## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IN RE: THE BANK OF NEW YORK MELLON ADR FX LITIGATION	16-CV-00212-JPO-JLC
	ECF Case
This Document Relates to:	
ALL ACTIONS	

JOINT DECLARATION OF SHARAN NIRMUL AND DANIEL P. CHIPLOCK IN SUPPORT OF (1) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (2) LEAD PLAINTIFFS' COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES, INCLUDING SERVICE AWARDS TO LEAD PLAINTIFFS

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SHARAN NIRMUL and DANIEL P. CHIPLOCK declare as follows pursuant to 28 U.S.C. § 1746:

- 1. We, Sharan Nirmul and Daniel P. Chiplock, are partners of the law firms of Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz") and Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser"), respectively. Kessler Topaz and Lieff Cabraser were designated by the Court as Interim Lead Counsel (herein referred to as, "Lead Plaintiffs' Counsel") in the above-captioned class action (the "Action"). We, along with Hach Rose Schirripa & Cheverie, LLP ("Hach Rose"), represent David Feige, International Union of Operating Engineers Local 138 Annuity Fund ("IUOE Local 138"), Annie L. Normand, and Diana Carofano, on behalf of her deceased husband, Don A. Carofano (collectively, "Named Plaintiffs" or "Plaintiffs") as well as Chester County Employees Retirement Fund ("Chester County") (together with Named Plaintiffs, "Lead Plaintiffs"). We have personal knowledge of the matters set forth herein based on our active supervision of and participation in the prosecution and resolution of the Action.
- 2. We respectfully submit this Joint Declaration in support of Lead Plaintiffs' motion pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (the "Federal Rules") for final approval of the proposed settlement (the "Settlement") with The Bank of New York Mellon ("Defendant," "BNYM" or the "Bank"). The Settlement will resolve all claims asserted in the Action against the Defendant, on behalf of the Settlement Class, consisting of all entities and individuals who at any time during the Settlement Class Period (i.e., January 1, 1997 through

All capitalized terms that are not defined in this Joint Declaration have the same meanings as defined in the Stipulation and Agreement of Settlement dated January 15, 2019 (the "Stipulation"). ECF No. 147-2.

References herein to "Plaintiffs' Counsel" includes all three firms, Kessler Topaz, Lieff Cabraser and Hach Rose.

Lead Plaintiffs and BNYM are sometimes collectively referred to herein as "Parties."

January 17, 2019) held (directly or indirectly, registered or beneficially), or otherwise claim any entitlement to any payment (whether a dividend, rights offering, interest on capital, sale of shares, or other distribution) in connection with any American Depositary Share (sometimes known as an American Depositary Receipt) ("ADR") for which BNYM acted as the depositary sponsored by an issuer that is identified in the Appendix attached to the Stipulation. ECF No. 147-2. The Court approved the proposed form and manner of notice of the Settlement to the Settlement Class by Order entered January 17, 2019 (the "Notice Order"). ECF No. 149.

- 3. We also respectfully submit this Joint Declaration in support of the proposed plan for allocating the net proceeds of the Settlement to eligible Settlement Class Members (the "Plan of Allocation") and Lead Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Fee and Expense Application"), including the requests for Service Awards to Lead Plaintiffs for the effort and time spent by them in connection with the prosecution of the Action.
- 4. For the reasons discussed below and in the accompanying memoranda,<sup>5</sup> we respectfully submit that: (i) the terms of the Settlement are fair, reasonable, and adequate in all respects and should be approved by the Court; (ii) the proposed Plan of Allocation is fair and reasonable and should be approved by the Court; and (iii) Lead Plaintiffs' Counsel's Fee and

For avoidance of doubt, Settlement Class Members include all entities, organizations, and associations regardless of form, including investment funds and pension funds of any kind. Certain entities and individuals are excluded from the Settlement Class as provided in ¶ 1(tt) of the Stipulation.

In addition to this Joint Declaration, Lead Plaintiffs and Lead Plaintiffs' Counsel are submitting: (i) the Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation (the "Settlement Memorandum"); and (ii) the Memorandum of Law in Support of Lead Plaintiffs' Counsel's Application for Attorneys' Fees and Reimbursement of Litigation Expenses, Including Service Awards to Lead Plaintiffs (the "Fee Memorandum").

Expense Application is reasonable and supported by the facts and law and should be granted in all respects.

#### I. PRELIMINARY STATEMENT

- 5. This Action began more than three years ago and was actively and vigorously litigated by Lead Plaintiffs' Counsel until the Parties reached their agreement-in-principle to settle the Action just weeks before summary judgment motions were due and while two critical motions—a motion by BNYM for partial summary judgment based on the applicability of the statute of limitations and standing and Named Plaintiffs' motion for class certification—were pending. During the course of this Action, Lead Plaintiffs' Counsel worked diligently, dedicating certain attorneys solely to the advancement of this case, and only after significant litigation efforts, extensive negotiations and careful consideration of the risks to continued litigation, as detailed below, did Lead Plaintiffs' Counsel and Lead Plaintiffs succeed in recovering \$72,500,000 for the Settlement Class. This amount reflects nearly 24% of the agreed upon margin that BNYM generated from the allegedly impermissible foreign exchange ("FX") fees at issue in this litigation. As provided in the Stipulation, in exchange for this consideration, the Settlement resolves all claims asserted in the Action, or that could have been asserted, by Lead Plaintiffs and the Settlement Class against BNYM.
- 6. Before agreeing to settle the Action, Lead Plaintiffs' Counsel and Lead Plaintiffs conducted an exhaustive investigation into the events and transactions underlying the claims alleged in the Consolidated Complaint (defined below) and engaged in substantial motion practice and wide-ranging discovery. These efforts included, among other things: (i) conducting a significant legal and factual investigation into BNYM's FX conversions in connection with ADR-related distributions; (ii) successfully opposing, in large part, BNYM's motion to dismiss the initial complaint, which required navigation of numerous complex arguments; (iii) drafting

the detailed complaints; (iv) engaging in extensive discovery efforts, including reviewing and analyzing more than 260,000 documents totaling more than 2.7 million pages, as well as 136,000 Excel documents, produced by BNYM, participating in numerous meet and confers with BNYM's counsel in an effort to resolve various discovery disputes, and deposing 14 fact witnesses and defending the depositions of three Plaintiffs; (v) consulting with an expert to develop a class-wide damages methodology, as well as taking and defending expert depositions; (vi) opposing BNYM's motion for partial summary judgment; and (vii) fully briefing a motion for class certification.

- 7. As a result of these efforts, Lead Plaintiffs' Counsel had a deep understanding of the strengths and weaknesses of the Parties' respective positions—an understanding further informed by the Parties' protracted settlement discussions. In March 2018, the Parties participated in their first in-person mediation with former U.S. District Court Judge for the Western District of Oklahoma, the Honorable Layn R. Phillips (Ret.) ("Judge Phillips"). Although too far apart in their respective positions to resolve the Action at the mediation, the Parties engaged in further efforts to reach a resolution in the months that followed, including two additional in-person mediations with David Murphy, Esq. of Phillips ADR, before ultimately accepting a mediator's proposal on the Settlement Amount. Given the complexities of the issues involved, it took additional hard-fought discussions to memorialize the material terms of their agreement-in-principle in a term sheet, and continued negotiations over several months until the Parties executed the Stipulation documenting all terms of their agreement, including the universe of the ADRs covered by the Settlement.
- 8. Moreover, in deciding to settle the Actions, Lead Plaintiffs' Counsel carefully considered the significant risks associated with advancing their case through summary judgment,

trial and the inevitable post-trial appeals. Notably, at the time the Settlement was reached, the Parties were awaiting the Court's ruling on three key motions—BNYM's motion for partial summary judgment, and Named Plaintiffs' motions for class certification and to add Chester County as a named plaintiff to address Defendant's various standing arguments—which, depending on the outcome, could have drastically changed the landscape of this litigation going forward. In particular, had BNYM succeeded on its standing arguments made in connection with class certification, the number of ADRs (and damages) at issue in the litigation may have been significantly limited.

9. Had the Settlement not been reached, BNYM would have continued to vigorously contest Lead Plaintiffs' claims. For example, Lead Plaintiffs faced significant risks to ultimately succeeding on their fraudulent concealment claim, as BNYM argued that all of the information Lead Plaintiffs needed to assert their claims was publicly available—a determination already made by the Hon. Valerie E. Caproni in a contemporaneous case against a BNYM competitor (Merryman et al. v. JPMorgan Chase Bank, N.A., No. 1:15-cv-09188-VEC (S.D.N.Y.)). Lead Plaintiffs also faced serious risks in establishing BNYM's liability. BNYM steadfastly maintained that the "Deposit Agreements" at issue in the Action did not obligate it to price FX in any particular way and that the spreads retained by BNYM were a perfectly acceptable (and commercially reasonable) means of compensating it for the risks associated with executing FX transactions. BNYM would further have pointed to the Court's motion to dismiss ruling, which noted that "significant unresolved issues of interpretation" existed with respect to the Deposit Agreements, to bolster this defense. Finally, with respect to damages, BNYM had already sought to undermine Lead Plaintiffs' expert's damages methodology and would have continued to challenge his opinions going forward. At trial, damages would have been hotly contested and, if the jury found BNYM's expert testimony more credible, the Settlement Class's recovery could have been much less than the Settlement Amount, or zero.

- 10. Lead Plaintiffs' Counsel believe that the Settlement, particularly when viewed in the context of the risks and uncertainties of continued litigation and trial, is an excellent result for the Settlement Class. Indeed, the Settlement Amount represents nearly 24% of the total margin amount attributed to the Settlement Class (i.e. approximately \$304 million)<sup>6</sup>—a substantial result when compared to the median recovery of investor losses as a percentage of damages in recent, comparably sized securities cases.<sup>7</sup>
- 11. The Settlement Class's reaction to the Settlement thus far has been positive. In accordance with the Court's Notice Order, the Court-authorized Claims Administrator, Kurtzman Carson Consultants LLC ("KCC"), has mailed Post-Card Notices to over 460,500 Registered Holder Settlement Class Members.<sup>8</sup> In addition, the Court-approved Publication Notice Plan Administration, HF Media, LLC ("HF Media"), has conducted an extensive media campaign comprised of press releases, publications in magazines, newspapers and investment e-

This total margin amount was agreed to by the Parties for purposes of settlement and is consistent with Lead Plaintiffs' damages expert's calculation during the Action.

See e.g., Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review, available at <a href="https://www.nera.com/content/dam/nera/publications/2019/PUB\_Year\_End\_Trends\_012819\_Final.pdf">https://www.nera.com/content/dam/nera/publications/2019/PUB\_Year\_End\_Trends\_012819\_Final.pdf</a>, at 35 (finding median settlement between 1996 and 2018 in securities cases with investor losses between \$200 million and \$399 million recovered 2.6% of investor losses).

See Declaration of Lance Cavallo Regarding (A) Receipt and Processing of Registered Holder Data; (B) Mailing of the Post-Card Notice; (C) Establishment of the Telephone Hotline; (D) Establishment of the Settlement Websites; and (E) Report on Requests for Exclusion Received to Date (the "Cavallo Declaration" or "Cavallo Decl.") attached hereto as Exhibit 1, at ¶ 5. Through their efforts, Lead Plaintiffs' Counsel were able to obtain the contact, holding and distribution information for these Registered Holder Settlement Class Members from BNYM's transfer agent, Computershare, Inc. and, as a result, Registered Holder Settlement Class Members do not need to take any further action in order to be eligible to receive a payment from the Settlement.

newsletters, and banner advertisements over the Internet and across social media channels.<sup>9</sup> Requests for exclusion from the Settlement Class and objections are due to be received no later than May 13, 2019. To date, there have been no objections to any aspect of the Settlement, Plan of Allocation, or Lead Plaintiffs' Counsel's request for attorneys' fees and expenses, including Service Awards to Lead Plaintiffs, and only six individuals have requested exclusion from the Settlement Class.<sup>10</sup>

#### II. BACKGROUND OF THE ACTION

#### A. The MDL

- 12. In March 2015, BNYM agreed to a global \$714 million settlement to resolve all civil and regulatory actions stemming from its misconduct in pricing certain FX transactions (the "MDL"). The MDL involved BNYM's custodial clients, and was litigated in tandem with cases brought by the U.S. Department of Justice ("DOJ"), and the New York Attorney General ("NYAG").
- 13. The MDL, which was led and chiefly litigated by Lead Plaintiffs' Counsel here, focused on BNYM's methods and manner of pricing "indirect" FX trades, such as those undertaken pursuant to "standing instructions." As BNYM ultimately admitted to the government, contrary to prior representations it made to its customers, BNYM priced "indirect" FX transactions at or near the extremes of a range of rates available to BNYM over a 24-hour (or longer) period in order to maximize its profits and disadvantage its customers. This practice was called "Session Range" pricing. In approving the global settlement of the civil and regulatory

See Declaration of Jeanne C. Finegan, APR Concerning Implementation of Notice to Settlement Class Members Through Multi-Media Notice Program (the "Finegan Declaration" or "Finegan Decl.") attached hereto as Exhibit 2, at ¶¶ 14, 18-44.

See Cavallo Decl, ¶ 13. Should any additional requests for exclusion or objections be received after the date of this submission, Lead Plaintiffs' Counsel will address them in their reply papers to be filed on or before June 10, 2019.

actions, the Hon. Lewis A. Kaplan stated in open court that "[t]his was an outrageous wrong committed by the Bank of New York Mellon."

- 14. Following closely on the heels of the MDL settlement, on October 1, 2015, BNYM published a "Depositary Receipts Foreign Exchange Pricing Disclosure" (the "Pricing Disclosure"). The Pricing Disclosure revealed that, just as for standing instructions, the Bank had utilized the Session Range to obtain a spread on FX trades it performed related to dividends or other cash distributions issued by foreign companies ("Cash Distributions") to holders of ADRs. Building on the MDL and BNYM's Pricing Disclosure, this Action alleges that such FX trades, as they pertained to ADRs, fell into the same category of "indirect" trades as standing instructions, and the spreads obtained by BNYM thereon were unauthorized and unlawful.
- 15. Unlike the MDL, however—in which fiduciary claims were asserted—this Action is a pure breach of contract action. And, notably, the claims in this case are subject to different contracts than those in the MDL. Accordingly, in litigating the MDL, Lead Plaintiffs' Counsel specifically carved out the claims at issue in this case so that they could be litigated separately.

## B. Summary of the Claims Asserted Against BNYM in the Action

Ownership of publicly traded shares in foreign corporations. ADRs allow their holders to invest in foreign companies without navigating a foreign market. Lead Plaintiffs and the Class are holders of ADRs for which BNYM served as the depositary bank during the Settlement Class Period. Pursuant to agreements between: (a) BNYM; (b) the foreign issuer whose shares were deposited with BNYM; and (c) the registered owners/beneficial owners of the ADRs, BNYM held shares issued by foreign companies on behalf of, and for the benefit of, U.S. investors in the ADRs. Under those agreements, called "Deposit Agreements," BNYM converted into U.S.

dollars any Cash Distributions received from these foreign companies for the benefit of ADR holders ("ADR FX Conversions").

- 17. Lead Plaintiffs allege BNYM essentially created and pocketed unauthorized fees when performing ADR FX Conversions. More specifically—as BNYM admitted in the MDL and as discovery in this case confirmed—BNYM priced "indirect" FX transactions such as ADR FX Conversions at or near the extremes of the applicable 24-hour (or longer) Session Range rather than more favorable prices readily available in the market at the time of the trades, and kept for itself the difference, i.e., the resulting "spreads."
- 18. Lead Plaintiffs allege BNYM's conduct in pricing FX for ADR holders breached the Deposit Agreements in several respects. First, by waiting 24 hours or more to assign FX rates for Cash Distributions, which allowed BNYM to retain a spread at Lead Plaintiffs' expense, the Bank violated its obligation to "promptly" convert and distribute Cash Distributions. Second, the spread retained by BNYM was deducted from the Cash Distributions paid to ADR holders and thus constituted a fee not authorized by the Deposit Agreements, which specifically enumerate the permissible charges for FX transactions and Cash Distributions. Third, the Bank acted in bad faith by retaining the spread and depriving Lead Plaintiffs of a portion of their Cash Distributions.
- 19. Lead Plaintiffs further allege that BNYM fraudulently concealed its breach of the Deposit Agreements. More specifically, BNYM provided Lead Plaintiffs and other class members with account statements that concealed that the Bank was charging a fee in the form of a spread above the rate it had obtained for FX conversions in the interbank market. While those statements disclosed the FX rate that was applied to Cash Distributions, they did not disclose the date or time of day when BNYM executed the conversions, which prevented Lead Plaintiffs

from determining the rate the Bank had obtained for the conversions (and thus the spread the Bank was generating). What's more, in internal emails that have since been made public, BNYM employees openly recognized that the Bank was "late to the transparency space" and that its competitors were offering "time stamping and fixed spreads across all currencies."

## C. Relevant Procedural History

## 1. Investigation and Commencement of the Action

- 20. Prior to filing the initial complaint, Lead Plaintiffs' Counsel conducted an exhaustive investigation into the facts underlying this Action. As part of their investigation, Lead Plaintiffs' Counsel reviewed an extensive number of publicly available documents, including: (i) public filings made by BNYM; (ii) press releases and other public statements issued by BNYM, including its admissions following the MDL settlement; (iii) media and news reports related to BNYM; (iv) data concerning the FX interbank market; (v) publicly available information concerning BNYM-sponsored ADRs (e.g., deposit agreements); and (vi) pleadings filed in related litigation against BNYM, including the MDL.
- 21. Several investigatory undertakings were particularly important in this case and warrant specific discussion. <u>First</u>, Lead Plaintiffs' Counsel reviewed hundreds of Deposit Agreements to determine: (i) BNYM's obligations to ADR holders; and (ii) whether such Deposit Agreements were substantially similar to one another such that BNYM's alleged conduct would constitute a breach of each agreement.
- 22. <u>Second</u>, Lead Plaintiffs' Counsel compared the rates received by ADR holders (as BNYM publicly disclosed on its website) to the FX rates available in the market at or around the same time. The divergence in the two rates, or "spread," indicated that BNYM breached the Deposit Agreements by retaining for itself an unauthorized fee.

- 23. <u>Third</u>, Lead Plaintiffs' Counsel thoroughly reviewed public filings in the MDL as well as BNYM's statements and admissions following the MDL settlement. These documents and admissions likewise indicated that BNYM had breached the Deposit Agreements.
- 24. Relatedly, because Lead Plaintiffs' Counsel had obtained a significant amount of institutional knowledge regarding BNYM's FX practices (and the FX market generally) from the MDL, Lead Plaintiffs' Counsel thoroughly researched the contours of the confidentiality order in that case to determine what, if any, information from the MDL could be used in Lead Plaintiffs' pleadings here. For example, as discussed in greater detail below, certain documents filed in connection with the MDL plaintiffs' motion for class certification had been stripped of their "Confidential" designations by Judge Kaplan. While Judge Kaplan's order made the documents presumptively public, that direction was never formally effectuated on the docket. Prior to filing the initial complaint, Lead Plaintiffs' Counsel thus thoroughly researched whether: (i) it was permissible to use such documents in a pleading here; and if not, (ii) whether it was permissible to file a motion to unseal such documents. Ultimately, Lead Plaintiffs' Counsel determined that such a motion was unnecessary and elected to file the initial complaint in this Action without reference to information previously marked "Confidential" in the MDL. As discussed in greater detail below, Lead Plaintiffs' Counsel did, however, raise the issue with both this Court and the Hon. James L. Cott.
- 25. On January 11, 2016, following the extensive investigation described above, Annie L. Normand, Don A. Carofano and David Feige filed the initial complaint in this Action ("Complaint"). ECF No. 1. The Complaint asserted claims for breach of contract, breach of implied covenant of good faith and fair dealing, and conversion against BNYM on behalf of all

ADR Holders who had received Cash Distributions from the BNYM-sponsored ADRs between 1997 and the filing of the Complaint.

## 2. Appointment of Interim Lead Plaintiffs' Counsel and Negotiations Regarding MDL Relatedness

- 26. Roughly one week after filing the Complaint, on January 19, 2016, Kessler Topaz and Lieff Cabraser moved, pursuant to Federal Rule 23(g), for appointment as Interim Lead Counsel for the class. ECF Nos. 7-9. In their motion, Kessler Topaz and Lieff Cabraser noted, among other things, that: (i) they had expended substantial resources investigating and preparing the action; and (ii) they had extensive experience litigating complex cases and knowledge of the applicable facts and law. In their motion, Kessler Topaz and Lieff Cabraser proposed that lead counsel would have authority over the following responsibilities:
  - (a) Directing, coordinating, and supervising the prosecution of Plaintiffs' claims in the action, including the drafting and filing of consolidated or amended complaints, the briefing of any motion(s) to dismiss by Defendant, as well as any class certification motion and any matters pertaining thereto;
  - (b) Initiating and conducting discovery, including, without limitation, coordinating discovery with Defendant's counsel, preparing written interrogatories, requests for admissions, and requests for production of documents;
  - (c) Directing and coordinating the examination of witnesses in depositions;
  - (d) Retaining experts;
  - (e) Communicating with the Court;
  - (f) Communicating with Defendant's counsel;
  - (g) Conducting settlement negotiations;
  - (h) Collecting and reviewing time and expense records from all plaintiffs' counsel on a monthly basis and at the conclusion of the case, as necessary and appropriate under the circumstances, and submitting a fee and costs application;
  - (i) Coordinating activities to avoid duplication and inefficiency in the filing, serving, and/or implementation of pleadings, other court papers, discovery papers, and discovery practice, and, generally, in the litigation; and

- (j) Performing such other duties that may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further order of the Court.
- 27. Through their motion, Lead Plaintiffs' Counsel also sought to have all future cases consolidated under the MDL caption. On February 2, 2016, BNYM filed a response to the application filed by Kessler Topaz and Lieff Cabraser. ECF No. 17. The Bank did not oppose the proposed appointment as Interim Lead Counsel, but it did oppose the request to have all future actions consolidated under the MDL caption.
- Subsequent to the Bank's opposition, the Parties met and conferred and agreed to a proposed form of order, which no longer included a designation of this case as related to the MDL. In their reply submission, Plaintiffs nonetheless noted: "it is likely that there will be substantial overlap between the substantial discovery taken in the MDL and that which Plaintiffs seek here," and, as such, "Plaintiffs' Counsel intend to work with BNYM's counsel to realize whatever efficiencies are possible in the prosecution of this action, and to avoid unnecessary duplication of effort, both in terms of BNYM's document production and depositions." ECF No. 18.
- 29. By Text Order entered on April 12, 2016, the Court granted the motion, designating Kessler Topaz and Lieff Cabraser as Interim Lead Counsel for the putative class. In the same order, the Court stated that it would "consider any motions to consolidate this action with others on a case-by-case basis."

#### 3. Consolidation of this Action and the IUOE Local 138 Action

30. On February 19, 2016, IUOE Local 138 filed a similar action in the United States District Court for the Eastern District of New York. The IUOE Local 138 Action was transferred to this Court on April 15, 2016, under the caption *International Union of Operating Engineers* 

Local 138 Pension Trust Fund v. The Bank of New York Mellon, No. 16-cv-02834-JPO ("IUOE Local 138 Action"). 11

31. On May 4, 2016, by Stipulation and Order, the IUOE Local 138 Action was consolidated with this Action for all purposes pursuant to Federal Rule 42(a), under the caption *In re: The Bank of New York Mellon ADR FX Litigation*, File No. 1:16-CV-00212-JPO. ECF No. 33.

#### 4. BNYM's Motion to Dismiss

- 32. On February 26, 2016, BNYM moved to dismiss the Complaint in this Action under Federal Rules 12(b)(1) and 12(b)(6). In so doing, the Bank advanced five primary arguments in favor of dismissal. First, BNYM claimed that the Deposit Agreements did not entitle Plaintiffs or ADR holders to the more competitive FX rates they claimed they were entitled to receive. Second, BNYM claimed that the fees charged in connection with FX transactions were disclosed and/or permitted under the Deposit Agreements. Third, BNYM argued that Plaintiffs were not parties to certain Deposit Agreements pled in the Complaint and therefore lacked standing to bring claims on behalf of those agreements.
- 33. <u>Fourth</u>, BNYM raised the novel argument that the claims here were barred by the Securities Litigation Uniform Standards Act ("SLUSA"), which forbids class actions based on state law claims (as relevant here, breach of contract and conversion) when Plaintiffs' underlying theory of liability is securities fraud. Finally, BNYM argued that a portion of Plaintiffs' claims

The operative complaints in the Action name International Union of Operating Engineers Local 138 Pension Trust Fund rather than International Union of Operating Engineers Local 138 Annuity Fund. Lead Plaintiffs' Counsel represent that the proper Named Plaintiff is International Union of Operating Engineers Local 138 Annuity Fund, as set forth in the Parties' executed Stipulation.

were time-barred under the applicable statutes of limitations, and that Plaintiffs had not adequately pled fraudulent concealment.

- 34. Lead Plaintiffs' Counsel carefully reviewed and analyzed BNYM's 30 pages of briefing and hundreds of pages of exhibits and the extensive legal authority cited. Lead Plaintiffs' Counsel also conducted significant legal research into Defendant's arguments and their responses thereto, particularly with respect to BNYM's SLUSA and class standing arguments.
- 35. On March 18, 2016, Plaintiffs filed a 30-page opposition to Defendant's motion to dismiss, citing 54 cases of their own and distinguishing the key authorities that Defendant cited in support of its motion. ECF No. 26. In their opposition, Plaintiffs vigorously defended their allegations, including that the Complaint adequately alleged breach of contract, fraudulent concealment and standing. More specifically, Plaintiffs argued, inter alia, that: (i) they plausibly stated a claim for breach of contract, including with respect to the Deposit Agreement's obligation that BNYM convert FX "promptly"; (ii) they had class standing to represent all ADR holders under *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012), and its progeny; (iii) BNYM's statute of limitations arguments did not bar Plaintiffs' claims and, in any event, were premature; and (iv) SLUSA did not bar Plaintiffs' claims because this case did not involve securities fraud, but rather straightforward breach of contract claims.
- 36. Defendant filed a 10-page reply in further support of its motion on March 28, 2016. ECF No. 30. In its reply, BNYM advanced further arguments in support of its purported bases for dismissing the Complaint, including that Plaintiffs had not identified any provision of the Deposit Agreements that was breached and Plaintiffs lacked both contractual and class standing to pursue the claims at issue.

37. On August 17, 2016, Plaintiffs submitted a letter to the Court attaching as supplemental authority the Honorable Colleen McMahon's recent decision in *Merryman v. Citigroup, Inc., et al.*, No. 1:15-cv-09185-CM (S.D.N.Y.) (the "Citi Action"), a substantially similar case against another BNYM competitor which sustained breach of contract claims similar to those of Plaintiffs here. ECF No. 34. In the letter, Plaintiffs further noted that Judge McMahon found that: (i) SLUSA did not bar the plaintiffs' claims; (ii) the defendant's challenges under the applicable statute of limitations were inappropriate for resolution on a motion to dismiss; and (iii) the defendant's challenges to class standing were premature and more appropriately addressed at class certification.

## 5. Defendant's Motion to Stay

- 38. At the same time BNYM moved to dismiss the complaint, it also filed a letter motion to stay discovery pending a ruling on the motion to dismiss. ECF No. 23. In the motion, Defendant argued that: (i) "good cause" existed for a stay of discovery because the motion to dismiss had the potential to dispose of most or all of Plaintiffs' claims; (ii) participating in the discovery process would be burdensome to the Bank; and (iii) the requested stay would not prejudice Plaintiffs. *Id*.
- 39. Plaintiffs filed a 5-page submission opposing BNYM's motion to stay on March 2, 2016. ECF No. 24. In their opposition, Plaintiffs argued that: (i) the requested discovery was targeted and not burdensome for BNYM to produce, as it had already been collected, reviewed and produced in the MDL; and (ii) the case was likely to be sustained on the merits. ECF No. 24. *Id.* <sup>12</sup>

Additional information regarding Plaintiffs' request for discovery prior to a decision on BNYM's motion to dismiss is discussed in Sections II.E.3 and II.E.7, *infra*.

40. On April 12, 2016, the Court entered an order granting BNYM's motion to stay, reasoning, at that time, that "a preliminary review of the briefing on this motion suggest that there are substantive arguments in favor of dismissal that could result in elimination, or significant narrowing, of the claims at issue." ECF No. 31 at 1.

## 6. The Court's Ruling on Defendant's Motion to Dismiss

- 41. By Opinion and Order dated September 29, 2016, the Court granted in part and denied in part BNYM's motion to dismiss the Complaint ("MTD Order"). ECF No. 36. The Court sustained Plaintiffs' core breach of contract allegations, stating: "Plaintiffs have pleaded enough to state a claim for breach of contract arising out of BNYM's deduction and retention of amounts to which it may not be authorized under the literal terms of the governing contract." *Id.* at 9.
- 42. In the MTD Order, the Court also found: (i) SLUSA did not bar Plaintiffs' claims, reasoning: "[w]hether or not BNYM misrepresented or omitted a material fact is simply separate and apart from whether BNYM's actions breached the terms of the contract"; (ii) BNYM's challenges under the applicable statute of limitations were inappropriate for resolution on a motion to dismiss (and Plaintiffs could therefore pursue claims dating back to January 1, 1997); (iii) beneficial owners of ADRs, like Plaintiffs, were parties to the Deposit Agreements, and thus had contractual standing to pursue claims; and (iv) Plaintiffs adequately pled class standing (i.e., Plaintiffs could represent all purchasers of BNYM-sponsored ADRs, regardless of whether or not Plaintiffs purchased a particular ADR). <sup>13</sup>

BNYM's motion with respect to fraudulent concealment was denied without prejudice to renewal, either on summary judgment after discovery, or at trial. Likewise, the Court deferred full consideration of the class standing issue until class certification.

43. Finally, the Court granted BNYM's motion to dismiss as to Plaintiffs' claims for breach of the implied duty of good faith and fair dealing and conversion, and dismissed these claims with prejudice.

## 7. The Consolidated Complaint and Defendant's Answer

- 44. Following the MTD Order, Plaintiffs negotiated a stipulation with the Bank which, among other things, permitted Plaintiffs to file a consolidated complaint by October 28, 2016. By agreement of the Parties, that complaint was not to be subject to a motion to dismiss. The Court signed the Parties' stipulation on October 19, 2016. ECF No. 38.
- 45. In accordance with the Court's Order, Plaintiffs filed the operative complaint in the Action—the Consolidated Amended Class Action Complaint (the "Consolidated Complaint") on October 26, 2016. ECF No. 39. The Consolidated Complaint retained all substantive allegations from the initial Complaint, but added IUOE Local 138 as a party.
- 46. BNYM answered the Consolidated Complaint on November 23, 2016 (the "Answer"). ECF No. 42. In its Answer, the Bank continued to deny that it had breached the Deposit Agreements and that it had fraudulently concealed its FX practices. Thereafter, the Parties commenced discovery, as detailed below.

# 8. Federal Rule 26(f) Report and Negotiations Regarding Early Discovery and the Schedule

47. The Parties held an initial Federal Rule 26(f) conference shortly after the initial Complaint was filed in January 2016, and continued to meet and confer thereafter, speaking on several additional occasions. As set forth in greater detail below, during the Parties' initial meet and confer, the Parties discussed how best to use the substantial discovery record that had been amassed in the MDL in order to litigate this case in the most efficient manner.

- 48. On March 4, 2016, the Parties submitted to the Court a Joint Case Management Statement summarizing the Parties' positions regarding, inter alia: (i) a discovery stay; (ii) the subjects and sources of discovery, including access to discovery from the MDL; (iii) a proposed schedule; (vi) anticipated motions, including class certification; (vii) anticipated length of trial, and (viii) settlement (the "March 4 Case Management Order"). ECF No. 25.
- 49. Except for the length of fact discovery and the time to serve initial disclosures, the Parties jointly agreed to all deadlines in the March 4 Case Management Order, including with respect to: (i) document production; (ii) written discovery; (iii) depositions; (iv) expert disclosures and discovery; (v) settlement; and (vi) trial.
- 50. With respect to the length of fact discovery, Plaintiffs proposed a fact discovery period of "up to 12 months" given the complexity of the Action. Defendant agreed that this was a complex case that would require more than 120 days for the completion of fact discovery, but did not propose a time period for the completion of fact discovery. Instead, the Bank took the position that a full discovery plan could be developed after the scope of the surviving claims was determined—i.e., after a decision on the motion to dismiss. ECF Nos. 23, 25.
- 51. With respect to the Parties' respective positions regarding discovery during the pendency of BNYM's motion to dismiss, Plaintiffs requested that BNYM respond to their First Request for Production of Documents (the "First RFPs"), which sought, inter alia, documents produced in the MDL that relate to the claims and defenses in this Action.<sup>14</sup>
- 52. As a compromise position, which was memorialized in the Parties' joint discovery plan, Plaintiffs offered to forego any additional discovery beyond that sought in the First RFPs

Defendant provided responses and objections to this request on March 9, 2016.

until the Court issued a decision on Defendant's motion to dismiss. In so doing, Plaintiffs argued that: (i) the discovery sought through the First RFP posed minimal burden to Defendant insofar as it sought the production of documents already produced in the MDL; and (ii) there would be substantial efficiencies to the Court and the Parties if such documents were made available to the Parties prior to the Court deciding a motion to dismiss. More specifically, Plaintiffs argued that having the benefit of such documents might amplify or clarify the pleadings, including a potential amended complaint, for the benefit of the Court and the Parties, and potentially narrow issues for briefing.

- 53. As noted above, on April 12, 2016, the Court granted BNYM's motion to stay pending a decision on its motion to dismiss and, in so doing, denied Plaintiffs' request for early discovery of certain documents from the MDL.
- 54. Following the September 29, 2016 MTD Order, the Parties continued to meet and confer over a schedule and discovery plan to govern the Action. On December 15, 2016, the Court entered a scheduling order (the "December 15 Scheduling Order"). The December 15 Scheduling Order provided that fact discovery "shall be completed no later than January 27, 2017 [i.e., within 120 days from the MTD Order], unless . . . the case presents unique complexities or other exceptional circumstances," but that it could be modified "for good cause shown." ECF No. 43.
- 55. On December 21, 2016, the Parties wrote jointly to the Court requesting an extension to the December 15 Scheduling Order. In their submission, the Parties argued that the case presented "unique complexities" and "exceptional circumstances" that constitute good cause to modify the December 15 Scheduling Order. ECF No. 44. In particular, they noted:
  - Plaintiffs sought to certify a class of ADR holders dating from 1997 to the present.

- Plaintiffs alleged that Defendant served as the depositary for more than 1200 ADRs during the putative class period, of which at least 600 paid dividends in foreign currency.
- Plaintiffs claimed that Defendant fraudulently concealed from Plaintiffs the manner in which it priced FX conversions, thereby tolling the statute of limitations.
- Fact discovery would encompass a large number of currency transactions, Defendant's disclosures concerning those transactions, the Parties' understanding of the operative contracts, Plaintiffs' and class members' injuries, if any, and other issues.
- Fact witnesses (including non-party witnesses) were likely to be located overseas as well as in the United States.
- The case involved significant document discovery, which would include not only
  electronic communications, but trading data, and potentially a substantial number of
  depositions.
- To the extent that discovery required obtaining information held abroad, the Parties may have needed to confront data privacy laws in other jurisdictions, and search multiple systems and data sources, including potentially archives and legacy systems going back 20 years.
- 56. At the same time, the Parties jointly requested that the Court enter a schedule to govern discovery and motion practice related to class certification. The Parties' proposed schedule accordingly included deadlines for Plaintiffs' motion for class certification and expert disclosures and discovery related to class certification.
- 57. On December 22, 2016, the Court vacated the December 15 Scheduling Order, and adopted the Parties' proposed schedule. ECF No. 45.

#### 9. Protective Order

- 58. On March 24, 2016, after extensive negotiations, the exchange of multiple drafts and rounds of edits, and numerous telephonic meet and confer sessions, the Parties entered into a Stipulated Protective Order to govern confidentiality in the case. The Court entered the Parties' stipulated protective order on March 28, 2016 (the "Protective Order"). ECF No. 29.
- 59. The Protective Order in this Action was modeled closely after the Confidentiality Order that was used in the MDL, with several notable differences, including: (i) the effective

elimination, in this Action, of the words "Outside Counsel Eyes Only" from any information designated as such in the MDL, to the extent such information was re-produced or made available in this Action; and (ii) the elimination of any requirement that experts be disclosed to a producing party prior to their viewing that producing party's Highly Confidential or Confidential Information (as defined in the Proposed Order)—a significant point of disagreement that arose in the MDL and which Plaintiffs were effectively able to negotiate away here.

### D. The Parties' Extensive Discovery Efforts

- 60. Throughout the course of this Action, discovery was aggressively pursued by both Plaintiffs and BNYM. The discovery process was vigorously contested and numerous disputes arose among the Parties regarding the scope of discovery. Nevertheless, as testament to the professionalism and skill of counsel involved in this Action, the Parties were able to resolve the vast majority of their differences without the need for judicial intervention.
- 61. Through their efforts, Lead Plaintiffs' Counsel obtained over 2.7 million pages of discovery from BNYM. As set forth below, Lead Plaintiffs' Counsel reviewed and analyzed these documents in order to engage experts, prepare for depositions, and ultimately develop the record for summary judgment and trial. Plaintiffs also took advantage of other discovery tools available under the Federal Rules, including depositions and written discovery. To that end, Lead Plaintiffs' Counsel took 14 fact depositions, one expert deposition, and served comprehensive interrogatories and requests for admission.
- 62. BNYM likewise aggressively pursued discovery from Plaintiffs. Collectively, Plaintiffs produced more than 23,000 pages of documents and were deposed for nearly 19 hours on the record. Plaintiffs also served initial disclosures, and responded to comprehensive contention interrogatories and requests for admission.

63. Lead Plaintiffs' Counsel's discovery efforts provided Lead Plaintiffs with a thorough understanding of the strengths and weaknesses of their claims and assisted Lead Plaintiffs' Counsel in considering and evaluating the fairness of the Settlement. A summary of those discovery efforts follows.

## E. Plaintiffs' Discovery Propounded on Defendant

### 1. Plaintiffs' Document Requests

- 64. Plaintiffs' First RFPs were served on February 8, 2016. Those requests sought, inter alia, documents previously produced in the MDL that: (i) concerned Defendant's procedures for and revenue generated by its FX pricing practices; or (ii) reflected FX conversions or cash distributions for ADRs. Defendant provided responses and objections to these requests on March 9, 2016.
- 65. As detailed above, the Parties met and conferred over whether BNYM would agree to produce any documents in response to Plaintiffs' First RFPs prior to a decision on its motion to dismiss, but were unable to reach agreement. The substance of this dispute was twice presented to the Court, in connection with the Parties' joint Federal Rule 26(f) report and BNYM's motion to stay. Ultimately, however, the Court stayed discovery pending BNYM's motion to dismiss.
- 66. Plaintiffs served their more expansive Second Requests for Production ("Second RFPs") on December 16, 2016. Among other things, the Second RFPs sought documents concerning, for instance: (i) any investigations into the Bank's FX practices; (ii) inquiries from ADR holders regarding the Bank's FX practices; (iii) the Bank's practices for converting FX in connection with ADR Cash Distributions; (iv) all transcripts from the MDL; (v) the Deposit Agreements which governed BNYM's contractual obligations; (vi) transaction data regarding the

Bank's FX practices; (vii) actual expenses incurred by the Bank in connection with ADR Cash Distributions; (viii) all ADRs sponsored by the Bank; and (ix) insurance agreements.

## 2. The Parties' Negotiations Regarding Efficient Document Discovery

- 67. Very early in this case, in connection with the Parties' Federal Rule 26(f) discussions, the Parties agreed that discovery would effectively proceed in two phases. First, the Parties agreed that Defendant's production would prioritize documents that had previously been collected and produced in the MDL. Second, the Parties agreed to defer discussion on additional document sources until after Defendant had completed its MDL production. This unique dual-track arrangement was designed to leverage work that had been done in connection with the MDL in order to ensure that discovery in this case proceeded in the most efficient and orderly way possible.
- 68. For more than a year, the Parties met and conferred extensively over how best to make use of the MDL repository in this Action. Plaintiffs initially offered to simply restore the dormant databases they had previously maintained in connection with the MDL and identify for themselves the relevant documents needed to support the claims in this Action. In Plaintiffs' view, this would have been the most efficient path forward, as all such documents had already been reviewed and coded by Lead Plaintiffs' Counsel. Nevertheless, BNYM took the position that document discovery in this case—even if it was to originate from the MDL repository—would need to be negotiated on its own terms. The ensuing negotiations centered on three principal areas of disagreement.
- 69. <u>First</u>, and most significantly, the Parties disagreed over the appropriate search terms that would be applied to the MDL production and any future document collection and review. In particular, Plaintiffs objected to the Bank's self-selected search terms, which were effectively limited to documents explicitly referencing "American Depositary Receipt," "ADR,"

or variants thereof. Throughout the course of the negotiations, Plaintiffs steadfastly maintained that the majority of BNYM's proposed limitations were inappropriate, and that they were entitled to much of the discovery produced in the MDL. In support of this position, Plaintiffs pointed out that the core FX pricing practices at issue in the MDL were unquestionably relevant to this case, and the burden of production for this first round of discovery was minimal in light of the fact that such documents had already been collected, reviewed, and produced.

- 70. <u>Second</u>, and relatedly, the Parties disagreed over which custodians would be searched for documents relevant to this Action. This dispute centered principally on which custodians from the MDL would be used in this Action. While the MDL involved more than 150 custodians, the Bank claimed less than 50 were relevant to this Action.
- 71. Third, Plaintiffs objected to BNYM's attempt to perform relevance reductions to the MDL transcripts. Drawing parallels to concepts governing ordinary document production, Plaintiffs argued that a party is not entitled to perform unilateral relevance reductions, unrelated to attorney-client privilege or work product protections.
- 72. The Parties were able to make some headway in their meet and confer efforts. Plaintiffs agreed to limit their requests for documents from the prior MDL to a defined list of 42 custodians, without prejudice to their ability to later request additional custodians from the Bank. In a similar vein, Plaintiffs agreed to limit their transcript requests to the same 42 custodians from the MDL. BNYM rejected Plaintiffs' proposed search terms as too broad, however, and continued to maintain that its relevance redactions with respect to the MDL transcripts were appropriate.

### 3. Motion to Compel Documents

73. Ultimately, the Parties were not able to resolve the principal disagreements outlined above. As such, on February 23, 2017, Plaintiffs filed a pre-motion letter with this Court

seeking an order directing BNYM not to limit its production of the MDL documents as it had done up to that time, and instead produce the MDL documents associated with each of the custodians exchanged during the meet-and-confer process using either: (i) no search terms; or (ii) at most, the broader set of search terms that Plaintiffs had proposed. Plaintiffs' motion also sought to compel BNYM to produce complete deposition transcripts from the 42 custodians in the MDL. ECF No. 47.

- 74. Finally, Plaintiffs' motion sought an additional form of relief: it asked the Court to de-designate as "Confidential" certain documents from the MDL. In so doing, Plaintiffs argued that BNYM had not shown "good cause" for certain documents to be designated as "Confidential" where they related to stale business practices and where the issue had already been litigated before and decided by Judge Kaplan.
- 75. BNYM opposed Plaintiffs' motion by letter dated February 28, 2017. ECF No. 48. In its opposition, BNYM continued to maintain that most of the documents from the MDL were irrelevant to the claims and defenses in this case. For instance, the Bank argued that its "pricing for SI [standing instruction] custody customers under different arrangements makes no fact of consequence" to the determination whether BNYM breached the Deposit Agreements "more probable or less probable." ECF No. 48. Accordingly, BNYM maintained that Plaintiffs' proposed search terms and custodians were overbroad. For largely the same reasons, BNYM opposed Plaintiffs' request for complete deposition transcripts of the 42 MDL custodians. Finally, the Bank opposed Plaintiffs' request to de-designate as "Confidential" certain documents on the grounds that the requirements under the Protective Order in place in this case had been met for each document.

- 76. Plaintiffs' motion was thereafter referred to Judge Cott, and the Parties argued the motion at an in-person hearing on March 16, 2017. Following the hearing, Judge Cott denied Plaintiffs' request with respect to the MDL documents without prejudice, but ordered the Bank to substantially complete its document production by May 5, 2017. Judge Cott further ordered BNYM to produce, contrary to BNYM's arguments, complete deposition transcripts from each of the 42 individuals who were deposed in the MDL. Finally, Judge Cott deferred consideration of the confidentiality issue and requested further briefing from the Parties.
- 77. By agreement of the Parties, and order of the Court, the deadline for BNYM to substantially complete document discovery was later extended to June 9, 2017. ECF No. 60. By that date, BNYM had produced more than 260,000 documents—consisting of both documents produced in the MDL and documents collected and gathered exclusively for this case. On November 3, 2017, the Bank produced an additional 740,000 pages of documents.

## 4. Implementation of Review Protocol

- 78. Lead Plaintiffs' Counsel's document review, which proceeded according to the protocols discussed below, began shortly after the Bank made its substantial document production in June 2017.
- 79. <u>First</u>, in anticipation of receiving documents, Lead Plaintiffs' Counsel solicited bids from database vendors for a document-management system that could accommodate the size of the production, enable the review of documents housed on the database by multiple users at two different law firms, and offer the latest coding, review, and search capabilities for electronic discovery management. Ultimately, Lead Plaintiffs' Counsel obtained substantial savings by choosing to internally host this significant volume of information on Lieff Cabraser's sophisticated electronic database and litigation support platform. Lead Plaintiffs' Counsel used this electronic database to organize and search the large volume of documents, which allowed

attorneys performing document review to categorize documents by issues and level of relevance, and to identify the critical documents supporting Lead Plaintiffs' claims.

- 80. <u>Second</u>, once the documents were received and loaded into the database, Lead Plaintiffs' Counsel utilized the algorithm-based "technology assisted review" (frequently referred to as "TAR" or "active learning") to rank documents by relevance and priority. This allowed Lead Plaintiffs' Counsel to focus their review on the most relevant documents first, and weed out potentially irrelevant material by prioritizing documents based on their relative importance.
- 81. In order to implement the technology assisted review, over the course of several weeks, a small group of attorneys coded several thousand "seed" documents. Through this process, the TAR software was able to identify certain keywords, phrases, and names that made a document more or less likely to contain high value information. Based on an algorithm, the TAR software then assigned a ranking to each document in BNYM's production. Lead Plaintiffs' Counsel then used those rankings to prioritize their review, focusing first on those documents most likely to contain highly useful information.
- 82. Third, to facilitate the document review, which occurred primarily across two law firms, Lead Plaintiffs' Counsel developed a detailed review protocol. Initially, Lead Plaintiffs' Counsel created a comprehensive coding manual, with explanatory notes covering: (i) the key facts at issue in the Action; (ii) relevance coding instructions; and (iii) "tags" covering more than 20 unique issues and sub-issues.
- 83. Next, Lead Plaintiffs' Counsel assembled a team of experienced attorneys to review and analyze Defendant's documents. That team included 11 lawyers from Kessler Topaz and 8 lawyers from Lieff Cabraser, who analyzed BNYM's production part or full-time. Many of

these lawyers had 10 years or more of experience, as well as significant institutional knowledge, having worked previously on the MDL. These lawyers reported directly to senior associates and partners at the respective firms, participated in periodic calls or online discussions to discuss their findings, and prepared memoranda on key factual issues and witnesses.

- 84. In requiring the lawyers involved in document analysis to remain in constant contact with associates and/or partners as a group, Lead Plaintiffs' Counsel sought to ensure that reviewing attorneys and associates across both firms were aware of: (i) the issues being identified in the document review; (ii) why certain documents were high-value documents; and (iii) how such documents were informing Lead Plaintiffs' theories of liability. Attorneys from Kessler Topaz and Lieff Cabraser also communicated frequently to ensure that coding decisions were applied consistently across the firms and that all team members were apprised of important developments with respect to the document review.
- 85. In undertaking the analysis of Defendant's production, documents were categorized in three major areas: (1) subject matter; (2) relevance; and (3) issue (e.g., ADR FX, damages, ADR disclosures). Within these categories, lawyers conducting the review also had a menu of sub-categories (e.g., witness, discovery follow-up), which further refined the review and helped identify relevant documents quickly when needed for more specific projects or for deposition preparation.
- 86. <u>Finally</u>, Lead Plaintiffs' Counsel understood that Defendant's documents would very likely form the basis for liability at summary judgment or trial. Therefore, simultaneously with the linear review of the production for important documents, Lead Plaintiffs' Counsel engaged in a number of additional discovery projects that involved a more targeted review and synthesis of the production.

- 87. Perhaps the most important project in this respect was Lead Plaintiffs' Counsel's review of the Deposit Agreements. There were two critical components to this review. First, Lead Plaintiffs' Counsel needed to determine which Deposit Agreements governed each ADR. This was no small task: the Bank sponsored more than 1,200 ADRs during the relevant time period, and produced thousands of Deposit Agreements in discovery. In many cases, the Bank produced more than one Deposit Agreement—spanning different amendments, time periods and even prior depository banks—for a given ADR. Second, once the operative Deposit Agreements were identified, Lead Plaintiffs' Counsel performed a substantive review of each agreement to determine whether: (i) they supplied the obligations necessary for Lead Plaintiffs' breach of contract claims, and (ii) were substantially similar to other Deposit Agreements such that class certification would be appropriate. Both projects were essential not just for class certification, but for summary judgment and trial if the case had not resolved.
- 88. Other projects undertaken by Lead Plaintiffs' Counsel included, for example: (i) a review and summary of many of the 42 prior deposition transcripts from the MDL; (ii) a "key players" list, which included the job title and description for certain high interest individuals and potential deposition targets, including witnesses deemed to have knowledge specific to ADRs who were not previously deposed in the MDL; (iii) a "key meetings" list, which included dates, general descriptions, and attendees; (iv) 15 witness-specific memos in advance of dispositions, attaching suggested exhibits as selected by the attorneys performing full-time document review and analysis; and (v) numerous topic-specific memos, analyzing topics such as client inquiries into FX rates, potential damages, FX fees, revenue and profits.
- 89. In total, Lead Plaintiffs' Counsel reviewed and analyzed over 260,000 documents totaling more than 2.7 million pages, as well as 136,000 Excel documents. The majority of the

documents ultimately singled out for use in depositions, deposition preparation, and expert work in the Action were specific to ADR-related issues, and were thoroughly analyzed as to their import for Lead Plaintiffs' claims for the first time in this Action.

#### 5. Depositions

- 90. Depositions served as a critical component of discovery in this Action from both a fact-gathering perspective and in terms of fleshing out the legal arguments each party made. Plaintiffs began taking depositions of the Bank's witnesses on December 12, 2017. Between that date and May 2018, Lead Plaintiffs' Counsel took 14 depositions of the Bank's current and former employees, principally in New York. More than 160 total exhibits were marked at the BNYM witness depositions.
- 91. The fact depositions that Lead Plaintiffs' Counsel took of Defendant's FX traders and salespeople, system developers, and executives were at times highly technical and involved the mastery of information across multiple areas that no single BNYM employee possessed. It was Lead Plaintiffs' discovery efforts that reconstructed a cohesive narrative of BNYM's development of its FX practices, over a period of time extending back decades, notwithstanding the highly dispersed nature of the information sought.
- 92. Lead Plaintiffs' Counsel also took four separate 30(b)(6) depositions of BNYM, derived from a comprehensive 13-topic notice. Topics from the notice included the Bank's policies and procedures regarding: (i) Cash Distributions; (ii) the execution, processing, and pricing of FX; (iii) communications with ADR holders or foreign issuers; (iv) BNYM's record keeping processes; and (v) the negotiation and terms of the Deposit Agreements.
- 93. The specific contours of the testimony provided in each 30(b)(6) deposition were negotiated over the course of numerous meet and confer sessions spanning several weeks. All told, the 30(b)(6) testimony was instrumental from both a fact gathering perspective (e.g., by

helping Lead Plaintiffs understand how a large disparate organization like BNYM operated and priced ADR FX Conversions) and from a strategic standpoint (e.g., by helping Lead Plaintiffs establish that the terms of Deposit Agreements were generally consistent).

- 94. Notably, Lead Plaintiffs' Counsel worked hard to reduce deposition costs, while ensuring that critical information regarding BNYM's ADR business and FX practices was obtained. To that end, Lead Plaintiffs' Counsel negotiated highly favorable pricing for deposition services and effectively used technology to keep costs for depositions down.
- 95. Lead Plaintiffs' Counsel also managed their time efficiently and shared resources in preparing for individual depositions. First-tier document review, as described above, was conducted by highly experienced attorneys whose primary responsibility was to perform document review and analysis. These same attorneys, along with some associate attorneys, would then conduct a second-tier document review of those documents most likely to contain useful information for a given deponent. Often, this involved reviewing all "Hot" and "Highly Relevant" documents in a deponent's custodial file. If time permitted, this review would be further expanded to include all "Hot" and "Highly Relevant" documents mentioning that deponent as well.
- 96. From this review, document review attorneys would create a memorandum and deposition kit identifying documents that could potentially serve as effective tools and exhibits for a given deposition. This memorandum would also contain a discussion of the deponent's role within BNYM and identify potential areas of interest to be explored at deposition, as well as any relevant prior testimony that mentioned the deponent (including from the MDL). Using these methods, Lead Plaintiffs' Counsel gained the benefit of multiple perspectives without duplicating efforts.

97. Following the Court's order regarding the coordination of depositions in this Action and the ERISA Action (as defined below), <sup>15</sup> Lead Plaintiffs' Counsel were required to be even more organized in preparing for depositions so as to make the most efficient use of deposition time. As discussed in greater detail below, the Court's order provided that Plaintiffs in this Action and lead plaintiffs in the ERISA Action would each be permitted to depose witnesses for up to five hours (as opposed to the traditional seven-hour limit set by the Federal Rules).

### 6. Written Discovery

- 98. As permitted by the Federal Rules, the Parties also engaged in extensive and time-consuming written discovery. <u>First</u>, Lead Plaintiffs' Counsel prepared and served more than 20 highly particularized interrogatories, contained in three unique sets, on BNYM. Initially, Plaintiffs' interrogatories were designed to allow Lead Plaintiffs' Counsel to identify the process for ADR FX Conversions and the individuals with knowledge over that process.
- 99. As Lead Plaintiffs' Counsel's knowledge of the case evolved over time—gained from analyzing significant amounts of testimonial and documentary evidence—Lead Plaintiffs' Counsel were able to craft and serve more targeted interrogatories designed to address specific proofs needed for class certification and liability. For instance, Plaintiffs' second and third sets of interrogatories requested information regarding: (i) foreign issuers who issued Cash Distributions; (ii) the specific spread taken by BNYM on ADR FX conversions; (iii) ADR FX Conversions for BNYM-sponsored ADRs that were not performed by the Bank; and (iv) Defendant's affirmative defenses. Interrogatories were also crafted to fill holes with respect to issues that had not been addressed through deposition testimony or document production.

As explained below, the ERISA Action contained similar factual allegations to this action premised on distinct legal theories (i.e., violations of ERISA).

- 100. <u>Second</u>, Lead Plaintiffs' Counsel drafted and served 141 unique Requests for Admission asking the Bank to admit, for example: (i) the specific rates used by BNYM in converting Cash Distributions; (ii) that BNYM's FX rates were less favorable to ADR holders than the rate it actually obtained; and (iii) that the guidelines and/or procedures outlined in certain exhibits were used to price ADR FX conversions.
- 101. Had this case proceeded, the Bank's responses to Plaintiffs' interrogatories and requests for admission would have been essential at summary judgment and trial.

# 7. Additional Discovery Disputes: Confidentiality, Privilege, and Redactions

- 102. Beyond what is described above, the Parties engaged in multiple additional meet and confers regarding discovery, some of which ended up before the Court. A summary of the most prominent disputes is provided below.
- 103. First, Plaintiffs challenged certain of the Bank's confidentiality designations. In accordance with Judge Cott's directive following the March 16, 2017 in-person hearing, the Parties summarized their dispute in letters to the Court on March 24 and 31, 2017. In particular, Plaintiffs continued to argue that BNYM had not demonstrated that it would suffer any specific harm if the documents were de-designated. On June 20, 2017, the Parties submitted a joint letter to the Court indicating that the dispute had been overtaken by certain events and therefore did not need to be addressed. ECF No. 64. In particular, pursuant to the so-called "sunset provision" of the protective order entered in the MDL, documents filed under seal in the MDL—including the three documents that formed the basis of the Parties' dispute in this case—became part of the public docket on June 20, 2017. Accordingly, the Parties' dispute was mooted.
- 104. <u>Second</u>, Plaintiffs thoroughly reviewed the Bank's privilege and redaction logs. After reviewing such logs, Lead Plaintiffs' Counsel wrote a letter to BNYM on November 13,

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2017 noting certain apparent deficiencies, including: (i) the Bank's inappropriate attempt to withhold certain documents on the basis of the bank examiner's privilege; (ii) the Bank's improper withholding of certain documents that did not contain any request for legal advice or legal edits (e.g., attachments to correspondence sent to attorneys); (iii) the Bank's failure to provide information necessary to establish the applicable privilege or for Lead Plaintiffs' Counsel to evaluate the propriety of such privileges; and (iv) the Bank's improper attempt to withhold certain documents instead of producing redacted versions of such documents.

- 105. In support of this request, Lead Plaintiffs' Counsel compiled 13 comprehensive exhibits collecting documents that corresponded to each of the identified deficiencies. Lead Plaintiffs' Counsel also wrote to Superintendent Maria T. Vullo of the New York State Department of Financial Services regarding the Bank's asserted bank examiner's privilege.
- 106. After meeting and conferring with Lead Plaintiffs' Counsel on several occasions, and exchanging written correspondence, the Bank ultimately agreed to produce additional documents from its privilege and redaction logs and to amend its privilege and redaction logs.

# 8. Plaintiffs' Discovery Propounded on Third Parties

107. Plaintiffs also served two non-party subpoenas—on Computershare, Inc. ("Computershare") and the Depositary Trust Company ("DTC")—aimed at learning the identities of class members (i.e., ADR holders). Plaintiffs met and conferred on numerous occasions with both Computershare and DTC regarding the scope of their respective productions and the related costs associated with each production. After evaluating the costs DTC was

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Computershare is a third party "transfer agent" who helped effectuate distributions of U.S. Dollars to ADR holders following ADR FX Conversions. DTC, as the registered holder, beneficially owns ADRs on behalf of the majority of class members.

seeking relative to the utility of the data, Plaintiffs ultimately elected not to pursue further discovery from DTC.

108. Plaintiffs did, however, push forward with the Computershare subpoena. In fact, the meet and confer process with respect to Computershare was particularly complex, as Plaintiffs' request required Computershare to create a bespoke computer program to harvest the information sought as well as devote several employees full time to overseeing that process. The negotiations regarding that process occurred over the course of several months, and involved countless phone calls and written correspondence. The data ultimately received from Computershare was instrumental to Lead Plaintiffs' Counsel in effectuating notice of the Settlement to the Settlement Class and developing the proposed plan for allocating the Settlement proceeds.

# 9. Defendant's Discovery Propounded on Plaintiffs

- 109. BNYM also sought extensive discovery from Lead Plaintiffs. <u>First</u>, on December 16, 2016, Defendant served Plaintiffs with 53 unique document requests, which covered subjects including: (i) Plaintiffs' investments in ADRs; (ii) Plaintiffs' investment strategies and records; (iii) Plaintiffs' participation in the Action; and (iv) all lawsuits that Plaintiffs had participated in. Plaintiffs served responses and objections to Defendant's document requests on January 17, 2017.
- 110. The Parties thereafter met and conferred regarding the scope of Defendant's document requests, which included substantial written correspondence. One particularly contentious issue that required resolution was the Bank's request for information regarding all ADRs held by Plaintiffs, regardless of whether or not such ADRs were sponsored by the Bank. Although Plaintiffs initially objected to this request, in order to avoid an unnecessary dispute,

they later agreed to produce documents reflecting such investments. The Parties also met and conferred over the appropriate time period applicable to Defendant's request.

- 111. In response to Defendant's documents requests, Plaintiffs, with the help of Lead Plaintiffs' Counsel, performed an extensive search and review for relevant documents in their possession, custody, or control. Such documents were located in both hard copy and electronic format. With the assistance of Lead Plaintiffs' Counsel, additional documents were retrieved from third parties, including investment brokers and managers. In total, Plaintiffs produced more than 23,000 pages of documents to the Bank.
- 112. Second, BNYM deposed three Plaintiffs—Mr. Carofano, Mr. Feige and IUOE Local 138—on far-ranging subjects including their knowledge of the case, their investment strategies, and their financial background and resources. Lead Plaintiffs' Counsel spent significant time preparing each of these Plaintiffs for deposition. In advance of each deposition, "deposition kits" were created for each witness. Those kits included a discussion of all important documents (either that produced by the witness or other documents relevant to the litigation), as well as likely areas of inquiry. In preparation for their depositions, Lead Plaintiffs' Counsel also met with each plaintiff in person for several hours. Collectively, BNYM spent nearly 19 hours on the record deposing Lead Plaintiffs, and marked 59 exhibits, totaling nearly 500 pages.
- Third, in addition to document discovery and depositions, Defendant also served contention interrogatories on Plaintiffs, which sought wide-ranging information regarding, among other things: (i) whether Plaintiffs contended that the Deposit Agreements prohibited BNYM, or a third party, from applying any spread when pricing ADR-related FX conversions; (ii) whether the Deposit Agreements required BNYM, or a third party, to set a price within less than 24 hours; (iii) whether BNYM violated the Deposit Agreements in connection with

unsponsored ADRs; (iv) which Deposit Agreement provisions Plaintiffs contended BNYM violated; (v) whether ADR holders would have received a more favorable exchange rate from a third party; and (vi) the amount of damages. After performing a thorough investigation, Plaintiffs submitted verified responses to Defendant's interrogatories on April 30, 2018.

