IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LAURA SAMPSON, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. SUBARU OF AMERICA, INC., Defendants.	Case No. 1:21-CV-10284-ESK-SAK Motion Date: April 21, 2025 PLAINTIFFS' UNOPPOSED MOTION FOR AN ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT

PLEASE TAKE NOTICE that on April 21, 2025 at 9:00 AM or as soon thereafter as the matter can be heard, Plaintiffs James Sampson, Janet Bauer, Lisa Harding, Barabara Miller, Shirley Reinhard, Celeste Sandoval, Xavier Sandoval, Danielle Lovelady Ryan, and Elizabeth Wheatley ("Plaintiffs") individually and on behalf of all other similarly situated, move this Court before Edward S. Kiel, U.S.D.J., pursuant to Rule 23 of the Federal Rules of Civil Procedure for an Order: (1) granting preliminary approval of the Settlement; (2) conditionally certifying the proposed Settlement Class for settlement purposes; (3) conditionally appointing Plaintiffs as the Representative Plaintiffs and Plaintiffs' Counsel, Berger Montague PC, as Settlement Class Counsel; (4) approving the Parties' proposed Class Notice form and plan for disseminating the Class Notice; (5) appointing JND Legal Administration as the Settlement Administrator; (6) setting deadlines for the filing

of any objections to, or requests for exclusion from, the Settlement, and for other submissions in connection with the Settlement approval process; and (7) setting a Final Fairness Hearing date and briefing schedule for Final Approval of the Settlement and Plaintiffs' application for attorneys' fees, reimbursement of costs and expenses, and service awards for the Representative Plaintiffs.

In support of this motion, Plaintiffs rely upon the accompanying brief in support, the Declaration of Russell D. Paul ("Paul Decl."), and a copy of the fully executed Settlement Agreement, which is attached as Exhibit A to the Paul Decl, the Declaration of Cody R. Padgett, and the Declaration of Samuel M. Ward. The following Exhibits are appended to the Settlement Agreement:

- Exhibit 1, proposed Claim Form
- Exhibit 2, proposed First-Class Notice
- Exhibit 3, proposed Long Form Notice
- Exhibit 4, proposed Preliminary Approval Order
- Exhibit 5, List of Settlement Class Vehicles identified by Vehicle Identification Number

Defendant Subaru of America, Inc. does not oppose this motion.

Dated: March 26, 2025

Respectfully submitted,

By:*/s/ Russell D. Paul*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Plaintiffs James Sampson, Janet Bauer, Lisa Harding, Barabara Miller, Shirley Reinhard, Celeste Sandoval, Xavier Sandoval, Danielle Lovelady Ryan, and Elizabeth Wheatley ("Plaintiffs") respectfully seek preliminary approval of the proposed Class Settlement Agreement ("Settlement")[1] of this action entered into between Plaintiffs and Defendant Subaru of America, Inc. ("SOA or "Defendant"; with Plaintiffs and Defendant, collectively, the "Parties"). The Settlement applies to all persons and entities who purchased or leased, in the continental United States, certain model year 2013 through 2024 Subaru vehicles, distributed by SOA in the continental United States, that are equipped with Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist features of EyeSight ("Settlement Class Vehicles")[2]. As discussed below, this Settlement, which affords substantial benefits to the Settlement Class consisting of present and former owners and lessees of approximately 3,364,708 vehicles, was the result of extensive arm's length negotiations of disputed claims by experienced class action counsel; is eminently fair, reasonable and adequate; and satisfies the criteria for preliminary approval under Rule 23.

[1] Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement, attached as Exhibit A to the Declaration of Russell D. Paul ("Paul Decl.").

[2] The Settlement Class Vehicles are identified with particularity by Vehicle Identification Number on Exhibit 5 to the Settlement Agreement and include certain model year 2013-2022 Subaru Legacy and Subaru Outback vehicles; certain model year 2015-2023 Subaru Impreza and Subaru Crosstrek vehicles; certain model year 2014-2021 Subaru Forester vehicles; certain model year 2019-2022 Subaru Ascent vehicles; certain model year 2016-2011 Subaru WRX vehicles; and certain model year 2022-2024 Subaru BRZ vehicles.

Plaintiffs alleged that the respective Settlement Class Vehicles contain one or more defects in the design, workmanship, and/or manufacturing of the EyeSight system installed in the Settlement Class Vehicles, specifically concerning the Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features that caused them to not function properly. Settlement Class Members will receive substantial benefits including: (1) a twelve (12) months or twelve thousand (12,000) miles (whichever occurs first) extension of the Settlement Class Vehicle's original New Vehicle Limited Warranty ("NVLW") to cover 75% of the cost of a Covered Repair, i.e., malfunction or failure of a Settlement Class Vehicle's Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist feature of the EyeSight system that resulted from failure or malfunction of the EyeSight camera assembly and/or rear sonar sensors; and (2) reimbursement of 75% of the cost of one past Covered Repair prior to the Notice Date and within forty-eight (48) months or forty-eight thousand (48,000) miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date. Settlement Class counsel respectfully submit that this Settlement is fair, reasonable, and adequate, satisfies Fed. R. Civ. P. 23 ("Rule 23") in all respects, and should be granted preliminary approval by this Court.

The proposed Settlement was the culmination of extensive arm's-length negotiations and occurred over many months during which certain information and discovery was also exchanged. The Settlement was ultimately reached with the assistance of a respected neutral mediator who is highly experienced in class action settlements. The Settlement, described more fully below, provides Settlement Class Members with immediate and valuable relief. It is fair, reasonable, and adequate,

and it complies in all respects with Fed. R. Civ. P. 23 ("Rule 23").

Plaintiffs accordingly request that this Court review their negotiated Settlement Agreement, attached as Exhibit A to the accompanying Declaration of Russell D. Paul ("Paul Decl."), and enter an order: (1) granting preliminary approval of the Settlement; (2) conditionally certifying the proposed Settlement Class for settlement purposes; (3) conditionally appointing Plaintiffs as the Representative Plaintiffs and Plaintiffs' Counsel, Berger Montague PC, , Capstone Law APC, and Barrack, Rodos and Racine, as Settlement Class Counsel; (4) approving the Parties' Notice Plan; (5) appointing JND Legal Administration as the Settlement Administrator; (6) setting deadlines for the filing of any objections to, or requests for exclusion from, the Settlement, and for other submissions in connection with the Settlement approval process; and (7) setting a Final Fairness Hearing date and briefing schedule for Final Approval of the Settlement and for Plaintiffs' application for service awards and attorneys' fees and expenses.

II. FACTS AND PROCEDURE

a. Overview of the Litigation and Settlement Negotiations

1. Plaintiffs' Experiences

Plaintiff James Sampson purchased a new 2017 Subaru Outback equipped with an EyeSight system in May 2017 in Illinois. Plaintiff Elizabeth Wheatley purchased a new 2019 Subaru Crosstrek equipped with an EyeSight system in November 2018 in Pennsylvania. Plaintiff Shirley Reinhard purchased a certified pre-owned 2015 Subaru Outback equipped with an EyeSight system in October 2017 in Wisconsin. Plaintiff Lisa Harding purchased new 2020 Subaru Forester equipped

with an EyeSight system in June 2020 in New York. Plaintiff Janet Bauer is the estate representative of John Armour, who leased a new 2020 Subaru Forester equipped with an EyeSight system in September 2020 in Pennsylvania. Plaintiff Barabara Miller purchased a new 2020 Subaru Forester equipped with an EyeSight system in August 2020 in Florida. Plaintiffs Celeste and Xavier Sandoval purchased a new 2019 Subaru Ascent equipped with an EyeSight system in October 2018 in Texas. Plaintiff Danielle Lovelady Ryan purchased a new 2021 Subaru Ascent equipped with an EyeSight system in November 2020 in California.

Each of the Plaintiffs claims to have experienced what he/she believed to be malfunctions in the Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist features of the EyeSight system, i.e., applying and/or not applying the brakes at inappropriate or unexpected times, and/or jerking the steering wheel such that the vehicle nearly hit vehicles in other lanes of traffic. Plaintiffs claim that the Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features of the EyeSight systems in their vehicles and the putative class vehicles were defective, that the alleged defect was known and not disclosed prior to their purchases/leases, and that instructions about the functionality of the system were inadequate.

Defendant has vigorously disputed Plaintiffs' claims. Defendant maintains that the subject vehicles' EyeSight systems and features were properly designed, manufactured, marketed, distributed and sold; were not defective in any way; were reasonably safe; are extremely beneficial insofar as preventing, and/or minimizing the severity of, crashes; that the instructions and information provided to consumers were adequate and sufficient; that no warranties were breached nor any statutes, laws

or rules violated; and that there was no wrongdoing with regard to the subject vehicles' EyeSight systems and features.

2. The Litigation

Plaintiffs filed their initial complaint on April 27, 2021, alleging that their vehicles were defective and asserting claims against Defendant and Subaru Corporation for, *inter alia*, alleged violation of the consumer statutes of their states of residence, including the Illinois Consumer Fraud Act, New York General Business Law §§ 349-350, the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and the Wisconsin Deceptive Trade Practices Act, breach of express and implied warranties, and fraud by concealment or omission, the Magnuson-Moss Warranty Act, and unjust enrichment. ECF 1. Following a stipulation between the Parties, *see* ECF 24, Plaintiffs filed their First Amended Complaint ("FAC") on May August 16, 2021. *See* ECF 28. SOA requested a pre-motion conference on October 7, 2021. *See* ECF 30. Plaintiffs filed their response on November 4, 2021. *See* ECF 37. Following a meet and confer, the Parties obviated the need for a motion to dismiss and instead filed a stipulation dismissing certain claims with prejudice and allowing Plaintiffs to file a Second Amended Complaint, which the Court so-ordered on November 12, 2021. *See* ECF No. 39; 40.

Subsequently, on November 29, 2021, Plaintiffs filed the Second Amended Complaint against only SOA. *See* ECF 42. On February 4, 2022, SOA filed an Answer. *See* ECF 47. Shortly thereafter, discovery began. Plaintiffs then filed a Third Amended Complaint on July 1, 2022, which SOA answered on July 14, 2022. *See* ECF Nos. 66, 69. Certain former Plaintiffs were voluntarily dismissed on August

25, 2022 and January 31, 2023. On November 15, 2023, Plaintiff Janet Bauer was substituted for Plaintiff John Armour following his death. *See* ECF No. 109.

Prior to settlement, Plaintiffs exchanged substantial written discovery with SOA. The parties responded to multiple rounds of requests for production of documents, as well as interrogatories. Plaintiffs provided rolling productions of documents to SOA, and received and reviewed 271,171 pages of documents from SOA. *See* Declaration of Russell D. Paul ("Paul Decl.") at ¶ 18. Plaintiffs also received and reviewed 35,801 pages of documents, as well as technical data files and diagnostics, from Subaru Corporation. *Id*. Six of the plaintiffs – David Harding, Lisa Harding, Barbara Miller, Shirley Reinhard, James Sampson, and Elizabeth Wheatley – were deposed before the Parties agreed to explore settlement negotiations and participate in mediation. *Id*. Based on the discovery exchanged, Class Counsel gained an understanding of both the strengths and weaknesses of Plaintiffs' claims. Paul Decl. ¶ 18.

3. Settlement Negotiations

Following the Parties' exchanges and analyses of substantial discovery, the Parties mutually agreed to explore the possibility of a settlement. Paul Decl. ¶ 19. The Parties engaged the services of Bradley A. Winters, Esq., a neutral with substantial experience in resolving automotive class actions, scheduled mediation to be held on August 14, 2024, and began the negotiations of a potential class settlement. *Id.*

The parties then engaged in arm's length settlement negotiations during the mediation session with Mr. Winters on August 14, 2024. Paul Decl. ¶ 10. The

mediation was successful in resolving many of the material terms of a class settlement of this action. Paul Decl. ¶ 29. After the mediation session, the Parties continued their arm's length negotiations of the remaining settlement terms, and were eventually able to negotiate a class settlement. The terms of the Settlement are set forth in detail in the Settlement Agreement ("S.A.") submitted herewith for the Court's preliminary approval. (Exhibit A to the Paul Decl.). At all times, the Parties' negotiations were adversarial and non-collusive, and the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. Paul Decl. ¶¶ 19-22.

III. MATERIAL TERMS OF THE PROPOSED SETTLEMENT

A. The Settlement Benefits

1. Warranty Extension for Current Owners and Lessees of Settlement Class Vehicles

Effective on the Notice Date, SOA will extend its New Vehicle Limited Warranties ("NVLWs") applicable to the Settlement Class Vehicles to cover 75% of the cost of a Covered Repair,[3] by an authorized Subaru retailer for up to 48 months or 48,000 miles, whichever occurs first, from the Settlement Class Vehicle's In-Service date. This constitutes a robust 33% extension of the original NVLW warranty period of 36 months or 36,000 miles, whichever occurs first. In addition, in the event a particular Settlement Class Vehicle's Warranty Extension time period

[3] A "Covered Repair" means repair or replacement, including parts and labor, of diagnosed and confirmed malfunction or failure of a Settlement Class Vehicle's Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist feature of the EyeSight system that resulted from failure or malfunction of the EyeSight camera assembly and/or rear sonar sensors.

has already expired as of the Notice Date, then for that Settlement Class Vehicle, the time limitation of the Warranty Extension will be extended until four (4) months from the Notice Date.

This Warranty Extension follows the same terms as Subaru's original NVLW, except for the extended duration. The Warranty Extension is also fully transferable to subsequent owners.

2. Reimbursement of Certain Past Paid Out-of-Pocket Expenses For a Covered Repair

The Settlement also provides for reimbursement of 75% of the paid invoice amount (parts and labor) of a Covered Repair that was made prior to the Notice Date and within 48 months or 48,000 miles, whichever occurred first, from the Settlement Class Vehicle's In-Service Date. This reimbursement is available to current and prior owners and lessees of Settlement Class Vehicles. Settlement Class Members may submit a Claim, including a Claim Form and Proof of Repair Expense, to the Settlement Administrator to receive the reimbursement.

In this regard, the Parties have, subject to the Court's approval, retained JND Legal Administration as the Settlement Administrator. JND Legal Administration has substantial experience, and has been repeatedly approved by Courts, regarding claim administration in automotive class settlements of this type. In addition, the Settlement provides for a reasonable claim process in which, although the Settlement Administrator's ultimate decisions on the claims are binding, a Settlement Class Member whose claim is deficient or incomplete will be mailed a written letter or notice of the deficiency(ies) and afforded 30-days to cure it/them, and he/she can

also seek an Attorney Review of a full or partial denial of a claim within 14 days of the Claim Administrator's letter or notice of denial.

B. Release of Claims/Liability

In consideration of the Settlement benefits, Defendant and its related entities and affiliates (the "Released Parties," as defined in S.A. I.¶ I.U.) will receive a release of claims and potential claims based on a failure or malfunction of a Settlement Class Vehicle's Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features of the EyeSight system, and any component parts thereof, which are the subject of this litigation and Settlement, including the claims that were or could have been asserted in the litigation related to these malfunctions (the "Released Claims," as defined in S.A. ¶ I.T.). The scope of the release properly reflects the issues, allegations and claims in this case and specifically excludes claims for death, personal injury and property damage (other than damage to the Settlement Class Vehicle itself).

C. Claim Submission and Administration

The Parties have agreed, subject to the Court's approval, to retain JND Legal Administration as the Settlement Administrator. S.A. ¶¶ I.C, V.B.2. The Settlement Administrator will carry out the Notice Plan (discussed below), disseminate the CAFA notice, administer any requests for exclusion, and administer the Claims process including the review and determination of reimbursement claims pursuant to the Settlement terms, and distribution of payments to eligible Claimants whose claims are complete and have been approved under the Settlement terms. S.A. §§ II.B., IV. Pursuant to the Settlement, SOA will pay all class notice and claim administration

costs, separate and apart from any benefits to which the Settlement Class Members may be entitled. S.A. § III.A Thus, none of these costs will be borne by the Class Members in any way.

The Settlement also provides for a fair, equitable, and straightforward process for Settlement Class Members to submit claims, either through the Settlement Website or by mail to the Claim Administrator. For each complete claim that is approved, the Settlement Administrator will mail a reimbursement check to the Settlement Class Member within 150 days after receipt of the completed Claim, or 150 days after the Effective Date of the Settlement, whichever is later. S.A. ¶ IV.B.1 Significantly, the Settlement provides that if a claim and/or its supporting documentation is incomplete or deficient, or qualifies for less than the full amount of the reimbursement sought by the Settlement Class Member, the Settlement Administrator will mail to the Settlement Class Member a letter or notice outlining the deficiencies and allowing the Class Member to supply any additional explanation and/or documents to cure any alleged deficiencies within 30 days upon receipt of the letter or notice with the claim decision. S.A. ¶¶ IV.B.3.

Finally, the individual post-card Class Notice, the long form Class Notice, the Claim Form, and the Settlement Website all provide the necessary details, including how and by when reimbursement claims must be submitted, what information and documentary proof is required for a valid claim, and how to contact the Settlement Administrator, or Class Counsel, with any questions or requests for assistance with respect to a claim. The Class Notice and settlement website will provide the mailing address, the email address, and a toll-free telephone number for Class Members to

contact the Settlement Administrator.

D. The Proposed Notice Plan

The Settlement Agreement contains an effective Notice Plan to be paid for solely by Defendant. S.A. § IV. The individual post-card Class Notice will be mailed to Settlement Class Members via first class mail within 120 days after entry of the Court's Order preliminarily approving this proposed Settlement. Settlement Class Members will be located based on the Settlement Class Vehicles' vehicle identification numbers ("VINs") to be provided by SOA, and using the services of Polk/IHS Markit or an equivalent company (such as Experian). S.A. ¶ IV.B.2. Polk/IHS Markit or Experian obtains vehicle ownership histories through state DMV title and registration records, thereby identifying the names and addresses of record of the Settlement Class Members.[4] The Settlement Administrator will then check the provided addresses against current U.S. Postal Service software and/or the National Change of Address Database. In addition, after the individual post-card Class Notice is mailed, for any individual mailed the post-card Class Notice that is returned as undeliverable, the Settlement Administrator will re-mail to any provided forwarding address, and for any where no forwarding address is provided, the Settlement Administrator will perform an advanced address search (e.g., a skip trace) and re-mail any undeliverable post-card Class Notice to any new and current addresses located. S.A. ¶ IV.B.2.

[4] The 120-day time period for mailing of the First-Class Notice is needed to obtain the vehicle ownership and history records from the DMVs and/or state agencies of the 50 states, which typically takes a long time to obtain, and for the Settlement Administrator to identify the names and last known addresses of the Settlement Class Members to whom the individual post-card Class Notice will be mailed.

In addition to the mailing, the Settlement Administrator will, with input from counsel for both Parties, establish a dedicated Settlement Website that will include details regarding the lawsuit, the Settlement and its benefits, and the Settlement Class Members' legal rights and options including objecting to or requesting to be excluded from the Settlement and/or not doing anything; instructions on how to contact the Settlement Administrator by e-mail, mail or (toll-free) telephone; copies of the long form Class Notice, Claim Form, Settlement Agreement, Motions and Orders relating to the Preliminary and Final Approval processes and determinations, and important submissions and documents relating thereto; important dates pertaining to the Settlement including the procedures and deadlines to opt-out of or object to the Settlement, the procedure and deadline to submit a claim for reimbursement, and the date, place and time of the Final Fairness Hearing; and answers to Frequently Asked Questions (FAQs). S.A. ¶ IV.B.6.

The long form Class Notice (Ex. 3 to Settlement Agreement) is detailed and complies with Rule 23(c)(2)(B). It clearly and concisely states in plain, easily understood language the nature of the action; the Settlement Class definition; the class claims, issues and/or defendant's positions; the Settlement terms and benefits available under the Settlement; Class Counsel's requested fee/expense award, and/or the Plaintiffs' requested service awards; the claim submission process including details and instructions regarding how and when to submit a Claim for reimbursement and the required proof/documentation for a Claim; the release of claims under the Settlement; the manner of and deadline by which Settlement Class Members may object to the Settlement; the manner of and deadline by which a Settlement Class Member may request to be excluded from the Settlement; the binding effect of the

Settlement and release upon Settlement Class Members that do not timely and properly exclude themselves from the Settlement; the procedure by which Settlement Class Members may, if they so wish, appear at the final fairness hearing individually and/or through counsel; the Settlement Website address; how to contact the Settlement Administrator (through the dedicated toll-free number, email or by mail) with any questions about the settlement or requests for assistance, the identities of and contact information for Class Counsel; and other important information about the Settlement and the Settlement Class Members' rights. *See* S.A., Ex. 3.

Pursuant to 28 U.S.C. § 1715, the Class Action Fairness Act of 2005, the Settlement Administrator will also provide timely notice to the U.S. Attorney General and the applicable State Attorneys General ("CAFA Notice") so that they may review the proposed Settlement and raise any comments or concerns to the Court's attention prior to final approval. S.A. § VIII.A.

E. Proposed Class Counsel Fees, Litigation Expenses, and Representative Plaintiff Service Awards

After the Parties had already agreed upon the Settlement relief, the Parties negotiated, and eventually resolved, the issues of Settlement Representative Plaintiff service awards and Class Counsel reasonable attorneys' fees and Expenses. *See* Paul Decl. ¶ 20. Defendant has agreed to not oppose Class Counsel's request for (a) attorneys' fees and expenses in the combined aggregate amount of up to (and not exceeding) $2.5 million, and (b) service awards of up to, but not exceeding, $5,000 to each of the Class Representative Plaintiffs (with Plaintiffs Celeste and Xavier Sandoval to receive only one award of $5,000 collectively because they, together,

own the same Settlement Class Vehicle), for a total combined service award of $40,000, such that there will be one payment per vehicle owned or leased by the named Class Representative Plaintiffs. Plaintiffs will seek Court approval of these payments before the deadline for Settlement Class Members to file objections, as described in the schedule below. Significantly, the awards for class counsel's reasonable fees/expenses and for the class representatives, up to the amounts agreed by the Parties, will not reduce or otherwise have any effect on the benefits the Settlement Class Members will receive. The requested Class Counsel Fees and Expenses and Class Representative Plaintiff Service Awards will be the subject of a separate fee motion, to be filed pursuant to the schedule set forth in the Preliminary Approval Order.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED.

A. Standard for Preliminary Approval in the Third Circuit

The Third Circuit favors settlement of class action litigation. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) ("Settlement Agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts."). Where the parties can resolve the litigation through good faith and arms-length negotiations, judicial resources can be preserved, and the public interest is furthered. *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 n.16 (3d Cir. 1993); *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333 (3d Cir. 2010) (quoting *In re Warfarin Sodium Antitrust Litig.*, 391

F.3d 516, 535 (3d Cir. 2004)) ("We reaffirm the 'overriding public interest is settling class action litigation.'").

"Compromises of disputed claims are favored by the courts." *Lachance v. Harrington*, 965 F. Supp. 630, 638 (E.D. Pa. 1997) (citing *Williams v. First Nat. Bank*, 216 U.S. 582, 595 (1910)). Settlement spares the litigants the uncertainty, delay and expense of a trial, while simultaneously reducing the burden on judicial resources. This is particularly true "in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *Parks v. Portnoff L. Assocs.*, 243 F. Supp. 2d 244, 249 (E.D. Pa. 2003) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 784); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 535 ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged"); *In re Sch. Asbestos Litig.*, 921 F.2d 1330, 1333 (3d Cir. 1990) (the court "encourage[s] settlement of complex litigation 'that otherwise could linger for years'").

In class actions, the "court plays the important role of protector of the [absentee members'] interests, in a sort of fiduciary capacity." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*,55 F.3d 768, 784 (3d Cir. 1995). The ultimate determination whether a proposed class action settlement warrants approval resides in the Court's discretion. *See Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). The Third Circuit has adopted the following four-factor test to determine the preliminary fairness of a class action settlement: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of

the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.[5] *In re Gen. Motors Corp. Pick-Up Fuel Tank Prod. Liab. Litig.*, 55 F.3d at 785. If such factors are satisfied, the settlement is presumed to be fair. *Id.* Preliminary approval of a proposed settlement is granted unless the proposed settlement is obviously deficient. *See Jones v. Com. Bancorp, Inc.*, 2007 WL 2085357, at *2 (D.N.J. July 16, 2007); *Udeen v. Subaru of Am., Inc.*,, 2019 WL 4894568, at *2 (D.N.J. Oct. 4, 2019) (internal quotation omitted). *See also Rudel Corp. v. Heartland Payment Sys., Inc.*, 2017 WL 4422416, at *2 (D.N.J. Oct. 4, 2017) (applying "obviously deficient" standard to preliminary approval of class action settlement). Generally, "[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted." *Udeen*, 2019 WL 4894568 at *2 (internal quotation omitted). As set forth below, these standards are easily met here.

[5] At the final approval stage, courts in the Third Circuit apply a more rigorous nine factor *"Girsh"* analysis to assess the fairness, adequacy, and reasonableness of the proposed class action settlement. Specifically, the Court would review the settlement in light of the factors established by *Girsh*, 521 F.2d at 157: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risk of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *See also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 301 (3d Cir. 2005).

B. The Settlement Is Fair, Reasonable, and Adequate Under Rule 23

1. The Settlement Is the Product of Arms-Length Negotiations Between Experienced Counsel and Entitled to a Presumption of Fairness

Under Rule 23(e)(2)(A) and (B), the Court should "consider whether the settlement is proposed by experienced counsel who reached the agreed-upon terms through arms-length bargaining." *Alves v. Main*, 2012 WL 6043272, at *9 (D.N.J. Dec. 4, 2012). "A settlement is presumed fair when it results from 'arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Udeen*, 2019 WL 4894568, at *2 (citation omitted). This presumption applies here because this settlement was only reached after several months of arm's length negotiation between the parties. Paul Decl. ¶¶ 19. Moreover, there was no discussion of service awards to the class representative plaintiffs or attorneys' fees until the terms of the settlement for the class were agreed. Paul Decl. ¶ 20.

In addition, counsel for all parties are experienced in litigating class action cases, including automotive class actions such as this one, and only entered into the Settlement Agreement after diligently exploring the strengths and weaknesses of the case. *See* V1. A. 4, *supra*; Paul Decl. ¶¶ 10-13, 18. Courts recognize that the opinion of experienced counsel supporting a settlement is entitled to considerable weight. *See Glaberson v. Comcast Corp*., 2014 WL 7008539, at *4 (E.D. Pa. Dec. 12, 2014) (a settlement is presumed to be fair "when the negotiations were at arm's length, there was sufficient discovery, and the proponents of the settlement are experienced in similar litigation"); *Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000) ("When the parties' attorneys are experienced and knowledgeable about the facts and claims,

their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight."). Here, proposed Class Counsel have made a considered judgment based on adequate information derived from substantial discovery from SOA, as well as other third-parties, and their independent research and investigation, that the Settlement is not only fair and reasonable, but a favorable result for the Class. Class Counsel's beliefs are based on their deep familiarity with the factual and legal issues in this case and risks associated with continued litigation. This further weighs in favor of the fairness of the settlement. *See* W. Rubenstein & H. Newberg, *Newberg and Rubenstein on Class Actions*, § 13:13 (6th ed. 2022) (noting that courts usually adopt an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval.). As such, this factor weighs in favor of preliminary approval.

2. The Extent of Discovery and Investigations Completed Supports Preliminary Approval

Proposed Class Counsel obtained sufficient information and discovery to enter into the proposed Settlement on a fully informed basis. First, Class Counsel conducted a detailed investigation into the origins and nature of the issues reported by owners of vehicles. Paul Decl. ¶¶ 10-13. Then, during litigation, the Parties exchanged copious quantities of documents and information concerning the nature of the functionality and alleged conditions of the Settlement Class Vehicles. Paul Decl. ¶ 18. Plaintiffs obtained and analyzed technical specifications and reports, design drawings and schematics, production part approval documentation, incident

investigation and vehicle inspection reporting, reports concerning customer communications and complaints, warranty data, NHTSA communications, and safety and reliability evaluations and testing results. *Id. See Udeen*, 2019 WL 4894568, at *3 (third *Girsh* factor supported preliminary approval even when discovery was not "overly extensive"); *In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 436 (3d Cir. 2016).

Based on this discovery, Class Counsel gained an understanding of both the strengths and weaknesses of Plaintiffs' claims and the viability of continued litigation. In particular, both sides would face risks were the litigation to proceed. In contrast to the complexity, delay, risk, and expense of continued litigation, the proposed Settlement will produce certain, prompt and substantial benefits for the Settlement Class.

The immediacy and certainty of the significant benefits provided by the Settlement supports granting preliminary approval. *See In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 103 (D.N.J. 2012) ("By reaching a favorable Settlement . . . Class Counsel have avoided significant expense and delay and have also provided an immediate benefit.").

While it is important to remember that "settlement is a compromise," the proposed Settlement is reasonable and confers a substantial benefit on the Settlement Class, namely recovery of 75% of monies expended (parts and labor) for Covered Repairs of EyeSight system components, in addition to an extended warranty over those same components, pursuant to the settlement's reasonable terms. As a result, the 8th and 9th *Girsh* factors are also fulfilled because these factors involve

analyzing the outcome of the Settlement in comparison to the potential risks of litigation. *See e.g., In re Nat'l Football League Players Concussion Injury Litig*., 821 F. 3d at 440 ("In evaluating the eighth and ninth *Girsh* factors, we ask 'whether the settlement represents a good value for a weak case or a poor value for a strong case.'") (citation omitted).

The benefit provided to the Settlement Class is substantial, addresses the alleged issues in this litigation, is in line with similar automotive class-action settlements, and is fair, reasonable, and adequate. *See e.g., Udeen*, 2019 WL 4894568, at *1 (preliminarily approving a settlement that provided reimbursement of certain qualifying repair-related expenses); *Parrish v. Volkswagen Grp. of Am., Inc*., No. 8:19-cv-01148 (C.D. Cal. Jan. 27, 2022), ECF 81 (preliminarily approving class action settlement, which provided a reimbursement for previous qualifying out of pocket costs of specified transmission-related repairs, to owners and lessees of certain Volkswagen Jetta and Tiguan vehicles); *Patrick v. Volkswagen Grp. of Am., Inc*., No. 8:19-cv-01908 (C.D. Cal. Mar. 10, 2021), ECF 72 (final approval of class action settlement, which provided reimbursement for previous qualifying out of pocket costs for repairs of specified engine stalling issues, to owners and lessees of certain Volkswagen Golf GTI and Jetta GLI vehicles); *In re Volkswagen Timing Chain Prod. Liab. Litig.,* No. 2:16-CV-02765 (D.N.J. Dec. 14, 2018), ECF 235 (final approval of class action settlement for allegedly defective timing chain tensioners which provided reimbursement of qualifying repair costs); *Saint v. BMW of N. Am., LLC*, 2015 WL 2448846 (D.N.J. May 21, 2015) (finding settlement that provided a warranty extension of three months and a reimbursement program to owners or

lessees of service demo vehicles was fair reasonable and adequate and finally approving class-action settlement); *Rieger v. Volkswagen Group of America, Inc.,* No. 1:21-cv-10546 (D.N.J. May 16, 2024), ECF 118 (final approval of settlement of class action settlement for alleged engine defects which provided reimbursement of qualifying repair costs and warranty extension); *Hickman v. Subaru of America Inc.,* No. 1:21-cv-02100 (D.N.J. April 18, 2024), ECF 76 (final approval of settlement of class action settlement for alleged transmission defects which provided warranty extension and reimbursement of qualifying repairs).

3. The Proponents of the Settlement Are Experienced in Similar Litigation

As set forth in greater detail below and in the declaration appended to this motion, proposed Class Counsel are highly experienced and skilled in handling complex class actions, and in particular, automotive class actions such as this. Proposed Class Counsel have served in leadership positions many class actions and have successfully obtained meaningful recoveries for consumers through class litigation. *See* Paul Decl. ¶¶ 4-6; Ex. B; Ward Decl. ¶¶3-7, Ex. A; Padgett Decl. ¶¶ 14-17, Ex. A. Accordingly, this factor strongly supports granting preliminary approval.

4. Plaintiffs Intend to Respond to and Resolve Any Objections

The fourth factor cannot be fully evaluated before the Class Notice has been disseminated to the Class informing Settlement Class Members of the proposed Settlement and its terms. However, Class Counsel is committed to responding to and resolving any concerns from Class Members made known to them prior to the Final

Fairness Hearing. Moreover, Class Counsel believes that because the settlement provides for a robust warranty extension, as well as reimbursement of 75% of qualifying out-of-pocket costs of past repairs/replacements of EyeSight system components which failed or malfunctioned, one would anticipate minimal objections.

5. The *Girsh* Factors Support Preliminary Approval

Although the foregoing analysis is sufficient for the Court to grant preliminary approval, courts sometimes consider the final approval factors to mitigate any potential issues in the future. *Udeen*, 2019 WL 4894568, at *3.[6] The Third Circuit directs district courts to analyze the following nine factors at the final approval stage:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) stage of the proceedings and the amount of discovery completed; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through the trial; (7) ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh, 521 F.2d at 157. All of the *Girsh* factors that the Court can analyze at this

[6] Rule 23(e) was amended in December 2018 to specify uniform standards for settlement approval. Courts in this district have continued to apply the same legal standards to preliminary approvals after the 2018 amendments. *See, e.g.*, *Udeen*, 2019 WL 4894568; *Smith v. Merck & Co.*, 2019 WL 3281609 (D.N.J. July 19, 2019). Further, "[t]he 2018 Committee Notes to Rule 23 recognize that, prior to this amendment, each circuit had developed its own list of factors to be considered in determining whether a proposed class action was fair[.]" *Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at *3 (E.D. Pa. Apr. 5, 2019) (citing Fed. R. Civ. P. 23(e)(2), Advisory Committee Notes). "[T]he goal of the amendment is not to displace any such factors, but rather to focus the parties [on] the 'core concerns' that motivate the fairness determination." *Id.* In this Circuit, the *Girsh* factors govern the analysis.

stage support preliminary approval.[7]

As to the first factor, the complexity, expense, and likely duration support preliminary approval because, without the Settlement, the parties would be engaged in contested motion practice and adversarial litigation for years. The claims advanced on behalf of the Settlement Class Members involve complex technical, engineering and legal issues. Continued litigation would be complex, time consuming and expensive, with no certainty of a favorable outcome. The Settlement Agreement secures substantial benefits for the Settlement Class while avoiding the delays, risks and uncertainties of continued litigation.

The third factor, the stage of the proceedings and the amount of discovery completed, also supports preliminary approval. The parties have exchanged detailed information regarding the complaints and alleged issues in the subject vehicles. In addition, Plaintiffs' counsel have conducted their own extensive independent investigation into the alleged defect. The discovery that has been completed has allowed Plaintiffs' counsel to understand the strengths and weaknesses of their case, and to analyze the risks of future litigation in comparison to the relief offered by the Settlement. *Udeen,* 2019 WL 4894568, at *3.

The fourth, fifth, and sixth factors all analyze the risks of continued litigation. If the Parties had been unable to resolve this case through the Settlement, the litigation would likely have been protracted and costly. Plaintiffs' counsel have litigated many automotive class actions that have taken several years to conclude.

[7] The reaction of the class cannot be evaluated until after notice is issued to the Class Members pursuant to the Settlement.

Before ever approaching a trial in this case, the Parties likely would have briefed, and the Court would have had to decide, discovery-related motions, a motion for class certification (along with a potential Rule 23(f) appeal), motions for summary judgment, as well as FRE 702 motions and other pre-trial and trial-related motions. Additionally, considerable resources would have been expended on additional discovery, depositions, and expert witnesses. It is therefore unlikely that the case would have reached trial before 2026, with post-trial activity to follow. *See Haas v. Burlington Cnty*.,2019 WL 413530, at *6 (D.N.J. Jan. 31, 2019) (granting approval where plaintiffs estimate the time to judgment, including trial, would take another three years).

Moreover, there is a risk of not obtaining class certification should this action be litigated rather than settled. Defendant is likely to assert numerous defenses that may apply to many individual putative class members under the applicable laws of their respective states, such as lack of standing, privity, and others, which, if litigated, could substantially if not completely bar many Settlement Class Members' claim and/or recovery. Likewise, if this action is litigated, there are other potentially predominating individualized issues relating to each putative class member's claim including the facts and circumstances of each putative class member's purchase or lease transaction; what, if anything, each putative class member viewed, heard and/or relied upon prior to purchase or lease; whether individual putative class members ever experienced the alleged issues; and the individual facts and circumstances of any putative class member's interactions, if any, with Subaru retailers with respect to the breach of warranty claims. In addition, outside the

context of a class settlement, the numerous differences in the laws among the 50 states may preclude certification of a nationwide class in the litigation context.

Conversely, in the context of a class settlement, these potential impediments do not preclude certification of a nationwide Settlement Class, since the Court is not faced with the significant manageability problems of a trial. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (individual issues that may preclude class certification in litigation do not preclude class certification for settlement purposes, since manageability at trial is no longer a concern).

Courts routinely find the seventh factor – the defendant's ability to withstand greater judgement – to be neutral, as it is here. Such a factor is typically only relevant when "the defendant's professed inability to pay is used to justify the amount of the settlement." *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 440. This not a factor here.

Finally, the remaining *Girsh* factors – the range of reasonableness of the settlement both independently and weighed against the risk of further litigation – support preliminary approval. The settlement must be judged "against the realistic, rather than theoretical potential for recovery after trial." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 323 (3d Cir. 2011). In conducting the analysis, the court must "guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Litig.*, 55 F.3d at 806; *see also In re Shop-Vac Mktg. & Sales Pracs. Litig.*, 2016 WL 3015219, at *2 (M.D. Pa. May 26, 2016) ("The proposed

settlement amount does not have to be dollar-for-dollar the equivalent of the claim…and a satisfactory settlement may only amount to a hundredth or even a thousandth part of a single percent of the potential recovery.") (internal citations and quotations omitted). Here, as shown, the Settlement provides significant benefits to the Settlement Class Members in the form of a Warranty Extension and reimbursements for 75% of qualifying out-of-pocket costs (parts and labor) to repair or replace Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features of the EyeSight systems. And the reasonable class notice expense, claim administration expense, counsel fees/expenses and/or service awards are paid by Defendant without reducing, in any way, any Settlement Class Members' available benefits.

V. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Both the Supreme Court and the various circuit courts have recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Products Inc.*, 521 U.S. at 620; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Accordingly, Plaintiffs seeks the certification of the Settlement Class set forth above for settlement purposes. "Rule 23 of the Federal Rules of Civil Procedure allows this Court to certify a class for settlement purposes only." *Chemi v. Champion Mortg.*, 2009 WL 1470429, at *6 (D.N.J. May 26, 2009).

In the Third Circuit, "a class action—whether certified for settlement or litigation purposes— must meet the class requisites enunciated in Rule 23." *In re*

Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig., 55 F.3d at 800 . "First, the Court must determine whether Plaintiffs have satisfied the prerequisites for maintaining a class action as set forth in Fed.R.Civ.P. 23(a)." *Id.* The requirements of "Rule 23(a) are (1) numerosity (a 'class [so large] that joinder of all members is impracticable'); (2) commonality ('questions of law or fact common to the class'); (3) typicality (named parties' claims or defenses 'are typical … of the class'); and (4) adequacy of representation (representatives 'will fairly and adequately protect the interests of the class')." *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, at 341 at n. 14 (3d Cir. 2010). If Plaintiffs satisfy these requirements, then "the Court must then determine whether the alternative requirements of Rule 23(b)(2) or 23(b)(3) are met." *McGee v. Cont'l Tire N. Am., Inc.,* 2009 WL 539893, at *8 (D.N.J. Mar. 4, 2009). Plaintiffs seek to certify a Settlement Class under FRCP 23(a) and 23(b)(3).

A. The Requirements of Rule 23(a) Are Satisfied for Settlement Purposes

1. Numerosity Is Satisfied

Rule 23(a)(1) requires that a class be "so numerous that joinder of all members is impracticable." Numerosity is presumed "if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40." *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001). The Settlement Class is comprised of all persons and entities who purchased or leased a Settlement Class Vehicle in the continental United States. S.A. ¶ I.V. Based on information provided by Defendant, the number of Settlement Class Vehicles is 3,364,708. Paul Decl., ¶ 23. Accordingly,

numerosity is satisfied.

2. Commonality Is Satisfied

Rule 23(a)(2) requires the existence of "questions of law or fact common to the class." The test for commonality is "easily met." *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994). All that is required is that "the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Stewart*, 275 F.3d at 227. "[C]ommonality is informed by the defendant's conduct as to all class members and any resulting injuries common to all class members." *See Sullivan*, 667 F.3d at 297. A single common question is enough to satisfy the requirements of Rule 23(a)(2). *See Baby Neal*, 43 F.3d at 56; *see also* W. Rubenstein & H. Newberg, *Newberg and Rubenstein on Class Actions (Sixth)*, § 22:69 (2022).

In this case, the commonality requirement is satisfied for settlement purposes because Plaintiffs' allegations arise from the same common nucleus of operative facts and all members of the proposed Settlement Class would cite the same common evidence to prove their identical claims - in particular, (1) whether the Settlement Class Vehicles contain defects related to the Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features of the EyeSight systems equipped in those vehicles, (2) whether the alleged defects implicate safety issues, (3) whether Defendant had the requisite notice of and a duty to disclose the alleged defects, and (4) whether the alleged defective nature of the EyeSight systems constitutes a material fact.

Such questions are common to classes alleging automobile defects.[8] These questions are common to the class, capable of class-wide resolution, and "will resolve an issue that is central to the validity of each one of the claims in one stroke." *In re Nat'l Football League Players Concussion Inj. Litig*., 821 F.3d at 427 (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

3. Typicality Is Satisfied

Typicality judges the sufficiency of the named plaintiffs as representatives of the class. *Baby Neal*, 43 F.3d at 57. A plaintiff's claim is typical if it challenges the same conduct that would be challenged by the class. *See In re Centocor, Inc.,* 1999 WL 54530, at *2 (E.D. Pa. Jan. 27, 1999). Typicality is demonstrated where a plaintiff can "show that two issues of law or fact he or she shares in common with the class occupy the same degree of centrality to his or her claims as those of the unnamed class members." *Weiss v. York Hosp.*, 745 F.2d 786, n. 36 (3d Cir. 1984).

Here, the claims of Plaintiffs and all Settlement Class Members are typical because they arise under substantially similar warranty and consumer protection

[8] *See e.g., Udeen,* 2019 WL 4894568, at *5 (commonality satisfied where there were numerous common questions regarding whether the class vehicles were defective); *Henderson v. Volvo Cars of N. Am*., *LLC*, 2013 WL 1192479, at *4 (D.N.J. Mar. 22, 2013) (commonality satisfied where there were several common questions, "including whether the transmissions in the Class Vehicles suffered from a design defect, whether Volvo had a duty to disclose the alleged defect, whether the warranty limitations on Class Vehicles are unconscionable or otherwise unenforceable, and whether Plaintiffs have actionable claims"); *Alin v. Honda Motor Co.,* 2012 WL 8751045, at*5 (D.N.J. April 13, 2012) (finding commonality and predominance satisfied where "class vehicles allegedly suffer from defects that cause their air conditioning systems to break down, although there are differences as to how the breakdowns occur").

laws and stem from common alleged defects of the Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features of the EyeSight systems and course of conduct by Defendant. *See, e.g.*, *Skeen v. BMW of N. Am., LLC*, 2016 WL 70817, at *6 (D.N.J. Jan. 6, 2016) (typicality satisfied where class suit alleged defendants "knowingly placed Class Vehicles containing the alleged defect into the stream of commerce and refused to honor its warranty obligations"); *Alin*, 2012 WL 8751045, at *6 (typicality established where the named plaintiffs each owned or lease one of the vehicles at issue and were damaged as a result of the defect at issue).

4. The Settlement Class Is Adequately Represented

Representative parties must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To evaluate adequacy, the Court considers whether the named plaintiff has "the ability and the incentive to represent the claims of the class vigorously, that [they have] obtained adequate counsel, and there is no conflict between the [named plaintiffs'] claims and those asserted on behalf of the class." *Hassine v. Jeffes*, 846 F.2d 169, 179 (3d Cir. 1988); *see also Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 182 (3d Cir. 2012).

The core analysis for plaintiff's conduct is whether plaintiff has diligently pursued the action and whether plaintiff has interests antagonistic to those of the Settlement Class. The capabilities and performance of Class Counsel under Rule 23(a)(4) is evaluated based upon factors set forth in Rule 23(g). *See New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007); *Sheinberg v. Sorenson*, 606 F.3d 130, 132 (3d Cir. 2010). Here, adequacy is readily met.

First, the proposed Representative Plaintiffs have retained counsel with significant experience in federal class actions, in particular, consumer and automotive class actions. *See* Paul Decl. ¶¶ 4-6, Ex. B; *Bredbenner v. Liberty Travel, Inc.*, 2010 WL 11693610, at *4 (D.N.J. Nov. 19, 2010) ("Plaintiffs' attorneys are qualified, experienced, and generally able to conduct the proposed litigation…"); *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 962 F. Supp. 450, 519 (D.N.J. 1997) ("Plaintiffs' team of legal counsel is comprised of preeminent class action attorneys from throughout the country, many of whom have been qualified as lead counsel in other nationwide class actions."). Furthermore, Class Counsel has spent a significant amount of time investigating the issues in this action including performing research into the technical specifications of the Settlement Class Vehicles, the nature of the alleged conditions and the costs of repair, reviewing hundreds of thousands of pages of documents, and defending the depositions of six of the named plaintiffs. Paul Decl. ¶ 18.

Class Counsel have significant experience litigating consumer class-actions, including automobile-defect class actions. Paul Decl. ¶¶ 4-6; Ex. B. By way of example, Class Counsel received the following appointments: *Francis v. General Motors, LLC*, No. 2:19-cv-11044-DML-DRG (E.D. Mich.), ECF 40 (appointed as member of Plaintiffs' Steering Committee); *Weston v. Subaru of America, Inc.*, No. 1:20-cv-05876 (D.N.J.), ECF 49 (appointed as Interim Co-Lead Counsel); *Miller v. Ford Motor Co.*, No. 2:20-cv-01796 (E.D. Cal.) ECF 60 (appointed to Interim Class Counsel Executive Committee) and *Powell v. Subaru of America, Inc.*, No. 1:19-cv-19114 (D.N.J.), ECF 26 (appointed as Interim Co-Lead Counsel). The extensive

experience of Class Counsel is discussed more fully in the Declaration of Mr. Paul filed concurrently herewith.

Second, Plaintiffs have no interest adverse or "antagonistic" to the absent Class Members. Each of the Plaintiffs is an owner of a Settlement Class Vehicle who claims to have experienced the alleged issues. See Second Amended Complaint, ECF 42, ¶¶21176. Plaintiffs have no interests antagonistic to the other Settlement Class Members and will continue to vigorously represent the Settlement Class's interests. The interests of Plaintiffs and other Class Members are aligned in seeking to maximize the Class's recovery relating to the alleged defect. *See In re Philips/Magnavox Television Litig.*, 2012 WL 1677244, at *6 (D.N.J. May 14, 2012) (plaintiffs adequately represent the interests of class where they purchased the same allegedly defective televisions as the rest of the class and were allegedly injured in the same manner).

B. The Requirements of Rule 23(b)(3) Are Satisfied for Settlement Purposes

1. Common Issues of Law and Fact Predominate

Rule 23(b)(3)'s predominance inquiry "'tests whether [a] proposed class[ ] [is] sufficiently cohesive to warrant adjudication by representation.'" *Marchese v. Cablevision Sys. Corp.*, 2016 WL 7228739, at *2 (D.N.J. Mar. 9, 2016) (citation omitted). There is "a 'key' distinction between certification for settlement purposes and certification for litigation: when taking a proposed settlement into consideration, individual issues which are normally present in litigation usually become irrelevant, allowing the common issues to predominate." *Id.*; *see Amchem Prod., Inc.*, 521 U.S.

at 618.

For settlement purposes, common questions of law and fact, such as whether the Settlement Class Vehicles which contain the same alleged condition were defective, whether Defendant breached any duty to disclose, and whether Settlement Class Members sustained cognizable harm, predominate over questions that may affect individual Settlement Class Members. *See, e.g.*, *Henderson,* 2013 WL 1192479, at *6 (predominance met where "t]he Class Members share common questions of law and fact, such as whether Volvo knowingly manufactured and sold defective automobiles without informing consumers…[and] liability in this case depends on Volvo's alleged conduct in manufacturing and selling the Class Vehicles").

Rule 23(b)(3) also requires a showing that a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). The superiority requirement is met when—as here—adjudicating claims in one action is "far more desirable than numerous separate actions litigating the same issues." *In re Ins. Brokerage Antitrust Litig.,* 579 F.3d 241, 259 (3d Cir. 2009); *see Marchese*, 2016 WL 7228739, at *2 (finding that certification of a class for settlement purposes is more efficient than separate litigation of numerous individual claims).

