counsel in a variety of complex antitrust cases, including *Le, et al. v. Zuffa, LLC*, No. 15-1045 (D. Nev.) (alleging the Ultimate Fighting Championship (“UFC”) obtained illegal monopoly power of the market for Mixed Martial Arts promotions and suppressed the compensation of MMA fighters).

Mr. Dell'Angelo is responsible for winning numerous significant settlements for his clients and class members. Most recently, as co-lead counsel, Mr. Dell'Angelo helped to reach settlements totaling more than \$190 million in the multidistrict litigation *In re Domestic Drywall Antitrust Litig.*, No. 13-md-2437 (E.D. Pa.). There, in granting final approval to the last settlement, the court observed about Mr. Dell'Angelo and his colleagues that “Plaintiffs’ counsel are experienced antitrust lawyers who have been working in this field of law for many years and have brought with them a sophisticated and highly professional approach to gathering persuasive evidence on the topic of price-fixing.” *In re Domestic Drywall Antitrust Litig.*, No. 13-md-2437, 2018 WL 3439454, at \*18 (E.D. Pa. July 17, 2018). “[I]t bears repeating,” the court emphasized, “that the result attained is directly attributable to having highly skilled and experienced lawyers represent the class in these cases.” *Id.*

Mr. Dell'Angelo also serves or has recently served as co-lead counsel or class counsel in numerous cases alleging price-fixing or other wrongdoing affecting a variety of financial instruments, including *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litig.*, 1:14-MD-2548-VEC (S.D.N.Y.) (\$102 million settlement pending approval; litigation is ongoing as to the remaining defendants); *In re Platinum and Palladium Antitrust Litig.*, No. 14-cv-09391-GHW (S.D.N.Y.); *Contant, et al. v. Bank of America Corp., et al.*, 1:17-cv-03139-LGS (S.D.N.Y.) (\$23.6 million in settlements); *In re Libor-Based Financial Instruments Antitrust Litig.*, No. 11-md-2262 (S.D.N.Y.) (\$187 million in settlements pending final approval); *Alaska Elec. Pension Fund, et al. v. Bank of Am. Corp., et al.*, No. 14 Civ. 7126-JMF (S.D.N.Y.) (\$504.5 million in settlements); *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (S.D.N.Y.); and *In re London Silver Fixing, Ltd. Antitrust Litig.*, No. 14-md-2573 (S.D.N.Y.) (\$38 million settlement pending approval; litigation is ongoing as to the remaining defendants).

Mr. Dell'Angelo also serves as lead counsel in numerous individual antitrust cases on behalf of purchasers of rail freight services from the four major rail carriers in the United States.

*The National Law Journal* featured Mr. Dell'Angelo in its profile of Berger Montague for a special annual report entitled “Plaintiffs’ Hot List.” *The National Law Journal's* Hot List identifies the top

plaintiff practices in the country. The Hot List profile focused on Mr. Dell'Angelo's role in the MF Global litigation (*In re MF Global Holding Ltd. Inv. Litig.*, No. 12-MD-2338-VM (S.D.N.Y.)). In *MF Global*, Mr. Dell'Angelo represented former commodity account holders seeking to recover approximately \$1.6 billion of secured customer funds after the highly publicized collapse of MF Global, a major commodities brokerage. At the outset of this high-risk litigation, the odds appeared grim: MF Global had declared bankruptcy, leaving the corporate officers, a bank, and a commodity exchange as the only prospect for the recovery of class's misappropriated funds. Nonetheless, four years later, a result few would have believed possible was achieved. Through a series of settlements, the former commodity account holders recovered more than 100 percent of their missing funds, totaling over \$1.6 billion.

Mr. Dell'Angelo has been recognized consistently as a Pennsylvania Super Lawyer, a distinction conferred upon him annually since 2007. He is regularly invited to speak at Continuing Legal Education (CLE) and other seminars and conferences, both locally and abroad. In response to his recent CLE, "How to Deal with the Rambo Litigator," Mr. Dell'Angelo was singled out as "One of the best CLE speakers [attendees] have had the pleasure to see."

#### **E. Michelle Drake – Executive Shareholder**

E. Michelle Drake is an Executive Shareholder in the Firm's Minneapolis office. With career settlements and verdicts valued at more than \$150 million, Michelle has had great success in a wide variety of cases.

Michelle focuses her practice primarily on consumer protection, improper credit reporting, and financial services class actions. Michelle is empathetic towards her clients and unyielding in her desire to win. Possessing a rare combination of an elite academic pedigree and real-world trial skills, Michelle has successfully gone toe-to-toe with some of the world's most powerful companies.

Michelle helped achieve one of the largest class action settlements in a case involving improper mortgage servicing practices associated with force-placed insurance, resulting in a settlement valued at \$110 million for a nationwide class of borrowers who were improperly force-placed with overpriced insurance. Michelle also served as liaison counsel and part of the Plaintiffs' Steering Committee on behalf of consumers harmed in the Target data breach, a case she helped successfully resolve on behalf of over ninety million consumers whose data was affected by the breach. In 2015, Michelle resolved a federal class action on behalf of a group of adult entertainers in New York for \$15 million. Most recently, Michelle has been successful in litigating numerous cases protecting consumers' federal privacy rights under the Fair Credit Reporting Act, securing settlements valued at over \$10 million on behalf of tens of thousands of consumers harmed by improper background checks and inaccurate credit reports in the last two years alone.

Michelle was admitted to the bar in 2001 and has since served as lead class counsel in over fifty class and collective actions alleging violations of the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Fair Labor Standards Act, various states' unfair and deceptive trade

practices acts, breach of contract and numerous other pro-consumer and pro-employee causes of action.

Michelle serves on the Board of the National Association of Consumer Advocates, is a member of the Partner's Council of the National Consumer Law Center, and is an At-Large Council Member for the Consumer Litigation Section for the Minnesota State Bar Association. She was named as a Super Lawyer in 2013-2018 and was named as a Rising Star prior to that. Michelle was also appointed to the Federal Practice Committee in 2010 by the United States District Court for the District of Minnesota. She has been quoted in the New York Times and the National Law Journal, and her cases were named as "Lawsuits of the Year" by Minnesota Law & Politics in both 2008 and 2009.

Michelle began her practice of law by defending high stakes criminal cases as a public defender in Atlanta. Michelle has never lost her desire to litigate on the side of the "little guy."

### **David F. Sorensen – Executive Shareholder**

David Sorensen is an Executive Shareholder and Co-Chair of the Firm's antitrust department. He graduated from Duke University (A.B. 1983) and Yale Law School (J.D. 1989), and clerked for the Hon. Norma L. Shapiro (E.D. Pa.). He concentrates his practice on antitrust and environmental class actions.

Mr. Sorensen co-trieed *Cook v. Rockwell Int'l Corp.*, No. 90-181 (D. Colo.) and received, along with the entire trial team, the "Trial Lawyer of the Year" award in 2009 from the Public Justice Foundation for their work on the case, which resulted in a jury verdict of \$554 million in February 2006, after a four-month trial, on behalf of thousands of property owners near the former Rocky Flats nuclear weapons plant located outside Denver, Colorado. The jury verdict was then the largest in Colorado history, and was the first time a jury has awarded damages to property owners living near one of the nation's nuclear weapons sites. In 2008, after extensive post-trial motions, the District Court entered a \$926 million judgment for the plaintiffs. The jury verdict in the case was vacated on appeal in 2010. In 2015, on a second trip to the Tenth Circuit Court of Appeals, Plaintiffs secured a victory with the case being sent back to the district court. In 2016, the parties reached a \$375 million settlement, which received final approval in 2017.

Mr. Sorensen played a major role in the Firm's representation of the State of Connecticut in *State of Connecticut v. Philip Morris, Inc., et al.*, in which Connecticut recovered approximately \$3.6 billion (excluding interest) from certain manufacturers of tobacco products. And he served as co-lead class counsel in *Johnson v. AzHHA, et al.*, No. 07-1292 (D. Ariz.), representing a class of temporary nursing personnel who had been underpaid because of an alleged conspiracy among Arizona hospitals. The case settled for \$24 million.

Mr. Sorensen also has played a leading role in numerous antitrust cases representing direct purchasers of prescription drugs. Many of these cases have alleged that pharmaceutical manufacturers have wrongfully kept less expensive generic drugs off the market, in violation of

the antitrust laws. Many of these cases have resulted in substantial cash settlements, including *In re: Namenda Direct Purchaser Antitrust Litigation*, (S.D.N.Y.) (\$750 million settlement – largest single-defendant settlement ever for a case alleging delayed generic competition); *King Drug Co. v. Cephalon, Inc.*, (E.D. Pa.) (\$512 million partial settlement); *In re: Aggrenox Antitrust Litigation* (\$146 million settlement); *In re Loestrin 24 Fe Antitrust Litigation* (\$120 million); *In re: K-Dur Antitrust Litigation* (\$60.2 million); *In re: Prandin Direct Purchaser Antitrust Litigation* (\$19 million); *In re: Doryx Antitrust Litigation* (\$15 million); *In re: Skelaxin Antitrust Litigation* (\$73 million); *In re: Wellbutrin XL Antitrust Litigation* (\$37.50 million); *In re: Oxycontin Antitrust Litigation* (\$16 million); *In re: DDAVP Direct Purchaser Antitrust Litigation* (\$20.25 million settlement following precedent-setting victory in the Second Circuit, which Mr. Sorensen argued, see 585 F.3d 677 (2d Cir. 2009)); *In re: Nifedipine Antitrust Litigation* (\$35 million); *In re: Terazosin Hydrochloride Antitrust Litigation*, MDL 1317 (S.D. Fla.) (\$74.5 million); and *In re: Remeron Antitrust Litigation* (\$75 million). Mr. Sorensen is serving as co-lead counsel or on the executive committee of numerous similar, pending cases.

In 2017, the American Antitrust Institute presented its Antitrust Enforcement Award to Mr. Sorensen and others for their work on the *K-Dur* case. In 2019, Mr. Sorensen and others were recognized again by the AAI for their work on the *King Drug* case, being awarded the Outstanding Antitrust Litigation Achievement in Private Law Practice. Mr. Sorensen and his team received the same award in 2020 for their work on the *Namenda* case. Also in 2020, *Law360* named Mr. Sorensen a Competition MVP of the Year.

## Shareholders

### Glen L. Abramson – Shareholder

Glen L. Abramson is a Shareholder in the Philadelphia office. He concentrates his practice on complex consumer protection, product defects, and financial services litigation, and representing public and private institutional investors in securities fraud class actions and commercial litigation.

Mr. Abramson has served as co-lead counsel in numerous successful consumer protection and securities fraud class actions, including:

*Casey v. Citibank, N.A.*, No. 5:12-cv-00820 (N.D.N.Y.). As Co-Lead Counsel, Mr. Abramson obtained a settlement valued at \$110 million in this consolidated class action on behalf of nationwide classes of borrowers whose mortgage loans were serviced by Citibank or CitiMortgage and who were force-placed with hazard, flood or wind insurance.

*In re Oppenheimer Rochester Funds Group Securities Litigation*, No. 09-md-02063-JLK-KMT (D. Colo.). As Co-Lead Counsel, Mr. Abramson represented shareholders in Oppenheimer municipal bond funds in connection with losses suffered during the financial crisis of 2008. The case settled in 2014 for \$89.5 million.

*In re Tremont, Securities Law, State Law, and Insurance Litig.*, No. 1:08-cv-11117-TPG. Mr. Abramson represented insurance policyholders who lost money in connection with the Madoff Ponzi scheme. The combined cases were settled for more than \$100 million.

*In re Mutual Fund Investment Litig.*, No. 04-md-15861-CCB. As Co-Lead Counsel, Mr. Abramson represented shareholders of various mutual fund families who lost money as the result of market timing in mutual funds. Mr. Abramson was lead counsel for Scudder/Deutsche Bank mutual fund shareholders and helped orchestrate combined settlements of more than \$14 million.

*In re Fleming Companies, Inc. Sec. Litig.*, No. 03-md-1530 (E.D. Tex.). As Co-Lead Counsel, Mr. Abramson represented shareholders of Fleming Companies, Inc. in connection with losses suffered as a result of securities fraud by Fleming and its auditors and underwriters. The case resulted in a \$93.5 million settlement.

Prior to joining Berger Montague, Mr. Abramson practiced at Dechert LLP in Philadelphia, where he handled complex commercial litigation, product liability, intellectual property, and civil rights disputes. While at Dechert, Mr. Abramson co-chaired a civil rights trial in federal court that led to a six-figure verdict. Mr. Abramson also spent three years as a professional equities trader.

Mr. Abramson is a graduate of Cornell University (B.A. *with distinction* 1993) and Harvard Law School (*cum laude* 1996). He is a past member of the Harvard Legal Aid Bureau and is a member of Cornell University's Phi Beta Kappa honors society.

#### **John G. Albanese – Shareholder**

John Albanese is a Shareholder in the Minneapolis office. Mr. Albanese concentrates his practice on consumer protection with a focus on Fair Credit Reporting Act violations related to criminal background checks. Mr. Albanese has also prosecuted class actions related to illegal online lending, unfair debt collection, privacy breaches, and other consumer law issues. Mr. Albanese is regularly invited to speak on consumer law and litigation issues. Mr. Albanese has obtained favorable decisions for consumers in state and federal courts all over the country. He also frequently represents consumer advocacy groups as *amici curiae* at the appellate level.

Mr. Albanese is a graduate of Columbia Law School and Georgetown University. At Columbia, he was a managing editor of the Columbia Law Review and was elected to speak at graduation by his classmates. Mr. Albanese clerked for Magistrate Judge Geraldine Brown in the Northern District of Illinois.

#### **Joy P. Clairmont – Shareholder**

Joy Clairmont is a Shareholder in the Whistleblower, *Qui Tam* & False Claims Act Group, which has recovered more than \$3 billion for federal and state governments, as well as over \$500 million for the firm's whistleblower clients. Ms. Clairmont also has experience practicing in the area of securities fraud litigation.

Ms. Clairmont has been investigating and litigating whistleblower cases for over fifteen years and has successfully represented whistleblower clients in federal and state courts throughout the United States. On behalf of her whistleblower clients, Ms. Clairmont has pursued fraud cases involving a diverse array of companies: behavioral health facilities, a national retail pharmacy chain, a research institution, pharmaceutical manufacturers, skilled nursing facilities, a national dental chain, mortgage lenders, hospitals and medical device manufacturers.

Most notably, Ms. Clairmont has participated in several significant and groundbreaking cases involving fraudulent drug pricing:

***United States ex rel. Streck v. AstraZeneca, LP, et al., C.A. No. 08-5135 (E.D. Pa.)***: a Medicaid rebate fraud case which settled in 2015 for a total of \$55.5 million against three pharmaceutical manufacturers, AstraZeneca, Cephalon, and Biogen. The case alleged that the defendants did not properly account for millions of dollars of payments to wholesalers for drug distribution and other services. As a result, the defendants underpaid the government in rebates owed under the Medicaid Drug Rebate Program.

***United States ex rel. Kieff and LaCorte v. Wyeth and Pfizer, Inc., Nos. 03-12366 and 06-11724-DPW (D. Mass.)***: a Medicaid rebate fraud case involving Wyeth's acid-reflux drug, Protonix, which settled for \$784.6 million in April 2016.

**"AWP" Cases**: a series of cases in federal and state courts against many of the largest pharmaceutical manufacturers, including Bristol-Myers Squibb, Boehringer Ingelheim, and GlaxoSmithKline, for defrauding the government through false and inflated price reports for their drugs, which resulted in more than \$2 billion in recoveries for the government.

Earlier in her career, Ms. Clairmont gained experience litigating securities fraud class actions including, most notably, *In Re Sunbeam Securities Litigation*, a class action which led to the recovery of over \$142 million for the class of plaintiffs in 2002.

Ms. Clairmont graduated in 1995 with a B.A. *cum laude* from George Washington University and in 1998 with a J.D. from George Washington University Law School.

#### **Caitlin G. Coslett – Shareholder**

Caitlin G. Coslett is a Co-Chair of the firm's Antitrust Department. She concentrates her practice on complex litigation, including antitrust and mass tort litigation.

Ms. Coslett represents classes of direct purchasers of pharmaceutical drugs who allege that drug manufacturers have violated federal antitrust law by wrongfully keeping less-expensive generic drugs off the market and/or by wrongfully impeding generic competition. Her work on generic suppression cases has contributed to significant settlements totaling hundreds of millions of dollars, including in the cases of *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation* (for which Ms. Coslett served as Co-Lead Counsel), *In re Lidoderm Antitrust Litigation*, and *In re Skelaxin (Metaxalone) Antitrust Litigation*. Ms. Coslett is currently litigating several similar antitrust

pharmaceutical cases, such as *In re Effexor XR Antitrust Litigation*, *In re Bystolic Antitrust Litigation*, *In re Intuniv Antitrust Litigation*, *In re Lamictal Antitrust Litigation*, *In re Novartis and Par Antitrust Litigation*, *In re Opana ER Antitrust Litigation*, and *In re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litigation*. She was honored for “Outstanding Antitrust Litigation Achievement by a Young Lawyer” for her work in *In re Lidoderm Antitrust Litigation*.

Ms. Coslett’s experience litigating antitrust class actions also includes *In re CRT Antitrust Litigation*, *In re Domestic Drywall Antitrust Litigation*, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, *In re Steel Antitrust Litigation*, and *In re Urethane [Polyether Polyols] Antitrust Litigation*.

Ms. Coslett also played a significant role in the post-trial litigation in *Cook v. Rockwell International Corporation*, a mass tort class action brought on behalf of thousands of property owners near the Rocky Flats nuclear plant in Colorado. The case settled for \$375 million following a successful appeal to the Tenth Circuit and, in ruling for the plaintiffs on appeal, then-Judge Neil Gorsuch (who is now a Supreme Court Justice) praised Class Counsel’s successful “judicial jiu jitsu” in litigating the case through the second appeal.

Ms. Coslett was named a “Next Generation Lawyer” by *The Legal 500 United States 2019* in the Civil Litigation/Class Actions: Plaintiff category and was selected as a Rising Star by Super Lawyers every year from 2014 – 2021. She has served as pro bono counsel for clients referred by the AIDS Law Project of Pennsylvania and Philly VIP and is a member of the National LGBT Bar Association.

A Philadelphia native, Ms. Coslett graduated *magna cum laude* from Haverford College with a B.S. in mathematics and economics and graduated *cum laude* from New York University School of Law. At NYU Law, Ms. Coslett was a Lederman/Milbank Fellow in Law and Economics and an articles selection editor for the NYU Review of Law and Social Change. Prior to law school, she was an economics research assistant at the Federal Reserve Board in Washington, D.C. Ms. Coslett was formerly one of the top 75 rated female chess players in the U.S.

#### **Andrew C. Curley – Shareholder**

Andrew C. Curley is a Shareholder in the Antitrust practice group. He concentrates his practice in the area of complex antitrust litigation.

Mr. Curley served as Co-Lead Class Counsel on behalf of a class of independent truck stops and other retail merchants in *Marchbanks Truck Service, Inc. v. Comdata Network, Inc.*, Case No. 07-1078 (E.D. Pa.). The *Marchbanks* litigation settled in January 2014 for \$130 million and significant prospective relief in the form of, among other things, meaningful and enforceable commitments by the largest over-the-road trucker fleet card issuer in the United States to modify or not to enforce those portions of its merchant services agreements that plaintiffs challenged as anticompetitive, and that an expert economist has determined to be worth an additional \$260 million to \$491 million (bringing the total value of the settlement to between \$390 and \$621 million).

Mr. Curley is also involved in a number of antitrust cases representing direct purchasers of prescription drugs. These cases have alleged that pharmaceutical manufacturers have wrongfully kept less expensive generic drugs off the market, in violation of the antitrust laws. Those cases include: *In re Solodyn Antitrust Litig.*, 14 MD 2503 (D. Mass.) (\$76 million settlements); and *In re Aggrenox Antitrust Litig.*, No. 3:14-md-02516 (D. Conn.) (\$146 million settlement); *In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 12-MD-2343 (E.D. Tenn.) (\$73 million settlement); *In re Wellbutrin XL Antitrust Litig.*, No. 08-2431 (E.D. Pa.) (\$37.5 million settlement with one of two defendants); *In re Opana ER Antitrust Litig.*, No. 14-cv-10150 (N.D. Ill.) and *In re Niaspan Antitrust Litig.*, No. 12-MD-2460 (E.D. Pa.).

Prior to joining the firm, Mr. Curley practiced in the litigation department of a large Philadelphia law firm where he represented clients in a variety of industries in complex commercial litigation in both state and federal court.