114. <u>Finally</u>, the Bank served requests for admission on Plaintiffs, asking Plaintiffs to admit that their respective account statements were true and complete and admissible as business records. The seemingly straightforward requests actually involved quite complex issues of both fact and law. Crafting appropriate responses was therefore an exercise in caution and discretion as much as it was a fact-gathering exercise.

# 10. Coordination with ERISA Action and Related Scheduling Negotiations and Issues

- 115. On December 31, 2015, an action was filed against BNYM alleging similar facts to this case but asserting claims under the Employees Retirement Income Security Act of 1974 ("ERISA"), *Carver v. Bank of New York Mellon*, 1:15-cv-10180 (S.D.N.Y.) (the "ERISA Action"). Like this case, the ERISA Action was accepted as related to the MDL, but ultimately assigned to this Court. On March 31, 2017, roughly six months after the MTD Order in this Action, the Court issued an opinion and order sustaining the core claims in the ERISA Action.
- 116. From the outset, the Bank had sought voluntary agreement from Lead Plaintiffs' Counsel in this Action and plaintiffs in the ERISA Action that discovery on common factual issues be coordinated to the extent feasible. All Parties agreed that such coordination might be warranted where circumstances permitted, and so stated in their respective Civil Case Management Plan and Scheduling Orders.
- 117. Consistent with that commitment, and understanding that plaintiffs in the ERISA Action were getting a slightly later start to document discovery in their case (due to the timing of

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the decision on the Bank's motion to dismiss that case), Plaintiffs agreed to extend the discovery and other pre-trial deadlines by approximately 60 days to facilitate any possible coordination of discovery. On May 15, 2017, consistent with the Parties' agreement, the Court entered an order extending all deadlines in this Action by approximately 60 days. ECF Nos. 61, 62.

- Action on June 9, 2017. After diligently reviewing those documents, Plaintiffs began noticing depositions of BNYM witnesses in August 2017. Thereafter, Plaintiffs met and conferred with the Bank on deposition scheduling. During these discussions, Plaintiffs again agreed in principle to coordinating depositions on common factual issues, such that witnesses would not be required to sit more than once. Plaintiffs also took the position that witnesses should be available for more than 7 hours where they may be: (i) offering non-duplicative testimony in both actions; and/or (ii) serving as both individual fact witnesses and Federal Rule 30(b)(6) organizational witnesses for specified topics.
- 119. By October 2017, with Plaintiffs poised to begin deposition discovery (and several BNYM witnesses already confirmed), the ERISA plaintiffs told the Parties in this Action that they were not ready to begin deposition discovery. Plaintiffs were thus left in the difficult position of trying to meet the deadlines in this Action (including a fact discovery cut-off of February 28, 2018 and expert disclosure deadlines preceding that date) while waiting for ERISA plaintiffs to be ready to participate in coordinated depositions. Over the course of several weeks, the Parties in this Action and the ERISA Action attempted to negotiate a protocol to govern efficient discovery in both cases. They were not able to reach a consensus.
- 120. On November 7, 2017, BNYM wrote a pre-motion letter to Judge Cott stating their intention to file a "motion for a protective order precluding duplicative depositions in the

related Actions, and requiring that Plaintiffs in both Actions coordinate their depositions of BNYM's witnesses to ensure that witnesses were deposed only once." ECF No. 66. Plaintiffs responded to the Bank's letter on November 9, 2017. ECF No. 70. In their letter, Plaintiffs set forth a comprehensive proposal for how deposition discovery could be coordinated to avoid duplication of effort in both Actions.

- 121. On November 14, 2017, the Parties participated in a telephonic conference with Judge Cott regarding coordination with the ERISA Action. Following the conference, Judge Cott ordered, in large part, that Plaintiffs' comprehensive proposal be followed, and that all deadlines in the Action be extended by 60 days to allow the Parties in this Action and the ERISA Action to coordinate depositions. ECF No. 72. At the same time, Judge Cott ruled that (i) any witnesses crossed noticed in both actions be available for 10 hours, with each side having five hours on the record for each witness; and (ii) all outstanding document discovery must be completed by December 15, 2017. ECF No. 73.
- 122. Consistent with Judge Cott's directive, the Parties efficiently used their respective allotted time in each of the five depositions that were cross-noticed in the ERISA Action.

# F. Plaintiffs' Significant Work with Experts

123. From the outset, Plaintiffs knew that many aspects of their claims, and in particular, the Bank's defenses, would be the subject of expert testimony. In support of class certification, Plaintiffs retained G. William Brown, Jr., Esq., principal of 8 Rivers Capital, former Fellow of Duke Law School (where he has been a Professor of the Practice of Law), and former head of FX sales at Morgan Stanley and Goldman Sachs to prepare a class-wide damages analysis. Mr. Brown had performed the same role in the MDL, and was thus quite familiar with BNYM's FX record-keeping protocols and the manner in which BNYM recorded margins on FX trades.

- 124. There were numerous steps involved in developing the factual foundation for Mr. Brown's analysis, which were each assisted by Lead Plaintiffs' Counsel. Initially, based on the language of the Deposit Agreements, Plaintiffs took the position that BNYM had promised to provide ADR holders with FX rates that were actually available to the Bank at the time the ADR Cash Distribution was actually converted. In contrast, Plaintiffs alleged, BNYM employed a policy of pricing FX transactions at the outer edges of the range of prices for the trading sessions during which the trades occurred.
- 125. Applying these allegations to Plaintiffs' legal theory yielded a damages methodology that sought to identify the difference between, on the one hand, the prices ADR holders actually received on their FX trades and, on the other hand, the prices they should have received had the Bank not deliberately priced FX trades at or near the least favorable rate (for the clients) of the applicable trading range.
- 126. Two steps were critical to developing the proof necessary for Mr. Brown's analysis. First, Plaintiffs identified and acquired the data maintained by the Bank that would allow such an analysis for a period spanning more than 20 years. This data included: the relevant Cash Distributions for BNYM-sponsored ADRs, the volume of such Cash Distributions, the date of relevant FX transactions by the Bank, the currencies involved in each FX transaction, the FX rates applied by BNYM, the FX rates passed on to ADR holders and the proceeds recorded by the Bank as a result of each FX transaction. Second, Plaintiffs needed to understand the pricing protocols, the various systems and databases that the Bank maintained, and various coding conventions that would permit an analysis by Plaintiffs' expert. Such information was sought and obtained through depositions of Bank witnesses, interrogatories, and document requests.

- 127. Through these discovery efforts, Mr. Brown was able to analyze a large volume of transactional data and build a damages model that ultimately formed the basis for the negotiations among the Parties that resulted in the resolution of all claims at issue here.
- 128. Over several months, Plaintiffs worked with Mr. Brown to refine his damages methodology and ultimately produced a damages report, including a class-wide damages methodology, in support of class certification.
- 129. In response to Mr. Brown's report, and in anticipation of their arguments in opposition to class certification, BNYM served Plaintiffs with the expert report of Terrence Hendershott, Ph.D. Mr. Brown, with the assistance of Lead Plaintiffs' Counsel, thereafter prepared a Declaration in further support of class certification that responded to the arguments raised by Dr. Hendershott.
- 130. Building on his class certification report, Mr. Brown also submitted a merits expert report on June 4, 2018. Mr. Brown's merits report reaffirmed the conclusions from his original report and responded to certain criticisms lodged by Dr. Hendershott in connection with class certification. Dr. Hendershott thereafter submitted a rebuttal expert report responding to Mr. Brown's merits report.
- 131. In connection with BNYM's expert reports, Lead Plaintiffs' Counsel were required to review and digest more than 35 unique sources, totaling thousands of pages of information. Lead Plaintiffs' Counsel also divided responsibility for deposing Dr. Hendershott, twice, and defending Mr. Brown's deposition, and expended significant time preparing for such depositions.

#### **G.** Motion Practice

# 1. BNYM's Motion for Partial Summary Judgment

- 132. On February 12, 2018, BNYM moved for partial summary judgment, pursuant to Federal Rule 56, on the applicability of the statutes of limitations and Plaintiffs' standing. ECF No. 77. More specifically, BNYM argued vigorously that the applicable limitations periods were not tolled because: (i) Plaintiffs (and putative class members) at all times had the information necessary to bring their claims; (ii) Plaintiffs did not exercise diligence in bringing their claims; and (iii) Plaintiffs could not demonstrate reasonable reliance on the Bank's alleged concealment. By its motion, the Bank further argued for dismissal of certain claims based on the fact that no named Plaintiff had actually sought to avail themselves of fraudulent concealment (i.e., each had brought only timely claims).
- 133. Plaintiffs filed a 25-page opposition to BNYM's motion on March 7, 2018, which was accompanied by a 99-paragraph Rule 56.1 response to BNYM's statement of facts and counterstatement of additional facts. ECF Nos. 87, 88. In their opposition, Plaintiffs argued first that BNYM's motion was illusory and null as it sought to dismiss the claims of absent class members, who were not yet parties to the litigation by virtue of the fact that a class had yet to be certified. With respect to the substance of BNYM's motion, Plaintiffs further argued, among other things, that genuine issues of material fact existed concerning: (i) the Bank's concealment of its conduct; (ii) Plaintiffs' access to information; and (iii) Plaintiffs' diligence. Finally, Plaintiffs argued that the Bank's efforts to dismiss claims on behalf of absent class members because Plaintiffs themselves did not seek recovery based on any claims that would be time-barred was simply an attempt to reargue class standing—an issue concerning which the Court had deferred full consideration until class certification. ECF No. 87.

134. BNYM filed a reply in support of its motion on March 19, 2018. Accordingly, by the time the Parties' agreement-in-principle to settle the Action was reached, BNYM's motion for partial summary judgment had been pending for roughly six months and was ripe for adjudication.

#### 2. Plaintiffs' Motion for Class Certification

- 135. On May 15, 2018, Plaintiffs moved for class certification. Plaintiffs' motion was supported by a 35-page memorandum, as well as 136 exhibits. In particular, Plaintiffs sought to certify under Rule 23:
  - A "Damages Class" consisting of all entities and individuals who are or were holders (registered or beneficially) of 100 ADRs (including any predecessor or successor securities) and received cash distributions for which the Bank charged a spread, from January 1, 1997 to the present; and
  - An "Injunction Class" seeking injunctive relief for all entities and individuals who currently hold (registered or beneficially) a BNYM-sponsored ADR.
- 136. In connection with class certification, Lead Plaintiffs' Counsel performed extensive legal and factual research to understand exactly what proof would be required under Federal Rule 23. Developing the proof necessary to certify a class spanning more than 20 years and 100 ADRs was a formidable assignment. Plaintiffs needed to develop the tools and facts to understand the various databases and systems that BNYM used to track, process, and settle FX transactions. This was critical to establishing a common practice—or breach—on behalf of the Bank. The depositions Plaintiffs took of the Bank's FX traders and salespeople, system developers, and executives were at times highly technical and involved the mastery of information across multiple areas that no single BNYM employee possessed. But it was Plaintiffs' discovery efforts that reconstructed a cohesive narrative of BNYM's development of its FX practices and ADR business.

- 137. Lead Plaintiffs' Counsel also had to discover and unite into common themes the actual contractual obligations (supplied by the Deposit Agreements) that bound the class. As explained in detail above, Plaintiffs performed an extensive search for and review of each of the Deposit Agreements at issue in this Action. Prior to filing their motion for class certification, Plaintiffs performed a substantive review of each Deposit Agreement to determine whether the agreements: (i) supplied the obligations necessary for Plaintiffs' breach of contract claims; and (ii) were substantially similar to other Deposit Agreements such that class certification would be appropriate.
- 138. The breadth of the evidentiary undertaking at class certification is evidenced by the more than 100 exhibits Plaintiffs submitted in connection with that motion.
- 139. Not surprisingly, BNYM aggressively opposed Plaintiffs' motion. ECF No. 130. In opposition to Plaintiffs' motion, the Bank argued that Plaintiffs could not unite the claims arising from thousands of different transactions over a more than 20-year class period. The Bank's arguments included:
  - Plaintiffs did not have class standing to represent investors who held securities other than those the Named Plaintiffs and proposed class representatives themselves held. Notably, of the 100 ADRs included in the damages class, the Named Plaintiffs held only 19.
  - Plaintiffs could not demonstrate that their claims were typical of the class's because, according to the Bank, each transaction was priced in a different way based on different considerations and variables.
  - The Named Plaintiffs were not adequate to represent the class, based on their willingness to limit the damages class to 100 ADRs.
  - Plaintiffs could not prove damages on a class-wide basis and Plaintiffs' damages methodology was not appropriately tethered to the theory of breach.
- 140. Plaintiffs filed a reply in support of their motion on June 19, 2018, in which they responded to each of the Bank's arguments. ECF No. 138. As noted above, in connection with their reply, Plaintiffs submitted a declaration from Mr. Brown. At the time of settlement,

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therefore, Plaintiffs' motion for class certification had been pending for approximately three months.

# 3. Plaintiffs' Motion to Add Chester County Employees Retirement Fund as Named Plaintiff

- 141. On April 27, 2018, in order to further protect the interests of the putative class, Lead Plaintiffs' Counsel moved to add Chester County as a named plaintiff. ECF No. 113. This motion was made in light of three developments:
  - BNYM's motion for partial summary judgment (ECF No. 76), which argued that Plaintiffs could not invoke the fraudulent concealment doctrine because they did not have any claims pre-dating the limitations period;
  - Mr. Carofano's unexpected death and the personal circumstances of Ms. Normand which
    made her participation as a representative plaintiff, including travel to New York,
    difficult; and
  - The recent class certification decision in a similar case, the *Citi* Action, in which Judge McMahon held that under the specific facts of that case, the plaintiffs only had constitutional standing to pursue claims in a representative capacity with respect to the ADRs they held.
- 142. Adding Chester County as a named plaintiff, Plaintiffs therefore argued, would protect from any potential adverse ruling on class standing the claims of absent class members who held the same 40 BNYM-sponsored ADRs as Chester County. It would also cure the alleged deficiency argued by the Bank in its partial summary judgment motion that Plaintiffs, by virtue of Ms. Normand's withdrawal as a proposed class representative, did not have any claims predating their respective limitations period, and protect absent class members who would rely on tolling based on fraudulent concealment.
- 143. The Bank opposed Plaintiffs' motion on May 11, 2018. ECF No. 117. In its opposition, BNYM argued that Plaintiffs had not shown "good cause" for relief from the scheduling order, which provided that the deadline to amend or add parties had passed on January 21, 2017. In particular, the Bank strenuously argued that Plaintiffs had known for more

than two years that BNYM would seek dismissal of certain claims on statute of limitations grounds and challenge class standing. BNYM further argued that the prejudice that would result from the belated joinder of Chester County also weighed against a finding of good cause.

144. Lead Plaintiffs' Counsel filed their reply on May 18, 2018, which responded to each of the arguments raised by the Bank. ECF No. 123. At the time of settlement, Plaintiffs' motion to add Chester County as a named plaintiff had been pending for roughly three months and was ripe for adjudication. While the motion was never decided by the Court, BNYM consented to the addition of Chester County as a party to the Settlement and an additional representative for the Settlement Class.

#### 4. Plaintiffs' Motion to Substitute

- 145. Sadly, one of the plaintiffs in this Action—Mr. Carofano—passed away during the pendency of the litigation. On April 19, 2018, in accordance with Federal Rule 25(a), Lead Plaintiffs' Counsel filed a suggestion of death for Mr. Carofano.
- 146. Thereafter, on May 23, 2018, Plaintiffs filed a motion pursuant to Federal Rule 25 to substitute Diana Carofano, Mr. Carofano's widow, as a party plaintiff. ECF No. 124. On June 6, 2018, BNYM filed a partial opposition to Plaintiffs' motion. ECF No. 133. In so doing, BNYM did not oppose Ms. Carofano's addition as executor of Mr. Carofano's estate, but did oppose her substitution in her individual capacity. *Id.* Plaintiffs submitted a reply in further support of their motion on June 13, 2018. ECF No. 134. At the time of settlement, Plaintiffs' motion to substitute had been pending for roughly three months and was ripe for adjudication.

# 5. Contemplated Motions for Summary Judgment

147. Pursuant to the Court's Individual Practices, motions for summary judgment were due to be filed within 14 days of the close of fact discovery—i.e., by August 13, 2018. On July 17, 2018, the Parties submitted a joint letter to the Court requesting that the summary judgment

deadline be extended by approximately two months. ECF No. 141. In their letter, the Parties further informed the Court that they had worked diligently to meet the Court's July 30, 2018 discovery cutoff and that all discovery had, as of that time, concluded. On July 19, 2018, the Court entered a text order approving the Parties' proposed schedule for summary judgment and setting a deadline of October 15, 2018 for opening motions. ECF No. 142.

148. Given the upcoming October deadline, at the time of settlement, Lead Plaintiffs had already begun actively preparing for summary judgment, including by assembling the proofs that would be necessary to carry an affirmative motion or defeat a motion by the Bank.

## III. SUMMARY OF LEAD PLAINTIFFS' WORK AS CLASS REPRESENTATIVES

- 149. In addition to the extensive discovery efforts described above, Lead Plaintiffs performed additional duties to fulfil their responsibilities as class representatives and to further protect the best interests of the class in the Action. Lead Plaintiffs have devoted substantial time to meeting those responsibilities. Among other things, Lead Plaintiffs:
- a. Searched their files and facilitated Lead Plaintiffs' Counsel's access to financial information and documents in the possession of their financial advisors, prior to approving the filing of this case and in connection with the investigation of the claims asserted;
- Reviewed and approved the filing of the initial complaints and operative
   Consolidated Complaint;
- c. Monitored the prosecution of this Action throughout the more than three years that it has been pending, including by receiving periodic updates on its progress and of the Court's rulings;
- d. During discovery, and in response to document requests from the Bank, performed further searches for documents and again ensured Lead Plaintiffs' Counsel's access to responsive documents held by financial advisors;

- e. Provided responses to written interrogatories served by the Bank;
- f. In the case of Messrs. Feige and Carofano, and IUOE Local 138, sat for depositions in September 2017 (lasting, collectively, approximately 19 hours on the record), which included traveling to New York, New York, meeting with their attorneys for several hours before the depositions in order to prepare, and reviewing their respective transcript for any errors;
- g. Reviewed and authorized filings in connection with class certification and summary judgment; and
- h. Stayed in contact with Lead Plaintiffs' Counsel during the Parties' settlement discussions and formal mediation process.
- 150. Moreover, each Lead Plaintiff provided Lead Plaintiffs' Counsel with authority to resolve the Action for the Settlement Amount and fully supports and endorses the proposed Settlement. Further, Lead Plaintiffs believe that the attorneys representing the class have worked diligently to secure the Settlement in the best interests of the Settlement Class. Each Lead Plaintiff also fully supports and endorses Lead Plaintiffs' Counsel's request for an award of attorneys' fees and reimbursement of expenses.

#### IV. THE RISKS OF CONTINUED LITIGATION

151. At the time the Parties reached their agreement in principle to resolve this Action, Lead Plaintiffs and Lead Plaintiffs' Counsel had sufficient material to evaluate the strengths and weaknesses of the claims alleged in the Complaint. Lead Plaintiffs' Counsel's exhaustive factual and legal research and analysis, coupled with their review and analysis of over two million pages of document discovery, provided them with a thorough understanding of the strengths and weaknesses of the claims at issue in this Action.

- 152. What's more, BNYM's legal and factual arguments advanced in seeking dismissal of the Complaint, in its motion for partial summary judgment, in opposition to class certification, and during the mediation, informed Lead Plaintiffs and Lead Plaintiffs' Counsel that, while their case against Defendant had merit, there were also a number of factors that made the outcome of continued litigation uncertain. These factors were conscientiously evaluated by Lead Plaintiffs and Lead Plaintiffs' Counsel in determining the course of action that was in the best interests of the Settlement Class.
- 153. For example, while Lead Plaintiffs firmly believed discovery in the case would fully support their claims at summary judgment and trial, there was no way to predict which inferences, interpretations, or testimony the Court or the jury would accept. Further, the Bank has adamantly denied any culpability throughout the Action, and was prepared to mount aggressive defenses that could potentially foreclose any recovery for Lead Plaintiffs and the Settlement Class. If the Court at summary judgment or the jury at trial sided with the Bank on even one of their defenses, Lead Plaintiffs could recover nothing. As discussed herein, Lead Plaintiffs' Counsel's experience in the Action indicated that BNYM was prepared to challenge critical elements of Lead Plaintiffs' claims.
- 154. Some of the most serious risks the Settlement Class faced are discussed in the following paragraphs. Lead Plaintiffs and Lead Plaintiffs' Counsel carefully considered each of these hurdles during the pendency of this litigation and before and during the settlement discussions with Defendant. Ultimately, consideration of the risks and unique complexities of the claims, thoroughly vetted during the mediated settlement discussions, informed Lead Plaintiffs' and Lead Plaintiffs' Counsel's decision as to an appropriate settlement amount.

## A. Risks of Certifying a Class

155. When the Parties reached their agreement in principle to settle the Action, Plaintiffs' motion for class certification had been pending for roughly three months. As with all large class actions, class certification represented a milestone in the litigation that carried significant risk for both sides.

156. Here, the risks to class standing were particularly acute. Just two months before Plaintiffs filed their motion for class certification in this case, Judge McMahon issued a class certification decision in the *Citi* Action, a case with close factual and legal parallels to this case. In that case, Judge McMahon found the factors related to Federal Rule 23(a) and (b) had been met. But, with respect to class standing, Judge McMahon determined that the plaintiffs in that case could not represent the claims of ADR Holders who had not purchased the same securities as they had purchased because they did not share the "same set of concerns' as those absent class members who own ADRs that no named plaintiffs owned." *Merryman v. Citibank*, 2018 WL 1621495, at \*11 (S.D.N.Y. Mar. 22, 2018).<sup>17</sup>

157. Just like Judge McMahon had done, this Court deferred full consideration of the class standing issue until class certification. Relying heavily on Judge McMahon's decision as well as recent Second Circuit authority, BNYM mounted strong arguments against class standing in connection with its opposition to class certification. Had the Bank succeeded on these arguments, it would have dramatically limited the number of ADRs at issue in this Action.

Notably, in connection with a motion to dismiss, Judge Caproni also reached a similar conclusion with respect to class standing in the *Merryman v. JPMorgan Chase Bank, N.A.* action, another case with similar legal and factual issues. 2016 WL 5477776, at \*14 (S.D.N.Y. Sept. 29, 2016).

158. Beyond class standing, Lead Plaintiffs faced additional risks related to class certification. For instance, as summarized above, the Bank mounted aggressive arguments related to damages, typicality, and adequacy. Had the Bank succeeded in persuading the Court that just one of these arguments was viable, it is possible that class certification could have been denied in its entirety.

## B. Risks of Proving Fraudulent Concealment

- 159. Similar to the risks faced in connection with class certification, Lead Plaintiffs also faced significant risks to ultimately proving their fraudulent concealment claim. Indeed, the Bank had already raised such arguments in connection with its motion for partial summary judgment, which had been pending for nearly six months at the time of settlement. In connection with that motion, the Bank argued strenuously that all of the information Lead Plaintiffs needed to assert their claims was publicly available. Significantly, Judge Caproni had already accepted a nearly identical argument in connection with the motion to dismiss in *JPMorgan*, 2016 WL 5477776, at \*11, a decision on which the Bank relied heavily.
- 160. Had the Bank prevailed on its motion, the class period in this Action would have been dramatically reduced—from more than 20 years to at most six years. And even if Lead Plaintiffs were successful in defeating BNYM's motion, they still faced substantial risk in actually proving the claim at trial. Thus, significant risk existed with respect to the statute of limitations and Lead Plaintiffs' ability to prove fraudulent concealment.

# C. Risks of Establishing Liability

161. Proving liability also constituted serious risk for Lead Plaintiffs. Although this Court sustained Lead Plaintiffs' breach of contract claims, it also noted in the MTD Order (at 7) that "significant unresolved issues of interpretation" existed with respect to the Deposit Agreements. Seizing on this language, BNYM steadfastly maintained that the Deposit

Agreements did not obligate it to price FX in any particular way. Rather, BNYM, its fact witnesses, and its expert all maintained that the spread it retained was a perfectly acceptable (and commercially reasonable) means of compensating it for the risks it took on in executing ADR FX Conversions.

162. Apart from the issues with respect to contractual interpretation, BNYM further claimed that it was insulated from liability in those cases where a third party (and not the Bank) performed FX on the Bank's behalf. While Lead Plaintiffs believed strongly in their ability to establish liability, the Bank's strong defenses made this obligation uncertain at best.

## D. Risks Concerning Damages

- 163. Finally, even if liability could be established, Lead Plaintiffs faced risks in establishing damages. Unlike a typical securities case, where damages are subject to a commonly accepted methodology, there was no template for Mr. Brown to follow in this Action. Rather, Mr. Brown's methodology, while grounded in sound economic theory and (in Lead Plaintiffs' view) supported by the factual record, was unique to this Action. In fact, BNYM had already sought to undermine Mr. Brown's damages methodology in connection with its opposition to Lead Plaintiffs' motion for class certification. There, the Bank argued that Mr. Brown's methodology: (i) did not adequately take account of available data; and (ii) had no relationship to Plaintiffs' theory of liability. In particular, the Bank argued that Mr. Brown's opinion failed to satisfy the standard set forth by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
- 164. Even if the Court ultimately permitted Mr. Brown's opinion in connection with class certification, Lead Plaintiffs faced the very real (if not entirely likely) possibility that the Bank would later seek to exclude Mr. Brown's merits opinion.

165. BNYM likewise had put forth a highly qualified expert of its own who sought to undermine Mr. Brown's damages opinion. Under any circumstances, then, the issue of damages would likely have come down to a battle of the experts. Lead Plaintiffs and Lead Plaintiffs' Counsel recognized that the Court and the jury would be presented with very different opinions from highly qualified experts. If the Court or the jury found BNYM's expert testimony to be more credible, it is very possible Lead Plaintiffs and the Settlement Class could recover nothing at all. Accordingly, substantial risks of establishing damages still remained in the case at the time the Settlement was reached.

# V. SETTLEMENT DISCUSSIONS, MEDIATION AND NEGOTIATION OF SETTLEMENT DOCUMENTS

- 166. While BNYM's motion for partial summary judgment and Plaintiffs' motion for class certification were pending, the Parties agreed to explore the possibility of resolving the Action. To this end, the Parties engaged retired Federal Judge Layn R. Phillips and David Murphy, Esq., both of Phillips ADR, to facilitate the negotiations.
- 167. The Parties met for an initial two-day, in-person mediation session with Judge Phillips in New York, New York on March 22-23, 2018. Judge Phillips' colleague, David Murphy, a retired partner of Wachtell, Lipton, Rosen & Katz, assisted in the negotiations. In advance of the mediation, the Parties prepared detailed mediation statements setting forth the salient factual and legal issues, which assisted the Parties and the mediator in evaluating the strengths and weaknesses of the case. During the course of the two-day session, Judge McMahon issued a class certification opinion in the substantially similar *Citi* Action which limited class certification in that matter to the ADRs that were purchased by the named plaintiffs in that case but not to a broader set of ADRs governed by substantially identical deposit agreements.

- 168. The March 22-23 mediation ended unsuccessfully with the Parties too far apart in their respective positions to reach a resolution of the Action at this time. Nonetheless, there was sufficient momentum to continue their discussions.
- 169. Following the March 2018 mediation, the Parties participated in two additional inperson mediation sessions with David Murphy, Esq., an in-person meeting without the mediator, and numerous telephone calls and e-mail correspondence. During this time, the Parties continued to aggressively litigate the case, with Plaintiffs filing their class certification motion, attempting to address Judge McMahon's opinion in the *Citi* Action through intervention by Chester County which represented many ADRs at issue in the litigation, submitting a reply in support of class certification, and deposing experts.
- 170. The Parties' hard-fought, arm's-length negotiations—spanning the course of six months—culminated on August 10, 2018, with the acceptance of a mediator's proposal on the Settlement Amount of \$72.5 million. Thereafter, there was extensive negotiation on the material terms of their agreement, which took several more months. The Parties executed a term sheet setting forth the material terms of their agreement-in-principle on October 16, 2018.
- document the Parties' Settlement as well as Lead Plaintiffs' anticipated motion for approval of notice to the Settlement Class. This work included obtaining bids from several organizations specializing in class action notice and claims administration and conducting follow-up communications with such organizations. As a result of this process, Lead Plaintiffs selected KCC to serve as the Claims Administrator. In addition, in light of the unique aspects of the Settlement Class and length of the Settlement Class Period here, Lead Plaintiffs retained and worked closely with a notice expert, Jeanne Finegan of HF Media, to develop a modern,

comprehensive multimedia notice program to specifically target the Settlement Class Members in this Action. *See* Section VII *infra*. During this time, Lead Plaintiffs' Counsel also worked with Lead Plaintiffs' damages expert to calculate the "Average Margin Across Settlement Class Period" for each eligible ADR as utilized in the proposed Plan of Allocation. *See* Section VI below. Lead Plaintiffs also retained the services of Cornerstone Research, an economic consulting and financial analysis firm, to assist in the identification and verification of the CUSIPs (unique identifying numbers for securities) for each of the ADRs at issue in the Settlement.

- 172. Over the following months, counsel for the Parties negotiated the specific terms of the Stipulation and exchanged multiple drafts of the Stipulation (as well as the exhibits thereto). The Parties also worked extensively with their experts to finalize the list of ADRs covered by the Settlement. On January 15, 2019, the Parties executed the Stipulation setting forth the final and binding agreement to settle the Action. On the same day, Lead Plaintiffs filed the Stipulation (and related exhibits) along with their Unopposed Motion for Approval of the Proposed Forms and Manner of Notice to be Disseminated in Connection with the Proposed Settlement and supporting memorandum. ECF Nos. 146-147.
- 173. On January 17, 2019, the Court entered the Order Approving Issuance of Notice, scheduling the final hearing on the Settlement and related matters for June 17, 2019 at 3:00 p.m. ECF No. 149.

#### VI. THE PLAN OF ALLOCATION IS FAIR AND ADEQUATE

174. The proposed plan for allocating the Net Settlement Fund to Authorized Recipients<sup>18</sup> in this matter (the "Plan of Allocation" or "Plan") is attached as Exhibit 1 to the

An Authorized Recipient is a Settlement Class Member who is approved for payment from the Net Settlement Fund.

Notice. The Plan was prepared in consultation with Lead Plaintiffs' damages expert, and is based on Lead Plaintiffs' view of the average margin per ADR that BNYM retained on FX conversions of ADR Cash Distributions as determined by Lead Plaintiffs' damages expert. In calculating the average margin for each of the eligible ADRs for which BNYM acted as the depositary sponsored by an issuer (as identified in the Appendix to the Notice), Lead Plaintiffs' damages expert utilized data produced by BNYM concerning the amount (if any) it retained for cash distributions issued for the ADRs during the relevant period. Table 1 of the Plan sets forth the "Average Margin Across Settlement Class Period" for each of the 342 eligible ADRs.

as many Settlement Class Members as possible. In connection with the Settlement, Lead Plaintiffs obtained contact, holding, and distribution information for over 460,500 Settlement Class Members from BNYM's transfer agent, Computershare. Those Settlement Class Members (i.e., "Registered Holder Settlement Class Members") are not required to take any action in order to be eligible to receive a payment from the Settlement.<sup>19</sup> On the other hand, Non-Registered Holder Settlement Class Members who wish to participate in the distribution of the Net Settlement Fund must submit a valid Claim Form and supporting documentation to the Courtauthorized Claims Administrator, KCC, postmarked (or submitted online) no later than August 15, 2019.

Registered Holder Settlement Class Members were mailed Post-Card Notices by KCC. The Post-Cards advised recipients that KCC would use the information provided by BNYM's transfer agent to calculate their claim pursuant to the Plan, unless the information was otherwise supplemented by the Registered Holder Settlement Class Member. Accordingly, the Post-Cards further advised recipients that they should review the information provided by BNYM's transfer agent, as accessible via the settlement website, to confirm the accuracy and completeness of the information.

- 176. In order to be potentially eligible to participate in the Settlement, a Person must have held one of the ADRs covered by the Settlement and received a Cash Distribution (whether a dividend, rights offering, interest on capital, sale of shares, or other distribution) in connection with such holding. To that end, under the Plan, a "Recognized Loss Amount Per ADR" will be calculated for each eligible ADR that was held by a Settlement Class Member during the relevant time period (i.e., January 1, 1997 through January 17, 2019, inclusive) and for which they received a Cash Distribution. This calculation will be done by multiplying the gross amount of the Cash Distribution received for the eligible ADR by the Average Margin for ADR set forth in Table 1 of the Plan. The sum of each Settlement Class Member's Recognized Loss Amounts Per ADR will be their "Recognized Claim" and the Net Settlement Fund will be distributed to Authorized Recipients on a *pro rata* basis based on the size of their Recognized Claim in comparison to the total Recognized Claims.
- 177. Once KCC has processed all claims for this matter and provided Non-Registered Settlement Class Members with an opportunity to cure any deficiencies in their claims or challenge the rejection of their claims, Lead Plaintiffs' Counsel will file a motion for approval of KCC's determinations with respect to all claims and authorization to distribute the Net Settlement Fund to Authorized Recipients.
- 178. As further set forth in the Plan, if, nine (9) months following the initial distribution, there is a balance remaining in the Net Settlement Fund, and if it is cost-effective to do so, Lead Plaintiffs' Counsel will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Recipients who have cashed their initial distributions and would receive at least \$1.00 from such re-distribution. Re-distributions will be repeated until it is

determined that re-distribution of the funds remaining in the Net Settlement Fund are no longer cost effective. Thereafter, Lead Plaintiffs' Counsel shall seek an order from the Court: (i) approving the recommendation that any further re-distribution is not cost effective or efficient; and (ii) ordering the contribution of the Net Settlement Fund to a nonsectarian charitable organization selected by the Court upon application by Lead Plaintiffs.

179. To date, there have been no objections to the Plan. In sum, Lead Plaintiffs' Counsel believe that the Plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among as many Settlement Class Members as possible and respectfully submits that the Plan should be approved by the Court.

# VII. LEAD PLAINTIFFS' COUNSEL'S COMPLIANCE WITH THE COURT'S NOTICE ORDER, THE COURT'S ORDER MODIFYING THE NOTICE PLAN, AND SETTLEMENT CLASS'S REACTION TO DATE.

180. To ensure notice of the Settlement was sufficiently provided to Settlement Class Members in this Action, Lead Plaintiffs proposed, and the Court approved by its Notice Order, the following three-prong approach to notice: (1) mailed Post-Card Notice to Registered Holder Settlement Class Members (i.e., Settlement Class Members who hold (or held) eligible securities directly, are listed in the records of BNYM's transfer agent with respect to such holdings, and whose contact, holding, and distribution information was provided to KCC by Computershare); (ii) an extensive media and Internet-based notice campaign utilizing a combination of print media and online resources to target Settlement Class Members and, in particular, Non-Registered Holder Settlement Class Members (i.e., Settlement Class Members who are not Registered Holder Settlement Class Members, including Settlement Class Members who hold (or held) eligible securities through a bank, broker, or other nominee rather than directly); and (iii) two informational websites—a Settlement-specific website, www.BNYADRFXSettlement.com.

and a general ADR FX settlement website, <u>www.ADRFXSettlement.com</u>.<sup>20</sup> By its Notice Order, the Court authorized Lead Plaintiffs' Counsel to retain (1) KCC as the Claims Administrator to supervise and administer the notice procedure for the Settlement, including the mailing of Post-Card Notices, as well as the processing of Claims and (2) HF Media as the Publication Notice Plan Administrator to shepherd the extensive media and Internet-based notice campaign ("Publication Notice Campaign"). ECF No. 149 ¶ 8.

181. Shortly after the entry of the Notice Order, HF Media, working under the supervision of Lead Plaintiffs' Counsel, commenced the Publication Notice Campaign—as detailed in the Declaration of Jeanne Finegan (the "Finegan Declaration" or "Finegan Decl.") attached as Exhibit 2 hereto—with the release of the Court-approved Summary Notice over *PR Newswire* on January 25, 2019. *See* Finegan Decl., ¶ 43. The Summary Notice contains a general description of the Action and Settlement, the important dates and deadlines and information on how to obtain the more detailed long-form Notice (described below). Over the next 79 days, HF Media facilitated the publication of the Summary Notice in 8 magazines, 3 newspapers (on two separate occasions) and investment e-newsletters. *Id.*, ¶¶ 17-34. In addition, banner ads were served through a variety of business, news and investment websites, as well as across social media platforms such as Facebook, Instagram, and LinkedIn—resulting in a total of over 121 million online impressions being served to the Settlement Class. *Id.*, ¶¶ 35-42. Through this wide-ranging Publication Notice Campaign, HF Media estimates that each Settlement Class Member had the opportunity to see the various publications and ads *4.4 times* on average. *Id.* 

182. Additionally, on March 18, 2019, the Claims Administrator, KCC, under the supervision of Lead Plaintiffs' Counsel, mailed, by first-class mail, the Court-approved Post-

In accordance with the Stipulation, Defendant also issued notice of the Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 on January 23, 2019.

Card Notice to a total of 460,551 Registered Holder Settlement Class Members whose contact, holding, and distribution information was provided to KCC by Computershare. *See* Cavallo Decl. attached as Exhibit 1 hereto, at ¶ 5. Along with advising recipients of the Settlement, their rights in connection with it, the important dates and deadlines and information on how to obtain further information, each Post-Card Notice contained a unique claim number and PIN to allow recipients to access and review their holding and Cash Distribution information provided by Computershare through a "claim portal" available on the Settlement website. <sup>21</sup> Cavallo Decl., ¶ 9.

183. In conjunction with the Post-Card Notice mailing and Publication Notice Campaign, KCC developed and currently maintains the website dedicated to the Settlement, <a href="https://www.BNYMADRFXSettlement.com">www.BNYMADRFXSettlement.com</a> (the "Settlement Website"), in order to provide Settlement Class Members and other interested parties with information concerning the Settlement and important dates and deadlines in connection therewith, as well as downloadable copies of the long-form Notice, Claim Form, Stipulation, Notice Order and operative complaint. Cavallo Decl., ¶ 8. In particular, the long-form Notice (referenced in the Summary and Post-Card Notices) contains detailed information concerning the Action and the Settlement, including the definition of the Settlement Class, a description of the proposed Settlement, information regarding the claims asserted in the Action, and the proposed Plan of Allocation. The Notice also provides information for Settlement Class Members to determine whether to: (i) submit a Claim Form to participate in the Settlement if they are a Non-Registered Settlement Class Member; (ii) request exclusion from the Settlement Class; or (iii) object to any aspect of the Settlement, the

In the event the information on the claim portal was inaccurate or incomplete, the Registered Holder Settlement Class Member can supplement the information through the Settlement website, or by contacting KCC.

Plan of Allocation, or the Fee and Expense Application. The Notice also informs recipients of Lead Plaintiffs' Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund and reimbursement of Litigation Expenses in connection with the prosecution and resolution of the Action in an amount not to exceed \$1,750,000, which may include a requests for Service Awards to Lead Plaintiffs up to an aggregate amount of \$40,000. See Cavallo Decl., Ex. A. The Settlement Website also contains the claim portal for Registered Holder Settlement Class Members to access their holding and Cash Distribution information and provides Non-Registered Holder Settlement Class Members the ability to submit a claim on-line. Id. ¶ 8-9.

184. In addition to the Settlement Website, KCC also maintains the website <a href="https://www.ADRFXSettlement.com">www.ADRFXSettlement.com</a>, which serves as a landing page for the online banner advertising and provides general information regarding the Settlement, along with a link to the more comprehensive Settlement Website. *Id.* ¶ 11. This website also serves as the landing page for the settlements of the analogous ADR FX cases, *Merryman et al. v. Citigroup, Inc.*, No. 1:15-cv-09185-CM-KNF (S.D.N.Y.) and *Merryman et al. v. JPMorgan Chase Bank, N.A.*, No. 1:15-cv-09188-VEC (S.D.N.Y.). KCC also maintains a toll-free telephone number and interactive voice-response system to respond to inquiries regarding the Settlement. *Id.* ¶ 7. Settlement Class Members can contact KCC by e-mail (i.e., <a href="mailto:info@BNYMADRFXSettlement.com">info@BNYMADRFXSettlement.com</a>) as well.

185. As noted above and as set forth in the Notice, Summary Notice, Post-Card Notice and on the Settlement Website, the deadline for Settlement Class Members to request exclusion from the Settlement Class or to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application is May 13, 2019. To date, only six requests for exclusion have been received (see Cavallo Decl., ¶ 13) and there have been no objections of any kind. Should

any additional requests for exclusion or objections be received after the date of this submission, Lead Plaintiffs' Counsel will address them in their reply papers to be filed on or before June 10, 2019.

#### VIII. LEAD PLAINTIFFS' COUNSEL'S FEE AND EXPENSE APPLICATION

186. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Plaintiffs' Counsel are making an application to the Court for an award of attorneys' fees and reimbursement of expenses incurred during the course of the Action. Specifically, Lead Plaintiffs' Counsel, on behalf of Plaintiffs' Counsel, are applying for attorneys' fees in the amount of 30% of the Settlement Fund and for expenses in the amount of \$1,377,383.93.<sup>22</sup> Lead Plaintiffs' Counsel are also seeking Service Awards in the aggregate amount of \$35,000 for Lead Plaintiffs in recognition of the work they have performed for the benefit of the Settlement Class.

187. As discussed above, the Notice informs recipients that Plaintiffs' Counsel would be applying for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund and reimbursement of Litigation Expenses in connection with the prosecution and resolution of the Action in an amount not to exceed \$1,750,000, which amount may include a requests for Service Awards to Lead Plaintiffs up to an aggregate amount of \$40,000. Lead Plaintiffs' Counsel's Fee and Expense Application is consistent with the amounts set forth in the Notice and, to date, there have been no objections to the maximum amount of attorneys' fees and

The lodestar and expense submissions of Sharan Nirmul (the "Nirmul Declaration" or Nirmul Decl."), on behalf of Kessler Topaz, Daniel P. Chiplock (the "Chiplock Declaration" or "Chiplock Decl."), on behalf of Lieff Cabraser, and Frank R. Schirripa (the "Schirripa Declaration" or "Schirripa Decl.") on behalf of Hach Rose are attached hereto as Exhibits 3 through 5, respectively. These declarations set forth the names of the attorneys and professional support staff who worked on the Action and their current hourly rates, the lodestar value of the time expended by such attorneys and professional support staff, the expenses incurred by Plaintiffs' Counsel, and the background and experience of the firms.

expenses set forth in the Notice. Moreover, the Fee and Expense Application is fully supported by Lead Plaintiffs.

188. Below is a summary of the primary factual bases for Lead Plaintiffs' Counsel's Fee and Expense Application. A full analysis of the factors considered by courts in this Circuit when evaluating requests for attorneys' fees and expenses from a common fund, as well as the supporting legal authority, is presented in the accompanying Fee Memorandum.<sup>23</sup>

# A. Lead Plaintiffs' Counsel's Fee Request Is Fair and Reasonable and Warrants Approval

1. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk, Contingent Litigation

189. The unique and significant risks faced by Plaintiffs' Counsel in prosecuting this Action are highly relevant to the Court's consideration of an award of attorneys' fees, as well as its approval of the Settlement. Here, Defendant adamantly denied any wrongdoing and, if the Action had continued, would have aggressively litigated their defenses through trial. As detailed in Section IV above, Plaintiffs' Counsel and Lead Plaintiffs faced significant risks to proving Defendant's liability and the full amount of the Settlement Class's damages if the Action continued. Notably, when the Settlement was reached, BNYM's motion for partial summary judgment and Named Plaintiffs' motion for class certification (and motion to add Chester County as a named plaintiff) were *sub judice*, and the outcomes of each motion carried significant risk for both sides. In the face of such uncertainty, Plaintiffs' Counsel were able to obtain a favorable recovery—nearly 24% of the total margin amount attributed to the Settlement Class (i.e.,

Courts in this Circuit consider the following factors when determining whether a fee from a common fund is fair and reasonable: (1) the time and labor expended by counsel; (2) the risks of the litigation; (3) the magnitude and complexity of the litigation; (4) the requested fee in relation to the settlement; (5) the quality of representation; and (6) public policy considerations. See Goldberger v. Integrated Res., Inc., 209 F.3d 43, 50 (2d Cir. 2000). See also Fee Memorandum, § I.

approximately \$304 million), as agreed to by the Parties for purposes of the Settlement, and consistent with Lead Plaintiffs' damages expert's calculation during the Action.

190. These case-specific litigation risks are in addition to the risks accompanying complex litigation generally, such as the fact that this Action was undertaken on a contingent-fee basis. From the outset, Plaintiffs' Counsel understood that this would be a complex, expensive, and potentially lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Plaintiffs' Counsel were obligated to ensure that sufficient attorney resources were dedicated to prosecuting the Action, and that funds were available to compensate staff and to cover the costs that a case such as this requires. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Plaintiffs' Counsel have received no compensation for their efforts in this matter, but have dedicated over 32,500 hours in prosecuting this Action for the benefit of the Settlement Class over the past three years.

191. Plaintiffs' Counsel fully bore the risk that no recovery would be achieved. Plaintiffs' Counsel are aware that despite the most vigorous and competent efforts, a law firm's success in contingent litigation such as this is never guaranteed.<sup>24</sup> Moreover, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to persuade sophisticated defendants to engage in serious settlement

For example, there are many appellate decisions affirming summary judgment and directed verdicts for defendants showing that surviving a motion to dismiss is not a guarantee of recovery. See, e.g., In re Oracle Corp., Sec. Litig., 627 F.3d 376 (9th Cir. 2010); In re Silicon Graphics Sec. Litig., 183 F.3d 970 (9th Cir. 1999); Phillips v. Sci.-Atlanta, Inc., 489 F. App'x 339 (11th Cir. 2012); In re Smith & Wesson Holding Corp. Sec. Litig., 669 F.3d 68 (1st Cir. 2012); McCabe v. Ernst & Young, LLP, 494 F.3d 418 (3d Cir. 2007); In re Digi Int'l, Inc. Sec. Litig., 14 F. App'x 714 (8th Cir. 2001).

negotiations at meaningful levels. Plaintiffs' Counsel also are aware of many hard-fought lawsuits in which, because of the discovery of facts unknown when the case commenced, or changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts by Lead Plaintiffs' counsel produced no fee for counsel.

192. Here, Plaintiffs' Counsel's efforts in the face of substantial risks and uncertainties have resulted in what Lead Plaintiffs' Counsel believe to be a significant and guaranteed recovery for the benefit of the Settlement Class. In these circumstances, and in consideration of their extensive efforts and the very favorable result achieved, Lead Plaintiffs' Counsel submit that the requested fee of 30% of the Settlement Fund should be approved.

## 2. The Work of Plaintiffs' Counsel and the Lodestar Cross-Check

arriving at the Settlement has been both time-consuming and challenging. Plaintiffs' Counsel have devoted significant efforts to the investigation, prosecution, and resolution of this Action. As more fully described above, Plaintiffs' Counsel: (i) conducted a significant legal and factual investigation into BNYM's FX conversions in connection with ADR-related distributions; (ii) opposed BNYM's motion to dismiss the initial complaint which required navigation of numerous complex arguments; (iii) drafted the detailed complaints; (iv) engaged in extensive discovery efforts, including reviewing and analyzing more than 2.7 million pages of documents and 136,000 Excel documents produced by BNYM, participating in numerous meet and confers with BNYM's counsel in an effort to resolve various discovery disputes, and deposing 14 fact witnesses and defending the depositions of three Lead Plaintiffs; (v) consulted with an expert to develop a class-wide damages methodology; (vi) opposed BNYM's motion for partial summary judgment based on statute of limitations and standing; (vii) fully briefed a motion for class

certification; and (viii) engaged in protracted settlement negotiations with Defendant's Counsel, including a formal mediation process facilitated by Judge Phillips. *See supra* Sections II.C-G. At all times throughout the Action, Plaintiffs' Counsel's efforts were driven and focused on advancing the litigation to achieve the most successful outcome for the Settlement Class, whether through settlement or trial, by the most efficient means possible.

194. In order to avoid duplication of efforts and to promote efficiency, we maintained daily control and monitoring of the work performed in this case. While we personally devoted substantial time to this case, other experienced attorneys at our respective firms undertook particular tasks appropriate to their levels of expertise, skill and experience, and more junior attorneys and paralegals works on matter appropriate to their experience levels. Assignments, including discovery efforts, were divided across our firms with the goal of ensuring that efficiencies were maximized by having one of our firms take the lead on specific assignments. *See supra* Section II.E.

195. The time devoted to this Action by Plaintiffs' Counsel is set forth in the accompanying Nirmul, Chiplock, and Schirripa Declarations filed concurrently herewith. Included with these declarations are schedules that summarize the time expended by the attorneys and professional support staff who worked on this case and their resulting "lodestar," i.e., their hours multiplied by their current hourly rates, as well as expenses (the "Fee and Expense Schedules"). The Fee and Expense Schedules were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which records are available at the request of the Court. The hourly rates for attorneys and professional support staff included in these schedules have been accepted in other complex litigation.

196. In total, from the inception of this Action through April 22, 2019, Plaintiffs' Counsel expended over 32,500 hours on the investigation, prosecution, and resolution of the claims against BNYM for a total lodestar of \$14,473,549.25. Thus, pursuant to a lodestar "cross-check," applied within the Second Circuit, Lead Plaintiffs' Counsel's fee request of 30% of the Settlement Fund, if awarded, would yield a modest multiplier of 1.5 on Plaintiffs' Counsel's lodestar, which falls on the lower end of the range of positive multipliers awarded in other complex cases by courts in this Circuit and elsewhere. *See* Fee Memorandum, § I.C.

## 3. The Quality of Plaintiffs' Counsel's Representation

197. As Plaintiffs' Counsel's firm biographies demonstrate, Kessler Topaz, Lieff Cabraser and Hach Rose are highly experienced in the area of complex class actions and commercial litigation and have a successful track record in such cases throughout the country. *See* Nirmul Decl., Ex. A; Chiplock Decl., Ex. A; Schirripa Decl., Ex. A. The firms' biographies also describe the expertise and experience of their attorneys. The substantial result achieved for the Settlement Class here reflects the superior quality of Plaintiffs' Counsel's representation.

198. The quality of the work performed by Plaintiffs' Counsel in attaining the Settlement should also be evaluated in light of the quality of opposing counsel. Defendant, BNYM, was represented by skilled counsel from the nationally prominent defense firm Paul, Weiss, Rifkind, Wharton & Garrison LLP. In the face of this knowledgeable and formidable defense, Plaintiffs' Counsel were nonetheless able to develop a case that was sufficiently strong to persuade BNYM to settle the Action on terms that are favorable to the Settlement Class.

Lead Plaintiffs' Counsel will continue to perform legal work on behalf of the Settlement Class should the Court approve the Settlement. Additional resources will be expended assisting Settlement Class Members with their Claim Forms and related inquiries and working with the Claims Administrator, KCC, to ensure the smooth progression of claims processing. No additional legal fees will be sought for this work.

- B. Lead Plaintiffs' Counsel's Request for Litigation Expenses Warrants Approval
  - 1. Lead Plaintiffs' Counsel Seek Payment of Plaintiffs' Counsel's Reasonable and Necessary Litigation Expenses from the Settlement Fund
- 199. Lead Plaintiffs' Counsel also seek reimbursement from the Settlement Fund of \$1,377,383.93 for expenses that were reasonably and necessarily incurred by Plaintiffs' Counsel in connection with the Action. The Notice informs the Settlement Class that Lead Plaintiffs' Counsel will apply for Litigation Expenses in an amount not to exceed \$1,750,000, which amount may include requests for Service Awards to Lead Plaintiffs up to an aggregate amount of \$40,000. The amount requested by Lead Plaintiffs' Counsel, along with the amount requested by Lead Plaintiffs, is well below this cap. To date, there have been no objections to these amounts.
- 200. From the inception of this Action, Lead Plaintiffs' Counsel were aware that they might not recover any of the expenses they incurred in prosecuting the claims against Defendant, and, at a minimum, would not recover any expenses until the Action was successfully resolved. Lead Plaintiffs' Counsel also understood that, even assuming the Action was ultimately successful, an award of expenses would not compensate counsel for the lost use or opportunity costs of funds advanced to prosecute the claims against Defendant. Lead Plaintiffs' Counsel were motivated to, and did, take significant steps to minimize expenses wherever practicable without jeopardizing the vigorous and efficient prosecution of the Action.
- 201. Lead Plaintiffs' Counsel maintained strict control over the expenses in this Action. Indeed, many of the expenses incurred were paid out of a litigation fund created by Lead Plaintiffs' Counsel and maintained by Kessler Topaz (the "Litigation Expense Fund"). Kessler Topaz and Lieff Cabraser together contributed \$1,240,000 to the Litigation Expense Fund. A description of the payments from the Litigation Expense Fund by category is included in the

individual firm declaration submitted on behalf of Kessler Topaz. *See* Nirmul Decl., at ¶¶ 11-12, Ex. D.

- 202. In addition to the expenses paid though the Litigation Expense Fund, Plaintiffs' Counsel's incurred additional expenses associated with the Action. These expenses are set forth in Plaintiffs' Counsel's individual declarations attached as Exhibit 3 through 5 hereto and include charges for, among other things (i) court fees; (ii) online factual and legal research; (iii) travel; (iv) document reproduction; (v) overnight mail and courier services; (vi) court reporters; and (vii) document database hosting. Courts have consistently found that these kinds of expenses are payable from a fund recovered by counsel for the benefit of a class.
- 203. The largest component of Plaintiffs' Counsel's expenses (i.e., \$1,131,491.68, or approximately 82% of their total expenses) was incurred for their experts, mainly G. William Brown, Jr., Esq., principal of 8 Rivers Capital. The next largest component of Plaintiffs' Counsel's expenses (i.e., \$66,174.16) was spent in connection document hosting, followed by \$51,380.00 for mediation costs.
- 204. Plaintiffs' Counsel also incurred \$9,531.60 for research. This amount represents charges for computerized research services such as Lexis Advance, Westlaw, and PACER. It is now standard practice for attorneys to use online services to assist them in researching legal and factual issues, and indeed, courts recognize that these tools create efficiencies in litigation and ultimately save money for clients and the class. Some travel was also required to prosecute this

As attested to in the Nirmul, Chiplock, and Schirripa Declarations, these expenses are reflected on the books and records maintained by Plaintiffs' Counsel. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. Plaintiffs' Counsel's expenses are listed in detail in their firm's respective declarations, each of which identifies the specific category of expense for which Plaintiffs' Counsel seek reimbursement. These expense items are billed separately and are not duplicated in the respective firms' billing rates.

Action, and Plaintiffs' Counsel incurred the related costs of rail and airline tickets, meals, and lodging. Accordingly, included in Plaintiffs' Counsel's total expense amount is \$31,673.22 for these travel expenses.

205. The other expenses for which Lead Plaintiffs' Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, process servers, document-reproduction costs, and delivery expenses.

#### 2. Service Awards to Lead Plaintiffs Are Fair and Reasonable

- 206. Lead Plaintiffs' Counsel also seek Service Awards on behalf of Lead Plaintiffs in the aggregate amount of \$35,000 to compensate them for the time, expense and unwavering commitment to this Action.
- 207. During the course of this Action, as detailed in Section III above, Lead Plaintiffs have been fully committed to pursuing the Settlement Class's claims. Lead Plaintiffs have effectively fulfilled their duties as class representatives, providing valuable assistance to Plaintiffs' Counsel during the prosecution and resolution of the Action. Specifically, Lead Plaintiffs have monitored the Action, conferred with Plaintiffs' Counsel, reviewed significant pleadings, responded to discovery requests, and authorized the resolution of the Action. In addition, in response to Defendant's discovery requests, Lead Plaintiffs David Feige, IUOE Local 138, and Diana Carofano's late husband Don Carofano collectively produced more than 23,000 pages of documents and all three sat for depositions.
- 208. For these reasons, and in recognition of Lead Plaintiffs' substantial efforts, we respectfully submit that Service Awards in the aggregate amount of \$35,000 (i.e., \$10,000 each for Lead Plaintiffs David Feige, IUOE Local 138, and Diana Carofano and \$2,500 each for Annie Normand and Chester County) are warranted. The aggregate amount of the Service

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Awards represents 0.048% of the Settlement Amount. Settlement Class Members were informed

that Lead Plaintiffs' Counsel could seek up to \$40,000 in Service Awards for Lead Plaintiffs and,

to date, no Settlement Class Member has objected to this request.

IX. CONCLUSION

209. For all the reasons stated above, Lead Plaintiffs and Lead Plaintiffs' Counsel

respectfully submit that the Settlement and the Plan of Allocation should be approved as fair,

reasonable, and adequate. Lead Plaintiffs' Counsel further submit that the requested fee of 30%

of the Settlement Fund should be approved as fair and reasonable, and the request for

reimbursement of total Litigation Expenses in the amount of \$1,412,383.93, which amount

includes Service Awards to the Lead Plaintiffs in the aggregate amount of \$35,000, should be

approved.

We each declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on April 29, 2019

SHARAN NIRMEI

Executed on April 29, 2019

DANIEL P. CHIPLOCK

## EXHIBIT 1

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IN RE: THE BANK OF NEW YORK
MELLON ADR FX LITIGATION

Civil Action No. 16-CV-00212-JPO-JLC

**ECF** Case

This Document Relates to:

ALL ACTIONS

DECLARATION OF LANCE CAVALLO REGARDING
(A) RECEIPT AND PROCESSING OF REGISTERED HOLDER DATA;
(B) MAILING OF THE POST-CARD NOTICE;
(C) ESTABLISHMENT OF THE TELEPHONE HOTLINE;
(D) ESTABLISHMENT OF THE SETTLEMENT WEBSITES; AND
(E) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE

- I, Lance Cavallo, declare and state as follows:
- 1. I am a Senior Project Manager of Class Actions at Kurtzman Carson Consultants LLC ("KCC"). KCC is headquartered at 3301 Kerner Boulevard, San Rafael, California 94901. Pursuant to the Court's January 17, 2019 Order Approving Issuance of Notice (the "Notice Order"), Lead Plaintiffs' Counsel were authorized to retain KCC as the Claims Administrator in connection with the proposed Settlement of the above-captioned Action. I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

#### RECEIPT AND PROCESSING OF REGISTERED HOLDER DATA

2. In accordance with the Stipulation and Notice Order, on February 15, 2019, KCC received from Computershare, The Bank of New York Mellon's ("BNYM") transfer agent,

<sup>&</sup>lt;sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated January 15, 2019 (the "Stipulation") and/or the Notice Order.

239 separate spreadsheets collectively containing the contact, holding, and distribution information for Registered Holder Settlement Class Members (*i.e.*, Settlement Class Members who hold (or held) their eligible securities directly, who are listed in the records of BNYM's transfer agent with respect to such holdings, and whose contact, holding, and distribution information has been provided by BNYM's transfer agent). The spreadsheets contained approximately 6.9 million lines of raw data.

3. Following the receipt of the Registered Holder Settlement Class Member data from Computershare, KCC spent approximately 4 weeks processing the data. KCC's efforts with respect to this data included (a) aligning like data points across all 239 spreadsheets, (b) separating account name information from account address information, (c) processing the names and addresses through the National Change of Address Database ("NCOA") to update any addresses on file with the United States Postal Service ("USPS"), (d) grouping transactions together based on identical name/address information for the purpose of creating one claim per account, and (e) loading all of the data into a case-specific database. These efforts resulted in contact, holding, and distribution information for 461,229 unique Registered Holder Settlement Class Members.

#### MAILING OF THE POST-CARD NOTICE

4. Pursuant to the Notice Order, KCC was responsible for disseminating the Post-Card Notice to Registered Holder Settlement Class Members. A copy of the Post-Card Notice is attached hereto as Exhibit A.

- 5. On March 18, 2019, KCC caused Post-Card Notices to be mailed by first-class mail to 460,551<sup>2</sup> Registered Holder Settlement Class Members. Following the initial mailing, through April 25, 2019, KCC has re-mailed 11,910 Post-Card Notices that were initially returned as undeliverable by the USPS, but re-mailed based on updated addresses provided by the USPS or obtained through a third-party vendor to which KCC subscribes.
- 6. As a result of the efforts described above, as of April 25, 2019, KCC has mailed a total of 472,461 Post-Card Notices.

#### **TELEPHONE HOTLINE**

7. KCC established and continues to maintain a toll-free telephone number (1-866-447-6210) for potential Settlement Class Members to call and obtain information about the Settlement, including important dates and deadlines, and/or seek assistance from a live operator during regular business hours. The telephone hotline became operational on January 28, 2019, and is accessible 24 hours a day, 7 days a week. As of April 25, 2019, KCC has received a total of 10,830 calls to the telephone hotline, of which 2,657 calls were handled by a live operator.