The proposed Settlement delivers prompt, certain relief while avoiding the substantial judicial burdens and the risk of inconsistent rulings that would arise from repeated adjudication of the same issues in individual actions. *See Henderson*, 2013 WL 1192479, at *6 ("To litigate the individual claims of even a tiny fraction of the

potential Class Members would place a heavy burden on the judicial system and require unnecessary duplication of effort by all parties. It would not be economically feasible for the Class Members to seek individual redress.").

VI. THE COURT SHOULD APPOINT PLAINTIFFS' COUNSEL AS SETTLEMENT CLASS COUNSEL

Fed. R. Civ. P. 23(g) requires a court to appoint class counsel. In appointing class counsel, the Court "must" consider:

- the work counsel has done in identifying or investigating potential claims in the action;
- counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- counsel's knowledge of the applicable law; and
- the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A). The court "may" also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B).

Proposed Class Counsel, Russell D. Paul of Berger Montague PC, Cody Padgett of Capstone Law, APC, and Sam Ward of Barrack, Rodos, and Racine satisfy these criteria. The firms expended time, effort, and expense investigating this action and the bona fides of the Settlement herein. Further, as set forth in the accompanying Declarations submitted herewith, each firm is highly experienced in consumer and other complex class action litigation. *See* Paul Decl. ¶¶ 4-6; Ex. B; Ward Decl. ¶¶3-7, Ex. A; Padgett Decl. ¶¶ 14-17, Ex. A. It is clear from the firm's track record of success that proposed Class Counsel are highly skilled and knowledgeable concerning consumer law and class action practice. As confirmed by the result

obtained in this case, Class Counsel have made the investment and have the experience to represent the Class vigorously. Accordingly, the appointment of the proposed Class Counsel under Rule 23(g) is warranted.

VII. THE NOTICE PROGRAM SHOULD BE APPROVED

In an action certified for settlement purposes under Rule 23(b)(3) "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). "Generally speaking, the notice should contain sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class." *In Re Nat'l Football League Players Concussion Injury Litig*., 821 F.3d at 435.

The Notice Plan described above and set forth in sections III and IV of the Settlement Agreement provides the best notice practicable under the circumstances. It includes: (1) mailing individual post-card Class Notice via first-class mail to the Settlement Class; (2) a settlement website established to allow Settlement Class Members to obtain information regarding the Settlement and access important documents regarding the Settlement, including the Claim Form and a longer Form Class Notice, and (3) a toll-free number to provide Settlement Class Members with information regarding the Settlement. First-Class Notices and Full Notices provided in this manner have been held to be sufficient. *Udeen*, 2019 WL 4894568, at *7; *Patrick v. Volkswagen Grp. Of Am.*, 2021 WL 3616105, at *5 (C.D. Cal. Mar. 10, 2021).

A. Contents of the First-Class Notice

The First-Class Notice was designed to provide information about the Settlement and the Settlement Class Members' legal rights in a clear and concise manner. The mailed notice provides basic information regarding the case, including instructions on obtaining more information from the Settlement Website. The longer form Class Notice includes the case caption; a description of the subject matter of the Action and claims asserted; a description of the Settlement Class and Settlement Class Vehicles; a description of the Settlement's benefits, their terms and conditions, and how to obtain them; the Settlement Class Members' rights including the right to object to, or opt out of, the Settlement and the procedures and deadlines for doing so; the procedures and deadline for filing a Claim and the information and documentation required; the claims being released under the Settlement; the contact information of Settlement Class Counsel and the Claims Administrator; other pertinent information including the amounts of the requested Representative Plaintiff service awards and Class Counsel's Fees and Expenses; the date, time and location of the Final Fairness Hearing; and the procedure for requesting permission to appear at the hearing if a Settlement Class Member who has not opted out wishes to do so. While the longer form Class Notice sets forth in detail what information and documentation is required for a valid Claim for Reimbursement, the required information and documentation is also listed on the Claim Form itself. Finally, the settlement website address will be set forth in the First-Class Notice, as well as the address and toll-free telephone number of the Settlement Administrator, so that any Settlement Class Member who so desires may obtain further information or any

needed assistance. S.A., Ex. 2. The information in the mailed Notice complies in all respects with Rule 23.

B. The Scope and Process of the Notice

The First-Class Notice will be mailed by the Settlement Administrator to Settlement Class Members using the U.S. first-class mail, postage prepaid. S.A. ¶ IV.B.1. As described in the Settlement Agreement, for purposes of identifying the Settlement Class Members, the Settlement Administrator shall obtain from Polk/HIS Markit or an equivalent company the names and current or last known addresses of all current and former Settlement Class Vehicle owners and lessees that can reasonably be obtained from the various states' Departments of Motor Vehicles, based upon the VINs of Settlement Class Vehicles provided by Defendants. The Settlement Administrator will then check the provided addresses against current U.S. Postal Service software and/or the National Change of Address Database. For each individual notice that is returned as undeliverable, the Settlement Administrator will perform an advanced address search (e.g., skip trace) and re-mail any undeliverable notices to the extent any new and current addresses are located.

Furthermore, the Settlement Administrator, with the input of the Parties, will set up a settlement website that will include, *inter alia*: the Complaint; the Settlement Agreement; the First Class Notice, Full Notice, Claim Forms and Declarations; the motions for preliminary approval, final approval, and Settlement Class Counsel's Fees and Expenses and Representative Plaintiff service awards; the Preliminary Approval Order; Frequently Asked Questions ("FAQs"); instructions on how to submit a Claim for reimbursement; instructions on how to contact the Claims

Administrator with any questions or requests for assistance; a portal for Settlement Class Members to insert their VIN to confirm that their vehicle is a Settlement Class Vehicle; the deadlines and procedures for objecting to the Settlement, requesting exclusion, and for submitting claims; and the date, time and location of the Final Fairness Hearing. S.A. ¶ IV.B.6.

The Notice Plan herein fully satisfies Rule 23, due process, and constitutes the best notice practicable under the circumstances and should, therefore, be approved. *Udeen*, 2019 WL 4894568, at *7; *Patrick*, 2021 WL 3616105, at *5 ("The Court has reviewed the Class Notice Plan and finds that the Settlement Class Members will receive the best notice practicable under the circumstances and that the Class Notice Plan comports with Rule 23 and due process.").

VIII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

Finally, the Court should schedule a final approval hearing to decide whether to grant final approval of the Settlement, address Class Counsel's request for attorneys' fees, expenses, and service awards for the Class Representative Plaintiffs, consider any objections and exclusion requests, and determine whether to dismiss this action with prejudice. *See* Fed. Jud. Ctr., *Manual for Complex Litig.* Fourth, § 30.44 (2004); *Ehrheart*, 609 F. 3d at 600.

IX. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request the Court enter an Order: (1) granting preliminary approval of the Settlement; (2) conditionally

certifying the proposed Settlement Class for settlement purposes; (3) conditionally appointing Plaintiffs as the Class Representative Plaintiffs and Plaintiffs' Counsel, Berger Montague PC, Capstone Law APC, and Barrack, Rodos and Racine, as Settlement Class Counsel; (4) approving the Parties' proposed Notice Plan for disseminating the Class Notice; (5) conditionally appointing JND Legal Administration, as the Settlement Administrator; (6) setting deadlines for the filing of any objections to, or requests for exclusion from, the Settlement, and for other submissions in connection with the Settlement approval process; and (7) setting a Final Fairness Hearing date and briefing schedule for Final Approval of the Settlement and Plaintiffs' application for service awards and attorneys' fees and expenses.

Dated: March 26, 2025

Respectfully submitted,

By:*/s/ Russell D. Paul*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LAURA SAMPSON, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. SUBARU OF AMERICA, INC., Defendant.	Case No. 1:21-CV-10284-ESK-SAK

DECLARATION OF RUSSELL PAUL IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Russell Paul, hereby declare as follows:

1. I am an attorney duly licensed to practice law before all of the courts of the Commonwealth of Pennsylvania, State of New York, State of New Jersey and State of Delaware as well as before the United States Court of Appeals for the Third, Seventh and Ninth Circuits, the United States District Courts of the Eastern District of Pennsylvania, District Court of Delaware, District Court of the Eastern District of Michigan, District Court of New Jersey, District Court of the Southern District of New York and District Court of the Eastern District of New York.

2. I am a shareholder at Berger Montague PC ("Berger Montague"). I make this declaration in support of the Motion for Preliminary Approval of Class Action Settlement. The Settlement Agreement is attached as Exhibit A. I have personal knowledge of the facts stated below and, if called upon, could

competently testify thereto.

3. My firm, Berger Montague, has been engaged in complex and class action litigation since 1970. While our firm has offices in Philadelphia, Pennsylvania; San Diego, California; Washington, D.C.; San Francisco, California; Chicago, Illinois; Wilmington, Delaware; and Minneapolis, Minnesota, we litigate nationwide. Our firm's practice areas include Antitrust, Commercial Litigation, Commodities & Options, Consumer Protection, Corporate Governance & Shareholder Rights, Employment Law, Environmental & Mass Tort, ERISA & Employee Benefits, Insurance and Financial Products & Services, Lending Practices & Borrowers' Rights, Securities Fraud, and Whistleblowers, Qui Tam & False Claims Acts. Our compensation is almost exclusively from court-awarded fees, court-approved settlements, and contingent fee agreements. Berger Montague's Consumer Protection Group, of which I am a member, represents consumers when they are injured by false or misleading advertising, defective products, including automobiles, and various other unfair trade practices.

4. Berger Montague's successful class action settlements providing relief to automobile owners and lessees include: *Powell v. Subaru of America, Inc.,* No. 1:19-cv-19114 (D.N.J. Oct. 3, 2024), ECF 155 (preliminary approval of settlement); *Dack v. Volkswagen Group of America, Inc*., No. 4:20-cv-00615 (W.D. Mo. Aug. 26, 2024), ECF 130 (final approval of settlement); *Rieger v. Volkswagen Group of America, Inc.,* No. 1:21-cv-10546 (D.N.J. May 16, 2024),

ECF 118 (final approval of settlement); *Hickman v. Subaru of America Inc.,* No. 1:21-cv-02100 (D.N.J. April 18, 2024), ECF 76 (final approval of settlement); *Gjonbalaj v. Volkswagen Group of Am., Inc.*, No. 2:19-cv-07165-BMC (E.D.N.Y. Dec. 11, 2023), ECF 101 (obtaining settlement and court's final approval for class members' damages from sunroofs); *Gioffe v. Volkswagen Group of Am., Inc.*, No. 22-cv-00193 (D.N.J. Jun. 20, 2023) (obtaining settlement and court's final approval for class members' damages from malfunctioning gateway control modules); *Buchanan v. Volvo Car USA, LLC,* No. 2:22-cv-02227 (D.N.J. May 23, 2023), ECF 39 (approval of individual settlement); *Parrish v. Volkswagen Grp. of Am., Inc*., No. 8:19-cv-01148 (C.D. Cal. March 2, 2023), ECF 100 (preliminarily final approval of class action settlement for owners and lessees of certain 2019 Volkswagen Jetta or 2018, 2019, and/or 2019 Volkswagen Tiguan vehicles equipped with 8-speed transmissions susceptible to possible oil leaks, rattling, hesitation, or jerking); *Patrick v. Volkswagen Grp. of Am., Inc*., No. 8:19-cv-01908 (C.D. Cal. Sept. 28, 2021), ECF 72 (final approval of class action settlement for owners and lessees of certain 2019 and 2020 Volkswagen Golf GTI or Jetta GLI vehicles equipped with manual transmissions suffering from an alleged engine stalling defect); *Weckwerth v. Nissan N.A.,* No. 3:18-cv-00588 (M.D. Tenn. Mar. 10, 2020) (as co-lead counsel, obtained a settlement covering over 2 million class vehicles of an extended warranty and reimbursement of 100% of out-of-pocket costs); *Stringer v. Nissan N.A.,* 3:21-cv-00099 (M.D. Tenn. Sept. 7, 2021); *Norman v. Nissan N. Am., Inc.*, No. 18-cv-00588-EJR (M.D. Tenn. July, 16, 2019),

ECF 102; *Batista v. Nissan N. Am., Inc*., No. 14-24728-RNS (S.D. Fla. June 29, 2017), ECF 191 (approving class action settlement for an alleged CVT defect, including a two-year warranty extension); *Soto v. American Honda Motor Co., Inc*., No. 3:12-cv-01377 (N.D. Cal. 2012) (as co-counsel, obtained a warranty extension and out-of-pocket expense reimbursements for consumers who purchased defective Hondas); *Vargas v. Ford Motor Co*., No. CV12-08388 AB (FFMX), 2017 WL 4766677 (C.D. Cal. Oct. 18, 2017) (finally approving class action settlement involving transmission defects for 1.8 million class vehicles); *Davis v. General Motors LLC,* No. 8:17-cv-2431 (M.D. Fla. 2017) (as co-lead counsel, obtained settlement for defects in Cadillac SRX headlights); *Yeager v. Subaru of America, Inc*., No. l:14-cv-04490 (D.N.J. Aug. 31, 2016) (approving class action settlement for damages from defect causing cars to burn excessive amounts of oil); *Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc*., No. ATL-1461-03 (N.J. Sup. Ct. 2007) (as co-lead counsel, obtained settlement for nationwide class alleging damages from defectively designed timing belt tensioners); *In Re Volkswagen and Audi Warranty Extension Litigation*, No. 07-md-1790-JLT (D. Mass. 2007) (obtained settlement valued at $222 million for nationwide class, alleging engines were predisposed to formation of harmful sludge and deposits leading to engine damage).

5. Other consumer class action settlements in which our firm was co-lead counsel include: *Cole v. NIBCO, Inc.*, No. 3:13-cv-07871-FLW-TJB (D.N.J. 2013) (obtaining a $43.5 million settlement on behalf of nationwide class of

consumers who purchased defective tubing manufactured by NIBCO and certain fittings and clamps used with the tubing); *In re: Certain Teed Fiber Cement Siding Litigation*, MDL No. 2270 (E.D. Pa.) (obtained a settlement of more than $103 million in a multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class); and *Tim George v. Uponor, Inc., et al.,* No. 12-CV-249 (D. Minn.) (achieving a $21 million settlement on behalf of a nationwide class of consumers who purchased defective plumbing parts).

6. Class Counsel in this case have received the following appointments in automobile defect class actions: *Francis v. General Motors, LLC*, No. 2:19-cv-11044-DML-DRG (E.D. Mich.), ECF 40 (appointed as member of Plaintiffs' Steering Committee); *Weston v. Subaru of America, Inc.*, No. 1:20-cv-05876 (D.N.J.), ECF 49 (appointed as Interim Co-Lead Counsel); *Miller v. Ford Motor Co.*, No. 2:20-cv-01796 (E.D. Cal.) ECF 60 (appointed to Interim Class Counsel Executive Committee); *Powell v. Subaru of America, Inc.*, No. 1:19-cv-19114 (D.N.J.), ECF 26 (appointed as Interim Co-Lead Counsel); *Rieger v. Volkswagen Group of America, Inc.*, No. 1:21-cv-10546-NLH-EAP (D.N.J.), ECF 65 (appointed as Interim Lead Counsel); and *Harrison v. General Motors, LLC*, No. 2:21-cv-12927-LJM-APP (E.D. Mich.), ECF 35 (appointed as Interim Co-Lead Counsel). A profile of our firm's experience in complex class actions, and specifically in consumer protection and products liability cases, is attached as Exhibit B.

7. I believe that the proposed Settlement provides substantial relief to the Settlement Class, is fair, reasonable and adequate, and merits approval.

Overview of Case

8. Berger Montague, along with Capstone Law APC and Barrack, Rodos & Bacine (collectively, "Class Counsel"), represent Plaintiffs James Sampson, Janet Bauer, Lisa Harding, Barabara Miller, Shirley Reinhard, Celeste Sandoval, Xavier Sandoval, Danielle Lovelady Ryan, and Elizabeth Wheatley ("Plaintiffs").

9. These Plaintiffs filed a class action against Subaru of America, Inc. ("Subaru"), stemming from the design and manufacture of model year 2013 through 2024 Subaru vehicles, that were imported and distributed by Subaru for sale or lease in the United States and allege that the vehicles are equipped with Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist features of EyeSight, that cause unwanted and unnecessary brake activation where there are no obstacles in front of or behind the vehicles; fail entirely to activate when there are persons or objects in front of the vehicle; jerk the wheel during driving when the driver is trying to change lanes, driving on a road with construction barriers, or if the road has multiple lines due to construction; or fail entirely.

Pre-Suit Investigation

10. Class Counsel investigated the alleged defects by reviewing publicly available information regarding the EyeSight and Lake Keep Assist systems, including information on the website of the National Highway Traffic Safety Administration ("NHTSA"), Defendant's marketing of the EyeSight and Lake Keep

Assist systems, research consumer complaints regarding these systems in their vehicles on online forums. and conducting interviews with drivers regarding their experiences with the EyeSight system. Class Counsel monitored these complaints and sources, as well as Subaru's response to those complaints.

11. Class Counsel also interviewed Plaintiffs regarding their experiences with the EyeSight and Keep Lane Assist systems, and all of these owners complained that their vehicles experienced unwanted and unnecessary brake activation where there are no obstacles in front of or behind the vehicles, failure to activate when there are persons or objects in front of the vehicle, and/or jerking of the wheel during driving when the driver is trying to change lanes.

12. Counsel researched the stories of Plaintiffs, and analyzed documentation regarding their purchases of their vehicles, their service records, and their specific car malfunctions and failures before bringing this class action lawsuit.

13. In addition to interviewing and responding to Plaintiffs regarding their potential claims, Class Counsel responded to numerous inquiries from Class Members and investigated their reported claims. From pre-suit investigation and continuing over the course of litigation, Class Counsel conducted detailed interviews with Class Members regarding their pre-purchase research, their purchasing decisions, their repair histories, and their specific experience with the EyeSight and Keep Lane Assist systems. Thereafter, counsel developed a plan for litigation based on Class Members' reported experiences with their Class Vehicles.

Procedural History

14. Class Counsel sent via certified mail, notice letters to Defendant on

behalf of Plaintiffs on February 25, 2021; May 13, 2021; June 1, 2021; July 20, 2021; July 16, 2021; August 24, 2021; and September 28, 2021. Each of these letters specified the problems related to the EyeSight and Keep Lane Assist systems and invited Subaru to address those concerns in advance of or in an effort to avoid litigation. However, these notices to Subaru did not lead to any resolution.

15. Following the investigation, Plaintiffs' filed the initial complaint on April 27, 2021, alleging that their vehicles were defective and asserting claims against Defendant and Subaru Corporation for, *inter alia*, alleged violation of the consumer statutes of their states of residence, including the Illinois Consumer Fraud Act, New York General Business Law §§ 349-350, the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and the Wisconsin Deceptive Trade Practices Act, breach of express and implied warranties, and fraud by concealment or omission, the Magnuson-Moss Warranty Act, and unjust enrichment. *See* ECF No. 1.

16. I appeared as counsel on the initial complaint and have managed all activities for this case.

17. During the initial stages of litigation, Class Counsel continued to gather public information and interview additional members of the putative Class. On July 1, 2022, after over a year of investigation and litigation, Plaintiffs filed a Third Amended Complaint. *See* ECF No. 66. After the negotiation and entry of protective orders and electronically stored information protocols, discovery then began in earnest.

18. Class Counsel drafted requests for production and received 271,171

documents from Defendant, as well as nearly 36,000 documents from non-defendant Subaru Corporation. Class Counsel also received and reviewed technical data files and diagnostics provided by Subaru Corporation. All Plaintiffs provided written discovery responses and produced responsive documents. Six of the Plaintiffs were also deposed during the course of discovery. This allowed Plaintiffs' counsel to gain an understanding of the strengths and weaknesses of Plaintiffs' claims.

Settlement Negotiations

19. Following the Parties' exchanges and analyses of substantial discovery, the Parties mutually agreed to explore the possibility of a settlement. The Parties then engaged the services of Bradley A. Winters, Esq., a neutral with substantial experience in resolving automotive class actions, scheduled mediation to be held on August 14, 2024, and began the negotiations of a potential class settlement.

20. The parties then engaged in arm's length settlement negotiations during the mediation session with Mr. Winters on August 14, 2024. After the mediation session, the Parties continued their arm's length negotiations of the remaining settlement terms, and were eventually able to negotiate a class settlement. After agreeing to the structure and material terms for settlement of the Class claims, the Parties negotiated and ultimately agreed upon an appropriate request for incentive awards and Plaintiffs' attorneys' fees and expenses. All the terms of the Settlement Agreement are the result of extensive, adversarial, and arm's-length negotiations between experienced counsel for both sides. The settlement is set forth in complete and final form in the Settlement Agreement.

21. In contrast to the complexity, delay, risk, and expense of continued

litigation, the proposed Settlement will produce certain, substantial recovery for the Settlement Class.

22. Based on the information exchanged as well as a thorough investigation prior to filing the Complaint, including interviewing putative Class Members, researching publicly available materials, and inspecting Class Vehicles, counsel gained a thorough understanding of both the strengths and weaknesses of Plaintiffs' claims and believe the proposed terms of the Settlement Agreement represent a substantial recovery on behalf of the putative Class.

Settlement Benefits

23. Class Counsel have been responsible for the prosecution of this Action and for the negotiation of the Settlement Agreement. Counsel have vigorously represented the interests of the Class Members throughout the course of the litigation and settlement negotiations. The number of Settlement Class Vehicles in the putative class here is 3,364,708.

24. The Settlement is an excellent result, as it provides the Settlement Class with valuable relief that squarely addresses Plaintiffs' concerns with the vehicles and provides meaningful relief to Class Members. Specifically, the Settlement provides a warranty extension to cover seventy-five percent of the cost of a Covered Repair for four years or 48,000 miles after the Settlement Class Vehicle's In-Service date, or for an additional four months after the Notice Date if the extension period has already lapsed. A "Covered Repair" means repair or replacement, including parts and labor, of diagnosed and confirmed malfunction or failure of a Settlement Class Vehicle's Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist

feature of the EyeSight system that resulted from failure or malfunction of the EyeSight camera assembly and/or rear sonar sensors. The Settlement also provides reimbursement for past paid out-of-pocket invoice amounts of a Covered Repair on the same terms as is covered under the warranty extension described above.

25. Plaintiffs remain convinced that their case has merit, but they recognize the substantial risk that comes along with continued litigation. Based on Class Counsel's investigation and review of information and evidence exchanged, and in consideration of the risks of continued litigation and the relative strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, we have concluded that the Settlement represents an excellent result for Class Members.

Settlement Notice and Claims Administration

26. The Parties agreed to retain JND Legal Administration as the Claim Administrator. The Claim Administrator will carry out the Notice Plan (as discussed in the Settlement), disseminate the CAFA notice, administer any requests for exclusion, and administer the claims process including the review and determination of reimbursement claims, and distribution of payments to eligible claimants whose claims are complete and have been approved under the Settlement terms. Pursuant to the Settlement, Defendant will pay all administrative costs separate and apart from any benefits to which the Settlement Class Members may be entitled. Thus, none of the Settlement Administration costs will be borne by the Class Members in any way.

Conclusion

27. Based on my experience, the Settlement is fair, reasonable, and adequate and the Settlement treats all Settlement Class Members equitably. I ask

that the Court preliminarily approve the Settlement and authorize notice of the settlement to go out to the class.

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

Dated: March 26, 2025

By:/s/ *Russell D. Paul*
Russell D. Paul

EXHIBIT A

CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement (the "Settlement Agreement" or the "Agreement") is made and entered into by and between (i) Plaintiffs James Sampson, Janet Bauer, Lisa Harding, Barbara Miller, Shirley Reinhard, Celeste Sandoval, Xavier Sandoval, Danielle Lovelady Ryan, and Elizabeth Wheatley (collectively, "Plaintiffs"), individually and as representatives of the Settlement Class defined below, and (ii) Subaru of America, Inc. ("SOA" or "Defendant") (all collectively referred to as the "Parties").

RECITALS

WHEREAS, on April 27, 2021, Plaintiffs filed a putative class action, entitled *Laura and James Sampson, et al. v. Subaru of America, Inc., et al.*, Civil Action No. 1:21-cv-10284-RMB-KMW, United States District Court for the District of New Jersey (the "Action"), asserting various claims alleging, *inter alia*, defects or deficiencies in the putative class vehicles' Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features of the EyeSight systems;

WHEREAS, Plaintiffs filed a First Amended Complaint on August 16, 2021, and after meeting and conferring, the Parties stipulated on November 12, 2021 to the dismissal of certain of Plaintiffs' claims with prejudice, and to Plaintiffs' filing of a Second Amended Complaint;

WHEREAS, Plaintiffs filed a Second Amended Complaint on November 29, 2021, and SOA filed an Answer to the Second Amended Complaint on February 4, 2022;

WHEREAS, Plaintiffs filed a Third Amended Complaint on July 1, 2022, and SOA filed its Answer on July 14, 2022, and the Parties thereafter conducted certain discovery;

WHEREAS, on August 25, 2022 and January 31, 2023, certain former Plaintiffs were voluntarily dismissed from the Action, and on November 15, 2023, the Court granted Plaintiffs' motion to substitute Plaintiff Janet Bauer as the personal representative of deceased former Plaintiff John Armour;

WHEREAS, the Defendant denies the Plaintiffs' allegations and claims with respect to both liability and damages, and maintains, *inter alia*, that the putative class vehicles and their systems, components and features at issue are not defective, were properly designed, tested, manufactured, distributed, marketed, advertised, warranted and sold, that no applicable warranties (express or implied) were breached, that no common law duties or applicable statutes, laws, rules or regulations were violated, that various defenses to the allegations and claims exist, and that the Action is not suitable for class treatment in a non-settlement context if they proceeded through litigation and trial;

WHEREAS, the Parties, after investigation and careful analysis of their respective claims and defenses, and with full understanding of the potential risks, benefits, expense and uncertainty of continued litigation, desire to compromise and settle all issues and claims that were asserted or could have been asserted in the Action by or on behalf of Plaintiffs and members of the Settlement Class including all Released Claims against the Released Parties;

WHEREAS, the Parties agree that neither this Settlement Agreement and exhibits, the underlying Settlement itself, nor its negotiations, documents or any filings or submissions relating thereto, shall constitute, be evidence of, be considered or construed as, and/or be admissible in any judicial or non-judicial proceeding as: (i) any admission of liability, damages, fault, or wrongdoing on the part of Defendant or any Released Party and/or (ii) the existence or validity of any fact, allegation and/or claim that was or could have been asserted in the Action, all of which are expressly denied by Defendant.

WHEREAS, this Settlement Agreement is the result of vigorous and extensive arm's length negotiations of highly disputed claims by experienced class action counsel, with adequate knowledge of the facts, issues, and the strengths and weaknesses of the Parties' respective claims,

defenses, and positions, and with the assistance of an experienced neutral Mediator from JAMS; and

WHEREAS, the Settlement is fair, reasonable, and adequate; in all respects satisfies the requirements of Fed. R. Civ. P. 23; and is in the best interests of the Settlement Class;

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth below, the Parties hereby agree as follows:

I. DEFINITIONS

A. "Action"

"Action" refers to *James Sampson, et al. v. Subaru of America, Inc., et al.*, Civil Action No. 1:21-cv-10284-ESK-SAK (D.N.J.).

B. "Agreement," "Settlement," or "Settlement Agreement"

"Agreement," "Settlement," or "Settlement Agreement" means this Settlement Agreement including all terms, provisions and conditions embodied herein and all attached Exhibits (which are an integral part of, and incorporated by reference in, this Settlement Agreement).

C. "Claim Administrator" or "Settlement Administrator"

The "Claim Administrator" or "Settlement Administrator" shall mean JND Legal Administration.

D. "Claim" or "Claim for Reimbursement"

"Claim" or "Claim for Reimbursement" means the timely and proper mailing or submission online, to the Claim Administrator, of the required fully completed, signed and dated Claim Form, together with all required Proof of Repair Expense documents (as defined in Section I.S. of this Settlement Agreement), in which a Settlement Class Member seeks to claim a reimbursement for 75% of certain past paid and unreimbursed out-of-pocket expenses for one (1) Covered Repair that occurred prior to the Notice Date and within 48 months or and 48,000 miles

(whichever occurred first) from the Settlement Class Vehicle's In-Service Date, pursuant to the terms, requirements, conditions and limitations set forth in Section II.B. of this Settlement Agreement.

E. "Claim Form"

"Claim Form" means the form that must be fully completed, dated, signed under penalty of perjury, and timely mailed to the Claim Administrator or timely submitted through the Settlement Website, together with all required Proof of Repair Expense and any other required documentation, in order to make a Claim for Reimbursement under the terms of this Settlement Agreement, which Claim Form will be substantially in the form attached hereto as Exhibit 1.

F. "Claim Period"

"Claim Period" means the period of time within which a Claim for Reimbursement under this Settlement must be mailed (postmarked) to the Claim Administrator, which period shall expire sixty (60) days after the Notice Date.

G. "Class Counsel" or "Plaintiffs' Counsel"

"Class Counsel" or "Plaintiffs' Counsel" shall mean Berger Montague, PC, Capstone Law APC, and Barrack, Rodos & Bacine.

H. "Class Notice"

"Class Notice" means the post-card class notice which will be mailed, and the long form class notice which will be made available on the settlement website, both of which will be substantially in the forms attached hereto as Exhibits 2 and 3, respectively.

I. "Class Notice Plan" or "Notice Plan"

"Class Notice Plan" or "Notice Plan" means the plan for disseminating the Class Notice to the Settlement Class as set forth in Section IV. of this Settlement Agreement, and includes any further notice provisions that may be agreed upon by the Parties.

J. "Court"

"Court" means the United States District Court for the District of New Jersey, located at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101.

K. "Covered Repair"

"Covered Repair" means repair or replacement (parts and labor) of a diagnosed and confirmed malfunction or failure of a Settlement Class Vehicle's Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist feature of the EyeSight system that resulted from failure or malfunction of the EyeSight camera assembly and/or rear sonar sensors. A "Covered Repair" shall not include a Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist feature failure or malfunction that resulted from the failure or malfunction of any other components of the Settlement Class Vehicle including but not limited to brake pads, rotors and other brake related parts, windshield, powertrain, electrical system, and any other vehicle components and systems.

L. "Defense Counsel"

"Defense Counsel" means Michael B. Gallub, Esq. and Homer B. Ramsey, Esq. of Shook, Hardy & Bacon L.L.P.

M. "Effective Date"

"Effective Date" means the third business day after: (1) the Court enters a Final Order and Judgment approving the Settlement Agreement, substantially in the form agreed upon by counsel for the Parties, and (2) all appellate rights with respect to said Final Order and Judgment, other than those related solely to any award of attorneys' fees, costs or service/incentive payments, have expired or been completely exhausted in such a manner as to affirm such Final Order and Judgment.

N. "Fee and Expense Application"

"Fee and Expense Application" means Class Counsel's application for an award of reasonable attorneys' fees, costs, and expenses ("Class Counsel Fees and Expenses"), and for Class Representative service awards.

O. "Final Fairness Hearing"

"Final Fairness Hearing" means the hearing at or after which the Court will determine whether to grant final approval of the Settlement as fair, reasonable, and adequate under Fed. R. Civ. P. 23(e).

P. "Final Order and Judgment"

"Final Order and Judgment" means the Final Order and Judgment granting final approval of this Settlement Agreement and dismissing the Action with prejudice, the form of which will be agreed by the Parties and submitted to the Court prior to the Final Fairness Hearing.

Q. "In-Service Date"

"In-Service Date" means the date on which a Settlement Class Vehicle was first delivered to either the original purchaser or the original lessee; or if the vehicle was first placed in service as a "demonstrator" or "company" car, on the date such vehicle was first placed in service.

R. "Notice Date"

"Notice Date" means the Court-ordered date by which the Claim Administrator shall mail the Class Notice of this Settlement to the Settlement Class. The Notice Date shall be a date that is up to one-hundred-twenty (120) days after the Court enters a Preliminary Approval Order, substantially in the form attached hereto as Exhibit 4.

S. "Proof of Repair Expense"

"Proof of Repair Expense" shall mean all of the following: (1) an original or legible copy of a repair invoice or record for, and demonstrating, a Covered Repair as defined in Section I.K., and entitlement to reimbursement under the terms and conditions, of this Settlement Agreement, which invoice and/or record shall contain the claimant's name, the make, model and vehicle identification number ("VIN") of the Settlement Class Vehicle, the name and address of the authorized Subaru retailer or other service center or facility that performed the Covered Repair, the date of the Covered Repair, the Settlement Class Vehicle's mileage at the time of the Covered Repair, a description of the repair work performed including the parts repaired/replaced and a breakdown of parts and labor costs, and the amount charged (parts and labor), for the Covered Repair; (2) records, receipts and/or invoices demonstrating that the Settlement Class Member paid for the Covered Repair; and (3) in the event the claimant is not the person or entity identified on the Class Notice mailing, proof of the claimant's ownership or lease of the Settlement Class Vehicle at the time of the Covered Repair.

T. "Released Claims" or "Settled Claims"

"Released Claims" or "Settled Claims" means any and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, entitlements, losses, actions, rights of action, costs, expenses, and remedies of any kind, nature and description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, and regardless of any legal or equitable theory, existing now or arising in the future, by Plaintiffs and any and all Settlement Class Members (including their successors, heirs, assigns and representatives) which, in any way, allege, arise from, or relate to any actual, potential, or claimed failure or malfunction of a Settlement Class Vehicle's Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist feature(s) of the EyeSight system, and any component parts thereof, any consequences, damage or loss relating

thereto, and any technical service bulletins, tech tips, and campaigns and notices that may address or relate to same, including but not limited to all matters that were asserted or could have been asserted in the Action, and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, entitlements, losses, actions, rights of action and remedies of any kind, nature and description, arising under any state, federal or local statute, law, rule and/or regulation including any consumer protection, consumer fraud, unfair or deceptive business or trade practices, false or misleading advertising, and/or other sales, marketing, advertising and/or consumer statutes, laws, rules and/or regulations, under any common law cause of action or theory, and under any legal or equitable causes of action or theories whatsoever, and on any basis whatsoever including contract, products liability, express warranty, implied warranty, negligence, fraud, misrepresentation, concealment, false or misleading advertising or marketing, unfair, deceptive and/or inequitable business practice, consumer protection, express or implied covenants, restitution, quasi-contract, unjust enrichment, injunctive relief of any kind and nature, including but not limited to the California Song-Beverly Consumer Warranty Act, California Consumer Legal Remedies Act, Florida Deceptive and Unfair Trade Practices Act, Illinois Consumer Fraud and Deceptive Business Practices Act, New Hampshire Consumer Protection Act, New York General Business Law § 349, New York General Business Law § 350, North Carolina Unfair and Deceptive Trade Practices Act, Pennsylvania Unfair Trade Practices and Consumer Protection Law, Uniform Commercial Code and any and all other or similar federal, state or local statutes, laws, rules or derivations thereof, any state Lemon Laws, secret warranty, and/or any other theory of liability and/or recovery whatsoever, whether in law or in equity, and for any and all injuries, losses, damages, remedies (legal or equitable), costs, recoveries or entitlements of any kind, nature and description, under statutory and/or common law, and including, but not limited to,

compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, statutory penalties or rights, restitution, unjust enrichment, injunctive relief, costs, expenses and/or counsel fees, and any other legal or equitable relief or theory of relief. This Settlement Agreement expressly exempts from the Released Claims all claims for personal injuries and property damage (other than for damage to the Settlement Class Vehicle itself).

U. "Released Parties"

"Released Parties" means any Subaru entity, including, but not limited to, Subaru of America, Inc., Subaru Corporation, Subaru USA Holdings, Inc., Subaru of Indiana Automotive, Inc., North American Subaru, Inc., and each of their designers, manufacturers, assemblers, distributors, importers, retailers, marketers, advertisers, testers, inspectors, sellers, suppliers, component suppliers, lessors, warrantors, dealers, repairers and servicers of the Settlement Class Vehicles and each of their component parts and systems, all of their past and present directors, officers, shareholders, principals, partners, employees, agents, servants, assigns and representatives, and all of the aforementioned persons' and entities' attorneys, insurers, trustees, vendors, contractors, heirs, executors, administrators, successors, successor companies, subsidiary companies, parents, affiliates, divisions, trustees and representatives.

V. "Settlement Class" or "Settlement Class Members"

"Settlement Class" or "Settlement Class Members" means: "All persons and entities who purchased or leased a Settlement Class Vehicle, as defined in Section I.X. of this Agreement, in the continental United States of America."

Excluded from the Settlement Class are: (a) all Judges who have presided over the Action and their spouses; (b) all current employees, officers, directors, agents and representatives of Defendant, and their family members; (c) any affiliate, parent or subsidiary of Defendant and any entity in which Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e)

anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of this Agreement, settled with and released Defendant or any Released Parties from any Released Claims, and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class that is accepted by the Court.

W. "Settlement Class Representatives"

"Settlement Class Representatives" mean named Plaintiffs James Sampson, Janet Bauer, Lisa Harding, Barbara Miller, Shirley Reinhard, Celeste Sandoval, Xavier Sandoval, Danielle Lovelady Ryan, and Elizabeth Wheatley.

X. "Settlement Class Vehicles"

"Settlement Class Vehicles" means certain of the following model year 2013 through 2024 Subaru vehicles, distributed by SOA in the continental United States, that are (i) equipped with Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist features of EyeSight, and (ii) specifically identified by vehicle identification number ("VIN") on a VIN List that is annexed as Exhibit 5 to this Agreement: certain model year 2013-2022 Subaru Legacy vehicles; model year 2013-2022 Subaru Outback vehicles; model year 2015-2023 Subaru Impreza vehicles; model year 2015-2023 Subaru Crosstrek vehicles; model year 2014-2021 Subaru Forester vehicles; model year 2019-2022 Subaru Ascent vehicles; model year 2016-2021 Subaru WRX vehicles; and model year 2022-2024 Subaru BRZ vehicles.

II. SETTLEMENT CONSIDERATION

In consideration for the full and complete Release of all Released Claims against the Defendant and all Released Parties, and the dismissal of the Action with prejudice, SOA agrees to provide the following consideration to the Settlement Class:

A. Warranty Extension for Current Owners and Lessees of Settlement Class Vehicles

Effective on the Notice Date, SOA will extend its New Vehicle Limited Warranties ("NVLWs") applicable to the Settlement Class Vehicles to cover seventy-five percent (75%) of the cost of a Covered Repair, by an authorized Subaru retailer during a period of up to forty-eight (48) months or forty-eight thousand (48,000) miles (whichever occurs first) from the Settlement Class Vehicle's In-Service Date.

If a particular Settlement Class Vehicle's Warranty Extension time period has already expired as of the Notice Date, then for that Settlement Class Vehicle, the time limitation of the Warranty Extension shall be extended until four (4) months from the Notice Date, subject to the other conditions set forth above.

The Warranty Extension is subject to the same terms, conditions, limitations and exclusions set forth in the Settlement Class Vehicle's original NVLW and Warranty and Maintenance Booklet, and shall be fully transferable to subsequent owners to the extent that its time and mileage limitation periods have not expired.

The Warranty Extension shall not cover damage to or malfunction of any aspect of Pre-Collision Braking, Rear Automatic Braking, or Lane Keep Assist resulting from an accident or crash, misuse, abuse, modification, movement, displacement of and/or damage to the system components (identified in "Covered Repair" definition), weather and/or environmental conditions, and/or from any outside source or factor.

B. Reimbursement of Certain Past Paid Out-of-Pocket Expenses For A Covered Repair (For Current and Prior Owners and Lessees of Settlement Class Vehicles)

1. **Reimbursement**: If a Settlement Class Member paid (and was not otherwise reimbursed) for the cost of a Covered Repair prior to the Notice Date and within forty-eight (48) months or forty-eight thousand (48,000) miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, then he/she/it may submit a Claim (a fully completed, signed and dated Claim Form together with all required Proof of Repair Expense and other documentation) to receive a reimbursement of seventy-five percent (75%) of the paid invoice amount (parts and labor) of one (1) such Covered Repair.

Reimbursement under this Section is subject to the Limitations, Conditions and Claim requirements set forth in Sections II.B.2 and II.B.3 below.

2. **Limitations and Other Conditions:**

a. Any reimbursement under this Section shall be reduced by goodwill or other amount or concession paid by SOA, an authorized Subaru retailer, any other entity (including insurers and providers of extended warranties or service contracts), or by any other source. If the Settlement Class Member received a free Covered Repair, or was otherwise reimbursed the full amount for the Covered Repair, then they will not be entitled to any reimbursement.

b. Defendant shall not be responsible for, and shall not warrant, repair/replacement work performed at any service center or facility that is not an authorized Subaru retailer.

c. A past paid Covered Repair shall not be eligible for, and shall be excluded from, reimbursement if documentation reflects that the Covered Repair or its underlying need resulted from an accident or crash, misuse, abuse, modification, movement, displacement of and/or damage

to the Eyesight system components (identified in the "Covered Repair" definition), weather and/or environmental conditions, and/or from any outside source or factor.

d. If the Covered Repair was performed during the Settlement Class Vehicle's original NVLW period, but not by an authorized Subaru retailer, then the Settlement Class Member must also submit, together with the other proof and submission requirements, documentation (such as a written estimate or invoice), or if documents are not available after a good-faith effort to obtain them, a Declaration signed under penalty of perjury confirming that the Settlement Class Member first attempted to have the Covered Repair performed by an authorized Subaru retailer, but the retailer declined or was unable to perform the repair free of charge pursuant to the NVLW.

3. <u>Requirements for a Valid and Timely Claim for Reimbursement:</u>

a. In order to submit a valid and timely Claim for Reimbursement pursuant to Section II.B. of this Agreement, the Settlement Class Member must mail to the Settlement Claim Administrator, post-marked within the Claim Period (no later than 60-days after the Notice Date), or submit to the Settlement Claim Administrator online through the Settlement Website (no later than 60-days after the Notice Date), a fully completed, signed and dated Claim Form, together with the required Proof of Repair Expense and any other required proof set forth in this Agreement.

b. If the claimant is not a person to whom the Claim Form was addressed, and/or the vehicle with respect to which a Claim is made is not the vehicle identified by VIN on the mailed Claim Form, the Claim must contain proof that the claimant is a Settlement Class Member and that the vehicle that is the subject of the Claim is a Settlement Class Vehicle.

c. The Claim Form and supporting documentation must demonstrate the Settlement Class Member's right to reimbursement, for the amount requested, under the terms and conditions of this Settlement Agreement.

III. CLAIMS ADMINISTRATION

A. Costs of Administration and Notice

As between the Parties, SOA shall be responsible for the Claim Administrator's reasonable costs of class notice and claim administration. The Parties retain the right to audit and review the Claims handling by the Claim Administrator, and the Claim Administrator shall report to both parties jointly.

B. Claim Administration

1. Only timely Claims that are complete and which satisfy the Settlement criteria for reimbursement can be approved for payment. For each approved reimbursement claim, the Claim Administrator, on behalf of SOA, shall mail to the Settlement Class Member, at the address listed on the Claim Form, a reimbursement check to be sent within one hundred fifty (150) days of the date of receipt of the completed Claim, or within one hundred fifty (150) days of the Effective Date, whichever is later. The reimbursement checks shall remain valid for 180 days. The Settlement Class Member may make one (1) request for reissuance of an expired un-negotiated check from the Claims Administrator within 225 days of its original issuance.

2. The Claim Administrator's denial of any Claim in whole or in part shall be binding and non-appealable, except that Class Counsel and Defendant's counsel may confer and attempt to resolve in good faith any disputed denial by the Claim Administrator.

3. If the Claims Administrator initially determines that the Claim Form is incomplete, deficient or otherwise not fully completed, signed and/or dated, and/or that supporting documentation is missing, deficient, or otherwise incomplete, then the Claim Administrator will send the Settlement Class Member a letter or notice by regular mail advising of the deficiency(ies) in the Claim Form and/or the documentation. The Settlement Class Member will then have until thirty (30) days after the date of said letter/notice to mail a response to the Claim Administrator

that cures all said deficiencies and supplies all missing or deficient information and documentation, or the claim will be denied.

4. If a Claim is denied in whole or in part, either for not meeting the Settlement criteria for reimbursement, or for failure to timely cure any deficiencies or missing or incomplete information/documentation, the Claim Administrator will so notify the Settlement Class Member by sending a letter or notice of the denial by regular mail. Any Settlement Class Member whose claim is denied shall have fourteen (14) days from the date of the Claim Administrator's letter/notice of denial to request an "attorney review" of the denial by emailing the Claim Administrator, after which time Class Counsel and Defense Counsel shall meet and confer and determine whether said denial, based upon the Claim Form and documentation previously submitted, was correct under the terms of the Settlement, whether the denial should be modified if it is not correct, and/or whether any disputed issues can amicably be resolved. The Claim Administrator will thereafter advise the Settlement Class Member of the attorney review determination, which shall be binding and not appealable.

IV. NOTICE

A. To Attorneys General: In compliance with the Attorney General notification provision of the Class Action Fairness Act, 28 U.S.C. § 1715, the Claim Administrator shall provide notice of this proposed Settlement to the Attorney General of the United States, and the Attorneys General of each state in which a known Settlement Class Member resides. The Claim Administrator shall also provide contemporaneous notice to the Parties.

B. To Settlement Class: The Claim Administrator shall be responsible for the following Settlement Class Notice Plan:

1. On an agreed upon date with the Claim Administrator, but in no event more than one hundred twenty (120) days after entry of the Preliminary Approval Order, the Claim Administrator shall cause individual post-card Class Notice, substantially in the form attached hereto as Exhibit 2, to be mailed, by first class mail, to the current or last known addresses of all reasonably identifiable Settlement Class Members. A longer form Class Notice, substantially in the form attached hereto as Exhibit 3, and a Claim Form, substantially in the form attached hereto as Exhibit 1, will be made available on the Settlement Website. Defendant SOA may format the Class Notice in such a way as to minimize the cost of the mailing, so long as Settlement Class Members can reasonably read it and Class Counsel approves all changes and formatting. The Claim Administrator shall be responsible for mailing of the Class Notice.

2. For purposes of identifying Settlement Class Members, the Claim Administrator shall obtain from Polk/IHS Markit or an equivalent company (such as Experian) the names and current or last known addresses of Settlement Class Vehicle owners and lessees that can reasonably be obtained, based upon the VINs of Settlement Class Vehicles to be provided by SOA.

3. Prior to mailing the Class Notice, the Claim Administrator shall conduct an address search through the United States Postal Service's National Change of Address database to update the address information for Settlement Class Vehicle owners and lessees. For each individual Class Notice that is returned as undeliverable, the Claim Administrator shall re-mail all Class Notices where a forwarding address has been provided. For the remaining undeliverable notice packets where no forwarding address is provided, the Claim Administrator shall perform an advanced address search (e.g., a skip trace) and re-mail any undeliverable to the extent any new and current addresses are located.

4. The Claim Administrator shall diligently, and/or as reasonably requested by Class Counsel or Defense counsel, report to Class Counsel and Defense counsel the number of individual Class Notices originally mailed to Settlement Class Members, the number of individual Class Notices initially returned as undeliverable, the number of additional individual Class Notices mailed after receipt of a forwarding address, and the number of those additional individual Class Notices returned as undeliverable.

5. The Claim Administrator shall, upon request, provide Class Counsel and Defense counsel with the names and addresses of all Settlement Class Members to whom the Claim Administrator sent a Class Notice pursuant to this section.

6. The Claim Administrator shall implement a Settlement website that contains the following information:

(i) instructions on how to submit a Claim for Reimbursement by mail;

(ii) instructions on how to contact the Claim Administrator, Class Counsel and Defense Counsel for assistance;

(iii) a copy of the Claim Form, Class Notice, this Settlement Agreement, the Preliminary Approval Order, the Motion for Final Approval, Class Counsel's Fee and Expenses Application, any submissions by Defendant in support of final approval, and other pertinent orders and documents to be agreed upon by counsel for the Parties; and

(iv) the deadlines for any objections, requests for exclusion and mailing of claims, the date, time and location of the final fairness hearing, and any other relevant information agreed upon by counsel for the Parties.

7. No later than ten (10) days after the Notice Date, the Claim Administrator shall provide an affidavit or declaration to Class Counsel and Defense counsel, attesting that the Class Notice was disseminated in a manner consistent with the terms of the Class Notice Plan of this Agreement or those required by the Court and agreed by counsel.

8. Notification to authorized Subaru retailers: Prior to the Notice Date, SOA will advise authorized Subaru retailers of the Settlement's Warranty Extension, so that the Warranty Extension may be implemented in accordance with the terms and conditions of this Settlement Agreement. Defense Counsel will confirm with Class Counsel that SOA has notified authorized retailers of the Settlement's Warranty Extension.