### **Josh P. Davis – Shareholder**

Josh supervises the Firm's San Francisco Bay Area Office. He focuses his practice on antitrust, appeals, class certification, and class action and complex litigation ethics. He is one of the leading scholars in the nation on antitrust procedure, class certification, and ethics in class actions and complex litigation.

Josh is currently a Research Professor at the University of California, Hastings College of the Law, where he is associated with the Center for Litigation and Courts, and the Director of the Center for Law and Ethics at the University of San Francisco School of Law. He has also taught at the Willamette University College of Law and the Georgetown University Law Center. He has testified before Congress on matters related to civil procedure and presented on matters related to private antitrust enforcement before the U.S. Department of Justice and the Federal Trade Commission.

Josh received a CLAY California Attorney of the Year Award in Antitrust in 2016. His law review article, "Defying Conventional Wisdom: The Case for Private Antitrust Enforcement," 48 Ga. L. Rev. 1 (2013), won the 2014 award for best academic article from George Washington University School of Law and Institute on Competition Law. His scholarship has been cited by multiple federal appellate and trial courts. He has published dozens of articles and book chapters on antitrust, civil procedure, class certification, legal ethics, and legal philosophy, among other topics. He regularly presents throughout the country and the world at scholarly and professional conferences and symposia on aggregate litigation, civil procedure, and ethics. Recently, he has written various articles and book chapters on artificial intelligence (AI) and the law and is completing his first book, "Unnatural Law: AI, Consciousness, Ethics, and Legal Theory" (forthcoming in Cambridge University Press 2022/23).

Josh graduated from N.Y.U. School of Law in 1993, where he won the Frank H. Sommer Memorial Award for top general scholarship and achievement in his class, served as the Articles Editor for the N.Y.U. Law Review, and was admitted to the Order of the Coif. After law school, he was a law clerk for Patrick E. Higginbotham of the U.S. Court of Appeals for the Fifth Circuit. He was a

partner at Lief, Cabraser, Heimann & Bernstein, LLP, until 2000, when he entered full-time legal academia until joining the Firm in 2022.

### **Lawrence Deutsch – Shareholder**

Mr. Deutsch has been involved in numerous major shareholder class action cases. He served as lead counsel in the Delaware Chancery Court on behalf of shareholders in a corporate governance litigation concerning the rights and valuation of their shareholdings. Defendants in the case were the Philadelphia Stock Exchange, the Exchange's Board of Trustees, and six major Wall Street investment firms. The case settled for \$99 million and also included significant corporate governance provisions. Chancellor Chandler, when approving the settlement allocation and fee awards on July 2, 2008, complimented counsel's effort and results, stating, "Counsel, again, I want to thank you for your extraordinary efforts in obtaining this result for the class." The Chancellor had previously described the intensity of the litigation when he had approved the settlement, "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong like they have gone at it in this case."

Mr. Deutsch was one of principal trial counsel for plaintiffs in *Fred Potok v. Floorgraphics, Inc., et al.* (Phila Co. CCP 080200944 and Phila Co. CCP 090303768) resulting in an \$8 million judgment against the directors and officers of the company for breach of fiduciary duty.

Over his 25 years working in securities litigation, Mr. Deutsch has been a lead attorney on many substantial matters. Mr. Deutsch served as one of lead counsel in the *In Re Sunbeam Securities Litigation* class action concerning "Chainsaw" Al Dunlap (recovery of over \$142 million for the class in 2002). As counsel on behalf of the City of Philadelphia he served on the Executive Committee for the securities litigation regarding *Frank A. Dusek, et al. v. Mattel Inc., et al.* (recovery of \$122 million for the class in 2006).

Mr. Deutsch served as lead counsel for a class of investors in Scudder/Deutsche Bank mutual funds in the nationwide *Mutual Funds Market Timing* cases. Mr. Deutsch served on the Plaintiffs' Omnibus Steering Committee for the consortium of all cases. These cases recovered over \$300 million in 2010 for mutual fund purchasers and holders against various participants in widespread schemes to "market time" and late trade mutual funds, including \$14 million recovered for Scudder/Deutsche Bank mutual fund shareholders.

Mr. Deutsch has been court-appointed Lead or a primary attorney in numerous complex litigation cases: *NECA-IBEW Pension Trust Fund, et al. v. Precision Castparts Corp., et al.* (Civil Case No. 3:16-cv-01756-YY); *Fox et al. v. Prime Group Realty Trust, et al.* United States District Court Northern District of Illinois (Civil Case No. 1:12-cv-09350) (\$8.25 million settlement pending); served as court-appointed lead counsel in *In Re Inergy LP Unitholder Litigation* (Del. Ch. No. 5816-VCP ) (\$8 million settlement).

Mr. Deutsch served on a team of lead counsel in *In Re: CertainTeed Fiber Cement Siding Litigation*, E.D.Pa. MDL NO. 11-2270 (\$103.9 million settlement); *Tim George v. Uponor, Inc., et*

*al.*, United States District Court, District of Minnesota, Case No. 12-CV-249 (ADM/JJK) (\$21 million settlement); *Batista, et al. v. Nissan North America, Inc.*, United States District Court, Southern District of Florida, Miami Division, Case No 1;14-cv-24728 (settlement valued at \$65,335,970.00).

In addition to his litigation work, Mr. Deutsch has been a member of the firm's Executive Committee and also manages the firm's paralegals. He has also regularly represented indigent parties through the Bar Association's VIP Program, including the Bar's highly acclaimed representation of homeowners facing mortgage foreclosure.

Prior to joining the firm, Mr. Deutsch served in the Peace Corps from 1973-1976, serving in Costa Rica, the Dominican Republic, and Belize. He then worked for ten years at the United States General Services Administration.

Mr. Deutsch is a graduate of Boston University (B.A. 1973), George Washington University's School of Government and Business Administration (M.S.A. 1979), and Temple University's School of Law (J.D. 1985). He became a member of the Pennsylvania Bar in 1986 and the New Jersey Bar in 1987. He has also been admitted to practice in Eastern District of Pennsylvania, the First Circuit Court of Appeals, the Second Circuit Court of Appeals, the Third Circuit Court of Appeals, the Fourth Circuit Court of Appeals, Eleventh Circuit Court of Appeals and the U.S. Court of Federal Claims as well as various jurisdictions across the country for specific cases.

#### **Candice J. Enders – Shareholder**

Candice J. Enders is a Shareholder in the Antitrust practice group. She concentrates her practice in complex antitrust litigation.

Ms. Enders has significant experience investigating and developing antitrust cases, navigating complex legal and factual issues, negotiating discovery, designing large-scale document reviews, synthesizing and distilling conspiracy evidence, and working with economic experts to develop models of antitrust impact and damages. Her work on antitrust conspiracy cases has contributed to significant settlements totaling hundreds of millions of dollars, including in *In re Domestic Drywall Antitrust Litigation*, No. 13-2437 (E.D. Pa.) (\$190 million in total settlements); *In re Commodity Exchange, Inc. Gold Futures & Options Trading Litigation*, No. 14-2548 (S.D.N.Y.) (\$60 million settlement with Deutsche Bank preliminarily approved; preliminary approval of \$42 million settlement with Defendant HSBC pending; litigation continuing against remaining defendants); *In re Microcrystalline Cellulose Antitrust Litigation*, No. 01-111 (E.D. Pa.) (\$50 million settlement achieved shortly before trial).

In addition to her case work, Ms. Enders contributes to the administration of the firm by serving as the firm's Attorney Recruitment Coordinator, Paralegal Coordinator, and a member of the Diversity, Equity & Inclusion Task Force.

#### **Michael T. Fantini – Shareholder**

Michael T. Fantini is a Shareholder in the Consumer Protection and Commercial Litigation practice groups. Mr. Fantini concentrates his practice on consumer class action litigation.

Mr. Fantini has considerable experience in notable consumer cases such as: *In re TJX Companies Retail Security Breach Litigation*, Master Docket No. 07-10162 (D. Mass) (class action brought on behalf of persons whose personal and financial data were compromised in the largest computer theft of personal data in history - settled for various benefits valued at over \$200 million); *In re Educational Testing Service Praxis Principles of Learning and Teaching: Grade 7-12 Litigation*, MDL No. 1643 (E.D. La. 2006) (settlement of \$11.1 million on behalf of persons who were incorrectly scored on a teachers' licensing exam); *Block v. McDonald's Corporation*, No: 01CH9137 (Cir. Ct. Of Cook County, Ill.) (settlement of \$12.5 million where McDonald's failed to disclose beef fat in french fries); *Fitz, Inc. v. Ralph Wilson Plastics Co.*, No. 1-94-CV-06017 (D. N.J.) (claims-made settlement whereby fabricators fully recovered their losses resulting from defective contact adhesives); *Parker v. American Isuzu Motors, Inc.*; No: 3476 (CCP, Philadelphia County) (claims-made settlement whereby class members recovered \$500 each for their economic damages caused by faulty brakes); *Crawford v. Philadelphia Hotel Operating Co.*, No: 04030070 (CCP Phila. Cty. 2005) (claims-made settlement whereby persons with food poisoning recovered \$1,500 each); *Melfi v. The Coca-Cola Company* (settlement reached in case involving alleged misleading advertising of Enviga drink); *Vaughn v. L.A. Fitness International LLC*, No. 10-cv-2326 (E.D. Pa.) (claims made settlement in class action relating to failure to cancel gym memberships and improper billing); *In re Chickie's & Pete's Wage and Hour Litigation*, Master File No. 12-cv-6820 (E.D. Pa.) (settled class action relating to failure to pay proper wage and overtime under FLSA).

Notable security fraud cases in which Mr. Fantini was principally involved include: *In re PSINet Securities Litigation*, No: 00-1850-A (E.D. Va.) (settlement in excess of \$17 million); *Ahearn v. Credit Suisse First Boston, LLC*, No: 03-10956 (D. Mass.) (settlement of \$8 million); and *In re Nesco Securities Litigation*, 4:01-CV-0827 (N.D. Okla.).

Mr. Fantini has represented the City of Chicago in an action against certain online travel companies, such as Expedia, Hotels.com, and others, for their alleged failure to pay hotel taxes. He also represented the City of Philadelphia in a similar matter.

Prior to joining the firm, Mr. Fantini was a litigation associate with Dechert LLP. At George Washington University Law School, he was a member of the Moot Court Board. From 2017 - 2021, Mr. Fantini was named a Pennsylvania Super Lawyer by Thomson Reuters.

#### **Michael J. Kane – Shareholder**

Michael J. Kane, a Shareholder of the firm, is a graduate of Rutgers University and Ohio Northern University School of Law, with distinction, where he was a member of the Law Review. Mr. Kane is admitted to practice in Pennsylvania and various federal courts.

Mr. Kane joined the antitrust practice in 2005. Prior to joining the firm, Mr. Kane was affiliated with Mager, White & Goldstein, LLP where he represented clients in complex commercial litigation

involving alleged unlawful business practices including: violations of federal and state antitrust and securities laws, breach of contract and other unfair and deceptive trade practices. Mr. Kane has extensive experience working with experts on economic issues in antitrust cases, including impact and damages. Mr. Kane has served in prominent roles in high profile antitrust, securities, and unfair trade practice cases filed in courts around the country.

Currently, Mr. Kane is one of the lead attorneys actively litigating and participating in all aspects of the *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.) alleging, *inter alia*, that certain of Visa and MasterCard rules, including anti-steering restraints and default interchange fees, working in tandem have caused artificially inflated interchange fees paid by Merchants on credit and debit card transactions. After over a decade of litigation, a settlement of as much as \$6.24 billion and no less than \$5.54 billion was preliminary approved in January 2019. He is also one of the lead counsel in *Contant, et al. v. Bank of America Corp., et al.*, 1:17-cv-03139-LGS (S.D.N.Y.) alleging a conspiracy among horizontal competitors to fix the prices of foreign currencies and certain foreign currency instruments to recover damages caused by defendants on behalf of plaintiffs and members of a proposed class of indirect purchasers of FX instruments from defendants.

Mr. Kane was also one of the lead lawyers in *Castro v. Sanofi Pasteur, Inc.*, No. 2:11-cv-07178-JMV-MAH (D.N.J.), a certified class action of over 26,000 physician practices, other healthcare providers, and vaccine distributors direct purchasers, alleging that defendant Sanofi engaged in anticompetitive conduct to maintain its monopoly in the market for MCV4 vaccines resulting in artificially inflated prices for Sanofi's MCV4 vaccine Menactra and the MCV4 vaccine Menveo. In October 2017 the court granted final approval the \$61.5 million settlement.

Mr. Kane also had a leading role in *Ross v. American Express Company* (S.D.N.Y.) (\$49.5 million settlement achieved after more than 7 years of litigation and after summary judgment was denied). In the related matter *Ross v. Bank of America* (S.D.N.Y.) involving claims that the defendant banks and American Express unlawfully acted in concert to require cardholders to arbitrate disputes, including debt collections, and to preclude cardholders from participating in any class actions, Mr. Kane was one of the primary trial counsel in the five week bench trial. Mr. Kane also has had a prominent role in several antitrust cases against pharmaceutical companies challenging so-called pay for delay agreements wherein the brand drug company allegedly seeks to delay competition from generic equivalents to the brand drug through payments by the brand drug company to the generic drug company. Mr. Kane served as co-lead counsel in *In re Microsoft Corporation Massachusetts Consumer Protection Litigation* (Mass. Super. Ct., Middlesex Cty.), in which plaintiffs alleged that as a result of Microsoft Corporation's anticompetitive practices, Massachusetts consumers paid more than they should have for Microsoft's operating systems and software. The case was settled for \$34 million. Other cases in which Mr. Kane has had a prominent role include: *In re Currency Conversion Fee Antitrust Litig.* (S.D.N.Y.) (settlement for \$336 million and injunctive relief); *In re Nasdaq Market Makers Antitrust Litig.* (S.D.N.Y.); *In re Compact Disc Antitrust Litig.* (C.D. Cal.); *In re WorldCom, Inc. Securities Litig.* (S.D.N.Y.); *In re Lucent Technologies, Inc. Securities Litig.* (D.N.J.); *City Closets LLC v. Self*

*Storage Assoc., Inc.* (S.D.N.Y.); *Rolite, Inc. v. Wheelabrator Environmental Sys. Inc.*, (E.D. Pa.); and *Amin v. Warren Hospital* (N.J. Super.).

### **Robert Litan – Shareholder**

Robert Litan is a Shareholder in the Antitrust practice group. Litan is one of the few practicing lawyers (in any field, including antitrust) with a PhD in economics and an extensive research and testimonial career in economics. During his legal career, Litan has specialized in administrative and antitrust litigation, concentrating on economic issues, working closely with economic experts (having been a testimonial witness in more than 20 legal and administrative proceedings himself). He previously was a partner with Powell, Goldstein, Frazier and Murphy (Washington, D.C and Atlanta) and Korein Tillery (St. Louis Chicago). He began his legal career as an Associate at Arnold & Porter (Washington, D.C.)

Litan has directed economic research at three leading national organizations: the Brookings Institution, the Kauffman Foundation and Bloomberg Government.

Litan has held several appointed positions in the federal government. In 1993, he was appointed Principal Deputy Assistant Attorney General in the Antitrust Division of the Justice Department, where he oversaw civil non-merger litigation and the Department's positions on regulatory matters, primarily in telecommunications. During his tenure, he settled the Department's antitrust lawsuit against the Ivy League and MIT for fixing financial aid awards, oversaw the Department's first monopolization case against Microsoft (resulting in 1994 consent decree) and the initial stages of the Antitrust Division's price fixing case against Nasdaq (also resulting in a consent decree). In 1995, Litan was appointed Associate Director of the Office of Management and Budget, where he oversaw the budgets of five cabinet level agencies.

Litan has co- chaired two panels of studies for the National Academy of Sciences (Measuring Innovation and Disaster Loan Estimation), has served on one other NAS Committee (Use of Scientific Evidence), and consulted for NAS (on energy modeling). He has also been a member of the Presidential-Congressional Commission on the Causes of the Savings and Loan Crisis (1991-93).

Litan has consulted for a broad range of private and governmental organizations, including the U.S. Justice Department (antitrust division), the U.S. Treasury Department, the Federal Reserve Bank of New York, the Federal Home Loan Bank of San Francisco, and the Financial Institutions Subcommittee of the House Banking Committee, the Monetary Authority of Singapore and the World Bank.

Litan has been adjunct professor teaching banking law at the Yale Law School and a Lecturer in Economics at Yale University. He also has taught economics and counter-insurgency at the U.S. Army Command General Staff College, Ft. Leavenworth

### **Patrick F. Madden – Shareholder**

Patrick F. Madden is a Shareholder in the Antitrust, Consumer Protection, Insurance Fraud, and Predatory Lending and Borrowers' Rights practice groups. His practice principally focuses on class actions concerning antitrust violations, financial practices, and insurance products.

Mr. Madden has served in key roles in multiple nationwide consumer class actions. For example, he represented homeowners whose mortgage loan servicers force-placed extraordinarily high-priced insurance on them and allegedly received a kickback from the insurer in exchange. Collectively, Mr. Madden's force-placed insurance settlements have made more than \$175 million in recoveries available to class members.

He has also represented plaintiffs in antitrust class actions. For example, Mr. Madden represents a proposed class of elite mixed martial arts fighters in an antitrust lawsuit against the Ultimate Fighting Championship. *Le, et al. v. Zuffa, LLC*, No. 15-cv-1045 (D. Nev.). Mr. Madden also represents a proposed class of broiler chicken farmers in an antitrust suit against the major chicken processing companies for colluding to suppress compensation to the farmers.

Prior to attending law school, Mr. Madden worked at the United States Department of Labor, Office of Labor-Management Standards as an investigator during which time he investigated allegations of officer election fraud and financial crimes by union officers and employees. While at Temple Law School, Mr. Madden was the Executive Editor of Publications for the Temple Journal of Science, Technology & Environmental Law.

#### **Peter Muhic – Shareholder**

Mr. Muhic is a Shareholder in the firm's Consumer Protection Department.

Earlier in his career, Mr. Muhic was a partner of Cozen O'Connor in Philadelphia and then Kessler Topaz Meltzer Check in Radnor, where he focused on ERISA, fiduciary, FLSA and consumer protection claims. Mr. Muhic has tried cases to verdict in numerous states and has obtained hundreds of millions of dollars in relief for investors, consumers and employees throughout the country. Most recently, he was a founding partner of LeVan Muhic Stapleton LLC where he prosecuted class and collective actions and litigated complex commercial cases.

#### **Ellen T. Noteware – Shareholder**

Ms. Noteware has successfully represented investors, retirement plan participants, employees, consumers, and direct purchasers of prescription drug products in a variety of class action cases. She currently chairs the firm's Pro Bono Committee.

Ms. Noteware served on the trial team for *Cook v. Rockwell Int'l Corp.* No. 90-181 (D. Colo.) and received, along with the entire trial team, the "Trial Lawyer of the Year" award in 2009 from the Public Justice Foundation for their work on the case, which resulted in a jury verdict of \$554 million in February 2006, after a four-month trial, on behalf of thousands of property owners near the former Rocky Flats nuclear weapons plant located outside Denver, Colorado. The jury verdict was then the largest in Colorado history, and was the first time a jury has awarded damages to property owners living near one of the nation's nuclear weapons sites. In 2008, after extensive post-trial

motions, the District Court entered a \$926 million judgment for the plaintiffs. The jury verdict in the case was vacated on appeal in 2010. In 2015, on a second trip to the Tenth Circuit Court of Appeals, Plaintiffs secured a victory with the case being sent back to the district court. In 2016, the parties reached a \$375 million settlement, which received final approval in 2017.

Ms. Noteware also has played a leading role in numerous antitrust cases representing direct purchasers of prescription drugs. Many of these cases have alleged that pharmaceutical manufacturers have wrongfully kept less expensive generic drugs off the market, in violation of the antitrust laws. Many of these cases have resulted in substantial cash settlements, including *In re: Namenda Direct Purchaser Antitrust Litigation*, (S.D.N.Y.) (\$750 million settlement – largest single-defendant settlement ever for a case alleging delayed generic competition); *In re Loestrin 24 Fe Antitrust Litigation*, (D.R.I.) (\$120 million settlement 3 weeks before trial was set to begin); *In re Ovcon Antitrust Litigation*, (D.D.C.) (\$22 million settlement); *In re Tricor Direct Purchaser Antitrust Litigation*, (D. Del.) (\$250 million settlement); *Meijer, Inc. v. Abbott Laboratories*, (N.D. Cal.) (Norvir) (\$52 million); and *In re Celebrex*, No. 14-cv-00361 (E.D. Va.) (\$95 million).