#### **SETTLEMENT WEBSITES**

8. To further assist potential Settlement Class Members, KCC, in coordination with Lead Plaintiffs' Counsel, designed, implemented and currently maintains a website, <a href="https://www.BNYMADRFXSettlement.com">www.BNYMADRFXSettlement.com</a>, dedicated to the Settlement (the "Settlement Website"). The address for the Settlement Website is set forth in the Post-Card Notice, the long-form Notice, the Claim Form, and the Summary Notice which was published in various magazines,

<sup>&</sup>lt;sup>2</sup> Of the 461,229 unique Registered Holder Settlement Class Members provided by the transfer agent, a total of 678 had incomplete address information. Accordingly, these 678 records were removed from the mailing.

<sup>&</sup>lt;sup>3</sup> Copies of the long-form Notice and Claim Form are attached hereto as Exhibits B and C.

newspapers and investment newsletters.<sup>4</sup> The Settlement Website became operational on January 28, 2019, and is accessible 24 hours a day, 7 days a week. The Settlement Website lists the exclusion, objection, and claim submission deadlines, as well as the date and time of the Court's Final Approval Hearing. In addition, the Settlement Website contains links to downloadable copies of the Stipulation, the Notice Order, the Notice, the Claim Form and the operative complaint for the Action. The Settlement Website also contains detailed instructions for entities who wish to submit claims electronically. Finally, the Settlement Website provides Non-Registered Holder Settlement Class Members with the ability to file a claim online.

- 9. In conjunction with the mailing to Registered Holder Settlement Class Members, KCC, on March 18, 2019, added functionality (i.e., the "Claim Portal") to the Settlement Website so that Registered Holder Settlement Class Members could access their holding and distribution information provided by BNYM's transfer agent, using the Claim Number and PIN set forth on the Post-Card Notice they received. Registered Holder Settlement Class Members were also provided with instructions on how to amend or supplement their claim if they believed the information contained on the Claim Portal was incorrect or incomplete.
- 10. KCC will continue operating, maintaining and, as appropriate, updating the Settlement Website until the conclusion of the administration. As of April 25, 2019, the Settlement Website has received 60,384 hits.
- 11. In addition to the Settlement Website, <a href="www.BNYMADRFXSettlement.com">www.BNYMADRFXSettlement.com</a>, KCC, in coordination with Lead Plaintiffs' Counsel, designed, implemented and currently maintains a general ADR FX website, <a href="www.ADRFXSettlement.com">www.ADRFXSettlement.com</a>, which serves as a landing page for this Settlement as well as the settlements obtained in the related ADR FX cases,

<sup>&</sup>lt;sup>4</sup> The media campaign for the Settlement is detailed in the Declaration of Jeanne C. Finegan which also is being submitted with Lead Plaintiffs' settlement submission.

Merryman et al. v. Citigroup, Inc. et al., No. 1:15-cv-09185-CM-KNF (S.D.N.Y.) and Merryman et al. v. JPMorgan Chase Bank, N.A., No. 1:15-cv-09188-VEC (S.D.N.Y.). The address for this website was included in the banner ads utilized in the media campaign.

#### REPORT ON EXCLUSION REQUESTS RECEIVED TO DATE

- 12. The Post-Card Notice, long-form Notice, Summary Notice and Settlement Website inform potential Settlement Class Members that requests for exclusion from the Settlement Class must be received no later than May 13, 2019. The long-form Notice provides that requests for exclusion must be mailed to *Bank of New York Mellon ADR FX Settlement*, c/o KCC Class Action Services, EXCLUSIONS, P.O Box 505030, Louisville, KY 40233-5030 and also sets forth the information that must be included in each request for exclusion.
- 13. As of April 25, 2019, KCC has received 6 requests for exclusion from the Settlement Class. KCC will submit a supplemental declaration after the May 13, 2019 deadline that will report on all exclusion requests received.

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

Executed in New York, New York on April 26, 2019.

Lance Cavallo

## Exhibit A

#### Case 1:16-cv-00212-JPO-JLC Decurbant of Siew York in the distribution 4X DB/1EX) Ser trangents of 71

In re: The Bank of New York Mellon ADR FX Litigation No. 16-CV-00212-JPO-JLC (S.D.N.Y.)

THIS NOTICE ONLY PROVIDES LIMITED INFORMATION ABOUT THIS CLASS ACTION LAWSUIT AND SETTLEMENT.

Please Visit

www.bnymadrfxsettlement.com

or call 1-866-447-6210

for more information.

c/o KCC Class Action Services P.O. Box 505030 Louisville, KY 40233-5030

2D

#### «BarCode»

Postal Service: Please do not mark barcode

Claim#: BMA-«ClaimNumber»

«Owner»

«CoOwner»

«Representative»

«Address1»

«Address2»

«City» «StateCd» «Zip»

«Country»

### **BMA**



#### NAME/ADDRESS CHANGES (IF ANY):

IF YOU HAVE A CHANGE OF NAME/ADDRESS, PLEASE FILL OUT THIS FORM AND MAIL IT TO THE CLAIMS ADMINISTRATOR VIA THE U.S. POSTAL SERVICE. THE ADDRESS IS ON THE BACK OF THIS CARD.

First	Name																	
Last I	Name																	
Stree	t Addr	ess																
											[							
City												State			Zip Co	ode		
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Area	Code		•	Teleph	none N	Numbe	er (Ho	me)				«Cou			, «Дір»			
Fmai									 		_						 	

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by BNYM's transfer agent and can be reviewed at <a href="www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a> using the Claim Number and PIN provided below. The Claims Administrator will use this information to calculate your Claim in accordance with the Plan of Allocation found in the full notice ("Notice"), or other plan approved by the Court, so it is important that you review the information to confirm it is accurate and complete. If the information is not accurate or complete, you must notify the Claims Administrator immediately. Otherwise, the Claims Administrator will assume the information is accurate and complete.

CLAIM NUMBER: «ClaimNumber» / PIN: «Pin»

Pursuant to Federal Rule of Civil Procedure 23 and Court Order, the Court has directed the issuance of notice of the proposed \$72.5 million settlement of he action to potential members of the Settlement Class. If approved, the settlement will resolve all claims in the case. This notice provides basic information. You should review the Notice found on the website <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a> for additional information.

What Is the Action About: Lead Plaintiffs allege that, during the relevant time period, BNYM systematically deducted impermissible fees for conducting foreign exchange from cash distributions issued by foreign companies, and owed to ADR holders. BNYM has denied, and continues to deny, any wrongdoing or liability whatsoever.

Who Is a Settlement Class Member: All entities and individuals who at any time from January 1, 1997 through January 17, 2019 held (directly or indirectly, registered or beneficially), or otherwise claim any entitlement to any payment (whether a dividend, rights offering, interest on capital, sale of shares, or other distribution) in connection with, any ADR for which BNYM acted as the depositary sponsored by an issuer that is identified in the Appendix to the Notice (the "Settlement Class"). Certain entities and individuals are excluded from the definition of the Settlement Class as set forth in detail in the Notice.

What Are the Benefits: If the Court approves the settlement, the settlement proceeds, after deduction of Court-approved notice and administration costs, attorneys' fees and expenses, and any applicable taxes will be distributed to eligible Settlement Class Members pursuant to the Plan of Allocation attached as Exhibit 1 to the Notice, or other plan approved by the Court.

What Are My Rights: As a Registered Holder Settlement Class Member, you do not have to take any action in order to be eligible to receive a settlement payment. Your Claim will be calculated using the information provided by BNYM's transfer agent, which can be accessed on the website using the Claim Number and PIN provided above. You should review this information to confirm it is accurate and complete. If you do not want to remain in the Settlement Class, you can request exclusion by May 13, 2019, in accordance with the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the action and you will not be eligible to share in the net settlement proceeds. Objections to the settlement, Plan of Allocation, and/or request for attorneys' fees and expenses must be received by May 13, 2019, in accordance with the Notice.

When Is the Final Approval Hearing: A hearing will be held on June 17, 2019 at 3:00 p.m. before the Honorable J. Paul Oetken, at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007, Nd the settlement, Plan of Allocation, and request for attorneys' fees and expenses should be approved. Supporting papers will be posted on the website once filed

For more information visit www.bnymadrfxsettlement.com,

email info@bnymadrfxsettlement.com or call 866-447-6210.

Place
Stamp
Here

Bank of New York Mellon ADR FX Settlement c/o KCC Class Action Services P.O. Box 505030 Louisville, KY 40233-5030

**BMA** 

# Exhibit B

#### Case 1:16-cv-00212-JPO-JLC Document 155-1 Filed 04/29/19 Page 11 of 71

#### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IN RE: THE BANK OF NEW YORK MELLON ADR FX LITIGATION

Civil Action No. 16-CV-00212-JPO-JLC

This Document Relates to:

**ECF Case** 

ALL ACTIONS.

#### NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II) FINAL APPROVAL HEARING; AND (III) MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO: All entities and individuals who at any time during the period January 1, 1997 through January 17, 2019 held (directly or indirectly, registered or beneficially), or otherwise claim any entitlement to any payment (whether a dividend, rights offering, interest on capital, sale of shares, or other distribution) in connection with, any American Depositary Share (sometimes known as an American Depositary Receipt) ("ADR") for which The Bank of New York Mellon ("BNYM" or "Defendant") acted as the depositary sponsored by an issuer that is identified in the Appendix to this Notice (the "Settlement Class").

#### A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

This notice ("Notice") is issued pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") and an Order of the United States District Court for the Southern District of New York ("Court"). The purpose of this Notice is to advise you of the pendency of the above-captioned class action ("Action") and the proposed settlement ("Settlement") of the Action for \$72,500,000 on the terms and provisions contained in the Stipulation and Agreement of Settlement filed in the Action and dated January 15, 2019 ("Stipulation"). The Honorable J. Paul Oetken is presiding over the Action. Judge Oetken has found that the prerequisites for class action certification under Rule 23 are likely to be found to be satisfied with respect to the Settlement Class (defined in ¶ 3 below) for purposes of settlement only, has approved this Notice to potential members of the Settlement Class and has scheduled a final settlement hearing for June 17, 2019, at 3:00 p.m. ("Final Approval Hearing"). The Final Approval Hearing will be held in Courtroom 706 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007.

The Settlement resolves claims by David Feige, International Union of Operating Engineers Local 138 Annuity Fund<sup>2</sup>, and Annie L. Normand (collectively, "Named Plaintiffs") and Diana Carofano and Chester County Employees Retirement Fund ("Intervenor Plaintiffs" and, together with Named Plaintiffs, "Lead Plaintiffs"), that have been asserted on behalf of the Settlement Class against BNYM. Lead Plaintiffs alleged that, during the relevant time period, BNYM, as depositary for the ADRs listed in the Appendix hereto, systematically deducted impermissible fees for conducting foreign exchange ("FX") from cash distributions issued by foreign companies, and owed to ADR holders. BNYM denies these allegations. A more detailed description of the claims asserted by Lead Plaintiffs in the Action, as well as the history of the Action, is set forth in ¶¶ 10-22 below.

As more fully described in ¶¶ 27-36 below, the Settlement provides for \$72.5 million ("Settlement Amount") to be paid by or on behalf of Defendant for the benefit of eligible Settlement Class Members, which amount has been deposited into an interest-bearing escrow account. The Net Settlement Fund (i.e., the Settlement Amount plus any and all interest earned thereon (the "Settlement Fund") less any (i) Taxes and Tax Expenses; (ii) Notice and Administration Costs; and (iii) attorneys' fees and Litigation Expenses awarded by the Court) will be distributed to eligible Settlement Class Members (i.e., "Authorized Recipients") according to a Court-approved plan of allocation. The proposed Plan of Allocation is set forth in Exhibit 1 hereto.

IMPORTANT - PLEASE NOTE: If you receive/have received a Post-Card Notice in the mail in connection with this Settlement, you are a Registered Holder Settlement Class Member (i.e., you hold (or held) the ADRs covered by this Action directly through BNYM, are listed in the records of BNYM's transfer agent with respect to such holdings, and your contact, holding, and distribution information was provided to the Claims Administrator by BNYM's transfer agent) and you do not have to take any action in order to be eligible to receive a payment from the Settlement. You should, however, review the information provided by BNYM's transfer agent with respect to your holdings and distributions to confirm that

The Stipulation can be viewed at www.bnymadrfxsettlement.com. Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation.

The operative complaint in the Action named International Union of Operating Engineers Local 138 Pension Trust Fund rather than International Union of Operating Engineers Local 138 Annuity Fund. The proper Named Plaintiff is International Union of Operating Engineers Local 138 Annuity Fund.

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the information is accurate and complete. See ¶ 38 below. If you do not receive/have not received a Post-Card Notice in the mail in connection with the Settlement, you are a Non-Registered Holder Settlement Class Member and you must complete and submit a valid Claim Form in order to be eligible to receive a payment from the Settlement.

Any questions regarding this Notice, the Action, the Settlement or your eligibility to participate in the Settlement should be directed to Lead Plaintiffs' Counsel: Sharan Nirmul, Esq., Kessler Topaz Meltzer & Check, LLP, 280 King of Prussia Road, Radnor, Pennsylvania 19087, (610) 667-7706, <a href="www.ktmc.com">www.ktmc.com</a>, and Daniel P. Chiplock, Esq., Lieff Cabraser Heimann & Bernstein, LLP, 250 Hudson Street, 8th Floor, New York, NY 10013-1413, (212) 355-9500, <a href="www.lieffcabraser.com">www.lieffcabraser.com</a>. Further information may be obtained by contacting the Court-appointed Claims Administrator, Kurtzman Carson Consultants LLC ("KCC"), at <a href="mailto:Bank of New York Mellon ADR FX Settlement">Bank of New York Mellon ADR FX Settlement</a>, c/o KCC Class Action Services, P.O. Box 505030, Louisville, KY 40233-5030, (866) 447-6210, info@bnymadrfxsettlement.com. <a href="mailto:Please DO NOT contact">Please DO NOT contact the Court, the Clerk's office, BNYM, or its counsel. All questions should be directed to either Lead Plaintiffs' Counsel or the Claims Administrator.

IF YOU ARE A SETTLEMENT CLASS MEMBER, PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.

A SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT						
SUBMIT A CLAIM FORM ONLINE OR POSTMARKED NO LATER THAN AUGUST 15, 2019, UNLESS YOU ARE A REGISTERED HOLDER SETTLEMENT CLASS MEMBER.	If you are a Non-Registered Holder Settlement Class Member (as defined above), this is the <u>only</u> way for you to be eligible to receive a payment from the Settlement. If you are a Registered Holder Settlement Class Member (as defined above), you do not need to take any further action ( <i>i.e.</i> , submit a Claim Form) to be eligible to receive a payment from the Settlement, but if the information regarding your holdings and cash distributions as set forth on the website is incorrect or incomplete, you must notify the Claims Administrator immediately.					
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN MAY 13, 2019.	If you are a member of the Settlement Class and choose to exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement. This is the only option that allows you ever to be part of any other lawsuit against the Defendant or any of the other Releasees concerning the Released Claims. See ¶¶ 46-51 below for details.					
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN MAY 13, 2019.	If you object to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Plaintiffs' Counsel's request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you object to them. You can only object to the Settlement, the Plan of Allocation or the fee and expense request if you are a Settlement Class Member and you do not exclude yourself from the Settlement Class. See ¶¶ 56-62 below for details.					
FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN MAY 13, 2019, AND GO TO THE FINAL APPROVAL HEARING ON JUNE 17, 2019.	Filing a written objection and notice of intention to appear by May 13, 2019 allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the proposed Plan of Allocation, and/or Lead Plaintiffs' Counsel's request for attorneys' fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.					
DO NOTHING.	You will remain a member of the Settlement Class, which means that you give up your right to sue the Defendant or any of the other Releasees about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.  Please Note: If you are a Non-Registered Holder Settlement Class Member and do nothing, you will not be eligible to receive a payment from the Settlement.					

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#### SUMMARY OF THE SETTLEMENT

- 1. As described in more detail below (and in the operative complaint filed in the Action), Lead Plaintiffs allege that during the relevant time period, Defendant, BNYM, as depositary for certain ADRs, systematically deducted impermissible fees for conducting FX from cash distributions issued by foreign companies, and owed to ADR holders. A copy of the operative complaint in the Action the Consolidated Amended Class Action Complaint dated October 26, 2016 ("Consolidated Complaint"), is available on the website for the Settlement, <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>.
- An Escrow Account has been established to hold the Settlement Fund prior to being distributed to Authorized Recipients pursuant to the Court-approved plan of allocation. After the Settlement becomes Final and pursuant to Order of the Court, the Net Settlement Fund will be distributed to Authorized Recipients. Lead Plaintiffs estimate, with the aid of a damages expert, that the amount of the Settlement represents approximately 23 percent of the total overcharges to the Settlement Class from the alleged ADR FX practices for the relevant ADRs. **This is only an estimate**. BNYM does not concede the accuracy of Lead Plaintiffs' damages expert's calculation, or that there were any damages. A Settlement Class Member's Recognized Claim, as explained in the Plan of Allocation, reflects Lead Plaintiffs' view of the purported margin(s) retained by BNYM for FX conversions of ADR cash distributions. A Settlement Class Member's actual recovery will be based upon the Net Settlement Fund, which will consist of the Settlement Fund, less certain amounts to be deducted from the Settlement Fund as described in the Stipulation, including expenses associated with providing notice to the Settlement Class, Court-awarded attorneys' fees and Litigation Expenses (including any Service Awards to Lead Plaintiffs for the effort and time spent by them in connection with the prosecution of the Action), Taxes and Tax Expenses, and other costs related to the administration of the Settlement Fund and implementation of the Plan of Allocation, and will be allocated in accordance with the plan of allocation approved by the Court. (See ¶¶ 41-44 below and the proposed Plan of Allocation attached as Exhibit 1).

3. The Settlement Class is defined as follows:

All entities and individuals who at any time during the period January 1, 1997 through January 17, 2019 held (directly or indirectly, registered or beneficially), or otherwise claim any entitlement to any payment (whether a dividend, rights offering, interest on capital, sale of shares, or other distribution) in connection with, any ADR for which BNYM acted as the depositary sponsored by an issuer that is identified in the Appendix hereto. For avoidance of doubt, Settlement Class Members include all entities, organizations, and associations regardless of form, including investment funds and pension funds of any kind.

<u>Please Note</u>: There are exceptions to being included in the Settlement Class. A description of those persons and entities excluded by definition from the Settlement Class is provided below in ¶ 26.

- 4. As with any litigation, the Parties would face an uncertain outcome if this Action were to continue. Absent the Settlement, orders and appeals on class certification, summary judgment and a trial could result in a judgment or verdict greater or less than the recovery obtained by the Settlement, or no recovery at all. This Action has been hotly contested from the outset. Throughout this Action, Lead Plaintiffs and BNYM have disagreed on both liability and damages. BNYM, among other things: (1) has denied, and continues to deny, the material allegations of the Consolidated Complaint; (2) has denied, and continues to deny, any wrongdoing or liability whatsoever; (3) contests the propriety of class certification; (4) believes that its actions were a proper exercise of its judgment and were in good faith and in its best judgment, and complied with all applicable laws, rules, regulations, codes, market practices, and standards; (5) would assert certain other defenses if this Settlement is not consummated; and (6) is entering into the Settlement solely to avoid the cost, disruption, and uncertainty of continued litigation. The Parties have taken into account the uncertainty and risks inherent in this Action, particularly its complex nature, and have concluded that it is desirable that this Action be fully and finally settled on the terms and conditions set forth in the Stipulation.
- 5. Over the course of this Action, the Parties briefed a motion to dismiss and engaged in extensive discovery efforts, which included Defendant's production of over 2.7 million pages of documents and over 136,000 Excel documents, Lead Plaintiffs' production of over 23,000 pages of documents, and the Parties taking 16 fact depositions and four expert depositions and exchanging several rounds of expert reports. The Parties' discovery efforts were coming to a close when they began discussing the possibility of resolving the Action. In addition, the Parties fully briefed Defendant's motion for partial summary judgment and Lead Plaintiffs' motion for class certification, both of which remained pending when the Settlement was reached.
- 6. Lead Plaintiffs' Counsel in this Action, on behalf of all plaintiffs' counsel, will apply to the Court for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Amount and reimbursement of Litigation Expenses in an amount not to exceed \$1,750,000, plus interest earned on these amounts. Lead Plaintiffs will share in the allocation of the money paid to members of the Settlement Class on the same basis and to the same extent as all other members of the Settlement Class, except that, in addition thereto, Lead Plaintiffs may apply to the Court for Service Awards of up to \$40,000 in the aggregate. Any Service Awards granted to Lead Plaintiffs by the Court will be payable from the Settlement Fund, and will compensate Lead Plaintiffs for their effort and time spent in connection with the prosecution of the Action, as supported by adequate written documentation of such effort and time. The aggregate amount of Service Awards (*i.e.*, \$40,000) is reflected in the maximum amount of Litigation Expenses set forth above.

#### **BASIC INFORMATION**

#### What Is The Purpose Of This Notice?

- 7. The Court has directed the issuance of this Notice to inform potential members of the Settlement Class regarding the proposed Settlement with BNYM before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and any related objections and appeals are favorably resolved, the Settlement Fund, net of the costs, fees and expenses described herein, will be allocated among eligible Settlement Class Members according to a Court-approved plan of allocation, and the Releasees and Releasors will be released from all Released Claims and Released Defendant Claims, respectively, as set forth in the Stipulation.
- 8. This Notice explains the Action, the Settlement, your legal rights (if you are a Settlement Class Member), what benefits are available, who is eligible for them, and how you will receive your portion of the benefits. The Notice also informs you of the Final Approval Hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the Settlement and to consider Lead Plaintiffs' Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses from the Settlement Fund, which may include Service Awards to Lead Plaintiffs.
- 9. The Final Approval Hearing will be on **June 17, 2019 at 3:00 p.m.**, before the Honorable J. Paul Oetken in the United States District Court for the Southern District of New York, Courtroom 706 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007, to determine:
  - whether the Settlement should be approved as fair, reasonable and adequate;
  - whether the Consolidated Complaint should be dismissed with prejudice pursuant to the terms of the Settlement;
  - whether the Settlement Class should be certified for settlement purposes:

#### Case 1:16-cv-00212-JPO-JLC Document 155-1 Filed 04/29/19 Page 15 of 71

- whether notice and the means of dissemination thereof pursuant to the Settlement: (i) were appropriate and
  reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to such
  notice; and (ii) met all applicable requirements of the Federal Rules of Civil Procedure, and any other
  applicable law; and
- whether Lead Plaintiffs' Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, including Service Awards to Lead Plaintiffs, should be approved.

The issuance of this Notice is not an expression of the Court's opinion on the merits of any claim in this Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payment to Authorized Recipients will be made after all related appeals, if any, are favorably resolved. It is always uncertain whether such appeals can be favorably resolved, and resolving them can take time, perhaps more than a year. Please be patient.

#### What Is This Action About? What Has Happened So Far?

- 10. On January 11, 2016, the initial complaint (*i.e.*, the "Class Action Complaint") was filed in the Action. The Class Action Complaint asserted claims for breach of contract, breach of implied covenant of good faith and fair dealing and conversion.
- 11. On February 26, 2016, BNYM moved to dismiss the Class Action Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"). Plaintiffs opposed BNYM's motion on March 18, 2016, and BNYM filed a reply in support of its motion on March 28, 2016.
- 12. By Order dated April 12, 2016, the Court designated Lieff Cabraser Heimann & Bernstein, LLP and Kessler Topaz Meltzer & Check, LLP as Interim Co-Lead Counsel for the putative class.
- 13. On April 15, 2016, the action titled *International Union of Operating Engineers Local 138 Pension* Trust *Fund v. The Bank of New York Mellon*, Case No. 16-cv-02834-JPO (the "Local 138 Action"), filed in the Eastern District of New York on February 19, 2016, was transferred to this Court. By Stipulation and Order Consolidating Cases and Setting Deadline for Response to Complaint in Local 138 Action, the Local 138 Action was consolidated with the Action for all purposes pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, under the caption *In re: The Bank of New York Mellon ADR FX Litigation*, File No. 1:16-CV-00212-JPO.
- 14. By Opinion and Order dated September 29, 2016, the Court granted in part and denied in part BNYM's motion to dismiss the Class Action Complaint. Specifically, the Court: (i) denied BNYM's motion as to plaintiffs' breach of contract claims; (ii) granted BNYM's motion as to plaintiffs' claims for breach of the implied duty of good faith and fair dealing and conversion; (iii) denied BNYM's motion as to plaintiffs' breach of contract claims under SLUSA; (iv) denied BNYM's motion as to plaintiffs' claims on the ground that plaintiffs lacked contractual standing; and (v) denied BNYM's motion as to claims asserted for the period prior to 2012 (for the California plaintiffs) and 2011 (for the Virginia plaintiffs) without prejudice to renewal, either on summary judgment after discovery, or at trial. The Court also found BNYM's argument that plaintiffs lacked class standing to represent all holders of the ADRs for which BNYM was depositary to be premature.
- 15. On October 19, 2016, the Court entered an order that, among other things, permitted plaintiffs to file a consolidated complaint by October 28, 2016. In accordance with that Order, Lead Plaintiffs filed the operative complaint in the Action, the Consolidated Amended Class Action Complaint (*i.e.*, the Consolidated Complaint), on October 26, 2016. BNYM answered the Consolidated Complaint on November 23, 2016.
- 16. Thereafter, the Parties commenced discovery, which included BNYM producing over 2.7 million pages of documents and over 136,000 Excel documents, Lead Plaintiffs producing over 23,000 pages of documents, and the Parties taking 16 fact depositions and four expert depositions and exchanging several rounds of expert reports.
- 17. On February 12, 2018, BNYM moved for partial summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the applicability of the statutes of limitations and plaintiffs' standing. Lead Plaintiffs opposed BNYM's motion by memoranda filed on March 7, 2018 and March 22, 2018. BNYM filed a reply in support of its motion on March 19, 2018.
- 18. On April 27, 2018, Lead Plaintiffs moved to add Chester County Employees Retirement Fund as a named plaintiff, which BNYM opposed on May 11, 2018. Lead Plaintiffs filed their reply on May 18, 2018.
- 19. On May 15, 2018, Lead Plaintiffs moved for class certification. BNYM opposed Lead Plaintiffs' motion on June 5, 2018, and Lead Plaintiffs filed a reply in support of their motion on June 19, 2018.
- 20. As the Parties' discovery efforts were coming to a close and while the Parties' respective motions for partial summary judgment and class certification were pending, counsel for the Parties began discussing the possibility of resolving the Action. Following hard-fought, arm's-length negotiations spanning the course of several months, including formal mediation, on August 10, 2018, the Parties accepted a mediator's proposal on the Settlement Amount, and on October 16, 2018, the Parties entered into a term sheet setting forth the material terms of their agreement. On the same day, the Parties notified the Court of their tentative settlement.

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- 21. Over the next two months, the Parties negotiated and documented the specific terms and conditions of the Settlement, which are embodied in the Stipulation entered on January 15, 2019. The Stipulation can be viewed at www.bnymadrfxsettlement.com.
- 22. Thereafter, on January 17, 2019, the Court entered the Notice Order, approving the proposed notice plan to potential Settlement Class Members and scheduling the Final Approval Hearing to consider whether to grant final approval of the Settlement, among other things.

#### Why Is This Action A Class Action?

23. In a class action, one or more individuals or entities, referred to as "plaintiffs," sue on behalf of individuals and entities who have similar claims. All of the persons and entities on whose behalf Lead Plaintiffs in this Action are suing are members of a "class" referred to in this Notice as Settlement Class Members or members of the Settlement Class. Because Lead Plaintiffs believe that the wrongful conduct alleged in this case affected all holders of the BNYM-sponsored ADRs at issue in the Action (reflected in the Appendix hereto) in the same way, Lead Plaintiffs filed their case as a putative class action. With respect to the Settlement Class, the Court has found that the prerequisite for class action certification under Rule 23 are likely to be found to be satisfied for purposes of effectuating the Settlement.

#### Why Is There A Settlement?

- 24. The Court has not expressed any opinions or reached any decisions on the ultimate merits of Lead Plaintiffs' claims against BNYM. Instead, Lead Plaintiffs and BNYM have agreed to a Settlement to resolve the Action. In reaching the Settlement, the Parties have avoided the cost and time of further litigation, including the costs and expenses involved in taking this Action to trial, post-trial briefing and potential appeals. As with any litigation, Lead Plaintiffs would face an uncertain outcome if this case proceeded. Pursuing the Action against BNYM could result in a verdict offering relief greater than this Settlement, a verdict for less money than Lead Plaintiffs have obtained through this Settlement, or no recovery at all. Based on these risks and an evaluation of other unique risks presented by this case, Lead Plaintiffs and Lead Plaintiffs' Counsel believe the Settlement is in the best interests of all members of the Settlement Class. Additional information concerning the Settlement and these factors is available on the website, www.bnymadrfxsettlement.com.
- 25. As stated above, the Settlement is the product of hard-fought, arm's-length negotiations between Lead Plaintiffs' Counsel and Defendant's Counsel, both of which are very experienced with respect to complex litigation of this type. Lead Plaintiffs' Counsel believe the proposed Settlement is fair, reasonable and adequate and in the best interest of the Settlement Class.

#### How Do I Know If I Am Part Of The Settlement Class?

26. The Settlement Class is defined as follows:

All entities and individuals who at any time during the period from January 1, 1997 through January 17, 2019 held (directly or indirectly, registered or beneficially), or otherwise claim any entitlement to any payment (whether a dividend, rights offering, interest on capital, sale of shares, or other distribution) in connection with, any ADR for which BNYM acted as the depositary sponsored by an issuer that is identified in the attached Appendix. For avoidance of doubt, Settlement Class Members include all entities, organizations, and associations regardless of form, including investment funds and pension funds of any kind.

BNYM and its officers, directors, legal representatives, heirs, successors, corporate parents, subsidiaries, and/or assigns, other than Investment Vehicles<sup>3</sup> (which are not excluded), are excluded from the Settlement Class only to the extent that such persons or entities had a proprietary (*i.e.*, for their own account) interest in any such ADR and not to the extent that they hold or held such ADR in a fiduciary capacity or otherwise on behalf of any third-party client, account, fund, trust, or employee benefit plan that otherwise falls within the definition of the Settlement Class. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves from the Settlement Class by submitting a request for exclusion that is accepted by the Court.

PLEASE READ THIS NOTICE CAREFULLY TO DETERMINE WHETHER YOU ARE A SETTLEMENT CLASS MEMBER AND WHETHER YOU ARE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.

IF YOU ARE A NON-REGISTERED HOLDER SETTLEMENT CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO RECEIVE A PAYMENT FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A CLAIM FORM AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED (OR RECEIVED) NO LATER THAN AUGUST 15, 2019. YOU CAN OBTAIN A COPY OF THE CLAIM FORM, OR SUBMIT A CLAIM ONLINE, AT WWW.BNYMADRFXSETTLEMENT.COM.

<sup>3</sup> "Investment Vehicle" means any investment company or pooled investment fund, including but not limited to mutual fund families, exchange-traded funds, funds of funds, private equity funds, real estate funds, and hedge funds, in which BNYM has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, general partner, managing member, or any other similar capacity.

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PLEASE NOTE: If you are an ERISA Entity<sup>4</sup>, you may also have received notice concerning a proposed settlement in another action entitled *Carver*, et al. v. Bank of New York Mellon, et al., No. 15-CV-10180 (JPO)(JLC) (S.D.N.Y.) (the "ERISA Settlement"). Detailed information regarding the ERISA Settlement can be found on the website <a href="https://www.BNYMADRERISASettlement.com">www.BNYMADRERISASettlement.com</a>. The Settlement described in this Notice is separate from <a href="mailto:and-in-addition-to">and in addition to</a> the ERISA Settlement insofar as ERISA Entities are concerned. <a href="ERISA Entities eligible to-participate">ERISA Entities eligible to-participate</a> in the ERISA Settlement can and should also consider submitting a claim to receive a distribution in connection with this Settlement.

#### What Does The Settlement Provide?

- 27. The Settlement provides for \$72,500,000 to be paid by or on behalf of Defendant to settle the Action. The \$72,500,000, plus interest that accrues on this amount, will be distributed to the Settlement Class after costs, expenses and fees are deducted as described below. Lead Plaintiffs estimate, with the aid of their damages expert, that the amount of the Settlement represents approximately 23 percent of the total overcharges to the Settlement Class from the alleged ADR FX practices for the relevant ADRs. **This is only an estimate.** BNYM does not concede the accuracy of Lead Plaintiffs' damages expert's calculation, or that there were any damages. A Settlement Class Member's Recognized Claim, as explained in the Plan of Allocation, reflects Lead Plaintiffs' view of the purported margin(s) retained by BNYM for FX conversions of ADR cash distributions. A Settlement Class Member's actual recovery will depend upon the net amount in the Settlement Fund (after the deduction of certain amounts as described herein and in the Stipulation, including Notice and Administration Costs, Court-approved attorneys' fees and Litigation Expenses, including any Service Awards to Lead Plaintiffs, and Taxes and Tax Expenses), which will be allocated and paid to eligible Settlement Class Members according to the plan of allocation approved by the Court.
- 28. The Settlement will provide for cash payments to Settlement Class Members who do not exclude themselves from the Settlement Class pursuant to ¶¶ 46-51 below. Registered Holder Settlement Class Members do not need to submit a Claim Form in order to be eligible for a payment from the Settlement. Non-Registered Holder Settlement Class Members must submit a valid Claim Form in order to be eligible to receive a payment from the Settlement.
- 29. If the Settlement is approved, the Court will enter a judgment ("Order and Final Judgment"). The Order and Final Judgment will dismiss with prejudice the claims alleged in the Action against Defendant, and pursuant to the Order and Final Judgment, without further action by anyone, upon the Effective Date of the Settlement, Lead Plaintiffs and each Settlement Class Member, on behalf of themselves and each of their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Order and Final Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Claim (as defined below) against any of the Releasees (as defined below), and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Releasees.
- "Released Claims" means any and all claims and causes of action of every nature and description, whether known or unknown (i.e., "Unknown Claims" as defined below), asserted or unasserted, whether arising under federal, state, common, or foreign law, whether in connection with the applicable deposit agreements or otherwise. whether class, derivative, or individual in nature, that (a) were or could have been asserted in the Action, or in any other forum, that arise out of, are based upon, or relate in any way to the allegations set forth in any complaint or other pleading filed in the Action or (b) arise from, are based upon, or relate in any way to the conversion of foreign currency (including but not limited to any sale, receipt, price, charges, expenses, costs, margins, markup, spread, fee, profit, exchange, adjustment, deduction, or disclosure) in connection with the deposit agreements, depositary receipts, common share agreements and/or transfer agency, registrar, and dividend disbursing agreements, including but not limited to in connection with any payment, transfer, disbursement, or distribution (whether associated with a dividend, rights offering, interest on capital, sale of shares, stamp or other taxes, tax withholding or relief therefrom, or otherwise), in connection with any and all ADRs for which BNYM acted as the depositary at any time during the Settlement Class Period, provided, however, that the Released Claims shall not include claims under 29 U.S.C. § 1132(a) by participants, beneficiaries, trustees, or named fiduciaries of employee retirement plans for alleged breach of 29 U.S.C. §§ 1104, 1106 arising under the Employee Retirement Income Security Act of 1974, as amended. This release incorporates a waiver by Releasors of any limitation on the scope of the release that would otherwise exist under California Civil Law § 1542. "Released Claims" do not include claims arising out of, based upon, relating to, concerning, or in connection with the interpretation or enforcement of the terms of the Settlement.
- 31. "Releasees" means (a) BNYM, its predecessors, successors, and assigns, its direct and indirect parents, subsidiaries, and affiliates, and their respective current and former officers, directors, employees, managers, members, partners, agents (in their capacity as agents of BNYM), shareholders (in their capacity as shareholders of BNYM), attorneys, and legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of

as defined by the U.S. Department of Labor "Instructions for Form 5500, Annual Return/Report of Employee Benefit Plan."

<sup>&</sup>lt;sup>4</sup> An "ERISA Entity" means an ERISA plan and any trust, pooled account, collective investment vehicle, or group insurance arrangement that files a Form 5500 annual return/report as a Direct Filing Entity ("DFE") in accordance with the DFE Filing Requirements, such as a group trust, master trust investment account (MTIA), common/collective trust (CCT), pooled separate account (PSA), 103-12 investment entity (103-12 IE), group insurance arrangement (GSA), or collective investment vehicle that held plan assets

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each of the foregoing; (b) any custodians or subcustodians appointed by BNYM in its capacity as depositary with respect to any of the ADRs subject to this Settlement, solely in their capacity as such, and only with respect to the period that BNYM served as depositary, transfer agent, registrar, or dividend disbursing agent in connection with such ADRs; (c) any issuer of any foreign security deposited with BNYM in relation to any ADR subject to this Settlement, solely in its capacity as such, solely in relation to the conduct alleged in the Consolidated Complaint, and only with respect to the period that BNYM served as depositary, transfer agent, registrar, or dividend disbursing agent in connection with such ADR; and (d) any person or entity that converted currency on BNYM's behalf for distribution to ADR holders during the Settlement Class Period in relation to any of the ADRs subject to this Settlement, solely with respect to such currency conversion. As used in this provision, "affiliates" means entities controlling, controlled by, or under common control with a Releasee.

32. "Unknown Claims" means any and all claims that any Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, and any and all claims that Defendant does not know or suspect to exist in its favor at the time of the release of the Released Defendant Claims, which if known to him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including, but not limited to, his, her, or its decision to object or not to object to the Settlement or not to exclude himself, herself, or itself from the Settlement Class. With respect to any and all Released Claims and Released Defendant Claims, the Parties stipulate and agree that, upon the Effective Date, each of the Lead Plaintiffs and Defendant shall expressly waive, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived and relinquished any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or any other jurisdiction, or principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiffs and Defendant acknowledge, and each of the Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

- 33. In addition, if the Settlement is approved, pursuant to the Order and Final Judgment, without further action by anyone, upon the Effective Date of the Settlement, Defendant shall be deemed to have, and by operation of law and of the Order and Final Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendant Claim (as defined below) against the Releasors (as defined below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendant Claims against any of the Releasors.
- 34. "Released Defendant Claims" means any and all claims and causes of action of every nature and description, whether known or unknown (*i.e.*, "Unknown Claims" as defined above), asserted or unasserted, whether arising under federal, state, common, or foreign law, whether in connection with the applicable deposit agreements or otherwise, whether class, derivative, or individual in nature, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against Defendant. "Released Defendant Claims" do not include claims arising out of, based upon, relating to, concerning, or in connection with the interpretation or enforcement of the terms of the Settlement.
- 35. "Releasors" means Lead Plaintiffs and each and every Settlement Class Member on their own behalf and on behalf of their respective predecessors, successors, beneficiaries, and assigns, direct and indirect parents, subsidiaries and affiliates, their current and former officers, directors, employees, agents, and legal representatives, and the predecessors, successors, heirs, executors, administrators, beneficiaries, and assigns of each of the foregoing, in their capacities as such. With respect to any Settlement Class Member that is a government entity, Releasors include any Settlement Class Member as to which the government entity has the legal right to release such claims. As used in this provision, "affiliates" means entities controlling, controlled by, or under common control with a Releasor.
- 36. <u>Please Note</u>: The complete terms of the Settlement are set forth in the Stipulation which may be viewed on the website <u>www.bnymadrfxsettlement.com</u>.

#### How Do I Participate In The Settlement? What Do I Need To Do?

37. If you do not receive/have not received a Post-Card Notice in the mail, you are a Non-Registered Holder Settlement Class Members. Non-Registered Holder Settlement Class Members are Settlement Class Members who are not listed in the records of BNYM's transfer agent or whose contact, holding, and distribution information has not been provided by BNYM's transfer agent, including those Settlement Class Members who hold (or held) their eligible securities through a bank, broker or other nominee rather than directly. If you are a Non-Registered Holder Settlement Class Member and you wish to be eligible to receive a payment from the proceeds of the Settlement, you must timely complete and return the Claim Form with adequate supporting documentation **postmarked**, or submitted online, no later than August 15, 2019. You can go to <a href="www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a> to submit a Claim. You can also obtain a copy of the Claim Form on the website, or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at 1-866-447-6210 or by sending an email to the Claims Administrator at info@bnymadrfxsettlement.com. Please retain all records of your holdings in the eligible ADRs, as they may be needed to document your claim. If you are a Non-Registered Holder Settlement Class Member and do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement

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Fund, but will still be bound by all the terms in the Stipulation and Settlement, including the terms of any orders by the Court and the Releases provided for therein and described above.

- Registered Holder Settlement Class Member (*i.e.*, you hold (or held) the ADRs covered by this Action directly through BNYM, are listed in the records of BNYM's transfer agent with respect to such holdings, and your contact, holding, and distribution information was provided to the Claims Administrator by BNYM's transfer agent) and you *do not* have to take any further action in order to participate in the Settlement and be potentially eligible to receive a payment from the proceeds of the Settlement. The Post-Card Notice you received contains a unique Claim Number and PIN. You can use your Claim Number and PIN to access information regarding the eligible ADRs you held and the cash distributions you received in connection with such holdings that was obtained from BNYM's transfer agent on the website <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>. Please Note: If you are a Registered Holder Settlement Class Member, your Recognized Claim and payment amount will be calculated pursuant to the information provided by BNYM's transfer agent. It is important that you review the holding and distribution information set forth on the website to confirm that it is accurate and complete. If the information regarding your holdings and cash distributions is incorrect or incomplete, you must notify the Claims Administrator (as set forth in ¶ 72 herein) immediately. If the Claims Administrator does not hear from you, it will assume the information set forth on the website is correct and complete, and will use this information to calculate your Claim.
- 39. Settlement Class Members who exclude themselves from the Settlement Class pursuant to ¶¶ 46-51 below, will not receive a payment from the Net Settlement Fund.
- 40. PLEASE NOTE: As mentioned above, if you are an ERISA Entity, you may also have received notice concerning a proposed settlement in another action entitled *Carver, et al. v. Bank of New York Mellon, et al.*, No. 15-CV-10180 (JPO)(JLC) (S.D.N.Y.). Detailed information regarding the *ERISA Settlement* can be found on the website <a href="https://www.BNYMADRERISASettlement.com">www.BNYMADRERISASettlement.com</a>. The Settlement described in this Notice is separate from <a href="https://www.bnymade.com/and-in-addition-to">and in addition to</a> the *ERISA Settlement* insofar as ERISA Entities are concerned. <a href="https://www.bnymade.com/erished-in-addition-to">ERISA Entities eligible to</a> <a href="https://www.bnymade.com/participate-in-the-erished-in-addition-to-addition

#### What Will Be My Share Of The Settlement Fund?

- 41. At this time, it is not possible to make a precise determination as to the amount of any payment that any individual Settlement Class Member may receive from the Settlement.
- 42. Exhibit 1 to this Notice sets forth the Plan of Allocation for allocating the Net Settlement Fund among Authorized Recipients, as proposed by Lead Plaintiffs and Lead Plaintiffs' Counsel. At the Final Approval Hearing, Lead Plaintiffs' Counsel will request that the Court approve the Plan of Allocation. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Settlement Class.
- 43. The Plan of Allocation describes the manner by which the Net Settlement Fund will be distributed to eligible Settlement Class Members. In general, the Net Settlement Fund will be allocated to (i) Registered Holder Settlement Class Members and (ii) Non-Registered Holder Settlement Class Members who submit valid Claim Forms. The amount paid to each Authorized Recipient will depend on each Authorized Recipient's calculated Recognized Claim, as defined in the Plan of Allocation below, relative to the Recognized Claims of other Authorized Recipients. Because the Net Settlement Fund most likely will be less than the total losses alleged to have been suffered in the Action, an Authorized Recipient's proportionate recovery most likely will be less than their alleged loss.
- 44. The tax treatment of any distribution varies based upon the recipient's tax status and treatment of its investments. The tax treatment of any distribution from the Net Settlement Fund is the responsibility of each recipient. You should consult your tax advisor to determine the tax consequences, if any, of any distribution to you.

#### When Will I Receive My Payment?

45. Payment is conditioned on several matters, including the Court's approval of the Settlement and that approval becoming Final and no longer subject to any appeals. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Recipients will be made after any appeals are resolved and after the completion of all Claims processing. Please be patient, as this process can take some time to complete.

#### **Can I Exclude Myself From The Settlement Class?**

46. Yes. You may request to be excluded (also referred to as "opting out") from the Settlement Class. If you request exclusion, (a) you will *not* participate in any distribution of the Net Settlement Fund and will not receive any part of the Settlement Amount; (b) you will not be bound by the terms of the Settlement, including the Releases, and you will retain any right to file your own lawsuit concerning the Released Claims; and (c) you will not be able to object to the Settlement.

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47. In the event you wish to exclude yourself from the Settlement Class, you must submit a written Request for Exclusion, which must be *received no later than May 13, 2019*, to:

Bank of New York Mellon ADR FX Settlement c/o KCC Class Action Services EXCLUSIONS P.O. Box 505030 Louisville, KY 40233-5030

- 48. In order to be valid, your Request for Exclusion must set forth: (i) your name; (ii) your address; (iii) your telephone number; (iv) the identity of the ADRs listed on the attached Appendix that you held and the cash payments you received per eligible ADR during the relevant time period; and (v) a statement that you wish to be excluded from the Settlement Class in the Action.
- 49. <u>To be effective, your Request for Exclusion must be received no later than May 13, 2019.</u> Unless otherwise ordered by the Court, any Settlement Class Member who does not submit a timely and valid Request for Exclusion as provided herein shall be bound by the Settlement. Do not request exclusion if you wish to participate in the Settlement.
- 50. You cannot exclude yourself on the Settlement website, by telephone or by email. If you do not follow these procedures including meeting the deadline for requesting exclusion set forth above you will not be excluded from the Settlement Class, and you will be bound by all of the orders and judgments entered by the Court regarding the Settlement, including the release of claims.
- 51. **Please Note:** If you decide to exclude yourself from the Settlement Class, there is a risk that any lawsuit you may file to pursue claims alleged in the Action may be dismissed, including because the suit is not filed within the applicable time periods required for filing suit. BNYM will have the right to assert any and all defenses it may have to any claims you seek to assert. Also, BNYM may terminate the Settlement if potential Settlement Class Members who meet certain criteria exclude themselves from the Settlement Class.

#### THE LAWYERS REPRESENTING YOU

#### Do I Have A Lawyer In This Case?

52. Kessler Topaz Meltzer & Check, LLP and Lieff Cabraser Heimann & Bernstein, LLP are Lead Plaintiffs' Counsel for Lead Plaintiffs and the Settlement Class in the Action. You will not be charged directly by Lead Plaintiffs' Counsel or any other firms representing Lead Plaintiffs in this case. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **How Will The Lawyers Be Paid?**

- 53. Lead Plaintiffs' Counsel, on behalf of all plaintiffs' counsel, will apply to the Court for an award of attorneys' fees and reimbursement of Litigation Expenses. Lead Plaintiffs' Counsel's application for attorneys' fees will not exceed 30% of the Settlement Fund plus reimbursement of Litigation Expenses not to exceed \$1,750,000 incurred in connection with the prosecution and resolution of this Action. Lead Plaintiffs' Counsel's application for attorneys' fees and Litigation Expenses, which may include requests for Service Awards to Lead Plaintiffs up to an aggregate amount of \$40,000, will be filed by April 29, 2019, and the Court will consider this application at the Final Approval Hearing. Once filed, a copy of Lead Plaintiffs' Counsel's application for fees and expenses will be available for review at <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>. Any award of attorneys' fees and reimbursement of Litigation Expenses, including any Service Awards to Lead Plaintiffs, will be paid from the Settlement Fund prior to allocation and payment to Authorized Recipients. Settlement Class Members are not personally liable for any such attorneys' fees or expenses.
- 54. To date, neither Lead Plaintiffs' Counsel nor any other firms representing Lead Plaintiffs have received any payment for their services in prosecuting this Action on behalf of the Settlement Class, nor have any counsel been reimbursed for their out-of-pocket expenses incurred in connection with litigating this Action. The attorneys' fees requested by Lead Plaintiffs' Counsel will compensate counsel for their efforts in achieving the Settlement for the benefit of the Settlement Class and for their risk in undertaking this representation on a contingency basis. The Court will determine the actual amount of the award.
- 55. By following the procedures described in ¶¶ 56-62 below, you can tell the Court that you do not agree with the attorneys' fees and expenses Lead Plaintiffs' Counsel intend to seek and ask the Court to deny their motion or limit the award.

#### **OBJECTIONS**

#### How Do I Tell The Court If I Do Not Like The Settlement?

56. Any Settlement Class Member may appear at the Final Approval Hearing and explain why it thinks the Settlement of the Action as embodied in the Stipulation should not be approved as fair, reasonable and adequate and why a judgment should not be entered thereon, why the attorneys' fees and expenses requested by Lead Plaintiffs' Counsel should not be awarded, in whole or in part, or why Lead Plaintiffs should not be awarded any Service Awards, in whole or in part. However, no Settlement Class Member shall be heard or entitled to contest these matters unless such Settlement Class Member has filed a written objection with the Court.

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57. To object, you must send a letter or other written statement saying that you object to the Settlement, the Plan of Allocation, and/or Lead Plaintiffs' Counsel's request for attorneys' fees and Litigation Expenses (including Service Awards) in *In re: The Bank of New York Mellon*, No. 16-CV-00212-JPO-JLC. You must (i) include your name, address, telephone number, and signature, (ii) indicate whether the objection applies only to the objector, to a specific subset of the Settlement Class or to the entire Settlement Class, and (iii) provide a full explanation of all reasons why you object to the Settlement and state with specificity the grounds for the objection, including any legal and evidentiary support you wish to bring to the Court's attention. You must also include documents sufficient to prove your membership in the Settlement Class, including any of the ADRs listed on the attached Appendix that you held and the cash distributions you received in connection with such holdings during the relevant time period.

58. Your written objection must be filed with the Court, and served by mail upon the counsel listed below by no later than May 13, 2019:

CLERK'S OFFICE	LEAD PLAINTIFFS' COUNSEL	DEFENDANT'S COUNSEL
United States District Court Southern District of New York Clerk of the Court Thurgood Marshall United States Courthouse 40 Foley Square New York, NY 10007	Sharan Nirmul, Esq.  Kessler Topaz Meltzer & Check, LLP  280 King of Prussia Road Radnor, PA 19087  Daniel P. Chiplock, Esq. Lieff Cabraser Heimann & Bernstein, LLP  250 Hudson Street, 8th Floor New York, NY 10013-1413	Elizabeth M. Sacksteder, Esq.  Paul, Weiss, Rifkind, Wharton  & Garrison LLP  1285 Avenue of the Americas  New York, NY 10019-6064

- 59. You may file a written objection without having to appear at the Final Approval Hearing. You may not, however, appear at the Final Approval Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.
- 60. If you wish to be heard orally at the Final Approval Hearing, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Plaintiffs' Counsel and Defendant's Counsel at the addresses set forth above so that it is *received* on or before May 13, 2019. Persons who intend to object and desire to present evidence at the Final Approval Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such Persons may be heard orally at the discretion of the Court.
- 61. You are not required to hire an attorney to represent you in making written objections to any aspect of the Settlement or in appearing at the Final Approval Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Plaintiffs' Counsel and Defendant's Counsel at the addresses set forth above so that the notice is *received* on or before May 13, 2019.
- 62. UNLESS OTHERWISE ORDERED BY THE COURT, ANY SETTLEMENT CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT, THE PLAN OF ALLOCATION AND/OR THE REQUESTS FOR ATTORNEYS' FEES AND LITIGATION EXPENSES, INCLUDING ANY SERVICE AWARDS.

#### THE COURT'S FINAL APPROVAL HEARING

#### When And Where Will The Court Decide Whether To Approve The Settlement?

- 63. The Court will hold a Final Approval Hearing at **3:00 p.m. on June 17, 2019**, before the Honorable J. Paul Oetken in Courtroom 706 of the United States District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007.
- 64. IF YOU DO NOT WISH TO OBJECT TO THE SETTLEMENT, PLAN OF ALLOCATION OR THE REQUESTS FOR ATTORNEYS' FEES AND LITIGATION EXPENSES (INCLUDING ANY SERVICE AWARDS), YOU NEED NOT ATTEND THE FINAL APPROVAL HEARING.
- 65. At the Final Approval Hearing, the Court will consider whether the proposed Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. At or after the hearing, the Court will decide whether to approve the Settlement. The Court will also consider any motions for attorneys' fees, expenses of plaintiffs' counsel, and Service Awards for Lead Plaintiffs, as well as the proposed Plan of Allocation. We do not know how long these decisions will take.

#### Do I Have To Come To The Hearing?

66. No. Lead Plaintiffs' Counsel will answer any questions that the Court may have about the Settlement at the Final Approval Hearing. You are not required to attend the Final Approval Hearing but are welcome to come at your own expense. If you send an objection, you do not have to come to Court to discuss it. As long as you filed your written

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objection on time, it will be before the Court when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You may also have your own lawyer attend the Final Approval Hearing at your expense, but such attendance is not mandatory. See ¶¶ 56-62 above.

67. The Final Approval Hearing may be rescheduled by the Court without further notice to the Settlement Class. If you wish to attend the Final Approval Hearing, you should confirm the date and time with Lead Plaintiffs' Counsel.

#### May I Speak At The Hearing?

68. If you are a Settlement Class Member and you have filed a timely objection, and if you wish to speak, present evidence or present testimony at the Final Approval Hearing, you must state in your objection your intention to do so, and must identify any witnesses you intend to call or evidence you intend to present. See ¶ 60 above.

#### IF YOU DO NOTHING

#### What Happens If I Do Nothing At All?

- 69. If you are a member of the Settlement Class and do nothing and the Settlement is approved, you will be bound by the terms of the Settlement and you will be deemed to have released all Released Claims against all of the Releasees.
- 70. If you are a Registered Holder Settlement Class Member and do nothing, you will receive your *pro rata* payment from the Settlement as described in the Plan of Allocation attached hereto as Exhibit 1, or according to such other plan of allocation the Court approves. The Claims Administrator will calculate your Recognized Claim using the information regarding your cash distributions provided by BNYM's transfer agent. However, if you are a Non-Registered Holder Settlement Class Member and do nothing, you will not be eligible to receive a payment from the Settlement. If you are a Non-Registered Holder Settlement Class Member, you must submit a valid Claim Form to be eligible to receive a payment from the Settlement.

#### **GETTING MORE INFORMATION**

#### **How Do I Get More Information?**

- 71. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007. Additionally, copies of the Stipulation, this Notice, the Claim Form, the proposed Order and Final Judgment, and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, www.bnymadrfxsettlement.com.
- 72. All inquiries concerning this Notice and the Claim Form, or requests for additional information, should be directed to:

Bank of New York Mellon ADR FX Settlement c/o KCC Class Action Services P.O. Box 505030 Louisville, KY 40233-5030 1-866-447-6210 info@bnymadrfxsettlement.com Court-Approved Claims Administrator

and/or

Sharan Nirmul, Esq.

KESSLER TOPAZ MELTZER

& CHECK, LLP

280 King of Prussia Road

Radnor, PA 19087

(610) 667-7706

info@ktmc.com

Daniel P. Chiplock, Esq.

LIEFF CABRASER HEIMANN

& BERNSTEIN, LLP

250 Hudson Street

8th Floor

New York, NY 10013-1413

(212) 355-9500

info@lieffcabraser.com

Lead Plaintiffs' Counsel for the Settlement Class

DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANT OR ITS COUNSEL REGARDING THIS NOTICE.

Dated: January 17, 2019

By Order of the Court
United States District

United States District Court
Southern District of New York

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#### **APPENDIX**

ISSUER	CUSIPs
ABI SAB GROUP HOLDING LTD	78572M105 836216309 836220103
ACCOR SA	00435F101 00435F309
ADIDAS AG	00687A107
ADMINISTRADORA DE FONDOS DE PE	00709P108
AES TIETE ENERGIA SA	00809V203 00808P207 00808P108
AIXTRON SE	009606104
ALCATEL-LUCENT SA	013904305
ALLIED IRISH BANKS PLC	019228402 019228303
ALSTOM SA	021244108
ALTANA AG	02143N103
ALUMINA LTD	022205108
AMBEV SA	20441W203
ANDE V OA	02319V103
ANGLO AMERICAN PLC	03485P102 03485P300
ANGLO PLATINUM	035078104
	035128206
ANGLOGOLD ASHANTI LTD	043743103
	043743202
	03524A108
ANHEUSER-BUSCH INBEV SA/NV	157123209 40051F100
	74838Y207
ARKEMA SA	041232109
ARM HOLDINGS PLC	042068106
ASSICURAZIONI GENERALI SPA	465234102
ASTRA AB	046298105 046298204
AUSTRALIA & NEW ZEALAND BANKIN	052528304
AV GOLD	035134303
AXA SA	054536107 149188104 866791106
B.A.	060587508 060593100

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ISSUER	CUSIPs
BANCO BILBAO VIZCAYA ARGENTARI	059458208 059456202 059456301 059456103 058925108 05946K101 059594408 059594507 07329Q507
BANCO COMERCIAL PORTUGUES SA	07329Q309 059479303
	059479709
BANCO DO BRASIL SA	059578104
BANCO POPOLARE SC	059471102 059633107
BANCO SANTANDER BRASIL SA	05964H105 05967A107
BANCO SANTANDER CHILE	05965F108 05965X109
BANK OF IRELAND	46267Q103
BANK OF TOKYO-MITSUBISHI FJ L	065379109
BARCLAYS AFRICA GROUP LTD	06738E204 06742G302 06739H776 06739H511 06739H362 06739F390
BASF SE	055262505 019097104
BASS PLC	069904209
BAT INDUSTRIES PLC	055270508
BAYER AG	072730302
BBVA BANCO FRANCES SA	059591107 07329M100
BG GROUP LTD	055434203 052578408 055434104 780259206 780259107
BIDVEST GROUP LTD/THE	088836101 088836200 088836309
BILLABONG INTERNATIONAL	090055104
BLUE CIRCLE INDUSTRIES	095342408 095342507
BNP PARIBAS SA	05565A202 05565A103 066747106
BOEHLER-UDDEHOLM AG	097356307

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ISSUER	CUSIPs
BRASIL TELECOM PARTICIPACOES S	10553M101 10553M200 105530109 670851104 670851203
BRASILAGRO - CO BRASILEIRA DE	10554B104
BRASKEM SA	105532105 217252105 86959M101
BRF SA	10552T107 71361V204 71361V303 71361V105
BRITISH AMERICAN TOBACCO PLC	110448107
BRITISH STEEL	111015301
BUNZL PLC	120738406 120738307
BURMAH CASTROL PLC	122169303
CENCOSUD SA	15132H101 802233106
CENTRICA PLC	15639K102 15639K201 15639K300
CHILCOTT UK LTD	363240102 93443W109
CHINA AGRI-INDUSTRIES HOLDINGS	16940R109
CHORUS LTD	17040V107
CHUNGHWA TELECOM CO., LTD.	17133Q205
CIA BRASILEIRA DE DISTRIBUICAO	20440T201 20440T102
CIA CERVEJARIA BRAHMA	20440X103 20440X202
CIA DE BEBIDAS DAS AMERICAS-AM	20441W104
CIA DE SANEAMENTO BASICO DO ES	20441A102
CIA DE TRANSMISSAO DE ENERGIA	20441Q107 20441Q206
CIA ENERGETICA DE SAO PAULO	20440P209 20440P407
CIA PARANAENSE DE ENERGIA	20441B308 20441B407
CIE FINANCIERE RICHEMONT SA	204318109
COCA COLA HELLENIC BOTTLING CO	1912EP104
COCA-COLA AMATIL LTD	191085208

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ISSUER	CUSIPs
COCA-COLA FEMSA SAB DE CV	191241108
COFLEXIP SA	192384105
COMMERZBANK AG	202597308
COMMERZBANK AG	202597605
COMMONWEALTH BANK OF AUSTRALIA	202712303
CONTROL VENEZA EL LA PROCENCIA EL VICINA EL VI	202712600
	20441P109
	20441P208
COMP. DE GERACAO DE ENERGIA EL	20441R204 20441R105
	264398108
	264398207
	20449X104
COMPASS GROUP PLC	20449X203
	20449X302
CONTINENTAL AG	210771200
CONVERIUM	21248N107
CORUS GROUP LTD	22087M101
COSCO SHIPPING INTERNATIONAL S	22112Y203
CRANEWARE PLC	224465104
CRAYFISH CO. LTD.	225226208
CREDIT SUISSE GROUP AG	225401108
CRH PLC	12626K203
CRUCELL NV	228769105
DAI NIPPON PRINTING CO LTD	233806306
DANKA BUSINESS SYSTEMS PLC	236277109
DBS GROUP HOLDINGS LTD	23304Y100
DELHAIZE GROUP SCA	29759W101
DEUTSCHE BANK AG	251525309
DEUTSCHE LUFTHANSA AG	251561304
DEUTSCHE LUFTHANSA AG	549836500
DEUTSCHE POST AG	25157Y202
	25243Q205
DIAGEO PLC	25243Q106
	402033302
DOLLAR PREF RESTRICTED 4-2 B E	6162*1019
	6162*1017
DOMINION MINING LTD	257457309
	26152H103
DRDGOLD LTD	26152H301
DRECONED DANK AC	266597301
DRESDNER BANK AG	261561302

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ISSUER	CUSIPs
	261561401
DUCATI MOTOR HOLDING SPA	264066101
ELETROPAULO METROPOLITANA ELET	286203302
ELF AQUITAINE SA	286269105
EMBOTELLADORA ANDINA SA	29081P204
LINDOTELL/ (BOTT) ( ) ( (A)	29081P303
EMBRATEL PARTICIPACOES SA	29081N100
	29081N209
EMPRESAS ICA SAB DE CV	292448107
	892360108
ENGIE BRASIL ENERGIA SA	29286U107
FAUL A CAMO PL C	892360306
ENI LASMO PLC	501730204
ENI SPA	26874R108
ENIIM 10 PERP	501730303
ERSTE GROUP BANK AG	296036304
EVRAZ HIGHVELD STEEL & VANADIU	30050A301
FERGUSON PLC	97786P100
FIBRIA CELULOSE SA	92906P106
FILA HOLDING S.P.A	316850106
FOMENTO ECONOMICO MEXICANO SAB	344419106
FOSTER'S GROUP PTY LTD	350258307
FRESENIUS MEDICAL CARE AG & CO	358029106
PRESENTOS IVIEDICAL CARE AG & CO	358029205
GALLAHER GROUP LTD	363595109
GATES WORLDWIDE LTD	890030208
GAZPROM NEFT PJSC	36829G107
	47973C305
GAZPROM PJSC	753317304
CALL ROWLEGO	753317205
	753317106
GENESYS	37185M209
GERDAU SA	373737105
GETLINK SE	39944Q109
GLAXOSMITHKLINE PLC	37733W105
GOL LINHAS AEREAS INTELIGENT	38045R107
	262026503
	38059R100
GOLD FIELDS LTD	38059T106
	380596205 957654304
	907004304

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ISSUER	CUSIPs
GRUPO AEROPORTUARIO DEL CENTRO	400501102
GRUPO AEROPORTUARIO DEL PACIFI	400506101
GRUPO AEROPORTUARIO DEL SUREST	40051E202
GRUPO CASA SABA SAB DE CV	40048P104
GRUPO ELEKTRA, S.A. DE C.V.	40050A102
	400486106
	059456400
	059456509
GRUPO FINANCIERO BANORTE SAB D	40051M105
	40052P107
	400486304
	40051M204
GRUPO MEX DESARROLLO	40048G104
CINET O MEXICEE	40048G203
GRUPO TELEVISA SAB	40049J206
HANNOVER RUECK SE	410693105
HARMONY GOLD MINING CO LTD	413216300
HBOS PLC	42205M106
HELLENIC TELECOMMUNICATIONS OR	423325307
HENKEL AG & CO KGAA	42550U109
TIENNEE AO & GO NOAA	42550U208
HILLSDOWN HOLDINGS PLC	432586204
HMS HYDRAULIC MACHINES & SYSTE	40425X100
HOECHST GMBH	434390308
HOT TELECOMMUNICATION SYSTEM L	576561104
HYDROMET CORP LTD	449003102
IGATE COMPUTER SYSTEMS LTD	703248203
IMPERIAL HOLDINGS LTD	452833106
IN ENACTIOEDINGO ETD	452833205
INCITEC PIVOT LTD	45326Y206
INDOSAT TBK PT	744383100
INDUSIND BANK LTD	45579Q108
INDUSTRIAS BACHOCO SAB DE CV	456463108
INDUSTRIE NATUZZI S.P.A.	456478106
	093529204
	45672B206
INFORMA PLC	45672B305
	90265U203
	90969M101
INTERCONTINUENTAL LIGHTLA COCCUE	45857P103
INTERCONTINENTAL HOTELS GROUP	458573102 458573204
	458573201

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ISSUER	CUSIPs
INTERNATIONAL POWER LTD	46018M104
	05944F104
INTESA SANPAOLO SPA	46115H107
INVENSYS LTD	461204109
INVERSIONES AGUAS METROPOLITAN	46128Q201
	059602102
ITALLUNIDANICO HOLDINIC CA	465562106
ITAU UNIBANCO HOLDING SA	059602201
	90458E107
J SAINSBURY PLC	466249208
	479142309
JOHNSON MATTHEY PLC	479142408
	479142507
JULIUS BAER GROUP LTD	481369106
KIDDE PLC	493793103
	495724403
KINGFISHER PLC	495724205
	495724304
KINGSGATE CONSOLIDATED LTD	496362104
KLABIN SA	45647P108
KEADIN OA	49834M100
KOMATSU LTD	500458401
KOMERCNI BANKA AS	500459409
	500467303
KONINKLIJKE AHOLD N.V.	500467402
	500467AA3
KOOR INDUSTRIES LTD	500507108
KROTON EDUCACIONAL SA	50106A402
KUMBA IRON ORE LTD	50125N104
LADBROKE GROUP INC	505727305
LADDIONE GROOT INC	505730101
LAGARDERE SCA	507069102
LAN AIRLINES S.A.	501723100
LEGAL & GENERAL GROUP PLC	52463H103
LENDLEASE GROUP	526023205
LHR AIRPORTS LTD	05518L206
	140487109
	530616101
LIBERTY GROUP LTD	53055R103
	53055R202
	530706100
	530706209

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ISSUER	CUSIPs
LIHIR GOLD LTD	532349206
EITIIN GOLD ETD	532349107
LLOYDS BANKING GROUP PLC	539439109
LONMIN PLC	54336Q104
	54336Q203
	543374409
LUKOIL PJSC	69343P105
	677862104
	677862807
	677862302 677862203
LUXOTTICA GROUP SPA	55068R202
LVMH MOET HENNESSY LOUIS VUITT	502441207
MACQUARIE GROUP LTD	55607P105 55607P204
MADECO, S.A.	556304103 556304202
MAHANAGAR TELEPHONE NIGAM LTD	559778402
MAKITA CORP	560877300
MANNESMANN A.G.	563775303
MASISA SA	574799102
	574800108
METEO OVI	592671101
METSO OYJ	754183101 920232303
	359558103
MIZUHO FINANCIAL GROUP INC	60687Y109
	46626D108
MMC NORILSK NICKEL PJSC	55315J102
MMI HOLDINGS LTD/SOUTH AFRICA	55314H107
MOBILE TELESYSTEMS PJSC	61946A106
MOL HUNGARIAN OIL & GAS PLC	831595202
	037376100
MOSENERGO PJSC	037376308
MTN GROUP LTD	62474M108
NATIONAL AUSTRALIA BANK LTD	632525408
NATIONAL BANK OF GREECE SA	633643507
	633643408
NATIONAL GRID	636274102
	636274300
	636274409
NATIONAL POWER PLC	637194408
L	l .

