IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

RAFAEL SUAREZ, DAISY GONZALEZ, and RICHARD BYRD, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

NISSAN NORTH AMERICA, INC.,

Defendant.

Case No.: 3:21-cv-00393-WLC-AN

Hon. William L. Campbell, Jr.

CLASS ACTION

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT AND RELATED RELIEF

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Plaintiffs Rafael Suarez, Daisy Gonzalez, and Richard Byrd (collectively, "Plaintiffs") submit this memorandum of law in support of the parties' Joint Motion for Preliminary Approval of a Nationwide Class Action Settlement and Related Relief ("Joint Motion"). The proposed Class Action Settlement Agreement ("Settlement Agreement"), with Exhibits A-F thereto, is attached as Exhibit 1 to the parties' Joint Motion.

I. INTRODUCTION

Although the Complaint in this action was filed just ten days ago, in reality, the parties have been litigating behind-the-scenes for two years, since May 2019, when Plaintiff Suarez, through his undersigned counsel, the Chimicles firm ("Lead Counsel"), served Nissan North America, Inc. ("NNA") with a pre-suit notice of claims and demand for relief on behalf of himself and a class of all others similarly situated, whose Altimas were manufactured with allegedly defective headlamps that become progressively dim over time due to delamination of an interior reflective surface. *See* Declaration of Timothy N. Mathews ("Mathews Decl."), filed herewith, at ¶¶ 7-9.

Shortly after serving the demand letter, Lead Counsel had numerous discussions with NNA's inside—and subsequently outside—counsel. *Id*. at ¶¶ 9, 12. The parties entered into a class-wide tolling agreement in July 2019, and over the course of the next 22 months Lead Counsel conducted several rounds of informal discovery from NNA, engaged an internationally recognized headlamp expert, collected information from over 1,900 class members, collected samples of headlamps for inspection by their expert, conducted a class member survey, and engaged in numerous discussions with NNA's counsel, among other things. *Id*. at ¶¶ 10, 12.

The parties agreed to mediate with Honorable Diane M. Welsh (Ret.), a renowned JAMS mediator with extensive experience mediating class actions. *See* Declaration of Hon. Diane M. Welsh ("Welsh Decl."), filed herewith, at ¶¶ 1-3; Mathews Decl. at ¶ 14. The mediation process

lasted approximately five months. Welsh Decl. at ¶ 3. The Settlement terms were hard fought and hard won. The parties submitted mediation briefs, participated in three full-day mediation sessions in August, September, and November 2020, exchanged several settlement negotiation letters, and participated in numerous telephonic discussions with Judge Welsh. *Id.* at ¶ 3. The parties reached agreement on all material terms of the settlement other than attorneys' fees in the afternoon of the final full-day mediation session. *Id*. at ¶ 5. The parties did not begin the negotiation of attorneys' fees until that afternoon, after all other material terms were agreed, but did not reach agreement then. After several further telephone discussions with Judge Welsh, the parties eventually reached agreement on attorneys' fees with Judge Welsh's assistance and recommendation in December 2020. *Id*. at ¶ 5. The parties then turned to drafting the settlement agreement, notices, and claim forms, which was also a time-consuming process. Mathews Decl. at ¶ 24.

Between May 6, 2021 and May 9, 2021, the parties executed the nationwide class action settlement. The Settlement provides outstanding relief for all United States residents who are current or former owners or lessees of approximately 1.43 million model year 2013–2018 Nissan Altimas ("Class Members" and "Class Vehicles," respectively).[1] To summarize the key benefits:

- The Settlement provides for reimbursement of amounts paid by Class Members to replace their headlamps at any time up to the Notice Date. Multiple replacements are covered. There is no cap for reimbursements by Nissan dealers, and replacements by independent repair facilities are capped at $1,200 per replacement event, which is well above average and intended only to ensure Nissan is not liable for extravagant charges.

- The Settlement also provides a three-year Extended Warranty (for a total of six years) covering the alleged headlamp defect. All headlamp replacements will be performed with a newly-designed part manufactured with a Countermeasure adopted by NNA to address the delamination defect.

[1] Unless otherwise noted, capitalized terms herein shall have the meaning ascribed to them in the Settlement Agreement. All citations to the Settlement Agreement herein are prefaced with "SA." All citations to lettered exhibits are to the Settlement Agreement's exhibits.

- The Settlement also affords every Class Member the opportunity to receive a free set of replacement headlamps manufactured with the Countermeasure *regardless of the current age of their Altima* if their headlamps have deteriorated. This provision is remarkable because many, if not most, vehicle class action settlements that provide a warranty extension do not cover owners who are already outside the extended warranty. Here, Plaintiffs demanded that Nissan provide an opportunity for *every* Class Member to receive a replacement set of headlamps if they are experiencing the defect. Moreover, those replacement parts will be covered by a one-year parts and labor warranty.

- In addition, because some Class Members may want to obtain replacements as soon as possible due to safety concerns, the Settlement also provides that Class Members who are currently within the six-year warranty period can obtain replacements from Authorized Nissan Dealers *before* the Effective Date, and they will be eligible to be reimbursed 100% of the cost after the Settlement becomes effective.

- The Settlement also includes a robust notice program, including direct mail notice to all Class Members who can be identified through state motor vehicle registration records, publication notice, and digital advertising. In addition to these standard notices, the Settlement also provides for tailored notices to be sent to certain Class Members after the Effective Date, meant to ensure they have a fair opportunity to receive free replacement headlamps with the Countermeasure within the time parameters of the Settlement.

In all, the Settlement provides excellent relief. The parties agree that the monetary value of this Settlement likely exceeds $50 million. SA ¶ 16. In addition to all of those benefits, subject to Court approval, Nissan has agreed to pay $2.5 million in attorneys' fees and expenses, and $5,000 incentive awards to each of the three named Plaintiffs who devoted their time and effort to achieve these excellent results on behalf of the Class Members.

The Settlement readily satisfies the standards for preliminary approval. Accordingly, as set forth in their join motion, Plaintiffs and NNA respectfully request that this Court enter an Order: (1) granting preliminary approval of the Settlement; (2) approving the Notice Program and directing commencement of notice; (3) conditionally certifying the Settlement Class; (4) approving the Notices attached as Exhibits A-E and the Reimbursement Claim Form attached as Exhibit F to the Settlement Agreement; (5) appointing Plaintiffs as Class Representatives; (6) appointing Timothy N. Mathews, Samantha E. Holbrook, Alex M. Kashurba, and Zachary P. Beatty of the

law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP as Lead Counsel; (7) appointing John Spragens of Spragens Law PLC as additional Class Counsel; (8) appointing Kurtzman Carson Consultants ("KCC") as Settlement Administrator; and (9) approving the parties' proposed schedule, and scheduling a final Fairness Hearing at the Court's earliest convenience on or after the 147th day following entry of the preliminary approval Order.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Alleged Defect

Plaintiffs' Complaint alleges that halogen headlamps in 2013-2018 model year Altimas are defective because of a design and materials defect that causes the interior reflective surface of the projector cup to "outgas." ECF 1, at ¶¶ 39-41. This "outgassing" makes the reflective surface dull, deposits material on the inner lens, and results in dramatic dimming of the light output.[2] *Id.* at ¶ 41. This result is referred to in the Settlement as "Headlamp Delamination." SA ¶ 40. As a result of this defect, many consumers report difficulty driving at night, and some have even reported being pulled over by the police because their headlights have become too dim. ECF 1, at ¶ 42. Plaintiffs allege that the problem has been known to NNA since 2013, as evidenced by, for example, the numerous complaints made to the National Highway Traffic Safety Administration ("NHTSA") and on NNA owner online forums that are monitored by NNA.[3] *Id.* at ¶ 49.

Plaintiffs' investigation, including examination of headlamps by their expert and informal discovery of NNA documents, determined that the outgassing is caused by the combined heat of the bulb and ambient temperature and exacerbated by humidity. Mathews Decl. at ¶ 13.

[2] Plaintiffs' Complaint includes a further description of the defect and photographs of a typical headlamp assembly, as well as a projector cup, which is internal to the headlamp assembly. *See* ECF No. 1, at ¶¶ 37–38, 41.

[3] Per the parties' pre-settlement discovery confidentiality agreement, the Complaint was written based solely on publicly available information.

Further, NNA developed a "Countermeasure" in late-2018 to address delamination, and all replacement parts manufactured after December 2018 are manufactured with the Countermeasure. *See* SA ¶ 5.

B. Procedural History

On May 20, 2019, Plaintiff Rafael Suarez, through Lead Counsel, served a pre-suit notice of claims for breach of express and implied warranty and violation of state consumer protection statutes and common law and a demand for relief on behalf of himself and all others similarly situated. *Id.* at ¶ 2. In the subsequent weeks, Lead Counsel had several discussions with NNA's counsel, and the parties entered in to a nationwide tolling agreement on July 17, 2019. *Id.* at ¶ 3. On November 13, 2019, additional Plaintiffs Daisy Gonzalez and Richard Byrd, by and through Lead Counsel, served NNA with an additional pre-suit notification of claims for breach of express and implied warranty and violation of consumer protection laws and a demand for relief on behalf of themselves and all others similarly situated. *Id.* at ¶ 4.

Between July 2019 and July 2020, the parties engaged in numerous discussions, and NNA produced documents in response to Plaintiffs' requests. Mathews Decl. at ¶¶ 12-13, 19. Plaintiffs also obtained several samples of delaminated headlamps from consumers and retained an internationally recognized headlight engineering expert to examine the headlamps, review NNA's documents, and consult with Plaintiffs about the defect and Nissan's Countermeasure. *Id.* at ¶¶ 12-13. Plaintiffs also received and catalogued information from over 1,200 Altima owners who had contacted Lead Counsel by that time. *Id.* at ¶ 12.

The parties exchanged mediation briefs in July 2020 and engaged in three full-day mediation sessions with Judge Welsh on August 3, 2020, September 30, 2020, and November 4, 2020. *Id.* at ¶¶ 15-16. During the course of the ensuing several months, the parties exchanged

numerous letters and participated in numerous telephonic discussions with each other and with Judge Welsh. *Id.* at ¶ 17. During the time the mediation was pending, Plaintiffs received additional documents from NNA and conducted a survey of putative Class Members, receiving around 350 responses, which they used for purposes of their investigation and settlement negotiation. *Id.* at ¶¶ 19-20. Subsequently, Lead Counsel continued to receive information from Class Members, with the current total exceeding 1,900 Class Members.

As stated in Judge Welsh's Declaration, "[t]hroughout the mediation process, the parties dealt with each other at arm's length …[and] the negotiations were hard fought by both sides. The parties were each represented by highly experienced, effective and assertive counsel who were well versed in the facts of the case and the applicable law. I was satisfied throughout the negotiations that the parties' positions were thoroughly explored and advanced." Welsh Decl. at ¶ 4.

The parties did not discuss attorneys' fees until all other material terms of the settlement benefitting the Class had been agreed. *Id.* at ¶ 5. The parties reached agreement on all other material terms of the Settlement in the afternoon of the final mediation session on November 4, 2020. They began discussion of fees at the end of that session but did not reach resolution. Negotiation of attorneys' fees spanned several weeks thereafter and was accomplished with the assistance of Judge Welsh through telephonic discussions with the parties. *Id.* at ¶ 5. The parties reached agreement on attorneys' fees, with Judge Welsh's "assistance and recommendation," on December 3, 2020. *Id.* at ¶ 5.

Thereafter, Plaintiffs conducted additional confirmatory discovery, receiving several more batches of documents from NNA, which Lead Counsel and their expert reviewed. Mathews Decl. at ¶ 23.

Drafting the Settlement and exhibits was time consuming given the scope of relief provided and the need for several customized notices, and, at times, the parties had to negotiate details of the drafts. *Id*. at ¶ 24. The parties then executed the Settlement between May 6 and May 9, 2021.

C. Principal Terms of the Settlement

1. Proposed Settlement Class

The Settlement Class consists of all United States residents who are current or former owners or lessees of the approximately 1.43 million model year 2013–2018 Nissan Altimas manufactured with halogen headlamps.[4] SA ¶ 70. Excluded from the Settlement Class are officers and directors of NNA or its parents and subsidiaries, the Judge to whom the litigation is assigned, and Settlement Class Members who timely opt out or exclude themselves from the Settlement. *Id.* The Settlement Class is coextensive with the class definition in the Complaint.

2. Settlement Consideration

The Settlement provides: (1) reimbursements for past repairs; (2) a total of six years of warranty coverage on the headlamps; (3) an opportunity for every class member who has delaminated headlights to get free replacements with the Countermeasure—even if they are outside the six-year warranty; and (4) reimbursement for replacements obtained between the Notice Date and the Effective Date of the Settlement for those who are currently within the six-year warranty and do not wish to wait. Additional details of those components are as follows.

a. Reimbursement for Qualifying Out-of-Pocket Expenses

The Settlement provides for reimbursement of out-of-pocket costs Class Members incurred to replace Class Vehicle headlamps at any time prior to the Notice Date, regardless of vehicle age.

[4] The Settlement Class does not include Altimas manufactured with xenon or LED headlights. The Settlement identifies the specific Altima years, trims, and packages that are not included.

SA ¶¶ 90-97. Reimbursement includes parts, labor, shipping, and other costs.[5] *Id.* at ¶ 61. Multiple replacements are reimbursable.[6] *Id.* at ¶ 95. Reimbursement for amounts paid to NNA dealers is uncapped. *Id.* at ¶ 92. Reimbursement for replacement by independent repair facilities is capped at $1,200 per replacement event, which is well-above the average cost of around $600-$800 per pair and is intended only to ensure that NNA is not liable for extravagant charges. *See id.* at ¶¶ 15, 94-95.

In Lead Counsel's survey of 350 putative Class Members, most respondents reported that they first noticed dimming when their vehicles were between thirty-three and fifty-five months old. Mathews Decl. at ¶ 20. Almost half of respondents reported that they paid for headlamp replacements due to dimming. *Id*. For those who replaced their headlamps, the average vehicle age at the time of replacement was around forty-eight months, which is outside of NNA's standard three-year warranty. *Id*. The typical cost for replacement varies widely, with NNA dealerships often charging more than independent repair facilities. *Id*. Based on Lead Counsel's investigation and survey results, the average cost of replacement for a pair of headlamps, including parts and labor, is typically around $600-$800. *Id*. Thus, the reimbursement component of the Settlement, which provides reimbursement for multiple replacements, is valuable.

In order to claim reimbursement, Class Members need only submit a simple claim form and a copy of receipts or other evidence of their out-of-pocket expenditure. SA ¶ 97 and Ex. F (Reimbursement Claim Form). A copy of the reimbursement claim form will be sent by direct mail to every Class Member with the Mailed Notice. SA ¶ 101. The evidence of out-of-pocket cost does

[5] The Settlement does not cover the cost of light bulbs, however, as the defective component is the headlamp assembly itself, not the bulb.

[6] If a Class Member replaced with aftermarket headlamps, that replacement is reimbursable, but subsequent replacements are not since NNA is not responsible for the quality of aftermarket parts.

not need to reflect a reason for the headlamp replacement so long as the Class Member signs the attestation on the Claim Form stating that the replacement was due to dimming. *Id.* at ¶ 33. Moreover, the Settlement expressly provides that the Settlement Administrator must review the evidence and make determinations based on a "more likely than not" standard, which ensures that the Settlement cannot be applied in an unduly restrictive manner. *Id.* at ¶¶ 97, 119.

Class Members will have six months from the Notice Date to submit reimbursement claims, and can submit claims online at the Settlement website or by mail. *Id.* at ¶¶ 24, 96.

b. Extended Warranty Coverage

The Settlement also provides three years of extended warranty coverage for Headlamp Delamination—on top of the standard three-year warranty—meaning Headlamp Delamination is covered for a total of six years. *Id.* at ¶¶ 73-82. There is no mileage limitation on this warranty, and it is fully transferable and will be subject to the same terms and conditions of the original New Vehicle Limited Warranty applicable to Class Vehicles. *Id.* at ¶¶ 75, 78. The extended warranty covers all costs (including parts, labor, and materials) associated with replacing Headlamp Assemblies. *Id.* at ¶ 76. Moreover, all replacement parts will be manufactured with NNA's Countermeasure. *Id.* at ¶ 66.

The six-year total warranty time period is fair and justified by the facts—99% of respondents in Lead Counsel's survey reported that they first noticed dimming within seventy-two months, and the vast majority reported noticing the defect within fifty-five months. Mathews Decl. at ¶ 20. Accordingly, most Class Members who experience the defect are expected to notice it, if they have not already, within the six-year extended warranty period.

In order to receive free replacement within the six-year period, Settlement Class Members only need to present their Class Vehicles to an Authorized Nissan Dealer; no claim form is required. SA ¶ 74.

c. Out-of-Warranty Window of Opportunity

The Settlement also provides relief for Class Vehicles that will already be outside the six-year warranty period when the Settlement becomes effective. *See id.* at ¶¶ 83-88. Settlement Class Members whose six-year warranties on the Headlamps will already be expired as of the Effective Date will have a six-month window of opportunity to receive a free set of replacement headlamps manufactured with NNA's Countermeasure. *Id.* at ¶ 83. These Class Members will be identified by NNA and will be mailed a special notice within five days of the Effective Date. *Id.* at ¶ 84. The notice will include a tear off, prepaid postcard "Out-of-Warranty Claim Form," which will be prepopulated with nearly all of the relevant information, including VIN number. *Id.* at ¶ 86. In order to obtain replacement headlamps, these Class Members must return the claim form within sixty-five days. *Id.* This will allow NNA to ensure that its dealers have access to adequate supplies of replacement parts in their geographic area. *See id.* at ¶ 87. The Class Members will then have six months thereafter to complete their replacement at an NNA Dealer. *Id.* at ¶ 88.

d. Coverage for Replacements Prior to the Effective Date

The Settlement also provides an opportunity for Class Members whose vehicles are currently within the six-year period to obtain headlamps *before* the Effective Date and receive 100% reimbursement when the Settlement becomes effective. *Id.* at ¶ 98. Thus, Class Members do not need to wait for the Effective Date if they experience the defect between now and then. These Class Members can opt to pay for a replacement from an Authorized Nissan Dealer now and will be entitled to reimbursement of the full cost when the Settlement becomes effective so

long as they submit a reimbursement claim form and evidence of the payment within six months of the Notice Date. *Id.*

3. Notice and Claims Administration

In addition to the other benefits of the settlement, Nissan will pay all costs of notice and administration of the Settlement. Subject to Court approval, the parties have selected KCC to provide notice and serve as the Settlement Administrator. SA ¶ 69. A copy of KCC's resume is attached herewith. The notice program conforms with, or exceeds, common best practices, and includes a number of components.

CAFA Notice: Within ten days, the Settlement Administrator shall serve the CAFA Notice upon the Attorneys General of each U.S. State in which Settlement Class Members reside, the Attorney General of the United States, and other required government officials, as required by the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).

Mailed Notice: The Mailed Notice and a Reimbursement Claim Form, attached as Exhibits C and F to the Settlement Agreement, will be mailed via first-class mail, to the current or last known addresses of *all* Settlement Class Members who can be reasonably identified through state motor vehicle records by IHS Markit, a leading provider of automotive data. SA ¶ 100.

Publication, Digital, and Other Notice: The Settlement Administrator will also publish the Publication Notice in a 1/3 page ad in People magazine; conduct a digital notice campaign on websites and networks, such as Facebook and Google, sufficient to create not less than 5,000,000 impressions; issue a PR press release; and create the Settlement Website, through which Class Members can obtain the Full Notice, submit claims, find information about all deadlines and court hearings, and obtain other information, such as copies of relevant filings in this Court. *Id.* at ¶¶

106-14. Lead Counsel will also publish information about the Settlement and a link to the Settlement Website on their law firm website. *Id.* at ¶ 115.

Out-of-Warranty Notice: As discussed above, the Out-of-Warranty Notice will be mailed Class Members whose Extended Warranties will already be expired as of the Effective Date to specifically notify them of the opportunity to receive a free set of replacement headlamps. *Id.* at ¶ 85. It will include a prepaid and pre-filled, detachable postcard Out-of-Warranty Claim Form. Ex. D.

Effective Date Notice: The Effective Date Notice will be mailed to Class Members whose Extended Warranty will expire within twenty-one days of the Effective Date. SA ¶ 117. The purpose of this notice is to ensure that these Class Members know that the Effective Date has occurred and have an adequate opportunity to receive free replacements. These Class Members will be given a thirty-day grace period to ensure adequate time to obtain replacements from their Authorized Nissan Dealer.[7]

All Class Members will also have an opportunity to exclude themselves from the Settlement, or to object to the Settlement, the request for attorneys' fees and expenses, and/or Plaintiff incentive awards. *See id.* at ¶¶ 142–152.

4. Release

The Settlement release is narrowly tailored to the claims at issue. It releases only claims "relating to the allegations in the Action concerning the alleged delamination defect . . . ." *Id.* at ¶ 162. Moreover, there is no release of personal injury, wrongful death, or claims for damage to property other than Settlement Class Vehicles. *Id.* at ¶ 162.

[7] As already discussed, they can also pay for replacements from an Authorized Nissan Dealer prior to the Effective Date and seek reimbursement if they do not wish to wait for the Effective Date.

5. Attorneys' Fees and Expenses

In addition to all other benefits of the Settlement, Nissan has agreed to pay attorneys' fees and expenses of $2.5 million, subject to approval by the Court. *Id.* at ¶ 136. As will be fully set forth when counsel file their motion for approval of the fees and expense award, the agreed fee amount is just 5% of the Parties' estimated monetary value of the settlement—well below 25% of the Settlement value, which is considered a benchmark in class action litigation—and it will be less than a 2.5 multiple of Class Counsel's lodestar, which is well within the typical range.

NNA has also agreed to pay Plaintiff incentive awards of $5,000 to each of the named Plaintiffs for their efforts on behalf of the Class, *id.* at ¶ 138, which, again, is an amount routinely awarded in similar class action litigation.

Importantly, these amounts were negotiated at arm's length, with the close involvement and recommendation of the mediator, Judge Welsh, only after the Parties had agreed upon all other material terms of the Settlement. Welsh Decl. at ¶ 5.

III. ARGUMENT

Rule 23 requires that a class action settlement be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e). There is a strong policy favoring the settlement of class actions. *UAW v. GMC*, 497 F.3d 615, 632 (6th Cir. 2007); *see also In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 530 (E.D. Mich. 2003) ("[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources.").

Approval of class action settlements occurs in two steps: (1) preliminary approval and conditional certification of the Settlement Class, after which notice is sent to the Class Members; and (2) a subsequent final approval hearing, where the Court considers whether to finally approve

the Settlement, certify the Settlement Class, and award attorneys' fees and Plaintiff incentive awards, after considering any objections from Class Members. *See, e.g.*, *Peck v. Air Evac EMS, Inc.*, 2019 U.S. Dist. LEXIS 118626, at *14 (E.D. Ky. July 17, 2019).

At the preliminary approval stage, the settling parties must provide the Court with "information sufficient to enable it to determine whether to give notice" of the proposed settlement to the class. Fed. R. Civ. P. 23(e)(1). To determine that giving notice is justified, the Court must determine that it will "*likely* be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B) (emphasis added).

A. <u>The Settlement is Fair, Reasonable, and Adequate</u>

Rule 23(e)(2), as amended in 2018, outlines several factors the Court must consider in determining whether a settlement is fair, reasonable, and adequate:

> **(A)** the class representatives and class counsel have adequately represented the class;
> **(B)** the proposal was negotiated at arm's length;
> **(C)** the relief provided for the class is adequate, taking into account:
> **(i)** the costs, risks, and delay of trial and appeal;
> **(ii)** the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> **(iii)** the terms of any proposed award of attorney's fees, including timing of payment; and
> **(iv)** any agreement required to be identified under Rule 23(e)(3); and
> **(D)** the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2)(A)-(D). The 2018 Advisory Committee Notes make clear, however, that these factors do not displace the "lists of factors" courts have traditionally applied to assess proposed class settlements.

Courts in the Sixth Circuit also evaluate whether a settlement is "fair, reasonable, and adequate" using the applicable approval factors:

> (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the

> likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

Day v. AMC Corp., 2019 U.S. Dist. LEXIS 143021, at *18 (E.D. Ky. July 26, 2019) (quoting *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 349 (6th Cir. 2009)).

Thus, at the preliminary approval stage, the Court should consider whether it will *likely* be able to hold that the Settlement is fair, reasonable, and adequate under the Rule 23(e)(2) factors, and also consider the traditional Sixth Circuit factors not otherwise addressed by the Rule 23(e)(2) factors. *See, e.g.*, *Peck*, 2019 U.S. Dist. LEXIS 118626, at *15. Application of both the Rule 23(e)(2) and traditional factors demonstrates that the settlement here is fair, reasonable, and adequate, and is in the best interests of the class.

1. Rule 23(e)(2)(A): The Class Representatives and Class Counsel Have Adequately Represented the Class

Plaintiffs and Lead Counsel most certainly "adequately represented the class," as required by Rule 23(e)(2)(A), thereby weighing in favor of approval. Similarly, Plaintiffs and Lead Counsel believe the Settlement results are outstanding, thereby satisfying the fifth traditional factor, which considers "the opinions of class counsel and class representatives." *Day*, 2019 U.S. Dist. LEXIS 143021, at *18.[8]

As Judge Welsh affirms in her declaration, Lead Counsel are "highly experienced, effective and assertive counsel who were well versed in the facts of the case and the applicable law." Welsh Decl. at ¶ 4. But the proof is also in the pudding—the adequacy of Plaintiffs' and Lead Counsel's representation is clearly demonstrated by the compelling results they achieved here.

[8] The sixth traditional factor, "the reaction of absent class members," is premature at the preliminary approval stage because notice has not yet been issued. This factor will be addressed at the final approval stage.

Plaintiffs served a vital role in achieving these results. Among other things, Plaintiffs: (i) provided important information and assisted in Lead Counsel's investigation of the factual basis for the claims; (ii) were involved in the drafting of the Complaint; (iii) regularly consulted with Lead Counsel during the course of the mediations; (iv) provided guidance and approved all of the negotiated relief; and (v) reviewed and approved the Settlement. *See* Declarations of Rafael Suarez, Daisy Rodriguez, and Richard Byrd (hereinafter, "Plaintiffs' Decls."), filed herewith. Plaintiffs state that they are "very pleased with the result we were able to achieve for the Class," and believe the Settlement provides "excellent relief to all Class Members." *Id.*

Lead Counsel, too, performed commendably, securing a very favorable settlement in a businesslike manner that will, with final approval, get relief to Class members quickly. As set forth more fully in the Mathews Declaration, for over thirty years, the Chimicles firm has earned a reputation as one of the leading firms of the plaintiffs' class action bar. Timothy Mathews, the partner who headed this case, has nearly two decades of experience leading complex class actions and has been described as "among the most capable and experienced lawyers in the country" in consumer class action litigation. *Chambers v. Whirlpool*, 214 F. Supp. 3d 877, 902 (C.D. Cal. 2016).