V. RESPONSE TO NOTICE

A. Objection to Settlement

Any Settlement Class Member who intends to object to the fairness of this Settlement Agreement and/or to Class Counsel's Fee and Expense Application must, by the date specified in the Preliminary Approval Order, which date shall be approximately thirty (30) days after the Notice Date, either (i) file any such objection, together with any supporting briefs and/or documents, with the Court either in person at the Clerk's Office of the United States District Court for the District of New Jersey, located at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, or (ii) file same in this Action via the Court's electronic filing system, or (iii) if not filed in person or via the Court's electronic system, then, by U.S. first-class mail post-marked within the said 30-day deadline, mail the objection, together with any supporting briefs and/or documents, to the United States District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, and also, by U.S. first-class mail post-marked within said deadline, serve same upon the following counsel for the Parties: Capstone Law APC, Attn: Cody Padgett, 1875 Century Park East, Suite 1000, Los Angeles, California 90067, on behalf of Plaintiffs, and Homer B. Ramsey, Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, New York 10020, on behalf of Defendant.

1. Any objecting Settlement Class Member must include with his or her objection:

(a) the objector's full name, address, and telephone number,

(b) the model, model year and Vehicle Identification Number of the Settlement Class Vehicle, along with proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt);

(c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and

(d) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection;

(e) the name and address of the lawyer(s), if any, who is/are representing the objecting Settlement Class Member in making the objection;

(f) a statement of whether the objecting Settlement Class Member intends to appear at the Final Fairness Hearing, either with or without counsel, and the identity(ies) of any counsel who will appear on behalf of the Settlement Class Member objection at the Final Fairness Hearing; and

(g) a list of all other objections submitted by the objector, and/or the objector's counsel, to any class action settlements in any court in the United States in the previous five (5) years, including the full case name with jurisdiction in which it was filed and the docket number. If the Settlement Class Member and/or his/her/its counsel has not objected to any other class action settlement in the United States in the previous five years, then he/she/it shall affirmatively so state in the objection.

2. Any Settlement Class Member who has not timely and properly filed an objection in accordance with the deadlines and requirements set forth herein shall be deemed to have waived

and relinquished his/her/its right to object to any aspect of the Settlement, or any adjudication or review of the Settlement, by appeal or otherwise.

3. Subject to the approval of the Court, any timely and properly objecting Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing to explain the bases for the objection to final approval of the proposed Settlement and/or to any motion for Class Counsel Fees and Expenses or incentive awards. In order to appear at the Final Fairness Hearing, the objecting Settlement Class Member must, no later than the objection deadline, file with the Clerk of the Court, and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence and identity of any witnesses that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) intends to present to the Court in connection with the Final Fairness Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other specifications set forth herein and in the Settlement Agreement and Class Notice, or who has not filed an objection that complies in full with the deadline and other requirements set forth in the Settlement Agreement and Class Notice, shall be deemed to have waived and relinquished any right to appear, in person or by counsel, at the Final Fairness Hearing.

B. Request for Exclusion from the Settlement

1. Any Settlement Class Member who wishes to be excluded from the Settlement Class must timely mail a request for exclusion ("Request for Exclusion") to the Claim Administrator and to Class Counsel and Defense Counsel at the addresses specified in the Class Notice, by the deadline set forth below and specified in the Preliminary Approval Order. To be effective, the Request for Exclusion must be timely mailed to the specified addresses below and:

(a) include the Settlement Class Member's full name, address and telephone number;

(b) identify the model, model year and VIN of the Settlement Class Vehicle; and

(c) state that he/she/it is or was a present or former owner or lessee of a Settlement Class Vehicle; and

(d) specifically and unambiguously state his/her/its desire to be excluded from the Settlement Class.

2. Any Request for Exclusion must be postmarked on or before the deadline set by the Court, which date shall be approximately thirty (30) days after the Notice Date, and mailed to all of the following: JND Legal Administration, 1100 2nd Ave., Suite 300, Seattle, WA 98101, the Claims Administrator: Russell D. Paul, Berger Montague PC, 1818 Market Street, Suite 3600, Philadelphia, PA 19103 on behalf of Class Counsel: and Homer B. Ramsey, Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, NY 10020 on behalf of Defense Counsel. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion mailed to the proper addresses, shall be subject to and bound by this Settlement Agreement, the Release, and every order or judgment entered relating to this Settlement Agreement.

3. Class Counsel and Defense Counsel will review the purported Requests for Exclusion and determine whether they meet the requirements of a valid and timely Request for Exclusion. Any Request for Exclusion which is untimely and/or does not meet the above requirements for a valid Request for Exclusion shall not be accepted and shall not be effective. The Claim Administrator will maintain a database of all Requests for Exclusion, and will send

written communications memorializing those Requests for Exclusion to Class Counsel and Defense counsel. The Claim Administrator shall report the names of all such persons and entities requesting exclusion, and the VINs of the Settlement Class Vehicles owned or leased by the persons and entities requesting exclusion, to the Court, Class Counsel and Defense Counsel at least eighteen (18) days prior to the Final Fairness Hearing. The list of persons and entities deemed by the Court to have timely and properly excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

VI. WITHDRAWAL FROM SETTLEMENT

Plaintiffs or Defendant shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if any of the following occurs:

1. Any objection to the proposed Settlement is sustained and such objection results in changes to this Agreement that the withdrawing party deems in good faith to be material (e.g., because it increases the costs of the Settlement, alters the Settlement, or deprives the withdrawing party of a material benefit of the Settlement; a mere delay of the approval and/or implementation of the Settlement including a delay due to an appeal procedure, if any, shall not be deemed material); or

2. The preliminary or final approval of this Settlement Agreement is not obtained without modification, and any modification required by the Court for approval is not agreed to by both parties and the withdrawing party deems any required modification in good faith to be material (e.g., because it increases the cost of the Settlement, alters the Settlement, or deprives the withdrawing party of a benefit of the Settlement; a mere delay of the approval and/or implementation of the Settlement including a delay due to an appeal procedure, if any, shall not be deemed material); or

3. Entry of the Final Order and Judgment described in this Agreement is vacated by the Court or reversed or substantially modified by an appellate court, except that a reversal or modification of an order awarding reasonable attorneys' fees and expenses, if any, shall not be a basis for withdrawal; or

4. In addition to the above grounds, the Defendant shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if more than five-percent (5%) of the persons and entities identified as being members of the Settlement Class exclude themselves from the Settlement Class. If Defendant withdraws from the Settlement Agreement on this basis, then neither Plaintiffs nor Class Counsel will be responsible for costs incurred by the Claims Administrator up to the date of withdrawal.

5. To withdraw from this Settlement Agreement under this paragraph, the withdrawing Party must provide written notice to the other Party's counsel and to the Court within ten (10) business days of receipt of any order or notice of the Court modifying, adding or altering any of the material terms or conditions of this Agreement. In the event either Party withdraws from the Settlement, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Action, and shall not be offered in evidence or used in the Action or any other litigation or proceeding for any purpose, including the existence, certification or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be inadmissible as evidence and without prejudice to the Defendant and Plaintiffs, and shall not be deemed or construed to be an admission or confession by any party of any fact, claim, matter or proposition of law, and shall not be used in any manner for any purpose, and all parties to the Action shall stand in the same position as if this Settlement Agreement had not been

negotiated, made or filed with the Court. Upon withdrawal, either party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

6. A change in law, or change of interpretation of present law, that affects this Settlement shall not be grounds for withdrawal from the Settlement.

VII. ADMINISTRATIVE OBLIGATIONS

A. In connection with the administration of the Settlement, the Claim Administrator shall maintain a record of all contacts from Settlement Class Members regarding the Settlement, any Claims submitted pursuant to the Settlement and any responses thereto. The Claim Administrator, on a monthly basis, shall provide to Class Counsel and Defense Counsel summary information concerning the number of Claims made, number of Claims approved, the number of Claims denied, the number of Claims determined to be deficient, and total dollar amount of payouts on Claims made, such that Class Counsel and Defense Counsel may inspect and monitor the claims process.

B. Except as otherwise stated in this Agreement, as between the Parties, the reasonable costs of the Claim Administrator in dissemination of the Class Notice and administration of Settlement reimbursement claims pursuant to the terms of this Agreement shall be borne by SOA.

VIII. SETTLEMENT APPROVAL PROCESS

A. Preliminary Approval of Settlement

Promptly after the execution of this Settlement Agreement, Class Counsel shall present this Settlement Agreement to the Court, along with a motion requesting that the Court issue a Preliminary Approval Order substantially in the form attached as Exhibit 4.

B. Final Approval of Settlement

1. If this Settlement Agreement is preliminarily approved by the Court, and pursuant to a schedule set forth in the Preliminary Approval Order or otherwise agreed by the Parties, Class Counsel shall present a motion requesting that the Court grant final approval of the Settlement and issue a Final Order and Judgment directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b) substantially in a form to be agreed by the Parties.

2. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. Such best efforts shall include taking all reasonable steps to secure entry of a Final Order and Judgment, as well as supporting the Settlement and the terms of this Settlement Agreement through any appeal.

C. Plaintiffs' Application for Reasonable Class Counsel Fees and Expenses and Class Representative Service Awards

1. After the Parties reached an agreement on the material terms of this Settlement, the Parties commenced efforts to negotiate the issue of Class Counsel Fees and Expenses and Class Representative service awards. As a result of adversarial arm's length negotiations occurring thereafter, the Parties hereby agree that Class Counsel may apply to the Court ("Fee and Expense Application") for a combined award of reasonable attorneys' fees, costs and expenses (hereinafter, collectively, "Class Counsel Fees and Expenses") in an amount up to, but not exceeding, the total combined sum of Two Million Five Hundred Thousand Dollars ($2,500,000) for all Class Counsel and all fees, costs and expenses collectively. Class Counsel may apply for such an award, up to that total combined sum, on or before twenty-one (21) days prior to the deadline in the Preliminary

Approval Order for objections and/or requests for exclusion, or as otherwise directed by the Court. Defendant will not oppose a request for Class Counsel Fees and Expenses that does not exceed said total combined and collective sum of up to Two Million Five Hundred Thousand Dollars ($2,500,000), and Class Counsel shall not seek or be awarded, nor shall Class Counsel accept, any amount of Class Counsel Fees and Expenses exceeding said total combined and collective sum. The award of reasonable Class Counsel Fees and Expenses, to the extent consistent with this Agreement, shall be paid by Defendant as set forth below, and shall not reduce or in any way affect any benefits available to the Settlement Class pursuant to this Agreement.

The Parties also agree that Class Counsel may apply to the Court for a total of eight reasonable service awards of up to, but not exceeding, $5,000 each to the following named Plaintiffs who will seek to serve as Settlement Class Representatives: James Sampson, Janet Bauer, Lisa Harding, Barbara Miller, Shirley Reinhard, Celeste and Xavier Sandoval (to receive only one award of $5,000 collectively), Danielle Lovelady Ryan, and Elizabeth Wheatley, to be paid by Defendant as set forth below. Defendant will not oppose Plaintiffs' request, made as part of the Fee and Expense Application, for a Service Award of up to and not exceeding said amounts to the aforesaid Plaintiff-Settlement Class Representatives.

2. The Class Counsel Fees and Expenses and Settlement Class Representative Service Awards, to the extent consistent with this Agreement, shall be paid as directed by the Court by wire transfer to Berger Montague PC within thirty (30) days after the later of the Effective Date of the Settlement or the date of entry of the Final Order and Judgment for attorney fees, expenses, and service awards, including final termination or disposition of any appeals relating thereto. Said payment to Berger Montague PC shall fully satisfy, release and discharge all obligations of Defendant and the Released Parties with respect to payment of the Class Counsel Fees and

Expenses, any attorneys' fees and expenses in connection with this Action, and Settlement Class Representative service awards, and Berger Montague PC shall thereafter have sole responsibility to distribute the appropriate portions of said payment to the other Class Counsel as agreed among them and/or directed by the Court, and to the Settlement Class Representatives.

3. The procedure for, and the grant, denial, allowance or disallowance by the Court of the Fee and Expense Application, are not part of the Settlement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Any order or proceedings relating solely to the Fee and Expense Application, or any appeal from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the Effective Date of the Settlement if it is granted final approval by the Court. Payment of Class Counsel Fees and Expenses and the Settlement Class Representatives' Service Awards will not reduce the benefits to which Settlement Class Members may be eligible under the Settlement terms, and the Settlement Class Members will not be required to pay any portion of the Class Counsel Fees and Expenses and Settlement Class Representative Service Awards.

D. Release of Plaintiffs' and Settlement Class Members' Claims

1. Upon the Effective Date, the Plaintiffs and each and every Settlement Class Member shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, completely and forever released, acquitted and discharged the Defendant and all Released Parties from all Released Claims.

2. Upon the Effective Date, with respect to the Released Claims, the Plaintiffs and all Settlement Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in

his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. Upon the Effective Date, the Action will be deemed dismissed with prejudice, and Class Counsel shall procure any necessary Orders from the appropriate courts, and file any necessary documents, dismissing said Actions with prejudice.

IX. MISCELLANEOUS PROVISIONS

A. Effect of Exhibits

The exhibits to this Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Agreement.

B. No Admission of Liability

Neither the existence of this Agreement, any provision or content thereof, any documents prepared and/or filed in connection therewith, the negotiations that preceded it, nor any action taken hereunder, shall constitute, be deemed, be considered or construed as, and/or be admissible in any judicial or non-judicial action or proceeding as: (i) any evidence or admission of the validity of, or concerning, any claim, allegation or fact that was or could have been alleged in the Action, and/or of (ii) any wrongdoing, fault, violation of law, or liability or damages of any kind and nature on the part of Defendant and the Released Parties. The Parties understand and agree that neither this Agreement, any documents prepared and/or filed in connection therewith, nor the negotiations that preceded it, shall be offered or be admissible in evidence against Defendant, the Released Parties, the Plaintiffs or the Settlement Class Members, or cited or referred to in the Action or any action or proceeding (judicial or otherwise), except as needed to enforce the terms of this Agreement, its Release of Claims against the Released Parties, and the Final Order and Judgment herein.

C. Entire Agreement

This Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements and understandings relating to the subject matter of this Agreement. The Parties acknowledge, stipulate and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or understanding concerning any part or all of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. No modification or waiver of any provisions of this Agreement shall in any event be effective unless the same shall be in writing and signed by the person or party against whom enforcement of the Agreement is sought.

D. Arm's-Length Negotiations and Good Faith

The Parties have negotiated all of the terms and conditions of this Agreement at arm's-length and in good faith. All terms, conditions and exhibits in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. In addition, the Parties hereby acknowledge that they have had ample opportunity to, and that they did, confer with counsel of their choice regarding, and before executing, this Agreement, and that this Agreement is fully entered into voluntarily, with free will, and without any duress whatsoever.

E. Continuing Jurisdiction

The Parties agree that the Court may retain continuing and exclusive jurisdiction over them, including all Settlement Class Members, for the purpose of the administration and enforcement of this Agreement.

F. Binding Effect of Settlement Agreement

This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, attorneys, executors, administrators, heirs, successors and assigns.

G. Extensions of Time

The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice (subject to Court approval as to Court dates).

H. Service of Notice

Whenever, under the terms of this Agreement, a person is required to provide service or written notice to Defense counsel or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other parties in writing, of a successor individual or address:

As to Plaintiffs:
Russell D. Paul, Esq.
Berger Montague PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103

As to Defendant:
Homer B. Ramsey, Esq.
Shook, Hardy & Bacon L.L.P.
1 Rockefeller Plaza, Suite 2801
New York, NY 10020

I. Authority to Execute Settlement Agreement

Each counsel or other person executing this Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

J. Return of Confidential Materials

All documents and information designated as "confidential" and produced or exchanged in the Action, shall be returned or destroyed within thirty (30) days after entry of the Final Order and Judgment.

K. No Assignment

The Parties represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the litigation or any related action.

L. No Third-Party Beneficiaries

This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party (other than Settlement Class Members themselves) as a beneficiary of this Agreement. However, this does not apply to, or in any way limit, any Released Party's right to enforce the Release of Claims set forth in this Agreement.

M. Construction

The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement and, therefore, the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

N. Captions

The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

IN WITNESS HEREOF, the Parties have caused this Agreement to be executed, by their duly authorized attorneys, as of the date(s) indicated on the lines below.

ON BEHALF OF PLAINTIFFS:

Dated: January 15, 2025

DocuSigned by:
James Sampson
4E55181AF0AAB...
James Sampson

Dated: February 5, 2025

DocuSigned by:
48485948A2064FA...
Janet Bauer

Dated: February____, 2025

Lisa Harding

Dated: February____, 2025

Barbara Miller

Dated: January____, 2025

Shirley Reinhard

Dated: January____, 2025

Celeste Sandoval

Dated: January____, 2025

Xavier Sandoval

Dated: January____, 2025

Danielle Lovelady Ryan

Dated: January____, 2025

Elizabeth Wheatley

Dated: January____, 2025

Russell D. Paul
BERGER MONTAGUE PC
1818 Market Street, Suite 3600

Dated: February____, 2025

Janet Bauer

Dated: February 21, 2025

Signed by:
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Lisa Harding

Dated: February____, 2025

Barbara Miller

Dated: January____, 2025

Shirley Reinhard

Dated: January____, 2025

Celeste Sandoval

Dated: January____, 2025

Xavier Sandoval

Dated: January____, 2025

Danielle Lovelady Ryan

Dated: January____, 2025

Elizabeth Wheatley

Dated: January____, 2025

Russell D. Paul
BERGER MONTAGUE PC
1818 Market Street, Suite 3600

Dated: February____, 2025

Janet Bauer

Dated: February____, 2025

Lisa Harding

Dated: February 5____, 2025

DocuSigned by:
BARBARA MILLER
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Dated: January____, 2025

Shirley Reinhard

Dated: January____, 2025

Celeste Sandoval

Dated: January____, 2025

Xavier Sandoval

Dated: January____, 2025

Danielle Lovelady Ryan

Dated: January____, 2025

Elizabeth Wheatley

Dated: January____, 2025

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BERGER MONTAGUE PC
1818 Market Street, Suite 3600

Dated: January____, 2025

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Janet Bauer

Dated: January____, 2025

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Lisa Harding

Dated: January____, 2025

_____
Barbara Miller

Dated: January 14, 2025

DocuSigned by:
Shirley Reinhard
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Shirley Reinhard

Dated: January____, 2025

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Celeste Sandoval

Dated: January____, 2025

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Xavier Sandoval

Dated: January____, 2025

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Danielle Lovelady Ryan

Dated: January____, 2025

_____
Elizabeth Wheatley

Dated: January____, 2025

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Russell D. Paul
BERGER MONTAGUE PC
1818 Market Street, Suite 3600

Dated: January____, 2025

Janet Bauer

Dated: January____, 2025

Lisa Harding

Dated: January____, 2025

Barbara Miller

Dated: January____, 2025

Shirley Reinhard

Dated: January 28, 2025

Celeste Sandoval

Dated: January 28, 2025

Xavier Sandoval

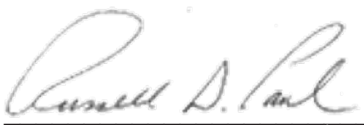
Dated: January____, 2025

Danielle Lovelady Ryan

Dated: January____, 2025

Elizabeth Wheatley

Dated: January 28, 2025



Russell D. Paul
BERGER MONTAGUE PC
1818 Market Street, Suite 3600

Dated: January____, 2025

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Janet Bauer

Dated: January____, 2025

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Lisa Harding

Dated: January____, 2025

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Barbara Miller

Dated: January____, 2025

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Shirley Reinhard

Dated: January 28, 2025

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Celeste Sandoval

Dated: January 28, 2025

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Xavier Sandoval

Dated: January____, 2025

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Dated: January____, 2025

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Dated: January____, 2025

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Barbara Miller

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Shirley Reinhard

Dated: January____, 2025

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Dated: January____, 2025

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Xavier Sandoval

Dated: January 14, 2025

Signed by:
_____
Danielle Lovelady Ryan

Dated: January____, 2025

_____
Elizabeth Wheatley

Dated: January____, 2025

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Russell D. Paul
BERGER MONTAGUE PC
1818 Market Street, Suite 3600

Dated: January____, 2025

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Dated: January____, 2025

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Dated: January____, 2025

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Barbara Miller

Dated: January____, 2025

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Shirley Reinhard

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Celeste Sandoval

Dated: January____, 2025

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Xavier Sandoval

Dated: January____, 2025

_____
Danielle Lovelady Ryan

Dated: January 15, 2025

DocuSigned by:
_____
Elizabeth Wheatley

Dated: January____, 2025

_____
Russell D. Paul
BERGER MONTAGUE PC
1818 Market Street, Suite 3600

Philadelphia, PA 19103
Settlement Class Counsel

Dated: February 21, 2025

Cody Padgett
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Settlement Class Counsel

Dated: January____, 2025

Samuel M. Ward
BARRACK, RODOS & BACINE
600 West Broadway, Suite 900
San Diego, CA 92101
Settlement Class Counsel

ON BEHALF OF DEFENDANT:

Dated: January____, 2025

Homer B. Ramsey
Michael B. Gallub
SHOOK, HARDY & BACON L.L.P.
1 Rockefeller Plaza, Suite 2801
New York, New York 10020
Counsel for Subaru of America, Inc.

Philadelphia, PA 19103
Settlement Class Counsel

Dated: January____, 2025

Cody Padgett
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Settlement Class Counsel

Dated: January 28, 2025

Samuel M. Ward
BARRACK, RODOS & BACINE
600 West Broadway, Suite 900
San Diego, CA 92101
Settlement Class Counsel

ON BEHALF OF DEFENDANT:

Dated: ~~January____, 2025~~ MARCH 20, 2025

Homer B. Ramsey
Michael B. Gallub
SHOOK, HARDY & BACON L.L.P.
1 Rockefeller Plaza, Suite 2801
New York, New York 10020
Counsel for Subaru of America, Inc.

EXHIBIT 1

SUBARU EYESIGHT SETTLEMENT REIMBURSEMENT CLAIM FORM

You Must Timely Complete, Sign and Submit This Form and Provide the Specified Records and Declaration(s) to Receive One 75% Reimbursement of Out-of-Pocket Expenses Paid Prior to the Notice Date and Within 48 Months or 48,000 Miles (Whichever Occurred First) from the Settlement Class Vehicle's In-Service Date for a Covered Repair of the Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist feature(s) of the EyeSight system, under the Terms of the Settlement Agreement in *Sampson. v. Subaru of America, Inc.*, No. 1:21-cv-10842-ESK-SAK (U.S. Dist. Ct., Dist. of New Jersey)

STEPS FOR SUBMITTING A CLAIM FOR REIMBURSEMENT:

(1) Verify Your Contact Information:

First Name: *MI:* *Last Name:*

Address:

City: *State:* *ZIP Code:*

Telephone Number: – –

Vehicle ID Number (VIN):

Vehicle Make:

Vehicle Model:

(2) Provide a repair invoice, receipt, or other records (original or legible copies) for the repair:

The repair invoice, receipt, or records submitted MUST include the following information:

(a) Your name;

(b) The make, model, and Vehicle Identification Number (VIN) of your Settlement Class Vehicle that was repaired;

(c) The name and address of the authorized Subaru dealership or other service facility that performed the repair;

(d) The date of the repair and the mileage of your Settlement Class Vehicle at the time of repair;

(e) That the repair was for a diagnosed and confirmed malfunction or failure of a Settlement Class Vehicle's Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist feature of the EyeSight system that resulted from failure or malfunction of the EyeSight camera assembly and/or rear sonar sensors;

(f) A description of the repair work performed including the parts repaired/replaced and a breakdown of parts and labor costs, and the amount charged (parts and labor);

(g) Records, receipts and/or invoices demonstrating that the Settlement Class Member paid for the repair work performed, including the amount paid; and

(h) If you are not the person or entity identified on the Class Notice mailing, proof of your ownership or lease of the Settlement Class Vehicle at the time of the repair.

(i) **If the repair was performed during the Settlement Class Vehicle's original New Vehicle Limited Warranty period, but not by an authorized Subaru retailer:** You must also submit, in addition to the above, documentation (such as a written estimate or invoice) confirming that prior to having it performed, you first attempted to have the repair performed by an authorized Subaru dealer and that the dealer would not or was unable to perform the repair free of charge. If you are unable to obtain such documentation despite a good faith effort to do so, you may, instead, submit with your completed Claim Form, a signed Declaration attesting to this fact and setting forth the good faith efforts you made to obtain the documentation. A form "Declaration of Initial Dealer Repair Request" is available on the settlement website, www.WEBSITE.com, or by contacting the Claim Administrator.

(3) State the total Dollar Amount Claimed for Reimbursement for the Paid Repair(s): $ ☐☐☐☐.☐☐

(4) For the amount of the repair cost for which you are seeking to be reimbursed, did you receive any payment, concession, or goodwill accommodation or discount(s) for all or any part of that amount from any source, including from Subaru of America, Inc., a Subaru dealership, an insurer, service contract provider, or extended warranty provider, or from any other person or entity?

☐ Yes ☐ No

If you answered YES, list the total amount of the cost for which you received payment, concession or goodwill accommodation or discount(s), and provide information regarding the source(s) of such payment(s):

$ ☐☐☐☐.☐☐

_____

_____

_____

(5) Sign & Date:

All the information that I (we) supplied in this Claim Form is true and correct to the best of my (our) knowledge and belief, and this document is signed under penalty of perjury.

	Date: ☐☐ ☐☐ ☐☐☐☐
	MM DD YYYY

Signature

(6) Mail Claim Form and all Documents/Paperwork, postmarked no later than [DATE], to:

JND Legal Administration
1100 2nd Ave.
Suite 300
Seattle, WA 98101

For more information, please view the Class Notice, call the Claims Administrator at 1-___-___-____, or visit www.WEBSITE.com

EXHIBIT 2

Notice of Proposed Class Action Settlement

If you currently or previously own(ed) or lease(d) *certain* 2013-2024 Subaru vehicles equipped with Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist driver assistance features of EyeSight, you may be entitled to benefits under a class action settlement. This notice is being mailed to you because you have been identified as owning or leasing such a vehicle.

For information on the proposed settlement, and how and when to file a claim for reimbursement or object to or exclude yourself from the settlement, call toll-free 1-XXX-XXX-XXXX or visit website URL.

Si desea recibir esta notificación en español, llámenos o visite nuestra página web.

Do not contact the Court for information about the settlement.

[Name of Settlement]
c/o Settlement Administrator
1100 2nd Avenue Suite 300
Seattle, WA 98101

1266

«ScanString»
Postal Service: Please do not mark barcode

Claim ID: «Claim ID»
Confirmation Code: «Confirmation Code»
«FirstName» «LastName»
«Address1»
«Address2»
«City», «StateCd» «Zip»
«CountryCd»

PLEASE RETAIN THIS POSTCARD FOR YOUR RECORDS

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

1467

A Settlement has been reached in a class action lawsuit regarding the Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist driver assistance features of EyeSight in certain Subaru vehicles.

Am I a Class Member? You are a Settlement Class Member if you are a current or former owner or lessee of *certain* 2013-2024 Subaru vehicles equipped with EyeSight functionality ("Settlement Class Vehicles"), subject to certain exclusions. You can confirm whether your vehicle is included in the settlement, and that you are therefore a class member, by searching the VIN Lookup Tool on the Settlement Website: website URL.

What benefits can I get from the settlement? If the Court grants final approval, the Settlement will provide the following benefits: 1) a Warranty Extension, and 2) Reimbursement of 75% of certain past paid out-of-pocket repair expenses. For details of these benefits, what is covered, the terms and conditions, and the requirements and deadline for submitting a claim for reimbursement, please refer to the Long Form Class Notice on the Settlement Website: website URL. You can also call the Settlement Claim Administrator toll free at _____to obtain a Claim Form and for any questions you may have.

How can I exclude myself from the class? If you want to exclude yourself from the settlement, you must mail a request for exclusion with the required information **postmarked no later than [date in PA order].** The requirements for a request for exclusion, and the addresses to whom it must be mailed, are set forth in the Long Form Class Notice on the Settlement Website at URL_____. If you timely and properly exclude yourself, you will not be eligible to receive any benefits of the settlement. If you do not timely and properly exclude yourself, you will remain part of the Settlement Class and will be bound by its terms and provisions including the Release and Waiver.

How can I object? If you want to stay in the Settlement Class but object to any aspect of the settlement, you must file an objection with the Court with the required information **no later than [date in PA order]**. For further information and instructions on the requirements for an objection, and when and how to file one, refer to the settlement website and the Long Form Class Notice at website URL.

Do I have a lawyer in this case? Yes. The Court has appointed the law firms of Berger Montague, PC, Capstone Law APC, and Barrack, Rodos & Bacine to represent you and the Class. These attorneys are called Class Counsel. You will not be charged for their services. If you would like to retain your own counsel you may do so at your own expense.

The Court's Final Fairness Hearing. The Court will hold a Final Fairness Hearing on **DATE at TIME,** at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Courtroom 4D, Camden, NJ 08101 to consider whether to approve (1) the settlement; (2) Class Counsel's request for Attorneys' fees and costs of up to $2.5 million; and (3) Named Plaintiffs' Service Awards of up to $5,000. The date of the hearing may change without further notice so please visit [website URL] for updated information.

Where can I get more information? Please visit the Settlement Website at [website URL] or call toll free 1-XXX-XXX-XXXX to obtain more complete information about the proposed settlement and your rights. ADD QR CODE HERE

EXHIBIT 3

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A federal court authorized this notice. This is not a solicitation from a lawyer.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

- A Settlement has been proposed in a class action lawsuit against Subaru of America, Inc. relating to allegations of defects or deficiencies in the Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features of the EyeSight driver assistance systems in certain model year 2013-2024 Subaru vehicles.

- If you currently or previously owned or leased a certain Subaru vehicle (listed below) in the continental United States, you may be entitled to benefits afforded by a class action Settlement which are described in Section 1 below.

- The proposed class action, pending in the United States District Court for the District of New Jersey, is captioned *Sampson, et al. v. Subaru of America, Inc.*, Civil Action No. 1:21-cv-10284-ESK-SAK (the "Action"). The parties have agreed to a class Settlement of the Action, which the Court has preliminarily approved, and have asked the Court to grant final approval of the proposed Settlement. As a Settlement Class Member, you have various options that you may exercise before the Court decides whether to approve the Settlement.

- This Notice explains the Action, the proposed Settlement, your legal rights and options, available benefits, who is eligible for and how to obtain the benefits, and applicable dates, time deadlines and procedures.

- Your legal rights are affected whether you act or do not act. **You should read this entire Notice carefully.**

- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and after appeals, if any, are resolved.

BASIC INFORMATION

1. What the Action and settlement benefits are.

The Settlement involves certain specific Subaru vehicles of the following models/model years, that were distributed by Subaru of America, Inc. ("SOA") in the continental United States (hereinafter, collectively, "Settlement Class Vehicles"):

- Certain MY2013-2022 Subaru Legacy*
- Certain MY2013-2022 Subaru Outback*
- Certain MY2015-2023 Subaru Impreza*
- Certain MY2015-2023 Subaru Crosstrek*
- Certain MY2014-2021 Subaru Forester*
- Certain MY2019-2022 Subaru Ascent*
- Certain MY2016-2021 Subaru WRX*
- Certain MY2022-2024 Subaru BRZ*

*Not every such model and model year vehicle is covered by this Settlement (i.e., a Settlement Class Vehicle). The Settlement Class Vehicles are determined by specific Vehicle Identification Numbers (VINs). You can look up whether

your vehicle is a Settlement Class Vehicle by typing your vehicle's VIN, where indicated, in the VIN Lookup Portal on the Settlement website at www.xxxxxxxxxxxx.com.

A Settlement Class Member is defined as a current or former owner or lessee of a Settlement Class Vehicle, purchased or leased in the continental United States.

The Action alleges defects or deficiencies in the putative class vehicles' Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features of the EyeSight systems. SOA denies the claims and maintains that the EyeSight systems in the Settlement Class Vehicles are not defective, function properly, were properly designed, manufactured, marketed and sold, and that no applicable warranties were breached nor any applicable statutes violated. The Court has not decided in favor of either party. Instead, the Action has been resolved through a class settlement under which eligible Settlement Class Members who qualify may obtain the following benefits:

I. Warranty Extension for Current Owners or Lessees of Settlement Class Vehicles

Effective on [the Notice Date], SOA will extend the New Vehicle Limited Warranties (NVLWs) applicable to the Settlement Class Vehicles to cover 75% of the cost of a Covered Repair (as defined below), by an authorized Subaru retailer, during a period of up to 4 years or 48,000 miles (whichever occurs first) from the Settlement Class Vehicle's In-Service Date. If a particular Settlement Class Vehicle's Warranty Extension time period has already expired as of [the Notice Date], then for that Settlement Class Vehicle, the time limitation of the above Warranty Extension shall be extended until four (4) months from [the Notice Date].

A "Covered Repair" means repair or replacement (parts and labor) of a diagnosed and confirmed malfunction or failure of a Settlement Class Vehicle's Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist feature of the EyeSight system that resulted from failure or malfunction of the EyeSight camera assembly and/or rear sonar sensors. A Covered Repair shall not include a Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist feature failure or malfunction that resulted from the failure or malfunction of any other components of the Settlement Class Vehicle including but not limited to brake pads, rotors and other brake related parts, windshield, powertrain, electrical system, and any other vehicle components and systems.

The Warranty Extension is subject to the same terms, conditions, limitations and exclusions set forth in the Settlement Class Vehicle's original NVLW and Warranty and Maintenance Booklet, and shall be fully transferable to subsequent owners to the extent that its time and mileage limitation periods have not expired.

The Warranty Extension shall not cover or apply to damage to or malfunction of any aspect of Pre-Collision Braking, Rear Automatic Braking, or Lane Keep Assist resulting from an accident or crash, misuse, abuse, modification, movement, displacement of and/or damage to the system components (identified in "Covered Repair" definition), weather and/or environmental conditions, and/or from any outside source or factor.

II. Reimbursement of Certain Past Paid Out-of-Pocket Expenses for a Covered Repair

If, prior to [the Notice Date] and within 4 years or 48,000 miles (whichever occurred first) from the Settlement Class Vehicle's In-Service Date, you incurred and paid for a Covered Repair, you may submit, to the Settlement Claim Administrator, a Claim for Reimbursement (a fully completed, dated and signed Claim Form together with all Proof of Repair Expense and other required documentation) for seventy-five percent (75%) of the paid invoice expense of one (1) such Covered Repair (parts and labor).

The above relief is subject to certain limitations and proof requirements, which are set forth below and in the Settlement Agreement, which can be found on the Settlement website at www.xxxxxxxxx.com.

III. Required Proof for a Claim for Reimbursement

To qualify for a Claim for Reimbursement of past paid and unreimbursed out-of-pocket expenses provided under Section II above, you must comply with the following requirements:

A. In order to submit a valid and timely Claim for Reimbursement, you must submit online no later than XXXXXX, or mail to the Settlement Claim Administrator post-marked no later than XXXXXX, a fully completed, signed and dated Claim Form, a copy of which is available at www._____.com, together with all required supporting documentation listed below.

1. An original or legible copy of a repair invoice(s) documenting the repair covered under the Settlement and containing your name, the make, model and vehicle identification number ("VIN") of the Settlement Class Vehicle, the name and address of the authorized Subaru retailer or other service center that performed the repair, the date of repair and the Settlement Class Vehicle's mileage at the time of the repair, a description of the repair work performed including the parts repaired/replaced and a breakdown of parts and labor costs, and the amount charged for the repair and proof of payment.

2. If your covered repair occurred within your Settlement Class Vehicle's New Vehicle Limited Warranty period but was not performed by an authorized Subaru retailer, then you must also submit records showing that you first attempted to have the repair completed at an authorized Subaru retailer, but the retailer declined or was unable to perform the repair free of charge under warranty. If such records cannot be obtained despite a good faith effort, then you may submit a declaration to that effect, signed under penalty of perjury, and stating the good faith efforts you made to obtain the records. A form declaration is available for you on the Settlement Website at www._____.com, or may be obtained from the Claim Administrator (1-800-_____).

B. If you are not the person to whom the Class Notice was addressed (or your claim is not for the vehicle identified by VIN on the Class Notice), your Claim must contain proof that you are a Settlement Class Member and that the vehicle is a Settlement Class Vehicle.

IV. Limitations

A. Any reimbursement under the Settlement shall be reduced by goodwill or other amount or concession paid by SOA, an authorized Subaru retailer, any other entity (including insurers and providers of extended warranties or service contracts), or by any other source. If the Settlement Class Member received a free repair covered under the Settlement Agreement, or was otherwise already reimbursed the full amount for the covered repair, then they will not be entitled to any reimbursement.

B. SOA shall not be responsible for, and shall not warrant, repair/replacement work performed at any service center or facility that is not an authorized Subaru retailer.

C. Reimbursement shall not apply to failures resulting from an accident or crash, misuse, abuse, modification, movement, displacement of and/or damage to the Eyesight camera assembly or rear sonar sensors, weather and/or environmental conditions, and/or from any outside source or factor.

2. Why is this a class action settlement?

In a class action lawsuit, one or more persons, called Plaintiffs or class representatives, sue on behalf of other people who have similar claims. All these people are Settlement Class Members. The company they sued is called the Defendant. One court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Class.

The Court has not decided in favor of the Plaintiffs or Defendant. Instead, both sides agreed to a Settlement with no decision or admission of who is right or wrong. That way, all parties avoid the risks and cost of a trial, and the people affected (the Settlement Class Members) will receive benefits quickly. The class representatives and the attorneys believe the Settlement is best for the Settlement Class.

WHO IS PART OF THE SETTLEMENT?

3. Am I in this Settlement Class?

The Court has conditionally approved the following definition of a Settlement Class Member: All persons and entities who purchased or leased a Settlement Class Vehicle in the continental United States of America (The Settlement Class Vehicles are discussed in Section 1 above).

Excluded from the Settlement Class are (a) all Judges who have presided over the Action and their spouses; (b) all current employees, officers, directors, agents and representatives of Defendant, and their family members; (c) any affiliate, parent or subsidiary of Defendant and any entity in which Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of this Agreement, settled with and released Defendant or any Released Parties from any Released Claims, and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class that is accepted by the Court. (see Section 10 below).

4. I'm still not sure if I am included in this Settlement.

If you are still not sure whether you are included in this Settlement, you can enter your vehicle's VIN in the VIN look-up Portal at www.xxxxxxxxx.com to determine if it is a Settlement Class Vehicle. You can also call the Claim Administrator at 1-___-___-____ or visit www.xxxxxxxxx.com for more information.

SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the Settlement provide?

The benefits afforded by the Settlement are described in Section 1. Additional details are provided below.

6. Who can send in a Claim for reimbursement?

Any person or entity who purchased or leased a Settlement Class Vehicle in the continental United States can send in a timely Claim for Reimbursement for money spent on a prior covered repair prior to [DATE] if the Claim satisfies the parameters and criteria required for reimbursement described in Section 1.

7. How do I send in a Claim for reimbursement?

To submit a Claim for reimbursement, you must do the following no later than [DATE]:

A. Complete, sign under penalty of perjury, and date a Claim Form. (you can download one at www.xxxxxxxxx.com). It is recommended that you keep a copy of the completed Claim Form; and

B. Submit your completed, signed and dated Claim Form, along with all required supporting documents, either (i) through the Settlement Website at www._____.com no later than [DATE]; or (ii) to the Claim Administrator by First-Class mail, post-marked no later than [DATE], at the address provided on the Claim Form. The information that must be reflected in your records is described on the Claim Form. It is recommended that you keep a copy of your records and receipts.

If you are eligible for reimbursement benefits under the Settlement but fail to submit the completed Claim Form and supporting documents by the required deadline, you will not receive a reimbursement.

8. When do I get my reimbursement or learn whether I will receive a payment?

If the Claim Administrator determines that your Claim is approved, your reimbursement will be mailed to you within 150 days of either (i) the date of receipt of the completed Claim Form (with all required proof), or (ii) the date that the Settlement becomes final (the "Effective Date"), whichever is later. The Court will hold a Final Fairness Hearing on [DATE], to decide whether to approve the Settlement as fair, reasonable, and adequate. Information about the progress of the case will be available at www.xxxxxxxxxxxx.com.

If the Claim Administrator determines that there is/are deficiency(ies) in your Claim Form and/or the supporting documentation that is required, then you will be mailed a letter or notice informing you of the deficiency(ies), what needs to be submitted to correct it/them, and the deadline for doing so. Deficiencies that are not timely corrected will result in denial of your Claim. To check on the status of your Claim, you can call 1-___-___-____.

9. What am I giving up to participate in the Settlement and stay in the Class?

Unless you exclude yourself from the Settlement by taking the steps described in Section 10 below, you will remain in the Class, and that means that you may receive any Settlement benefits to which you are eligible, and you will be bound by the terms of the Settlement including the release of claims, and cannot sue, continue to sue, or be part of any other lawsuit about the same matters, claims, and legal issues that were or could have been asserted in this case, and the Released Claims set forth in the Settlement Agreement (except for claims of personal injury or property damage other than damage to the Settlement Class Vehicle itself). It also means that all the Court's orders and judgments will apply to you and legally bind you. The specific claims and parties you will be releasing are set forth in sections I.T and I.U of the Settlement Agreement which is available for review on the Settlement Website, www.xxxxxxxxxxxx.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How do I Exclude Myself from this Settlement?

You do not have to do anything to remain in this Settlement. However, you have a right, if you so desire, to exclude yourself from the Settlement. To exclude yourself from the Settlement, you must send a letter by U.S. mail post-marked no later than [DATE], stating clearly that you want to be excluded from the Settlement ("Request for Exclusion"). You must include in the Request for Exclusion your full name, address, and telephone number; the model, model year and VIN of the Settlement Class Vehicle; a statement that you are a present or former owner or lessee of a Settlement Class Vehicle; and specifically and unambiguously state your desire to be excluded from the Settlement Class. You must mail your completed Request for Exclusion, post-marked no later than [DATE], to each of the following:

CLAIM ADMINISTRATOR	CLASS COUNSEL	DEFENSE COUNSEL
JND Legal Administration 1100 2nd Ave., Suite 300, Seattle, WA 98101	RUSSELL D. PAUL, ESQ. BERGER MONTAGUE PC 818 MARKET STREET, SUITE 3600 PHILADELPHIA, PA 19103	HOMER B. RAMSEY, ESQ. SHOOK, HARDY & BACON LLP 1 ROCKEFELLER PLAZA, SUITE 2801 NEW YORK, NY 10020

You cannot exclude yourself on the phone or by email. If you have timely mailed a Request for Exclusion that contains all of the required information, and the Court grants your request for exclusion upon final approval of the Settlement, then you will be excluded from the Settlement Class. You will not receive any benefits of the Settlement, you cannot object to the Settlement, and you will not be legally bound by anything that happens in this Lawsuit.

11. If I don't exclude myself, can I sue later?

No, not for the same matters and legal claims that were or could have been asserted in the Action or any of the Released Claims in the Settlement Agreement, unless your claim is for personal injury or property damage (other than damage to the Settlement Class Vehicle itself).

12. If I exclude myself, can I get the benefits of this Settlement?

No, if you exclude yourself from the Settlement Class, you will not receive any money or benefits from this Settlement, and you should not submit a Claim Form. You cannot do both.

13. Do I have a lawyer in this case?

Yes, the Court has appointed the law firms of Berger Montague, PC, Capstone Law APC, and Barrack, Rodos & Bacine as "Class Counsel" to represent Settlement Class Members.

14. Should I get my own lawyer?

You do not need to hire your own lawyer to participate in the Settlement because Class Counsel will be representing you and the Settlement Class. But, if you want your own lawyer, you may hire one at your own cost.

15. How will the lawyers be paid, and will the Settlement Class representatives receive a service award?

Class Counsel have prosecuted this case on a contingency basis. They have not received any fees for their services or reimbursement for costs and expenses associated with this case. Class Counsel will file an application with the Court requesting an award of reasonable attorney fees, costs, and expenses in an amount not exceeding a collective combined total sum of $2,500,000. SOA has agreed not to oppose Class Counsel's Fee and Expense Application to the extent not exceeding that combined total sum, and Class Counsel have agreed not to accept any fees and expenses in excess of that combined total sum.

Class Counsel will also apply to the Court for class representative service awards, in the amount of $5,000 each, to the class representatives James Sampson, Janet Bauer, Lisa Harding, Barbara Miller, Shirley Reinhard, Celeste and Xavier Sandoval (to receive only one award of $5,000 collectively), Danielle Lovelady Ryan, and Elizabeth Wheatley, for their efforts in pursuing this litigation for the benefit of the Settlement Class.

Any award for Class Counsel Fees and Expenses, and any service awards to the class representatives, will be paid separately by Defendant and will not reduce any benefits available to you or the rest of the Settlement Class under the Settlement. You won't have to pay the Class Counsel Fees and Expenses.

Class Counsel's Fee and Expense Application and request for class representative service awards will be filed by [DATE], and a copy will be made available for review at www.xxxxxxxxxxxx.com.

SUPPORTING OR OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I like or dislike the Settlement?

If you are a member of the Settlement Class and do not request to be excluded, you can tell the Court you like the Settlement and it should be approved, or you can ask the Court to deny approval by filing a written objection. You can object to the Settlement and/or to Class Counsel's Fee and Expense Application and request for class representative service awards**.** You cannot ask the Court to order a different settlement; the Court can only approve or reject the proposed Settlement. If the Court denies approval of the Settlement, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object on a timely basis. You are not required to submit anything to the Court unless you are objecting or wish to be excluded from the Settlement.

To object to or comment on the Settlement, you must do either of the following:

i. File your written objection or comment, and any supporting papers or materials, on the Court's docket for this case, *Sampson, et al. v. Subaru of America, Inc.,* United States District Court for the District of New Jersey, Civil Action No. 1:21-cv-10284-ESK-SAK, via its electronic filing system, no later than [DATE], or

ii. File your written objection or comment, and any supporting papers or materials, with the Court in person at the Clerk's Office of the United States District Court for the District of New Jersey, located at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, no later than [DATE], or

iii. Mail your written objection or comment, and any supporting papers or materials, to each of the following, by U.S. first-class mail, post-marked no later than [DATE]:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court for the District of New Jersey Mitchell H. Cohen Building & U.S. Courthouse 4th & Cooper Streets Camden, NJ 08101	Capstone Law APC Attn: Cody Padgett 1875 Century Park East, Suite 1000 Los Angeles, California 90067	Shook, Hardy & Bacon L.L.P. Attn: Homer B. Ramsey 1 Rockefeller Plaza, Suite 2801 New York, New York 10020

Regardless of the above method you choose, your written objection must state clearly that you are objecting to the Settlement or the request for Class Counsel Fees and Expenses and/or class representative service awards in *Sampson, et al. v. Subaru of America, Inc.,* United States District Court for the District of New Jersey, Civil Action No. 1:21-cv-10284-ESK-SAK, and must include all of the following: (i) your full name, address and telephone number; (ii) the model, model year and VIN of your Settlement Class Vehicle, (iii) proof that you own(ed) or lease(d) the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration or license receipt); (iv) a written statement of all your factual and legal grounds for objecting; (v) copies of any papers, briefs and/or other documents upon which the objection is based and which are pertinent to the objection; (vi) the name and address of any counsel representing you; (vii) a statement of whether you intend to appear at the Final Fairness Hearing, either with or without counsel, and the identity(ies) of any counsel who will appear on your behalf at the Final Fairness Hearing; and (viii) a list of all other objections submitted by you, and/or any counsel representing you, to any class action settlements in any court in the United States in the previous five (5) years, including the full case name with jurisdiction in which it was filed and the docket number, or affirmatively state, in your objection, that you and/or your counsel have not objected to any other class action settlement in the United States in the previous five (5) years.

Subject to the approval of the Court, any Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing. In order to appear, the Settlement Class Member must, by the objection deadline of [DATE], file with the Clerk of the Court and serve upon all counsel designated in the Class Notice (see above), a Notice of Intention to Appear at the Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence and identity of witnesses that the Settlement Class Member (or his/her counsel) intends to present to the Court in connection with the Fairness Hearing.

Any Settlement Class Member who does not submit a written objection to the proposed Settlement, or Class Counsel's application for Fees and Expenses and/or the Class Representative service award, within the above deadline and in full compliance with the above requirements and procedure for a valid objection shall waive his/her/its right to do so, and to appeal from any order or judgment of the Court concerning the Settlement, Fees and Expenses and/or service award.

Any Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other requirements set forth in this Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Fairness Hearing.

17. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

FINAL FAIRNESS HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing **on [DATE] at XXXX a.m.,** before the Honorable Edward S. Kiel, United States District Judge, United States District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Courtroom 4D, Camden, NJ 08101, to determine whether the Settlement should be granted final approval. At this Final Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel's application for Fees and Expenses, including the request for class representative service awards. The date and/or time of the Final Fairness Hearing may change without further notice to the Settlement Class. You should check the Settlement Website or the Court's PACER site to confirm that the date and/or time has not changed, or if it has, learn to the new date and time.