Ms. Noteware is also extensively involved in litigating breach of fiduciary duty class action cases under the Employee Retirement Income Securities Act ("ERISA"). Her ERISA settlements include: *In re Nortel Networks Corp. ERISA Litigation* (M.D. Tenn.) (\$21 million settlement); *In re Lucent Technologies, Inc. ERISA Litigation* (D.N.J.) (\$69 million settlement); *In re SPX Corporation ERISA Litigation* (W.D.N.C.) (\$3.6 million settlement); *Short v. Brown University*, (D.R.I.) (\$3.5M settlement plus requirement that independent adviser for ERISA plans be retained); *Dougherty v. The University of Chicago*, No. 1:17-cv-03736 (N.D. Ill.) (\$6.5M settlement); and *Nicolas v. The Trustees of Princeton University*, No. 3:17-cv-03695 (D.N.J.) (settlement announced).

Ms. Noteware is a graduate of Cornell University (B.S. 1989) and the University of Wisconsin-Madison Law School (J.D. *cum laude* 1993) where she won the Daniel H. Grady Prize for the highest grade point average in her class, served as Managing Editor of the Law Review, and earned Order of the Coif honors. She is currently a member of the Pennsylvania, New York, and District of Columbia bars.

#### **Phyllis Maza Parker – Shareholder**

Phyllis Maza Parker is a Shareholder at the firm. She is a member of the firm's Securities and Investor Protection Department, where she focuses on complex securities class action litigation under the federal securities laws, representing both individual and institutional investors. She is also a member of the firm's Employment Law Department representing employees in class and collective action wage and hour employment cases.

Among securities class action cases, Ms. Parker served on the team as co-lead counsel for the Class in *In re Xcel Energy, Inc. Securities Litigation* (D. Minn.). The case, which settled for \$80 million, was listed among the 100 largest securities class action settlements in the United States since the enactment of the 1933-1934 Securities Acts. Among other cases, she has also served as co-lead counsel in *In re Reliance Group Holdings, Inc. Securities Litigation* (\$15 million

settlement); *In re The Loewen Group, Inc. Securities Litigation* (\$6 million settlement); as lead counsel in *In re Veeco Instruments Inc. Securities Litigation* (\$5.5 million settlement on the eve of trial); as co-lead counsel in *In re Nuvelo, Inc. Securities Litigation* (\$8.9 million settlement); and, most recently, as co-lead counsel in *Coady v. Perry, et al.* (IndyMac Bancorp, Inc.) (\$6.5 million settlement).

While studying for her J.D. at Temple, Ms. Parker was a member of the Temple Law Review. She published a Note on the subject of the Federal Sentencing Guidelines in the Temple Law Review, Vol. 67, No. 4, 1994, which has been cited by a court and in a law review article. After her first year of law school, Ms. Parker interned with the Honorable Dolores K. Sloviter of the United States Court of Appeals for the Third Circuit. Following law school, Ms. Parker clerked for the Honorable Murray C. Goldman of the Philadelphia Court of Common Pleas.

Ms. Parker is fluent in Hebrew and French.

### **Russell D. Paul – Shareholder**

Russell Paul is a Shareholder in the Consumer Protection, Qui Tam/Whistleblower, and Securities/Governance/Shareholder Rights practice groups and heads the Automobile Defect practice area. He concentrates his practice on consumer class actions, securities class actions and derivative suits, complex securities, and commercial litigation matters, and False Claims Act suits.

Mr. Paul has successfully litigated and led consumer protection and product defect actions in the automotive, pet food, soft drink, and home products industries. He has been appointed to a leadership position in several automotive defect cases. See *Francis v. General Motors, LLC*, No. 2:19-cv-11044-DML-DRG (E.D. Mich.), ECF No. 40 (appointed as member of Plaintiffs' Steering Committee); *Weston v. Subaru of America, Inc.*, No. 1:20-cv-05876 (D.N.J.), ECF No. 49 (appointed as Interim Co-Lead Counsel); *Miller v. Ford Motor Co.*, No. 2:20-cv-01796 (E.D. Cal.) ECF No. 60 (appointed to Interim Class Counsel Executive Committee) and *Powell v. Subaru of America, Inc.*, No. 1:19-cv-19114 (D.N.J.), ECF No. 26 (appointed as Interim Co-Lead Counsel). Mr. Paul has litigated securities class actions against Tyco International Ltd., Baxter Healthcare Corp., ALSTOM S.A., Able Laboratories, Inc., Refco Inc., Toll Brothers and the Federal National Mortgage Association (Fannie Mae). He has also litigated derivative actions in various state courts around the country, including in the Delaware Court of Chancery. Mr. Paul has also briefed and argued several federal appeals, including in the Third, Sixth and Ninth Circuits.

In addition to securities litigation, Mr. Paul has broad corporate law experience, including mergers and acquisitions, venture capital financing, proxy contests, and general corporate matters. He began his legal career in the New York office of Skadden, Arps, Slate, Meagher & Flom.

Mr. Paul has been designated a "Pennsylvania Super Lawyer" and a "Top Attorney in Pennsylvania."

Mr. Paul graduated from the Columbia University School of Law (J.D. 1989) where he was a Harlan Fiske Stone Scholar, served on the Moot Court Review Board, was an editor of Pegasus (the law school's catalog) and interned at the United States Attorneys' Office for the Southern District of New York. He completed his undergraduate studies at the University of Pennsylvania, earning a B.S. in Economics from the Wharton School (1986) and a B.A. in History from the College of Arts and Sciences (1986). He was elected to the Beta Gamma Sigma Honors Society.

**Barbara A. Podell – Shareholder**

Barbara A. Podell is a Shareholder in the Securities practice group at the firm. She concentrates her practice on securities class action litigation.

Ms. Podell graduated from the University of Pennsylvania (*cum laude*) and the Temple University School of Law (*magna cum laude*), where she was Editor-in-Chief of the Temple Law Quarterly.

Ms. Podell was one of the firm's senior attorneys representing the Pennsylvania State Employees' Retirement System ("SERS") as the lead plaintiff in the *In re CIGNA Corp. Sec. Litig.*, No. 02-CV-8088 (E.D. Pa.), a federal securities fraud class action in which SERS moved for, and was appointed, lead plaintiff. CIGNA allegedly concealed crucial operational problems, which, once revealed, caused the company's stock price to fall precipitously. The firm obtained a \$93 million settlement. This was a remarkable recovery because there were no accounting restatements, government investigations, typical indicators of financial fraud, or insider trading. Moreover, the case was settled on the eve of trial (22.7% of losses recovered).

Before joining the firm, Ms. Podell was a founding member of Savett Frutkin Podell & Ryan, P.C., and before that, a shareholder at Kohn, Savett, Klein & Graf and an associate at Dechert LLP, all in Philadelphia.

**Camille Fundora Rodriguez – Shareholder**

Ms. Rodriguez is a Shareholder in the firm's Employment Law, Consumer Protection, and Lending Practices & Borrowers' Rights practice groups. Ms. Rodriguez primarily focuses on wage and hour class and collective actions arising under the Fair Labor Standards Act and state laws.

Prior to joining the firm, Ms. Rodriguez practiced in the litigation department at a boutique Philadelphia law firm where she represented clients in a variety of personal injury, disability, and employment discrimination matters. Ms. Rodriguez is a graduate of Widener University School of Law.

Ms. Rodriguez is an active member of the Pennsylvania, Philadelphia, and Hispanic Bar Associations.

**Martin I. Twersky – Shareholder**

Martin I. Twersky is a Shareholder in the Antitrust Department. He has considerable experience in litigation involving a wide range of industries including oil and gas, banking, airline, waste hauling, agricultural chemicals and other regulated industries. For more than 40 years, Mr.

Twersky has successfully represented numerous plaintiffs and defendants in both individual and class actions pending in state and federal courts.

Mr. Twersky has played a leading role in the following class action cases among others: *In re Containerboard Antitrust Litigation* (N.D. Ill.) (where settlements of more than \$350 million were obtained for the class; see 306 F.R.D. 585 (N.D. Ill., 2015) (certifying class)); *In re Linerboard Antitrust Litigation* (E.D. Pa.) (as a member of the Executive Committee, he helped obtain settlements of more than \$200 million and he received specific praise from the court for co-managing the major discovery effort; see 2004 WL 1221350 at \*10); *In re Graphite Antitrust Litigation* (E.D. Pa.) (settlements of more than \$120 million); *In re Catfish Antitrust Litigation* (N.D. Miss.) (as a member of the trial team he helped obtain settlements of more than \$27 million); *In re Revco Securities Litigation* (N.D. Ohio) ("Junk Bond" class action where settlements of \$36 million were reached and where he received judicial praise from Senior District Court Judge William K. Thomas for the "specialized, highly competent and effective quality of the legal services." See 1993 CCH Fed Sec. L. Rep. at Para. 97,809); *Bogosian v. Gulf Oil* (E.D. Pa.) (landmark litigation with settlements and injunctive relief on behalf of a nationwide class of gasoline dealers). In *Bogosian*, District Judge Donald Van Artsdalen praised class counsel as follows: "Despite the extreme uncertainties of trial, plaintiffs' counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants..."; see 621 f. supp 27, 31 (E.D. Pa. 1985); and *Lease Oil Antitrust* (S.D. Tex.), where in a significant class action decision, the Fifth Circuit affirmed the granting of an injunction prohibiting settlements in related state court actions (see 200 F.3d 317 (5th Cir. 2000), cert. denied, 530 U.S. 1263). Mr. Twersky was appointed one of the co-lead counsel in *In re Abrasive Grains Antitrust Litig.* (95-cv-7574) (W.D.N.Y.).

Mr. Twersky has also played a key role in various non-class action cases, such as *Kutner Buick v. America Motors*, 848 F.2d 614 (3rd Circuit 1989) (breach of contract) (cited in the Advisory Committee Notes to the 1991 Amendment to Rule 50, Fed. R. Civ. P.), *Florham Park v. Chevron* (D.N.J. 1988) (Petroleum Marketing Act case), and *Frigitemp v. IDT Corp.*, 638 F. Supp. 916 (S.D. N.Y. 1986) and 76 B.R. 275, 1987 LEXIS 6547 (S.D. N.Y. 1987) (RICO case brought by the Trustee of Frigitemp Corp. against General Dynamics and others involving extortion of kickbacks from Frigitemp officers). Mr. Twersky also served prominently in savings-and-loan related securities and fraud litigation in federal and state courts in Florida, where the firm represented the Resolution Trust Corporation and officers of a failed bank in complex litigation involving securities, RICO and breach of fiduciary duty claims. E.g., *Royal Palm v. Rapaport*, Civ. No. 88-8510 (S.D. Fla.) and *Rapaport v. Burgoon*, CL-89-3748 (Palm Beach County).

#### **Daniel J. Walker – Shareholder**

Dan Walker is a Shareholder of the firm, which he rejoined in July 2017 after serving three years in the Health Care Division at the Federal Trade Commission. Mr. Walker practices in the firm's Washington, D.C. office.

While at the Federal Trade Commission, Mr. Walker investigated and litigated antitrust matters in the health care industry. In addition to leading various nonpublic investigations in the pharmaceutical and health information technology sectors, Mr. Walker litigated *Federal Trade Commission v. AbbVie Inc., et al.*, a case alleging that a brand pharmaceutical manufacturer engaged in sham patent litigation to delay generic competition, and *Federal Trade Commission v. Cephalon Inc.*, a "pay-for-delay" lawsuit over a brand pharmaceutical manufacturer's payment to four generic competitors in return for the generics' agreement to delay entry into the market. The Cephalon case settled shortly before trial for \$1.2 billion—the largest equitable monetary relief ever secured by the Federal Trade Commission—as well as significant injunctive relief.

During his time in private practice, Mr. Walker has litigated cases on behalf of plaintiffs and defendants in many areas of law, including antitrust, financial fraud, breach of contract, bankruptcy, and intellectual property. Mr. Walker has helped recover hundreds of millions of dollars on behalf of plaintiffs, including in *In re Titanium Dioxide Antitrust Litigation* (with settlements totaling \$163.5 million for purchasers of titanium dioxide), *In re High Tech Employee Antitrust Litigation* (with settlements totaling \$435 million for workers in the high tech industry), and *Adriana Castro, M.D., P.A., et al. v. Sanofi Pasteur Inc.*, No. 11-cv-07178 (D.N.J.) (with a \$61.5 million settlement pending court approval for purchasers of pediatric vaccines). Mr. Walker was also a member of the team that recovered the funds lost by account holders during MF Global's collapse and a member of the trial team that successfully represented the Washington Mutual stockholders seeking to recover investments lost in the bankruptcy.

In addition, Mr. Walker has spoken frequently on antitrust issues, including on the intersection of antitrust and intellectual property in the health care industry.

Mr. Walker is a *magna cum laude* graduate of Amherst College and Cornell University Law School, where he was an Articles Editor for the Cornell Law Review. Before entering private practice, Mr. Walker clerked for the Honorable Richard C. Wesley of the United States Court of Appeals for the Second Circuit.

## Senior Counsel

### **Andrew Abramowitz – Senior Counsel**

Andrew Abramowitz, Senior Counsel in the Securities Department, concentrates his practice in shareholder litigation, representing investors in matters under the federal securities laws and state law governing breach of fiduciary duty. Prior to joining the firm, Mr. Abramowitz was a partner with a prominent Philadelphia law firm where he practiced for more than twenty years.

Mr. Abramowitz has served as one of the lead counsel in numerous cases, including, of note, *In re Parmalat Securities Litigation* (S.D.N.Y.), often referred to as “the Enron of Europe,” which was a worldwide securities fraud involving an international dairy conglomerate; *In re SCOR Holding (Switzerland) AG Litigation* (S.D.N.Y.), the first case ever to secure recovery for investors in both a U.S. jurisdiction and a foreign forum; and *In re Abbott Depakote Shareholder Derivative Litigation* (N.D. Ill.), involving the off-label marketing of an anti-seizure drug.

Other notable cases in which Mr. Abramowitz played a significant role include: *Howard v. Liquidity Services, Inc.* (D.D.C.); *In re The Bancorp, Inc. Securities Litigation* (D. Del.); *In re Life Partners Holdings, Inc. Derivative Litigation* (W.D. Tex.); *In re Synthes Inc. Shareholder Litigation* (Del. Ch.); *In re Atheros Communications, Inc. Shareholder Litigation* (Del. Ch.); *Utah Retirement Systems v. Strauss* (American Home Mortgage) (E.D.N.Y.); *In re PSINet, Inc. Securities Litigation* (E.D. Va.); *Penn Federation BMW v. Norfolk Southern Corp.* (E.D. Pa.); *Inter-Local Pension Fund of the Graphic Communications Conference of the International Brotherhood of Teamsters v. Cybersource Corp.* (Del. Ch.).

He previously served as Legal Counsel to Tradeoffs, a popular health policy podcast launched by a prominent Philadelphia journalist.

Mr. Abramowitz graduated *cum laude* from Franklin & Marshall College (1993) where he earned membership in Phi Beta Kappa. He earned a J.D. from the University of Maryland School of Law (1996), where he was Assistant Editor for *The Business Lawyer*, published jointly with the American Bar Association.

He was a long-standing member of the Corporate Advisory Board of the Pennsylvania Association of Public Employee Retirement Systems (PAPERS), an organization dedicated to educating trustees and fiduciaries of public pension funds throughout Pennsylvania. He has also participated for more than fifteen years in the University of Pennsylvania School of Law's Mentoring Program, in which he mentors international students in the L.L.M. program about the practice of law in the U.S. He has written and spoken extensively on matters relating to securities litigation and corporate governance.

Mr. Abramowitz is also the author of two novels, *A Beginner's Guide to Free Fall* (Lake Union Publishing, 2019), and *Thank You, Goodnight* (Touchstone/Simon & Schuster, 2015).

#### **Natisha Aviles – Senior Counsel**

Natisha Aviles is Senior Counsel in the firm's Antitrust practice group. She concentrates her practice on complex antitrust litigation.

#### **Sylvia Bolos – Senior Counsel**

Sylvia Bolos is a consumer protection attorney that represents consumers against credit reporting agencies when those agencies maintain inaccurate information in consumer credit files. In addition to the Fair Credit Reporting Act claims, Sylvia has also successfully represented consumers against debt collection and robo-dialing abuse and represented consumer interests against creditors for truth in lending and equal credit opportunity act violations.

Sylvia believes in holding bad actors responsible for their misdeeds. Prior to joining the Firm, Sylvia was a Senior Associate at a consumer rights law firm in Michigan and for six years she represented consumers that were victims of identity theft and inaccurate credit reporting, harassed by debt collectors, robo-dialed by third parties, and discriminated against by creditors.

She also worked with consumers to identify the numerous fraudulent activities engaged in by auto dealerships and represented a number of consumers to secure monetary relief for their harm. During her career, Sylvia has represented consumers in matters involving violations of the Fair Credit Reporting Act, Fair Debt Collection Practices Act, Telephone Consumer Protection Act, Truth in Lending Act, Equal Credit Opportunity Act, and their Michigan analog statutes.

Sylvia grew up in Metro Detroit and earned her Bachelor's Degree with a concentration in Accounting from Oakland University in Rochester Michigan. Sylvia spent a number of years as an Accountant and later as a Budget Analyst for the Department of Defense's Tank Armament command in Michigan. She then attended Wayne State University Law School in Detroit Michigan and took a serious interest in civil rights and consumer issues, in particular, the impact of the 2008 mortgage crisis on Detroiters. During her time at Wayne State Law School, Sylvia interned for then-Chief Judge Gerald Rosen of the Eastern District of Michigan Federal Court. She also completed extensive mediation and negotiation coursework and mediated a number of disputes for the Macomb County Mediation Center.

Ms. Bolos is admitted to practice law in the Court of Appeals for the Sixth Circuit, Eastern and Western District Courts of Michigan, and the Northern District of Illinois. She is an active member of the Federal Bar Association for the Eastern District of Michigan and for a number of years she was the co-chair for the New Lawyers sub-committee. Ms. Bolos is regularly invited to speak at consumer protection conferences, including the Consumer Rights Litigation Conference, the Fair Credit Reporting Act Conference, and the Fair Debt Collection Practices Act Conference. She has also repeatedly spoken at the New Lawyers Seminar for the Eastern District of Michigan and she has provided Fair Credit Reporting Act training to a number of consumer protection attorneys through her former consulting firm.

**Jennifer Elwell – Senior Counsel**

Jennifer Elwell is Senior Counsel in the firm's Consumer Protection group. She concentrates her practice in complex civil litigation involving actions brought on behalf of consumers for corporate wrongdoing and consumer fraud.

**Abigail J. Gertner – Senior Counsel**

Abigail J. Gertner is an attorney in the firm's Philadelphia office and practices in the firm's Consumer Protection and ERISA Litigation practice groups.

Before joining the firm, Ms. Gertner worked at both plaintiff and defense firms, where she gained experience in complex litigation, including consumer fraud, ERISA, toxic tort, and antitrust matters. She concentrates her current practice on automotive defect, consumer fraud, and ERISA class actions.

Ms. Gertner graduated from Santa Clara University School of Law in 2003, where she interned for the Santa Clara County District Attorney's Office in the Child and Elder Abuse Unit. She completed her undergraduate studies at Tulane University in 2000, earning a B.S. in Psychology and a B.A. in Classics.

She is also active in her community, formerly serving as a Youth Aid Panel chairperson for Upland in Delaware County. She now serves on the Upland Borough Council, beginning her four-year term in January 2020.

Ms. Gertner is admitted to practice in state courts in Pennsylvania and New Jersey; and the United States District Courts for the Eastern District of Pennsylvania, the District of New Jersey, and the Eastern District of Michigan.

**Karen L. Handorf – Senior Counsel**

Karen L. Handorf is Senior Counsel at Berger Montague and a member of the firm's Employee Benefits & ERISA practice group, where she represents the interests of employees, retirees, plan sponsors, plan participants and beneficiaries in employee benefit and ERISA cases in the district court and on appeal. Ms. Handorf brings four decades of ERISA knowledge to Berger Montague's practice, where she will focus on emergent issues in health care, with a particular focus on the actions of insurance carrier TPAs that exercise fiduciary duties under ERISA-covered health plans. Ms. Handorf also advises employers and other plan sponsors on the provisions in their administrative service agreements that might cause them to unwittingly violate ERISA or other employee benefit laws. Ms. Handorf is also focused on other legal violations related to patient health care under other (non-ERISA) federal statutes and state consumer statutes in her efforts to address the exorbitant health care costs facing most Americans.

Prior to joining Berger Montague, Ms. Handorf was a partner at another prominent plaintiffs' class action firm and the immediate-past chair and then co-chair of that firm's Employee Benefits/ERISA practice group, where she led efforts in identifying, litigating, and when necessary, appealing often novel employee benefits issues. In that role, Ms. Handorf was one of the pioneers of the church plan litigation against organizations claiming to be exempt from ERISA due to their affiliation with or status as religious organizations.