Here, Lead Counsel extensively researched the legal claims and facts in this case; reviewed hundreds of consumer complaints in online forums and the NHTSA's website; performed comprehensive research as to the Class Vehicles and nature of the defect; negotiated a nationwide tolling agreement; received discovery from NNA; communicated with over 1,900 Class Members; collected samples of Class Member headlamps; hired a consulting expert, who examined headlamps and NNA documents and advised Lead Counsel; conducted a Class Member survey; prepared mediation briefs; participated in three full-day mediation sessions plus numerous

additional telephonic negotiations; and negotiated a nationwide class action settlement that provides robust relief.[9] Mathews Decl. at ¶¶ 8-25.

Further, "Class Counsel's ability to negotiate the instant Settlement at the early stages of this litigation demonstrates their high level of skill and efficiency." *Simpson v. Citizens Bank*, 2014 U.S. Dist. LEXIS 205466, at *23 (E.D. Mich. Jan. 31, 2014).

Many courts have approved class action settlements that were negotiated, like this one, prior to the institution of formal litigation, and those courts have recognized the benefits of these early settlements. In *Rotondo v. JPMorgan Chase Bank, N.A.*, 2019 U.S. Dist. LEXIS 201616, at *11 (S.D. Ohio Nov. 20, 2019), for example, the court approved a class action settlement that was negotiated prior to filing the Complaint in court, noting that it resulted "saving[s] of time and money to the Parties and serve judicial economy," *Id.* at *11. The "substantial benefit" secured for the class members was "undiminished by further expenses and without the delay, cost, and uncertainty of protracted litigation." *Id.*; *see also Torczyner v. Staples, Inc.*, 2017 U.S. Dist. LEXIS 228910, at *13 (S.D. Cal. Aug. 28, 2017) (approving early settlement that was reached "in the wake of a lengthy pre-complaint investigation, a letter complaint, extensive informal discovery and numerous settlement conferences—including private mediation" and where "the attorneys on both sides have extensive experience in nationwide consumer class action cases"); *Mills v. Capital One*, 2015 U.S. Dist. LEXIS 133530, at *11-12 (S.D.N.Y. Sept. 30, 2015) (approving settlement where the parties had engaged in pre-litigation settlement discussions and executed settlement just four months after filing complaint, reasoning "early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere").

[9] This also relates to the third traditional factor ("the amount of discovery").

It is also well recognized that it is appropriate to utilize informal discovery to reach a fair and adequate settlement. *See, e.g.*, *Wright v. Premier Courier, Inc.*, 2018 U.S. Dist. LEXIS 140019, at *9 (S.D. Ohio Aug. 17, 2018) ("In considering whether there has been sufficient discovery to permit the plaintiffs to make an informed evaluation of the merits of a possible settlement, the court should take account not only of court-refereed discovery but also informal discovery in which parties engaged both before and after litigation commenced.") *In re Packaged Ice Antitrust Litig.,* 2010 U.S. Dist. LEXIS 77645, at *42 (E.D. Mich. Aug. 2, 2010) ("The overriding theme of our caselaw is that formal discovery is not necessary as long as (1) the interests of the class are not prejudiced by the settlement negotiations and (2) there are substantial factual bases on which to premise the settlement."); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) ("In the context of class action settlements, formal discovery is not a necessary ticket to the bargaining table where the parties have sufficient information to make an informed decision about settlement."); *Kimber Baldwin Designs, LLC v. Silv Communs., Inc.*, 2017 U.S. Dist. LEXIS 186830, at *12 (S.D. Ohio Nov. 13, 2017) (recognizing that "[w]hile this case settled relatively early, Plaintiff had sufficient time throughout several months of negotiations to review documents produced by Defendant and assess the merits of its case"). Informal discovery has been recognized as saving the time and expense of formal discovery and is especially useful for focusing discovery toward settlement. *See* Manual for Complex Litigation, Fourth (2004), at § 11.423*; id.* at § 13.12 (recognizing that the benefits of settlement are diminished if settlement is postponed until discovery is completed).

By agreeing to proceed with informal discovery and engage in early settlement discussions, Lead Counsel prioritized getting relief to Class Members quickly; they did not seek to engage in unnecessary litigation in order to increase their lodestar or fees. As the Third Circuit Task Force

recognized in its Report on Court Awarded Attorneys' Fees, a class action attorney's "contribution to a prompt . . . resolution" should be rewarded because doing so "encourage[s] early settlement by providing an incentive that neutralizes an attorney's possible predilection to increase the number of hours invested in a case for lodestar purposes." Court Awarded Atty. Fees, 1985 U.S. App. LEXIS 31653, at *66-67 (3d Cir. Oct. 8, 1985).

By engaging in pre-litigation, informal discovery and settlement discussions, Lead Counsel also avoided the possibility of "copycat" lawsuits, which would only result in duplicative litigation, cause delay, and increase the costs and burden on the courts. *See Wright & Miller*, 7B Fed. Prac. & Proc. Civ. § 1798.1 (3d Ed.) ("Clearly, a single nationwide class action seems to be the best means of achieving judicial economy . . . . [C]ompeting and duplicative actions not only generate unnecessary litigation and duplicative fees, but also they may result in delay, pose complicated problems of judicial coordination in some instances, [and] increase the risk of disparate verdicts raising serious questions of fairness . . . .")

In short, Lead Counsel placed the interests of Class members first and acted commendably in securing an early, excellent settlement, without unnecessary expenditure of time or placing undue burden on the court system. Lead Counsel believe the relief made available to Class Members through the Settlement is first-rate.

Further, Lead Counsel's work will not end when the Settlement is finally approved; they will continue to oversee implementation of the Settlement, supervise the claims administration, and communicate with Class Members, potentially for many years in the future as the Settlement benefits extend into at least 2024 for some Class Members. Lead Counsel pride themselves on ensuring that claims administration is properly handled, even after their attorneys' fees have been

paid, which is one of the reasons the Settlement includes a provision expressly allowing an audit of the Settlement Administrator's claims review work. SA ¶ 125.

Lead Counsel and Plaintiffs adequately represented the class and will continue to do so.

2. Rule 23(e)(2)(B): The Settlement was Negotiated at Arm's Length[10]

The Settlement was negotiated at arm's length, by highly-experienced counsel on both sides, and with the assistance of a renowned class action mediator, Judge Welsh. This too weighs heavily in favor of approval.

"Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary." *See Peck*, 2019 U.S. Dist. LEXIS 118626, at *19-20 (quoting *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521 (E.D. Ky. 2010)). But here, all terms of the Settlement were negotiated with the assistance of Judge Welsh, who affirms that all negotiation was conducted at arm's length and were "hard fought" by "highly experienced, effective and assertive counsel…." Judge Welsh Decl. at ¶ 4; *see also* Mathews Decl. at ¶ 18. There was zero collusion. *See Applegate-Walton v. Olan Mills, Inc.*, 2010 U.S. Dist. LEXIS 77965, at *5 (M.D. Tenn. Aug. 2, 2010) (there was no risk of fraud or collusion where the settlement was "the result of intensive, arms-length negotiations, including mediation with an experienced third-party neutral"); *Peck*, 2019 U.S. Dist. LEXIS 118626, at *20 (no risk of collusion where the "parties engaged in months of settlement negotiations, discussed the strengths and weaknesses of their claims and defenses, and engaged a well-versed mediator in determining the terms of the settlement").

[10] This factor overlaps with the first traditional factor ("the risk of fraud or collusion").

3. Rule 23(e)(2)(C)(i): The Relief Provided for the Class is Adequate, Taking into Account the Costs, Risks, and Delay of Trial and Appeal, Weighs in Favor of Approval[11]

The Settlement relief is outstanding and easily satisfies the adequacy requirement of Rule 23(e)(2)(C)(i). Further, the notice program is robust, the release is narrow, and the agreed amounts for attorneys' fees, costs, and incentive awards are all fair. Thus, the Settlement is fair, reasonable, and adequate.

Importantly, because the alleged headlight defect potentially impacts vehicle safety, these benefits are even more valuable because they will be made available to Class Members as soon as the Court grants final approval. The immediacy and certainty of the relief provided by the Settlement heavily weigh in favor of granting preliminary approval.

"The anticipated complexity, cost, and duration of continued litigation is a significant factor to be considered in assessing the fairness of a settlement, and settlements should represent a compromise taking into account the risks, expense, and delay of further litigation." *In re Skelaxin Metaxalone Antitrust Litig.*, 2015 U.S. Dist. LEXIS 197729, at *5-6 (E.D. Tenn. Jan. 16, 2015). "This is especially true of . . . class action litigation, which is unpredictable." *Id.* at *6. Courts encourage early class settlements, which allow class members to recover without undue delay and preserve judicial resources. *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1372 (6th Cir. 1976) ("By such agreements are the burdens of trial spared to the parties, to other litigants waiting their turn before over-burdened courts, and to the citizens whose taxes support the latter. An amicable compromise provides the more speedy and reasonable remedy for the dispute.").

[11] This subsection subsumes several traditional factors, including the second ("complexity, expense and likely duration of the litigation") and the fourth ("likelihood of success on the merits").

While Plaintiffs believe their claims are strong and that they would have been successful at trial, litigating this matter through trial and appeal would be lengthy, complex, and costly to all parties and would have entailed significant risk. Prosecuting this matter to final judgment would require substantial motion practice, extensive fact discovery, class certification proceedings, dispositive motions practice, and trial, not to mention a costly battle of experts regarding the existence of the Defect in Class Vehicles. Given the size of the Class and the amount of relief at stake, there would likely be a lengthy appeals process. "Avoiding these unnecessary expenditures of time and resources is beneficial to all the parties and the Court." *Skelaxin*, 2015 U.S. Dist. LEXIS 197729, at *6.

The significance of the immediate recovery by way of compromise in the face of a mere possibility of relief in the future weighs in favor of approval. *See Manjunath A. Gokare, P.C. v. Fed. Express Corp.*, 2013 U.S. Dist. LEXIS 203546, at *17 (W.D. Tenn. Nov. 22, 2013) ("The certainty of recovery and prospective relief makes the Settlement Agreement a better course of action for the Settlement Class than proceeding with the uncertainty of whether the Settlement Class would overcome the potential difficulties in its case."); *Rotuna v. West Customer Mgmt. Group*, 2010 U.S. Dist. LEXIS 58912, at *16 (N.D. Ohio June 15, 2010) ("[G]iven the factual and legal complexity of the case, there is no guarantee that Representative Plaintiff and the Class would prevail at trial. . . . Given the uncertainty surrounding a possible trial in this matter, the certainty and finality that come with settlement also weigh in favor of a ruling approving the agreement."); *Rankin v. Rots*, 2006 U.S. Dist. LEXIS 45706, at *8-9 (E.D. Mich. June 28, 2006) ("[T]he Court should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation . . . .").

4. Rule 23(e)(2)(C)(ii): The Relief Provided for the Class is Adequate, Taking into Account the Effectiveness of Any Proposed Method of Distributing Relief to the Class, Including the Method of Processing Class-Member Claims

The method of distributing relief and the claims process is also fair, reasonable, and adequate, and "facilitates filing legitimate claims;" it is not "unduly demanding" in any respect. Rule 23(e)(2)(C)(ii); 2018 Adv. Comm. Notes.

No claim is required to receive the benefit of the Extended Warranty—it is automatic, and fully transferable in the same manner as NNA's standard warranty. *See* SA ¶ 74. To receive new headlamps within the six-year period, Class Members need only go to an Authorized Nissan Dealer.

A claim is required for reimbursement of out-of-pocket costs, but the claim form is simple and straightforward, and Class Members need only submit sufficient documentary evidence to substantiate, under a "more likely than not" standard, their out of pocket cost. Requiring claims forms and documentations to receive reimbursement of out-of-pockets costs is standard, and regularly approved. *See, e.g., In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.,* 2016 U.S. Dist. LEXIS 130467, at *43 (N.D. Ohio Sep. 23, 2016) (approving the use of claim forms to pursue a claim for reimbursement of out-of-pocket expenses, reasoning "a minimal proof requirement 'strike[s] a proper balance between, on the one hand, avoiding fraudulent claims and keeping administrative costs low, and on the other hand, allowing as many class members as possible to claim benefits'"); *Simerlein v. Toyota Motor Corp.*, 2019 U.S. Dist. LEXIS 63397, at *28 (D. Conn. Jan. 14, 2019) (approving settlement that included a claim form for class members seeking reimbursement of past out-of-pocket repairs to Toyota vehicles). Moreover, the documentary evidence required only needs to show that the Class Member paid money for headlamp replacements; it does not need to specify the *reason* for replacement, so long as the Class

Member signs the certification on the claim form stating that the reason was due to dimming of the headlights. SA ¶ 97.

Finally, Class Members who are already outside the six-year extended warranty as of the Effective Date need only return a tear-off, pre-filled and prepaid postcard notifying NNA that they plan to seek replacement headlamps, and then make an appointment with an Authorized Nissan Dealer within six months thereafter. *Id.* at ¶ 86. This process ensures that NNA will have adequate supply of replacement headlamps manufactured with the Countermeasure in all geographic locations. *See id.* at ¶ 87. A special notice and the tear-off, prepaid claim form will be sent to the relevant Class Members within five days of the Effective Date expressly notifying them that they fall into this category and explaining in simple terms what they need to do to get free replacements. *Id.* at ¶ 85; *see also* Ex. D (Out-of-Warranty Notice and Claim Form).

Class Members can submit any/all of the claim forms and any necessary documentation online or by mail. SA ¶ 107.

Courts routinely hold that similar class action claims processes are fair and adequate. *See, e.g., In re Packaged Ice Antitrust Litig.*, 2017 U.S. Dist. LEXIS 135232, at *61 (E.D. Mich. Aug. 23, 2017) (approving settlement that included direct mailed claim forms with notice); *accord Davis v. Omnicare, Inc.*, 2021 U.S. Dist. LEXIS 63014, at *6 (E.D. Ky. Mar. 30, 2021); *Blasi v. United Debt Servs., LLC*, 2019 U.S. Dist. LEXIS 198201, at *7 (S.D. Ohio Nov. 15, 2019).

5. Rule 23(e)(2)(C)(iii): The Relief Provided for the Class is Adequate, Taking into Account the Terms of Any Proposed Award of Attorney's Fees, Including Timing of Payment

The terms of the proposed award of attorney's fees, including timing of payment, are also fair, reasonable, and adequate. Rule 23(e)(2)(C)(ii). Here, the parties negotiated attorneys' fees and expenses at arm's length with the close involvement of Judge Welsh, and only after all other

material terms of the Settlement were agreed. Welsh Decl. at ¶ 5. The parties reached agreement on the amount of fees with Judge Welsh's "assistance and recommendation." *Id.*

The fees will not diminish the benefits to the class in any respect. Consistent with best practices, Lead Counsel will file a motion for an award of attorneys' fees and expenses prior to the deadline for objections, which will afford Class Members the opportunity to object to the fee request if they wish. SA ¶¶ 137, 147-152. Further, the Settlement is not conditioned on the Court's approval of the payment of the attorneys' fees, which are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. *Id.* at ¶ 139. Finally, the Settlement provides that fees approved by the Court will be paid after the Effective Date of the Settlement. *Id.* at ¶ 137.

All of these terms are routinely found reasonable and adequate by courts in class action settlements. *See, e.g., Macy v. Gc Servs.*, 2020 U.S. Dist. LEXIS 105473, at *8 (W.D. Ky. May 28, 2020) (granting approval of settlement that provided for payment of attorneys' fees separate and apart from the settlement fund); *Manners v. Am. Gen. Life Ins. Co.*, 1999 U.S. Dist. LEXIS 22880, at *84 (M.D. Tenn. Aug. 10, 1999) ("The Court finds that the fee and expense negotiations were conducted at arm's length, only after the parties had reached agreement on all terms of the Settlement. There is no evidence in this case that the Settlement, or the fee and expense agreement, was in any way collusive. Under these circumstances, the Court gives great weight to the negotiated fee in considering the fee and expense request.")

Moreover, while the court does not decide the amount of fees to award at this stage, the agreed fee amount represents a small fraction of the value of the Settlement (estimated to be $50 million) and will be less than a 2.5 multiple of counsel's lodestar, which is easily within the range typically held to be reasonable. *See, e.g., In re Oral Sodium Phosphate Sol.-Based Prods. Liab.*

Action, 2010 U.S. Dist. LEXIS 128371, at *24 (N.D. Ohio Dec. 6, 2010) ("The Sixth Circuit Court of Appeals has endorsed the use of multipliers…'"); *see also id*. at *27 n.28 (citing Stuart J. Logan, Dr. Jack Moshman, & Beverly C. Moore, Jr., *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Reports (March-April 2003)) (finding an average multiplier of 3.89 across 1,120 fee awards entered by state and federal courts); *City of Plantation Police Officers' Emples. Ret. Sys. v. Jeffries*, 2014 U.S. Dist. LEXIS 178280, at *48 (S.D. Ohio Dec. 29, 2014) (awarding a lodestar multiplier of 3); *AK Steel v. Lowther*, 2012 U.S. Dist. LEXIS 181476, at *17 (S.D. Ohio Dec. 21, 2012) (awarding a lodestar multiplier of 3.06).

6. Rule 23(e)(2)(C)(iv): There are No Side Agreements Required to be Identified Under Rule 23(e)(3)

Rule 23(e)(3) requires settling parties to "file a statement identifying any agreement made in connection with the proposal." Here, there are no "side agreements" concerning this settlement.

7. Rule 23(e)(2)(D): The Proposal Treats Class Members Equitably Relative to Each Other

The Settlement also treats all Class Members equitably relative to one another. Fed. R. Civ. P. 23(e)(2)(D). "For this factor, '[m]atters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.'" *Fitzgerald v. P.L. Mktg.*, 2020 U.S. Dist. LEXIS 25672, at *32-33 (W.D. Tenn. Feb. 13, 2020) (citing Fed. R. Civ. P. 23(e)(2), 2018 Advisory Committee Notes).

Here, all Class Members who have experienced the defect are entitled to a free set of replacement headlamps manufactured with the Countermeasure. Likewise, all Class Members are entitled to reimbursement of prior replacement costs. The Settlement also provides all Class Members the extended six-year warranty coverage, and while some Class Members will already be outside that period as of the Effective Date, the Settlement ensures that they, too, can receive

free replacements with the Countermeasure, which in turn will benefit from a one-year parts and labor warranty. These common-sense distinctions among Class Members are reasonable and appropriate, and courts routinely approve such relief. *See e.g., Fulton-Green,* 2019 U.S. Dist. LEXIS 164375, at *22 (E.D. Pa. Sept. 23, 2019) (approving settlement where "the settlement treats each class member individually" because "[e]ach and every class member can receive a reimbursement specific to their losses"); *In re Nexus 6P Prods. Liab. Litig.*, 2019 U.S. Dist. LEXIS 197733, at *28-29 (N.D. Cal. Nov. 12, 2019) (approving settlement plan that "divides claimants into different groups based on the relative size of their potential claims and distributes funds based on these groups"); *Burrow v. Forjas Taurus S.A.*, 2019 U.S. Dist. LEXIS 151734, at *29 (S.D. Fla. Sep. 6, 2019) (the court found that the settlement treated class members equitably where settlement class members received the benefit of an enhanced warranty service automatically). This factor supports preliminary approval of the Settlement.

8. The Public Interest is Served by this Settlement

Finally, "[t]here is a strong policy favoring settlement in class actions. The public interest weighs in favor of resolving matters fairly and expeditiously." *Peck*, 2019 U.S. Dist. LEXIS 118626, at *22 (citation omitted). Here, that policy is even stronger because dim headlamps pose a potential safety hazard and the Settlement aims to get safe replacement headlamps into Class Vehicles that experienced delaminated headlamps at no expense to Settlement Class Members. *See Smith v. Ohio Dep't of Rehab. & Corr.*, 2012 U.S. Dist. LEXIS 58634, at *71 (S.D. Ohio Apr. 26, 2012). (noting that "creating a safer environment . . . serves the public interest").

Thus, all applicable fairness factors weigh in favor of approval. Respectfully, the Court should preliminarily approve the Settlement as fair, reasonable, and adequate.

B. The Court Should Conditionally Certify the Settlement Class

The Court should also conditionally certify the Settlement Class. "Rule 23(a), (b), and (g) set out the criteria for certifying a class action in federal court, including a settlement class." *Fitzgerald*, 2020 U.S. Dist. LEXIS 117220, at *11-12. "The Rule requires a party seeking class certification to demonstrate that: (1) the proposed class and class representatives meet all of the requirements of Rule 23(a); (2) the case fits into one of the categories of Rule 23(b); and (3) class counsel meets the requirements of Rule 23(g)." *Id.* NNA consents to certification of the Settlement Class for settlement purposes. SA ¶ 72. The requirements of Rules 23(a) and (b)(3) are readily satisfied here, and the Court should certify the Class for settlement purpose only.

1. The Settlement Class Satisfies the Requirements of Rule 23(a)

a. Numerosity and Ascertainability

The Settlement Class of current and former owners and lessees of 1.43 million Altimas easily meets the requirement of Rule 23(a)(1) that the class is "so numerous that joinder of all members is impracticable." *Garner Props. & Mgmt., LLC v. City of Inkster*, 333 F.R.D. 614, 622 (E.D. Mich. 2020) (quoting Davidson v. Henkel, 302 F.R.D. 427, 436 (E.D. Mich. 2014)) ("[I]t generally is accepted that a class of 40 or more members is sufficient to satisfy the numerosity requirement.").

The Class is also readily ascertainable.[12] For a class to be ascertainable, the class definition must enable the Court "to resolve the question of whether class members are included or excluded from the class by reference to objective criteria." *Rikos v. P&G*, 799 F.3d 497, 525 (6th Cir. 2015) (quoting *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 539 (6th Cir. 2012)). Class Members

[12] Although Rule 23(a) has no express ascertainability requirement, some courts hold that it is an implicit requirement of class certification. *See Cole v. City of Memphis*, 839 F.3d 530, 541 (6th Cir. 2016).

here can readily identify themselves by objective criteria, and virtually all Class Members can be identified from state motor vehicle registration records.

b. Commonality

The Settlement Class also easily satisfies the second requirement of Rule 23(a)(2), that "there are questions of law or fact common to the class." *Garden City Emples. Ret. Sys. v. Psychiatric Sols., Inc*., 2012 U.S. Dist. LEXIS 44445, at *92 (M.D. Tenn. Mar. 29, 2012) (citing Fed. R. Civ. P. 23(a)(2)). "The commonality test requires only a single issue common to all class members." *Id.* "A class meets the commonality requirement even if questions peculiar to individual class members remain after a determination of defendant's liability." *Id.*; *see also Sprague v. General Motors Corp.*, 133 F.3d 388, 398 (6th Cir. 1998) (noting that the test is whether there is a "common issue the resolution of which will advance the litigation").

In cases alleging defects in automobiles, the issue whether a defect exists is usually sufficient to meet the commonality requirement. *See, e.g.*, *Gann v. Nissan North America, Inc.*, No. 18-cv-00966 (M.D. Tenn. Mar. 10, 2020), at ECF No. 130 (certifying settlement class where common questions existed "regarding the reliability, design and performance of the type of Continuously Variable Transmission in the Class Vehicles at issue"); *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006) (affirming district court's decision that commonality was satisfied by the same alleged vehicle defect); *Keegan v. Am. Honda Motor Co.*, 284 F.R.D. 504, 524 (C.D. Cal. 2012) (alleged defect was common issue); *Alin v. Honda Motor Co.*, 2012 U.S. Dist. LEXIS 188223, at *13 (D.N.J. Apr. 13, 2012) (alleged defect was "a common thread among all class members . . . sufficient to satisfy the commonality requirement").

Here, in addition to many other common questions that are described below under the predominance inquiry, the alleged defect is a common issue.

c. Typicality

The Plaintiffs' claims are also typical of the Class, satisfying the Rule 23(a)(3) requirement that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." The typicality requirement is satisfied where "the representative's interests will be aligned with those of the represented group, and in pursuing his own claims, the named plaintiff will also advance the interests of the class members." *Young*, 693 F.3d at 542. A representative plaintiffs' "claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and [the] claims are based on the same legal theory." *Arlington Video Prods. v. Fifth Third Bancorp*, 515 F. App'x 426, 442 (6th Cir. 2013). "[A] plaintiff's burden to establish typicality is not onerous." *Campbell v. Hope Cmty. Credit Union,* 2012 U.S. Dist. LEXIS 87697, at *14 (W.D. Tenn. June 25, 2012). That burden is readily satisfied here.

Here, Plaintiffs' and Class Members' claims all arise out of the purchase or lease of a Class Vehicle equipped with allegedly defective headlamp assemblies, and their claims are based upon the same legal theories. ECF No. 1, at ¶ 67. Moreover, while not a requirement, it is worth noting that the Plaintiffs are residents of different geographic regions—Florida, Ohio, and California—ensuring that they are representative of Class Members across the country. Plaintiffs are typical of the Class they represent.

d. Adequacy of Representation

In addition, "the representative parties will fairly and adequately protect the interest of the class," as required by Rule 23(a)(4). "To establish adequacy of representation, plaintiffs must satisfy two elements." *Connectivity Sys. Inc. v. Nat'l City Bank*, 2011 U.S. Dist. LEXIS 7829, at *24 (S.D. Ohio Jan. 25, 2011). "First, the representative must have interests common with the

unnamed members of the class. Second, it must be shown that the representatives -- through qualified counsel—will vigorously prosecute the interests of the class." *Id.* (internal citations omitted).