19. Do I have to come to the Final Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. You may also pay your own lawyer to attend. However, if your objection is timely and compliant with the requirements, the Court will consider it whether or not you or your lawyer attend.

20. May I speak at the Fairness Hearing?

If you do not exclude yourself, you may ask the Court's permission to speak in favor of the proposed Settlement at the Final Fairness Hearing, and any Settlement Class Member who has properly filed a timely objection may ask the Court's permission to appear and speak regarding that objection. To do so, you must file with the Clerk of the Court, and serve upon all counsel identified in Section 16 above, a Notice of Intention to Appear at the Final Fairness Hearing, saying that it is your intention to appear at the Final Fairness Hearing in *Sampson, et al. v. Subaru of America, Inc.,* United States District Court for the District of New Jersey, Civil Action No. 1:21-cv-10284-ESK-SAK. The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence and the identity of witnesses that the Settlement Class Member (or the Settlement Class Member's counsel) intends to present to the Court in connection with the Fairness Hearing.

You must file your Notice of Intention to Appear with the Clerk of the Court and serve upon all counsel designated in the Class Notice, by the objection deadline of [DATE]. You cannot speak at the Final Fairness Hearing if you excluded yourself from the Settlement.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you do nothing, you will remain in the Settlement Class. If the Court approves the Settlement, you can receive any benefits of the Settlement to which you are eligible, and you will be bound by the Settlement and its terms and provisions, including the Release of Claims, and by all orders and judgments of the Court.

MORE INFORMATION

22. Where can I get more information?

The Settlement Website at www.xxxxxxxxxxxx.com allows you to look up your vehicle's VIN to determine if it is a Settlement Class Vehicle, obtain Claim Forms, a copy of the Settlement Agreement and other pertinent documents, and more information on this Litigation and Settlement. Updates regarding the Action, including important dates and deadlines, will also be available on the website. You may also call the Claim Administrator at 1-___-___-____ or email [INSERT EMAIL ADDRESS].

EXHIBIT 4

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAMES SAMPSON, ELIZABETH WHEATLEY, SHIRLEY REINHARD ON HER OWN BEHALF AND ON BEHALF OF THE ESTATE OF KENNETH REINHARD, LISA HARDING, JANET BAUER, BARBARA MILLER, CELESTE AND XAVIER SANDOVAL, and DANIELLE LOVELADY RYAN, individually and on behalf of all others similarly situated, Plaintiffs, v. SUBARU OF AMERICA, INC., Defendant.	Case No. 1:21-cv-10284-ESK-SAK

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, pursuant to Fed. R. Civ. P. ("Rule") 23(a), 23(b)(3), and 23(e), the parties seek entry of an order: preliminarily approving the nationwide class action Settlement of this Action ("Settlement") pursuant to the terms and provisions of the Settlement Agreement dated March 20, 2025, with attached exhibits ("Settlement Agreement"); preliminarily certifying the Settlement Class for settlement purposes only; directing notice to the Settlement Class pursuant to the parties' proposed Notice Plan set forth in the Settlement Agreement; preliminarily

appointing class representatives for the Settlement Class, Class Counsel, and the Claim Administrator; directing the timing and procedures for any objections to, and requests for exclusion from, the Settlement; setting forth other procedures, filings, and deadlines; and scheduling the Final Fairness Hearing; and

WHEREAS, this Court has read and carefully considered the Settlement Agreement and its exhibits, Plaintiffs' Unopposed Motion for Preliminary Approval, and the applicable law;

NOW, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. The Court has jurisdiction over this litigation, Plaintiffs, all Settlement Class Members, Defendant Subaru of America, Inc. ("SOA"), and any party to any agreement that is part of or related to the Settlement.

3. The Court preliminarily approves the Settlement Agreement, and its Settlement terms, as fair, reasonable, and adequate under Rule 23 of the Federal Rules of Civil Procedure, subject to further consideration at the Final Fairness Hearing.

4. The Court preliminarily finds that the proceedings that occurred before the Parties entered into the Settlement Agreement afforded counsel the opportunity

to adequately assess the claims and defenses in the Action, the positions, strengths, weaknesses, risks, and benefits to each party, and as such, to negotiate a Settlement Agreement that is fair, reasonable, and adequate and reflects those considerations.

5. The Court also preliminarily finds that the Settlement Agreement has been reached following vigorous and intensive arm's-length negotiations of disputed claims, including the assistance of an experienced third-party neutral mediator, and that the proposed Settlement is not the result of any collusion.

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for settlement purposes only, the following Settlement Class:

> All persons and entities who purchased or leased, in the continental United States, certain model year 2013-2022 Subaru Legacy vehicles; certain model year 2013-2022 Subaru Outback vehicles; certain model year 2015-2023 Subaru Impreza vehicles; certain model year 2015-2023 Subaru Crosstrek vehicles; certain model year 2014-2021 Subaru Forester vehicles; certain model year 2019-2022 Subaru Ascent vehicles; certain model year 2016-2021 Subaru WRX vehicles; and certain model year 2022-2024 Subaru BRZ vehicles, which are specifically designated by Vehicle Identification Number (VIN) in Exhibit 5 to the Settlement Agreement, which were distributed by Subaru of America, Inc. in the continental United States and are equipped with Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist features of EyeSight (hereinafter, the "Settlement Class").

Excluded from the Settlement Class are: (a) all Judges who have presided over the Actions and their spouses; (b) all current employees, officers, directors, agents and representatives of Defendant, and their family members; (c) any affiliate, parent

or subsidiary of Defendant and any entity in which Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released Defendant or any Released Parties from any Released Claims, and (j) any Settlement Class Member who files a timely and proper Request for Exclusion from the Settlement Class that is accepted by the Court.

7. The Court preliminarily appoints Berger Montague PC, Capstone Law APC, and Barrack, Rodos & Bacine as Class Counsel for the Settlement Class. The Court finds that the requirements of Rule 23(g) are satisfied by these appointments. The Court preliminarily appoints, pursuant to Rule 23(a), Plaintiffs James Sampson, Janet Bauer, Lisa Harding, Barbara Miller, Shirley Reinhard, Celeste Sandoval, Xavier Sandoval, Danielle Lovelady Ryan, and Elizabeth Wheatley, as Settlement Class representatives. The Court finds that these Plaintiffs will fairly and adequately represent the interests of the Class.

8. The Court preliminarily appoints JND Legal Administration as the Claim Administrator.

9. The Court preliminarily finds, solely for purposes of the Settlement, that the criteria under Rule 23(a)-(b) for certification of the Settlement Class are satisfied, in that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over individual questions; (c) the claims of the Settlement Class representatives are typical of the claims of the Settlement Class; (d) the Settlement Class representatives and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

10. The Court finds, pursuant to Rule 23(e)(1)(B), that giving notice to the class is justified and appropriate because the Court will likely be able to approve the Settlement as fair, reasonable, and adequate, and certify the class for purposes of judgment on the proposed Settlement, pursuant to Rule 23(e)(1)(b)(i) and (ii). In addition, the Court finds, pursuant to Rule 23(e)(2)(A)-(D), that the class representatives and class counsel have adequately represented the class, the Settlement was negotiated at arm's length, the relief provided for the class is

adequate, and the proposal herein treats class members equitably relative to each other.

11. The Court has carefully reviewed and hereby approves the Parties' Notice Plan as set forth in the Settlement Agreement. The Court approves the form and content of the Class Notices, including the postcard Class Notice (Exhibit 2 to the Settlement Agreement) which shall be mailed on an agreed upon date with the Claim Administrator, but in no event more than 120 days after entry of the Preliminary Approval Order, and the long form Class Notice to be available on the Settlement Website (Exhibit 3 to the Settlement Agreement). In addition, the Claim Administrator shall implement a Settlement Website and a toll-free Settlement telephone number as provided for under the Settlement Agreement, and the Court approves the Claim Form (Exhibit 1 to the Settlement Agreement) which will be made available on said Settlement Website. The Court authorizes the Parties to make non-material modifications to the Class Notices and Claim Form prior to mailing if they jointly agree that any such changes are appropriate.

12. The Court finds that the Parties' Notice Plan satisfies Rule 23, due process, and constitutes the best notice practicable under the circumstances. The Notice Plan is reasonably calculated to apprise the Settlement Class of the pendency of the Action; the certification of the Settlement Class for settlement purposes only; the terms of the Settlement, its benefits, and the release of claims; the Settlement

Class Members' rights, including the right to and the deadlines and procedures for requesting exclusion from the Settlement or objecting to the Settlement; Class Counsel's Fee and Expense Application and the application for class representative service awards; the deadline, procedure, and requirements for submitting a Claim for Reimbursement pursuant to the Settlement terms; the time, place, and right to appear at the Final Fairness Hearing; and other pertinent information.

13. The Court further finds that all the notices are written in simple terminology and are readily understandable by Settlement Class Members. The date and time of the Final Fairness Hearing shall be included in all notices before they are disseminated. The parties, by agreement, may revise the notices in ways that are appropriate to update those notices for purposes of accuracy and clarity, and may adjust the layout of those notices for efficient electronic presentation and mailing. No Settlement Class Member shall be relieved from the terms of the proposed Settlement, including the releases provided for therein, based solely upon the contention that such Settlement Class Member failed to receive adequate or actual notice.

14. Accordingly, the Court approves, and directs the implementation of, the Notice Plan pursuant to the terms of the Settlement Agreement.

15. The Claim Administrator is directed to perform all settlement administration duties set forth in, and pursuant to the terms and time periods of, the

Settlement Agreement, including providing notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, implementing and maintaining the Settlement Website, disseminating the Class Notice in accordance with the Notice Plan, the processing, review and determination of timely submitted and proper Claims for Reimbursement under the Settlement terms, and the submission of any declarations and other materials to counsel and the Court, as well as any other duties required under the Settlement Agreement.

16. The Departments of Motor Vehicles within the United States and its territories are ordered to provide approval to Polk/IHS Markit, or any other company so retained by the parties and/or the Claim Administrator, to release the names and addresses of Settlement Class Members associated with the titles of the VINs for the Settlement Class Vehicles for the purposes of disseminating the Class Notice to the Settlement Class Members. Polk/IHS Markit, or any other company so retained, is ordered to license, pursuant to agreement between Defendant and Polk/IHS Markit or such other company, and/or the Claim Administrator and Polk/IHS Markit or such other company, the Settlement Class Members' contact information to the Claim Administrator and/or Defendant solely for the use of providing Class Notice and for no other purpose.

17. Class Counsel and Defense Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the

Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, non-material changes to the form or content of the long form Class Notice, postcard Class Notice, the Claim Form, and other exhibits that they jointly agree are reasonable or necessary.

18. Upon application by the parties, the deadlines set forth in this Order may be extended by order of the Court, without further notice to the Settlement Class. Settlement Class Members must check the Settlement Website regularly for updates and further details regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Fairness Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Settlement Class.

19. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail, by first-class mail postmarked no later than 30 days after the Notice Date, a written request for exclusion ("Request for Exclusion") to (a) the Claim Administrator at the address specified in the Class Notice, (b) Russell D. Paul, Berger Montague PC, 1818 Market Street, Suite 3600, Philadelphia, PA 19103 on behalf of Class Counsel, and (c) Homer B. Ramsey, Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, NY 10020 on behalf of Defendant. To be effective, the Request for Exclusion must:

a. include the Settlement Class Member's full name, address and telephone number;

b. identify the model, model year and VIN of the Settlement Class Vehicle;

c. state that he/she/it is or was a present or former owner or lessee of a Settlement Class Vehicle; and

d. specifically and unambiguously state his/her/its desire to be excluded from the Settlement Class.

20. Any Settlement Class Member who fails to mail a timely and complete Request for Exclusion to the proper addresses shall remain in the Settlement Class and shall be subject to and bound by all determinations, orders, and judgments in the Action concerning the Settlement, including but not limited to the Released Claims set forth in the Settlement Agreement.

21. Any Settlement Class Member who has not submitted a Request for Exclusion may object to the fairness of the Settlement Agreement and/or the requested amount of Class Counsel Fees and Expenses and/or Settlement Class representative service awards.

a. To object, a Settlement Class Member must either: (i) file any such objection, together with any supporting briefs and/or documents, with the Court either in person at the Clerk's Office of the United

States District Court for the District of New Jersey, located at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, or (ii) file same in this Action via the Court's electronic filing system, or (iii) if not filed in person or via the Court's electronic system, then, by U.S. first-class mail post-marked within the said 30-day deadline, mail the objection, together with any supporting briefs and/or documents, to the United States District Court for the District of New Jersey, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, and also, by U.S. first-class mail post-marked within said deadline, serve same upon the following counsel for the Parties: Capstone Law APC, Attn: Cody Padgett, 1875 Century Park East, Suite 1000, Los Angeles, California 90067, on behalf of Plaintiffs, and Homer B. Ramsey, Shook, Hardy & Bacon L.L.P., 1 Rockefeller Plaza, Suite 2801, New York, New York 10020, on behalf of Defendant.

b. Any objecting Settlement Class Member must include the following with his/her/its objection: (i) the objector's full name, address, and telephone number; (ii) the model, model year, and VIN of the Settlement Class Vehicle, along with proof that the objector has

owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt); (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection; (v) the name and address of any counsel representing said objector; (vi) a statement of whether the objecting Settlement Class Member intends to appear at the Final Fairness Hearing, either with or without counsel, and the identity(ies) of any counsel who will appear on behalf of the Settlement Class Member's objection at the Final Fairness Hearing; and (vii) a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in the United States in the previous five years, including the full case name, the jurisdiction in which it was filed, and the docket number. If the Settlement Class Member or his/her/its counsel has not objected to any other class action settlement in the United States in the previous five years, he/she/it shall affirmatively so state in the objection.

c. Subject to the approval of the Court, any Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing

to explain why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any motion for Class Counsel Fees and Expenses or Settlement Class representative service awards, or to make any statement in favor of the settlement. In order to appear, any Settlement Class Member must, no later than the objection deadline, file with the Clerk of the Court and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence and the identity of all witnesses that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) intends to present to the Court in connection with the Final Fairness Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other requirements set forth in this Order and the Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Fairness Hearing.

d. Any Settlement Class Member who has not properly filed a timely objection in accordance with the deadline and requirements set forth in this Order shall be deemed to have waived any objections to the

Settlement and any adjudication or review of the Settlement Agreement by appeal or otherwise.

22. In the event the Settlement is not granted final approval by this Court, or for any reason the parties fail to obtain a Final Order and Judgment as contemplated in the Settlement Agreement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

a. All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding, judicial or otherwise;

b. The parties' respective pre-Settlement claims, defenses, and procedural rights will be preserved, and the parties will be restored to their positions *status quo ante*;

c. Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant, Released Parties, or Plaintiffs on any allegation, claim, defense, or point of fact or law in connection with this Action;

d. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation,

the Class Notice, court filings, orders, and public statements, may be used as evidence in this or any other proceeding, judicial or otherwise; and

e. The preliminary certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Settlement Class had never been preliminarily certified.

23. Pending the Final Fairness Hearing and the Court's decision whether to grant final approval of the Settlement, no Settlement Class Member, either directly, representatively, or in any other capacity (including those Settlement Class Members who filed Requests for Exclusion from the Settlement which have not yet been reviewed and approved by the Court at the Final Fairness Hearing), shall commence, prosecute, continue to prosecute, or participate in - against Defendant and/or any of the Released Parties - any action or proceeding in any court or tribunal (judicial, administrative, or otherwise) asserting any of the matters, claims, or causes of action that are to be released in the Settlement Agreement. Pursuant to 28 U.S.C. § 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

24. Pending the Final Fairness Hearing and any further determination thereof, this Court shall maintain continuing jurisdiction over these Settlement proceedings.

25. Based on the foregoing, the Court sets forth below the following schedule for the Final Fairness Hearing and the actions which must precede it. If any deadline set forth in this Order falls on a weekend or federal holiday, then such deadline shall extend to the next business day. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Class. Settlement Class Members must check the Settlement Website regularly for updates and further details regarding this Settlement and any pertinent dates and deadlines:

Event	**Deadline Pursuant to Settlement Agreement**
Notice shall be mailed in accordance with the Notice Plan and this Order	_____ [120 days after issuance of Preliminary Approval Order]
Class Counsel's Fee and Expense Application and request for service awards for class representatives	_____ [144 days after issuance of Preliminary Approval Order]
Objection and Request for Exclusion deadline	_____ [150 days after issuance of Preliminary Approval Order; 30-days after the Notice Date]
Plaintiffs' Motion for Final Approval of the Settlement	_____ [170 days after issuance of Preliminary Approval Order; 50-days after the Notice Date]

Claim Administrator shall submit a declaration to the Court (i) reporting the names of all persons and entities that submitted timely and proper Requests for Exclusion; and (ii) attesting that Class Notice was disseminated in accordance with the Settlement Agreement and this Preliminary Approval Order.	_____ [170 days after issuance of Preliminary Approval Order; 50-days after the Notice Date]
Responses of any party to timely filed Objections or Requests for Exclusion	_____ [185 days after issuance of Preliminary Approval Order; 65-days after the Notice Date]
Any submissions by Defendant concerning Final Approval of Settlement	_____ [185 days after issuance of Preliminary Approval Order; 65-days after the Notice Date]
Final Fairness Hearing will be held at U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, Courtroom 4D, Camden, NJ 08101 or by video conference as determined by the Court	_____ [a date on or after 215-days after issuance of Preliminary Approval Order; 30-days after Plaintiffs' filing of Final Approval Motion]

26. The Court may modify the dates above if good cause exists, and the Court may adjourn the Final Fairness Hearing without further notice to Settlement Class Members; however, any changes to deadlines shall be posted on the Settlement Website.

27. Pending further order of the Court, all litigation activity and events, except those contemplated by this Order or in the Settlement Agreement, are hereby

STAYED, and all hearings, deadlines, and other proceedings in the Litigation, except the Final Fairness Hearing and the matters set forth in this Order, are VACATED.

SO ORDERED:

Date: _____

_____
Honorable Edward S. Kiel
United States District Judge

EXHIBIT 5

The VIN list is approximately 997,359 lines long and the Parties will make a copy available to the Court at the Court's request. Class Members will be able to use a VIN lookup tool on the class settlement website.

EXHIBIT B

BERGER MONTAGUE

About Berger Montague

Berger Montague is one of the nation's preeminent law firms focusing on complex civil litigation, class actions, and mass torts with nationally known attorneys highly sought after for their legal skills and commitment to justice.

The firm has been recognized by federal and state courts across the country for its ability and expertise in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation.

For more than 50 years, Berger Montague has played leading roles in precedent-setting cases and our attorneys have recovered over $50 billion for their clients and the classes they have represented.

Berger Montague laid the groundwork for the use of class actions in antitrust and securities litigation. The firm has since expanded the use of class actions in the fields of consumer, employment, environmental, and insurance litigation as well as of civil and human rights.

From helping companies in high-stakes commercial litigation to representing whistleblowers who have identified fraud against the government, our 100+ lawyers are able to tackle the most complex, precedent- setting legal matters.

Berger Montague has earned a national reputation for delivering results for clients. Our record of obtaining successful multimillion dollar settlements and verdicts is a direct reflection of our philosophy of preparing for trial from the moment we take your case — and paying attention to the details.

Berger Montague is a full-spectrum civil litigation firm, with nationally known and respected attorneys highly sought after for their legal skills. Throughout the United States, federal courts, state courts, and legal peers have recognized Berger Montague lawyers for their ability, agility and decades of experience in handling major complex litigation across multiple practice areas.

Berger Montague has been named one of *U.S. News* and *Best Lawyers* "Best Law Firms" multiple times, a leading antitrust law firm by *Chambers and Partners*, and a Class Action Department of the Year finalist by *Legal Intelligencer*. Every year, our lawyers are recognized for their outstanding achievements by *Super Lawyers*, the *Best Lawyers in America*, the *National Law Journal*, *Lawdragon,* and more. Berger Montague is frequently called upon to serve as co-counsel in complex, consequential litigation.

Berger Montague is one of the largest plaintiffs' firms in the United States and maintains eight offices across the country and internationally.

Our offices are located in

- Philadelphia, Pennsylvania (headquarters)
- Chicago, Illinois
- Minneapolis, Minnesota
- San Diego, California
- San Francisco, California
- Toronto, Ontario, Canada
- Washington, D.C.
- Wilmington, Delaware

Our Practice Areas Include:

- Antitrust
- Appeals & Complex Briefing
- Child Sexual Abuse & Sexual Assault
- Commercial Litigation
- Commodities & Options
- Complex Litigation Ethics
- Consumer Protection
- Credit Reporting & Background Checks
- Defective Drugs & Medical Devices
- Defective Products
- Employee Benefits & ERISA
- Employment Law & Unpaid Wages
- Environmental Law & Public Health
- False Claims Act, Qui Tam & Whistleblower
- Government Representation
- Healthcare
- Intellectual Property
- Securities Fraud
- & Investor Protection
- Securities & Financial Fraud
- Technology, Privacy & Data Breach

History of the Firm

Berger Montague was founded in 1970 to concentrate on the representation of plaintiffs in antitrust class actions. The founding members of the firm pioneered the use of class actions in antitrust litigation and were later instrumental in extending the use of the class action procedure to other practice areas, including securities, civil and human rights,

and consumer protection. During the last several decades, the firm continued to expand its practice areas and has now recovered over $50 billion dollars for its clients and the classes they have represented. In complex litigation, and particularly in the area of class action litigation, Berger Montague has established new law and forged the path for recovery.

Berger Montague has achieved many victories over the years, including for example:

- Trial counsel in the Exxon Valdez Oil Spill litigation in Anchorage, Alaska, and obtained a record jury award of $5 billion against Exxon, later set by the U.S. Supreme Court to $507.5 million;

- Lead counsel in the School Asbestos Litigation, in which a national class of elementary and secondary schools recovered over $200 million to defray the costs of asbestos abatement in the first mass tort property damage class action certified on a national basis;

- Represented the plaintiffs in the Drexel Burnham Lambert/Michael Milken securities and bankruptcy litigation, in which the claimants recovered approximately $2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of Drexel;

- Lead counsel in *Cook v. Rockwell International Corp*., involving environmental contamination at the Rocky Flats nuclear weapons facility in Colorado, and tried and won the largest jury verdict in Colorado history, a $554 million verdict on behalf of property owners whose homes were exposed to plutonium, which when interest was added, totaled $926 million, and a $375 million settlement was thereafter reached in 2016;

- Served on the executive committee in the Holocaust Victim Assets Litigation and helped achieve a $1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War, and also played an instrumental role in achieving a $4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust;

- Represented the State of Connecticut in the tobacco litigation; and

- Co-lead counsel in In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, in which, after 15 years of litigation, a $6.2 billion settlement – the largest antitrust class action settlement in U.S. history – was recently affirmed by the United States Court of Appeals for the Second Circuit, in a case against Visa, MasterCard, and the largest banks in the country, challenging the fixing of

interchange fees and adoption of rules that hindered any competitive pressure by merchants to reduce those fees.

Many other notable victories are available for viewing at www.bergermontague.com.

Commitment to Community and Pro Bono Opportunities

Berger Montague attorneys and professionals commit their most valuable resource, their time, to their communities, charities, nonprofit organizations, and important pro bono (unpaid volunteer) legal work. For over half a century, Berger Montague has encouraged its employees to support charitable causes and volunteer in the community. Our attorneys understand that participating in pro bono representation is an essential component of their professional and ethical responsibilities.

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

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

Berger Montague has also received the Chancellor's Award presented by the Philadelphia Volunteers for the Indigent Program ("VIP"), which provides crucial legal services to low-income Philadelphia residents. VIP relies on volunteer attorneys to provide pro bono representation for families and individuals. In 2009 and 2010, Berger Montague also received an award for its volunteer work with the VIP Mortgage Foreclosure Program following the 2008 subprime mortgage crisis.

Berger Montague attorneys are currently engaged in many pro bono opportunities with many organizations, including, for example:

- Public Justice
- Public Interest Law Center of Philadelphia ("PILCOP")
- Community Legal Services of Philadelphia ("CLS")
- Philadelphia Legal Assistance
- Education Law Center
- Legal Clinic for the Disabled
- Support Center for Child Advocates

- Veterans Pro Bono Consortium
- AIDS Law Project of Philadelphia
- Center for Literacy
- National Liberty Museum
- Philadelphia Volunteers for the Indigent Program
- Philadelphia Mortgage Foreclosure Program
- The Impact Fund
- Southern Center for Human Rights

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

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

The firm has held numerous clothing drives, toy drives, food drives, and blood drives. Through these efforts, Berger Montague's employees have donated thousands of items of clothing, toys, and food to local charities including the Salvation Army, Toys for Tots, and Philabundance, a local food bank. Blood donations are made to the American Red Cross. Berger Montague attorneys also volunteer at MANNA, a Philadelphia non-profit organization that prepares and delivers meals to those suffering with serious illnesses.

Read more about our commitment to pro bono work at www.bergermontague.com/pro-bono.

Summary of Practice Areas

Antitrust

Berger Montague's innovative approach to antitrust class actions continues to recover billions of dollars for clients and class members. The Firm has played a principal role in numerous precedent-setting cases, including a number of the largest and most successful antitrust class actions.

Our pivotal role has obtained billions of dollars in settlements across diverse industries, including commodity markets, pharmaceuticals, and financial products. As a result of our successes and the skill, reputation and experience of our Firm's antitrust lawyers, Berger Montague is routinely appointed by federal courts to serve in leadership roles in complex antitrust class action cases.

The firm and its antitrust lawyers have been recognized by *Chambers USA* for over 20 years. The firm has also received recognition from *The Legal 500*, Martindale-Hubbell, America's Best Lawyers, Lawdragon.com, and The National Law Journal for its outstanding work in antitrust litigation. The country's leading judges have also noted our tremendous litigation skills and our outstanding preparation and representation of our clients and class members.

- **Cung Le, et al v. Zuffa, LLC, d/b/a Ultimate Fighting Championship and UFC – Antitrust Litigation**: Co-lead counsel obtained a $375 million settlement on behalf of a certified class of UFC fighters, charging the UFC with violations of the antitrust laws. The class fought for the UFC between December 16, 2010 and June 30, 2017 in Le v. Zuffa, LLC. There is also a proposed class of UFC fighters who fought for the UFC between July 1, 2017 and the present in *Johnson v. Zuffa, LLC*. The complaints in the Le Action and the Johnson Action allege that the plaintiffs and members of the classes are victims of the UFC's illegal scheme to eliminate its competition in the sport of Mixed Martial Arts (MMA), and that the defendants have suppressed compensation for UFC Fighters.

- **In re: Platinum and Palladium Antitrust Litigation:** Co-lead counsel obtained a $20 million settlement in these consolidated class actions on behalf of traders of platinum of platinum and palladium-based derivative contracts, physical platinum and palladium, and platinum and palladium-based securities against BASF, Goldman Sachs, HSBC, and ICBC Standard Bank (collectively, the "Fixing Participants" or "defendants").

- **In re Domestic Drywall Antitrust Litigation:** Co-lead Counsel and obtained a $190.7 million settlement on behalf of a class of direct purchasers of drywall, in a case alleging that the dominant manufacturers of drywall engaged in a conspiracy to fix drywall prices in the United States and to abolish the industry's long-standing practice of limiting price increases for the duration of a construction project through "job quotes." The case was litigated in the United States District Court for the Eastern District of Pennsylvania.

- **In re Commodity Exchange Inc., Gold Futures and Options Trading Litigation:** Co-lead Counsel and obtained total settlements of $152 million in this class action antitrust lawsuit alleging that the five banks that participated in the London Gold Fixing conspired to suppress the PM Gold Fix, an important gold pricing benchmark, thereby harming sellers of physical gold and certain gold investments. The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank Ag, HSBC Bank plc and Société Générale are all members of the London Gold Market Fixing Ltd., which conducts the London Gold Fixing. The London Gold Fixing is a twice daily process where the defendants set an important benchmark

price for gold. The plaintiffs alleged that the defendants conspired to manipulate this benchmark for their collective benefit. The plaintiffs further alleged that they were injured because the defendants' manipulation caused prices for gold-based derivatives contracts, physical gold, and gold-based securities to be made artificial.

- **In re: Generic Pharmaceuticals Pricing Antitrust Litigation:** On the Plaintiffs' Steering Committee for a proposed class of generic drug purchasers in price-fixing and market allocation litigation brought against many of the generic drug manufacturers operating in the United States. This large MDL litigation contains various, similar complaints filed by the plaintiffs which allege that generic pharmaceutical manufacturers engaged in an unlawful scheme or schemes to fix, maintain, and stabilize prices, rig bids, and engage in market and customer allocations concerning many generic drugs.

- **In re Google Digital Advertising Antitrust Litigation**. Co-Lead Counsel representing "Publishers," i.e., ad-supported online content companies, in a suit alleging that Google engaged in a scheme to monopolize markets for products publishers use to sell their ad inventory. Plaintiffs alleges that Google's scheme to monopolize suppresses the ad revenues Publishers can generate on their content.

- **In re: Shale Oil Antitrust Litigation**. Co-Lead Counsel for a class of purchasers who paid inflated prices for gasoline, heating oil, and other crude oil-derived products as a result of a conspiracy among major U.S. shale oil producers to restrict production under the pretext of "market discipline." The proposed class includes individuals and entities in the United States who purchased gasoline, diesel fuel, or heating oil at artificially inflated prices due to the alleged anticompetitive conduct of major shale oil producers.
-

Additional Firm Antitrust Experience

Over the last half century, the firm has litigated many of the significant civil antitrust cases alleging price fixing and monopoly abuse. Our founding partner is recognized for pioneering the modern antitrust class action, leading to the recovery of billions of dollars for our clients and the classes we represent.

Berger Montague's antitrust practice has also obtained some of the largest antitrust class action settlements including $5.6 billion *in In re Payment Card Interchange Fee &*

Merchant Discount Litigation. and $750 million in *In re Namenda Direct Purchaser Antitrust Litigation*. Our innovative approach to antitrust litigation helped shaped the applicable legal standards.

Pharmaceutical Antitrust Class Actions

Berger Montague has also played a principal role in obtaining over $1 billion in settlements from drug companies alleged to have impeded the entry of generics and artificially inflated drug prices.

These Pay-for-Delay cases include:

- **In re Namenda Direct Purchaser Antitrust Litigation – Antitrust Class Action Settlement:** Co-lead counsel and obtained a $750 million settlement on behalf of a class of direct purchasers of branded and/or generic Namenda IR and/or branded Namenda XR. This is the largest single-defendant settlement ever for a case alleging delayed generic competition. The case was litigated in the United States District Court for the Southern District of New York.

- I**n re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litigation:** Represented a certified class of direct purchaser plaintiffs who purchased Suboxone tablets directly from defendant Reckitt Benckiser Pharmaceuticals, Inc. (now known as Indivior Inc.) (“Reckitt”). Shortly before trial was scheduled to start (the Court had set the trial start date for October 30, 2023), the parties reached a $385 million settlement.

- **King Drug Co. of Florence Inc. v. Cephalon Inc. – Provigil Antitrust Settlement:** Served on the Executive Committee and obtained total settlements of over $512 million in this antitrust pay for delay class action on behalf of direct purchasers of Provigil (modafinil), a prescription drug for sleeping disorders manufactured and sold by defendant Cephalon, Inc. After nine years of hard-fought litigation, the court approved a $512 million partial settlement, then the largest settlement ever for a case alleging delayed generic competition. The case was litigated in the United States District Court for the Eastern District of Pennsylvania.

- **In Re: Opana ER Antitrust Litigation – Antitrust Settlement:** Co-lead class counsel and obtained a $145 million settlement in this antitrust pay for delay action on behalf of a certified class of direct purchasers of brand or generic Opana, alleging that the defendants entered into a pay for delay agreement whereby Impax delayed the launch of its generic Opana ER product in exchange for valuable consideration from Endo. After eight years of hard-fought litigation and the court’s class certification opinion in favor of the plaintiffs on June 4, 2021,

the class and Impax settled as trial commenced (and proceeded against Endo), reaching what Judge Leinenweber described as an "excellent" settlement.

- **Celebrex (Celecoxib) Antitrust Class Action Settlement:** Class counsel and obtained a $94 million settlement for the class of direct purchasers of brand and generic Celebrex (celecoxib) in this antitrust action against Pfizer. The plaintiffs alleged that Pfizer, in violation of the Sherman Act, improperly obtained a patent for Celebrex from the U.S. Patent and Trademark Office in a scheme to unlawfully extend patent protection and delay market entry of generic versions of Celebrex. The case was litigated in the District Court for the Eastern District.

- **In re Loestrin 24 Fe Antitrust Litigation – Antitrust Class Action Settlement:** Co-lead counsel and obtained a $120 million settlement for the class of direct purchasers of brand Loestrin, generic Loestrin, and brand Minastrin. The direct purchaser class alleged that the defendants violated the antitrust laws by unlawfully impairing the introduction of generic versions of the prescription drug Loestrin 24 Fe. The case was litigated in the United States District Court for the District of Rhode Island.

- **In re K-Dur Antitrust Litigation – Antitrust Class Action Settlement:** Co-Lead Counsel and obtained $62.3 million in total settlements for a class of direct purchasers of the brand-name drug K-Dur 20, a potassium chloride supplement used to treat patients with depleted potassium. The lawsuit alleged that the defendants, Schering-Plough, Upsher-Smith, and American Home Products, violated federal antitrust law by entering into written, anti-competitive agreements under which Schering-Plough paid its rival generic manufacturers, Upsher-Smith and American Home Products, $60 million to delay the market entry of their generic versions of K-Dur 20.The case was litigated in United States District Court for the District of New Jersey.

- **In re Solodyn Antitrust Litigation – Antitrust Class Action Settlement:** Co-lead counsel and obtained over $76.8 million in total settlements on behalf of a class of direct purchasers of brand and generic Solodyn (extended-release minocycline hydrochloride tablets) in this antitrust action. The plaintiffs alleged that Medicis Pharmaceutical Corp. entered into agreements with each of Impax Laboratories, Inc., Sandoz Inc., and Lupin Limited/Lupin Pharmaceuticals, Inc. not to compete in the market for extended-release minocycline hydrochloride tablets, including Solodyn and its generic equivalents. The case was litigated in the United States District Court for the District of Massachusetts

- **In re Tricor Antitrust Litigation:** Class counsel and obtained a $250 million settlement on behalf of a class of direct purchasers of the cholesterol drug Tricor. The plaintiffs charged Abbott Laboratories and Fournier Industrie et Sante, two

brand-name pharmaceutical companies, with monopolizing the market for Tricor and its generic equivalents and paying its competitors to refrain from introducing less expensive generic versions of the drug. The case was litigated in the United States District Court for the District of Delaware.

Commodities Antitrust Class Actions

- **In re Capacitors Antitrust Direct Purchaser Litigation:** One of the lead trial counsel obtaining over $604.5 million in settlements on behalf of a class of direct purchasers of aluminum and tantalum electrolytic capacitors and film capacitors. After nearly a decade of hard-fought litigation, and two nearly completed trials in front of California juries, the plaintiffs ultimately obtained combined settlements for the class, representing an extraordinary recovery of 141.4% of the class's single damages as calculated by the class' expert. Capacitors are a fundamental component of electrical circuits that store electric charge and, as such, are ubiquitous in electronic devices. The challenged conduct included both formal and informal conspiratorial meetings and communications with anticompetitive exchanges occurring throughout Asia, Europe, and the U.S.

- **In re: Platinum and Palladium Antitrust Litigation:** Co-lead counsel obtained a $20 million settlement in these consolidated class actions on behalf of traders of platinum of platinum and palladium-based derivative contracts, physical platinum and palladium, and platinum and palladium-based securities against BASF, Goldman Sachs, HSBC, and ICBC Standard Bank (collectively, the "Fixing Participants" or "defendants").

- **In re Commodity Exchange Inc., Gold Futures and Options Trading Litigation:** Co-lead Counsel and obtained total settlements of $152 million in this class action antitrust lawsuit alleging that the five banks that participated in the London Gold Fixing conspired to suppress the PM Gold Fix, an important gold pricing benchmark, thereby harming sellers of physical gold and certain gold investments. The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank Ag, HSBC Bank plc and Société Générale are all members of the London Gold Market Fixing Ltd., which conducts the London Gold Fixing. The London Gold Fixing is a twice daily process where the defendants set an important benchmark price for gold. The plaintiffs alleged that the defendants conspired to manipulate this benchmark for their collective benefit. The plaintiffs further alleged that they were injured because the defendants' manipulation caused prices for gold-based derivatives contracts, physical gold, and gold-based securities to be made artificial.

- **In re: Generic Pharmaceuticals Pricing Antitrust Litigation:** On the Plaintiffs' Steering Committee for a proposed class of generic drug purchasers in price-

fixing and market allocation litigation brought against many of the generic drug manufacturers operating in the United States. This large MDL litigation contains various, similar complaints filed by the plaintiffs which allege that generic pharmaceutical manufacturers engaged in an unlawful scheme or schemes to fix, maintain, and stabilize prices, rig bids, and engage in market and customer allocations concerning many generic drugs.

Athletic and Academic Antitrust Class Actions

- **Cung Le, et al v. Zuffa, LLC, d/b/a Ultimate Fighting Championship and UFC – Antitrust Litigation:** Co-lead counsel obtained a $375 million settlement on behalf of a certified class of UFC fighters, charging the UFC with violations of the antitrust laws. The class fought for the UFC between December 16, 2010 and June 30, 2017 in Le v. Zuffa, LLC, as well as a proposed class of UFC fighters who fought for the UFC between July 1, 2017 and the present in Johnson v. Zuffa, LLC. The complaints in the Le Action and the Johnson Action allege that the plaintiffs and members of the classes are victims of the UFC's illegal scheme to eliminate its competition in the sport of Mixed Martial Arts (MMA), and that the defendants have suppressed compensation for UFC Fighters.

- **Fusion Elite All Stars v. Varsity Brands, LLC – Antitrust Class Action Settlement:** Co-Lead Class Counsel representing classes of All-Star Cheer Gyms and Spectators of All Star Cheer Events in antitrust litigation against Varsity Brands, LLC and its subsidiaries (collectively "Varsity") and U.S. All-Star Federation, Inc. ("USASF"). In late 2022, the plaintiffs' negotiation team reached a settlement of the matter for $82 million in cash plus valuable prospective relief that would unwind some of the key conduct that the plaintiffs had alleged Varsity had used to monopolize the market for All Star Cheer Events in the United States. All-Star Cheer is an elite, competitive type of cheerleading that is focused solely on competitions between teams of cheerleaders ("All-Star Competitions"), as opposed to cheering to support another athletic team from the sidelines.

- **Henry, et al. v. Brown University, et al. 568 Cartel Antitrust Litigation:** Co-lead counsel obtained $284 million in settlements to date in this antitrust class action lawsuit filed against Brown University, California Institute of Technology, University of Chicago, Columbia University, Cornell University, Dartmouth College, Duke University, Emory University, Georgetown University, Massachusetts Institute of Technology, Northwestern University, Notre Dame, University of Pennsylvania, Rice University, Vanderbilt University, and Yale University. U.S. District Court Judge Matthew Kennelly rejected motions by the defendant universities to dismiss the case. Discovery in the litigation is now going forward.

Financial Services Antitrust Class Actions

Sophisticated investors' portfolios contain a diverse set of investment vehicles, including equities, bonds, futures, swaps, commodities and other financial instruments. Plaintiffs' law firms that focus on traditional securities fraud and Delaware litigation are, generally, focused on investor losses on one category of investment products: equities. Berger Montague has a long history of success in securities litigation. Our broad litigation expertise—including in antitrust and commodities litigation—enables us to also identify and successfully pursue meritorious claims for losses suffered in other financial instruments, such as bonds, swaps, futures, commodities, etc., on behalf of our investor clients that the firm's peers often overlook.

Representative complex antitrust litigation experience includes financial services companies includes:

- **Currency Conversion Fee Litigation – Antitrust Class Action Settlement:** Co-lead counsel led this class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of $336 million was approved. A subsequent settlement with American Express increased the settlement amount to $386 million. The case was litigated in the United States District Court for the Southern District of New York.

- **Ross v. Bank of America**: Lead counsel for the cardholder classes and obtained settlements with four of the nation's largest credit card companies, JPMorgan Chase, Bank of America, Capital One and HSBC. The plaintiffs alleged that six major credit card banks and one arbitration provide unlawfully colluded to require cardholders to arbitrate disputes, including debt collection disputes, and to preclude cardholders from participating in any class actions. The case was litigated in United States District Court for the Southern District of New York.

- **In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation:** Co-Lead Counsel and obtained a $5.6 billion antitrust settlement for a national class of direct purchasers in the Payment Card Interchange Fee and Merchant Discount Antitrust Litigation against Visa, MasterCard, and several of the largest banks in the United States including JPMorgan Chase, Bank of America, and Citibank. The case is pending in the United States District Court for the Eastern District of New York. Our team earned high judicial praise.

- **Contant v. Bank of America corp. – Antitrust Class Action Settlement:** Lead Counsel and obtained $23.63 million in settlements with the defendants in the multistate indirect purchaser antitrust class action, Contant, et al. v. Bank of

America Corp., et al. The plaintiffs alleged that the defendants including 16 of the world's largest dealer banks colluded to manipulate prices on foreign currency ("FX") instruments. The case was litigated in the United States District Court for the Southern District of New York. We earned judicial praise.

Additional Complex Antitrust Litigation Experience

- **Dental Supplies Antitrust Litigation:** Co-lead counsel and obtained an $80 million settlement for a class of dental practices and dental laboratories in this antitrust lawsuit against Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company, the three largest distributors of dental supplies in the United States. Our team earned judicial praise for our work.

- **In re Domestic Drywall Antitrust Litigation:** Co-lead Counsel and obtained a $190.7 million settlement on behalf of a class of direct purchasers of drywall, in a case alleging that the dominant manufacturers of drywall engaged in a conspiracy to fix drywall prices in the United States and to abolish the industry's long-standing practice of limiting price increases for the duration of a construction project through "job quotes." The case was litigated in the United States District Court for the Eastern District of Pennsylvania.

- **Marchbanks Truck Service Inc. v. Comdata Network, Inc. – Antitrust Settlement:** Co-lead counsel and obtained settlements totaling $130 million for a class of 6,500 independent truck stops and other retail fueling facilities in this antitrust lawsuit. The settlement also included valuable prospective relief that rolled back much of the conduct that the plaintiffs challenged in the lawsuit as anticompetitive. The case was litigated in the United States District Court for the Eastern District of Pennsylvania.

- **Chicken Farmers In re Broiler Chicken Grower Antitrust Litigation**: Co-lead counsel and obtained $169 million for a class of chicken farmers (also called "growers") in a pay suppression case alleging that the major chicken processing companies (e.g., Tyson, Perdue, Pilgrim's Pride) conspired to suppress the growers' pay by illegally sharing confidential grower compensation data and illegally conspiring not to recruit each other's growers. This is believed to be the largest recovery ever for growers against the chicken companies.

Appeals & Complex Briefing

For more than 50 years, Berger Montague has successfully argued high stakes appeals and briefed complex issues in trial courts around the country. Berger Montague has a proven track record of winning appeals and obtaining favorable results after complex briefing. Our San Francisco office, led by Supreme Court advocate Joshua Davis, has

become a destination Appeals & Complex Briefing practice where clients and peer law firms turn when they need top-flight advocacy in federal and state courts of appeal, in the United States Supreme Court, and for critical briefing in trial courts.

- **Harrow v. Department of Defense:** Appellate counsel representing Petitioner Harrow in a briefing on the merits and oral argument before the Supreme Court. Berger Montague is litigating in the Federal Circuit after shareholder Josh Davis secured a unanimous 9-0 U.S. Supreme Court victory on behalf of a furloughed federal employee.

- **Innovative Health, LLC v. Biosense Webster, Inc:** Counsel representing Plaintiff-Appellant Innovative Health, LLC in a civil appeal of an adverse judgment. Berger Montague successfully reversed a grant of summary judgment in the U.S. Court of Appeals for the Ninth Circuit. The case challenges a medical device provider's exclusionary conduct under federal antitrust laws.

- **Simon & Simon v. Align:** Counsel representing Plaintiff-Appellant Simon & Simon in a civil appeal of an adverse judgment. Berger Montague is engaged in briefing in the U.S. Court of Appeals for the Ninth Circuit, challenging a summary judgment antitrust ruling in a refusal-to-deal case. The U.S. Department of Justice and American Antitrust Institute filed supportive amicus briefs.

- **Giordano v. Saks Incorporated:** Counsel representing Plaintiff Giordano in a civil appeal. Berger Montague briefed and argued Saks before the U.S. Court of Appeals for the Second Circuit. The briefing case challenges a conspiracy where defendants agreed not to compete for one another’s employees.

- **Berger Montague is Pro Bono Appellate Counsel representing Donald Felton in a criminal appeal:** Matt Summers argued U.S. v. Felton in the U.S. Court of Appeals for the Seventh Circuit. Berger Montague represents a criminal defendant challenging an unlawful warrant on Fourth Amendment grounds.

- **Osheske v. Landmark Theaters:** Counsel representing Osheske in a civil appeal of an adverse judgment. Berger Montague associate Sophia Rios argued before the U.S. Court of Appeals for the Ninth Circuit, contending that the Video Privacy Protection Act applies to movie theaters that sell consumer data to third parties.

- **In Re Abbott Labs:** Counsel representing Plaintiffs-Respondents in a civil appeal. Berger Montague developed briefing in this Third Circuit case against two former U.S. Solicitors General, resulting in an opinion upholding the district court’s use of the crime-fraud exception against pharmaceutical company that had engaged in sham litigation.

- **Harris v. Krasner:** Counsel representing Plaintiffs-Appellants Harris and Dixon-Fowler in a civil appeal of an adverse judgment. Berger Montague achieved a precedential Third Circuit victory representing District Attorney Larry Krasner.

- **Boynes v. Limetree Bay Ventures LLC:** Counsel representing Plaintiffs-Appellees in a civil appeal. Berger Montague represented residents of St. Croix before the U.S. Court of Appeals for the Third Circuit. The Third Circuit affirmed a preliminary injunction requiring oil companies to provide bottled water to affected residents after their refinery contaminated local water supplies.

- **Gilead v. Superior Court:** Appellate Counsel representing Justice Catalyst as amicus curiae in a briefing on the merits. Berger Montague filed an amicus brief in the California Supreme Court arguing that pharmaceutical companies should be liable for substantial, unreasonable harm. The amicus brief argues that hyperbolic arguments from the pharmaceutical industry's amici are baseless, in part because analogous doctrines in antitrust law provide liability under similar circumstances.

- **NVIDIA Corp. v. E. Ohman J:OR Fonder AB**: Appellate Counsel representing certain institutional investors as amici curiae in a briefing on the merits. Berger Montague filed an amicus brief in the Supreme Court of the United States on behalf of major institutional investors, advocating against the imposition of novel pleading standards that would impede meritorious securities litigation.

- **Gibson v. Cendyn:** Appellate Counsel representing the American Antitrust Institute as amicus curiae in a briefing on the merits. Berger Montague filed an amicus brief in the U.S. Court of Appeals for the Ninth Circuit, collaborating with the American Antitrust Institute to address the antitrust implications of algorithmic collusion in the hospitality industry.

- **In re: Merck Mumps Vaccine Antitrust Litigation:** Appellate Counsel representing the American Antitrust Institute as amicus curiae in a brief supporting a petition for rehearing en banc. Berger Montague filed an amicus brief in the U.S. Court of Appeals for the Third Circuit Berger Montague collaborated with the American Antitrust Institute to argue that the en banc Third Circuit Court of Appeals should re-consider the applicability of the Noerr-Pennington doctrine on knowing misrepresentations.

Child Sex Abuse & Sexual Assault

The Child Sexual Abuse Team at Berger Montague works to obtain justice for survivors of sexual predators. Berger Montague has a national reputation dating over a half

century for the successful representation of our clients. During its history, Berger Montague has recovered over Forty Billion Dollars for its clients. We use our decades of experience, professional expertise, and unwavering commitment to justice to shine a light on the truth, obtain compensation for our clients, and help our clients begin their healing journey.

We serve survivors across the United States and can meet with you confidentially and inform you about your options for pursuing justice and the types of remedies that can be pursued.

Commercial Litigation

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

- **Ginsburg v. Philadelphia Stock Exchange, Inc.**, No. 2202-CC (Del. Ch.). Lead counsel and obtained a settlement valued at over $99 million on behalf of a former trader who brought a shareholder class action on behalf of minority shareholders of the Philadelphia Stock Exchange. The litigation alleged breaches of fiduciary duty by directors of the exchange and the exchange itself. The settlement was reached on the eve of trial and provided for significant changes to corporate governance to prevent the recurrence of the disenfranchisement that occasioned the litigation in the first place.