Prior to that, Ms. Handorf had a distinguished career in government service. She spent 25 years at the Department of Labor, where, among other senior positions, she was the Deputy Associate Solicitor in the Plan Benefits Security Division. During her tenure at the Department of Labor, Ms. Handorf played a major role in formulating and litigating the Government's position on a wide variety of ERISA issues, from conception through expression in amicus briefs filed by the United States Solicitor General in the United States Supreme Court.

**Matthew Hartman – Senior Counsel**

Matthew Hartman is Senior Counsel in the firm's San Diego office. He primarily practices in complex litigation.

**Joseph C. Hashmall – Senior Counsel**

Joe Hashmall, Senior Counsel, is a member of the firm's Consumer Protection practice group. In that practice group, Mr. Hashmall primarily focuses on consumer class actions concerning financial and credit reporting practices.

Mr. Hashmall is a graduate of the Grinnell College and the Cornell University School of Law. During law school, Mr. Hashmall served as the Executive Editor of the Cornell Legal Information Institute's Supreme Court Bulletin and as an Editor for the Cornell International Law Journal. Mr. Hashmall has also worked as law clerk for President Judge Bonnie B. Leadbetter of the Pennsylvania Commonwealth Court and for the Honorable David J. Ten Eyck of the Minnesota District Court.

**J. Quinn Kerrigan – Senior Counsel**

J. Quinn Kerrigan is Senior Counsel in the firm's Consumer Protection practice group. He concentrates his practice in the area of complex consumer litigation, prosecuting actions against corporate defendants and other institutions for violations of state and federal law, including state causes of action challenging unfair and deceptive practices.

Before joining the firm, Mr. Kerrigan gained notable experience litigating antitrust and consumer class actions, corporate mergers, derivative claims, and insurance coverage disputes.

Mr. Kerrigan is admitted to practice in state courts in Pennsylvania and New Jersey, the United States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, and the District of New Jersey.

Mr. Kerrigan is a graduate of Temple University's Beasley School of Law and John Hopkins University.

**Joseph P. Klein – Senior Counsel**

Joseph Klein is Senior Counsel in the Antitrust practice group and focuses his work on complex antitrust litigation.

**David A. Langer – Senior Counsel**

David A. Langer is Senior Counsel in the Antitrust practice group. He concentrates his practice in complex antitrust litigation.

Mr. Langer has had a primary role in the prosecution of the following antitrust class actions: *In re Currency Conversion Fee Antitrust Litigation* (S.D.N.Y.) (after 5½ years of litigation, through the close of fact and expert discovery, achieved a settlement consisting of \$336 million and injunctive relief for a class of U.S. Visa and MasterCard cardholders; extraordinary settlement participation from class members drawing more than 10 million claimants in one of the largest consumer antitrust class actions); *Ross and Wachsmuth v. American Express Co., et al.* (S.D.N.Y.) (\$49.5 million settlement achieved after more than 7 years of litigation and after summary judgment was denied); *Ross, et al. v. Bank of America, N.A. (USA), et al.* (S.D.N.Y.) (obtained settlements with four of the nations' largest card issuers (Bank of America, Capital One, Chase and HSBC) to drop their arbitration clauses for their credit cards for 3.5 years, and a settlement with the non-bank defendant arbitration provider (NAF), who agreed to cease administering arbitration proceedings

involving business cards for 3.5 years); and *In re Linerboard Antitrust Litigation* (E.D. Pa.) (helped obtain settlements of more than \$200 million dollars).

Mr. Langer was one of the trial team chairs in the 5-week consolidated bench trial of arbitration antitrust claims in *Ross v. American Express* and *Ross v. Bank of America*, where the Honorable William H. Pauley, III of the United States District Court for the Southern District of New York, commended the "extraordinary talents of Plaintiffs' counsel."

Mr. Langer has also had a primary role in appellate proceedings, obtaining relief for his clients in a number of matters, including *Ross, et al. v. American Express Co., et al.*, 547 F.3d 137 (S.D.N.Y. 2008) (precluding an alleged co-conspirator from relying on the doctrine of equitable estoppel to invoke arbitration clauses imposed by its competitor co-conspirators); *Ross, et al. v. Bank of America, N.A. (USA), et al.*, 524 F.3d 217 (S.D.N.Y. 2008) (holding that antitrust plaintiffs possess Article III standing to challenge the defendants' collusive imposition of arbitration clauses barring participation in class actions); *In re Pharmacy Benefit Managers Antitrust Litig.*, 700 F.3d 109 (3d Cir. 2012) (finding opposing party waived the right to compel arbitration and reversing district court).

While at Vermont Law School, Mr. Langer was Managing Editor and a member of the Vermont Law Review.

#### **Natalie Lesser – Senior Counsel**

Natalie Lesser is Senior Counsel in the firm's Consumer Protection and Employee Benefits & ERISA practice groups. She concentrates her practice on automotive defect, consumer fraud, and ERISA class actions.

Before joining the firm, Ms. Lesser gained experience at both plaintiff and defense firms, litigating complex matters involving consumer fraud, securities fraud, and managed care disputes.

Ms. Lesser is admitted to practice in state courts in Pennsylvania and New Jersey, the United States District Courts for the Eastern District of Pennsylvania, the District of New Jersey, and the Eastern District of Michigan, and the United States Courts of Appeals for the Third Circuit and the Ninth Circuit.

Ms. Lesser received her law degree from the University of Pittsburgh School of Law in 2010 and her undergraduate degree in English from the State University of New York at Albany in 2007. While attending the University of Pittsburgh School of Law, Ms. Lesser was Editor in Chief of the University of Pittsburgh Law Review.

#### **Hans Lodge – Senior Counsel**

Hans Lodge is a zealous advocate and is dedicated to protecting the rights of consumers in and out of court. Hans assists consumers who have been denied jobs or housing due to inaccurate criminal history information reporting in their employment/tenant background check reports. Hans

also assists consumers who have been denied credit due to inaccurate information reporting in their credit reports and have suffered harm due to unlawful debt collection behavior.

Hans is an aggressive and strategic litigator who has a reputation of working tirelessly to get favorable outcomes for his clients. Hans understands how frustrating it can be trying to deal with background check companies, credit reporting agencies, credit bureaus, and debt collectors, and has a passion for helping clients navigate these areas of the law during their times of need.

Prior to joining the firm, Hans combined his passions for fighting for the little guy and oral advocacy by representing consumers in individual and class action litigation where he held businesses, banks, background check companies, credit bureaus, and debt collectors accountable for illegal practices. As an Associate Attorney at a consumer rights law firm, Hans represented consumers who had trouble paying their bills and were abused and harassed by debt collection agencies, some of whom had their motor vehicles wrongfully repossessed, bringing numerous individual and class action claims under the Fair Debt Collection Practices Act (FDCPA).

Hans also represented consumers who had trouble obtaining credit, employment, and housing due to inaccuracies in their credit reports and background check reports, bringing numerous individual and class action claims under the Fair Credit Reporting Act (FCRA). As an Associate Attorney at a national employment and consumer protection law firm, Hans represented consumers who purchased defective products and employees misclassified as independent contractors, bringing class action claims under consumer protection statutes and the Fair Labor Standards Act (FLSA).

Hans grew up in the Twin Cities and received his Bachelor's Degree from Gustavus Adolphus College in St. Peter, Minnesota, where he double-majored in Political Science and Communication Studies and graduated with honors. His first experience resolving quasi-legal disputes began as a Student Representative on the Campus Judicial Board, where he served for three years and resolved numerous complex disputes between students and the College. His interests in sports and ethics took him to New Zealand, Australia, and Fiji, where he studied Sports Ethics.

During his time at Marquette University Law School, Hans concentrated his legal studies on civil litigation and sports law. As a second-year law student, Hans gained valuable experience working as a law clerk for the Honorable Joan F. Kessler at the Wisconsin Court of Appeals. He also served as a member of the Marquette Sports Law Review where he wrote and edited articles about legal issues impacting the sports industry.

As a member of Marquette Law's moot court team, his brief writing and oral advocacy skills earned him a regional championship and an appearance in the national competition at the New York City Bar Association. Hans was also a member of Marquette's mock trial team, finishing in third place at the regional competition at the Daley Center in Chicago, Illinois.

Mr. Lodge is admitted to practice law in the United States District Court, District of Minnesota; United States District Court, Western District of Wisconsin; and both Minnesota and Wisconsin state courts.

In addition to practicing law, Hans is an Adjunct Professor at Concordia University, St. Paul, where he teaches a sports law course in the Master of Arts in Sports Management program. He is also a professionally-trained umpire and umpires Little League, high school, college, legion, and amateur baseball throughout Minnesota. In his free time, Hans enjoys working out, long distance running, road biking, bowling, going to concerts, playing ping pong and softball, and kayaking on Lake Minnetonka.

**Jeffrey L. Osterwise – Senior Counsel**

Mr. Osterwise pursues relief for consumers and businesses in a broad array of matters.

Mr. Osterwise litigates class actions on behalf of consumers who have been damaged by automobile manufacturers that conceal known defects in their vehicles and refuse to fulfill their warranty obligations. His experience includes actions against General Motors, Nissan North America, American Honda Motor Company, among others.

Mr. Osterwise also has substantial experience advising consumers and businesses of their rights with respect to a variety of other defective products. He has helped injured parties pursue their claims arising from defects in pharmaceuticals, solar panels, riding lawn tractors, and HVAC and plumbing products.

In addition to defective product claims, Mr. Osterwise has fought to protect consumers from unfair business practices. For example, he has represented clients deceived by their auto insurance carriers and consumers improperly billed by a national health club chain.

Mr. Osterwise also has significant experience representing the interests of shareholders in securities fraud and corporate governance matters. And, he represented the City of Philadelphia and the City of Chicago in separate actions against certain online travel companies for their failure to pay hotel taxes.

**Kerri Petty – Senior Counsel**

Kerri Petty is Senior Counsel for the firm and concentrates her practice on complex litigation.

**Alexandra Koropey Piazza – Senior Counsel**

Alexandra Koropey Piazza, Senior Counsel, is a member of the firm's Employment Law, Consumer Protection and Lending Practices & Borrowers' Rights practice groups. In the Employment Law practice group, Ms. Piazza primarily focuses on wage and hour class and collective actions arising under state and federal law. Ms. Piazza's work in the Consumer Protection and Lending Practices & Borrowers' Rights practice groups involves consumer class actions concerning financial practices.

Ms. Piazza is a graduate of the University of Pennsylvania and Villanova University School of Law. During law school, Ms. Piazza served as a managing editor of the Villanova Sports and

Entertainment Law Journal and as president of the Labor and Employment Law Society. Ms. Piazza also interned at the United States Attorney's Office and served as a summer law clerk for the Honorable Eduardo C. Robreno of the United States District Court for the Eastern District of Pennsylvania.

**Jacob M. Polakoff – Senior Counsel**

Since joining the firm in 2006, Mr. Polakoff has concentrated his practice on the prosecution of class actions and other complex litigation, including the representation of plaintiffs in consumer protection, securities, and commercial cases.

Mr. Polakoff currently represents homeowners throughout the country in various product liability actions concerning defective construction products, including plumbing and roofing. He served on the teams of co-lead counsel in two nationwide class action plumbing lawsuits: (i) against NIBCO, Inc., claiming that NIBCO's cross-linked polyethylene (PEX) plumbing tubes and component parts were defective and prematurely failed (\$43.5 million settlement), and (ii) in *George v. Uponor, Inc., et al.*, a class action about Uponor's high zinc yellow brass PEX plumbing fittings (\$21 million settlement).

He represented the shareholders of the Philadelphia Stock Exchange in *Ginsburg v. Philadelphia Stock Exchange, Inc., et al.*, in the Delaware Court of Chancery, which settled for in excess of \$99 million in addition to significant corporate governance provisions. He also is on the team of co-lead counsel representing the shareholders of Patriot National, Inc., and helped secure a \$6.5 million settlement with the bankrupt company's directors and officers.

Mr. Polakoff's experience also includes representing entrepreneurs and small businesses in actions against Fortune 500 companies.

Mr. Polakoff was selected as a Pennsylvania Super Lawyer in 2021, an honor conferred upon only the top 5% of attorneys in Pennsylvania. He was previously selected as a Pennsylvania Super Lawyer – Rising Star in 2010 and 2013-2019.

Mr. Polakoff is a 2006 graduate of the joint J.D./M.B.A. program at the University of Miami, where he was the recipient of the Dean's Certificate of Achievement in Legal Research & Writing, was awarded a Graduate Assistantship and was honored with the Award for Academic Excellence in Graduate Studies.

He holds a 2002 B.S.B.A. from Boston University's School of Management, where he concentrated in finance.

Mr. Polakoff is the Judge of Election for Philadelphia's 30th Ward, 1st Division. He was also a member of the planning committee and the sponsorship sub-committee for the Justice for All 5K from its inception. The event benefited Community Legal Services of Philadelphia, which provides free legal services, in civil matters, to low-income Philadelphians.

**Geoffrey C. Price – Senior Counsel**

Geoffrey C. Price is Senior Counsel in the firm's antitrust division, specializing in complex litigation related to pharmaceuticals, investment fraud, and general anti-competitive business practices.

**Richard Schwartz – Senior Counsel**

Richard Schwartz is Senior Counsel in the Antitrust practice group. Mr. Schwartz concentrates his practice in the area of complex antitrust litigation with a focus on representation of direct purchasers of prescription drugs.

Prior to joining the firm, Mr. Schwartz was an attorney in the New York and Philadelphia offices of a firm where he represented plaintiffs in a variety of matters before trial and appellate courts with a focus on antitrust and shareholder class actions.

Mr. Schwartz is a member of the teams prosecuting a number of antitrust class actions on behalf of direct purchasers of prescription drugs in which the purchasers allege that generic drugs have been illegally kept off the market. Those cases include *In re Opana ER Antitrust Litigation*, No. 14-cv-10151 (N.D. Ill.); *In re Suboxone*, No. 13-MD-2445 (E.D. Pa.); *In re Solodyn*, No. 14-MD-2503 (D. Mass.) and *In re Celebrex*, No. 14-cv-00361 (E.D. Va.).

Mr. Schwartz is admitted to practice in New York, Pennsylvania, and Illinois.

**Julie Selesnick – Senior Counsel**

Julie S. Selesnick is Senior Counsel at Berger Montague and a member of the firm's Employee Benefits & ERISA practice group, where she represents the interests of employees, retirees, plan sponsors, plan participants and beneficiaries in employee benefit and ERISA cases in the district court and on appeal. Ms. Selesnick's practice is focused on health care, where she brings more than a decade of insurance coverage experience to good use focusing on the behaviors of insurance carrier TPAs that exercise fiduciary duties under ERISA-covered health plans and counseling employers and other plan sponsors on provisions in their administrative service agreements that might cause them to unwittingly violate ERISA or other employee benefit laws. Ms. Selesnick is also focused on other legal violations related to patient health care under various federal statutes and state consumer statutes to help everyday American's bring down the out-of-control health care costs they face.

Prior to joining Berger Montague, Ms. Selesnick was of counsel at another prominent plaintiffs' class action firm, where she practiced primarily in the ERISA group representing plaintiffs in class cases related to 401K excessive fee disputes, actuarial equivalence pension issues, church plan litigation, and cases against third-party administrators for breach of fiduciary duty in connection with their administration of ERISA-covered group health plans. Ms. Selesnick also worked in that firm's Consumer Protection group litigating consumer class action lawsuits and policyholder insurance coverage actions on behalf of individual and class plaintiffs.

Prior to that, Ms. Selesnick was a partner at a Washington D.C. law firm in both the insurance coverage and employment law groups, where she represented carriers in insurance coverage litigation and subrogation litigation in state and federal courts throughout the United States, and represented both employers and employees in employment litigation, as well as negotiating severance agreements and reviewing and updating employee handbooks. Ms. Selesnick has first chair trial experience in jury and bench trials and has experience with arbitration and mediation of complex disputes.

Ms. Selesnick is an accomplished writer and has written numerous legal and non-legal articles and blog posts. She has also contributed to ERISA Litigation textbooks and cumulative supplements, and written materials for use in health-care litigation conferences.

Ms. Selesnick graduated with a B.A., cum laude, from the San Diego State University and was elected Phi Beta Kappa and Pi Sigma Alpha, and she received her J.D., from the George Washington University School of Law, where she was a member of the George Washington University Law Review and was inducted into the Order of the Coif.

#### **Lane L. Vines – Senior Counsel**

Lane L. Vines's practice is concentrated in the areas of securities/investor fraud, consumer and *qui tam* litigation. For more than 17 years, Mr. Vines has prosecuted both class action and individual opt-out securities cases for state government entities, public pension funds, and other large investors. Mr. Vines also represents consumers in class actions involving unlawful and deceptive practices, as well as relators in *qui tam*, whistleblower and False Claims Act litigations. Mr. Vines is admitted to practice law in Pennsylvania, New Jersey and numerous federal courts.

Mr. Vines also has experience in the defense of securities and commercial cases. For example, he was one of the firm's principal attorneys defending a public company which obtained a pre-trial dismissal in full of a proposed securities fraud class action against a gold mining company based in South Africa. See *In re DRDGold Ltd. Securities Litigation*, 05-cv-5542 (VM), 2007 U.S. Dist. LEXIS 7180 (S.D.N.Y. Jan. 31, 2007).

During law school, Mr. Vines was a member of the Villanova Law Review and served as a Managing Editor of *Outside Works*. In that role, he selected outside academic articles for publication and oversaw the editorial process through publication.

Prior to law school, Mr. Vines worked as an auditor for a Big 4 public accounting firm and a property controller for a commercial real estate development firm, and served as the Legislative Assistant to the Minority Leader of the Philadelphia City Council.

Mr. Vines has achieved the highest peer rating, "AV Preeminent" in Martindale-Hubbell for legal abilities and ethical standards. Mr. Vines is admitted to practice law in Pennsylvania, New Jersey and several federal courts.

### **Dena Young – Senior Counsel**

Dena Young is Senior Counsel in the firm's Consumer Protection practice group. She concentrates her practice in the area of complex consumer litigation, prosecuting actions against pharmaceutical and product manufacturers for violations of state and federal law.

Before joining the firm, Dena worked for prominent law firms in the Philadelphia region where she worked on personal injury and mass tort cases involving dangerous and defective medical devices, pharmaceutical, and consumer products including Talcum Powder, Transvaginal Mesh, Roundup, Risperdal, Viagra, Zofran, and Xarelto. She also assisted in the prosecution of cases on behalf of the U.S. Government and other government entities for violations of federal and state false claims acts and anti-kickback statutes.

Recently, the Honorable Brian R. Martinotti appointed Dena to serve on the plaintiffs' steering committee (PSC) of MDL 2921 in the *Allergan BIOCELL Textured Breast Implant Products Liability Litigation*, situated in the United States District Court for the District of New Jersey. In this case, Dena represents plaintiffs diagnosed with breast implant associated anaplastic large cell lymphoma (BIA-ALCL), a deadly form of cancer caused by Allergan's textured breast implants.

Early in her legal career, Dena represented clients diagnosed with devastating asbestos-related diseases, including mesothelioma and lung cancer. Cases she handled resulted in millions of dollars in settlements for her clients.

During law school, Dena represented defendants in preliminary hearings and misdemeanor trials while working for the Defender Association of Philadelphia. She also clerked for the Animal Protection Litigation section of the United States Humane Society. In 2008-2009, Young worked for the Honorable Renee Cardwell Hughes of Philadelphia's Court of Common Pleas.

In 2010, she received her Juris Doctor degree, with honors, from Drexel University's Thomas R. Kline School of Law where she founded the School's Student Animal Legal Defense Fund chapter.

Dena is admitted to practice in state courts in Pennsylvania and New Jersey, the U.S. District Court for the Eastern District of Pennsylvania, and the U.S. District Court for the District of New Jersey.

### **Associates**

#### **Hope Brinn – Associate**

Hope Brinn is an Associate in the firm's Antitrust group. Prior to joining the firm, Ms. Brinn clerked for the Honorable Janet Bond Arterton in the District of Connecticut. Ms. Brinn graduated from the University of Michigan Law School, where she was a senior editor for the Michigan Law Review, and the executive notes editor for the Michigan Journal of Race & the Law.

Prior to law school, Ms. Brinn worked at The Philadelphia School and Breakthrough of Greater Philadelphia.

**William H. Ellerbe – Associate**

William H. Ellerbe is an Associate in the Philadelphia office and practices in the firm's Whistleblower, *Qui Tam* & False Claims Act group, which has collectively recovered more than \$3 billion for federal and state governments, as well as over \$500 million for the firm's whistleblower clients. Mr. Ellerbe represents whistleblowers in litigation across the country and also actively assists in investigating and evaluating potential whistleblower claims before a lawsuit is filed.