The adequacy inquiry under Rule 23(a)(4) "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Gooch v. Life Inv'rs Ins. Co. of Am.*, 672 F.3d 402, 429 (6th Cir. 2012) (*quoting Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997)). "Although significant conflicts make a plaintiff an inadequate class representative, differently weighted interests are not detrimental." *Id.*

Here, each of the Plaintiffs purchased a Class Vehicle, and each suffered loss of headlamp brightness due to the defect. *See* Plaintiffs' Decls., at ¶ 3. They are each aware of their duties as Class representatives and have agreed to abide by those responsibilities. *Id.* at ¶ 4. There is no conflict between Plaintiffs and other Class Members. Plaintiffs have also vigorously represented the Class. They worked with Class Counsel to serve NNA with pre-suit notification of claims and demand for relief, assisted in drafting and reviewing the Complaint, communicated and advised across the settlement negotiations, and understand their duties as Class Representatives. *Id.* at ¶¶ 4-10.

Further, Plaintiffs retained highly-experienced counsel to represent them and the Class. *See generally,* Mathews Decl. Lead Counsel devoted substantial resources to the case and negotiated a very strong settlement. The representation they provided easily meets the adequacy standard. *See, e.g., Blasi v. United Debt Servs., LLC,* 2019 U.S. Dist. LEXIS 198201, at *13 (S.D. Ohio Nov. 15, 2019) (finding adequacy satisfied where class counsel were "experienced class action practitioners"); *In re Skechers Toning Shoe Prods. Liab. Litig.*, 2012 U.S. Dist. LEXIS 113641, at *13 (W.D. Ky. Aug. 13, 2012) (citing *Smith v. Ajax Magnethermic Corp.*, 2007 U.S. Dist. LEXIS

85551, at *10 (N.D. Ohio Nov. 7, 2007)) ("Courts have previously approved class counsel with experience in conducting class actions as adequate."); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, 2009 U.S. Dist. LEXIS 119870, at *23 (W.D. Ky. Dec. 22, 2009) (finding adequacy satisfied where class counsel "assert extensive experience in class litigation").

2. The Settlement Class Satisfies the Requirements of 23(b)

Certification is also warranted under Rule 23(b)(3) because "questions of law or fact common to class members predominate over any questions affecting only individual members," and "a class action is superior to other available methods for fairly and efficiently" settling the controversy.

a. Common Issues of Law and Fact Predominate

The class action device achieves economies over individual litigation where, as here, common issues predominate. *Ham v. Swift Transp. Co.*, 275 F.R.D. 475, 483 (W.D. Tenn. 2011) (citing *Coleman v. Gen. Motors Acceptance Corp.*, 296 F.3d 443, 448 (6th Cir. 2002)). "Predominance is usually decided on the question of liability, so that if the liability issue is common to the class, common questions are held to predominate over individual ones." *Id.* "This requirement is satisfied when the questions common to the class are at the heart of the litigation." *Powers v. Hamilton Cnty. Public Defender Comm'n*, 501 F.3d 592, 619 (6th Cir. 2007).

In automotive defect cases, courts routinely find a predominance of common issues that are capable of resolution by common evidence and would be resolved for all Class Members on a class-wide basis. *See e.g., Daffin*, 458 F.3d at 554 ("The issues that predominate include: (1) whether the throttle body assembly is defective, (2) whether the defect reduces the value of the car, and (3) whether Ford's express 'repair or replace' warranty covers the latent defect at issue in this case."); *Asghari v. Volkswagen Grp. of Am., Inc.*, 2015 U.S. Dist. LEXIS 188824, at *38 (C.D.

Cal. May 29, 2015) (collecting cases and holding: "Indeed, courts faced with motions for class certification in automobile design defect cases routinely find that common questions such as those present here suffice to satisfy the predominance requirement.").

Here, common questions of law and fact abound, including: the existence and nature of the Defect in Class Vehicles, NNA's knowledge of the alleged Defect, including the timing of NNA's knowledge; whether the alleged Defect presents a safety issue; whether the alleged Defect violated express and implied warranties; whether NNA failed to disclose the alleged defect; whether and the extent to which the alleged defect affected the value of the Class Vehicles; and numerous other issues that would ultimately be tried on a class wide basis.[13] ECF No. 1, at ¶ 66.

b. Class Treatment is the Superior Method for Adjudication of this Case

A class action is also "superior to other available methods for fairly and efficiently adjudicating the controversy" at issue here. Fed. R. Civ. P. 23(b)(3). "The superiority requirement of Rule 23(b)(3) requires a court to balance the merits of a class action in terms of fairness and efficiency." *Kimber Baldwin Designs*, 2016 U.S. Dist. LEXIS 173481, at *16-17. "In determining whether Plaintiff has made this showing, the court may consider: (1) the class member's interests in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against class members; (3) the desirability or undesirability of concentrating the ligation of the claims in the particular forum; and (4) the likely difficulties in managing a class action." *Id.* at *17 (citing Fed. R. Civ. P. 23(b)(3)). The manageability factor need not be considered in the settlement context. *See Amchem*, 521 U.S.

[13] Common issues can predominant, and class certification can be appropriate, even if there might be some individual issues that cannot be resolved on a class wide basis. *See e.g., Kimber Baldwin Designs, LLC v. Silv Communs., Inc*., 2016 U.S. Dist. LEXIS 173481, at *13 (S.D. Ohio Dec. 15, 2016) ("individual damage determinations… are no bar to class certification, even where some class members suffered no harm at all.").

at 620 ("Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there by no trial.").

Here, a class action is the superior method to fairly and efficiently adjudicate the Class Members' claims against NNA. The Settlement provides prompt, certain relief while avoiding the substantial judicial burdens and risk of inconsistent rulings that would arise from repeated adjudication of the same issues in individual actions. And Class Members would be unlikely to file individual actions against NNA because the cost of litigating such claims would easily dwarf any individual recovery. *See e.g.*, *id.* at 617 ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights."). Further, requiring Class Members to litigate their individual claims against NNA "is a vastly inferior method of adjudication" in a case like this. *See Daffin*, 458 F.3d at 554. The proposed Settlement here also provides "an efficient and cost-free means" to advance their individual claims for out-of-pocket reimbursement related to the Defect. *Manners v. Am. Gen. Life Ins. Co.*, 1999 U.S. Dist. LEXIS 22880, at *52 (M.D. Tenn. Aug. 10, 1999). A class action is thus the superior method by which to fairly and efficiently adjudicate this controversy.

C. The Notice Plan Satisfies Rule 23 and Due Process

Rule 23(e)(1)(B) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by the proposal . . . ." In an action certified 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). "All that notice must do is fairly apprise . . . prospective members of the

class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests." *Gooch*, 672 F.3d at 423.

The proposed Notice Plan readily satisfies this standard. It includes: (1) sending the Mailed Notice via first-class mail and a Reimbursement Claim Form to all current and former lessees who can be reasonably identified through state motor vehicle records; (2) Publication Notice in People Magazine and a press release on the PR Newswire; (3) Digital Publication Notice sufficient to create at least 5 million impressions on networks such as Facebook, Google, and other electronic and mobile advertising sites; and (4) creation of the Settlement Website and toll free number, where Class Members can obtain the Full Notice, important Court filings, and other information. *See* SA ¶¶ 99-117. Notice will also be posted on Lead Counsel's website and emailed to the over 1,900 Class Member who have contacted them. Further, supplemental notices will be mailed after the Effective Date to Class Members whose six-year extended warranties have already expired, or soon will be, in order to ensure that they have an opportunity to receive free replacement headlamps within the deadlines afforded.

Consistent with Rule 23(c)(2)(B)(i)-(vii), the Full Notice describes the nature of the action and the claims at issue, provides a definition of the Settlement Class, describes the Settlement benefits, explains Settlement Class Members' rights, including the right to object or opt out of the Settlement, explains the binding effect of a class judgment and release of claims, provides the date of the fairness hearing, and provides other relevant information necessary for Class Members to make informed decisions regarding the Settlement. *See id.* at ¶¶ 99-116; Ex. B. The Full Notice also provides Class Members with contact details for the Settlement Administrator and Class Counsel and the location of the Settlement Website to obtain more detailed information.

The Mailed Notice and Publication Notice, in turn, summarize all of the key information , including: the nature of clams; class definition; settlement benefits; Class Members' legal rights and options, including objecting and opting out; deadlines and the final fairness hearing date; and clearly informs Class Members about how to obtain the Full Notice and additional information by either visiting the Settlement Website, sending a mailed request to the Settlement Administrator, or calling the toll-free number. *See e.g.*, *Gooch*, 672 F.3d at 423-24 (finding notice that gave class members an address, phone number, and website to obtain more information about proposed settlement comported with due process); *In re Polyurethane Foam Antitrust Litig.*, 168 F. Supp. 3d 985, 1002 (N.D. Ohio 2016) (settlement notice met the standard of due process where it directed class members to the website where the full settlement agreements were posted).

The notice documents fairly apprise Class Members of the terms of the Settlement. *See Pelzer v. Vassalle*, 655 F. App'x 352, 368 (6th Cir. 2016) ("Class notice [must] be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" and must "fairly apprise the prospective members of the class of the terms of the proposed settlement so that class members may come to their own conclusions about whether the settlement serves their interests."). The proposed Notice Plan provides the best notice practicable under the circumstances, and it includes all content required by Rule 23 and comports with due process. The Notice Plan should be approved.

D. The Court Should Appoint Chimicles Schwartz Kriner & Donaldson-Smith as Lead Counsel and Spragens Law PLC as Additional Class Counsel

Plaintiffs also request that the Court appoint Timothy N. Mathews, Samantha E. Holbrook, Alex M. Kashurba, and Zachary P. Beatty of the law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP as Lead Counsel. As set forth more fully in the Mathews Declaration, Lead Counsel have considerable experience in litigation complex class actions, and they have a thorough

knowledge and understanding of the laws applicable to Plaintiffs' claims for relief. Lead Counsel have also devoted considerable resources to pursuing and settling the action and achieved an excellent result for Class Members. *See* Mathews Decl. at ¶¶ 8-25.

Accordingly, the Rule 23(g) factors weigh in favor of appointing Timothy Mathews, Samantha Holbrook, Alex Kashurba, and Zachary Beatty as Lead Counsel for the Settlement Class. *See, e.g.*, *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, 2009 U.S. Dist. LEXIS 119870, at *28-29 (W.D. Ky. Dec. 22, 2009) (considering plaintiffs' counsel's class action experience and nearly five months of arm's length negotiations to reach a settlement agreement in finding plaintiffs' counsel would fairly and adequately represent the interests of the class as co-lead counsel for the settlement class).

Plaintiffs also request that the Court appoint John Spragens as an additional counsel for the Class. John Spragens is local counsel for Plaintiffs and is likewise an experienced class action practitioner. *See* Declaration of John Spragens, filed herewith.

E. Proposed Schedule

Finally, the parties ask that the Court approve the schedule set forth in the Proposed Order filed herewith, and schedule a Fairness Hearing at the Court's earliest convenience on or after the 147th day following entry of an Order preliminarily approving the Settlement.

The Proposed Order establishes deadlines for completing notice, filing the motions for final approval and attorneys' fees, submission of Class Member objections, and other deadlines, all of which are calculated by reference to the date an Order preliminarily approving the settlement is

entered.[14] All proposed deadlines are set forth in increments of seven days from the entry of a preliminary approval Order to ensure that the deadlines fall on weekdays.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter the Proposed Order filed herewith.

Dated: May 24, 2021

Respectfully submitted,

/s/ Timothy N. Mathews
Timothy N. Mathews
Samantha E. Holbrook
Alex M. Kashurba
Zachary P. Beatty
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Attorneys for Plaintiffs and Proposed Class Counsel

[14] After the Settlement was executed the Settlement Administrator requested a slightly longer period of time to complete the Mailed Notice than is set forth in the Settlement Agreement. Therefore, certain of the proposed deadlines in the Proposed Order vary from what is stated in the Settlement.

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2021, I electronically filed PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT AND RELATED RELIEF with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

/s/ Timothy N. Mathews
Timothy N. Mathews

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

RAFAEL SUAREZ, DAISY GONZALEZ, and RICHARD BYRD, individually and on behalf of all others similarly situated, Plaintiffs, vs. NISSAN NORTH AMERICA, INC., Defendant.	Case No.: 3:21-cv-00393 Hon. William L. Campbell, Jr. **CLASS ACTION**

DECLARATION OF MEDIATOR HON. DIANE M. WELSH (RET.)

I, Diane M. Welsh, declare as follows:

1. I am a former United States Magistrate Judge for the United States District Court for the Eastern District of Pennsylvania and currently a neutral with JAMS.

2. Over the past 27 years, I have successfully resolved over 5000 matters, covering virtually every type of complex dispute. I have been nationally recognized for my work as a neutral and Special Master in complex class actions, mass torts, and multi-district litigations (MDLs). I was recognized as a 2016-2018 "ADR Champion" by the National Law Journal, I have been named a "Best Lawyer" in the Alternative Dispute Resolution category by Best Lawyers in America every year since 2007, and I have received numerous other honors for my work as a mediator. I have successfully resolved many class actions, including consumer and products liability class actions. While on the bench, I presided over many settlement conferences in complex business disputes and class actions. My full biography is available at: https://www.jamsadr.com/welsh/#biography.

3. I served as mediator for the parties in this Action. Under my supervision, the

parties engaged in arm's length, vigorous negotiations over the course of approximately five months. I conducted three full-day mediation sessions on August 3, 2020, September 30, 2020, and November 4, 2020. These mediation sessions included meetings with both sides present, as well as many separate sessions where I met only with one side or the other. I also engaged in several telephonic follow-up calls with each party to address issues that were discussed but not resolved in the mediation sessions, and at times I instructed the parties to negotiate certain details directly.

4. Throughout the mediation process, the parties dealt with each other at arm's length. Although always professional, the negotiations were hard fought by both sides. The parties were each represented by highly experienced, effective and assertive counsel who were well versed in the facts of the case and the applicable law. I was satisfied throughout the negotiations that the parties' positions were thoroughly explored and advanced.

5. The parties focused most of their negotiations on the relief for class members. The parties did not discuss or negotiate attorneys' fees and costs, or Plaintiff incentive awards, until agreement was reached on all other material terms of the Settlement. The parties did not begin to negotiate attorneys' fees until late in the afternoon on the third full-day mediation session, but they did not reach agreement then. I continued to mediate the issue of fees via phone calls with counsel for the parties over the next several weeks. The parties eventually reached agreement on fees with my assistance and recommendation on December 3, 2020.

I declare that the foregoing is true and correct.

Executed this 19th day of May, 2021.

Diane M. Welsh

HON. DIANE M. WELSH (RET.)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

RAFAEL SUAREZ, DAISY GONZALEZ, and RICHARD BYRD, individually and on behalf of all others similarly situated, Plaintiffs, vs. NISSAN NORTH AMERICA, INC., Defendant.	Case No.: 3:21-cv-00393-WLC-AN **Hon. William L. Campbell, Jr.** **CLASS ACTION** **DECLARATION OF TIMOTHY N. MATHEWS IN SUPPORT OF PARTIES' JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT AND RELATED RELIEF**

I, Timothy N. Mathews, declare as follows:

1. I am a partner in the law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP ("Chimicles Firm"), counsel for Plaintiffs Rafael Suarez, Daisy Gonzalez and Richard Byrd (collectively "Plaintiffs"), and proposed Lead Counsel for the proposed Class in this action. I am admitted to this Court *pro hac vice* and am a member in good standing of the bars of Pennsylvania and New Jersey. I am also admitted to practice in the United States Courts of Appeals for the Third, Fourth, Ninth, and Eleventh Circuits, and the United States District Courts for the District of New Jersey, the Eastern District of Pennsylvania, and the Eastern District of Michigan. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so. I respectfully submit this declaration in support of the parties' Joint Motion for Preliminary Approval of Class Action Settlement and Related Relief.

Background

2. In its over three decades of existence, the Chimicles Firm has developed a national reputation for excellence as one of the leading firms of the plaintiffs' class action bar. From its offices in Haverford, Pennsylvania and Wilmington, Delaware, the Chimicles Firm prosecutes complex class actions and shareholder derivative litigation in state and federal courts throughout the nation. We have represented individuals, public pension funds, institutional investors, and businesses in hundreds of consumer protection, automotive defect, shareholder, antitrust, and other complex actions, and we have recovered billions of dollars for class members in these cases. Our partners and attorneys are regularly recognized as among the top lawyers in our profession. My firm takes seriously its fiduciary duty to the classes it is appointed to represent, and accordingly, has a longstanding culture that strives to obtain the maximum recovery possible for our clients. A copy of my firm's resume is attached hereto as Exhibit A.

3. As reflected in my biography in Exhibit A, I have served in a leadership role in numerous class actions where, like this one, I achieved outstanding results on behalf of the class, including several cases where I achieved full recoveries for class members. *See* Exhibit A at 12-13. I have been described as "among the most capable and experienced lawyers in the country" in consumer class action litigation. *Chambers v. Whirlpool*, 214 F. Supp 3d 877, 902 (C.D. Cal. 2016) (vacated in part on other grounds at 980 F.3d 645).

4. I graduated *with high honors* from Rutgers Law School, where I served as Lead Marketing Editor for the Rutgers Journal of Law & Religion, served as a teaching assistant for the Legal Research and Writing Program, received the Legal Writing Award, and received a Dean's Merit Scholarship and the Hamerling Merit Scholarship. I received my B.A. from Rutgers University *with highest honors*, where I was inducted into the Athenaeum honor society. I have

worked at the Chimicles Firm since my second year as a law student, starting as a summer associate, then associate, and advancing to partnership. I have been selected as a Pennsylvania Rising Star, Pennsylvania Super Lawyer, and LawDragon 500 Leading Plaintiff Lawyer numerous times. My volunteer work includes currently serving as Co-Chair of the Planning Commission for Lower Merion Township, which is the 11th most populous municipality in Pennsylvania.

5. Alex Kashurba served as the primary associate on this case and contributed substantially to its prosecution. Mr. Kashurba received his law degree from the University of Michigan Law School. While in law school, he interned for the United States Attorney's Office for the Eastern District of Pennsylvania as well as the Office of General Counsel for the United States House of Representatives. Prior to joining my Firm, Mr. Kashurba served as a law clerk in the United States District Court for the Western District of Pennsylvania, including for the Honorable Kim R. Gibson and the Honorable Nora Barry Fischer. Mr. Kashurba's biography is also included in Exhibit A.

6. My associates Samantha Holbrook and Zachary Beatty also contributed significant work to this case, along with our paralegals and support staff. Their full biographies are also included in Exhibit A.

The Instant Action

7. The alleged defect in this case involves model year 2013-2018 Nissan Altimas manufactured with halogen headlamps. These Altimas utilize a "projector headlamp" design, where the headlight bulb is housed inside a reflective cup that reflects and focuses the light through a lens. The Complaint alleges the headlamps are defective because the reflective cup "outgasses," or deteriorates, resulting in loss of reflectivity and significant loss of headlight brightness. Repair requires replacement of the entire headlamp assembly.

8. My firm and I conducted significant investigation into the factual and legal issues related to the alleged defect prior to May 2019, at which time I sent Nissan North America, Inc. ("NNA") a formal notice of claims for breach of express and implied warranty and violation of consumer protection laws and a demand for relief on behalf of our client, Rafael Suarez, and all others similarly situated.

9. In response to our demand letter, we engaged in several direct discussions with NNA's inside counsel, and subsequently outside counsel hired by NNA, Brigid Carpenter of Baker Donelson.

10. The parties entered into a nationwide class-wide tolling agreement in July 2019.

11. On November 13, 2019, we served a further notice of claims and a demand for relief on behalf of our additional clients, Daisy Gonzalez and Richard Byrd, and all others similarly situated.

12. Between July 2019 and July 2020, the parties engaged in numerous discussions, and NNA produced documents in response to Plaintiffs' requests. My firm also obtained several samples of delaminated headlamps from consumers. We also retained an internationally recognized headlight engineering expert to examine the headlamps, review NNA's documents, and consult with us. We also received and catalogued information from over 1,200 Altima owners who had contacted us by that time. Subsequently, we continued to receive information from Class Members, with the current total exceeding 1,900 Class Members .

13. Our investigation, including examination of headlamps by our expert and discovery of NNA documents, revealed that the outgassing of the reflector cup is caused by the combined heat of the bulb and ambient temperature, and exacerbated by humidity.

14. The parties agreed to mediate with the Honorable Diane M. Welsh (Ret.), a renowned JAMS mediator with extensive experience mediating class actions.

15. The parties exchanged mediation briefs in July 2020.

16. The parties participated in three full-day mediation sessions on August 3, 2020, September 30, 2020, and November 4, 2020.

17. Between mediation sessions the parties exchanged several settlement negotiation letters and emails, and participated in numerous telephonic discussions with Judge Welsh.

18. All settlement negotiations were conducted at arm's length and with the involvement of Judge Welsh.

19. During the time the mediation was pending, we obtained additional documents from NNA and my firm conducted a survey of putative Class Members, receiving around 350 responses, which we used for purposes of our investigation and settlement negotiation.

20. In our survey of 350 putative Class Members, most respondents reported that they first noticed dimming when their vehicles were between thirty-three and fifty-five months old. The vast majority reported noticing the defect within fifty-five months, and 99% of respondents in our survey reported that they first noticed dimming within seventy-two months. Almost half of respondents reported that they paid for headlamp replacements due to dimming. For those who replaced their headlamps, the average vehicle age at the time of replacement was around forty-eight months, which is outside of NNA's standard three-year warranty. The typical cost for replacement varies widely, with NNA dealerships often charging more than independent repair facilities. Based on our investigation and survey results, the average cost of replacement for a pair of headlamps, including parts and labor, is typically around $600-$800.

21. The parties did not discuss or negotiate attorneys' fees and costs, or Plaintiff incentive awards, until agreement was reached on all other material terms of the Settlement. The parties reached agreement on all material terms of the settlement other than attorneys' fees in the afternoon of the final full-day mediation session on November 4, 2020. The parties did not begin the negotiation of attorneys' fees until that afternoon, after all other material terms were agreed, but we did not reach agreement on attorneys' fees that day.

22. Over the next several weeks, Judge Welsh engaged in several further telephone discussions with the parties individually. The parties eventually reached agreement on attorneys' fees with Judge Welsh's assistance and recommendation on December 3, 2020.

23. After the parties reached agreement on December 3, 2020, we conducted additional confirmatory discovery, and further consulted with our expert.

24. The parties then turned to drafting the settlement agreement, notices, and claim forms, which was also a time-consuming process and sometimes required additional notice and claims details to be worked out between the parties. My firm handled the majority of the drafting work.

25. I believe the Settlement provides excellent relief to Class Members and I am very proud of what we accomplished. Achieving these results did not come easy, but, rather, was the result of our dogged negotiation, investigation, and deep understanding of the facts and law relevant to the case. Moreover, by conducting our investigation, discovery, and mediation prior to filing a complaint in court, I believe we achieved a better Settlement, faster and with less burden, than could have been accomplished had we filed the complaint first. At all times we acted in the best interest of class members, even though it meant my Firm's lodestar would be less.

26. Based on my long experience in class action litigation, and strong knowledge of the facts and law relevant to this case, I wholeheartedly endorse the Settlement as fair, reasonable, and adequate.

Executed this 24th Day of May 2021 at Haverford, Pennsylvania.

/s/ Timothy N. Mathews

Timothy N. Mathews
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EXHIBIT 1

CHIMICLES
SCHWARTZ KRINER & DONALDSON-SMITH LLP

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Our Attorneys-Partners

Practice Areas:

- Antitrust
- Automobile Defects and False Advertising
- Corporate Mismanagement & Shareholder Derivative Action
- Defective Products and Consumer Protection
- Mergers & Acquisitions
- Non-Listed REITs
- Other Complex Litigation
- Securities Fraud

Education:

- University of Virginia School of Law, J.D., 1973
- University of Virginia Law Review; co-author of a course and study guide entitled "Student's Course Outline on Securities Regulation," published by the University of Virginia School of Law
- University of Pennsylvania, B.A., 1970

Memberships & Associations:

- Supreme Court of Pennsylvania Disciplinary Board Hearing Committee Member, 2008-2014.
- Past President of the National Association of Securities and Commercial Law Attorneys based in Washington, D.C., 1999-2001
- Chairman of the Public Affairs Committee of the American Hellenic Institute, Washington, D.C.
- Member of the Boards of Directors of Opera Philadelphia, Pennsylvanians for Modern Courts, and the Public Interest Law Center of Philadelphia.

Admissions:

- Supreme Court of Pennsylvania
- United States Supreme Court
- Second Circuit Court of Appeals
- Third Circuit Court of Appeals

NICHOLAS E. CHIMICLES

Mr. Chimicles has been lead counsel and lead trial counsel in major complex litigation, antitrust, securities fraud and breach of fiduciary duty suits for over 40 years. Representative Cases include:

- In three related cases involving the collection of improperly imposed telephone utility users taxes, Mr. Chimicles was co-lead counsel representing taxpayers in the Superior Court in Los Angeles, resulting in the creation of settlement finds totaling more than $120 million. *Ardon v. City of Los Angeles* ($92.5 million)(2016); *McWilliams v. City of Long Beach* ($16.6 million)(2018); and *Granados v. County of Los Angeles* ($16.9 million)(2018). The suits were settled after the Supreme Court of California unanimously upheld the rights of taxpayers to file class action refund claims under the California Government Code.
- *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation,* Civ. No. 2:13-cv-2777, involved various violations of contractual, fiduciary and corporate statutory duties by defendants who engaged in various related-party transactions, wrongfully withheld dividends and financial information, and failed to timely hold an annual preferred stockholder meeting. This litigation resulted in a swift settlement valued at over $76 million after ten months of hard -fought litigation.
- *Lockabey v. American Honda Motor Co.,* Case No. 37-2010-87755 (Superior Ct., San Diego). A settlement valued at over $170 million resolved a consumer action involving false advertising claims relating to the sale of Honda Civic Hybrid vehicles as well as claims relating to a software update to the integrated motor assist battery system of the HCH vehicles. As a lead counsel, Mr. Chimicles led a case that, in the court's view, was "difficult and risky" and provided "significant public value."
- *City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc.*, Case No. 07 C 6174 (N.D. Ill.). A $90 million settlement was reached in 2010 in this class action challenging the accuracy of a proxy statement that sought (and received) stockholder approval of the merger of an external advisor and property managers by a multi-billion dollar real estate investment trust, Inland Western Retail Real Estate Trust, Inc. The settlement provided that the owners of the advisor/property

- Fourth Circuit Court of Appeals
- Sixth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Tenth Circuit Court of Appeals
- Eleventh Circuit Court of Appeals
- Court of Appeals for the D.C. Circuit
- Eastern District of Pennsylvania
- Eastern District of Michigan
- Northern District of Illinois
- District of Colorado
- Eastern District of Wisconsin
- Court of Federal Claims
- Southern District of New York

Honors:

- Recipient of the American Hellenic Institute's Heritage Achievement & National Public Service Award (2019)
- Fellow of the American Bar Foundation (2017) - an honorary organization of lawyers, judges and scholars whose careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.
- Prestigious 2016 Thaddeus Stevens Award of the Public Interest Law Center (Philadelphia) in recognition of his leadership and service to this organization.
- Ellis Island Medal of Honor in May 2004, in recognition of his professional achievements and history of charitable contributions to educational, cultural and religious organizations.
- Pennsylvania and Philadelphia SuperLawyers, 2006-present.
- AV® rated by Martindale-Hubbell

manager entities (who are also officers and/or directors of Inland Western) had to return nearly 25% of the Inland Western stock they received in the merger.

