

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRENT MCCULLOUGH,

Plaintiff,

v.

TRUE HEALTH NEW MEXICO, INC.,

Defendant.

Case No. D-202-CV-2021-06816

CLASS ACTION

**PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS
AND EXPENSES, AND SERVICE AWARDS**

I. INTRODUCTION

Faced with the risks inherent to data breach lawsuits, Class Counsel expeditiously secured a class-wide Settlement¹ that compensates Class Members for their losses and provides meaningful prospective relief which protects against future risks arising from the Data Incident. Class Counsel now respectfully request that the Court award \$315,000 in attorneys' fees and costs and expenses as contingent compensation for their work bringing this case to a successful resolution. The requested \$315,000 fee represents an approximately 1.53 multiplier on Class Counsel's collective current lodestar of \$205,630, which is well within range of what courts have found to be reasonable in other data breach class action settlements.

Additionally, Class Counsel respectfully request that the Court approve Service Awards in the amount of \$1,500 each to the five Class Representatives in recognition of their time and effort in pursuing this litigation. The Class Representatives actively participated in the prosecution of the case to obtain an excellent outcome for the Class and fulfilled all their duties as lead plaintiffs. No Settlement or recovery would have been possible without their vital role. Class Counsel's attorneys' fees, expenses, and costs, and the Service Awards to the Class Representatives will be paid by Defendant separately, without decreasing any Class benefits.

Class Counsel respectfully submit that the requested fee award is justified because of the significant Settlement benefits obtained despite the risks and obstacles presented by this litigation, the significant resources Class Counsel have invested and will continue to invest in this case, and the caliber of Class Counsel's work in the face of formidable opposition. Given the time and effort the Plaintiffs devoted to this litigation on behalf of the Class, Class Counsel submit that the requested Service Awards are reasonable. For all these reasons, and for those set

¹ Unless otherwise noted, all capitalized terms not defined herein have the same meaning ascribed to them in the Settlement Agreement ("Settlement" or "SA").

forth in more detail below, Plaintiffs respectfully request that the Court grant this Motion in its entirety.

II. BACKGROUND

The proposed Settlement seeks to resolve three separate class action lawsuits filed against True Health arising from a security incident involving the personally identifiable information (“PII”) and protected health information (“PHI”) of True Health’s patients: *McCullough v. True Health*, Case No. D-202-CV-2021-06816, *Clement, et al. v. True Health*, Case No. D-101-CV-2022-00129, and *Shanks v. True Health*, Case No. D-202-CV-2022-00449.

Plaintiffs allege that a ransomware attack occurred on or about October 5, 2021, and that this attack resulted in cyber-criminals accessing and/or obtaining the PII/PHI of True Health’s patients (the “Data Incident” or “Incident”). Plaintiffs allege that the PII/PHI of approximately 62,982 True Health patients were impacted in the Data Incident. Plaintiffs allege in their Complaints the following counts: negligence; negligence per se; invasion of privacy by intrusion; breach of express contract; breach of implied contract; breach of fiduciary duty; violation of the New Mexico Unfair Practices Act; and unjust enrichment.

Defendant aggressively maintained its position that Plaintiffs cannot state a claim for relief, that a class cannot be certified, that it would not be found liable at trial, and that Plaintiffs would not be able to prove damages resulting from the Data Incident. Defendant denies any and all liability.

As set forth in the concurrently filed Declarations of Anthony L. Parkhill (“Parkhill Fee Decl.”) and Andrew W. Ferich (“Ferich Fee Decl.”), Class Counsel expended considerable efforts litigating this case, and they persistently advanced and protected the interests of the Class from inception. Parkhill Fee Decl. ¶ 3; Ferich Fee Decl. ¶ 3.

A. Class Counsel Conducted Extensive Factual and Legal Investigations and Diligently Litigated the Case

Prior to commencing this litigation, Class Counsel diligently investigated potential legal claims (and potential defenses thereto) arising from True Health's failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI. Parkhill Fee Decl. ¶ 7; Ferich Fee Decl. ¶ 7. Class Counsel researched and analyzed voluminous reports, articles, and all publicly available information surrounding the Data Incident, including True Health's corporate structure and potential co-defendants. Parkhill Fee Decl. ¶ 8; Ferich Fee Decl. ¶ 8. Class Counsel interviewed and vetted victims and potential class members inquiring about the Data Incident. *Id.* In all phases of the litigation, Class Counsel stayed abreast of all material developments involving the Data Incident and endeavored to gain an ample understanding of the legal issues underlying Plaintiffs' claims. Parkhill Fee Decl. ¶ 9; Ferich Fee Decl. ¶ 9.

B. Class Counsel Engaged in Extensive Arms' Length Settlement Discussions and Negotiated All Aspects of the Settlement

Class Counsel also advocated zealously on behalf of the Class Members during the Settlement negotiation process. Parkhill Fee Decl. ¶¶ 3, 10; Ferich Fee Decl. ¶ 3, 10. In early 2022, the Parties began to engage in extensive arm's length negotiations concerning a possible settlement of this matter. Parkhill Fee Decl. ¶ 11; Ferich Fee Decl. ¶ 11. After extensive pre-mediation negotiations and discussions, on July 12, 2022, the Parties participated in a full-day mediation with Mediator Bennett G. Picker, Esq. of Stradley Ronon Stevens and Young, LLP. *Id.* In advance of formal mediation, the Parties discussed their respective positions on the merits of the claims and class certification and provided detailed information to the mediator on the relevant facts and law. Parkhill Fee Decl. ¶ 12; Ferich Fee Decl. ¶ 12. The July 2022 mediation session was hard-fought. Class Counsel and counsel for True Health aggressively advocated for each side's positions and views during the mediation session. Parkhill Fee Decl. ¶

14; Ferich Fee Decl. ¶ 14. The Parties were unable to reach a resolution at the mediation but continued to engage in settlement negotiations. *Id.*

Following substantial additional extensive arm's length settlement negotiations following the mediation, the Parties ultimately reached agreement on the general terms of the Settlement. Parkhill Fee Decl. ¶ 15; Ferich Fee Decl. ¶ 15. During the weeks that followed, the Parties exchanged numerous drafts of the Settlement Agreement and its exhibits, and exhaustively negotiated the remaining finer details of the Settlement. Parkhill Fee Decl. ¶ 16; Ferich Fee Decl. ¶ 16. These negotiations continued to be contested and involved detailed discussions regarding every provision of the Settlement Agreement and ancillary documents and the plan for Class Notice. Parkhill Fee Decl. ¶ 17; Ferich Fee Decl. ¶ 17.

Class Counsel solicited competing bids from multiple third-party administrators for settlement notice and administration. Parkhill Fee Decl. ¶ 18; Ferich Fee Decl. ¶ 18. The Parties ultimately agreed to the appointment of Epiq Class Action and Claims Solutions, Inc. ("Epiq") as Settlement Administrator. Class Counsel crafted, negotiated, and meticulously refined the final Notice Program and each document comprising the notice, with the assistance of a class action notice expert, to ensure that the information disseminated to Class Members is clear and concise. Parkhill Fee Decl. ¶ 19; Ferich Fee Decl. ¶ 19.

The information gleaned from an investigation and research into the facts and potential legal claims enabled Class Counsel to assess the strengths and weaknesses of this case, analyze potential damages models that could be utilized at trial, and informed the decision to engage in negotiation with True Health's Counsel about attending mediation and later settling the matter. Parkhill Fee Decl. ¶ 28; Ferich Fee Decl. ¶ 28. Class Counsel's diligence in preparing for mediation, including obtaining information necessary to analyze all claims and defenses, allowed

Class Counsel to negotiate a robust relief package and valuable outcome for the Settlement Class, and to determine a fair and efficient structure and distribution plan. Parkhill Fee Decl. ¶ 29; Ferich Fee Decl. ¶ 29.

At all times during settlement discussions, the negotiations were at arm's length. Furthermore, it was always Class Counsel's primary goal to achieve the maximum substantive relief possible for the Settlement Class Members. Parkhill Fee Decl. ¶ 20; Ferich Fee Decl. ¶ 20.

C. Class Counsel Obtained Preliminary Settlement Approval and Implemented the Court-Approved Notice Plan

After the lengthy process that led to finalization of the Settlement Agreement and its numerous exhibits, Class Counsel prepared and filed Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Mot. for Prelim. App."), which included supporting documents, declarations, and exhibits. As discussed therein, despite the risk and uncertainty of class certification and continued litigation, the Settlement is an outstanding result for the Class.

On December 19, 2022, the Court preliminarily approved the Settlement and ordered that the Class be given notice. *See* Order Allowing Preliminary Approval of Class Action Settlement and Directing Notice of Proposed Settlement ("Prelim. App. Order"). Thereafter, the Parties continued to work with the Settlement Administrator to supervise dissemination of Notice to Class Members. Parkhill Fee Decl. ¶ 30; Ferich Fee Decl. ¶ 30. These efforts included review and drafting of the language and format of the Settlement Website, the script for the automated response to the toll-free number, the language and format of the Notice forms, monitoring for exclusion requests and objections, and ensuring prompt response to every Class Member inquiry (whether by phone or e-mail) regarding the Settlement. *Id.*

D. Class Counsel Achieved a Strong Result for the Class

After over a year of hard-fought litigation, Class Counsel secured a robust Settlement that

provides significant and immediate relief to Class Members.² As an initial matter, the speedy resolution of data breach class actions is in the best interests of class members because it allows class members to take advantage of settlement benefits and protect their identities moving forward. Parkhill Fee Decl. ¶ 23; Ferich Fee Decl. ¶ 23. As such, the results achieved in this case are even more significant in that they were achieved relatively quickly while avoiding the attendant risks of litigation and non-recovery. The Settlement provides the following benefits, which are designed to address past, present, and future harm:

1. Ordinary Expense Reimbursement

All Settlement Class members who submit a valid Claim are eligible to recover compensation for up to \$250 of their ordinary out-of-pocket expenses that were incurred between October 5, 2021, and the August 14, 2023, Claims Deadline as a result of the Data Incident. *See* Prelim. App. Order ¶ 9(a); SA ¶ 18. These expenses include: (i) cost to obtain credit reports; (ii) fees related to credit freezes; (iii) card replacement fees; (iv) late fees; (v) overlimit fees; (vi) interest on payday loans taken as a result of the Incident; (vii) other bank or credit card fees; (viii) postage, mileage, and other incidental expenses resulting from lack of access to an existing account; and (ix) costs associated with credit monitoring or identity theft insurance if purchased as a result of the Incident; (x) compensation for attested-to lost time spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the aftermath/clean-up of the Incident, at the rate of \$20 per hour for up to five (5) hours of lost time (attestation requires at least a narrative description of the activities performed during the time claimed and their connection to the Incident). *Id.*

² The Settlement Class is defined as: “all Persons to whom True Health sent notification that their personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Incident.” Prelim. App. Order ¶ 10.

2. Extraordinary Expense Reimbursement

All Settlement Class members who submit a valid Claim are eligible to recover compensation for up to \$5,000 of their documented extraordinary monetary out-of-pocket losses incurred on or after October 5, 2021. Prelim. App. Order ¶ 9(b); SA ¶ 19. To receive benefits under this category, Settlement Class members will need to provide documentation plausibly supporting that the loss was not reimbursed by any other source, the loss was in material part caused by the Incident, and the Settlement Class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. *Id.* Any Settlement Class member who suffered documented fraud, attempted fraud, or publication or actual misuse associated with PHI compromised as a result of the Incident can also claim up to an additional three hours of lost time, at \$20 per hour, for time spent remedying the fraud or attempted misuse, subject to the \$5,000 extraordinary expense cap. *Id.*

3. Credit Monitoring Protections

Under the Settlement, True Health will provide two years of three bureau credit monitoring and identity theft insurance for those Settlement Class Members who submit valid Claims for such monitoring. Prelim. App. Order ¶ 9(c); SA ¶ 20.

4. Equitable Relief

Additionally, the Settlement Agreement requires True Health to implement certain security policies for at least one year from the Effective Date of the Settlement. SA ¶ 21. These increased security measures include: a written information security policy which employees will be required to review; cybersecurity training; a written password policy; Multi-Factor Authentication for remote access to email; and endpoint security measures. *Id.*

III. ARGUMENT

A. Class Counsel’s Fee Request Is Reasonable and Should Be Approved Under the Lodestar Method

“In class actions, the [] court has broad authority over awards of attorneys’ fees.” *Law v. Nat’l Collegiate Athletic Ass’n*, 4 Fed. App’x 749, 751 (10th Cir. 2001) (citation omitted). Courts assess the reasonableness of an attorney’s fee award using either the lodestar method or the percentage of the fund method. *See Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Rivera–Platte v. First Colony Life Ins. Co.*, 2007-NMCA-158, ¶ 78, 143 N.M. 158, 173 P.3d 765 (recognizing the court’s discretion to use either the percentage of recovery method or the lodestar method to calculate attorney fees); *In re N.M. Indirect Purchasers Microsoft Corp. Antitrust Litig.*, 2007-NMCA-007, ¶ 39, 140 N.M. 879, 149 P.3d 976 (“the choice of method is within the district court’s discretion”). Under either method, “the fee awarded must be reasonable.” *Microsoft*, 2007-NMCA-007, ¶ 76 (citing *Gottlieb*, 43 F.3d at 482).

1. The Lodestar Method Should Be Applied to Evaluate the Fee Request

Application of the lodestar method here is appropriate because the Settlement is an uncapped claims settlement, rather than a common fund. Thus, evaluation of the requested fees on a percentage of the fund basis is not feasible.

Applying the lodestar method confirms the propriety of Class Counsel’s fee request. Under this approach, “[a]ttorneys’ fees are properly calculated by determining the ‘lodestar’ – the number of hours reasonably expended multiplied by reasonable hourly rates – and then adjusting the lodestar figure, if appropriate, by considering one or more of the factors in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)” (the “*Johnson* factors”). *In re Davita Healthcare Partners, Inc. Derivative Litig.*, No. 12-cv-2074-WJM-CBS, 2015 U.S. Dist. LEXIS 74372, at *12 (D. Colo. June 5, 2015); *see also Case v. Unified Sch. Dist. No. 233*, 157

F.3d 1243, 1249 (10th Cir. 1998); *Flitton v. Primary Residential Mortg., Inc.*, 614 F.3d 1173, 1176 (10th Cir. 2010). This value serves as a starting point for the calculation of a reasonable fee. *Microsoft*, 2007-NMCA-007, ¶ 34; *Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist.*, 2012-NMCA-091, ¶ 20, 287 P.3d 318 (“The lodestar provides an objective basis for valuing the attorney’s services.”). A lodestar enhancement in the form of a multiplier may be appropriate based on, *inter alia*, the results achieved, counsel’s risk in prosecuting the case, and the complexity of the case. *See, e.g., In re Miniscribe Corp.*, 309 F.3d 1234, 1245 (10th Cir. 2002) (approving a 2.57 multiplier where “results achieved were sufficiently extraordinary”).

The lodestar method is typically used in statutory fee-shifting cases because it provides adequate fees to attorneys who undertake litigation that is socially beneficial. *Atherton v. Gopin*, 2012-NMCA-023, ¶ 7, 272 P.3d 700. Awards based on a lodestar may be increased by a multiplier if the court finds that a greater fee is reasonable in consideration of the risk factors and the result obtained. *Id.*; *see Microsoft*, 2007-NMCA-007, ¶¶ 72–75 (lodestar multiplier of 3 not unreasonable).

As discussed in more detail below in connection with analysis of the *Johnson* factors, the Court should apply the lodestar method to evaluate this claims-made settlement. Consideration of the *Johnson* factors confirms the reasonableness of Class Counsel’s fee request and the requested multiplier of approximately 1.53 on Class Counsel’s lodestar.

2. An Analysis of the *Johnson/Fryar* Factors Supports Class Counsel’s Fee Request

The *Johnson* factors, as referenced in the Tenth Circuit and other circuits, are as follows: 1) the time and labor involved; 2) the novelty and difficulty of the questions; 3) the skill required to perform the legal services properly; 4) the preclusion of other employment; 5) the customary fee; 6) any prearranged fee; 7) time limitations imposed by the client or the circumstances; 8) the

amount involved and the results obtained; 9) the experience, reputation, and ability of the attorneys; 10) the undesirability of the case; 11) the nature and length of the professional relationship with the client; and 12) awards in similar cases. *Johnson*, 488 F.2d at 717–19.

“Historically, New Mexico courts have also used the factors now found in Rule 16–105 of the Rules of Professional Conduct to examine the reasonableness of attorney fees.” *See, e.g., Microsoft*, 2007-NMCA-007, ¶ 76; *Rivera-Platte*, 2007-NMCA-158, ¶ 83 (“In New Mexico, a court determines the reasonableness of attorney fees by applying the . . . factors found in Rule [of Professional Conduct] 16-105.”); *Atherton*, 2012-NMCA-023, ¶ 6 (same); *Calderon v. Navarette*, 1990-NMSC-098, ¶¶ 7–10, 111 N.M. 1, 800 P.2d 1058 (addressing the reasonableness of fees awarded on a theory of quantum meruit after a contingency fee agreement was voided); *Fryar v. Johnsen*, 1979-NMSC-080, ¶¶ 9–11, 93 N.M. 485, 601 P.2d 718 (addressing the issue of reasonable attorney fees in the context of workers’ compensation cases).³ The eight factors described in the Rule are “effectively identical to the ‘*Johnson* factors’ used by the Tenth Circuit . . . and are commonly referred to as the ‘*Fryar* factors’ in New Mexico.” *Microsoft*, 2007-NMCA-007, ¶ 76 (internal citation omitted) (citing *Econ. Rentals, Inc. v. Garcia*, 1991-NMSC-092, ¶ 52, 112 N.M. 748, 819 P.2d 1306).

“The factors are not of equal weight, and all of the factors need not be considered.” *Atherton*, 2012-NMCA-023, ¶ 6 (quoting *Microsoft*, 2007-NMCA-007, ¶ 78).

a. The Time and Labor Required

³ These factors include: “(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.” Rule 16–105(A) NMRA.

The first *Johnson* factor supports the fee request. Bringing this case to a successful conclusion demanded a significant commitment of time and resources by a team of experienced lawyers. Parkhill Fee Decl. ¶¶ 32–43; Ferich Fee Decl. ¶¶ 32–43. Over the course of nearly two years of litigating this case from its initiation until reaching a settlement—which included, *inter alia*, pre-suit investigation of the relevant facts and potential claims, communications with potential plaintiffs and class members, drafting the initial complaints and the comprehensive CAC, review of all publicly available information and documents produced by True Health, and extensive efforts to mediate and settle this action—Class Counsel alone have expended 291.4 hours of time in prosecuting this case. Parkhill Fee Decl. ¶ 32; Ferich Fee Decl. ¶ 32; *see also* Additional Plaintiffs’ Counsel Declarations, submitted herewith.

As set forth *infra*, Class Counsel’s (and additional plaintiffs’ counsel’s) hourly rates are reasonable. Using current, reasonable billable rates, this equates to a collective lodestar for Class Counsel of \$205,630. Parkhill Fee Decl. ¶ 32; Ferich Fee Decl. ¶ 32. This figure does not include any additional work Class Counsel will expend toward finalizing the Settlement, including drafting the Motion for Final Approval, addressing objections, if any, attending the fairness hearing, and overseeing the work of the Settlement Administrator to make sure claims are timely paid. Parkhill Fee Decl. ¶ 41; Ferich Fee Decl. ¶ 41. The substantial investment of time and resources strongly supports the reasonableness of the requested fee.⁴

b. Novelty and Difficulty of the Questions, Undesirability of the Case

The second and tenth *Johnson* factors also support the fee request. This case presented complex and uncertain questions of fact and law. This is a highly complicated data breach case. True Health adamantly denied liability and expressed an intention to defend itself through trial.

⁴ A summary of timekeeping records for each firm are provided with the Declarations submitted herewith. *See* Parkhill Fee Decl. ¶ 37; Ferich Fee Decl. ¶ 37.

Parkhill Fee Decl. ¶ 21; Ferich Fee Decl. ¶ 21. There are very few attorneys in this state or nationally who are willing and capable of taking on a complex privacy claim like this at all, much less with the added complexity of class action rules and pitfalls.

Indeed, data breach cases are especially risky, expensive, and complex given the unsettled nature of the law in this area. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2807, 2019 U.S. Dist. LEXIS 135573, at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always “unpredictable.”); *in re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that “many of the legal issues presented in [] data-breach case[s] are novel”); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800, 2020 U.S. Dist. LEXIS 118209, at *32–*33 (N.D. Ga. Mar. 17, 2020) (recognizing the complexity and novelty of issues in data breach class actions). Despite these risks, Class Counsel were able to obtain an excellent result for Class Members.

This case is no different in that it presented novel and difficult issues, and the path to class certification was far from certain. *See Berry v. Fed. Kemper Life Assur. Co.*, 2004-NMCA-116, ¶ 37, 136 N.M. 454, 99 P.3d 1166 (noting that the mood across the country with regard to class actions is marked with caution).

Notably, “[a]s of May 2018, nationwide only one data breach consumer class had been certified.” *Linnins v. HAECO Ams., Inc.*, No. 1:16CV486, 2018 U.S. Dist. LEXIS 183839, at *2 (M.D.N.C. Oct. 26, 2018) (referring to *Smith v. Triad of Ala., LLC*, No. 1:14-CV-324-WKW, 2017 U.S. Dist. LEXIS 38574 (M.D. Ala. Mar. 17, 2017)). Numerous courts to consider class certification motions in data breach cases have denied certification. *See, e.g., Dolmage v. Combined Ins. Co. of Am.*, No. 14 C 3809, 2017 U.S. Dist. LEXIS 67555, at *9 (N.D. Ill. May 3,

2017) (class certification denied); *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21, 33 (D. Me. 2013) (same); *In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. 389, 397–98 (D. Mass. 2007) (same); *see also Hammond v. Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060, 2010 U.S. Dist. LEXIS 71996, at *14 (S.D.N.Y. June 25, 2010) (granting summary judgment for defendant due to lack of standing in data security/theft action).

This uncertainty and the novelty of this case, as well as the possibility of no recovery, equally supports the “undesirability” *Johnson* factor. *Hapka v. Carecentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 U.S. Dist. LEXIS 68186, at *3 (D. Kan. Feb. 15, 2018) (finding “undesirability” *Johnson* factor to be satisfied by uncertainty of success and novelty of the case). Accordingly, these factors support Class Counsel’s fee request.

c. The Skill Required, the Experience, Reputation, and Ability of the Attorneys

The third and ninth *Johnson* factors also support the fee request. This case presented extraordinary challenges that required extraordinary lawyering. In general, data breach class actions present relatively uncharted territory, and no data breach case has gone to trial.

Class Counsel are experienced litigators who have successfully prosecuted and resolved numerous large consumer class actions and other complex matters, including in other data breach cases. Parkhill Fee Decl. ¶ 44, Ex. A; Ferich Fee Decl. ¶ 44. Class Counsel’s skill and relevant experience were critical to achieving the Settlement here. This factor supports Class Counsel’s fee request.

d. Preclusion of Other Employment, Customary Fee, Contingent Fee, Awards in Similar Cases

Johnson factors 4, 5, 6, and 12 all strongly weigh in favor of the requested fee. As previously noted, Class Counsel alone spent 291.4 hours litigating this class action. Parkhill Fee Decl. ¶ 32; Ferich Fee Decl. ¶ 32. Additional Plaintiffs’ counsel incurred additional time in the

case, further supporting the requested fee. *See* Additional Plaintiffs’ Counsel Declarations, submitted herewith. Because hours and resources are necessarily limited, Class Counsel were required to defer or decline other work in order to properly prosecute this case. Parkhill Fee Decl. ¶ 38; Ferich Fee Decl. ¶ 38; *see, e.g., Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003, 1009 (D. Colo. 2014) (“Moreover, the time expended by Class Counsel on this case prevented them from working on other matters.”); *Burford v. Cargill, Inc.*, No. 05-0283, 2012 U.S. Dist. LEXIS 161232, at *3 (W.D. La. Nov. 8, 2012) (“The affidavits of Class Counsel prove that while this case did not preclude them from accepting other work, they were often times precluded from working on other cases due to the demands of the instant matter. . . . This factor weighs in favor of a substantial fee award.”).

Additionally, Class Counsel accepted this case on a contingent fee basis and therefore, accepted a significant risk of non-payment. *See Tuten*, 41 F. Supp. 3d at 1009 (“Class Counsel took the case on a contingent basis, which permits a higher recovery to compensate for the risk of recovering nothing for their work. This is notable, particularly because this case involved novel legal issues for which recovery was uncertain.” (internal citation omitted)). Had the case been lost, they would have received no compensation for their significant investment of money, time and effort.

The requested fee amount is also consistent with those approved in other data breach settlements. Class Counsel have amassed a collective lodestar of \$205,630 through March 30, 2023, thus the fee request of \$315,000 represents a 1.53 multiplier of Class Counsel’s lodestar (not including additional Plaintiffs’ counsel’s time). Parkhill Fee Decl. ¶ 32; Ferich Fee Decl. ¶ 32.

The lodestar multiple is well below the upper limit of the acceptable range of multipliers that have been approved by courts in the Tenth Circuit. *See, e.g., In re Davita*, 2015 U.S. Dist. LEXIS 74372, at *14–*16 (approving a multiplier of three where “Plaintiff has established that the significant risk it assumed by taking this case on contingency warrants compensation”); *Connolly v. Harris Trust Co. of Ca. (In re Miniscribe Corp.)*, 309 F.3d 1234, 1245 (10th Cir. 2002) (affirming fee award based on a lodestar multiplier of 2.57 in class action); *Tuten*, 41 F. Supp. 3d at 1009 (approving fees with lodestar multiplier estimated to be at or below two). New Mexico state courts have blessed similar and higher lodestar multipliers. *Microsoft*, 2007-NMCA-007, ¶ 99 (concluding that multiplier of 3 was appropriate); *Autovest L.L.C. v. Misquez*, A-1-CA-34964, mem. op. ¶ 17 (N.M. Ct. App. Dec. 14, 2017) (nonprecedential) (affirming fee award with a 1.2 multiplier); *Puma v. Wal-Mart Stores E., LP*, 2023-NMCA-005, ¶¶ 59–60, 523 P.3d 589 (affirming fee award amounting to 1.5 multiplier), *cert. granted* (S-1-SC-39540, Jan. 3, 2023).