- **Robert S. Spencer, et al. v. The Arden Group, Inc., et al.,** No. 02066 (Pa. Ct. Com. Pl., Phila. Cty. - Commerce Program)**.** Represented an owner of limited partnership interests in several commercial real estate partnerships in a lawsuit against the partnerships' general partner. The terms of the settlement are subject to a confidentiality agreement.

- **Forbes v. GMH,** (No. 07-cv-00979 (E.D. Pa.) Represented a private real estate developer/investor who sold a valuable apartment complex to GMH for cash and publicly held securities. The case which claimed securities fraud in connection with the transaction settled for a confidential sum which represented a significant portion of the losses experienced.

Commodities & Financial Instruments

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

- **In re Peregrine Financial Group Customer Litigation:** Co-lead counsel obtained settlements worth over $73.5 million on behalf of former customers of Peregrine Financial Group, Inc. in litigation against U.S. Bank, N.A. and JPMorgan Chase Bank, N.A., arising from Peregrine's collapse. The plaintiffs alleged that both banks breached legal duties by allowing Peregrine's owner to withdraw and put millions of dollars in customer funds to non-customer use.

- **In re MF Global Holdings Ltd. Investment Litigation:** Co-lead counsel obtained $1.6 billion to thousands of commodities account holders who were victims to the alleged massive theft and misappropriation of client funds at the former global commodities brokerage firm, MF Global. This was one of the largest recoveries arising out of the U.S. financial crisis. The firm reached a variety of settlements, including with JPMorgan Chase Bank, the MF Global SIPA Trustee, and the CME Group, that benefitted the plaintiffs and class members. The class members received more than 100% of the funds allegedly misappropriated by MF Global even after all attorneys' fees and expenses.

- **In re Commodity Exchange Inc., Gold Futures and Options Trading Litigation**: Co-lead counsel obtained total settlements of $152 million in this class action antitrust lawsuit alleging that the five banks that participated in the London Gold Fixing conspired to suppress the PM Gold Fix, an important gold pricing benchmark, thereby harming sellers of physical gold and certain gold investments. The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank Ag, HSBC Bank plc and Société Générale are all members of the London Gold Market Fixing Ltd., which conducts the London Gold Fixing. The London Gold Fixing is a twice daily process where the defendants set an important benchmark price for gold. The plaintiffs alleged that the defendants conspired to manipulate this benchmark for their collective benefit.

- **In re: Platinum and Palladium Antitrust Litigation:** Co-lead counsel obtained a $20 million settlement in these consolidated class actions on behalf of traders of platinum and palladium-based derivative contracts, physical platinum and palladium, and platinum and palladium-based securities against BASF, Goldman Sachs, HSBC, and ICBC Standard Bank (collectively, the "Fixing Participants" or "defendants").

- **In re Libor-Based Financial Instruments Antitrust Litigation:** Class counsel and obtained settlements totaling $187 million on behalf of investors who transacted in Eurodollar futures contracts and options on futures contracts on the Chicago Mercantile Exchange ("CME"). The suit alleged that 13 global banks conspired and colluded to misreport and manipulate LIBOR rates, thereby harming investors in futures, swaps, and other Libor-based derivative products. (No. 1:11-md-02262-NRB (S.D.N.Y.)).

Complex Litigation Ethics

Berger Montague offers a wide range of services on ethics issues in complex litigation and class action settings. Our team provides guidance, expert testimony, representation, and counseling to law firms and lawyers on a variety of legal ethics issues, such as:

- Attorney-client privilege and work product protections
- Attorney fee awards
- Communications with absent class members
- Conflicts of interest
- Confidentiality
- Litigation funding
- Settlements
- Solicitation
- Third-party claim filers

Consumer Protection

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

- **In re Public Records Fair Credit Reporting Act Litigation:** Class counsel in three class action settlements involving how the big three credit bureaus, Experian, TransUnion, and Equifax, report public records, including tax liens and civil judgments. The settlements provide groundbreaking injunctive relief valued at over $100 billion and provide a streamlined process for consumers to receive uncapped monetary payments for claims related to inaccurate reporting of public records.

- **In re: CertainTeed Fiber Cement Siding Litigation,** (MDL No. 2270 (E.D. Pa.). Co-lead counsel obtained a settlement of more than $103 million in this product

liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class.

- **Countrywide Predatory Lending Enforcement Action:** Advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a landmark law enforcement proceeding against Countrywide (and its parent, Bank of America) culminating in 2008 in mortgage-related modifications and other relief for borrowers across the country valued at some $8.6 billion.

- **In re Experian Data Breach Litigation:** Served on the Executive Committee of this class action lawsuit that arose from a 2015 data breach at Experian in which computer hackers stole personal information including Social Security numbers and other sensitive personal information for approximately 15 million consumers. The settlement is valued at over $170 million. It consisted of $22 million for a non-reversionary cash Settlement Fund; $11.7 million for Experian's remedial measures implemented in connection with the lawsuit; and two years of free credit monitoring and identity theft insurance. The aggregate value of credit monitoring claimed by class members during the claims submission process exceeded $138 million, based on a $19.99 per month retail value of the service.

- **In re Pet Foods Product Liability Litigation,** 1:07-cv-02867 (D.N.J.), MDL Docket No. 1850 (D.N.J.). Co-lead counsel obtained a $24 million settlement suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food. Many terms of the settlement are unique and highly beneficial to the class, including allowing class members to recover up to 100% of their economic damages without any limitation on the types of economic damages they may recover.

- **In re TJX Companies Retail Security Breach Litigation,** No. 1:07-cv-10162-WGY, (D. Mass.). The firm served as co-lead counsel in this multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history. The breach involved more than 45 million credit and debit card numbers and 450,000 customers' driver's license numbers. The case was settled for benefits valued at over $200 million. Class members whose driver's license numbers were at risk were entitled to 3 years of credit monitoring and identity theft insurance (a value of $390 per person based on the retail cost for this service), reimbursement of actual identity theft losses, and reimbursement of driver's license replacement costs. Class members whose credit and debit card numbers were at risk were entitled to cash of $15-$30 or store vouchers of $30-$60.

- **In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation.** No. 4:09-MD-2046 (S.D. Tex. 2009). Served on the Executive

Committee of this multidistrict litigation and obtained a settlement of cash and injunctive relief for a class of 130 million credit card holders whose credit card information was stolen by computer hackers. The breach was the largest known theft of credit card information in history.

- **In re: Countrywide Financial Corp. Customer Data Security Breach Litigation,** No. 3:08-md-01998-TBR (W.D. Ky.). The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement for a class of 17 million individuals whose personal information was at risk when a rogue employee sold their information to unauthorized third parties. Settlement benefits included: (i) reimbursement of several categories of out-of-pocket costs; (ii) credit monitoring and identity theft insurance for 2 years for consumers who did not accept Countrywide's prior offer of credit monitoring; and (iii) injunctive relief.

- **In re Educational Testing Service Praxis Principles of Learning and Teaching,** MDL No. 1643 (E.D. La.). Grades 7-12 Litigation: The firm served on the plaintiffs' steering committee and obtained an $11.1 million settlement in 2006 on behalf of persons who were incorrectly scored on a teacher's licensing exam.

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

Credit Reporting and Background Checks

Berger Montague's credit reporting and background checks practice group litigates on behalf of consumers nationwide to protect them against violations of their rights under the Fair Credit Reporting Act and other laws that govern credit reports and background checks.

We are committed to ensuring that credit report and background check information is accurate and that it is sold and used for legal purposes. When your rights are violated by an employer, consumer reporting agency, credit bureau, background check company, landlord, or another report user, our team is here to help.

- **In re Public Records Fair Credit Reporting Act Litigation:** Class counsel in three class action settlements involving how the big three credit bureaus, Experian, TransUnion, and Equifax, report public records, including tax liens and

civil judgments. The settlements provide groundbreaking injunctive relief valued at over $100 billion and provide a streamlined process for consumers to receive uncapped monetary payments for claims related to inaccurate reporting of public records.

- **Fernandez v. CoreLogic Credco LLC**, No. 3:20-cv-01262-JM-SBC (SD. Cal.). Obtained $58.5 million on behalf of people who had been wrongly reported as potential matches to the OFAC List by CoreLogic Credco, a company that sells consumer reports to mortgage lenders, auto dealers, and other entities across the country seeking to evaluate consumers for credit.

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

- **Rubio-Delgado & Moore v. Aerotek, Inc.**, Nos. 2:15-cv-2701, 2:16-cv-1066 (S.D. Ohio). Serving as lead counsel, Ms. Drake obtained a $15 million settlement on behalf of a nationwide class of employees and applicants against a large temporary staffing company for alleged violations of the Fair Credit Reporting Act.

- **Taylor v. Inflection Risk Solutions, LLC,** No. 20-2266 (D. Minn.). Obtained a $4 million settlement on behalf of people who had been inaccurately reported as committing violent crimes or felonies which were actually misdemeanors under Minnesota law by Inflection Risk Solutions, LLC, a company that sold background checks to companies, such as Airbnb.

- **Halvorson, et al. v. TalentBin, Inc.**, No. 3:15-cv-05166 (N.D. Cal.). Serving as lead counsel, Ms. Drake obtained a $1.5 million settlement on behalf of a nationwide class against a large consumer reporting agency for alleged violations of the Fair Credit Reporting Act.

- **Hinkel & Noon v. Universal Credit Services, LLC – Deceased Credit Report Settlement,** No. 2:22-cv-01902 (E.D. Pa.). obtained $225,000 for individuals who had been wrongly reported as deceased on their credit reports by Universal Credit Services, a company that sells credit reports primarily to mortgage lenders.

- **Thomas v. Equifax Info. Services, LLC**, No. 18-cv-684 (E.D. Va.). FCRA class action, alleging violations by credit bureau, providing nationwide resolution of

class action claims asserted across multiple jurisdictions, including injunctive relief, and an uncapped mediation program for millions of consumers.

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

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

- **Christopher Hicks v. Advanced Background Check, Inc.**, No. 3:22-cv-361(S.D. Ohio). Resolved a case for Mr. Hicks who lost a job opportunity after his records falsely stated he was a Registered Sex Offender and violent criminal.

- **Mariaeugenia Pintos-Quiroga v. Equifax Information Services LLC, et al**. No. 1:21-cv-00184-SM (S.D. Ohio). Resolved a case for Ms. Pintos-Quiroga after her credit reports were negatively affected by personal information and numerous credit accounts that did not belong to her.

Defective Drugs & Medical Devices

- **In re Philips Recalled CPAP, Bi-Level PAP, And Mechanical Ventilator Products Litigation**, MDL No. 3014 (W.D. Pa.). Appointed to Plaintiffs' Steering Committee in this multi-district litigation alleging claims for economic losses, medical monitoring, and personal injuries in connection with Philips' recall of millions of CPAPs, BiPAPs and ventilators that contained polyester-based polyurethane foam that degrades into particles and emits volatile toxic compounds, and in which the Court granted preliminary approval to a proposed settlement of class members' economic loss claims that, if approved, will require the Philips defendants to pay over $479 million to class members.

- **Allergan Textured Breast Implants Litigation.** Co-lead Counsel in this nationwide consolidated mass tort and class action litigation against medical device manufacturer Allergan (now acquired by AbbVie). The multi-district litigation, captioned In re: Allergan BIOCELL Textured Breast Implant Products Liability Litigation, No. 2:19-md-02921, MDL No. 2921 (D.N.J.), and pending in the United States District Court for the District of New Jersey, asserts claims for personal injuries, economic harms, and medical monitoring, on behalf of women in the United States who have been harmed by Allergan's Biocell® Textured

Breast Implants. The Allergan Textured Breast Implants were recalled on a global basis in 2019.

Defective Products

Berger Montague's Defective Products Group represents homeowners, vehicle owners and other consumers nationwide who have been harmed by failing products. Whether the problem is with a construction product, an appliance or an automobile, we will vigorously fight to protect your rights under the law and to make you whole. Manufacturers seem to have an unfair advantage when evaluating — and often rejecting or dismissing — warranty claims and other complaints made by consumers concerning faulty products. Berger Montague, however, has the ability to level the playing field through the legal system.

- **State of Connecticut Tobacco Litigation:** Co-lead counsel for the State of Connecticut and helped it recover approximately $3.6 billion from certain manufacturers of tobacco products in its litigation against the tobacco industry.

- **In re School Asbestos Litigation**, No. 83-0268 (E.D. Pa.). Co-lead counsel and obtained a $215 million asbestos remediation settlement for elementary and secondary schools suffering property damage in this historic environmental and defective product action. The settlement included cash in excess of $70 million plus $145 million in discounts toward replacement building materials. This vigorously fought action spanned thirteen years. This was the first mass tort property damage class action certified in the United States on a nationwide basis.

- **In re: Building Materials Corporation of America Asphalt Roofing Shingle Products Liability Litigation**, MDL No.: 8:11-mn-02000-JMC (D.S.C.), Class Counsel in the GAF roof shingles litigation on behalf of homeowners harmed by allegedly defective roof shingles that settled for over $200 million.

- **In re: CertainTeed Fiber Cement Siding Litigation,** (MDL No. 2270 (E.D. Pa.). Co-lead counsel obtained a settlement of more than $103 million in this product liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class.

- **Cole, et al. v. NIBCO Inc.**, No. 13-cv-7871 (D.N.J.). Co-Lead Counsel and obtained a $43.5 million settlement for class members harmed by allegedly defective pex tubing, fittings, or clamps.

- **In re Pet Foods Product Liability Litigation**, MDL Docket No. 1850, No. 07-cv-02867 (D.N.J). Co-lead counsel and obtained a $24 million settlement in this

lawsuit against Menu Foods and other defendants seeking damages for harms caused by the manufacture and sale of contaminated dog food and cat food.

- **George v. Uponor, Inc.**, No. No. 12-cv-249 (D. Minn.). Co-Lead Counsel and obtained a $21 million settlement on behalf of consumers who had water leaks and economic losses as a result of Uponor high-zinc yellow brass plumbing fittings used in potable water distribution systems throughout the United States.

Automotive Defect Litigation

The firm is a leader is a leader in class actions brought on behalf of drivers against automobile manufacturers.

- **Wood, et al. v. FCA US LLC.,** No. 5:20-cv-11054-JEL-APP (E.D. Mich.). Member of Plaintiffs' Steering Committee and obtained a settlement of at least $88.15 million in this consolidated class action on behalf of owners and lessees of any FCA vehicle equipped with a 2.4L Tigershark MultiAir II Engine. The engines in these vehicles suffer from a defect that causes them to (a) consume excessive engine oil so that oil pressure drops too low before recommended oil changes; (b) to avoid engine damage when oil pressure drops too low, shut off during operation without warning; and (c) release excessive oil into the exhaust system causing vehicles to emit higher levels of toxic emissions that exceed relevant emissions standards. As a result, these vehicles stall unexpectedly and without warning, often when turning at an intersection or when accelerating or decelerating, creating a serious safety hazard. The defect can also result in engine damage and premature wear that necessitates costly repairs, including engine replacements.

- **Vargas, et al. v. Ford Motor Co.**, No. 2:12-08388-ABF-FFM (C.D. Cal.). Co-counsel and obtained a settlement of at least $77.4 million. Plaintiffs alleged that 2011-2016 Ford Fiesta and 2012-2016 Ford Focus vehicles contained a defect in their DPS6 PowerShift transmissions—a kind of automated manual transmission that causes shuddering, bucking, jerking, hesitating and slipping. The settlement provided extraordinary benefits to 1.9 million class members.

- **Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc**. No. ATL-1461-03 (D.N.J). Co-Lead counsel and obtained a settlement exceeding $2 million for plaintiffs with autos with defectively designed timing belt tensioners, timing belts, and/or associated parts (the "timing belt tensioner system"). The plaintiffs further alleged that the defendant failed to disclose and/or misrepresented the appropriate service interval for replacement of the timing belt tensioner system. Settlement included reimbursement for past documented out

of pocket losses, implementation of a revised maintenance program, and an extended warranty program.

- **Steele, et al v. General Motors,** No. 2:17-cv-04323-BRO-SK (C.D. Cal). Obtained a confidential settlement after plaintiffs alleged that 2010-2015 Cadillac SRX vehicles contain a defect that causes their headlights to wear out and fail unexpectedly and prematurely.

- **Patrick v. Volkswagen Group of America, Inc.**, No. 8:19-cv-01908 (C.D. Cal.). Co-lead counsel and obtained a settlement against Volkswagen Group of America, Inc. on behalf plaintiffs who were purchasers and lessees of certain 2019 and 2020 Volkswagen Golf GTI or Jetta GLI vehicles equipped with manual transmissions exhibiting an alleged engine stalling defect. Class members were able to receive an engine control module software update, free of charge. Class members were also able to recover up to 100% reimbursement for out-of-pocket costs of repairs for engine stalling at low speeds such as while the vehicle was slowing down or coming to a stop or when the vehicle was already at a stop while the engine was running.

- **Soto v. American Honda Motor Co., Inc.**, No. 3:12-cv-01377 (N.D. Cal.): Case concerned engine misfiring and excessive oil consumption for Honda models with 6 cylinders with VCM-2 controls. Settlement provided reimbursement for repairs and an extended 8 year warranty for numerous Honda models (Accords, Odysseys, Pilots, and Crosstours) covering 2008-2013 model years.

- **Vargas, et al. v. Ford Motor Co.**, No. 2:12-08388-ABF-FFM (C.D. Cal.). Co-counsel and obtained a settlement of at least $77.4 million. Plaintiffs alleged that 2011-2016 Ford Fiesta and 2012-2016 Ford Focus vehicles contained a defect in their DPS6 PowerShift transmissions—a kind of automated manual transmission that causes shuddering, bucking, jerking, hesitating and slipping. The settlement provided extraordinary benefits to 1.9 million class members.

- **Weiss et al v. General Motors LLC**, No. 1:19-cv-21552-SCOLA/TORRES (S.D. Fla). Obtained confidential settlement after plaintiffs alleged that General Motors' recent generation of half-ton "K2XX platform" trucks and SUVs that causes certain Vehicles to shake violently at cruising speeds. Consumers have named this defect the "Chevy Shake."

- **Boulom et al. v. Toyota Motor Sales, U.S.A., Inc.**, No. 2:20-cv-00999 (C.D. Cal.). Obtained confidential settlement for plaintiffs alleging that 2019 and 2020 Toyota RAV4 Hybrids have defective fuel tanks that cannot be filled to its

advertised 14.5 gallon capacity, compromising the promised range of the vehicles, increasing emissions, and increasing the risk of overflow during fueling.

- **Talley, et al., v. General Motors, LLC**, No. 20-cv-01137 (D. Del.). Obtained confidential settlement against General Motors, LLC, on behalf of plaintiffs who purchased or leased certain 2010 to 2022 Chevrolet Camaro vehicles ("Class Vehicles") for violations of the express and implied warranty statutory provisions.

- **Bolton et al. v. Ford Motor Company**, No. 1:23-cv-00632 (D. Del.). Obtained confidential settlement against Ford on behalf of plaintiffs who were owners or lessees of a 2016 or later Ford-brand vehicle equipped with a 1.0L EcoBoost engine, including 2016-2017 Ford Fiesta, 2018-2021 Ford EcoSport, and 2016-2018 Ford Focus vehicles alleging that Ford Motor Company marketed, distributed, and sold these vehicles with a defective engine which does not allow for the engine oil to circulate properly, thus damaging the engine and causing it to fail prematurely.

- **Swinburne, et al., v. Volkswagen Group of America, Inc., d/b/a Audi of America, Inc. and Audi AG**, No. 20-cv-917 (E.D. Va.). Obtained confidential settlement for plaintiffs who purchased vehicles contain design, manufacturing, and/or workmanship defects which result in the Start/Stop System causing the Class Vehicles' engines to lag, hesitate, or otherwise fail to immediately engage or restart when drivers attempt to accelerate from a full or rolling stop.

- **Buchanan, et al., v. Volvo Car USA, LLC, Volvo Cars of North America, LLC, and Volvo Personvagnar AB**, No. 22-cv-022227 (D.N.J.). Obtained confidential settlement for plaintiffs who purchased or leased vehicles with a latent design, workmanship, and/or manufacturing defects in the Class Vehicles' engines' pistons/piston heads (the "Defect"). The Defect can cause the pistons and the engine itself to fail at any time. It can also cause the engine to consume an excessive amount of oil.

- **Loo v. Toyota Motor Sales, U.S.A., Inc.**, No. 8:19-cv-00750-VAP (C.D. Cal.). Obtained a confidential settlement for plaintiffs experiencing hesitation, jerking, unintended acceleration, lurching, excessive revving before upshifting (also known as excessively high RPM shift points), and lack of power when needed (such as from a stop).

- **Parker v. American Isuzu Motors**, No. 3476 (CCP). Obtained settlement where plaintiffs were able to recover up to $500 each for economic damages resulting from accidents caused by the faulty brakes.

- **Parrish, et al. v. Volkswagen Group of America., Inc.**, No. 8:19-cv-01148 (C.D. Cal.) Obtained settlement where plaintiffs were able to obtain an update of the vehicle's transmission control module software and installation of a damper weight on the drive shaft, free of charge. Certain class members able to recover up to 100% reimbursement for out-of-pocket costs of repairs.

Employment Law & Unpaid Wages

The Berger Montague Employment & Unpaid Wages Department works tirelessly to safeguard the rights of employees and devotes all of their energies to helping the firm's clients achieve their goals.

Our attorneys' understanding of federal and state wage and hour laws, federal and state civil rights and discrimination laws, ERISA, the WARN Act, laws protecting whistleblowers, such as federal and state False Claims Acts, and other employment laws, allows us to develop creative strategies to vindicate our clients' rights and help them secure the compensation to which they are entitled.

Berger Montague is at the forefront of class action litigation, seeking remedies for employees under the Fair Labor Standards Act, state wage and hour law, breach of contract, unjust enrichment, and other state common law causes of action. Berger Montague's Employment & Unpaid Wages Group, which is chaired by Executive Shareholder Shanon Carson, is repeatedly recognized for outstanding success in effectively representing its clients. In 2015, The National Law Journal selected Berger Montague as the top plaintiffs' law firm in the Employment Law category at the Elite Trial Lawyers awards ceremony. Portfolio Media, which publishes Law360, also recognized Berger Montague as one of the eight Top Employment Plaintiffs' Firms in 2009.

Representative cases include the following:

- **Anstead, et al. v. Ascension Health, et al.**, No. 3:22-CV-2553-MCR-HTC (N.D. Fla.) Co-lead counsel and obtained a $19.74 million settlement in this wage and hour lawsuit against Ascension Health and Sacred Heart Health System, Inc., et. al. ("Ascension") on behalf of approximately 84,600 individuals employed in the United States as non-exempt healthcare professionals.

- **Jantz v. Social Security Administration,** EEOC No. 531-2006-00276X. Co-lead counsel and obtained a settlement on behalf of employees with targeted disabilities ("TDEs") alleged that SSA discriminated against TDEs by denying them promotional and other career advancement opportunities. The settlement was reached after more than ten years of litigation, and the Class withstood

challenges to class certification on four separate occasions. The settlement includes a monetary fund of $9.98 million and an unprecedented package of extensive programmatic changes valued at approximately $20 million.

- **Fenley v. Applied Consultants, Inc.,** No. 2:15-cv-259 (W.D. Pa.). Lead counsel and obtained a settlement of $9.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week.

- **Salcido v. Cargill Meat Solutions Corp.** Nos. 1:07-cv-01347-LJO-GSA and 1:08-cv-00605-LJO-GSA (E.D. Cal.). Co-lead counsel and obtained a settlement of $7.5 million on behalf of a class of thousands of employees of Cargill Meat Solutions Corp. alleging that they were forced to work off-the-clock and during their breaks. This is one of the largest settlements of this type of case involving a single plant in U.S. history.

- **Acevedo v. Brightview Landscapes, LLC,** No. 3:13-cv-02529 (M.D. Pa.). Co-lead counsel and obtained a settlement of $6.95 million on behalf of a class of landscaping crew members who allegedly did not receive proper overtime premiums for hours worked in excess of 40 per week.

- **Amador, et al. v. The Brickman Group, Ltd., LLC.**, No. 3:13-cv-02529 (M.D. Pa). Co-lead counsel and obtained a $6.95 million settlement in this wage and hour lawsuit against Brightview Landscapes, LLC f/k/a the Brickman Group LTD. LLC ("Brightview") on behalf of approximately 1,315 individuals employed as salaried landscape/crew/irrigation Supervisors who were paid on a "fluctuating workweek"-type half-time overtime pay scheme.

- **Fenley v. Wood Group Mustang, Inc.,** No. 2:15-cv-326 (S.D. Ohio). Lead counsel and obtained a settlement of $6.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week.

- **Ciamillo v. Baker Hughes, Incorporated,** No. 14-cv-81 (D. Alaska). Lead counsel and obtained a settlement of $5 million on behalf of a class of oil and gas workers who allegedly did not receive any overtime compensation for working hours in excess of 40 per week.

- **Gundrum v. Cleveland Integrity Services, Inc.,** No. 4:17-cv-55 (N.D. Okl.). Lead counsel and obtained a settlement of $4.5 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week.

- **Braniff, et al. v. HCTec Partners, LLC**, No. 3:17-cv-00496 (M.D. Tenn.). Co-lead counsel and obtained a $4.5 million settlement in this wage and hour lawsuit against HCTec Partners, LLC, f/k/a HCTec, LLC on behalf of approximately 2,271 individuals employed in the United States as Consultants.

- **Gentry, et al., v. Scientific Drilling International, Inc.,** No. 4:14-cv-00363 (S.D. Tex.). Co-lead counsel and obtained a $4.45 million settlement in this wage and hour lawsuit against Scientific Drilling International, Inc. on behalf of approximately 745 individuals employed in the United States as Measurement While Drilling ("MWD") Hand Technicians and Survey Field Technicians.

- **Arrington v. Optimum Healthcare IT, LLC**, No. 2:17-cv-03950-RBS (E.D. Pa.). Co-lead counsel and obtained a $4.9 million settlement in this wage and hour lawsuit against Optimum Healthcare IT, LLC on behalf of approximately 2,110 individuals employed in the United States as Consultants.

- **Cortez v. Nebraska Beef**, No. 8:08-cv-00090 (D. Neb.) Co-lead counsel and obtained a $3.9 million settlement on behalf of a class of non-exempt employees at Nebraska Beef's processing plant. The plaintiffs alleged that Nebraska Beef failed to pay them for all pre-shift and post-shift time in the beef processing facility that the workers spent donning, doffing, and washing their required personal protective equipment that was integral and indispensable to their work duties.

- **Sanders v. The CJS Solutions Group, LLC,** No. 17-3809 (S.D.N.Y.). Co-lead counsel and obtained a settlement of $3.24 million on behalf of a class of IT healthcare consultants who allegedly did not receive overtime premiums for hours worked in excess of 40 per week.

- **Chabrier v. Wilmington Finance, Inc.,** No. 06-4176 (E.D. Pa.). Co-lead counsel and obtained a settlement of $2.9 million on behalf of loan officers who worked in four offices to resolve claims for unpaid overtime wages. A significant opinion issued in the case is *Chabrier v. Wilmington Finance, Inc.*, 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant's motion to decertify the class).

- **Koszyk et al. v. Country Financial a/k/a CC Services, Inc.,** No. 1:16-cv-03571 (N.D. Ill.). Co-lead counsel and obtained a $2.825 million settlement in this wage and hour lawsuit against Country Financial a/k/a CC Services, Inc. on behalf of approximately 1,381 individuals employed in the United States as Financial Representatives.

- **Hatzey v. Divurgent, LLC**, No. 1:17-cv-03237-RLM-DLP (E.D. Va.). Co-lead counsel and obtained a $2.45 million settlement in this wage and hour lawsuit against Divurgent, LLC, on behalf of approximately 1,065 individuals employed in the United States as Consultants.

- **Bonnette v. Rochester Gas & Electric Co.,** No. 07-6635 (W.D.N.Y.). Co-lead counsel and obtained a settlement of $2 million on behalf of a class of African American employees of Rochester Gas & Electric Co. to resolve charges of racial discrimination in hiring, job assignments, compensation, promotions, discipline, terminations, retaliation, and a hostile work environment.

- **Lopez v. T/J Inspection, Inc**. No. 5:16-cv-00148-M (W.D. Okla.). Co-lead counsel and obtained a $2 million settlement in this wage and hour lawsuit against T/J Inspection, Inc. on behalf of approximately 520 individuals employed in the United States as Inspectors paid a daily rate.

- **Beasley, et al. v. Custom Communications, Inc.** No. 5:15-CV-00583-F (E.D.N.C.). Co-lead counsel and obtained a $1.22 million settlement in this wage and hour lawsuit against Custom Communications, Inc. (“CCI”) on behalf of approximately 296 individuals employed in the United States as Technicians.

- **Diaz v. TAK Communications CA, Inc., et al.** No. RG20064706 (Cal. Super. Ct., Alameda Cty.). Co-lead counsel and obtained a $1.2 million settlement in this wage and hour lawsuit against TAK Communications CA, Inc. and TAK Communications, Inc. on behalf of approximately 770 individuals employed in the United States as Technicians.

- **Black v. Wise Intervention Services, Inc.**, No. 2:15-cv-00453-MPK (W.D. Pa.). Co-lead counsel and obtained a $826,014.42 settlement in this wage and hour lawsuit against Wise Intervention Services, Inc. (“WISE”) on behalf of 47 individuals employed by WISE in Pennsylvania as Coiled-Tubing Spread.

- **Benton, et al. v. Flyway Express, LLC, et al.**, No. 5:20-cv-01028-EEF-MLH (W.D. Tenn.). Co-lead counsel and obtained a $695,000 settlement in this wage and hour lawsuit against DHL Express (USA) Inc. d/b/a DHL Express and Flyway Express, LLC on behalf of approximately 104,690 individuals employed in the United States as non-exempt employees.

- **Thorpe v. Golden Age Home Care, Inc.**, No. 2:17-cv-01187-TR (E.D. Pa.). Lead counsel and obtained a $725,000 settlement in this wage and hour lawsuit against Golden Age Home Care, Inc., on behalf of approximately 323 individuals employed in the United States as Home Health Aides.

- **Ware, et al. v. CKF Enterprises, Inc. et al.**, No. 5:19-cv-183-DCR (E.D. Ky.). Co-lead counsel and obtained a $595,000 settlement in this wage and hour lawsuit against CKF Enterprises, Inc., d/b/a ExecuTrain of Kentucky, d/b/a Optim Support, Inc. ("ExecuTrain") on behalf of approximately 652 individuals employed in the United States as non-exempt Consultants.

- **Rivera v. Vital Support Home Health Care Agency, Inc.,** (E.D. Pa.). No. 2:15-cv-04857-GEKP Co-lead counsel and obtained a $586,000 settlement in this wage and hour lawsuit against Vital Support Home Health Care Agency, Inc. ("Vital Support") on behalf of approximately 230 individuals employed in the United States as Home Health Aides.

- **Thomas v. Accenture, LLP, d/b/a Sagacious Consultants, LLC, and DB Healthcare, Inc**., No. 2:18-cv-13128-VAR-SDD (E.D. Mich.). Co-lead counsel and obtained a $415,000 settlement in this wage and hour lawsuit against Accenture, LLP, d/b/a Sagacious Consultants, LLC, and DB Healthcare, Inc., on behalf of approximately 257 individuals employed in the United States as Consultants.

Environmental Litigation & Public Health

Berger Montague lawyers are trailblazers in the fields of environmental class action litigation and mass torts. Our attorneys have earned their reputation in the fields of environmental litigation and mass torts by successfully prosecuting some of the largest, most well-known cases of our time. Our Environment & Public Health Group also prosecutes significant claims for personal injury, commercial losses, property damage, and environmental response costs.

- **Cook v. Rockwell International Corporation,** No. 90-cv-00181-JLK (D. Colo.). Won a $554 million jury verdict on behalf of thousands of property owners whose homes were exposed to plutonium from the former Rocky Flats nuclear weapons site northwest of Denver, Colorado. Judgment in the case was entered by the court in June 2008 which, with interest, totaled $926 million. Recognizing this tremendous achievement, the Public Justice Foundation bestowed its prestigious Trial Lawyer of the Year Award for 2009 on Merrill G. Davidoff, David F. Sorensen, and the entire trial team for their "long and hard-fought" victory against "formidable corporate and government defendants." The jury verdict in that case was vacated on appeal in 2010, but on a second trip to the Tenth Circuit, Plaintiffs secured a victory in 2015, with the case then being sent back to the district court. A $375 million settlement was reached in May 2016, and final approval by the district court was obtained in April 2017.

- **In re Exxon Valdez Oil Spill Litigation,** No. A89-0095-CVCHRH (D. Alaska). On September 16, 1994, a jury trial of several months duration resulted in a record punitive damages award of $5 billion against the Exxon defendants as a consequence of one of the largest oil spills in U.S. history. The award was reduced to $507.5 million pursuant to a Supreme Court decision. David Berger was co-chair of the plaintiffs' discovery committee (appointed by both the federal and state courts). Harold Berger served as a member of the organizing case management committee. H. Laddie Montague was specifically appointed by the federal court as one of the four designated trial counsel. Both Mr. Montague and Peter Kahana shared (with the entire trial team) the 1995 "Trial Lawyer of the Year Award" given by the Trial Lawyers for Public Justice.

- **Drayton v. Pilgrim's Pride Corp.**, No. 03-2334 (E.D. Pa). The firm served as counsel in a consolidation of wrongful death and other catastrophic injury cases brought against two manufacturers of turkey products, arising out of a 2002 outbreak of Listeria Monocytogenes in the Northeastern United States, which resulted in the recall of over 32 million pounds of turkey – the second largest meat recall in U.S. history at that time. A significant opinion issued in the case is Drayton v. Pilgrim's Pride Corp., 472 F. Supp. 2d 638 (E.D. Pa. 2006) (denying the defendants' motions for summary judgment and applying the alternative liability doctrine). All of the cases settled on confidential terms in 2006..)).

- **In re Three Mile Island Litigation,** No. 79-0432 (M.D. Pa.). As lead/liaison counsel, the firm successfully litigated the case and reached a settlement in 1981 of $25 million in favor of individuals, corporations and other entities suffering property damage as a result of the nuclear incident involved.

- **State of Connecticut Tobacco Litigation:** Co-lead counsel for the State of Connecticut and helped it recover approximately $3.6 billion from certain manufacturers of tobacco products in its litigation against the tobacco industry.

ERISA & Fiduciary Compliance

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

- **Diebold v. Northern Trust Investments, N.A.:** As co-lead counsel in this ERISA breach of fiduciary duty case, the firm secured a $36 million settlement on behalf

of participants in retirement plans who participated in Northern Trust's securities lending program. Plaintiffs alleged that defendants breached their ERISA fiduciary duties by failing to manage properly two collateral pools that held cash collateral received from the securities lending program. The settlement represented a recovery of more than 25% of alleged class member losses. (No. 1:09-cv-01934 (N.D. Ill.)).

- **Glass Dimensions, Inc. v. State Street Bank & Trust Co.:** The firm served as co-lead counsel in this ERISA case that alleged that defendants breached their fiduciary duties to the retirement plans it managed by taking unreasonable compensation for managing the securities lending program in which the plans participated. After the court certified a class of the plans that participated in the securities lending program at issue, the case settled for $10 million on behalf of 1,500 retirement plans that invested in defendants' collective investment funds. (No. 1:10-cv-10588-DPW (D. Mass)).

- **In re Eastman Kodak ERISA Litigation:** The firm served as class counsel in this ERISA breach of fiduciary duty class action which alleged that defendants breached their fiduciary duties to Kodak retirement plan participants by allowing plan investments in Kodak common stock. The case settled for $9.7 million. (Master File No. 6:12-cv-06051-DGL (W.D.N.Y.)).

- **Lequita Dennard v. Transamerica Corp. et al.:** The firm served as counsel to plan participants who alleged that they suffered losses when plan fiduciaries failed to act solely in participants' interests, as ERISA requires, when they selected, removed and monitored plan investment options. The case settled for structural changes to the plan and $3.8 million monetary payment to the class. (Civil Action No. 1:15-cv-00030-EJM (N.D. Iowa)).

False Claims Act, Qui Tam, & Whistleblower

Berger Montague's nationally recognized Whistleblower, Qui Tam & False Claims Act Group has recovered more than $3 billion for federal and state governments, as well as over $500 million for our whistleblower clients.

Berger Montague's award-winning team has litigated False Claims Act cases for over two decades. Berger lawyers Sherrie Savett, Joy Clairmont, Michael Fantini, and William Ellerbe won *The Anti-Fraud Coalition's* Whistleblower Lawyers of the Year Award this year for their work on United States ex rel. Silver v. Omnicare, Inc., PharMerica Corp, et al. and United States et al. ex rel. Penelow v. Janssen Products, LP. Both were government-declined cases that Berger Montague doggedly litigated for over a decade. The PharMerica case settled for $100 million, and the Janssen judgment could exceed $1 billion.

- **In United States ex rel Silver v. Omnicare, Inc. et al**, No. 11-cv-1326 (NLH)(AMD) (D.N.J.). the relator alleged that defendant PharMerica violated the federal False Claims Act and Anti-Kickback Statute by offering kickbacks to certain nursing homes in the form of below-cost Part A prescription drug prices in exchange for the referral of their federally-insured Medicare Part D business. This unlawful practice is known as "swapping" and is a form of a kickback. In November 2023, after 13 years of hard-fought litigation, and just two weeks before trial, the parties reached an agreement to settle this case for $100 million.

- **United States ex rel Penelow v. Janssen Products, LP**, No. 12-7758 (ZNQ)(JBD) (D.N.J.). the relators alleged that Janssen violated the federal and state False Claims Acts by engaging in false, fraudulent, and off label marketing of two of its HIV drugs Prezista and Intelence from June 2006 to 2014. After 12 years of litigation, and a 6-week trial held in May/June 2024, the jury reached a verdict finding that Janssen violated the federal and state FCAs and finding that federal and state damages collectively amount to over $150 million. With the imposition of mandatory trebling of damages and civil penalties, the judgment could exceed $1 billion. This represents one of the largest False Claims Act jury verdicts (in a government-declined case) in history. Relators have moved the Court to enter judgment in the case, which will be subject to appeal. The parties are currently awaiting decisions from the District Court Judge on Janssen's post-trial motions and Relators' Motion for Entry of Judgment.

- **United States ex rel. Zissa v. Santa Barbara County Alcohol, Drug, and Mental Health Services, et al.** Case No: 14- cv-06891- DMG (RZX) (CDCAL). Berger Montague brought this Medi-Cal fraud case for a former Santa Barbara County compliance officer who had been illegally fired for uncovering and reporting Medi-Cal fraud. The government declined to intervene, but our team aggressively litigated this case achieving a $28 million settlement for our client and the Federal government. It was one of the largest False Claims Act settlements against a public entity.

- **United States ex rel. Streck v. Bristol-Myers Squibb Co.**, No. 2:13-cv-7547 (E.D. Pa.). Berger Montague, on behalf of their whistleblower client, achieved a $75 million settlement resolving allegations that Bristol-Myers Squibb had fraudulently underpaid rebates on its drugs owed to State Medicaid Programs across the country.

- **United States ex rel. Kieff and LaCorte v. Wyeth and Pfizer, Inc.**, Nos. 03-12366 and 06-11724-DPW (D. Mass.). Berger Montague represented one of two whistleblowers who alleged that the drug manufacturers, Wyeth and Pfizer, had defrauded the federal government by failing to give the government its Best

Price, as required by Medicaid, on its acid-reflux drug, Protonix. The case settled for $784.6 million.

- **United States ex rel. Jain v. Universal Health Services, Inc., et al**., No. 2:14-cv-00921 (E.D. Pa.). Berger Montague represented a whistleblower who was a psychiatrist who had worked in a UHS hospital and claimed a national scheme by this giant hospital system of over 100 in-patient psychiatric hospitals who were violating Medicare regulations concerning admittance and treatment in these facilities on a national basis. The government intervened in this case and related cases and reached a global settlement of $127 million.

- **United States ex rel. Srivastava v. Trident USA Health Services LLC, et al.**, No. 16-cv-2956 (E.D. Pa.). in this False Claims Act and Anti-Kickback Statute case, Berger Montague represented the former Chief Information Officer of a company that provided mobile diagnostic and x-ray services to nursing home residents. The whistleblower alleged that the company engaged in a "swapping" arrangement, in which it provided certain diagnostic services to nursing homes at below cost, in exchange for those nursing homes referring to the company their more remunerative Medicare Part B and Medicaid business. We obtained an $8.5 million settlement in this case within the context of a Chapter 11 bankruptcy proceeding.

- **United States ex rel. Burris v. The Scripps Research Institute**, No. 1:15-cv-01443 (D. Md.). Berger Montague represented a scientist employed by Scripps who learned of grant fraud. According to the whistleblower, Scripps was using money from National Institutes of Health-funded research grants to pay for time spent by its researchers on activities outside of the scope of the grant. Research funds were improperly claimed from approved grants for time spent by principal investigators writing applications for other, unrelated grants, teaching, and other administrative duties. Scripps settled this case for $10 million.

Healthcare

Our Healthcare & Benefits Law Group is a one-stop solution for group health plans to contain costs, advise on and draft plan documents, negotiate claims, and protect plan assets. We bring decades of experience from a variety of the key players including the U.S. Department of Labor, private law practice, the insurance industry, and a deep bench of subject-matter experts.

Securities & Financial Fraud

Berger Montague's Securities & Investor Protection Group includes many accomplished litigators and a cadre of paralegals, analysts, investigators and support staff. Depth and versatility of talent are among our law firm's greatest strengths. Whether in litigation,

mediation or arbitration, or on behalf of an individual client or a class, we fully commit our resources and experience to maximizing recoveries. We are always ready, willing and able to take cases to trial, and defense lawyers know this. In fact, Berger Montague is one of the few firms in the country that has actually tried securities class action cases and won a substantial jury verdict. We also believe that a well-prepared case should be amenable to dispute resolution prior to trial, and our record of achieving excellent settlements for our clients speaks for itself.

- **In re Five Below, Inc. Securities Litigation.** Co-Lead Counsel, representing Co-Lead Plaintiff the Arkansas Public Employees' Retirement System (APERS), in this securities class action on behalf of a proposed class of investors who purchased Five Below's common stock at artificially inflated prices. Lead Plaintiffs' claims arise from a series of allegedly materially false and misleading statements made by defendants concerning Five Below's ability to recognize and respond to product trends, shrink mitigation efforts and the impact of shrink, and store growth plans. The market learned the truth through a series of disclosures that revealed disappointing earnings and sales, and the departure of Five Below's CEO. These disclosures caused Five Below's stock price to plummet, wiping out billions of dollars in shareholder value. Lead Plaintiffs filed their consolidated amended complaint on January 13, 2025.
- **Camille Lamar Roberts, Inc., et al. v. Rice Energy Inc.**, et al. Sole lead counsel and obtained an $18.75 million settlement with a natural gas and oil company, Rice Energy Inc. on behalf of a class of certain of the company's convertible debenture investors. The settlement arises from a securities class action brought in Pennsylvania state court in Pittsburgh for common law breach of contract and unjust enrichment, along with a novel claim for violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). The plaintiffs alleged that the defendants intentionally withheld material information in violation of their contractual and statutory obligations to certain debenture holders of Rice Drilling B LLC. Plaintiffs alleged that defendants concealed a planned IPO and that the information withheld was material and induced investors to exercise their put options and forfeit potential equity in Rice Energy as a public company.

- **In re: Platinum and Palladium Antitrust Litigation**. Co-lead counsel obtained a $20 million settlement in these consolidated class actions on behalf of traders of platinum and palladium-based derivative contracts, physical platinum and palladium, and platinum and palladium-based securities against BASF, Goldman Sachs, HSBC, and ICBC Standard Bank (collectively, the "Fixing Participants" or "defendants").

- **In re MF Global Holdings Ltd. Investment Litigation**. Co-lead counsel obtained $1.6 billion to thousands of commodities account holders who were

victims to the alleged massive theft and misappropriation of client funds at the former global commodities brokerage firm, MF Global. This was one of the largest recoveries arising out of the U.S. financial crisis. Berger Montague reached a variety of settlements, including with JPMorgan Chase Bank, the MF Global SIPA Trustee, and the CME Group, that benefitted the plaintiffs and class members. The class members represented by Berger Montague received more than 100% of the funds allegedly misappropriated by MF Global even after all attorneys' fees and expenses.

- **In re Merrill Lynch Securities Litigation.** Co-Lead counsel obtained a settlement of $475 million representing the Ohio State Teachers' Retirement System, for the benefit of the class in one of the largest recoveries among the financial crisis cases.

- **Allred, et al. v. Chicago Title Company, et al.** Settled a lawsuit against Chicago Title Co. on behalf of its individual clients who alleged they were victims in a more than $400 million liquor license lending Ponzi scheme engineered by Gina Champion-Cain through ANI Development. Following extensive proceedings and hard-fought negotiations, Chicago Title agreed to pay 70% of Berger Montague's clients' out-of-pocket losses, which was greater than Chicago Title's agreement to pay 65% of losses suffered by investors who filed individual cases in federal court. Recovered 70% of the class members' net losses.

- **In re Rite Aid Corp. Securities Litigation.** Co-lead counsel obtained settlements totaling $334 million against Rite Aid Corp.'s outside accounting firm and certain of the company's former officers.

- **In re Mutual Funds Investment Litigation (Scudder) – Securities Class Action Settlement.** Lead counsel obtained over $300 million for a class of investors in the Scudder/Deutsche Bank/Mutual Funds track of the nationwide Mutual Funds Market Timing cases.

- **Waste Management, Inc. Securities Litigation.** Obtained a class settlement for investors of $220 million cash which included a settlement against Waste Management's outside accountants.

- **In re Commodity Exchange Inc., Gold Futures and Options Trading Litigation.** Co-lead counsel obtained total settlements of $152 million in this class action antitrust lawsuit alleging that the five banks that participated in the London Gold Fixing conspired to suppress the PM Gold Fix, an important gold pricing benchmark, thereby harming sellers of physical gold and certain gold investments. The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank Ag, HSBC Bank plc and Société Générale are all members of the London Gold

Market Fixing Ltd., which conducts the London Gold Fixing. The London Gold Fixing is a twice daily process where the defendants set an important benchmark price for gold. The plaintiffs alleged that the defendants conspired to manipulate this benchmark for their collective benefit.

- **In re IKON Office Solutions Inc. Securities Litigation.** Representing the City of Philadelphia as both co-lead and liaison counsel, obtained a cash settlement of $111 million for the benefit of the class.

- **Ginsburg v. Philadelphia Stock Exchange, Inc.**, No. 2202-CC (Del. Ch.). Lead counsel and obtained a settlement valued at over $99 million on behalf of a former trader who brought a shareholder class action on behalf of minority shareholders of the Philadelphia Stock Exchange. The litigation alleged breaches of fiduciary duty by directors of the exchange and the exchange itself. The settlement was reached on the eve of trial and provided for significant changes to corporate governance to prevent the recurrence of the disenfranchisement that occasioned the litigation in the first place.

- **Fleming Companies, Inc. Securities Fraud Class Action Settlement.** Co-lead counsel obtained settlements totaling $94 million on behalf of a class of shareholders of Fleming Companies, Inc., in connection with losses suffered as a result of alleged securities fraud by Fleming and its auditors and underwriters.

- **In re CIGNA Corp. Securities Litigation.** Co-lead counsel representing the Pennsylvania State Employees' Retirement System, obtained a settlement of $93 million for the benefit of the class.

- **In Re Melridge, Inc. Securities Litigation.** Lead counsel on behalf of a class of purchasers of Melridge common stock and convertible debentures. A four-month jury trial yielded a verdict in plaintiffs' favor for $88.2 million, and judgment was entered on RICO claims against certain defendants for $239 million. Following additional proceedings, the court approved settlements totaling $58 million.

- **In re CVR Refining, LP Unitholder Litigation.** Co-lead counsel obtained a $78.5 million settlement on behalf of certified class of holders of CVR Refining, LP common units regarding allegations that the defendants underpaid the unit holders. The action settled for after a four-day trial. The case was litigated in the Delaware Chancery Court.

- **In re Sotheby's Holding, Inc. Securities Litigation.** Lead counsel obtained a $70 million settlement in this securities fraud class action, of which $30 million was contributed personally by an individual defendant.

- **In re Peregrine Financial Group Customer Litigation.** Co-lead counsel obtained settlements worth over $73.5 million on behalf of former customers of Peregrine Financial Group, Inc. in litigation against U.S. Bank, N.A. and JPMorgan Chase Bank, N.A., arising from Peregrine's collapse. The plaintiffs alleged that both banks breached legal duties by allowing Peregrine's owner to withdraw and put millions of dollars in customer funds to non-customer use.