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ISSUER	CUSIPs
NATUZZI SPA	63905A101
NEC CORP	629050204
	81661W109
NEDBANK GROUP LTD	63975P103
	63975K104
	63975P202
NET SERVICOS DE COMUNICACAO SA	37957X102
NEWCREST MINING LTD	651191108
	390290104
NEWMONT AUSTRALIA PTY LTD	656190105
	656190204
NIPPON YUSEN KK	654633304
NOMURA HOLDINGS INC	65535H208
	62942M201
	62942M102
	629424201
NTT DOCOMO INC	62942M300
	629424102
	629424508
	629424409
ORANGE POLSKA SA	87943D108
	35177Q105
ORANGE SA	35177Q204
	35177QAB1
PARTNER COMMUNICATIONS CO LTD	70211M109
PEARSON PLC	705015105
PERNOD RICARD SA	019121102
1 2 1 1 1 2 1 1 1 2 1 1 2 1 1 2 1 1 1 2 1 1 2 1 1 2 1 1 2 1 1 2 1 1 2 1 1 2 1 1 1 2 1 1 1 2 1 1 1 2 1 1 1 2 1 1 1 1 2 1	714264108
PETROCHINA CO LTD	71646E100
PETROLEO BRASILEIRO SA	71654V101
	71654V408
PFLLN 1.35	74050U206
PHAROL SGPS SA	737273102
POLSKI KONCERN NAFTOWY ORLEN S	731613402
POLYUS PJSC	678129107
	73181P102
POWERGEN LTD	738905405
PREMIER FARNELL LTD	74050U107
PROVIDENT FINANCIAL PLC	74387B103
PUBLICIS GROUPE SA	74463M106
	F76080112
	785144205

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ISSUER	CUSIPs
QANTAS AIRWAYS LTD	74726M406
	74726M505
QBE INSURANCE GROUP LTD	74728G605
RACAL ELECTRONICS PLC	749815403
RANDSTAD UK HOLDING LTD	81617E203
RBS 11.2 PERP	780097309
RBS 6.35 PERP	780097770
RBS 8 1/2 PERP	780097804
	780097853
RBS 8.1 PERP	780097705
RBS 8.2125 PERP	780097606
RBS 9 1/2 PERP	780097408
	758204101
	758205108
REED ELSEVIER NV	758204200
	758205207
RENTOKIL INITIAL PLC	760125104
REPSOL SA	76026T205
	761655406
REXAM LTD	761655505
	761655604
RHODIA SA	762397107
KIODIA GA	762397206
RIO TINTO FRANCE SAS	705151207
	767202104
	767204100
RIO TINTO PLC	045074101
	126170505
	74974K706
ROCHE HOLDING AG	771195104
	771195401
ROLLS-ROYCE HOLDINGS PLC	775781206
ROYAL BANK OF SCOTLAND/ABN	780097721
	780097739
	466294105
	782183123
RUSHYDRO PJSC  RWE AG	782183131
	782183404
	466294204
	74975E303 74975E402
DWE CENEDATION HIS HOLDINGS DLO	
RWE GENERATION UK HOLDINGS PLC	45769A103
RYANAIR HOLDINGS PLC	783513104

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ISSUER	CUSIPs
SADIA SA	786326108
SANOFI	80105N105
	762426AC8
5, 11, 51, 1	762426401
	80105N204
SANTANDER UK PLC	002920106
	002920700
SANUK 8 3/4 PERP	002920205
SAP SE	803054204
	803054303
0.000.170	803069103
SAPPI LTD	803069202
04001170	108510041
SASOL LTD	803866300
SBERBANK OF RUSSIA PJSC	80585Y308
SCOTTISH POWER PLC	81013T408
	81013T705
SEGA SAMMY HOLDINGS INC	815794102
SEKISUI HOUSE LTD	816078307
SERONO	81752M101
SEVERSKY TUBE WORKS PJSC	818146102
SHELL TRANSPORT & TRADING CO L	822703609
SHISEIDO CO LTD	824841407
SHOPRITE HOLDINGS LTD	82510E209
SIBANYE GOLD LTD	03840M109
SIBANTE GOLD LTD	825724206
SIGNET JEWELERS LTD	82668L872
SIMS METAL MANAGEMENT LTD	829160100
SIX CONTINENTS LTD	830018107
SKY PLC	111013108
SMITHKLINE BEECHAM LTD	832378301
SOCIEDAD QUIMICA Y MINERA DE C	833636103
SOCIEDAD QUMICA Y MINERA DE CHILE	833635105
	784320103
SOCIETE GENERALE SA	784320202
	83364L109
SODEXO SA	833792104
SOFTBANK GROUP CORP	471104109
SOUTHERN ELECTRIC PLC 144A	842809709
	842809402
SPARK NEW ZEALAND LTD	84652A102

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ISSUER	CUSIPs
	879278307
	879278208
	810133405
SSE PLC	810133702
	81012K309
STANDARD BANK GROUP LTD	853118206
STATOIL ASA	85771P102
SUBMARINO S.A REG S	86431P300
	86431P508
SUMITOMO MITSUI FINANCIAL GROU	865622104
SUNCORP GROUP LTD	867232100
	46625F104
SURGUTNEFTEGAS OJSC	868861204
	868861105
SVENSKA CELLULOSA AB SCA	869587402
SWEDISH MATCH AB	870309507
	870794302
SWIRE PACIFIC LTD	870794401
	870797404
SWISSCOM AG	871013108
SYNGENTA AG	87160A100
TABCORP HOLDINGS LTD	873306203
	876564105
TATA COMMUNICATIONS LTD	92659G402
TATA GOMMONIOANIONO ETD	92659G600
	92659G303
TATE & LYLE PLC	876570607
	03737P207
TATNEFT PJSC	03737P108
777772777333	65486P100
	876629205
TDC A/S	87236N102
TELE CELULAR SUL PART S.A.	879238103
TELE CENTRO OESTE CELULAR PART	87923P105
TELE NORDESTE CELULAR PARTICIP	87924W109
TELE NORTE LESTE PARTICIPACOES	87924Y105
TEEL NOW ELECTE FACTION AGOLD	879246106
TELE SUDESTE CELULAR PARTICIPA	87943B102
3323.2 3232	879252104
TELE2 AB	87952P109
· · ·-	87952P208
TELECOMUNICACOES BRASILEIRAS S	879287209

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ISSUER	CUSIPs
TELEKOM AUSTRIA AG	87943Q109
TELEKOMUNIKASI INDONESIA PERSE	715684106
TELEMIG CELULAR PARTICIPACOES	87944E105
TELEOD DADTIOIDACOEC CA	87952L108
TELESP PARTICIPACOES S.A.	87952K100
TELKOM SA SOC LTD	879603108
	87969N204
TELSTRA CORP LTD	87969N303
	87969N105
TERNIUM MEXICO SA DE CV	880890108
TESCO PLC	881575302
12000120	098561202
	881624209
TEVA PHARMACEUTICAL INDUSTRIES	16361E108
	50540H104
TIGER BRANDS LTD	88673M102 88673M201
TIGER BRAINDS ETD	886911106
TMK PJSC	87260R300
Time 1 des	89151E109
TOTAL SA	716485206
	893234104
TRANSCOMMORI DIVIDE CA	893545103
TRANSCOM WORLDWIDE SA	893545202
	894116102
TREND MICRO INC/JAPAN	89486M206
	900148305
TURKIYE GARANTI BANKASI AS	900148701
	900151101
TV AZTECA SAB DE CV	901145102
UBS AG	90261R105
ULTRAPAR PARTICIPACOES SA	90400P101
UNIBAIL-RODAMCO SE	960224103
UNIFIED ENERGY SYSTEM OAO	904688108
ON IED ENERGY STOTEW OAG	904688405
UNION ANDINA DE CEMENTOS SAA	904845104
UNITED OVERSEAS BANK LTD	911271302
S.I. ID GVERGERO DANKELD	910903301
USINAS SIDERURGICAS DE MINAS G	917302408
VAN DER MOOLEN HOLDING NV	921020103
VEOLIA ENVIRONNEMENT SA	92334N103
VIMPEL-COMMUNICATIONS PJSC	92719A106

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ISSUER	CUSIPs
	92719A304
VINA CONCHA Y TORO SA	927191106
	137041208
	204390108
VIVENDI SA	419312202
	92851S105
	92851S204
VODAFONE AIRTOUCH PLC	92857T107
	92857W308
	698113107
VODAFONE GROUP PLC	87926R108
VODAFONE GROUP FEC	92857W209
	92857W100
	92858M101
WACOAL HOLDINGS CORP	930004205
WAL-MART DE MEXICO SAB DE CV	93114W107
WAVECOM SA	943531103
WESTPAC BANKING CORPORATION	789547106
WESTPAC BANKING CORPORATION	961214301
WMC LIMITED	928947100
WING LIMITED	92928R106
WOODSIDE PETROLEUM LTD	980228308
	480209402
WOOLWORTHS HOLDINGS LTD/SOUTH	98088R109
	98088R505
	01959Q101
ZURICH INSURANCE GROUP AG	98982M107
	989825104

### **EXHIBIT 1**

### PLAN OF ALLOCATION OF NET SETTLEMENT FUND

The plan of allocation set forth below ("Plan of Allocation" or "Plan") is the plan for allocating the Net Settlement Fund to Authorized Recipients that is being proposed by Lead Plaintiffs and Lead Plaintiffs' Counsel. In accordance with the Settlement, the Net Settlement Fund will be allocated to (i) Registered Holder Settlement Class Members and (ii) Non-Registered Holder Settlement Class Members who submit valid Claim Forms. The Court may approve the below Plan, or modify it, without additional notice to the Settlement Class. Any order modifying the Plan will be posted on the website for the Settlement, <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>.

The objective of the Plan is to equitably distribute the Net Settlement Fund among as many Settlement Class Members as possible. The Plan is based on Lead Plaintiffs' view of the average margin per ADR that BNYM retained on FX conversions of ADR dividends and cash distributions as determined by Lead Plaintiffs' damages expert. BNYM produced data concerning the amount (if any) it retained for cash distributions issued for the ADRs listed in the Appendix to the Notice between January 1, 1997 and December 31, 2017, inclusive. Utilizing this data, Lead Plaintiffs' damages expert calculated the average margin per ADR across the Settlement Class Period. BNYM does not concede the accuracy of Lead Plaintiffs' damages expert's calculation, or that there were any damages. The Plan is intended to be generally consistent with an assessment of, among other things, the damages that Lead Plaintiffs and Lead Plaintiffs' Counsel believe could have been recovered for the claims asserted in the Action, and reflect Lead Plaintiffs' allegations that over the course of the relevant time period, BNYM, as depositary for certain ADRs, systematically deducted impermissible fees for conducting FX from dividends and/or cash distributions issued by foreign companies, and owed to ADR holders.

To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Recipient will receive an amount equal to that Settlement Class Member's "Recognized Claim," as described below. If, however, as expected, the amount in the Net Settlement Fund is not sufficient to permit payment of the total Recognized Claim of each Authorized Recipient, then each Authorized Recipient shall be paid the percentage of the Net Settlement Fund that each Authorized Recipient's Recognized Claim bears in relation to the total of the Recognized Claims of all Authorized Recipients – *i.e.*, the Authorized Recipient's *pro rata* share of the Net Settlement Fund.

### A. Calculation of Recognized Claims

Individuals and entities are potentially eligible to participate in the Settlement and the distribution of the Net Settlement Fund if they at any time during the Settlement Class Period (*i.e.*, January 1, 1997 through January 17, 2019, inclusive) held (directly or indirectly, registered or beneficially), or otherwise claim any entitlement to any payment (whether a dividend, rights offering, interest on capital, sale of shares, or other distribution) in connection with, any ADR for which BNYM acted as the depositary sponsored by an issuer that is identified in the Appendix to the Notice.

A "Recognized Loss Amount Per ADR" will be calculated according to the formula set forth below for each eligible ADR a Settlement Class Member held during the relevant time period and for which they received a cash distribution. A Settlement Class Member's "Recognized Claim" shall be the sum of his, her or its Recognized Loss Amounts Per ADR.

The formula for calculating a Settlement Class Member's Recognized Loss Amount Per ADR shall be as follows:

Gross Amount of Cash Distributions Received by the Settlement Class Member for that ADR X Calculated Average Margin for ADR ("Margin") set forth in Table 1 below

### B. Distribution to Authorized Recipients

Prior to the Effective Date, the Settlement Fund shall remain in an interest-bearing escrow account, except as otherwise provided in the Stipulation. After the Court enters the Order and Final Judgment and the Settlement becomes Final, the Claims Administrator shall distribute the Net Settlement Fund, which shall be done as promptly as possible pursuant to the Distribution Order. The Distribution Order shall not authorize payments to Authorized Recipients prior to the Effective Date.

### C. Additional Provisions

As noted above, the Net Settlement Fund will be distributed to Authorized Recipients on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a "Distribution Amount" will be calculated for each Authorized Recipient, which shall be the Authorized Recipient's Recognized Claim divided by the total Recognized Claims of all Authorized Recipients, multiplied by the total amount in the Net Settlement Fund. If an Authorized Recipient's Distribution Amount calculates to less than \$1.00, it will not be included in the calculation and no distribution will be made to such Authorized Recipient.

After the initial distribution of the Net Settlement Fund, the Claims Administrator shall make reasonable and diligent efforts to have Authorized Recipients cash their distribution checks. To the extent any monies remain in the fund nine (9) months after the initial distribution, if Lead Plaintiffs' Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator shall conduct a re-distribution of the funds remaining

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after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Recipients who have cashed their initial distributions and who would receive at least \$1.00 from such redistribution. Additional re-distributions to Authorized Recipients who have cashed their prior checks and who would receive at least \$1.00 on such additional re-distributions may occur thereafter if Lead Plaintiffs' Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, Lead Plaintiffs' Counsel shall seek an order from the Court: (i) approving the recommendation that any further re-distribution is not cost effective or efficient; and (ii) ordering the contribution of the Net Settlement Fund to a nonsectarian charitable organization selected by the Court upon application by Lead Plaintiffs.

Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Recipients. No Person shall have any claim against Lead Plaintiffs, Lead Plaintiffs' Counsel, plaintiffs' counsel, Lead Plaintiffs' damages expert, Defendant, Defendant's Counsel, or any of the other Released Parties, the Claims Administrator, the Publication Notice Plan Administrator or other agent designated by Lead Plaintiffs' Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiffs, Defendant, and their respective counsel, and all other Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the plan of allocation; the determination, administration, calculation, or payment of any Claim or nonperformance of the Claims Administrator or the Publication Notice Plan Administrator; the payment or withholding of Taxes and Tax Expenses; or any losses incurred in connection therewith.

TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
ABI SAB GROUP HOLDING LTD	78572M105 836216309 836220103	0.34%
ACCOR SA	00435F101 00435F309	0.62%
ADIDAS AG	00687A107	0.43%
ADMINISTRADORA DE FONDOS DE PE	00709P108	0.28%
AES TIETE ENERGIA SA	00809V203 00808P207 00808P108	0.43%
AIXTRON SE	009606104	0.28%
ALCATEL-LUCENT SA	013904305	0.24%
ALLIED IRISH BANKS PLC	019228402 019228303	0.22%
ALSTOM SA	021244108	0.31%
ALTANA AG	02143N103	0.42%
ALUMINA LTD	022205108	1.03%
AMBEV SA	20441W203 02319V103	0.94%
ANGLO AMERICAN PLC	03485P102 03485P300	0.50%
ANGLO PLATINUM	035078104	0.30%
ANGLOGOLD ASHANTI LTD	035128206 043743103 043743202	0.36%
ANHEUSER-BUSCH INBEV SA/NV	03524A108 157123209 40051F100 74838Y207	0.42%
ARKEMA SA	041232109	0.26%
ARM HOLDINGS PLC	042068106	0.30%
ASSICURAZIONI GENERALI SPA	465234102	0.86%
ASTRA AB	046298105 046298204	0.17%
AUSTRALIA & NEW ZEALAND BANKIN	052528304	0.47%
AV GOLD	035134303	0.97%
AXA SA	054536107 149188104 866791106	0.37%

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TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
B.A.	060587508 060593100	0.64%
BANCO BILBAO VIZCAYA ARGENTARI	059458208 059456202 059456301 059456103 058925108 05946K101 059594408 059594507 07329Q507 07329Q200 07329Q309	0.36%
BANCO COMERCIAL PORTUGUES SA	059479303 059479709	0.46%
BANCO DO BRASIL SA	059578104	0.46%
BANCO POPOLARE SC	059471102 059633107	0.31%
BANCO SANTANDER BRASIL SA	05964H105 05967A107	0.37%
BANCO SANTANDER CHILE	05965F108 05965X109	1.14%
BANK OF IRELAND	46267Q103	0.22%
BANK OF TOKYO-MITSUBISHI FJ L	065379109	0.20%
BARCLAYS AFRICA GROUP LTD	06738E204 06742G302 06739H776 06739H511 06739H362 06739F390	0.25%
BASF SE	055262505 019097104	0.41%
BASS PLC	069904209	0.20%
BAT INDUSTRIES PLC	055270508	0.31%
BAYER AG	072730302	0.25%
BBVA BANCO FRANCES SA	059591107 07329M100	0.39%
BG GROUP LTD	055434203 052578408 055434104 780259206 780259107	0.25%

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TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
BIDVEST GROUP LTD/THE	088836101 088836200 088836309	0.36%
BILLABONG INTERNATIONAL	090055104	0.69%
BLUE CIRCLE INDUSTRIES	095342408 095342507	0.30%
BNP PARIBAS SA	05565A202 05565A103 066747106	0.43%
BOEHLER-UDDEHOLM AG	097356307	0.66%
BRASIL TELECOM PARTICIPACOES S	10553M101 10553M200 105530109 670851104 670851203	0.34%
BRASILAGRO - CO BRASILEIRA DE	10554B104	0.48%
BRASKEM SA	105532105 217252105 86959M101	0.61%
BRF SA	10552T107 71361V204 71361V303 71361V105	0.40%
BRITISH AMERICAN TOBACCO PLC	110448107	0.32%
BRITISH STEEL	111015301	0.48%
BUNZL PLC	120738406 120738307	0.21%
BURMAH CASTROL PLC	122169303	0.25%
CENCOSUD SA	15132H101 802233106	0.28%
CENTRICA PLC	15639K102 15639K201 15639K300	0.13%
CHILCOTT UK LTD	363240102 93443W109	0.41%
CHINA AGRI-INDUSTRIES HOLDINGS	16940R109	0.01%
CHORUS LTD	17040V107	0.38%
CHUNGHWA TELECOM CO., LTD.	17133Q205	0.15%
CIA BRASILEIRA DE DISTRIBUICAO	20440T201 20440T102	0.47%

TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
CIA CERVEJARIA BRAHMA	20440X103 20440X202	0.31%
CIA DE BEBIDAS DAS AMERICAS-AM	20441W104	0.73%
CIA DE SANEAMENTO BASICO DO ES	20441A102	0.47%
CIA DE TRANSMISSAO DE ENERGIA	20441Q107 20441Q206	0.54%
CIA ENERGETICA DE SAO PAULO	20440P209 20440P407	0.38%
CIA PARANAENSE DE ENERGIA	20441B308 20441B407	0.62%
CIE FINANCIERE RICHEMONT SA	204318109	0.30%
COCA COLA HELLENIC BOTTLING CO	1912EP104	0.24%
COCA-COLA AMATIL LTD	191085208	0.33%
COCA-COLA FEMSA SAB DE CV	191241108	0.35%
COFLEXIP SA	192384105	0.36%
COMMERZBANK AG	202597308 202597605	0.13%
COMMONWEALTH BANK OF AUSTRALIA	202712303 202712600	0.29%
COMP. DE GERACAO DE ENERGIA EL	20441P109 20441P208 20441R204 20441R105 264398108 264398207	0.33%
COMPASS GROUP PLC	20449X104 20449X203 20449X302	0.12%
CONTINENTAL AG	210771200	0.47%
CONVERIUM	21248N107	0.62%
CORUS GROUP LTD	22087M101	0.31%
COSCO SHIPPING INTERNATIONAL S	22112Y203	0.49%
CRANEWARE PLC	224465104	0.35%
CRAYFISH CO. LTD.	225226208	0.64%
CREDIT SUISSE GROUP AG	225401108	0.04%
CRH PLC	12626K203	0.36%
CRUCELL NV	228769105	0.18%

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TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
DAI NIPPON PRINTING CO LTD	233806306	0.49%
DANKA BUSINESS SYSTEMS PLC	236277109	0.25%
DBS GROUP HOLDINGS LTD	23304Y100	0.18%
DELHAIZE GROUP SCA	29759W101	0.29%
DEUTSCHE BANK AG	251525309	0.32%
DEUTSCHE LUFTHANSA AG	251561304 549836500	0.24%
DEUTSCHE POST AG	25157Y202	0.24%
DIAGEO PLC	25243Q205 25243Q106 402033302	0.28%
DOLLAR PREF RESTRICTED 4-2 B E	6162*1019 6162*1017	0.25%
DOMINION MINING LTD	257457309	2.66%
DRDGOLD LTD	26152H103 26152H301 266597301	0.48%
DRESDNER BANK AG	261561302 261561401	0.17%
DUCATI MOTOR HOLDING SPA	264066101	0.90%
ELETROPAULO METROPOLITANA ELET	286203302	0.67%
ELF AQUITAINE SA	286269105	0.44%
EMBOTELLADORA ANDINA SA	29081P204 29081P303	0.30%
EMBRATEL PARTICIPACOES SA	29081N100 29081N209	0.44%
EMPRESAS ICA SAB DE CV	292448107	0.34%
ENGIE BRASIL ENERGIA SA	892360108 29286U107 892360306	0.64%
ENI LASMO PLC	501730204	0.26%
ENI SPA	26874R108	0.37%
ENIIM 10 PERP	501730303	0.25%
ERSTE GROUP BANK AG	296036304	0.41%
EVRAZ HIGHVELD STEEL & VANADIU	30050A301	0.42%
FERGUSON PLC	97786P100	0.30%

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TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
FIBRIA CELULOSE SA	92906P106	0.65%
FILA HOLDING S.P.A	316850106	0.27%
FOMENTO ECONOMICO MEXICANO SAB	344419106	0.48%
FOSTER'S GROUP PTY LTD	350258307	0.54%
FRESENIUS MEDICAL CARE AG & CO	358029106 358029205	0.44%
GALLAHER GROUP LTD	363595109	0.12%
GATES WORLDWIDE LTD	890030208	0.26%
GAZPROM NEFT PJSC	36829G107	0.29%
GAZPROM PJSC	47973C305 753317304 753317205 753317106	0.23%
GENESYS	37185M209	0.21%
GERDAU SA	373737105	0.66%
GETLINK SE	39944Q109	0.85%
GLAXOSMITHKLINE PLC	37733W105	0.36%
GOL LINHAS AEREAS INTELIGENT	38045R107	0.85%
GOLD FIELDS LTD	262026503 38059R100 38059T106 380596205 957654304	0.53%
GRUPO AEROPORTUARIO DEL CENTRO	400501102	0.33%
GRUPO AEROPORTUARIO DEL PACIFI	400506101	0.29%
GRUPO AEROPORTUARIO DEL SUREST	40051E202	0.40%
GRUPO CASA SABA SAB DE CV	40048P104	0.34%
GRUPO ELEKTRA, S.A. DE C.V.	40050A102	0.33%
GRUPO FINANCIERO BANORTE SAB D	400486106 059456400 059456509 40051M105 40052P107 400486304 40051M204	0.27%
GRUPO MEX DESARROLLO	40048G104 40048G203	0.30%

TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
GRUPO TELEVISA SAB	40049J206	0.30%
HANNOVER RUECK SE	410693105	0.30%
HARMONY GOLD MINING CO LTD	413216300	0.74%
HBOS PLC	42205M106	0.14%
HELLENIC TELECOMMUNICATIONS OR	423325307	0.32%
HENKEL AG & CO KGAA	42550U109 42550U208	0.40%
HILLSDOWN HOLDINGS PLC	432586204	0.25%
HMS HYDRAULIC MACHINES & SYSTE	40425X100	0.95%
HOECHST GMBH	434390308	0.17%
HOT TELECOMMUNICATION SYSTEM L	576561104	0.26%
HYDROMET CORP LTD	449003102	0.33%
IGATE COMPUTER SYSTEMS LTD	703248203	0.21%
IMPERIAL HOLDINGS LTD	452833106 452833205	0.14%
INCITEC PIVOT LTD	45326Y206	0.35%
INDOSAT TBK PT	744383100	0.29%
INDUSIND BANK LTD	45579Q108	0.41%
INDUSTRIAS BACHOCO SAB DE CV	456463108	0.34%
INDUSTRIE NATUZZI S.P.A.	456478106	0.85%
INFORMA PLC	093529204 45672B206 45672B305 90265U203 90969M101	0.18%
INTERCONTINENTAL HOTELS GROUP	45857P103 458573102 458573201	0.32%
INTERNATIONAL POWER LTD	46018M104	0.64%
INTESA SANPAOLO SPA	05944F104 46115H107	0.38%
INVENSYS LTD	461204109	0.71%
INVERSIONES AGUAS METROPOLITAN	46128Q201	0.13%
ITAU UNIBANCO HOLDING SA	059602102 465562106 059602201 90458E107	0.49%

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TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
J SAINSBURY PLC	466249208	0.34%
JOHNSON MATTHEY PLC	479142309 479142408 479142507	0.41%
JULIUS BAER GROUP LTD	481369106	0.38%
KIDDE PLC	493793103	0.60%
KINGFISHER PLC	495724403 495724205 495724304	0.32%
KINGSGATE CONSOLIDATED LTD	496362104	0.58%
KLABIN SA	45647P108 49834M100	0.71%
KOMATSU LTD	500458401	0.19%
KOMERCNI BANKA AS	500459409	0.24%
KONINKLIJKE AHOLD N.V.	500467303 500467402 500467AA3	0.11%
KOOR INDUSTRIES LTD	500507108	0.38%
KROTON EDUCACIONAL SA	50106A402	0.14%
KUMBA IRON ORE LTD	50125N104	0.32%
LADBROKE GROUP INC	505727305 505730101	0.18%
LAGARDERE SCA	507069102	0.45%
LAN AIRLINES S.A.	501723100	0.46%
LEGAL & GENERAL GROUP PLC	52463H103	0.17%
LENDLEASE GROUP	526023205	0.63%
LHR AIRPORTS LTD	05518L206	0.37%
LIBERTY GROUP LTD	140487109 530616101 53055R103 53055R202 530706100 530706209	0.59%
LIHIR GOLD LTD	532349206 532349107	0.67%
LLOYDS BANKING GROUP PLC	539439109	0.26%

TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
LONMIN PLC	54336Q104 54336Q203 543374409	0.24%
LUKOIL PJSC	69343P105 677862104 677862807 677862302 677862203	0.30%
LUXOTTICA GROUP SPA	55068R202	0.52%
LVMH MOET HENNESSY LOUIS VUITT	502441207	0.63%
MACQUARIE GROUP LTD	55607P105 55607P204	0.42%
MADECO, S.A.	556304103 556304202	0.51%
MAHANAGAR TELEPHONE NIGAM LTD	559778402	0.18%
MAKITA CORP	560877300	0.31%
MANNESMANN A.G.	563775303	0.28%
MASISA SA	574799102 574800108	0.22%
MASSMART HOLDINGS LTD	576290100	0.69%
METSO OYJ	592671101 754183101 920232303	0.39%
MIZUHO FINANCIAL GROUP INC	359558103 60687Y109	0.29%
MMC NORILSK NICKEL PJSC	46626D108 55315J102	0.45%
MMI HOLDINGS LTD/SOUTH AFRICA	55314H107	0.30%
MOBILE TELESYSTEMS PJSC	61946A106	0.10%
MOL HUNGARIAN OIL & GAS PLC	831595202	0.57%
MOSENERGO PJSC	037376100 037376308	0.14%
MTN GROUP LTD	62474M108	0.24%
NATIONAL AUSTRALIA BANK LTD	632525408	0.41%
NATIONAL BANK OF GREECE SA	633643507 633643408	0.38%
NATIONAL GRID	636274102 636274300 636274409	0.26%

TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
NATIONAL POWER PLC	637194408	0.30%
NATUZZI SPA	63905A101	0.49%
NEC CORP	629050204 81661W109	0.71%
NEDBANK GROUP LTD	63975P103 63975K104 63975P202	0.38%
NET SERVICOS DE COMUNICACAO SA	37957X102	0.29%
NEWCREST MINING LTD	651191108	0.48%
NEWMONT AUSTRALIA PTY LTD	390290104 656190105 656190204	0.38%
NIPPON YUSEN KK	654633304	0.70%
NOMURA HOLDINGS INC	65535H208	0.34%
NTT DOCOMO INC	62942M201 62942M102 629424201 62942M300 629424102 629424508 629424409	0.30%
ORANGE POLSKA SA	87943D108	0.36%
ORANGE SA	35177Q105 35177Q204 35177QAB1	0.39%
ORKLA ASA	686331109	0.49%
PARTNER COMMUNICATIONS CO LTD	70211M109	0.41%
PEARSON PLC	705015105	0.22%
PERNOD RICARD SA	019121102 714264108	0.19%
PETROCHINA CO LTD	71646E100	0.01%
PETROLEO BRASILEIRO SA	71654V101 71654V408	0.49%
PFLLN 1.35	74050U206	0.25%
PHAROL SGPS SA	737273102	0.31%
POLSKI KONCERN NAFTOWY ORLEN S	731613402	0.53%
POLYUS PJSC	678129107 73181P102	0.38%

NAME	TABLE 1 Average Margin Across Settlement Class Period		
PREMIER FARNELL LTD         74050U107         0.27%           PROVIDENT FINANCIAL PLC         74387B103         0.25%           PUBLICIS GROUPE SA         74463M108 F76080112 785144205         0.21%           QANTAS AIRWAYS LTD         74726M406 74726M505         0.42%           QBE INSURANCE GROUP LTD         74728G605         0.23%           RACAL ELECTRONICS PLC         749815403         0.36%           RANDSTAD UK HOLDING LTD         81617E203         0.95%           RBS 11.2 PERP         780097309         0.25%           RBS 6.35 PERP         780097700         0.10%           RBS 8 1/2 PERP         780097803         0.25%           RBS 8.1 PERP         780097803         0.25%           RBS 8.2 125 PERP         780097806         0.25%           RBS 9.1/2 PERP         780097408         0.25%           RBS 9.1/2 PERP         780097408         0.25%           RBS 9.1/2 PERP         780097408         0.25%           REZOLESEVIER NV         758204101 758204200 758204200 758204200 758204200 758204200         0.34%           REXAM LTD         761655406 761655506         0.11%           REYAM LTD         761655406 761655500         0.11%           REYAM LTD         762397206 762397200         0.21%	ISSUER	CUSIPs	MARGIN
PROVIDENT FINANCIAL PLC         74387B103         0.25%           PUBLICIS GROUPE SA         74463M106 F76080112 785144205         0.21% 785144205           QANTAS AIRWAYS LTD         74726M406 74726M505         0.42%           QBE INSURANCE GROUP LTD         74728G605         0.23%           RACAL ELECTRONICS PLC         749815403         0.36%           RANDSTAD UK HOLDING LTD         81617E203         0.95%           RBS 11.2 PERP         780097700         0.10%           RBS 6.35 PERP         780097700         0.10%           RBS 8 1/2 PERP         780097853         0.25%           RBS 8.1 PERP         780097705         0.25%           RBS 8.2125 PERP         780097606         0.25%           RBS 9 1/2 PERP         780097408         0.25%           RED ELSEVIER NV         758204101 758205207         0.34%           REED ELSEVIER NV         76026T205         0.45%           RENTOKIL INITIAL PLC         760125104         0.22%           REPSOL SA         76026T205         0.45%           REAMA LTD         761655406 761655505         0.11% 7612397206         0.21%           RIO TINTO FRANCE SAS         765151207         0.72%           RIO TINTO FRANCE SAS         767202104 767204100 767204100	POWERGEN LTD	738905405	0.37%
PUBLICIS GROUPE SA 74463M106 F76080112 785144205  QANTAS AIRWAYS LTD 74728M406 74728M406 74728M505  QBE INSURANCE GROUP LTD 74728G055 0.23%  RACAL ELECTRONICS PLC 749815403 0.36%  RANDSTAD UK HOLDING LTD 81617E203 0.95%  RBS 11.2 PERP 780097700 0.10%  RBS 8 1/2 PERP 780097701 0.10%  RBS 8 1/2 PERP 780097705 0.25%  RBS 8.1 PERP 780097705 0.25%  RBS 8.2 125 PERP 780097408 0.25%  RBS 9 1/2 PERP 780097408 0.25%  RED ELSEVIER NV 758204101 758204101 758205108 758204200 758205207 78005104 0.22%  RENTOKIL INITIAL PLC 761655004 7	PREMIER FARNELL LTD	74050U107	0.27%
PUBLICIS GROUPE SA         F76080112 785144205         0.21%           QANTAS AIRWAYS LTD         74726M4005 74726M505         0.42%           QBE INSURANCE GROUP LTD         747286055         0.23%           RACAL ELECTRONICS PLC         749815403         0.36%           RANDSTAD UK HOLDING LTD         81617E203         0.95%           RBS 11.2 PERP         780097309         0.25%           RBS 6.35 PERP         780097770         0.10%           RBS 8 1/2 PERP         780097804         0.25%           RBS 8.1 PERP         780097705         0.25%           RBS 8.2125 PERP         780097705         0.25%           RBS 9 1/2 PERP         780097408         0.25%           RES 9 1/2 PERP         780297408         0.25%           RES 9 1/2 PERP         780297408         0.25%           REVAIL TO         76165504         0.21%           REX PERP COLLEAN         76165504         0.11%           REX PERP COLLEAN         762397107         <	PROVIDENT FINANCIAL PLC	74387B103	0.25%
QANTAS AIRWAYS LTD         74726M505         0.42%           QBE INSURANCE GROUP LTD         74728G605         0.23%           RACAL ELECTRONICS PLC         749815403         0.36%           RANDSTAD UK HOLDING LTD         81617E203         0.95%           RBS 11.2 PERP         780097309         0.25%           RBS 6.35 PERP         780097770         0.10%           RBS 8 1/2 PERP         780097863         0.25%           RBS 8.1 PERP         78009705         0.25%           RBS 8.2125 PERP         78009706         0.25%           RBS 9 1/2 PERP         780097408         0.25%           REED ELSEVIER NV         758205108 758205207         0.34%           REPSOL SA         760267205         0.45%           REXAM LTD         761655406 761655606         0.11%           REXAM LTD         761655406 761655605         0.11%           RHODIA SA         762397206 762397206         0.21%           RIO TINTO FRANCE SAS         705151207 767204100 04507401         0.25%           RIO TINTO PLC         045074101 126170505 74974K706         0.25%           ROCHE HOLDING AG         771195104 771195401         0.44%	PUBLICIS GROUPE SA	F76080112	0.21%
RACAL ELECTRONICS PLC         749815403         0.36%           RANDSTAD UK HOLDING LTD         81617E203         0.95%           RBS 11.2 PERP         780097309         0.25%           RBS 6.35 PERP         780097770         0.10%           RBS 8 1/2 PERP         780097804 780097853         0.25%           RBS 8.1 PERP         78009705         0.25%           RBS 8.2125 PERP         780097606         0.25%           RBS 9 1/2 PERP         780097408         0.25%           REED ELSEVIER NV         758204101 758205207         0.34%           REED ELSEVIER NV         758204200 758205207         0.34%           REPSOL SA         760125104         0.22%           REPSOL SA         760267205         0.45%           REXAM LTD         761655406 76165505         0.11%           RHODIA SA         762397206 762397206         0.21%           RIO TINTO FRANCE SAS         705151207         0.72%           RIO TINTO PLC         045074101 045074101 04507400         0.25%           ROCHE HOLDING AG         771195104 771195401         0.44%	QANTAS AIRWAYS LTD		0.42%
RANDSTAD UK HOLDING LTD  RBS 11.2 PERP  RBS 6.35 PERP  RBS 6.35 PERP  RBS 8 1/2 PERP  RBS 8 1/2 PERP  RBS 8.1 PERP  RBS 8.1 PERP  RBS 8.2125 PERP  RBS 9 1/2 PERP  REED ELSEVIER NV  REED ELSEVIER NV  RENTOKIL INITIAL PLC  REXAM LTD  REXAM LTD  REXAM LTD  RHODIA SA  RIO TINTO FRANCE SAS  RIO TINTO PLC  ROCHE HOLDING AG  RECH 12.56  RBS 11.2 PERP  RB0097705  RE0097705  RE0097705  R25%  R80097705  R25%  R80097705  R25%  R80097606  R25%  R80097408  R25%  R80097408  R25%  R80097408  R25%  R60097408  R60097408  R25%  R60097408  R60097408  R25%  R60097408  R6009700  R6009700	QBE INSURANCE GROUP LTD	74728G605	0.23%
RBS 11.2 PERP       780097309       0.25%         RBS 6.35 PERP       780097770       0.10%         RBS 8 1/2 PERP       780097804       780097803       0.25%         RBS 8.1 PERP       780097705       0.25%         RBS 8.2125 PERP       780097408       0.25%         RBS 9 1/2 PERP       780097408       0.25%         REED ELSEVIER NV       758204101       758204101         758204200       758204200       758204200         758204200       758204200       0.34%         758204200       758205207       0.45%         REPSOL SA       76026T205       0.45%         REXAM LTD       761655406       0.11%         RHODIA SA       762397107       0.21%         RIO TINTO FRANCE SAS       705151207       0.72%         RIO TINTO PLC       045074101       0.25%         RIO TINTO PLC       045074101       0.25%         ROCHE HOLDING AG       771195104       771195104         ROCHE HOLDING AG       0.44%	RACAL ELECTRONICS PLC	749815403	0.36%
RBS 6.35 PERP 780097770 0.10%  RBS 8 1/2 PERP 780097804 780097853 0.25%  RBS 8.1 PERP 78009705 0.25%  RBS 8.2125 PERP 780097606 0.25%  RBS 9 1/2 PERP 780097408 0.25%  REED ELSEVIER NV 758204101 758205108 758204100 758205207  RENTOKIL INITIAL PLC 760125104 0.22%  REPSOL SA 76026T205 0.45%  REXAM LTD 76165505 761655604  RHODIA SA 762397107 762397206 0.21%  RIO TINTO FRANCE SAS 767202104 767202104 767202104 767202104 767202104 767202104 767204100 045074101 0.25%  ROCHE HOLDING AG 771195104 771195104 771195104 771195104 771195104 771195104 771195104 771195401 0.44%	RANDSTAD UK HOLDING LTD	81617E203	0.95%
RBS 8 1/2 PERP 780097804 780097853 0.25%  RBS 8.1 PERP 780097705 0.25%  RBS 8.2125 PERP 780097606 0.25%  RBS 9 1/2 PERP 780097408 0.25%  REED ELSEVIER NV 758204101 758204100 758205207  RENTOKIL INITIAL PLC 760125104 0.22%  REPSOL SA 760267205 0.45%  REXAM LTD 76165505 761655064  RHODIA SA 762397107 762397206 0.21%  RIO TINTO FRANCE SAS 767204100 045074101 126170505 74974K706  ROCHE HOLDING AG 771195104 771195401 0.44%	RBS 11.2 PERP	780097309	0.25%
RBS 8 1/2 PERP 780097853 0.25%  RBS 8.1 PERP 780097705 0.25%  RBS 8.2125 PERP 780097606 0.25%  RBS 9 1/2 PERP 780097408 0.25%  REED ELSEVIER NV 758204101 758204101 758204200 758205207  RENTOKIL INITIAL PLC 760125104 0.22%  REPSOL SA 76026T205 0.45%  REXAM LTD 761655406 761655505 761655604  RHODIA SA 762397107 762397107 762397206 0.21%  RIO TINTO FRANCE SAS 767204100 767204100 767204100 767204100 767204100 764974K706  ROCHE HOLDING AG 771195104 771195104 771195401 0.44%	RBS 6.35 PERP	780097770	0.10%
RBS 8.2125 PERP 780097606 0.25%  RBS 9 1/2 PERP 780097408 0.25%  REED ELSEVIER NV 758204101 758205108 758204200 758205207  RENTOKIL INITIAL PLC 760125104 0.22%  REPSOL SA 76026T205 0.45%  REXAM LTD 76165505 761655004 761655604  RHODIA SA 762397107 762397206 0.21%  RIO TINTO FRANCE SAS 767202104 767204100 767204100 767204100 126170505 74974K706  ROCHE HOLDING AG 771195104 771195401 0.44%	RBS 8 1/2 PERP		0.25%
RES 9 1/2 PERP 780097408 0.25%  REED ELSEVIER NV 758204101 758205108 758204200 758204200 758205207  RENTOKIL INITIAL PLC 760125104 0.22%  REPSOL SA 76026T205 0.45%  REXAM LTD 761655406 76165505 761655604  RHODIA SA 762397107 762397206 0.21%  RIO TINTO FRANCE SAS 705151207 0.72%  RIO TINTO PLC 045074101 0.25%  ROCHE HOLDING AG 771195104 771195401 0.44%	RBS 8.1 PERP	780097705	0.25%
REED ELSEVIER NV  758204101 758205108 758204200 758205207  RENTOKIL INITIAL PLC  760125104 0.22% REPSOL SA 76026T205 0.45%  REXAM LTD 761655406 761655505 761655604  RHODIA SA 762397107 762397206 RIO TINTO FRANCE SAS 767202104 767204100 RIO TINTO PLC 760125104 ROCHE HOLDING AG 771195104 771195401 0.44%	RBS 8.2125 PERP	780097606	0.25%
REED ELSEVIER NV       758205108 758204200 758204200 758205207         RENTOKIL INITIAL PLC       760125104       0.22%         REPSOL SA       76026T205       0.45%         REXAM LTD       761655406 76165505 76165505 761655604       0.11%         RHODIA SA       762397107 762397206       0.21%         RIO TINTO FRANCE SAS       705151207       0.72%         RIO TINTO PLC       045074101 045074101 126170505 74974K706       0.25%         ROCHE HOLDING AG       771195104 771195104 771195401       0.44%	RBS 9 1/2 PERP	780097408	0.25%
REPSOL SA       76026T205       0.45%         REXAM LTD       761655406       0.11%         761655505       0.11%       761655604         RHODIA SA       762397107       0.21%         RIO TINTO FRANCE SAS       705151207       0.72%         RIO TINTO PLC       045074101       0.25%         RIO TINTO PLC       045074101       0.25%         T4974K706       771195104       771195401         ROCHE HOLDING AG       771195401       0.44%	REED ELSEVIER NV	758205108 758204200	0.34%
REXAM LTD  761655406 76165505 761655604  RHODIA SA  762397107 762397206  RIO TINTO FRANCE SAS  705151207  0.21%  767202104 767204100 767204100 045074101 0.25% 126170505 74974K706  ROCHE HOLDING AG  761655406 761655505 0.11% 762397206  0.21% 767202104 767202104 767204100 0.25% 126170505 74974K706	RENTOKIL INITIAL PLC	760125104	0.22%
REXAM LTD       761655505 76165505       0.11%         RHODIA SA       762397107 762397206       0.21%         RIO TINTO FRANCE SAS       705151207       0.72%         RIO TINTO PLC       767202104 767204100 045074101 0.25% 126170505 74974K706       0.25% 771195104 771195401       0.44%	REPSOL SA	76026T205	0.45%
RHODIA SA  RIO TINTO FRANCE SAS  705151207 0.72%  767202104 767204100 045074101 0.25%  ROCHE HOLDING AG  771195401 0.24%	REXAM LTD	761655505	0.11%
RIO TINTO PLC 767202104 767204100 045074101 126170505 74974K706 ROCHE HOLDING AG 771195104 771195401 0.44%	RHODIA SA		0.21%
RIO TINTO PLC 045074101 0.25% 126170505 74974K706 POCHE HOLDING AG 771195104 771195401 0.44%	RIO TINTO FRANCE SAS	705151207	0.72%
ROCHE HOLDING AG 771195401 0.44%	RIO TINTO PLC	767204100 045074101 126170505	0.25%
ROLLS-ROYCE HOLDINGS PLC 775781206 0.21%	ROCHE HOLDING AG		0.44%
	ROLLS-ROYCE HOLDINGS PLC	775781206	0.21%

TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
ROYAL BANK OF SCOTLAND/ABN	780097721 780097739	0.15%
RUSHYDRO PJSC	466294105 782183123 782183131 782183404 466294204	0.41%
RWE AG	74975E303 74975E402	0.30%
RWE GENERATION UK HOLDINGS PLC	45769A103	0.31%
RYANAIR HOLDINGS PLC	783513104	0.26%
SADIA SA	786326108	0.64%
SANOFI	80105N105 762426AC8 762426401 80105N204	0.27%
SANTANDER UK PLC	002920106 002920700	0.26%
SANUK 8 3/4 PERP	002920205	0.25%
SAP SE	803054204 803054303	0.40%
SAPPI LTD	803069103 803069202 108510041	0.62%
SASOL LTD	803866300	0.58%
SBERBANK OF RUSSIA PJSC	80585Y308	0.35%
SCOR SE	80917Q106	0.33%
SCOTTISH POWER PLC	81013T408 81013T705	0.23%
SEGA SAMMY HOLDINGS INC	815794102	0.32%
SEKISUI HOUSE LTD	816078307	0.33%
SERONO	81752M101	0.39%
SEVERSKY TUBE WORKS PJSC	818146102	0.20%
SHELL TRANSPORT & TRADING CO L	822703609	0.25%
SHISEIDO CO LTD	824841407	0.29%
SHOPRITE HOLDINGS LTD	82510E209	0.80%
SIBANYE GOLD LTD	03840M109 825724206	0.19%

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TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
SIGNET JEWELERS LTD	82668L872	0.22%
SIMS METAL MANAGEMENT LTD	829160100	1.67%
SIX CONTINENTS LTD	830018107	0.20%
SKY PLC	111013108	0.21%
SMITHKLINE BEECHAM LTD	832378301	0.25%
SOCIEDAD QUIMICA Y MINERA DE C	833636103	0.16%
SOCIEDAD QUMICA Y MINERA DE CHILE	833635105	0.72%
SOCIETE GENERALE SA	784320103 784320202 83364L109	0.38%
SODEXO SA	833792104	0.42%
SOFTBANK GROUP CORP	471104109	0.49%
SOUTHERN ELECTRIC PLC 144A	842809709 842809402	0.27%
SPARK NEW ZEALAND LTD	84652A102 879278307 879278208	0.46%
SSE PLC	810133405 810133702 81012K309	0.25%
STANDARD BANK GROUP LTD	853118206	0.86%
STATOIL ASA	85771P102	0.49%
SUBMARINO S.A REG S	86431P300 86431P508	0.33%
SUMITOMO MITSUI FINANCIAL GROU	865622104	0.72%
SUNCORP GROUP LTD	867232100	0.58%
SURGUTNEFTEGAS OJSC	46625F104 868861204 868861105	0.26%
SVENSKA CELLULOSA AB SCA	869587402	0.25%
SWEDISH MATCH AB	870309507	0.38%
SWIRE PACIFIC LTD	870794302 870794401 870797404	0.03%
SWISSCOM AG	871013108	0.49%
SYNGENTA AG	87160A100	0.40%
TABCORP HOLDINGS LTD	873306203	0.42%
		1

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TABLE 1 Average Margin Across Settlement Class Period		
ISSUER	CUSIPs	MARGIN
TATA COMMUNICATIONS LTD	876564105 92659G402 92659G600 92659G303	0.11%
TATE & LYLE PLC	876570607	0.27%
TATNEFT PJSC	03737P207 03737P108 65486P100 876629205	0.25%
TDC A/S	87236N102	0.36%
TELE CELULAR SUL PART S.A.	879238103	0.66%
TELE CENTRO OESTE CELULAR PART	87923P105	0.52%
TELE NORDESTE CELULAR PARTICIP	87924W109	0.74%
TELE NORTE LESTE PARTICIPACOES	87924Y105 879246106	0.56%
TELE SUDESTE CELULAR PARTICIPA	87943B102 879252104	0.23%
TELE2 AB	87952P109 87952P208	0.55%
TELECOMUNICACOES BRASILEIRAS S	879287209	0.48%
TELEKOM AUSTRIA AG	87943Q109	0.71%
TELEKOMUNIKASI INDONESIA PERSE	715684106	0.15%
TELEMIG CELULAR PARTICIPACOES	87944E105	0.55%
TELESP PARTICIPACOES S.A.	87952L108 87952K100	0.14%
TELKOM SA SOC LTD	879603108	0.42%
TELSTRA CORP LTD	87969N204 87969N303 87969N105	0.35%
TERNIUM MEXICO SA DE CV	880890108	0.29%
TESCO PLC	881575302 098561202	0.32%
TEVA PHARMACEUTICAL INDUSTRIES	881624209 16361E108 50540H104	0.36%
TIGER BRANDS LTD	88673M102 88673M201 886911106	0.31%

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TABLE 1 Average Margin Across Settlement Class Period			
ISSUER	CUSIPs	MARGIN	
TMK PJSC	87260R300	0.37%	
TOTAL SA	89151E109 716485206	0.39%	
TRANSCOM WORLDWIDE SA	893234104 893545103 893545202 894116102	0.22%	
TREND MICRO INC/JAPAN	89486M206	0.29%	
TURKIYE GARANTI BANKASI AS	900148305 900148701 900151101	0.30%	
TV AZTECA SAB DE CV	901145102	0.32%	
UBS AG	90261R105	0.29%	
ULTRAPAR PARTICIPACOES SA	90400P101	0.55%	
UNIBAIL-RODAMCO SE	960224103	1.00%	
UNIFIED ENERGY SYSTEM OAO	904688108 904688405	0.17%	
UNION ANDINA DE CEMENTOS SAA	904845104	0.33%	
UNITED OVERSEAS BANK LTD	911271302 910903301	0.22%	
USINAS SIDERURGICAS DE MINAS G	917302408	0.52%	
VAN DER MOOLEN HOLDING NV	921020103	0.38%	
VEOLIA ENVIRONNEMENT SA	92334N103	0.34%	
VIMPEL-COMMUNICATIONS PJSC	92719A106 92719A304	0.21%	
VINA CONCHA Y TORO SA	927191106	0.32%	
VIVENDI SA	137041208 204390108 419312202 92851S105 92851S204	0.25%	
VODAFONE AIRTOUCH PLC	92857T107	0.25%	
VODAFONE GROUP PLC	92857W308 698113107 87926R108 92857W209 92857W100 92858M101	0.39%	

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TABLE 1 Average Margin Across Settlement Class Period					
ISSUER	ISSUER CUSIPS MARGIN				
WACOAL HOLDINGS CORP	930004205	0.30%			
WAL-MART DE MEXICO SAB DE CV	93114W107	0.36%			
WAVECOM SA	943531103	0.52%			
WESTPAC BANKING CORPORATION	789547106 961214301	0.18%			
WIND HELLAS TELECOMMUNICATIONS	859823106 88706Q104	0.18%			
WMC LIMITED	928947100 92928R106	0.27%			
WOODSIDE PETROLEUM LTD	980228308	0.41%			
WOOLWORTHS HOLDINGS LTD/SOUTH	480209402 98088R109 98088R505	0.38%			
ZURICH INSURANCE GROUP AG	01959Q101 98982M107 989825104	0.33%			

# Exhibit C

Bank of New York Mellon ADR FX Settlement c/o KCC Class Action Services P.O. Box 505030 Louisville, KY 40233-5030 1-866-447-6210 info@bnymadrfxsettlement.com

### PROOF OF CLAIM AND RELEASE FORM

IMPORTANT – If you receive/have received a Post-Card Notice in the mail in connection with this Settlement, you are a Registered Holder Settlement Class Member (i.e., you hold (or held) the American Depositary Receipts ("ADRs") covered by this Action directly through The Bank of New York Mellon ("BNYM" or "Defendant"), are listed in the records of BNYM's transfer agent with respect to such holdings, and your contact, holding, and distribution information was provided to the Claims Administrator by BNYM's transfer agent), and you DO NOT need to complete and submit this Proof of Claim and Release Form ("Claim Form") to be eligible to receive a share of the Net Settlement Fund in connection with this Settlement. The Post-Card Notice mailed to you contains a Claim Number and PIN to access your holdings and distribution information on the website <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>. Please refer to paragraph 2 of the General Instructions in this Claim Form and the full Notice available on the website for more information. If you did NOT receive a Post-Card Notice containing a Claim Number and PIN, please follow the instructions below to submit a Claim Form.

IF YOU DO NOT RECEIVE/HAVE NOT RECEIVED A POST-CARD NOTICE IN THE MAIL IN CONNECTION WITH THIS SETTLEMENT, YOU ARE A NON-REGISTERED HOLDER SETTLEMENT CLASS MEMBER AND YOU MUST COMPLETE AND SIGN THIS CLAIM FORM AND MAIL IT BY PREPAID, FIRST-CLASS MAIL TO THE ABOVE ADDRESS, OR SUBMIT IT ONLINE AT <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>, **POSTMARKED (OR RECEIVED) NO LATER THAN AUGUST 15, 2019** IN ORDER TO BE ELIGIBLE TO RECEIVE A SHARE OF THE NET SETTLEMENT FUND IN CONNECTION WITH THIS SETTLEMENT.

IF YOU ARE A NON-REGISTERED HOLDER SETTLEMENT CLASS MEMBER, FAILURE TO SUBMIT YOUR CLAIM FORM BY THE DATE SPECIFIED ABOVE WILL SUBJECT YOUR CLAIM TO REJECTION AND MAY PRECLUDE YOU FROM BEING ELIGIBLE TO RECEIVE ANY MONEY IN CONNECTION WITH THE SETTLEMENT.

DO NOT MAIL OR DELIVER YOUR CLAIM FORM TO THE COURT, THE PARTIES, OR THEIR COUNSEL. SUBMIT YOUR CLAIM FORM ONLY TO THE CLAIMS ADMINISTRATOR AT THE ADDRESS SET FORTH ABOVE, OR ONLINE AT <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>.