New Mexico state courts have blessed similar and higher lodestar multipliers. *Microsoft*, 2007-NMCA-007, ¶ 99 (concluding that multiplier of 3 was appropriate); *Autovest L.L.C. v. Misquez*, A-1-CA-34964, mem. op. ¶ 17 (N.M. Ct. App. Dec. 14, 2017) (nonprecedential) (affirming fee award with a 1.2 multiplier); *Puma v. Wal-Mart Stores E., LP*, 2023-NMCA-005, ¶¶ 59–60, 523 P.3d 589 (affirming fee award amounting to 1.5 multiplier), *cert. granted* (S-1-SC-39540, Jan. 3, 2023).

e. The Time Limitations Imposed by the Client or the Circumstances

Class Counsel’s efficient and expeditious resolution of this litigation and timely provision of the Settlement benefits is of tremendous value. This case involved a time-sensitive issue in that the longer this case went unresolved, the longer that Class Members’ sensitive information

was at risk. *See Microsoft*, 2007-NMCA-007, ¶ 84 (“It is not the limit placed on counsel’s time that is significant in a case like the one at hand. Rather, it is Class Counsel’s commitment to represent the Class, despite the probability of years of litigation. If the Agreement had not been reached, the proceedings could have continued for an indeterminate time.”).

Here, Class Counsel’s efficient work allows Settlement Class members to seek compensation for out-of-pocket expenses incurred as a result of the Data Incident *immediately*. Parkhill Fee Decl. ¶ 23; Ferich Fee Decl. ¶ 23. At the same time, the Settlement allows Class Members to take advantage of Credit Monitoring Services and other similar services, which will help mitigate future harms. *Id.* “Given the nature of [data breach] case[s], it was important for Class Counsel to litigate this case on an expedited schedule, which Class Counsel successfully did.” *Hapka*, 2018 U.S. Dist. LEXIS 68186, at *3 (finding fee request appropriate where settlement provided \$200 payment for fraud). The seventh *Johnson* factor thus supports the fee request.

f. The Amount Involved and the Results Obtained

The eighth *Johnson* factor also supports the fee request. “[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained.” *O’Dowd v. Anthem, Inc.*, No. 14-cv-02787-KLM-NYW, 2019 U.S. Dist. LEXIS 153610, at *18 (D. Colo. Sept. 9, 2019) (D. Colo. Sep. 9, 2019). In negotiating the amounts to be paid under the Settlement, Class Counsel relied upon published reports documenting data breach and identity theft costs, actual costs incurred by Class Members (as relayed in conversations with Class Counsel), information uncovered in discovery, their own experience in other data breach litigation, and reported settlements in other data breach class actions. Parkhill Fee Decl. ¶ 22; Ferich Fee Decl. ¶ 22. The monetary benefits offered to Settlement Class Members are more than

fair and reasonable in light of reported average out-of-pocket expenses due to a data breach.

The benefits available here compare favorably to what Class Members could recover if successful at trial. In the experience of Class Counsel, the relief provided by this Settlement should be considered an outstanding result and benefit to the Class. *See, e.g., Hapka*, 2018 U.S. Dist. LEXIS 68186, at *3 (“By any measure, Class Counsel obtained a robust result in this data breach class action. The Settlement addresses past harms through reimbursement of Out-of-Pocket Losses or the alternative minimum \$200 payment for tax fraud and also helps Settlement Class Members protect against future harm through the Credit Monitoring Services.”). The equitable, forward-looking relief obtained with respect to True Health’s data security practices also provides substantial non-monetary benefits to all Class Members, irrespective of whether they submit a claim under the Settlement. *See* Parkhill Fee Decl. ¶ 23; Ferich Fee Decl. ¶ 23; *see also O’Dowd*, 2019 U.S. Dist. LEXIS 153610, at *18 (injunctive relief provides “substantial non-monetary benefits” to the class).

g. Nature and Length of the Relationship with the Clients

Finally, the eleventh *Johnson* factor weighs in favor of the fee award. Class Counsel and additional plaintiffs’ counsel have been in communication with their clients since before this action was commenced in December 2021 and remain in contact with them regarding details of this Settlement and its progression. Parkhill Fee Decl. ¶ 25; Ferich Fee Decl. ¶ 25. The Plaintiffs have been actively involved in this litigation and strongly support the Settlement. *Id.* Accordingly, this factor weighs in favor of Class Counsel’s fee request.

3. Class Counsel’s Hourly Rates Are Reasonable

In assessing the reasonableness of an attorney’s hourly rate, courts consider whether the claimed rate is “in line with those prevailing in the community for similar services by lawyers of

reasonably comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895–96 n.11 (1984). A “reasonable rate” is defined as the prevailing market rate in the relevant community for an attorney of similar experience. *Guides, Ltd. v. Yarmouth Group Prop. Mgmt., Inc.*, 295 F.3d 1065, 1078 (10th Cir. 2002).

“Because of the significant resources and skill required, as well the risks entailed, to litigate large-scale actions . . . very few attorneys handle such cases.” *Lucas v. Kmart Corp.*, No. 99-cv-01923-JLK-CBS, 2006 U.S. Dist. LEXIS 51420, at *13 (D. Colo. July 27, 2006). “Thus the relevant community for purposes of determining a reasonable billing rate for Class Counsel likely consists of attorneys who litigate nationwide, complex class actions.” *Id.* Class Counsel’s current rates are “in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation,” *Blum*, 465 U.S. at 895 n.11, *i.e.*, in the nationwide class action practice.

As set forth in Class Counsel’s Declarations, partner billing rates in this case range from \$1,050–675; associate rates range from \$725–425; and professional staff rates range from \$250–150. Class Counsel’s rates are in line with those recognized across the country (including in the Tenth Circuit) as acceptable in data breach and large complex class action cases. *See, e.g., Fulton-Green v. Accolade, Inc.*, No. 18-274, 2019 U.S. Dist. LEXIS 164375, at *32 (E.D. Pa. Sept. 23, 2019) (finding in data breach lawsuit that “Class Counsel’s rates range from \$202 to \$975 per hour. Courts have considered similar rates reasonable in the past.”). Class Counsel’s hourly rates (which are adjusted periodically according to market rates) have been accepted by courts throughout the country as reasonable. *See, e.g., In re Zoom Video Commc’ns, Inc. Priv. Litig.*, No. 20-cv-02155-LB, 2022 U.S. Dist. LEXIS 94857, at *33–*34 (N.D. Cal. Apr. 21, 2022) (granting final approval to \$85 million common fund privacy litigation settlement, and

approving Ahdoot Wolfson’s hourly rates, including Andrew Ferich’s then-current rate of \$750 for work performed in 2021, and Robert Ahdoot’s then-current rate of \$950); *In re BJC Healthcare Data Breach Litigation*, No. 2022-CC09492 (Circuit Court of the City of St. Louis, Missouri Sep. 6, 2022) (approving fee award of \$790,000, which included Barnow and Associates’ fees at rates of \$1,050/hour for Ben Barnow, \$725/hour for Anthony L. Parkhill, and \$425/hour for Riley W. Prince); *Yamagata v. Reckitt-Benckiser, LLC*, No. 3:17-cv-03529-VC, 2021 U.S. Dist. LEXIS 244276, at *12–*13 (N.D. Cal. Oct. 28, 2021) (awarding \$12,500,000 of reasonable attorneys’ fees, costs, and expenses on the basis of evidence submitted, including time records for Ben Barnow (\$950/hr) and Anthony L. Parkhill (\$650/hr)); *Allegretti v. Walgreen Co.*, No. 1:19-cv-05392, 2022 U.S. Dist. LEXIS 31985, at *13–*14 (N.D. Ill. Jan. 4, 2022) (approving a reasonable attorneys’ fee award of \$4,583,333.33, which included Barnow and Associates, P.C.’s fees at rates of \$950/hr for Ben Barnow and \$650/hr for Anthony L. Parkhill). Class Counsel’s rates fall within the national average rates for attorneys of comparable skill and experience who charge by the hour for their work and have been approved by numerous courts.

B. Class Counsel’s Costs and Expenses Are Reasonable and Appropriate

Class Counsel are entitled to reimbursement of the expenses they reasonably incurred investigating and prosecuting this matter. *See Staton*, 327 F.3d 938, 974 (Apr. 29, 2003). To date, Class Counsel have collectively incurred \$9,609.11 in unreimbursed litigation costs. Parkhill Fee Decl. ¶ 42; Ferich Fee Decl. ¶ 42. This amount does not include internal and other additional costs that Class Counsel incurred in this litigation but, in an exercise of discretion, do not seek to recover. These costs and expenses are included in the overall \$315,000 request.

The expenses for which Class Counsel seek reimbursement were reasonably necessary

for the continued prosecution and resolution of this litigation and were incurred by Class Counsel for the benefit of the class members with no guarantee that they would be reimbursed. They are reasonable in amount and the Court should approve their reimbursement.

C. The Requested Service Awards Should Be Approved

“[C]ourts regularly give incentive awards to compensate named plaintiffs for the work they performed—their time and effort invested in the case.” *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 468 (10th Cir. 2017); *see also Lane v. Page*, 862 F. Supp. 2d 1182, 1236 (D.N.M. 2012) (“The Courts of Appeals consistently assert that incentive awards for class representatives are justified to give incentive to a class representative to come forward when none are forthcoming, and to compensate a class representative for risks they take and work they perform on behalf of the class.”) (collecting cases and analysis).

Efforts supporting incentive awards include “monitoring class counsel, being deposed by opposing counsel, keeping informed of the progress of the litigation, and serving as a client for purposes of approving any proposed settlement with the defendant.” *Chieftain Royalty Co.*, 888 F.3d at 468. Similarly stated, “[i]n deciding whether [an incentive] award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.” *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *accord UFCW Local 880—Retail Food Emp’rs Joint Pension Fund v. Newmont Mining Corp.*, 352 Fed. App’x 232, 235 (10th Cir. 2009) (“[A] class representative may be entitled to an award for personal risk incurred or additional effort and expertise provided for the benefit of the class.”).

Here, Plaintiffs request a Service Award of \$1,500 each in recognition of their contributions to the successful resolution of this litigation. A \$1,500 Service is lower than those approved in numerous other data breach settlements. *See, e.g., In re Ashley Madison Customer Data Security Breach*, No. 4:15-md-02669 (E.D. Mo.) (\$5,000 service awards); *T.A.N. v. PNI Digit. Media, Inc.*, No. 2:16-CV-00132 (S.D. Ga.) (\$3,750); *Bray v. Gamestop Corp.*, No. 1:17-cv-01365-JEJ, 2018 U.S. Dist. LEXIS 226221, at *7–*8 (D. Del. Dec. 19, 2018) (\$3,750 service awards).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order: (a) awarding Co-Lead Class Counsel attorneys' fees, costs, and expenses in the amount of \$315,000; and (b) awarding the Class Representative Service Awards in the amount of \$1,500 each for efforts and commitment on behalf of the Class.

Dated: March 30, 2023

Respectfully submitted,

By: /s/ Mark Fine

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* admitted *pro hac vice*

DECLARATION OF SERVICE

I, Mark Fine declare that I effected service of the following document(s) on the parties listed below via e-mail.

Document(s):

Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards

Parties:

Meena H. Allen
Allen Law Firm LLC
6121 Indian School Road NE, Suite 230
Albuquerque, NM 87110

Paul G. Karlsgodt (*pro hoc vice forthcoming*)
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Counsel for Defendant True Health New Mexico, Inc.

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

DATED this 30th day of March, 2023.

/s/ Mark Fine

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRENT MCCULLOUGH,

Plaintiff,

v.

TRUE HEALTH NEW MEXICO, INC.,

Defendant.

Case No. D-202-CV-2021-06816

CLASS ACTION

**DECLARATION OF JOSEPH G. SAUDER IN SUPPORT OF THE PLAINTIFFS'
UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES,
AND INCENTIVE AWARDS**

I, Joseph G. Sauder, declare as follows, pursuant to 28 U.S.C. § 1746.

1. I am an attorney licensed to practice before the courts of Pennsylvania and New Jersey, as well as in the Eastern District of Michigan, District of New Jersey, the Eastern District of Pennsylvania, and the District of Colorado. I am a Partner at Sauder Schelkopf LLC. I have personal knowledge of the facts stated in this declaration and, if called as a witness, I could and would testify competently to them. I make this Declaration in support of Plaintiffs' Unopposed Motion for Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses, and Incentive Awards ("Fee and Expense Motion").

2. Sauder Schelkopf's firm resume and biographies for the principal attorneys working on this case is attached as Exhibit 1 to this Declaration.

3. During the pendency of this litigation, counsel carefully coordinated their activities to avoid engaging in duplicative work.

4. During the course of the litigation, Sauder Schelkopf attorneys performed the following tasks:

- a. Investigated the existence, cause, and scope of the data breach;

- b. Interviewed individuals who contacted our firm and reviewed their documents;
 - c. Drafted a detailed complaint;
 - d. Coordinated the case filed on behalf of our client with the counsel responsible for the *McCullough* action; and
 - e. Reviewed the terms of the proposed settlement and discussed them with our client.
5. As summarized below, Sauder Schelkopf devoted 42.5 hours to the prosecution and resolution of this matter, resulting in a lodestar of \$26,312.50.

Timekeeper	Role	Rate	Hours	Amount Billed
Joseph Sauder	Partner	\$875	13.60	\$11,560.00
Matthew Schelkopf	Partner	\$825	2.60	\$2,105.00
Joseph Kenney	Partner	\$625	14.90	\$8,607.50
Mark DeSanto	Associate	\$575	.4	\$230.00
Alice Elmer	Associate	\$350	10.8	\$3,780.00
Archita Rutkowski	Paralegal	\$150	.2	\$30.00
TOTAL			42.50	\$26,312.50

6. Sauder Schelkopf attorneys regularly prepared and maintained files contemporaneously documenting time spent, including tasks performed, and expenses incurred, relating to this matter.

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

Executed on March 29, 2023 at Berwyn, Pennsylvania.


/s/ Joseph G. Sauder

Exhibit A



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Attorneys at Law

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About Us

Attorneys

Joseph G. Sauder
Matthew D. Schelkopf
Joseph B. Kenney
Mark B. DeSanto

Practice Areas

Automobile Defects and False Advertising
Consumer Fraud Class Actions
Sexual Misconduct and Gender Discrimination
Employee Rights Class Actions
General Complex Litigation
Data Breach/Privacy Litigation

Case Highlights



About Us

Sauder Schelkopf has a nationally recognized litigation practice. The firm currently serves as court-appointed lead counsel in courts across the country. The attorneys at Sauder Schelkopf have recovered over \$500 million on behalf of their clients and class members. Our firm was recognized by the *Legal Intelligencer's* 2022 Professional Excellence Awards. [The Legal Intelligencer's Professional Excellence Awards](#) honor Pennsylvania law firms and attorneys who have made a significant, positive impact on the legal profession. Our firm was named in the Litigation Departments of the Year (Specialty Area Category), an award that honors the best litigation practice in a small or mid-sized firm in Pennsylvania. This recognition was based on the firm's 2021 litigation work and its important ongoing cases. *LawDragon* has recognized our attorneys in its list of the ["500 Leading Plaintiff Consumer Lawyers"](#) for 2022. This list notes: "From the opioid epidemic to toxic substances and defective products, truck accidents to wildfires and sexual abuse, these are the lawyers who stand on the front line in individual lawsuits and class actions seeking justice." Mr. Schelkopf was named to Pennsylvania's [Best Lawyers® 2022](#) for Class Actions/Mass Tort Litigation. *The American Lawyer* named Mr. Sauder to its [2021 Northeast Trailblazers](#). The honor recognizes 60 lawyers who are "truly agents of change." It "recognizes professionals in the Northeast who have moved the needle in the legal industry." *The Legal Intelligencer* named Mr. Sauder and Mr. Schelkopf in its [2020 Pennsylvania Trailblazers](#) list recognizing 31 lawyers who "have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change." *The Legal* highlighted the firm's innovative work on advocacy as class counsel in large institutional sex abuse cover-ups, women's, and children's rights. Our attorneys have also consistently been recognized by their peers being named to [Pennsylvania SuperLawyer](#), a distinction held by the top 5% of attorneys in Pennsylvania, and Pennsylvania [SuperLawyer Rising Stars](#), a distinction for 2.5% of lawyers in Pennsylvania. Our attorneys have also been selected by the National Trial Lawyers Association as the Top 100 Trial Lawyers in Pennsylvania.

Joseph G. Sauder, Partner

Joseph G. Sauder handles complex cases on behalf of individuals, sexual abuse survivors, consumers, small businesses and employees. Mr. Sauder currently serves as court appointed lead counsel in state and federal courts across the country. He has successfully litigated cases against some of the largest companies in the world.



Mr. Sauder started his legal career as a prosecutor in the Philadelphia District Attorney's Office where, from 1998 to 2003, he successfully tried hundreds of criminal cases to verdict, including sexual abuse cases. LawDragon recognized Mr. Sauder in its list of the ["500 Leading Plaintiff Consumer Lawyers"](#) for 2022. The Lawdragon consumer law guide offers the publication's take on the best of the U.S. plaintiff bar specializing in representing consumers. The publication notes "these are the lawyers who stand on the front line in individual lawsuits and class actions seeking justice. They relish their role of underdog, taking on the toughest cases" The American Lawyer named Joe Sauder to its [2021 Northeast Trailblazers](#). The honor recognizes 60 lawyers who are "truly agents of change." It "recognizes professionals in the Northeast who have moved the needle in the legal industry." The Northeast includes Maine, New York, New Jersey, Vermont, Massachusetts, Rhode Island, Connecticut, New Hampshire, and Pennsylvania. The Legal Intelligencer named Mr. Sauder in its [2020 Pennsylvania Trailblazers](#) list recognizing 31 lawyers who "have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change." The Legal highlights Joe's innovative work on advocacy as class counsel in large institutional sex abuse cover-ups, women's, and children's rights. Mr. Sauder has been repeatedly recognized by his peers. Since 2011, Mr. Sauder has been selected as a [Pennsylvania SuperLawyer](#), a distinction held by the top 5% of attorneys in Pennsylvania, as chosen by their peers and through the independent research of Law & Politics.

Mr. Sauder received his Bachelor of Science, magna cum laude in Finance from Temple University in 1995. He graduated from Temple University School of Law in 1998, where he was a member of Temple Law Review.

Mr. Sauder is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey, the United States Court of Appeals for the Third Circuit, the United

States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the District of New Jersey and the District of Colorado. Mr. Sauder currently serves as a lead counsel in numerous class actions related to product, construction and automotive defect cases pending throughout the country.

Matthew D. Schelkopf, Partner

Matthew D. Schelkopf has extensive trial and courtroom experience throughout the United States, with an emphasis on class actions involving automotive defects, consumer protection, defective products and mass torts litigation.



The Legal Intelligencer named Mr. Schelkopf in its [2020 Pennsylvania Trailblazers](#) list recognizing 31 lawyers who “have taken extra measures to contribute to positive outcomes . . . and who are truly agents of change.” *The Legal* highlights Matthew’s work on behalf of clients who have been victimized by corporations. Since 2010, Mr. Schelkopf has been selected by Pennsylvania Super Lawyers as a Rising Star (a distinction held by the top 2.5% of attorneys in PA) and then a Pennsylvania Super Lawyer, as chosen by their peers and through the independent research of Law & Politics. In 2012, The American Lawyer Media, publisher of *The Legal Intelligencer* and the *Pennsylvania Law Weekly*, named Mr. Schelkopf as one of the “Lawyers on the Fast Track” a distinction that recognized thirty-five Pennsylvania attorneys under the age of 40 who show outstanding promise in the legal profession and make a significant commitment to their community. Mr. Schelkopf was also selected as a Top 40 under 40 by the National Trial Lawyers in 2012-2015.

Mr. Schelkopf began his legal profession as a criminal prosecutor with the District Attorney’s Office of York County. He quickly progressed to Senior Deputy Prosecutor where he headed a trial team responsible for approximately 300 felony and misdemeanor cases each quarterly trial term.

In 2004, Mr. Schelkopf then associated with a suburban Philadelphia area law firm, litigating civil matters throughout Pennsylvania and New Jersey. In 2006, he was co-counsel in a Philadelphia County trial resulting in a \$30,000,000.00 jury verdict in favor of his clients - the largest state verdict recorded for that year. Mr. Schelkopf currently serves as a lead and co-lead counsel in numerous class actions related to product and automotive defect cases pending throughout the country.

Outside of the office, Mr. Schelkopf enjoys spending time with his family, mountain and road biking, skiing and restoring classic automobiles. Three of his auto restorations have been featured in nationally circulated automotive publications.

Joseph B. Kenney, Partner

Joseph B. Kenney has experience representing consumers in class actions involving defective products, automotive defects, false and misleading advertising, and other consumer protection litigation. Mr. Kenney also represents victims of sexual misconduct in federal courts throughout the country.



Since 2017, Joe has been selected by Pennsylvania Super Lawyers as a Rising Star, an honor reserved for 2.5% of lawyers in Pennsylvania, as chosen by his peers based on his professional achievements. Joe is also the co-chair of the firm's Law & College Fellowship Program, where he mentors undergraduate students, law students, and new attorneys. Joe has argued numerous dispositive motions in federal courts across the country, deposed engineers and other highly specialized witnesses, and achieved settlements valued in the tens of millions of dollars on behalf of consumers.

Joe received his J.D., *cum laude*, from Villanova University's School of Law in 2013. While at Villanova, he was elected as a Managing Editor of Student Works for the Jeffrey S. Moorad Journal of Sports Law for his third year of law school. As a staff writer, his comment, *Showing On-Field Racism the Red Card: How the Use of Tort Law and Vicarious Liability Can Save the MLS from Joining the English Premier League on Racism Row*, was selected for publication in the Spring 2012 Volume of the Journal. Prior to law school, he attended Ursinus College where he majored in politics and minored in international studies. Mr. Kenney was also a member of the men's varsity soccer team at Ursinus.

Joe is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey and the United States District Courts for the Eastern District of Pennsylvania, the District of New Jersey, the District of Colorado, and the Eastern District of Michigan.

Mark B. DeSanto, Associate

Mark B. DeSanto has extensive class action litigation experience in federal courts throughout the United States representing consumers, pension participants, investors, and employees in class actions involving false and misleading advertising, defective products, data breaches, ERISA litigation, securities litigation, employee rights, and other consumer protection litigation.



Since 2018, Mr. DeSanto has been selected by Pennsylvania Super Lawyers as a Rising Star (an honor reserved for 2.5% of lawyers in Pennsylvania), as selected by his peers based on his professional achievements. Mr. DeSanto has extensive experience handling all aspects of class action litigation, from inception through pretrial motion practice, including case investigation and initiation, complaint drafting and motion to dismiss briefing, written discovery and discovery motion practice, taking and defending fact witness depositions, contested class certification briefing, preparation of expert reports, taking and defending expert witness depositions, *Daubert* motion practice, summary judgment, motions in limine, preliminary and final approval settlement briefing, and oral arguments on all of the foregoing. Mr. DeSanto also authored a chapter of a course handbook published by the Practising Law Institute on March 1, 2018, for the 23rd Annual Consumer Financial Services Institute titled Chapter 57: The Impact of Payment Card II on Class Action Litigation & Settlements (ISBN Number: 9781402431005).

Mr. DeSanto received his Juris Doctor (J.D.), *cum laude*, from the University of Miami School of Law in 2013, where he was also a member of the National Security and Armed Conflict Law Review. During his second and third years of law school, Mr. DeSanto worked full-time at a securities litigation firm while also attending law school full-time and earning Dean's List and President's Honor Roll distinction (4.0 GPA) in multiple semesters. Prior to attending law school, Mr. DeSanto attended the University of Miami where he earned his Bachelor of Business Administration (B.B.A.) in Finance in 2009.

Mr. DeSanto is admitted to practice law in Florida, Pennsylvania, and New Jersey, and has been admitted to United States District Courts for the Eastern District of Pennsylvania, the District of New Jersey, Southern District of Florida, and the District of Colorado.

Practice Area: Consumer Fraud Class Actions

The attorneys at Sauder Schelkopf have prosecuted and resolved numerous consumer fraud class actions on behalf of millions of consumers against nationally known corporations for deceptive and unfair business practices. Sauder Schelkopf's experience includes the following types of consumer fraud class action cases:

Automotive Defects - Automobiles are a major expense and consumers expect them to provide safe and reliable transportation for themselves and their family and friends. Some vehicles, however, may contain manufacturing or design defects that can pose a danger to our families and others on the road. Even if these defects do not create a potential safety issue, they might result in costly repairs to consumers.

Construction Defects - When consumers purchase a home, they expect the plumbing and other basic functions of the home to work without fail. Certain companies, however, are known to cut corners when designing and manufacturing their products. When an essential component of the home fails, it can lead to costly repair bills, damage to the surrounding property in the home, and high homeowner's deductibles.

Consumer Electronics Defects - As technology continues to evolve, more and more consumers purchase and depend upon electronic devices in their daily routines. From smartphones to state-of-the-art drones, many manufacturers rush products to sale to take advantage of high consumer demand. As these products are rushed to market, consumers often are left between the difficult choice of paying expensive repair bills or placing their expensive product on the shelf to gather dust.

Medical Device Defects - Manufacturers of medical devices are held to high standards in the design, manufacturing, and marketing of their products. When a manufacturer learns of a defect in their medical device that could cause bodily harm to the end-user, the law imposes a strict duty on them to institute a recall immediately. Many times, however, manufacturers seek to place profits above the safety of their customers



Practice Area: Sexual Misconduct and Gender Discrimination

Sauder Schelkopf has a nationally recognized sexual misconduct practice with significant experience fighting for victims. Our former prosecutors have extensive experience investigating and trying cases. Sauder Schelkopf represented victims of clergy sexual abuse in dioceses throughout the country. We have litigated numerous class action and individual lawsuits throughout the country on behalf of sexual abuse survivors.



Practice Area: Employee Rights Class Actions

The attorneys at Sauder Schelkopf have protected workers' rights. Employees are given numerous protections under state and federal law. The attorneys at Sauder Schelkopf has held employers accountable to their obligations under the law when hiring, employing, and firing their workers.

If employees face discrimination based on their race, color, country of origin, religion, gender, sexual orientation, the employer is violating the law. In addition, many employees do not receive their due compensation as numerous employers engage in wage and hour violations. Whether you are a potential whistleblower, or your case is associated with any technical or creative legal matter, the attorneys at Sauder Schelkopf are available to discuss your potential case.