Mr. Ellerbe received an A.B. in English from Princeton University. He graduated *magna cum laude* from the University of Michigan Law School and also received a certificate in Science, Technology, and Public Policy from the Ford School of Public Policy. During law school, Mr. Ellerbe was an Associate Editor of the *Michigan Telecommunications and Technology Law Review* and an active member of both the Environmental Law Society and the Native American Law Students Association.

Prior to joining the firm, Mr. Ellerbe clerked for the Honorable Anne E. Thompson of the United States District Court for the District of New Jersey. He also worked as a white collar and commercial litigation associate at two large corporate defense firms.

Mr. Ellerbe is admitted to practice in the state courts of Pennsylvania, New Jersey, and New York, as well as the Third and Fourth Circuit Courts of Appeals and the United State District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the District of New Jersey, the Southern District of New York, and the Eastern District of New York.

**William H. Fedullo – Associate**

William H. Fedullo is an Associate in the firm's Philadelphia office, practicing in the Whistleblower, *Qui Tam* & False Claims Act group, which has collectively recovered more than \$3 billion for federal and state governments, as well as over \$500 million for the firm's whistleblower clients. Mr. Fedullo represents whistleblowers in active litigation throughout the country. He also assists in the pre-litigation investigation and evaluation of potential whistleblower claims.

Prior to joining the firm, Mr. Fedullo was a commercial litigation associate at a large full-service Philadelphia law firm. His practice there focused on protecting small businesses that had been the victims of usurious "merchant cash advance" lending practices. He also took an active role in franchisee rights litigation in the hospitality industry. He served as lead associate in numerous state and federal litigations as well as AAA and JAMS arbitrations. His accomplishments included primarily authoring briefs that obtained critical injunctive relief in bet-the-business arbitration; primarily authoring dispositive and appellate briefs in parallel state and federal actions against one of the largest debt collection companies in the world, resulting in a federal court denying a motion to dismiss a consumer's Fair Debt Collections Practices Act claims; and authoring a complaint brought by over ninety hotel franchisees against a prominent international hotel

franchisor. Additionally, Mr. Fedullo played key roles in several other cases that resulted in favorable verdicts or settlements for his clients.

Mr. Fedullo received a Bachelor of Arts from Swarthmore College with High Honors, with a major in Philosophy and minor in English Literature. He graduated from the University of Pennsylvania Law School *cum laude*. In law school, he was an executive editor of the Penn Law Journal of Constitutional Law, where he published a Comment, "Classless and Uncivil." He also worked as a research assistant for the reporter for the forthcoming Restatement (Third) of Conflicts of Law, and as a teaching assistant at the Wharton School of Business for the undergraduate class "Constitutional Law and Free Enterprise." He was the recipient of the 2019 Penn Law Fred G. Leebron Memorial Prize for Best Paper in Constitutional Law for his paper "Original Public Meaning Originalism and Women Presidents." Finally, he received honors from both the Philadelphia Bar Association and Penn Law for his involvement in pro bono activities, which included serving as a board member for the Custody and Support Assistance Clinic, a student-run organization that provides legal assistance to low-income Philadelphians facing family law issues; working on low-income housing and utility issues at Community Legal Services; and working as a certified legal intern in the Civil Practice Clinic, litigating several cases for low-income Philadelphians before the Philadelphia Court of Common Pleas.

Mr. Fedullo is admitted to practice law in the state courts of the Commonwealth of Pennsylvania as well as the United States District Court for the Eastern District of Pennsylvania.

#### **Najah Jacobs – Associate**

Ms. Jacobs is an Associate in the firm's Consumer Protection & ERISA Departments.

Prior to joining Berger Montague, Najah Jacobs was an associate at Stevens & Lee, P.C., where she focused her practice on commercial litigation matters with an emphasis on litigation involving financial products and representation of broker-dealers in FINRA arbitration matters related to the purchase and sale of securities and insurance products. Prior to that, Najah was an associate at a large New Jersey law firm, where she defended large oil companies in complex statewide environmental litigation. During her time there, Najah played a major role in formulating a defense strategy and obtaining a favorable disposition for the City of Philadelphia in a constitutional rights case brought by the Fraternal Order of Police over an alleged "do not call list."

Najah graduated from Drexel University Thomas R. Kline School of Law, where she was an active leader. Najah served as the President of the Black Law Students Association, a Law School Ambassador, a Diversity and Inclusion Fellow, and as a Marshall Brennan Constitutional Literacy Fellow, where she taught high school students about their constitutional rights. Najah was also the Executive Symposium Editor of the Drexel Law Review and a competitor on Drexel's nationally recognized Trial Team, leading the group to back-to-back victories in national mock trial competitions against some of the nation's top law schools. During law school, Najah served as a judicial extern for the Honorable Robert B. Kugler of the United States District Court for the District of New Jersey and also served as an intern for the Philadelphia District Attorney's Office. At

graduation, Najah received the Faculty Award for Contributions to the Intellectual Life of the Law School and the Thomas R. Kline School of Law Trial Team Award for Outstanding Advocacy.

Najah is currently an adjunct faculty member at the Kline School of Law, serving as a coach and mentor for teams competing in national trial advocacy competitions. In her spare time, Najah enjoys playing basketball, mentoring high school and college students, and hosting events for her non-profit organization, which focuses on giving back to underserved communities.

**Ariana B. Kiener – Associate**

Ariana B. Kiener is an Associate in the firm's Minneapolis office and practices in the firm's Consumer Protection group.

Before joining the firm, Ms. Kiener worked for several years in education, first as a classroom teacher (through a Fulbright Scholarship in Northeastern Thailand) and eventually as the communications director for an education advocacy nonprofit organization. While in law school, she clerked at the Firm and served as a Certified Student Attorney and Student Director with the Mitchell Hamline Employment Discrimination Mediation Representation Clinic.

**Julia McGrath – Associate**

Julia McGrath is an Associate in the firm's Antitrust practice group. She represents consumers, businesses, and public entities in complex class action litigation, prosecuting anticompetitive conduct such as price-fixing, bid-rigging, and illegal monopolization.

Ms. McGrath has challenged anticompetitive conduct in a variety of industries, including the single-serve coffee industry in *In Re Keurig Green Mountain Single-Serve Antitrust Litigation*; the pharmaceutical industry in *In Re: Ranbaxy Generic Drug Application Antitrust Litigation* (D. Mass) and *In Re: Generic Pharmaceuticals Pricing Antitrust Litigation* (E.D. Pa.); and the financial industry in *In re London Silver Fixing Ltd. Antitrust Litigation* (S.D.N.Y.) and *In re: GSE Bonds Antitrust Litigation* (S.D.N.Y.).

Prior to law school, Ms. McGrath had a successful career in government and politics. She worked on political campaigns at the local, state, and federal level. She's advised top-tier congressional, gubernatorial, and U.S. Senate candidates in Pennsylvania and New Jersey and served as the Finance Director for U.S. Senator Bob Casey. In 2013, she was appointed by President Obama to serve as Special Assistant to the Mid-Atlantic Regional Administrator of the U.S. General Services Administration.

Ms. McGrath earned her J.D., *cum laude*, from Temple University Beasley School of Law and her B.A. in History from Boston University.

**Amey J. Park – Associate**

Amey J. Park is an Associate in the firm's Philadelphia office and practices in the firm's Consumer Protection and Commercial Litigation practice groups.

Before joining the firm, Ms. Park was an associate in the litigation department of a large corporate defense firm. She represented corporate and individual clients in complex commercial litigation, product liability, and personal injury matters in a wide variety of industries, including financial services, insurance, trust administration, and real estate. Ms. Park also represented clients *pro bono*, serving as first-chair counsel in a federal jury trial for violations of an inmate's constitutional rights by law enforcement officers and assisting a young refugee seeking asylum in federal immigration court.

Ms. Park is admitted to practice in state courts in Pennsylvania and New Jersey; the United States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, and the District of New Jersey; and the United States Court of Appeals for the Third Circuit.

**Sophia Rios – Associate**

Sophia Rios is an associate in the firm's San Diego office and practices in the Consumer Protection and Antitrust practice groups.

Before joining the firm, Sophia was an associate in the litigation department of a large international law firm. She represented corporate and individual clients in consumer protection, complex commercial litigation, securities, and Americans with Disabilities Act (ADA) matters. In her *pro bono* practice, Sophia assisted refugees seeking asylum in the United States.

Sophia is committed to furthering diversity and inclusion in law firms. She serves on the firm's Diversity, Equity & Inclusion Task Force. Sophia has also participated in the Leadership Council on Legal Diversity's Pathfinder Program.

While at Stanford Law School, Sophia served as an extern Legal Adviser in the Office of Commissioner Julie Brill at the Federal Trade Commission in Washington, DC. Sophia co-founded the Stanford Critical Law Society, which serves as a student forum for the discussion of the relationship between law and race. Sophia was a Lead Article Editor for the Stanford Environmental Law Journal.

Before beginning law school, Sophia attended UC Berkeley and served as an intern on the White House Council of Environmental Quality. She is a first-generation college student and a San Diego native.

**Reginald L. Streater – Associate**

Reginald L. Streater, an Associate, is a member of the firm's Employment & Unpaid Wages, Consumer Protection, and Predatory Lending and Borrowers' Rights practice groups. In the Employment & Unpaid Wages practice group, Mr. Streater focuses on discrimination and wage and hour class and collective actions arising under state and federal law. Mr. Streater's work in the Consumer Protection and Predatory Lending and Borrowers' Rights practice groups involves consumer class actions concerning financial practices. Mr. Streater is a member of the firm's Diversity, Equity & Inclusion Task Force.

Before joining the firm, Mr. Streater was an associate at a large regional law firm where his practice focused on commercial and complex litigation. His clients ranged from individuals and small businesses to large corporations and public entities. Mr. Streater handled a variety of litigation matters, including contract disputes, usury claims, federal claims, federal civil rights claims, insurance matters, employment claims, fraud claims, and tort claims in Pennsylvania, New Jersey, and New York, where he has federal and state trial experience. His prior work experience also includes positions with the Pennsylvania Innocence Project and the District Office of State Representative Brian Sims of Philadelphia.

Mr. Streater graduated from Temple University's College of Liberal Arts where he studied Political Science and African American Studies. There he was inducted into Pi Sigma Alpha – the National Political Science Honor Society. Subsequently, Mr. Streater graduated from Temple University Beasley School of Law, where he was an active leader within the Temple Law community. Mr. Streater served as the first Black President of the Student Bar Association, President of the Black Law Students Association, and as an Advisor to the Affinity Group Coalition. Mr. Streater was Staff Editor for Volume 31 of the Temple International & Comparative Law Journal, and he served as a teaching assistant for the Integrated Transactional Advocacy Program and the Integrated Trial Advocacy Program. He was a Rubin Public Interest Law Honor Society Fellow, as well as a member of the National Lawyers Guild Temple Law Chapter and Phi Alpha Delta Law Fraternity. During law school, Reggie received the Henry J. Richardson III Award, the Captain Robert Miller Knox Award, and the H. Monica Rasch Memorial Award. He was also the recipient of the Barristers Association of Philadelphia Merit Scholarship, the McCool Scholarship, and the Conwell Scholarship.

#### **Mark Suter – Associate**

Mark Suter is an Associate in the firm's Philadelphia office. He represents businesses, workers, consumers, and public entities in complex civil litigation, including class and collective actions, with a focus on antitrust, labor, and consumer protection matters.

Mr. Suter has successfully challenged price-fixing, bid-rigging, and other anticompetitive conduct in a wide array of industries, including as co-trial counsel in *In re Capacitors Antitrust Litigation* (N.D. Cal.) (\$451.5 million in settlements to date); co-lead counsel in *In re Domestic Drywall Antitrust Litigation* (E.D. Pa.) (\$190.7 million total settlements); co-lead counsel in *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation* (S.D.N.Y.) (\$102 million in settlements to date); counsel for the City and County of Denver in *In re Liquid Aluminum Sulfate Antitrust Litigation* (D.N.J.) (\$90.5 million total settlements); and co-lead counsel in *In re Dental Supplies Antitrust Litigation* (E.D.N.Y.) (\$80 million total settlements). Among other matters, he currently serves as co-lead counsel in *Le, et al v. Zuffa, LLC d/b/a Ultimate Fighting Championship* (D. Nev.), representing a class of professional mixed martial arts fighters, and *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.* (W.D. Tenn.) on behalf of a proposed class of All Star Cheer gyms and parents. Mr. Suter also represents whistleblowers in *qui tam* or False Claims Act litigation against companies that have committed fraud against the government.

Mr. Suter serves as Co-Chair for the Young Lawyers Division of the Committee to Support Antitrust Laws (COSAL) and on the Executive Committee for Community Legal Services Justice Rising Advocates. He maintains an active pro bono practice partnering with local public interest organizations and volunteering at juvenile expungement clinics.

Mr. Suter graduated from Rutgers Law School with *magna cum laude* and Order of the Coif honors. While in law school, he served as Senior Editor of the *Rutgers Law Review* and represented children and families as part of the Rutgers Child Advocacy Clinic. Mr. Suter received his B.A. in Philosophy and Political Science from McGill University.

**Y. Michael Twersky – Associate**

Y. Michael Twersky concentrates his practice primarily on representing plaintiffs in complex litigation, including on insurance, antitrust, and environmental matters.

In the past, Mr. Twersky has worked on a wide variety of insurance matters including an insurance case in which a Federal District Court found on Summary Judgement that a large insurance company had breached its policy when it denied benefits under an accidental death insurance plan. Mr. Twersky has also worked on a number of antitrust class actions alleging that pharmaceutical manufacturers wrongfully kept less expensive generic drugs off the market, in violation of the antitrust laws, including: *In re Skelaxin (Metaxalone) Antitrust Litigation*, 1:12-md-02343 (E.D. Tenn.) (\$73 million settlement in 2014), and *In re Solodyn Antitrust Litig.*, 14 MD 2503 (D. Mass.) (combined settlements in excess of \$76 million in 2018). Mr. Twersky has also represented inmates in connection with allegations that various inmate calling services charged unreasonable rates and fees in violation of the Federal Communication Act.

Currently, Mr. Twersky is litigating a number of complex class actions related to insurance products, including proposed class actions in multiple forums against a workers' compensation insurance company alleging that the company deceptively sold illegal workers' compensation programs that were not properly filed with state regulators. *E.g.*, *Shasta Linen Supply, Inc. v Applied Underwriters et al.*, No. 2:16-cv-0158 (N.D. Cal.). Mr. Twersky is also involved in a proposed class action in Federal Court brought on behalf of Alaska-enrolled Medicaid Healthcare Providers against the developers of the Alaska Medicaid Management Information System Company alleging that providers were harmed as a result of the negligent and faulty design and implementation of the MMIS system. *See South Peninsula Hospital et al v. Xerox State Healthcare, LLC*, 3:15-cv-00177 (D. Alaska). Mr. Twersky is also involved in environmental litigation on behalf of various states to recover the costs of remediation for contamination to groundwater resources.

Mr. Twersky graduated from Temple University Beasley School of Law in 2011, where he was a member of the Rubin Public Interest Law Honors Society and a Class Senator. In addition, Mr. Twersky advised various clients in business matters as part of Temple University's Business Law Clinic.

**Michaela Wallin – Associate**

Michaela Wallin is an Associate in the Antitrust and Employment Law practice groups. Ms. Wallin's work in the Antitrust group involves complex class actions, including those alleging that pharmaceutical manufacturers have wrongfully kept less expensive drugs off the market, in violation of the antitrust laws. In the Employment Law Group, Ms. Wallin focuses on wage and hour class and collective actions arising under federal and state law.

Prior to joining the firm, Ms. Wallin served as a law clerk for the Honorable James L. Cott of the United States District Court of the Southern District of New York. She also completed an Equal Justice Works Fellowship at the ACLU Women's Rights Project, where she worked to challenge local laws that target domestic violence survivors for eviction and impede tenants' ability to call the police.

Ms. Wallin is a graduate of Columbia Law School, where she was a Harlan Fiske Stone Scholar. Ms. Wallin graduated *magna cum laude* from Bowdoin College, where she was Phi Beta Kappa and a Sarah and James Bowdoin Scholar.

## **Counsel**

### **Alexandra Antoniou – Counsel**

Alexandra Antoniou is an attorney in the firm's Philadelphia office, and works in the firm's Auto Defect practice area.

### **James P.A. Cavanaugh – Counsel**

James P.A. Cavanaugh has experience working in antitrust matters, with a focus on the suppression of generic competition by major pharmaceutical manufacturers. Jim is an experienced litigator having previously established and managed for some years his own general practice law firm, prior to working in antitrust matters in more recent years. That law practice emphasized litigation, including workers' compensation, employment law, civil rights, and personal injury claims.

In that practice, Jim advocated for the establishment of case law precedent in *Dr. Joe John Doe v. TRIS Mental Health Services*, 298 N.J. Super. 677 (1996) permitting the disabled, for the first time, to proceed anonymously in the New Jersey Superior Courts.

Jim's experience included investigating the facts of a workplace explosion involving a faulty truck rim, coordination of physical evidence, close consultation with a Drexel University engineering expert, and ultimate settlement for injured plaintiff.

Jim's community contributions include pro bono representation of an amicus curiae (friend of the court) the National Association of Social Workers opposing discriminatory policies in the widely followed *James Dale v. Boy Scouts of America*, 160 N.J. 562 (1999) case [see also 530 U.S. 640 (2000)].

Jim was appointed by the Chief Justice of the New Jersey Supreme Court to sit on the NJ Supreme Court Task Force on Lesbian & Gay Issues, whose purpose was to examine discrimination in the courts and the legal profession and to adopt recommendations.

**Carl Copenhaver – Counsel**

Carl Copenhaver is Counsel in the Firm's Antitrust Department. Carl has almost 18 years of experience in complex securities and antitrust class action litigation as a discovery specialist. Over that span, he has worked independently, and later through his own discovery firm, with a wide variety of firms on a range of cases assisting in discovery and evidentiary-related matters.

Mr. Copenhaver received his Bachelor of Arts with Scholastic Distinction in History and a concentration in African American Studies from Carleton College, graduating magna cum laude. He was a member of the Mortar Board National Honor Society and was a nationally ranked member of the tennis team while winning multiple All-Conference Awards.

Mr. Copenhaver attended The George Washington University Law School where he was a Murray Snyder Public Interest Fellow and worked with local and national civil rights organizations on Fair Housing issues.

**Stephen Farese – Counsel**

Stephen Farese is Counsel in the Firm's Antitrust Department.

Stephen has over eighteen years of solid e-discovery experience and has developed significant technical skills on various e-discovery software platforms. Since 2004, he has helped large and small firms with their e-discovery needs including document productions, witness preparation, and quality control. He has interfaced with and assisted partners and associates in finding optimal ways to cull large document collections and has assisted them in the development of protocols setting the rules upon which the remaining documents are to be coded by reviewers.

Stephen has significant document review experience and is fully capable of handling a review from its initial stage (raw document collection) through to the use of legally supportable search terms to cull the initial population of documents into a subset to be reviewed by reviewers for responsiveness and privilege. He has an in-depth knowledge of attorney-client privilege and work product rules and has been instrumental in 2<sup>nd</sup> level (QC) and privilege reviews including privilege log creation.

Stephen has been hired as an E-discovery Subject Matter Expert on the document review side of the e-discovery equation. He is proficient in dealing with clients in answering their questions and presenting PowerPoint presentations illustrating costs and workflow. His legal background also positions him in a unique position of being able to assist in the writing of substantive review protocols and have the technical expertise to design and implement the necessary review coding panels.

Stephen Received his JD from Widener University School of Law in 1998. He is actively licensed in the Commonwealth of Pennsylvania and the State of New York.

**Daniel E. Listwa – Counsel**

Daniel E. Listwa has worked on a number of antitrust matters, with a focus on the suppression of generic competition by major pharmaceutical manufacturers. Before joining the firm, Mr. Listwa

clerked for the Honorable J. Brian Johnson of the Lehigh County Court of Common Pleas, and was an associate at a medical malpractice defense firm in Blue Bell, PA. While in law school, Mr. Listwa was a staff writer for the Boston College Environmental Affairs Law Review, and interned at the U.S. District Court for the Eastern District of Pennsylvania.

### **Ivy Marsnik – Counsel**

Ivy L. Marsnik is a litigation attorney based out of the Firm's Minneapolis office where she focuses her current practice on representing individuals who have been harmed by violations of the Fair Credit Reporting Act.

Prior to joining Berger Montague, Ms. Marsnik worked on behalf of individual plaintiffs at a premier employment and civil rights law firm and in several legal counsel positions at the Minnesota state legislature. She has also provided legal services to individual clients at Tubman, a nonprofit serving survivors of domestic violence, and at a University of Minnesota Law School clinic where she worked primarily as an advocate for tenants' rights.