- **KLA-Tencor Securities Litigation Settlement.** Executive Committee and obtained a $65 million cash settlement in this securities fraud class action on behalf of investors against KLA-Tencor and certain of its officers and directors.

- **Howell Family Trust DTD 01/27/2004 v. Hollis Greenlaw, et al.** Lead counsel obtained settlements worth over $55.5 million on behalf of former customers of Peregrine Financial Group, Inc. in litigation against U.S. Bank, N.A. and JPMorgan Chase Bank, N.A., arising from Peregrine's collapse. The lawsuit sought to remedy harm inflicted as a result of bad faith conduct by United Development Funding Land Opportunity Fund, L.P. ("LOF") General Partner and the General Partner's affiliates. The settlement also included the introduction of corporate governance procedures.

- **In re Sepracor Inc. Securities Litigation.** Co-lead counsel obtained a $52.5 million settlement for the bond and stock purchaser classes in this action.

- **State of New Jersey, et al. v. Qwest Communications International Inc.,** et al. Berger Montague obtained a $45 million settlement for the State of New Jersey pension funds for public employees in this securities fraud opt-out action alleging losses on investments in Qwest Communications International common stock. Berger Montague represented the State of New Jersey against Qwest and certain officers in the Superior Court of New Jersey.

- **Brown v. Kinross Gold U.S.A., Inc.** Co-lead counsel and obtained a $35.7 million settlement in this securities fraud lawsuit consisting of a $29.25 million cash settlement plus an additional $6,528,371 in dividends for a gross settlement value of $35,778,371. Led by Michael Dell'Angelo, this case was litigated in the United States District Court for the District of Nevada.

- **Dodona I, LLC v. Goldman, Sachs & Co. – Securities Fraud Class Action Settlement.** Lead counsel obtained a $27.5 million settlement in this securities fraud class action against Goldman, Sachs & Co. and other defendants. The plaintiff alleged that the defendants violated Section 10(b) of the Securities Exchange Act of 1934 and New York law in structuring, offering, and selling to the plaintiff and other investors certain Hudson CDO securities.

- **The City of Hialeah Employees' Retirement System v. Toll Brothers, Inc.** Co-lead counsel, obtained a class settlement of $25 million against home builder Toll Brothers, Inc.

- **Pennsylvania Public School Employees' Retirement System v. Time Warner, Inc.** The Firm, representing four Commonwealth of Pennsylvania public pension and other funds in securities opt-out litigation filed in Pennsylvania state court, obtained a settlement of $23 million.

- **In re NetBank, Inc. Securities Litigation – Securities Fraud Class Action Settlement.** Lead counsel obtained a $12.5 million settlement on behalf of purchasers of NetBank common stock alleging claims against NetBank and certain of its officers and directors for violations of federal securities laws.

- **In re Nuvelo, Inc. Securities Litigation.** Co-counsel obtained an $8.9 million settlement for the class of investors in this securities fraud class action. The plaintiffs alleged that Nuvelo, Inc. misled investors by repeatedly trumpeting prior clinical success in the ongoing clinical trials of its lead drug candidate, alfimeprase, to treat blocked leg arteries and blocked catheters.

- **Fox v. Riverview Realty Partners, f/k/a Prime Group Realty Trust, et al.** Co-lead counsel obtained an $8.25 million settlement in this lawsuit on for holders of Prime Group Realty Trust's ("PGRT") Series B Cumulative Redeemable Preferred Stock. The plaintiff claimed that the defendants breached their fiduciary duties to the class by transferring control of PGRT to Five Mile and forcing the plaintiff and class members to surrender their Series B Shares for inadequate compensation.

- **Kahn v. Sakar (Foodarama) – Shareholder Protection Settlement.** Obtained a $6.9 million settlement in a state law class action in which the plaintiff alleged that the defendants breached fiduciary duties under the New Jersey Shareholders' Protection Act in a going private transaction.

- **In re: Patriot National, Inc. Securities Litigation.** Co-lead counsel obtained a $6.5 million settlement on behalf of a class of investors who bought Patriot National, Inc. stock between Jan. 15, 2015, and Nov. 28, 2017. The plaintiffs won the settlement with the bankrupt company's directors and officers.

- **Gray v. Gessow – Commercial Litigation Settlement.** Represented a litigation trust and brought actions against the officers and directors of Sunterra Inc., and its accountants, and obtained a $4.5 million settlement. The cases were litigated in the United States District Courts for the District of Maryland and the Middle District of Florida.

- **Hemispherx Biopharma Inc. Securities Litigation – Securities Fraud Class Action Settlement.** Co-lead counsel obtained a $3.6 million settlement in this securities class action arising from the collapse of Hemispherx stock after it was revealed in December 2009 that the U.S. Food and Drug Administration had rejected Ampligen despite repeated assurances by the company that approval was right around the corner. The FDA said that two primary clinical studies that Hemispherx submitted with its application did not provide credible evidence that the drug helped treat chronic fatigue syndrome. Hemispherx's stock dropped 40 percent the next day, the second major fall for the stock in the span of a month.

- **In re Xcel Inc. Securities, Derivative & "ERISA" Litigation.** The Firm obtained a cash settlement of $80 million on behalf of investors against Xcel Energy and certain of its officers and directors.

- **In re Alcatel Alsthom Securities Litigation.** The Firm obtained a class settlement for investors of $75 million cash.

- **Countrywide Predatory Lending Enforcement Action:** The Firm advised the Ohio Attorney General (and several other state attorneys general) regarding predatory lending in a landmark law enforcement proceeding against Countrywide (and its parent, Bank of America) culminating in mortgage-related modifications and other relief for borrowers across the country valued at some $8.6 billion.

- **Citigroup Opt-Out Litigation:** The Firm, representing the Commonwealth of Pennsylvania School Employees' Retirement System and Commonwealth of Pennsylvania Municipal Retirement Board in securities opt-out litigation, obtained a substantial recovery. (The amount remains confidential under the terms of the settlement agreement.)

- **In re Lehman Brothers Securities and BRISA Litigation:** The Firm, representing the State of New Jersey public pension funds in opt-out litigation against officers and directors of Lehman Brothers Holding, Inc. and Lehman's auditor, Ernst & Young ("E&Y"), obtained $8.25 million in a settlement with the D&Os in 2011, and a confidential amount from E&Y.

- **Alaska Electrical Pension Fund v. Bank of America.** The firm represents the lead plaintiff Pennsylvania Turnpike Commission in alleged antitrust conspiracy to manipulate ISDAfix, a key benchmark rate used to set the terms for swaps and financial instruments. ISDAfix was incorporated into a broad range of financial derivatives, billions of dollars of which were traded during the alleged class period.

- **In re Luckin Coffee Inc. Securities Litigation.** (New York County, Index No. 651939/2020). Lead Counsel in a state court Section 11 action concerning Luckin Coffee Inc.'s May 17, 2019 IPO and January 10, 2020 SPO. In addition to the state court Section 11 class, the firm also represented Convertible Noteholders who were not included in the federal securities class action. The noteholders claims settled for $7 million.

- **In Re Woodbridge Investments Litigation.** No. 2:18-cv-00103-DMG-MRW (C.D. Cal.). Served on the Executive Committee settled for $54.2 million in an action against Comerica Bank for aiding and abetting the Woodbridge Ponzi scheme. The action alleged that Woodbridge principal Robert H. Shapiro ran a nationwide Ponzi scheme, raising $1.2 billion in investments from thousands of investors, styled as investments in "notes" or "units" in Woodbridge fund entities.

- **Crivellaro v. Singularity Future Technology Ltd. et al.** No. 1:22-cv-07499-BMC (E.D.N.Y.). Lead Counsel in a lawsuit against Singularity Future Technology Ltd. concerning material omissions and misstatements in connection with Singularity's claim that it was transforming from a small, struggling shipping company into a global leader in the opaque, but booming, world of cryptocurrencies.

- **In re Lottery.com, Inc. Securities Litigation** No. 1:22-cv-07111-JLR (S.D.N.Y.). Counsel in a lawsuit against Lottery.com, Inc. concerning the company's false or misleading portrayal of its financial position after a business combination with a Special Purpose Acquisition Company (SPAC).

- **Pirani v. Medical Properties Trust, Inc. et al.** No. 2:23-cv-00486-CLM (N.D. Ala.). Lead Counsel in a lawsuit against Medical Properties Trust, Inc. concerning an alleged scheme to conceal from investors that its portfolio of assets was severely distressed.

- **Commonwealth of Pennsylvania Municipal Retirement Board in securities opt-out litigation:** The Firm, representing and Commonwealth of Pennsylvania Municipal Retirement Board in securities opt-out litigation, obtained a substantial recovery. (The amount remains confidential under the terms of the settlement agreement.)
- Campbell Soup Securities Litigation (D.N.J.), the Firm recovered $35 million in a class action involving allegations of channel stuffing, i.e., sending more product on to customers to show growth regardless of whether the customer actually wanted, or could sell, the additional product.

- **Crivellaro v. Singularity Future Technology Ltd. et al.** No1:22-cv-07499-BMC (E.D.N.Y). Lead counsel in a lawsuit against Singularity Future Technology Ltd. concerning material omissions and misstatements in connection with Singularity's claim that it was transforming from a small, struggling shipping company into a global leader in the opaque, but booming, world of cryptocurrencies.

- **Sun v. TAL Education Group**, No. 1:22-cv-01015 (ALC) (KHP) (S.D.N.Y.). Co-Lead Counsel for the proposed class, representing Co-Lead Plaintiff Public Employees' Retirement System of Mississippi ("Mississippi"). Mississippi was appointed Co-Lead Plaintiff with the New Mexico State Investment Council. Lead Plaintiffs' claims arise from a series of alleged materially false and misleading statements made by the defendants from April 26, 2018 through July 22, 2021, concerning TAL's core business, including its adherence to Chinese regulations governing the private, after school for-profit tutoring industry, its ability to comply with those regulations, the causes for its increasing student enrollment and financial success, and the characterization of those regulations as "beneficial." TAL told the investing public that it complied with these critical regulations, however, the plaintiffs allege that it intentionally failed to do so to fuel its rapid growth, contributing to a shut-down of the industry and TAL's profitable tutoring business. Lead Plaintiffs filed their Second Amended Complaint on November 20, 2023, and motions to dismiss that pleading are fully briefed and before the court.

- **Dong v. Cloopen Group Holding Limited, et al.**, No. 1:21-cv-10610 (S.D.N.Y.) (Koeltl, J.). Berger Montague is Lead Counsel in a securities class action on behalf of all persons who: (a) purchased or otherwise acquired Cloopen American Depositary Shares ("ADSs") pursuant and/or traceable to the registration statement and prospectus (collectively, the "Registration Statement") issued in connection with Cloopen's initial public offering and/or (b) purchased or otherwise acquired Cloopen securities. Lead Plaintiff brings strict liability, non-fraud claims under the Securities Act of 1933 and fraud-based claims under the Securities Exchange Act of 1934. Lead Plaintiff alleges that the Registration Statement concealed from investors that Cloopen had incurred a massive liability related to the increased fair value of a recently granted Series F Warrant and that Defendants' representations in the Registration Statement regarding Cloopen's growth strategy were false and misleading because as of the effective date of the Registration Statement, Cloopen had already lost a material percentage of existing customer business during and had done so at an exponentially increasing rate over the rate reported in the Registration Statement. On January 23, 2024, the New York Supreme Court, Commercial Division, granted final approval of a $12 million cash settlement resolving claims in both federal and

state court. Michael Dell'Angelo, Barbara Podell and Andrew Abramowitz worked on this case.

- **PLB Investments LLC, et al. v. Heartland Bank & Trust Company**, No. 1:20-cv-01023 (N.D. Ill.). Berger Montague is lead counsel for a proposed class of investors that collectively lost more than $80 million to Today's Growth Consultant Inc. ("TGC") and owner Kenneth Courtright ("Courtright") in an alleged Ponzi scheme. TGC is in receivership and Courtright has been indicted. The suit names as defendant TGC's and Courtright's bank and alleges that the bank substantially assisted TGC's fraudulent scheme by allowing TGC to steal millions of dollars from hundreds of victims across the country and misuse, divert, and misappropriate the investors' proceeds, all through TGC's and Courtright's bank accounts. Discovery is complete, subject to potential motions to compel. Michael Dell'Angelo and Barbara Podell are responsible for this matter.

- **In re GPB Capital Holdings, LLC Litigation,** Index No. 157679/2019 (Sup. Ct., New York County) (Commercial Division). Berger Montague is Co-lead counsel in this class action on behalf of investors in GPB's funds, which were offered as limited partnerships. Plaintiffs allege that the funds were a Ponzi scheme and involved serious financial wrongdoing. GPB was investigated by and produced documents to the SEC, the New Jersey and Massachusetts securities regulators, the US Attorney for the Eastern District of New York and the New York City Business Integrity Commission. Justice Andrew Borrok of the New York Supreme Court granted plaintiffs' motion to compel in its entirety, ordering defendants to produce all documents produced to regulators, GPB's books and records and permitting full discovery to proceed prior to a decision on defendants' motions to dismiss. An SEC monitor was appointed to oversee the operations of the general partner of the funds and three of the individual defendants were indicted. The case is stayed pending resolution of the criminal cases. The monitorship has been converted into a receivership. Michael Dell'Angelo and Barbara Podell are responsible for this matter.

- **NECA-IBEW Pension Trust Fund (The Decatur Plan), and Ann F. Lynch, as Trustee for the Angela Lohmann Revocable Trust, v. Precision Castparts Corp.**, No. 3:16-cv-01756-YY (D. Or.). Berger Montague is Co-lead counsel in this action in which Plaintiffs allege that Defendants issued a false and misleading proxy statement in connection with the acquisition of Precision Castparts by Berkshire Hathaway in violation of §§14(a) and 20(a) of the Securities Exchange Act of 1934. Magistrate Judge You issued a Findings and Recommendation suggesting that Defendants' motion to dismiss be denied in its entirety. Senior District Judge Brown adopted Judge You's Findings and Recommendation and denied Defendants' motion over Defendants' objections. Motions for class certification, summary judgment and to exclude expert

testimony were filed. The case settled for $21 million. Larry Deutsch was responsible for this matter.

- **In re Patriot National, Inc. Sec. Litig.**, No. 1:17-cv-01866-ER (S.D.N.Y.) ($6.5 million class settlement). The Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws (the "Complaint") asserted claims against Defendants under Sections 10(b) and 20 (a) of the Securities Exchange Act of 1934. Among other things, the Complaint alleged that Patriot National and the defendants made materially false and misleading statements about Patriot National's failure to adhere to its publicly disclosed Policy Regarding Transactions with Related Persons and the fact that Patriot National's most important customer was on the brink of failure. A settlement for $6.5 million was reached with the director and officer defendants. Although the settlement was appealed by two investors, the Second Circuit upheld all aspects of the settlement. Larry Deutsch was responsible for this matter.

- **In re Fisker Automotive Holdings, Inc. Shareholder Securities**, No. 13-02100-SLR (D. Del.). Berger Montague was Co-lead counsel in this action arising under Section 10b and Rule 10b-5 of the 1934 Securities Exchange Act. It was brought by 18 substantial investors, including institutional investors, because of their investment in electric car developer Fisker Automotive Holdings, Inc., which filed for bankruptcy. All three of Defendants' motions to dismiss were denied. Extensive formal discovery was conducted, and summary judgment motions were pending when the case was resolved in a confidential settlement shortly before trial. Barbara Podell assumed a major role in this matter.

- **Medaphis/Deloitte & Touche**, No. 1:96-CV-2088-FMH (N.D. GA). The Firm obtained a class settlement for investors of $96.5 million.

Technology, Privacy, & Data Breach

Berger Montague's Technology, Privacy & Data Breach practice group litigates cases on behalf of consumers nationwide to protect their privacy rights and seek redress. In the modern economy where sensitive financial, medical, and other personal information is routinely stored electronically by corporations large and small, protecting personal information is vitally important. All too frequently companies fail to protect consumers' personal information, leading to privacy breaches with devastating consequences.

- **In re TJX Retail Securities Breach Litigation.** MDL Docket No. 1838, No. 1:07-cv-10162-WGY (D. Mass.). Co-lead counsel and obtained a settlement valued at over $200 million in this multidistrict litigation on behalf of consumers whose

personal and financial data were stolen by computer hackers from TJX Companies, Inc. ("TJX").

- **Experian/T-Mobile Data Breach – Consumer Class Action Settlement.** Obtained a $170 million settlement as a member of the Executive Committee. The settlement included a $22 million non-reversionary cash settlement fund as well as remedial measures and two years of free credit monitoring and identity theft insurance. Under the settlement, class members were entitled to recover cash payments relating to (1) reimbursements of fraud losses; (2) reimbursements of costs incurred in responding to the data breach; and (3) compensation for time spent in connection with the data breach calculated at $20 per hour and capped at two hours for undocumented time or seven hours for documented time.

- **Anthem Inc. Data Security Breach Litigation.** Obtained a $115 million settlement on behalf of its clients against health insurer Anthem, Inc. arising from Anthem's massive data breach. Computer hackers accessed Anthem's computer servers and stole the personal and financial information of approximately 80 million Anthem customers and other individuals. Stolen information included names, birth dates, Social Security numbers, street and email addresses, and employment data including income.

- **Beckett, et al. v. Aetna, Inc., et al.**, No. 2:17-cv-03864 (E.D. Pa.). Co-lead counsel and obtained a $17.1 million settlement in this lawsuit in which the plaintiffs alleged that Aetna violated the privacy rights of thousands of its customers by exposing their private and confidential information regarding prescriptions for HIV medication.

- **In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation.** No. 4:09-MD-2046 (S.D. Tex. 2009). Served on the Executive Committee of this multidistrict litigation and obtained a settlement of cash and injunctive relief for a class of 130 million credit card holders whose credit card information was stolen by computer hackers. The breach was the largest known theft of credit card information in history.

- **In re: Countrywide Financial Corp. Customer Data Security Breach Litigation,** No. 3:08-md-01998-TBR (W.D. Ky.). The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement for a class of 17 million individuals whose personal information was at risk when a rogue employee sold their information to unauthorized third parties. Settlement benefits included: (i) reimbursement of several categories of out-of-pocket costs; (ii) credit monitoring and identity theft insurance for 2 years for consumers who

did not accept Countrywide's prior offer of credit monitoring; and (iii) injunctive relief.

Judicial Praise for Berger Montague Attorneys

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

Antitrust Cases

From **Judge Richard F. Boulware, II.**, U.S. District Court of Nevada:

> During the hearing where the Court granted final approval of a precedent-setting $375 million class action settlement on behalf of a class of mixed-martial arts fighters in Le v. UFC, Judge Boulware praised "the investment, the quality of the representation in this case, [and] the hours spent" by the Firm and its co-counsel."

Transcript of the February 6, 2025 hearing in ***Cung Le, et al. v. Zuffa, LLC, d/b/a Ultimate Fighting Championship and UFC***, Case No. 2:15-cv-01045-RFB-BNW (D.Nev.).

From **Hon. Gregory H. Woods**, U.S. District Court for the Southern District of New York:

> The Court praised the $20 million settlement in the *In re: Platinum and Palladium Antitrust Litigation* observing that the Firm has "…considerable experience in antitrust litigation such as this…in addition to a host of successful settlements in antitrust and commodities litigation" and that the "high quality of defense counsel opposing plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the settlement. Plaintiffs' opponents were well resourced global financial institutions. Plaintiffs secured a settlement that grants the settlement class financial relief, despite being opposed by well-funded defendants represented by top-flight law firms. The ability of plaintiffs' counsel to obtain a favorable settlement for the class in the face of such formidable legal opposition confirms the quality of their representation of the class."

Transcript of the January 14, 2025 Hearing in the ***In re: Platinum and Palladium Antitrust Litigation***, No. 1:14-cv-09391 (GHW).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation…were unique and issues of first impression."
>
> * * *
>
> "Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues…The law firms of Berger Montague and Coughlin Stoia were indefatigable. They represented the Class

> with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Securities & Investor Protection Cases

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "Thanks to the nimble class counsel, this sum, which once included securities worth $149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received $145,754,922.00. The class also received $14,435,104 in interest on the Notes."
>
> " Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over $1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here."

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

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

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

* * *

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

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

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

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

* * *

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

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

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

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

* * *

"Examination of the experience-studded biographies of the attorneys primarily involved in this litigation and review of their pioneering prosecution of many class actions in antitrust, securities, toxic tort matters and some defense representation

> in antitrust and other litigation, this court has no difficulty in approving and adopting the hourly rates fixed by Judge Aldrich."

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

Consumer Protection Cases

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

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

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

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

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

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

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

> "You are extraordinarily impressive. And I thank you for being here, and for your candid, non-evasive response to every question I have. I was extremely skeptical at the outset of this morning. You have allayed all of my concerns and have persuaded me that this is an important issue, and that you have done a great service to the class. And for that reason, I am going to approve your settlement in

> all respects, including the motion for attorneys' fees. And I congratulate you on your excellent work."

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

Civil/Human Rights Cases

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

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

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

Insurance Litigation

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

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

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

Customer/Broker Arbitrations

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

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

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

Employment & Unpaid Wages Cases

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

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

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

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

> "At the final approval hearing, class counsel reiterated in detail the arguments set forth in the named plaintiffs' briefing. … The court lauded the parties for their extensive work in reaching a settlement the court deemed fair and reasonable.
>
> * * *
>
> "The court is confident that [class counsel] are highly skilled in FLSA collective and hybrid actions, as seen by their dealings with the court and

> the results achieved in both negotiating and handling the settlement to date."

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

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

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

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

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

> "The nature of the instant application obliges the Court to make this point clear: In my fifteen years on the bench, no case has been litigated with more skill, tenacity and legal professionalism than this case. The clients, corporate and individual, should be proud of the manner in which their legal interests were brought before and presented to the Court by their lawyers and law firms."
>
> and
>
> "…the Court would be remiss if it did not commend class counsel and all those who worked for firms representing the thousands of current and former employees of Kodak for the outstanding job they did in representing the interests of their clients. For the last several years, lead

> counsel responsibilities were shared by Shanon Carson …. Their legal work in an extraordinarily complex case was exemplary, their tireless commitment to seeking justice for their clients was unparalleled and their conduct as officers of the court was beyond reproach."

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

Other Cases

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

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

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JAMES SAMPSON, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. SUBARU OF AMERICA, INC., *et al.*, Defendant. .	Case No. 1:21-cv-10284-ESK-SAK

DECLARATION OF CODY R. PADGETT IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Cody R. Padgett, hereby declare as follows:

1. I am an attorney at law duly licensed to practice before the courts of the State of California and all Federal District Courts in California. I am also a Senior Counsel at Capstone Law APC which, along with Berger Montague, PC and Barrack, Rodos & Bacine (collectively, "Class Counsel"), are counsel of record for Plaintiffs James Sampson, Janet Bauer, Lisa Harding, Barbara Miller, Shirley Reinhard, Celeste Sandoval, Xavier Sandoval, Danielle Lovelady Ryan, and Elizabeth Wheatley (collectively, "Plaintiffs"), in the above-captioned action. Unless the context indicates otherwise, I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of the Motion for Preliminary Approval of Class Action Settlement.

OVERVIEW OF THE LITIGATION AND SETTLEMENT NEGOTIATIONS

2. This nationwide class action arises out of an alleged defect in the design, workmanship, and/or manufacturing of the EyeSight system installed in the Class Vehicles, specifically with the Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features that cause unwanted and unnecessary brake activation where there are no obstacles in front of or behind the vehicles; fail entirely to activate when there are persons or objects in front of the vehicle; jerk the wheel during driving when the driver is trying to change lanes, driving on a road with construction barriers, or if the road has multiple lines due to construction; or fail entirely.

3. Plaintiffs' Counsel, including Berger Montague PC, Capstone Law APC, and Barrack, Rodos and Racine, investigated the alleged defect by reviewing publicly available information regarding the EyeSight system, including information on the website of the National Highway Traffic Safety Administration ("NHTSA"), Defendant's marketing of the EyeSight system, and conducting interviews with drivers regarding their experiences with the EyeSight system.

4. Following the investigation, Plaintiffs' filed the initial complaint on April 27, 2021, alleging that their vehicles were defective and asserting claims against Defendant and Subaru Corporation for, *inter alia*, alleged violation of the consumer statutes of their states of residence, including the Illinois Consumer Fraud Act, New York General Business Law §§ 349-350, the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and the Wisconsin Deceptive Trade Practices Act, breach of express and implied warranties, and fraud by concealment

or omission, the Magnuson-Moss Warranty Act, and unjust enrichment. *See* ECF No. 1.

5. During the initial stages of litigation, Plaintiffs' Counsel continued to gather public information and interview additional members of the putative Class. Ultimately, on July 1, 2022, after over a year of investigation and litigation, Plaintiffs filed a Third Amended Complaint. *See* ECF No. 66. After the negotiation and entry of protective orders and electronically stored information protocols, discovery then began in earnest.

6. Plaintiffs' Counsel drafted requests for production and received 271,171 documents from Defendant, as well as nearly 36,000 documents from non-defendant Subaru Corporation. Plaintiffs' Counsel also received and reviewed technical data files and diagnostics provided by Subaru Corporation. Six of the Plaintiffs were also deposed during the course of discovery. This allowed Plaintiffs' counsel to gain an understanding of the strengths and weaknesses of Plaintiffs' claims.

7. Following the Parties' exchanges and analyses of substantial discovery, the Parties mutually agreed to explore the possibility of a settlement. The Parties then engaged the services of Bradley A. Winters, Esq., a neutral with substantial experience in resolving automotive class actions, scheduled mediation to be held on August 14, 2024, and began the negotiations of a potential class settlement.

8. The parties then engaged in arm's length settlement negotiations during the mediation session with Mr. Winters on August 14, 2024. After the mediation session, the Parties continued their arm's length negotiations of the remaining

settlement terms, and were eventually able to negotiate a class settlement. After agreeing to the structure and material terms for settlement of the Class claims, the Parties negotiated and ultimately agreed upon an appropriate request for incentive awards and Plaintiffs' attorneys' fees and expenses. All the terms of the Settlement Agreement are the result of extensive, adversarial, and arm's-length negotiations between experienced counsel for both sides. The settlement is set forth in complete and final form in the Settlement Agreement.

CLASS COUNSEL THOROUGHLY INVESTIGATED THE CLAIMS AND DEFENSES

9. Based on the information exchanged as well as a thorough investigation prior to filing the Complaint, including interviewing putative Class Members, researching publicly available materials, and inspecting Class Vehicles, counsel gained a thorough understanding of both the strengths and weaknesses of Plaintiffs' claims and believe the proposed terms of the Settlement Agreement represent a substantial recovery on behalf of the putative Class.

SETTLEMENT BENEFITS

10. Class Counsel have been responsible for the prosecution of this Action and for the negotiation of the Settlement Agreement. Counsel have vigorously represented the interests of the Class Members throughout the course of the litigation and settlement negotiations. The number of Settlement Class Vehicles in the putative class here is 3,364,708.

11. The Settlement is an excellent result, as it provides the Settlement Class with valuable relief that squarely addresses Plaintiffs' concerns with the vehicles and provides meaningful relief to Class Members. Specifically, the Settlement provides

a warranty extension to cover seventy-five percent of the cost of a Covered Repair for four years or 48,000 miles after the Settlement Class Vehicle's In-Service date, or for an additional four months after the Notice Date if the extension period has already lapsed. A "Covered Repair" means repair or replacement, including parts and labor, of diagnosed and confirmed malfunction or failure of a Settlement Class Vehicle's Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist feature of the EyeSight system that resulted from failure or malfunction of the EyeSight camera assembly and/or rear sonar sensors. The Settlement also provides reimbursement for past paid out-of-pocket invoice amounts of a Covered Repair.

12. Plaintiffs remain convinced that their case has merit, but they recognize the substantial risk that comes along with continued litigation. Based on Counsel's investigation and review of information and evidence exchanged, and in consideration of the risks of continued litigation and the relative strengths and weaknesses of Plaintiffs' claims and SOA's defenses, we have concluded that the Settlement represents an excellent result for Class Members.

SETTLEMENT NOTICE AND CLAIMS ADMINISTRATION

13. The Parties agreed to retain JND Legal Administration as the Claim Administrator. The Claim Administrator will carry out the Notice Plan (as discussed in the Settlement), disseminate the CAFA notice, administer any requests for exclusion, and administer the claims process including the review and determination of reimbursement claims, and distribution of payments to eligible claimants whose claims are complete and have been approved under the Settlement terms. Pursuant to the Settlement, SOA will pay all administrative costs separate and apart from any

benefits to which the Settlement Class Members may be entitled. Thus, none of the Settlement Administration costs will be borne by the Class Members in any way.

QUALIFICATIONS TO SERVE AS CLASS COUNSEL

14. Capstone is one of California's largest plaintiff-only labor and consumer law firms. With over twenty-five seasoned attorneys, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

15. Capstone's accomplishments since its creation in 2012 are set forth in the firm resume. A true and correct copy of Capstone's firm resume is attached hereto as **Exhibit A.**

16. Capstone, as lead or co-lead counsel, has obtained final approval of sixty class actions valued at over $100 million dollars. Recognized for its active class action practice and cutting-edge appellate work, Capstone's recent accomplishments have included three of its attorneys being honored as California Lawyer's Attorneys of the Year in the employment practice area for 2014 for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014).

17. Capstone has an established practice in automotive defect class actions and was appointed class counsel, following contested class certification, in *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019). Capstone was also appointed class counsel after contested class certification in *Victorino v. FCA US LLC*, No. 16CV1617-GPC(JLB), 2021 WL 4124245 (S.D. Cal. Sept. 9, 2021). Capstone has negotiated numerous class action settlements providing valuable relief to owners/lessees, including in *Salas* (finally

approved Jan. 8, 2025) and *Victorino* (finally approved Sept. 29, 2023), as well as in other actions. *See, e.g., Rieger v. Volkswagen Group of America, Inc.* Case No. 21-cv-10546 (D.N.J., May 16, 2024) (finally approving settlement for alleged excessive oil consumption or piston defects); *Weckwerth, et al. v. Nissan North America, Inc.*, No. 3:18-cv-00588 (M.D. Tenn, Mar. 10, 2020) (finally approving settlement on behalf of millions of Nissan drivers with alleged transmission defects); *Wylie, et al. v. Hyundai Motor America,* No. 8:16-cv-02102-DOC (C.D. Cal. Mar. 02, 2020) (finally approving settlement on behalf of tens of thousands of Hyundai drivers with alleged transmission defects); *Granillo v. FCA US LLC*, No. 16-00153-FLW (D. N.J. Feb. 12, 2019); *Morishige v. Mazda Motor of Am., Inc.,* No. BC595280 (Los Angeles Sup. Ct. Aug. 20, 2019); *Falco v. Nissan N. Am. Inc*., No. 13-00686-DDP (C.D. Cal. July 16, 2018), Dkt. No. 341 (finally approving settlement after certifying class alleging timing chain defect on contested motion); *Vargas v. Ford Motor Co*., No. CV12-08388 AB (FFMX), 2017 WL 4766677 (C.D. Cal. Oct. 18, 2017) (finally approving class action settlement involving transmission defects for 1.8 million class vehicles); *Batista v. Nissan N. Am., Inc*., No. 14-24728-RNS (S.D. Fla. June 29, 2017), Dkt. 191 (finally approving class action settlement alleging CVT defect); *Chan v. Porsche Cars N.A., Inc*., No. No. 15-02106-CCC (D. N.J. Oct. 6, 2017), Dkt. 65 (finally approving class action settlement involving alleged windshield glare defect); *Klee v. Nissan N. Am., Inc*., No. 12-08238-AWT, 2015 WL 4538426, at *1 (C.D. Cal. July 7, 2015) (settlement involving allegations that Nissan Leaf's driving range, based on the battery capacity, was lower than was represented by Nissan); *Asghari v. Volkswagen Group of America, Inc.*, Case No. 13-cv-02529-MMM-VBK,

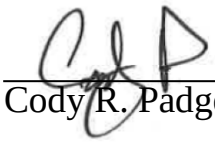
2015 WL 12732462 (C.D. Cal. May 29, 2015) (class action settlement providing repairs and reimbursement for oil consumption problem in certain Audi vehicles).

CONCLUSION

18. As a result of this litigation, owners and lessees of the Settlement Class Vehicles receive substantial benefits from the Settlement. Based on my experience, the Settlement is fair, reasonable, and adequate, and treats all Class Members equitably. I ask that the Court approve the Settlement achieved on behalf of the Class resulting from this litigation.

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

Dated: March 26, 2025



Cody R. Padgett

EXHIBIT A

FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining hundreds of millions for employees and consumers:

- Capstone has made important contributions to consumer protection law. In *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the right to seek public injunctive relief under the state's consumer protection laws cannot be waived. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a denial of class certification, making law that clarified the use of "benefit of the bargain" damages models in consumer class actions. Both decisions were awarded a "Top Appellate Reversal" in California by *Daily Journal* for their respective years.

- In February 2015, Capstone attorneys Raul Perez and Ryan H. Wu were honored with the *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.

- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshalls of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.

- Capstone has an established practice in automotive defect class actions, recently securing over $100 million in direct monetary relief to class members in the highly publicized *Vargas v. Ford Motor Co.*, No. CV12-08388-AB (C.D. Cal. Mar. 6, 2020). Capstone has also negotiated numerous class action settlements providing valuable relief to owners/lessees. *See Weckworth v. Nissan N.A.*, No. 3:18-cv-00588 (M.D. Tenn. Mar. 10, 2020); *Wylie v. Hyundai Motors America,* 8:16-cv-02102-DOC (C.D. Cal. Mar. 2, 2020); *Granillo v. FCA US LLC,* No. 16-00153-FLW (D. N.J. Feb. 12, 2019); *Morishige v. Mazda Motor of Am., Inc.,* No. BC595280 (Los Angeles Sup. Ct. Aug. 20, 2019); *Falco v. Nissan N. Am. Inc.*, No. 13-00686-DDP (C.D. Cal. July 16, 2018), Dkt. No. 341 (finally approving settlement after certifying class alleging timing chain defect on contested motion); *Batista v. Nissan N. Am., Inc.*, No. 14-24728-RNS (S.D. Fla. June 29, 2017), Dkt. 191 (finally approving class action settlement alleging CVT defect); *Chan v. Porsche Cars N.A., Inc.*, No. No. 15-02106-CCC (D. N.J. Oct. 6, 2017), Dkt. 65 (finally approving class action settlement involving alleged windshield glare defect); *Klee v. Nissan N. Am., Inc.*, No. 12-08238-AWT, 2015 WL 4538426, at *1 (C.D. Cal. July 7, 2015) (settlement involving allegations that Nissan Leaf's driving range, based on the battery capacity, was lower than was represented by Nissan); *Asghari v. Volkswagen Group of America, Inc.*, Case No. 13-cv-02529-MMM-VBK, 2015 WL 12732462 (C.D. Cal. May 29, 2015) (class action settlement providing repairs and reimbursement for oil consumption problem in certain Audi vehicles); *Aarons v. BMW of N. Am.*, LLC, No. CV 11-7667 PSG, 2014 WL 4090564 (C.D. Cal. Apr. 29, 2014), objections overruled, No.

CV 11-7667 PSG CWX, 2014 WL 4090512 (C.D. Cal. June 20, 2014) (C.D. Cal.) (class action settlement providing up to $4,100 for repairs and reimbursement of transmission defect in certain BMW vehicles). Capstone was appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).

- Capstone has served as class counsel in a number of significant consumer class actions, providing relief and protection to consumers from deceptive and unlawful business practices, data breaches, and deceptive and false advertising by large corporations and manufacturers. These cases include *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.); *Fernandez v. Home Depot U.S.A.,* No. 13-648 (C.D. Cal.); *Livingston v. MiTAC,* No. 18-05993 (N.D. Cal.).

SUMMARY OF SIGNIFICANT SETTLEMENTS

Since its founding, Capstone has settled over 100 high-stakes class and representative actions totaling well over $200 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Vargas v. Ford Motor Co.*, No. 12-08388-AB (C.D. Cal.): direct monetary benefits of over $100 million to class members in highly-publicized class action involving alleged transmission problem.
- *Rieger v. Volkswagen Group of America, Inc.*, Case No. 21-cv-10546 (D.N.J.): Settlement providing warranty extension and reimbursement for past covered repairs valued at over $20 million.
- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of $12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Moore v. Petsmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of $10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of $9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over $6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of $5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of $5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of $5.4 million in a case alleging FCRA violations;

- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of $5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of $5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.,* Case No. 08-07919 (C.D. Cal.): gross settlement of nearly $5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly $5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over $20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over $10 million.

PROFESSIONAL BIOGRAPHIES

Partners

Rebecca Labat. Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

Raul Perez. Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.);

Tameifuna v. Sunrise Senior Living Managements, Inc., Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles,* 59 Cal. 4th 348 (2014), Mr. Perez, along with Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

Melissa Grant. Melissa Grant is a partner and lead trial attorney at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions and PAGA cases. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on numerous certified class actions currently on track for trial, representing over hundreds of thousands of California employees in pursuit of their wage and hour claims. She is also at the forefront in developing the law on the California Labor Code's Private Attorneys General Act (PAGA), including administrative exhaustion, the scope of discovery, manageability, and PAGA trial plans. Recently, Ms. Grant has taken two PAGA cases to trial and worked on several key PAGA appellate decisions, including *Williams v. Superior Court (Marshalls of CA LLC)*, 3 Cal.5th 531 (2017). Ms. Grant also represented the plaintiff in *Davidson v. Seterus, Inc.*, 21 Cal. App. 5th 283 (2018), which, in a case of first impression, found that the Defendant, a mortgage servicer, was a debt collector under California's Rosenthal Fair Debt Collection Practices Act. The case led to enactment of legislation that expressly includes "mortgage debt" within the Rosenthal Act's definition of "consumer credit" and amends the Rosenthal Act to expressly apply to debt collection activities involving residential mortgage loans.

Ms. Grant began her legal career as a law clerk for the Honorable Harry Pregerson, Justice, Ninth Circuit Court of Appeals. Thereafter, she was an associate with Sidley Austin LLP, where she represented Fortune 500 companies in commercial litigation and consumer class actions. Before joining Capstone, Ms. Grant was a Senior Associate with Quinn Emanuel Trial Attorneys, where she was on the trial team that prosecuted *Mattel v. Bratz (I)*, and a staff attorney in the Enforcement Division of the Securities and Exchange Commission, investigating ongoing violations of federal securities regulations and statutes. Ms. Grant graduated summa cum laude and first in her class from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review. She earned her undergraduate degree from Cornell University's College of Arts & Sciences, where she received the JFK Public Service Award and the Outstanding Senior Award (graduating class of 4,000 students). Ms. Grant has been a panelist and speaker on PAGA actions and wage-and-hour class actions at various annual and biannual California Bar Association, California Law Association, and Bridgeport Continuing Education conferences. Her published articles include: Los Angeles Lawyer: A PAGA Rollercoaster (September 2023), Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: Early Decisions on Commencement and Removal of Actions (2006).

Ms. Grant is a member of the Los Angeles County Women Lawyers Association of Los Angeles, the Consumer Attorneys Association of Los Angeles (CAALA), and the Consumer Attorneys of California. She was recently named a 2024 Worker Health & Safety Hero by Worksafe for her work in advancing workplace safety and justice. She also currently serves on the Los Angeles County Bar Association's President's Commission on Women in the Legal Profession, the Subcommittee on Gender Bias and Civility, and the Amicus Subcommittee, and is a member of the Executive Board of Los Angeles Lawyer magazine. Ms. Grant was recognized by the Daily Journal as a Top Employment & Labor Attorney in 2023 and has been selected as one of Southern California's "Super Lawyers" in 2022, 2023, and 2024.

Ryan H. Wu. Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshalls of CA LLC)*, 3 Cal.5th 531(2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*. Mr. Wu recently achieved an important consumer victory in *Nguyen v. Nissan N.A.*, 932 F.3d 811 (9th Cir. 2019), which clarified the use of "benefit of the bargain" damages models in consumer class actions.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Williams v. Superior Court: Employees' Perspective*" and "*Iskanian v. CLS Transportation*: Employees' Perspective," both published in the *California Labor & Employment Law Review*.

Robert Drexler. Robert Drexler is a partner with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" in 2009 and every year from 2001 through 2024.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored Defective Prosthetic Devices: Strict Tort Liability for the Hospital? 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at The Ohio State University where he

graduated *cum laude*. Mr. Drexler has been a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal.

Jamie Greene. Jamie Greene is a partner with Capstone Law, where she leads the firm's business development and case generation team. Ms. Greene is responsible for evaluating all potential new cases and referrals, developing new claims, and managing the firm's client and cocounseling relationships. She also supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation.

Before joining Capstone, Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. Ms. Greene is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California.

Bevin Allen Pike. Bevin Allen Pike is a partner with Capstone Law, where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

Senior Counsel

Theresa Carroll. Theresa Carroll is a senior counsel at Capstone Law. Her practice is devoted to the Appeals & Complex Motions team, working on various settlement and approval projects.

Prior to joining Capstone, Ms. Carroll was an associate with Parker Stanbury, LLP, advising small business owners on various employment matters and worked as an associate attorney for O'Donnell & Mandell litigating employment discrimination and sexual harassment cases. In 1995, she graduated from Southwestern University School of Law where she was on the trial advocacy team and was awarded the prestigious Trial Advocate of the Year award sponsored by the American Board of Trial Advocates (ABOTA) for Southwestern University School of Law. Ms. Carroll received her Bachelor of Science degree in speech with an emphasis in theatre from Iowa State University.

Liana Carter. Liana Carter is a senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017

WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

Anthony Castillo. Anthony Castillo is a senior counsel with Capstone Law. His practice focuses on analyzing and developing pre-litigation wage-and-hour and consumer claims, including PAGA representative actions and class actions for failure to pay overtime and minimum wages, meal and rest period violations, and claims under the Fair Labor Standards Act and the Investigative Consumer Reporting Agency Act. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues.

Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

Helga Hakimi. Helga Hakimi is a senior counsel at Capstone Law. Her practice primarily involves employment law class action litigation, namely wage-and-hour class actions and PAGA litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work, and related employer violations under the Fair Labor Standards Act and California Labor Code.

Prior to joining Capstone, Ms. Hakimi was a partner at a civil litigation firm in West Los Angeles, where she handled mainly real estate litigation, business litigation, and defense of some employment law matters; prior to that, she worked as a civil litigation attorney handling complex personal injury litigation. Ms. Hakimi's interest in advocating for employee rights began in law school, where she volunteered for the Workers' Rights Clinic and assisted low-income community members in Northern California's greater Bay Area region with employment-related legal issues. Upon graduating from law school, Ms. Hakimi worked as an associate for a municipal law firm, and thereafter at the local City Attorney's Office, where she advised municipalities and cities in civil matters involving land use, environmental law, development issues, Constitutional law, and First Amendment rights. Ms. Hakimi graduated from Berkeley Law (Boalt Hall School of Law), where she earned her Juris Doctorate and was awarded the Prosser Award in Remedies. Ms. Hakimi received her Bachelor of Arts degree in Political Science with a minor in Education Studies from the University of California, Los Angeles, and graduated summa cum laude and with Departmental Highest Honors.

Majdi Hijazin. Majdi Hijazin is a senior counsel at Capstone Law. His practice primarily focuses on representing consumers in complex litigation matters. Currently, Mr. Hijazin prosecutes automotive defect and other consumer class action lawsuits throughout the United States. Prior to joining Capstone, Mr. Hijazin led a national team of six attorneys in bringing claims under the Illinois Biometric Information Privacy Act (BIPA), where he and his team routinely obtained high-value settlements for their clients.

Mr. Hijazin has prosecuted many individual and class action lawsuits under the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), the Telephone Consumer Protection Act (TCPA),

and the Illinois Consumer Fraud Act (ICFA). On behalf of aggrieved homeowners, Mr. Hijazin was part of a trial team where his efforts were instrumental in securing two multi-million-dollar jury verdicts. See *Hammer v. Residential Credit Solutions, Inc.*, No. 13 C 6397 (N.D. Ill. Dec. 3, 2015), and *Saccameno v. Ocwen Loan Servicing, LLC*, 372 F. Supp. 3d 609 (N.D. Ill. 2019). Most recently, in late 2023, Mr. Hijazin's work was vital in securing a seven-digit settlement on the third day of trial. Mr. Hijazin graduated from the University of Illinois Chicago School of Law.

Daniel Jonathan. Daniel Jonathan is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to joining Capstone, Mr. Jonathan began his career as an associate at Kirkland & Ellis representing Fortune 500 clients in high-stakes litigation in various matters, including class action defense and plaintiff's actions for accounting fraud. Following that, he was a senior counsel at a boutique litigation firm where he successfully first-chaired several trials. Mr. Jonathan graduated from the Northwestern University School of Law. He received his undergraduate degree in Accounting from the University of Southern California, where he graduated cum laude. He has passed the CPA examination and worked as an auditor at Deloitte before attending law school.

Jonathan Lee. A senior counsel with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California.

Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

Shealene Mancuso. Shealene Mancuso is a senior counsel with Capstone, specializing in employment class action litigation. Her practice is devoted to wage-and-hour class actions and Private Attorneys General Act litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to provide compensation for off-the-clock work, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to joining Capstone Law, Ms. Mancuso was a Partner at a California maritime law firm, representing employers in federal claims brought by domestic and foreign civilian employees for benefits for injuries sustained while working on U.S. military bases for government contractors. She also has extensive litigation experience representing individuals in federal vaccine injury, personal injury, and family law matters. She served on the Board of Directors of a Philadelphia domestic violence organization and as a pro bono attorney assisting low-income families with custody and grandparent's rights matters. In 2020, she was recognized as a Rising Star by Super Lawyers.

Ms. Mancuso graduated from Temple University, Beasley School of Law in 2014, where she was a Fellow in the Rubin Public Interest Law Honor Society, served as the Volunteer Chair of the Women's Law Caucus, Women's Rights Chair of the National Lawyers Guild, Membership Coordinator of the American Constitution Society, and board member of the School to Prison Pipeline, and volunteered with the Domestic

Violence Assistant Project. She began to develop her litigation skills through the Integrated Trial Advocacy Program at Temple Law, as a certified law clerk with the Ventura County District Attorney's Office, and through internships with non-profit organizations. She received her undergraduate degree from the University of California, Riverside, where she majored in Sociology: Law and Society.

Robert Myong. Robert Myong is a senior counsel at Capstone Law. His practice focuses on helping employees recover their unpaid wages, overtime, and penalties in class actions and PAGA representative actions in state and federal court.

Prior to joining Capstone, Mr. Myong managed a team of attorneys that recovered millions of dollars on behalf of employees for their unpaid wages, discrimination, harassment, retaliation, and wrongful termination claims. Robert is a graduate of Whittier Law School and earned his bachelor's degree in economics from the University of Southern California.

Cody Padgett. Cody Padgett is a senior counsel with Capstone Law. Mr. Padgett prosecutes automotive defect and other consumer class action lawsuits during all stages of litigation. His work has been integral to achieving contested class certification in several automotive defect cases, including *Falco v. Nissan N. Am. Inc.*, No. 13-00686 (C.D. Cal.) (certifying a class of owners/lessees of Nissan vehicles), *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-08629 (C.D. Cal.) (certifying a class of owners/lessees of Toyota vehicles), and *Victorino v. FCA US*, LLC, No. 16-01617 (S.D. Cal.) (certifying a class of owners/lessees of Dodge Dart vehicles). Mr. Padgett's efforts have also contributed to major settlements of automotive defect and consumer cases, providing substantial monetary relief to millions of class members, valued in the hundreds of millions of dollars. See, e.g., *Weckwerth v. Nissan North America, Inc.*, No. 18-00588 (M.D. Tenn.) (providing a $407 to $547 million-dollar benefit to a class of nearly 3 million consumers).

Prior to joining Capstone Law, Mr. Padgett assisted with the defense of major felony cases at the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*. Mr. Padgett is admitted to practice in California, before the Ninth Circuit Court of Appeals, and before United States District Court for the Northern, Eastern, Central, and Southern Districts of California.

Eduardo Santos. Eduardo Santos is a senior counsel at Capstone Law, and concentrates his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over $100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of $4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement.

Mao Shiokura. Mao Shiokura is a senior counsel with Capstone. Her practice focuses on identifying, evaluating, and developing new claims, including PAGA representative actions and class actions for wage-and-hour violations and consumer actions under the Consumers Legal Remedies Act, False Advertising Law, Unfair Competition Law, and other consumer protection statutes. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships.

Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

John Stobart. John Stobart is a senior counsel with Capstone Law. He focuses on appellate issues in state and federal courts and contributes to the firm's amicus curiae efforts to protect and expand the legal rights of California employees and consumers. Mr. Stobart has significant appellate experience having drafted over two dozen writs, appeals and petitions, and having argued before the Second, Fourth, and Fifth Districts of the California Court of Appeal.