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Case 1:16-cv-00212-JPO-JLC Filed 04/29/19 Page 57 of 71 **Must Be Postmarked** or Received No Later **Than August 15, 2019** Official **BMA** UNITED STATES DISTRICT COURT Office FOR THE SOUTHERN DISTRICT OF NEW YORK Use The Bank of New York Mellon ADR FX Litigation Only Civil Action No. 16-CV-00212-JPO-JLC PROOF OF CLAIM AND RELEASE Please Type or Print in the Boxes Below Do NOT use Red Ink, Pencil, or Staples PART I - CLAIMANT IDENTIFICATION -Last Name M.I. First Name Last Name (Co-Beneficial Owner) M.I. First Name (Co-Beneficial Owner) Other\_ O IRA Employee Individual Joint Tenancy (specify) Company Name (Beneficial Owner - If Claimant is not an Individual) or Custodian Name if an IRA Trustee/Asset Manager/Nominee/Record Owner's Name (If Different from Beneficial Owner Listed Above) Account#/Fund# (Not Necessary for Individual Filers) Last Four Digits of Social Security Number **Taxpayer Identification Number** Telephone Number (Primary Daytime) Telephone Number (Alternate) **Email Address MAILING INFORMATION** Address 1 Address 2 Zip Code City State Foreign Province Foreign Postal Code Foreign Country Name/Abbreviation O FL FOR CLAIMS FOR CLAIMS KE DR ME RE



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### PART II - GENERAL INSTRUCTIONS

- 1. It is important that you completely read and understand the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Final Approval Hearing; and (III) Motion for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") available at <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>, including the proposed Plan of Allocation of Net Settlement Fund attached as Exhibit 1 to the Notice. The Notice describes the proposed Settlement, how Settlement Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and understand the Notice, including the terms of the Releases described therein and provided for herein.
- 2. Important Please Note: Only Non-Registered Holder Settlement Class Members, including those Settlement Class Members who hold (or held) their eligible ADRs through a bank, broker or other nominee rather than directly, must submit a Claim Form in order to be eligible to receive a payment from the Settlement. Those Settlement Class Members who receive/have received a Post-Card Notice in the mail (i.e., Registered Holder Settlement Class Members) do not need to submit a Claim Form in order to be eligible to receive a payment from the Settlement. The Post-Card Notice mailed to Registered Holder Settlement Class Members contains a unique Claim Number and PIN to access, on the website <a href="www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>, information regarding the ADRs they held and the cash distributions they received during the relevant period in connection with their holdings as provided by BNYM's transfer agent, which information will be used to calculate their Claims. If you received a Post-Card Notice, please review the information regarding your holdings and cash distributions as set forth on the website to confirm it is accurate and complete. If the information regarding your holdings and cash distributions is incorrect or incomplete, you must notify the Claims Administrator immediately. Otherwise, the Claims Administrator will assume the information is correct and complete, and will use such information to calculate your Claim. If you are unsure whether you are a Non-Registered Holder Settlement Class Member, please contact the Claims Administrator.
- 3. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlement described in the Notice. IF YOU ARE NOT A SETTLEMENT CLASS MEMBER (see definition of Settlement Class on page 6 of the Notice, which sets forth who is included in and who is excluded from the Settlement Class), OR IF YOU, OR SOMEONE ACTING ON YOUR BEHALF, SUBMITTED A REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS, DO NOT SUBMIT A CLAIM FORM. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A SETTLEMENT CLASS MEMBER. THUS, IF YOU ARE EXCLUDED FROM THE SETTLEMENT CLASS, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.
- 4. Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.
- 5. Use the Schedule of Cash Distributions Per Eligible ADR in Part III of this Claim Form to supply all required information regarding the cash distributions you received as a result of your holdings in the ADRs covered by the Action. Please provide all of the requested information.
- 6. You are required to submit genuine and sufficient documentation for all of the cash distributions set forth in the Schedule of Cash Distributions Per Eligible ADR in Part III of this Claim Form. Documentation may consist of copies of your end of year account statements, or an authorized statement from your broker containing the information regarding your cash distributions that would be found in a year-end account statement. **Please Note:** If you are a Non-Registered Holder Settlement Class Member, the Parties and the Claims Administrator do not independently have information about your holdings in the ADRs covered by the Action or the cash distributions you may have received as a result of such holdings. IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. **Please keep a copy of all documents that you send to the Claims Administrator. Also, please do not highlight any portion of the Claim Form or any supporting documents.** 
  - 7. Separate Claim Forms should be submitted for each separate legal entity.
  - 8. All joint beneficial owners must sign this Claim Form and their names must appear as "Claimants" in Part I of this Claim Form.



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- 9. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:
  - (a) expressly state the capacity in which they are acting;
  - (b) identify the name, account number, last four digits of the SSN (or TIN), address and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the eligible ADRs; and
  - (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)
  - 10. By submitting a signed Claim Form, you will be swearing that you:
    - (a) received the cash distributions you have listed in the Claim Form; or
    - (b) are expressly authorized to act on behalf of the owner of the ADRs that received such cash distributions.
- 11. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your Claim and may subject you to civil liability or criminal prosecution.
- 12. If the Court approves the Settlement, payments to eligible Authorized Recipients pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after any appeals are resolved, and after the completion of all Claims processing. The Claims process could take substantial time to complete fully and fairly. Please be patient.
- 13. **PLEASE NOTE**: As set forth in the Plan of Allocation, each Authorized Recipient shall receive his, her or its *pro rata* share of the Net Settlement Fund. If the prorated payment to any Authorized Recipient calculates to less than \$1.00, it will not be included in the calculation and no distribution will be made to that Authorized Recipient.
- 14. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, KCC Class Action Services, at the above address, by toll-free phone at (866) 447-6210, or by e-mail at info@bnymadrfxsettlement.com, or you may download the documents from the website for the Settlement, <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>.
- 15. NOTICE REGARDING ELECTRONIC FILES: Certain Claimants may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the Settlement website at <a href="www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a> or you may email the Claims Administrator's electronic filing department at Nominees@bnymadrfxsettlement.com. Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email after processing your file with your claim numbers and respective account information. Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at Nominees@bnymadrfxsettlement.com to inquire about your file and confirm it was received and acceptable.

### **IMPORTANT: PLEASE NOTE**

YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, PLEASE CALL THE CLAIMS ADMINISTRATOR TOLL- FREE AT (866) 447-6210.



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### PART III - SCHEDULE OF CASH DISTRIBUTIONS PER ELIGIBLE ADR

Please be sure to include proper documentation with your Claim Form as described in detail in Part II – General Instructions, paragraph 6, above.

A. In the chart below, please fill in the total cash distributions you received from January 1, 1997 through January 17, 2019 for each of the ADRs set forth in the list of eligible ADRs beginning on page 6.

ADR CODE	Total Cash Distributions Received from January 1, 1997 though January 17, 2019	Confirm Proof Enclosed
	\$	◯ Yes ◯ No
	\$	◯ Yes ◯ No
	\$	◯ Yes ◯ No
	\$	◯ Yes ◯ No
	\$	◯ Yes ◯ No
	\$	◯ Yes ◯ No
	\$	◯ Yes ◯ No
	\$	◯ Yes ◯ No
	\$	◯ Yes ◯ No
	\$	◯ Yes ◯ No

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, PLEASE PHOTOCOPY THIS PAGE, WRITE YOUR NAME ON THE COPY AND FILL THIS CIRCLE:

IF YOU DO NOT FILL IN THIS CIRCLE, THESE ADDITIONAL PAGES MAY NOT BE REVIEWED.
YOU MUST READ AND SIGN THE RELEASE ON PAGE 15. FAILURE TO SIGN THE RELEASE
MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.



## Case 1:16-cv-00212-JPO-JLC Document 155-1 Filed 04/29/19 Page 61 of 71 LIST OF ELIGIBLE ADRS

ADR/CUSIPs	Code (To be entered in PART III above)	ADR/CUSIPs	Code (To be entered in PART III above)
<b>ABI Sab Group Holding Ltd</b> (CUSIPs: 78572M105 / 836216309 / 836220103)	ABIS	Legal & General Group Plc (CUSIP: 52463H103)	LEGA
Accor SA (CUSIPs: 00435F101 /00435F309)	ACCO	Lendlease Group (CUSIP: 526023205)	LEND
Adidas AG (CUSIP: 00687A107)	ADID	LHR Airports Ltd (CUSIP: 05518L206)	LHRA
Administradora de Fondos de Pe 00709P108	ADMI	Liberty Group Ltd (CUSIPs: 140487109 / 530616101 / 53055R103 / 53055R202 / 530706100 / 530706209)	LIBE
<b>AES Tiete Energia SA</b> (CUSIPs: 00809V203 / 00808P207 / 00808P108	AEST	Lihir Gold Ltd (CUSIPs: 532349206 / 532349107)	LIHI
<b>Aixtron SE</b> (CUSIP: 009606104)	AIXT	Lloyds Banking Group Plc (CUSIP: 539439109)	LLOY
Alcatel-Lucent SA (CUSIP: 013904305)	ALCA	Lonmin Plc (CUSIPs: 54336Q104 / 54336Q203 / 543374409)	LONM
Allied Irish Banks PLC (CUSIPs: 019228402 / 019228303)	ALLI	Lukoil Pjsc (CUSIPs: 69343P105 / 677862104 / 677862807 / 677862302 / 677862203)	LUKO
<b>Alstom SA</b> (CUSIP: 021244108)	ALST	Luxottica Group Spa (CUSIP: 55068R202)	LUXO
<b>Altana AG</b> (CUSIP: 02143N103)	ALTA	Lvmh Moet Hennessy Louis Vuitt (CUSIP: 502441207)	LYMH
Alumina Ltd. (CUSIP: 022205108)	ALUM	Macquarie Group Ltd (CUSIPs: 55607P105 / 55607P204)	MACQ
Ambev SA (CUSIPs: 20441W203 / 02319V103)	AMBE	Madeco, S.A. (CUSIPs: 556304103 / 556304202)	MADE
<b>Anglo American Plc.</b> (CUSIPs: 03485P102 / 03485P300)	ANGA	Mahanagar Telephone Nigam Ltd (CUSIP: 559778402)	МАНА
Anglo Platinum (CUSIP: 035078104)	ANGP	Makita Corp (CUSIP: 560877300)	MAKI
Anglogold Ashanti Ltd. (CUSIPs: 035128206 / 043743103 / 043743202)	ANGL	Mannesmann A.G. (CUSIP: 563775303)	MANN
Anheuser-Busch Inbev SA/NV (CUSIPs: 03524A108 / 157123209 / 40051F100 / 74838Y207)	ANHB	<b>Masisa SA</b> (CUSIPs: 574799102 / 574800108)	MASI
<b>Arkema SA</b> (CUSIP: 041232109)	ARKE	Massmart Holdings Ltd (CUSIP: 576290100)	MASS
Arm Holdings Plc. (CUSIP: 042068106)	ARMH	Metso Oyj (CUSIPs: 592671101 / 754183101 / 920232303)	METS
Assicurazioni Generali Spa (CUSIP: 465234102)	ASSI	Mizuho Financial Group Inc (CUSIPs: 359558103 / 60687Y109)	MIZU
Astra AB (CUSIPs: 046298105 / 046298204)	ASTR	Mmc Norilsk Nickel Pjsc (CUSIPs: 46626D108 / 55315J102)	MMCN
Australia & New Zealand Banking (CUSIP: 052528304)	AUST	MMI Holdings Ltd/South Africa (CUSIP: 55314H107)	ммін
<b>AV Gold</b> (CUSIP: 035134303)	AVGO	Mobile Telesystems Pjsc (CUSIP: 61946A106)	МОВІ



A DD/OHOID-	Code	ADD/OUGID-	Code
ADR/CUSIPs	(To be entered in PART III above)	ADR/CUSIPs	(To be entered in PART III above)
<b>AXA SA</b> (CUSIPs: 054536107 / 149188104 / 866791106)	AXAS	Mol Hungarian Oil & Gas Plc (CUSIP: 831595202)	MOLH
<b>B.A.</b> (CUSIPs: 060587508/ 060593100)	ВВАА	Mosenergo Pjsc (CUSIPs: 037376100 / 037376308)	MOSE
Banco Bilbao Vizcaya Argentari (CUSIPs: 059458208 / 059456202 / 059456301 / 059456103 / 058925108 / 05946K101 / 059594408 / 059594507 / 07329Q507 / 07329Q200 / 07329Q309)	BANB	MTN Group Ltd (CUSIP: 62474M108)	MTNG
Banco Comercial Portugues SA (CUSIPs: 059479303 / 059479709)	ВАСР	National Australia Bank Ltd (CUSIP: 632525408)	NAAB
Banco Do Brasil SA (CUSIP: 059578104)	BADB	National Bank of Greece SA (CUSIPs: 633643507 / 633643408)	NABG
<b>Banco Popolare SC</b> (CUSIPs: 059471102 /059633107)	ВАРО	National Grid (CUSIPs: 636274102 / 636274300 / 636274409)	NATG
Banco Santander Brasil SA (CUSIPs: 05964H105 / 05967A107)	BASB	National Power Plc (CUSIP: 637194408)	NATP
Banco Santander Chile (CUSIPs: 05965F108 / 05965X109)	BASC	Natuzzi Spa (CUSIP: 63905A101)	NATU
Bank of Ireland (CUSIP: 46267Q103)	BAOI	NEC Corp (CUSIPs: 629050204 / 81661W109)	NECC
Bank of Tokyo – Mitsubishi FJ L (CUSIP: 065379109)	вотм	Nedbank Group Ltd (CUSIPs: 63975P103 / 63975K104 / 63975P202)	NEDB
Barclays Africa Group Ltd. (CUSIPs: 06738E204 / 06742G302 / 06739H776 / 06739H511 / 06739H362 / 06739F390	BAAG	Net Servicos de Comunicacao SA (CUSIP: 37957X102)	NETS
BASF SE (CUSIPs: 055262505 / 019097104)	BASF	Newcrest Mining Ltd (CUSIP: 651191108)	NEWC
Bass Plc. (CUSIP: 069904209)	BASS	Newmont Australia Pty Ltd (CUSIPs: 390290104 / 656190105 / 656190204)	NEWM
BAT Industries Plc. (CUSIP: 055270508)	BATI	Nippon Yusen KK (CUSIP: 654633304)	NIPP
<b>Bayer AG</b> (CUSIP: 072730302)	BAYE	Nomura Holdings Inc (CUSIP: 65535H208)	NOMU
<b>BBVA Banco Frances SA</b> (CUSIPs: 059591107 / 07329M100)	BBVA	NTT Docomo Inc (CUSIPs: 62942M201 / 62942M102 / 629424201 / 62942M300 / 629424102 / 629424508 / 629424409)	NTTD
<b>BG Group Ltd.</b> (CUSIPs: 055434203 / 052578408 / 055434104 / 780259206 / 780259107)	BGGR	Orange Polska SA (CUSIP: 87943D108)	ORAN



	Ondo		Cada
ADR/CUSIPs	Code (To be entered in PART III above)	ADR/CUSIPs	Code (To be entered in PART III above)
<b>Bidvest Group LTD/THE</b> (CUSIPs: 088836101 / 088836200 / 088836309)	BIDV	Orange SA (CUSIPs: 35177Q105 / 35177Q204 / 35177QAB1)	ORNG
Billabong International (CUSIP: 090055104)	BILL	<b>Orkla Asa</b> (CUSIP: 686331109)	ORKL
<b>Blue Circle Industries</b> (CUSIPs: 095342408 / 095342507)	BLUE	Partner Communications Co Ltd (CUSIP: 70211M109)	PART
BNP Paribas SA (CUSIPs: 05565A202 / 05565A103 / 066747106)	BNPP	Pearson Pic (CUSIP: 705015105)	PEAR
Boehler-Uddeholm AG (CUSIP: 097356307)	воен	Pernod Ricard SA (CUSIPs: 019121102 / 714264108)	PERN
Brasil Telecom Participacoes S (CUSIPs: 10553M101 / 10553M200 / 105530109 / 670851104 / 670851203)	BRTP	Petrochina Co Ltd (CUSIP: 71646E100)	PETR
Brasilagro – Co Brasileira De (CUSIP: 10554B104)	BRCB	Petroleo Brasileiro SA (CUSIPs: 71654V101 / 71654V408)	PEBR
Braksem SA (CUSIPs: 105532105 / 217252105 / 86959M101)	BRAS	<b>Pflin 1.35</b> (CUSIP: 74050U206)	PFLL
BRF SA (CUSIPs: 10552T107 / 71361V204 /71361V303 / 71361V105)	BRFS	Pharol Sgps SA (CUSIP: 737273102)	PHAR
British American Tobacco Plc. (CUSIP: 110448107)	BRIT	Polski Koncern Naftowy Orlen S (CUSIP: 731613402)	POLS
British Steel (CUSIP: 111015301)	BRST	Polyus Pjsc (CUSIPs: 678129107 / 73181P102)	POLY
Bunzl Plc. (CUSIPs: 120738406 / 120738307)	BUNZ	Powergen Ltd (CUSIP: 738905405)	POWE
Burmah Castrol Plc. (CUSIP: 122169303)	BURM	Premier Farnell Itd (CUSIP: 74050U107)	PREM
Cencosud SA (CUSIPs: 15132H101 / 802233106)	CENC	Provident Financial Plc (CUSIP: 74387B103)	PROV
Centrica Plc. (CUSIPs: 15639K102 / 15639K201 15639K300)	CENT	Publicis Groupe SA (CUSIPs: 74463M106 / F76080112 / 785144205)	PUBL
Chilcott UK Ltd. (CUSIPs: 363240102 / 93443W109)	CHIL	Qantas Airways Ltd (CUSIPs: 74726M406 / 74726M505)	QANT
China Agri-Industries Holdings (CUSIP: 16940R109)	CHIN	QBE Insurance Group Ltd (CUSIP: 74728G605)	QBEI
Chorus Ltd. (CUSIP: 17040V107)	CHOR	Racal Electronics Plc (CUSIP: 749815403)	RACA
Chunghwa Telecom Co., Ltd. (CUSIP: 17133Q205)	CHUN	Randstad UK Holding Ltd (CUSIP: 81617E203)	RAND
CIA Brasileira De Distribuicao (CUSIPs: 20440T201 / 20440T102)	CBDD	<b>Rbs 11.2 Perp</b> (CUSIP: 780097309)	RBSA
CIA Cervejaria Brahma (CUSIPs: 20440X103 / 20440X202)	CCBR	<b>Rbs 6.35 Perp</b> (CUSIP: 780097770)	RBSB
Cia DeBebidas Das Americas-AM (CUSIP: 20441W104)	CBDA	Rbs 8 1/2 Perp (CUSIP: 780097804 / 780097853)	RBSC
Cia De Saneamento Basico Do Es (CUSIP: 20441A102)	CDSB	<b>Rbs 8.1 Perp</b> (CUSIP: 780097705)	RBSD
Cia De Transmissao De Energia (CUSIPs: 20441Q107 / 20441Q206)	CDTD	Rbs 8.2125 Perp (CUSIP: 780097606)	RBSE



ADR/CUSIPs	Code (To be entered in	ADR/CUSIPs	Code (To be entered in
Cia Energetica De Sao Paulo	PART III above) CESP	Rbs 9 1/2 Perp	PART III above) RBSF
(CUSIPs: 20440P209 / 20440P407)	OLGI	(CUSIP: 780097408) Reed Elsevier NV	ND31
Cia Paranaense De Energia (CUSIPs: 20441B308 / 20441B407)	CIPE	(CUSIPs: 758204101 / 758205108 / 758204200 / 758205207)	REED
Cie Financiere Richemont SA (CUSIP: 204318109)	CIEF	Rentokil Initial Plc (CUSIP: 760125104)	RENT
Coca Cola Hellenic Bottling Co. (CUSIP: 1912EP104)	COCA	Repsol SA (CUSIP: 76026T205)	REPS
Coca-Cola Amatil Ltd. (CUSIP: 191085208)	COAM	Rexam Ltd (CUSIPs: 761655406 / 761655505 / 761655604)	REXA
Coca-Cola Femsa Sab De CV (CUSIP: 191241108)	COFE	Rhodia SA (CUSIPs: 762397107 / 762397206)	RHOD
<b>Coflexip SA</b> (CUSIP: 192384105)	COFL	Rio Tinto France Sas (CUSIP: 705151207)	RIOF
Commerzbank AG (CUSIPs: 202597308 / 202597605)	СОММ	Rio Tinto Plc (CUSIPs: 767202104 / 767204100 / 045074101 / 126170505 / 74974K706)	RIOT
Commonwealth Bank of Australia (CUSIPs: 202712303 / 202712600)	СВОА	Roche Holding AG (CUSIPs: 771195104 / 771195401)	ROCH
Comp. De Geracao De Energia El (CUSIPs: 20441P109 / 20441P208 / 20441R204 / 20441R105 / 264398108 / 264398207)	CDGE	Rolls-Royce Holdings Plc (CUSIP: 775781206)	ROLL
Compass Group Plc. (CUSIPs: 20449X104 / 20449X203 / 20449X302)	COMP	Royal Bank of Scotland/ABN (CUSIPs: 780097721 / 780097739)	ROYA
Continental AG (CUSIP: 210771200)	CONT	Rushydro Pjsc (CUSIPs: 466294105 / 782183123 / 782183131 / 782183404 / 466294204)	RUSH
Converium (CUSIP: 21248N107)	CONV	RWE AG (CUSIPs: 74975E303 / 74975E402)	RWEA
Corus Group Ltd. (CUSIP: 22087M101)	CORU	RWE Generation UK Holdings Plc (CUSIP: 45769A103)	RWEG
Cosco Shipping International S (CUSIP: 22112Y203)	cosc	Ryanair Holdings Plc (CUSIP: 783513104)	RYAN
Craneware Plc. (CUSIP: 224465104)	CRAN	Sadia SA (CUSIP: 786326108)	SADI
Crayfish Co. Ltd. (CUSIP: 225226208)	CRAY	Sanofi (CUSIPs: 80105N105 / 762426AC8 / 762426401 / 80105N204)	SANO
Credit Suisse Group AG (CUSIP: 225401108)	CRED	Santander UK Plc (CUSIPs: 002920106 / 002920700)	SANT
CRH Plc. (CUSIP: 12626K203)	CRHP	Sanuk 8 3/4 Perp (CUSIP: 002920205)	SANU
Crucell NV (CUSIP: 228769105)	CRUC	Sap SE (CUSIPs: 803054204 / 803054303)	SAPS
Dai Nippon Printing Co Ltd (CUSIP: 233806306)	DAIN	Sappi Ltd. (CUSIPs: 803069103 / 803069202 / 108510041)	SAPP
Danka Business Systems Plc (CUSIP: 236277109)	DABS	Sasol Ltd. (CUSIP: 803866300)	SASO
DBS Group Holdings Ltd (CUSIP: 23304Y100)	DBSG	Sberbank of Russia Pjsc (CUSIP: 80585Y308)	SBER
Delhaize Group Sca (CUSIP: 29759W101)	DELH	Scor SE (CUSIP: 80917Q106)	SCOR



	Code	1	Code
ADR/CUSIPs	(To be entered in PART III above)	ADR/CUSIPs	(To be entered in PART III above)
Deutsche Bank AG (CUSIP: 251525309)	DEUT	Scottish Power Plc (CUSIPs: 81013T408 / 81013T705)	SCOT
Deutsche Lufthansa AG		Sega Sammy Holdings Inc	
(CUSIPs: 251561304 / 549836500)	DEUL	(CUSIP: 815794102)	SEGA
Deutsche Post AG	DELID	Sekisui House Ltd	OFIZI
(CUSIP: 25157Y202)	DEUP	(CUSIP: 816078307)	SEKI
Diageo Plc (CUSIPs: 25243Q205 / 25243Q106 / 402033302)	DIAG	<b>Serono</b> (CUSIP: 81752M101)	SERO
<b>Dollar Pref Restricted 4-2 b e</b> (CUSIPs: 6162*1019 / 6162*1017)	DOLL	Seversky Tube Works Pjsc (CUSIP: 818146102)	SEVE
Dominion Mining Ltd (CUSIP: 257457309)	DOMN	Shell Transport & Trading Co I (CUSIP: 822703609)	SHEL
<b>Drdgold Ltd</b> (CUSIPs: 26152H103 / 26152H301 / 266597301)	DRDG	Shiseido Co Ltd (CUSIP: 824841407)	SHIS
<b>Dresdner Bank AG</b> (CUSIPs: 261561302 / 261561401)	DRES	Shoprite Holdings Ltd (CUSIP: 82510E209)	SHOP
Ducati Motor Holding Spa (CUSIP: 264066101)	DUCA	Sibanye Gold Ltd (CUSIPs: 03840M109 / 825724206)	SIBA
Eletropaulo Metropolitana Elet (CUSIP: 286203302)	ELET	Signet Jewelers Ltd (CUSIP: 82668L872)	SIGN
Elf Aquitaine SA (CUSIP: 286269105)	ELFA	Sims Metal Management Ltd (CUSIP: 829160100)	SIMS
Embotelladora Andina SA (CUSIPs: 29081P204 / 29081P303)	ЕМВО	Six Continents Ltd (CUSIP: 830018107)	SIXC
Embratel Participacoes SA (CUSIPs: 29081N100 / 29081N209)	EMBR	Sky Plc (CUSIP: 111013108)	SKYP
Empresas Ica Sab de CV (CUSIP: 292448107)	EMPR	Smithkline Beecham Ltd (CUSIP: 832378301)	SMIT
Engie Brasil Energia SA (CUSIPs: 892360108 / 29286U107 / 892360306)	ENGI	Sociedad Quimica y Minera De C (CUSIP: 833636103)	SOCI
Eni Lasmo Plc (CUSIP: 501730204)	ENIL	Sociedad Qumica y Minera de Chile (CUSIP: 833635105)	SQMC
<b>Eni Spa</b> (CUSIP: 26874R108)	ENSP	Societe Generale SA (CUSIPs: 784320103 / 784320202 / 83364L109)	SOGE
Eniim 10 Perp (CUSIP: 501730303)	ENII	<b>Sodexo SA</b> (CUSIP: 833792104)	SODE
Erste Group Bank AG (CUSIP: 296036304)	ERST	Softbank Group Corp (CUSIP: 471104109)	SOFT
Evraz Highveld Steel & Vanadiu (CUSIP: 30050A301)	EVRA	Southern Electric Plc 144a (CUSIPs: 842809709 / 842809402)	SOUT
Ferguson Plc (CUSIP: 97786P100)	FERG	Spark New Zealand Itd (CUSIPs: 84652A102 / 879278307 / 879278208)	SPAR
Fibria Celulose SA (CUSIP: 92906P106)	FIBR	Sse Plc (CUSIPs: 810133405 / 810133702 / 81012K309)	SSEP
Fila Holding S.P.A. (CUSIP: 316850106)	FILA	Standard Bank Group Ltd (CUSIP: 853118206)	STAN
Fomento Economico Mexicano Sab (CUSIP: 344419106)	FOME	Statoil Asa (CUSIP: 85771P102)	STAT
Foster's Group Pty Ltd (CUSIP: 350258307)	FOST	Submarino S.A Reg s (CUSIPs: 86431P300 / 86431P508)	SUBM



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	Code		Code
ADR/CUSIPs	(To be entered in PART III above)	ADR/CUSIPs	(To be entered in PART III above)
Fresenius Medical Care AG & Co (CUSIPs: 358029106 / 358029205)	FRES	Sumitomo Mitsui Financial Group (CUSIP: 865622104)	SUMI
Gallaher Group Ltd (CUSIP: 363595109)	GALA	Suncorp Group Ltd (CUSIP: 867232100)	SUNC
Gates Worldwide Ltd (CUSIP: 890030208)	GATE	Surgutneftegas Ojsc (CUSIPs: 46625F104 / 868861204 / 868861105)	SURG
Gazprom Neft Pjsc (CUSIP: 36829G107)	GAZP	Svenska Cellulosa Ab Sca (CUSIP: 869587402)	SVEN
Gazprom Pjsc (CUSIPs: 47973C305 / 753317304 / 753317205 / 753317106)	GAPP	Swedish Match Ab (CUSIP: 870309507)	SWED
Genesys (CUSIP: 37185M209)	GENE	Swire Pacific Ltd (CUSIPs: 870794302 / 870794401 / 870797404)	SWIR
<b>Gerdau SA</b> (CUSIP: 373737105)	GERD	<b>Swisscom AG</b> (CUSIP: 871013108)	swis
<b>Getlink SE</b> (CUSIP: 39944Q109)	GETL	Syngenta AG (CUSIP: 87160A100)	SYNG
Glaxosmithkline Plc (CUSIP: 37733W105)	GLAX	Tabcorp Holdings Ltd (CUSIP: 873306203)	TABC
Gol Linhas Aereas Inteligent (CUSIP: 38045R107)	GOLL	<b>Tata Communications Ltd</b> (CUSIPs: 876564105 / 92659G402 / 92659G600 / 92659G303)	TATA
Gold Fields Ltd (CUSIPs: 262026503 / 38059R100 / 38059T106 / 380596205 / 957654304)	GOLD	<b>Tate &amp; Lyle Plc</b> (CUSIP: 876570607)	TATE
Grupo Aeroportuario del Centro (CUSIP: 400501102)	GRUP	Tatneft Pjsc (CUSIPs: 03737P207 / 03737P108 / 65486P100 / 876629205)	TATN
Grupo Aeroportuario del Pacifi (CUSIP: 400506101)	GADP	TDC A/S (CUSIP: 87236N102)	TDCA
Grupo Aeroportuario del Surest (CUSIP: 40051E202)	GADS	Tele Celular Sul Part S.A. (CUSIP: 879238103)	TELC
Grupo Casa Saba Sab de CV (CUSIP: 40048P104)	GCSS	Tele Centro Oeste Celular Part (CUSIP: 87923P105)	TECE
Grupo Elektra, S.A. De C.V. (CUSIP: 40050A102)	GREL	Tele Nordeste Celular Particip (CUSIP: 87924W109)	TELN
Grupo Financiero Banorte Sab D (CUSIPs: 400486106 / 059456400 / 059456509 / 40051M105 / 40052P107 / 400486304 / 40051M204)	GRFI	Tele Norte Leste Participacoes (CUSIPs: 87924Y105 / 879246106)	TNLP
<b>Grupo Mex Desarrollo</b> (CUSIPs: 40048G104 / 40048G203)	GRMD	Tele Sudeste Celular Participa (CUSIPs: 87943B102 / 879252104)	TELS
Grupo Televisa SAB (CUSIP: 40049J206)	GRTS	Tele2 AB (CUSIPs: 87952P109 / 87952P208)	TELE
Hannover Rueck SE (CUSIP: 410693105)	HANN	Telecomunicacoes Brasileiras S (CUSIP: 879287209)	TECB
Harmony Gold Mining Co Ltd (CUSIP: 413216300)	HAGO	Telekom Austria AG (CUSIP: 87943Q109)	TELA
Hbos Plc (CUSIP: 42205M106)	HBOS	Telekomunikasi Indonesia Perse (CUSIP: 715684106)	TELI
Hellenic Telecommunications OR (CUSIP: 423325307)	HETE	Telemig Celular Participacoes (CUSIP: 87944E105)	TECP
Henkel AG & Co KGAA (CUSIP: 42550U109 / 42550U208)	HENK	Telesp Participacoes S.A. (CUSIPs: 87952L108 / 87952K100)	TESP



ADR/CUSIPs	Code (To be entered in PART III above)	ADR/CUSIPs	Code (To be entered in PART III above)
Hillsdown Holdings Plc (CUSIP: 432586204)	HILL	Telkom SA Soc Ltd (CUSIP: 879603108)	TELK
HMS Hydraulic Machines & Syste (CUSIP: 40425X100)	HMSH	Telstra Corp Ltd (CUSIPs: 87969N204 / 87969N303 / 87969N105)	TEST
Hoechst Gmbh (CUSIP: 434390308)	HOEC	Ternium Mexico SA De Cv (CUSIP: 880890108)	TERN
Hot Telecommunication System I (CUSIP: 576561104)	нотт	Tesco Plc (CUSIPs: 881575302 / 098561202)	TESC
Hydromet Corp Ltd (CUSIP: 449003102)	HYDR	Teva Pharmaceutical Industries (CUSIPs: 881624209 / 16361E108 / 50540H104)	TEVA
Igate Computer Systems Ltd (CUSIP: 703248203)	IGAT	Tiger Brands Ltd (CUSIPs: 88673M102 / 88673M201 / 886911106)	TIGR
Imperial Holdings Ltd (CUSIPs: 452833106 / 452833205)	IMPE	TMK Pjsc (CUSIP: 87260R300)	ТМКР
Incitec Pivot Ltd (CUSIP: 45326Y206)	INCI	Total SA (CUSIPs: 89151E109 / 716485206)	тота
Indosat Tbk Pt (CUSIP: 744383100)	INDO	Transcom Worldwide SA (CUSIPs: 893234104 / 893545103 / 893545202 / 894116102)	TRAN
Indusind Bank Ltd (CUSIP: 45579Q108)	INBA	Trend Micro Inc/Japan (CUSIP: 89486M206)	TREN
Industrias Bachoco Sab de CV (CUSIP: 456463108)	INDB	Turkiye Garanti Bankasi AS (CUSIPs: 900148305 / 900148701 / 900151101)	TURK
Industrie Natuzzi S.P.A. (CUSIP: 456478106)	INDU	Tv Azteca Sab De Cv (CUSIP: 901145102)	TVAZ
Informa PIc (CUSIPs: 093529204 / 45672B206 / 45672B305 / 90265U203 / 90969M101)	INFO	UBS AG (CUSIP: 90261R105)	UBSA
Intercontinental Hotels Group (CUSIPs: 45857P103 / 458573102 / 458573201)	INTE	Ultrapar Participacoes SA (CUSIP: 90400P101)	ULTR
International Power Ltd (CUSIP: 46018M104)	INPO	Unibail-Rodamco SE (CUSIP: 960224103)	UNIB
Intesa Sanpaolo Spa (CUSIPs: 05944F104 / 46115H107)	INTS	Unified Energy System Oao (CUSIPs: 904688108 / 904688405)	UNIF
Invensys Ltd (CUSIP: 461204109)	INVE	Union Andina de Cementos SAA (CUSIP: 904845104)	UNIO
Inversiones Aguas Metropolitan (CUSIP: 46128Q201)	INAM	United Overseas Bank Ltd (CUSIPs: 911271302/ 910903301)	UNIT
Itau Unibanco Holding SA (CUSIPs: 059602102 / 465562106 / 059602201 / 90458E107)	ITAU	Usinas Siderurgicas de Minas G (CUSIP: 917302408)	USIN
<b>J Sainsbury Plc</b> (CUSIP: 466249208)	SAIN	Van Der Moolen Holding Nv (CUSIP: 921020103)	VAND
Johnson Matthey Plc (CUSIPs: 479142309 / 479142408 / 479142507)	JOHN	Veolia Environnement SA (CUSIP: 92334N103)	VEOL
Julius Baer Group Ltd (CUSIP: 481369106)	JULI	Vimpel-Communications Pjsc (CUSIPs: 92719A106 / 92719A304)	VIMP
Kidde Plc (CUSIP: 493793103)	KIDD	Vina Concha y Toro SA (CUSIP: 927191106)	VINA



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ADR/CUSIPs	Code (To be entered in PART III above)	ADR/CUSIPs	Code (To be entered in PART III above)
Kingfisher Plc (CUSIPs: 495724403 / 495724205 / 495724304)	KING	Vivendi SA (CUSIPs: 137041208 / 204390108 / 419312202 / 92851S105 / 92851S204)	VIVE
Kingsgate Consolidated Ltd (CUSIP: 496362104)	KIGA	Vodafone Airtouch Plc (CUSIP: 92857T107)	VODA
<b>Klabin SA</b> (CUSIPs: 45647P108 / 49834M100)	KLAB	Vodafone Group Plc (CUSIPs: 92857W308 / 698113107 / 87926R108 / 92857W209 / 92857W100 / 92858M101)	VODG
Komatsu Ltd (CUSIP: 500458401)	KOMA	Wacoal Holdings Corp (CUSIP: 930004205)	WACO
Komercni Banka AS (CUSIP: 500459409)	KOME	Wal-mart de Mexico Sab De Cv (CUSIP: 93114W107)	WALM
Koninklijke Ahold N.V. (CUSIPs: 500467303 / 500467402 / 500467AA3)	KONI	<b>Wavecom SA</b> (CUSIP: 943531103)	WAVE
Koor Industries Ltd (CUSIP: 500507108)	KOOR	Westpac Banking Corporation (CUSIPs: 789547106 / 961214301)	WEST
Kroton Educacional SA (CUSIP: 50106A402)	KROT	Wind Hellas Telecommunications (CUSIPs: 859823106 / 88706Q104)	WIND
Kumba Iron Ore Ltd (CUSIP: 50125N104)	KUMB	WMC Limited (CUSIPs: 928947100 / 92928R106)	WMCL
Ladbroke Group Inc (CUSIPs: 505727305 / 505730101)	LADB	Woodside Petroleum Ltd (CUSIP: 980228308)	WOOD
Lagardere Sca (CUSIP: 507069102)	LAGA	Woolworths Holdings Ltd/South (CUSIPs: 480209402 / 98088R109 / 98088R505)	WOOL
<b>Lan airlines S.A.</b> (CUSIP: 501723100)	LANA	Zurich Insurance Group AG (CUSIPs: 01959Q101 / 98982M107 / 989825104)	ZURI



#### PART IV - RELEASE OF CLAIMS AND SIGNATURE

### YOU MUST READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 15 OF THIS CLAIM FORM.

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Claim against any of the Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Claims against any of the Releasees.

### **CERTIFICATION**

By signing and submitting this Claim Form, the Claimant(s) or the person(s) who represent(s) the Claimant(s) certifies (certify), as follows:

- 1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the Releases provided for in the Settlement and the terms of the Plan of Allocation;
- 2. that the Claimant(s) is a (are) Settlement Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Settlement Class as set forth in the Notice;
  - 3. that the Claimant has not submitted a request for exclusion from the Settlement Class;
- 4. that I (we) received the cash distributions identified in the Claim Form and have not assigned the claim against the Defendant or any of the other Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
- 5. that the Claimant(s) has (have) not submitted any other claim covering the same cash distributions identified in the Claim Form and knows (know) of no other person having done so on the Claimant's (Claimants') behalf:
- 6. that the Claimant(s) submit(s) to the jurisdiction of the Court with respect to Claimant's (Claimants') claim and for purposes of enforcing the Releases set forth herein;
- 7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Plaintiffs' Counsel, the Claims Administrator or the Court may require;
- 8. that the Claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the Court's summary disposition of the determination of the validity or amount of the claim made by this Claim Form;
- 9. that I (we) acknowledge that the Claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
- 10. that the Claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the Claimant(s) is (are) exempt from backup withholding or (b) the Claimant(s) has (have) not been notified by the IRS that he/she/it/they is/are subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the Claimant(s) that he/she/it/they is/are no longer subject to backup withholding. If the IRS has notified the Claimant(s) that he/she/it/they is/are subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.



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UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND

Signature of Claimant	Date (mm/dd/yyyy)
Print Name	
Signature of Joint Claimant, if any	Date (mm/dd/yyyy)
Print Name  If the Claimant is other than an individual, or is not the person c	ompleting this form, the following also must be provided:
Signature of person signing on behalf of Claimant	Date (mm/dd/yyyy)
Print Name	

#### REMINDER CHECKLIST

- 1. Please sign the above Release and certification. If this Claim Form is being made on behalf of joint Claimants, then both must sign.
- 2. Remember to attach only **copies** of acceptable supporting documentation, as these documents will not be returned to you.
- 3. Please do not highlight any portion of the Claim Form or any supporting documents.

CORRECT COPIES OF WHAT THEY PURPORT TO BE.

- 4. Keep copies of the completed Claim Form and documentation for your own records.
- The Claims Administrator will acknowledge receipt of your Claim Form by mail within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, PLEASE CALL THE CLAIMS ADMINISTRATOR TOLL-FREE AT 1-866-447-6210.
- 6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, please send the Claims Administrator written notification of your new address. If you change your name, please inform the Claims Administrator.
- 7. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the above address or toll-free at 1-866-447-6210, or visit <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a>. Please DO NOT call BNYM or its counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY PREPAID, FIRST-CLASS MAIL, OR SUBMITTED ONLINE AT <u>WWW.BNYMADRFXSETTLEMENT.COM</u>, **POSTMARKED (OR RECEIVED) NO LATER THAN AUGUST 15, 2019**. IF MAILED, THE CLAIM FORM SHOULD BE ADDRESSED AS FOLLOWS:

Bank of New York Mellon ADR FX Settlement c/o KCC Class Action Services P.O. Box 505030 Louisville, KY 40233-5030

If mailed, a Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before August 15, 2019 is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.



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## EXHIBIT 2

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IN RE: THE BANK OF NEW YORK	16-CV-00212-JPO-JLC
MELLON ADR FX LITIGATION	
	ECF Case
This Document Relates to:	
ALL ACTIONS	

# DECLARATION OF JEANNE C. FINEGAN, APR CONCERNING IMPLEMENTATION OF NOTICE TO SETTLEMENT CLASS MEMBERS THROUGH MULTI-MEDIA NOTICE PROGRAM

#### **INTRODUCTION**

- 1.Ā I am President and Chief Media Officer of HF Media, LLC ("HF Media"), a division of Heffler Claims Group LLC ("Heffler"). This Declaration is based upon my personal knowledge as well as information provided to me by my associates and staff, including information reasonably relied upon in the fields of advertising media and communications.
- 2.Ā Pursuant to the Order Approving Issuance of Notice ("Notice Order"), Dkt. No. 149, dated January 17, 2019, p. 5, my firm, HF Media, was retained by Lead Plaintiffs' Counsel as Publication Notice Plan Administrator to conduct the Publication Notice Plan for the Settlement.<sup>1</sup>
- 3.Ā I submit this Declaration in order to provide the Court and the Parties to the Action a report regarding the successful implementation of the Publication Notice Plan, i.e., the portion of the

<sup>&</sup>lt;sup>1</sup> All capitalized terms used herein and not otherwise defined have the meanings set forth in the Notice Order.

Court-approved notice program conducted via, print, online and social media, as well as the overall reach as it relates specifically to the Publication Notice Plan.

- 4.Ā As described more fully below, the Publication Notice Plan was successfully and timely implemented.
- 5.Ā In compliance with the Court's Notice Order, the Publication Notice Plan commenced on January 25, 2019 and was substantially completed by April 16, 2019. The Publication Notice Plan, consisting of notice via media, including print and Internet banner ads and social media, exceeded our original estimated projection as to reach.<sup>2</sup> The Publication Notice Plan, as implemented, reached more than 92 percent of the target audience (i.e., the Settlement Class), on average, 4.4 times.<sup>3</sup>
- 6.Ā Importantly, the successful implementation of the Publication Notice Plan is underscored by Settlement Class Member response, where as of April 26, 2019, a total of 59,433 users have visited the Settlement websites with over 60,300 sessions and over 154,900 page views.<sup>4</sup>

#### **QUALIFICATIONS**

7.Ā A comprehensive description of my credentials and experience that qualify me to provide an expert opinion on the adequacy of the class action notice program in this matter was included in my previous Declaration filed with this Court on January 15, 2019. ECF No. 147-14. In summary, I have served as an expert directly responsible for the design and implementation of hundreds of class action notice programs, including Federal Trade Commission Enforcement actions, some of which are the largest and most complex programs ever implemented in both the

<sup>&</sup>lt;sup>2</sup> As set forth in my previously filed Declaration, I estimated that 90 pecent of Settlement Class Members would be reached, on average, more than 4 times. ECF No. 147-14, at 17.

<sup>&</sup>lt;sup>3</sup> Pursuant to the Notice Order, the Settlement Class is defined as all entities and individuals who at any time during the period January 1, 1997 through the date of the Notice Order (i.e., January 17, 2019) held (directly or indirectly, registered or beneficially), or otherwise claim any entitlement to any payment (whether a dividend, rights offering, interest on capital, sale of shares, or other distribution) in connection with, any American Depositary Share (sometimes known as an American Depositary Receipt) ("ADR") for which The Bank of New York Mellon ("BNYM") acted as the depositary sponsored by an issuer that is identified in the Appendix attached to the Stipulation. For avoidance of doubt, Settlement Class Members include all entities, organizations, and associations regardless of form, including investment funds and pension funds of any kind.

<sup>&</sup>lt;sup>4</sup> This user statistic, provided to me by Kurtzman Carson Consultants LLC, includes only BNYM users on the <a href="https://www.adrfxsettlement.com">www.adrfxsettlement.com</a> landing page and users who specifically typed in the <a href="https://www.bnymadrfxsettlement.com">www.bnymadrfxsettlement.com</a> website address prominently displayed in the Summary Notice published in magazines and newspapers.

United States and in Canada.

- 8.Ā I was extensively involved as a lead author for "Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions" published by Duke University School of Law. Also, I am a member of the Board of Directors for the Alliance for Audited Media.
- 9.Ā My work includes a wide range of class actions and regulatory and consumer matters, including product liability, construction defect, antitrust, asbestos, medical, pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities, banking, insurance and bankruptcy.
- 10.Ā Additionally, I have been at the forefront of modern notice, including plain language as noted in a RAND study<sup>5</sup>, and importantly, I was the first notice expert to integrate digital media and social media into court-approved legal notice programs. My recent work includes:
  - •Ā Chapman v. Tristar Products, Case No. 1:16-cv-1114, JSG (N.D. Ohio 2018);
  - •Ā Cook et. al v. Rockwell International Corp. and the Dow Chemical Co., Case No. 14-md-02562-RWS (E.D. Mo. 2016); and
  - •Ā In re: TracFone Unlimited Service Plan Litigation, Case No. C-13-3440 EMC (N.D. Cal. 2015).
- 11.Ā In evaluating the adequacy and effectiveness of my notice programs, courts have repeatedly recognized my work as an expert. For example, in:

*Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc.*, Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016), the Honorable Patricia Seitz, in her Final Order and Judgment Granting Plaintiffs Motion for Final Approval of Class Action Settlement, dated July 22, 2016, stated:

"The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. ... There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers... Thus the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. ... The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile

3

<sup>&</sup>lt;sup>5</sup> Deborah R. Hensler et al., CLASS ACTION DILEMMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).

and social media platforms to reach the Settlement Class Members."

- Additionally, in the January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, stated: "I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class."
- 12.Ā In *In Re: Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation*, Case No. 4:14-MD-2562 RWS (E.D. Mo. 2015), the Honorable Rodney Sippel, during the hearing for final approval of the settlement (Hearing for Final Approval, May 19, 2016 transcript p. 49), said:
  - "It is my finding that notice was sufficiently provided to class members in the manner directed in my preliminary approval order and that notice met all applicable requirements of due process and any other applicable law and considerations."
- 13.Ā A comprehensive description of my credentials is attached as **Exhibit A**.

#### **NOTICE PROGRAM SUMMARY**

- 14.Ā In compliance with the Court's Notice Order, the notice program for this matter included the following components:
  - •Ā Direct Mail via Post-Card Notice to all Registered Holder Settlement Class Members listed in the records of BNYM's transfer agent;
  - •Ā Publication of a short form notice (the "Publication Notice" or "Summary Notice") in eight general circulation consumer magazines;
  - •Ā Publication of the Publication Notice two times in three nationally circulated newspapers;
  - •Ā Banner ads in specialty investment e-newsletters;
  - •Ā Online and cross-device display banner advertising specifically targeted to Settlement Class Members over a 79-day period;
    - a.Ā Online banner ads appearing on a custom whitelist of approximately 4,000 prevetted websites, including:
      - i.Ā43 Business Journal websites;
      - ii.ĀA custom whitelist of approximately 140 investment websites;
      - iii.ĀA custom whitelist of approximately 350 local market and top-tier news websites;

- b. ASearch words and terms on Google AdWords;
- c.ĀOnline banner ads appearing over social media channels Facebook, Instagram and LinkedIn;
- •Ā Transmittal of the Publication Notice in the form of a press release over PR Newswire's US1 Newslines with additional targeting to finance influencers;
- •Ā An informational Settlement Website on which the long-form Notice and other important Court documents are posted;
- •Ā A general ADR FX settlement website developed to serve as a landing page for the online banner ads; and
- •Ā A toll-free information line where Settlement Class Members can call 24/7 for more information about the Settlement, including important dates and deadlines, and to request to speak to a live operater during regular business hours.

#### **MULTI-MEDIA NOTICE ELEMENTS SUMMARY**

15.Ā Kurtzman Carson Consultants LLC ("KCC") was retained by Lead Plantiffs' Counsel as the Claims Administrator for the Settlement and was responsible for providing mailed notice to the Registered Holder Settlement Class Members identified in BNYM's transfer records and establishing the websites and toll-free information line. KCC is also responsible for processing the claims received for the Settlement. KCC's efforts are detailed in the Declaration of Lance Cavallo which is being submitted, along with this Declaration, with Lead Plaintiffs' settlement submission. 16.Ā My firm, HF Media, was retained by Lead Plaintiffs' Counsel to conduct the multi-media notice campaign for the Settlement, referred to herein as the Publication Notice Plan. The Publication Notice Plan is detailed below.

17.Ā As noted above, the Publication Notice Plan was successfully and timely implemented, commencing on January 25, 2019 and continuing for a period of 79 days. As implemented, the Publication Notice Plan reached more than 92 percent of the target audience, on average, 4.4 times.

#### **MEDIA OUTREACH – PUBLICATIONS**

#### **MAGAZINES**

18.Ā The magazines below were selected for the Publication Notice Plan in this matter based on media research data provided by GfK Mediamark Research and Intelligence LLC ("MRI"), which

identified the magazines with the highest coverage and index<sup>6</sup> against the target audience (i.e., the Settlement Class) characteristics. <sup>7</sup>

- 19.Ā <u>AARP Bulletin</u> covers news and policy that meets the needs of adults 50+ with information written just for them. AARP Bulletin's circulation is 23,000,000. A one-third page, black and white Publication Notice was published once in the national edition of this publication on April 5, 2019. 20.Ā <u>Fortune</u> covers news and information of interest to the affluent and business decision-makers. Fortune's circulation is 856,000. A one-half page, black and white Publication Notice was published once in this magazine on March 18, 2019.
- 21.Ā <u>Money Magazine</u> covers finance topics ranging from investing, saving, retirement and taxes to family finance issues like paying for college, credit, career and home improvement. *Money's* circulation is 1,580,000. A one-half page, black and white Publication Notice was published once in this magazine on March 15, 2019.
- 22.Ā <u>National Geographic</u> is the flagship magazine of the National Geographic Society, which chronicles exploration and adventure, as well as changes that impact life on Earth. Editorial coverage encompasses people and places of the world, with an emphasis on human involvement in a changing universe. *National Geographic* has a circulation of 2,943,000. A one-half page, black and white Publication Notice was published once in the national edition of this magazine on March 27, 2019.
- 23.Ā <u>People Magazine</u> is a general circulation magazine reporting on entertainment. <u>People Magazine</u> reports a circulation of 3,418,000. A one-half page, black and white Publication Notice was published once in the national edition of this magazine on February 22, 2019.

<sup>&</sup>lt;sup>6</sup> Index is a media metric that describes a target audience's inclination to use a given outlet. An index over 100 suggests a target population's inclination to use a medium to a greater degree than the rest of the population. For example, an index of 157 would mean that the target is 57 percent more likely than the rest of the population to use a medium.

<sup>&</sup>lt;sup>7</sup> It is not unusual in the course of implementing a notice program to make modifications as a result of the publisher review process. All advertising is subject to publisher approval, which can sometimes include an extensive legal review. Publishers retain the right to decline advertising; such was the case here. *Golf Magazine, Forbes, Delta Sky Magazine and United Hemespheres* were included in my original notice plan proposal; however, during the publisher review process, HF Media was advised by *Golf Magazine, Forbes, Delta Sky Magazine and United Hemespheres*, that after legal review, they were declining to publish the Summary Notice for this matter. As a result, HF Media found suitable substitute replacement publications, including *Sports Illustrated*, which replaced *Golf Magazine, Fortune*, which replaced *Forbes Magazine*, and *Time Magazine*, which replaced the in-flight magazines. These adjustments not only maintained, but helped to increase the original target audience reach objectives and integrity of the Publication Notice Plan.

- 24.Ā <u>Time Magazine</u> covers issues and events that define and impact our time. *Time Magazine's* circulation is 2,321,000. A half-page, black and white Publication Notice was published once in this magazine on March 22, 2019.
- 25. $\bar{A}$  <u>Travel + Leisure</u> reaches sophisticated travelers and features immersive, inspiring travel lifestyle content. Travel + Leisure reports a circulation of 953,000. A half-page, black and white Publication Notice was published once in the national edition of this magazine on March 22, 2019.
- 26.Ā <u>Sports Illustrated</u> covers the world of sports through unparalleled access, emotional storytelling and in-depth reporting. *Sports Illustrated's* circulation is 2,759,000. A one-half page, black and white Publication Notice was published once in this magazine on March 7, 2019.
- 27.Ā In total the magazines selected for this Publication Notice Plan have a combined circulation of 37,830,000 with more than 140,000,000 readers.<sup>8</sup>
- 28.Ā Attached as **Exhibit B** are tear sheets of the published Summary Notice in these magazines.

#### SPECIALTY INVESTMENT AND NATIONALLY CIRCULATED NEWSPAPERS

- 29.Ā <u>Investor's Business Daily</u> provides exclusive stock lists, investing data, stock market research, education and the latest financial and business news to help investors make more money in the stock market. *IBD*'s circulation is 106,000. A 1/6 page, black and white Publication Notice was published twice in this newspaper on February 11, 2019 and February 25, 2019.
- 30.Ā <u>The Wall Street Journal</u> is distributed nationally and provides news and information on stock and business. The WSJ's circulation is 2,069,000. A 1/6 page, black and white Publication Notice was published twice in this newspaper on February 11, 2019 and February 25, 2019.
- 31.Ā <u>The New York Times</u> is distributed nationally and provides news and information on stock and business. The *NYT*'s circulation is 510,000. A 1/6 page, black and white Publication Notice was published twice in this newspaper on February 11, 2019 and February 25, 2019.
- 32.Ā Attached as **Exhibit** C are tear sheets of the published Summary Notice in these newspapers.

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<sup>&</sup>lt;sup>8</sup> Each magazine has a pass-along factor. These are readers in addition to the subscriber who read a publication. For example, *Sports Illustrated* has a circulation of 2,759,000 and a pass along factor of 5.45 to deliver more than 15,000,000 readers.

#### **E-NEWSLETTERS**

33.Ā Further, the Publication Notice Plan was enhanced through e-newsletter distribution with one insertion in the <u>Wall Street Journal Markets</u>, which has a circulation of 154,000 and eleven insertions in <u>Investor's Business Daily Market Prep</u>, which has a circulation of 91,000. The enewsletter was published on February 20, 2019 in *Wall Street Journal Markets* and February 25, 2019 through March 3, 2019 in *Investor's Business Daily Market Prep*.

34.Ā Attached as **Exhibit D** are copies of the banner ads published in the e-newsletters.

#### **MEDIA OUTREACH - INTERNET**

35.Ā Internet advertising was a particularly helpful method of providing notice in this case, given that according to MRI, nearly 98 percent of the target audience is online.

36.Ā In total, over 121 million online impressions were served to the target audience across a whitelist<sup>9</sup> of approximately 4,000 pre-vetted websites, multiple exchanges, and the social media platforms Facebook, Instagram and LinkedIn. We also used retargeting<sup>10</sup> to provide additional reminders for those who expressed interest in the ads.

37.Ā Further, our media outreach included banner ads on local Business Journal websites, as well as top-tier national news and local news websites. Online banner ads were served across multiple devices including desktop, tablet and mobile devices.

38.Ā The online banner ads provided information for visitors to self-identify as potential Settlement Class Members, allowing them to "click" on the banner ad and link directly to the "landing page" website (<a href="www.ADRFXSettlement.com">www.ADRFXSettlement.com</a>), with a further link to the Settlement Website for more detailed information regarding the Settlement, important dates and deadlines, downloadable copies of the long-form Notice, Claim Form and other relevant documents, and the ability to submit a Claim Form online.

39.Ā To further enhance this Publication Notice Plan, HF Media employed Google AdWords

<sup>&</sup>lt;sup>9</sup> A whitelist is a custom list of acceptable websites where ad content may be served. Creating a whitelist helps to mitigate ad fraud, ensure ads will be served in relevant digital environments to the target audience and helps to ensure that ads will not appear next to offensive or objectionable content.

<sup>&</sup>lt;sup>10</sup> Retargeting is an online reminder ad. Here, HF Media served additional ads to people on Facebook and Instagram who engaged with our ads, either by clicking or commenting on them.

keyword search terms. Accordingly, when identified target phrases and keywords were used in a search on Google's search engine, a link to the Settlement website appeared on the search result page. Representative key terms included, but were not limited to: BNYM ADR Settlement, ADR Settlement and ADR class action, among others.

40.Ā Attached as **Exhibit** E are examples of the banner ads.

#### SOCIAL MEDIA

41.Ā The Publication Notice Plan also included the social media platforms Facebook, Instagram and LinkedIn. On Facebook and Instagram, targeting included adults who are 35 years of age and older with high household incomes in addition to those who liked or followed investment pages such as *Motley Fool, Investing.com, MarketWatch, Morning Star, Seeking Alpha, The Street*, the *Wall Street Journal, Yahoo! Finance, MarketWatch, Bloomberg, Financial Times* and others. On LinkedIn, targeting included individuals who are in top management positions in companies with 51 or more employees.

42.Ā Attached as **Exhibit F** are copies of the social media ads.

#### **PRESS RELEASE**

43.Ā In compliance with the Notice Order, the Publication Notice was issued across PR Newswire's US1 Newslines with additional targeting to finance influencers on January 25, 2019. My staff and I monitored various media channels for subsequent news articles that mentioned our press release and identified 151 various media pick-ups.

44. $\bar{A}$  Attached as **Exhibit G** is a copy of the pick-up report.

#### SETTLEMENT WEBSITE AND TOLL-FREE INFORMATION LINE

- 45.Ā The Court-authorized Claims Administrator, KCC, maintains the Settlement Website. The Settlement Website is an important component of the notice program for the Settlement as it allows potential Settlement Class Members to get information about the Settlement, obtain a copy of the detailed long-form Notice, and/or submit a Claim Form.
- 46.Ā I am informed by the Claims Administrator that the Settlment Website was optimized for mobile visitors so that information loads on their mobile device quickly. The Settlement Website address was prominently displayed in the Publication Notices, as well as the Post-Card Notices

mailed to Registered Holder Settlement Class Members. KCC has informed me that, as of April 26, 2019, a total of 59,433 users visited the Settlement websites with over 60,300 sessions and

over 154,900 page views.

47.Ā I am also informed by KCC that, as of April 26, 219, the IVR has received a total of 10,830

calls.

**CONCLUSION** 

48.Ā In my opinion, the robust outreach efforts described above reflect a particularly

appropriate, highly targeted and contemporary way to employ notice to the Settlement Class in

this matter, and in particular, the Non-Registered Holder Settlement Class Members who did not

receive direct mailed notice. Importantly, these outreach efforts are consistent with the flexibility

of notice provided in Rule 23.

49.Ā Through the Publication Notice Plan detailed above, an estimated 92 percent of targeted

Settlement Class Members were reached, on average, 4.4 times. In my experience, this is an

excellent result.

50.Ā Moreover, in my opinion, the efforts used in this Publication Notice Plan were of the

highest modern communication standards, embraced in FRCP Rule 23, and were reasonably

calculated to provide notice that is not only consistent, but exceeds best practicable court approved

notice programs in similar matters which are consistent with the Federal Judicial Center's

guidelines concerning appropriate reach.

51.Ā I declare under the penalty of perjury, under the laws of the United States of America, that

the foregoing is true and correct. Executed on April 29, 2019, in Tigard, Oregon.

# Exhibit A



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Jeanne Finegan, APR, is President and Chief Media Officer of HF Media, LLC, a division of Heffler Claims Group. She is a member of the Board of Directors for the prestigious Alliance for Audited Media ("AAM"), and was named by *Diversity Journal* as one of the "Top 100 Women Worth Watching." She is a distinguished legal notice and communications expert with more than 30 years of communications and advertising experience.

She was a lead contributing author for Duke University's School of Law, "Guidelines and Best Practices Implementing Amendments to Rule 23 Class Action Settlement Provisions." And more recently, she has been involved with New York School of Law and The Center on Civil Justice ("CCJ") assisting with a class action settlement data analysis and comparative visualization tool called the called the Aggregate Litigation Project, designed to help judges make decisions in aggregate cases on the basis of data as opposed to anecdotal information. Moreover, her experience also includes working with the Special Settlement Administrator's team to assist with the outreach strategy for the historic Auto Airbag Settlement, In re: Takata Airbag Products Liability Litigation MDL 2599.

During her tenure, she has planned and implemented over 1,000 high-profile, complex legal notice communication programs. She is a recognized notice expert in both the United States and in Canada, with extensive international notice experience spanning more than 170 countries and over 40 languages.  $\bar{\bf A}$ 

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Ms. Finegan has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications. She has served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns. Further, she has planned and implemented large-scale government enforcement notice programs for the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

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Ms. Finegan is accredited in Public Relations (APR) by the Universal Accreditation Board, which is a program administered by the Public Relations Society of America (PRSA), and is also a recognized member of the Canadian Public Relations Society (CPRS). She has served on examination panels for APR candidates and worked *pro bono* as a judge for prestigious PRSA awards. **Ā** 

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Ms. Finegan has provided expert testimony before Congress on issues of notice, and expert testimony in both state and federal courts regarding notification campaigns. She has conducted



numerous media audits of proposed notice programs to assess the adequacy of those programs under Fed R. Civ. P. 23(c)(2) and similar state class action statutes.  $\bar{\mathbf{A}}$ 

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She was an early pioneer of plain language in notice (as noted in a RAND study,  $^1$ ) and continues to set the standard for modern outreach as the first notice expert to integrate social and mobile media into court approved legal notice programs.  $\bar{\mathbf{A}}$ 

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In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include product liability, construction defect, antitrust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, government enforcement actions, securities, banking, insurance, mass tort, restructuring and product recall.  $\bar{\bf A}$ 

In evaluating the adequacy and effectiveness of Ms. Finegan's notice campaigns, courts have repeatedly recognized her excellent work. The following excerpts provide some examples of such judicial approval.

Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc., Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016). In her Final Order and Judgment Granting Plaintiffs Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. ...There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers... Thus the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. ...The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members.

Additionally, in January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, noted:

I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class.

**Cook et. al v. Rockwell International Corp. and the Dow Chemical Co.,** No. 90-cv-00181- KLK (D.Colo. 2017)., aka, Rocky Flats Nuclear Weapons Plant Contamination **[A**n the Order Granting Final Approval, dated April 28, 2017, p.3, the Honorable John L. Kane said:

<sup>1</sup> Deborah R. Hensler et al., CLASS ACTION DILEMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).