Case Highlights

The attorneys at Sauder Schelkopf have played a lead role in cases throughout the country including:

- *Afzal v. BMW of North America, LLC, (D.N.J.)* (class action on behalf of purchasers and lessees of BMW M3 vehicles with S65 engines containing an alleged rotating assembly defect resulting in engine failure);
- *Ajose v. Interline Brands, Inc., (M.D. Tenn.)* (\$16.5 million nationwide class action settlement on behalf of purchasers of defective toilet connectors);
- *Bang v. BMW of North America, LLC, (D.N.J.)* (class action settlement on behalf of hundreds of thousands of purchasers and lessees of certain BMW vehicles with N63 engines containing alleged oil consumption defect);
- *Bromley v. SXS LLC, (W.D. Tex.)* (class action settlement related to ticket purchases for 2020 festival cancelled by the COVID-19 pandemic);
- *Brown v. Hyundai Motor Am., (D.N.J.)* (class action settlement related to defect that caused premature engine failure in approximately 1 million Hyundai vehicles);
- *In re Checking Account Overdraft Litig., (S.D. Fla.)* (class action resulting in a \$55 million settlement with US Bank; \$14.5 million settlement with Comerica);
- *Cole v. NIBCO, Inc., (D.N.J.)* (\$43.5 million class action settlement related to defect in PEX products that made them prone to leaking and causing substantial property damage);
- *Davitt v. Honda North America, Inc., (D.N.J.)* (class action settlement on behalf of hundreds of thousands of purchasers and lessees of Honda CR-V vehicles with alleged defective door lock actuators);
- *Desio et al. v. Insinkerator et al. (E.D. WA)* (\$3.8 million class action settlement on behalf of homeowners who purchased defective water filters);
- *Fath v. American Honda Motor Co., (D. Minn)* (class action settlement related to defect that caused vehicles to experience fuel dilution and eventually engine failure);

- ***Guill, Jr. v. Alliance Resource Partners, L.P., (S.D. Ill)*** (WARN Act class action on behalf of 200 coal miners);
- ***Hartley v. Sig Sauer, Inc., (W.D. Mo.)*** (class action settlement related to pistols that suffered from defect which made them susceptible to firing out-of-battery);
- ***Henderson v. Volvo Cars of North America LLC, (D.N.J.)*** (class action nationwide settlement on behalf of 90,000 purchasers and lessees of Volvo vehicles with defective GM4T65 automatic transmissions);
- ***In re: Hyundai and Kia Engine Litig., (C.D. Cal.)*** (class action settlement valued at \$892 million related to defect that caused catastrophic engine failure in approximately 4 million Hyundai and Kia vehicles);
- ***International Brotherhood of Electrical Workers Local 98 Pension Fund v Encore, (San Diego, CA)*** (shareholder derivative settlement implemented industry-leading reforms to its risk management and corporate governance practices, including creating Chief Risk Officer and Chief Compliance Officer positions, various compliance committees, and procedures for consumer complaint monitoring);
- ***Jackson v. Viking Group, Inc., (D. Md.)*** (class action settlement valued between \$30.45 million and \$50.75 million on behalf of owners of defective sprinklers that suffered from non-fire activations);
- ***Klug v. Watts Regulatory Co., and Ponzo v. Watts Regulatory Co., (D. Neb.)*** (\$14 million settlement on behalf of homeowners with defective toilet connectors and water heater connectors manufactured by Watts);
- ***Lax v. Toyota Motor Corporation, (N.D. Cal.)*** (class action on behalf of hundreds of thousands of purchasers and lessees of certain Toyota vehicles with alleged oil consumption defect);
- ***McCoy v. North State Aviation, (M.D.NC)*** (\$1.5 million settlement on behalf of hundreds of former employees for Worker Adjustment and Retraining Notification (WARN) violations when they were fired without notice);
- ***Mendoza v. Hyundai Motor America, Inc., (N.D. Cal.)*** (class action on behalf of hundreds of thousands of purchasers and lessees of certain Hyundai Sonata vehicles with alleged connecting rod bearing defect resulting in engine failure);

- *Neale v. Volvo Cars of North America LLC, (D.N.J.)* (certified class action on behalf of hundreds of thousands of purchasers and lessees of certain Volvo vehicles with alleged defective sunroof water drainage systems);
- *In re: Outer Banks Power Outage Litigation, (E.D.N.C.)* (\$10.3 million settlement on behalf of businesses impacted by massive power outage and evacuation cause by a bridge builder);
- *Physicians of Winter Haven v. Steris Corp., (N.D. Ohio)* (\$20 million class action settlement on behalf of surgical centers to recoup out-of-pocket expenses related to recalled medical device);
- *Rangel v. Cardell Cabinetry, LLC, (W.D. Tex.)* (\$800,000 settlement on behalf of hundreds of former employees of a Texas cabinetry maker for Worker Adjustment and Retraining Notification (WARN) violations when they were fired without notice);
- *Rivera v. Ford Motor Company, (E.D. Mich.)* (class action on behalf of hundreds of thousands of purchasers and lessees of certain Ford Focus vehicles with alleged defective Evaporative Emission Control (EVAP) systems causing sudden and unexpected engine stalling);
- *Smith v. Gaiam, (D. Colo.)* (\$10 million consumer class action settlement, which provided full relief to the class);
- *In re Stericycle Inc., Sterisafe Contract Litigation, (N.D. Ill.)* (\$295 million class action settlement on behalf of medical waste disposal customers of Stericycle regarding alleged automated price increases in violation of contractual terms);
- *Tolmasoff v. General Motors, (E.D. MI.)* (\$6 million nationwide class action settlement on behalf of purchasers and lessees alleging overstated MPG);
- *Traxler v. PPG Industries, Inc., (N.D. Ohio)* (\$6.5 million class action settlement on behalf of homeowners who purchased and used defective deck stain);
- *In re: USC Student Health Center Litig., (C.D. Cal.)* (\$215 million class action settlement on behalf of female patients of Dr. George Tyndall, a gynecologist at the University of Southern California accused of sexually assaulting students since the 1990s);

- ***Wallis v. Kia Motors America, Inc., (N.D. Cal.)*** (class action on behalf of hundreds of thousands of purchasers and lessees of certain Kia vehicles with alleged connecting rod bearing defect resulting in engine failure);
- ***Whalen v. Ford Motor Co., (N.D. Cal.)*** (class action on behalf of hundreds of thousands of purchasers and lessees of certain Ford and Lincoln vehicles with alleged defective MyFord Touch infotainment systems);
- ***Yaeger v. Subaru of America, Inc., (D.N.J.)*** (class action on behalf of hundreds of thousands of purchasers and lessees of certain Subaru vehicles with alleged oil consumption defect).
- ***Shanks v. True Health New Mexico, Inc., D-202-CV-2022-00445 (2nd Dist. Ct. NM)*** (class action on behalf of consumers impacted by a data breach).

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRENT MCCULLOUGH,

Plaintiff,

v.

TRUE HEALTH NEW MEXICO, INC.,

Defendant.

Case No. D-202-CV-2021-06816

CLASS ACTION

**DECLARATION OF ANTHONY L. PARKHILL IN SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEYS' FEES, COSTS AND EXPENSES,
AND SERVICE AWARDS**

I, Anthony L. Parkhill, hereby declares as follows:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to so testify. I am one of Class Counsel in this action. I am an attorney with Barnow and Associates, P.C. ("B&A"), and am a member in good standing of the bar of the state of Illinois.

2. This Declaration is submitted in Support of Plaintiffs' Motion for Attorneys' Fees, Costs and Expenses, and Service Awards. I make the following declaration based upon my own personal knowledge and, where indicated, as based on information and belief, that the following statements are true. If called upon as a witness, I could and would competently testify as follows.

3. B&A, along with our Co-Class Counsel, have vigorously and zealously represented the interests of the Settlement Class from the inception of this litigation until the present.

4. Throughout this action, B&A and co-counsel have managed the administration and work division in this case in a systematic and efficient manner, coordinating work assignments through conference calls, working to avoid duplication of efforts or unnecessary work undertaken,

and ensuring that the skills and talents of counsel were put to use in an efficient and effective manner that maximized what each firm and attorney could contribute in a non-redundant way.

5. As explained herein, I believe the Settlement to be fair, reasonable, and adequate, and in the best interests of the Settlement Class.

CLASS COUNSEL’S LITIGATION EFFORTS AND WORK ON BEHALF OF THE CLASS

6. On December 3, 2021, my firm, B&A, and co-counsel at Ahdoot Wolfson, P.C., filed a complaint against True Health on behalf of Plaintiff McCullough and similarly situated individuals relating to the True Health data breach (“Data Incident”). *McCullough v. True Health*, Case No. D-202-CV-2021-06816. Two additional complaints were filed after our first-filed case. *Clement et al v. True Health*, Case No. D-101-CV-2022-00129; *Shanks v. True Health*, Case No. D-202-CV-2022-00449. On March 21, 2022, Plaintiff McCullough and the plaintiffs from the *Clement* action agreed to consolidate the *McCullough* and *Clement* actions. Plaintiff Shanks agreed to stay her case for thirty days after the date of the mediation.

7. My firm has been diligent in and committed to investigating claims on behalf of the Class. Prior to commencing this litigation, Class Counsel diligently investigated potential legal claims (and potential defenses thereto) arising from True Health’s failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI.

8. My firm has performed the following work on behalf of Plaintiffs and Class members (much of which is ongoing):

- a. Diligently investigated the circumstances surrounding the Data Incident;
- b. Articulated the nature of the Data Incident in a detailed complaint;

- c. Stayed abreast of and analyzed voluminous reports, articles, and other public materials discussing the Data Incident and describing the challenged conduct;
- d. Reviewed public statements concerning the Data Incident;
- e. Researched True Health's corporate structure and potential co-defendants;
- f. Fielded numerous contacts from victims and potential class members inquiring about this matter;
- g. Investigated the nature of the challenged conduct at issue here by interviewing potential clients who contacted us;
- h. Investigated the adequacy of the named Plaintiffs to represent the putative class;
- i. Drafted and filed an original complaint against True Health;
- j. Extensively prepared for and attended an all-day mediation session with True Health;
- k. Engaged in continued settlement negotiations until the Settlement was finalized;
- l. Communicated and met and conferred internally amongst other Plaintiffs' counsel in the later-filed cases;
- m. Coordinated with True Health's counsel regarding the litigation and settlement issues; and
- n. Negotiated and memorialized the Settlement and all of its supporting documents in preparation for seeking preliminary approval from the Court.

9. In all phases of the litigation, B&A stayed abreast of all material developments involving the Data Incident and gained an ample understanding of the legal issues underlying Plaintiffs' claims.

MEDIATION AND SETTLEMENT NEGOTIATIONS

10. Class Counsel advocated zealously on behalf of the Class Members during the Settlement negotiation process.

11. In early 2022, my co-counsel and I began to engage in extensive arm's length negotiations concerning a possible settlement of this matter. After extensive pre-mediation negotiations and discussion, we eventually agreed to attend a mediation with True Health on July 12, 2022. Our firms engaged Bennett G. Picker, Esq. of Stradley Ronon Stevens and Young, LLP as a mediator to oversee settlement negotiations in this Action.

12. Prior to the mediation with Mr. Picker, the Parties exchanged information to prepare for and facilitate a productive mediation session. The Parties discussed their respective positions on the merits of the claims and class certification and provided detailed information to the mediator on the relevant facts and law.

13. Class Counsel received and analyzed ample discovery and confirmatory information to determine that the Settlement is fair. Prior to the mediation, Class Counsel requested documents from Defendant in order to ascertain what would be a fair, reasonable, and adequate settlement in this case. This discovery guided Class Counsel in their negotiations with Defendant and gave Class Counsel confidence that the Settlement exceeds the standards of Rule 1-023 NMRA.

14. The July 2022 mediation session was hard-fought. Class Counsel and counsel for True Health aggressively advocated for each side's positions and views during the mediation

session. The Parties were unable to reach a resolution at the mediation but continued to engage in settlement negotiations.

15. Following substantial additional extensive arm's length settlement negotiations following the mediation, the Parties ultimately reached agreement on the general terms of the Settlement.

16. During the weeks that followed, the Parties exchanged numerous drafts of the Settlement Agreement and its exhibits, and exhaustively negotiated the remaining finer details of the Settlement.

17. These negotiations continued to be contested and involved detailed discussions regarding many provisions of the Settlement Agreement and ancillary documents and the plan for Class Notice.

18. Class Counsel solicited competing bids from multiple third-party administrators for settlement notice and administration.

19. The Parties ultimately agreed to the appointment of Epiq Class Action and Claims Solutions, Inc. ("Epiq") as Settlement Administrator. Class Counsel crafted, negotiated, and meticulously refined the final Notice Program and each document comprising the notice, with the assistance of a class action notice expert, to ensure that the information disseminated to Class Members is clear and concise.

20. At all times during settlement discussions, the negotiations were at arm's length. Furthermore, it was always Class Counsel's primary goal to achieve the maximum substantive relief possible for the Settlement Class Members.

21. The Settlement benefits that Plaintiffs have obtained for the Class are well within the range of possible recovery of benefits at trial. This is a highly complicated data breach case.

True Health adamantly denied liability and expressed an intention to defend itself through trial. Due to the risks of data breach litigation, as well as much litigation, Class Counsel believe that it is possible that the Class could receive less than the Settlement provides if the case is litigated.

22. The Settlement achieved in this litigation is the product of the initiative, investigations, and hard work of skilled counsel. In negotiating the amounts to be paid under the Settlement, Class Counsel relied upon published reports documenting data breach and identity theft costs, actual costs incurred by Class Members (as relayed in conversations with Class Counsel), information uncovered in discovery, their own experience in other data breach litigation, and reported settlements in other data breach class actions.

23. In my opinion, the speedy resolution of data breach class actions is in the best interests of class members because it allows class members to take advantage of settlement benefits and help protect their identities moving forward. The Settlement allows Settlement Class members to seek compensation for out-of-pocket expenses incurred as a result of the Data Incident promptly. At the same time, the Settlement allows Class Members to take advantage of Credit Monitoring Services and other similar services, which will help mitigate future harms. Further, the equitable, forward-looking relief obtained with respect to True Health's data security practices provides substantial non-monetary benefits to all Class Members, irrespective of whether they submit a claim under the Settlement.

24. The requested Service Awards in the amount of \$1,500 per Class Representative fairly reflect the work the Class Representatives have performed in assisting Class Counsel with this litigation and their dedication in bringing this lawsuit on behalf of the Settlement Class.

25. The named Plaintiffs have been actively engaged in this litigation, and were essential to the success achieved. Among other things, they provided information to Class Counsel,

gathered documents, reviewed pleadings, stayed updated about the litigation, and reviewed and approved the Settlement. The Settlement would not have been possible without the effort and commitment of the Plaintiffs, who sacrificed their time and put their name on the line for the sake of the Class. Their commitment is notable given the modest size of their personal financial stakes in the matter.

26. The Parties did not discuss or agree upon payment of attorneys' fees, costs, expenses, and Service Awards until after they agreed on all material terms of relief to the Settlement Class.

MOTION FOR PRELIMINARY APPROVAL AND BEYOND

27. After the lengthy process that led to finalization of the Settlement Agreement and its numerous exhibits, Class Counsel prepared and filed Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Mot. for Prelim. App."), which included supporting documents, declarations, and exhibits.

28. The information gleaned from an investigation and research into the facts and potential legal claims enabled Class Counsel to assess the strengths and weaknesses of this case, analyze potential damages models that could be utilized at trial, and informed the decision to engage in negotiation with True Health's Counsel about attending mediation and later settling the matter.

29. Class Counsel's diligence in preparing for mediation, including obtaining information necessary to analyze all claims and defenses, allowed Class Counsel to negotiate a robust relief package and valuable outcome for the Settlement Class, and to determine a fair and efficient structure and distribution plan.

30. On December 19, 2022, the Court preliminarily approved the Settlement and ordered that the Class be given notice. *See* Order Allowing Preliminary Approval of Class Action Settlement and Directing Notice of Proposed Settlement (“Prelim. App. Order”). After the Settlement received preliminary approval, Class Counsel worked closely with the Settlement Administrator to implement the Notice Plan. These efforts included review and drafting of the language and format of the Settlement Website, the script for the automated response to the toll-free number, the language and format of the Notice forms, monitoring for exclusion requests and objections, and ensuring prompt response to every Class Member inquiry (whether by phone or e-mail) regarding the Settlement. Class Counsel continues to work closely with the Settlement Administrator during the ongoing Claims Period. B&A will continue to communicate with and assist Class Members who reach out to Class Counsel about the Settlement and filing Claim Forms.

31. B&A has performed various other litigation related work during the pendency of this matter, included meetings, emails, and phone calls between co-counsel and with counsel for True Health, communicating with the Plaintiffs regarding case developments and litigation strategy, and calls with numerous consumers who reached out to B&A about this litigation.

**B&A HAS COMMITTED SIGNIFICANT EFFORTS AND RESOURCES TO THIS
LITIGATION FOR THE BENEFIT OF THE CLASS**

32. B&A expended 125.4 hours in this litigation through March 30, 2023, for a total lodestar of \$81,025.00.

33. B&A’s representation of the Class in this matter is on a wholly contingent basis. B&A’s fees were not guaranteed—the retainer agreements B&A has with Plaintiffs do not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. B&A has devoted substantial resources to this matter, and we have received no payment for any of the hours of services performed or the out-of-pocket costs and expenses that

B&A committed to the litigation of this case. As such, B&A assumed a significant risk of nonpayment or underpayment. We did this, with no guarantee of repayment, to represent our clients and because of the public interest and social importance of this case. Moreover, B&A was required to forego other financial opportunities to litigate this case. B&A thus took this case with the expectation that the Firm would receive a risk enhancement in the event we prevailed.

34. All B&A attorneys and legal staff who worked on this case maintained contemporaneous time records reflecting the time spent on all billable matters. In all instances, the B&A timekeeper indicated the date and amount of time spent on a task to the tenth of an hour, described the work that was performed during the indicated time period, and identified the case to which the time should be billed.

35. B&A made every effort to litigate this matter efficiently by coordinating the work of B&A’s attorneys, minimizing duplication, and assigning tasks in a time and cost-efficient manner, based on the timekeepers’ experience levels and talents.

36. B&A’s fee records accurately reflect work actually, reasonably, and necessarily performed in connection with the litigation of this matter. I believe that the hours spent reflect time spent reasonably litigating this case, which I have sought to manage and staff efficiently as described above.

37. A summary of rates and hours expended by B&A’s professionals, as of March 30, 2023, is set forth as follows:

Professional	Title	Billable Rate	Billable Hours	Billable Fees
Ben Barnow	Partner	\$1050	12.8	\$13,440.00
Anthony L. Parkhill	Associate	\$725	58	\$42,050.00
Riley W. Prince	Associate	\$475	46.6	\$22,135.00
Nicholas Blue	Associate	\$425	8	\$3,400.00
TOTALS:			125.4	\$81,025.00

38. This matter has required me, and other attorneys at B&A, to spend time on the investigation and litigation of this matter that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time and B&A's time. Such time could otherwise have been spent on other fee-generating work. Because our Firm undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time my Firm spent working on this case could and would have been spent pursuing other potentially fee generating matters.

39. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real and high, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite B&A's devotion to the case and our confidence in the claims alleged against True Health, there have been many factors beyond our control that posed significant risks. Had True Health prevailed on the merits, on class certification, or on appeal, my Firm and I might have recovered nothing for the time and expense B&A invested in representing the Settlement Class.

40. I believe that the time and resources spent by my Firm were reasonable, and I have sought to manage this matter efficiently at every turn.

41. B&A will continue to expend significant attorney time and resources on this matter given the future work still needed for completion of the Settlement, including: drafting and filing a motion for final approval, preparing for and attending the final approval hearing, responding to Class Member inquiries or challenges, responding to any requests for exclusion or objections,

addressing any appeals, and working with Defendant and the Settlement Administrator on the distribution of benefits to the Settlement Class.

BARNOW AND ASSOCIATES' REASONABLE EXPENSES

42. To date, B&A has incurred \$4,451.03 of litigation expenses, as follows:

Description	Amount
Filing Fees	\$900.00
Mediation Fees	\$3,500.00
Legal Research	\$47.03
Notarization	\$4.00
Total	\$4,451.03

43. These costs include court fees, mediation fees, legal research costs, and notarization fees. Each of these costs and expenses are fully documented and, in my opinion, were necessary and reasonable. This amount does not include internal and other additional costs that Class Counsel incurred in this litigation but, in an exercise of discretion, do not seek to recover.

BARNOW AND ASSOCIATES, P.C. FIRM EXPERIENCE

44. At all times, B&A had the experience, expertise, and resources to effectively litigate any and all issues related to this litigation.

45. Barnow and Associates, P.C. is nationally recognized for its experience in leading some of the nation's largest consumer class actions. Ben Barnow has been recognized as a Titan of the Plaintiffs Bar.¹ As a court-appointed lead counsel or equivalent designation, Ben Barnow has successfully led over fifty major class actions (including MDLs) where class-wide recoveries were achieved, resulting in benefits valued in excess of five billion dollars being made available to class members. A copy of B&A's firm resume is attached hereto as **Exhibit A**.

46. The work of Class Counsel in this Action to date, as well as their experience prosecuting complex litigation matters, demonstrate that Class Counsel are well-qualified to represent the Settlement Class.

47. The bulk of B&A's practice is contingent, and many of my Firm's cases have been large and substantial in settlements or verdicts. In contingent risk cases, my Firm and other firms doing this type of work frequently advance expenses and costs and defer all payment of our fees for several years, with no guarantee that any of the fees we incurred or costs we advanced would ever be recovered.

48. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Attorneys' Fees, Costs and Expenses, and Service Awards are reasonable, and that the Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members.

Dated: March 30, 2023

By: /s/ Anthony Parkhill
Anthony Parkhill*
aparkhill@barnowlaw.com
BARNOW AND ASSOCIATES, P.C.
1630 W. Randolph St., Ste. 1630
Chicago, IL 60606
Telephone: (312) 621-2000

Counsel for Plaintiffs

* admitted *pro hac vice*

Exhibit A

BEN BARNOW

BARNOW AND ASSOCIATES

a professional corporation
ATTORNEYS AT LAW

Ben Barnow is nationally recognized for his experience in leading some of the nation's largest class actions. In that capacity, he has successfully led the prosecution of a number of large-scale class actions relating to consumer data security breaches, consumer protection issues, and antitrust violations. He has been appointed to and served in leadership positions in cases throughout the nation, in both state and federal courts, including MDL proceedings. His efforts have delivered resolutions in numerous significant cases, including cases against America Online, DaimlerChrysler, McDonald's, Microsoft, Shell Oil, Sony, TJX, and Toyota.

Ben Barnow graduated from the University of Wisconsin in 1966 with a Bachelor's degree in Business Administration. He received his Juris Doctor from the University of Michigan Law School in 1969. He is licensed to practice in the State of Illinois and the State of New York. Mr. Barnow is also admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the First, Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits, the United States District Court for the Northern District of Illinois, the Central District of Illinois, the District of Colorado, the Eastern District of Wisconsin, the Western District of Wisconsin, and the Eastern District of Michigan. He is a member of the American Bar Association, the American Association for Justice, the Illinois State Bar Association, and the Chicago Bar Association. He has also served as a member of the Panel of Arbitrators of the American Arbitration Association. He is listed in Martindale-Hubbell with an AV rating.

During his over fifty-year legal career, Ben Barnow has represented both plaintiffs and defendants in many types of litigation and has engaged in significant transactional work. He was General Counsel to one of the world's largest public relations agencies and presided as chairman of certain of its retirement trusts. Ben Barnow was an Associate Professor at Northern Michigan University from 1969-1971, where he taught business law and unfair competition. Mr. Barnow joined the law firm of Herrick, McNeill, McElroy & Peregrine in July 1971, where he became a partner in 1977.

As part of a series of articles by Law360 featuring notable plaintiff attorneys, Ben Barnow was recognized as a Titan of the Plaintiffs Bar, and Barnow and Associates, P.C. "a plaintiffs' class action outfit known for winning big-time antitrust and data breach settlements." Sindhu Sundar, Titan of the Plaintiffs Bar:

Ben Barnow, Law360 (Oct. 8, 2014), <https://www.law360.com/articles/585655/titan-of-the-plaintiffs-bar-ben-barnow> (last visited June 3, 2019).

Selected Cases

Data Security Breach Cases

Cochran v. Kroger Co. Ben Barnow took a leading role in this litigation against Kroger involving a data breach of Accellion's File Transfer Appliance affecting a class of Kroger customers and employees. He was instrumental in negotiating a settlement that made benefits of \$5 million available to the settlement class. He was appointed as one of Class Counsel and the Settlement was finally approved.

Hestrup, et al. v. DuPage Medical Group, Ltd. Ben Barnow was appointed as one of Class Counsel in this medical data breach class action. He helped negotiate a settlement establishing a \$3 million fund for a class of approximately 655,000 persons. The settlement allowed for class members to select between reimbursement for damages incurred as a result of the data breach and alternative cash payments.

Lozano v. CodeMetro, Inc. Serving as Co-Lead Settlement Class Counsel in a case relating to a data breach of a medical industry business service provider, Ben Barnow secured a settlement making benefits of \$850,000 available to the class of approximately 98,700 persons. The plaintiff's claims against the defendant included claims for violations of the California Consumer Privacy Act and the California Confidentiality of Medical Information Act, claims that have only become more important in data breach litigation since.

In re BJC Healthcare Data Breach Litig. Ben Barnow served as Class Counsel in an action involving a medical data breach affecting a class of over 280,000 persons. Ben Barnow played a central role in negotiating a settlement allowing class members to claim reimbursements for certain expenses that arose as a result of the data breach.

In re: Zappos.com Inc. Customer Data Security Breach Litigation. Ben Barnow was one of Co-Lead Class Counsel and settlement class counsel in this litigation, which resulted in a landmark Ninth Circuit ruling recognizing the Article III standing of consumers harmed by data breaches. He also successfully opposed Zappos' petition for writ of certiorari to the Supreme Court of the United States, where he served as counsel of record for plaintiffs. After many years of litigation, he negotiated a settlement that was granted final approval. The Settlement provided Class Members with CAFA-compliant coupons that were redeemed for over \$5 million.

In Re: Sony Gaming Networks and Customer Data Security Breach Litigation, MDL 2258. The Honorable Anthony J. Battaglia appointed Ben Barnow to the

Plaintiffs' Steering Committee—a committee of seven firms established to lead the litigation—in this MDL proceeding involving over 60 cases relating to a data security breach that affected approximately 50 million consumers in the United States and Canada. A settlement agreement was entered into and was granted final approval. At the final fairness hearing, Judge Battaglia remarked: “Just in the final analysis, the order, much like all the work by both sides throughout the case, has been impeccable, highly professional, and skilled. It’s been a real pleasure dealing with you.”

In Re: TJX Retail Security Breach Litigation, MDL No. 1838. Ben Barnow served as one of Co-Lead Settlement Class Counsel for the Consumer Track in this MDL proceeding relating to the theft of approximately 45 million credit and debit card numbers used at TJX stores and the personal information of over 454,000 TJX customers. Mr. Barnow took the lead in negotiating a settlement with TJX's attorneys that made available benefits valued at over \$200 million to the Class. The Honorable Judge Young granted final approval to the settlement, which he referred to as “excellent,” and as containing “innovative” and “groundbreaking” elements.