### **Stacy Savett – Counsel**

Stacy Savett is a Staff Attorney in the firm's Employment & Unpaid Wages Group. She focuses on wage and hour class and collective actions arising under federal and state laws.

## **Of Counsel**

### **H. Laddie Montague Jr. – Chair *Emeritus* & Of Counsel**

H. Laddie Montague Jr. is Chairman *Emeritus* of the firm, in addition to his continuing work as Of Counsel. Mr. Montague was Chairman of the firm from 2003 to 2016 and served as a member of the firm's Executive Committee for decades, having joined the firm's predecessor David Berger, P.A., at its inception in 1970.

In addition to being one of the courtroom trial counsel for plaintiffs in the mandatory punitive damage class action in the *Exxon Valdez Oil Spill Litigation*, Mr. Montague has served as lead or co-lead counsel in many class actions, including, among others, *High Fructose Corn Syrup Antitrust Litigation* (2006), *In re Infant Formula Antitrust Litigation* (1993) and *Bogosian v. Gulf Oil Corp.* (1984), a nationwide class action against thirteen major oil companies. Mr. Montague was co-lead counsel for the State of Connecticut in its litigation against the tobacco industry. He is currently co-lead counsel in several pending class actions. In addition to the *Exxon Valdez Oil Spill Litigation*, he has tried several complex and protracted cases to the jury, including three class actions: *In re Master Key Antitrust Litigation* (1977), *In re Corrugated Container Antitrust Litigation* (1980) and *In re Brand Name Prescription Drugs Antitrust Litigation*, M.D.L. (1997-1998). For his work as trial counsel in the *Exxon Valdez Oil Spill Litigation*, Mr. Montague shared the Trial Lawyers for Public Justice 1995 Trial Lawyer of the Year Award.

Mr. Montague has been repeatedly singled out by *Chambers USA: America's Leading Lawyers for Business* as one of the top antitrust attorneys in the Commonwealth of Pennsylvania. He is

lauded for his stewardship of the firm's antitrust department, referred to as "the dean of the Bar," stating that his peers in the legal profession hold him in the "highest regard," and explicitly praised for, among other things, his "fair minded[ness]." He also is or has been listed in *Lawdragon*, *An International Who's Who of Competition Lawyers*, and *The Legal 500: United States (Litigation)*. He has repeatedly been selected by *Philadelphia Magazine* as one of the top 100 lawyers in Pennsylvania. Mr. Montague has also been one of the only two inductees in the American Antitrust Institute's inaugural Private Antitrust Enforcement Hall of Fame.

He has been invited and made a presentation at the Organization for Economic Cooperation and Development (Paris, 2006); the European Commission and International Bar Association Seminar (Brussels, 2007); the Canadian Bar Association, Competition Section (Ottawa, 2008); and the 2010 Competition Law & Policy Forum (Ontario).

Mr. Montague is a graduate of the University of Pennsylvania (B.A. 1960) and the Dickinson School of Law (L.L.B. 1963), where he was a member of the Board of Editors of the Dickinson Law Review. He is the former Chairman of the Board of Trustees of the Dickinson School of Law of Penn State University and current Chairman of the Dickinson Law Association.

**Harold Berger –Of Counsel, Executive Shareholder *Emeritus***

Judge Berger is an Executive Shareholder *Emeritus* & Of Counsel. He participated in many complex litigation matters, including the *Exxon Valdez Oil Spill Litigation*, No. A89-095, in which he served on the case management committee and as Co-Chair of the national discovery team. He also participated in the *Three Mile Island Litigation*, No. 79-0432 (M.D. Pa.), where he acted as liaison counsel, and in the nationwide school asbestos property damage class action, *In re Asbestos School Litigation*, Master File No. 83-0268 (E.D. Pa.), where the firm served as co-lead counsel.

A former Judge of the Court of Common Pleas of Philadelphia, he has long given his service to the legal community and the judiciary. He is also active in law and engineering alumni affairs at the University of Pennsylvania and in other philanthropic endeavors. He serves as a member of Penn's Board of Overseers and as Chair of the Friends of Penn's Biddle Law Library, having graduated from both the engineering and law schools at Penn. Judge Berger also serves on the Executive Board of Penn Law's Center for Ethics and Rule of Law. In 2017, he was the recipient of Penn Law's Inaugural Lifetime Commitment Award, which recognizes graduates "who through a lifetime of service and commitment to Penn Law have truly set a new standard of excellence."

He is past Chair of the Federal Bar Association's National Committee on the Federal and State Judiciary and past President of the Federal Bar Association's Eastern District Chapter. He is the author of numerous law review articles, has lectured extensively before bar associations and at universities, and has served as Chair of the International Conferences on Global Interdependence held at Princeton University. Judge Berger has served as Chair of the Aerospace Law Committees of the American, Federal and Inter-American Bar Associations and, in recognition of the importance and impact of his scholarly work, was elected to the International Academy of Astronautics in Paris.

As his biographies in *Who's Who in America*, *Who's Who in American Law* and *Who's Who in the World* outline, he is the recipient of numerous awards, including the Special Service Award of the Pennsylvania Conference of State Trial Judges, a Special American Bar Association Presidential Program Award and Medal, and a Special Federal Bar Association Award for distinguished service to the Federal and State Judiciary. He has been given the highest rating (AV Preeminent) for legal ability as well as the highest rating for ethical standards by Martindale-Hubbell. Judge Berger was also presented with a Lifetime Achievement Award in 2014 by *The Legal Intelligencer* in recognition of figures who have helped shape the law in Pennsylvania and who had a distinct impact on the legal profession in the Commonwealth.

He is a permanent member of the Judicial Conference of the United States Court of Appeals for the Third Circuit and has served as Chair of both the Judicial Liaison and International Law Committees of the Philadelphia Bar Association. He has also served as National Chair of the FBA's Alternate Dispute Resolution Committee.

Recipient of the Alumnus of the Year Award of the Thomas McKean Law Club of the University of Pennsylvania Law School, he was further honored by the University's School of Engineering and Applied Science by the dedication of the Harold Berger Biennial Distinguished Lecture and Award given to a technical innovator who has made a lasting contribution to the quality of our lives. He was also honored by the University by the dedication of an auditorium and lobby bearing his name and by the dedication of a student award in his name for engineering excellence.

Long active in diverse, philanthropic, charitable, community and inter-faith endeavors Judge Berger serves as a Lifetime Honorary Trustee of the Federation of Jewish Charities of Greater Philadelphia, as a Director of the National Museum of Jewish History, as a National Director of the Hebrew Immigrant Aid Society (HIAS) in its endeavors to assist refugees and indigent souls of all faiths, as A Charter Fellow of the Foundation of the Federal Bar Association and as a member of the Hamilton Circle of the Philadelphia Bar Foundation.

Among other honors and awards, as listed above, Judge Berger was honored by the University of Pennsylvania Law School at its annual Benefactors' Dinner and is the recipient of the "Children of the American Dream" award of HIAS for his leadership in the civic, legal, academic and Jewish communities.

#### **Gary E. Cantor – Of Counsel**

Gary E. Cantor is Of Counsel in the Philadelphia office. He concentrates his practice on securities and commercial litigation and derivatives valuations.

Mr. Cantor served as co-lead counsel in *Steiner v. Phillips, et al. (Southmark Securities)*, Consolidated C.A. No. 3-89-1387-X (N.D. Tex.), (class settlement of \$82.5 million), and *In re Kenbee Limited Partnerships Litigation*, Civil Action No. 91-2174 (GEB), (class settlement involving 119 separate limited partnerships resulting in cash settlement, oversight of partnership governance and debt restructuring (with as much as \$100 million in wrap mortgage reductions)). Mr. Cantor also represented plaintiffs in numerous commodity cases.

In recent years, Mr. Cantor played a leadership role in *In re Oppenheimer Rochester Funds Group Securities Litigation* (\$89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc.), No. 09-md-02063-JLK (D. Col.); *In re KLA-Tencor Corp. Securities Litigation*, Master File No. C-06-04065-CRB (N.D. Cal.) (\$65 million class settlement); *In re Sepracor Inc. Securities Litigation*, Civil Action no. 02-12235-MEL (D. Mass.) (\$52.5 million settlement.); *In re Sotheby's Holding, Inc. Securities Litigation*, No. 00 Civ. 1041 (DLC) (S.D.N.Y.) (\$70 million class settlement). He was also actively involved in the *Merrill Lynch Securities Litigation* (class settlement of \$475 million) and *Waste Management Securities Litigation* (class settlement of \$220 million).

For over 20 years, Mr. Cantor also has concentrated on securities valuations and the preparation of event or damage studies or the supervision of outside damage experts for many of the firm's cases involving stocks, bonds, derivatives, and commodities. Mr. Cantor's work in this regard has focused on statistical analysis of securities trading patterns and pricing for determining materiality, loss causation and damages as well as aggregate trading models to determine class-wide damages.

Mr. Cantor was a member of the Moot Court Board at University of Pennsylvania Law School where he authored a comment on computer-generated evidence in the University of Pennsylvania Law Review. He graduated from Rutgers College with the highest distinction in economics and was a member of Phi Beta Kappa.

### **Peter R. Kahana –Of Counsel**

Peter R. Kahana is Of Counsel in the Insurance and Antitrust practice groups. He concentrates his practice in complex civil and class action litigation involving relief for insurance policyholders and consumers of other types of products or services who have been victimized by fraudulent conduct and unfair business practices.

Significant class cases vindicating the rights of insurance policyholders or consumers in which Mr. Kahana was appointed as co-class counsel have included: settlement in 2012 for \$90 million of breach of fiduciary duty and negligence claims (certified for trial in 2009) on behalf of a class of former policyholder-members of Anthem Insurance Companies, Inc. ("Anthem") alleging the class was paid insufficient cash compensation in connection with Anthem's conversion from a mutual insurance company to a publicly-owned stock insurance company (a process known as "demutualization") (*Ormond v. Anthem, Inc., et al.*, USDC, S.D. Ind., Case No. 1:05-cv-01908 (S.D. Ind. 2012)); settlement in 2010 for \$72.5 million of a nationwide civil RICO and fraud class action (certified for trial in 2009) against The Hartford and its affiliates on behalf of a class of personal injury and workers compensation claimants for the Hartford's alleged deceptive business practices in settling these injury claims for Hartford insureds with the use of structured settlements (*Spencer, et al. v. The Hartford Financial Services Group, Inc., et al.*, 256 F.R.D. 284 (D. Conn. 2009)); settlement in 2009 for \$75 million of breach of contract, Unfair Trade Practices Act and insurance bad faith tort claims on behalf of a class of West Virginia automobile policyholders

(certified for trial in 2007) alleging that Nationwide Mutual Insurance Company failed to properly offer and provide them with state-required optional levels of uninsured and underinsured motorist coverage (*Nationwide Mutual Insurance Company v. O'Dell, et al.*, Circuit Court of Roane County, W. Va., Civ. Action No. 00-C-37); and, settlement in 2004 for \$20 million on behalf of a class of cancer victims alleging that their insurer refused to pay for health insurance benefits for chemotherapy and radiation treatment (*Bergonzi v. CSO, USDC, D.S.D.*, Case No. C2-4096). For his efforts in regard to the Bergonzi matter, Mr. Kahana was named as the recipient of the American Association for Justice's Steven J. Sharp Public Service Award, which is presented annually to those attorneys whose cases tell the story of American civil justice and help educate state and national policymakers and the public about the importance of consumers' rights.

Mr. Kahana has also played a leading role in major antitrust and environmental litigation, including cases such as *In re Brand Name Prescription Drugs Antitrust Litigation* (\$723 million settlement), *In re Ashland Oil Spill Litigation* (\$30 million settlement), and *In re Exxon Valdez* (\$287 million compensatory damage award and \$507.5 million punitive damage award). In connection with his work as a member of the trial team that prosecuted *In re The Exxon Valdez*, Mr. Kahana was selected in 1995 to share the Trial Lawyer of the Year Award by the Public Justice Foundation.

#### **Susan Schneider Thomas – Of Counsel**

Susan Schneider Thomas concentrates her practice on *qui tam* litigation.

Ms. Thomas has substantial complex litigation experience. Before joining the firm, she practiced law at two Philadelphia area firms, Schnader, Harrison, Segal & Lewis and Greenfield & Chimicles, where she was actively involved in the litigation of complex securities fraud and derivative actions.

Upon joining the firm, Ms. Thomas concentrated her practice on complex securities and derivative actions. In 1986, she joined in establishing Zlotnick & Thomas where she was a partner with primary responsibility for the litigation of several major class actions including *Geist v. New Jersey Turnpike Authority*, C.A. No. 92-2377 (D.N.J.), a bond redemption case that settled for \$2.25 million and *Burstein v. Applied Extrusion Technologies*, C.A. No. 92-12166-PBS (D. Mass.), which settled for \$3.4 million.

Upon returning to the firm, Ms. Thomas has had major responsibilities in many securities and consumer fraud class actions, including *In re CryoLife Securities Litigation*, C.A. No. 1:02-CV-1868 BBM (N.D.Ga.), which settled in 2005 for \$23.25 million and *In re First Alliance Mortgage Co.*, Civ. No. SACV 00-964 (C.D.Cal.), a deceptive mortgage lending action which settled for over \$80 million in cooperation with the FTC. More recently, Ms. Thomas has concentrated her practice in the area of healthcare *qui tam* litigation. As co-counsel for a team of whistleblowers, she worked extensively with the U.S. Department of Justice and various State Attorney General offices in the prosecution of False Claims Act cases against pharmaceutical manufacturers that recovered more than \$2 billion for Medicare and Medicaid programs and over \$350 million for the

whistleblowers. She has investigated or is litigating False Claims Act cases involving defense contractors, off-label marketing by drug and medical device companies, federal grant fraud, upcoding and other billing issues by healthcare providers, drug pricing issues and fraud in connection with for-profit colleges and student loan programs.

**Tyler E. Wren – Of Counsel**

Mr. Wren is a trial lawyer with over 35 years of experience in both the public and private sectors.

Mr. Wren has represented both plaintiffs and defendants in a broad spectrum of litigation matters, including class actions, environmental, civil rights, commercial disputes, personal injury, insurance coverage, election law, zoning and historical preservation matters and other government affairs. Mr. Wren routinely appears in both state and federal courts, as well as before local administrative agencies.

Following his graduation from law school, Mr. Wren served as staff attorney to the Committee of Seventy, a local civic watchdog group. Mr. Wren then spent a decade in the Philadelphia City Solicitor's Office in various positions in which his litigation and counseling skills were developed: Chief Assistant City Solicitor for Special Litigation and Appeals, Divisional Deputy City Solicitor for the Environment, Counsel to the Philadelphia Board of Ethics and Counsel to the Philadelphia Planning Commission. After leaving government employ and before joining the Firm in 2010, Mr. Wren was in private practice, including nine years with the Sprague and Sprague firm, headed by nationally recognized litigator Richard Sprague.

**Exhibit B**

## E. MICHELLE DRAKE

BERGER MONTAGUE PC  
1229 Tyler Street NE, Suite 205  
Minneapolis, Minnesota 55413  
612.594.5933  
emdrake@bm.net



### Experience

#### Admissions

- ◇ U.S. Supreme Court, 2017
- ◇ State Bar of Georgia, 2001
- ◇ Georgia Supreme Court, 2006
- ◇ Minnesota Supreme Court, 2007
- ◇ U.S. Court of Appeals for the 8th Cir., 2010
- ◇ U.S. Court of Appeals for the 1st Cir., 2011
- ◇ U.S. Court of Appeals for the 7th Cir., 2014
- ◇ U.S. Court of Appeals for the 9th Cir., 2015
- ◇ U.S. Court of Appeals for the 10th Cir., 2018
- ◇ U.S. Court of Appeals for the 3d Cir., 2019
- ◇ U.S. District Court for the Northern District of Georgia, 2007
- ◇ U.S. District Court for the District of Minnesota, 2007
- ◇ U.S. District Court for the Eastern District of Wisconsin, 2011
- ◇ U.S. District Court for the Western District of Texas, 2011
- ◇ U.S. District Court for the Western District of Wisconsin, 2015
- ◇ U.S. District Court for the Eastern District of Michigan, 2015
- ◇ U.S. District Court for the Central District of Illinois, 2016
- ◇ U.S. District Court for the Southern District of Texas, 2017
- ◇ U.S. District Court for the District of Colorado, 2017
- ◇ U.S. District Court for the Western District of New York, 2017
- ◇ U.S. District Court for the Western District of Michigan, 2018
- ◇ U.S. District Court for the Northern District of Illinois, 2020

#### **Executive Shareholder Berger Montague**

Minneapolis, Minnesota *January 2016-present*  
Manage the firm's Minneapolis office. Chair of the FCRA Department. Co-chair of the Consumer Protection & Mass Tort Department. Serve as lead class counsel on dozens of consumer class actions filed throughout the United States, including cases involving improper credit and background reporting, defective consumer products and unlawful financial services practices.

#### **Partner Nichols Kaster, PLLP**

Minneapolis, Minnesota *May 2007-December 2015*  
Represented thousands of employees and consumers in collective and class actions. Led the firm's Consumer Class Action Team which originated individual and class action cases.

#### **Solo Practitioner E. Michelle Drake, LLC**

Atlanta, Georgia *March 2006-May 2007*  
Practiced both civil and criminal law. Served as "of counsel" attorney to Richard S. Alembik, P.C., a civil firm focused on real estate litigation. Served as co-counsel in pending death penalty case which was accepted by the Georgia Supreme Court for interim appellate review.

#### **Attorney Georgia Capital Defender Office**

Atlanta, Georgia *October 2004-March 2006*  
Provided trial level representation for indigent clients facing the death penalty. Directed all aspects of death penalty litigation in capital cases throughout Georgia.

#### **Staff Attorney Fulton County Conflict Defender, Major Case Division**

Atlanta, Georgia *May 2002-August 2004*  
Served as lead counsel for over one hundred indigent defendants facing felony criminal charges. Had primary responsibility for cases where juveniles were being tried as adults in Superior Court. Served as lead counsel in four murder trials to verdict.

#### **Staff Attorney Fulton County Public Defender,**

Atlanta, Georgia *August 2001-May 2002*  
Served as lead counsel for pre-indictment felony cases and probation revocations.

Recent  
Judicial Praise

You're **very articulate** on this issue...  
Obviously, you're **very thoughtful** and you have given it a great deal of thought...  
You're **demonstrating credibility by a mile** as you go ...  
You are **extraordinarily impressive...**  
You have allayed all of my concerns and have persuaded me that this is an important issue, and that **you have done a great service to the class...** I congratulate you on your **excellent work.**

Hon. Harold E. Kahn, Cal. Super. Ct., San Fran. Cnty., Nov. 7, 2017 Final Approval Hearing, *Nesbitt v. Postmates, Inc.*, No. CGC-15-547146 (emphasis added)

**Law Clerk****Defense Team For Kristen Gilbert**

Springfield, Massachusetts

*Fall 1999-May 2001*

Assisted in the first federal death penalty trial in Massachusetts. Lived in Springfield, MA three days a week during last year of law school to assist with eighth month trial which resulted in a life sentence.

Education**Harvard Law School, J.D., cum laude***June 2001*

Recipient of Edith Fine Fellowship, awarded to graduating woman most committed to public interest law. Recipient of Kauffman Fellowship, awarded to graduating students most committed to public interest law. Co-chair of Harvard Innocence and Justice Project, an organization which provided legal research and assistance to capital defense attorneys nationwide.

**Oxford University, M.Sc. in Sociology***June 1998*

Recipient of Rotary International Ambassadorial Scholarship, nominated by Edina Rotary Club. Thesis: *Criticisms of Herbert Packer's Two Models of the Criminal Process.*

**Harvard College, B.A. in Government, cum laude***June 1996*

Harvard Nominee for the Rhodes Scholarship. Graduated with Advanced Standing (in three years instead of four).

Titles, Awards, Memberships

Partner's Council Member for the National Consumer Law Center, 2014 – present

Board Member for the National Association of Consumer Advocates, 2014 – present

Board Member for the Southern Center for Human Rights, 2018 – present

Co-Chair of Minnesota State Bar Association Consumer Litigation Section, 2016 – present

Member of Ethics Committee for the National Association of Consumer Advocates, 2015

2014-2015 Treasurer, MSBA Consumer Litigation Section Council. 2013-14 At-Large Council Member.