The Court-approved Notice Plan, which was successfully implemented by [HF Media- emphasis added] (see Doc. 2432), constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice Plan that was implemented, as set forth in Declaration of Jeanne C. Finegan, APR Concerning Implementation and Adequacy of Class Member Notification (Doc. 2432), provided for individual notice to all members of the Class whose identities and addresses were identified through reasonable efforts, ... and a comprehensive national publication notice program that included, inter alia, print, television, radio and internet banner advertisements. ...Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Notice Plan provided the best notice practicable to the Class.

*In re: Domestic Drywall Antitrust Litigation,* MDL. No. 2437, in the U.S. District Court for the Eastern District of Pennsylvania. For each of the four settlements, Finegan implemented and extensive outreach effort including traditional, online, social, mobile and advanced television and online video. In the Order Granting Preliminary Approval to the IPP Settlement, Judge Michael M. Baylson stated:

"The Court finds that the dissemination of the Notice and summary Notice constitutes the best notice practicable under the circumstances; is valid, due, and sufficient notice to all persons... and complies fully with the requirements of the Federal rule of Civil Procedure."

Warner v. Toyota Motor Sales, U.S.A. Inc., Case No 2:15-cv-02171-FMO FFMx (C.D. Cal. 2017). In the Order Re: Final Approval of Class Action Settlement; Approval of Attorney's Fees, Costs & Service Awards, dated May 21, 2017, the Honorable Fernando M. Olguin stated:

Finegan, the court-appointed settlement notice administrator, has implemented the multiprong notice program. ...the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement. (See Dkt. 98, PAO at 25-28).

Michael Allagas, et al., v. BP Solar International, Inc., et al., BP Solar Panel Settlement, Case No. 3:14-cv-00560- SI (N.D. Cal., San Francisco Div. 2016). In the Order Granting Final Approval, Dated December 22, 2016, The Honorable Susan Illston stated:

Class Notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and d. fully satisfied the requirements of the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23(c)(2) and (e), the



United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.

*Foster v. L-3 Communications EOTech*, Inc. et al (6:15-cv-03519), Missouri Western District Court.

In the Court's Final Order, dated July 7, 2017, The Honorable Judge Brian Wimes stated: "The Court has determined that the Notice given to the Settlement Class fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable."

*In re: Skechers Toning Shoes Products Liability Litigation,* No. 3:11-MD-2308-TBR (W.D. Ky. 2012). In his Final Order and Judgment granting the Motion for Preliminary Approval of Settlement, the Honorable Thomas B. Russell stated:

... The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.

**Brody v. Merck & Co., Inc., et al,** No. 3:12-cv-04774-PGS-DEA (N.J.) (Jt Hearing for Prelim App, Sept. 27, 2012, transcript page 34). During the Hearing on Joint Application for Preliminary Approval of Class Action, the Honorable Peter G. Sheridan acknowledged Ms. Finegan's work, noting:

Ms. Finegan did a great job in testifying as to what the class administrator will do. So, I'm certain that all the class members or as many that can be found, will be given some very adequate notice in which they can perfect their claim.

**Quinn v. Walgreen Co., Wal-Mart Stores Inc.,** 7:12 CV-8187-VB (NYSD) (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti stated:

"The notice plan was the best practicable under the circumstances. ... [and] "the proof is in the pudding. This settlement has resulted in more than 45,000 claims which is 10,000 more than the Pearson case and more than 40,000 more than in a glucosamine case pending in the Southern District of California I've been advised about. So the notice has reached a lot of people and a lot of people have made claims."

*In Re: TracFone Unlimited Service Plan Litigation, No. C-13-3440 EMC (ND Ca).* In the Final Order and Judgment Granting Class Settlement, July 2, 2015, the Honorable Edward M. Chen noted:

"...[D]epending on the extent of the overlap between those class members who will automatically receive a payment and those who filed claims, the total claims rate is estimated to be approximately 25-30%. This is an excellent result...



In Re: Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation, Case No. 4:14-MD-2562 RWS (E.D. Mo. 2015), (Hearing for Final Approval, May 19, 2016 transcript p. 49). During the Hearing for Final Approval, the Honorable Rodney Sippel said:

It is my finding that notice was sufficiently provided to class members in the manner directed in my preliminary approval order and that notice met all applicable requirements of due process and any other applicable law and considerations.

**DeHoyos, et al. v. Allstate Ins. Co.**, No. SA-01-CA-1010 (W.D.Tx. 2001). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. ... This program was vigorous and specifically structured to reach the African-American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts. Specifically, in order to reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach which included national magazines; magazines specifically appropriate to the targeted audiences; and newspapers in both English and Spanish.

*In re: Reebok Easytone Litigation,* No. 10-CV-11977 (D. MA. 2011). The Honorable F. Dennis Saylor IV stated in the Final Approval Order:

The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and [Ms. Finegan's] Declaration and the notice dissemination methodology implemented pursuant to the Settlement Agreement and this Court's Preliminary Approval Order... constituted the best practicable notice to Class Members under the circumstances of the Actions.

ÈI EÈĒĀ ĢĀĆ ĒĐGĎĒ Ā ČĆ Ā PĒĒĀĆ ĒĐGĎĒ Ā ĀĢĒĀĒĢĒŠGĒ LLC, No 12-10513 (D. MA) The Honorable Douglas P. Woodlock stated in the Final Memorandum and Order:

...[O]n independent review I find that the notice program was robust, particularly in its online presence, and implemented as directed in my Order authorizing notice. ...I find that notice was given to the Settlement class members by the best means "practicable under the circumstances." Fed.R.Civ.P. 23(c)(2).

**Gemelas v. The Dannon Company Inc.,** No. 08-cv-00236-DAP (N.D. Ohio). In granting final approval for the settlement, the Honorable Dan A. Polster stated:



In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, [Ms. Finegan] caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. ... The distribution of Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.

**Pashmova v. New Balance Athletic Shoes, Incl**, 1:11-cv-10001-LTS (D. Mass.). The Honorable Leo T. Sorokin stated in the Final Approval Order:

The Class Notice, the Summary Settlement Notice, the web site, and all other notices in the Settlement Agreement and the Declaration of [Ms Finegan], and the notice methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Actions, the terms of the Settlement and their rights under the settlement ... met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.

*Hartless v. Clorox Company*, No. 06-CV-2705 (CAB) (S.D.Cal.). In the Final Order Approving Settlement, the Honorable Cathy N. Bencivengo found:

The Class Notice advised Class members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.

**McDonough et al v. Toys 'R' Us et al,** No. 09:-cv-06151-AB (E.D. Pa.). In the Final Order and Judgment Approving Settlement, the Honorable Anita Brody stated:

The Court finds that the Notice provided constituted the best notice practicable under the circumstances and constituted valid, due and sufficient notice to all persons entitled thereto.

*In re: Pre-Filled Propane Tank Marketing & Sales Practices Litigation,* No. 4:09-md-02086-GAF (W.D. Mo.) In granting final approval to the settlement, the Honorable Gary A. Fenner stated:



The notice program included individual notice to class members who could be identified by Ferrellgas, publication notices, and notices affixed to Blue Rhino propane tank cylinders sold by Ferrellgas through various retailers. ... The Court finds the notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process and provided to the Class the best notice practicable under the circumstances.

*Stern v. AT&T Mobility Wireless*, No. 09-cv-1112 CAS-AGR (C.D.Cal. 2009). In the Final Approval Order, the Honorable Christina A. Snyder stated:

[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.

*In re: Processed Egg Prods. Antitrust Litig.*, MDL No. 08-md-02002 (E.D.P.A.). In the Order Granting Final Approval of Settlement, Judge Gene E.K. Pratter stated:

The Notice appropriately detailed the nature of the action, the Class claims, the definition of the Class and Subclasses, the terms of the proposed settlement agreement, and the class members' right to object or request exclusion from the settlement and the timing and manner for doing so.... Accordingly, the Court determines that the notice provided to the putative Class Members constitutes adequate notice in satisfaction of the demands of Rule 23.

*In re Polyurethane Foam Antitrust Litigation*, 10- MD-2196 (N.D. OH). In the Order Granting Final Approval of Voluntary Dismissal and Settlement of Defendant Domfoam and Others, the Honorable Jack Zouhary stated:

The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. The Notice constituted the most effective and best notice practicable under the circumstances of the Settlement Agreements, and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice.

**Rojas v Career Education Corporation**, No. 10-cv-05260 (N.D.E.D. IL) In the Final Approval Order dated October 25, 2012, the Honorable Virgina M. Kendall stated:

The Court Approved notice to the Settlement Class as the best notice practicable under the circumstance including individual notice via U.S. Mail and by email to the class members whose addresses were obtained from each Class Member's wireless carrier or from a commercially reasonable reverse cell phone number look-up service, nationwide magazine publication, website publication, targeted on-line advertising, and a press release. Notice has been successfully implemented and satisfies the requirements of the Federal Rule of Civil Procedure 23 and Due Process.



Golloher v Todd Christopher International, Inc. DBA Vogue International (Organix), No. C 1206002 N.D CA. In the Final Order and Judgment Approving Settlement, the Honorable Richard Seeborg stated:

The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.

**Stefanyshyn v. Consolidated Industries**, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:

The long and short form notices provided a neutral, informative, and clear explanation of the Settlement. ... The proposed notice program was properly designed, recommended, and implemented ... and constitutes the "best practicable" notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements. ... The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.

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McGee v. Continental Tire North America, Inc. et al, No. 06-6234-(GEB) (D.N.J.).

The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices,

Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al., No. 04-2702 (JLL) (D.N.J.). The Court stated that:

[A]II of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices. ... By working with a nationally syndicated media research firm, [Finegan's



firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). . . . The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).

In re: Nortel Network Corp., Sec. LitigÍ, No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). Ms. Finegan designed and implemented the extensive United States and Canadian notice programs in this case. The Canadian program was published in both French and English, and targeted virtually all investors of stock in Canada. See www.nortelsecuritieslitigation.com. Of the U.S. notice program, the Honorable Loretta A. Preska stated:

The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement ... constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

Regarding the B.C. Canadian Notice effort: *Jeffrey v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honourable Mr. Justice Groberman said:

The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages have been available through the worldwide web site nortelsecuritieslitigation.com on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.

*Mayo v. Walmart Stores and Sam's Club*, No. 5:06 CV-93-R (W.D.Ky.). In the Order Granting Final Approval of Settlement, Judge Thomas B. Russell stated:

According to defendants' database, the Notice was estimated to have reached over 90% of the Settlement Class Members through direct mail. The Settlement Administrator ... has classified the parties' database as 'one of the most reliable and comprehensive databases [she] has worked with for the purposes of legal notice.'... The Court thus reaffirms its findings and conclusions in the Preliminary Approval Order that the form of the Notice and manner of giving notice satisfy the requirements of Fed. R. Civ. P. 23 and affords due process to the Settlement Class Members.



Fishbein v. All Market Inc., (d/b/a CEGAFEF) No. 11-cv-05580 (S.D.N.Y.). In granting final approval of the settlement, the Honorable J. Paul Oetken stated:

"The Court finds that the dissemination of Class Notice pursuant to the Notice Program...constituted the best practicable notice to Settlement Class Members under the circumstances of this Litigation ... and was reasonable and constituted due, adequate and sufficient notice to all persons entitled to such notice, and fully satisfied the requirements of the Federal Rules of Civil Procedure, including Rules 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable laws."

**Lucas, et al. v. Kmart Corp.**, No. **Ā**9-cv-01923 (D.Colo.), wherein the Court recognized Jeanne Finegan as an expert in the design of notice programs, and stated:

The Court finds that the efforts of the parties and the proposed Claims Administrator in this respect go above and beyond the "reasonable efforts" required for identifying individual class members under F.R.C.P. 23(c)(2)(B).

In re: Johns-Manville Corp. ÏĆĞĪĞĞRĦĀËĠĐĞĀ ĞËĘĀĆÈĞĞĔÈÈÇĞĀAFĖ Ė FĘĀÅĎHĀÀŘÈĐĞĀ ĐĞĦĀ ĎĘEĀÄĎHĎËŘÆĞĞĚÈĘĞĪ No 82-11656, 57, 660, 661, 665-73, 75 and 76 (BRL) (Bankr. S.D.N.Y.). The nearly half-billion dollar settlement incorporated three separate notification programs, which targeted all persons who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company. In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, slip op. at 47-48 (Aug. 17, 2004), the Honorable Burton R. Lifland, Chief Justice, stated:

As demonstrated by Findings of Fact (citation omitted), the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and far exceeded the minimum notice required. . . . The results simply speak for themselves.

**Pigford v. Glickman and U.S. Department of Agriculture** \(\bar{A}\)No. 97-1978. 98-1693 (PLF) (D.D.C.). This matter was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commended the parties with respect to the notice program, stating;

The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television stations. . . . The Court concludes that class members have received



more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree.

*In re: Louisiana-Pacific Inner-Seal Siding Litig.*, Nos. 879-JE, and 1453-JE (D.Or.). Under the terms of the Settlement, three separate notice programs were to be implemented at three-year intervals over a period of six years. In the first notice campaign, Ms. Finegan implemented the print advertising and Internet components of the Notice program. In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

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The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement...[through] a broad and extensive multi-media notice campaign.

Additionally, with regard to the third-year notice program for Louisiana-Pacific, the Honorable Richard Unis, Special Master, commented that the notice was:

...well formulated to conform to the definition set by the court as adequate and reasonable notice. Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs. Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to insure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).

*In re: Expedia Hotel Taxes and Fees Litigation*, No. 05-2-02060-1 (SEA) (Sup. Ct. of Wash. in and for King County). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

The Notice of the Settlement given to the Class ... was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.

**Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation**, No. 95-151-M (Cir. Ct., Choctaw County, Ala.). This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Ms. Finegan designed and implemented was national in scope and received the following praise from the Honorable J. Lee McPhearson:

The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified



through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program. ... The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see id. ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign.

*Wilson v. Massachusetts Mut. Life Ins. Co.*, No. D-101-CV 98-02814 (First Judicial Dist. Ct., County of Santa Fe, N.M.). This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. www.insuranceclassclaims.com. In granting preliminary approval to the settlement, the Honorable Art Encinias found:

[T]he Notice Plan [is] the best practicable notice that is reasonably calculated, under the circumstances of the action. ...[and] meets or exceeds all applicable requirements of the law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.

**Sparks v. AT&T Corp.**, No. 96-LM-983 (Third Judicial Cir., Madison County, Ill.). The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Ms. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States. In granting final approval to the settlement, the Court found:

The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements.

In re: Georgia-Pacific Toxic Explosion Litig., No. 98 CVC05-3535 (Ct. of Common Pleas, Franklin County, Ohio). Ms. Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-born toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement, the Honorable Jennifer L. Bunner stated:

[N]otice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified



through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).

*In re: American Cyanamid*, No. CV-97-0581-BH-M (S.D.Al.). The media program targeted Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement.

In re: First Alert Smoke Alarm Litig., No. CV-98-C-1546-W (UWC) (N.D.Al.). Ms. Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class for Settlement Purposes, Preliminarily Approving Class Settlement, Appointing Class Counsel, Directing Issuance of Notice to the Class, and Scheduling a Fairness Hearing, the Honorable C.W. Clemon wrote that the notice plan:

...constitutes due, adequate and sufficient notice to all Class Members; and (v) meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law.

*In re: James Hardie Roofing Litig.,* No. 00-2-17945-65SEA (Sup. Ct. of Wash., King County). The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment, the Honorable Steven Scott stated:

The notice program required by the Preliminary Order has been fully carried out... [and was] extensive. The notice provided fully and accurately informed the Class Members of all material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law.

Barden v. Hurd Millwork Co. Inc., et al, No. 2:6-cv-00046 (LA) (E.D.Wis.) ("The Court approves, as to form and content, the notice plan and finds that such notice is the best practicable under the circumstances under Federal Rule of Civil Procedure 23(c)(2)(B) and constitutes notice in a reasonable manner under Rule 23(e)(1)(")



Altieri v. Reebok, No. 4:10-cv-11977 (FDS) (D.C.Mass.) ("The Court finds that the notices ... constitute the best practicable notice... The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices.")

Marenco v. Visa Inc., No. CV 10-08022 (DMG) (C.D.Cal.) ("[T]he Court finds that the notice plan...meets the requirements of due process, California law, and other applicable precedent. The Court finds that the proposed notice program is designed to provide the Class with the best notice practicable, under the circumstances of this action, of the pendency of this litigation and of the proposed Settlement's terms, conditions, and procedures, and shall constitute due and sufficient notice to all persons entitled thereto under California law, the United States Constitution, and any other applicable law.")

Palmer v. Sprint Solutions, Inc., No. 09-cv-01211 (JLR) (W.D.Wa.) ("The means of notice were reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provide3d with notice.")

In re: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation, No. 1:08-md-01982 RDB (D. Md. N. Div.) ("The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement.")

Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation, No. 01043771 (Sup. Ct. Cal., County of Santa Barbara) ("Notice provided was the best practicable under the circumstances.").

Deke, et al. v. Cardservice Internat'l, Case No. BC 271679, slip op. at 3 (Sup. Ct. Cal., County of Los Angeles) ("The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances.").

Levine, et al. v. Dr. Philip C. McGraw, et al., Case No. BC 312830 (Los Angeles County Super. Ct., Cal.) ("[T]he plan for notice to the Settlement Class ... constitutes the best notice practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class ... and satisfies the requirements of California law and federal due process of law.").

In re: Canadian Air Cargo Shipping Class Actions, Court File No. 50389CP, Ontario Superior Court of Justice, Supreme Court of British Columbia, Quebec Superior Court ("I am satisfied the proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate.").



*Fischer et al v. IG Investment Management, Ltd. et al*, Court File No. 06-CV-307599CP, Ontario Superior Court of Justice.

*In re: Vivendi Universal, S.A. Securities Litigation*, No. 02-cv-5571 (RJH)(HBP) (S.D.N.Y.).

In re: Air Cargo Shipping Services Antitrust Litigation, No. 06-MD-1775 (JG) (VV) (E.D.N.Y.).

Berger, et al., v. Property ID Corporation, et al., No. CV 05-5373-GHK (CWx) (C.D.Cal.).

Lozano v. AT&T Mobility Wireless, No. 02-cv-0090 CAS (AJWx) (C.D.Cal.).

Howard A. Engle, M.D., et al., Āv. R.J. Reynolds Tobacco Co., Philip Morris, Inc., Brown & Williamson Tobacco Corp., No. 94-08273 CA (22) (11<sup>th</sup> Judicial Dist. Ct. of Miami-Dade County, Fla.).

*In re: Royal Dutch/Shell Transport Securities Litigation,* No. 04 Civ. 374 (JAP) (Consolidated Cases) (D. N.J.).

*In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding,* No. 4347 (Sup. Ct. of Cal., County of Los Angeles).

UAW v. General Motors Corporation, No: 05-73991 (E.D.MI).

Wicon, Inc. v. Cardservice Intern'l, Inc., BC 320215 (Sup. Ct. of Cal., County of Los Angeles).

*In re: SmithKline Beecham Clinical Billing Litig.*, No. CV. No. 97-L-1230 (Third Judicial Cir., Madison County, Ill.). Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

*MacGregor v. Schering-Plough Corp.*, No. EC248041 (Sup. Ct. Cal., County of Los Angeles). This nationwide notification program was designed to reach all persons who had purchased or used an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

*In re:* Swiss Banks Holocaust Victim Asset Litig., No. CV-96-4849 (E.D.N.Y.). Ms. Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors. www.swissbankclaims.com.

*In re: Exxon Valdez Oil Spill Litig.*, No. A89-095-CV (HRH) (Consolidated) (D. Alaska). Ms. Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.



*In re: Johns-Manville Phenolic Foam Litig.*, No. CV 96-10069 (D. Mass). The nationwide multimedia legal notice program was designed to reach all Persons who owned any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns-Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

**Bristow v Fleetwood Enters Litig.**, No Civ 00-0082-S-EJL (D. Id). Ms. Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer, or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

*In re: New Orleans Tank Car Leakage Fire Litig.*, No 87-16374 (Civil Dist. Ct., Parish of Orleans, LA) (2000). This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.

**Garria Spencer v. Shell Oil Co.**, No. CV 94-074(Dist. Ct., Harris County, Tex.). The nationwide notification program was designed to reach individuals who owned real property or structures in the United States, which contained polybutylene plumbing with acetyl insert or metal insert fittings.

*In re:* Hurd Millwork Heat Mirror™ Litig., No. CV-772488 (Sup. Ct. of Cal., County of Santa Clara). This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

Laborers Dist. Counsel of Alabama Health and Welfare Fund v. Clinical Lab. Servs., Inc, No. CV–97-C-629-W (N.D. Ala.). Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.

*In re: StarLink Corn Prods. Liab. Litig.*, No. 01-C-1181 (N.D. III).. Ms. Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

*In re: MCI Non-Subscriber Rate Payers Litig.*, MDL Docket No. 1275, 3:99-cv-01275 (S.D.III.). The advertising and media notice program, found to be "more than adequate" by the Court, was designed with the understanding that the litigation affected all persons or entities who were customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. www.rateclaims.com.

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*In re: Albertson's Back Pay Litig.*, No. 97-0159-S-BLW (D.Id.). Ms. Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

*In re:* Georgia Pacific Hardboard Siding Recovering Program, No. CV-95-3330-RG (Cir. Ct., Mobile County, Ala.). Ms. Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements, which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

In re: Diet DrugsĀBĚÈĘĞÈĠ ËỆÌĀÀÈĘĤĞŒÉ ËỆÌĀÀÈĤÊĘÆĠŒĎĖ ËỆÌĀBŒFEĜÍĀËĎDÍĀËŒË, Nos. 1203, 99-20593. Ms. Finegan worked as a consultant to the National Diet Drug Settlement Committee on notification issues. The resulting notice program was described and complimented at length in the Court's Memorandum and Pretrial Order 1415, approving the settlement,

*In re: Diet Drugs* ÄBĚÈĘĞÈĠ ËỆÌ ĀÂÈĘĒĠŒŎĖ ËỆÌ Ā ÈĤĒĘĒĠĒŎĖ ËĘÈ ĪĀBĢFEĜÍ ĀĒĎDÍ ĀĀËŒË, 2000 WL 1222042, Nos. 1203, 99-20593 (E.D.Pa. Aug. 28, 2002).

Ms. Finegan designed the Notice programs for multiple state antitrust cases filed against the Microsoft Corporation. In those cases, it was generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal notice programs designed by Jeanne Finegan and listed below targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

*In re: Florida Microsoft Antitrust Litig. Settlement*, No. 99-27340 CA 11 (11<sup>th</sup> Judicial Dist. Ct. of Miami-Dade County, Fla.).

*In re: Montana Microsoft Antitrust Litig. Settlement*, No. DCV 2000 219 (First Judicial Dist. Ct., Lewis & Clark Co., Mt.).

*In re: South Dakota Microsoft Antitrust Litig. Settlement*, No. 00-235(Sixth Judicial Cir., County of Hughes, S.D.).

*In re: Kansas Microsoft Antitrust Litig. Settlement*, No. 99C17089 Division No. 15 Consolidated Cases (Dist. Ct., Johnson County, Kan.) ("The Class Notice provided was the best notice practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3.").

*In re: North Carolina Microsoft Antitrust Litig. Settlement*, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln) (General Court of Justice Sup. Ct., Wake and Lincoln Counties, N.C.).



*In re: ABS II Pipes Litig.*, No. 3126 (Sup. Ct. of Cal., Contra Costa County). The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe.

In re: Avenue A Inc. Internet Privacy Litig., No: C00-1964C (W.D. Wash.).

*In re: Lorazepam and Clorazepate Antitrust Litig.*, No. 1290 (TFH) (D.C.C.).

In re: Providian Fin. Corp. ERISA Litig., No C-01-5027 (N.D. Cal.).

In re: H & R Block., et al Tax Refund Litig., No. 97195023/CC4111 (MD Cir. Ct., Baltimore City).

*In re: American Premier Underwriters, Inc, U.S. Railroad Vest Corp.*, No. 06C01-9912 (Cir. Ct., Boone County, Ind.).

In re: Sprint Corp. Optical Fiber Litig., No: 9907 CV 284 (Dist. Ct., Leavenworth County, Kan).

In re: Shelter Mutual Ins. Co. Litig., No. CJ-2002-263 (Dist.Ct., Canadian County. Ok).

*In re: Conseco, Inc. Sec. Litig.*, No: IP-00-0585-C Y/S CA (S.D. Ind.).

In re: Nat'l Treasury Employees Union, et al., 54 Fed. Cl. 791 (2002).

*In re: City of Miami Parking Litig.*, Nos. 99-21456 CA-10, 99-23765 — CA-10 (11<sup>th</sup> Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Comm., No. L 1:01CV658 (E.D. Tx.).

Alsea Veneer v. State of Oregon A.A., No. 88C-11289-88C-11300.



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**Bell v. Canadian Imperial Bank of Commerce**, et al, Court File No.: CV-08-359335 (Ontario Superior Court of Justice); (2016).

*In re: Canadian Air Cargo Shipping Class Actions* (Ontario Superior Court of Justice, Court File No. 50389CP, Supreme Court of British Columbia.

In re: Canadian Air Cargo Shipping Class Actions Québec Superior Court).

**Fischer v. IG Investment Management LTD**., No. 06-CV-307599CP (Ontario Superior Court of Justice).

In Re Nortel I & II Securities Litigation, Civil Action No. 01-CV-1855 (RMB), Master File No. 05 MD 1659 (LAP) (S.D.N.Y. 2006).

**Frohlinger v. Nortel Networks Corporation** et al., Court File No.: 02-CL-4605 (Ontario Superior Court of Justice).

Association de Protection des Épargnants et Investissuers du Québec v. Corporation Nortel Networks, No.: 500-06-0002316-017 (Superior Court of Québec).

**Jeffery v. Nortel Networks Corporation** et al., Court File No.: S015159 (Supreme Court of British Columbia).

Gallardi v. Nortel Networks Corporation, No. 05-CV-285606CP (Ontario Superior Court).

Skarstedt v. Corporation Nortel Networks, No. 500-06-000277-059 (Superior Court of Québec).

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**SEC v. Vivendi Universal, S.A., et al.,** Case No. 02 Civ. 5571 (RJH) (HBP) (S.D.N.Y.). The Notice program included publication in 11 different countries and eight different languages.

**SEC v. Royal Dutch Petroleum Company**, No.04-3359 (S.D. Tex.)

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FTC v. TracFone Wireless, Inc., Case No. 15-cv-00392-EMC.

FTC v. Skechers U.S.A., Inc., No. 1:12-cv-01214-JG (N.D. Ohio).

FTC v. Reebok International Ltd., No. 11-cv-02046 (N.D. Ohio)

FTC v. Chanery and RTC Research and Development LLC [Nutraquest], No :05-cv-03460 (D.N.J.)

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Ms. Finegan has designed and implemented hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

In re AMR Corporation [American Airlines], et al., No. 11-15463 (SHL) (Bankr. S.D.N.Y.) ("due and proper notice [was] provided, and ... no other or further notice need be provided.")

In re Jackson Hewitt Tax Service Inc., et al., No 11-11587 (Bankr. D.Del.) (2011). The debtors sought to provide notice of their filing as well as the hearing to approve their disclosure statement and confirm their plan to a large group of current and former customers, many of whom current and viable addresses promised to be a difficult (if not impossible) and costly undertaking. The court approved a publication notice program designed and implemented by Finegan and the administrator, that included more than 350 local newspaper and television websites, two national online networks (24/7 Real Media, Inc. and Microsoft Media Network), a website notice linked to a press release and notice on eight major websites, including CNN and Yahoo. These online efforts supplemented the print publication and direct-mail notice provided to known claimants and their attorneys, as well as to the state attorneys general of all 50 states. The Jackson Hewitt notice program constituted one of the first large chapter 11 cases to incorporate online advertising.

In re: Nutraquest Inc., No. 03-44147 (Bankr. D.N.J.)

*In re: General Motors Corp. et al*, No. 09-50026 (Bankr. S.D.N.Y.). This case is the 4<sup>th</sup> largest bankruptcy in U.S. history. Ms. Finegan and her team worked with General Motors restructuring attorneys to design and implement the legal notice program.

In re: ACandS, Inc., No. 0212687 (Bankr. D.Del.) (2007) ("Adequate notice of the Motion and of the hearing on the Motion was given.").

*In re: United Airlines*, No. 02-B-48191 (Bankr. N.D III.). Ms. Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was published in 11 countries and translated into 6 languages. Ms. Finegan worked closely with



legal counsel and UAL's advertising team to select the appropriate media and to negotiate the most favorable advertising rates. www.pd-ual.com.

*In re: Enron*, No. 01-16034 (Bankr. S.D.N.Y.). Ms. Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

*In re: Dow Corning,* ANO. 95-20512 (Bankr. E.D. Mich.). Ms. Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

*In re: Harnischfeger Inds.*, No. 99-2171 (RJW) Jointly Administered (Bankr. D. Del.). Ms. Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

*In re: Keene Corp.*, No. 93B 46090 (SMB), (Bankr. E.D. MO.). Ms. Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

*In re: Lamonts*, No. 00-00045 (Bankr. W.D. Wash.). Ms. Finegan designed an implemented multiple bankruptcy notice programs.

*In re: Monet Group Holdings*, Nos. 00-1936 (MFW) (Bankr. D. Del.). Ms. Finegan designed and implemented a bar date notice.

*In re: Laclede Steel Co.*, No. 98-53121-399 (Bankr. E.D. MO.). Ms. Finegan designed and implemented multiple bankruptcy notice programs.

*In re: Columbia Gas Transmission Corp.*, No. 91-804 (Bankr. S.D.N.Y.). Ms. Finegan developed multiple nationwide legal notice notification programs for this case.

*In re: U.S.H. Corp. of New York, et al.* (Bankr. S.D.N.Y). Ms. Finegan designed and implemented a bar date advertising notification campaign.

*In re: Best Prods. Co., Inc.,* No. 96-35267-T, (Bankr. E.D. Va.). Ms. Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

*In re: Lodgian, Inc., et al.*, No. 16345 (BRL) Factory Card Outlet – 99-685 (JCA), 99-686 (JCA) (Bankr. S.D.N.Y).

*In re: Internat'l Total Servs, Inc., et al.*, Nos. 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y).

In re: Decora Inds., Inc. and Decora, Incorp., Nos. 00-4459 and 00-4460 (JJF) (Bankr. D. Del.).



In re: Genesis Health Ventures, Inc., et al, No. 002692 (PJW) (Bankr. D. Del.).

In re: Tel. Warehouse, Inc., et al, No. 00-2105 through 00-2110 (MFW) (Bankr. D. Del.).

In re: United Cos. Fin. Corp., et al, No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D. Del.).

In re: Caldor, Inc. New York, The Caldor Corp., Caldor, Inc. CT, et alĺ, No. 95-B44080 (JLG) (Bankr. S.D.N.Y).

In re: Physicians Health Corp., et al., No. 00-4482 (MFW) (Bankr. D. Del.).

In re: GC Cos., et al., Nos. 00-3897 through 00-3927 (MFW) (Bankr. D. Del.).

In re: Heilig-Meyers Co., et all, Nos. 00-34533 through 00-34538 (Bankr. E.D. Va.).

#### Ā BCÆÀČAĈĀCÁA ÁÁĀÆÀĀACĀĆĀĆĀAÆĄĄČÆĀA ĈĀÆÆĀĀÇBÁCĀÁÆAÁĀ

**Reser's Fine Foods.** Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Ms. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Ms. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

Gulf Coast Claims Facility Notice CampaignÍĀFinegan coordinated a massive outreach effort throughout the Gulf Coast region to notify those who have claims as a result of damages caused by the Deep Water Horizon Oil spill. The notice campaign included extensive advertising in newspapers throughout the region, Internet notice through local newspaper, television and radio websites and media relations. The Gulf Coast Claims Facility (GCCF) was an independent claims facility, funded by BP, for the resolution of claims by individuals and businesses for damages incurred as a result of the oil discharges due to the Deepwater Horizon incident on April 20, 2010.

City of New Orleans Tax Revisions, Post-Hurricane Katrina. In 2007, the City of New Orleans revised property tax assessments for property owners. As part of this process, it received numerous appeals to the assessments. An administration firm served as liaison between the city and property owners, coordinating the hearing schedule and providing important information to property owners on the status of their appeal. Central to this effort was the comprehensive outreach program designed by Ms. Finegan, which included a website and a heavy schedule of television, radio and newspaper advertising, along with the coordination of key news interviews about the project picked up by local media.



# CĈ ĀNĀÁĆĀ

Author, "Creating a Class Notice Program that Satisfies Due Process" Law360, New York, (February 13, 2018 12:58 PM ET).

Author, "3 Considerations for Class Action Notice Brand Safety" Law360, New York, (October 2, 2017 12:24 PM ET).

Author, "What Would Class Action Reform Mean for Notice?" Law360, New York, (April 13, 2017 11:50 AM ET).

Author, "Bots Can Silently Steal your Due Process Notice." Wisconsin Law Journal, April 2017.

Author, "Don't Turn a Blind Eye to Bots. Ad Fraud and Bots are a Reality of the Digital Environment." LinkedIn article March 6, 2107.

Co-Author, "Modern Notice Requirements Through the Lens of *Eisen* and *Mullane"* – Bloomberg - BNA Class Action Litigation Report, 17 CLASS 1077, (October 14, 2016).

Author, "Think All Internet Impressions Are The Same? Think Again" – Law360.com, New York (March 16, 2016, 3:39 ET).

Author, "Why Class Members Should See an Online Ad More Than Once" – Law360.com, New York, (December 3, 2015, 2:52 PM ET).

Author, 'Being 'Media-Relevant' — What It Means and Why It Matters - Law360.com, New York (September 11, 2013, 2:50 PM ET).

Co-Author, "New Media Creates New Expectations for Bankruptcy Notice Programs," ABI Journal, Vol. XXX, No 9, (November 2011).

Quoted Expert, "Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist," Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

Co-Author, with Hon. Dickran Tevrizian – "Expert Opinion: It's More Than Just a Report...Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," BNA Class Action Litigation Report, 12 CLASS 464, May 27, 2011.

Co-Author, with Hon. Dickran Tevrizian, Your Insight, "Expert Opinion: It's More Than Just a Report -Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," TXLR, Vol. 26, No. 21, May 26, 2011.



Quoted Expert, "Analysis of the FJC's 2010 Judges' Class Action Notice and Claims Process Checklist and Guide: A New Roadmap to Adequate Notice and Beyond," BNA Class Action Litigation Report, 12 CLASS 165, February 25, 2011.

Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, April, 9, 2010 Vol. 11, No. 7 p. 343.

Quoted Expert, "Communication Technology Trends Pose Novel Notification Issues for Class Litigators," BNA Electronic Commerce and Law, 15 ECLR 109 January 27, 2010.

Author, "Legal Notice: R U ready 2 adapt?" BNA Class Action Report, Vol. 10 Class 702, July 24, 2009.

Author, "On Demand Media Could Change the Future of Best Practicable Notice," BNA Class Action Litigation Report, Vol. 9, No. 7, April 11, 2008, pp. 307-310.

Quoted Expert, "Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty," Warranty Week, warrantyweek.com/archive/ww20070228.html/February 28, 2007.

Co-Author, "Approaches to Notice in State Court Class Actions," For The Defense, Vol. 45, No. 11, November, 2003.

Citation, "Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior," U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates, July 2003.

Author, "The Web Offers Near, Real-Time Cost Efficient Notice," American Bankruptcy Institute, ABI Journal, Vol. XXII, No. 5., 2003.

Author, "Determining Adequate Notice in Rule 23 Actions," For The Defense, Vol. 44, No. 9 September, 2002.

Author, "Legal Notice, What You Need to Know and Why," Monograph, July 2002.

Co-Author, "The Electronic Nature of Legal Noticing," The American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

Author, "Three Important Mantras for CEO's and Risk Managers," - International Risk Management Institute, irmi.com, January 2002.

Co-Author, "Used the Bat Signal Lately," The National Law Journal, Special Litigation Section, February 19, 2001.

Heffler Claims Group

Author, "How Much is Enough Notice," Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, "Monitoring the Internet Buzz," The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, "High-Profile Product Recalls Need More Than the Bat Signal," - International Risk Management Institute, irmi.com, July 2001.

Co-Author, "Do You Know What 100 Million People are Buzzing About Today?" Risk and Insurance Management, March 2001.

Quoted Article, "Keep Up with Class Action," Kentucky Courier Journal, March 13, 2000.

Author, "The Great Debate - How Much is Enough Legal Notice?" American Bar Association – Class Actions and Derivatives Suits Newsletter, winter edition 1999. $\bar{\bf A}$   $\bar{\bf A}$ 

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CLE Webinar "Rule 23 Changes to Notice, Are You Ready for the Digital Wild,

Wild West?" October 23, 2018, https://bit.ly/2RIRvZq

American Bar Assn. Faculty Panelist, 4<sup>th</sup> Annual Western Regional CLE Class Actions,

"Big Brother, Information Privacy, and Class Actions: How Big Data and Social Media are Changing the Class Action Landscape" San

Francisco, CA June, 2018.

Miami Law Class Action Faculty Panelist, "Settlement and Resolution of Class Actions,"

& Complex Litigation Forum Miami, FL December 2, 2016.

The Knowledge Group Faculty Panelist, "Class Action Settlements: Hot Topics 2016 and

Beyond," Live Webcast, www.theknowledgegroup.org, October

2016.

ABA National Symposium Faculty Panelist, "Ethical Considerations in Settling Class Actions,"

New Orleans, LA, March 2016.

S.F. Banking Attorney Assn. Speaker, "How a Class Action Notice can Make or Break your

Client's Settlement," San Francisco, CA, May 2015.

Perrin Class Action Conf. Faculty Panelist, "Being Media Relevant, What It Means and Why

It Matters – The Social Media Evolution: Trends, Challenges and

Opportunities," Chicago, IL May 2015.

Bridgeport Continuing Ed. Speaker, Webinar "Media Relevant in the Class Notice Context."

July, 2014.



Bridgeport Continuing Ed. Faculty Panelist, "Media Relevant in the Class Notice Context."

Los Angeles, California, April 2014.

CASD 5<sup>th</sup> Annual Speaker, "The Impact of Social Media on Class Action Notice."

Consumer Attorneys of San Diego Class Action Symposium, San

Diego, California, September 2012.

Law Seminars International Speaker, "Class Action Notice: Rules and Statutes Governing FRCP

(b)(3) Best Practicable... What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011.

\*Voted by attendees as one of the best presentations given.

CASD 4<sup>th</sup> Annual Faculty Panelist, "Reasonable Notice - Insight for practitioners on

the FJC's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. Consumer Attorneys of San Diego Class

Action Symposium, San Diego, California, October 2011.

CLE International Faculty Panelist, Building a Workable Settlement Structure, CLE

International, San Francisco, California May, 2011.

CASD Faculty Panelist, "21st Century Class Notice and Outreach." 3nd

Annual Class Action Symposium CASD Symposium, San Diego,

California, October 2010.

CASD Faculty Panelist, "The Future of Notice." 2<sup>nd</sup> Annual Class Action

Symposium CASD Symposium, San Diego California, October 2009.

American Bar Association Speaker, 2008 Annual Meeting, "Practical Advice for Class Action

Settlements: The Future of Notice In the United States and

Internationally – Meeting the Best Practicable Standard."

Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New

York, NY, August 2008.

Women Lawyers Assn. Faculty Panelist, Women Lawyers Association of Los Angeles

"The Anatomy of a Class Action." Los Angeles, CA, February, 2008.

Warranty Chain Mgmt. Faculty Panelist, Presentation Product Recall Simulation. Tampa,

Florida, March 2007.

Practicing Law Institute. Faculty Panelist, CLE Presentation, 11<sup>th</sup> Annual Consumer

Financial Services Litigation. Presentation: Class Action Settlement



Structures – Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA, May 2006.

U.S. Consumer Product Safety Commission

Ms. Finegan participated as an invited expert panelist to the CPSC to discuss ways in which the CPSC could enhance and measure the recall process. As a panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.

Weil, Gotshal & Manges

Presenter, CLE presentation, "A Scientific Approach to Legal Notice

Communication." New York, June 2003.

Sidley & Austin

Presenter, CLE presentation, "A Scientific Approach to Legal

Notice Communication." Los Angeles, May 2003.

Kirkland & Ellis

Speaker to restructuring group addressing "The Best Practicable Methods to Give Notice in a Tort Bankruptcy." Chicago, April

2002.

Georgetown University Law Faculty, CLE White Paper: "What are the best practicable methods to Center Mass Tort Litigation give notice? Dispelling the communications myth – A notice Institute disseminated is a notice communicated," Mass Tort Litigation Institute. Washington D.C., November, 2001.

American Bar Association

Presenter, "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits. Chicago, IL, August 6, 2001.

McCutchin, Doyle, Brown

Speaker to litigation group in San Francisco and simulcast to four other McCutchin locations, addressing the definition of effective notice and barriers to communication that affect due process in legal notice. San Francisco, CA, June 2001.

Marylhurst University

Guest lecturer on public relations research methods. Portland, OR, February 2001.

University of Oregon

Guest speaker to MBA candidates on quantitative and qualitative research for marketing and communications programs. Portland, OR, May 2001.

Heffler Claims Group

Judicial Arbitration & Mediation Services (JAMS)

Speaker on the definition of effective notice. San Francisco and Los

Angeles, CA, June 2000.

International Risk
Management Institute

Past Expert Commentator on Crisis and Litigation Communications.

www.irmi.com.

The American Bankruptcy Institute Journal (ABI)

Past Contributing Editor – Beyond the Quill. www.abi.org.

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Ms Finegan's past experience includes working in senior management for leading Class Action Administration firms including The Garden City Group ("GCG") and Poorman-Douglas Corp., ("EPIQ"). Ms. Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation's leading legal notice communication agencies.

Prior to that, Ms. Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.

Prior to Huntington Advertising, Ms. Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.

Additionally, Ms. Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJJ/KJIB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Ms. Finegan worked as an assistant television program/promotion manager for KPDX directing \$50 million in programming. She was also the program/promotion manager at KECH-22 television.

Ms. Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.



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Alliance for Audited Media ("AAM") is the recognized leader in cross-media verification. It was founded in 1914 as the Audit Bureau of Circulations (ABC) to bring order and transparency to the media industry. Today, more than 4,000 publishers, advertisers, agencies and technology vendors depend on its data-driven insights, technology certification audits and information services to transact with trust.

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LinkedIn: www.linkedin.com/in/jeanne-finegan-apr-7112341b

# Exhibit B

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DESIGNING SOLUTIONS A TEMPORARY REFUGE BECOMES HOME WALKING THROUGH A MEGALOPOLIS RATS-THEY'LL ALWAYS BE WITH US IF YOU ARE OR WERE A HOLDER
OF OR OTHERWISE CLAIM ANY
ENTITLEMENT TO ANY PAYMENT IN
CONNECTION WITH ANY

# AMERICAN DEPOSITARY SHARE

(SOMETIMES KNOWN AS AN AMERICAN DEPOSITARY RECEIPT)
("ADR") FOR WHICH THE BANK OF NEW YORK MELLON ("BNYM")
ACTED AS DEPOSITARY, YOUR RIGHTS MAY BE AFFECTED.

Pursuant to Federal Rule of Civil Procedure 23 and Court Order, the Court has directed notice of the \$72.5 million settlement proposed in *In re: The Bank of New York Mellon ADR FX Litigation*, No. 16-CV-00212-JPO-JLC (S.D.N.Y.) to the Settlement Class. If approved, the settlement will resolve all claims in the litigation. **This notice provides basic information. It is important that you review the detailed notice ("Notice") found at the website below.** 

## What is this lawsuit about:

Lead Plaintiffs allege that, during the relevant time period, BNYM systematically deducted impermissible fees for conducting foreign exchange from dividends and/or cash distributions issued by foreign companies, and owed to ADR holders. BNYM has denied, and continues to deny, any wrongdoing or liability whatsoever.

#### Who is a Settlement Class Member:

All entities and individuals who at any time from January 1, 1997 through January 17, 2019 held (directly or indirectly, registered or beneficially), or otherwise claim any entitlement to any payment (whether a dividend, rights offering, interest on capital, sale of shares, or other distribution) in connection with, any ADR for which BNYM acted as the depositary sponsored by an issuer that is identified in the Appendix to the Notice. Certain entities and individuals are excluded from the definition of the Settlement Class as set forth in the Notice.

#### What are the benefits:

If the Court approves the settlement, the proceeds, after deduction of Court-approved notice and administration costs, attorneys' fees and expenses, and any applicable taxes, will be distributed pursuant to the Plan of Allocation set forth in the Notice, or other plan approved by the Court.

# What are my rights:

If you receive/have received a Post-Card Notice in the mail, you are a Registered Holder (i.e., you hold (or held) your eligible ADRs directly and your relevant information was provided by BNYM's transfer agent), and you <u>do not</u> have to take any action to be eligible for a settlement payment. If you do not receive/have not received a Post-Card Notice in the mail, you are a Non-Registered Holder and you <u>must submit</u> a Claim Form, **postmarked (if mailed), or online, by August 15, 2019**, to be eligible for a settlement payment. Non-Registered Holder Settlement Class Members who do nothing will not receive a payment, but will be bound by all Court decisions.

If you are a Settlement Class Member and do not want to remain in the Settlement Class, you may exclude yourself by request, *received by May 13, 2019*, in accordance with the Notice. If you exclude yourself, you will *not* be bound by any Court decisions in this litigation and you will *not receive a payment*, but you will retain any right you may have to pursue your own litigation at your own expense concerning the settled claims. Objections to the settlement, Plan of Allocation, or request for attorneys' fees and expenses must be *received by May 13, 2019*, in accordance with the Notice.

A hearing will be held on **June 17, 2019 at 3:00 p.m.**, before the Honorable J. Paul Oetken, at the Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY 10007, to determine if the settlement, Plan of Allocation, and/or request for fees and expenses should be approved. Supporting papers will be posted on the website once filed.

For more information visit www.bnymadrfxsettlement.com, email info@bnymadrfxsettlement.com or call 866-447-6210.

866-447-6210 www.bnymadrfxsettlement.com **LEGAL NOTICE** 

# IF YOU PURCHASED CERTAIN MORNING SONG WILD BIRD FOOD PRODUCTS FROM NOVEMBER 2005 TO MAY 2008, YOU MAY BE ENTITLED TO PAYMENT FROM A PROPOSED CLASS ACTION SETTLEMENT.

A proposed Settlement has been reached in a class action lawsuit about certain Morning Song wild bird food products that were purchased between November 2005 and May 2008. The plaintiffs allege that the application of two pesticides, Storcide II and Actellic 5E, to certain wild bird food products and the sale of those products violated the law. The plaintiffs sought refunds for their purchases. The defendants, The Scotts Miracle-Gro Company, The Scotts Company LLC, and Scotts' Chief Executive Officer, deny any wrongdoing and deny that the plaintiffs suffered any damages or that they are entitled to refunds. The Court has not decided which side is right, but the parties have elected to settle the dispute by agreement.

What Are The Settlement Terms? The proposed Settlement provides for the payment of up to \$85,000,000 in cash from which eligible consumers may receive refunds for their qualifying purchases of Morning Song Bird Food. Retailer-Identified Refunds will be provided automatically to Settlement Class Members who can be identified through certain retailer records. Settlement Class Members who cannot be identified through those retailer records must submit a Claim Form for a refund. A Settlement Class Member who submits a Claim Form with Proof of Purchase will receive a full refund. Claim Forms submitted without proof of purchase may receive up to \$100 per household or more, depending on the amount of the claims and the balance available for distribution.

How Do I Get A Payment? Settlement Class Members who do not receive a "Retailer-Identified Refund Notice" by mail or email must submit a Claim Form by July 1, 2019. Claim Forms may be submitted online or printed from the website and mailed to the address on the Claim Form. Claim Forms are also available by calling 1-866-459-1390.

Your Other Options. If you do nothing, your rights will be affected but you will not receive a Settlement payment unless you are eligible for a Retailer-Identified Refund. If you do not want to be legally bound by the Settlement, you must exclude yourself by May 13, 2019. Unless you exclude yourself, you will not be able to sue Scotts or any of the Released Defendants for any and all of the legal and factual issues that the Settlement resolves and the Settlement Agreement releases. If you exclude yourself, you cannot receive a Refund under the Settlement. If you do not exclude yourself, you may object to the Settlement and notify the Court that you or your lawyer intend to appear at the Court's final approval hearing. Any objection to the Settlement, or the fee and expenses application, are due no later than May 13, 2019: Rachel L. Jensen, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101; Edward Patrick Swan, Jr., Jones Day, 4655 Executive Drive, Suite 1500, San Diego, CA 92121-3134; and Mark Holscher, Kirkland & Ellis LLP, 333 South Hope Street, Los Angeles, CA 90071.

The Court will hold a hearing in this case (*In re Morning Song Bird Food Litig.*, No 3:12-cv-01592) at 2:30 p.m. on June 3, 2019 at the U.S. District Court for the Southern District of California, 333 West Broadway, San Diego, California 92101, for the purpose of determining: (i) whether the proposed Settlement of the claims in this litigation should be approved by the Court as fair, reasonable and adequate; (ii) whether a final judgment and order of dismissal with prejudice should be entered by the Court dismissing the litigation with prejudice; and (iii) whether Class Counsel's application for the payment of attorneys' fees and expenses and service awards for the four named plaintiffs should be approved. You do not need to appear at the hearing or hire your own attorney, although you have the right to do so at your own expense.

This Notice is just a summary. Complete details, the Long-Form Notice, and Settlement Agreement are available at www.birdfoodsettlement.com or by calling 1-866-459-1390.





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Jimmy Fallon
and newlywed
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popular "Ewl"
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4 IN THE NEWS

**BOGUS PILLS** 

**FDA TARGETS FAKE DEMENTIA CURES** 

**30 YOUR MONEY** 

**RISK-FREE TRAVEL** 

**22 YOUR HEALTH** 

**NOW HEAR THIS!** 

**ADVANCES IN HEARING AIDS**  **34 YOUR MONEY** 

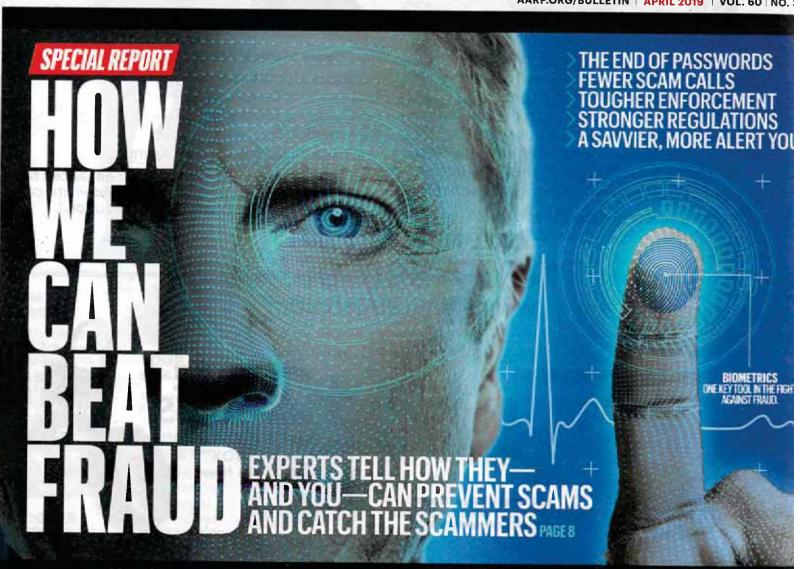
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36 YOUR LIFE

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YOUR AARP / PAGE 42

<del>:16 ev 90212 JP</del>O-JLC Document 155-2 Filed 04/29/19 Page <u>48 of 139</u>

IF YOU ARE OR WERE A HOLDER OF OR OTHERWISE CLAIM ANY ENTITLEMENT TO ANY PAYMENT IN CONNECTION WITH ANY

**AMERICAN DEPOSITARY SHARE** 

(SOMETIMES KNOWN AS AN AMERICAN DEPOSITARY RECEIPT) ("ADR") FOR WHICH THE BANK OF NEW YORK MELLON ("BNYM") ACTED AS DEPOSITARY, YOUR RIGHTS MAY BE AFFECTED.

Pursuant to Federal Rule of Civil Procedure 23 and Court Order, the Court has directed notice of the \$72.5 million settlement proposed in In re: The Bank of New York Mellon ADR FX Litigation, No. 16-CV-00212-JPO-JLC (S.D.N.Y.) to the Settlement Class. If approved, the settlement will resolve all claims in the litigation. This notice provides basic information. It is important that you review the detailed notice ("Notice") found at the website below.

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#### What are the benefits:

If the Court approves the settlement, the proceeds, after deduction of Court-approved notice and administration costs, attorneys' fees and expenses, and any applicable taxes, will be distributed pursuant to the Plan of Allocation set forth in the Notice, or other plan approved by the Court.

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For more information visit www.bnymadrfxsettlement.com, email info@bnymadrfxsettlement.com 866-447-6210.

**Q&A** MELINDA GATES

# **WHEN WOMEN LOCK** ARMS, AT WHATEVER LEVEL IN SOCIETY, THEY CAN CHANGE THE W

HOW THE COFOUNDER OF THE BILL AND MELINDA GATES FOUNDATION DISCOVERED THAT EMPOWERING WOMEN WAS THE KEY TO TRANSFORMING GLOBAL SOCIETY

# What was your biggest misconception when you started your foundation?

That if we had a breakthrough—a new vaccine, a new contraceptive, a new seed-and we got it into the supply chain, it would reach men and women equally. That turned out to be a very false assumption. Even if a country's government says it wants to deliver these tools, few actually make it into the hands of women.

# In your book, The Moment of Lift, you write about a heartrending encounter you had with a young woman in northern India. Was that an "Aha!" moment for you?

Meena was a woman I met at a health facility we'd helped fund. She'd recently given birth, and we had a warm conversation, mother-to-mother, about bonding with a new baby. But when I asked if she planned to have more children, she said, "The truth is, no. I don't know how I'm going to feed this child. I don't have any hope of educating him. The only hope I have for this child's future is for you to take him home with you." The conversation crushed me. I had to tell her, "I'm so sorry. I can't." I started digging and learned that more than 200 million women in developing countries wanted access to contraceptives but didn't have it.

# Your global campaign to give contraceptives to 120 million women by 2020 has made you unpopular in some places.

I'm a practicing Catholic, but I really had to follow my conscience on this one. I was seeing so much death in the developing world. I would go out and get 60 women in a village together and ask them to raise their hands if they knew of someone who had lost a child in childbirth. Every single hand would go up! The lack of contraceptives-and having children too soon and too often-was

causing an immense amount of misery.

Hans Rosling, an expert on international

health, once told you, "American billionaire giving away money will mess everything up How do you avoid that?

**Melinda** Gates t with a mother

daughter in Dha

Bangladesh.

He advised me to always go to the margins ( society. He taught me that I needed to go or and talk to women and understand-wit data—where they were being held back of a societal level.

That's not just a developing-world issue, is it

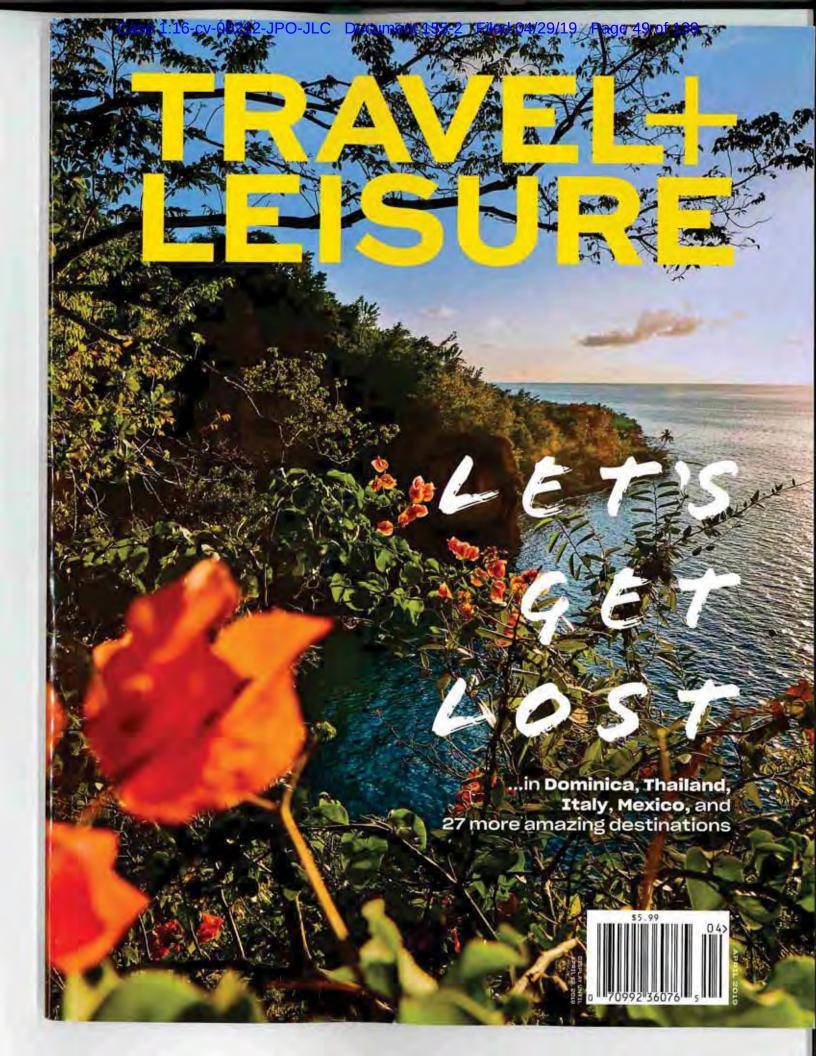
Correct. I remember looking a few year back at how far women had actually com in the United States. I thought we were full empowered. But less than 5 percent of the Fortune 500 CEOs were women. And when I went through each industry systematically I realized that we still had a long way to go.

# What steps have you and Bill taken to make your marriage more equitable?

When I got pregnant with our first child I surprised Bill by saying that I wanted to leave my job to stay home with the baby. We fell into pretty traditional gender roles. But over time, we've gotten more intentiona about making our partnership a truly equa one. At the beginning, I was happy for Bill to be the public face of the foundation. I real ized later that it was important to me that ! was seen as his equal there. There were moments when that took a little push but, for the most part, I've had Bill's support. He's a data geek, so he's seen the research that says equal partnerships tend to be happier ones.

# How about in the Gates household?

We all do the dishes together after dinner. But one night I was still in the kitchen 15









# Enough: True Measures of Money, Business, and Life

"Shortly after the 2008 financial crisis, I read Jack Bogle's *Enough*, and it [had] a profound impact on me both professionally and personally," says Trent Porter, founder of Priority Financial Partners. "Unlike most books on investing, *Enough* goes beyond dollars and cents and dives into the values Jack lived by to obtain his success."

Porter calls this book, published in 2008, "incredibly insightful [about] the failings of Wall Street that led to the financial crisis," and says it remains just as relevant today. The Little Book of Common Sense Investing: The Only Way to Guarantee Your Fair Share of Stock Market Returns

"Jack was an original industry thought leader," says John O'Donnell, director of research at Online Trading Academy, who calls *The Little Book of Common Sense Investing* one of his favorite titles.

Bogle gave an entire generation tools for a secure financial future, O'Donnell says. This book goes a long way in helping investors reach that goal: "Jack inspired us to self-direct and manage our own capital... and enjoy the amazing benefits of compounding long-term growth and income tax deferral."

While Bogle didn't invent the index fund, his version, with its relatively low threshold for entry, was the first targeted at retail investors, ultimately helping millions of Americans save on unnecessary investment fees, while also making the process of finding the right mutual fund a whole lot simpler.

In addition to founding Vanguard, Bogle was a prolific writer and frequent interview subject, regularly name-checked by money-management and personal finance experts as an inspiration.

That's why MONEY asked financial and market pros to share which of Bogle's books they have found over the course of their careers to be the most valuable or influential. See the box above for what they had to say.

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**AMERICAN DEPOSITARY SHARE** 

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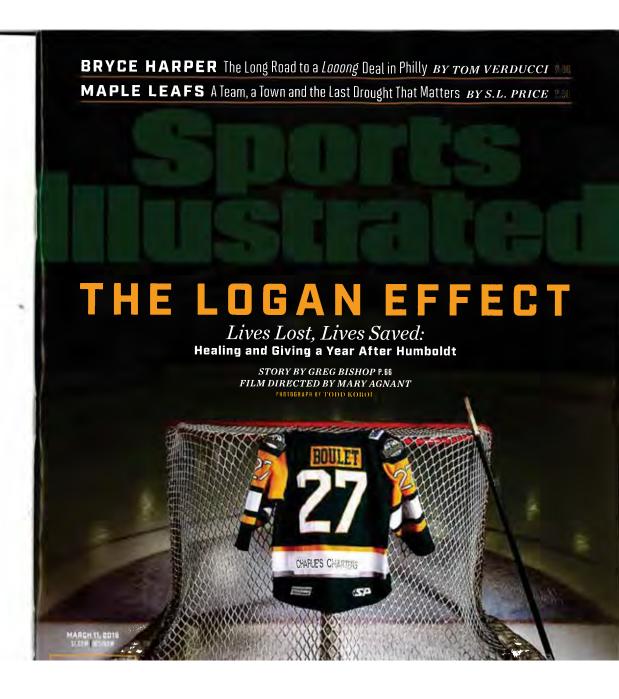
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the door. The untouched downstairs bedroom, where the Boulets always leave the light on, is still packed with Fanta cans and Lego sets. Upstairs, a room is filled with handmade quilts and green bracelets and books on how to grieve. And the cards, thousands of cards, sent from all over the world "Sometimes it's like we're sharing our kid with everybody,"
Bernie says. "But that's not a bad thing."
Moving forward remains complicated. Moving on, impossible. Toby helped Neil Langevin

coach the women's rugby team at the University of Lethbridge last fall—the same team that Suggitt returned for—and that meant riding buses to away games.