- *In re Real Estate Associates Limited Partnerships Litigation*, No. CV 98-7035 DDP, was tried in the federal district court in Los Angeles before the Honorable Dean D. Pregerson. Mr. Chimicles was lead trial counsel for the Class of investors in this six-week jury trial of a securities fraud/ breach of fiduciary duty case that resulted in a $185 million verdict in late 2002 in favor of the Class (comprising investors in the eight REAL Partnerships) and against the REALs' managing general partner, National Partnership Investments Company ("NAPICO") and the four individual officers and directors of NAPICO. The verdict included an award of $92.5 million in punitive damages against NAPICO. This total verdict of $185 million was among the "Top 10 Verdicts of 2002," as reported by the National Law Journal (verdictsearch.com). On post-trial motions, the Court upheld in all respects the jury's verdict on liability, upheld in full the jury's award of $92.5 million in compensatory damages, upheld the Class's entitlement to punitive damages (but reduced those damages to $2.6 million based on the application of California law to NAPICO's financial condition), and awarded an additional $25 million in pre-judgment interest. Based on the Court's decisions on the post-trial motions, the judgment entered in favor of the Class on April 28, 2003 totaled over $120 million.
- *CNL Hotels & Resorts, Inc. Securities Litigation*, Case No. 6:04-cv-1231 (M.D. Fla., Orl. Div. 2006). The case settled Sections 11 and 12 claims for $35 million in cash and Section 14 proxy claims by significantly reducing the merger consideration by nearly $225 million (from $300 million to $73 million) that CNL paid for internalizing its advisor/ manager.
- *Prudential Limited Partnerships Litigation*, MDL 1005 (S.D.N.Y.). Mr. Chimicles was a member of the Executive Committee in this case where the Class recovered from Prudential and other defendants $130 million in settlements, that were approved in 1995. The Class comprised limited partners in dozens of public limited partnerships that were marketed by Prudential.
- *PaineWebber Limited Partnerships Litigation*, 94 Civ. 8547 (S.D.N.Y.). Mr. Chimicles was Chairman of the Plaintiffs' Executive Committee representing limited partners who had invested in more than 65 limited partnerships that PaineWebber organized and/or marketed. The litigation was settled for a total of $200 million, comprising $125 million in cash and $75 million in additional benefits resulting from restructurings and fee concessions and waivers.
- *In Re Phoenix Leasing Incorporated Limited Partnership Litigation*, Superior Court of the State of California, County of Marin, Case No. 173739. In February 2002, the Superior Court of Marin County, California, approved the settlement of this case which involved five public partnerships sponsored by Phoenix Leasing Incorporated and

- *Continental Illinois Corporation Securities Litigation*, Civil Action No. 82 C 4712 (N.D. Ill.) involving a twenty-week jury trial in which Mr. Chimicles was lead trial counsel for the Class that concluded in July, 1987 (the Class ultimately recovered nearly $40 million).

ROBERT J. KRINER, JR.

Practice Areas:

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Delaware Law School of Widener University, J.D., 1988
- University of Delaware, B.S. Chemistry, 1983

Memberships:

- Delaware State Bar Association

Admissions:

- Supreme Court of Delaware

Robert K. Kriner, Jr. is a Partner in the Firm's Wilmington, Delaware office. From 1988 to 1989, Mr. Kriner served as law clerk to the Honorable James L. Latchum, Senior Judge of the United States District Court for the District of Delaware. Following his clerkship and until joining the Firm, Mr. Kriner was an associate with a major Wilmington, Delaware law firm, practicing in the areas of corporate and general litigation.

Mr. Kriner has prosecuted actions, including class and derivative actions, on behalf of stockholders, limited partners and other investors with claims relating to mergers and acquisitions, hostile acquisition proposals, the enforcement of fiduciary duties, the election of directors, and the enforcement of statutory rights of investors such as the right to inspect books and records. Among his recent achievements are Sample v. Morgan, C.A. No. 1214-VCS (obtaining full recovery for shareholders diluted by an issuance of stock to management), In re Genentech, Inc. Shareholders Litigation, Consolidated C.A. No. 3911-VCS (leading to a nearly $4 billion increase in the price paid to the Genentech stockholders) and In re Kinder Morgan, Inc. Shareholders Litigation, Consolidated Case No. 06-C-801 (action challenging the management led buyout of Kinder Morgan, settled for $200 million).

Recently, Mr. Kriner led the prosecution of a derivative action in the Delaware Court of Chancery by stockholders of Bank of America Corporation relating to the January 2009 acquisition of Merrill Lynch & Co. In re Bank of America Corporation Stockholder Derivative Litigation, C.A. No. 4307-CS. The derivative action concluded in a settlement which included a $62.5 million payment to Bank of America.

Steven A. Schwartz

Practice Areas:

- Antitrust
- Corporate Mismanagement & Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud

Education:

- Duke University School of Law, J.D., 1987
  - ◊ Law & Contemporary Problems Journal, Senior Editor
- University of Pennsylvania, B.A., 1984 - *cum laude*

Memberships & Associations:

- National Association of Shareholder and Consumer Attorneys (NASCAT) Executive Committee Member
- American Bar Association
- Pennsylvania Bar Association

Admissions:

- United States Supreme Court
- Pennsylvania Supreme Court
- Third Circuit Court of Appeals
- Sixth Circuit Court of Appeals
- Eighth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Eastern District of Pennsylvania
- Western District of Pennsylvania
- Eastern District of Michigan
- District of Colorado

Honors:

- National Trial Lawyers Top 100
- AV Rating from Martindale Hubbell
- Pennsylvania Super Lawyer, 2006-Present
- America's Top 100 High Stakes Litigator

Steven A. Schwartz has prosecuted complex class actions in a wide variety of contexts. Notably, Mr. Schwartz has been successful in obtaining several settlements where class members received a full recovery on their damages. Representative cases include:

- *In re Cigna-American Specialty Health Administrative Fee Litigation*, No. 2:16-cv-03967-NIQA (E. D. Pa.). I served as co-lead counsel in this national class action alleging that defendant Cigna and its subcontractor, ASH, violated the written terms of ERISA medical benefit by treating ASH's administrative fees as medical expenses to artificially inflate the amount of "benefits" owed by plans and the cost-sharing obligations of plan participants and beneficiaries. The Court approved the $8.25 million settlement in which class members were automatically mailed checks representing a full or near-full recovery of the actual amount they paid for the administrative fees. ECF 101 at 4, 23-24.
- *Rodman v. Safeway Inc.*, No. 11-3003-JST (N.D. Cal.). Mr. Schwartz served as Plaintiffs' Lead Trial Counsel and presented all of the district court and appellate arguments in this national class action regarding grocery delivery overcharges. He was successful in obtaining a national class certification and a series of summary judgment decisions as to liability and damages resulting in a $42 million judgment, which represents a full recovery of class members' damages plus interest. The $42 million judgment was entered shortly after a scheduled trial was postponed due to Safeway's discovery misconduct, which resulted in the district court imposing a $688,000 sanction against Safeway. The Ninth Circuit affirmed the $42 million judgment. 2017 U.S. App. LEXIS 14397 (9th Cir. Aug. 4, 2017).
- *In re Apple iPhone/iPod Warranty Litig.*, No. 3:10-1610-RS (N.D. Cal.). Mr. Schwartz served as co-lead counsel in this national class action in which Apple agreed to a $53 million non-reversionary, cash settlement to resolve claims that it had improperly denied warranty coverage for malfunctioning iPhones due to alleged liquid damage. Class members were automatically mailed settlement checks for more than 117% of the average replacement costs of their iPhones, net of attorneys' fees, which represented an average payment of about $241.
- *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, No. 06 C 7023, (N.D. Ill.) & Case 1:09-wp-65003-CAB (N. D. Ohio) (MDL No. 2001). Mr. Schwartz served as co-lead class counsel in this case which related to defective central control units ("CCUs") in front load washers manufactured by Whirlpool and sold by Sears. After extensive litigation, including two trips to the Seventh Circuit and a trip to the United States Supreme Court challenging the certification of the plaintiff class, he negotiated a settlement shortly before trial that the district court held, after a contested proceeding approval proceeding, provided a "full-value, dollar-for-dollar recovery" that was "as good, if not a

better, [a] recovery for Class Members than could have been achieved at trial." 2016 U.S. Dist. LEXIS 25290 at *35 (N.D. Ill. Feb. 29, 2016).

- *Chambers v. Whirlpool Corp., et al., Case No.* 11-1773 FMO (C.D. Cal.). Mr. Schwartz served as co-lead counsel in this national class action involving alleged defects resulting in fires in Whirlpool, Kenmore, and KitchenAid dishwashers. The district court approved a settlement which he negotiated that provides wide-ranging relief to owners of approximately 24 million implicated dishwashers, including a full recovery of out-of-pocket damages for costs to repair or replace dishwashers that suffered overheating Events. In approving the settlement, Judge Olguin of the Central District of California described Mr. Schwartz as "among the most capable and experienced lawyers in the country in [consumer class actions]." 214 F. Supp. 3d 877, 902 (C.D. Cal. 2016).

- *Wong v. T-Mobile*, No. 05-cv-73922-NGE-VMM (E.D. Mich.). In this billing overcharge case, Mr. Schwartz served as co-lead class counsel and negotiated a settlement where T-Mobile automatically mailed class members checks representing a 100% net recovery of the overcharges and with all counsel fees paid by T-Mobile in addition to the class members' 100% recovery.

- *In re Certainteed Corp. Roofing Shingle Products Liability Litig.*, No, 07-md-1817-LP (E.D. Pa.). In this MDL case related to defective roof shingles, Mr. Schwartz served as Chair of Plaintiffs' Discovery Committee and worked under the leadership of co-lead class counsel. The parties reached a settlement that provided class members with a substantial recovery of their out-of-pocket damages and that the district court valued at between $687 to $815 million.

- *Shared Medical Systems 1998 Incentive Compensation Plan Litig.,* Mar. Term 2003, No. 0885 (Phila. C.C.P.). In this case on behalf of Siemens employees, after securing national class certification and summary judgment as to liability, on the eve of trial, Mr. Schwartz negotiated a net recovery for class members of the full amount of the incentive compensation sought (over $10 million) plus counsel fees and expenses. At the final settlement approval hearing, Judge Bernstein remarked that the settlement "should restore anyone's faith in class action[s]. . . ." Mr. Schwartz served as co-lead counsel in this case and handled all of the arguments and court hearings.

- *In re Pennsylvania Baycol: Third-Party Payor Litig.*, Sept. Term 2001, No. 001874 (Phila. C.C.P.) ("Baycol"). Mr. Schwartz served as co-lead class counsel in this case brought by health and welfare funds and insurers to recover damages caused by Bayer's withdrawal of the cholesterol drug Baycol. After extensive litigation, the court certified a nationwide class and granted plaintiffs' motion for summary judgment as to liability, and on the eve of trial, he negotiated a settlement providing class members with a net recovery that approximated the maximum damages (including pre-judgment interest) that class members suffered. That settlement represented three times the net recovery of Bayer's voluntary claims process (which AETNA and CIGNA had negotiated and was accepted by many large insurers who opted out of the class early in the litigation).

- *Wolens v. American Airlines, Inc*. Mr. Schwartz served as plaintiffs' co-lead counsel in this case involving American Airlines' retroactive increase in the number of frequent flyer miles needed to claim travel awards. In a landmark decision, the United States Supreme Court held that plaintiffs' claims were not preempted by the Federal Aviation Act. 513 U.S. 219 (1995). After eleven years of litigation, American Airlines agreed to provide class members with mileage certificates that approximated the full extent of their alleged damages, which the Court, with the assistance of a court-appointed expert and after a contested proceeding, valued at between $95.6 million and $141.6 million.

- *In Re ML Coin Fund Litigation*, (Superior Court of the State of California for the County of Los Angeles). Mr. Schwartz served as plaintiffs' co-lead counsel and successfully obtained a settlement from defendant Merrill Lynch in excess of $35 million on behalf of limited partners, which represented a 100% net recovery of their initial investments (at the time of the settlement the partnership assets were virtually worthless due to fraud committed by Merrill's co-general partner Bruce McNall, who was convicted of bank fraud).

- *Nelson v. Nationwide*, July Term 1997, No. 00453 (Phila. C.C.P.). Mr. Schwartz served as lead counsel on behalf of a certified class. After securing judgment as to liability in the trial court (34 Pa. D. & C. 4th 1 (1998)), and defeating Nationwide's Appeal before the Pennsylvania Superior Court, 924 PHL 1998 (Dec. 2, 1998), he negotiated a settlement whereby Nationwide agreed to pay class members approximately 130% of their bills.

Kimberly Donaldson Smith

Practice Areas:

- Securities Fraud
- Non-Listed REITs
- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Villanova University School of Law, J.D., 1999 - *cum laude*
- Boston University, B.A. Political Science, 1996
-

Memberships & Associations:

- Pennsylvania Bar Association
- Villanova Law School Alumni Association

Admissions:

- Pennsylvania Supreme Court
- New Jersey Supreme Court
- Third Circuit Court of Appeals
- District of New Jersey
- Eastern District of Pennsylvania

Honors:

- Pennsylvania SuperLawyer: 2013– Present
- Named Pennsylvania Rising Star by Super Lawyers: 2006-2012
- Sutton Who's Who in American Law

Kimberly Donaldson Smith is a partner in the Firm's Haverford Office. Kimberly has been counseling clients and prosecuting cases on complex issues involving securities, business transactions and other class actions for over 15 years.

Kimberly concentrates her practice in sophisticated securities class action litigation in federal courts throughout the country, and has served as lead or co-lead counsel in over a dozen class actions. She is very active in investigating and initiating securities and shareholder class actions.

Kimberly is currently prosecuting federal securities claims on behalf of investors in numerous cases. Kimberly was instrumental in the outstanding settlements achieved for investors in:

- *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation,* Civ. No. 2:13-cv-2777 (W.D. Tenn.)(a settlement valued at over $76 million for current and former W2007 Grace preferred stockholders);
- *In re Empire State Realty Trust, Inc. Investor Litigation*, Case 650607/2012, NY Supreme Court (a $55,000,000 cash settlement fund and $100 million tax savings for the Empire investors);
- *CNL Hotels & Resorts Inc. Federal Securities Litigation*, Case No. 04-cv-1231 (M.D. Fla.)(a $35,000,000 cash settlement fund and a $225 million savings for the CNL shareholders);
- *Inland Western Retail Real Estate Trust, Inc., et al. Litigation*, Case 07 C 6174 (U.S.D.C. N.D. Ill) (a $90 million savings for the Inland shareholders subjected to a self-dealing transaction); and
- *Wells REIT Securities Litigation*, Case 1:07-cv-00862/1:07-cv-02660 (U.S.D.C. N.D. GA)(a $7 million cash settlement fund for the Wells REIT investors).

Notably, Kimberly was an integral member of the trial team that successfully litigated *the In re Real Estate Associates Limited Partnership Litigation*, No. CV 98-7035 DDP (CD. Cal.) through a six-week jury trial that resulted in a landmark $184 million plaintiffs' verdict, which is one of the largest jury verdicts since the passage of the Private Securities Litigation Reform Act of 1995. The Real Estate Associates judgment was settled for $83 million, which represented full recovery for the Class (and an amount in excess of the damages calculated by Plaintiffs' expert).

Kimberly's pro bono activities include serving as a volunteer attorney with the Support Center for Child Advocates, a Philadelphia-based, nonprofit organization that provides legal and social services to abused and neglected children. Since 2006, Kimberly has been recognized by

Law & Politics and the publishers of Philadelphia Magazine as a Pennsylvania Super Lawyer or Rising Star, as listed in the Super Lawyers' publications.

Timothy N. Mathews

Tim Mathews is a partner in the firm's Haverford office. He has been described as "among the most capable and experienced lawyers in the country" in consumer class action litigation. *Chambers v. Whirlpool*, 214 F. Supp 3d 877 (C.D.Cal. 2016). He is also an experienced appellate attorney in the United States Courts of Appeals for the Third, Fourth, Ninth, and Eleventh Circuits, as well as the Supreme Court of California. Representative cases in which Mr. Mathews has held a lead role include:

- *Rodman v. Safeway, Inc.* (N.D.Cal.) – $42 million judgment against Safeway, Inc., representing 100% of damages plus interest for grocery delivery overcharges;
- *Ardon v. City of Los Angeles* (Superior Court, County of Los Angeles) – $92.5 million tax refund settlement with the City of Los Angeles after winning landmark decision in the Supreme Court of California securing the rights of taxpayers to file class-wide tax refund claims under the CA Government Code;
- *McWilliams v. City of Long Beach* (Superior Court, County of Los Angeles) - $16.6 million telephone tax refund settlement;
- *Granados v. County of Los Angeles* - $16.9 million telephone tax refund settlement;
- *In re 24 Hour Fitness Prepaid Memberships. Litig.* (N.D.Cal.) - Full-relief settlement providing over $8 million in refunds and an estimated minimum of $16 million in future rate reductions, for class of consumers who purchased prepaid gym memberships;
- *Chambers v. Whirlpool Corp.* (C.D.Cal.) – Settlement providing 100% of repair costs and other benefits for up to 24 million dishwashers that have an alleged propensity to catch fire due to a control board defect;
- *Livingston v. Trane U.S. Inc.* (D.N.J.) – multimillion-dollar settlement providing repair reimbursements, extended warranty coverage, and free service for owners of defective air conditioners;
- *In re Apple iPhone Warranty Litig.* (N.D.Cal.) – $53 million settlement in case alleging improper iPhone warranty denials; class members received on average 118% of their damages;
- *In re Colonial Bancgroup, Inc.*– Settlements totaling $18.4 million for shareholders in securities lawsuit involving one of the largest U.S. bank failures of all time;
- *International Fibercom* (D.Ariz.) – Represented plaintiff in insurance coverage actions against D&O carriers arising out of securities fraud

Practice Areas:

- Antitrust
- Corporate Mismanagement
- Consumer Fraud & Deceptive Products
- Securities Fraud Litigation

Education:

- Rutgers School of Law-Camden, J.D., 2003 - *with High Honors*
- Rutgers University-Camden, B.A., 2000 - *with Highest Honors*

Memberships & Associations:

- National Association of Shareholder and Consumer Attorneys (NASCAT) Amicus Committee Member
- Rutgers Journal of Law & Religion – Lead Marketing Editor (2002-2003)

Admissions:

- Pennsylvania
- New Jersey
- Eastern District of Pennsylvania
- District of New Jersey
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Eleventh Circuit

Honors:

- 2019-2021 Lawdragon 500 Leading Plaintiff Lawyer
- Super Lawyers 2019-2021
- Pennsylvania Super Lawyers Rising Star 2008, 2010, 2013-2014
- Rutgers Law Legal Writing Award 2003

claims; achieved a near-full recovery for the plaintiff; and

- *In re Mutual Funds Investment Litigation*, MDL 1586 (D.Md.) – Lead Fund Derivative Counsel in the multidistrict litigation arising out of the market timing and late trading scandal of 2003, which involved seventeen mutual fund families and hundreds of parties, and resulted in over $250 million in settlements.

Mr. Mathews graduated from Rutgers School of Law-Camden with high honors, where he served as Lead Marketing Editor for the Rutgers Journal of Law & Religion, served as a teaching assistant for the Legal Research and Writing Program, received the 1L legal Writing Award, and received a Dean's Merit Scholarship and the Hamerling Merit Scholarship. He received his B.A. from Rutgers University-Camden in 2000 with highest honors, where he was inducted into the Athenaeum honor society.

Mr. Mathews also serves as Co-Chair of the Planning Commission for the township of Lower Merion. His pro bono work has included representation of the Holmesburg Fish and Game Protective Association in Philadelphia. He also served on the Amicus Committee for the National Association of Shareholder and Consumer Attorneys (NASCAT) for over ten years.

Benjamin F. Johns

Benjamin F. Johns first began working at the firm as a Summer Associate while pursuing a J.D./M.B.A. joint degree program in business school and law school. He became a full-time Associate upon graduation, and is now a Partner. Over the course of his legal career, Ben has argued in state and federal courts, at both the appellate and trial level. Among other witnesses, he has also deposed prison guards, lawyers, bankers, experts, engineers, I.R.S. officials, and information technology personnel. Ben is currently serving as Court appointed interim co-lead counsel in several consumer data breach class actions, including *Perdue et al. v. Hy-Vee, Inc.*, No. 1:19-cv-01330-MMM-JEH (C.D. Ill.); *In re Wawa, Inc. Data Security Litig.*, Lead Case No. 2:19-cv-06019-GEKP (E.D. Pa); and *In re Rutter's Inc. Data Security Breach Litig.*, No. 1:20-cv-382 (M.D. Pa.). He has also been appointed Chair of the Executive Committee in *In re Subaru Battery Drain Prods. Liab. Litig.,* Civil Action No. 1:20-cv-03095-JHR-JS (D.N.J.), a consumer automobile case that largely withstood a motion to dismiss, and is among the lead lawyers prosecuting a case against Apple related to allegedly defective MacBook keyboards. *In re Macbook Keyboard Litig*., No. 5:18-cv-02813-EJD (N.D. Cal.). Along with his co-counsel, Ben successfully argued against two motions to dismiss and for class certification in that case.

Over the course of his career, Ben has provided substantial assistance in the prosecution of the following cases:

- *Udeen v. Subaru of Am., Inc.,* 18-17334 (RBK/JS) (D.N.J.) (Mr. Johns was co-lead counsel in this consumer class action involving allegedly defective infotainment systems in certain Subaru automobiles, which resulted a settlement valued at $6.25 million. At the hearing granting final approval of the settlement, the district court commented that the plaintiffs' team "are very skilled and very efficient lawyers…They've done a nice job.")
- *In re Nexus 6P Product Liability Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (Mr. Johns served as co-lead counsel – and argued two of the motions to dismiss – in this defective smartphone class action. The case resulted in a settlement valued at $9.75 million, which Judge Beth Labson Freeman described as "substantial" and an "excellent resolution of the case.")
- *In re MyFord Touch Consumer Litig*., No. 13-cv-03072-EMC (N.D. Cal.) (Mr. Johns served as court-appointed co-lead counsel in this consumer class action concerning allegedly defective MyFord Touch infotainment systems, which settled for $17 million shortly before trial)
- *Weeks v. Google LLC,* No. 5:18-cv-00801-NC, 2019 U.S. Dist. LEXIS 215943, at *8-9 (N.D. Cal. Dec. 13, 2019) (Mr. Johns was co-lead counsel – and successfully argued against a motion to dismiss – in this defective smartphone class action. A $7.25 million settlement was reached, which Magistrate Judge Nathanael M. Cousins described as being an "excellent result.")
- *Gordon v. Chipotle Mexican Grill, Inc*., No. 17-cv-01415-CMA-SKC (D. Colo.) (Mr. Johns served as co-lead counsel of behalf of a class of millions of cardholders who were impacted by a data breach at

Practice Areas:

- Antitrust
- Automobile Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud
- Data Breach

Education:

- Penn State Dickinson School of Law, J.D., 2005 - Woolsack Honor Society
- Penn State Harrisburg, M.B.A., 2004 - Beta Gamma Sigma Honor Society
- Washington and Lee University, B.S., 2002 - *cum laude*

Memberships & Associations:

- Executive Committee, Young Lawyers Division of the Philadelphia Bar Association (2011-2014)
- Board Member, The Dickinson School of Law Alumni Society
- Editorial Board, Philadelphia Bar Reporter (2013-2016)
- The Federalist Society

Admissions:

- Third Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- D.C. Circuit Court of Appeals
- Eastern District of Pennsylvania
- Middle District of Pennsylvania
- District of New Jersey
- District of Colorado
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- U.S. Court of Federal Claims

Honors:

- Named a "Lawyer on the Fast Track" by *The Legal Intelligencer*
- Named a Pennsylvania "Rising Star" 2010-2018

Chipotle restaurants. After largely defeating a motion to dismiss filed by Chipotle, the case resulted in a favorable settlement for affected consumers. At the final approval of the settlement, the district court noted that class counsel has "extensive experience in class action litigation, and are very familiar with claims, remedies, and defenses at issue in this case.")