Named an Elite Woman of the Plaintiffs' Bar by National Law Journal, 2020

Named to LawDragon's 500 Leading Plaintiff Financial Lawyers List, 2019

Named to The Best Lawyers of America since 2016

Named to the Top 50 Women Minnesota Super Lawyers since 2015

Named to the Super Lawyers list, Minnesota Super Lawyers, Minneapolis/St. Paul Magazine, and Minnesota Business Journal, 2013 - 2019

Named to the Rising Stars list, Minnesota Super Lawyers, Minneapolis/St. Paul Magazine, and Minnesota Business Journal, 2011-2012

Federal Practice Committee, U.S. District Court, Minnesota, Appointed 2010

Thurgood Marshall Defender Award, Massachusetts Committee for Public Counsel Services Recipient, 2001

American Bar Association Member

Hennepin County Bar Association Member

Minnesota Association for Justice Member

National Association of Consumer Advocates Member

Public Justice Member

American Association for Justice Member

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### **Publications/Speaking Engagements**

“Evidentiary Challenges in Certifying Class Actions,” Class Action Symposium, Consumer Rights Litigation Conference, National Consumer Law Center, December 2021.

“COVID and Post-COVID Issues in FCRA Litigation,” National Association of Consumer Advocates Spring Training, Virtual, April 2021.

“Consumer Law: Overview of the Fair Credit Reporting Act,” Minnesota Continuing Legal Education, Virtual, December 2020.

“The Role of the Lawyer in Class Actions,” Panel Chair, Global Class Actions Symposium 2020, Virtual, November 2020.

“Hunting the Snark: Finding & Effectively Using Data to Certify Classes,” Class Action Symposium, National Consumer Law Center Consumer Rights Litigation Conference, Virtual, November 2020.

“Specialty CRAs Part 1: Conviction Histories, Expungement, and FCRA: Keeping up with Developments in a Changing Legal Landscape,” National Consumer Law Center Consumer Rights Litigation Conference, Virtual, November 2020.

“Conducting Financial & Criminal Background Checks – Applicant Rights & Employer Best Practices,” Minnesota Continuing Legal Education, Minneapolis, MN, October 2020.

“Current Accuracy Topics for Traditional Credit Reporting,” Accuracy in Consumer Reporting, FTC/CFPB Workshop, Washington, DC, December 2019.

Plaintiffs’ Food Fraud Litigation Forum, Cambridge Forums, Manalapan, FL, November 2019.

“Sealing, Expungement, and FCRA: Criminal Records Reporting in a New Era,” Consumer Rights Litigation Conference, National Consumer Law Center, Boston, MA, November 2019.

“Stop Stealing the Microphone! Amped-Up Judicial Scrutiny of Class-Action Settlements,” Class Action Institute, American Bar Association, Nashville, TN, October 2019.

“The Complete Lawyer: Consumer Law,” Minnesota Continuing Legal Education, Minneapolis, MN, June 2019.

“Fair Credit Reporting Act/Debt Collection Issues,” 24<sup>th</sup> Annual Consumer Financial Services Institute, Practising Law Institute, Chicago, IL, May 2019.

“Ethics Session: Referrals and Fee-Sharing,” Fair Credit Reporting Act Conference, National Association of Consumer Advocates, Long Beach, CA, May 2019.

Contributing Author, “Consumer Law,” The Complete Lawyer’s Quick Answer Book, Minnesota Continuing Legal Education, 2d. ed. (forthcoming.)

Contributing Author, “Financial and Criminal Background Checks,” Job Applicant Screening: A Practice Guide, Minnesota Continuing Legal Education Publication, 2d. Edition (forthcoming).

Contributing Author, “Chapter 1: Case and Claims Selection, Other First Considerations,” Consumer Class Actions, National Consumer Law Center, 10th ed. (forthcoming),

“Consumer Law: Recent Trends and Hot Topics in FCRA Litigation,” Minnesota Continuing Legal Education, Minneapolis, MN, January 2019.

“Diamonds in the Rough: Identifying Good Class Claims,” Mass Torts Made Perfect Fall Seminar, Las Vegas, NV, October 2018.

“Nationwide Settlement Classes – The Impact of the Hyundai/Kia Litigation,” Class Action Symposium, Consumer Rights Litigation Conference, National Consumer Law Center, Denver, CO, October 2018.

“Developments in Public Records Litigation,” Consumer Rights Litigation Conference, National Consumer Law Center, Denver, CO, October 2018.

“Big Challenges in the City of BIG Shoulders, Electronic Discovery’s Rise to Prominence,” ABA 22nd Annual National Institute on Class Actions, Chicago, IL, October 2018.

“Jurisdiction Issues Post *Bristol-Myers*,” Bridgeport 2018 Class Action Litigation Conference, San Francisco, CA, September 2018.

“New Developments in the Law of Personal Jurisdiction in the Aftermath of the Supreme Court’s Decisions in *BNSF Railway Co. v. Tyrrell* and *Bristol Myers* and the Strategies,” Plaintiffs’ Class Action Roundtable, Rancho Palos Verdes, CA, April 2018.

“New Developments in Personal Jurisdiction,” Litigator’s Short Course, Minnesota Continuing Legal Education, Minneapolis, MN, February 2018.

“Game Changing Blindspots that Create Privacy Liabilities – a Plaintiff-Side Litigator’s Insights,” Midwest Legal Conference on Privacy & Data Security, Minneapolis, MN, January 2018.

“Federal Discovery: Winning Your Cases Early,” “FCRA Report Disclosures: Issues and Litigation,” Consumer Rights Litigation Conference, National Consumer Law Center, Washington, D.C., November 2017.

“Strategic Response to Recent Supreme Court Decision in *Bristol-Myers*,” Consumer Rights Litigation Conference, Class Action Symposium, National Consumer Law Center, Washington, D.C., November 2017.

Conference Co-Chair, “Class Actions: Legislative Developments, Updates & More,” CLE International, Los Angeles, CA, November 2017.

“The Times They Are a-Changin’: The Role of Administrative Agencies and Private Counsel in the Trump Era,” American Bar Association Annual National Institute on Class Actions, Washington, D.C., October 2017.

“The CFPB’s New Rule on Arbitration: What It Is and What Comes Next,” Minnesota State Bar Association Continuing Legal Education Presentation, Minneapolis, MN, September 2017.

“Standing: Assessing Article III Jurisdiction One Year After Spokeo,” Minnesota State Bar Association Continuing Legal Education Presentation, Minneapolis, MN, June 2017.

“House Resolution 985 – Update and Strategies for Defeat,” Cambridge Forums – Plaintiffs’ Class Action Forum, Carefree, AZ, May 2017.

“TCPA/Fair Credit Reporting Act/Debt Collection Issues,” PLI 22nd Annual Consumer Financial Services Institute, Chicago, IL, May 2017.

“Case Law and Recent Trial Update,” Panelist, Fair Credit Reporting Act Conference, National Association of Consumer Advocates, Baltimore, MD, April 2017.

“Using the FCRA for Criminal Background Checks,” “Spokeo Standing Challenges (and Opportunities).” Consumer Rights Litigation Conference, National Consumer Law Center, Anaheim, CA, October 2016.

“Appeals: Whether, When and How.” Consumer Rights Litigation Conference Class Action Symposium, National Consumer Law Center, Anaheim, CA, October 2016.

“Recent Developments in Food Class Action Litigation.” Perrin Food & Beverage Litigation Conference, New York, NY, October 2016.

“A Winning Hand or a Flop? After 50 Years are Class Actions Still Legit?” American Bar Association Annual National Institute on Class Actions, Las Vegas, NV, October 2016.

Contributing Author, “Consumer Law,” The Complete Lawyer’s Quick Answer Book, Minnesota Continuing Legal Education, 2016.

“Changing Standard for Class Certification Including a Discussion of the Use of Experts and Statistical Sampling at Class Certification in Light of Spokeo and Tyson.” Bridgeport Continuing Education 2016 Class Action Litigation Conference, San Francisco, CA, September 2016.

“The U.S. Supreme Court’s Big New Decisions.” Minnesota Continuing Legal Education Presentation, Minneapolis, MN, August 2016.

“The Complete Lawyer Series: Consumer Law, Debt Collection and Credit Reporting.” Minnesota Continuing Legal Education Webcast, Minneapolis, MN, July 2016.

“What Does the Spokeo Decision Mean for Consumer Lawyers.” National Association of Consumer Advocates Webinar, May 2016.

“Hot Button Consumer Issues.” Practising Law Institute’s Annual Consumer Financial Services Institute, Chicago, IL, May 2016.

“Consumer Law.” Minnesota Continuing Education Seminar, Minneapolis, MN, May 2016.

“Hot Topics in Class Actions.” Bridgeport Class Action Conference, Hollywood, CA, April 2016.

“Hot Button Consumer Issues.” Practicing Law Institute’s Annual Consumer Financial Services Institute, New York, NY, April 2016.

“Beyond the Headlines – What EVERY Lawyer Should Know About the U.S. Supreme Court’s Big New Decisions.” Minnesota Continuing Legal Education Seminar, Minneapolis, MN, August 2015.

“Financial and Criminal Background Checks.” National Employment Lawyers Association Annual Convention Presentation, Atlanta, GA, June 2015.

“The Complete Lawyer: Consumer Law.” Minnesota Continuing Legal Education Presentation, Minneapolis, MN, May 2015.

“Protecting Your Plaintiffs and the Class: Rule 68 Offers and Other Pick-Off Tactics.” Impact Fund Class Action Conference, Berkeley, CA, February 2015.

“Be Careful what you Wish For: Trends in Arbitration.” ACI Wage & Hour Claims and Class Actions Summit Panel, Miami, FL, January 2015.

“Job Applicant Screening, Financial & Criminal Background Checks – Applicant Rights and Employer Best Practices.” Minnesota Continuing Legal Education Seminar, Minneapolis, MN, December 2014.

“Economics of Objecting for the Right Reasons.” Class Action Symposium Panel, National Consumer Rights Litigation Conference, Tampa, FL, November 2014.

“Data Harvesting, Background Checks, and the Fair Credit Reporting Act for Criminal Attorneys.” Criminal Law Section, Minnesota State Bar Association Presentation, November 2014.

“Discovery Strategies in Class Actions: When Less is More and When it Isn’t.” Bridgeport Class Action Conference, Chicago, IL, June 2014.

“Job Applicant Screening Crash Course.” Upper Midwest Employment Law Institute, Saint Paul, MN, May 2014.

“Financial and Criminal Background Checks.” Job Applicant Screening: A Practice Guide, Minnesota Continuing Legal Education Publication, May 2014.

“The Complete Lawyer: Quick Answers to Questions about Consumer Law.” Minnesota Continuing Legal Education Seminar, Minneapolis, MN, May 2014.

“Employment Law 360.” Minnesota Continuing Legal Education Seminar, Minneapolis, MN, February 2014.

“Precertification Discovery Strategies including Issues of Standing & Certification.” Bridgeport Class Action Conference, San Francisco, CA, August 2013.

“Beyond the Headlines – What Every Lawyer Should Know About the U.S. Supreme Court’s Big New Decision.” Minnesota Continuing Legal Education Seminar, Minneapolis, MN, August 2013.

“The Complete Lawyer: Quick Answers to Questions about Consumer Law.” Minnesota Continuing Legal Education Seminar, Minneapolis, MN, June 2013.

“The Misclassification Mess – What Do You Do If You Have Misclassified Workers as Exempt?” Upper Midwest Employment Law Institute, Minneapolis, MN, May 2013.

“Housing Finance – Consumer Financial Services.” Panelist, American Bar Association Business Law Section Spring Meeting, Washington, D.C., April 2013.

“5 Developments in E-Discovery.” The Civil Litigator’s Annual Short Course, Minnesota Continuing Legal Education, Minneapolis, MN, February 2013.

“Employment Rights & Criminal Backgrounds in the Context of the FCRA and Title VII.” Goodwill Easter Seals Presentation, Saint Paul, MN, December 2012.

“Federal Court 101.” National Business Institute Webinar, Eau Claire, WI, December 2012.

“Employment Law Series: Ethics Issues for Employment Law Lawyers.” Minnesota Continuing Legal Education Webcast, Minneapolis, MN, October 2012.

“Real World Ethics Issues and Answers for the Employment Lawyer.” Upper Midwest Employment Law Institute, Minneapolis, MN, May 2012.

“Real World Ethics Issues and Answers for the Employment Lawyer.” Minnesota Continuing Legal Education Seminar, Minneapolis, MN, November 2011.

“The Complete Lawyer: Consumer Law 101.” Minnesota Continuing Legal Education Seminar, Minneapolis, MN, November 2011.

“Litigation and the Federal Rules. What Every Paralegal Should Know”, National Federation of Paralegal Associations, Annual Convention, Bloomington, MN, October 2011.

“Dukes v. Wal-Mart: the View from the Plaintiff’s Bar.” American Conference Institute’s Defending and Managing Retaliation and Discrimination Claims Conference, New York City, NY, July 2011.

“How to Practice in Federal Court: Complaints, Answers, and Service of Process.” Minnesota Continuing Legal Education Seminar, Minneapolis, MN, October 2010.

“Recent Trends in FLSA Collective Actions Panel.” Minnesota Federal Bar Association Annual Seminar, Minneapolis, MN, June 2010,

Minnesota Continuing Legal Education Panel on Real-World Ethics Issues and Answers for the Employment Lawyer, Minneapolis, MN, June 2010.

“Maintaining Privilege and Confidentiality.” National Federation of Paralegal Association Annual Convention, Bloomington, MN, June 2010.

“Strategic Discovery Practice”, Upper Midwest Employment Law Institute, Minneapolis, MN, May 2010.

Minnesota Continuing Legal Education Panel on the Impact of Twombly and Iqbal on the Pleading standard, Minneapolis, MN, February 2010.

*Interviewed by* National Law Journal regarding recent wave of tip pooling cases (June 2009).

Strategic Discovery: How to Fight Discovery Abuses and Win Discovery Disputes, Minnesota Institute for Continuing Legal Education (May 2009).

Who’s the Boss? Joint employers, successor employers and integrated enterprises, Equal Employment Opportunity Commission Investigator training (March 2008).

Litigating Capital Cases Under Georgia’s New Discovery Statutes, Advanced Capital Defender Training (St. Simons Island, GA, January 2006).

Responding to Changes in Georgia’s Criminal Discovery Statutes, Advanced Capital Defender Training. (St. Simons Island, GA, July 2005).

# Exhibit 4

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

LISA HILL-GREEN,

Plaintiff,

v.

Civil Action No. 3:19-cv-00708

EXPERIAN INFORMATION SERVICES, LLC

Defendant.

**DECLARATION OF SHANNON R. WHEATMAN, PH.D. ON ADEQUACY OF THE  
NOTICE PROGRAM**

I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

1. I am president of Kinsella Media, LLC (“KM”), a nationally recognized advertising and legal notification firm in Washington, D.C. specializing in the design and implementation of notification programs to reach unidentified putative class members, primarily in consumer and antitrust class actions, and claimants in bankruptcy and mass tort litigation. My business address is 2101 L Street, NW Suite 800, Washington, D.C. 20037. My telephone number is (202) 686-4111.

2. This declaration will describe the Notice Program and the content and form of the proposed Notices and website proposed here for the *Hill-Green v. Experian Information Solutions, Inc.*, Rule 23(b)(2) Settlement Class, including how they were developed and why I believe they will be effective. My credentials were previously submitted to the Court in the *Declaration of Shannon R. Wheatman, Ph.D. on Adequacy of the Notice Program*, filed on November 22, 2021 at ECF 90-1, as part of the previously approved Rule 23(b)(2) settlement in this case.

3. I designed the notice programs in *Clark v. Experian Information Solutions*, No. 3:16-cv-32 (E.D. Va.) and *Brown v. Experian Information Solutions*, No. 3:16-cv-670 (E.D. Va.); *Clark v. Trans Union LLC*, No. 3:15-cv-00391 (E.D. Va.) and *Anderson v. Trans Union LLC*, No. 3:16-cv-00558 (E.D. Va.); *Thomas v. Equifax Information Services, LLC*, No. 3:18-cv-00684

(E.D. Va.); and *Berry v. LexisNexis*, No. 3:11CV754 (E.D. Va.). The proposed Notice Program for the current *Hill-Green* Rule 23(b)(2) Settlement Class includes similar media components used to provide notice to the Rule 23(b)(2) classes in the previously approved Rule 23 (b)(2) settlement in this case, as well as the previous public record cases, including publication notice and online media.

4. This declaration is based on my personal knowledge and information provided by Class Counsel, Defense Counsel, and my associates and staff. The information is of a type reasonably relied upon in legal advertising.

### **NOTICE PROGRAM OVERVIEW**

5. The multi-layered Notice Program includes print, digital, and social media advertising.

#### **Paid Media Notice**

##### ***Target Audience: Selection Methodology and Demographics***

6. To design the Paid Media Notice segment of the Notice Program, KM identified and selected demographics that encompass the characteristics of Class Members. Media outlets were analyzed and selected for their strength and efficiency in reaching these demographic targets.

7. To develop profiles of the demographics and the media habits of Class Members, KM analyzes syndicated data available from the MRI-Simmons USA *Doublebase Study*<sup>1</sup>. MRI-Simmons is a nationally accredited media and marketing research firm that provides syndicated data on audience size, composition, and other relevant factors.

8. MRI-Simmons does not provide specific demographic information on individuals who had a Fraud Shield Indicator marked on their credit report. However, based on the age

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<sup>1</sup> MRI-Simmons produces a biannual *Doublebase Study*, a study of more than 50,000 adults providing two full years of data. The MRI-Simmons sample includes 25,000 respondents. Fieldwork is done in two waves per year, each lasting six months and consisting of 13,000 interviews. At the end of the interview, the fieldworker presents a self-administered questionnaire that measures approximately 500 product/service categories, 6,000 brands, and various lifestyle activities.

distribution of potential Class Members<sup>2</sup>, KM elected to develop a Paid Media Notice Program that is designed to reach a target audience of Adults 25 years of age or older (“Adults 25+”).

***Target Audience: Media Usage***

9. The media components for the Paid Media Notice were chosen based on their effectiveness at reaching each segment of the Class. Based on the target audience’s media consumption habits and geography, KM researched the most appropriate media outlets for this case.

10. The Paid Media Notice is designed to ensure that the Notice is placed in media outlets whose audiences are likely to include potential Class Members.

***Paid Media Components***

Print Advertising

11. Most adults read one or more magazines during an average month. Adults 25+ read an average of four magazines per month.<sup>3</sup>

12. The Publication Notice will appear in the following consumer magazine:

MAGAZINE	AD SIZE	CIRCULATION	INSERTIONS	SUMMARY
	1/3-page (1.6875” x 9.5”)	1,100,000	1	TV Guide is a bi-weekly publication providing television entertainment coverage and program recommendations. The median age of readers is 58.

13. *TV Guide* was chosen to reach older Class Members who may not spend time online.

Target Audience Print Readership

14. Readership includes both primary readers and pass-along readers. Primary readers purchase a publication or are members of a household where the publication was purchased. Pass-

<sup>2</sup> KM reviewed age-distribution data in two earlier credit reporting class action cases and found that over 99% of the class was 25 years or older.

<sup>3</sup> 2022 MRI-Simmons USA *Spring Study*.

along readers are those who read the publication outside the home, in places such as a doctor’s office. The table below indicates the estimated number of readers of an average issue of the magazine:

MAGAZINE	READERS
<i>TV Guide</i>	7,000,000

Digital Advertising

15. The Notice Program includes extensive digital advertising because over 94% of Adults 25+ have used the Internet in the past 30 days.<sup>4</sup> Internet advertising allows the viewer of an advertisement to click through to a website for further information. Banner ads are typically located either at the top or side of a website page.

16. KM will produce banner advertisements that will provide information on the Settlement. KM will purchase approximately 200,000,000 gross impressions.<sup>5</sup> Impressions will be allocated to maximize exposure during the campaign.

17. Ads will appear on the following online networks for six weeks:

NETWORK	AD SIZE	SUMMARY
	728x90, 300x250, 160x600, 320x50, 320x480	Online advertising company and Top 20 Ad Network.
	Ad Text & Image	A free, global social networking website that helps people communicate with friends, family, and coworkers.
	728x90, 300x250, 160x600, 320x50, 320x480	Google reaches 90% of Internet users worldwide across millions of websites, news pages, blogs, and Google sites like Gmail and YouTube.

<sup>4</sup> 2022 MRI-Simmons USA *Spring Study*.

<sup>5</sup> Gross Impressions are the duplicated sum of exposures to the media vehicle containing the notice.

18. Targeted digital and social media advertising will also reach potential Class Members on the Internet across different ad networks and publisher websites and on Facebook. Ads will appear on online, mobile, and tablet platforms on a variety of sites/networks. Tactics include:

TACTIC	DEFINITION
<b>Third-Party Targeting</b>	Advanced targeting and dynamic ad capabilities fully integrate with industry-standard third-party data sources (MarketView®) to bring different messages to targeted audiences. These sources collect and analyze data based on actual credit card purchase data. Ad delivery targets people who purchased services indicating someone was looking to protect/repair/check one's credit (e.g., Experian, Equifax, Transunion, LifeLock, and Quizzle).
<b>Facebook Advertising</b>	Ad delivery targeted to users who indicated an interest in pages related to credit history, credit, credit solutions, credit counseling, credit karma, debits and credits, tax lien, and others.