Neville, the Broncos' assistant general manager, rebuilt an almost entirely new team. He spent three months watching tape and calling players, laying out the situation in Humboldt, convincing them to play for a grieving city with the world watching. Many turned him down, not wanting to deal with the extra pressure. But 23 players eventually signed on, each unaware of Neville's own unprocessed grief. He was supposed to have been on that bus but stayed home because his parents were in town. "There's a lot of guilt," he says. In September, he resigned.

The Paulsens chose to billet again, but after both players they housed this past season were trad-ed, they decided not to take in another. McLaren made the team that

Logan helped him train for, wore number 27 and recorded 17 points in his first 27 games. He never got to make that phone call, but sometimes he can hear Logan's voice in his head, shout ing, "Skate faster!" He plans to put a YOUNG SAVAGE license on his first car

The GoFundMe page that collected donations for the victims and their families in the wake of the crash became the largest in the history of Canada, with more than 140,000 donors from at least 80 countries contributing \$15.1 million. Each survivor will receive \$475,000. Each family that lost

omeone will get \$525,000.

Logan's friends and relatives inked his name, his initials

or hockey sticks on their bodies. Fiddler, the crash witness, named her baby girl Logan Humble Strong. Sometimes she sends Bernie baby pictures. Sometimes she dreams about those hockey players. "They're my guardian angels," she says.

The Boulets returned to Humboldt for the Broncos opener in September. From their hotel, they watched two planes fly overhead, emitting smoke to create two halves of one heart. At the game they saw thousands of faces stained with tears in the stands. A moment of silence, a ceremonial puck drop. a national television audience and 29 banners that would later be raised, one for each of the passengers on the bus "It broke me," Toby says.



Returning just two players fro the 2017–18 team, the Broncos went 35-19-4 and made the playoffs

The Broncos ended up contending, despite everything. The Boulets followed as the season progressed, as Humboldt carried a 10-game winning streak deep into February and climbed into first place. The Broncos continued to travel to every away game, even to the ones in Nipawin, the same wax—by Nive.

In late January the Boulets attended a hearing for the truck driver. They presented to the courtroom the first of 75 victim impact statements. The driver, Jaskirat Sidhu, had already pleaded guilty to 16 counts of dangerous driving causing death and 13 more counts of dangerous driving causing bodily harm. The Boulets were relieved that there wouldn't be a trial, but they wanted Sidhu to know how wouldn't be a trial, but they wanted stinnt is snow many families he had broken. It was hard for the Boulets to listen to the families, however, however, the work of the the defentify their children, who didn't get 27 hours to say goodbye.

"More often than not I forget. I forget that Logan's gone. I forget how permanent this is. I forget that the only place

I can see and talk to him is in my dreams. . . . I am an only child now," Mariko wrote.

HE BOULETS seek comfort in the bigger picture, the best thing that came from the worst thing and the only thing that makes them feel even a little bit better as the anniversary of the crash approaches

They're not sure exactly how many donors signed up after Logan's death or how many of those donors signed up because of Logan's story. But the numbers they have heard—100,000; 200,000; even more—are staggering. Imagine when those new donors tell their friends, who tell their friends, and how

new donors tell their trends, who fell their trends, and now many of those people will sign up. "Like ripples in a pond," says Jenn Suggitt, whose husband tossed the first stone. The Boulets heard directly from thousands, through let-ters, email or social media, who said they joined the move-ment because of Logan. Families reached out to say they had ment because of Logan. Families reached out to say they had lost fowed ones who donated their organs in his memory. One woman told them that all of four her quadruplets pledged to become donors on their 19th birthday. Hoping to sustain that momentum, the Boulets are in the process of creating a foundation. On April 7, the anniversary of his death, they and thousands across Canada will take part in Green Shirt

Day to raise swareness for organ donor registration.

Remember the legacy that Higo implored his nephew to cement? Right there. That's it—the conversations that will reverberate far longer and far wider than anything he might have done on the ice.

Sometimes Logan's sister and his girlfriend laugh about how much Logan himself would have hated all this attention, all the speeches, all the times his family told the story of his life and the overwhelming impact of his death. For a week last summer, Bernie noticed a moth flying nearby whenever the summer, perme noticed a most nying nearny whenever the Boulet family sortustide, landing on the empty chair where Logan would have sat. She often finds dimes in her pockets, and in Canada, she says, that means someone who died is thinking about you. These small comfort, but she'd trade all of it, of course, for another embrace.

"I would love," she says, "to hear his heart beat again."

A short drive from the Boulet house, a cemetery rises from a hillside. Logan's grave sits near the far edge. It's decorated with orchids and hockey sticks and a rock with the word LOVE carved into it. In an adjacent plot rests Ric Suggitt Together, the graves speak to the randomness of human Together, the graves speak to the randomness of human existence, how one man impacted one hockey player and how that hockey player impacted hundreds of thousands of other lives. All because of the choices made by two friends before two welstels collided on a lonely stretch of highway in Nowhere, Saskatchewan. What are the chances?

in Nownere, Saskatchewan. What are the chances?
The Boulers, wawsh in irreconcibable emotions, face their
new reality with little hope they'll ever feel whole again.
The best thing from the worst thing doesn't erase the worst
thing; if just makes the worst thing mean something. Now
they attempt to amplify the good that has come from the tragedy they share, like their son, with the world. There's inspeakable pain there. Comfort, too.

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AMERICAN DEPOSITARY SHARE (SOMETIMES KNOWN AS AN AMERICAN DEPOSITARY RECEIPT) ("ADR") FOR WHICH THE BANK OF NEW YORK MELLON ("BNYM") ACTED AS DEPOSITARY, YOUR RIGHTS MAY BE AFFECTED.

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Case 1:16-cv-00212-JPO-JLC Document 155-2 Filed 04/29/19 Page 55 of 139 SPECIAL INVESTIGATION

# HOW YOUR HEALTH RECORDS BECAME A HEALTH CRISIS



APRIL 2019

ABOUT FACE

ADVERTISERS
LOVE MARK
ZUCKERBERG'S
BUSINESS
MODEL.
THE PUBLIC
HATES IT.
INSIDE
FACEBOOK'S
IMPOSSIBLE
DILEMMA



to court. Jennifer De Angelis, a Tulsa attorney, has frequently sparred with hospitals over releasing her clients' records. She says they either attempt to charge huge sums for them or force her to obtain a court order before releasing them. De Angelis adds that she sometimes suspects the records have been overwritten to cover up medical mistakes.

Consider the case of 5-year-old Uriah R. Roach, who fractured and cut his finger on Oct. 2, 2014, when it was accidentally slammed in a door at school. Five days later, an operation to repair the damage went awry, and he suffered permanent brain damage, apparently owing to an anesthesia problem. The Epic electronic medical file had been accessed more than 76,000 times during the 22 days the boy was in the hospital, and a lawsuit brought by his parents contended that numerous entries had been "corrected, altered, modified and possibly deleted after an unexpected outcome during the induction of anesthesia." The hospital denied wrongdoing. The case settled in November 2016, and the terms are confidential.

More than a dozen other attorneys interviewed cited similar problems, especially with gaining access to computerized "audit trails." In several cases, court records show, government lawyers resisted turning over electronic files from federally run hospitals. That happened to Russell Uselton, an Oklahoma lawyer who represented a pregnant teen admitted to the Choctaw Nation Health Care Center in Talihina, Okla. Shelby Carshall, 18, was more than 40 weeks pregnant at the time, Doctors failed to perform a cesarean section, and her baby was born brain-damaged as a result, she alleged in a lawsuit filed in 2017 against the U.S. government. The baby began having seizures at 10 hours old and will "likely never walk, talk, eat, or otherwise live normally," according to pleadings in the suit. Though the federal government requires hospitals to produce electronic health records to patients and their families, Uselton had to obtain a court order to get the baby's complete medical files. Government lawyers denied any negligence in the case, which is pending.

"They try to hide anything from you that they can hide from you," says Uselton. "They make it extremely difficult to get records, so expensive and hard that most lawyers can't take it on," he said.

Nor, it seems, can high-ranking federal officials. When Seema Verma's husband was discharged from the hospital after his summer health scare, he was handed a few papers and a CD-ROM containing some medical images—but missing key tests and monitoring data. Says Verma, "We left that hospital and we still don't have his information today." That was nearly two years ago.

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Patel plays a Hotel Mumbai hero

# Room for both action and unease in Hotel Mumbai

SOMETIMES A FILM IS EXPERTLY made and beautifully acted-and it's still not something you feel you should be watching. Anthony Maras' debut feature, Hotel Mumbai, focuses on the November 2008 siege of that city's stately Taj Mahal Palace, in which a group of terrorists killed more than 150 people. Many more would have died if not for the heroic actions of the

hotel staff, including the head chef (played here by the wonderful Indian actor Anupam Kher) and a young Sikh waiter named Arjun (Dev Patel), almost sent home that day for showing up in improper shoes.

The attacks, as dramatized, are brutal to watch. The survivors may or may not include Zahra (Nazanin

Boniadi), who is Indian; David (Armie Hammer), her American husband; and Vasili, a crude Russian businessman (played, grandly, by Jason Isaacs). Hotel Mumbai-as respectful to the survivors and victims as Maras is-ultimately takes on the qualities of an action film: Who will live and who will die? But that's not Maras' fault. With the increased frequency of assault-weapon attacks worldwide, the reality of our lives too often feels like something that belongs only in a movie. Whether or not you can bear to look is up to you. -s.z.

'A film like this, with a bunch of brown faces, would not have been made 10 years ago.'

**DEV PATEL**, in the Sydney Morning Herald



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# Exhibit C



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Class No. 1,13-co-11775-GAD

SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II) SETTLEMENT PAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS FEES AND REIMBURSEMENT OF LITERATION EXPENSES

AND REIMMURSHMENT OF LITERATION EXPENSES.

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LAWSHIT PENDING IN THIS COURT.

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YOU ARE ALSO NOTIFIED that Plaintiffs in the Action have reached a proposed statement of the Action for \$18,550,000 in cash (the "festivative"), that, if approved, will reacher all claims in the Action.

expansa should be approved.

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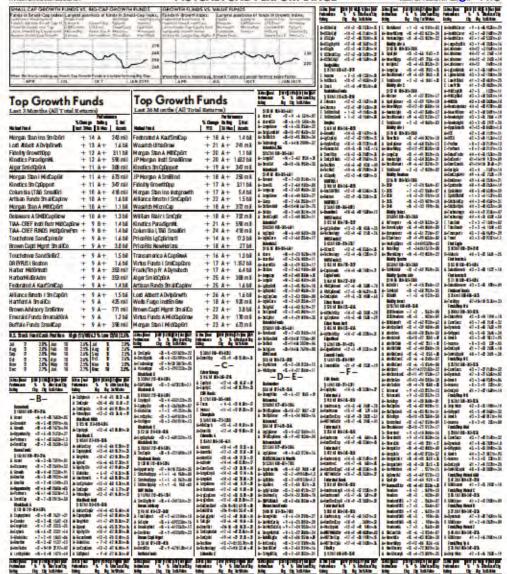
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# **New Huawei Phone Folds**

BY DAN STRUMEP

BARCELONA—Just days after Samsung Electronics Co. launched the industry's first mainstream foldable-screen smartphone, China's Huawe and the competing device and an even more strato-spheric price tag.

Huawei's new device, called the Mate X, feature as single wide screen that folds in half when closed. Like the Samsung Galaxy Fold, the Mate X will Jawe a folded and unfolded mode, run multiple applications at once and be compatible with coming superfast 50 metworks.

And Richard Yu, the head of And Richard Yu, the head of Huawei's consumer device business, said the handset will be priced at £2,299, or about \$2,600—over 30% more than the \$1,980 Galaxy Fold.

The new device launch comes amid the mobile industry's biggreat enemt of the work.

the \$1,980 Galaxy Fold.
The new device launch comes amid the mobile industry's biggest event of the year here, MWC Barcelona. While Huawei typically uses the venue to showcase top-of-the line new devices, this year its executives will be sharing the event space with a team of US. officials looking to persuade American allies against using Huawei telecome gear in their 5G rollouts.

Mr. Yu's focus is strictly on Huawei's new phone, as well as a trio of new laptops and several new internet-connected home devices unveiled on Sunday. The summer of the Mate X. Huawei's device will be thimper than its rieval's, he said. When fully opened, the screen will be 8 strides and ambition to com-



The Mate X will cost about \$2,600 and features a single wide screen that folds in half. The launch event on Sunday.

inches diagonally, he said, pete at the highest level of the folded display on the Galaxy

pete at the ingrest level of the smartphone market.

Not long ago, the Chinese company barely registered it is soaring sales are bucking an industrywide slump.

The Mate X features a slightly different overall design than the Galaxy Fold. While the Galaxy fold has two separate screens—one when folded and another when unfolded—the Mate X will have a single screen that closes in two, one half of which is used when it's closed.

screen that closes in two, one half of which is used when it's closed.

"This will catapult Huawei to a true leader in smartphones, proving themselves to eworthy of comparison to Apple and Samsung," said Wayne Lam, an analyst at consulting firm HIS Markit.

Huawei's booming consumer business—now the biggest revenue generator for the Chines technology juggernaut—is a montant propertion of the flower of the coughly 1.5 billion smartphones sold annually.

# Nokia CEO Weighs In On Rival's Security

BARCELONA—Nokia Corp.
has mostly stayed quiet as its
biggest competitor, Huawei
Technologies Co., defended its
self against a U.S.-led campaign to globally blacklist the
Chinese cellular-equipment
maker over national-security
concerns.

Now Nokia is throwing
nunches too.

Now Nokia is throwing punches, too.
At the Barcelona telecomindustry conference where U.S. officials plan to urge governments and wireless carriers to avoid Huawei, Nokia Chief Executive Rajeev Suri on Sunday emphasized the Finnish

accurre Angere sur in Sunday emphasized the Finnish company's focus on security as a selling point.

Mr. Suri also appeared to a selling point.

Mr. Suri also appeared to the Surial sees go common that the Chinese go common to could order Huawei to spy or conduct cyberattacks. "People everywhere are asking the legitimate questions about how best to secure critical networks, about which vendors are appropriate to use and which are not," he said, without specifically naming China or Huawei during a news conference.

The Nokia chief said manu-

The tookia chief said manuber of the tookia neight speed wireless networks, which so the tookia and Huawei make, to connect factory telecoromponents in the near five ture. Without security, he said, "essential trade secrets will fall with those networks—airplane innovations, pharmaceutical formulas, electric-car schematics—things worth not just millions, but billions."

A Huawei spokesman said The Nokia chief said manu-

"security should be an area where no vendor compromises" and that Huawei has focused on security for more than a decade. Huawei executives have long said it is an employeeowned company that operates independently of Beijing, and that it would never conduct state-sponsored espionage or sabotage because doing so would ruin its leading business.

would ruin its leading busi-ness.
Mr. Suri also addressed concerns that Nokia's products were more expensive and less sophisticated than Huawei's. He said Nokia's recent deals prove that Nokia makes com



Rajeev Suri, CEO of Nokia emphasized the Finnish

petitive hardware, and said he felt the Finnish company also

felt the Finnish company also offered competitive prices. But he added: "Let us be clear: Cheaper is not always better," he said. "When it comes to network security, better really matters." to Huawei led the matters." Ho relecom equipment, which in-cludes cellular-tower hardware and internet routers that wire-less and cable providers need, with a 28% share of revenue through 2018's third quarter, according to research firm Dell'Oro Group, Noka was sec-ond with 17%, while Sweden's Ericsson AB followed with 134%.

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wrongdoing or liability whatsoever.

Who is a Settlement Class Member:
All entities and individuals who at any time from
January 1. 1997 through January 17, 2019 held (directly or indirectly, registered or beenfcially),
or otherwise claim any entitlement to any payment (whether a dividend, rights offering, interest on capital, sale of shares, or other distribution) in connection with, any ADR for which BNYM acted as the depositary sponsored by an issuer that is identified in the Appendix to the Notice. Certain entities and individuals are excluded from the entities and individuals are excluded from the the Notice.

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welcome distraction from its

welcome distraction from its legal and political woes. Those include the arrest of its chief financial officer in December and dual criminal indictments in January alleging that the company evaded U.S. sanctions

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# Google Still Plays Catch-Up

start.) In my testing around the San Francisco area, I had service everywhere I ex-pected, but often not at the

Googie caps the bill there. You can keep using data at no added cost, though at 15GB, Google will slow your network speed. Because Google has simi-lar carrier deals in more

than 200 countries, you can travel essentially all over the world without racking up roaming changes. You can roaming changes. You can with just a few tays, too.

For a while, Google Fi was available only on select devices. Now it's available on most Android phones, including Samsung's new Galaxy Slo. Only a few "designed for Fi" models get the network-hopping, VPN and easy international service. With other support? All of the world with the property of the world with the world wit

easy as logging into Gmail, Fi could be a game-changer Otherwise—especially as the carriers add 5G to their net-works and more services to their sales pitches—Google will have trouble keeping up.

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to the settlement, Plan of Allocation, or request for attorneys' fees and expenses must be received by May 13, 2091, in accordance with the Notice. A hearing will be held on June 17, 2019 at 3:00 p.m., before the Honorable J. Paul Oecken, at the Thurgood Marshall U.S. Counthouse, d Foley Square, New York, NY 10007, to determine if the settlement, Plan of Allocation, and/or request for fees and expenses should be approved. Supporting papers will be posted on the webbie once filed.

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#### FINANCE | TECHNOLOGY

# Fed Reversal on Rates Calmed World Markets

FROM FIRST BUSINESS PAGE we've seen in equity markets," said Tony Roth, chief investment officer at the wealth management firm Wilmington Trust.

BONDS In December, stress started to build in the market for corporate bonds. Investors balked at putting money in anything other than super-safe government bonds. One sign of this was a widening of "credits spreads" — the difference between the rela-

the difference between the rela-tively low yields on government bonds and the relatively high yields on corporate bonds. Since Jan. 4, when the Fed's swivel began, those credit spreads have fallen sharply. That is largely because the yields on corporate bonds have declined, while those on government debt have barely budged.

A big reason for the drop in cor-porate bond yields is that invest-

porate bond yields is that invest-ors have greater confidence in the United States economy and the ability of American companies to remain financially healthy.

United States economy and the ability of American companies to remain financially healthy.

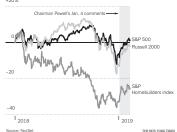
CUBERCIES Doe way to think about the short-term interest rates that the Fed sets is that they are the rates at which investors or even people with savings accounts or certificates of depositage and the short term interest, and the short term interest, and the short term interest, and the short term around the world. The influx of money pushes up the value of the dollar creat rates four times and appeared ready to continue in 2015, the collar rose about 10 permet relative to the euro and other mappeared ready to continue in 2015, the collar rose about 10 permet relative to the euro and other mappeared ready to continue in 2015, the collar rose about 10 permet relative to the euro and other mappeared ready to continue in 2015, the collar rose about 10 permet relative to the euro and other mappeared ready to continue in 2015, the collar shas big implications. It makes American manufactured goods more expensive, and herefore less competitive, on the world market. It depresses the worst of the collar shability in the collar shability in the collar shability to the euro and other mappeared ready to continue in 2015, the collar shability in the world's of the collar shability in the collar shability in the world's of the collar



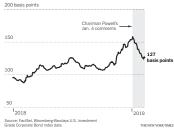
Jerome H. Powell, Fed chairman

When the Fed signaled that it was backing off further rate in-creases, that slowed the upward momentum of the dollar. In fact, it appeared to put a ceiling on the dollar's rise, at least for now. That, in turn, is likely to help American companies and strengthen commodity prices. Crude oil prices are up 16 percent in 2010.

#### Stock Market Rebounds

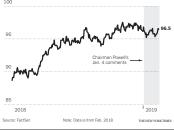


#### **Corporate Bonds Bounce Back**



#### A Cap on Dollar Strength?

The U.S. dollar index — a gauge of the dollar's value against other major currencies — was up as much as 10 percent from lows in early 2018. The Fed's shift may have capped those gains.



# Two robots powered by artificial intelligence on display at the World Internet Conference, China's big tech conference, in Wuzhen last fall

# President to Sign Order To Back and Develop A.I.

President Trump is expected to sign an executive order on Monday meant to spur the devolopment and regulation of artificial intelligence, technology the future of everything from consumer products to health care towarfare.

A.I. experts across industry, andemia and government have long called on the Trump adminisor of artificial intelligence a major priority. Last spring, worried that builted States was not keeping pace with China and other countries, Jim Mattis, then the defense secretary, sent a memo to the White House imploring the president to create a national stratego on A.I.

Now, Mr. Trump is about to take that stop, though this "American."

on A.I.

Now, Mr. Trump is about to take that step, though this "American A.I. Initiative" may not be as bold as some had hoped.

The executive orders in the field, implementation of the control of the

States in the development of tech-nologies that will power surveil-lance systems and autonomous weapons as well as driverless cars and a wide range of internet serv-

ices.

In July 2017, China unveiled a — plan to become the world leader in A.I., aiming to create an industry worth \$150 billion to its economy by 2030, and two Chinese cities promised to invest \$7 billion in the

Amount two Chinese cities pledged to develop A.I., compared with \$75 million for a U.S. defense effort.

Google are also expanding their operations in countries like China, France and Canada, as the A.I. talent in those countries continues to

the administration said it would increase efforts to educate American workers in the field. It plants to work with the National Council for the American Worker to create educational efforts through industry and academia, and it will call on government agencies to develop fellowships related to A.I. But the senior official did not provide specifics on how the United States will track the progress of these efforts.

Everything you need to know for your business day is in Business Day. The New York Times



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#### Who is a Settlement Class Member:

who is a Settlement Class Member:
All entities and individuals who at any time from
January 1, 1997 through January 17, 2019 held (directly
or indirectly, registered or beneficially), or otherwise
claim any entitlement to any payment (whether a
dividend, rights offering, interest on capital, sale urvicenu, rigins onlering, interest on capital, saie of shares, or other distribution) in connection with, any ADR for which BNYM acted as the depositary sponsored by an issuer that is identified in the Appendix to the Notice. Certain entities and individuals are excluded from the definition of the Settlement Class as set forth in the Notice.

#### What are the benefits:

What are the benefits:

If the Court approves the settlement, the proceeds, after deduction of Court-approved notice and administration costs, attorneys, fees and expenses, and any applicable taxes, will be distributed pursuant to the Plan of Allocation set forth in the Notice, or other plan approved by the Court.

Pursuant to Federal Rule of Civil Procedure 23 and Court Onder, the Court has directed notice of the \$72.5 million settlement proposed in In re-The Bank of Now Policy Median ADR FX Litigation, No. 16-CV-00212-PPO-LIC (S.D.N.Y) to the Settlement Class. If approved, the settlement will resolve all claims in the litigation. This notice provides basic information. It is important that you review the detailed notice ("Notice") found at the website below.

What is this lawsuit about:

Lead Plaintiffs allege that, during the relevant time period, BNYM systematically deducted impermissible to be eligible for a settlement payment. Non-Registered Holder Settlement Class Members who do nothing will not receive hour bound by all Court for the control of the providence o

decisions. If you are a Settlement Class Member and do not want to remain in the Settlement Class, you may eckle yourself by request, received by May 13, 20, 200, the Question With the Notice. If you exclude yourself, you will net bound by any Court decisions in this litigation and you will net receive a paramete. But you will retain any right you may have to pruse your own litigation at your own expense concerning the settled claims. Objections to the settlement, Plan of Allocation, or request for attempts, and a fall can be considered by May 13, 2019, in accordance with the Notice.

accordance with the Notice.

A hearing will be held on June 17, 2019 at 3:00 p.m., before the Honorable J. Paul Oetken, at the Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY 10007, to determine if the settlement, Plan of Allocation, and/or request for fees and expenses should be approved. Shapporing papers will be posted on the website once thed.

For more information visit www.bnymadrfxsettlement.com. email info@bnymadrfxsettlement.com or call 866-447-6210.

866-447-6210

www.bnymadrfxsettlement.com

#### FINANCE

# Less Complex Way To Tax the Wealthy Is to End Loopholes

consumed win tax accountants, lawyers, executives, political leaders and yes, billionaires, and specific ideas have come up about plugging the gaps in the tax code, without blowing it

apart.
None of these are as headline grabbing as Ms. Ocasio-Cortez's Green New Deal, nor will they evoke the emotional response of a sound bite about Ms. Warren's wealth tax. But it could be that evolution has a better chance than revolution.

#### Patch the Estate Tax

Patch the Estate Tax
None of the suggestions in this
column — or anywhere else—
can work unless the estate tax is
rid of the loopholes that allow
wealthy Americans to blatantly
(and legally) skirt taxes.
Without addressing whether
the SIL2 million exemption is roo
is riddled with problems. Chief
among them: Wealthy Americans can pass much of their
riches to their heirs without
paying taxes on capital gains paying taxes on capital gains — ever. According to the Center on Budget and Policy Priorities, unrealized capital gains account for "as much as about 55 percent for estates worth more than \$100

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# Increase Capital Gains Rates

Increase Capital Gains Rates
Our income tax rates are progressive, but taxes on capital
gains are less so. There are only
two brackets, and they top out at
20 percent.
By contrast, someone making
40,000 a year by working 40
hours a week is in the 22 percent
Buffett asys his secretary pays a
higher tax rate.

So why not increase capital gains rates on the wealthiest among us?
One chief argument for low capital gains rates to incensive the control of the control o

#### End the Real Estate Loopholes

one reason there are so many real estate billionaires is the law allows the industry to perpetually defer capital gains on properties by trading one for another. In tax parlance, it is known as a 1031 exchange.

In addition, real estate industry executives can denreciate the

In addition, real estate indus-try executives can depreciate the value of their investment for tax purposes even when the actual value of the property appreci-ates. (This partly explains Mr. Kushner's low tax bill.) These are glaring loopholes that are illogical unless you are a beneficiary of them. Several real estate veterans I spoke to pri-vately acknowledged the tax breaks are unconscionable.

This is far and away the most obvious loophole that goes to Americans' basic sense of fair-

Americans' basic sense of faurness.

For reasons that remain inex-plicable — unless you count lobbying money — the private quity, wenture capital, real estate and hedge fund industries that the control of the country of the country

bonuses they earn investing in-clients taxed as capital gains, not clients taxed as a capital gains, not Even President Trump op-posed the loophole. In a 2015 interview, he said hedge fund managers were "getting away with murder."
This idea and the others would. This idea and the others would be a supported to the said of the con-fers to overflowing, but they would help restore a sense of fairness to a system that feels so casily gamed by the wealthiest among us.
There are a couple of other things worth considering.

# Let's Talk About Philanthropy Nobody wants to dissuade charitable giving. But average taxpay-





Closing the perverse loopholes in the estate tax is possibly a more palatable way to raise taxes on the wealthy.

ers are often subsidizing wealthy philanthropists whose charitable deductions genificantly reduce their bills. These people deserve credit for giving money to noble causes (though some nonprofits are lobbying organizations masquerading as do-gooders) but their wealth, in many cases, isn't paying for the basics of health care, defense, education and everything else that taxes pay for. Philanthropic giving is laud-

do the same. Most of Mr. Buffett's wealth is ou une same.

Most of Mr. Buffett's wealth is stock he built up in Berkshire Hathaway. Close estate tax loopholes and raise the capital gains rate to the sky, but the wast mapping. The fortune we Mr. Buffett and the fortune we Mr. Buffett plans to donate almost all off it to Mr. Gates's foundation, which won't pay taxes when the stock is sold to fund the very worthy projects Mr. Gates has undertaken.

SINCE IS EXECUTE DIVER for a promote to (a) decree to (iii) of the belower for a relative content of the (c) (iiii) or a shaper of the below for the (a) the content of the (a) the content of (a) the below for the (a) the (a) the content of (a) the content of

sepent. This would prevent them from using their foundations to capture a tax deduction in windfall years without the money having to go to a worthy cause at the same time. Finally, Fund the I.R.S.

Finally, Fund the I.R.S.
The Internal Revenue Service is so underfunded that the chance an individual gets audited is minuscule—one person in light of the agency And individuals with more than SI million in income, the people with the most complicated tax situations, were audited just 4.4 percent of the time. It was more than 12 percent in 2011, the Center on Budget and 12 the Center of Budget and 12 the people who collect what so weed.

what's owed."

"It encourages people to cheat," she said. "We need a well-trained, well-paid I.R.S. staff so that those of us who pay our so that those of us who pay our taxes aren't being made fools of." Nobody wants to be a patsy.

IF YOU ARE OR WERE A HOLDER OF OR OTHERWISE CLAIM ANY ENTITLEMENT TO ANY PAYMENT IN CONNECTION WITH ANY AMERICAN DEPOSITARY SHARE

(SOMETIMES KNOWN AS AN AMERICAN DEPOSITARY RECEIPT) ("ADR") FOR WHICH THE BANK OF NEW YORK MELLON ("BNYM") ACTED AS DEPOSITARY, YOUR RIGHTS MAY BE AFFECTED.

#### What are the benefits:

DEPOSITARY, YOUR RIGHTS MAY BE AFFECTED.

Parament to Federal Rule of Civil Procedure: 23 and Court Order, the Court has directed notice of the \$72.5 in Court Order, the Court has directed notice of the \$72.5 in Court Order, the Court has directed notice of the \$72.5 in Court Order, the Court has directed notice of the \$72.5 in Court Order, the Court has directed notice of the \$72.5 in Court Order, the Court Order, and the State of the State o

e once filed.

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email info@bnymadrfxsettlement.co

or call 866-447-6210.

accordance with the Notice.

A hearing will be held on June 17, 2019 at 3:00 p.m., before the Honorable J. Paul Oetken, at the Thurgood Marshall U.S. Courthouse, 40 Foley Square, New York, NY 10007, to determine if the settlement, Plan of Allocation, and/or request for fees and expenses should be approved. Supporting papers will be posted on the website once filled.

All logaries concerning this listice of Sole and the terms and conditions of the sole should be made to: Ranson Ulberra, Orick, Heritopica & Sociality LLP (bringhouse; 2017) 95% STTIS) (small refuserables). What J. March. CSEE (bringhouse; 410) 75%-4440 (small but Almostria (Schruce, son), Jong person making any impairy or request must; (i) disclaim the person or cetty on whose behalf such information in On making the conditional but the Sociality of the Socialists and the Sociality of the Sociality of

**Hear It First.** *HEAR IT FIRSTHAND.* 

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# Exhibit D

ÂĎĂCĄÅ PE/d: Markets: Investors Looking to Escape Volatility Turn to 'Smart' ETFs ĀDĄE Wednesday, February 20, 2019 at 1:27:11 PM Eastern Standard Time AČČĆE ÃČE

Please see below.

Trouble viewing this email? View in web prowser:

# THE WALL STREET JOURNAL.



Markets

Are you seeking ways to dodge the next stock-market downturn? We'll get you up to speed on that and more. I'm Jessica Menton, bringing you the latest on today's pre-market moves.

- Stock futures are sagging after back-to-back days of gains. The Nasdaq, meanwhile, is looking to extend its winning streak to eight days. Investors are eyeing results from CVS Health and Analog Devices this morning, followed by Agilent Technologies after the closing bell.
- Minutes from the Fed's latest meeting are on tap. Traders will
  parse the release for more <u>clues into the central bank's economic</u>
  <u>outlook</u>. Some investors are concerned that the assumption
  underpinning the stock market's recent rally—that the Fed has stopped
  raising rates—<u>could be wrong</u>.
- Plus, some investors are scooping up "smart" funds.
   Our <u>Asjylyn Loder</u> weighs in on the pros and cons of adding exposure to these ETFs as investors look for opportunities to evade stock-market turbulence.

# Markets in a Minute

 DjlA
 S&P 500
 U.S 10 Year

 25941.81 0.2% ▲
 2784.42 0.17% ▲
 2.64% 0 ▲

 Crude Oil
 Stoxx Europe 600
 Shanghai Composite

 \$57.05 1.71% ▲
 371.46 0.67% ▲
 2761.22 0.2% ▲

Market data as of 2/20/2019, 1:32:48 PM

# **Overnight Developments**

- U.S. stocks were poised to weaken despite upbeat trading elsewhere on Wednesday, as investors awaited further information on White House trade talks with China.
- Read our full market wrap here
- The view from Asia: <u>Stock Investors Look Past Gloomy Japanese Trade</u>
   Data

# Investors Eye 'Smart' ETFs to Avoid Volatility

By Asjylyn Loder, markets reporter

# **Getting Smart**

'Smart' exchange-traded funds that try to mitigate market risk are finally catching on with investors.

# Net flows into risk-oriented strategic beta ETFs, monthly



Note: Data through February 19

Sources: Morningstar (fund classification); FactSet (flows)

Investors hunting for protection after last year's market turbulence are snapping up so-called smart funds in the hopes of sidestepping the next downturn.

# The S&P 500 has advanced 11% so far this year, but that hasn't stopped investors from looking for a safer way to bet on stocks.

Two of the biggest exchange-traded funds that try to pick less volatile stocks have been among the most popular so far this year. A surge of new money has pushed assets in both the iShares Edge MSCI Min Vol USA ETF and the Invesco S&P 500 Low Volatility ETF to record heights.

In all, ETFs that try to pick less risky stocks have taken in \$11.3 billion since the beginning of November, according to Morningstar. The funds, billed as "smart beta" or "strategic beta," are pegged to bespoke indexes that target stocks that are less susceptible to violent price swings. ETF issuers have been trying for years to get cost-conscious passive investors to embrace more sophisticated—and pricier—styles of index investing. Last year's rocky markets finally did what slick marketing and backtests failed to do: provide a real-world example of how such funds can outperform when markets are topsy turvy.

Larry Carroll, chief executive of Carroll Financial, said his ETF of choice is the iShares Edge MSCI Min Vol USA ETF, which aims to pick a less volatile mix of U.S. stocks. Its three biggest holdings are Newmont Mining, Waste Management and Visa, compared with Microsoft, Apple and Amazon.com for the iShares plain-vanilla S&P 500 ETF. Mr. Carroll said the fund accounts for 5% to 10% of his clients' stock portfolios.

In the past year, both Mr. Carroll's iShares ETF and the competing Invesco ETF have handily beat the iShares ETF that tracks S&P 500. Both ETFs have returned more than 10%, compared with just 3.6% for the S&P 500 fund. The iShares ETF and the Invesco fund aim to smooth out market upheaval. They're built quite differently though, which can have a meaningful impact on returns.

Investors, however, win less when the markets are on the way up. So far this year, both the iShares and Invesco low-volatility ETFs are up more than 9%, trailing the S&P 500's 11% gain.

Are you investing in "smart" ETFs? Let the author know your thoughts at <u>asjylyn.loder@wsj.com</u>. Emailed comments may be edited before publication in future newsletters, and please make sure to include your name and location.



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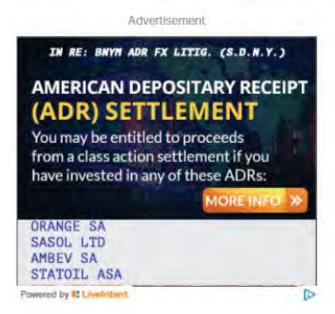
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# Market Facts

 Renewed geopolitical uncertainty on U.S.-China trade talks and a weaker dollar helped <u>power gold prices</u> up 1.7% to \$1,340.10 a troy ounce on Tuesday, their highest close since April 19 and their biggest one-day advance since Nov. 1. The precious metal has climbed 4.8% this year.

- Yields on shorter-term debt, which tend to move in tandem with investors' interest-rate expectations, retreated this week. The yield on the two-year Treasury note settled at 2.500% Tuesday, compared with 2.520% Friday. The yield on the two-year Treasury note has <u>fallen</u> for three consecutive months, its longest such streak since 2013, according to Dow Jones Market Data. Yields fall as bond prices rise.
- On this day in 1852, a locomotive of the Michigan Southern railroad arrived in Chicago, connecting the breadbasket of the world directly with the Eastern U.S. for the first time. Instead of more than two weeks by horse, coach and canal boat, it took just two days by rail to travel from New York City to Chicago. Goods, money and people could flow between the two booming cities faster than anyone had ever imagined.



# **Key Events**

The Dallas Fed's Richard Kaplan speaks in Houston at 1:10 p.m. ET.

The Federal Reserve releases minutes from its Jan. 29-30 policy meeting at 2 p.m.

#### **Must Reads**



Illustration: Laura Kammermann

Why are there calls to restrict stock buybacks? In the video above, our <u>Ken Brown</u> explains the basics of buybacks and the economics of lawmakers' proposals to limit them.

Investors are sounding a warning about markets' complacency on rates. Stocks and bonds are rising on bets the Fed has ended its interestrate increases, <u>worrying investors who believe</u> the central bank could upend those expectations later this year.

Customers hunt for a bankrupt crypto exchange's missing millions. An unusual cash-pickup system is the latest <u>unusual business</u> practice at Quadriga to emerge since Gerald Cotten, the firm's 30-year-old

co-founder and CEO, died in India late last year.

Who needs free? Passive fund prices have flatlined. Zero-fee exchange-traded funds have <u>failed to take off</u> as investors accept higher costs for finer-tuned strategies.

Markets warm to the prospect of an ECB funding boost for banks. Market participants are growing confident that the European Central Bank will soon try to boost the eurozone's ailing economy by <u>rebooting its</u> <u>program</u> of ultracheap long-term loans to the banking system.

The SEC wants to make it easier for companies to explore IPOs. Any company exploring whether to go public would get greater leeway to discuss their plans privately with potential investors before announcing an initial public offering, under a proposal that securities regulators released Tuesday.

#### What We've Heard on the Street

"Although they are in vogue, mini deals may not hit the spot for growth-starved consumer companies."

-Heard on the Street columnist Carol Ryan

#### Stocks to Watch

Herbalife Nutrition: The company reported a 9% sales increase in the fourth quarter, driven by strong growth in Asia.

<u>PepsiCo</u>: Hormel Foods said the beverage giant will buy the company's CytoSport business, which makes Muscle Milk, for an undisclosed amount.

Analog Devices: The chip maker said late Tuesday that its board of directors voted to raise the company's quarterly dividend to 54 cents a

share, an increase of 12.5%.

La-Z-Boy: The furniture maker's profit and sales results for the latest quarter topped analysts' estimates.

LendingClub: The peer-to-peer lending company missed Wall Street's fourth-quarter revenue expectations.

#### **About Us**

This newsletter is written and edited by Amrith Ramkumar (@AmrithRamkumar; amrith.ramkumar@wsj.com) and Jessica Menton (@JessicaMenton; jessica.menton@wsj.com) in New York, and James Willhite (@jimwillhite; james.willhite@wsj.com) in London.

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ÂDĀBĀĀĢÐStocks To Buy And Watch

Monday, February 25, 2019 at 9:04:19 AM Eastern Standard Time

AČĈCĐ IBD Market Prep

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#### Market Prep AM | 2/25



Young IPOs led China stocks, Caterpillar topped the Dow Jones Monday as stock futures rose on a delayed increase in China tariffs.



American Depositary Receipt (ADR) Settlement

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#### **Artificial Intelligence Stocks To Buy And Watch Amid Rising AI Competition**

When looking for the best artificial intelligence stocks to buy, investors should expand their search to unexpected fields. Salesforce.com and Trade Desk are among AI stocks on IBD's radar....



#### Which Pharmaceutical Stocks Are **Outperforming All Other Stocks?**

The best pharmaceutical stocks to buy have commonalities: Strong Composite Ratings and Relative Strength Ratings....



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### New ETFs To Consider, Plus Second Marijuana Play On The Way?

New ETFs launched this month include financial technology and short-duration income. Another ETF issuer is seeking approval for a U.S.-listed pure-play marijuana fund....



# How To Become A Financial Advisor: Experts Offer Tips

In launching their own firm, advisors plan with care and commit to a business model that matches their interests....





ÂDĀBAĂÇIDs The Market Reached A Tipping Point?

Monday, February 25, 2019 at 5:57:14 PM Eastern Standard Time

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#### Market Prep PM | 2/25



New signs that the U.S. and China are closer to a trade agreement sent stocks up, but the early gains faded and left the S&P 500 today with a symptom of institutional selling.



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#### Palo Alto Leads 3 IBD 50 Stocks Near Buys **Before Earnings: Action Plan (\$)**

IBD 50 stocks Palo Alto Networks, Planet Fitness, Nexstar Media, Veeva Systems and Autohome have earnings due. Palo Alto leads 3 stocks near buy points....



#### No. 1 Cybersecurity Stock Eyes New Buy Zone After 138% Run (\$)

As fellow cloud security leaders Palo Alto Networks and CyberArk show strength, Fortinet is also among the top cybersecurity stocks to watch....



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### These 2 Marijuana Stocks Are Best Poised For World Domination, Analyst Says

Marijuana stocks: Aurora Cannabis and Canopy Growth are best-poised for global domination, a Jefferies analyst said Monday. Cowen sees a big CBD market....



### These China Tech Stocks Rally As Trump Delays Tariff Hikes

China stocks in the tech sector rallied Monday after President Donald Trump on Sunday announced he would delay a March 1 deadline for tariff hikes on Chinese imports following weekend talks....



### This Cybersecurity Firm Is IBD Stock Of The Day Ahead Of Earnings

Palo Alto Networks is the IBD Stock Of The Day ahead of its fiscal secondquarter earnings report due late Tuesday. The stock has neared an entry point amid some other bullish signs....



### What Did 4 Top Stocks Scoring Breakouts Have In Common?

Several top stocks staged breakouts early Monday, before pulling back slightly to trade below their respective buy points in the current stock market....



ÃĎĂCĄÅDEese 2 Dow Stocks Take A Hit

Tuesday, February 26, 2019 at 9:00:11 AM Eastern Standard Time

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#### Market Prep AM | 2/26



Caterpillar and Home Depot held back the Dow Jones industrials Tuesday as stock futures traded lower ahead of Senate testimony from Fed chief Jerome Powell.



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#### Square Earnings Due; 3 Top Stocks Fight For **Key Support**

Investing Action Plan: Square earnings are on tap with shares are still off highs. Wingstop stock, Horizon Pharma stock and TJX stock are fighting for support with reports due....



#### **ETF Fees Falling To Zero As Lender Plans First No-Cost Funds**

Social Finance, the online lender known as SoFi, is helping start two new ETFs that won't charge a management fee, according to regulatory filings....



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### Macy's Earnings Beat But Comps Miss As Restructuring Sees Savings

Macy's earnings topped Q4 views early Tuesday but fell short on same-store sales, while targeting \$100 million in annual savings from a restructuring plan....



#### This IBD 50 Media Star Misses Earnings Views

Nexstar earnings missed views despite a fourth straight quarter of triple-digit growth. The IBD 50 stock, wasn't trading yet early Tuesday....



# See Which Stocks Just Came On And Off IBD's Top Screens

Find the best stocks to buy and watch by seeing which top growth stocks were just added to the IBD 50, IPO Leaders and other IBD stock lists....



### What Facebook, Alibaba, Tencent Music Reveal About Buying IPO Stocks

Interested in buying "hot" IPO stocks? Keep in mind these lessons from the initial public offerings of Facebook, Alibaba, Snap, Tencent Music and Cronos....



ÂDĀBĀĀĢ@re's One Key To Beating The Dow In 2019

Tuesday, February 26, 2019 at 6:02:54 PM Eastern Standard Time

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#### Market Prep PM | 2/26

# The Big Picture: Here's One Key To Beating The Dow In 2019 (\$)

DAVID SAITO-CHUNG | Feb 26, 2019 5:59 PM ET

The Dow Jones Industrial Average and other key indexes showed miserly declines in lower volume. Small caps fell more. Ten Dow stocks show a good RS Rating.



#### American Depositary Receipt (ADR) Settlement

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#### Square Earnings On Tap; Wingstop, TJX Fight For Support: Action Plan (\$)

Investing Action Plan: Square earnings are on tap with shares are still off highs. Wingstop stock, Horizon Pharma stock and TJX stock are fighting for support with reports due....



#### Palo Alto Earnings, Revenue Top Estimates, As \$1 Billion Stock Buyback Set

Palo Alto Networks earnings and revenue for the fourth quarter, reported late Tuesday, beat analyst estimates. Palo Alto stock climbed in after-hours trading on the stock market today....



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### Planet Fitness Jumps On Earnings, Cites This 'Favorable' Trend

Planet Fitness earnings for the fourth quarter are due after the close. Planet Fitness stock crept higher, fighting to hold its 50-day line in a flat base....



# These 5 Top Stocks Are Breaking Out To New Highs

A broad group of top stocks led by Etsy broke out to new highs Tuesday, with most of the gains fueled by positive earnings reports....



### This Highly Rated Medical Stock Just Beat Fourth-Quarter Estimates

Masimo earnings of 83 cents a share, minus certain items, on \$223.13 million in fourth-quarter sales, beat views. Masimo stock jumped during after-hours action on the market late Tuesday....



### IBD Stock Of The Day: Chip-Gear Supplier Is 'Steady Eddy' Amid Downturn

Cabot Microelectronics, a supplier of chemicals for semiconductor manufacturing, is the IBD Stock Of The Day after its shares broke out in heavy trading Monday. It continued to rise Tuesday....



ÃĐÅĆÆÅĎĎcks Point Lower But You Can Still Find Breakouts

Wednesday, February 27, 2019 at 9:06:40 AM Eastern Standard Time

**ÀCĊĈÈ IBD Market Prep** 

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#### Market Prep AM | 2/27



Stock futures lagged Wednesday, but Palo Alto Networks and MercadoLibre soared on earnings news, and the Dow Jones sighted in on 10 straight weekly gains.



American Depositary Receipt (ADR) Settlement You may get proceeds from a settlement if you invested in certain ADRs. Promoted Content By HF Media LLC

#### TJX Boosts Dividend, OKs New Buyback As **Sales Crush Views**

Off-price apparel chain TJX easily beat same-store sales estimates for the holiday quarter early Wednesday and announced bigger returns to shareholders....



#### Trump Unveils Big Boeing Orders In Vietnam, **But Only One Is New**

Bamboo Airways signed a new Boeing deal and VietJet wrapped up a provisional order of Boeing passenger jets during President Donald Trump's visit to Hanoi for his North Korea summit Wednesday....



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Promoted Content By HF Media LLC

### **Best Buy Earnings Crush Estimates, Sending Shares Soaring**

Consumer electronics retailer Best Buy on Wednesday beat Wall Street's targets for its fiscal fourth quarter. The Best Buy earnings news sent the company's shares soaring in early trading....



### **Active-Manager Revenge Gains Steam As Funds Thrash Benchmarks**

If you're wondering why index funds are suddenly losing more money this year than active managers, look no further than their performance....





You may get proceeds from a settlement if you invested in certain ADRs. Court Authorized Notice.



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### Wingstop Earnings Miss Even As Chicken Costs Fall; Stock Drops

Chicken-wing restaurant chain Wingstop missed fourth-quarter earnings forecasts despite a drop in chicken costs....



### This New Boeing Drone May Fly Into Combat With U.S. Fighter Jets

Boeing unveiled a new combat drone "wingman" that can fly independently or with other aircraft. ...



# IBD Stock Of The Day: Leader With 139% Growth Chases Buy Point

Industrial distributor HD Supply is the IBD Stock Of The Day as it chases a new buy point. The top stock has seen its value soar by 139% since going public in 2013....



ÃĐĂĆĄÅĎĒtures Mixed, But This Stock Is Ready For A Monster Breakout

Thursday, February 28, 2019 at 9:08:00 AM Eastern Standard Time

**ÀCĊĈÈ** IBD Market Prep

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#### Market Prep AM | 2/28



Monster Beverage spiked, Tesla and Boeing gained Thursday as stock futures were mixed and the Dow Jones industrials edged higher ahead of the open.



American Depositary Receipt (ADR) Settlement You may get proceeds from a settlement if you invested in certain ADRs. Promoted Content By HF Media LLC

#### U.S. GDP Grows Above-Forecast 2.6% As **Business Spending Picks Up**

The U.S. economy cooled by less than expected last quarter as business investment picked up, suggesting growth could be stronger for longer....



#### No. 1-Ranked Stock In Highly Rated Industry **Enters Buy Zone**

RealPage, which shares the No. 1 ranking among specialty enterprise software stocks with Atlassian and Alarm.com, is in the buy zone after a 50% EPS gain....



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# **Chinese E-Commerce Giant Soars On Surprise Earnings**

JD.com earnings unexpectedly were positive in Q4, while revenue growth for the Chinese e-commerce giant also topped. JD.com stock soared....



### 9 New Stocks Cycle Into IBD's Premier Watch Lists

Find out which top-rated stocks have just earned a spot on IBD's lists of the best growth stocks....



### Crocs Earnings Top Views, But Stock Tripped Up On Guidance

Crocs earnings came in better-than-expected in Q4, while the specialty footwear maker gave OK revenue guidance. Crocs stock fell....





ÂĎĀCÅĂ��er Hours: These 7 Stocks Are Big Earnings Movers

Thursday, February 28, 2019 at 6:33:37 PM Eastern Standard Time

**AĊČĆF IBD Market Prep** 

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INVESTOR'S BUSINESS DAILY®











#### Market Prep PM | 2/28



After hours: The \$35,000 Model 3 is here, but Tesla stock fell as Elon Musk sees a Q1 loss. Workday led 6 top software stocks reporting late.



American Depositary Receipt (ADR) Settlement

You may get proceeds from a settlement if you invested in certain ADRs.

Promoted Content By HF Media LLC

#### The Big Picture: Indexes Fade Late As These 2 ETFs Hammer The Dow (\$)

Some commentators said Trump's walk-off move could give him more leverage in trade talks with China, a bigger concern for the stock market than North Korea....



#### Fastenal, PayPal, 7 Other Stocks Added To IBD **Watch Lists**

Here are today's top growth stocks that have just been added to the IBD stock lists, including the IBD 50, IPO Leaders and the IBD Big Cap 20....



ÃĐĂĆĄÅĎĚhat Does Amazon Want With Push Into Electric Vehicles?

Friday, March 1, 2019 at 8:57:04 AM Eastern Standard Time

**ÀCĊĈÈ** IBD Market Prep

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#### Market Prep AM | 3/1



Foot Locker spiked Friday, and tech names like Zscaler also lifted stock futures higher, as the Dow Jones industrials aimed for a 10th straight weekly gain.



American Depositary Receipt (ADR) Settlement You may get proceeds from a settlement if you invested in certain ADRs. Promoted Content By HF Media LLC

#### Amazon Electric Vehicle Push: What Does E-**Commerce Giant Want?**

Amazon's investment in Rivian and Aurora fit into a plan called "Shipment Zero." That project aims to make all Amazon shipments carbon free, with 50% of shipments achieving that by 2030....



#### No. 1-Ranked Stock In Highly Rated Industry **Enters Buy Zone (\$)**

RealPage, which shares the No. 1 ranking among specialty enterprise software stocks with Atlassian and Alarm.com, is in the buy zone after a 50% EPS gain....



You may get proceeds from a settlement if you invested in certain ADRs. Court Authorized Notice.



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### Foot Locker Leaps On Surging Same-Store Sales; Nike Signals Breakout

Foot Locker earnings rose 23% in Q4, the best gain in years, as same-store sales surged 9.7%. Foot Locker shares soared while Nike rose too....



### These 2 Airline Stocks Enter 2019 On Rising Expectations

United Airlines stock and Spirit Airline stocks have emerged as airline industry leaders, even as other airline stocks struggle....



### How Much Mortgage Can You Afford In The 25 Priciest U.S. Markets?

Are you wondering, How much mortgage can I afford? In some markets, you better be able to afford a lot....



### **Commercial Drones Set To Take Business By Storm**

The government is finally taking the leash off commercial drones and letting them soar higher as regulations start to open up new uses in more places....



ÂĎĀCÅĂĐĒck Market Battles, But Bulls Prevail

Friday, March 1, 2019 at 5:40:43 PM Eastern Standard Time

AĊČĆE **IBD Market Prep** 

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INVESTOR'S BUSINESS DAILY®











#### Market Prep PM | 3/1



The Nasdag threatened to give back all of its early gains but rallied to close up 0.8% in Friday's stock market. Blue chips lagged for the day.



American Depositary Receipt (ADR) Settlement

You may get proceeds from a settlement if you invested in certain ADRs.

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#### Here's What To Watch For In The Market Next Week: Investing Action Plan (\$)

Earnings reports slow down but some top stocks are coming up, including software leaders Salesforce and Guidewire as well as Ciena and Burlington Stores....



#### **Commercial Drones Set To Take Business By** Storm, And By Air

The government is taking the leash off commercial drones and letting them soar higher as regulations start to open up new uses in more places. Get ready for a proliferation in drones....



You may get proceeds from a settlement if you invested in certain ADRs. Court Authorized Notice.



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### IBD Stock Of The Day Soars As This Business 'Cannot Be Duplicated' Online

Live Nation Entertainment, the music-concert gatekeeper that merged with Ticketmaster nearly a decade ago, is the IBD Stock of the Day....



### These 2 Dividend Leaders Show Sharply Rising RS Lines

Large-cap stocks Leggett & Platt and TransCanada are both below buy points, with the best performing RS lines among IBD's top dividend stocks....



### This MiG-21 Vs. F-16 Dogfight Heats Up \$15 Billion Fighter Contest

An Indian MiG-21 pilot's capture by Pakistan earlier this week makes New Delhi's fighter procurement contest to replace its aging fleet even more dire, a top aviation analyst said....



### EBay Stock Up As It Reveals Plans For Strategic Review Of Assets

EBay stock rose after the company announced plans to boost its performance by reviewing assets such as StubHub and appointing a director from Elliott Management to its board....



ÃĐĂĆĄÅĎĒtures Rally With China Deal Near; Tesla To Unveil Model Y

Sunday, March 3, 2019 at 6:53:25 PM Eastern Standard Time

**ÀCĊĈÈ** IBD Market Prep

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INVESTOR'S BUSINESS DAILY®











#### Market Prep PM | 3/3



Stock futures: A China trade deal is reportedly near. That should be good for the stock market rally, Apple, Boeing, Alibaba and Starbucks. Tesla unveils the Model Y on March 14.



American Depositary Receipt (ADR) Settlement You may get proceeds from a settlement if you invested in certain ADRs. Promoted Content By HF Media LLC

#### **Four Recent Breakouts Offer New Tight Entries**

Recent breakouts TransDigm, Paycom Software, RingCentral and Mercury Systems have forged three-weeks-tight entries....



#### **These 4 Stocks From Hot Sector Are Simmering** In Buy Range

Among top stocks to watch this week, Adobe, Palo Alto Networks, Verisign and SS&C Technologies are leading software stocks in buy range....



You may get proceeds from a settlement if you invested in certain ADRs. Court Authorized Notice.



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### IBD Stock Of The Day Soars As This Business 'Cannot Be Duplicated' Online

Live Nation Entertainment, the music-concert gatekeeper that merged with Ticketmaster nearly a decade ago, is the IBD Stock of the Day....



### Buffett Bets Big On This Hot IPO — Why It Should Be On Your Radar

Recent IPO stock StoneCo is a profitable Brazilian payments firm. Warren Buffett has taken a big stake. Here's why you should take a look....



### **SpaceX Crew Dragon Capsule Docks With Space Station**

After a successful SpaceX launch Saturday, the unmanned Crew Dragon capsule docked with the International Space Station early Sunday....

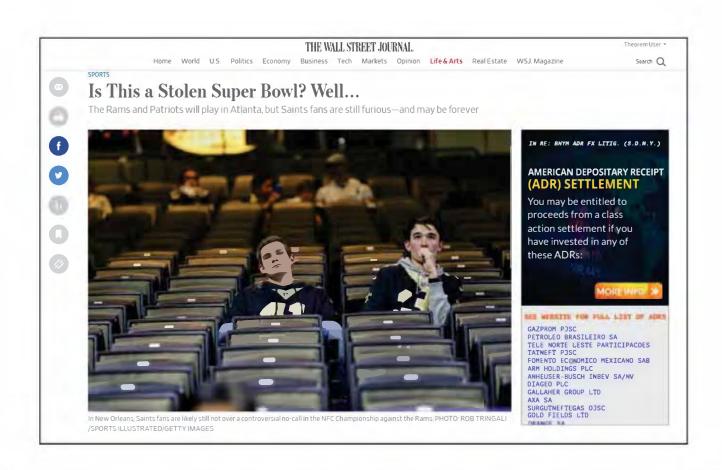


# **Commercial Drones Set To Take Business By Storm, And By Air**

The government is taking the leash off commercial drones and letting them soar higher as regulations start to open up new uses in more places. Get ready for a proliferation in drones....

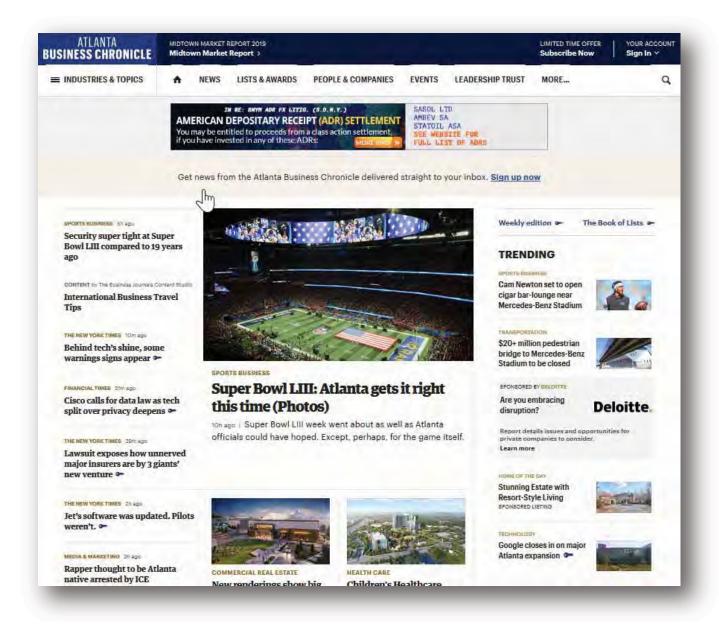


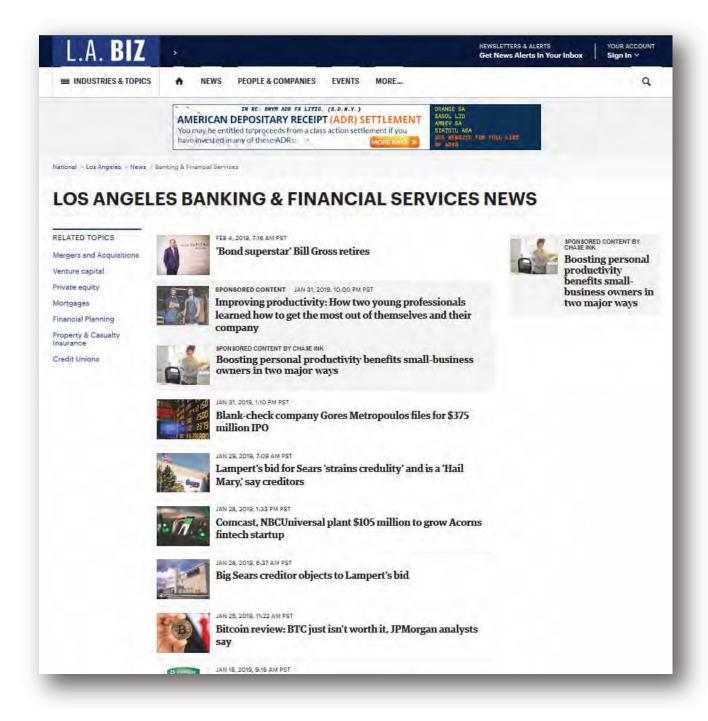
# Exhibit E



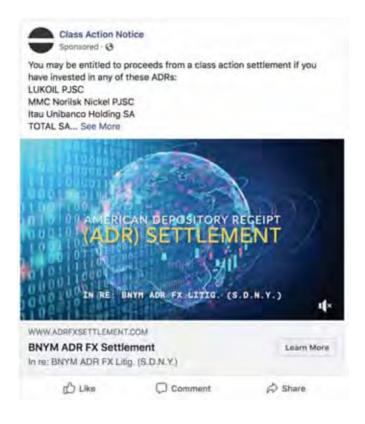








# Exhibit F











# Exhibit G

If You Are Or Were A Holder Of Or Otherwise Claim Any Entitlement To Any Payment In Connection With Any American Depositary Share (Sometimes Known As An American Depositary Receipt) ("ADR") For Which The Bank of New York Mellon ("BNYM") Acted As Depositary, Your Rights May Be Affected.

English

PR Newswire ID: 2356528-1 Clear Time Jan 25, 2019 9:17 AM ET

#### Pickup

Where did my release get picked up?

151 82,201,420 total pickup total potential audience

#### **Traffic**

What traffic did my release generate?

938 3,150 release views web crawler hits

#### **Audience**

Who are the audiences viewing my release?

67 86 591 1,081 media views organization views targeted influencers Associated Press outlets

### Engagement How are people engaging with my release?

211 total engagement actions

2 209 shares click-throughs

#### Case 1:16-cv-00212-JPO-JLC Document 155-2 Filed 04/29/19 Page 109 of 139

#### **Industry Benchmarks**

On a scale of 1 - 100, how this release performed compared to other similar releases.