- *Bray et al. v. GameStop Corp.,* No. 1:17-cv-01365-JEJ (D. Del.) (Mr. Johns served as co-lead counsel for consumers affected by a data breach at GameStop. After largely defeating a motion to dismiss, the case was resolved on favorable terms that provided significant relief to GameStop customers. At the final approval hearing, the District Judge found the settlement to be "so comprehensive that really there's nothing else that I need developed further," that "the settlement is fair," "reasonable," and "that under the circumstances it is good for the members of the class under the circumstances of the claim.")
- *In re: Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litig.*, No. 15-cv-18-JLL-JAD (D.N.J.) (Mr. Johns served on the Plaintiffs' Steering Committee in this MDL proceeding, which involved allegedly defective wood-composite decking, and which ultimately resulted in a $20 million settlement)
- *In re Checking Account Overdraft Litig.,* No. 1:09-MD-02036-JLK (S.D. Fla.). (Ben was actively involved in these Multidistrict Litigation proceedings, which involve allegations that dozens of banks reorder and manipulate the posting order of debit transactions. Settlements collectively in excess of $1 billion were reached with several banks. Ben was actively involved in prosecuting the actions against U.S. Bank ($55 million settlement) and Comerica Bank ($14.5 million settlement)
- *In re Flonase Antitrust Litig.,* 2:08-cv-03301-AB (E.D. Pa.). (indirect purchaser plaintiffs alleged that the manufacturer of Flonase (a nasal allergy spray) filed "sham" citizen petitions with the FDA in order to delay the approval of less expensive generic versions of the drug. A $46 million settlement was reached on behalf of all indirect purchasers. Ben argued a motion before the District Court.)
- *In re TriCor Indirect Purchasers Antitrust Litig.,* No. 05-360-SLR (D. Del.). ($65.7 million settlement on behalf of indirect purchasers who claimed that the manufacturers of a cholesterol drug engaged in anticompetitive conduct designed to keep generic versions off of the market.)
- *Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation,* No. 1:10-cv-00264-CAB (N.D. Ohio). ($20 million settlement on behalf of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA.)
- *West v. ExamSoft Worldwide, Inc*., No. 14-cv-22950-UU (S.D. Fla.) ($2.1 million settlement on behalf of July 2014 bar exam applicants in several states who paid to use software for the written portion of the exam which allegedly failed to function properly)
- *Henderson v. Volvo Cars of North America, LLC,* No. 2:09-cv-04146-CCC-JAD (D. N.J.). (provided substantial assistance in this consumer automobile case that settled after the plaintiffs prevailed, in large part, on a motion to dismiss)
- *In re Marine Hose Antitrust Litig.,* No. 08-MDL-1888 (S.D. Fla.) (Settlements totaling nearly $32 million on behalf of purchasers of

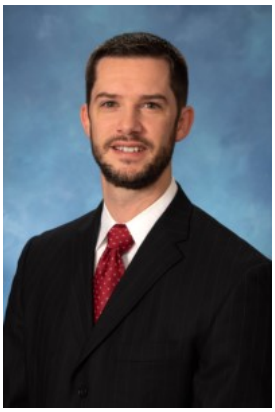
marine hose)

- *In re Philips/Magnavox Television Litig.,* No. 2:09-cv-03072-CCC-JAD (D. N.J.). (Settlement in excess of $4 million on behalf of consumers whose flat screen televisions failed due to an alleged design defect. Ben argued against one of the motions to dismiss.)
- *Allison, et al. v. The GEO Group*, No. 2:08-cv-467-JD (E.D. Pa.), and *Kurian v. County of Lancaster*, No. 2:07-cv-03482-PD (E.D. Pa.). (Settlements totaling $5.4 million in two civil rights class action lawsuits involving allegedly unconstitutional strip searches at prisons)
- *In re Canon Inkjet Printer Litig*., No. 2-14-cv-03235-LDW-SIL (E.D.N.Y.) (Ben was co-lead counsel in this consumer class action involving allegedly defective printers that resulted in a $930,000 settlement.)
- *In re Recoton Sec. Litig.*, 6:03-cv-00734-JA-KRS (M.D.Fla.). ($3 million settlement for alleged violations of the Securities Exchange Act of 1934)
- *Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB (D. Colo.). (Obtained a settlement in this consumer fraud case that provided full recovery to approximately 930,000 class members)

Ben has also had success at the appellate level in cases to which he substantially contributed. *See Cohen v. United States*, 578 F.3d 1 (D.C. Cir. 2009), *reh'g granted per curiam*, 599 F.3d 652 (D.C. Cir. 2010), *remanded by*, 650 F.3d 717 (D.C. Cir. 2011) (en banc) (reversing district court's decision to the extent that it dismissed taxpayers' claims under the Administrative Procedure Act); *Lone Star Nat'l Bank, N.A. v. Heartland Payment Sys.*, No. 12-20648, 2013 U.S. App. LEXIS 18283 (5th Cir. Sept. 3, 2013) (reversing district court's decision dismissing financial institutions' common law tort claims against a credit card processor).

Ben was elected by fellow members of the Philadelphia Bar Association to serve a three year term on the Executive Committee of the organization's Young Lawyers Division. He also served on the Editorial Board of the Philadelphia Bar Reporter, and the Board of Directors for the Dickinson School of Law Alumni Society. Ben was also a head coach in the Narberth basketball summer league for several years. He has been published in the Philadelphia Lawyer magazine and the Philadelphia Bar Reporter, presented a Continuing Legal Education course , and spoken to a class of law school students about the practice. While in college, Ben was on the varsity basketball team and spent a semester studying abroad in Osaka, Japan. Ben has been named a "Lawyer on the Fast Track" by The Legal Intelligencer, a "Top 40 Under 40" attorney by The National Trial Lawyers, and a Pennsylvania "Rising Star" for the past nine years.

Scott M. Tucker



Scott M. Tucker is a Partner in the Firm's Wilmington Office. Mr. Tucker is a member of the Firm's Mergers & Acquisitions and Corporate Mismanagement and Shareholder Derivative Action practice areas. Together with the Firm's Partners, Mr. Tucker assisted in the prosecution of the following actions:

- *In re Kinder Morgan, Inc. Shareholders Litigation*, Consol. C.A. No. 06-C-801 (Kan.) (action challenging the management led buyout of Kinder Morgan Inc., which settled for $200 million).
- *In re J.Crew Group, Inc., Shareholders Litigation.* C.A. No. 6043-CS (Del. Ch.) (action that challenged the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management which resulted in a settlement fund of $16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction be approved by a majority of the unaffiliated shareholders).
- *In re Genentech, Inc. Shareholder Litigation*, C.A. No. 3911-VCS (Del. Ch.) (action challenging the attempt by Genentech's controlling stockholder to take Genentech private which resulted in a $4 billion increase in the offer).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.*, C.A. No. 6900-VCP (Del. Ch.) (action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and controlling shareholder of Oracle, which led to a settlement valued at $440 million, one of the larger derivative settlements in the history of the Court of Chancery.
- *In re Sanchez Derivative Litigation*, C.A. No. 9132-VCG (Del. Ch.) (action challenging a related party transaction between Sanchez Energy Inc. and Sanchez Resources, LLC a privately held company, which settled for roughly $30 million in cash and assets)

Mr. Tucker is a Member of the Richard S. Rodney Inn of Court. While attending law school, Mr. Tucker was a member of the Securities Arbitration Clinic and received a Corporate Counsel Certificate from the Center for Law and Business Enterprise.

Practice areas:

- Corporate Mismanagement and Shareholder Derivative Actions
- Mergers and Acquisitions

Education:

- SUNY Cortland, B.S., 2002, *cum laude*
- Syracuse University College of Law, 2006, J.D., *cum laude*
- Whitman School of Management at Syracuse University, 2006, M.B.A

Admissions:

- Supreme Court of Delaware
- Supreme Court of Connecticut
- District of Colorado
- District of Delaware
- Third Circuit Court of Appeals

Honors:

- Named a 2016, 2017, 2018, and 2019 Delaware "Rising Star"
- Martindale Hubbell-Distinguished rated
- 2015–2017 Secretary of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- 2013 – 2015 Assistant Secretary of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- 2010 – 2013 Associate Member of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- Member, Richard S. Rodney Inn of Court

Practice Areas:

- Antitrust
- Automotive Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation

Education:

- Villanova Law School, J.D. - *cum laude*
  - ◊ *Villanova Law Review*, Associate Editor
  - ◊ *Villanova Moot Court Board*
  - ◊ Obert Corporation Law Prize
- University of Virginia, B.A., English literature

Memberships & Associations:

- Pennsylvania Bar Association
- Passe´ International

Admissions:

- Pennsylvania
- Eastern District of Pennsylvania
- Federal Circuit

Anthony Allen Geyelin

Tony is of Counsel to the firm at the Haverford office, where for the last decade he has used his extensive private and public sector corporate and regulatory experience to assist the firm in the effective representation of its many clients. Tony has previously worked as an associate in the business department of a major Philadelphia law firm; served as Chief Counsel and then Acting Insurance Commissioner with the Pennsylvania Insurance Department in Harrisburg; and represented publicly traded insurance companies based in Pennsylvania and Georgia as their senior vice president, general counsel and corporate secretary.

Tony has represented the firm's clients in a number of significant litigations, including the AHERF, Air Cargo, Certainteed, Cipro, Clear Channel, Del Monte, Honda Hybrid Vehicles, Insurance Brokers, iPhone LDI, Intel, Marine Hoses, Phoenix Leasing, and Reliance Insolvency matters.

Outside of the office Tony's pro bono, professional and charitable activities have included volunteering as a Federal Public Defender; service as a member and officer of White-Williams Scholars, the Schuylkill Canal Association, and the First Monday Business Club of Philadelphia; and serving as a member of the National Association of Insurance Commissioners and the Radnor Township (PA) Planning Commission.

Tiffany J. Cramer

Tiffany J. Cramer is Senior Counsel in the Wilmington office. Her entire practice is devoted to litigation, with an emphasis on corporate mismanagement & derivative stockholder actions and mergers & acquisitions.

Together with the Firm's Partners, Ms. Cramer has assisted in the prosecution of numerous shareholder and unitholder class and derivative actions arising pursuant to Delaware law, including:

- *In re Starz Stockholder Litigation,* C.A. No. 12584-VCG (Del. Ch.) (Co-Lead Counsel in Court of Chancery class action challenging the acquisition of Starz by Lions Gate Entertainment Corporation, which led to a settlement of $92.5 million).
- *In re Freeport McMoRan Copper & Gold, Inc. Deriv. Litig.,* C.A. No. 815-VCN (Del. Ch.) (Co-Lead Counsel in Court of Chancery derivative litigation arising from Freeport McMoRan Copper & Gold, Inc.'s acquisition of Plains Exploration Production Co. and McMoran Exploration Production Co, which led to a settlement valued at nearly $154 million, including an unprecedented $147.5 million dividend paid to Freeport's stockholders).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.*, C.A. No. 6900-VCP (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and largest shareholder of Oracle, which led to a settlement valued at $440 million, one of the larger derivative settlements in the history of the Court of Chancery).
- *In Re Genentech, Inc. Shareholders Litigation*, Consol. C.A. No. 3911-VCS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery class action litigation challenging Roche Holding's buyout of Genentech, Inc., which resulted in a settlement providing for, among other things, an additional $4 billion in consideration paid to the minority shareholders of Genentech, Inc.).
- *In re Atlas Energy Resources, LLC Unitholder Litigation*, Consol. C.A. No. 4589-VCN (Co-Lead Counsel in the Court of Chancery class action litigation challenging Atlas America, Inc.'s acquisition of Atlas Energy Resources, LLC, which resulted in a settlement providing for an additional $20 million fund for former Atlas Energy Unitholders).
- *In re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813-CS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative litigation arising from Barnes & Noble, Inc.'s acquisition of Barnes & Noble College Booksellers, Inc., which resulted in a settlement of nearly $30 million).

Ms. Cramer is a Member of the Richard S. Rodney American Inn of Court. Ms. Cramer has also been selected to the Delaware "Rising Stars" list from Super Lawyers: 2016 and 2017. While in law school, she served as law clerk to the Honorable Jane R. Roth of the United States Court of Appeals for the

Practice Areas:

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

Education:

- Villanova University School of Law, J.D., 2007
  - ◊ Co-President of Asian-Pacific American Law Students Association
- Tufts University, B.A., 2002 – *cum laude* in Political Science

Memberships & Associations:

- Delaware State Bar Association
- The Richard S. Rodney American Inn of Court

Admissions:

- Delaware, 2007
- U.S. District Court for the District of Delaware, 2008

Third Circuit. While in college, she played the bassoon as a member of the Tufts Symphony Orchestra.

Beena M. McDonald

Beena Mallya McDonald is Senior Counsel in the Firm's Haverford office. She focuses her practice on complex litigation including securities fraud and consumer protection cases. She also serves as a part of the firm's Client Business Development group, responsible for overseeing client portfolio monitoring and evaluation services, and establishing and maintaining client relationships.

Beena is very active in investigating and initiating securities and shareholder class actions, and has assisted in the representation of sophisticated institutional and individual investors in complex class actions against corporate defendants and their executives for violations of federal securities laws, as well as consumers in nationwide consumer protection class actions, including:

- *In re: MacBook Keyboard Litig.*, No: 5:18-cv-02813-EJD (N.D. Cal.) (class action lawsuit alleging that Apple sold MacBook, MacBook Pro, and MacBook Air butterfly keyboard laptops from 2015 – 2020 with a known defect of allowing dust and debris to disrupt the keyboard use; CSK&D is class counsel);
- *In re Nexus 6P Prods. Liab. Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (class action lawsuit alleging that smartphones manufactured by Google and Huawei contain defects that cause the phones to "bootloop" and experience sudden battery drain; after overcoming a motion to dismiss, a $9.75 million settlement was reached, which Judge Beth Labson Freeman described as "substantial" and an "excellent resolution of the case.");
- *Weeks, et al. v. Google LLC*, No. 5:18-cv-00801-NC (N.D. Cal.) (consumer class action against Google relating to Pixel smartphones, alleging that Google sold these phones with a known microphone defect; after defeating a motion to dismiss, a $7.25 million settlement was reached, which Magistrate Judge Nathanael M. Cousins described as being an "excellent result.");
- Gordon v. Chipotle Mexican Grill, Inc., No. 1:17-cv-01415- CMA (D. Colo.) (class action relating to a data breach suffered by Chipotle that allegedly exposed consumers' payment card data to hackers, in which case CSK&D has been appointed interim co-lead counsel);
- Christofferson v. Creation Entertainment, Inc., No. 19STCV11000 (Sup. Ct. CA). (class action relating to a data breach suffered by Creation Entertainment that allegedly exposed consumers' payment card data to hackers, in which case CSK&D is interim co-lead counsel).
- *Westmoreland County v. Inventure Foods*, No. CV2016-002718 (Super Ct. Ariz.) (state securities shareholder class action filed against Inventure Foods., Inc., after identifying that the company's stock price had suffered a precipitous decline due to troubles at a manufacturing facility, including a major food recall. After

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation
- Client Business Development

Education:

- Widener University Delaware Law School, J.D., 1998
- Pennsylvania State University, B.A., 1995

Memberships and Associations:

- Member, American Association of Justice (AAJ)
- Member, Philadelphia Bar Association
- Member, South Asian Bar Association, Philadelphia Chapter

Admissions:

- Pennsylvania
- District of Columbia
- Eastern District of Michigan

mediation, a preliminary settlement was reached that recovers over 35% of damages for investors.)

- *Orrstown Financial Services, Inc., et al., Securities Litig.*, No. 12-cv-00793 (USDC M.D. Pa.) (federal securities class action lawsuit by large transportation authority institutional investor client, named sole lead plaintiff, challenging false and misleading statements made by Orrstown to investors about its internal controls and financial condition);

Beena most recently served as a Special Assistant U.S. Attorney in the Southern District of California where she prosecuted major corruption, drug importation and illegal immigration cases. Upon initially receiving her law degree, she successfully tried hundreds of criminal cases as an Assistant Defender with Defender Association of Philadelphia. She has also served as lead counsel in civil jury and bench trials and arbitrations throughout the Philadelphia area while in-house at Allstate Insurance Company.

Beena's extensive trial experience is also bolstered by her business management experience working for a Fortune 200 company, allowing her to bring this business acumen to her current practice on behalf of defrauded investors and consumers.

Practice Areas:

- Automobile Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud

Education:

- Villanova University School of Law, J.D., 2006
  - ◊ Villanova Environmental Law Journal – managing editor of student works (2006), staff writer (2005)
- University of California, Los Angeles, B.A., 2003 – *cum laude*

Membership & Associations:

- Member, Philadelphia Bar Association

Admissions:

- Pennsylvania
- New Jersey
- Eastern District of Pennsylvania
- District of New Jersey
- District of Colorado

Honors:

- Pennsylvania Super Lawyers 2019-present
- Pennsylvania Super Lawyers Rising Star 2013-2016

Alison Gabe Gushue

Alison G. Gushue is Of-Counsel at the Firm's Haverford Office. Her practice is devoted to litigation, with an emphasis on consumer fraud, securities, and derivative cases. Ms. Gushue also provides assistance to the Firm's Institutional Client Services Group.

Prior to joining the firm, Ms. Gushue was counsel to the Pennsylvania Securities Commission in the Division of Corporation Finance. In this capacity, she was responsible for reviewing securities registration filings for compliance with state securities laws and for working with issuers and issuers' counsel to bring noncompliant filings into compliance.

Together with the Partners, Ms. Gushue has provided substantial assistance in the prosecution of the following cases:

- *Lockabey et al. v. American Honda Motor Co., Inc.*, Case No. 37-2010 -00087755-CU-BT (San Diego Super. Ct.) (settlement valued by court at $170 million for a class of 460,000 purchasers and lessees of Honda Civic Hybrids to resolve claims that the vehicle was advertised with fuel economy representations it could not achieve under real-world driving conditions, and that a software update to the IMA system further decreased fuel economy and performance)
- *In re DVI Inc. Securities Litigation*, Case No. 2:03-cv-05336-LDD (over $17m in settlements recovered for the shareholder class in lawsuit alleging that the company's officers and directors, in conjunction with its external auditors and outside counsel, violated the federal securities laws)
- *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.,* No. 06-cv-7023 (N.D. Ill.) & Case No. 09-wp-65003-CAB (N.D. Ohio) (MDL No. 2001)(settlement providing a "full-value, dollar-for-dollar recovery" that was "as good, if not a better, recovery for Class Members than could have been achieved at trial" in a lawsuit relating to defective central control units in front-load washers manufactured by Whirlpool and sold by Sears.) 2016 U.S. Dist. LEXIS 20290 at *35 (N.D. Ill. Feb. 29, 2016)
- *Orrstown Financial Services, Inc., et al., Securities Litig.,* No. 12-cv-00793 (M. D. Pa.) (pending federal securities lawsuit challenging false and misleading statements made by Orrstown Bank to investors about its internal controls and financial condition);

Ms. Gushue has also provided pro bono legal services to nonprofit organizations in Philadelphia such as the Philadelphia Bankruptcy Assistance Project, the Public Interest Law Center of Philadelphia, and the Community Legal Services of Philadelphia..

Practice Areas:

- Securities Fraud Class Actions & Complex Litigation
- Consumer Protection and Multi-District Litigation
- Other Complex Litigation/ Mass Actions

Education:

- University of Miami School of Law, J.D. 2013 – *cum laude*
  - ◊ University of Miami NSAC Law Review
  - ◊ Dean's List-Spring 2013 (4.0 GPA); Spring 2012; Fall 2012
  - ◊ Advanced Business Litigation Skills-honors recognition
- University of Miami, B.B.A.,2009 – Finance

Admissions:

- Member, Florida Bar
- Member, Pennsylvania Bar
- Member, New Jersey Bar
- Admitted, United States District Court for the Eastern District of Pennsylvania
- Admitted, United States District Court for the Southern District of Florida
- Admitted, United States District Court for the District of New Jersey
- Admitted, United States District Court for the District of Colorado

Publications:

- Practicing Law Institute's 23rd Annual Consumer Financial Services Institute - Chapter 57: The Impact of *Payment Card II* on Class Action Litigation & Settlements

Honors:

- Pennsylvania Super Lawyers Rising Star 2018
- Pennsylvania Super Lawyers Rising Star 2019
- Pennsylvania Super Lawyers Rising Star 2020

Mark B. DeSanto

Mark B. DeSanto is an Associate Attorney in the Firm's Haverford office. He has extensive experience in ERISA, securities, data breach, TCPA, all types of consumer protection, and other forms of class actions. Prior to joining the Firm, he was an attorney in the Radnor office of a national class action law firm where he represented sophisticated institutional and individual investors in complex class actions against corporate defendants and their executives for violations of federal securities laws, as well as consumers in nationwide consumer protection class actions. To date, Mr. DeSanto has been involved in the prosecution of the following federal court class actions:

- *Snitzer et al v. The Board of Trustees of the American Federation of Musicians and Employers' Pension Fund et al*, No. 1:17-cv-5361 (S.D.N.Y) (settled – $26.85 Million) (represented a class of pension participants of the American Federation of Musicians and Employers' Pension Plan, alleging that the Board of Trustees breached their fiduciary duties of prudence and loyalty under ERISA by, inter alia, over-allocating plan assets to high-risk asset classes);
- *Lacher et al v. Aramark Corp*., 2:19-cv-00687 (E.D. Pa. 2019) (represented a class of Aramark's current and former managers alleging that Aramark breached its employment contracts by failing to pay bonuses and restricted stock unit compensation to managers nationwide);
- *High St. Rehab., LLC v. Am. Specialty Health Inc.,* No. 2:12-cv-07243-NIQA, 2019 U.S. Dist. LEXIS 147847 (E.D. Pa. Aug. 29, 2019) (settled – $11.75 million) (represented a class of chiropractors and other similar healthcare practitioners alleging, inter alia, that Cigna and its third-party claims management provider's use of utilization management review ("UMR") when evaluating out-of-network claims for chiropractic services performed on individuals who participated in employer-sponsored health benefits Plans that Cigna insured and/or for which Cigna administered benefits claims violated ERISA);
- *Lietz v. Cigna Corp. (In re Cigna-American Specialty Health Admin. Fee Litig.),* No. 2:16-cv-03967-NIQA, 2019 U.S. Dist. LEXIS 146899 (E.D. Pa. Aug. 29, 2019) (settled – $8.25 million) (represented insureds alleging that Cigna violated ERISA by charging an elevated amount for services that included an administrative fee charged by Cigna's third-party claims management provider, and only passing on a small portion of the elevated amount charged to the doctor, while knowingly hiding this fee from insureds);

- *Louisiana Municipal Police Employees' Retirement System v. Green Mountain Coffee Roasters, Inc. et al.*, Civ. No. 2:11-cv-00289 (D. Vt.) (settled – $36.5 million) (represented financial institutions in class action lawsuit brought on behalf of all Keurig Green Mountain shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934);

- *In re St. Jude Medical, Inc. Securities Litigation*, Civ. No. 10-0851 (D. Minn.) (settled – $39.25 million) (represented financial institutions in class action lawsuit brought on behalf of all St. Jude Medical Inc. shareholders, alleging that the company and its executives violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934);

- *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 14–2522 (D. Minn.) (settled – $39 million) (represented a class of payment card issuing financial institutions in nationwide class action against Target for its highly-publicized 2013 data breach in which roughly 110 million Target customers' personal and financial information was compromised by hackers);

- *Smith v. ComplyRight, Inc*., No. 1:18-cv-4990, 2019 U.S. Dist. LEXIS 174217 (N.D. Ill. Oct. 7, 2019) (settled – $3 million) (represented a class of consumers whose personal information was maintained on ComplyRight's website during a data breach that occurred from at least April 20, 2018 through May 22, 2018);

- *In re Wawa, Inc. Data Security Litig.*, Lead Case No. 2:19-cv-06019-GEKP (E.D. Pa) (representing a class of consumers whose personal information was compromised in the highly-publicized Wawa data breach);

- *Kyles et al v. Stein Mart, Inc.* et al, No. 1:19-cv-00483-CFC (D. Del. 2018) (represented a class of consumers whose personal information was compromised in a data breach involving Stein Mart and Annex Cloud at various times between December 28, 2017 and July 9, 2018);

Mr. DeSanto is admitted to practice law in Pennsylvania, New Jersey, and Florida. He earned his Juris Doctor, cum laude, from the University of Miami School of Law in 2013, where he was also a member of the NSAC Law Review. During his second and third years of law school, Mr. DeSanto worked at a boutique securities litigation firm on Brickell Avenue in Downtown Miami. Mr. DeSanto earned his Bachelor of Business Administration, with a major in Finance, from the University of Miami in 2009.

Stephanie E. Saunders

Stephanie E. Saunders is an associate in the Firm's Haverford office. She focuses her practice on complex litigation including securities fraud, shareholder derivative, and consumer protection cases. She also provides assistance to the Firm's Client Development Group which is responsible for establishing and maintaining strong client relations.

Stephanie received her law degree from the Drexel University Thomas R. Kline School of Law in 2015. Her law school career was marked by several academic honors which included being named the CALI Excellence for the Future Award® recipient in Legal Methods & Legal Writing for earning the highest grade in the class. While in law school, she clerked for the Firm and conducted her practice-intensive semester long co-op with the Firm during her second year of law school.

Upon graduating from Drexel University's LeBow College of Business in 2005, Stephanie began her professional career in marketing. She was an integrated marketing and promotions manager with Condé Nast Publications in Manhattan where she managed and executed print and digital advertising campaigns. Upon returning to the Philadelphia region, she joined PNC Wealth Management where she was the marketing segment manager of Hawthorn, an ultra-high net worth multi-family office, where she was responsible for the development of integrated marketing plans, advertising, and client events.

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation

Education:

- Drexel University Thomas R. Kline School of Law, J.D., 2015
- Drexel University, B.S. in Business Administration, 2005

Memberships and Associations:

- Member, Philadelphia Bar Association
- Member, Pennsylvania Bar Association

Admissions:

- Pennsylvania, 2015

Practice Areas:

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation

Education:

- Michigan State University College of Law, J.D. *summa cum laude*, 2017
- Michigan State Law Review – managing editor (2016-2017), staff editor (2015-2016)
- York College of Pennsylvania, B.A. *magna cum laude*, 2013

Admissions:

- Pennsylvania
- Eastern District of Pennsylvania

Honors:

- 2019 and 2020 Rising Star, Pennsylvania Super Lawyers

Zachary P. Beatty

Zachary P. Beatty is an associate in the Firm's Haverford office. He focuses his practice on complex litigation including securities fraud, shareholder derivative suits, and consumer protection class actions.

Zachary received his law degree from Michigan State University College of Law in 2017. While in law school, Zachary served as a managing editor for the Michigan State Law Review. His law school career was marked by several academic honors including earning Jurisprudence Awards for receiving the highest grades in his Corporate Finance, Business Enterprises, Constitutional Law II, and Advocacy classes. Zachary clerked for a small central Pennsylvania law firm and clerked for the Honorable Carol K. McGinley in the Lehigh County Court of Common Pleas. He also clerked for the Firm's Haverford office. Zachary graduated from York College of Pennsylvania where he majored in history.