19. Sponsored keywords and phrases will be advertised on all major search engines, including Google AdWords, Bing (Microsoft Advertising), and their search partners. Sponsored links will appear on the results page when a user searches for one of the specified search terms or phrases (e.g., high risk address credit report, business address credit report, non-residential address credit report, address alert credit report, etc.).

#### **NOTICE FORM AND CONTENT**

20. Fed. R. Civ. Proc. 23(c)(2) requires class action notices to be written in “plain, easily understood language.” KM applies the plain language requirement in drafting notices in federal and state class actions. I have reviewed the Rule 23(b)(2) and the Rule 23(b)(3) proposed notices and claim forms in this case. All notice materials, in this case, are in plain, easily understood language. The Notices effectively communicate the required information about the Settlement.

21. The Publication Notice is designed to capture the Class Members' attention with clear, concise, plain language. It directs readers to the Settlement website and toll-free phone number for more information. The plain language text provides important information regarding

the subject of the litigation, the Class definition, and the legal rights available to Class Members. No important or required information is missing or omitted. The Notice states all required information, without omitting significant facts, that Class Members need to understand their rights.

22. The Detailed Notice provides substantial information, including background on the issues in the case and all specific instructions Class Members must follow to properly exercise their rights. No important or required information is missing or omitted. It is designed to encourage readership and understanding in a well-organized and reader-friendly format.

23. The Notices will also be available in Spanish at the website.

### **SETTLEMENT WEBSITE**

24. An informational, interactive website is a critical component of this Notice Program. I have coordinated with Jennifer Keough of JND Legal Administration (“JND”) and our firms are cooperating to ensure that the Settlement website will be updated at [www.FraudShieldSettlement.com](http://www.FraudShieldSettlement.com) to enable Class Members to get information on the Settlement.

25. Class Members will be able to download notice materials and other important documents such as the Settlement Agreement, Detailed Notices (in English and Spanish), Preliminary Approval Order, and other relevant documents as applicable.

26. The website will be designed so Class Members can easily find the information they need and how to contact Class Counsel should the website not address their specific needs. The website will feature a clean layout, consistent site navigation cues, and search engine optimization for easy access to the details of the litigation.

27. The website is designed for ease of navigation and comprehension. Once the user enters the website, the homepage will have a directory that provides links to the information available on the website. This information includes “Court Documents,” “Important Dates,” “Frequently Asked Questions,” “Notice,” and “Contact Information.”

28. The website will provide the toll-free number, mailing address, and email address for individuals seeking additional information.

29. If a user goes from the homepage to another part of the website, links back to the homepage and other subpages will remain at the top of each page. The case name will be listed on every page of the website.

### **OTHER ADMINISTRATION COMPONENTS**

30. My firm is coordinating with JND to ensure that a toll-free phone number will be established to allow Class Members to call and request that a Detailed Notice be mailed to them or listen to answers to frequently asked questions in English and Spanish. Callers will also be able to leave messages for follow-up calls.

31. A post office box will be established to allow Class Members to contact Class Counsel by mail with any specific requests or questions.

32. Class Counsel will maintain the e-mail address they used previously to allow Class Members to contact them.

### **CONCLUSION**

33. The Notice Program is designed to reach<sup>6</sup> approximately 75% of the target audience using a methodology that is consistent with many nationwide court-approved class action notice programs. The reach is within the guidelines established by the Federal Judicial Center<sup>7</sup> and uses the same media tactics included in the previous credit reporting cases KM implemented.

34. It is my opinion that the Notice Program is adequate and reasonable under the circumstances and will provide the best notice practicable.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Souderton, Pennsylvania, this 18th day of August 2022.



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Shannon R. Wheatman, Ph.D.

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<sup>6</sup> *Reach* is the estimated percentage of a target audience reached through a specific media vehicle or combination of media vehicles.

<sup>7</sup> The Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, <https://www.consumerclassdefense.com/wp-content/uploads/sites/235/2013/06/FJC-Notice-Checklist-and-Plain-Language-Guide.pdf>.

# Exhibit 5

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

LISA HILL-GREEN, *on behalf of  
herself and all others similarly situated,*

Plaintiffs,

Civil Action No. 3:19-cv-708 (MHL)

v.

EXPERIAN INFORMATION SOLUTIONS,  
INC.,

Defendant.

**DECLARATION OF JENNIFER M. KEOUGH ON PROPOSED NOTICE PROGRAM  
FOR THE RULE 23(B)(3) SETTLEMENT CLASS**

I, Jennifer M. Keough, being duly sworn, hereby declare as follows:

1. I am the Chief Executive Officer (“CEO”) of JND Legal Administration LLC (“JND”). I have more than 20 years of legal experience creating and supervising notice and claims administration programs and have personally overseen the settlement administration of well over 1,000 matters. A comprehensive description of my experience is attached as Exhibit A.

2. As CEO of JND, I am involved in all facets of JND’s operations, including monitoring the implementation of our notice and claims administration programs.

3. I submit this Declaration, based on my personal knowledge and information provided to me by Plaintiffs’ Counsel and experienced JND employees working under my supervision, at the request of the Parties, to describe the proposed Notice Program and address why it is consistent with other class notice plans that courts have determined satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and any other applicable statute, law or rule, as well as the Federal Judicial Center (“FJC”) guidelines for best practicable due process notice.

## **BACKGROUND AND EXPERIENCE**

4. JND is a leading legal administration services provider with offices throughout the United States and its headquarters in Seattle, Washington. JND's class action division provides all services necessary for the effective implementation of class actions, including: (1) all facets of providing legal notice to potential class members, such as developing the final class member list and addresses for them, outbound mailing, email notification, and the design and implementation of media programs; (2) website design and deployment, including on-line claim filing capabilities; (3) call center and other contact support; (4) secure class member data management; (5) paper and electronic claims processing; (6) lien verification, negotiation, and resolution; (7) calculation design and programming; (8) payment disbursements through check, wire, PayPal, merchandise credits, and other means; (9) qualified settlement fund management and tax reporting; (10) banking services and reporting; and (11) all other functions related to the secure and accurate administration of class actions.

5. JND is an approved vendor for the United States Securities and Exchange Commission ("SEC"), as well as for the Federal Trade Commission ("FTC"), and we have been working with the following other government agencies: the U.S. Equal Employment Opportunity Commission ("EEOC"), the Office of the Comptroller of the Currency ("OCC"), the Consumer Financial Protection Bureau ("CFPB"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Communications Commission ("FCC"), the Department of Justice ("DOJ") and the Department of Labor ("DOL"). We have Master Services Agreements with various law firms, corporations, and banks, which were only awarded after JND underwent rigorous reviews of our systems, privacy policies, and procedures. JND has also been certified as SOC 2 compliant by noted accounting firm Moss Adams. Finally, JND has been recognized by various publications,

including, among others, the *National Law Journal*, the *Legal Times* and the *New York Law Journal*, for excellence in class action administration.

6. The principals of JND, including me, collectively have over 80 years of experience in class action legal and administrative fields and have overseen claims processes for some of the largest legal claims administration matters in the country's history and regularly prepare and implement court approved notice and administration campaigns throughout the United States.

7. JND was appointed the notice and claims administrator in the \$2.67 billion Blue Cross Blue Shield antitrust settlement, in which we mailed over 100 million postcard notices; sent hundreds of millions of email notices and reminders; placed notice via print, television, radio, internet, and more; received and processed more than eight million claims; and staffed the call center with more than 250 agents during the peak notice program. JND was also appointed the settlement administrator in the \$1.3 billion Equifax Data Breach Settlement, the largest class action in terms of the 18 million claims received. Email notice was sent twice to over 140 million class members, the interactive website received more than 130 million hits, and the call center was staffed with 1,500 agents at the peak of call volume.

8. Other large JND matters include a voluntary remediation program in Canada on behalf of over 30 million people; the \$1.5 billion Mercedes-Benz Emissions class action settlements, the \$120 million GM Ignition class action economic settlement, where we sent notice to nearly 30 million class members; and the \$215 million USC Student Health Center Settlement on behalf of women who were sexually abused by a doctor at USC, as well as hundreds of others.

9. JND's Legal Notice Team, which operates under my direct supervision, researches, designs, develops, and implements a wide array of legal notice programs to meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and relevant state court rules. In addition to providing notice directly to potential class members through direct mail and email, our media

campaigns, which are regularly approved by courts throughout the United States, have used a variety of media including newspapers, press releases, magazines, trade journals, radio, television, social media and the internet depending on the circumstances and allegations of the case, the demographics of the class, and the habits of its members, as reported by various research and analytics tools. During my career, I have submitted several hundred affidavits to courts throughout the country attesting to our role in the creation and launch of various media programs.

### **CASE BACKGROUND**

10. I have been asked by the Parties to assist in preparing a Notice Program to reach members of the Rule 23(b)(3) Settlement Class and inform them about the Settlement and their rights and options. The Rule 23(b)(3) Settlement Class or Class Members meet the following criteria:

- a. the consumer was the subject of a consumer report issued by Experian between July 1, 2018, and July 31, 2021;
- b. in connection with the consumer report, Experian transmitted at least one instance of either Fraud Shield indicator 10 or 16;
- c. the consumer's address, as provided by Experian, corresponds to an address in Experian's Non-Residential Address Table that was loaded into the table more than seven years prior to the date of the report;
- d. the address in the Non-Residential Address Table that matched the consumer's address was classified in the Non-Residential Address Table with a Standard Industrial Code ("SIC Code") denoting a business type identified in the Injunctive Relief Order that Experian has agreed as part of the settlement of this matter to no longer classify as a "high risk" business type;

- e. The consumer's historical Vantage Score as provided by Experian was 650 or greater;
- f. Experian's records indicate that the consumer report transmitted with the Fraud Shield Indicator was sold for a purpose other than debt collection; and
- g. the consumer did not have any new tradelines opened within 120 days of the date of the consumer report.

11. The Rule 23(b)(3) Settlement Class also includes all consumers in the time period from July 1, 2018 to July 31, 2021 who contacted Experian to inquire about and/or dispute a non-residential or high-risk address indicator.

### **NOTICE PROGRAM OVERVIEW**

12. The objective of proposed Notice Program is to provide the best notice practicable, consistent with the methods and tools employed in other court-approved notice programs and to allow Settlement Class Members the opportunity to review a plain language notice with the ability to easily take the next step and learn more about this Settlement. The FJC's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* ("FJC Checklist") considers a Notice Plan with a high reach (above 70%) effective.

13. The proposed Notice Program includes the following components:
- a. Initial Email Notice to all Rule 23(b)(3) Settlement Class Members for whom an email address can be found;
  - b. Initial Mail Notice to all Rule 23(b)(3) Settlement Class Members for whom a postal address is available;
  - c. Reminder Notices via email and mail during the claims period;

d. The Settlement Website through which the Rule 23(b)(3) Internet Notice will be posted and the Claim Form may be submitted electronically or printed and mailed; and

e. The Settlement toll-free number, post office box, and email address through which Settlement Class Members may obtain more information about the Settlement and request that the Long Form Notice and/or Claim Form be sent to them.

14. The direct notice effort is expected to reach the vast majority of Rule 23(b)(3) Settlement Class Members. Based on my experience in developing and implementing class notice programs, I believe the proposed Notice Program will provide the best notice practicable under the circumstances.

15. Each component of the proposed Notice Program is described in more detail in the sections below.

#### **DIRECT NOTICE**

16. An adequate notice plan needs to satisfy “due process” when reaching a class. The United States Supreme Court, in *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 (1974), stated that direct notice (when possible) is the preferred method for reaching a class. In addition, Rule 23(c)(2) of the Federal Rules of Civil Procedure provides that “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.”

17. JND will send an email notice to all Rule 23(b)(3) Settlement Class Members for whom an email address can be found and a postcard notice to all Rule 23(b)(3) Settlement Class Members for whom a mailing address is available. I understand that postal addresses are available for all Rule 23 (b)(3) Settlement Class Members.

18. Different variations of the Initial Email Notice will be sent to Rule 23(b)(3) Settlement Class Members who disputed a non-residential or high-risk address indicator and those who did not.

19. Likewise, different variations of the Initial Mail Notice will be sent to Rule 23(b)(3) Settlement Class Members who disputed a non-residential or high-risk address indicator and those who did not.

20. Upon receipt of Settlement Class Member data, JND will promptly load the information into a secure case-specific database for this Settlement. JND will review the data provided in order to identify any undeliverable addresses and duplicate records. A unique identification number (“Unique ID”) will be assigned to each Rule 23(b)(3) Settlement Class Member to identify them throughout the Settlement administration process. JND employs appropriate administrative, technical and physical controls designed to ensure the confidentiality and protection of Settlement Class Member data, as well as to reduce the risk of loss, misuse, or unauthorized access, disclosure or modification of Settlement Class Member data.

#### *Email Notice*

21. JND will conduct a sophisticated email append process to obtain email addresses for Rule 23(b)(3) Settlement Class Members based on the information provided by Experian in connection with the Class List. Prior to emailing the Email Notice, JND will evaluate the email for potential spam language to improve deliverability. This process includes running the email through spam testing software, DKIM<sup>1</sup> for sender identification and authorization, and hostname

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<sup>1</sup> DomainKeys Identified Mail, or DKIM, is a technical standard that helps protect email senders and recipients from spam, spoofing, and phishing.

evaluation. Additionally, we will check the send domain against the 25 most common IPv4 blacklists.<sup>2</sup>

22. JND uses industry-leading email solutions to achieve the most efficient email notification campaigns. Our Data Team is staffed with email experts and software solution teams to conform each notice program to the particulars of the case. JND provides individualized support during the program and manages our sender reputation with the Internet Service Providers (“ISPs”). For each of our programs, we analyze the program’s data and monitor the ongoing effectiveness of the notification campaign, adjusting the campaign as needed. These actions ensure the highest possible deliverability of the email campaign so that more potential Settlement Class Members receive notice.

23. For each email campaign, including this one, JND will utilize a verification program to eliminate invalid email and spam traps that would otherwise negatively impact deliverability. We will then clean the list of email addresses for formatting and incomplete addresses to further identify all invalid email addresses.

24. To ensure readability of the Email Notice, our team will review and format the body content into a structure that is applicable to all email platforms, allowing the email to pass easily to the recipient. Before launching the email campaign, we will send a test email to multiple ISPs and open and test the email on multiple devices (iPhones, Android phones, desktop computers, tablets, etc.) to ensure the email opens as expected.

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<sup>2</sup> IPv4 address blacklisting is a common practice. To ensure that the addresses being used are not blacklisted, a verification is performed against well-known IP blacklist databases. A blacklisted address affects the reputation of a company and could cause an acquired IP addresses to be blocked.

25. Additionally, JND will include an “unsubscribe” link at the bottom of the email to allow Settlement Class Members to opt out of any additional email notices from JND. This step is essential to maintain JND’s good reputation among the ISPs and reduce complaints relating to the email campaign.

26. Emails that are returned to JND are generally characterized as either “Soft Bounces” or “Hard Bounces.” Hard Bounces are when the ISP rejects the email due to a permanent reason such as the email account is no longer active. Soft Bounces are when the email is rejected for temporary reasons, such as the recipient’s email address inbox is full.

27. When an email is returned due to a Soft Bounce, JND attempts to re-email the email notice up to three additional times in an attempt to secure deliverability. The email is considered undeliverable if it is a Hard Bounce or a Soft Bounce that is returned after a third resend.

*Mailed Notice*

28. Prior to mailing notice, JND staff will perform advanced address research using skip trace databases and the United States Postal Service (“USPS”) National Change of Address (“NCOA”) database<sup>3</sup> to update addresses. JND will track all notices returned undeliverable by the USPS and will promptly re-mail notices that are returned with a forwarding address. In addition, JND will take reasonable efforts to research and determine if it is possible to reach a Settlement Class Member for whom a notice is returned without a forwarding address, either by mailing to a more recent mailing address or using available skip-tracing tools to identify a new mailing address.

29. It is our understanding that the direct mail notice effort will reach virtually all Rule 23(b)(3) Settlement Class Members.

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<sup>3</sup> The NCOA database is the official USPS technology product which makes changes of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream.

***Reminder Notice***

30. Reminder notices will be sent to identified Rule 23(b)(3) Settlement Class Members who have not submitted a claim, opted-out of the Settlement Class, or have not unsubscribed from the email campaign. JND will confer with the Parties regarding the necessity and specific timing of any reminder notices, to avoid logistical difficulties and to optimize effectiveness.

31. Again, different variations of the Reminder Notices will be sent to Settlement Class Member who disputed a non-residential or high-risk address indicator and those who did not. The content of the Reminder Notices alerts Rule 23(b)(3) Settlement Class Member that they have not yet filed a claim and need to do so in order to receive a payment pursuant to the Settlement.

**SETTLEMENT WEBSITE**

32. JND will work with the Parties to add information and links to the (b)(3) Settlement Website on the existing case website (<https://fraudshieldsettlement.com/>). The existing case website address will be prominently displayed in all notice documents and a direct link will be available in the email notices.

33. The (b)(3) Settlement Website will provide answers to frequently asked questions (FAQs), contact information for the Settlement Administrator, Settlement deadlines, and links to important case documents including the Rule 23(b)(3) Internet Notice, Claim Form, and the Settlement Agreement. It will also include information on how Rule 23(b)(3) Settlement Class Members can opt-out of or object to the Settlement if they choose.

34. The (b)(3) Settlement Website will feature an online Claim Form (“OCF”). If a user logs into the OCF with their Unique ID and Control Number that are provided in the Email and Mail Notices, JND will prepopulate the OCF with the Rule 23(b)(3) Settlement Class Members’ name and contact information where possible. JND will also ensure that Settlement Class Members are able to view the address(es) that Class Counsel identified as triggering the Fraud Shield

Indicator for the Settlement Class Member whose Unique ID and Control Number has been entered into the OCF, and will pre-populate this information into the OCF as well. JND will work with the Parties to design the online claims submission process to be streamlined and efficient for Rule 23(b)(3) Settlement Class Members. Additionally, a Claim Form will be posted on the (b)(3) Settlement Website for download for Rule 23(b)(3) Settlement Class Members who prefer to submit a Claim Form by mail.

35. The (b)(3) Settlement Website will be ADA-compliant and optimized for mobile visitors so that information loads quickly on mobile devices and will also be designed to maximize search engine optimization through Google and other search engines. Keywords and natural language search terms will be included in the site's metadata to maximize search engine rankings.

**TOLL-FREE NUMBER AND P.O. BOX**

36. JND will establish and maintain a 24-hour, toll-free telephone line that Settlement Class Members can call to obtain information about the Settlement. During business hours, the call center will be staffed with operators who are trained to answer questions about the Settlement using the approved answers to the FAQs referenced above.

37. JND will establish a dedicated email address to receive and respond to Rule 23 (b)(3) Settlement Class Member inquiries. JND will generate email responses from scripted answers to FAQs, which will be approved by the Parties, and will also be used by our call center personnel for efficiency and to maintain uniformity of messaging.

38. JND will also establish two separate post office boxes for this Settlement, one to receive Rule 23(b)(3) Settlement Class Member correspondence and paper Claim Forms, and another solely to receive exclusion requests.

### **NOTICE DESIGN AND CONTENT**

39. The proposed notice documents are designed to comply with Rule 23’s guidelines for class action notices and the *FJC’s Checklist*. The notices contain easy-to-read summaries of the Settlement and instructions on how to obtain more information.

40. Courts routinely approve notices that have been written and designed in a similar manner.

### **REACH**

41. Based on JND’s experience, we expect the direct notice effort to reach virtually all Rule 23(b)(3) Settlement Class Members. The reminder notice effort will further enhance notice exposure.

42. The expected reach will exceed that of other court approved programs and is on the high end of the 70–95% reach standard set forth by the FJC.<sup>4</sup>

### **CONCLUSION**

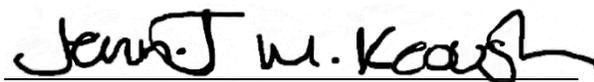
43. In my opinion, the proposed Notice Program provides the best notice practicable under the circumstances; is consistent with the requirements of Rule 23, and is consistent with other similar court-approved best notice practicable notice programs. The Notice Plan is designed to reach as many Rule 23(b)(3) Settlement Class Members as possible and inform them about the Settlement and their rights and options.

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<sup>4</sup> Federal Judicial Center, *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), p. 3 states: “...the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Seattle, Washington, this 18th day of August 2022.

A handwritten signature in black ink that reads "Jennifer M. Keough". The signature is written in a cursive style with a horizontal line underneath the name.

JENNIFER M. KEOUGH