In Re: Countrywide Fin. Corp. Customer Data Security Breach Litigation, MDL No. 1998. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this forty-case MDL proceeding relating to a former Countrywide employee's theft and sale of millions of Countrywide customers' private and confidential information. Mr. Barnow negotiated a settlement that was granted final approval, making benefits valued at over \$650 million available to approximately 17 million Settlement Class Members. In the opinion granting final approval to the settlement, the Honorable Chief Judge Russell noted that “Co-Lead Settlement Counsel are nationally recognized in the field of class actions, particularly those involving security breaches,” and stated that “the Court was impressed with Co-Lead Counsel and Countrywide counsels' knowledge and skill, as represented in the various motions and hearings that took place throughout this settlement process.”

In Re: Heartland Payment Systems Inc., Data Security Breach Litigation, MDL No. 2046. Ben Barnow served as one of Co-Lead Counsel for the Consumer Track in this MDL proceeding relating to what, at the time, was reported as one of the largest data security breaches in history. Mr. Barnow negotiated a settlement on behalf of a Settlement Class that is estimated to include more than 120 million members. Notice of the settlement was completed and only one objection was received. Final approval of the settlement was granted.

Winstead v. ComplyRight, Inc., Ben Barnow served as one of Co-Lead Settlement Class Counsel in this proceeding relating to the theft of approximately 665,000 individuals' private and confidential information (including Social Security numbers) from ComplyRight, Inc.'s web portal. Mr. Barnow and his Co-Lead Settlement Class Counsel negotiated a settlement that included the creation of a

\$3,025,000 settlement fund and which allowed Settlement Class members to claim, at their selection, a cash payment, a protection plan option, or reimbursement of up to \$200 in documented and unreimbursed out-of-pocket expenses incurred as a result of the Data Breach. Final approval of the settlement was granted.

Lockwood v. Certegy Check Services, Inc. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this consolidated proceeding relating to the theft of approximately 37 million individuals' private and confidential information from Certegy Check Services, Inc.'s computer databases. Mr. Barnow organized all plaintiffs' counsel and pending cases without the benefit of an MDL and negotiated a settlement that was granted final approval, making benefits valued at over \$500 million available to Settlement Class Members. At the final fairness hearing, the Honorable Judge Merryday described the settlement as a "good deal," providing "a real benefit to a large class of persons" as "the result of the focused attention of skilled counsel for a protracted time."

McGann v. Schnuck Markets, Inc., Ben Barnow served as one of Co-Lead Settlement Class Counsel in this proceeding relating to the theft of the credit and debit card information of an estimated 777,000 individuals from point-of-sale terminals at affected Schnucks stores. Mr. Barnow negotiated a settlement that has been granted final approval, making significant benefits available to the Settlement Class.

Rowe v. Unicare Life and Health Insurance Co. Ben Barnow was Lead Counsel in this proceeding relating to the defendants' alleged failure to secure the private health information of approximately 220,000 individuals enrolled in the defendants' health insurance plans, resulting in such information being accessible to the public via the Internet. Mr. Barnow negotiated a settlement that was granted final approval, making benefits valued at over \$20 million available to Settlement Class Members. At the preliminary approval hearing, the Honorable Judge Hibbler described the efforts of the parties as "exemplary."

Orr v. InterContinental Hotels Group, PLC. Ben Barnow was appointed as one of Lead Class Counsel in this payment card data breach litigation. He successfully negotiated a class settlement providing a claim process for Class Members to seek reimbursement for certain expenses or fraudulent and unauthorized charges resulting from the data breach, subject to an aggregate cap of \$1.55 million. The settlement was granted final approval.

Perdue v. Hy-Vee, Inc. Ben Barnow served as one of Co-Lead Class Counsel in this payment card data breach case. His work with other Plaintiffs' counsel was instrumental in securing a settlement that made reimbursements available to class

members. In addition, the defendant committed no less than \$20 million to maintaining data security enhancements.

Deceptive Trade Practices and Other Consumer Protection Cases

In re: 100% Grated Parmesan Cheese Marketing and Sales Practices Litigation. Ben Barnow was appointed as one of Co-Lead Counsel in this MDL relating to multiple retailers' parmesan cheese labels which advertised the products as "100% Grated Parmesan Cheese" even though the products contained substances other than parmesan cheese. Following the district court's dismissal of plaintiffs' deceptive labeling claims, Mr. Barnow and his co-counsel appealed the decision to the Seventh Circuit. The Seventh Circuit overturned the district court's order, finding that a reasonable consumer could believe that the phrase "100% Grated Parmesan Cheese" means that the product was 100% cheese. The Seventh Circuit's opinion has become one of the most important decisions in the deceptive labeling practices litigation area.

Gann v. Nissan North America, Inc. Ben Barnow served as one of Class Counsel in this case regarding defective continuously variable transmissions on 1.4 million 2013–2016 Nissan Altima vehicles. After successfully defeating Nissan's motions to dismiss the litigation in two separate courts, he negotiated a settlement providing reimbursement for out-of-pocket costs for prior transmission replacements and a warranty extension, collectively valued at over \$444 million.

Warner v. Toyota Motor Sales, U.S.A., Inc. Ben Barnow served as one of Co-Lead Counsel in this litigation regarding claims of excessive frame rust to certain Toyota vehicles, yielding a recent landmark settlement estimated at \$3.4 billion. Under the settlement, owners of 2005–2010 Toyota Tacoma, 2007–2008 Toyota Tundra, and 2005–2008 Toyota Sequoia vehicles are eligible for free frame inspections for a period of twelve years from the date the vehicle was originally sold or leased, or one year from the date of the Final Order and Judgment, whichever is longer. Vehicles that exhibit excessive frame rust are eligible for a free frame replacement.

Rafofsky v. Nissan North America, Inc. Ben Barnow served as Class Counsel in this litigation regarding the failure to timely deliver certain advertised infotainment apps on 2014 Infiniti Q50s. Class Counsel achieved a settlement in which class members could file claims for cash worth up to \$85 or for vouchers to purchase of a new Infiniti vehicle worth up to \$1,250.

Palace v. DaimlerChrysler Corp. Ben Barnow was one of Co-Lead Class Counsel in this litigation relating to the defendant's sale of Neons containing allegedly defective head gaskets. After several years of litigation, a settlement was granted final approval, making up to \$8.25 million available to Class members for reimbursement of repair costs and other expenses.

Schulte v. Fifth Third Bank. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this action relating to allegations that the defendant unlawfully re-sequenced debit card transactions in order to maximize overdraft fees. In this capacity, he negotiated a settlement with Defendant's counsel providing for the establishment of a \$9.5 million settlement fund and including substantial injunctive relief, the present value of which Plaintiffs' expert estimated to be approximately \$58.8 million over five years and \$108.3 million over ten years. The settlement has been granted final approval.

Schwab v. America Online, Inc. (America Online Access Litigation). Ben Barnow served as Class Counsel and Co-Chair in this highly publicized litigation relating to AOL's representation that users would have unlimited access to AOL for \$19.95/month and the connectivity problems that ensued in conjunction therewith. In the face of what was ultimately over one hundred class actions filed nationwide, Mr. Barnow organized over 50 law firms and set up the co-chairmanship and the Executive Committee, which brought order and resolution to this litigation. A settlement was reached and was granted final approval, resulting in a multi-million-dollar benefit to a Class estimated to include over 8 million people.

Miner v. Philip Morris USA, Inc., Ben Barnow served as one of Class Counsel in this litigation concerning Philip Morris USA, Inc.'s practice of marketing and selling its Marlboro Lights and Marlboro Ultra-Lights cigarettes as less harmful to smoke than regular cigarettes when, in fact, they were not. A settlement was reached and granted final approval, providing for Philip Morris's payment of \$45 million into an escrow account for the benefit of Class members.

Boland v. McDonald's Corp. (McDonald's Sweepstakes Litigation). As Co-Lead Class Counsel in this litigation, Ben Barnow coordinated the efforts of approximately 25 plaintiffs' firms. The litigation concerned certain McDonald's promotional games and arose from the fraudulent removal of winning game pieces from random public distribution. Mr. Barnow developed and accomplished the settlement concept; to wit, for a chance lost, a chance would be given. The settlement, valued at approximately \$20 million, included fifteen \$1 million prizes given away by random selection. The settlement included the United States and nine other countries.

Campos v. Calumet Transload R.R., LLC, Ben Barnow served as one of Co-Lead Settlement Class Counsel in this litigation relating to the defendants' alleged negligent storage and handling of petroleum coke and coal at certain industrial storage facilities in Chicago, Illinois. Two settlements were reached which collectively provided for the payment of \$1,455,000 for the benefit of Settlement Class members. The settlements were granted final approval.

Fernandez v. Vitamin Shoppe Industries, Inc. Ben Barnow served as Co-Lead Counsel in this national class action that settled, resulting in injunctive relief regarding labeling practices, and additional relief by way of discount coupons and *cy pres* relief to appropriate charities.

Gianopolous v. Interstate Brand Corp. and Interstate Bakeries Corp. Ben Barnow was appointed one of Class Counsel in this litigation concerning allegedly adulterated bakery goods. A settlement was reached and granted final approval, making valuable relief available to consumers.

Glenz v. RCI, LLC. Ben Barnow served as one of three Class Counsel in this litigation involving the RCI Points program and allegations of improper use of points by RCI. The settlement made available cash benefits of approximately \$19 million to members of the Settlement Class and included substantial injunctive relief. Final approval of the settlement has been granted.

Heilman v. Perfection Corp. Ben Barnow served as Co-Lead Class Counsel in this national class action concerning allegedly defective dip tubes in over 14.2 million hot water tanks sold throughout the United States. In this capacity, Mr. Barnow organized twenty-three law firms and oversaw numerous filings in bringing about a national unified settlement that provided for a 100% recovery of out-of-pocket expenses and requisite repairs, including preventive replacement of all concerned dip tubes, whether or not the dip tubes had actually failed.

In Re: Chicago Flood Litigation. As Co-Lead Class Counsel and a member of the Executive Committee, Ben Barnow was responsible for several major aspects of this class action, which included years of litigation, appellate practice, trial, and a multi-million-dollar settlement. Mr. Barnow argued a related portion of the matter before the Supreme Court of the United States, *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995), and was responsible for preparing the petition for a writ of certiorari and all related filings. At the Supreme Court level, opposing counsel was John Roberts, who now sits as Chief Justice of the Supreme Court of the United States.

In Re: High Sulfur Content Gasoline Products Liability Litigation, MDL No. 1632 ("Shell Oil"). Ben Barnow served as Co-Lead Settlement Class Counsel in this 26-case MDL proceeding relating to the defendant's alleged sale of defective gasoline. A settlement was reached and was granted final approval, resulting in approximately \$100 million being made available towards the satisfaction of consumers' claims.

In Re: Mercury Class Action Litigation. Ben Barnow served as Co-Lead Class Counsel in this case relating to the location of mercury-containing gas regulators in and on real estate. A settlement was reached and granted final approval that

provided for medical monitoring, removal of the regulators, and cash compensation to certain class members.

In Re: M3Power Marketing Practices Litigation, MDL No. 1704. Ben Barnow was appointed Co-Lead Class Counsel in this MDL proceeding relating to the defendant's allegedly deceptive marketing and sale of M3Power shaving razors. A settlement was reached and granted final approval, making available benefits of more than \$7 million to Class members.

In Re: Pilot Flying J Fuel Rebate Contract Litigation. Ben Barnow served as one of Settlement Class Counsel in this litigation involving allegations that the defendants withheld portions of fuel discounts and rebates that Class members were contractually entitled to receive in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 ("RICO"), and various state laws. The settlement was granted final approval.

In Re: Starlink Corn Products Liability Litigation, MDL No. 1403. Ben Barnow served as Co-Lead Class Counsel in this MDL proceeding relating to the alleged inclusion of genetically engineered corn in the defendants' food products. A settlement was reached, valued at \$9 million, including the return of up to \$6 million to consumers on a fluid recovery/*cy pres* basis through price reduction on future purchases coupled with a cash payment to approved charities based on shortfall in the redemption.

In Re: United Parcel Service, Inc., Shipper Excess Value Insurance Coverage Litigation. Ben Barnow was one of Settlement Class Counsel in this litigation. A settlement was reached and granted final approval, providing relief to UPS shippers who had paid premiums for excess value insurance coverage.

Ori v. Fifth Third Bank. Ben Barnow served as one of Co-Lead Settlement Class Counsel in this action relating to inactive mortgage loans that were erroneously reported as active to Consumer Credit Reporting Agencies. The Settlement Class included approximately 55,000 individuals, and the settlement made available cash benefits of approximately \$3,000,000 to members of the Settlement Class. Final approval of the settlement has been granted.

Orrick v. Sonic Communications. Ben Barnow was one of Lead Class Counsel in this matter relating to the practice known as "slamming." The private actions and actions filed on behalf of various Attorneys General were consolidated. A settlement covering all of the pending cases and providing benefits of approximately \$8.3 million was achieved and granted final approval. This litigation is believed to be the first class certification and settlement relating to the practice known as "slamming."

Rosen v. Ingersoll-Rand Co., Kryptonite Corp. Ben Barnow was Co-Lead Class Counsel in this matter relating to allegedly defective bicycle locks. Mr. Barnow organized 18 U.S. and Canadian law firms and negotiated a settlement on behalf of Class members in the U.S. and Canada. The settlement was granted final approval, providing valuable relief to purchasers of the allegedly defective U-shaped tubular cylinder bicycle locks in the U. S. and Canada.

Schneider v. Dominick's Finer Foods, Inc. Ben Barnow was Co-Class Counsel in this matter relating to the defendant's alleged failure to deliver on representations of 100% ground beef. A settlement was reached and granted final approval, which included significant remedial relief in the form of shop signage regarding cleanliness and meat grinding practices, and fluid recovery mechanisms to compensate the class members by way of in-store sales and published coupons.

Schwab v. Binney & Smith. Ben Barnow served as Co-Lead Class Counsel in this case relating to crayons that were produced for decades with talc, which allegedly contained, or was subject to containing, asbestos. Mr. Barnow negotiated a national class settlement that contributed to the reformulation of most crayons produced in this country, so as to eliminate the inclusion of talc and, thus, the alleged asbestos inclusion, and the settlement was granted final approval. This represented one of the largest classes ever certified, if not the largest.

Siegel v. Synchronys. Ben Barnow was Co-Class Counsel in this nationwide class action concerning an allegedly defective computer product. The matter was settled, resulting in a remedy for the Class that provided for a 100% reimbursement on moneys spent for the product; the value of the settlement was estimated at \$22 million.

Smith v. J.M. Smucker Co. Ben Barnow was Class Counsel in this litigation relating to allegedly deceptive advertising practices. Mr. Barnow negotiated a national settlement and organized a group of plaintiffs' counsel from over 25 firms throughout the country who supported the settlement. The settlement was granted final approval, making available valuable relief to consumers of spreadable fruit products labeled "Simply 100% Fruit," including a change of labeling practices by the defendant, which added and maintained the following language, in prominent fashion, on the front label of its Simply 100% Fruit products: "Sweetened with fruit syrup from apple, pineapple or pear juice concentrate," thus fairly and fully advising consumers of the product they were purchasing.

Stelk v. BeMusic, Inc. Ben Barnow served as Co-Lead Class Counsel in this litigation relating to charges for shipping and handling in the context of a "free" offer. The Class included an estimated 16 million members. A settlement was reached and granted final approval providing substantial relief to Class members, including a guaranteed minimum of \$8 million.

Antitrust Cases

Wisconsin Civil Microsoft Antitrust Litigation. Ben Barnow served as one of Co-Lead Class Counsel in this indirect purchaser antitrust lawsuit. Mr. Barnow and his co-counsel successfully petitioned the Wisconsin Supreme Court to recognize the rights of indirect purchasers to recover under Wisconsin's antitrust laws. *Olstad v. Microsoft Corp.*, 700 N.W.2d 139 (Wis. 2005). Subsequently thereto, Mr. Barnow negotiated a settlement valued at approximately \$224 million that was granted final approval.

Arkansas, Kansas, South Dakota Civil Microsoft Antitrust Litigations. Ben Barnow served as a Co-Lead Class Counsel in the Arkansas, Kansas, and South Dakota Microsoft civil antitrust cases. Each of these cases settled, and the settlements were granted final approval.

Microsoft Civil Antitrust Litigation, MDL No. 1332. Ben Barnow served as a member of the nine-member Plaintiffs' Lead Counsel Committee in this MDL antitrust proceeding before Judge Motz in the United States District Court for the District of Maryland.

Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd. Ben Barnow served as a Co-Lead Counsel for third-party payor plaintiffs in this antitrust action where settlements were reached and finally approved collectively providing for the payment of \$9,850,000 for the benefit of the Settlement Class.

Loeb Industries, Inc. v. Sumitomo Corp. Ben Barnow served as Co-Lead Counsel in this nationwide antitrust class action, which sought recovery on behalf of scrap copper purchasers who were allegedly harmed by activities designed to manipulate the copper market. A \$20 million cash settlement with one of the defendants (Merrill Lynch) was reached.

Vichreva v. Cabot Corp. Ben Barnow served as Co-Lead Counsel in this Florida antitrust litigation. An \$825,500 common fund, which is believed to be the largest per-consumer Carbon Black state court antitrust class action settlement in the country, was obtained.

Public Speaking Engagements

1. HarrisMartin's Equifax Data Breach Litigation Conference (Atlanta, GA, Nov. 10, 2017), topic: "Settlements" (Program Co-Chair)
2. Bridgeport Continuing Education's 2016 Class Action Litigation & Management Conference (Los Angeles, CA, Apr. 15, 2016) (Program Co-Chair)

3. HarrisMartin's Data Breach Litigation Conference: The Coming of Age (San Diego, CA, Mar. 25, 2015), topic: "Creative Approaches to Settling Data Breach Cases."
4. Bridgeport Continuing Education's 2014 National Consumer Class Action Conference (Chicago, IL, Jun. 12-13, 2014); topic: "Privacy/TCPA Class Actions: State of the Law, Claims and Defenses, What Does the Future Hold?"
5. HarrisMartin's MDL Conference: Target Data Security Breach Litigation (San Diego, CA, Mar. 26, 2014); topic: "Settlement of a Data Breach Case."
6. NetDiligence Cyber Risk & Privacy Liability Forum (Marina del Rey, CA, Oct. 11-12, 2012).
7. 25th Annual Producer Conference (Stowe, VT, Sept. 10-12, 2012); topic: "Cyber 2.0—The Evolution of Cyber in the Boardroom."
8. NetDiligence 2012 Cyber Risk & Privacy Liability Forum (Philadelphia, PA, June 4-5, 2012); topic: "State of the Cyber Nation—Cases, Theories, and Damages."
9. Tulane University Law School's symposium on *The Problem of Multidistrict Litigation* (February 15-16, 2008); topic: "The Practicalities of Multidistrict Litigation."

ANTHONY L. PARKHILL

BARNOW AND ASSOCIATES

a professional corporation
ATTORNEYS AT LAW

Anthony L. Parkhill has more than eight years of litigation experience and has spent the last six years prosecuting some of the nation's largest complex consumer fraud, automotive defect, and privacy class action matters.

Mr. Parkhill graduated from DePaul University with a Bachelor's degree in Political Science in 2010. He received his Juris Doctor from the University of Chicago Law School in 2014. He is licensed to practice in the State of Illinois. He is also admitted to practice before the United States Courts of Appeals for the Seventh Circuit, the United States District Court for the Northern District of Illinois, the United States District Court for the Central District of Illinois, the United States District Court for the District of Colorado, and the United States District Court for the Eastern District of Michigan. He is a member of the Illinois State Bar Association.

Mr. Parkhill has served in leadership roles in multiple class action lawsuits, including the following: *Cochran v. Kroger Co.* (N.D. Cal.) (appointed as one of Class Counsel in this data breach class action against Kroger and helped negotiate a settlement making \$5 million in benefits available to the class); *Lozano v. CodeMetro, Inc.* (Super. Ct. San Diego, Cal.) (serving as one of settlement class counsel in this data breach class action and helped achieve a settlement making benefits of \$850,000 available to the class of approximately 98,700 persons); *Rafofsky v. Nissan North America, Inc.* (C.D. Cal.) (appointed as one of class counsel where a class settlement was granted final approval).

Mr. Parkhill has played an active role in litigating the following class action matters that successfully settled: *Gann v. Nissan North America, Inc.* (M.D. Tenn.) (settlement reached in case regarding defective transmissions providing reimbursement for out-of-pocket costs for prior transmission replacements and a warranty extension, collectively valued at over \$444 million); *Warner v. Toyota Motor Sales, U.S.A., Inc.* (C.D. Cal.) (settlement reached regarding allegations of excessive frame rust to certain vehicles providing benefits valued at in excess of \$3.4 billion to Settlement Class members); *Hestrup, et al. v. DuPage Medical Group, Ltd.* (DuPage Cty. Circ. Ct., Illinois) (settlement establishing a common fund of \$3 million relating to a medical data breach); *In re BJC Healthcare Data Breach Litig.* (St. Louis Circ. Ct., Missouri) (settlement allowing a class of over 280,000 persons to claim reimbursements for certain expenses that arose as a result of a medical data breach); *Winstead v. ComplyRight, Inc.* (N.D. Ill.) (settlement reached relating to a data breach providing a \$3.025 million fund to approximately 665,000 class members); *Perdue v. Hy-Vee, Inc.* (C.D. Ill.) (settlement reached relating to a payment card data

breach, allowing for class members to receive reimbursements for damages resulting from the breach); *Orr v. InterContinental Hotels Group, PLC* (N.D. Ga.) (settlement reached in payment card breach case providing reimbursement for certain expenses subject to an aggregate cap of \$1.55 million); *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd.*, (E.D. Wis.) (settlements reached with four of six defendants in this ongoing international antitrust action providing for the payment of \$9,850,000); *Campos v. Calumet Transload R.R., LLC* (N.D. Ill.) (settlements reached providing for payment of \$1,455,000 for the benefit of the Settlement Class in action relating to the alleged negligent storage and handling of petroleum coke and coal at certain industrial storage facilities); and *In re Zappos Security Breach Litigation*, (D. Nev.) (settlement providing class with benefits in excess of \$5 million); and *Cullan and Cullan LLC v. m-Qube, Inc.*, (D. Neb.), (making over \$1 million available to victims of cell phone cramming).

RILEY W. PRINCE

BARNOW AND ASSOCIATES

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ATTORNEYS AT LAW

Riley W. Prince graduated from the University of Michigan-Ann Arbor in 2017 with Bachelor's degrees in Political Science and Spanish. He received his Juris Doctor from the Chicago-Kent College of Law in 2021. Mr. Prince has been a part of Barnow and Associates, P.C. since January of 2020, working as a clerk with the firm while in law school. Mr. Prince is licensed to practice in the State of Illinois and is admitted to practice before the United States District Court for the Northern District of Illinois, the United States District Court for the Central District of Illinois, and the United States District Court for the Eastern District of Michigan.

Mr. Prince played a significant role in the litigation of *Hestrup, et al. v. DuPage Medical Center, Ltd.*, No. 2021L937 (DuPage Cty. Circ., Illinois), a medical data breach class action that resulted in a settlement establishing a \$3 million fund for approximately 655,000 class members.

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRENT MCCULLOUGH,

Plaintiff,

v.

TRUE HEALTH NEW MEXICO, INC.,

Defendant.

Case No. D-202-CV-2021-06816

CLASS ACTION

**DECLARATION OF TODD S. GARBER IN SUPPORT OF THE PLAINTIFFS'
UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND
INCENTIVE AWARDS**

I, Todd S. Garber, declare as follows, pursuant to 28 U.S.C. § 1746.

1. I am an attorney licensed to practice before the courts of New York and Connecticut; the United States District Courts for the District of Connecticut, Northern District of New York, Western District of New York, Southern District of New York, and Eastern District of New York; and the United States Courts of Appeals for the First Circuit, Second Circuit, and Eleventh Circuit. I am a Founding Partner at Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG"). I have personal knowledge of the facts stated in this declaration and, if called as a witness, I could and would testify competently to them. I make this Declaration in support of Plaintiffs' Unopposed Motion for Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses, and Incentive Awards ("Fee and Expense Motion").

2. FBFG's firm resume including biographies for the principal attorneys working on this case is attached as Exhibit 1 to this Declaration.

3. During the pendency of this litigation, counsel carefully coordinated their activities to avoid engaging in duplicative work.

4. During the course of the litigation, FBFG attorneys performed the following tasks:

- a. Investigated the existence, cause, and scope of the data breach;
- b. Interviewed individuals who contacted our firm and reviewed their documents;
- c. Drafted a detailed complaint;
- d. Coordinated the case filed on behalf of our client with the counsel responsible for the *McCullough* action; and
- e. Reviewed the terms of the proposed settlement and discussed them with our client.

5. As summarized below, FBFG devoted 21.9 hours to the prosecution and resolution of this matter, resulting in a lodestar of \$16,364.50.

Timekeeper	Role	Rate	Hours	Amount Billed
Todd S. Garber	Partner	\$985/hr	9.2	\$9,062.00
Andrew C. White	Associate	\$575/hr	12.7	\$7,302.50
TOTAL			21.9	\$16,364.50

6. FBFG attorneys regularly prepared and maintained files contemporaneously documenting time spent, including tasks performed, and expenses incurred, relating to this matter.

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

Executed on March 30, 2023 in White Plains, New York.

/s/ Todd S. Garber

Exhibit 1

FBFG | Finkelstein, Blankinship,
Frei-Pearson & Garber, LLP

FIRM RESUME

Finkelstein, Blankinship, Frei-Pearson & Garber, LLP

The lawyers of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP (“FBFG”) have successfully litigated complex class actions in federal and state courts across the country and have obtained successful results for clients against some of the world’s largest corporations. A sampling of FBFG’s more significant cases includes:

- *Farruggio v. 918 James Receiver, LLC*, No. 3831/2017 (Onondaga Cty. Com. Div.). Class action on behalf of approximately 4,000 residents of an unsafe nursing home. On July 5, 2018, the Court granted Plaintiffs’ contested motion to certify a class of all nursing home residents and appointed a FBFG attorney as class counsel. On December 18, 2018, the Court finally approved a settlement with the current owners valued at over \$4 million that required the home to provide substantial injunctive relief to make the home safe. On April 22, 2021, the Court has finally approved a settlement with the former owners that provided approximately \$6 million in cash to class members, a settlement that is easily the highest nursing home class action settlement ever in New York.
- *Saint Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal. Sup.Ct.). Complex class action on behalf of approximately 31,800 patients who were victimized by a data breach. A FBFG lawyer was appointed co-lead class counsel. The Court denied Saint Joseph’s demurrer and the Court of Appeals upheld that ruling. The Court certified the class and denied Saint Joseph’s summary judgment motion; the Court of Appeals upheld those rulings as well. On the eve of trial, the parties reached a settlement valued at approximately \$39 million and the Court finally approved the settlement on February 3, 2016. This settlement provides the more money per capita to individual class members than any other known data breach settlement.
- *Hamlen v. Gateway Energy Services Corp.*, No. 16-03526 (S.D.N.Y.). Class action alleging that Gateway Energy overcharged its customers for natural gas. The case settled on behalf of a nationwide class of Gateway Energy natural gas customers. The court granted final approval of the settlement, valued at approximately \$12 million, on September 13, 2019.
- *Wise v. Energy Plus Holdings, LLC*, No. 11-7345 (S.D.N.Y.). Nationwide class action alleging that Energy Plus falsely claimed to offer competitive electricity rates when its prices were substantially higher than market rates in violation of New York Gen. Bus. L. § 349 and other consumer protection laws. On September 17, 2013, the Court certified the class, appointed the lawyers of FBFG as lead class counsel, and approved the settlement valued at over \$11 million.