Zach has assisted in prosecuting the following matters, among others:

- *Oddo v. Arcoaire Air Conditioning & Heating*, No. 8:15-cv-01985-CAS -E (C.D. Cal.) (consumer class action against Carrier Corporation arising out of the sale of air conditioners that contained an unapproved rust inhibitor in the compressor, which causes widespread failures of thermostatic expansion valves. The plaintiffs allege that the unapproved rust inhibitor was present in virtually all Carrier-manufactured air conditioners from December 2013 through August 2014);
- *Livingston v. Trane U.S. Inc.*, No. 2:17-cv-06480-ES-MAH (D.N.J.) (consumer class action against Trane U.S. Inc. arising out of the sale of air conditioners that contained an unapproved rust inhibitor in the compressor, which causes widespread failures of thermostatic expansion valves);
- *In re MyFord Touch Consumer Litig.*, No. C-13-3072 EMC (N.D. Cal.) (consumer class action against Ford alleging flaws, bugs, and failures in certain Ford automobile infotainment systems. CSK&D is co-lead counsel in this certified class action);
- *Weeks v. Google LLC*, No. 5:18-cv-00801-NC (N.D. Cal.) (consumer class action against Google relating to Pixel smartphones alleging that Google sold these phones with a known defect);
- *In re Nexus 6P Prods. Liab. Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (class action lawsuit alleging that smartphones manufactured by Google and Huawei contain defects that cause the phones to "bootloop" and experience sudden battery drain; CSK&D has been

appointed interim co-lead class counsel;

- *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415- CMA (D. Colo.) (class action relating to a data breach suffered by Chipotle that allegedly exposed consumers' payment card data to hackers, in which case CSK&D has been appointed interim co-lead counsel); and
- *Chambers v. Whirlpool Corp.*, No. 11-1773-0FMO (C.D. Cal.) (a national class action involving alleged defects resulting in fires in Whirlpool, Kenmore, and KitchenAid dishwashers. The district court approved a settlement which he negotiated that provides wide-ranging relief to owners of approximately 24 million implicated dishwashers, including a full recovery of out-of-pocket damages for costs to repair or replace dishwashers that suffered Overheating Events).

Practice Areas:

- Defective Products and Consumer Protection
- Securities Fraud Class Actions
- Other Complex Litigation

Education:

- University of Michigan Law School, J.D. cum laude, 2014
- The College of William & Mary, B.A. cum laude, 2011

Admissions:

- Pennsylvania
- New Jersey
- Western District of Pennsylvania
- Eastern District of Pennsylvania
- Middle District of Pennsylvania
- District of New Jersey
- Central District of Illinois
- Eastern District of Michigan

Honors:

- 2021 Rising Star, Pennsylvania Super Lawyers

Alex M. Kashurba

Alex M. Kashurba is an associate in the Firm's Haverford office. He focuses his practice on complex litigation including securities, consumer protection, and data privacy class actions.

Alex received his law degree from the University of Michigan Law School. While in law school, he interned for the United States Attorney's Office for the Eastern District of Pennsylvania as well as the Office of General Counsel for the United States House of Representatives. Prior to joining the Firm, Alex served as a law clerk in the United States District Court for the Western District of Pennsylvania, including for the Honorable Kim R. Gibson and the Honorable Nora Barry Fischer. Alex graduated from The College of William & Mary where he majored in Government.

Alex has assisted in prosecuting the following matters, among others:

- *Udeen, et al. v. Subaru of America, Inc.*, No. 1:18-cv-17334-RBK-JS (D.N.J.) (final approval granted of a settlement valued at $6.25 million in this consumer class action involving defective infotainment systems in certain Subaru automobiles);
- *In re: MacBook Keyboard Litig.*, No: 5:18-cv-02813-EJD (N.D. Cal.) (class action lawsuit alleging that Apple sold 2015 and later MacBook and 2016 and later MacBook Pro laptops with a known defect plaguing the butterfly keyboards, and allowing dust and other debris to disrupt keyboard use; CSK&D is appointed interim co-lead counsel);
- *In re Nexus 6P Prods. Liab. Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (final approval of a $9.75 million settlement granted in this class action lawsuit which alleged that Google smartphones contained a defect that caused "bootlooping" and sudden battery drain; CSK&D served as co-lead class counsel);
- *Weeks, et al. v. Google LLC*, 5:18-cv-00801-NC (N.D. Cal.) (final approval of a $7.25 million settlement granted in this consumer class action alleging that Google sold first-generation Pixel smartphones with a known microphone defect; CSK&DS was appointed co-lead class counsel);
- *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA (D. Colo.) (final approval granted in class action relating to a data breach that allegedly exposed consumers' payment card data to hackers; CSK&D served as co-lead class counsel).

Samantha E. Holbrook

Samantha E. Holbrook is an Associate Attorney in the firm's Haverford office. She has extensive experience in consumer protection class action litigation. Prior to joining the firm, Ms. Holbrook was an attorney in the Radnor office of a national class action law firm where she represented consumers and investors in nationwide class actions. Ms. Holbrook has experience handling and litigating all aspects of the prosecution of national class action litigation asserting claims under state and federal law challenging predatory lending practices, product defects, breach of fiduciary duty, antitrust claims, consumer fraud and unfair and deceptive acts and practices in federal courts throughout the country.

Ms. Holbrook has assisted in obtaining substantial recoveries in numerous class actions on behalf of investors and participants in employee stock ownership plans including the following:

Board of Trustees of the AFTRA Retirement Fund, et al. v. JPMorgan Chase Bank, N.A., 09-CV-686 (SAS), 2012 WL 2064907 (S.D.N.Y. June 7, 2012) (approving $150 million settlement)

In re 2008 Fannie Mae ERISA Litigation, Case No. 09-cv-1350 (S.D.N.Y.) ($9 million settlement on behalf of participants in the Federal National Mortgage Association Employee Stock Ownership Plan)

Ms. Holbrook has also obtained favorable recoveries on behalf of multiple nationwide classes of borrowers whose insurance was force-placed by their mortgage services.

Practice Areas:

- Consumer protection
- Consumer fraud and defective products
- Other complex litigation

Education:

- Temple Beasley School of Law, J.D., 2011
- Pennsylvania State University, B.A., Political Science, 2007
- Pennsylvania State University, B.A., Spanish, 2007

Admissions:

- Pennsylvania
- Eastern District of Pennsylvania
- New Jersey

Honors:

- Pennsylvania Rising Stars Super Lawyer, 2020-2021

Emily L. Skaug

Emily L. Skaug is an associate in the Firm's Wilmington office. Together with the Firm's Partners, she focuses her practice on complex litigation, including shareholder derivative and other investor rights cases.

Emily received her Bachelor of Arts in Psychology from University of Delaware. She received her law degree from Widener University Delaware Law School in 2018. While in law school, Emily was a student ambassador and was involved in Wills for Heroes and Delaware Volunteer Legal Services. After graduating law school, Emily interned in the Delaware Superior Court for the Honorable Jan R. Jurden, President Judge and later served as a law clerk for the Honorable John A. Parkins, Jr. and the Honorable Calvin L. Scott, Jr.

Education:

- Widener University Delaware Law School, J.D., 2018
- University of Delaware, B.A., 2015

Admissions:

- Pennsylvania
- New Jersey

Practice Areas

Health & Welfare Fund Assets

CSK&D Protects Clients' Health & Welfare Fund Assets Through Monitoring Services & Vigorously Pursuing Health & Welfare Litigation.

At no cost to the client, CSK&D seeks to protect its clients' health & welfare fund assets against fraud and other wrongdoing by monitoring the health & welfare fund's drug purchases, Pharmacy benefit Managers and other health service providers. In addition, CSK&D investigates potential claims and, on a fully-contingent basis, pursues legal action for the client on meritorious claims involving the clients' heath & welfare funds. These claims could include: the recovery of excessive charges due to misconduct by health service providers; antitrust claims to recover excessive prescription drug charges and other costs due to corporate collusion and misconduct; and, cost-recovery claims where welfare funds have paid for health care treatment resulting from defective or dangerous drugs or medical devices.

Monitoring Financial Investments

CSK&D Protects Clients' Financial Investments Through Securities Fraud Monitoring Services.

Backed by extensive experience, knowledge of the law and successes in this field, CSK&D utilizes various information systems and resources (including forensic accountants, financial analysts, seasoned investigators, as well as technology and data collection specialists, who can cut to the core of complex financial and commercial documents and transactions) to provide our institutional clients with a means to actively protect the assets in their equity portfolios. As part of this no-cost service, for each equity portfolio, CSK&D monitors relevant financial and market data, pricing, trading, news and the portfolio's losses. CSK&D investigates and evaluates potential securities fraud claims and, after full consultation with the client and at the client's direction, CSK&D will, on a fully-contingent basis, pursue legal action for the client on meritorious securities fraud claims.

Corporate Transactional

CSK&D Protects Shareholders' Interest by Holding Directors Accountable for Breaches of Fiduciary Duties

Directors and officers of corporations are obligated by law to exercise good faith, loyalty, due care and complete candor in managing the business of the corporation. Their duty of loyalty to the corporation and its shareholders requires that they act in the best interests of the corporation at all times. Directors who breach any of these "fiduciary" duties are accountable to the stockholders and to the corporation itself for the harm caused by the breach. A substantial part of the practice of Chimicles Schwartz Kriner & Donaldson-Smith LLP involves representing shareholders in bringing suits for breach of fiduciary duty by corporate directors.

Practice Areas

Securities Fraud

CSK&D Protects and Recovers Clients' Assets Through the Vigorous Pursuit of Securities Fraud Litigation.

CSK&D has been responsible for recovering over $1 billion for institutional and individual investors who have been victims of securities fraud. The prosecution of securities fraud often involves allegations that a publicly traded corporation and its affiliates and/or agents disseminated materially false and misleading statements to investors about the company's financial condition, thereby artificially inflating the price of that stock. Often, once the truth is revealed, those who invested at a time when the company's stock was artificially inflated incur a significant drop in the value of their stock. CSK&D's securities practice group comprises seasoned attorneys with extensive trial experience who have successfully litigated cases against some of the nation's largest corporations. This group is strengthened by its use of forensic accountants, financial analysts, and seasoned investigators.

Antitrust and Unfair Competition

CSK&D Enforces Clients' Rights Against Those Who Violated Antitrust Laws.

CSK&D successfully prosecutes an array of anticompetitive conduct, including price fixing, tying agreements, illegal boycotts and monopolization, anticompetitive reverse payment accords, and other conduct that improperly delays the market entry of less expensive generic drugs . As counsel in major litigation over anticompetitive conduct by the makers of brand-name prescription drugs, CSK&D has helped clients recover significant amounts of price overcharges for blockbuster drugs such as BuSpar, Coumadin, Cardizem, Flonase , Relafen, and Paxil, Toprol-XL, and TriCor.

Real Estate Investment Trusts

CSK&D is a Trail Blazer in Protecting Clients' Investments in Non-Listed Equities.

CSK&D represents limited partners and purchaser of stock in limited partnerships and real estate investment trusts (non-listed REITs) which are publicly-registered but not traded on a national stock exchange. These entities operate outside the realm of a public market that responds to market conditions and analysts' scrutiny, so the investors must rely entirely on the accuracy and completeness of the financial and other disclosures provided by the company about its business, its finances, and the value of its securities. CSK&D prosecutes: (a) securities law violations in the sale of the units or stock; (b) abusive management practices including self-dealing transactions and the payment of excessive fees; (c) unfair transactions involving sales of the entities' assets; and (d) buy-outs of the investors' interests.

Practice Areas

Shareholder Derivative Action

CSK&D is a Leading Advocate for Prosecuting and Protecting Shareholder Rights through Derivative Lawsuits and Class Actions.

CSK&D is at the forefront of persuading courts to recognize that actions taken by directors (or other fiduciaries) of corporations or associations must be in the best interests of the shareholders. Such persons have duties to the investors (and the corporation) to act in good faith and with loyalty, due care and complete candor. Where there is an indication that a director's actions are influenced by self-interest or considerations other than what is best for the shareholders, the director lacks the independence required of a fiduciary and, as a consequence, that director's decisions cannot be honored. A landmark decision by the Supreme Court of Delaware underscored the sanctity of this principal and represented a major victory for CSK&D's clients.

Corporate Mismanagement

CSK&D is a Principal Advocate for Sound Corporate Governance and Accountability.

CSK&D supports the critical role its investor clients serve as shareholders of publicly held companies. Settlements do not provide exclusively monetary benefits to our clients. In certain instances, they may include long term reforms by a corporate entity for the purpose of advancing the interests of the shareholders and protecting them from future wrongdoing by corporate officers and directors. On behalf of our clients, we take corporate directors' obligations seriously. It's a matter of justice. That's why CSK&D strives not to only obtain maximum financial recoveries, but also to effect fundamental changes in the way companies operate so that wrongdoing will not reoccur.

Defective Products and Consumer Protection

CSK&D Protects Consumers from Defective Products and Deceptive Conduct.

CSK&D frequently represents consumers who have been injured by false advertising, or by the sale of defective goods or services. The firm has achieved significant recoveries for its clients in such cases, particularly in those involving defectively designed automobiles and other consumer products. CSK&D has also successfully prosecuted actions against banks and other large institutions for engaging in allegedly deceptive conduct.

Practice Areas

Data Breaches

CSK&D Protects Consumers Affected by Data Breaches

CSK&D has significant experience in prosecuting class action lawsuits on behalf of consumers who have been victimized by massive payment card data breaches. Large-scale payment data breaches have been on the rise over the past couple years. These breaches occur when cybercriminals gain unauthorized access to a company's payment systems or computer servers. When they occur, consumers are forced to take significant precautionary measures such as cancelling other cards and accounts, obtaining replacement cards (often for a fee), purchasing credit monitoring and identity theft, and spending large amounts of time reviewing accounts and statements for incidences of fraud. Two recent examples of settlements that CSK&D has resolved are: *Crystal Bray v. GameStop Corp.,* No. 1:17-cv-01365 (D. Del.) and *Gordon, et al. v. Chipotle Mexican Grille, Inc.,* No. 1:17-cv-01415-CMA-SKC (D. Colo.).

***CNL Hotels & Resorts Inc. Securities Litigation*, Case No. 6:04-CV-1231, United States District Court, Middle District of Florida.**

CSK&D was Lead Litigation Counsel in CNL Hotels & Resorts Inc. Securities Litigation**,** representing a Michigan Retirement System, other named plaintiffs and over 100,000 investors in this federal securities law class action that was filed in August 2004 against the nation's second largest hotel real estate investment trust, CNL Hotels & Resorts, Inc. (f/k/a CNL Hospitality Properties, Inc.) ("CNL Hotels") and certain of its affiliates, officers and directors. CNL raised over $3 billion from investors pursuant to what Plaintiffs alleged to be false and misleading offering materials. In addition, in June 2004 CNL proposed an affiliated-transaction that was set to cost the investors and the Company over $300 million ("Merger").

The Action was filed on behalf of: (a) CNL Hotels shareholders entitled to vote on the proposals presented in CNL Hotels' proxy statement dated June 21, 2004 ("Proxy Class"); and (b) CNL Hotels' shareholders who acquired CNL Hotels shares pursuant to or by means of CNL Hotels' public offerings, registration statements and/or prospectuses between August 16, 2001 and August 16, 2004 ("Purchaser Class").

The Proxy Class claims were settled by (a) CNL Hotels having entered into an Amended Merger Agreement which significantly reduced the amount that CNL Hotels paid to acquire its Advisor, CNL Hospitality Corp., compared to the Original Merger Agreement approved by CNL Hotels' stockholders pursuant to the June 2004 Proxy; (b) CNL Hotels having entered into certain Advisor Fee Reduction Agreements, which significantly reduced certain historic, current, and future advisory fees that CNL Hotels paid its Advisor before the Merger; and (c) the adoption of certain corporate governance provisions by CNL Hotels' Board of Directors. **In approving the Settlement, the Court concluded that in settling the Proxy claims, "a substantial benefit [was] achieved (estimated at approximately $225,000,000)" and "this lawsuit was clearly instrumental in achieving that result."** The Purchaser Class claims were settled by Settling Defendants' payment of **$35,000,000**, payable in three annual installments (January 2007 to January 2009).

On August 1, 2006, the Federal District Court in Orlando, Florida granted final approval of the Settlement as fair, reasonable, and adequate, and in rendering its approval of an award of attorneys' fees and costs to Plaintiffs' Counsel, the Court noted that "Plaintiffs' counsel pursued this complex case diligently, competently and professionally" and "achieved a successful result." More than 100,000 class members received notice of the proposed settlement and no substantive objection to the settlement, plan of allocation or fee petition was voiced by any class member.

Representative Cases

Securities Cases Involving Real Estate Investments

***In re Real Estate Associates Limited Partnership Litigation*, Case No. CV 98-7035, United States District Court, Central District of California.**

Chimicles Schwartz Kriner & Donaldson-Smith LLP achieved national recognition for obtaining, in a federal securities fraud action, the first successful plaintiffs' verdict under the PSLRA. Senior partner Nicholas E. Chimicles was Lead Trial Counsel in the six-week jury trial in federal court in Los Angeles, in October 2002. The jury verdict, in the amount of $185 million (half in compensatory damages; half in punitive damages), was ranked among the top 10 verdicts in the nation for 2002. After the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for $83 million, representing full recovery for the losses of the class**.** At the final hearing, held in November 2003, the Court praised Counsel for achieving both a verdict and a settlement that "qualif[ied] as an exceptional result" in what the Judge regarded as "a very difficult case…" In addition, the Judge noted the case's "novelty and complexity…and the positive reaction of the class. Certainly, there have been no objections, and I think Plaintiffs' counsel has served the class very well."

Case Summary: In August of 1998, over 17,000 investors ("Investor Class") in 8 public Real Estate Associates Limited Partnerships ("REAL Partnerships") were solicited by their corporate managing general partner, defendant National Partnership Investments Corp. ("NAPICO"), and other Defendants via Consent Solicitations filed with the Securities and Exchange Commission ("SEC"), to vote in favor of the sale of the REAL Partnerships' interests in 98 limited partnerships ("Local Partnerships"). In a self-dealing and interested transaction, the Investor Class was asked to consent to the sale of these interests to NAPICO's affiliates ("REIT Transaction"). In short, Plaintiffs alleged that defendants structured and carried out this wrongful and self-dealing transaction based on false and misleading statements, and omissions in the Consent Solicitations, resulting in the Investor Class receiving grossly inadequate consideration for the sale of these interests. Plaintiffs' expert valued these interests to be worth a minimum of $86,523,500 (which does not include additional consideration owed to the Investor Class), for which the Investor Class was paid only $20,023,859.

Plaintiffs and the Certified Class asserted claims under Section 14 of the Securities Exchange Act of 1934 ("the Exchange Act"), alleging that the defendants caused the Consent Solicitations to contain false or misleading statements of material fact and omissions of material fact that made the statements false or misleading. In addition, Plaintiffs asserted that Defendants breached their fiduciary duties by using their positions of trust and authority for personal gain at the expense of the Limited Partners. Moreover, Plaintiffs sought equitable relief for the Limited Partners including, among other things, an injunction under Section 14 of the Exchange Act for violation of the "anti-bundling rules" of the SEC, a declaratory judgment decreeing that defendants were not entitled to indemnification from the REAL Partnerships.

Trial: This landmark case is the *first* Section 14 – proxy law- securities class action seeking damages, a significant monetary recovery, for investors that has been tried, and ultimately won, before a jury anywhere in the United States since the enactment of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Trial began on October 8, 2002 before a federal court jury in Los Angeles. The jury heard testimony from over 25 witnesses, and trial counsel moved into evidence approximately 4,810 exhibits; out of those 4,810 exhibits, witnesses were questioned about, or referred to, approximately 180 exhibits.

On November 15, 2002, the ten-member jury, after more than four weeks of trial and six days of deliberation, unanimously found that Defendants knowingly violated the federal proxy laws and that NAPICO breached its fiduciary duties, and that such breach was committed with oppression, fraud and malice. The jury's unanimous verdict held defendants liable for compensatory damages of $92.5 million in favor of the Investor Class. On November 19, 2002, a second phase of the trial was held to determine the amount of punitive damages to be assessed against NAPICO. The jury returned a verdict of $92.5 million in punitive damages. In total, trial counsel secured a unanimous jury verdict of $185 million on behalf of the Investor Class.

With this victory, Mr. Chimicles and the trial team secured the 10th largest verdict of 2002. (See, National Law Journal, "The Largest Verdicts of 2002", February 2, 3003; National Law Journal, "Jury Room Rage", Feb. 3. 2002). Subsequent to post-trial briefing and rulings, in which the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for $83 million. The settlement represented full recovery for the losses of the class.

Prosecuting and trying this Case required dedication, tenacity, and skill: This case involved an extremely complex transaction. As Lead Trial Counsel, CSK&D was faced with having to comprehensively and in an understandable way present complex law, facts, evidence and testimony to the jury, without having them become lost (and thus, indifferent and inattentive) in a myriad of complex terms, concepts, facts and law. The trial evidence in this case originated almost exclusively from the documents and testimony of Defendants and their agents. As Lead Trial Counsel, CSK&D was able, through strategic cross-examination of expert witnesses, to effectively stonewall defendants' damage analysis. In addition, CSK&D conducted thoughtful and strategic examination of defendants' witnesses, using defendants' own documents to belie their testimony.

The significance of the case: The significance of this trial and the result are magnified by the public justice served via this trial and the novelty of issues tried. This case involved a paradigm of corporate greed, and CSK&D sent a message to not only the Defendants in this Action, but to all corporate fiduciaries, officers, directors and partners, that it does not pay to steal, lie and cheat. There needs to be effective deterrents, so that "corporate greed" does not pay. The diligent and unrelenting prosecution and trial of this case by CSK&D sent that message.

Moreover, the issues involved were novel and invoked the application of developing case law that is not always uniformly applied by the federal circuit courts. In Count I, Plaintiffs alleged that defendants violated § 14 of the Exchange Act. Subsequent to the enactment of the PLSRA, the primary relief sought and accorded for violations of the proxy laws is a preliminary injunction. Here, the consummation of the REIT Transaction foreclosed that form of relief. Instead, Plaintiffs' Counsel sought significant monetary damages for the Investor Class on account of defendants' violations of the federal proxy laws. CSK&D prevailed in overcoming defendants' characterization of the measure of damages that the Investor Class was required to prove (defendants argued for a measure of damages equivalent to the difference in the value of the security prior to and subsequent to the dissemination of the Consent Solicitations), and instead, successfully recouped damages for the value of the interests and assets given up by the Investor Class. The case is important in the area of enforcement of fiduciary duties in public partnerships which are a fertile ground for unscrupulous general partners to cheat the public investors.

Representative Cases

Securities Cases Involving Real Estate Investments

Aetna Real Estate Associates LP

Nicholas Chimicles and Pamela Tikellis represented a Class of unitholders who sought dissolution of the partnership because the management fees paid to the general partners were excessive and depleted the value of the partnership. The Settlement, valued in excess of $20 million, included the sale of partnership property to compensate the class members, a reduction of the management fees, and a special cash distribution to the class.

***City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc., Case No. 07 C 6174*, United States District Court, Northern District of Illinois .**

CSK&D was principal litigation counsel for the plaintiff class of stockholders that challenged the accuracy of a proxy statement that was used to secure stockholder approval of a merger between an external advisor and property managers and the largest retail real estate trust in the country. In 2010, in a settlement negotiation lead by the Firm, we succeeded in having $90 million of a stock, or 25% of the merger consideration, paid back to the REIT.

***Wells and Piedmont Real Estate Investment Trust, Inc., Securities Litigation, Case Nos. 1:07-cv-00862, 02660*, United States District Court, Northern District of Georgia.**

CSK&D served as co-lead counsel in this federal securities class action on behalf of Wells REIT/Piedmont shareholders. Filed in 2007, this lawsuit charged Wells REIT, certain of its directors and officers, and their affiliates, with violations of the federal securities laws for their conducting an improper, self-dealing transaction and recommending that shareholders reject a mid-2007 tender offer made for the shareholders' stock. On the verge of trial, the Cases settled for $7.5 million and the Settlement was approved in 2013.

***In re Cole Credit Property Trust III, Inc. Derivative and Class Litigation, Case No. 24-C-13-001563,* Circuit Court for Baltimore City.**

In this Action filed in 2013, CSK&D, as chair of the executive committee of interim class counsel, represents Cole Credit Property Trust III ("CCPT III") investors, who were, without their consent, required to give Christopher Cole (CCPT III's founder and president) hundreds of millions of dollars' worth of consideration for a business that plaintiffs allege was worth far less. The Action also alleges that, in breach of their fiduciary obligations to CCPT III investors, CCPT III's Board of Directors pressed forward with this wrongful self-dealing transaction rebuffing an offer from a third party that proposed to acquire the investors' shares in a $9 billion dollar deal. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

Representative Cases

Securities Cases Involving Real Estate Investments

Roth v. The Phoenix Companies, Inc. and U.S. Bank National Association, in its capacity as Indenture Trustee, Index No. 650634/2016 (N.Y. Sup. Ct.).

CSK&D served as lead counsel in this action on behalf of bondholders in connection with a 2015 going-private merger. In early 2016, Phoenix sought Bondholder's consent to amend the Company's Indenture to severely limit Bondholder's access to financial information and to allow the Trustee to waive certain of its oversight responsibilities. CSK&D promptly filed a complaint seeking injunctive relief, and within seven days, CSK&D secured material benefits for Bondholders, including, most significantly, ongoing access to material financial and corporate information which increased the value of the Bonds by $17.5 million and secured ongoing liquidity for the Bonds. In approving the settlement, the Court stated that "I think the plaintiffs were successful in getting everything they could have gotten …. I think it's a great settlement."

Gamburg, et al., v. Hines Real Estate Investment Trust, Inc., et al, Case No. 24C16004496 (Cir. Ct. Baltimore City, MD).

CSK&D served as co-lead counsel in this direct and derivative action filed in 2016 on behalf of Hines REIT and its stockholders which challenges various self-dealing conduct by the managers and directors of Hines REIT. The action alleged, among other things, that $15 million in fees were paid to affiliates in violation of contractual and fiduciary duties. Defendants moved to dismiss the action, and the Court held a hearing in December 2015. In an expedited partial ruling on an issue of first impression, the Court held that plaintiffs were entitled to proceed with their derivative claims even subsequent to the then-impending liquidation – a crucial initial decision in favor of the stockholders that preserved rights that could have otherwise been extinguished upon the liquidation. While the Court's ruling on the remaining issues raised in Defendants' motion was pending, the parties reached a settlement in January 2018. On June 6, 2018 the court granted final approval of the Settlement which provides for the cash payment of $3.25 million, which represents a recovery of over 20% of the fees paid to affiliates.

In re Empire State Realty Trust, Inc. Investor Litigation, Case 650607/2012, **New York Supreme Court.**

In this action filed in 2012, CSK&D represents investors who own the Empire State Building, as well as several other Manhattan properties, whose interests and assets are proposed to be consolidated into a new entity called Empire State Realty Trust Inc. The investors filed an action against the transaction's chief proponents, members of the Malkin family, certain Malkin-controlled companies, and the estate of Leona Helmsley, claiming breaches of fiduciary for, among other things, such proponents being disproportionately favored in the transaction. A Settlement of the Litigation has been reached and was approved in full by the Court. The Settlement consists of: a cash settlement fund of $55 million, modifications to the transaction that result in an over $100 million tax deferral benefit to the investors, and defendants will provide additional material information to investors about the transaction.