Prior to joining Capstone, Mr. Stobart was a law and motion attorney who defended against civil liability in catastrophic injury and wrongful death cases brought against his clients, which included the railroad, public schools, small businesses, and commercial and residential landowners. He has drafted and argued scores of dispositive motions at the trial court level and had success in upholding judgments and verdicts on appeal. He graduated cum laude from Thomas Jefferson School of Law where he was on the mock trial competition team and earned his undergraduate degree from the Ohio State University.

Roxanna Tabatabaeepour. Roxanna Tabatabaeepouris a senior counsel with Capstone Law. Her practice primarily involves representing employees in class actions and representative actions for various violations of the California Labor Code.

Before joining Capstone, Ms. Tabatabaeepour's experience included representing workers in single-plaintiff and class/representative action lawsuits regarding wage-and-hour violations, as well as individual claims for discrimination, retaliation, failure to accommodate, harassment, and wrongful termination, under both California and federal laws. Ms. Tabatabaeepour received her undergraduate degrees from the University of California San Diego. She subsequently graduated from the American University, Washington College of Law, where she was a Marshall-Brennan Constitutional Literacy Fellow and taught Constitutional Literacy to teens in marginalized communities.

Ryan Tish. Ryan Tish is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and Private Attorneys General Act ("PAGA") representative actions on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to reimburse necessary business expenses, and other claims under the Fair Labor Standards Act and California Labor Code.

Before joining Capstone, Mr. Tish was an associate at a civil litigation firm in Los Angeles, handling a variety of matters, including commercial contracts, real estate, and employment law. Mr. Tish has represented both employers and employees in actions ranging from individual claims of discrimination, harassment, retaliation, and wrongful termination, to class and representative actions for wage-and-hour and privacy law violations.

Mr. Tish is a graduate of the University of Southern California Gould School of Law and earned his bachelor's degree in civil and environmental engineering from the University of California, Los Angeles. Mr. Tish is admitted to practice law in California and before the United States District Court for the Northern, Eastern, Central, and Southern Districts of California.

Orlando Villalba. Orlando Villalba is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Mr. Villalba began his career at Kirkland & Ellis where he handled a wide range of business litigation matters, including transnational contract disputes, insurance-related tort claims, developer litigation, and civil rights actions. He also has extensive plaintiff-side experience representing government agencies and note-holders in the pursuit of mortgage and other fraud losses. Mr. Villalba graduated from Stanford Law School, where he served as an articles editor on the Stanford Journal of Law, Business & Finance. After law school, he clerked for the Honorable Warren Matthews of the Alaska Supreme Court. Orlando received his bachelor's degree in International Business from the University of Southern California.

Associates

Tyler Anderson. Tyler Anderson is an associate with Capstone Law. His practice focuses on complex motions, writs, and appeals. Before joining Capstone, Mr. Anderson was Co-Director of the Los Angeles Center for Community Law and Action ("LACCLA"), a nonprofit law firm that represents tenant unions and union organizers. While there, Mr. Anderson tried a disparate impact federal Fair Housing Act case that resulted in a jury verdict of over $1,000,000. He also frequently used California Anti-SLAPP laws to block attempts to silence tenant union organizers. Prior to working at LACCLA, Mr. Anderson clerked for the Honorable Martha Vazquez, a federal district court judge for the District of New Mexico who, at the time, sat on the Executive Committee of the Federal Judiciary. Before that, Mr. Anderson was a litigation associate at the international law firm Jenner & Block LLP. Mr. Anderson graduated from Harvard Law School, where he was the Executive Articles Editor of the Harvard Journal on Legislation as well as President of one of the largest student-run pro bono organizations at Harvard University, Project No One Leaves. He graduated with several "Dean's Scholar" prizes for receiving top grades in his constitutional law courses.

Sairah Budhwani. Sairah Budhwani is an associate with Capstone Law. Her practice focuses on evaluating and analyzing pre-litigation wage-and-hour claims, including claims for violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work violations. Previously, Ms. Budhwani litigated employment discrimination, harassment, and retaliation claims, and also represented incarcerated individuals contesting the conditions of their confinement. Ms. Budhwani graduated from UCLA School of Law in 2019 and received an undergraduate degree in Urban Studies from University of California, Irvine in 2012. Ms. Budhwani is admitted to practice law in California. She is fluent in Urdu.

Arianna Eguiluz. Arianna Eguiluz is an associate with Capstone Law. Her practice focuses on evaluating pre-litigation wage-and-hour claims, including potential violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work issues, as well as consumer protection claims. Previously, Ms. Eguiluz gained experience as a law clerk at a mass action tort firm, contributing to the Boy Scouts of America Litigation. Ms. Eguiluz was offered four full-ride scholarships from various accredited law schools across the country and graduated from California Western School of Law in 2024. She earned her

undergraduate degree at University of California, San Diego, where she majored in Political Science and Public Law. Ms. Eguiluz is admitted to practice law in California. She is bilingual in English and Spanish.

Nate Kiyam. Nate Kiyam is an associate with Capstone. His practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. Prior to joining Capstone Law, Mr. Kiyam was an associate with the Auto Fraud Legal Center representing individuals who have been defrauded by dealers into purchasing a defective vehicle. Previous to that, Mr. Kiyam was an associate with DLA Piper, Allen Matkins, and Buchalter on various corporate and employment matters. Throughout his career, Mr. Kiyam has helped many organizations and individuals on various pro bono matters including winning an administrative trial for a young refugee in his asylum hearing. Mr. Kiyam is admitted to practice law in California and the District of Columbia.

Ninel Kocharyan. Ninel Kocharyan is an associate with Capstone. Her practice focuses on evaluating and analyzing pre-litigation wage-and-hour claims, including claims for violation of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work violations. Ms. Kocharyan began her career in entertainment law reviewing, drafting, and negotiating contracts for talent and ensuring FTC compliance. She immigrated to the United States from Russia at the age of 15 with a passion to pursue a career in law. Ms. Kocharyan graduated from Thomas Jefferson School of Law in 2014 and received her undergraduate degree from University of California, Los Angeles where she majored in Political Science. Ms. Kocharyan is admitted to practice law in California.

Alexander Lima. Alexander Lima is an associate with Capstone Law. His practice focuses on evaluating pre-litigation wage-and-hour claims, including potential violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work issues, as well as consumer protection claims. Previously, Mr. Lima was an associate at a California civil litigation practice representing individuals and entities in real estate disputes. Mr. Lima graduated from Santa Clara University, School of Law in 2018, where he served as an Executive Board Member of the Honors Moot Court and was selected as a regional finalist for the American Bar Association Negotiation Competition. He received his undergraduate degree from the University of California, Riverside in 2014.

Trisha Monesi. Trisha Monesi is an associate with Capstone. Her practice focuses on prosecuting consumer class actions in state and federal court. Ms. Monesi graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations.

Alexander Wallin. Alexander Wallin is an associate at Capstone Law. He is a passionate litigator who has successfully represented employees against corporate injustice. Mr. Wallin has recovered millions of dollars in numerous wage-and-hour class actions, PAGA actions, and individual discrimination lawsuits. He has a particular interest in representing economically disadvantaged employees who cannot afford legal representation on a retainer-fee basis. Mr. Wallin is a member of the Los Angeles County Bar Association's Employment Law Section and stays up-to-date with the rapidly evolving areas of wage-and-hour protections. He graduated from Loyola Law School in 2017 and is admitted to practice law in California, as well as before the United States District Court for Central and Northern Districts of California. He has been selected as a Southern California "Super Lawyers – Rising Star" in 2022 and 2023.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JAMES SAMPSON, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. SUBARU OF AMERICA, INC., *et al.*, Defendant.	Case No. 1:21-cv-10284-ESK-SAK

DECLARATION OF SAMUEL M. WARD IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Samuel M. Ward, hereby declare as follows:

1. I am an attorney at law duly licensed to practice before the courts of the State of California, all Federal District Courts in California and the United States District Court for the Eastern District of Wisconsin. I am also a Partner at Barrack, Rodos & Bacine which, along with Berger Montague, PC and Capstone Law APC (collectively, "Class Counsel"), are counsel of record for Plaintiffs James Sampson, Janet Bauer, Lisa Harding, Barbara Miller, Shirley Reinhard, Celeste Sandoval, Xavier Sandoval, Danielle Lovelady Ryan, and Elizabeth Wheatley (collectively, "Plaintiffs"), in the above-captioned action. Unless the context indicates otherwise, I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of the Motion for Preliminary Approval of Class Action Settlement.

2. The accompanying Declaration of Russell D. Paul, submitted contemporaneously herewith, accurately summaries the overview of the litigation, the settlement negotiations and mediation, the procedural history, the work undertaken by Plaintiffs and Class Counsel to initiate this litigation and for the benefit of the class, the substantial contingent risks in and the complexity of this litigation, and the benefits of the Settlement.

QUALIFICATIONS TO SERVE AS CLASS COUNSEL

3. Barrack, Rodos & Bacine ("BRB"), with offices in California, New York and Pennsylvania, has secured some of the largest class action recoveries in the history of American jurisprudence, with total recoveries exceeding $15 billion, including several class action settlements securing recoveries in excess of $1 billion. Specializing in complex securities, antitrust and consumer class actions, BRB possesses extensive litigation and trial experience, and has received numerous judicial accolades.

4. Barrack, Rodos & Bacine has a long history of successfully litigating complex class actions including, *inter alia*, complex consumer class actions as forth in the firm resume, a true and correct copy of which is attached hereto Exhibit A.

5. Barrack, Rodos & Bacine has extensive experience litigating automotive defect class actions, serving as court appointed class counsel in *Wilson et al., v. FCA US, LLC*, Case No. 4:22-cv-00447, in the Eastern District of Texas; Interim Executive Committee Counsel in *In re Toyota Hybrid Brake Litigation*, Case No. 4:20-CV-00127-ALM, in the Eastern District of Texas; Interim Executive

Committee Class Counsel in *In re: Chrysler Pacifica Fire Recall Products Liability* Litigation, MDL No. 3040, in the Eastern District of Michigan; and Executive Committee Class Counsel in *Stringer, et al., v. Nissan Of North America, Inc., et al.*, Case No. 3:21cv99, in the Middle District of Tennessee.

6. Throughout the course of investigation, pleadings, mediation, and filing of the Settlement Agreement with the Court, Barrack, Rodos & Bacine, along with Class Counsel Capstone and Berger Montague's attorneys, has devoted significant time and resources to the investigation, development, and resolution of this case.

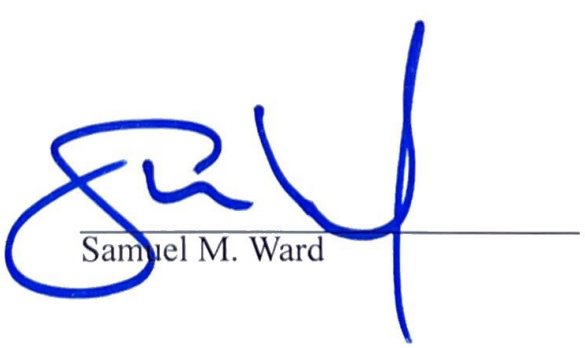
7. Barrack, Rodos & Bacine is not representing clients with interest at odds with the interests of the Class Members.

CONCLUSION

8. As a result of this litigation, owners and lessees of the Settlement Class Vehicles receive substantial benefits from the Settlement. Based on my experience, the Settlement is fair, reasonable, and adequate, and treats all Class Members equitably. I ask that the Court approve the Settlement achieved on behalf of the Class resulting from this litigation.

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

Dated: February 5, 2025



Samuel M. Ward

EXHIBIT A

BARRACK | RODOS | BACINE

(ABBREVIATED)
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Barrack, Rodos & Bacine ("BR&B") has been extensively involved for more than forty years in complex class action and derivative litigation, participating in hundreds of such cases and recovering over **$15 billion** dollars for class members, including several such actions that alone have secured recoveries in excess of **$1 billion**. The Firm has concentrated this complex practice in securities, shareholder rights, antitrust, and consumer class actions. The Firm has had significant leadership positions in these litigations, having been appointed by courts as lead counsel in numerous class actions throughout the United States.

Significant Consumer Cases

The Firm has achieved significant recoveries on behalf of class members in consumer cases, including the following:

- "Senior Annuity" cases in which BR&B served as a co-lead counsel or participated in the prosecution group, which achieved settlements valued in the aggregate **between $552 million and $1.273 billion**, after asserting claims against insurance companies under consumer protection and elder abuse statutes arising from sales and marketing practices and the Racketeer Influenced and Corrupt Organizations Act, including the following:

  - *Negrete. et al. v. Allianz Life Insurance Company of North* America, Case No. 05-cv-06838-CAS-MAN (C.D. Cal.), resulted in a claims-made settlement valued between $251 million and **$971 million**;

  - *In re American Equity Annuity Practices and Sales Litigation*, Case No. 2:05-cv-06735-CAS-MAN (C.D. Cal.), resulted in a settlement valued at approximately **$129 million**;

  - *Rand v. American National Insurance Co*., Case No. 3:09-cv-0639-WDB (N.D. Cal.), resulted in a settlement valued at more than **$9 million**;

  - *Negrete, et al. v. Fidelity and Guaranty Life Insurance* Company, Case No. 2:05-cv-06837-CAS-MAN (C.D. Cal), resulted in a settlement valued at approximately **$52.7 million**;

  - *Meadows v. Jackson National Life Insurance Co*., Case No. 4:12-cv-1380-CW (N.D. Cal), resulted in a settlement valued at more than **$11.2 million**;

  - *Midland National Life Insurance Co Annuity Sales Practices Litigation*, Case No. 2:07-ml-01825-CAS-MAN (C.D. Cal.), resulted in a settlement valued at **$79.5 million**; and

  - *In re National Western Life Insurance Deferred Annuities Litigation*, Case No. 05-cv-1018-AJB (WVG), resulted in a settlement valued at more than **$21 million**.

- *Rieff v. Evans* (Allied Mutual Insurance Company Demutualization Litigation), Civil Action No. CE 35780 (Polk Cty., Iowa, District Ct.). BR&B, as co-lead counsel for a class of individual mutual insurance company policyholders (as owners of the mutual, similar to shareholder-owners of a stock company), brought an action against management for, inter alia, conversion of the value of their ownership interests in the mutual under a theory of de facto demutualization. The Iowa Supreme Court upheld the plaintiffs' theory in *Rieff v. Evans*¸ 630 N.W.2d 278 (Iowa 2001), and the case was subsequently resolved for **approximately $130 million**.

- *Gutierrez v. Charles J. Givens Organization, et al.*, Case No. 667169 (San Diego Cty., California, Superior Court). BR&B, on behalf of the plaintiff and similarly situated class members, achieved a jury verdict in **excess of $14 million** for the benefit if the plaintiff consumer class.

- In *Feller, et al. v. Transamerica Life Insurance Company*, Case No. 16-cv-01378 CAS (AJWx), in the Central District of California, which was ultimately **settled for $200 million**, BR&B served as interim executive committee counsel.

- BR&B is currently serving in a leadership position in consumer class actions, including *In re: Lincoln National COI Litigation,* Case No. 16-cv-06605-GJP (E.D. Pa.) (Chair of Plaintiffs' Steering Committee), and *In re: Lincoln National 2017 COI Rate Litigation,* Case No. 2:17-cv-04150-GJP (E.D. Pa.) (Co-Chair of Plaintiffs' Steering Committee).

- In 2017, the Attorney General of the State of New Mexico appointed Stephen R. Basser, Jeffrey A. Barrack, and Samuel M. Ward of Barrack, Rodos & Bacine as Special Assistant Attorneys General for the purpose of prosecuting an action on behalf of New Mexico consumers against Vivint Solar, Inc., and other defendants for violations of New Mexico Consumer law. The action, *State of New Mexico, ex. Rel., Hector H. Balderas, Attorney General of New Mexico v. Vivint Solar Developer, LLC,* Case No. D-202-CV-2018-01936, was settled in 2020 in exchange for a substantial cash payment and changes to Vivint's marketing and training policies.

- Served as interim Executive Committee chair in *In re Forefront Data Breach Litigation*, Master File No. 1:21-cv-00887-LA, in the Eastern District of Wisconsin.

- Serving as interim Executive Committee member in *In re Lincare Holdings Data Breach Litig.*, Case No. 8:22-cv-01472 (M.D. Fla.).

- Serving as interim Executive Committee member in *In re Shields Health Group Data Breach Litig.*, Case No. 1:22-cv-10901 (D. Mass.).

- Serving as Interim Executive Committee Counsel in *In re Apria Healthcare Data Breach Litig.*, Master File No. 1:22-cv-01003-JPH-KMN (Southern District of Indiana).

- Serving as Interim Executive Committee Counsel in *In re Mr. Cooper Data Breach Litig.*, Case No. 3:23-cv-02453 (Northern District of Texas).

- Served as a member of Plaintiffs' Steering Committee in *In re East Palestine Derailment Litig.*, Case No. 4:23-cv-00242 (N.D. Ohio), which recently settled for **$600 million**.

- Served as Interim Executive Committee Counsel in *In re Toyota Hybrid Brake Litigation*, Case No. 4:20-CV-00127-ALM, in the Eastern District of Texas.

- Served as Interim Executive Committee Counsel in *Lane, et al. v. Nissan of Norther America, Inc.*, (*In re Nissan CVT* Litigation) CV-00150, in the Middle District of Tennessee, which settled in 2020 for a valuation of benefits conferred on class members exceeding **$300 million**.

- Currently serving as Interim Executive Committee Counsel in *In re Evenflo Co., Inc. Marketing, Sales Practices and Products Liability Litigation*, Civil Action No. 1:20md-02938-DJC in the District of Massachusetts.

- Served as a member of Plaintiffs Science and Expert Subcommittee in *In re Philips Recalled CPAP, Bi-Level PAP and Mechanical Ventilator Products Liability Litig.*, Case No. 2:21-MC-01230-JPC (Western District of Pennsylvania), which recently settled for **$479 million**.

- *Hernandez, et al. v. Google, Inc., et al.,* Case No. 1-15-CV-280601 (Santa Clara Cty., California, Superior Ct.), before the Honorable Brian C. Walsh. BR&B, on behalf of the plaintiffs and similarly situated purchasers of gift cards issued by Google, Inc. for use in its Google Play Store, prosecuted this action to require defendants to abide by California law with regard to gift cards with less than a $10.00 balance on them. Pursuant to the settlement reached in the case, which is pending final approval, Google agreed to comply with California law, which requires sellers to refund gift card balances of less than $10.00 upon request. In addition, Google agreed to (1) provide refunds to all Google Play users who had previously requested, but were denied, such refunds; (2) provide additional training regarding the refund requirements to its customer service representatives; and (3) provide notice of the availability of refunds on its website. Notably, after the filing of the lawsuit, Google revised its payment system, allowing gift card users to combine their gift cards with other forms of payment. The changes adopted by Google pursuant to the settlement are ongoing, providing benefit to millions of Google Play gift card users.

Significant Antitrust Cases

The firm has been appointed lead counsel or to the leadership group in many antitrust class action cases, including:

In re Lithium Ion Batteries Antitrust Litigation, MDL Docket No. 2420, the Honorable Yvonne Gonzalez Rogers in the Northern District of California;

In re Fasteners Antitrust Litigation, MDL Docket No. 1912, the Honorable R. Barclay Surrick in the Eastern District of Pennsylvania;

In re Publication Paper Antitrust Litigation, Docket No. 3:04 MDL 1631 (SRU), the Honorable Stefan R. Underhill in the District of Connecticut;

In re Automotive Paint Refinishing Antitrust Litigation, MDL No. 1426, the Honorable R. Barclay Surrick in the Eastern District of Pennsylvania;

Brookshire Brothers, Ltd., et al. v. Chiquita Brands International, Inc., et al., Lead Case No. 05-21962-Cooke/Brown, the Honorable Marcia G. Cooke in the Southern District of Florida, Miami Division;

Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives and Composites, Inc., et al. (Carbon Fiber Antitrust Litigation), No. CV-99-07796-GHK(Ctx), the Honorable Florence Marie Cooper in the Central District of California, Western Division;

In re Graphite Electrodes Antitrust Litigation, Master File No. 97-CV-4182(CRW), the Honorable Charles R. Weiner in the Eastern District of Pennsylvania;

In re Flat Glass Antitrust Litigation, Master Docket Misc. No. 970550, MDL No. 1200, the Honorable Donald E. Ziegler in the Western District of Pennsylvania;

In re New Jersey Title Insurance Litigation, No. 2:08-cv-01425-GEB, the Honorable Garrett E. Brown in the District of New Jersey;

In re Bath and Kitchen Fixtures Antitrust Litigation, Docket No. 05-cv-00510-MAM, the Honorable Mary A. McLaughlin in the Eastern District of Pennsylvania;

In re Sorbates Antitrust Litigation, Master File No. C 98-4886 MCC, the Honorable William H. Orrick, Jr. in the Northern District of California;

In re Sodium Gluconate Antitrust Litigation, No. C-97-4142CW, the Honorable Claudia Wilken in the Northern District of California;

In re Vitamins Antitrust Litigation, MDL No. 1285, the Honorable Thomas F. Hogan in the District of Columbia;

In re: Metal Building Insulation Antitrust Litigation, Master File No. H-96-3490, the Honorable Nancy F. Atlas in the Southern District of Texas;

In re Carpet Antitrust Litigation, MDL No. 1075, the Honorable Harold L. Murphy in the Northern District of Georgia, Rome Division;

In re Citric Acid Antitrust Litigation, Master File No. 95-2963, the Honorable Charles A. Legge in the Northern District of California; and

Capital Sign Company, Inc. v. Alliance Metals, Inc., et al., Civil Action No. 95-CV-6557 (LHP), the Honorable Louis H. Pollak in the Eastern District of Pennsylvania;

Plastic Cutlery Antitrust Litigation, Master File No. 96-728, the Honorable Joseph L. McGlynn in the Eastern District of Pennsylvania.

Recoveries Achieved in Antitrust Cases

The Firm has achieved significant recoveries on behalf of class members in antitrust cases, including the following:

- *In re Urethane Antitrust Litigation*, 2:04-md-01616-JWL (D. Kan.). After nearly nine years of litigation and four weeks of trial, the Jury reached a verdict for plaintiffs in excess of **$400 million** (before trebling) against defendant Dow Chemical Company, and the District Court entered a Judgment of **$1.06 billion**, which was upheld on appeal by the Tenth Circuit Court of Appeals. While on appeal to the U.S. Supreme Court, the case against Dow settled for **$835 million**, which was in addition to earlier settlements reached with other defendants. BR&B served as a member of the trial team for the case.

- *In re Vitamins Antitrust Litigation*, MDL No. 1285 (D.D.C.). In this highly complex litigation, plaintiffs achieved settlements **in excess of $1 billion**. BR&B served as a member of the executive committee.

- *In re Citric Acid Antitrust Litigation*, Master File No. 95-2963 (N.D. Cal.). After five years of litigation, plaintiffs achieved settlements totaling **over $80 million**. BR&B served as co-lead counsel.

- *In re Graphite Electrodes Antitrust Litigation*, Master File No. 97-CV-4182 (CRW) (E.D. Pa.). After six years of litigation, plaintiffs achieved settlements totaling **over $133 million**. BR&B served as co-lead counsel.

- *In re Automotive Refinishing Paint Antitrust Litigation*, MDL No. 1426 (E.D. Pa.). After five years of litigation, plaintiffs achieved settlements totaling **over $105 million**. See 617 F. Supp.2d 336 (E.D. Pa. 2007). BR&B served as co-lead counsel.

- *In re Sorbates Antitrust Litigation,* No. C 98-4886 (N.D. Cal.). After four years of litigation, plaintiffs achieved settlements in the total amount of **$96.5 million**. BR&B served as co-lead counsel.

- *Thomas & Thomas Rodmakers, Inc., et al. v. Newport Adhesives and Composites, et al.*, No. CV-99-07796 FMC (RNBx) (C.D. Cal.) (Carbon Fiber Antitrust Litigation). Plaintiffs achieved settlements totaling **$67.5 million**. BR&B served as co-lead counsel.

- *In re Polypropylene Carpet Antitrust Litigation*, MDL No. 1075 (N.D. Ga.). After five years of litigation, plaintiffs achieved a recovery of **nearly $50 million**. See 93 F. Supp. 2d 1348 (N.D. Ga. 2000). BR&B served as co-lead counsel.

- *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (E.D. Pa.). After more than seven years of litigation, plaintiffs were successful in maintaining the case on appeal, see 385 F.3d 350 (3d Cir. 2004), and achieved total recoveries of **more than $120 million**. BR&B served as co-lead counsel.

Significant Securities and Shareholder Cases

Among the many securities law, derivative and fiduciary duty cases where the Firm has been appointed lead counsel in recent years are the following:

In re Grand Canyon Education, Inc. Securities Litigation, No. 20-639-MN-CJB, before the Honorable Maryellen Noreika in the District of Delaware;

Allegheny County Employees' Retirement System v. Energy Transfer LP, et al., Case No. 2:20-cv-00200-GAM, before the Honorable Gerald A. McHugh in the Eastern District of Pennsylvania;

In re Dentsply Sirona, Inc. Securities Litigation, No. 18-cv-7253 (NG) (PK), before the Honorable Nina Gershon in the Southern District of New York;

In re WageWorks, Inc. Securities Litigation, Case No. 4:18-cv-01523-JSW, before the Honorable Jeffrey S. White in the Northern District of California;

Shenk v. Mallinckrodt PLC, et al., No. 1:17-00145-DLF, before the Honorable Dabney L. Friedrich in the District of Columbia;

In re Roadrunner Transportation Systems, Inc. Securities Litigation, Case No. 17-cv-144-PP, before the Honorable Pamela Pepper in the Eastern District of Wisconsin;

In re DFC Global Corp. Securities Litigation, Civil Action No. 2:13-cv-06731-BMS, before the Honorable Berle M. Schiller in the Eastern District of Pennsylvania;

Pennsylvania Public School Employees' Retirement System v. Bank of America Corp., et al., Civil Action No. 1:11-cv-733-WHP, before the Honorable William H. Pauley, III, in the Southern District of New York;

In re Omnivision Technologies, Inc. Securities Litigation, Case No. 5:11-cv-05235, before the Honorable Ronald M. Whyte in the Northern District of California;

Louisiana Municipal Police Employees Retirement System v. Green Mountain Coffee Roasters et al., Case No. 11-cv-00289, before the Honorable William K. Sessions, III, in the District of Vermont;

In re American International Group Inc. 2008 Securities Litigation, Master File No. 08-CV-4772-LTS, before the Honorable Laura Taylor Swain in the Southern District of New York;

In re McKesson HBOC, Inc. Securities Litigation, No. C-99-20743-RMW, before the Honorable Ronald M. Whyte in the Northern District of California;

In re WorldCom, Inc. Securities Litigation, Master File No. 02-Civ-3288 (DLC), before the Honorable Denise L. Cote in the Southern District of New York;

In re Cendant Corporation Litigation, Master File No. 98-1664 (WHW), before the Honorable William H. Walls in the District of New Jersey;

In re Apollo Group, Inc. Securities Litigation, Master File No. CV 04-2147-PHX-JAT, before the Honorable James A. Teilborg in the District of Arizona;

In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, Master File No. 07-cv-9633 (LBS)(AJP)(DFE), before the Honorable Jed S. Rakoff in the Southern District of New York;

In re The Mills Corporation Securities Litigation, Civil Action No. 1:06-77 (GBL), before the Honorable Liam O'Grady in the Eastern District of Virginia;

In re R & G Financial Corp. Securities Litigation, No. 05 cv 4186, before the Honorable John E. Sprizzo in the Southern District of New York;

In re Bridgestone Securities Litigation, Master File No. 3:01-0017, before the Honorable Robert L. Echols in the Middle District of Tennessee;

In re DaimlerChrysler Securities Litigation, No. 00-0993, before the Honorable Joseph J. Farnan, Jr. in the District of Delaware;

In re Schering-Plough Securities Litigation, Master File No. 01-CV-0829 (KSH/RJH), before the Honorable Katherine Hayden in the District of New Jersey;

In re Pepsi Bottling Group Shareholder Litigation, C.A. No. 4526-VCS, before the Honorable Leo E. Strine, Jr. in the Delaware Court of Chancery;

In re Nationwide Financial Services Litigation, Case No. 2:08-CV-00249, before the Honorable H. Michael Watson, in the Southern District of Ohio;

In re Chiron Shareholder Deal Litigation, Case No. RG 05-230567, before the Honorable Robert B. Freedman in the California Superior Court for Alameda County; and

Dennis Rice v. Lafarge North America, Inc., et al., Civil No. 268974-V, before the Honorable Michael D. Mason in the Circuit Court for Montgomery County, Maryland.

Recoveries Achieved in Securities and Shareholder Cases

The Firm has achieved significant recoveries on behalf of class members, including institutional clients, in more than 50 cases since passage of the PSLRA, including the following:

- *In re WorldCom, Inc. Securities Litigation*, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.). BR&B, as co-lead counsel for lead plaintiff the Comptroller of the State of New York, the sole Trustee for the New York State Common Retirement Fund ("NYSCRF"), negotiated **$6.19 billion** in settlements with defendants, including a settlement with the company's outside auditor, Arthur Andersen LLP, after nearly five weeks of trial. The recovery is the largest ever achieved in the Southern District of New York and in the Second Circuit.

- *In re Cendant Corporation Litigation*, Civil Action No. 98-1664 (WHW) (D.N.J.). BR&B, as co-lead counsel, represented co-lead plaintiffs NYSCRF and the California Public Employees' Retirement System. This litigation was settled for $3.18 billion – which, at the time, was by far the largest recovery ever achieved in a class action under the securities laws – plus a contingency that brought the total recovery to **$3.32 billion**. The $335 million settlement with Ernst & Young, the outside auditor for one of the Cendant predecessor companies, continues to stand as the largest recovery from an accounting firm in a securities class action. The recovery is the largest ever achieved in the District of New Jersey and in the Third Circuit.

- *In re McKesson HBOC, Inc. Securities Litigation*, Master File No. CV-99-20743 RMW (N.D. Cal.). BR&B, as co-lead counsel, represented the NYSCRF as sole lead plaintiff. BR&B vigorously prosecuted the case against the company, its management, HBOC, Inc.'s former auditor, Arthur Andersen LLP, and Bear Stearns & Co., Inc., which had issued a fairness opinion in connection with the merger between McKesson and HBOC. After contentious motion practice and during discovery, BR&B participated with the NYSCRF in negotiating settlements totaling **$1.052 billion**. The recovery is the largest ever achieved in the Northern District of California and in the Ninth Circuit.

- *In re American International Group, Inc. 2008 Securities Litigation*, Case No. 08-cv-4772-LTS-DCF (S.D.N.Y.). BR&B served as a co-lead counsel representing the State of Michigan Retirement Systems. After more than six years of intensive litigation, including the completion of all fact discovery and full briefing, an evidentiary hearing, and oral argument on lead plaintiff's motion for class certification, the parties reached settlements totaling **$970.5 million**, which the court approved on March 20, 2015, finding that it was an "outstanding result

obtained on behalf of the settlement class." The recovery is among the largest achieved in a securities fraud class action stemming from the 2008 financial crisis, and appears to be the largest securities class action settlement in the absence of a criminal indictment, an SEC enforcement action or a restatement of a company's financial statements.

- *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, Master File No. 07-cv-9633 (LBS)(AJP)(DFE), pending before the Honorable Jed S. Rakoff in the Southern District of New York. BR&B, as co-lead counsel for sole lead plaintiff the State Teachers Retirement System of Ohio, negotiated a **$475 million** settlement with defendants in January 2009.

- *Pennsylvania Public School Employees' Retirement System v. Bank of America Corp., et al.,* Civil Action No. 1:11-cv-733-WHP, pending before the Honorable William H. Pauley, III, in the Southern District of New York. After nearly six years of litigation, BR&B, as the sole lead counsel for sole lead plaintiff the Pennsylvania Public School Employees' Retirement System, negotiated a **$335 million** settlement with defendants that the court approved in December 2016.

- *In re DaimlerChrysler AG Securities Litigation*, Master File No. 00-993 (JJF) (D. Del.). BR&B, as co-lead counsel for institutional investors the Denver Employees Retirement Plan, the Policemen's Annuity and Benefit Fund of Chicago, and the Municipal Employees Annuity and Benefit Fund of Chicago, negotiated in October 2003, a **$300 million** settlement of this case involving the purported "merger of equals" between Daimler Benz and Chrysler Corporation. Notably, in a related opt out case, the court granted summary judgment in defendants' favor, leaving the opt out plaintiff with no recovery.

- *In re The Mills Corporation Securities Litigation*, Civil Action No. 1:06-cv-00077 (LO/TRJ) (E.D. Va.). BR&B, as co-lead counsel and counsel for co-lead plaintiff the Iowa Public Employees Retirement System ("IPERS"), negotiated settlements totaling **$202.75 million** with the defendant real estate investment trust corporation, with Mills' former auditor, Ernst & Young, and with a foreign real estate development company. When it was approved in December 2009, the global settlement of the case was the largest securities fraud class action recovery in the Eastern District of Virginia.

- *In re Schering-Plough Securities Litigation*, Master File No. 01-CV-0829 (KSH/RJH), before the Honorable Katherine Hayden in the District of New Jersey. BR&B, as lead counsel for sole lead plaintiff the Florida State Board of Administration, negotiated a **$165 million** settlement after 8 years of hard-fought litigation. The settlement, approved in December 2009, was described by the Court as the product of "hard work and good judgment in ultimately achieving a negotiated resolution of substantial value to the class."

- *In re Apollo Group, Inc. Securities Litigation*, Master File No. CV 04-2147-PHX-JAT, before the Honorable James A. Teilborg in the District of Arizona. BR&B, as lead counsel for sole lead plaintiff the Policemen's Annuity and Benefit Fund of Chicago ("PABF"), conducted a two month trial which resulted in a **unanimous jury verdict in January 2008 for the lead plaintiff and investor class for the full amount of price inflation per share that the lead plaintiff had requested**. Although the district court judge entered a judgment for defendants notwithstanding the verdict on loss causation grounds, on June 23, 2010, the Ninth Circuit overturned the judgment and reinstated the jury verdict in favor of plaintiffs and the investor class. The decision of the Court of Appeals to reinstate the plaintiffs' jury verdict appears to be the only time such an appellate decision has been made since passage of the PSLRA. On March 7, 2011, the U.S. Supreme Court denied defendants' petition for certiorari, thereby

allowing the Ninth Circuit's decision to stand and for the district court to enter judgment in favor of the plaintiff class. Later in 2011, the case was resolved by the payment by defendants of **$145 million** for the benefit of the injured investors. On April 20, 2012, the court granted final approval of the case resolution.

- *Michael Rubin v. M.F. Global Ltd.*, Case No. 08cv2233 (VM), before the Honorable Victor Marrero in the Southern District of New York. BR&B, as co-lead counsel and counsel for co-lead plaintiffs IPERS and the PABF, negotiated a **$90 million** settlement after the Second Circuit Court of Appeals reversed the trial court's dismissal of the complaint.

- *In re R&G Financial Corporation, et al.*, Civil Action No. 1:05cv04186 (JES), before the Honorable John E. Sprizzo in the Southern District of New York. BR&B, as co-lead counsel for co-lead plaintiff the City of Philadelphia Board of Pensions and Retirement, negotiated a **$51 million** settlement with defendants.

- *In re Pepsi Bottling Group Shareholder Litigation,* C.A. No. 4526-VCS, before the Honorable Leo E. Strine, Jr. in the Delaware Court of Chancery. BR&B, as co-lead counsel for co-lead plaintiff IBEW Local 98, challenged the proposed takeover of Pepsi Bottling Group (PBG), by PepsiCo, and in related actions, shareholders of PepsiCo's other primary bottling company, PepsiAmericas, Inc. (PAS), challenged the proposed takeover of PAS by PepsiCo. After significant litigation of the PBG and PAS actions, and through negotiations of special committees of both bottling companies' boards, PepsiCo agreed to: (a) significantly higher acquisition prices that provided PBG shareholders as a group with **$1.022 billion** more in value; (b) delete the cross-conditionality provision for the two deals; (c) reductions in the merger agreements' termination fees and termination tail periods; and (d) additional disclosures in the final proxy statements for the two deals. On June 1, 2010, then-Vice Chancellor Strine granted final approval of the settlements of the related cases, crediting the litigation brought by the plaintiffs and their counsel as a causal factor in prompting PepsiCo to make fuller offers for the bottling companies.

- *In re Nationwide Financial Services Litigation*, Case No. 2:08-CV-00249, before the Honorable H. Michael Watson, in the U.S. District Court for the Southern District of Ohio. BR&B, as co-lead counsel, represented lead plaintiff the International Brotherhood of Electrical Workers Local 98 Pension Fund in this class action litigation contesting the buy-out of Nationwide Financial Services, Inc. by its majority owner Nationwide Mutual Insurance Company and certain affiliates in 2008. After extensive negotiations, Nationwide Mutual agreed to increase its tender offer price from its initial offer of $47.20 per share to the final price of $52.25 per share, a benefit to the class of approximately **$232.8 million** (a 10.7% increase), and further agreed to additional disclosures in the final proxy statement. In assessing the settlement, the Court agreed with lead plaintiffs that it represented an "excellent result for the Class."

- *Dennis Rice v. Lafarge North America, Inc., et al.*, Civil No. 268974-V, before the Honorable Michael D. Mason in the Circuit Court for Montgomery County, Maryland. BR&B, as co-lead counsel, represented lead plaintiff the City of Philadelphia Board of Pensions and Retirement in this class action litigation contesting the buy-out of Lafarge North America by majority owner Lafarge S.A in 2006. After extensive discovery and injunction practice, Lafarge SA agreed to increase its tender offer price from its initial offer of $75 per share to the final price of $85.50, a benefit to the class of approximately **$388 million**.

- *In re Chiron Shareholder Deal Litigation*, Case No. RG 05-230567, before the Honorable Robert B. Freedman in the California Superior Court for Alameda County. BR&B, as

lead counsel, represented an individual investor and the class in this class action litigation contesting the proposed acquisition of Chiron Corp. by Novartis AG in 2005. After extensive discovery and injunction practice, Novartis agreed to increase the offering price from its initial offer of $40 per share to the final price of $48, a benefit to the class of approximately **$880 million**.

- *In re Applied Micro Circuits Corp. Securities Litigation*, Civil Action No. 01-cv-0649-K (AJB) (S.D.Cal.). BR&B, as sole lead counsel for lead plaintiff the Florida State Board of Administration, negotiated a **$60 million** settlement in 2005.

- *In re Sunbeam Securities Litigation*, Case No. 98-8258-Civ-Middlebrooks (S.D. Fla.). BR&B represented a lead plaintiff group that included the CWA/ITU Negotiated Pension Plan in this litigation, which could not be prosecuted against Sunbeam itself due to its bankruptcy filing. This case resulted in settlements in 2002 totaling **more than $140 million** from Arthur Andersen LLP, Albert J. Dunlap, Russell Kersh and one of the Company's insurers. The settlement included a record breaking $110 million settlement with Arthur Andersen and one of the largest individual securities settlements ($15 million) from the company's former chief executive officer, "Chainsaw" Al Dunlap.

- *In re 3Com Securities Litigation*, Master File No. C 97-21083-EAI (N.D. Cal.). This case, in which BR&B represented a lead plaintiff group of individual investors, involved discovery taken throughout the United States and in Europe with respect to 3Com and its outside auditing firm. A settlement in the amount of **$259 million** was reached at the end of the discovery process.

- *In Re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813-CS, before the Honorable Leo E. Strine, Jr. in the Delaware Court of Chancery. BRB served as co-lead counsel in this derivative action challenging the corporation's overpayment for an asset owned by its controlling stockholder. After extensive litigation, an eve-of-trial settlement providing a reduction in the purchase price of the asset of **$29 million** was achieved. The settlement was approved on September 4, 2012.

- *In re Cheniere Energy, Inc. Stockholders Litigation*, C.A. No. 9710-VCL, in the Delaware Chancery Court. BR&B achieved a settlement of lawsuits filed on behalf of investors against Cheniere's CEO, certain other senior executives, and the members of Cheniere's board of directors alleging that Cheniere's management team and board breached the terms of the company's bylaws as well as their fiduciary duties to the company and its shareholders with respect to stock awards made in 2013. Upon the filing of the initial complaint by BR&B, Cheniere postponed the Annual Stockholder Meeting for three months, and thereafter took off the agenda for the Meeting the proposal to add another 30 million shares to the stock incentive plan's share reserve. The settlement negotiated with defendants, among other things: (a) invalidated the board's ability to issue to company insiders 7.845 million shares of stock that the company claimed had been validly set aside for compensation purposes based on a prior stockholder vote, which shares had a market price-based value at the time of the settlement of approximately **$565 million**; (b) provided that the 7.845 million shares could be used for compensation purposes only if the company scheduled a new vote and obtained stockholder authorization pursuant to a voting standard in line with the default provision of Delaware law, a so-called "present and entitled to vote" standard under which abstentions are counted as "no" votes; and (c) prohibited the company from granting to company insiders or seeking stockholder approval for any further stock-based compensation to company insiders until January 1, 2017. The Court approved the settlement in March 2015.

- *Public Employees' Retirement System of Mississippi v. Leonard S. Schleifer, et al.* (Regeneron Pharmaceuticals, Inc. Derivative Case), No. 656813/2017, Part 39 (N.Y. Supreme Ct.). BR&B, on behalf of the MPERS, filed a shareholder derivative complaint in the New York Supreme Court in November 2017, alleging that Regeneron Pharmaceuticals, Inc.'s then-current and certain former directors breached their fiduciary duties and were unjustly enriched when they approved and/or received allegedly excessive compensation in 2013, 2014, 2015, and 2016, and that they breached their fiduciary duties in 2014 when they approved a long-term incentive plan and in 2017 when they approved the amended and restated plan, both of which authorized the award of equity compensation to directors and others. After certain Court-ordered document discovery took place, BR&B negotiated a settlement on behalf of MPERS (subsequently joined by plaintiffs in a related action) in which: (1) Regeneron agreed to a significant reduction of the compensation that will be provided to its non-employee directors and the chairman of its board for the next five years, providing a financial benefit to the Company of **$44.5 million**; (2) defendants agreed that after 2021, only a vote of non-affiliated shareholders can increase the compensation caps agreed to in the settlement, meaning the Company insiders as well as other potentially interested shareholders will not be able to vote on this issue; (3) Regeneron agreed to provide increased disclosures concerning director compensation for the next five years, in excess of what would otherwise be required by SEC regulations; and (4) Regeneron agreed to institute certain governance reforms concerning director compensation. The Court approved the settlement in December 2018.

Extensive Class Action Trial Experience

The Firm has extensive experience in trying class action cases in federal and state court, including the following:

In re Apollo Group, Inc. Securities Litigation, Master File No. CV-04-2147-PHX-JAT (District of Arizona) (jury verdict in 2008 for the full amount of per share damages requested, and later settled after the jury verdict was upheld on appeal for **$145 million**);

In re WorldCom, Inc. Securities Litigation, Master File No. 02-Civ-3288(DLC) (Southern District of New York) (2005 securities class action jury trial against accounting firm, which was settled just before closing arguments for **$65 million** and a contingency claim later settled for **$38 million**);

Becker v. The Bank of New York Mellon Trust Co., N.A., et al., No. 2:11-cv-06460 (JRS) (Eastern District of Pennsylvania) (case sought $15 million in damages, plus interest, settling for **$13.5 million**. The Court approved the settlement in December 2018.

Equity Asset Investment Trust, et al. v. John G. Daugman, et al., No. 20395 (Delaware Court of Chancery) (non-jury trial in 2003 in which BR&B represented Iridian Technologies, Inc., the world leader at the time in iris recognition technologies, and its common shareholder-elected directors);

Uniondale Beer Co., Inc. v. Anheuser-Busch, Inc., et al., Civil Action No. CV 86-2400(TCP) (Eastern District of New York) (antitrust class action trial);

Gutierrez v. Charles J. Givens Organization, et al., Case No. 667169 (Superior Court of California, County of San Diego) (jury verdict in excess of **$14 million** for plaintiff consumer class);

In re Control Data Corporation Securities Litigation, 933 F.2d 616 (8th Cir. 1991) (securities class action that BR&B took to trial, got directed verdict overturned on appeal, and thereafter favorably settled for the certified class);

Gould v. Marlon, CV-86-968-LDG (D. Nev.) (jury verdict for plaintiff class);

Betanzos v. Huntsinger, CV-82-5383 RMT (C.D. Cal.) (jury verdict for plaintiff class).

Leonard Barrack, senior partner at Barrack, Rodos & Bacine, is a graduate of Temple University Law School (J.D. 1968) where he was Editor in Chief of the Temple Law Reporter. Mr. Barrack has been practicing in the area of securities class and derivative actions, and corporate litigation generally, for more than 40 years, during which time he has analyzed laws and provided advice on issues relevant to pension fund boards of trustees. He was admitted to the bar of the Supreme Court of Pennsylvania in 1969, and is also a member of the bars of the United States Supreme Court, the United States Courts of Appeals for the First, Third, Eighth and Tenth Circuits, and the United States District Court for the Eastern District of Pennsylvania. Mr. Barrack can be reached at the Firm's Philadelphia, PA office.

Since enactment of the PSLRA, Mr. Barrack has been appointed lead or co-lead counsel in dozens of securities cases throughout the United States, including three of the largest case settlements in securities class action history. In In re WorldCom, Inc. Securities Litigation, before the Honorable Denise L. Cote in the Southern District of New York, Mr. Barrack was responsible for guiding both the vigorously prosecuted litigation – including the five-week trial against Arthur Andersen – as well as negotiating on behalf of the NYSCRF the ground-breaking settlements totaling more than $6.19 billion with WorldCom's underwriters, its outside directors, and Arthur Andersen, in the midst of trial. He was also co-lead counsel in In re Cendant Corporation Litigation, before the Honorable William H. Walls in the District of New Jersey, which, at $3.3 billion, was the previously highest recovery ever achieved in a securities fraud class case; In re McKesson HBOC, Inc. Securities Litigation, before the Honorable Ronald M. Whyte in the Northern District of California, which settled for $1.052 billion. Mr. Barrack was also appointed co-lead counsel in In re Merrill Lynch & Co. Securities, Derivative and ERISA Litigation, before the Honorable Jed S. Rakoff in the Southern District of New York (settlement of $475 million approved in August 2009) and co-lead counsel in In re American International Group, Inc. Securities Litigation, before the Honorable Laura Taylor Swain in the Southern District of New York, which settled for $970.5 million.

Mr. Barrack has had extensive trial and deposition experience in complex actions including the successful trial of derivative lawsuits under Section 14(a) of the Securities Exchange Act of 1934; Gladwin v. Medfield, CCH Fed. Sec. L. Rep. ¶95,012 (M.D. Fla. 1975), aff'd, 540 F.2d 1266 (5th Cir. 1976); Rafal v. Geneen, CCH Fed. Sec. L. Rep. ¶93,505 (E.D. Pa. 1972). In addition, Mr. Barrack has lectured on class actions to sections of the American and Pennsylvania Bar Association and is the author of Developments in Class Actions, The Review of Securities Regulations, Volume 10, No. 1 (January 6, 1977); Securities Litigation, Public Interest Practice and Fee Awards, Practicing Law Institute (March, 1980).

Gerald J. Rodos, a partner at Barrack, Rodos & Bacine, is a graduate of Boston University (B.A. 1967) and an honor graduate of the University of Michigan Law School (J.D. cum laude 1970). Mr. Rodos has been practicing in the area of securities class and derivative actions, antitrust litigation and corporate litigation generally, for more than 40 years, during which time he has analyzed laws and provided advice on issues relevant to pension fund boards of trustees. He was admitted to the bar of the Supreme Court of Pennsylvania in 1971, and is also a member of the bars of the Supreme Court of the United States, the United States Court of Appeals for the Third Circuit, and the United States District Court for the Eastern District of Pennsylvania. Mr. Rodos can be reached at the Firm's Philadelphia, PA office.

Mr. Rodos has been appointed lead counsel, inter alia, in Payne, et al. v. MicroWarehouse, Inc., et al., before the Honorable Dominic J. Squatrito in the District of Connecticut; In re Sunbeam Securities Litigation, pending before the Honorable Donald M. Middlebrooks in the Southern District of Florida; In re Regal Communications Securities

Litigation, before the Honorable James T. Giles in the Eastern District of Pennsylvania; In re Midlantic Corp. Shareholders Securities Litigation, before the Honorable Dickinson R. Debevoise in the District of New Jersey; In re Craftmatic Securities Litigation, before the Honorable Joseph L. McGlynn, Jr. in the Eastern District of Pennsylvania; In re New Jersey Title Insurance Litigation, Case No. 2:08-cv-01425-PGS-ES, before the Honorable Peter G. Sheridan in the District of New Jersey; In re Automotive Refinishing Paint Antitrust Litigation, Case No. 2:01-cv-02830-RBS, before the Honorable R. Barclay Surrick in the Eastern District of Pennsylvania; and In re Publication Paper Antitrust Litigation, Docket No. 3:04 MD 1631 (SRU), before the Honorable Stefan R. Underhill in the District of Connecticut, among many others. Mr. Rodos also represented lead plaintiff in the WorldCom litigation.