- *Chen v. Hiko Energy, LLC*, No. 14-1771 (S.D.N.Y.). Multistate class action alleging that Hiko falsely claimed to offer competitive electricity rates when its prices are substantially higher than market rates in violation of New York Gen. Bus. L. §§ 349 and 349-d, and common law. On May 9, 2016, the Court certified the class, appointed the lawyers of FBFG as class counsel, and approved the settlement valued at over \$10 million.
- *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.). Class action alleging deceptive labeling in connection with Defendant's Aveeno Naturals brand of personal care products. Plaintiffs defeated Defendant's motions to dismiss and exclude Plaintiffs' expert's report and obtained class certification and an appointment as co-lead class counsel. On November 1, 2017, the Court approved a proposed settlement valued at \$6.75 million.
- *Collins v. NPC Int'l Inc.*, No. 17-00312 (S.D. Ill.). Class action on behalf of under-reimbursed delivery drivers, with FBFG serving as co-lead counsel and Jeremiah Frei-Pearson serving as lead trial counsel. NPC successfully compelled this matter to individual arbitration, but FBFG and co-counsel filed a series of individual arbitrations, forcing NPC to abandon its arbitration defense. After NPC declared bankruptcy to reorganize, FBFG persisted in litigating the case, which settled for \$10.5 million one week before the scheduled trial date.
- *Sackin v. Transperfect Global, Inc.*, No. 17-1469 (S.D.N.Y. 2017). Class action on behalf of over 4,800 individuals victimized by a data breach. On June 15, 2017, the Court entirely denied Transperfect's motion to dismiss. The Court appointed FBFG as class counsel and, on December 14, 2018, finally approved a settlement valued at over \$40 million.
- *Castillo v. Seagate Technology LLC*, No. 16-1958 (N.D. Cal.). Class action on behalf of over 12,000 individuals victimized by a data breach. On September 19, 2016, the Court denied Seagate's motion to dismiss in part. The Court appointed a FBFG attorney as co-lead class counsel and, on March 14, 2018, finally approved settlement valued at over \$40 million.
- *Lowell v. Lyft, Inc.*, No. 17-6521 (S.D.N.Y.). Nationwide class action on behalf of millions of people with disabilities who are denied services by Lyft. On November 29, 2018, the Court denied Lyft's motion to compel arbitration, calling Lyft's arguments "supremely unjust," and denied in part Lyft's motion to dismiss.

¹ Three of the founding partners of FBFG were formerly partners in the firm of Meiselman, Packman, Nealon, Scialabba & Baker, P.C. ("MPNSB"). References in this resume to "lawyers of FBFG" includes instances involving current FBFG lawyers while they were at MPNSB.

- *Durling v. Papa John's International Inc.*, No. 16-03592 (S.D.N.Y.). Nationwide class and collective action on behalf of tens of thousands of Papa John's delivery drivers who were paid wages below the minimum. On August 3, 2018, the Court conditionally certified a nationwide collective of all corporate Papa John's delivery drivers.
- *McLaughlin v. IDT Energy*, No. 14-4107 (E.D.N.Y.). Nationwide class action alleging that IDT overcharged consumers for gas and electric supply. On October 18, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over \$54 million.
- *Edwards v. North American Power & Gas, LLC*, No. 14-1714 (D. Conn.). Nationwide class action alleging that North American Power charged electricity and gas rates far in excess of what it promised to charge variable rate customers. On August 2, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over \$19 million.
- *In Re: KIND LLC "Healthy and All Natural" Litigation*, Nos. 15-md-2645, 15-mc-2645 (S.D.N.Y.). Class action alleging false advertising of Defendant KIND's snack food products. Appointed as co-lead interim class counsel on November 13, 2015.
- *Bellino v. JPMorgan Chase Bank, N.A.*, No. 14-3139 (S.D.N.Y.). Statewide class action on behalf of mortgagors alleging Chase's failure to comply with mortgage recording requirements. On November 9, 2017, the Court approved a settlement valued at \$10,808,630, certifying the settlement class and appointing FBFG attorneys as class counsel.
- *Reed v. Friendly's Ice Cream, LLC*, No. 15-0298 (M.D. Pa.). Nationwide class and collective minimum wage and overtime claim on behalf of approximately 10,000 servers. On January 31, 2017, the Court certified the class, appointed a FBFG lawyer as co-lead class counsel, and approved the settlement valued at over \$4.6 million.
- *Quinn v. Walgreens*, No. 12-8187 (S.D.N.Y.). Nationwide settlement valued at \$2.8 million to resolve Plaintiffs' claim that Defendant's glucosamine products did not perform as represented. On March 24, 2015, the Court certified the class, appointed FBFG lawyers as Co-Lead Class Counsel and approved a nationwide \$2.8 million settlement.
- *Al Fata v. Pizza Hut of America, Inc.*, No. 14-376 (M.D. Fla.). Statewide minimum wage claim on behalf of approximately 2,000 Pizza Hut delivery drivers. On June 21, 2017, the Court certified the class and approved a settlement valued at \$3.1

million that provided the then-highest per-person recovery in any delivery driver under-reimbursement class action.

- *Adler v. Bank of America, N.A.*, No. 13-4866 (S.D.N.Y.). Class action alleging that Bank of America failed to timely present certificates of discharge for mortgages that were satisfied in New York State. On July 20, 2016, the Court certified the class, appointed the lawyers of FBFG as class counsel, and approved the settlement valued at over \$7 million.
- *In re Michaels Stores, Inc. Zip Code Litigation*, No. 11-10920 (D. Mass.). State-wide class action alleging that Michaels Stores unlawfully collected consumers' private information. After securing a groundbreaking decision by the Massachusetts Supreme Judicial Court, establishing that consumers whose privacy has been violated may bring consumer protection claims against companies that unlawfully collect personal identification information, the lawyers of FBFG were appointed as co-lead class counsel and negotiated a class wide settlement, which the Court approved.

FBFG is also counsel of record in numerous class actions throughout the country, including cases pending in United States District Courts in New York, California, Massachusetts, Nevada, New Jersey, Maryland, New Mexico, Colorado, Arkansas, and Pennsylvania, as well as actions pending in the state courts of New York, California, and New Jersey.

FBFG also has an accomplished appellate practice, having obtained numerous groundbreaking decisions from federal and state appellate courts. Examples include: *In re Zappos.com, Inc.*, 888 F.3d 1020, 1027-28 (9th Cir. 2018), *cert. denied*, 18-225, 2019 WL 1318579 (U.S. Mar. 25, 2019) (reversing dismissal by district court and holding that consumers whose personal identification information was stolen in a data breach have Article III standing); *Zahn v. N. Am. Power & Gas, LLC*, 2016 IL 120526, 72 N.E.3d 333, *reh'g denied* (Jan. 23, 2017) (on certified question from the Seventh Circuit, holding that the Illinois Commerce Commission does not have exclusive jurisdiction to hear consumer claims against alternative retail electricity suppliers); *Zahn v. N. Am. Power & Gas, LLC*, 847 F.3d 875 (7th Cir. 2017) (reversing dismissal of consumer's putative class action seeking redress for excessive electricity charges by alternative retail electricity supplier); *John v. Whole Foods Mkt. Grp., Inc.*, 858 F.3d 732, 738 (2d Cir. 2017) (reversing dismissal of consumer's putative class action seeking redress for Whole Foods' alleged practice of representing the weight of prepackaged foods); *Tyler v. Michaels Stores, Inc.*, 464 Mass. 492, 984 N.E.2d 737 (2013) (on certified question from U.S. District Court for the District of Massachusetts, finding that the collecting personal identification information from unwitting consumers violates Massachusetts consumer protection law).

Attorney Profiles

Andrew Finkelstein



Andrew Finkelstein is the Managing Partner of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP. He has become a noted consumer activist through his representation of injured individuals against corporate wrong doers and other irresponsible parties.

Mr. Finkelstein served as Captain of the 9/11 Victim Compensation Fund in a pro bono capacity, where he helped obtain over \$10 million for victims and waived all legal fees associated with this representation. Mr. Finkelstein is also the Chairman of the Plaintiff Personal Injury Steering committee for the Neurontin Liability Multidistrict Litigation in Boston, Massachusetts. He has worked closely with the FDA regarding the adverse effects associated with Neurontin, having filed a Citizens Petition seeking enhanced warning of the side effects of this drug, specifically increased suicidal tendencies. Additionally, Mr. Finkelstein is a member of the Executive Steering Committee of the Hormone Replacement Therapy Multidistrict Litigation in both Philadelphia, Pennsylvania and Little Rock, Arkansas. He is a member of the Plaintiff Steering Committee of the Ortho Evra Birth Control Patch New Jersey Coordinated Litigation, and the Plaintiff Steering Committee of the Viagra Multidistrict Litigation in Minneapolis, Minnesota.

Mr. Finkelstein is a frequent lecturer at Continuing Legal Education courses. His topics include “Science in the Courtroom”, “Technology in the Courtroom”, “Prosecution of a Pharmaceutical Case”, “The Ethics of On-line Advertising”, and “Structured Settlements and the Personal Injury Settlement.”

In addition to these presentations, Mr. Finkelstein volunteers his time to present his “Commit to Quit Texting While Driving” seminar to area high school students.

Greg Blankinship



Greg Blankinship is a founding partner of FBFG, and he specializes in class actions in state and federal courts. Mr. Blankinship has worked on substantial class action matters representing both defendants and plaintiffs in numerous state, federal, and multidistrict class actions, including wage and hour and consumer fraud matters. Mr. Blankinship has been designated a New York Super Lawyer every year since 2014, a distinction earned by only five percent of the lawyers in the New York metro area.

Prior to joining FBFG, Mr. Blankinship was an associate with Skadden, Arps, Slate, Meagher & Flom LLP and Greenberg Traurig, LLP. Mr. Blankinship received his B.A. from Emory University in 1991 and his M.A. from the University of North Carolina in 1995. He attended law school at the University of Washington, where he earned his J.D. in 2003. While in law school, Mr. Blankinship was a member of the University of Washington Law Review.

A sampling of Mr. Blankinship's successful cases includes:

- Appointed Interim Co-Lead Class Counsel in *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.). Class action alleging deceptive labeling in connection with Defendant's Aveeno Naturals brand of personal care products. Plaintiffs defeated Defendant's motions to dismiss and exclude Plaintiffs' expert's report and won class certification. On November 1, 2017, the Court approved a proposed settlement valued at \$6.75 million.
- Appointed to the Plaintiffs' Executive committee in *In Re: Santa Fe Natural Tobacco Company Marketing and Sales Practices Litigation*, No. 16-md-2695 (D. N.M.). Plaintiffs in this multidistrict litigation contend that Santa Fe Natural Tobacco mislead consumers into believing their cigarettes were less harmful than others because they are natural and organic. Litigation is on-going.
- Appointed co-class counsel in *Hamlen v. Gateway Energy Services Corp.*, No. 16-03526 (S.D.N.Y.). Class action alleging that Gateway Energy overcharged its customers for natural gas. The case settled on behalf of a nationwide class of Gateway Energy natural gas customers. The court granted final approval of the settlement, valued at approximately \$12 million, on September 13, 2019.
- Class counsel in *McLaughlin v. IDT Energy*, No. 14-4107 (E.D.N.Y.). Nationwide class action alleging that IDT overcharged consumers for gas and electric supply. On October

18, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over \$54 million.

- Class counsel in *Edwards v. North American Power & Gas, LLC*, No. 14-1714 (D. Conn.). Nationwide class action alleging that North American Power charged electricity and gas rates far in excess of what it promised to charge variable rate customers. On August 2, 2018, the Court certified the class, appointed the lawyers of FBFG as co-lead class counsel, and approved the settlement valued at over \$19 million.
- Counsel in *Wise v. Energy Plus Holdings LLC*, No. 11-7345 (S.D.N.Y.). Plaintiffs alleged that Energy Plus, an independent electricity supplier, misrepresented that its rates were reflective of the market when they were much higher. The Court granted final approval of a settlement covering more than 400,000 consumers in eight states and valued at more than \$11,000,000.
- Appointed Class Counsel in *Brenner v. J.C. Penney Company, Inc.*, No. 13- 11212 (D. Mass.). Plaintiff alleged that J.C. Penney requested and recorded customers' ZIP codes, which it then used to identify consumers' mailing addresses to send them junk mail, in violation of Massachusetts law. The Court granted final approval of a settlement valued at more than \$3.5 million.
- Appointed Class Counsel in *Brenner v. Kohl's Corporation*, No. 13-10935 (D. Mass.). State-wide class action alleging that Kohl's unlawfully collected consumers' personal identification information. On December 5, 2013, the Court granted preliminary approval to a settlement valued at \$435,000 and appointed lawyers of FBFG class counsel.
- Appointed Interim Co-Lead Class Counsel in *Chen v. Hiko Energy, LLC*, No. 4- 01771 (S.D.N.Y.). State-wide class action alleging that Hiko charged deceptively high electricity and natural gas rates.
- Appointed Interim Co-Lead Class Counsel in *Tyler v. Bed Bath & Beyond, Inc.*, No. 13-10639 (D. Mass.). Plaintiff alleged that Bed, Bath & Beyond illegally requested and recorded customers' ZIP codes.

Mr. Blankinship's broad experience as a litigator has also exposed him to a wide variety of substantive business and consumer issues. He also has substantial experience with the issues and procedural aspects of large class action and complex cases.

Mr. Blankinship is admitted to practice in New York and Massachusetts and is a member of the bars of the U.S. District Courts for the Eastern, Western, Northern, and Southern Districts of New York, the District of Connecticut, the District of Massachusetts, and the First, Second, Third, Seventh, and Ninth Circuit Courts of Appeals.

Jeremiah Frei-Pearson



Jeremiah Frei-Pearson is a founding partner of FBFG. He is a passionate advocate and an experienced litigator who represents consumers and employees in complex class actions. The National Trial Lawyers Association selected Mr. Frei-Pearson as a member of the Top 100 Trial Lawyers every year since 2014. Mr. Frei-Pearson is a member of the Best Attorneys of America, a distinction that is limited to less than 1% of attorneys, and he is also designated as a Super Lawyer, a distinction awarded to only 5% of the New York Metro Area. Mr. Frei-Pearson practices in federal and state courts throughout the country and his areas of expertise include class actions, privacy, consumer fraud, employment law, and civil rights.

Prior to joining FBFG, Mr. Frei-Pearson was an associate with Kaye Scholer LLP, a multinational law firm, and a staff attorney with Children's Rights, a national public interest law firm representing children in foster care reform class action lawsuits. Mr. Frei-Pearson received his B.A. from Skidmore College, *Magna Cum Laude*, Phi Beta Kappa in 2000 and he earned his in 2003 from Stanford Law School. While in law school, Mr. Frei-Pearson was a Public Interest Fellow and served as Senior Symposium Editor of the Stanford Law & Policy Review.

A sampling of Mr. Frei-Pearson's significant cases includes:

- Appointed class counsel in *Farruggio v. 918 James Receiver, LLC*, No. 3831/2017 (Onondaga Cty. Com. Div, a class action on behalf of approximately 4,000 residents of an unsafe nursing home. On July 5, 2018, the Court granted Plaintiffs' contested motion to certify a class of all nursing home residents and appointed a FBFG attorney as class counsel. On December 18, 2018, the Court finally approved a settlement with the current owners valued at over \$4 million that required the home to provide substantial injunctive relief to make the home safe. On April 22, 2021, the Court has finally approved a settlement with the former owners that provided approximately \$6 million in cash to class members, a settlement that is easily the highest nursing home class action settlement ever in New York.
- Appointed co-class counsel in *Saint Joseph Health System Medical Information Cases*, JCCP No. 4716 (Cal. Sup. Ct.). The Court denied Saint Joseph's demurrer and the Court of Appeals upheld that ruling. After more than two years of litigation, the Court granted Plaintiffs' motion to certify a class of approximately 31,800 data breach victims. On January 14, 2015, the Court denied Saint Joseph's motion for summary judgment. The Court of Appeals upheld the Court's summary judgment and class certification decisions. The case was set for trial on August 24, 2015, but the parties reached a settlement valued at approximately \$39 million, which the Court finally approved on February 3, 2016. This

settlement provides the more money *per capita* to individual class members than any other known data breach settlement on record.

- Co-lead counsel and lead trial counsel in *Collins v. NPC Int'l Inc.*, No. 17-00312 (S.D. Ill.), a class action on behalf of under-reimbursed delivery drivers. NPC successfully compelled this matter to individual arbitration, but FBFG and co- counsel filed a series of individual arbitrations, forcing NPC to abandon its arbitration defense. After NPC declared bankruptcy to reorganize, FBFG persisted in litigating the case, which settled for \$10.5 million one week before the scheduled trial date.
- Appointed co-lead class counsel in *Al Fata v. Pizza Hut of America, Inc.*, No. 14- 376 (M.D. Fla.). The Court denied defendant's motion to compel arbitration. While Plaintiffs' class certification motion was sub *judice*, the parties reached a class settlement on behalf of a Florida class of delivery drivers alleging minimum wage violations. The Court granted final approval of the settlement, which is valued at \$3.1 million, on June 21, 2017.
- Appointed class counsel in *Beebe v. V&J Nat'l Enterp., LLC*, No. 17-6075 (W.D.N.Y.). The Court denied defendants' motion for judgment on the pleadings and certified a FLSA collective of all delivery driver employees at one of the largest Pizza Hut franchisees in the country. On June 1, 2020, the Court granted final approval of a class and collective settlement valued at \$2.35 million.
- Appointed class counsel in *Hanna v. CFL Pizza, LLC*, No. 05-2011-CA-52949 (Fl. Cir. Court). On September 3, 2013, the Court granted final approval of a settlement that created a substantial settlement fund for under-reimbursed Pizza Hut franchisee delivery drivers who alleged violations of Florida minimum wage law.
- Appointed co-class counsel in *Bellaspica v. PJPA, LLC*, No. 13-3014 (E.D. Pa.). On June 22, 2016, the Court granted final approval of a FLSA collective action settlement, providing a settlement fund for under-reimbursed Papa John's franchisee pizza delivery drivers.
- Lead counsel to Plaintiffs and the certified collective in *Durling v. Papa John's International Inc.*, No. 16-03592 (S.D.N.Y.). Nationwide class and collective action on behalf of tens of thousands of Papa John's delivery drivers who were paid wages below the minimum. On August 3, 2018, the Court conditionally certified a nationwide collective of all corporate Papa John's delivery drivers.
- Appointed co-lead class counsel in *Reed v. Friendly's Ice Cream, LLC*, No. 15- 00298 (M.D. Pa.). The Court denied motions to dismiss and ruled for plaintiffs on several other motions in this wage and hour class action. On January 31, 2017, the Court certified the class and finally approved a settlement valued at over \$4.6 million.

- Appointed class counsel in *Yoeckel v. Marriott*, No. 703387 (Queens Cty. Com. Div.). Class action alleging that Marriott violated New York wage and hour laws. On May 3, 2017, the Court certified a class and finally approved a settlement that provided class members with 100% of their maximum compensatory damages alleged.
- Appointed co-lead class counsel in *Castillo v. Seagate Technology LLC*, No. 16- 02136 (N.D. Cal.). Class action on behalf of over 12,000 individuals victimized by a data breach. On September 19, 2016, the Court denied Seagate’s motion to dismiss in part. On March 14, 2018, the Court finally approved a settlement valued at over \$40 million.
- Appointed class counsel in *Sackin v. Transperfect Global, Inc.*, No. 17-1469 (S.D.N.Y. 2017). Class action on behalf of over 4,800 individuals victimized by a data breach. On June 15, 2017, the Court entirely denied Transperfect’s motion to dismiss. On December 14, 2018, the Court finally approved a settlement valued at over \$40 million.
- Appointed co-liaison class counsel in *Yahoo! Inc. Private Information Disclosure Cases*, JCCP No. 4895 (Cal Sup. Ct.). Complex class action involving one of the largest data breaches in U.S history. The Court denied Yahoo’s demurrer, and, after Plaintiffs’ class certification motion was fully briefed, the parties reached a settlement valued at over \$85 million. Plaintiffs moved for preliminary approval in federal court.
- Appointed co-lead class counsel in *In Re Zappos.Com, Inc., Customer Data Security Breach Litigation*, No. 16-16860 (D. Nev. 2012). Multidistrict class action on behalf of approximately 23 million consumers victimized by a data breach. The Ninth Circuit reversed the District Court’ decision dismissing the case and issued a significant decision holding that data breach victims whose personal identification information was stolen in a data breach have standing. On March 25, 2019, the Supreme Court denied Zappos’ request for certiorari. The court granted preliminary approval of the settlement on September 19, 2019.
- Lead counsel to plaintiffs in *Lowell v. Lyft, Inc.*, No. 17-6521 (S.D.N.Y.). Nationwide class action on behalf of millions of people with disabilities who are denied services by Lyft. On November 29, 2018, the Court denied Lyft’s motion to compel arbitration, calling Lyft’s arguments “supremely unjust”, and denied in part Lyft’s motion to dismiss. Discovery is ongoing and Plaintiffs will expeditiously move for class certification.
- Appointed co-class counsel in *Miller v. Fresh*, No. 14-0880 (Mass. Suffolk Cty.). State-wide class action alleging that Fresh unlawfully collected consumers’ personal identification information. On July 15, 2015, the Court certified a class and granted final approval to a settlement.
- Appointed co-class counsel in *Miller v. Patagonia*, No. 14-0888 (Mass. Suffolk Cty.). State-wide class action alleging that Patagonia unlawfully collected consumers’ personal

identification information. On February 9, 2015, the Court certified a class and granted final approval to a settlement.

- Counsel to the Plaintiffs in *D.G. ex rel. Stricklin v. Henry*, No. 08-074 (N.D. Okl.). In this class action to reform Oklahoma's foster care system, the Court certified a statewide class of Oklahoma's foster children (an opinion that was affirmed by the Tenth Circuit). As a result of this litigation, Oklahoma has committed to restructuring its state foster care agency to eliminate dangerous practices (such as an unsafe shelter where babies in state custody disproportionately suffered fractured skulls) and improve measurable outcomes for children in state custody.
- As counsel in *Charlie and Nadine H. v. Christie*, No. 99-3678 (D.N.J.), worked with the state agencies, a federally appointed monitor, and the Court to help ensure implementation of a consent decree to reform New Jersey's foster care system. Among many other significant achievements under the consent decree, New Jersey broke a record for adoptions achieved, significantly reformed supervision procedures that were inadequate, and substantially increased the percentage of foster children who subsequently attended college. Mr. Frei-Pearson continues to be involved in this litigation in a *pro bono* capacity.

Mr. Frei-Pearson has received numerous awards for his legal work, including the New York City Bar Association's Thurgood Marshall Award for his work on death penalty cases, a citation from the New York City Council for his child advocacy work, and the 2010 Palomountain Award from Skidmore College. Mr. Frei-Pearson regularly speaks on panels, including speaking engagements at Stanford Law School and Harvard Law School.

Mr. Frei-Pearson is also active in his community; he is a district leader in White Plains, where he serves as Chair of the Mayor's Sustainability Committee, as a member (and former Chair) of the Mayor's Committee For People With Disabilities; he also serves on the Board of the Legal Services of the Hudson Valley; and he was recently elected as Vice Chair of both the Westchester County Democratic Party and the White Plains Democratic City Committee.

Mr. Frei-Pearson is admitted to practice in New York and is a member of the bars of the U.S. District Courts for the Eastern, Northern, Western, and Southern Districts of New York.

Todd S. Garber



Todd S. Garber is a founding partner of FBFG. Mr. Garber is an experienced litigator, who practices in state and federal courts. His areas of experience include class actions, consumer fraud, securities fraud, complex commercial disputes, business torts, antitrust, and general litigation. Mr. Garber was designated a New York Super Lawyer every year since 2013, a distinction earned by only five percent of the lawyers in the New York metro area.

Prior to joining FBFG, Mr. Garber worked at Lowey Dannenberg Cohen & Hart, P.C., where he prosecuted and defended complex commercial litigation matters and class actions.

Mr. Garber's career achievements include:

- Appointed co-class counsel in *Hamlen v. Gateway Energy Services Corp.*, No. 16-03526 (S.D.N.Y.). Class action alleging that Gateway Energy overcharged its customers for natural gas. The case settled on behalf of a nationwide class of Gateway Energy natural gas customers. The court granted final approval of the settlement, valued at approximately \$12 million, on September 13, 2019.
- Appointed Class Counsel in *Brenner v. J.C. Penney Company, Inc.*, No. 13-11212 (D. Mass.). Plaintiff alleged that J.C. Penney requested and recorded customers' ZIP codes, which it then used to identify consumers' mailing addresses to send them junk mail, in violation of Massachusetts law. The Court granted final approval of a settlement valued at more than \$3.5 million.
- Appointed Class Counsel in *Brenner v. Kohl's Corporation*, No. 13-10935 (D. Mass). State-wide class action alleging that Kohl's unlawfully collected consumers' personal identification information. On March 12, 2014, the Court granted final approval to a settlement valued at \$425,000 and appointed lawyers of FBFG class counsel.
- Appointed Co-Lead Class Counsel in *Quinn v. Walgreen*, No. 12-8187 (S.D.N.Y.). Nationwide settlement valued at \$2.8 million to resolve Plaintiffs' claim that Defendant's glucosamine products did not perform as represented. On March 24, 2015, the Court finally approved the settlement and certified the class.
- Appointed Interim Co-Lead Class Counsel in *Chen v. Hiko Energy, LLC*, No. 14-cv-01771 (S.D.N.Y.). State-wide class action alleging that Hiko charged

deceptively high electricity and natural gas rates. On May 9, 2016, the Court certified the class and approved a settlement valued at over \$10 million.