Representative Cases

Securities Cases Involving Real Estate Investments

***Delaware County Employees Retirement Fund v. Barry M. Portnoy, et al.*, Case No. 1:13-cv-10405, United States District Court, District Court of Massachusetts.**

CSK&D is lead counsel in an action pending in federal court in Boston filed on behalf of Massachusetts-based CommonWealth REIT ("CWH") and its shareholders against CWH's co-founder Barry Portnoy and his son Adam Portnoy ("Portnoys"), and their wholly-owned entity Reit Management & Research, LLC ("RMR"), and certain other former and current officers and trustees of CWH (collectively, "Defendants"). The Action alleges a long history of management abuse, self-dealing, and waste by Defendants, which conduct constitutes violations of the federal securities laws and fiduciary duties owed by Defendants to CWH and its shareholders. Plaintiff seeks damages and to enjoin Defendants from any further self-dealing and mismanagement. The Defendants sought to compel the Plaintiff to arbitrate the claims, and Plaintiff has vigorously opposed such efforts on several grounds including that CWH and its shareholders did not consent to arbitration and the arbitration clause is facially oppressive and illegal. The parties are awaiting the Court's ruling on that matter.

Representative Cases

Securities Cases (Non-Real Estate)

Westmoreland County v. Inventure Foods, Case No. CV2016-002718 (Super. Ct. Ariz.)

In this securities shareholder class action, CSK&D served as Lead Counsel against Inventure Foods, and certain of its officers and underwriters, arising out of the company's secondary stock offering held in September 2014. As portfolio monitoring counsel for Westmoreland, CSK&D first identified that the company's stock price had suffered a precipitous decline, rather soon after the offering, due to troubles at the Company's manufacturing facility, including a major food recall. Before filing a complaint, CSK&D investigated the potential causes of the problems – including securing documents from the FDA and GA Department of Agriculture, talking to former employees and engaging a listeria expert. Subsequent to the investigation, CSK&D filed the first complaint alleging that the Defendants violated the Securities Act of 1933 by issuing a false and misleading Registration Statement and Prospectus in connection with the stock offering. In a pair of rulings entered on February 24, 2017, and August 4, 2017, the Court rejected defendants' motions to dismiss the action. The parties proceeded with Mediation and reached a proposed Settlement which was preliminarily approved by the court on June 6, 2018. On November 2, 2018 the court granted final approval of the settlement which recovers over 35% of damages for investors (which percentage even assumes all offering shares were damaged).

***Orrstown Financial Services, Inc., et al,* Securities Litigation, Case No. 12-cv-00793 United States District Court, Middle District of Pennsylvania.**

In this federal securities fraud class action filed in 2012, CSK&D serves as Lead Counsel on behalf of Lead Plaintiff Southeastern Pennsylvania Transportation Authority (SEPTA). The action alleges that Orrstown bank, its holding company, and certain of its officers, violated the Securities Exchange Act by misleading investors concerning material information about Orrstown's loan portfolio, underwriting practices, and internal controls. CSK&D investigated the cause of the decline which included reviewing Orrstown's filings with the SEC, making FOIA requests on the Federal Reserve Bank of Philadelphia and the PA Department of Banking, and interviewing former employees of Orrstown. The Court denied in large part Defendants' motions to dismiss, and the parties are currently engaged in discovery. This case demonstrates CSK&D's ability to identify potential claims, fully investigate them, bring litigation on behalf of a pension fund, secure appointment of lead plaintiff for its client and then vigorously prosecute the case.

***ML-Lee Litigation, ML Lee Acquisition Fund L.P.* and *ML-Lee Acquisition Fund II L.P.* and *ML-Lee Acquisition Fund (Retirement Accounts)*, (C.A. Nos. 92-60, 93-494, 94-422, and 95-724), United States District Court, District of Delaware.**

CSK&D represented three classes of investors who purchased units in two investment companies, ML-Lee Funds (that were jointly created by Merrill Lynch and Thomas H. Lee). The suits alleged breaches of the federal securities laws, based on the omission of material information and the inclusion of material misrepresentations in the written materials provided to the investors, as well as breaches of fiduciary duty and common law by the general partners in regard to conduct that benefited them at the expense of the limited partners. The complaint included claims under the often-ignored Investment Company Act of 1940, and the case witnessed numerous opinions that are considered seminal under the ICA. The six-year litigation resulted in **$32 million** in cash and other benefits to the investors.

Representative Cases

Securities Cases (Non-Real Estate)

***In re Colonial BancGroup, Inc. Securities Litigation*, Case No. 09-CV-00104, United States District Court, Middle District of Alabama.**

CSK&D is actively involved in prosecuting this securities class action arising out of the 2009 failure of Colonial Bank, in which Norfolk County Retirement System, State-Boston Retirement System, City of Brockton Retirement System, and Arkansas Teacher Retirement System are the Court-appointed lead plaintiffs. The failure of Colonial Bank was well-publicized and ultimately resulted in several criminal trials and convictions of Colonial officers and third parties involved in a massive fraud in Colonial's mortgage warehouse lending division. The pending securities lawsuit includes allegations arising out of the mortgage warehouse lending division fraud, as well as allegations that Colonial misled investors concerning its operations in connection with two public offerings of shares and bonds in early 2008, shortly before the Bank's collapse. In April 2012, the Court approved a $10.5 million settlement of Plaintiffs' claims against certain of Colonial's directors and officers. Plaintiffs' claims against Colonial's auditor, PwC, and the underwriters of the 2008 offerings are ongoing.

***Continental Illinois Corporation Securities Litigation*, Civil Action No. 82 C 4712, United States District Court, Northern District of Illinois.**

Nicholas Chimicles served as lead counsel for the shareholder class in this action alleging federal securities fraud. Filed in the federal district court in Chicago, the case arose from the 1982 oil and gas loan debacle that ultimately resulted in the Bank being taken over by the FDIC. The case involved a twenty-week jury trial conducted by Mr. Chimicles in 1987. Ultimately, the Class recovered nearly $40 million.

***PaineWebber Limited Partnerships Litigation, 94 Civ. 8547,* United States District Court, Southern District of New York .**

The Firm was chair of the plaintiffs' executive committee in a case brought on behalf of tens of thousands of investors in approximately 65 limited partnerships that were organized or sponsored by PaineWebber. In a landmark settlement, investors were able to recover $200 million in cash and additional economic benefits following the prosecution of securities law and RICO (Racketeer Influenced and Corrupt Organizations Act) claims.

In re: Starz Shareholder Litigation, Cons. C.A. No. 12584-VCG (Del. Ct. Ch.)

In this stockholder class action, CSK&D served as co-lead counsel in this stockholder class action lawsuit against Starz, its controlling stockholder, John C. Malone ("Malone"), and certain of its officers and directors, arising out of the acquisition of Starz by Lions Gate Entertainment Corp. ("Lions Gate") (the "Merger"). Pursuant to the Merger, Malone who is also a director of Lions Gate, was to receive superior consideration, including voting rights in Lions Gate, while the remaining Starz stockholders would receive less valuable consideration and lose their voting rights. The Action alleges that the process undertaken by the Starz's board of directors in connection with the Merger was orchestrated by Malone and tainted by multiple conflicts. The Complaint also alleges that the consideration proposed is unfair and represents an effort by Malone to enlarge his already-massive media empire and to ensure his control position, to the detriment of Starz's minority stockholders. On August 16, 2016, the Court appointed Norfolk County as Co-Lead Plaintiff and CSK&D, specifically Robert Kriner, as Co-Lead Counsel. After a 2-day mediation session in August 2018, the parties have reached a proposed settlement of a $92.5 million payment to former shareholder of Starz. The Settlement Agreement and supporting papers were filed with the court on October 9, 2018, and the court has scheduled the settlement hearing for December 10, 2018.

***In re Sanchez Energy Derivative Litigation*, C.A. No. 9132-VCG (Del. Ch.).**

In this derivative action, CSK&D served as co-lead counsel for plaintiffs in this derivative action which challenged the acquisition by Sanchez Energy Corporation of assets in the Tuscaloosa Marine Shale from Sanchez Resources LLC, an affiliate of Sanchez Energy's CEO, Tony Sanchez, III, and Executive Chairman Tony Sanchez, Jr. The case alleged wrongful self-dealing in the acquisition in which Sanchez Energy paid the affiliate acreage prices which far exceeded prices paid in comparable transactions. On November 6, 2017, the Delaware Court of Chancery approved a Settlement valued at more than $30 million. In approving the Settlement, the Court characterized it as a very good result in CSK&D having obtained a substantial portion of the home-run damages available at trial.

***In re Freeport-McMoran Sulphur, Inc. Shareholder Litigation*, C.A. No. 16729, Delaware Court of Chancery.**

In this shareholder class action, CSK&D served as Lead Plaintiffs' Counsel representing investors in a stock-for-stock merger of two widely held public companies, seeking to remedy the inadequate consideration the stockholders of Sulphur received as part of the merger. In June 2005, the Court of Chancery denied defendants' motions for summary judgment, allowing Plaintiffs to try each and every breach of fiduciary duty claim asserted in the Action. In denying defendants' motions for summary judgment the Court held there were material issues of fact regarding certain board member's control over the Board including the Special Committee members and the fairness of the process employed by the Special Committee implicating the duty of entire fairness and raising issues regarding the validity of the Board action authorizing the merger. The decision has broken new ground in the field of corporate litigation in Delaware. Before the trial commenced, Plaintiffs and Defendants agreed in principle to settle the case. The settlement, which was approved in April 2006, provides for a cash fund of $17,500,000.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***In re Genentech, Inc. Shareholders Litigation*, C.A. No. 3911-VCS, Delaware Court of Chancery.**

In this shareholder class action, CSK&D served as Co-Lead Counsel representing minority stockholders of Genentech, Inc. in an action challenging actions taken by Roche Holdings, Inc. ("Roche") to acquire the remaining approximately 44% of the outstanding common stock of Genentech, Inc. ("Genentech") that Roche did not already own. In particular, Plaintiffs challenged that Roche's conduct toward the minority was unfair and violated pre-existing governance agreements between Roche and Genentech. During the course of the litigation, Roche increased its offer from $86.50 per share to %95 per share, a $4 billion increase in value for Genentech's minority shareholders. That increase and other protections for the minority provided the bases for the settlement of the action, which was approved by the Court of chancery on July 9, 2009.

***In re Kinder Morgan Shareholder Litigation*, C.A. No. 06-c-801, District Court of Shawnee County, Kansas**

In this shareholder class action, CSK&D served as Co-Lead Counsel representing former stockholders of Kinder Morgan, Inc. (KMI) in an action challenging the acquisition of Kinder Morgan by a buyout group lead by KMI's largest stockholder and Chairman, Richard Kinder. Plaintiffs alleged that Mr. Kinder and a buyout group of investment banks and private equity firms leveraged Mr. Kinder's knowledge and control of KMI to acquire KMI for less than fair value. As a result of the litigation, Defendants agreed to pay $200 million into a settlement fund, believed to be the largest of its kind in any buyout-related litigation. The district Court of Shawnee County, Kansas approved the settlement on November 19, 2010.

***In re Chiron Shareholder Deal Litigation*, Case No. RG05-230567 (Cal. Super.) & *In re Chiron Corporation Shareholder Litigation*, C.A. No. 1602-N, Delaware Court of Chancery**

CSK&D represents stockholders of Chiron Corporation in an action which challenged the proposed acquisition of Chiron Corporation by its 42% stockholder, Novartis AG. Novartis announced a $40 per share merger proposal on September 1, 2005, which was rejected by Chiron on September 5, 2005. On October 31, Chiron announced an agreement to merge with Novartis at a price of $45 per share. CSK&D was co-lead counsel in the consolidated action brought in the Delaware Court of Chancery. Other similar actions were brought by other Chiron shareholders in the Superior Court of California, Alameda City. The claims in the Delaware and California actions were prosecuted jointly in the Superior Court of California. CSK&D, together with the other counsel for the stockholders, obtained an order from the California Court granting expedited proceedings in connection with a motion preliminary to enjoin the proposed merger. Following extensive expedited discovery in March and April, 2006, and briefing on the stockholders' motion for injunctive relief, and just days prior to the scheduled hearing on the motion for injunctive relief, CSK&D, together with Co-lead counsel in the California actions, negotiated an agreement to settle the claims which included, among other things, a further increase in the merger price to $48 per share, or an additional $330 million for the public stockholders of Chiron. On July 25, 2006, the Superior Court of California, Alameda County, granted final approval to the settlement of the litigation.

Representative Cases

Delaware and Other Merger and Acquisition Suits

Gelfman v. Weeden Investors, L.P., Civ. Action No. 18519-NC, Delaware Court of Chancery

Chimicles Schwartz Kriner & Donaldson-Smith LLP served as class counsel, along with other plaintiffs' firms, in this action against the Weeden Partnership, its General Partner and various individual defendants filed in the Court of Chancery in the State of Delaware. In this Class Action, Plaintiffs alleged that Defendants breached their fiduciary duties to the investors and breached the Partnership Agreement. The Delaware Chancery Court conducted a trial in this action which was concluded in December 2003. Following the trial, the Chancery Court received extensive briefing from the parties and heard oral argument. On June 14, 2004, the Chancery Court issued a memorandum opinion, which was subsequently modified, finding that the Defendants breached their fiduciary duties and the terms of the Partnership Agreement, with respect to the investors, and that Defendants acted in bad faith ("Opinion"). This Opinion from the Chancery Court directed an award of damages to the classes of investors, in addition to other relief. In July 2004, Class Counsel determined that it was in the best interests of the investors to settle the Action for over 90% of the value of the monetary award under the Opinion (over $8 million).

I.G. Holdings Inc., et al. v. Hallwood Realty, LLC, et al., C.A. No. 20283, Delaware Court of Chancery.

In the Delaware Court of Chancery, C& T represented the public unitholders of Hallwood Realty L.P. The action challenged the general partner's refusal to redeem the Partnership's rights plan or to sell the Partnership to maximize value for the public unitholders. Prior to the filing of the action, the Partnership paid no distributions and Units of the Partnership normally traded in the range of $65 to $85 per unit. The prosecution of the action by CSK&D caused the sale of the Partnership, ultimately yielding approximately $137 per Unit for the unitholders plus payment of the attorneys' fees of the Class.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***Southeastern Pennsylvania Transportation Authority v. Josey*, et. al., C.A. No. 5427, Delaware Court of Chancery.**

Chimicles Schwartz Kriner & Donaldson-Smith served as class counsel in this action challenging the acquisition of Mariner Energy, Inc. by Apache Corporation. Following expedited discovery, CSK&D negotiated a settlement which led to the unprecedented complete elimination of the termination fee from the merger agreement and supplemental disclosures regarding the merger. On March 15, 2011, the Delaware Court of Chancery granted final approval to the settlement of the litigation.

***In re Pepsi Bottling Group, Inc. Shareholders Litigation*, C.A. No. 4526, Delaware Court of Chancery.**

The Firm served as class counsel, along with several other firms challenging PepsiCo's buyout of Pepsi Bottling Group, Inc. CSK&D's efforts prompted PepsiCo to raise its buyout offer for Pepsi Bottling Group, Inc. by approximately $1 billion and take other steps to improve the buyout on behalf of public stockholders.

***In re Atlas Energy Resources LLC, Unitholder Litigation*, Consol C.A. No. 4589, Delaware Court of Chancery.**

The Firm was co-lead counsel in an action challenging the fairness of the acquisition of Atlas Energy Resources LLC by its controlling shareholder, Atlas America, Inc. After over two-years of complex litigation, the Firm negotiated a $20 million cash settlement, which was finally approved by the court on May 14, 2012.

***In re J. Crew Group, Inc. S'holders Litigation*, C.A. No. 6043, Delaware Court of Chancery.**

The Firm was co-lead counsel challenging the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management. After hard-fought litigation, the action resulted in a settlement fund of $16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction to be approved by a majority of the unaffiliated shareholders. The settlement was finally approved on December 16, 2011.

Representative Cases

Delaware and Other Merger and Acquisition Suits

***In re McKesson Derivative Litigation, Saito*, et al. v. McCall, et al., C.A. No. 17132, Delaware Court of Chancery.**

As Lead Counsel in this stockholder derivative action, CSK&D challenged the actions of the officers, directors and advisors of McKesson and HBOC in proceeding with the merger of the two companies when their managements were allegedly aware of material accounting improprieties at HBOC. In addition, CSK&D also brought (under Section 220 of the Delaware Code) a books and records case to discover information about the underlying events. CSK&D successfully argued in the Delaware Courts for the production of the company's books and records which were used in the preparation of an amended derivative complaint in the derivative case against McKesson and its directors. Seminal opinions have issued from both the Delaware Supreme Court and Chancery Court about Section 220 actions and derivative suits as a result of this lawsuit. Plaintiffs agreed to a settlement of the derivative litigation subject to approval by the Delaware Court of Chancery, pursuant to which the Individual Defendants' insurers will pay $30,000,000 to the Company. In addition, a claims committee comprised of independent directors has been established to prosecute certain of Plaintiffs' claims that will not be released in connection with the proposed settlement. Further, the Company will maintain important governance provisions among other things ensuring the independence of the Board of Directors from management. On February 21, 2006, the Court of Chancery approved the Settlement and signed the Final Judgment and Order and Realignment Order.

***Barnes & Noble Inc.,* C.A. No. 4813, Delaware Court of Chancery.**

CSK&D served as Co-Lead Counsel in a shareholder lawsuit brought derivatively on behalf of Barnes & Noble ("B&N") alleging wrongdoing by the B&N directors for recklessly causing B&N to acquire Barnes & Noble College Booksellers, Inc. ("College Books") the "Transaction") from B&N's founder, Chairman and controlling stockholder, Leonard Riggio ("Riggio") at a grossly excessive price, subjecting B&N to excessive risk. The case settled for nearly $30 million and finally approved by the court on September 4, 2012.

***Sample v. Morgan*, et. al., C.A. No. 1214-VCS, Delaware Court of Chancery.**

Action alleging that members of the board of directors of Randall Bearings, Inc. breached their fiduciary duties to the company and its stockholders and committed corporate waste. The action resulted in an eve-of-trial settlement including revocation of stock issued to insiders, a substantial cash payment to the corporation and reformation of the Company's corporate governance. The Court finally approved the settlement on August 5, 2008.

***Manson v. Northern Plain Natural Gas Co*., LLC, et. al., C.A. No. 1973-N, Delaware Court of Chancery.**

Chimicles Schwartz Kriner & Donaldson-Smith served as counsel in a class and derivative action asserting contract and fiduciary duty claims stemming from dropdown asset transactions to a partnership from an affiliate of its general partner. The case settled for a substantial adjustment (valued by Plaintiff's expert to be worth more than $100 million) to the economic terms of units issued by the partnership in exchange for the assets. The settlement was finally approved by the Court on January 18, 2007.

Representative Cases

Consumer Cases

***Lockabey v. American Honda Motors Co., Inc.*, Case No. 37-2010-00087755-CU-BT-CTL, San Diego County Superior Court**

Mr. Chimicles is co-lead counsel in a nationwide class action involving fuel economy problems encountered by purchasers of Honda Civic Hybrids ("HCH"). *Lockabey v. American Honda Motors Co., Inc.*, Case No. 37-2010-00087755-CU-BT-CTL (Super. Ct. San Diego). After nearly five years of litigation in both the federal and state courts in California, a settlement benefiting nearly 450,000 consumers who had leased or owned HCH vehicles from model years 2003 through 2009. Following unprecedented media scrutiny and review by the attorneys general of each state as well as major consumer protection groups, the settlement was approved on March 16, 2012 in a 40 page opinion by the Honorable Timothy B. Taylor of the San Diego County (CA) Superior Court in which the Court stated:

> *The court views this as a case which was difficult and risky… The court also views this as a case with significant public value which merited the 'sunlight' which Class Counsel have facilitated..*

Depending on the number of claims that are filed (deadline will not expire until 6 months after a pending single appeal is resolved), the Class will garner benefits ranging from $100 million to $300 million.

***In re Pennsylvania Baycol: Third-Party Payor Litigation*, Case No. 001874, Court of Common Pleas, Philadelphia County**.

In connection with the withdrawal by Bayer of its anti-cholesterol drug Baycol, CSK&D represents various Health and Welfare Funds, including the Pennsylvania Employees Benefit Trust Fund, and a certified national class of "third party payors" seeking damages for the sums paid to purchase Baycol for their members/insureds and to pay for the costs of switching their members/insureds from Baycol to an another cholesterol-lowering drug. The Philadelphia Court of Common Pleas granted plaintiffs' motion for summary judgment as to liability; this is the first and only judgment that has been entered against Bayer anywhere in the United States in connection with the withdrawal of Baycol. The Court subsequently certified a national class, and the parties reached a settlement (recently approved by the court) in which Bayer agreed to pay class members a net recovery that approximates the maximum damages (including pre-judgment interest) suffered by class members. The class settlement negotiated by CSK&D represents a net recovery for third party payors that is between double and triple the net recovery pursuant to a non-litigated settlement negotiated by lawyers representing third party payors such as AETNA and CIGNA that was made available to and accepted by numerous other third party payors (including the TRS). CSK&D had advised its clients to reject that offer and remain in the now settled class action. On June 15, 2006 the court granted final approval of the settlement.

Representative Cases

Consumer Cases

Shared Medical Systems 1998 Incentive Compensation Plan Litigation, Philadelphia County Court of Common Pleas, Commerce Program, No. 0885.

Chimicles Schwartz Kriner & Donaldson-Smith LLP is lead counsel in this action brought in 2003 in the Philadelphia County Court of Common Pleas. The case was brought on behalf of approximately 1,300 persons who were employees of Defendant Siemens Medical Solutions Health Services Corporation (formerly Shared Medical Systems, Inc.) who had their 1998 incentive compensation plan ("ICP") compensation reduced 30% even though the employees had completed their performance under the 1998 ICP contracts and had earned their incentive compensation based on the targets, goals and quotas in the ICPs. The Court had scheduled trial to begin on February 4, 2005. On the eve of trial, the Court granted Plaintiffs' motion for summary judgment as to liability on their breach of contract claim. With the rendering of that summary judgment opinion on liability in favor of Plaintiffs, the parties reached a settlement in which class members will receive a net recovery of the full amount of the amount that their 1998 ICP compensation was reduced. On May 5, 2005, the Court approved the settlement, stating that the case "should restore anyone's faith in class actions as a reasonable way of proceeding on reasonable cases."

***Wong v. T-Mobile USA, Inc.*, Case No. CV 05-cv-73922-NGE-VMM, United States District Court, Eastern District of Michigan.**

Chimicles Schwartz Kriner & Donaldson-Smith LLP and the Miller Law Firm P.C. filed a complaint alleging that defendant T-Mobile overcharged its subscribers by billing them for data access services even though T-Mobile's subscribers had already paid a flat rate monthly fee of $5 or $10 to receive unlimited access to those various data services. The data services include Unlimited T-Zones, Any 400 Messages, T-Mobile Web, 1000 Text Messages, Unlimited Mobile to Mobile, Unlimited Messages, T-Mobile Internet, T-Mobile Internet with corporate My E-mail, and T-Mobile Unlimited Internet and Hotspot. Chimicles Schwartz Kriner & Donaldson-Smith LLP and the Miller Law Firm defeated a motion by T-Mobile to force resolution of these claims via arbitration and successfully convinced the Court to strike down as unconscionable a provision in T-Mobile's subscription contract prohibiting subscribers from bringing class actions. After that victory, the parties reached a settlement requiring T-Mobile to provide class members with a net recovery of the full amount of the un-refunded overcharges with all costs for notice, claims administration, and counsel fees paid in addition to class members' 100% net recovery. The gross amount of the overcharges, which occurred from April 2003 through June 2006, is approximately $6.7 million. To date, T-Mobile has refunded approximately $4.5 million of those overcharges. A significant portion of those refunds were the result of new policies T-Mobile instituted after the filing of the Complaint. Pursuant to the Settlement, T-Mobile will refund the remaining $2.2 million of un-refunded overcharges.

***In re Checking Account Overdraft Litig*., No. 1:09-MD-02036-JLK, United States District Court, Southern District of Florida.**

These Multidistrict Litigation proceedings involve allegations that dozens of banks reorder and manipulate the posting order of consumer debit transactions to maximize their revenue from overdraft fees. Settlements in excess of $1 billion have been reached with several banks. CSK&D was active in the overall prosecution of these proceedings, and was specifically responsible for prosecuting actions against US Bank (pending $55 million settlement) and Comerica Bank (pending $14.5 million settlement).

Representative Cases

Consumer Cases

***In re Apple iPhone/iPod Warranty Litig.*, No. 10-CV-01610, United States District Court, Northern District of California** .

CSK&D is interim co-lead counsel in this case brought by consumers who allege that that Apple improperly denied warranty coverage for their iPhone and iPod Touch devices based on external "Liquid Submersion Indicators" (LSIs). LSIs are small paper-and-ink laminates, akin to litmus paper, which are designed to turn red upon exposure to liquid. Plaintiffs alleged that external LSIs are not a reliable indicator of liquid damage or abuse and, therefore, Apple should have provided warranty coverage. The district court recently granted preliminary approval to a settlement pursuant to which Apple has agreed to pay $53 million to settle these claims.

***Henderson v. Volvo Cars of North America LLC, et al.*, No. 2:09-CV-04146-CCC-JAD, United States District Court, District of New Jersey.**

CSK&D was lead counsel in this class action lawsuit brought behalf of approximately 90,000 purchasers and lessees of Volvo vehicles that contained allegedly defective automatic transmissions. After the plaintiffs largely prevailed on a motion to dismiss, the district court granted final approval to a nationwide settlement in March 2013.

***In re Philips/Magnavox Television Litig.*, No. 2:09-cv-03072-CCC-JAD, United States District Court, District of New Jersey.**

This class action was brought by consumers who alleged that a defective electrical component was predisposed to overheating, causing their televisions to fail prematurely. After the motion to dismiss was denied in large part, the parties reached a settlement in excess of $4 million.

***Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation*, No. 1:10-cv-00264-CAB, United States District Court, Northern District of Ohio.**

This case was brought on behalf of a class of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA. The case settled for approximately $20 million worth of benefits to class members. CSK&D, which represented an outpatient surgical center, was the sole lead counsel in this case.

***Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB, United States District Court, District of Colorado.**

CSK&D was co-lead counsel in this consumer case in which a settlement that provided full recovery to approximately 930,000 class members was achieved.

***In re Certainteed Corp. Roofing Shingle Products Liability Litigation*, No, 07-MDL-1817-LP, United States District Court, Eastern District of Pennsylvania.**

This was a consumer class action involving allegations that CertainTeed sold defective roofing shingles. The parties reached a settlement which was approved and valued by the Court at between $687 to $815 million.

Representative Cases

Antitrust Cases

***In re TriCor Indirect Purchasers Antitrust Litig.*, No. 05-360-SLR, United States District Court, District of Delaware.**

CSK&D was liaison counsel in this indirect purchaser case which resulted in a $65.7 million settlement. The plaintiffs alleged that manufacturers of a cholesterol drug engaged in anticompetitive conduct, such as making unnecessary changes to the formulation of the drug, which was designed to keep generic versions off of the market.

***In re Flonase Antitrust Litig.*, No. 2:08-cv-3301, United States District Court, Eastern District of Pennsylvania.**

CSK&D was liaison counsel and trial counsel on behalf of indirect purchaser plaintiffs in this pending antitrust case. The plaintiffs allege that the manufacturer of Flonase engaged in campaign of filing groundless citizens petitions with the Food and Drug Administration which was designed to delay entry of cheaper, generic versions of the drug. The court has granted class certification, and denied motions to dismiss and for summary judgment filed by the defendant. A $46 million settlement was reached on behalf of all indirect purchasers a few months before trial was to commence.

***In re In re Metoprolol Succinate End-Payor Antitrust Litig.*, No. 1:06-cv-00071, United States District Court, District of Delaware.**

CSK&D was liaison counsel for the indirect purchaser plaintiffs in this case, which involved allegations that AstraZeneca filed baseless patent infringement lawsuits in an effort to delay the market entry of generic versions of the drug Toprol-XL. After the plaintiffs defeated a motion to dismiss, the indirect purchaser case settled for $11 million.

***In re Insurance Brokerage Antitrust Litigation*, No. 2:04-cv-05184-GEB-PS, United States District Court, District of New Jersey.**

This case involves allegations of bid rigging and steering against numerous insurance brokers and insurers. The district court has granted final approval to settlements valued at approximately $218 million.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

RAFAEL SUAREZ, DAISY GONZALEZ, and RICHARD BYRD, individually and on behalf of all others similarly situated, Plaintiffs, vs. NISSAN NORTH AMERICA, INC., Defendant.	Case No.: 3:21-cv-00393 **Hon. William L. Campbell, Jr.** **CLASS ACTION**

DECLARATION OF JOHN SPRAGENS IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT AND RELATED RELIEF

I, John Spragens, declare as follows:

1. My name is John Spragens. I am the managing partner of the law firm Spragens Law PLC ("Spragens Law"), co-counsel of record for Plaintiffs in this matter.

2. I am admitted to practice before this Court and am a member in good standing of the bar of the state of Tennessee; the United States District Court for the Eastern District of Tennessee; the United States District Court for the Western District of Tennessee; the Northern District of Illinois; and the Eastern District of Texas. I have been admitted to practice *pro hac vice* in federal district courts across the United States.

3. I respectfully submit this declaration in support of the parties' Joint Motion for Preliminary Approval of Class Action Settlement Agreement and Related Relief, specifically the appointment of Class Counsel.

4. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

Background and Experience

5. I am a licensed attorney and have practiced in the Middle District of Tennessee for the past eight years since my graduation from Vanderbilt Law School in May 2012. I was admitted to the Bar of the State of Tennessee in 2012.

6. After graduating from law school, I clerked for Judge Kevin Sharp of this Court. After completing my clerkship, I joined Bass, Berry, & Sims in the litigation department, where I represented the firm's clients in complex class action litigation, health care fraud cases, internal investigations, and other commercial litigation.

7. In 2014, I joined Lieff Cabraser Heimann & Bernstein, LLP ("LCHB"), a national plaintiffs' class action firm, prosecuting federal jury trials against cigarette manufacturers in the *Engle* progeny litigation and, later, representing consumers and whistleblowers in federal litigation involving defective products, antitrust conspiracies, health care fraud, Telephone Consumer Protection Act ("TCPA") violations, racketeering violations, and other consumer frauds.

8. In 2019, I founded Spragens Law, where I have represented plaintiffs in consumer, securities, and antitrust class actions as well as individual personal injury, medical malpractice, employment discrimination, and whistleblower matters.

9. I was named a "Top 40 Young Lawyer" by the American Bar Association in 2018 and have been recognized as a Mid-South "Rising Star" each year from 2016 to 2020. In 2020, I

was a member of a team of attorneys that received an American Antitrust Association Antitrust Enforcement Award for "Outstanding Antitrust Litigation Achievement in Private Law Practice," recognizing our $120 million settlement for purchasers of certain prescription blood-thinners in *Hosp. Auth. of Metropolitan Gov't of Nashville and Davidson Cty., Tenn., et al. v. Momenta Pharms., Inc., et al.*, No. 3:15-cv-1100 (M.D. Tenn.).

10. In April 2021, my firm was appointed Class Counsel, along with one other firm, in *Elrod, et al. v. No Tax 4 Nash, et al.*, No. 3-20-cv-00617, *consolidated with* No. 3:20-cv-00618 (M.D. Tenn. April 19, 2021) (Dkt. No. 48), a class action alleging violations of the Telephone Consumer Protection Act ("TCPA").

11. Since 2018, I have served as an adjunct faculty member at Vanderbilt Law School, where I, along with two colleagues, teach a course called The Practice of Aggregate Litigation. In it, students learn about class action and multidistrict litigation (MDL), with a particular focus on the practical aspects of litigating class actions and MDLs as court-appointed counsel for a group of hundreds or thousands of plaintiffs.

Defective Product Class Actions

12. Since 2014, my practice has focused on a number of nationwide consumer protection and product defect class actions. Along with other attorneys and co-counsel, I have served as counsel in numerous class actions that benefited consumers who were wronged by alleged corporate misconduct.

13. Below is a representative sampling of product defect class actions I litigated that won significant relief for consumers, and in which I played a substantial role.

a. *In re Whirlpool Corporation Front-Loading Washer Products Liability Litigation*, MDL No. 2001 (N.D. Ohio) (MDL No. 2001) (nationwide settlement involving front-loading washers alleged to develop mold, odor, and biofilm).

b. *In re Sears Roebuck and Co. Front-Loading Washer Products Liability Litigation (CCU Claims)*, No. 06-cv-7023 (N.D. Ill.) (nationwide settlement involving front-loading washers alleged to include defective processors).

c. *In re LG Front Loading Washing Machine Class Action Litigation*, No. 08-51 (D. N.J.) (nationwide settlement involving front-loading washers alleged to develop mold, odor, and biofilm).

d. *Amin, et al. v. Mercedes-Benz USA, LLC, et al.*, No. 1:17-cv-01701 (N.D. Ga.) (nationwide settlement for owners of cars alleged to develop mold and odor in HVAC system).

e. *In re: Samsung Top-load Washing Machine Marketing, Sales Practices and Products Liability Litigation (MDL 2792)* (W.D. Okla.) (nationwide settlement involving top-loading washers alleged to explode violently during spin cycle).

f. *Allagas, et al. v. BP Solar, Inc., et al.*, No. 3:14-cv-00560-SI (N.D. Cal.) (nationwide settlement for owners of solar panels alleged to crack and pose risk of fire).

Consumer Protection Class Actions

14. I, along with other attorneys, have also served as class counsel in a series of groundbreaking nationwide class actions under the TCPA. The TCPA is a technologically focused statute. In my experience, successful TCPA class actions require attorneys to understand the mechanics of automatic telephone dialing systems and complex computer databases that store and organize call records. In addition, attorneys must closely track relevant orders, rulemakings, and

petitions from the Federal Communications Commission, as the FCC has been very active on TCPA issues. Below is representative list of TCPA cases I have litigated and in which I played a substantial role.

a. I, along with other attorneys and co-counsel, served as counsel in *Thomas v. Dun & Bradstreet Credibility Corp.*, No. 2:15-cv-03194-BRO-GJS (C.D. Cal.). On March 22, 2017, the court approved a $10.5 million cash settlement for a class of small business owners who received telemarketing calls.

b. I, along with other attorneys and co-counsel, served as counsel in *Smith v. State Farm Mutual Auto. Ins. Co., et al.*, Case No. 1:13-cv-02018 (N.D. Ill.). On December 8, 2016, the court approved a $7 million settlement.

c. I, along with other attorneys and co-counsel, served as counsel in *Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884 (N.D. Ill. June 25, 2018) (certifying nationwide class). On April 9, 2019, the court preliminarily approved a $6.5 million settlement.

d. I, along with other attorneys and co-counsel, served as counsel in *Rice-Redding v. Nationwide Mutual Automobile Ins. Co.*, Case No. 1:16-cv-03634 (N.D. Ga.). On March 21, 2019, the court preliminarily approved a $5 million settlement.

e. I, along with other attorneys and co-counsel, served as counsel in *Pine v. A Place For Mom, Inc.*, Case No. Case 2:17-cv-01826-TSZ (W.D. Wash.). On January 11, 2021 (after I was no longer involved in the case), the court granted final approval of a $6 million settlement.

15. I, along with other attorneys and co-counsel, currently serve as counsel in *Kenney et al v. Centerstone of America, Inc. et al.*, No. 20-cv-1007 (M.D. Tenn.), a certified class action

involving allegations of a negligent failure to protect personal information and private health information that was released in a data breach.

Other Complex Litigation Experience

16. I have also served as counsel in other complex cases involving allegations of defective design, personal injury, antitrust injury, and fraud.

a. In the *Engle* progeny tobacco litigation, I represented addicted smokers and families of deceased smokers in hundreds of federal lawsuits and appeals involving Philip Morris USA, R.J. Reynolds Tobacco Co., and Lorillard Tobacco Co. I participated as trial counsel in several federal jury trials, winning noteworthy verdicts of over $27 million and $6 million, eventually resulting in a $100 million settlement for the remaining federal *Engle* progeny plaintiffs.

b. In *Hosp. Auth. of Metropolitan Gov't of Nashville and Davidson Cty., Tenn., et al. v. Momenta Pharms., Inc., et al.*, No. 3:15-cv-1100 (M.D. Tenn.), I represented the Nashville General Hospital and other class members who purchased blood-thinners Lovenox® and enoxaparin at prices that were alleged to be artificially inflated by anticompetitive conduct. On May 29, 2020, Chief Judge Waverly D. Crenshaw of this Court granted final approval of a $120 million settlement on behalf of a nationwide class of purchasers.

c. In *National Prescription Opiate Litigation (MDL 2804)*, I represented cities, counties, and other public and private entities in litigation against the manufacturers and distributors of prescription opioids that created a devastating addiction crisis in the United States. In my role as counsel at a firm in the leadership of the massive litigation, I successfully briefed innovative claims for damages under the Racketeering Influenced and Corrupt Organizations (RICO) Act and common law theories including public nuisance and fraud.

Spragens Law's Work on Behalf of the Proposed Class

17. I have prosecuted litigation of similar size, scope, and complexity to the instant case, and my firm has the resources necessary to conduct litigation of this nature efficiently and effectively. I have negotiated and implemented settlements of a similar size, scope, and complexity to the instant proposed settlement.

18. If appointed additional class counsel, we will devote all resources necessary to fairly and adequately represent the interests of the class, including implementing the proposed settlement, if approved, for the benefit of all class members.

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

Executed on May 24, 2021, in Nashville, Tennessee.

JOHN SPRAGENS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

RAFAEL SUAREZ, DAISY GONZALEZ, and RICHARD BYRD, individually and on behalf of all others similarly situated, Plaintiffs, vs. NISSAN NORTH AMERICA, INC., Defendant.	Case No.: 3:21-cv-00393 Hon. William L. Campbell, Jr. **CLASS ACTION** DECLARATION OF RAFAEL SUAREZ IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT

I, Rafael Suarez, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Named Plaintiff in the above entitled matter, *Suarez, et al. v. Nissan North America, Inc.,* Case No. 3:21-cv-00393. I have personal knowledge of the information set forth herein and, if called upon, am competent to testify to the content of this declaration.

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

3. I own a Class Vehicle and experienced the defect alleged in the complaint (the "Headlight Defect") which resulted in significant dimming of my headlights. I contacted the Chimicles firm and got involved in this case because I felt that the Headlight Defect was a serious problem that needed to be addressed.

4. My attorneys informed me at the beginning of my involvement in this litigation of the responsibilities of a class representative. I understand these responsibilities and have been and continue to be willing and prepared to represent the interests of similarly situated class members.

5. I helped Class Counsel with the investigation, including being interviewed by counsel several times and searching for and providing emails, communications, and other documents regarding my purchase and problems with my Nissan.

6. By and through my attorneys, I sent Nissan a demand letter on May 20, 2019.

7. Once the demand letter was sent, I continued to stay in contact with Class Counsel about the ongoing settlement discussions. Over the past year and a half, I have had numerous telephone calls and email exchanges with Class Counsel. I have worked with my attorneys to discuss the facts of this case, frame the issues, and to assist them in preparing for mediations, and formulating potential structures for settlement that would most benefit the Class. I also discussed the settlement negotiations with my attorneys several times during the months-long course of the mediations, and I approved of the settlement relief negotiated. I also reviewed and signed the final draft of the settlement agreement.

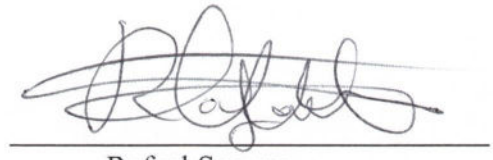
8. Since the beginning of my involvement with this case, I have spoken with my attorneys many times, by email and telephone. I was fully prepared to participate in discovery and appear at trial, if necessary.

9. I understand the terms of the Settlement and I am very pleased with the result we were able to achieve for the Class. I believe the Settlement is fair and reasonable and provides excellent relief to all Class Members.

10. In sum, I have spent significant time and attention working on this case, always with the best interests of the class in mind, and I support approval of the Settlement.

I declare under penalty of perjury, under the laws of the State of Florida and the United States, that the foregoing is true and correct to the best of my personal knowledge.

Executed on May 19, 2021 in SARASOTA, Florida.



Rafael Suarez

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

RAFAEL SUAREZ, DAISY GONZALEZ, and RICHARD BYRD, individually and on behalf of all others similarly situated, Plaintiffs, vs. NISSAN NORTH AMERICA, INC., Defendant.	Case No.: 3:21-cv-00393 Hon. William L. Campbell, Jr. **CLASS ACTION** DECLARATION OF DAISY GONZALEZ IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT

I, Daisy Gonzalez, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Named Plaintiff in the above entitled matter, *Suarez, et al. v. Nissan North America, Inc.*, Case No. 3:21-cv-00393. I have personal knowledge of the information set forth herein and, if called upon, am competent to testify to the content of this declaration.

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

3. I own a Class Vehicle and experienced the defect alleged in the complaint (the "Headlight Defect") which resulted in significant dimming of my headlights. I contacted the Chimicles firm and got involved in this case because I felt that the Headlight Defect was a serious problem that needed to be addressed.

4. My attorneys informed me at the beginning of my involvement in this litigation of the responsibilities of a class representative. I understand these responsibilities and have been and continue to be willing and prepared to represent the interests of similarly situated class members.

5. I helped Class Counsel with the investigation, including being interviewed by counsel several times and searching for and providing emails, communications, and other documents regarding my purchase and problems with my Nissan.

6. By and through my attorneys, I sent Nissan a demand letter on November 13, 2019.

7. Once the demand letter was sent, I continued to stay in contact with Class Counsel about the ongoing settlement discussions. Over the past year and a half, I have had numerous telephone calls and email exchanges with Class Counsel. I have worked with my attorneys to discuss the facts of this case, frame the issues, and to assist them in preparing for mediations, and formulating potential structures for settlement that would most benefit the Class. I also discussed the settlement negotiations with my attorneys several times during the months-long course of the mediations, and I approved of the settlement relief negotiated. I also reviewed and signed the final draft of the settlement agreement.

8. Since the beginning of my involvement with this case, I have spoken with my attorneys many times, by email and telephone. I was fully prepared to participate in discovery and appear at trial, if necessary.

9. I understand the terms of the Settlement and I am very pleased with the result we were able to achieve for the Class. I believe the Settlement is fair and reasonable and provides excellent relief to all Class Members.

10. In sum, I have spent significant time and attention working on this case, always with the best interests of the class in mind, and I support approval of the Settlement.

I declare under penalty of perjury, under the laws of the State of California and the United States, that the foregoing is true and correct to the best of my personal knowledge.

Executed on May 19, 2021 in Fontana, California.

Daisy Gonzalez

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

RAFAEL SUAREZ, DAISY GONZALEZ, and RICHARD BYRD, individually and on behalf of all others similarly situated, Plaintiffs, vs. NISSAN NORTH AMERICA, INC., Defendant.	Case No.: 3:21-cv-00393 Hon. William L. Campbell, Jr. **CLASS ACTION** DECLARATION OF RICHARD BYRD IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT

I, Richard Byrd, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Named Plaintiff in the above entitled matter, *Suarez, et al. v. Nissan North America, Inc.*, Case No. 3:21-cv-00393. I have personal knowledge of the information set forth herein and, if called upon, am competent to testify to the content of this declaration.

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

3. I own a Class Vehicle and experienced the defect alleged in the complaint (the "Headlight Defect") which resulted in significant dimming of my headlights. I contacted the Chimicles firm and got involved in this case because I felt that the Headlight Defect was a serious problem that needed to be addressed.

4. My attorneys informed me at the beginning of my involvement in this litigation of the responsibilities of a class representative. I understand these responsibilities and have been and continue to be willing and prepared to represent the interests of similarly situated class members.

5. I helped Class Counsel with the investigation, including being interviewed by counsel several times and searching for and providing emails, communications, and other documents regarding my purchase and problems with my Nissan.

6. By and through my attorneys, I sent Nissan a demand letter on November 13, 2019.

7. Once the demand letter was sent, I continued to stay in contact with Class Counsel about the ongoing settlement discussions. Over the past year and a half, I have had numerous telephone calls and email exchanges with Class Counsel. I have worked with my attorneys to discuss the facts of this case, frame the issues, and to assist them in preparing for mediations, and formulating potential structures for settlement that would most benefit the Class. I also discussed the settlement negotiations with my attorneys several times during the months-long course of the mediations, and I approved of the settlement relief negotiated. I also reviewed and signed the final draft of the settlement agreement.

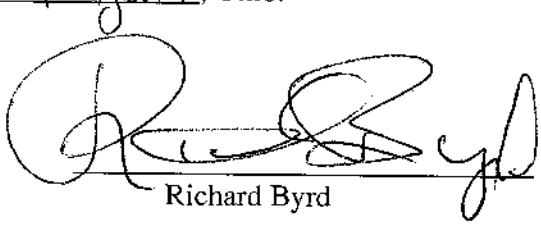
8. Since the beginning of my involvement with this case, I have spoken with my attorneys many times, by email and telephone. I was fully prepared to participate in discovery and appear at trial, if necessary.

9. I understand the terms of the Settlement and I am very pleased with the result we were able to achieve for the Class. I believe the Settlement is fair and reasonable and provides excellent relief to all Class Members.

10. In sum, I have spent significant time and attention working on this case, always with the best interests of the class in mind, and I support approval of the Settlement.

I declare under penalty of perjury, under the laws of the State of Ohio and the United States, that the foregoing is true and correct to the best of my personal knowledge.

Executed on May 19, 2021 in Steubenville, Ohio.



Richard Byrd

KCC Class Action Services Resume

KCC is an industry leader in class action settlement administration. We administer claims processes and distribute funds in a vast array of varying matters, ranging from small and simple settlements to multi-year complex settlements involving millions of claimants.

KCC's parent company, Computershare, is a $9 billion publicly-traded company which, among its many business lines, provides global financial services centering on communications with customers on behalf of our corporate clients. Computershare employs over 12,000 people and does business with more than 16,000 clients in more than 21 countries. KCC's operations are regulated by federal agencies, including both the SEC and OCC. KCC has the largest infrastructure in the class action industry, and is backed by superior data security, call center support and technology. In addition to the immense resources and capabilities brought to bear through Computershare, KCC can execute all operations in-house with zero outsourcing; a capacity which allows for full quality control over each aspect of service.

KCC has administered over 7,000 class action matters and handled thousands of distribution engagements in other contexts as well. Our call centers handle 13.9 million calls each year. Our domestic infrastructure can open and scan 200,000 claims in a single day, and we have document production capabilities that print and mail millions of documents annually. Last year, our disbursement services team distributed more than a trillion dollars.

Locations
KCC has an administrative office in El Segundo, CA, operation offices in San Rafael, CA, and Louisville, KY, and presence in the East Coast, South and Midwest. In addition to these offices, KCC has the global support of Computershare. In the United States Computershare has more than 20 offices.

KCC Personnel
KCC's experienced team of experts knows first-hand the intricacies contained in every aspect of settlement administration, and approach each matter with careful analysis and procedural integrity. Each client is assigned a team of experienced consultants, specialists and technology experts who serve as knowledgeable, reliable and accessible partners that have earned a reputation for exceeding clients' expectations. KCC's executive team – Eric Barberio, President; Patrick Ivie, Senior Executive Vice President; and Daniel Burke, Executive Vice President – are experienced industry leaders.

Our personnel have considerable experience which includes years of practice with KCC and related endeavors. KCC's professionals have extensive training, both on-the-job and formal, such as undergraduate and advanced business, information technology and law degrees, and they possess and/or have had licenses and certificates in disciplines that are relevant to class action administration.

Recognition
Our settlement administration services have been recognized by *The National Law Journal*, *The New York Law Journal, The New Jersey Law Journal, The Recorder, Legal Intelligencer, Legal Times* and other leading publications. KCC has earned the trust and confidence of our clients with our track record as a highly-responsive partner.

Settlement Value	
Case	**Value**
Fortis Settlement	$1,572,690,000
Ramah Navajo Chapter v. Jewell	$940,000,000
U.S.A. v. The Western Union Company	$586,000,000
Vaccarino v. Midland National Life Ins. Co	$555,000,000
Safeco v. AIG	$450,000,000
Johnson v. Caremark Rx, LLC	$310,000,000
In re Activision Blizzard, Inc. Stockholder Litigation	$275,000,000
Harborview MBS	$275,000,000
Dial Corp. v. News Corporation, et al.	$244,000,000
In re Medical Capital Securities Litigation Settlement	$219,000,000
In Re: NCAA Athletic Grant-In-Aid Antitrust Litigation	$208,664,445
Gutierrez v. Wells Fargo Bank, N.A	$203,000,000
Bell v. Farmers - Bell III	$170,000,000
In Re Diamond Foods, Inc. Securities Litigation	$167,000,000
In re JPMorgan Chase & Co. Securities Litigation	$150,000,000
Haddock v. Nationwide Life Insurance Co. Settlement	$140,000,000
In re Freeport-McMoran Copper & Gold Inc. Derivative Litigation Notice	$137,500,000
Bank of America, et al. v. El Paso Natural Gas Company, et al.	$115,000,000
In re Anthem, Inc. Data Breach Litigation	$115,000,000
In re Medical Capital Securities Litigation Settlement	$114,000,000
Drywall Acoustic Lathing v. SNC Lavalin	$110,000,000
In re Automotive Parts Antitrust Litigation III	$103,000,000
Rural/Metro Corporation Stockholders Litigation	$97,793,880
J.C. Penney Securities Litigation	$97,500,000
Smokeless Tobacco Cases	$96,000,000
Oubre v. Louisiana Citizens	$92,865,000
Ardon v. City of Los Angeles	$92,500,000
Nishimura v. Gentry Homes, Ltd. II	$90,341,564
In Re: Potash Antitrust Litigation (II) (Escrow)	$90,000,000
Ormond, et al, v. Anthem, Inc.	$90,000,000
In re DRAM Antitrust Litigation	$87,750,000
In re: Morning Song Bird Food Litigation	$85,000,000
Ideal v. Burlington Resources Oil & Gas Company LP	$85,000,000
Willoughby v. DT Credit Corporation, et al. (Drivetime)	$78,000,000

Class Members	
Case	**Volume**
Edwards v. National Milk Producers Federation et al.	90,000,000
In re Anthem, Inc. Data Breach Litigation	80,000,000
Carrier IQ Inc. Consumer Privacy Litigation	47,300,000
The Home Depot, Inc. Customer Data Security Breach Litigation	40,000,000
In Re Midland Credit Management, Inc. TCPA Litigation	30,000,000
Golden v. ContextLogic Inc. d/b/a Wish.com	29,222,936
Cassese v. WashingtonMutual	23,200,344
Rael v. The Children's Place, Inc.	22,000,000
In Re Optical Disk Drive Antitrust Litigation	20,000,000
In re UltraMist Sunscreen Litigation	20,000,000
Torres v. Wendy's International, LLC	18,000,000
In Re Lithium Ion Batteries Antitrust Litigation	16,000,000
Gordon v. Verizon Communications, Inc.	15,236,046
Experian Data Breach Litigation	15,000,000
Opperman v. Kong Technologies, Inc. et al.	13,279,377
Lerma v Schiff Nutrition International, Inc.	12,000,000
Kolinek v. Walgreen Co.	10,213,348
Dunstan v. comScore, Inc.	10,000,000
Sprint Government Restitution Program	9,500,000
Steinfeld v. Discover Financial Services	9,088,000
Cohen, et al. v. FedEx Office and Print Services, Inc., et al.	9,000,000
Elvey v. TD Ameritrade, Inc.	8,639,226
In Re: Monitronics International, Inc. Telephone Consumer Protection Act Litigation	7,789,972
In re Portfolio Recovery Associates Telephone Consumer Protection Act Litigation	7,395,511
Morrow v. Ascena Retail Group, Inc. and Ann Inc.	7,277,056
Shames v. The Hertz Corporation	7,271,238
In Re Facebook Biometric Information Privacy Litigation	7,000,000
Roberts, et al. v. Electrolux Home Products, Inc.	6,305,000
Chambers v. Whirlpool Corporation, et al.	5,788,410
Morales v. Conopco Inc. dba Unilever (TRESemmé Naturals)	5,000,000