Mr. Rodos is the co-author of Standing To Sue Of Subsequent Purchasers For Antitrust Violations -- The Pass-On Issue Re-Evaluated, 20 S.D.L. Rev. 107 (1975), and Judicial Implication of Private Causes of Action; Reappraisal and Retrenchment, 80 Dick. L. Rev. 167 (1976).

Daniel E. Bacine, a partner at Barrack, Rodos & Bacine, is a graduate of Temple University (B.S. 1967) and of Villanova University School of Law (J.D. 1971), where he was an Associate Editor of the Law Review and a member of the Order of the Coif. Mr. Bacine has been practicing in the area of securities class and derivative actions, and corporate litigation generally, for more than 40 years, during which time he has analyzed laws and provided advice on issues relevant to pension fund boards of trustees. He was admitted to the bar of the Supreme Court of Pennsylvania in 1971, and is also a member of the bars of the United States Courts of Appeals for the Third and Seventh Circuits and the United States District Court for the Eastern District of Pennsylvania. Mr. Bacine can be reached at the Firm's Philadelphia, PA office.

Mr. Bacine is an experienced civil litigator in both the federal and state courts, having tried jury and non-jury securities and other commercial cases, including cases involving disputes between securities brokerage firms and their customers. He has been lead or co-lead counsel in various class actions, including, inter alia, In re American Travelers Corp. Securities Litigation, in the Eastern District of Pennsylvania; In re IGI Securities Litigation, in the District of New Jersey; Kirschner v. CableTel Corp., in the Eastern District of Pennsylvania; Lewis v. Goldsmith, in the District of New Jersey; Rieff v. Evens (Allied Mutual Demutualization Litigation), in the District Court for Polk County, Iowa; Crandall v. Alderfer (Old Guard Demutualization Litigation), in the Eastern District of Pennsylvania; and In re Harleysville Mutual, in the Court of Common Pleas of Philadelphia.

Mr. Bacine served as senior plaintiff's counsel in Becker v. BNY Mellon Trust Co., N.A., in the Eastern District of Pennsylvania, a class action case that resulted in several important decisions delineating the duties of indenture trustees to bondholders: 172 F. Supp. 3d 777 (E.D. Pa. 2016) (denying motion for summary judgment); 2016 WL 6397415 (E.D. Pa. October 28, 2016) (reconsideration denied); 2016 WL5816075 (E.D. Pa. October 5, 2016) (granting class certification). He was senior counsel at the trial of the Becker matter, which settled just before closing arguments.

Mr. Bacine is an adjunct professor of law at Drexel University's Thomas R. Kline School of Law and an adjunct lecturer in law at Villanova University School of Law, teaching courses in class actions and complex litigation. He also sits as an arbitrator for the Financial Industry Regulatory Authority, hearing disputes involving the securities industry, and has chaired numerous FINRA arbitration panels since 2000.

E. Teresa Akonhai, an associate at Barrack, Rodos & Bacine, is a graduate of Georgetown University School of Foreign Service (1997, B.S. International Politics & Spanish) and Temple University Beasley School of Law (J.D. 2002). Before joining Barrack, Ms. Ahonkhai represented plaintiffs and defendants in a variety of matters, including: complex securities class action litigation, multi-district product liability litigation and mass tort litigation in diverse industries (such as pharmaceutical products, devices and chemicals in regulated and non-regulated industries). Ms. Akonhai can be reached at the Firm's Philadelphia, PA office.

At BR&B, Ms. Ahonkhai represents investors in class and derivative actions, including cases involving securities fraud, shareholder rights and corporate governance. Ms. Ahonkhai was a member of the litigation team that prosecuted In re American International Group, Inc. 2008 Securities Litigation, which resulted in a $970.5 million settlement for defrauded investors, among the largest recoveries ever achieved in a securities fraud class action arising from the 2008 financial crisis.

Ms. Ahonkhai serves as a volunteer for Big Brothers Big Sisters, a mentoring organization that pairs at-risk youth with positive role models with the goal of overcoming otherwise significant barriers to success and for Metropolitan Area Neighborhood Nutrition Alliance (MANNA), a non-profit that prepares and delivers nutritional meals and nutrition services at no cost to individuals in need. A former college and professional basketball player, Ms. Ahonkhai is a frequent lecturer for high-school and collegiate student-athletes and coaches.

William J. Ban, a partner at Barrack, Rodos & Bacine, is a graduate of Brooklyn Law School (J.D. 1982) and Lehman College of the City University of New York (A.B. 1977). Mr. Ban was admitted to practice in New York in 1983 and in Pennsylvania in 2005. He is a member of the bars of United States District Courts for the Southern and Eastern Districts of New York and the Eastern District of Pennsylvania and is a member of the New York City Bar Association. Mr. Ban can be reached at the Firm's New York, NY office.

For more than thirty-five years, Mr. Ban's practice of law has focused on securities, antitrust and consumer class action litigation on behalf of plaintiffs and he has participated as lead or co-lead counsel, on executive committees and in significant defined roles in scores of major class action litigations in federal and state courts throughout the country. Since Mr. Ban came to the Firm in 2004, he has been an important member of the firm's litigation teams for: In re WorldCom, Inc. Securities Litigation, Master File No. 02-Civ-3288 (DLC), before the Honorable Denise L. Cote in the Southern District of New York; IPERS v. MF Global, Ltd., 08-Civ-2233 (VM), before the Honorable Victor Marrero in the Southern District of New York; PPSERS v. Bank of America, Corp., 11-Civ-00733(WHP), before the Honorable William H. Pauley in the Southern District of New York; In re Automotive Refinishing Paint Antitrust Litigation, MDL Docket No. 1426, before the Honorable R. Barclay Surrick in the Eastern District of Pennsylvania; In re: OSB Antitrust Litigation, 06-CV-00826 (PSD), before the Honorable Paul S. Diamond in the Eastern District of Pennsylvania; and the recently concluded In re: Lithium Ion Batteries Antitrust Litigation, MDL Docket No. 2420, before the Honorable Yvonne G. Rogers in the Northern District of California, among others.

Jeffrey A. Barrack, a partner at Barrack, Rodos & Bacine, is a graduate of Clark University (B.A. 1990), Boston College (M.A. 1992) and Temple University School of Law (J.D. 1996). He was admitted to practice in Pennsylvania in 1996 and in New York in 2009, is a member of the bars of the United States Court of Appeals for the Third Circuit and the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Pennsylvania, and has been admitted pro hac vice in district courts throughout the United

States. Mr. Barrack has represented plaintiffs in securities fraud, antitrust and other class actions since joining the Firm in 1996. He also has represented both plaintiff and defendant individual and corporate clients in environmental, consumer, business tort and commercial litigation in state and federal courts. Before joining the Firm, Mr. Barrack served under the United States Attorney assisting in the prosecution of complex white-collar crime in the Eastern District of Pennsylvania and the Philadelphia District Attorney assisting in the prosecution of crime in Philadelphia. He has been honored repeatedly by the First Judicial District of Pennsylvania as an attorney whose "work has been recognized by the judiciary as exemplary." Mr. Barrack can be reached at the Firm's Philadelphia, PA office.

Mr. Barrack served as a principal member of the litigation team and as a trial attorney in *In re Apollo Group Inc. Securities Litigation*, Master File No. CV-04-2147 PHX-JAT, before the Honorable James A. Teilborg of the United States District Court for the District of Arizona, which resulted in a **$145 million** recovery for the class. With the firm representing the Policemen's Annuity and Benefit Fund of Chicago, the Apollo Group federal jury trial began in November 2007 and ended in a unanimous verdict for investors in January 2008 for the full amount requested per damaged share. After the District Court entered a judgment notwithstanding the verdict on loss causation grounds, Mr. Barrack participated on the briefing team before the Ninth Circuit Court of Appeals, which led to the Court of Appeals vacating the JNOV and reinstating the jury verdict. Mr. Barrack also participated on the briefing team before the U.S. Supreme Court, which denied defendants' petition for certiorari.

Mr. Barrack was also a principal member of the litigation team in In re WorldCom, Inc. Securities Litigation, Master File No. 02-Civ-3288 (DLC), before the Honorable Denise L. Cote of the United States District Court for the Southern District of New York, in which the Firm represented the New York State Common Retirement Fund. He served as the lead attorney on auditing and accounting issues through the case and actively participated in the five-week trial of the only non-settling defendant, WorldCom's former auditor Arthur Andersen LLP. The 2005 jury trial against Arthur Andersen resulted in an additional $103 million for the benefit of the class of WorldCom investors, prompting Judge Cote to commend in an opinion and order that in the "trial against Andersen, the quality of Lead Counsel's representation remained first-rate."

Mr. Barrack was a principal member of the litigation team in *Pennsylvania Public School Employees' Retirement System v. Bank of America Corp., et al*., Civil Action No. 1:11-cv-733-WHP, before the Honorable William H. Pauley, III, in the United States District Court for the Southern District of New York. With the firm serving as counsel on behalf of the lead plaintiff and class representative, the Pennsylvania Public School Employees' Retirement System, Mr. Barrack has served as a key member in the litigation and resolution of the case, which settled for $335 million.

Mr. Barrack has also served as an important member of many successful litigation teams for the Firm. He participated in the prosecution of *In re McKesson HBOC, Inc. Securities Litigation*, No. C-99-20743-RMW, before the Honorable Ronald M. Whyte in the Northern District of California, which resulted in more than $1.052 billion for investors from defendants, including Bear Stearns, the investment bank that issued a fairness opinion on the merger that was the subject of the action; *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, Master File No.: 1:07-cv-9633-JSR-DFE, before the Honorable Judge Jed S. Rakoff, in the Southern District of New York, which settled for $475 million; *In re The Mills Corporation Securities Litigation*, Civil Action No. 1:06-cv-00077 (LO/TRJ), before the Honorable Liam O'Grady, in the Eastern District of Virginia, which settled for $202.75 million; *In re DaimlerChrysler AG Securities Litigation*, Master Docket No. 00-0993 (JJF), before the

Honorable Joseph J. Farnan, Jr. in the District of Delaware ($300 million settlement); *In re Sunbeam Securities Litigation*, No. 98-8258-CIV-MIDDLEBROOKS, before the Honorable Donald M. Middlebrooks in the Southern District of Florida ($140 million settlement recovered from corporate defendants and the company's independent public accounting firm); *In re R&G Financial Corporation Securities Litigation*, Master File No. 05 Civ. 4186 (JES), before the Honorable John E. Sprizzo, in the Southern District of New York ($51 million settlement from corporate defendants and the company's independent public accounting firm); and *In re Bridgestone Securities Litigation*, Master File No. 3:01-cv-0017, before the Honorable Robert L. Echols in the Middle District of Tennessee ($30 million settlement from Japanese corporation).

Mr. Barrack has successfully advocated corporate governance and excessive executive compensation reforms through shareholder rights claims asserted in direct and derivative cases alleging corporate directors' breaches of fiduciary and other legal duties. For example, Mr. Barrack was a principal member of the litigation team in *Resnick v. Occidental Petroleum, et al*., Case No. 10-cv-00390, before the Honorable Robert F. Kelly, presiding by special designation in the District of Delaware, which resulted in benefits described by the Court as "meaningful change" to the company's executive compensation and reporting policies and practices that "affords valuable consideration to Occidental and its shareholders." And in *Gralnick v Apple, Inc*., No. 13 Civ. 900 (RJS), 13 Civ. 0976 (RJS) (S.D.N.Y.), Mr. Barrack was a principal member of the litigation team that successfully challenged an improper proxy statement issued by Apple, Inc., seeking to preserve shareholders' right to a fair and informed shareholder vote and to enjoin the vote on the offending proposal. The Court issue the injunction ruling that plaintiff shareholder was "likely to succeed on the merits and [would] face irreparable harm if the vote ... [was] permitted to proceed. Further, the Court finds that the balance of hardships tips in [plaintiff's] favor, and that a preliminary injunction would be in the public interest."

Mr. Barrack has participated in public pension board educational programs and conferences designed for the education of public pension fiduciaries. For example, Mr. Barrack participated at a board educational program hosted by the Pennsylvania Public School Employees' Retirement System, and presented on trial practice in securities fraud litigation. In addition, Mr. Barrack has presented to the members of the National Association of Public Pension Attorneys ("NAPPA") during its annual summer seminar, and has published work in its periodical, The NAPPA Report. Mr. Barrack currently serves on NAPPA's Securities Litigation Working Group. Mr. Barrack has lectured on private securities litigation at the Beasley School of Law at Temple University, has been a featured columnist on securities litigation for The Legal Intelligencer, the oldest law journal in the United States, and has written on trial practice for the American Journal of Trial Advocacy.

Stephen R. Basser, partner in Barrack, Rodos & Bacine, is a graduate of the American University, Washington D.C. (B.A., with Honors, 1973) and Temple University School of Law, Philadelphia, Pennsylvania (J.D. *cum laude* 1976), where he was awarded the honor of "Highest Grade and Distinguished Class Performance" by its nationally renowned clinical trial litigation program and was selected to serve as a student prosecutor under the supervision of the United States Attorney's Office for the Eastern District of Pennsylvania. Mr. Basser has been practicing in the area of securities class and derivative actions, corporate litigation, and consumer protection litigation generally, for over 35 years. He was admitted to the bars of the Supreme Court of Pennsylvania in 1976, and the Supreme Court of California in 1985. He is also a member of the bars of the United States Circuit Courts of Appeals for the Sixth and Ninth Circuits, and the United States District Courts for the Southern, Central and Northern Districts of California, the District of Colorado, Eastern District of Pennsylvania, the Northern District of Texas, the Eastern District of Wisconsin, and the Eastern District of Michigan. Mr. Basser is the managing partner of the Firm's San Diego, CA office.

Mr. Basser is an experienced civil litigator in federal and state courts and has successfully tried numerous civil jury and non-jury cases to verdict. In addition to litigating product liability, medical malpractice, catastrophic injury, mass toxic tort and complex business disputes, Mr. Basser has extensive experience prosecuting securities class actions, including actions against Pfizer, Inc., Procyte Corp., Wall Data Corp., Louisiana-Pacific Corp., Samsonite Corp., TriTeal Corp., Sybase, Inc., Silicon Graphics, Inc., Orthologic Corp., Adobe, PeopleSoft, Inc., Safeskin Corp., Bridgestone Corp., Harmonic, Inc., 3Com Corp., Dignity Partners, Inc., Daou, Vivus, Inc., FPA Medical, Inc., Union Banc of California, Merix Corporation, Simulation Sciences, Inc., Informix Corporation, OmniVision Technologies, Inc., Roadrunner Transportation Corp., WageWorks, Inc., and Hewlett Packard Company. Mr. Basser served as lead counsel representing lead plaintiff the Florida State Board of Administration in *In re Applied Micro Circuits Corp. Securities Litigation*, Lead Case No. 01-cv-0649-K (AJB), which settled for **$60 million**, one of the largest recoveries in a securities class action in the Southern District of California since passage of the PSLRA. He also acted as co-lead counsel for lead plaintiff the NYSCRF in *In re McKesson HBOC, Inc. Securities Litigation*, Master File No. CV-99-20743 RMW, which settled for a total of **$1.052 billion** from all defendants and is the largest securities fraud class action recovery in the Northern District of California. Mr. Basser was the lead attorney in *In re Chiron Shareholder Deal Litigation*, Case No. RG 05-230567, (Superior Court in and for the County of Alameda, California), resulting in a settlement for the shareholder class valued at approximately **$880 million**, constituting one of the largest securities ever achieved in a merger related class action alleging breach of fiduciary duties by corporate officers and directors. He was the lead and first chair trial attorney in *In re Apollo Group Inc. Securities Litigation*, Master File No. CV-04-2147 PHX-JAT (District of Arizona), before the Honorable James A. Teilborg, which was tried to a federal jury from November 2007 until the jury returned a unanimous verdict for investors in January 2008, ultimately recovering **$145 million** for the shareholder class.

Mr. Basser has prosecuted derivative shareholder actions on behalf of and for the benefit of nominal corporate entities such as Pfizer, Apple, Nvidia and Quest, achieving significant corporate governance therapeutics on behalf of those entities. Mr. Basser has also vigorously pursued the rights of the elderly, and consumers serving as a co-lead counsel and as part of a group of firms prosecuting class actions ("*Senior Annuity Litigation*") alleging California consumer protection and federal RICO claims against companies that target senior citizens in the sale of deferred annuity products, ultimately securing benefits collectively valued at over **$1 billion**.

Mr. Basser was the firm's primary attorney assisting in the development of expert witnesses in aid of the prosecution of the *In re Anthem, Inc. Data Breach Litigation* which secured a **$115 million** settlement. Mr. Basser has served or is serving as a member of Plaintiffs' Executive Committee in several data breach litigation matters, especially with regard to health care related entities, including for example, *In re Forefront Dermatology Data Breach Litigation*, Case No. 1:21-cv-00887-LA (E.D. Wisc.); *In re Shields Health Care Group Data Breach Litigation*, Civil Action No. 1:22-cv-10901-PBJ (D. Mass.); *In re Lincare Holdings, Inc. Data Breach Litigation*, Case No. 8:22-cv-1472-TPB-AAS (N.D. Fla.); *In re Apria Healthcare Data Breach Litigation*, Case No. 1:22-cv-01003-JPH-KMN (S.D. Ind.); *In re Mr. Cooper Data Breach Litigation*, Case No. 3:23-cv-02453 (N.D. Tex.); *In re Landmark Admin. LLC Data Incident Litigation*. Case No. 6:24-cv-00082-H (N.D. Tex). He served as Interim Executive Committee Counsel in the *Feller v. Transamerica Life Insurance Litigation* that settled for **$200 million**. He has served as Interim Executive Committee Counsel in the *Toyota Hybrid Brake* (EDTX) and in the *Nissan CVT* (MDTN) litigation cases (settlement valued at over **$300** million) and as Chair of the Executive Committee in *In re Forefront Data Breach Litigation* (EDWI). He served as a member of the Science and Expert Subcommittee in *In re Philips CPAP, Bi-Level PAP Mechanical Ventilator Products Liability Litigation* (WDPA), which settled for **$479 million**

and as a member of Plaintiffs' Steering Committee in *In re East Palestine Derailment Litig.* (N.D. Ohio), which recently settled for **$600 million**.

Mr. Basser has regularly shared his experience and knowledge with attorneys, Judges, public pension funds and the lay public. He also lectured on the topic of securities related litigation and shareholder issues in the wake of the derivative securities, toxic debt portfolio and real estate mortgage default related global economic crisis of 2008, at the American Association of Justice, Winter Convention, February 2010 and the American Association of Justice, Summer Convention 2010. He presented on the topic of "Securities Litigation" at the Federal Judicial Center's Workshop for Judges of the Ninth Circuit on February 1, 2011 and lectured on the topic of trying a complex class action at Vanderbilt Law School entitled "*Battle in the Valley of the Sun: Strategy Tactics and Honor in Litigation*," October 17, 2013. He has written for the American Association of Justice Quarterly Newsletter, Fall 2009, co-authoring "*Securities Litigation in the Wake of the Sub-Prime Crisis.*" Mr. Basser has been repeatedly selected as a California "Super Lawyer," as LAWDRAGON's "100 Attorneys You Need to Know in Securities Litigation" and has been regularly commended by San Diego Magazine and the Los Angeles Times as a "Top Lawyer." He has also been repeatedly cited as one of Southern California's "Top 100 High-Stakes Litigators."

Chad A. Carder, a partner at Barrack, Rodos & Bacine, is an honors graduate of The Ohio State University (B.A. 1999), and College of William and Mary, Marshall-Wythe School of Law (J.D. 2002), where he was a Graduate Research Fellow and served on the William and Mary Moot Court Board. From 2002 to 2003, Mr. Carder served as the law clerk to the Honorable Michael J. Hogan of the New Jersey Superior Court. He was admitted to practice in Pennsylvania and New Jersey in 2002 and is a member of the bars of the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. Mr. Carder can be reached at the Firm's Philadelphia, PA office.

Mr. Carder concentrates his practice on federal securities class action litigation, is experienced in representing both institutional investor plaintiffs and individual defendants, and has been a member of the teams that have litigated major securities class actions to their landmark conclusions, including In re WorldCom, Inc. Securities Litigation, Master File No. 02-Civ-3288 (DLC), before the Honorable Denise L. Cote in the Southern District of New York; In re Schering-Plough Securities Litigation, Master File No. 01-CV-0829 (KSH/RJH), before the Honorable Katherine Hayden in the District of New Jersey; Eastwood Enterprises, LLC v. Farha, et al., Case No. 8:07-cv-1940-T-33EAJ, before the Honorable Virginia M. Hernandez Covington in the Middle District of Florida; and In re The Mills Corporation Securities Litigation, Civil Action No. 1:06-cv-00077 (LO/TJR), before the Honorable Liam O'Grady in the Eastern District of Virginia.

In addition to representing plaintiffs in securities class actions, Mr. Carder also has an active antitrust litigation practice, representing plaintiffs in the prosecution of the following antitrust cases, among others: In re Chocolate Confectionary Antitrust Litigation, before the Honorable Christopher C. Connor, in the Middle District of Pennsylvania; In re Processed Egg Products Antitrust Litigation, before the Honorable Gene E.K. Pratter, in the Eastern District of Pennsylvania; In re New Jersey Title Insurance Antitrust Litigation, before the Honorable Garrett E. Brown, Jr., in the District of New Jersey; In re Flat Glass (II) Antitrust Litigation, before the Honorable Donetta W. Ambrose in the Western District of Pennsylvania; and In re Publication Paper Antitrust Litigation, before the Honorable Stefan R. Underhill in the District of Connecticut. Mr. Carder has also litigated several corporate takeover class and derivative actions, and has extensive experience litigating shareholder derivative actions in various state and federal courts.

Matthew Cyr, an associate at Barrack, Rodos & Bacine, is a graduate of St. Joseph's University, Philadelphia, Pennsylvania (B.A. 1998) and the University of Wisconsin Law School, Madison, Wisconsin (J.D. 2005). Mr. Cyr was admitted to practice in Wisconsin in 2005, in New Jersey in 2006 and in Pennsylvania in 2012. He can be reached at the Firm's Philadelphia, PA office.

At the Firm, Mr. Cyr has worked on major class action litigation in the securities and antitrust fields, including cases against Mills Corporation, WellCare Health Plans, Inc., American International Group, RAIT Financial Trust, Merrill Lynch & Co., and companies involved in the municipal derivatives industry.

Jeffrey W. Golan, a partner in Barrack, Rodos & Bacine, graduated with honors from Harvard College in 1976 with a degree in Government. He graduated in 1980 from the Georgetown University Law Center, where he served as the Topics Editor for the school's international law review, and from the School of Foreign Service, with a Master's of Science Degree in Foreign Service. In 1980, he received the Francis Deák Award from the American Society of International Law for the year's best student writing in an international law journal. Mr. Golan served as a Law Clerk for the Honorable Edwin D. Steel, Jr., in the United States District Court for the District of Delaware, and thereafter joined a large firm in Philadelphia, where he concentrated on commercial litigation, including the representation of plaintiffs and defendants in federal securities and antitrust cases. Mr. Golan was admitted to practice in Pennsylvania in 1981 and is a member of the bars of United States Court of Appeals for the Second, Third, and Fourth Circuits, and the United States District Court for the Eastern District of Pennsylvania. Mr. Golan can be reached at the Firm's Philadelphia, PA office.

Since joining BR&B in 1990, Mr. Golan has been the Firm's primary attorney in many major securities fraud cases throughout the country. Of particular note, he was BR&B's lead trial attorney in the WorldCom securities class action – a prosecution that yielded a record-breaking recovery of more than $6.19 billion for defrauded investors – one of the most notable fraud cases ever to go to trial. In April 2005, Mr. Golan led the BR&B team that took the only non-settling defendant, WorldCom's former auditor Arthur Andersen LLP, to trial. Andersen agreed to settle in the fifth week of trial, shortly before closing arguments. In approving this and other settlements, Judge Denise Cote found "the quality of the representation given by Lead Counsel is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation" and that "the quality of representation that Lead Counsel has provided to the class has been superb." From 2008 to 2015, Mr. Golan was the Firm's lead attorney in In re American International Group, Inc. 2008 Securities Litigation, which settled for $970.5 million. The settlement is believed to be the largest recovery in a securities class action in the absence of a restatement, an SEC enforcement action or a criminal indictment. In approving the settlement in March 2015, Judge Laura Taylor Swain found the recovery to be an "outstanding result obtained on behalf of the settlement class."

Mr. Golan also served as BR&B's primary attorney for the landmark Cendant case, in which the lead plaintiffs and lead counsel achieved what is still the third highest recovery ever achieved in a securities fraud class case ($3.32 billion), which included the most ever paid in a securities fraud class case by an outside auditor ($335 million). He served as the Firm's lead attorney in the securities fraud class action involving The Mills Corporation, which settled with the defendant real estate investment trust corporation, its officers and directors, its auditor, and a foreign real estate development company, for $202.75 million, as well as in cases against DaimlerChrysler ($300 million obtained for the class), DFC Global Corp. ($30 million recovered), and many others.

Mr. Golan also served as the lead trial attorney in an action in the Delaware Court of Chancery, Equity Asset Investment Trust, et al. v. John G. Daugman, et al., in which the Firm represented Iridian Technologies, Inc. (the world leader in iris recognition technologies) and its common shareholder-elected directors. The case was brought against the Company and the common directors, prepared for trial on an expedited basis under the Chancery Court's "fast-track" procedures for Board contests, and went to trial two months after the complaint was filed.

Mr. Golan has also headed up the Firm's representation of lead plaintiffs in a number of derivative actions stemming from the stock option backdating scandal, and served as the Firm's lead attorney in cases challenging proposed corporate transactions. He served as a co-lead counsel in consolidated shareholder cases challenging PepsiCo's acquisition of Pepsi Bottling Group. After such lawsuits were filed, PepsiCo increased its offer price from $29.50 to $36.50 per share, which provided PBG's public shareholders with an additional $1.022 billion in value. He represented institutional and individual lead plaintiffs in a case that challenged the proposed buy-out of Lafarge N.A. by its majority shareholder, Lafarge S.A., which was settled when Lafarge S.A. agreed to increase the buy-out price from the $75.00 per share initially offered to $85.50 per share (a $388 million increase in the amount paid to Lafarge N.A.'s public shareholders) and to make additional disclosures about the company and the proposed transaction. And, among other cases, Mr. Golan served as a co-lead counsel in consolidated shareholder cases challenging the majority shareholder buy-out of Nationwide Financial Services, Inc., where as part of a settlement the acquirer raised its offer price from $47.20 per share to $52.25 per share, thereby providing a $232 million benefit to class members.

Mr. Golan also successfully represented investors in the class and derivative action in the Delaware Court of Chancery in In re Cheniere Energy Stockholders Litigation, which challenged whether shareholders approved an equity compensation plan that provided Cheniere's CEO with $126 million in equity compensation for one year. The successful settlement of this litigation resulted in the withdrawal of a new equity compensation plan that had earlier been proposed to grant executives 30 million shares that would have had a market value of $565 million at the time, a new stockholder vote on the shares that were challenged by the litigation, and several other corporate reforms.

Mr. Golan has been selected several times as a "Pennsylvania Super Lawyer" in the field of securities litigation. In June 2000, he was honored as the "Featured Litigator" in the on-line magazine published by Summation Legal Technologies, the legal software company. Mr. Golan, who has served as a faculty member at various deposition training programs, has also served in numerous capacities for the Public Interest Law Center of Philadelphia, including as Vice-Chair of the Board, on the staff of the Mayor's Task Force for the Employment of Minorities in the Philadelphia Police Force, and as a member of the Philadelphia Bar Association's Pro Bono Task Force (report issued October 2017).

Andrew J. Heo, an associate at Barrack, Rodos & Bacine, is a graduate of George Washington University (B.A. 2015) and Drexel University Thomas R. Kline School of Law (J.D. 2018), where he was President of the Civil Litigation Society. Mr. Heo is admitted to practice in Pennsylvania and New Jersey, and is a member of the bar of the Eastern District of Pennsylvania and the District of New Jersey. Mr. Heo can be reached at the Firm's Philadelphia, PA office.

Mr. Heo focuses his practice on complex class action litigation with an emphasis on antitrust and securities litigation. Among other matters, Mr. Heo is active in the prosecution of complex class action claims against Energy Transfer LP, Subaru of America, Inc., and MSG

Networks, Inc. Prior to joining BR&B, Mr. Heo's practice included advising and representing institutional clients in a wide range of commercial litigation matters, including complex products liability, class action, and mass torts litigation. During law school, Mr. Heo worked at the Federal Reserve Bank of Philadelphia, as well as for the Honorable Rayford A. Means of the First Judicial District of Pennsylvania. Mr. Heo's pro bono practice has included appellate work on behalf of plaintiffs in federal court.

Robert A. Hoffman, a partner at Barrack, Rodos & Bacine, is a graduate of Rutgers University (B.A. 1980) (with high distinction) and Rutgers University School of Law - Camden (J.D. 1983). Mr. Hoffman clerked for the Honorable Charles R. Weiner, United States District Court for the Eastern District of Pennsylvania, during the years 1984-1985. Mr. Hoffman has been practicing in the area of securities class and derivative actions, and corporate litigation generally, for more than 25 years, during which time he has analyzed laws and provided advice on issues relevant to pension fund boards of trustees. He was admitted to the bars of the Supreme Court of Pennsylvania and Supreme Court of New Jersey in 1983, and is also a member of the bars the United States Court of Appeals for the Eighth Circuit and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey. Mr. Hoffman can be reached at the Firm's Philadelphia, PA office.

Mr. Hoffman has broad experience in prosecuting securities class actions in federal courts around the country. He served as lead counsel for the Florida State Board of Administration in In re Schering-Plough Securities Litigation, before the Honorable Katherine Hayden in the District of New Jersey, which settled in 2009 for $165 million. Mr. Hoffman also prosecuted one of the most significant subprime related securities class actions, *In Re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, before the Honorable Judge Jed S. Rakoff, in the Southern District of New York, which settled for $475 million for defrauded investors, and was a member of the litigation team in prosecuting In re American International Group, Inc. 2008 Securities Litigation, before the Honorable Laura Taylor Swain in the Southern District of New York, which settled in 2014 for $970.5 million. He was one of the lead attorneys representing plaintiffs in *In re MicroWarehouse Securities Litigation*, (D.Conn.), which resulted in a $30 million recovery for the plaintiff class. He also has significant experience in the trial and appeal of securities class actions. *See, e.g. In re Control Data Corp. Securities Litigation*, 933 F.2d 616 (8th Cir. 1991). Mr. Hoffman also led a derivative case against Synthes, Inc., a large medical device company that had been cited by the U.S. Government for illegal "off-label" promotions. The case resulted in the implementation of significant corporate governance changes at the company.

Jordan R. Laporta, an associate at Barrack, Rodos & Bacine, joined the Firm in 2023. Ms. Laporta is a 2019 graduate, summa cum laude, of Drexel University Thomas R. Kline School of Law. During law school, she was a lead editor for the Drexel Law Review, an accomplished member of the Moot Court Board, and a student attorney with the Federal Litigation and Appeals Clinic, through which she achieved victories for her clients in immigration and social security cases. Ms. Laporta also graduated cum laude from the Pennsylvania State University Schreyer Honors College in 2016.

Ms. Laporta was admitted to practice law in Pennsylvania in 2019. Prior to joining BR&B's Philadelphia office, she served as a law clerk to the Honorable Russell G. Vineyard, Chief Magistrate Judge, and the Honorable Justin S. Anand, Magistrate Judge, in the United States District Court for the Northern District of Georgia. As an associate at BR&B, Ms. Laporta represents investors and clients in complex commercial litigation with an emphasis on securities

litigation. She is a member of the BR&B team prosecuting In re Grand Canyon Education, Inc. Securities Litigation, which the Court upheld in its entirety in March 2023.

Leslie Bornstein Molder, a partner at Barrack, Rodos & Bacine, is an honors graduate from the University of Michigan (A.B. magna cum laude 1980) as well as from the National Law Center at the George Washington University (J.D. cum laude 1983) and was admitted to practice in Pennsylvania in 1983 and is a member of the bar of the United States Court of Appeals for the Seventh Circuit and the United States District Court for the Eastern District of Pennsylvania. For over 25 years, Ms. Molder has practiced primarily in the area of complex civil litigation, including securities class actions, antitrust class actions and policyholder actions against insurance companies and has participated in the trials of a variety of commercial cases, including cases involving disputes between securities brokerage firms and their customers. Ms. Molder oversees the Firm's portfolio monitoring services for institutional clients. She is also the Firm's settlement attorney, specializing in documenting and effectuating settlements of class actions and assisting clients throughout the settlement process. Ms. Molder can be reached at the Firm's Philadelphia, PA office.

Christopher D. Taylor, an associate at Barrack, Rodos & Bacine, is a graduate of Cornell University's College of Arts and Sciences (1983, B.A., Joint Degree in Government and African Studies) and Georgetown University Law Center (1990, J.D.). Prior to joining BR&B, Mr. Taylor represented plaintiffs and defendants in a variety of matters, including complex securities class action litigation, multi-district product liability litigation and mass tort litigation in diverse industries including, but not limited to, pharmaceuticals (opiates, schizophrenia and microcrystalline cellulose), government contracts, and commercial contracts disputes. Mr. Taylor also worked with the Washington, DC Rental Housing Commission and as the Program Coordinator for the Senior Legal Services Program in Burlington County, NJ. Mr. Taylor can be reached at the Firm's Philadelphia, PA office.

Mr. Taylor is committed to helping his community. He serves on the Board of Trustees of Tabernacle Baptist Church in Burlington, New Jersey, where he previously held the office of Chairperson for three years, as well as the HYPE Youth Ministry and the King's Men, male youth mentoring program, is a Life Member of Phi Beta Sigma Fraternity, Inc., an international service fraternity, and is a board member of the non-profit organization, Making a Better Tomorrow Foundation, a non-profit organization dedicated to providing scholarships assistance and mentoring young people. Mr. Taylor is a frequent participant in fraternity and public-school activities for middle and high-school students where he provides insights about applying to college and career opportunities in the legal profession.

Michael A. Toomey, a partner at Barrack, Rodos & Bacine, is a graduate of Tufts University (B.A. 2005) and Temple University School of Law (J.D. 2010). Mr. Toomey is admitted to practice in New York and New Jersey and is a member of the bars of the United States District Courts for the Southern and Eastern Districts of New York. While at Temple, Mr. Toomey was an intern in the Chambers of Judge Lerner of the Philadelphia Court of Common Pleas and Magistrate Judge Elizabeth Hey of the Eastern District of Pennsylvania. He also interned at the Philadelphia Public Defender where he advocated in court on behalf of indigent defendants. Mr. Toomey can be reached at the Firm's New York, NY office.

At BR&B, Mr. Toomey has represented investors, including state, local and union pension funds, in many class and derivative actions, including cases involving securities fraud, shareholder rights and corporate governance. Mr. Toomey was an integral part of the litigation teams that prosecuted In re American International Group, Inc. 2008 Securities Litigation, which

resulted in a $970.5 million settlement for defrauded investors, among the largest recoveries ever achieved in a securities fraud class action stemming from the 2008 financial crisis, and Pennsylvania Public School Employees' Retirement System v. Bank of America Corp et. al., which resulted in a $335 million settlement in 2016. Mr. Toomey has also successfully represented investors in class and derivative actions such as *Pub. Employees' Ret. Sys. of Miss. v. Schleifer*, which challenged the excessive compensation provided to Regeneron Pharmaceuticals, Inc. board of directors'. The successful settlement of this case resulted in the largest reduction in board compensation in any excessive director compensation case, ever: $44.5 million. Mr. Toomey also represented investors in In re Cheniere Energy Stockholders Litigation, which challenged whether shareholders approved an equity compensation plan that provided Cheniere's CEO with $126 million in one year. The successful settlement of this litigation resulted in the withdrawal of a new equity compensation plan that proposed to grant executives 30 million shares, a new stockholder vote on the shares that were challenged by the litigation, and several other corporate reforms. Mr. Toomey also successfully represented shareholders in a derivative case challenging the payment by Barnes & Noble for an asset held by its chairman Leonard Riggio whereby Riggio agreed to pay $29 million to settle shareholders' claims. Mr. Toomey has also helped to establish important standards in shareholder derivative actions such as *Seinfeld v. Slager*, No. CIV.A. 6462-VCG, 2012 WL 2501105 (Del. Ch. June 29, 2012) (directors must show entire fairness of their own compensation if compensation plan lacks meaningful limits) and *Kaufman v. Allemang*, 70 F. Supp. 3d 682 (D. Del. 2014) (companies must strictly comply with SEC regulation 17 C.F.R. § 240.14a-101 (Item 10(a)(1)) when attempting to gain shareholder approval of company compensation plans).

Samuel M. Ward, partner in Barrack, Rodos & Bacine, is a graduate of the University of California, Hastings College of Law (J.D. 2001), and a 1995 honors graduate of the University of California, San Diego (B.A. 1995). Mr. Ward was admitted to practice in California in 2001 and is a member of the bars of the United States District Courts for the Southern, Central and Northern District of California. Before joining BR&B, Mr. Ward worked as a political consultant, managing both Congressional and State Assembly campaigns. At the Firm, he has litigated numerous securities cases in federal district courts throughout the country. Mr. Ward was a member of the trial team in *In re Apollo Group Inc. Securities Litigation*, before the Honorable James A. Teilborg in the District of Arizona, where he played a critical role in mastering the deposition and documentary proof that was used at trial to secure the jury's unanimous verdict. Mr. Ward also represented the plaintiff class in *In re Applied Micro Circuits Corp. Securities Litigation*, achieving a $60 million settlement for class members, one of the largest recoveries in a securities class action in the Southern District of California since passage of the PSLRA. Mr. Ward can be reached at the Firm's San Diego, CA office.

Danielle M. Weiss, an associate at Barrack, Rodos & Bacine, joined the Firm in 2022. She graduated cum laude from the University of Pennsylvania in 2002 with a degree in U.S. History. Ms. Weiss attended the James E. Beasley School of Law of Temple University (J.D. 2005), where she was a James Beasley Scholar, a member and editor of the Temple International and Comparative Law Journal, and the recipient of the Harry R. Kozart Memorial Prize in Products Liability. She is licensed to practice law in Pennsylvania and New Jersey. Ms. Weiss can be reached at the Firm's Philadelphia, PA office.

Before joining BR&B's Philadelphia office, Ms. Weiss spent over fifteen years at a boutique litigation firm in Philadelphia, where she successfully represented individual and small-business clients in high stakes cases in state and federal court, trying several matters to successful conclusion, including at the appellate level. Her experience includes litigating complex matters involving issues of professional liability, products liability, defamation, breach of contract, breach of warranty, employment discrimination, personal injury, and education law

through all phases of litigation. Ms. Weiss is active in the community, serving, among other positions and organizations, on the Board of Directors of the Jewish Federation of Greater Philadelphia, Chair of the Jewish Community Relations Council of the Jewish Federation of Greater Philadelphia, and on the National Young Leadership Cabinet of the Jewish Federations of North America.

Frances Vilella-Vélez, of-counsel to Barrack, Rodos & Bacine, is a graduate of Syracuse University College of Law, Syracuse, New York (J.D. 1977) and Swarthmore College (B.A. 1974). She was admitted to practice in Puerto Rico in 1977 and in Pennsylvania in 1978 and is a member of the bars of the United States Court of Appeals for the Third Circuit and the United States District Court for the Eastern District of Pennsylvania. Ms. Vilella-Vélez began her legal career in 1978 as a trial attorney in the Office of the Regional Solicitor, U.S. Department of Labor, where she litigated OSHA cases before the United States district courts and the Occupational Safety and Health Review Commission (OSHRC). She then served as the first law clerk for the Honorable Nelson A. Diaz, on the Court of Common Pleas of Philadelphia County, Philadelphia, Pennsylvania. During her tenure with Judge Diaz, Ms. Vilella-Vélez also served as a staff member on the Mayor's Task Force on Minority Employment in the Police Department, in Philadelphia, where she conducted legal and policy analyses of alternative proposals to increase minority employment in the Policy Department, and assisted in drafting the report to the mayor. Ms. Vilella-Vélez can be reached at the Firm's office. Among other community activities, Ms. Vilella-Vélez served for many years on the board of the Valentine Foundation and currently serves on the board of the Chester Children's Chorus.

Zakiya Washington, an associate at Barrack, Rodos & Bacine, is a graduate of Hampton University School of Business (2004, B.S. Entrepreneurship) and Temple University Beasley School of Law (2007, J.D.). Before joining Barrack, Ms. Washington performed discovery representing plaintiffs and defendants in a variety of matters, including: complex securities class action litigation, pharmaceutical litigation and insurance litigation. Ms. Washington was also a Compliance Advisor to large financial institutions in the Financial Crimes department. At BR&B, Ms. Washington performs discovery representing investors in class and derivative actions, including cases involving securities fraud, shareholder rights and corporate governance. Ms. Washington can be reached at the Firm's Philadelphia, PA office.

Significant Judicial Praise

In ***In re Apollo Group Inc. Securities Litigation***, Master File No. CV-04-2147 PHX-JAT (U.S. District Court for the District of Arizona), Barrack, Rodos & Bacine, as the sole lead counsel for the class, secured a jury verdict for the full amount per share requested. Judge Teilborg commented that trial counsel ***"brought to this courtroom just extraordinary talent and preparation.... The technical preparation, the preparation for your examination and cross-examination of witnesses has been evident in every single instance. The preparation for evidentiary objections and responses to those objections have been thorough and foresighted. The arguments that have been made in every instance have been well-prepared and well-presented throughout the case. *** Likewise, for the professionalism and the civility that you -- and the integrity that you have all demonstrated and exuded throughout the handling of this case, it has just, I think, been***

very, very refreshing and rewarding to see that. *** [W]hat I have seen has just been truly exemplary."

BR&B ultimately secured payment of $145 million from the defendants – the largest post-verdict judgment and recovery achieved in a shareholder class action for violations of the federal securities laws since passage of the PSLRA. In approving the $145 million resolution on April 20, 2012 (see 2012 WL 1378677), Judge Teilborg further stated: "[S]ince the enactment of the Private Securities Litigation Securities Reform Act ("PLSRA"), securities class actions rarely proceed to trial. Because Plaintiffs faced the burden of proving multiple factors relating to securities fraud, there was great risk that this case would not result in a favorable verdict after trial. Further, after the jury verdict, this Court granted judgment as a matter of law in favor of Defendants and Class Counsel pursued a risky and successful appeal to the Ninth Circuit Court of Appeals. Thereafter, Class Counsel successfully opposed a petition for certiorari to the United States Supreme Court. ***Based on this procedural history and the seven years of diligence in representing the Class, Class Counsel achieved an exceptional result for the Class. Such a result is unique in such securities cases and could not have been achieved without Class Counsel's willingness to pursue this risky case throughout trial and beyond***. … [A]s discussed above, ***Plaintiffs' Lead Counsel achieved exceptional results for the Class and pursued the litigation despite great risk***."

In ***In re WorldCom, Inc. Securities Litigation***, No. 02 Civ. 3288 (DLC), BR&B was co-lead counsel for the Class and achieved settlements in excess of $6.13 billion. After a partial settlement with one group of defendants for in excess of $2.56 billion, Judge Cote stated that ***"the settlement amount ... is so large that it is of historic proportions."*** The Judge found that ***"Lead Counsel has performed its work at every juncture with integrity and competence. It has worked as hard as a litigation of this importance demands, which for some of the attorneys, including the senior attorneys from Lead Counsel on whose shoulders the principal responsibility for this litigation rests, has meant an onerous work schedule for over two years."*** Judge Cote further found that ***"the quality of the representation given by Lead Counsel is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation. Lead Counsel has been energetic and creative. Its skill has matched that of able and well-funded defense counsel. It has behaved professionally and has taken care not to burden the Court or other parties with needless disputes. Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions. It has cooperated with other counsel in ways that redound to the benefit of the class and those investors who have opted out of the class. The submissions of Lead Counsel to the Court have been written with care and have repeatedly been of great assistance."*** The Court also found that ***"In sum, the quality of representation that Lead Counsel has provided to the class has been superb."*** In approving the final settlements totaling $3.5 billion, in an opinion and order dated September 20, 2005, the Court stated ***"The impressive extent and superior quality of Lead Counsel's efforts as of May 2004 were described in detail in the Opinion approving the Citigroup Settlement. … At the conclusion of this litigation, more than ever, it remains true that 'the quality of representation that Lead Counsel has provided to the class has been superb.' … At trial against Andersen, the quality of Lead Counsel's representation remained first-rate. .. The size of the recovery achieved for the class – which has been praised even by several objectors – could not have been achieved without the unwavering commitment of Lead Counsel to this litigation."***

Further, the Court found that ***"Despite the existence of these risks, Lead Counsel obtained remarkable settlements for the Class while facing formidable opposing counsel from some of the best defense firms in the country;"*** and ***"If the Lead Plaintiff had been***

represented by less tenacious and competent counsel, it is by no means clear that it would have achieved the success it did here on behalf of the Class." In reiterating that the size of the settlements was "historic," Judge Cote stated: ***"it is likely that less able plaintiffs' counsel would have achieved far less."***

In ***Becker v. Bank of New York Mellon, et al.,*** 11-cv-06460-JS (E.D. Pa.), BR&B served as class counsel, and achieved a cash settlement of $13,500,000 to resolve all claims asserted by the plaintiff and the class. In approving the settlement, the Court noted that trial counsel's ***"skill and efficiency"*** in defending against a ***"litany of pretrial motions, including a new motion to dismiss, motions in limine, and several Daubert motions,"*** as well as during the trial. The Court further stated that: ***"This favorable settlement is attributable in large part to class counsel's zealous advocacy for the class and vigorous prosecution of this action in the face of formidable opposition from Defendants."***

In ***In re Automotive Refinishing Paint Antitrust Litigation****,* 2:10-md-01426-RBS (E.D. Pa.), BR&B, co-lead counsel for a Class of direct purchasers of automotive refinishing paint, achieved settlements with five defendants in excess of $100 million. After reaching a settlement with the last two defendants remaining in the litigation, the Court stated, ***"I want to commend counsel on both sides of this litigation. I think that the representation on both sides of this litigation is as good as I've ever seen in my entire professional career. Counsel worked together in this case. They frankly made the job of this Court very easy and I commend all of you for what you've done in this litigation."***

In ***In re Nationwide Financial Services Litigation***, Case No. 2:08-CV-00249, before the Honorable H. Michael Watson, in the U.S. District Court for the Southern District of Ohio. BR&B, as co-lead counsel, represented a lead plaintiff in a class action litigation contesting the buy-out of Nationwide Financial Services, Inc. by its majority owner Nationwide Mutual Insurance Company and certain affiliates in 2008. In assessing the settlement, the Court found: ***Plaintiffs and their counsel have made a thoroughly considered judgment that the Settlement is not only fair, adequate and reasonable, but an excellent result for the Class.*** The $52.25 per share revised offer was 12% more than NFS's closing price on August 6; it was 10.7% higher than Nationwide Mutual's initial offer of March 10, 2008 (providing an aggregate benefit of $232.8 million to the members of the Class); and it was negotiated in the midst of an overall decline in the financial markets, and apparently while internal forecasts for NFS indicated some decline in its projected results." And, in assessing the work of co-lead counsel, the Court found that the "***quality and skill in the work performed by Plaintiffs' Counsel is evident through the significant economic and non-economic recovery achieved in this Action***."

In ***In re Cendant Corporation Litigation***, No. 98-CV-1664 (WHW) (D.N.J.), BR&B was co-lead counsel for the Class and achieved settlements with defendants in excess of **$3.18 billion**, more than three times larger than the next highest recovery ever achieved in a securities law class action suit by that time. The *Cendant* settlement included what was, at the time, the largest amount by far ever paid in a securities class action by an issuing company and the amount paid by Ernst & Young remains the largest amount ever paid in a securities class action by an outside auditor. The *Cendant* settlement further included extensive corporate governance reforms, and a contingency recovery of one-half the net recovery that Cendant and certain of its affiliated individuals may recover in on-going proceedings against CUC's former auditor. The *Cendant* Court stated that ***"we have all been favored with counsel of the highest competence and integrity and fortunately savvy in the ways of the law and the market."*** The Court found that the ***"standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and***

quality of opposed counsel were and are high in this action." The Court further found that the result of lead counsel's efforts were "***excellent settlements of uncommon amount engineered by highly skilled counsel with reasonable cost to the class.***"