- Appointed Interim Co-Lead Class Counsel in *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y.). Class action alleging deceptive labeling in connection with Defendant's Aveeno Naturals brand of personal care products. Plaintiffs defeated Defendant's motions to dismiss and exclude Plaintiffs' expert's report and won class certification. On November 1, 2017, the Court approved a proposed settlement valued at \$6.75 million.
- Appointed Co-Lead Class Counsel in *Tyler v. Bed Bath & Beyond, Inc.*, No. 13-10639 (D. Mass.). Plaintiff alleged that Bed, Bath & Beyond illegally requested and recorded customers' ZIP codes.
- Class Counsel in *Wise v. Energy Plus Holdings LLC*, No. 11-7345 (S.D.N.Y.). Plaintiffs alleged that Energy Plus, an independent electricity supplier, misrepresented that its rates were reflective of the market when they were much higher. The Court granted final approval of a settlement covering more than 400,000 consumers in eight states and valued at more than \$11,000,000.
- As counsel for the New York City Pension Funds, Lead Plaintiff in *In re Juniper Networks, Inc. Sec. Litig.*, No. C-06-04327 JW (N.D. Cal 2010), helped achieve a settlement of \$169.5 million, one of the largest settlements in an options backdating case, after more than three years of hard-fought litigation.
- Involvement in the prosecution of a number of high-profile cases, which have resulted in hundreds of millions of dollars in recoveries for investors, including *In re WorldCom Securities Litigation*, *In re HealthSouth Securities Litigation*, *In re DaimlerChrysler AG Securities Litigation*, and *In re Bayer AG Securities Litigation*.
- Representation of institutional investors in stockholder voting rights and corporate governance cases, including *Gabelli Global Multimedia v. Western Investment LLC*, 700 F. Supp. 2d 748 (D. Md. 2010); *Delcath Systems, Inc. v. Ladd*, 466 F.3d 257 (2d. Cir. 2006); *Salomon Brothers Mun. Partners Fund, Inc. v. Thornton*, 410 F. Supp. 2d 330 (S.D.N.Y. 2006); *meVC Draper Fisher Jurvetson Fund I, Inc. v. Millennium Partners*, 260 F. Supp. 2d 616 (S.D.N.Y. 2003); and *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund I, Inc.*, 824 A.2d 11 (Del. Ch. 2002).

Mr. Garber received his B.A. from Cornell University in 1999 and his J.D. from the Benjamin N. Cardozo School of Law in 2002, where he was articles editor for the Cardozo Journal of International and Comparative Law and was competitively selected to work for the New York City Law Department's Corporation Counsel in its Appellate Division.

Mr. Garber co-authored “Morrison v. National Australia Bank: The Potential Impact on Public Pension Fund Fiduciaries,” The NAPP Report, Vol. 24, Number 3, August 2010, and “Loss Causation in the Ninth Circuit,” New York Law Journal, September 2, 2008.

Mr. Garber is admitted to practice in New York and Connecticut and is a member of the bars of the U.S. District Courts for the Eastern, Western, and Southern Districts of New York and the Second Circuit Court of Appeals.

Olena Ball



Olena Ball is an associate at FBFG, where she specializes in prosecuting class actions in state and federal courts. Mrs. Ball joined the firm after working at several prominent law firms. She received her J.D. from Benjamin N. Cardozo School of Law and her B.A., cum laude, from the City College of New York. During law school, Mrs. Ball served on the Cardozo Women’s Law Journal.

Joshua Cottle



Joshua Cottle is an associate at FBFG. Mr. Cottle received his J.D. from the University of Minnesota Law School and conducted his undergraduate studies at Grinnell College. At the University of Minnesota Law School, Mr. Cottle was a Managing Editor of the Minnesota Law Review.

Emily Fisher



Emily Fisher is an associate at FBFG. Emily joined the firm in 2022. She received her J.D. from St. John’s University School of Law and her B.A. and B.S. from St. Lawrence University.

Yaneike Mckenzie-Coley



Yaneike McKenzie-Coley is an associate at FBFG, she received her J.D. from Hofstra University School of Law and her B.A., cum laude, from the Stony Brook University. After Law School, Mrs. Coley volunteered assisting consumers with consumer debt related issues in the Bronx County Court.

Chantel Mills



Chantel Mills is an associate at FBFG, where she specializes in prosecuting class actions in state and federal courts. Ms. Mills joined the firm after working at several prominent law firms. She received her J.D. from William and Mary School of Law and her B.A., with honors, from the University of Pennsylvania. During law school, Ms. Mills received various awards for her commitment to academic excellence and community service.

Keir Negron



Keir Negron is an associate attorney at FBFG. Mr. Negron received his J.D. from Harvard Law School and conducted his undergraduate studies at the University of California, Santa Cruz. At Harvard Law, Mr. Negron was a student attorney at the Cyberlaw and Environmental Law and Policy clinics and the president of the Harvard Asia Law Society.

John Sardesai-Grant



Mr. Sardesai-Grant is a highly experienced litigator who specializes in class actions in state and federal courts.

Before joining FBFG, John was an associate at Baritz & Colman LLP, where he represented clients in employment discrimination and commercial disputes. As of counsel to Reese Richman LLP, John brought cases against the New York Police Department on behalf of victims of police misconduct. As an associate at Brower Piven, P.C., he prosecuted complex securities fraud class actions on behalf of shareholders. And as an associate at Bickel & Brewer, a premier commercial litigation boutique, he represented clients in a variety of regulatory and commercial matters.

John earned his B.S. in Economics from The Wharton School at the University of Pennsylvania, as well as an M.A. in Chinese from the University of Pennsylvania's Graduate School of Arts and Sciences. John received his J.D. from New York University School of Law.

John is admitted to practice in New York and the United States District Courts for the Southern and Eastern Districts of New York and the District of Colorado. He is an active member of the New York County Lawyers Association

Bradley Silverman



Mr. Silverman is a highly experienced litigator. He has represented individuals and public and private companies in courts throughout the country. He has broad experience handling numerous types of disputes. This experience includes the representation of plaintiffs and defendants in: class actions; contract disputes; employment matters; disputes relating to the management and control of closely held businesses; intellectual property and trade secret disputes; RICO actions; antitrust and unfair competition matters; real estate disputes; Title IX and other claims relating to college disciplinary actions; challenges to local and state laws that are either unconstitutional or preempted by federal law; and actions to enforce First Amendment Rights.

At FBFG, Mr. Silverman's practice focuses on class actions in which he represents individuals across the country who have been harmed by the unlawful acts of companies. Past class actions in which he has been involved include *In re: Coca-Cola Products Marketing and Sales Practices Litigation*, a multidistrict litigation where Mr. Silverman's prior firm served as co-lead counsel for all plaintiffs. In that case and in other cases, he has asserted claims against some of the largest food manufacturers in the world for placing illegal, deceptive, and false statements on product labels.

Prior to joining FBFG, Mr. Silverman practiced at several of the leading litigation firms in New York City, including the international law firm of Kaye Scholer LLP (now Arnold & Porter Kaye Scholer LLP). He received his undergraduate degree, *Magna Cum Laude*, from Brandeis University. He received his law degree from the University of Pennsylvania Law School where he served as a member of the Moot Court Board and as Senior Editor of the *Journal of International Economic Law*. Born and raised in Brooklyn, New York, he and his family now reside in Westchester County.

Andrew White



Mr. White is an associate at FBFG, where he specializes in class actions in state and federal courts. Mr. White received his J.D. from New York University School of Law and his B.A. from State University of New York, College at Potsdam. During law school, Mr. White served as an editor for the *Journal of Law and Liberty*. Mr. White is admitted to practice in New York and in the United States District Court for the Southern District of New York.

**STATE OF NEW MEXICO
IN THE SECOND JUDICIAL DISTRICT COURT**

MIRIAM SHANKS, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

TRUE HEALTH NEW MEXICO, INC.,

Defendant.

Civil Action No.

**DECLARATION OF JEAN MARTIN IN SUPPORT OF THE PLAINTIFFS'
UNOPPOSED MOTION FOR ATTORNEYS' FEES, EXPENSES, AND
INCENTIVE AWARDS**

I, Jean Martin, declare as follows, pursuant to 28 U.S.C. § 1746.

1. I am an attorney licensed to practice law in the state of North Carolina as well as various federal courts across the country. I am a Partner at Morgan & Morgan. I have personal knowledge of the facts stated in this declaration and, if called as a witness, I could and would testify competently to them. I make this Declaration in support of Plaintiffs' Unopposed Motion for Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses, and Incentive Awards ("Fee and Expense Motion").

2. Morgan & Morgan's firm resume and biographies for the principal attorneys working on this case is attached as Exhibit 1 to this Declaration.

3. During the pendency of this litigation, counsel carefully coordinated their activities to avoid engaging in duplicative work.

4. During the course of the litigation, Morgan & Morgan attorneys performed the following tasks:

- a. Investigated the existence, cause, and scope of the data breach;
 - b. Interviewed individuals who contacted our firm and reviewed their documents;
 - c. Drafted a detailed complaint; and
 - d. Coordinated our filed case with the counsel responsible for the *McCullough* action.
5. As summarized below, Morgan & Morgan devoted 28.3 hours to the prosecution

and resolution of this matter, resulting in a lodestar of \$20,250.00.

Timekeeper	Role	Rate	Hours	Amount Billed
Jean Martin	Partner	\$1,150	6.6	\$7,590.00
Francesca Kester	Associate	\$650	18.3	\$11,895.00
Jennifer Cabezas	Paralegal	\$225	3.4	\$765.00
TOTAL			28.3	\$20,250.00

6. Morgan & Morgan attorneys and staff regularly prepared and maintained files contemporaneously documenting time spent, including tasks performed, and expenses incurred, relating to this matter.

7. In addition, Morgan & Morgan retained The Law Offices of Nicholas Koluncich III, LLC to act as local counsel in *Shanks v. True Health New Mexico, Inc.*, No. D-202-cv-2022-00445. To date, Mr. Koluncich has spent 29 hours at a rate of \$600.00 per hour, for a total lodestar of \$17,400.00.

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

Executed on March 29, 2023 at Tampa, Florida.

s/ Jean S. Martin
 Jean S. Martin*
 MORGAN & MORGAN

COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 559-4908
Facsimile: (813) 223-5402
jeanmartin@forthepeople.com

Exhibit 1

MORGAN & MORGAN[®]

Morgan & Morgan is a leading civil trial law firm representing consumers and commercial clients nationwide. With over 800 lawyers, and more than 3,000 non-lawyer employees, Morgan & Morgan is the largest plaintiffs' firm in the nation. Morgan & Morgan maintains over offices throughout the United States. Among its lawyers are former state attorney generals and present and former members of various state legislatures.

Morgan & Morgan has a dedicated Complex Litigation Group staffed with lawyers, paralegals, and retired FBI agents serving as investigators committed to representing consumers in complex litigation, MDL proceedings and class action cases throughout the country. It has achieved many remarkable results in class litigation, including the settlement of *In re Black Farmers Discrimination Litigation*, no. 08-0511 (D.C. Oct. 27, 2017), where one of its partners served as co-lead. The case resulted in a settlement with the United States Government in the amount of \$1.2 billion for African American farmers who had been systematically discriminated against on the basis of race, in violation of the Fifth Amendment to the United States Constitution, the Equal Credit Opportunity Act, Title VI of the Civil Rights Act, and the Administrative Procedure Act. Morgan & Morgan has assembled a talented team of lawyers:

John A. Yanchunis leads the class action section of the law firm. His practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., S. D. Tex.—has concentrated on complex litigation and spans over 40 years, including consumer class actions for more than two-thirds of that time. As a result of his extensive experience in class litigation, including privacy and data-breach litigation, he regularly lectures nationally and internationally at seminars and symposiums regarding class litigation and privacy litigation.

He has served as lead, co-lead, and class counsel in numerous national class actions, including multi-district litigation, involving a wide range of subjects affecting consumers, including antitrust, defective products, life insurance, annuities, and deceptive and unfair acts and practices. In 2014, he was recognized by the National Law Journal as a trailblazer in the area of privacy litigation, and in 2020, he was recognized by LAW 360 for the second year in a row as one of 4 MVPs in the United States in the area of privacy and cyber security litigation. For his work in the area of privacy litigation, he was awarded lawyer of the year in the state of Florida by The Daily Business Review.

As a result of his experience in insurance and complex litigation, beginning in 2005, he was selected by Tom Gallagher, the Chief Financial Officer for the state of Florida and a member

of the Florida Cabinet, to serve as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida) in their investigations of the insurance industry on issues concerning possible antitrust activity and other possible unlawful activities regarding the payment of undisclosed compensation to insurance brokers. He served as lead regulator counsel and worked with a core group of state Attorneys General from the National Association of Attorneys General, which were selected to conduct the investigations. The insurance regulator for Florida was the only insurance regulator in the group. The litigation that was filed and the related investigations netted millions of dollars in restitution for Florida consumers and resulted in significant changes in the way commercial insurance is sold in Florida and across the country.

During his career, he has tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by the Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case pended, he served as lead counsel for several insurance companies, regarding coverage for asbestos and environmental claims. The case was tried in three phases over several years beginning in 1992. He was also lead counsel for these parties in the subsequent appeals that followed a judgment in favor of his clients.

Mr. Yanchunis began his work in privacy litigation in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001), alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, he served as co-Lead Counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). See *Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.), and *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.). Subsequently, I also served as co-Lead Counsel in the DPPA class cases, *Davis v. Bank of America*, No. 05-cv-80806 (S.D. Fla.) (\$10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and Trust*, No. 03-cv-80593 (S.D. Fla.) (\$50 million class settlement).

He has been appointed and served in leadership positions a number of multidistrict litigation in the area of privacy and data breaches: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.) (settlement for \$190,000,000 preliminarily approved) *In re Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.) ("Yahoo") (Lead Counsel) (Court approved \$117,500,000.00 common fund settlement for approximately 194 million US residents and 270,000 Israeli citizens); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.)

(co-Lead Counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of \$29,025,000); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs' Steering Committee) (final judgment entered approving \$380.5 million fund for 145 million consumers); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) ("OPM") (member of the Executive Committee) (motion for preliminary approval of a \$60,000,000 common fund); *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers).

His court-appointed leadership experience in non-MDL, data breach class actions is likewise significant, and to just name a few : *Schmidt, et al., v. Facebook, Inc.*, No. 3:18-cv-05982 (N.D. Cal.) (Co-Lead Counsel) ("Facebook") (class certified for 8 million residents , subsequently settlement of the class was approved by the court); *Walters v. Kimpton Hotel & Restaurant*, No. 3:16-cv-05387 (N.D. Cal.) ("Kimpton") (Lead Counsel) (class action settlement final approval order entered July 11, 2019); and *In re: Arby's Restaurant Group, Inc. Data Security Litigation*, Nos. 1:17-cv-514 and 1:17-cv-1035 (N.D. Ga.) (co-Liaison Counsel) (final approval of a class settlement entered June 6, 2019); and *Jackson, et al., v. Wendy's International, LLC*, No. 6:16-cv-210-PGB (M.D. Fla.) (final approval of a class settlement entered February 26, 2019); *Henderson v. Kalispell Regional Healthcare*, No. CDV-19-0761 (Montana Eighth Judicial Court – Cascade County) (final approval of class settlement entered January 5, 2021); *In re: Citrix Data Breach Litigation*, No. 19-cv-61350 (S.D. Fla.) (preliminary approval of class action settlement entered on January 26, 2021); *Kuss v. American HomePatient, Inc., et al.*, 18-cv-2348 (M.D. Fla.) (final approval of class action settlement entered on August 13, 2020); *Fulton-Green v. Accolade, Inc.*, 18-cv-274 (E.D. Pa.) (final approval of class action settlement entered September 23, 2019); *Nelson v. Roadrunner Transportation Systems, Inc.*, 18-cv-7400 (N.D. Ill.) (final approval of class action settlement entered September 15, 2020).

His experience in these major data breach matters extends far beyond simply briefing threshold issues and negotiating settlements. Rather, he has personally deposed dozens of corporate representatives, software engineers, cyber professionals and CISOs in major data breach cases such as Capital One, Yahoo, Kimpton, and Facebook. In addition, he has defended experts used in these cases and also deposed defense liability and damage experts.

Presently he leads his firm's efforts in two major class cases pending against Google for data misuse.

As result of his experience in the area of class litigation and ethics, he has served as an expert for The Florida Bar on ethical issues arising in class action litigation. He is a frequent

lecturer on privacy and class litigation nationally and internationally, including at international conferences, having presented at the University of Haifa's 2019 Class Action Conference, in Haifa, Israel, attended by lawyers, judges and law professors from around the world. In 2020 he lectured on data privacy in Mexico, and in November 2020 and 2021 he presented on class action issues to an international group of lawyers, judges and professors at a symposium in London sponsored by the London Law Society. He is schedule to speak on class action issues in 2022 at two different symposiums in Amsterdam, and two seminars on privacy and cyber security issues in the United States .

While at the University of Florida Mr. Yanchunis was a member of Florida Blue Key and Omicron Delta Kappa. He received his Juris Doctor degree from the South Texas College of Law in 1980, where he graduated magna cum laude. During law school, Mr. Yanchunis was a member of the Order of the Lytae, Associate Editor-in-Chief and Technical Editor of the South Texas Law Journal.

Michael F. Ram. Mr. Ram is a consumer class action lawyer with 40 years of experience. He graduated cum laude from Harvard Law School in 1982. He has co-tried several class action trials and frequently lectures on class trials. In 1992 he was a co-recipient of the Trial Lawyer of the Year Award given by Trial Lawyers for Public Justice for *National Association of Radiation Survivors v. Walters* No. 83-c-1861 (N.D. Cal.) (tried to class-wide judgment on remand from Supreme Court).

From 1993 through 1997, Mr. Ram was a partner with Loeff, Cabraser, Heimann and Bernstein where he represented plaintiffs in several major class actions, including: *Cox v. Shell*, Civ. No 18,844 (Obion County Chancery Court, Tenn.) national class of six million owners of property with defective polybutylene plumbing systems; *In re Louisiana-Pacific Inner-Seal Litigation*, No. 95-cv-879 (D. Oregon) (co-lead counsel) national class of homeowners with defective siding; *ABS Pipe Litigation*, Cal. Judicial Council Coordination Proceeding No. 3126 (Contra Costa County) national class of homeowners.

In 1997, Mr. Ram founded Levy, Ram & Olson which became Ram & Olson and then Ram, Olson, Cereghino & Kopczynski. He was co-lead counsel in many consumer class actions including a national class of half a million owners of dangerous glass pane gas fireplaces in *Keilholtz et al. v. Superior Fireplace Company*, No. 08-cv-00836 (N.D. Cal. 2008). He was co-lead counsel for plaintiffs in *Chamberlan v. Ford Motor Company*, No. 03-cv-2628 (N.D. Cal.), a class action involving defective intake manifolds that generated four published opinions, including one by the Ninth Circuit, 402 F.3d at 950, and settled one court day before the class trial. He was also co-counsel for plaintiffs in a number of other consumer class actions, including: *In re General Motors Corp. Product Liability Lit.* MDL. No. 1896 (W.D. Wash.) (defective speedometers);

Richison v. American Cemwood Corp., San Joaquin Superior Court Case No. 005532 (defective Cemwood Shakes); *Williams v. Weyerhaeuser*, San Francisco Superior Court Case No. 995787 (defective hardboard siding); *Naef v. Masonite*, Mobile County, Alabama Circuit Court Case No. CV-94-4033 (defective hardboard siding on their homes); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998) (approving class action settlement); *McAdams v. Monier, Inc.* (2010) 182 Cal. App. 4th 174 (reversing denial of class certification in consumer class action involving roof tiles); *Gardner v. Stimson Lumber Co.* (King County Wash. No. 2-17633-3-SEA) (defective siding); *Rosenberg v. U-Haul* (Santa Cruz Superior Ct. No. CV-144045 (certified consumer class action for false and deceptive conduct; tried successfully to judgment); *In re Google Buzz User Privacy Litigation*, No. 10-cv-00672-JW (N.D. Cal. 2011) (international class action settlement for false and deceptive conduct); *Whitaker v. Health Net of California, Inc., and International Business Machines Corp.*, No. 2:11-cv-0910 KJM DAD (E.D. Cal.) (electronic privacy class action under the California Confidentiality of Medical Information Act); and *In re Kitec Plumbing System Products Liab. Litigation MDL No 2098*, N.D. Texas, No. 09-MD-2098 (MDL class action involving claims concerning defective plumbing systems).

From 2017 to 2020, Mr. Ram was a partner at Robins Kaplan LLP. In August, 2020, Mr. Ram joined Morgan & Morgan to open a San Francisco office for them. He is currently co-lead counsel in numerous consumer class actions, including *Gold v. Lumber Liquidators*, N.D. Cal. No. 14-cv-05373-RS, a certified multistate class action involving bamboo floors, and *Fowler v. Wells Fargo*, N.D. Cal. No. 3:17-cv-02092-HSG, a class action involving interest charges that settled for \$30 million. In addition, he is also currently serving on the Plaintiffs' Steering Committee in the *In re Philips CPAP MDL Litigation*, where he is co-chair of the Law and Briefing Committee.

Jean Sutton Martin. Ms. Martin presently serves by appointment as interim co-lead counsel in, *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.), *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.), and *Johnson, et al. v. Yuma Regional Medical Center*, 2:22-cv-01061-SMB (D. Ariz.). She also serves as a member of the Plaintiffs' Steering Committee for the cases proceeding against LabCorp, Inc. in *In re: American Medical Collection Agency Data Breach Litigation*, 19-md-2904 (D. N.J.) and a steering committee member *In re: Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 19-md-2921 (D. N.J.).

In a case in which she serves as interim co-lead counsel, Ms. Martin argued a motion for class certification which resulted in the first order in the country granting Rule 23(b)(3) certification in a consumer payment card data breach. *In re Brinker Data Incident Litig.*, No. 3:18-CV-686-TJC-MCR, 2021 WL 1405508 (M.D. Fla. Apr. 14, 2021).

She has served in leadership positions in many consumer class actions and consolidated

proceedings in federal courts around the country, including *inter alia*: *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.)(\$68 million settlement for 15 million class members); *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.) (data breach settlement valued at over \$17.5 million) (co-lead counsel); *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415 (D. Colo.) (data breach) (co-lead counsel); *Linnins v. HAECO Americas, Inc., et al.*, No. 16-cv-486 (M.D.N.C.) (employee data disclosure) (co-lead counsel); *Torres v. Wendy's International, LLC*, No. 6:16- cv-210 (M.D. Fla.) (data breach) (class counsel); *Fuentes, et al. v. UniRush, LLC, et al.*, No. 1:15- cv-08372 (S.D.N.Y.) (disruption in servicing of financial accounts) (co-lead counsel); *Lewis, et al., v. Green Dot Corp., et al.*, No. 2:16-cv-03557 (C.D. Cal.) (disruption in servicing of financial accounts) (class counsel); *Brady, et al. v. Due North Holdings, LLC, et al.*, No. 1:17-cv-01313 (S.D. Ind.) (employee data disclosure) (class counsel); *Foreman v. Solera Holdings, Inc.*, No. 6:17-cv-02002 (M.D. Fla.) (employee data disclosure) (class counsel); *In Re: Outer Banks Power Outage Litigation*, No. 4:17-cv-141 (E.D.N.C.) (extended island power outage due to defective construction practices) (class counsel); and, *McCoy v. North State Aviation, LLC, et al.*, No. 17- cv-346 (M.D.N.C.) (WARN Act violations) (class counsel).

In addition to consumer class actions, Ms. Martin has practiced in the areas of mass tort and catastrophic personal injury litigation. Prior to joining Morgan and Morgan, Ms. Martin ran her own law firm concentrating in consumer class actions and mass tort litigation. She also has served as an adjunct professor at Wake Forest University School of Law.

Ms. Martin received her Juris Doctor degree from Wake Forest University School of Law in 1998, where she served as Editor-in-Chief of the *Wake Forest Law Review*. She obtained eDiscovery certification from the eDiscovery Training Academy at Georgetown Law Center in 2017. Ms. Martin graduated from Wake Forest University with a Bachelor of Science in Mathematical Economics in 1989. She earned a Master of International Business from the University of South Carolina in 1991.

Ms. Martin has been honored with the prestigious “AV” rating by Martindale-Hubbell. In 2016, Ms. Martin was selected by her peers as the foremost Litigation attorney in the State of North Carolina for *Business North Carolina Magazine's Legal Elite*, gaining membership in the *Legal Elite* Hall of Fame. In 2015, she was inducted as a Fellow of the Litigation Counsel of America, a prestigious trial lawyer honorary society comprised of less than one-half of one percent of American lawyers. Fellows are selected based upon excellence and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation. For upholding the highest principles of the legal profession and for outstanding dedication to the welfare of others, Ms. Martin has also been selected as a Fellow of the American Bar Foundation, an honorary legal organization whose membership is limited to one third of one percent of

lawyers in each state. In 2022, she was recognized by LAW 360 as an MVP in the area of cybersecurity and data privacy.

Before entering law school, Ms. Martin worked with the sales finance team of Digital Equipment Company in Munich, Germany developing sales forecasts and pricing models for the company's expansion into the Eastern European market after the fall of the Berlin wall. She also worked as a practice management consultant for a physician consulting group and as a marketing manager for an international candy manufacturer where her responsibilities included product development, brand licensing, market research, and sales analysis.

Ms. Martin has been a presenter on a variety of topics related to class actions including: *Fantasy Gaming Webinar: FanDuel and DraftKings Litigation*, AAJ (December 2015); *Thinking Outside the Black Box: Drug Cases in the Class Context*, Mass Torts Made Perfect (October 2019); *Mass Torts and MDLs*, Western Alliance Class Action Forum (March 2020); *Consumer Class Actions*, Western Alliance Class Action Forum (March 2022); *How to Maximize Efficiency in Document Production and Review*, Mass Torts Made Perfect (April 2022).

Ms. Martin is a member of the North Carolina bar, having been admitted in 1998. She is also admitted to practice before the United States Supreme Court, the United States Court of Federal Claims, the United States Court of Appeals for the Fourth Circuit, the Western, Middle, and Eastern Districts of North Carolina, and the United States District Court of Colorado.

Marcio Valladares. Mr. Valladares was born in Managua, Nicaragua and immigrated to the United States during Nicaragua's civil war. In 1990, Marcio obtained a Bachelor of Science degree in psychology from the University of Florida. In 1993, he obtained his Juris Doctor degree, *magna cum laude*, from Florida State University. He is pursuing a Masters in Law (LL.M.) degree from Columbia University, focusing on federal and comparative law.

Before joining Morgan & Morgan, Marcio worked in both the public and private sectors. He served as a judicial law clerk to the Honorable Steven D. Merryday, United States District Judge, Middle District of Florida, and then served as a judicial law clerk to the Honorable Susan H. Black, United States Circuit Court Judge, Court of Appeals for the Eleventh Circuit. Marcio served as an Assistant United States Attorney for the Middle District of Florida. In the private sector, Marcio practiced commercial litigation and insurance defense at Holland & Knight LLP. Marcio also worked as in-house counsel for the Mayo Clinic. Marcio is fluent in English and Spanish.

Marie Noel Appel. Ms. Appel has dedicated her career to representing consumers in both individual and class action cases involving claims under consumer protection laws and other

statutory and common law claims. She earned a B.A. in French from San Francisco State University in 1992 and graduated from University of San Francisco School of Law in 1996.

For most of her career, Ms. Appel has been in private practice litigating class claims related to defective products, mortgage fraud/Truth in Lending violations, unfair business practices relating to manufactured home sales, interest overcharges by the United States on military veterans' credit accounts, and statutory violations by the United States relating to offset of debts beyond the limitations period.

From 2012 to 2019, Ms. Appel left private practice to become the Supervising Attorney of the Consumer Project at the Justice & Diversity Center of the Bar Association of San Francisco which provides free legal services to low-income persons facing consumer issues. In April 2019, Ms. Appel returned to private practice as Counsel at Robins Kaplan, LLP, then joined Morgan & Morgan in August 2020 where she focuses on class action litigation.

In addition to her legal practice, Ms. Appel is an Adjunct Professor at Golden Gate University School of Law in San Francisco where she teaches legal research and writing, and from 2011 to 2018 supervised students at the Consumer Rights Clinic, in which students performed legal work at the Justice & Diversity Center's Consumer Debt Defense and Education Clinics.

Ms. Appel has a long history of pro bono involvement and currently is a regular volunteer at the Community Legal Assistance Saturday Program, a monthly free legal clinic sponsored by the Alameda County Bar Association. Ms. Appel provides trainings to San Francisco Bay Area legal aid attorneys regarding consumer collection defense and related matters, focusing recently on defense of lawsuits against low-income individuals for unpaid back rent resulting during the COVID-19 pandemic. In the past, Ms. Appel has provided pro bono representation for numerous low-income consumers facing debt collection lawsuits, and volunteered regularly at free legal clinics through the Justice & Diversity Center in San Francisco which, on multiple years, designated her as one of the Outstanding Volunteers in Public Service.

Ms. Appel is admitted to practice in the Ninth Circuit Court of Appeals, and United States District Courts in the Central District of California; the Eastern District of California; the Northern District of California; and the Southern District of California.

Kenya Reddy. Ms. Reddy represents consumers in class action litigation. She graduated from Duke University in 1997 with a degree in political science. In 2000, she received her law degree from the University of Virginia School of Law. Prior to joining Morgan & Morgan, Ms. Reddy was a shareholder at Carlton Fields, P.A., where her primary areas of practice were

antitrust, complex civil litigation, class action defense, and business litigation. She also has experience in including labor and employment, products litigation, ERISA and employee benefits law, insurance, healthcare, and securities litigation.

Ms. Reddy has served as a law clerk for the Honorable Charles R. Wilson, United States Circuit Court Judge, Court of Appeals for the Eleventh Circuit, the Honorable Anne C. Conway, former Chief Judge of the United States District Court for the Middle District of Florida, the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida, and the Honorable Karla R. Spaulding, United States Magistrate Judge, Middle District of Florida.

Ms. Reddy was a guest speaker in January 2019 at HarrisMartin's Marriott Data Breach Litigation Conference on the topic of standing in data breach cases. In October 2019, she presented on the topic of third-party litigation funding at the Mass Torts Made Perfect Conference.

Ms. Reddy is admitted to practice in the Northern, Middle, and Southern Districts of Florida.

Ryan Maxey. Mr. Maxey grew up in Tampa, Florida. He attended the University of South Florida, where he obtained degrees in Computer Science and Philosophy. During and after his undergraduate education, Mr. Maxey developed software and databases for Amalie Oil Company, an automotive lubricant manufacturer located in the Port of Tampa. Mr. Maxey later attended law school at the University of Florida, graduating *order of the coif* in 2008.

From 2008 to 2011, Mr. Maxey served as a judicial law clerk to the Honorable Elizabeth A. Jenkins, United States Magistrate Judge, University of Florida. Mr. Maxey then worked at one of the country's largest law firms, Greenberg Traurig, for four years. In 2015, Mr. Maxey joined Morgan & Morgan's Business Trial Group as a lead attorney handling a variety of business litigation matters. Mr. Maxey later started his own law practice, litigating claims related to breach of contract, trade secret misappropriation, the FLSA, the FDCPA, and premises liability.

Mr. Maxey was admitted to the Florida Bar in 2008 and is also admitted to practice in the Middle District of Florida and the Southern District of Florida.

Ryan J. McGee. Mr. McGee was born and raised in Tampa, Florida. He studied business economics and history at the University of Florida, where he was a teaching assistant for technology classes in the business school, and received his law degree from Stetson University College of Law, where he was an editor on the *Stetson Law Review*, a research assistant for antitrust and consumer protection laws, and a teaching assistant for Stetson's trial advocacy program.

Ryan began his legal career as a state-appointed prosecutor, where he tried over 50 jury trials to verdict, mostly felonies, as well as a special prosecutor appointed to investigate police officers' deadly use-of-force and corruption within various law enforcement agencies. Ryan also served as a law clerk for two years for the Honorable Elizabeth A. Kovachevich, the former Chief United States District Judge, Middle District of Florida. Before joining Morgan & Morgan, Ryan's practice involved complex business disputes, antitrust, trade secret, data security, and class action investigations and defense-side litigation in state and federal courts across the country.

Since shifting his focus entirely to consumer class action representation, Ryan has been selected as a Florida Super Lawyer Rising Star in 2018 and 2019 in the field of Class Actions, and has extensive privacy and consumer fraud class action experience, having actively participated in the following litigations: *Brown v. Google LLC*, No. 4:20-cv-03664-YGR (N.D. Cal.); *Rodriguez v. Google LLC*, No. 3:20-cv-4688-RS (N.D. Cal.); *Stoll et al. v. Musculoskeletal Institute*, No. 8:20-cv-01798 (M.D. Fla.); *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.); *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.); *Schmidt, et al., v. Facebook, Inc.*, No. 3:18-cv-05982 (N.D. Cal.); *In re Google Plus Profile Litigation*, No. 5:18-cv-06164 EJD (N.D. Cal.); *Kuss v. American HomePatient, Inc., et al.*, No. 8:18-cv-02348 (M.D. Fla.); *In re Equifax, Inc. Customer Data Sec. Breach Litigation*, No. 1:17-md-02800 (N.D. Ga.); *Morrow v. Quest Diagnostics, Inc.*, No. 2:17-cv-0948(CCC)(JBC) (D.N.J.); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-02752-LHK (N.D. Cal.); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.C.);

Ryan was admitted to the Florida Bar in 2009 and is also admitted to practice in the Northern, Middle, and Southern Districts of Florida.

Patrick Barthle. Mr. Barthle was born and raised in Dade City, Florida. He attended the University of Florida where he was admitted to the Honors Program and graduated, *cum laude*, with a double major in History and Criminology in 2009. While at UF, Patrick was inducted into the Phi Beta Kappa Honor Society and served as President of the Catholic Student Center. Patrick attended Washington and Lee University School of Law, graduating *summa cum laude* in 2012; where he was a Lead Articles Editor for the Wash. & Lee Law Review, a member of the Order of the Coif and the Phi Delta Phi Legal Honor Society, and President of the W&L Law Families organization.

Before joining Morgan & Morgan in 2015, Patrick worked at one of the country's largest law firms, Greenberg Traurig, LLP, and then served as a judicial law clerk for two years to the Honorable Mary S. Scriven, United States District Judge, Middle District of Florida. Patrick has extensive privacy and consumer fraud class action experience, having actively participated in

the following litigations: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.C.); *Torres v. Wendy's International, LLC*, No. 6:16-cv-210 (M.D. Fla.); *Morrow v. Quest Diagnostics, Inc.*, No. 2:17-cv-0948 (Dist. NJ); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.); *In re The Home Depot, Inc. Customer Data Security Data Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 16-md-02752-LHK (N.D. Cal.); and *Finerman v. Marriott Ownership Resorts, Inc.*, Case No.: 3:14-cv-1154-J-32MCR (M.D. Fla.).

Patrick was selected as a Florida Super Lawyer Rising Star in 2019 in the field of Class Actions. He is also active in speaking on privacy and class action topics, having spoken in June 2018, at the NetDiligence Cyber Risk Summit on the topic of Unauthorized Use of Personal Data; in November 2018 at the American Association for Justice's Advanced 30(b)(6) Seminar, on the topic of 30(b)(6) Depositions in in Data Breach Cases; and in January 2019 at HarrisMartin's Marriott Data Breach Litigation Conference on that topics of damage models and settlements in data breach cases; and Rule 23(c)(4) classes at the Mass Torts Made Perfect conference.

Mr. Barthle was admitted to the Florida Bar in 2012 and is also admitted to practice in the Middle District of Florida, the Southern District of Florida, and the District of Colorado.

Francesca Kester Burne. Ms. Burne was born and raised in Scranton, Pennsylvania. She attended Marywood University, where she graduated with a major in English Literature, and The Pennsylvania State University's Dickinson School of Law, where she received her Juris Doctor degree in 2017. While at Dickinson, Ms. Burne competed in the American Bar Association's National Appellate Advocacy Competition, where she was awarded the highest honor for her legal brief writing, and the Texas Young Lawyer's National Trial Competition, where she finished as a regional finalist. Ms. Burne also served as Executive Chair of the Dickinson Law Moot Court Board, Founder of the Dickinson Law partnership with Big Brothers Big Sisters, and Student Director of the Bethesda Mission Men's Shelter legal clinic. At graduation, she was honored with the D. Arthur Magaziner Human Services Award for outstanding academic achievement and service to others, the Joseph T. McDonald Memorial Scholarship for excellence in trial advocacy, and the peer-selected Lee Popp Award for her devotion to the legal field.

Ms. Burne interned as a judicial clerk to United States Magistrate Judge Martin C. Carlson while in law school. After graduation, she served for two years as a law clerk to the Honorable James M. Munley in the United States District Court for the Middle District of Pennsylvania. Ms. Burne now focuses her class action practice on data privacy and products liability, having actively participated in *Aguallo, et al. v. Kemper Corp., et al.*, Case No.: 1:21-cv-01883 (N.D. Ill.) (data breach settlement valued at over \$17.5million); *Gordon, et al. v. Chipotle Mexican Grill, Inc.*,

No. 17-cv-01415 (D. Colo.) (data breach); *Combs, et al. v. Warner Music Group*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.) (data breach); *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.) (data disclosure), and *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.) (data disclosure); *In re: American Medical Collection Agency Data Breach Litigation*, 19-md-2904 (D. N.J.) (data breach); *In re: Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 19-md-2921 (D. N.J) (products). Ms. Burne served as settlement class counsel in *Portier, et al. v. Neo Technology Solutions, et al.*, No. 3:17-cv-30111 (D. Mass.) (data breach).

Ms. Burne is admitted to practice law in both Pennsylvania and Florida as well as various federal courts throughout the country.

Ra O. Amen. Mr. Amen was raised in both the California Bay Area and Massachusetts. In 2005, Ra graduated from Stanford University with a B.A. in Economics. After graduating, Ra worked as a Peace Corps volunteer in Morocco teaching English as a second language and business skills to local artisans. Before entering law school, Ra worked for several years in education and in business development for a mobile technology startup. In 2017, he obtained his Juris Doctor degree with Honors from Emory University School of Law. While at Emory Law, he was a Managing Editor of the Bankruptcy Developments Journal, interned at a consumer fraud law practice, and worked in-house with one of the globe's leading metals companies assisting in a diverse array of legal issues ranging from corporate restructuring to international tax and contract disputes. Before joining Morgan & Morgan in 2020, Mr. Amen worked at one of the nation's largest defense law firms in the nation where he specialized in representing clients in complex commercial, administrative, and ecclesiastical disputes.

Ra speaks both English and Spanish, and is an avid guitar player.

Ra was admitted to the Georgia Bar in 2017.

David Reign. Mr. Reign is the former Assistant Special Agent in Charge of the Tampa FBI Field office, with nearly 25 years of investigative experience. He has investigated and managed some of the FBI's most complex white-collar crime cases, with an emphasis on health care fraud, public corruption, and financial crimes. As Deputy Chief of the Enron Task Force, he led a team of investigators and analysts in the successful investigation and prosecution of several executives of the Enron Corporation. He received the Attorney General's Award for Exceptional Service for his work on the Enron matter.

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRENT MCCULLOUGH,

Plaintiff,

v.

TRUE HEALTH NEW MEXICO, INC.,

Defendant.

Case No. D-202-CV-2021-06816

CLASS ACTION

**DECLARATION OF ANDREW W. FERICH IN SUPPORT OF PLAINTIFFS’
MOTION FOR ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARDS**

I, Andrew W. Ferich, hereby declares as follows:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to so testify. I am co-counsel for Plaintiffs in this action. I am a partner of Ahdoot & Wolfson, PC (“AW”), and a member in good standing of the bars of the Commonwealth of Pennsylvania, the State of New Jersey, and the District of Columbia.

2. This Declaration is submitted in Support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards. I make the following declaration based upon my own personal knowledge and, where indicated, as based on information and belief, that the following statements are true. If called upon as a witness, I could and would competently testify as follows.

3. AW, along with our co-Class Counsel, have vigorously and zealously represented the interests of the Settlement Class from the inception of this litigation until the present.

4. Throughout this action, AW and co-counsel have managed the administration and work division in this case in a systematic and efficient manner, coordinating work assignments through conference calls, working to avoid duplication of efforts or unnecessary work undertaken,

and ensuring that the skills and talents of counsel were put to use in an efficient and effective manner that maximized what each firm and attorney could contribute in a non-redundant way.

5. As explained herein, I and my partners at AW believe the Settlement to be fair, reasonable, and adequate, and in the best interests of the Settlement Class.

**CLASS COUNSEL’S LITIGATION EFFORTS AND
WORK ON BEHALF OF THE CLASS**

6. On December 3, 2021, my firm AW and co-counsel Barnow and Associates, P.C., filed a complaint against True Health on behalf of Plaintiff McCullough and similarly situated individuals relating to the True Health data breach (“Data Incident”). *McCullough v. True Health*, Case No. D-202-CV-2021-06816. Two additional complaints were filed after our first-filed case. *Clement, et al. v. True Health*, Case No. D-101-CV-2022-00129; *Shanks v. True Health*, Case No. D-202-CV-2022-00449. On March 21, 2022, Plaintiff McCullough and the plaintiffs from the *Clement* action agreed to consolidate the *McCullough* and *Clement* actions. Plaintiff Shanks agreed to stay her case for thirty days after the date of the mediation.

7. My firm has been diligent in and committed to investigating claims on behalf of the Class. Prior to commencing this litigation, Class Counsel diligently investigated potential legal claims (and potential defenses thereto) arising from True Health’s failure to implement adequate and reasonable data security procedures and protocols necessary to protect PII/PHI.

8. My firm has performed the following work on behalf of Plaintiffs and Class members (most of which is ongoing):

- a. Diligently investigated the circumstances surrounding the Data Incident;
- b. Articulated the nature of the Data Incident in a detailed complaint;

- c. Stayed abreast of and analyzed voluminous reports, articles, and other public materials discussing the Data Incident and describing the challenged conduct;
- d. Reviewed public statements concerning the Data Incident;
- e. Researched True Health's corporate structure and potential co-defendants;
- f. Fielded numerous contacts from victims and potential class members inquiring about this matter;
- g. Investigated the nature of the challenged conduct at issue here by interviewing potential clients who contacted us;
- h. Investigated the adequacy of the named Plaintiffs to represent the putative class;
- i. Drafted and filed an original complaint against True Health;
- j. Extensively prepared for and attended an all-day mediation with True Health;
- k. Engaged in continued settlement negotiations until the Settlement was finalized;
- l. Communicated and met and conferred internally amongst other Plaintiffs' counsel in the later-filed cases;
- m. Coordinated with True Health's counsel regarding the litigation and settlement issues; and
- n. Negotiated and memorialized the Settlement and all of its supporting documents in preparation for seeking preliminary approval from the Court.

9. In all phases of the litigation, AW stayed abreast of all material developments involving the Data Incident and endeavored to gain an ample understanding of the legal issues underlying Plaintiffs' claims.

MEDIATION AND SETTLEMENT NEGOTIATIONS

10. Class Counsel advocated zealously on behalf of the Class Members during the Settlement negotiation process.

11. In early 2022, my co-counsel and I began to engage in extensive arm's length negotiations concerning a possible settlement of this matter. After extensive pre-mediation negotiations and discussion, we eventually agreed to attend a mediation with True Health on July 12, 2022. Our firms engaged Bennett G. Picker, Esq. of Stradley Ronon Stevens and Young, LLP as a mediator to oversee settlement negotiations in this Action.

12. Prior to the mediation with Mr. Picker, the Parties exchanged information to prepare for and facilitate a productive mediation session. The Parties discussed their respective positions on the merits of the claims and class certification and provided detailed information to the mediator on the relevant facts and law.

13. Class Counsel received and analyzed ample discovery and confirmatory information to determine that the Settlement is fair. Prior to the mediation, Class Counsel requested documents from Defendant in order to ascertain what would be a fair, reasonable, and adequate settlement in this case. This discovery guided Class Counsel in their negotiations with Defendant and gave Class Counsel confidence that the Settlement exceeds the standards of Rule 1-023 NMRA.

14. The July 2022 mediation session was spirited and hard-fought. Class Counsel and counsel for True Health aggressively advocated for each side's positions and views during the

mediation session. The Parties were unable to reach a resolution at the mediation but continued to engage in settlement negotiations.

15. Following substantial additional extensive arm's length settlement negotiations following the mediation, the Parties ultimately reached agreement on the general terms of the Settlement.

16. During the weeks that followed, the Parties exchanged numerous drafts of the Settlement Agreement and its exhibits, and exhaustively negotiated the remaining finer details of the Settlement.

17. These negotiations continued to be contested and involved detailed discussions regarding every provision of the Settlement Agreement and ancillary documents and the plan for Class Notice.

18. Class Counsel solicited competing bids from multiple third-party administrators for settlement notice and administration.

19. The Parties ultimately agreed to the appointment of Epiq Class Action and Claims Solutions, Inc. ("Epiq") as Settlement Administrator. Class Counsel crafted, negotiated, and meticulously refined the final Notice Program and each document comprising the notice, with the assistance of a class action notice expert, to ensure that the information disseminated to Class Members is clear and concise.

20. At all times during settlement discussions, the negotiations were at arm's length. Furthermore, it was always Class Counsel's primary goal to achieve the maximum substantive relief possible for the Settlement Class Members.

21. The Settlement benefits that Plaintiffs have obtained for the Class are well within the range of possible recovery of benefits at trial. This is a highly complicated data breach case.

True Health adamantly denied liability and expressed an intention to defend itself through trial. Due to the risks of data breach litigation, as well as much litigation, Class Counsel believe that it is possible that the Class could receive little or nothing if the case is litigated.

22. The Settlement achieved in this litigation is the product of the initiative, investigations, and hard work of skilled counsel.

23. In my opinion, the speedy resolution of data breach class actions is in the best interests of class members because it allows class members to take advantage of settlement benefits and protect their identities moving forward. The Settlement allows Settlement Class members to seek compensation for out-of-pocket expenses incurred as a result of the Data Incident *immediately*. At the same time, the Settlement allows Class Members to take advantage of Credit Monitoring Services and other similar services, which will help mitigate future harms. Further, the equitable, forward-looking relief obtained with respect to True Health's data security practices provides substantial non-monetary benefits to all Class Members, irrespective of whether they submit a claim under the Settlement.

24. The requested Service Awards in the amount of \$1,500 per Class Representative reflect the work the Class Representatives have performed in assisting Class Counsel with this litigation and their dedication in bringing this lawsuit on behalf of the Settlement Class.

25. The named Plaintiffs have been actively engaged in this litigation, and were essential to the success achieved. Among other things, they provided information to Class Counsel, gathered documents, reviewed pleadings, stayed updated about the litigation, and reviewed and approved the Settlement. The Settlement would not have been possible without the effort and commitment of the Plaintiffs, who sacrificed their time and put their name on the line for the sake

of the Class. Their commitment is notable given the modest size of their personal financial stakes in the matter.

26. The Parties did not discuss or agree upon payment of attorneys' fees, costs, expenses, and Service Awards until after they agreed on all material terms of relief to the Settlement Class.

MOTION FOR PRELIMINARY APPROVAL AND BEYOND

27. After the lengthy process that led to finalization of the Settlement Agreement and its numerous exhibits, Class Counsel prepared and filed Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Mot. for Prelim. App."), which included supporting documents, declarations, and exhibits.

28. The information gleaned from an investigation and research into the facts and potential legal claims enabled Class Counsel to assess the strengths and weaknesses of this case, analyze potential damages models that could be utilized at trial, and informed the decision to engage in negotiation with True Health's Counsel about attending mediation and later settling the matter.

29. Class Counsel's diligence in preparing for mediation, including obtaining information necessary to analyze all claims and defenses, allowed Class Counsel to negotiate a robust relief package and valuable outcome for the Settlement Class, and to determine a fair and efficient structure and distribution plan.

30. On December 19, 2022, the Court preliminarily approved the Settlement and ordered that the Class be given notice. *See* Order Allowing Preliminary Approval of Class Action Settlement and Directing Notice of Proposed Settlement ("Prelim. App. Order"). After the Settlement received preliminary approval, Class Counsel worked closely with the Settlement

Administrator to implement the Notice Plan. Class Counsel continues to work closely with the Settlement Administrator during the ongoing Claims Period. AW will continue to communicate with and assist Class Members who reach out to Class Counsel about the Settlement and filing Claim Forms.

31. AW has performed various other litigation related work during the pendency of this matter, included meetings, emails, and phone calls between co-counsel and with counsel for True Health, communicating with the Plaintiffs regarding case developments and litigation strategy, and calls with numerous consumers who reached out to AW about this litigation.

AHDOOT & WOLFSON, PC HAS COMMITTED SIGNIFICANT EFFORTS AND RESOURCES TO THIS LITIGATION FOR THE BENEFIT OF THE CLASS

32. AW expended 166 hours in this litigation through March 27, 2023, for a total lodestar of \$124,605.00.

33. AW's representation of the Class in this matter is on a wholly contingent basis. AW's fees were not guaranteed—the retainer agreements AW has with Plaintiffs do not provide for fees apart from those earned on a contingent basis, and, in the case of class settlement, approved by the Court. AW has devoted substantial resources to this matter, and we have received no payment for any of the hours of services performed or the out-of-pocket costs and expenses that AW committed to the litigation of this case. As such, AW assumed a significant risk of nonpayment or underpayment. We did this, with no guarantee of repayment, to represent our clients and because of the public interest and social importance of this case. Moreover, AW was required to forego other financial opportunities to litigate this case. AW thus took this case with the expectation that the Firm would receive a risk enhancement in the event we prevailed.

34. All AW attorneys and legal staff who worked on this case maintained contemporaneous time records reflecting the time spent on all billable matters. In all instances, the

AW timekeeper indicated the date and amount of time spent on a task to the tenth of an hour, described the work that was performed during the indicated time period, and identified the case to which the time should be billed.

35. AW made every effort to litigate this matter efficiently by coordinating the work of AW's attorneys and paralegals, minimizing duplication, and assigning tasks in a time and cost-efficient manner, based on the timekeepers' experience levels and talents.

36. AW's fee records accurately reflect work actually, reasonably, and necessarily performed in connection with the litigation of this matter. I believe that the hours spent reflect time spent reasonably litigating this case, which I have sought to manage and staff efficiently as described above.

37. A summary of rates and hours expended by AW's professionals, as of March 27, 2023, is set forth as follows:

Professional	Title	Billable Rate	Billable Hours	Billable Fees
Robert Ahdoot	Partner	\$1,050 ¹	18.4	\$19,320.00
Andrew W. Ferich	Partner	\$850	87.9	\$74,715.00
Deborah De Villa	Senior Associate	\$675	38.6	\$26,055.00
Heidi Liivamagi	Paralegal	\$250	13.5	\$3,375.00
Candy Santos	Legal Assistant	\$150	7.6	\$1,140.00
TOTALS:			166	\$124,605.00

38. This matter has required me, and other attorneys at AW, to spend time on the investigation and litigation of this matter that could have been spent on other matters. At various times during the litigation of this class action, this lawsuit has consumed significant amounts of my time and AW's time. Such time could otherwise have been spent on other fee-generating work.

¹ Mr. Ahdoot's ordinary billable rate is \$1,200 per hour, but this rate has been adjusted for purposes of this Settlement.

Because our Firm undertook representation of this matter on a contingency-fee basis, we shouldered the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment. If not devoted to litigating this action, from which any remuneration is wholly contingent on a successful outcome, the time my Firm spent working on this case could and would have been spent pursuing other potentially fee generating matters.

39. Litigation is inherently unpredictable and therefore risky. Here, that risk was very real and high, due to the rapidly evolving nature of case law pertaining to data breach litigation, and the state of data privacy law. Therefore, despite AW's devotion to the case and our confidence in the claims alleged against True Health, there have been many factors beyond our control that posed significant risks. Had True Health prevailed on the merits, on class certification, or on appeal, my Firm and I might have recovered nothing for the time and expense AW invested in representing the Settlement Class.

40. I believe that the time and resources spent by my Firm were reasonable and I have sought to manage this matter efficiently at every turn.

41. AW will continue to expend significant attorney time and resources on this matter given the future work still needed for completion of the Settlement, including: drafting and filing a motion for final approval, preparing for and attending the final approval hearing, responding to Class Member inquiries or challenges, responding to any requests for exclusion or objections, addressing any appeals, and working with Defendant and the Settlement Administrator on the distribution of benefits to the Settlement Class.

AHDOOT & WOLFSON'S REASONABLE EXPENSES

42. To date, AW has incurred \$5,158.08 of litigation expenses, as follows:

Description	Amount
Attorney Service Fees	\$567.68
Filing Fees	\$575.00
Mediation Fees	\$4,000.00
Postage	\$8.95
Printing & Reproduction	\$6.45
Total	\$5,158.08

43. These costs include court fees, mediation fees, attorney service fees, printing & reproduction fees, postage, and other related costs. Each of these costs and expenses are fully documented, and, in my opinion, were necessary and reasonable. This amount does not include internal and other additional costs that Class Counsel incurred in this litigation but, in an exercise of discretion, do not seek to recover.

AHDOOT & WOLFSON, PC FIRM EXPERIENCE

44. At all times, AW had the experience, expertise, and resources to effectively litigate any all issues related to this litigation.

45. In March 1998, Robert Ahdoot and Tina Wolfson founded AW, now a nationally recognized law firm that specializes in complex and class action litigation, with a focus on privacy rights, consumer fraud, anti-competitive business practices, employee rights, defective products, civil rights, and taxpayer rights. The attorneys at AW are experienced litigators who have often been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In over two decades of its successful existence, AW has successfully vindicated the rights of millions of class members in protracted, complex litigation, conferring hundreds of millions of dollars to the victims, and affecting real change in corporate behavior. A copy of AW firm's resume is attached hereto as **Exhibit A**.

46. AW has been on the cutting edge of privacy litigation since the late 1990s, when its attorneys successfully advocated for the privacy rights of millions of consumers against major

financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without consumers' consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, they were novel and hidden from public scrutiny at the time AW was prosecuting them. Our work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW has been at the forefront of privacy-related litigation since then.

47. AW has been appointed lead counsel in numerous complex consumer class actions. The following are some examples of recent class actions that AW has litigated to conclusion or are currently litigating on behalf of clients – either as Class Counsel, proposed Class Counsel or members of a Court appointed Plaintiff Steering Committee:

48. As co-lead counsel in *In re Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155-LHK (N.D. Cal.) (Hon. Lucy H. Koh), AW achieved an \$85 million settlement that provides monetary relief to Zoom users who submit a claim for payment and comprehensive injunctive relief which addresses the privacy issues on which Plaintiffs' claims were based. This settlement was recently finally approved by the Northern District.

49. In *Rivera v. Google LLC*, No. 2019-CH-00990 (Ill. Cir. Ct.) (Hon. Anna M. Loftus), a class action arising from Google's alleged illegal collection, storage, and use of the biometrics of individuals who appear in photographs uploaded to Google Photos in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*, AW achieved a \$100 million non-reversionary cash settlement, with meaningful prospective relief, which was granted final approval by Judge Loftus on September 28, 2022.

50. As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members,

AW achieved a settlement conservatively valued at over \$150 million. Under that settlement, each class member was entitled to two years of additional premium credit monitoring and ID theft insurance (to begin whenever their current credit monitoring product, if any, expires) plus monetary relief (in the form of either documented losses or a default payment for non-documented claims). Experian also provided robust injunctive relief. Judge Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

51. As a member of a five-firm Plaintiffs' Steering Committee ("PSC") in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-md-2633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at \$74 million.

52. In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a \$29 million settlement and robust injunctive relief for the consumer class.

53. As co-lead counsel in *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA-SKC (D. Colo.) (Hon. Christine M. Arguello), AW secured a settlement for the nationwide class that provided for up to \$250 in claimed damages or \$10,000 in extraordinary damages.

54. In *Adlouni v. UCLA Health Sys. Auxiliary*, No. BC589243 (Cal. Super. Ct. Los Angeles Cnty.) (Hon. Daniel J. Buckley), AW, as a member of the PSC for patients impacted by a university medical data breach, achieved a settlement providing two years of credit monitoring, a \$5,275,000 fund, and robust injunctive relief.

55. AW's efforts have also shaped privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited routinely in briefing on Article III and data breach standing, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). The Seventh Circuit concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) (reversed and remanded).

56. Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), AW briefed and argued, in part, the granted motions to dismiss based on standing, and briefed in part the successful appeal to the D.C. Circuit. Judge Jackson recently issued her preliminary approval of a \$60 million settlement in this Action.

57. AW's other ongoing privacy class actions include *In re Ring LLC Privacy Litigation*, No. 2:19-cv-10899-MWF-RAO (C.D. Cal.) (Hon. Michael W. Fitzgerald) (serving as co-lead counsel), *In re Google Location History Litigation*, No. 5:18-cv-5062-EJD (N.D. Cal.) (Hon. Edward J. Davila) (same), *In re Ambry Genetics Data Breach Litigation*, No. 8:20-cv-791-CJC-KES (C.D. Cal.) (Hon. Cormac J. Carney) (same), and *Acaley v. Vimeo, Inc.*, No. 1:19-cv-7164 (N.D. Ill.) (Hon. Matthew F. Kennelly).

58. In addition, AW has served or is serving as plaintiffs' counsel in class actions enforcing consumer rights under the Telephone Consumer Protection Act of 1991 ("TCPA"), such

as *Chimeno-Buzzi v. Hollister Co.*, No. 1:14-cv-23120-MGC (S.D. Fla.) (Hon. Marcia G. Cooke) (class counsel in \$10 million nationwide settlement) and *Melito v. American Eagle Outfitters, Inc.*, No. 1:14-cv-02440-VEC (S.D.N.Y.) (Hon. Valerie E. Caproni) (\$14.5 million nationwide settlement).

59. I joined AW as a partner at the age of only 33, and already have extensive experience serving in leadership and support roles in data privacy class action cases and other complex actions. For example, I have been at the forefront of the highly publicized Accellion FTA data breach litigation announced in late 2020 and have zealously prosecuted cases against Accellion and three of its customers that were impacted by this massive breach. Due to my firm's efforts, settlements were reached in each of these litigations. In one of the Accellion cases, final approval of the settlement was recently granted, and I was appointed as class counsel. *See Cochran, et al. v. The Kroger Co., et al.*, No. 5:21-cv-01887-EJD (N.D. Cal.), ECF No. 115 (granting final approval of nationwide settlement that provides \$5 million non-reversionary fund, and appointing Ferich and his firm as class counsel with co-counsel).

60. I was recently appointed as Interim Co-Lead Counsel in *Smeltz, et al. v. Logan Health, et al.*, No. A-DV-22-0124 (8th Judicial District Court, Cascade County Mar. 31, 2022) (Grubich, J.), where the court just granted final approval of a \$4.3 million common fund settlement in a health information class action lawsuit.

61. I am serving as Class Counsel in *Leitermann et al v. Forefront Dermatology SC, et al.*, No. 1:21-cv-00887-LA (E.D. Wis.) where the Wisconsin federal district court recently granted final approval of a settlement that included a \$3.75 million non-reversionary common fund. ECF No. 33.

62. I also was recently appointed to the plaintiffs' executive steering committee in a ransomware class action lawsuit involving disclosure of sensitive medical information and other PII/PHI. *See In re: Eskenazi Health Data Incident Litig.*, No. 49D01-2111-PL-038870 (Ind. Comm. Ct. Jan. 24, 2022).

63. I was previously appointed as class counsel in *Perdue et al. v. Hy-Vee, Inc.*, No. 1:19-cv-01330 (C.D. Ill.), a payment card data breach that exposed the sensitive payment card information of millions of class members. *Id.*, ECF No. 62, at 3. My efforts on behalf of the class resulted in the creation of an uncapped claims settlement providing cash payments to class members, and Hy-Vee committing at least \$20 million to data security improvements. *Id.*, ECF No. 58, at 4; *see also Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA (D. Colo.) (data breach case where millions of consumers' payment card data was exposed to hackers); *Bray, et al. v. GameStop Corp.*, No. 1:17-cv-01365 (D. Del.) (data breach settlement involving exposure of payment card information through defendant's website).

64. I have also been appointed to leadership positions in other consumer class actions. For example, I was appointed as class counsel in *Udeen, et al. v. Subaru of America, Inc.*, No. 1:18-cv-17334-RBK-JS (D.N.J.), where I helped obtain a settlement valued at more than \$6.25 million on behalf of owners and lessees of Subaru vehicles with allegedly defective infotainment systems. *See also McFadden v. Microsoft Corp.*, No. C20-0640-RSM-MAT, 2020 WL 5642822, at *3 (W.D. Wash. Sept. 22, 2020) (appointed as co-lead counsel).

65. AW has decades of experience in the prosecution of class actions, including data breach and privacy lawsuits such as this action. AW has a proven track record of experience and results, and specific expertise in data privacy class action litigation.

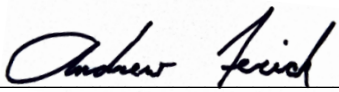
66. I am, and my Firm is, fully aware of the financial and human resources that are required to bring this case to a successful conclusion and the Court should have no reservations that my Firm has and is willing to commit those resources for the benefit of the plaintiff class. AW has never used third-party funding or failed to meet its assessment obligations in any case.

67. The work of Class Counsel in this Action to date, as well as their experience prosecuting complex litigation matters, demonstrate that Class Counsel are well-qualified to represent the Settlement Class.

68. The bulk of AW's practice is contingent, and many of my Firm's cases have been large and substantial in settlements or verdicts. In contingent risk cases, my firm and other firms doing this type of work frequently advance expenses and costs and defer all payment of our fees for several years, with no guarantee that any of the fees we incurred or costs we advanced would ever be recovered.

69. Based on my experience and my knowledge regarding the factual and legal issues in this matter, and given the substantial benefits provided by the Settlement, it is my opinion that the proposed Attorneys' Fees, Expenses, and Service Awards are reasonable, and that the Settlement in this matter is fair, reasonable, and adequate, and is in the best interests of the Settlement Class Members.

Dated: March 30, 2023

By: 
ANDREW W. FERICH*
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Counsel for Plaintiffs
* admitted *pro hac vice*

Exhibit A



Ahdoot & Wolfson, PC (“AW”) is a nationally recognized law firm founded in 1998 that specializes in class action litigation, with a focus on privacy cases, unfair and anticompetitive business practices, consumer fraud, employee rights, defective products, antitrust, civil rights, and taxpayer rights and unfair practices by municipalities. The attorneys at AW are experienced litigators who have often been appointed by state and federal courts as lead class counsel, including in multidistrict litigation. In 25 years of its successful existence, AW has vindicated the rights of millions of class members in protracted, complex litigation, conferring billions of dollars to the victims, and affecting real change in corporate behavior.

Privacy Class Actions

AW has been prosecuting cutting edge data privacy cases on behalf of consumers since the late 1990s. AW was among the first group of attorneys who successfully advocated for the privacy rights of millions of consumers against major financial institutions based on the unlawful compilation and sale of detailed personal financial data to third-party telemarketers without the consumers’ consent. While such practices later became the subject of Gramm-Leach-Bliley Act regulation, at the time AW was prosecuting these cases before the Hon. Richard R. Kramer, (Ret.) in the complex department of San Francisco Superior Court, such practices were novel and hidden from public scrutiny. AW’s work shed light on how corporations and institutions collect, store, and monetize mass data, leading to governmental regulation. AW has been at the forefront of data-related litigation since then.

In *Rivera v. Google LLC*, No. 2019-CH-00990 (Ill Cir. Ct.) (Hon. Anna M. Loftus), a class action arising from Google’s alleged illegal collection, storage, and use of the biometrics of individuals who appear in photographs uploaded to Google Photos in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), AW achieved a settlement that establishes a \$100 million non-reversionary cash settlement fund and changes Google’s biometric privacy practices for the benefit of class members.

As co-lead counsel in the *Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-02155 (N.D. Cal.) (Hon. Laurel Beeler), a nationwide class action alleging privacy violations from the collection of personal information through third-party software development kits and failure to provide end to end encryption, AW achieved an \$85 million nationwide class settlement that also included robust injunctive relief overhauling Zoom’s data collection and security practices.

As co-lead counsel in the *Experian Data Breach Litigation*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.) (Hon. Andrew J. Guilford), which affected nearly 15 million class members, AW achieved a settlement conservatively valued at over \$150 million. Experian also provided robust injunctive relief. Judge Guilford praised counsel's efforts and efficiency in achieving the settlement, commenting "You folks have truly done a great job, both sides. I commend you."

As an invaluable member of a five-firm Plaintiffs' Steering Committee ("PSC") in the *Premera Blue Cross Customer Data Sec. Breach Litigation*, No. 3:15-cv-02633-SI (D. Or.) (Hon. Michael H. Simon), arising from a data breach disclosing the sensitive personal and medical information of 11 million Premera Blue Cross members, AW was instrumental in litigating the case through class certification and achieving a nationwide class settlement valued at \$74 million.

Similarly, in the *U.S. Office of Personnel Management Data Security Breach Litigation*, No. 1:15-mc-1394-ABJ (D.D.C.) (Hon. Amy Berman Jackson), AW, as a member of the PSC, briefed and argued, in part, the granted motions to dismiss based on standing, briefed in part the successful appeal to the D.C. Circuit, and had an important role in reaching a \$63 million settlement.

In *The Home Depot, Inc., Customer Data Sec. Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (Hon. Thomas W. Thrash Jr.), AW served on the consumer PSC and was instrumental in achieving a \$29 million settlement fund and robust injunctive relief for the consumer class.

AW's efforts have shaped data privacy law precedent. As lead counsel in *Remijas v. Neiman Marcus Group, LLC*, No. 14-cv-1735 (N.D. Ill.) (Hon. Sharon Johnson Coleman), AW's attorneys successfully appealed the trial court's order granting a motion to dismiss based on lack of Article III standing. The Seventh Circuit's groundbreaking opinion, now cited in every privacy case standing brief, was the first appellate decision to consider the issue of Article III standing in data breach cases in light of the Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013) and concluded that data breach victims have standing to pursue claims based on the increased risk of identity theft and fraud, even before that theft or fraud materializes in out-of-pocket damages. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015).

AW also currently serves on the PSC in *Am. Med. Collection Agency, Inc., Customer Data Sec. Breach Litigation*, No. 2:19-md-2904-MCA-MAH (D.N.J.) (Hon. Madeline Cox Arleo), a class action arising out of a medical data breach that disclosed the personal and financial information of over 20 million patients. AW has successfully resolved numerous other data breach class actions, including in *Leitermann et al v. Forefront Dermatology SC, et al.*, No. 1:21-cv-00887-LA (E.D. Wis.) (preliminarily approved settlement in a medical privacy case that includes a \$3.75 million common fund; AW is appointed co-lead class counsel); *Smeltz v. Logan Health*, No. A-DV-22-0124 (Mont. 8th Jud. Dist. Ct., Cascade Cty. Mar. 31, 2022) (preliminarily approved medical data breach settlement providing \$4.3 million common fund for class of 210,000 people [approx. \$20 per class member on per capita basis]; AW is appointed co-lead class counsel); *In re Ambry Genetics Data Breach Litig.*, No. 8:20-cv-00791 (C.D. Cal.) (preliminarily approved data breach settlement valued at over \$20 million, including a

\$12.25 million common fund, for the benefit of a class of more than 225,000 people [approx. \$54 per class member per capita]; AW is appointed co-lead counsel).

Other Class Action Results

AW has achieved excellent results as lead counsel in numerous complex class actions.

In *Alvarez v. Sirius XM Radio Inc.*, No. 2:18-cv-08605-JVS-SS (C.D. Cal.) (Hon. James V. Selna), a breach of contract class action alleging that defendant did not honor its lifetime subscriptions, AW achieved a nationwide class action settlement conservatively valued at approximately \$420 million. The settlement extended the promised lifetime subscription for the lifetime of class members who have active accounts and provided the opportunity for class members with closed accounts to reactivate their accounts and enjoy a true lifetime subscription or recover \$100. The district court had granted the motion to compel arbitration on an individual basis, and AW appealed. AW reached the final deal points of the nationwide class action settlement minutes prior to oral argument in the Ninth Circuit.

In *Eck v. City of Los Angeles*, No. BC577028 (Cal. Super. Ct.) (Hon. Ann I. Jones), AW achieved a \$295 million class settlement in a case alleging that an 8% surcharge on Los Angeles electricity rates was an illegal tax. Final settlement approval was affirmed on appeal in October 2019.

As a member of the Plaintiffs' Executive Committee in the *Apple Inc. Device Performance Litigation*, No. 5:18-md-2827-EJD (N.D. Cal.) (Hon. Edward J. Davila), AW helped achieve a nationwide settlement of \$310 million minimum and \$500 million maximum. The case arose from Apple's alleged practice of deploying software updates to iPhones that deliberately degraded the devices' performance and battery life.

In the *Dental Supplies Antitrust Litigation*, No. 1:16-cv-00696-BMC-GRB (E.D.N.Y.) (Hon. Brian M. Cogan), a class action alleging an anticompetitive conspiracy among three dominant dental supply companies in the United States, AW served on the plaintiffs' counsel team that brought in an \$80 million cash settlement for the benefit of a class of approximately 200,000 dental practitioners, clinics, and laboratories.

In *Kirby v. McAfee, Inc.*, No. 5:14-cv-02475-EJD (N.D. Cal.) (Hon. Edward J. Davila), a case arising from McAfee's auto renewal and discount practices, AW and co-counsel achieved a settlement that made \$80 million available to the class and required McAfee to notify customers regarding auto-renewals at an undiscounted subscription price and change its policy regarding the past pricing it lists as a reference to any current discount.

In *Lavinsky v. City of Los Angeles*, No. BC542245 (Cal. Super. Ct.) (Hon. Ann I. Jones), a class action alleging the city unlawfully overcharged residents for utility taxes, AW certified the plaintiff class in litigation and achieved a \$51 million class settlement.

Current Noteworthy Leadership Roles

AW was appointed to serve as co-lead interim class counsel in the *Google Location History Litigation*, No. 5:18-cv-05062-EJD (N.D. Cal.) (Hon. Edward J. Davila), a consumer class action arising out of Google's allegedly unlawful collection and use of mobile device location information on all Android and iPhone devices.

In the *Google Digital Advertising Antitrust Litigation*, No. 1:21-md-03010-PKC (S.D.N.Y.) (Hon. P. Kevin Castel), a class action alleging monopolization of the digital advertising market, AW is serving as court-appointed co-lead counsel on behalf of the advertiser class.

In *Klein v. Meta Platforms, Inc.*, No. 3:20-cv-08570-JD (N.D. Cal.) (Hon. James Donato), AW is serving on the Executive Committee for the digital advertiser plaintiff class in a class action alleging that Meta (formerly Facebook) engaged in anticompetitive conduct to stifle and/or acquire competition to inflate the cost of digital advertising on its social media platform. Many of the plaintiffs' claims recently survived a motion to dismiss and are in the process of amending their complaint.

AW serves on the Plaintiffs' Executive Committees in *Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 2:19-md-02921-BRM-JAD (D.N.J.) (Hon. Brian R. Martinotti), a class action alleging textured breast implants caused a rare type of lymphoma and in *ZF-TRW Airbag Control Units Products Liability Litigation*, No. 2:19-ml-02905-JAK-FFM (C.D. Cal.) (Hon. John A. Kronstadt), a class action alleging a dangerous defect in car airbag component units.

As part of the leadership team in *Novoa v. The Geo Group, Inc.*, No. 5:17-cv-02514-JGB-SHK (C.D. Cal.) (Hon. Jesus G. Bernal), AW certified a class of immigration detainees challenging private prison's alleged forced labor practices.

Attorney Profiles

Tina Wolfson graduated Harvard Law School *cum laude* in 1994. Ms. Wolfson began her civil litigation career at the Los Angeles office of Morrison & Foerster, LLP, where she defended major corporations in complex actions and represented indigent individuals in immigration and deportation trials as part of the firm's *pro bono* practice. She then gained further invaluable litigation and trial experience at a boutique firm, focusing on representing plaintiffs on a contingency basis in civil rights and employee rights cases. Since co-founding AW in 1998, Ms. Wolfson has led numerous class actions to successful results. Ms. Wolfson is a member of the California, New York and District of Columbia Bars.

Recognized for her deep class action experience, Ms. Wolfson frequently lectures on numerous class action topics across the country. She is a guest lecturer on class actions at the University of California at Irvine Law School. Her recent notable speaking engagements include:

- Class Action Mastery Forum at the University Of San Diego School of Law (Consumer Class Actions Roundtable) March 2020, featuring Hon. Lucy H. Koh, Hon. Edward M. Chen, and Hon. Fernando M. Olguin.
- Class Action Mastery Forum at the University Of San Diego School of Law (Data Breach/Privacy Class Action Panel) January 16, 2019.
- Association of Business Trial Lawyers: “Navigating Class Action Settlement Negotiations and Court Approval: A Discussion with the Experts,” Los Angeles May 2017, featuring Hon. Philip S. Gutierrez and Hon. Jay C. Gandhi.
- CalBar Privacy Panel: “Privacy Law Symposium: Insider Views on Emerging Trends in Privacy Law Litigation and Enforcement Actions in California,” Los Angeles Mar. 2017 (Moderator), featuring Hon. Kim Dunning.
- American Conference Institute: “2nd Cross-Industry and Interdisciplinary Summit on Defending and Managing Complex Class Actions,” April 2016, New York: Class Action Mock Settlement Exercise featuring the Hon. Anthony J. Mohr.
- Federal Bar Association: N.D. Cal. Chapter “2016 Class Action Symposium,” San Francisco Dec. 2016 (Co-Chair), featuring Hon. Joseph F. Anderson, Jr. and Hon. Susan Y. Illston.
- Federal Bar Association: “The Future of Class Actions: Cutting Edge Topics in Class Action Litigation,” San Francisco Nov. 2015 (Co-Chair & Faculty), featuring Hon. Jon S. Tigar and Hon. Laurel Beeler.

Ms. Wolfson currently serves as a Ninth Circuit Lawyer Representative for the Central District of California, as Vice President of the Federal Litigation Section of the Federal Bar Association, as a member of the American Business Trial Lawyer Association, as a participant at the Duke Law School Conferences and the Institute for the Advancement of the American Legal System, and on the Board of Public Justice.

Robert Ahdoot graduated from Pepperdine Law School *cum laude* in 1994, where he served as Literary Editor of the Pepperdine Law Review. Mr. Ahdoot clerked for the Honorable Paul Flynn at the California Court of Appeals, and then began his career as a civil litigator at the Los Angeles office of Mendes & Mount, LLP, where he defended large corporations and syndicates such as Lloyds of London in complex environmental and construction-related litigation as well as a variety of other matters. Since co-founding AW in 1998, Mr. Ahdoot had led numerous class actions to successful results. Recognized for his deep class action experience, Mr. Ahdoot frequently lectures on numerous class action topics across the country. His notable speaking engagements include:

- MassTorts Made Perfect: Speaker Conference, April 2019, Las Vegas: “Llegal Fees: How Companies and Governments Charge The Public, and How You Can Fight Back.”
- HarrisMartin: Lumber Liquidators Flooring Litigation Conference, May 2015, Minneapolis: “Best Legal Claims and Defenses.”

- Bridgeport: 15th Annual Class Action Litigation Conference, September 2014, San Francisco: “The Scourge of the System: Serial Objectors.”
- Strafford Webinars: Crafting Class Settlement Notice Programs: Due Process, Reach, Claims Rates and More, February 2014: “Minimizing Court Scrutiny and Overcoming Objector Challenges.”
- Pincus: Wage & Hour and Consumer Class Actions for Newer Attorneys: The Do’s and Don’ts, January 2014, Los Angeles: “Current Uses for the 17200, the CLRA an PAGA.”
- Bridgeport: 2013 Class Action Litigation & Management Conference, August 2013, San Francisco: “Settlement Mechanics and Strategy.”

Theodore W. Maya graduated from UCLA Law School in 2002 after serving as Editor-in-Chief of the UCLA Law Review. From July 2003 to August 2004, Mr. Maya served as Law Clerk to the Honorable Gary Allen Feess in the United States District Court for the Central District of California. Mr. Maya was also a litigation associate in the Los Angeles offices of Kaye Scholer LLP for approximately eight years where he worked on a large variety of complex commercial litigation from inception through trial. Mr. Maya was named “Advocate of the Year” for 2007 by the Consumer Law Project of Public Counsel for successful pro bono representation of a victim of a large-scale equity fraud ring. Mr. Maya has been involved in all facets of AW’s work since he joined the firm in 2011. For instance, his work in *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015), contributed to a groundbreaking decision by the Seventh Circuit Court of Appeals that significantly strengthened the rights of data breach victims to bring class actions in federal court.

Bradley K. King is a member of the State Bars of California, New Jersey, New York, and the District of Columbia. He graduated from Pepperdine University School of Law in 2010, where he served as Associate Editor of the Pepperdine Law Review. He worked as a law clerk for the California Office of the Attorney General, Correctional Law Section in Los Angeles and was a certified law clerk for the Ventura County District Attorney’s Office. Mr. King began his legal career at a boutique civil rights law firm, gaining litigation experience in a wide variety of practice areas, including employment law, police misconduct, municipal contracts, criminal defense, and premises liability cases. During his eleven-year career at AW, Mr. King has focused on consumer class actions, and data breach class actions in particular. He has extensive experience litigating consolidated and MDL class actions with AW serving in leadership roles, including numerous large data breach cases that have resulted in nationwide class settlements.

Andrew W. Ferich, a partner at AW, is admitted to the bars of Pennsylvania, New Jersey, and the District of Columbia. Mr. Ferich received his law degree from Villanova University’s Charles Widger School of Law in 2012, where he served as Executive Editor of the *Journal of Catholic Social Thought*. Mr. Ferich has significant experience in consumer protection, data privacy,

ERISA/retirement plan, and whistleblower/*qui tam* litigation. Prior to joining the firm, Mr. Ferich was a senior associate at a well-known Philadelphia-area class action law firm. Before joining the plaintiffs' bar, Mr. Ferich was an associate at an AmLaw 200 national litigation firm in Philadelphia where he focused his practice on commercial litigation and financial services litigation. Mr. Ferich has represented a wide array of clients and has received numerous court-appointed leadership positions in large class actions. Mr. Ferich possesses major jury trial experience and has assisted in litigating cases that have collectively resulted in hundreds of millions of dollars in settlement value in damages and injunctive relief for various classes and groups of people.

Mr. Ferich's recent appointments to leadership positions in data privacy litigation include: *Cochran, et al. v. The Kroger Co.*, No. 5:21-cv-01887-EJD (N.D. Cal.) (final approval of nationwide settlement that provides \$5 million common fund and appointing Ferich and AW as co-lead class counsel); *Leitermann et al v. Forefront Dermatology SC, et al.*, No. 1:21-cv-00887-LA (E.D. Wis.) (final approval of a \$3.75 million common fund medical data breach settlement has been granted; Ferich appointed as co-lead class counsel); *Smeltz, et al. v. Logan Health, et al.*, No. A-DV-22-0124 (8th Judicial District Court, Cascade County Mar. 31, 2022) (medical privacy class action impacting hundreds of thousands of Montanans; Ferich achieved \$4.3 million finally approved common fund settlement); *In re Keystone Data Breach Litig.*, No. 1:22-cv-01643-CCC (M.D. Pa.) (health information data breach impacting hundreds of thousands of Pennsylvanians; Ferich is appointed interim co-lead class counsel); *Kesner et al. v. UMass Memorial Health Care, Inc.*, No. 2185 CV 01210 (Mass. Super. Ct.) (medical data privacy case where the parties agreed to a \$1.2 million common fund settlement that has received preliminary approval from the court—Mr. Ferich is appointed co-lead class counsel).

Deborah De Villa is an associate attorney at AW and a member of the State Bars of New York and California. She graduated from Pepperdine University School of Law in 2016, where she earned the CALI Excellence for the Future Award in immigration law, business planning and commercial law. During law school, Ms. De Villa completed internships at the Los Angeles District Attorney's Office, Hardcore Gangs Unit, and at the Supreme Court of the Philippines, Office of the Court Administrator. Born in the Philippines, Ms. De Villa moved to Florida at the age of sixteen to attend IMG Golf Academy as a full-time student-athlete. Ms. De Villa earned a scholarship to play NCAA Division 1 college golf at Texas Tech University, where she graduated *magna cum laude* with a Bachelor of Arts in Psychology and a minor in Legal Studies. Ms. De Villa has gained substantial experience litigating class actions with AW and focuses her practice on consumer protection and privacy class actions. She demonstrates leadership, a hard work ethic, and a commitment to excellence in all her endeavors.