60 total visibility

38 80 62 pickup traffic audience

100 engagement

## Pickup

## Overview

TOTAL PICKUP 151 TO

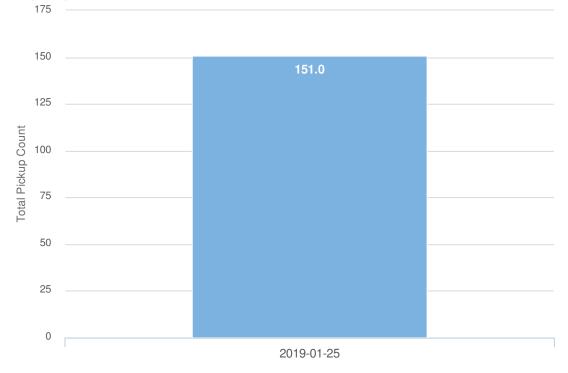
Exact Match 151 postings Ex

TOTAL POTENTIAL AUDIENCE 82.2M

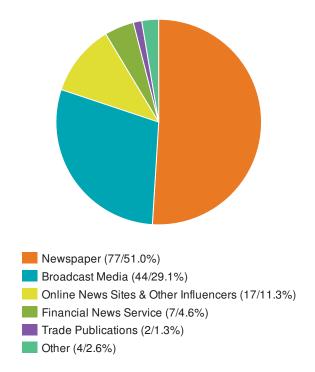
Exact Match 82.2M visitors

## Total Pickup Over Time

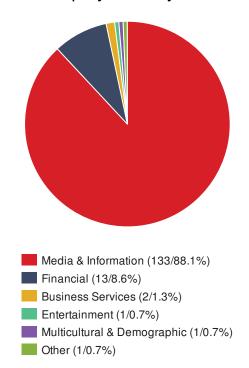
Total pickup since your content was distributed







#### Total Pickup by Industry



### **Exact Match Pickup**

Exact matches are full text postings of your content which we have found in the online and social media that we monitor. Understand how it is calculated. Your release has generated **151** exact matches with a total potential audience of **82,201,420**.

Logo	Outlet Name	Location	Source Type	Industry	Potential Audience
YAHOO! FINANCE	Yahoo! Finance Online ☐ View Release	Global	Online News Sites & Other Influencers	Media & Information	73,379,000 visitors/day
Market Watch	MarketWatch Online ☐ View Release	United States	Financial News Service	Financial	789,000 visitors/day
TheStreet	TheStreet.com Online ☐ View Release	United States	Trade Publications	Financial	230,000 visitors/day
Wichita Business Journal	Wichita Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BusinessJournal	Washington Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day

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Business Journal	Minneapolis / St. Paul Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Tuore Benes Joena	Triangle Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
THE BUSINESS OF RIVE ACROSS THE CHAPTER & PRINCE AND	Business Journal of the Greater Triad Area Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
B <mark>isiness Journal</mark>	Tampa Bay Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Šī Laus <mark>Busmas</mark> Jurmu	St. Louis Business Journal Online 🖵 View Release	United States	Newspaper	Media & Information	168,000 visitors/day
South Almida Business Journal	South Florida Business Journal Online	United States	Newspaper	Media & Information	168,000 visitors/day
PUGET SOUND Business Journal	Puget Sound Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BUSINESS. DUTTA	San Jose Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business Times	San Francisco Business Times Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BUSINESS JOURNAL	San Antonio Business Journal Online 🖵 View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business Journal	Sacramento Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
bizjournals"	Bizjournals.com, Inc. Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business Journal	Portland Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
DUSTRISSTIMS	Pittsburgh Business Times Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business Journal	Business Journal of Phoenix Online   View Release	United States	Newspaper	Media & Information	168,000 visitors/day

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BUSINESSJOURNAL	Philadelphia Business Journal Online 🖵 View Release	United States	Newspaper	Media & Information	168,000 visitors/day
PACIFIC BUSINESS NEWS	Pacific Business News Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business Journal	Orlando Business Journal Online  View Release	United States	Newspaper	Media & Information	168,000 visitors/day
NEW YORK BUSINESS JOURNAL	New York Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Nashrille Business Journal	Nashville Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business Journal	Business Journal of Greater Milwaukee Online — View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Menglis Business Journal	Memphis Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business First	Business First of Louisville Online	United States	Newspaper	Media & Information	168,000 visitors/day
Los Angeles Business	Los Angeles Business from bizjournals Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BUSINESS OURNAL	Kansas City Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business Journal	Jacksonville Business Journal Online 🖵 View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BUSINES JOURNAL	Houston Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business Journal	Denver Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BUSINESS JOURNAL	Dayton Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Dallas Business Journal	Dallas Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day

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BUSINESS FIRST	Business First of Columbus Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business Courier	Cincinnati Business Courier Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BUSINESS JOURNAL	Charlotte Business Journal Online   ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
Business First Westen New 1943 Dissiless Revisioner	Business First of Buffalo Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
<mark>Ouston Business J</mark> ournal	Boston Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BUSINESS JOURNAL	Birmingham Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BusinessJournal	Baltimore Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
USNESCOUNAL	Austin Business Journal Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
ATLANTA BUSINESS CHRONICLE	Atlanta Business Chronicle Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BUSINESSWEEKLY	New Mexico Business Weekly Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
BUSINESS REVIEW	Business Review (Albany) Online ☐ View Release	United States	Newspaper	Media & Information	168,000 visitors/day
PR Newswire a downcompany	PR Newswire Online ☐ View Release	United States	PR Newswire	Media & Information	123,000 visitors/day
NEWS	WFMZ-TV IND-69 [Allentown, PA] Online ☐ View Release	United States	Broadcast Media	Media & Information	51,000 visitors/day
Dittsburgh Dost-Gazette post-gazete com	Pittsburgh Post-Gazette [Pittsburgh, PA] Online ☐ View Release	United States	Newspaper	Media & Information	40,000 visitors/day

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NEWSOK Venico di ci carrento del servi regionare	Oklahoman [Oklahoma City, OK] Online ☐ View Release	United States	Newspaper	Media & Information	39,000 visitors/day
BENZINGA the trading idea network	Benzinga Online ☐ View Release	United States	Online News Sites & Other Influencers	Financial	23,000 visitors/day
Tig Picture Local Focus	Daily Herald [Chicago, IL] Online ☐ View Release	United States	Newspaper	Media & Information	18,000 visitors/day
MARKETPLACE'	Marketplace Online ☐ View Release	United States	Broadcast Media	Media & Information	17,000 visitors/day
MALEIGH - DUREAU - ANYETTIYALE	WRAL-TV CBS-5 [Raleigh, NC] Online   ✓ View Release	United States	Broadcast Media	Media & Information	17,000 visitors/day
Townhall Finglace	Townhall Finance Online ☐ View Release	United States	Financial News Service	Media & Information	17,000 visitors/day
Townsconding	Tamar Securities Online ☐ View Release	United States	Online News Sites & Other Influencers	Financial	17,000 visitors/day
Financial	FinancialContent - PR Newswire Online  View Release	United States	Financial News Service	Media & Information	17,000 visitors/day
rrstar.com	Rockford Register Star [Rockford, IL] Online □ View Release	United States	Newspaper	Media & Information	17,000 visitors/day
Value investing News	Value Investing News Online ☐ View Release	United States	Financial News Service	Financial	17,000 visitors/day
Baily Penny Alerts	Daily Penny Alerts Online ☐ View Release	United States	Online News Sites & Other Influencers	Financial	17,000 visitors/day
Participant Education Center	Benefit Plans Administrative Services Online	United States	Online News Sites & Other Influencers	Financial	17,000 visitors/day
Herald.com	Boston Herald [Boston, MA] Online ☐ View Release	United States	Newspaper	Media & Information	17,000 visitors/day
1st Discount Brokerage	1st Discount Brokerage Online ☐ View Release	United States	Financial News Service	Financial	17,000 visitors/day
NewsOn6.com	KOTV-TV CBS-6 [Tulsa, OK] Online ☐ View Release	United States	Broadcast Media	Media & Information	16,000 visitors/day

EYEWITNESS NEWS	WRCB-TV NBC-3 [Chattanooga, TN] Online ☐ View Release	United States	Broadcast Media	Media & Information	14,000 visitors/day
count on 2 first	WBBH-TV NBC-2 [Fort Myers, FL] Online ☐ View Release	United States	Broadcast Media	Media & Information	8,000 visitors/day
News9.com	KWTV-TV CBS-9 [Oklahoma City, OK] Online ☐ View Release	United States	Broadcast Media	Media & Information	6,000 visitors/day
<b>0</b> 00000000000000000000000000000000000	KFMB-TV CBS-8 [San Diego, CA] Online ☐ View Release	United States	Broadcast Media	Media & Information	5,000 visitors/day
WBOC 16	WBOC-TV CBS-16 [Salisbury, MD] Online ☐ View Release	United States	Broadcast Media	Media & Information	4,000 visitors/day
One News Page	One News Page Global Edition Online ☐ View Release	Global	Online News Sites & Other Influencers	Media & Information	4,000 visitors/day
NBC	WVIR-TV NBC-29 [Charlottesville, VA] Online ☐ View Release	United States	Broadcast Media	Media & Information	4,000 visitors/day
NEWS 25	KXXV-TV ABC-25 [Waco, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information	4,000 visitors/day
<b>wfmj∦</b> com	WFMJ-TV NBC-21 [Youngstown, OH] Online ☐ View Release	United States	Broadcast Media	Media & Information	3,000 visitors/day
lickertech.com	Ticker Technologies Online ☐ View Release	United States	Financial News Service	Financial	3,000 visitors/day
spoke	Spoke Online ☐ View Release	United States	News & Information Service	Business Services	3,000 visitors/day
KITV &	KITV-TV ABC [Honolulu, HI] Online ☐ View Release	United States	Broadcast Media	Media & Information	3,000 visitors/day
Kake com	KAKE-TV ABC [Wichita, KS] Online ☐ View Release	United States	Broadcast Media	Media & Information	3,000 visitors/day
Â	WZVN-TV ABC-7 [Fort Myers, FL] Online ☐ View Release	United States	Broadcast Media	Media & Information	3,000 visitors/day

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Cusc	1.10-CV-00212-31 O-3LC DC	Journeric	133-2 1 1100 04/2		0
3 abc	WSIL-TV ABC-3 [Carterville, IL] Online ☐ View Release	United States	Broadcast Media	Media & Information	2,000 visitors/day
2 NEWS	KTVN-TV CBS-2 [Reno, NV] Online ☐ View Release	United States	Broadcast Media	Media & Information	2,000 visitors/day
MYMOTHERLODE CON	myMotherLode.com [Sonora, CA] Online ☐ View Release	United States	Newspaper	Media & Information	2,000 visitors/day
ERIE NEWS	WICU-TV NBC-12 / WSEE-TV CBS-35 [Erie, PA] Online □ View Release	United States	Broadcast Media	Media & Information	2,000 visitors/day
News <mark>Blaze</mark>	NewsBlaze Online ☐ View Release	United States	Online News Sites & Other Influencers	Media & Information	1,420 visitors/day
NEWS	WENY-TV [Horseheads, NY] Online    View Release	United States	Broadcast Media	Media & Information	1,000 visitors/day
RFDITY	RFD-TV [Nashville, TN] Online ☐ View Release	United States	Broadcast Media	Media & Information	1,000 visitors/day
∞6.com	WLNE-TV ABC-6 [Providence, RI] Online ☐ View Release	United States	Broadcast Media	Media & Information	1,000 visitors/day
FOX 40 WICZ-TV EINGHAMION	WICZ-TV FOX-40 [Binghamton, NY] Online ☐ View Release	United States	Broadcast Media	Media & Information	1,000 visitors/day
The Chronicle Journal	The Chronicle Journal [Thunder Bay, ON] Online    View Release	Canada	Newspaper	Media & Information	1,000 visitors/day
6/2 FOX	KEYC-TV CBS-12 / FOX-12 [Mankato, MN] Online	United States	Broadcast Media	Media & Information	1,000 visitors/day
LATIN BUSINESS TODAY	Latin Business Today Online ☐ View Release	United States	Online News Sites & Other Influencers	Multicultural & Demographic	
Axcess News	Axcess News Online  View Release	United States	Online News Sites & Other Influencers	Media & Information	
1stCounsel	1stCounsel Online ☐ View Release	United States	Online News Sites & Other Influencers	Policy & Public Interest	
WGTA *	WGTA-TV MeTV-32 [Atlanta, GA] Online ☐ View Release	United States	Broadcast Media	Media & Information	

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GE WASCE	WBCB-TV CW-21 (Youngstown, OH) Online ☐ View Release	United States	Broadcast Media	Media & Information	
SAN DIEGO	KFMB-TV CW [San Diego, CA] Online □ View Release	United States	Broadcast Media	Media & Information	
TELEMINOO LUBBOCK	Telemundo Lubbock [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information	
(95.9) LUBBOCK'S 90s COUNTRY & MORE!	996.9-FM The Bull [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information	
PROFIT QUOTES	ProfitQuotes Online ☐ View Release	United States	Financial News Service	Financial	
One News Page	One News Page Unites States Edition Online    View Release	United States	Online News Sites & Other Influencers	Media & Information	
W	Oldies 97.7 FM [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information	
NYXPO	New York Business Expo Online ☐ View Release	United States	Industry Association Sites	Business Services	
my lubbockty	KMYL-TV MyLubbock-TV [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information	
<u> </u>	KXTQ-FM 106.5 Magic [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information	
LURBOCK	KLCW-TV Lubbock CW [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information	
KUAM NEW S	KUAM-TV NBC-8 / CBS-11 [Hagatna, Guam] Online ☐ View Release	United States	Broadcast Media	Media & Information	
TELEMINOO 2 MASA	KASA-TV Telemundo-2 [Albuquerque, NM] Online ☐ View Release	United States	Broadcast Media	Media & Information	
InvestorPoint	InvestorPoint.com Online ☐ View Release	United States	Trade Publications	Financial	
F0)(34 .COM	KJTV-TV FOX-34 [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information	

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FOX(2)	WBOC-TV FOX-21 [Salisbury, MD] Online □ View Release	United States	Broadcast Media	Media & Information
DELMARVA  OCUMENTATION  DIRECT PROJECT PRO	KTTU-FM 97.3 Double T [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information
CityRoom	Warren and Hunterdon Counties CityRoom [Warren County, NJ] Online   ☐ View Release	United States	Online News Sites & Other Influencers	Media & Information
CityRoom www.chroom.com	El Paso CityRoom [El Paso, TX] Online ☐ View Release	United States	Online News Sites & Other Influencers	Media & Information
U. Thi Said (Mark) that th	KLBB-FM 93.7 The Eagle [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information
760 RPMB	KFMB 760-AM [San Diego, CA] Online ☐ View Release	United States	Broadcast Media	Media & Information
VEST .	KLZK-FM 107.7 YES FM [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information
1007/SCORE	100.7-FM The Score [Lubbock, TX] Online ☐ View Release	United States	Broadcast Media	Media & Information
BIN	IBTN9 US Online ☐ View Release	Global	Online News Sites & Other Influencers	Media & Information
	KQCW-TV CW-12/19 [Tulsa, OK] Online ☐ View Release	United States	Broadcast Media	Media & Information
FAT PITCH FINACIALS	Fat Pitch Financials Online ☐ View Release	United States	Online News Sites & Other Influencers	Financial
NEWYORK E V E N T S	New York Events Online ☐ View Release	United States	Blog	Entertainment
Window, Essay / Unidees, Inc.	Winslow, Evans & Crocker Online ☐ View Release	United States	Online News Sites & Other Influencers	Financial
PENTICTON HERALD	Penticton Herald [Penticton, BC] Online ☐ View Release	Canada	Newspaper	Media & Information
THE DAILY COURIER	Kelowna Daily Courier [Kelowna, BC] Online ☐ View Release	Canada	Newspaper	Media & Information

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Casc	1.10-CV-00212-JPO-JLC DC	Cumcin	155-2 Filed 04/2	J/13 rage 1	20 01 133
manhattanweek.com	Manhattanweek Online ☐ View Release	United States	Online News Sites & Other Influencers	Media & Information	
NEWS STEWN	KLKN-TV ABC-8 [Lincoln, NE] Online  View Release	United States	Broadcast Media	Media & Information	
M) Bides	KFMB 100.7 FM [San Diego, CA] Online ☐ View Release	United States	Broadcast Media	Media & Information	
DAILY NEWS	Wapakoneta Daily News [Wapakoneta, OH] Online ☐ View Release	United States	Newspaper	Media & Information	
Wins Record	Valley City Times-Record [Valley City, ND] Online ☐ View Release	United States	Newspaper	Media & Information	
The Post (Mall Prinds torough Holes Camp, Indian	The Post and Mail [Columbia City, IN] Online ☐ View Release	United States	Newspaper	Media & Information	
thepilotnews.com	The Pilot News [Plymouth, IN] Online ☐ View Release	United States	Newspaper	Media & Information	
Evening SLEADER Georgia description	The Evening Leader [St. Marys, OH] Online ☐ View Release	United States	Newspaper	Media & Information	
AMERICAN	The Antlers American [Antlers, OK] Online ☐ View Release	United States	Newspaper	Media & Information	
Sweetwater-Reporter	Sweetwater Reporter [Sweetwater, TX] Online ☐ View Release	United States	Newspaper	Media & Information	
STARRVILLE DAILY NEWS	Starkville Daily News [Starkville, MS] Online ☐ View Release	United States	Newspaper	Media & Information	
DAILY PRESS, COM	The Daily Press [St. Marys, PA] Online ☐ View Release	United States	Newspaper	Media & Information	
<u>ridayay Regord</u>	Ridgway Record [Ridgway, PA] Online ☐ View Release	United States	Newspaper	Media & Information	
PUNXSUTAWNEYSPIRIT	The Punxsutawney Spirit [Punxsutawney, PA] Online □ View Release	United States	Newspaper	Media & Information	
POTRAU DALLY PERMS	Poteau Daily News [Poteau, OK] Online ☐ View Release	United States	Newspaper	Media & Information	

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Case	1.10-CV-00212-JPO-JLC D	ocument	, 155-2 Filed 04/2	.9/19 Paye 1	21 01 139
Observer News Enterprise www.observers.ews.milins.com	The Observer News Enterprise [Newton, NC] Online ☐ View Release	United States	Newspaper	Media & Information	
The Community Post score on community size 1996	Minster Community Post [Minster, OH] Online ☐ View Release	United States	Newspaper	Media & Information	
Mammoth Times	Mammoth Times [Mammoth Lakes, CA] Online ☐ View Release	United States	Newspaper	Media & Information	
MALVERN DAILY RECORD	Malvern Daily Record [Malvern, AR] Online    View Release	United States	Newspaper	Media & Information	
R. Rapit Rean	The Kane Republican [Kane, PA] Online ☐ View Release	United States	Newspaper	Media & Information	
The Anyo Register	Inyo Register [Bishop, CA] Online ☐ View Release	United States	Newspaper	Media & Information	
Deer Park Tribune:€	The Deer Park Tribune [Deer Park, WA] Online ☐ View Release	United States	Newspaper	Media & Information	
DECATER DAILE	Decatur Daily Democrat [Decatur, IN] Online   ☐ View Release	United States	Newspaper	Media & Information	
Pully Cines Leader	Daily Times Leader [West Point, MS] Online ☐ View Release	United States	Newspaper	Media & Information	
BORGER NEWS-HERALD	Borger News Herald [Borger, TX] Online ☐ View Release	United States	Newspaper	Media & Information	
578M5-1-1 (M)	Big Spring Herald [Big Spring, TX] Online ☐ View Release	United States	Newspaper	Media & Information	
THE SALIVE COURIER	The Saline Courier [Benton, AR] Online ☐ View Release	United States	Newspaper	Media & Information	
MorningNews	The Morning News [Blackfoot, ID] Online ☐ View Release	United States	Newspaper	Media & Information	

## Traffic

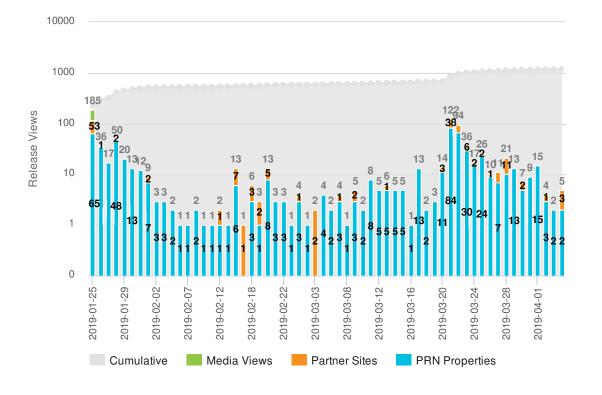
#### Overview

Total Release Views & Web Crawler Hits 4.1K



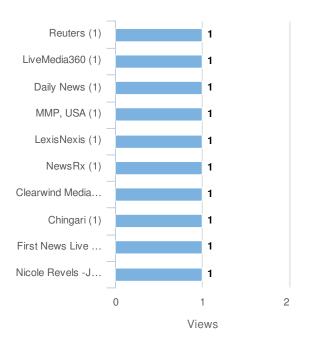
#### Release Views

#### Release Views Over Time



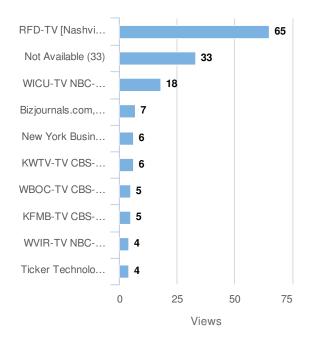
Media Views on PR Newswire for Journalists

Case 1:16-cv-00212-JPO-JLC Document 155-2 Filed 04/29/19 Page 123 of 139 Top 10 Outlets



## Views on Partner Sites

Top 10 Sites

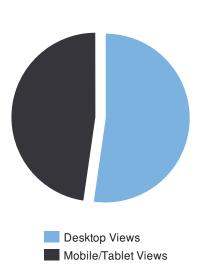


## Traffic to PR Newswire Properties

Type of Views Views

Туре		Views
Total	Views on PR Newswire Properties	679

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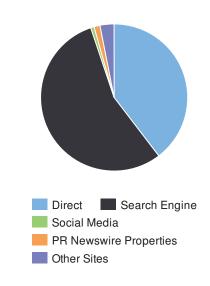


Туре	Views
Desktop Views	355
Mobile/Tablet Views	324
Total Views on PR Newswire Properties	679

#### External Traffic Sources

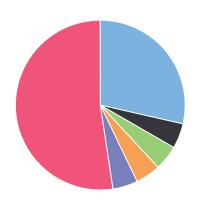
Understand how viewers found your release.

Source	Source Type	Instances
Direct	Direct	269
Google	Search Engine	310
Yahoo!	Search Engine	34
Bing	Search Engine	25
AOL	Search Engine	5
Ask.com	Search Engine	1
Twitter	Social Media	4
Facebook	Social Media	1
prnewswire.com	PR Newswire Properties	9
translatetheweb.com	Other Sites	4
suche.t-online.de	Other Sites	4
search.xfinity.com	Other Sites	4
search.myway.com	Other Sites	2
newsdesk.moreover.com	Other Sites	1
cuyahoga.libnet.info	Other Sites	1
robinhood.com	Other Sites	1
search.pch.com	Other Sites	1
owler.com	Other Sites	1
inoreader.com	Other Sites	1
Total		679



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Source	Source Type	Instances
start.att.net	Other Sites	1
Total		679





## Search Engine Keywords

The search terms that visitors to your release use to find it. Note that Google increasingly does not make this data available.

#### Google keywords not available: 309

Search Engine	Search Term	Instances
Google	bny mellon depositary receipts	1
Bing	Not Available	6
	www.bnymadrfxsettlement.com	5
	+www,bnymadrfxsettlement.com	1
	bnymadrfxsettlement.com	1
	.bnymadrfxsettlement.con	1
	bnym adr settlement	1
	bnymadfrxsettlement.com	1
	bnymadrfxsettlement	3
	bnymadrfxsettlement.com	2
	http://www.bnymadrfxsettlement.com/	1
	mutual funds effected by bnym adr erisa settlement	1
	www.baymadrfxsettlement.com	1
	www.bnymadrfxsettlement.	1
Ask Jeeves	www.bnymadrfxsettlement.com	1
AOL	Not Available	5
Total		32

#### **Audience**

#### Overview

VIEWS FROM IDENTIFIED AUDIENCES

AP & INFLUENCER LIST RECIPIENTS 1.7K

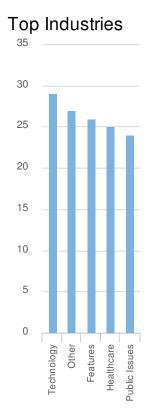
Media Views	67
Organization Views	86

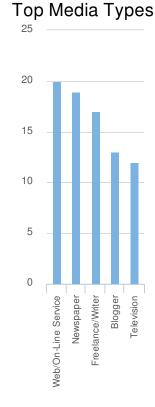
Wire Distribution / AP Outlets	1.1K
Targeted Influencers	591

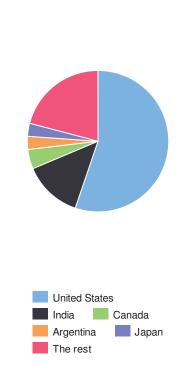
## **Audience Summary**

#### Media Demographics

A break down of the industries covered, the media types and the locations of the journalists & bloggers accessing your release on PR Newswire for Journalists.







**Top Countries** 

See where views of your release originated.

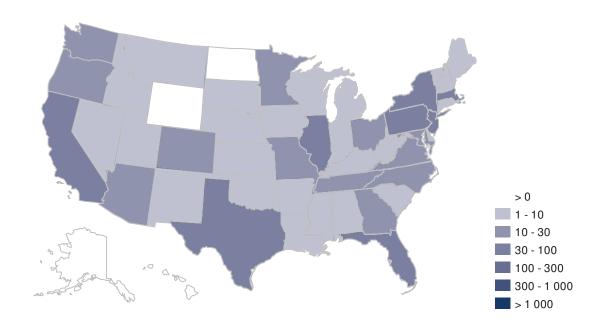
Select a region:

World View

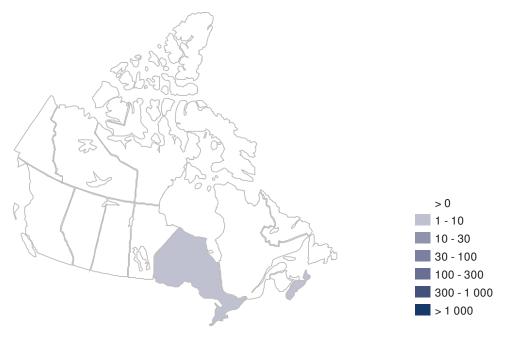




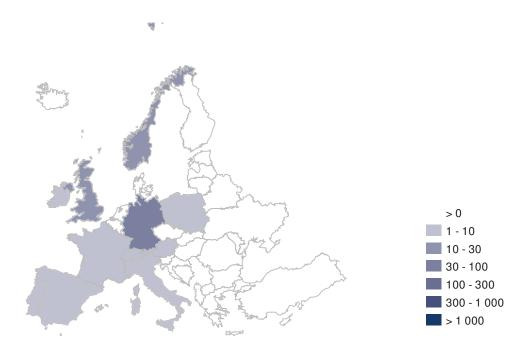
Views by state



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## Views by country



## **Audience Details**

#### Media Views

See the details of each media outlet from PR Newswire for Journalists that viewed your release.

Outlet	Industry	Source Type	Country	Views
Reuters	Other	Wire Service	United States	1
Total num				67

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LiveMedia360	Consumer Products, Energy, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Public Issues, Technology, Transportation	Blogger, Freelance/Writer, Other	United States	1
Daily News	Other	Other	South Africa	1
MMP, USA	Auto, Broadcast, Consumer Products, Energy, Entertainment, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Television	United States	1
LexisNexis	Other	Trade Periodicals, Web/On-Line Service	United States	1
NewsRx	Auto, Broadcast, Consumer Products, Energy, Entertainment, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Web/On-Line Service	United States	1
Clearwind Media	Auto, Broadcast, Consumer Products, Energy, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Technology, Transportation, Travel	Television	United States	1
Chingari	General Business	Newspaper	India	1
First News Live	Features	Freelance/Writer	India	1
Nicole Revels - Journalist	Public Issues	Freelance/Writer	United States	1
Sing Tao Daily Toronto Edition	Other	Newspaper	Canada	1
Polish N Glitter	Consumer Products, Healthcare	Blogger	India	1
Way2Online	Transportation	Freelance/Writer	India	1
The Page	General Business	Newspaper	India	1
Healtheventz	Broadcast, Environment, Healthcare	Blogger, Consumer Periodicals, Freelance/Writer, Newspaper, Other, Radio, Television, Trade Periodicals, Web/On-Line Service, Wire Service	India	1
Great Lakes Banker	Financial Services	Trade Periodicals	United States	1
WNBC-TV	Broadcast, Heavy Industry, Public Issues, Technology, Transportation	Television	United States	1
BioMetAuth.com	Technology	Freelance/Writer	United States	1
God4b	Auto, Broadcast, Consumer Products, Energy, Entertainment, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Blogger, Freelance/Writer	United States	1
Total num				67

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PR Newswire	Other	Wire Service	United States	1
ABC	Auto, Broadcast, Consumer Products, Energy, Entertainment, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Television	United States	1
Picante Today	Auto, Broadcast, Consumer Products, Energy, Entertainment, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Freelance/Writer, Newspaper, Web/On-Line Service	Romania	1
Univision Dallas	Broadcast, General Business, Healthcare, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Television, Web/On-Line Service	United States	1
Arutz 7	Auto, Broadcast, Consumer Products, Energy, Entertainment, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Newspaper, Radio, Web/On- Line Service	Israel	1
Cognizant	Broadcast	Blogger	American Samoa	1
The Morning Call	Public Issues	Newspaper	United States	1
Argus Media Group	Auto, Broadcast, Consumer Products, Energy, Entertainment, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Web/On-Line Service	United States	1
Principal Group	Auto, Broadcast, Consumer Products, Energy, Entertainment, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Blogger	United States	1
PR Newswire	Auto, Broadcast, Consumer Products, Energy, Entertainment, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Blogger, Consumer Periodicals, Freelance/Writer, Newspaper, Other, Radio, Television, Trade Periodicals, Web/On-Line Service, Wire Service	Canada	1
Freelancer	Energy, Financial Services, Healthcare, Heavy Industry, Technology	Freelance/Writer	United States	1
MMP USA	Consumer Products, Environment, General Business, Healthcare, Technology, Travel	Television	United States	1
She Prevailed Media	Auto, Broadcast, Consumer Products, Energy, Entertainment, Environment, Features, Financial Services, General Business, Healthcare, Heavy Industry, Media, Other, Public Issues, Sports, Technology, Transportation, Travel	Blogger	United States	1
Deccan Herald	Features, Financial Services, General Business, Technology	Newspaper	India	1
Total num				67

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EMS Chemie AG	Auto, Consumer Products, General Business, Technology	Other	Switzerland	1
Economic Review	Auto, Energy, Features, Financial Services, Media, Public Issues, Sports	Freelance/Writer, Newspaper, Trade Periodicals	Pakistan	1
SNL Energy	Energy	Trade Periodicals	United States	1
heart & soul	Entertainment, Healthcare, Travel	Consumer Periodicals, Radio, Web/On-Line Service	United States	1
IDG Japan	Technology	Consumer Periodicals, Web/On- Line Service, Wire Service	Japan	1
Thomson Corp	Technology	Wire Service	India	1
Kingsport Times-New	Other	Newspaper	United States	1
Zee News	Auto, Broadcast, Consumer Products, Financial Services	Television	India	1
PR	Technology	Other	Malaysia	1
Freelancer	Other	Trade Periodicals	United States	1
InvestmentWires	Financial Services	Consumer Periodicals	United States	1
WSAZ	Financial Services	Television	United States	1
New York 1 News	Other	Television	United States	1
Walla Walla Union Bulletin	Features, Healthcare, Technology	Newspaper	United States	1
http://gay_blog.blogspot.com/	Other, Travel	Web/On-Line Service	United States	1
Feather River Bulletin	Other	Newspaper	United States	1
Randall-Reilly Publishing Co.	Transportation	Trade Periodicals	United States	1
Latitudes & Attitudes	Features, Financial Services, General Business, Public Issues, Technology, Travel	Blogger, Consumer Periodicals, Freelance/Writer, Trade Periodicals, Web/On-Line Service	France	1
http://soshable.com/could- twitter-save-lives-tweeting-in- the-medical-industry/	Auto, Media, Technology	Blogger	Canada	1
Gaceta UNAM	Environment, Features, Healthcare, Media, Public Issues, Sports, Travel	Newspaper, Web/On-Line Service	Mexico	1
Mega Autos	Auto	Consumer Periodicals, Web/On- Line Service	Argentina	1
Total num				67

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- Cusc 1.10 CV 00	212 of 0 020 Bocament 195 2	1 1100 04/23/13 1 ugo	102 01 10	
The Kyle & Jackie O Show	Broadcast, Consumer Products, Entertainment, Features, Media, Other, Public Issues, Technology	Radio	Australia	
Amrikaee	Broadcast, Consumer Products, Energy, Entertainment, Features, General Business, Media, Other, Public Issues	Blogger, Freelance/Writer, Newspaper, Web/On-Line Service	United States	
16 Valvulas	Auto, Healthcare	Web/On-Line Service	Argentina	
Real Tv Canal 41	Broadcast, Entertainment, Environment, Features, Media, Public Issues, Sports	Newspaper, Television	Peru	
Okinawa Marine	Broadcast, Environment, Features, Financial Services, Media, Public Issues, Technology, Transportation, Travel	Freelance/Writer, Newspaper, Web/On-Line Service, Wire Service	Japan	
Coelum	Other	Consumer Periodicals, Web/On- Line Service	Italy	
Telecos	Consumer Products, Energy, Environment, Healthcare, Technology	Other	Spain	
Dow Jones Newswires	Features, Financial Services, Media, Public Issues	Wire Service	United States	
Freelancer	Entertainment, Features, Healthcare	Freelance/Writer, Newspaper	United States	
Houston Chronicle	Features	Newspaper	United States	
Women in Business magazine	Consumer Products, Entertainment, Environment, Features, General Business, Healthcare, Media, Other, Public Issues, Technology	Blogger, Consumer Periodicals, Freelance/Writer, Other, Trade Periodicals, Web/On-Line Service	United States	
News Aktuell	Other	Wire Service	Switzerland	
Formula 4 Media / Sports Insight Extra	Broadcast, Consumer Products, Entertainment, Healthcare, Media, Sports	Blogger, Consumer Periodicals, Freelance/Writer, Other, Web/On-Line Service, Wire Service	United States	
Total num				6

## Organization Views

See which organizations have viewed your release

oo whon organizations ha						
Organization	Headquarters	Country	Location	Parent Organization	Industry	Views
Tel-Kab Sp. z o.o. Sp.k.	Boleslawa Prusa 92 POLAND	PL	POLAND			7
Finanz Informatik GmbH & Co. KG	Laatzener Strasse 5 GERMANY	DE	GERMANY			4
The Bank of New York Mellon Corporation	One Wall Street	US	UNITED STATES	The Bank of New York Company , Inc.	Financial Services	3
Robbins Geller Rudman & Dowd LLP	655 West Broadway		UNITED STATES			2
Total num						86

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A.G. Edwards & Sons, Inc.	420 Montgomery ST	US	UNITED STATES	Wells Fargo Advisors , LLC	Financial Services	2
AON Corporation	200 E. Randolph Street 7th floor	US	UNITED STATES	Aon Corporation	Insurance	2
Liverton Limited	Level 6, Vocus House 138 The Terrace	NZ	NEW ZEALAND			2
McAfee, Inc.	2821 Mission College Blvd.	US	UNITED STATES	McAfee , Inc.	Manufacturing	2
Cleary, Gottlieb, Steen & Hamilton LLP	165 Broadway		UNITED STATES			1
Volo.com SRL		IT	ITALY			1
SID-18051 CI -Administrative Office of the United States Courts	21571 Beaumeade Circle	US	UNITED STATES		Government	1
Teachers Retirement System of the City of New York	55 Water St		UNITED STATES			1
Markus Koch	Markus Koch Heinestrasse 37	DE	UNITED KINGDOM			1
COUNTY OF CONTRA COSTA	777 ARNOLD DR	US	UNITED STATES	Contra Costa County	Government	1
Software Technology Parks of India		IN	INDIA			1
GOSIGER MACHINE TOOLS LLC	108 MCDONOUGH ST	US	UNITED STATES			1
Plante & Moran, PLLC	4765 Barden Ct SE	US	UNITED STATES	Plante & Moran PLLC	Business Services	1
Kessler Topaz Meltzer & Check, LLP	280 King of Prussia Road	US	UNITED STATES	kessler topaz meltzer & check , Ilp	Law Firms & Legal Services	1
Cerner Corporation	2800 Rockcreek Parkway	US	UNITED STATES	Cerner Corporation	Software & Internet	1
Aurora Public Schools	82 Airport Blvd	US	UNITED STATES	Aurora Public Schools	Education	1
Fusion Voice and Data Corp.	640 Belle Terre Rd Building G	US	UNITED STATES			1
Florida State College at Jacksonville	9911 OLD BAYMEADOWS RD	US	UNITED STATES	Florida State College at Jacksonville	Education	1
SUSTAINABLE ENG SOLUTIONS		US	UNITED STATES			1
ISS Inc.	655 Research Parkway	US	UNITED STATES			1
FireFly	20 Battery Park Ave #804	US	UNITED STATES	FireFly Technologies	Software & Internet	1
Institutional Protection Services Ltd	1-3 Staple Inn	UK	UNITED KINGDOM	Institutional Protection Services Ltd	Financial Services	1
Cmed		UK	UNITED KINGDOM			1
Michael Dusi Trucking	3230 RIVERSIDE AVE	US	UNITED STATES	Michael Dusi Trucking Inc		1
WISCONSIN EDUCATION ASSOCIATIO	33 NOB HILL RD	US	UNITED STATES			1
Total num						86

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CCS Business Solutions, Inc.	4450 Belden Village St NW	US	UNITED STATES	CCS Business Solutions Inc		1
Sierra Auto Finance	1649 W. Frankford Rd		UNITED STATES			1
The Capital Group Companies, Inc.	333 HOPE ST	US	UNITED STATES	The Capital Group Companies , Inc.	Financial Services	1
Gallagher Bassett Services, Inc.	2 Pierce Place	US	UNITED STATES	Artco-Bell Corporation	Manufacturing	1
DIVINE BLALOCK MARTI		US	UNITED STATES			1
Deutsche Bank	2 Gatehall Drive	US	UNITED STATES	Deutsche Bank AG	Financial Services	1
F-Secure Corporation		DE	GERMANY			1
Thuega SmartService GmbH	Zum Kugelfang 2 GERMANY	DE	GERMANY			1
EWE TEL GmbH		DE	GERMANY			1
Mesirow Financial	350 N. Clark St.	US	UNITED STATES	Mesirow Financial Inc.	Insurance	1
Banque de developpement du Canada	5 Place Ville-Marie - Suite 500	CA	CANADA	Business Development Bank of Canada	Software & Internet	1
Hamilton Capital Management	5025 ARLINGTON CENTRE BLVDSuite 300	US	UNITED STATES	Hamilton Capital Management Inc	Financial Services	1
PURtel.com GmbH	PURtel.com GmbH Paul- Gerhardt-Allee 48	DE	GERMANY			1
BAE Systems Applied Intelligence US Corp.	440 Wheelers Farms Road	US	UNITED STATES	BAE Systems Inc.	Manufacturing	1
Clarity Connect Inc	200 Pleasant Grove Road	US	UNITED STATES	Clarity Connect Inc	Business Services	1
Drummond Woodsum	84 MARGINAL WAY	US	UNITED STATES	Drummond Woodsum	Law Firms & Legal Services	1
ANALYTICS INC	18750 LAKE DR E	US	UNITED STATES			1
Bundesamt fuer Sicherheit in der Informationstechnik	Bonn	DE	GERMANY			1
crawfordcountylib.org			UNITED STATES			1
Conxx, Inc.	2818 S Redwood Road	US	UNITED STATES	CONXX Inc	Manufacturing	1
University of Florida	Networking Services PO BOX 112050	US	UNITED STATES	University of Florida	Education	1
Schroder Investment Management Limited	1 London Wall Place EC2Y 5AU	UK	UNITED KINGDOM			1
SPECTROTEL HOLDING COMPANY, L	1895 90TH AV	US	UNITED STATES			1
JPMorgan Chase & Co.	120 Broadway	US	UNITED STATES	Chase	Financial Services	1
Butler University	4600 Sunset Ave.	US	UNITED STATES	Butler University	Education	1
Total num						86

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Indiana University-Purdue University at Indianapolis	535 West Michigan Street	US	UNITED STATES	IUPUI	Education	1
Baltimore Technology Park, LLC	1401 Russell St	US	UNITED STATES	Baltimore Technology Park LLC	Telecommunications	1
Ratiodata GmbH	Hahnstrasse 48 GERMANY	DE	GERMANY			1
CETERA FINANCIAL GROUP	400 1ST ST S	US	UNITED STATES	Cetera Financial Group Inc	Financial Services	1
Philipps-Universitaet Marburg	Biegenstrasse 10 Germany	DE	GERMANY			1
Stifel, Nicolaus & C	501 North Broadway	US	UNITED STATES	Stifel , Nicolaus & Company , Incorporated	Financial Services	1
POTTS DUPRE		US	UNITED STATES			1
BALLIE GIFFORD & CO		UK	UNITED KINGDOM			1
Jones Stevedoring Co	7245 W Marginal Way		UNITED STATES	Jones Stevedoring Company	Business Services	1
STONERIDGE CO		US	UNITED STATES			1
Fiducia und GAD IT AG, Karlsruhe		DE	GERMANY			1
Commonwealth of PA - Department of Public Welfare	P.O. Box 2675	US	UNITED STATES	State Corporation	Insurance	1
ST GEORGES INDEPENDENT	1880 WOLF RIVER BLVD	US	UNITED STATES			1
ZF Friedrichshafen AG	Ehlerstrasse 50 Germany	DE	GERMANY	ZF Friedrichshafen AG	Manufacturing	1
Ewopharma AG		СН	SWITZERLAND			1
Knight Athletics Inc	300 Mt Lebanon Blvd.	US	UNITED STATES	Knight Athletics Inc		1
Total num						86

Targeted Audience
The lists below represent categories of targeted audiences you selected for your release.

#### Cision Influencer Lists

Mutual Funds (123 organizations, 185 recipients)

Organization	Number of recipients
Barron's   Magazine	6
Bloomberg News   News Service/Syndicate	6
Wall Street Journal   Daily Newspaper	6
Gartner   Industry Research Firm	5
IBD Weekly   Community Newspaper	5
Ignites.com   Internet Magazine - Online Only	5
Seeking Alpha   Internet Magazine - Online Only	5

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Organization	Number of recipients
Forbes   Magazine	3
Fund Action   Magazine	3
Institutional Investor   Internet Magazine - Online Only	3

#### Personal Finance (325 organizations, 406 recipients)

Organization	Number of recipients
Squawk Box - CNBC Cable Network   Cable Network Show	15
Business Insider   Internet Magazine - Online Only	5
Smartasset   Internet Magazine - Online Only	5
Bottom Line/Personal   Magazine	4
GOBankingRates   Internet Magazine - Online Only	4
New York Times   Daily Newspaper	4
Wise Bread   Internet Blog	4
CNNBusiness   Internet Magazine - Online Only	3
Consumer Reports   Magazine	3
Dave Ramsey Show   Radio Syndicated Show	3

#### **Associated Press Outlets**

Every PR Newswire U.S. wire newsline includes targeted distribution to the Associated Press, an essential global news network that delivers content to an extensive set of media platforms and formats. The list below represents the outlets you reach via this partnership.

Outlet Name	City	State	Country	Newsline	Туре	Audience
C-SPAN	Washington	DC	US	US1	Television	86,200,000 Subscribers
Scribd, Inc.	San Francisco	CA	US	US1	Aggregator	43,531,670 Visitors per Month
FoxNews.com	New York	NY	US	US1, New York State newsline	Online	32,516,438 Visitors per Month
CBS News Radio	New York	NY	US	US1, New York State newsline	Radio	30,000,000 Broadcast Audience
New York Times Digital	New York	NY	US	US1, New York State newsline	Newspaper	29,886,442 Visitors per Month
Apple Inc.	Cupertino	CA	US	US1	Organization/Company	29,709,459 Visitors
CNBC.com	Englewood Cliffs	NJ	US	New York State newsline, US1	Online	26,089,266 Visitor per Montl

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Outlet Name	City	State	Country	Newsline	Туре	Audience
CBSnews.com	New York	NY	US	US1, New York State newsline	Online	26,080,671 Visitors per Month
abcnews.com	New York	NY	US	US1, New York State newsline	Online	24,167,779 Visitors per Month
U.S. News & World Report	Washington	DC	US	US1	Magazine	23,945,529 Visitors per Month

## Engagement

**211**Total Engagement Actions

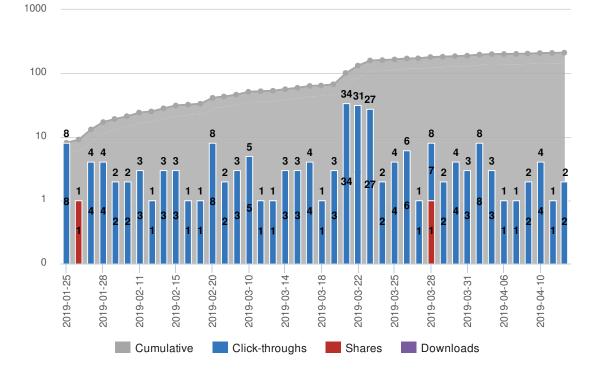
**209** Click-throughs

2 Shares

#### Overview

## **Engagement Timeline**

See when your audience engaged with your release.



## **Engagement Details**

A break down of click-throughs, shares and other engagement actions.

## Click-throughs

The number of times your release sent visitors to the pages you linked to

URL	Click-throughs
http://www.bnymadrfxsettlement.com/	207
mailto:info@bnymadrfxsettlement.com	2
Total	209

#### **Shares**

A breakdown of the types of sharing your release generated.

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Type of share	Shares
Facebook	1
Email	1
Total Shares	2

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# EXHIBIT 3

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IN RE:	THE	BANI	C OF	<b>NEW</b>	YORK
MFI I	N A	DR FY	TLIS	IGAT	ION

16-CV-00212-JPO-JLC

ECF Case

This Document Relates to:

ALL ACTIONS

DECLARATION OF SHARAN NIRMUL IN SUPPORT OF LEAD PLAINTIFFS' COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF KESSLER TOPAZ MELTZER & CHECK, LLP

I, Sharan Nirmul, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

- 1. I am a partner of the law firm of Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz"), one of the Court-designated Interim Lead Counsel firms in the above-captioned action ("Action"). I submit this declaration in support of Lead Plaintiffs' Counsel's application for attorneys' fees in connection with services rendered in the Action, as well as for reimbursement of litigation expenses incurred in connection with the Action. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.
- 2. Kessler Topaz has offices in Radnor, Pennsylvania and San Francisco, California. My firm has litigated numerous class actions in the Southern District of New York and in other courts around the country. A copy of my firm's resume, as well as a brief biography of all Kessler Topaz attorneys, is attached hereto as Exhibit A.

<sup>&</sup>lt;sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated January 15, 2019 (ECF No. 147-2).

- 3. Kessler Topaz was involved in all aspects of the prosecution and resolution of the Action. I personally rendered legal services in the Action and was responsible, along with my partner Joseph H. Meltzer, for coordinating and supervising the efforts carried out by attorneys and professional support staff employees at my firm. In its capacity as one of the Interim Lead Counsel firms, Kessler Topaz was a principle contributor to the results achieved in this Action for the benefit of the Settlement Class. My firm's efforts, as well as the facts supporting Lead Plaintiffs' Counsel's application for attorneys' fees and expenses, are more fully set forth in the Joint Declaration of Sharan Nirmul and Daniel P. Chiplock in Support of (1) Lead Plaintiffs' Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation; and (2) Lead Plaintiffs' Counsel's Application for Attorneys' Fees and Reimbursement of Litigation Expenses, Including Service Awards to Lead Plaintiffs, submitted herewith.
- 4. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by other attorneys and professional support staff employees at or on behalf of Kessler Topaz in the Action ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit B hereto. This chart (i) identifies the names and positions (*i.e.*, titles) of the Timekeepers who devoted ten (10) or more hours to the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through April 22, 2019; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of each Timekeeper and the entire firm.<sup>2</sup> For Timekeepers who are no longer employed by Kessler Topaz, the hourly rate

<sup>&</sup>lt;sup>2</sup> The information concerning the Timekeeper's hours and hourly rate is not based on my personal knowledge, but on the information reported by each Timekeeper or the files and records of Kessler Topaz, as well as my familiarity with the work undertaken by my firm in the Action.

used is the hourly rate for such employee in his or her final year of employment by my firm. The chart set forth in Exhibit B was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. All time expended on Lead Plaintiffs' Counsel's application for fees and reimbursement of expenses has been excluded.

- 5. The hourly rates for the Timekeepers, as set forth in Exhibit B, are their standard rates. My firm's hourly rates are largely based upon a combination of the title, cost to the firm and the specific years of experience for each attorney and professional support staff employee, as well as market rates for practitioners in the field. These hourly rates (or materially similar hourly rates) have been accepted by courts in other complex class actions for purposes of 'cross-checking' lodestar against a proposed fee based on the percentage-of-the-fund method or determining a reasonable fee under the lodestar method.
- 6. The total number of hours expended by Kessler Topaz in this Action, from inception through April 22, 2019, as reflected in Exhibit B, is 15,351.35. The total lodestar for my firm, as reflected in Exhibit B, is \$6,312,342.50, consisting of \$6,166,690.50 for attorneys' time and \$145,652.00 for professional support staff time.
- 7. In my judgment, the number of hours expended and the services performed by the attorneys and professional support staff employees at or on behalf of Kessler Topaz were reasonable and expended for the benefit of the Settlement Class in this Action.
- 8. Kessler Topaz's lodestar figures are based upon my firm's standard hourly rates and do not include expense items. Expense items are being submitted separately and are not duplicated in the firm's hourly rates.

9. As set forth in Exhibit C hereto, Kessler Topaz is seeking reimbursement for a total of \$641,017.95 in unreimbursed expenses incurred in connection with the prosecution and resolution of the Action. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.

10. The expenses incurred by Kessler Topaz in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

11. Kessler Topaz was also responsible for maintaining a litigation expense fund on behalf of Lead Plaintiffs' Counsel ("Litigation Expense Fund") to facilitate payment of certain common expenses in connection with the prosecution and resolution of the Action. As reflected in Exhibit D hereto, the Litigation Expense Fund has received deposits from Lead Plaintiffs' Counsel totaling \$1,240,000.00, and has incurred a total of \$1,222,552.89 in expenses. The balance of \$17,447.11 that remains in the Litigation Expense Fund will be repaid to Kessler Topaz. The amount reflected on Kessler Topaz's Expense Report (Exhibit C) has been reduced by \$17,447.11 to avoid any double counting of expenditures.

12. The expenses incurred in the Action and paid from the Litigation Expense Fund are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on April 26, 2019.

SHARAN NIRMUL

#### **EXHIBIT A**

In re: The Bank of New York Mellon ADR FX Litigation Case No. 16-CV-00212-JPO-JLC

## KESSLER TOPAZ MELTZER & CHECK, LLP

#### FIRM RESUME



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## FIRM PROFILE

Since 1987, Kessler Topaz Meltzer & Check, LLP has specialized in the prosecution of securities class actions and has grown into one of the largest and most successful shareholder litigation firms in the field. With offices in Radnor, Pennsylvania and San Francisco, California, the Firm is comprised of 94 attorneys as well as an experienced support staff consisting of over 80 paralegals, in-house investigators, legal clerks and other personnel. With a large and sophisticated client base (numbering over 180 institutional investors from around the world -- including public and Taft-Hartley pension funds, mutual fund managers, investment advisors, insurance companies, hedge funds and other large investors), Kessler Topaz has developed an international reputation for excellence and has extensive experience prosecuting securities fraud actions. For the past several years, the National Law Journal has recognized Kessler Topaz as one of the top securities class action law firms in the country. In addition, the Legal Intelligencer recently awarded Kessler Topaz with its Class Action Litigation Firm of The Year award. Lastly, Kessler Topaz and several of its attorneys are regularly recognized by Legal500 and Benchmark: Plaintiffs as leaders in our field.

Kessler Topaz is serving or has served as lead or co-lead counsel in many of the largest and most significant securities class actions pending in the United States, including actions against: Bank of America, Duke Energy, Lehman Brothers, Hewlett Packard, Johnson & Johnson, JPMorgan Chase, Morgan Stanley and MGM Mirage, among others. As demonstrated by the magnitude of these high-profile cases, we take seriously our role in advising clients to seek lead plaintiff appointment in cases, paying special attention to the factual elements of the fraud, the size of losses and damages, and whether there are viable sources of recovery.

Kessler Topaz has recovered billions of dollars in the course of representing defrauded shareholders from around the world and takes pride in the reputation we have earned for our dedication to our clients. Kessler Topaz devotes significant time to developing relationships with its clients in a manner that enables the Firm to understand the types of cases they will be interested in pursuing and their expectations. Further, the Firm is committed to pursuing meaningful corporate governance reforms in cases where we suspect that systemic problems within a company could lead to recurring litigation and where such changes also have the possibility to increase the value of the underlying company. The Firm is poised to continue protecting rights worldwide.

### NOTEWORTHY ACHIEVEMENTS

During the Firm's successful history, Kessler Topaz has recovered billions of dollars for defrauded stockholders and consumers. The following are among the Firm's notable achievements:

### **Securities Fraud Litigation**

In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, Master File No. 09 MDL 2058:

Kessler Topaz, as Co-Lead Counsel, brought an action on behalf of lead plaintiffs that asserted claims for violations of the federal securities laws against Bank of America Corp. ("BoA") and certain of BoA's officers and board members relating to BoA's merger with Merrill Lynch & Co. ("Merrill") and its failure to inform its shareholders of billions of dollars of losses which Merrill had suffered before the pivotal shareholder vote, as well as an undisclosed agreement allowing Merrill to pay up to \$5.8 billion in bonuses before the acquisition closed, despite these losses. On September 28, 2012, the Parties announced a \$2.425 billion case settlement with BoA to settle all claims asserted against all defendants in the action which has since received final approval from the Court. BoA also agreed to implement significant corporate governance improvements. The settlement, reached after almost four years of litigation with a trial set to begin on October 22, 2012, amounts to 1) the sixth largest securities class action lawsuit settlement ever; 2) the fourth largest securities class action settlement ever funded by a single corporate defendant; 3) the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; 4) the single largest securities class action settlement ever resolving a Section 14(a) claim (the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation); and 5) by far the largest securities class action settlement to come out of the subprime meltdown and credit crisis to date.

### In re Tyco International, Ltd. Sec. Litig., No. 02-1335-B (D.N.H. 2002):

Kessler Topaz, which served as Co-Lead Counsel in this highly publicized securities fraud class action on behalf of a group of institutional investors, achieved a record \$3.2 billion settlement with Tyco International, Ltd. ("Tyco") and their auditor PricewaterhouseCoopers ("PwC"). The \$2.975 billion settlement with Tyco represents the single-largest securities class action recovery from a single corporate defendant in history. In addition, the \$225 million settlement with PwC represents the largest payment PwC has ever paid to resolve a securities class action and is the second-largest auditor settlement in securities class action history.

The action asserted federal securities claims on behalf of all purchasers of Tyco securities between December 13, 1999 and June 7, 2002 ("Class Period") against Tyco, certain former officers and directors of Tyco and PwC. Tyco is alleged to have overstated its income during the Class Period by \$5.8 billion through a multitude of accounting manipulations and shenanigans. The case also involved allegations of looting and self-dealing by the officers and directors of the Company. In that regard, Defendants L. Dennis Kozlowski, the former CEO and Mark H. Swartz, the former CFO have been sentenced to up to 25 years in prison after being convicted of grand larceny, falsification of business records and conspiracy for their roles in the alleged scheme to defraud investors.

As presiding Judge Paul Barbadoro aptly stated in his Order approving the final settlement, "[i]t is difficult to overstate the complexity of [the litigation]." Judge Barbadoro noted the extraordinary effort required to pursue the litigation towards its successful conclusion, which included the review of more than 82.5 million pages of documents, more than 220 depositions and over 700 hundred discovery requests and responses. In addition to the complexity of the litigation, Judge Barbadoro also highlighted the great risk undertaken by

Co-Lead Counsel in pursuit of the litigation, which he indicated was greater than in other multi-billion dollar securities cases and "put [Plaintiffs] at the cutting edge of a rapidly changing area of law."

In sum, the Tyco settlement is of historic proportions for the investors who suffered significant financial losses and it has sent a strong message to those who would try to engage in this type of misconduct in the future.

In re Tenet Healthcare Corp. Sec. Litig., No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002):

Kessler Topaz served as Co-Lead Counsel in this action. A partial settlement, approved on May 26, 2006, was comprised of three distinct elements: (i) a substantial monetary commitment of \$215 million by the company; (ii) personal contributions totaling \$1.5 million by two of the individual defendants; and (iii) the enactment and/or continuation of numerous changes to the company's corporate governance practices, which have led various institutional rating entities to rank Tenet among the best in the U.S. in regards to corporate governance. The significance of the partial settlement was heightened by Tenet's precarious financial condition. Faced with many financial pressures — including several pending civil actions and federal investigations, with total contingent liabilities in the hundreds of millions of dollars — there was real concern that Tenet would be unable to fund a settlement or satisfy a judgment of any greater amount in the near future. By reaching the partial settlement, we were able to avoid the risks associated with a long and costly litigation battle and provide a significant and immediate benefit to the class. Notably, this resolution represented a unique result in securities class action litigation — personal financial contributions from individual defendants. After taking the case through the summary judgment stage, we were able to secure an additional \$65 million recovery from KPMG – Tenet's outside auditor during the relevant period – for the class, bringing the total recovery to \$281.5 million.

# In re Wachovia Preferred Securities and Bond/Notes Litigation, Master File No. 09 Civ. 6351 (RJS) (S.D.N.Y.):

Kessler Topaz, as court-appointed Co-Lead Counsel, asserted class action claims for violations of the Securities Act of 1933 on behalf of all persons who purchased Wachovia Corporation ("Wachovia") preferred securities issued in thirty separate offerings (the "Offerings") between July 31, 2006 and Mary 29, 2008 (the "Offering Period"). Defendants in the action included Wachovia, various Wachovia related trusts, Wells Fargo as successor-in-interest to Wachovia, certain of Wachovia's officer and board members, numerous underwriters that underwrote the Offerings, and KPMG LLP ("KPMG"), Wachovia's former outside auditor. Plaintiffs alleged that the registration statements and prospectuses and prospectus supplements used to market the Offerings to Plaintiffs and other members of the class during the Offerings Period contained materially false and misleading statements and omitted material information. Specifically, the Complaint alleged that in connection with the Offerings, Wachovia: (i) failed to reveal the full extent to which its mortgage portfolio was increasingly impaired due to dangerously lax underwriting practices; (ii) materially misstated the true value of its mortgage-related assets; (iii) failed to disclose that its loan loss reserves were grossly inadequate; and (iv) failed to record write-downs and impairments to those assets as required by Generally Accepted Accounting Principles ("GAAP"). Even as Wachovia faced insolvency, the Offering Materials assured investors that Wachovia's capital and liquidity positions were "strong," and that it was so "well capitalized" that it was actually a "provider of liquidity" to the market. On August 5, 2011, the Parties announced a \$590 million cash settlement with Wells Fargo (as successor-in-interest to Wachovia) and a \$37 million cash settlement with KPMG, to settle all claims asserted against all defendants in the action. This settlement was approved by the Hon. Judge Richard J. Sullivan by order issued on January 3, 2012.

### In re Initial Public Offering Sec. Litig., Master File No. 21 MC 92(SAS):

This action settled for \$586 million on January 1, 2010, after years of litigation overseen by U.S. District Judge Shira Scheindlin. Kessler Topaz served on the plaintiffs' executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to

the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

In re Longtop Financial Technologies Ltd. Securities Litigation, No. 11-cv-3658 (S.D.N.Y.):

Kessler Topaz, as Lead Counsel, brought an action on behalf of lead plaintiffs that asserted claims for violations of the federal securities laws against Longtop Financial Technologies Ltd. ("Longtop"), its Chief Executive Officer, Weizhou Lian, and its Chief Financial Officer, Derek Palaschuk. The claims against Longtop and these two individuals were based on a massive fraud that occurred at the company. As the CEO later confessed, the company had been a fraud since 2004. Specifically, Weizhou Lian confessed that the company's cash balances and revenues were overstated by hundreds of millions of dollars and it had millions of dollars in unrecorded bank loans. The CEO further admitted that, in 2011 alone, Longtop's revenues were overstated by about 40 percent. On November 14, 2013, after Weizhou Lian and Longtop failed to appear and defend the action, Judge Shira Scheindlin entered default judgment against these two defendants in the amount of \$882.3 million plus 9 percent interest running from February 21, 2008 to the date of payment. The case then proceeded to trial against Longtop's CFO who claimed he did not know about the fraud - and was not reckless in not knowing - when he made false statements to investors about Longtop's financial results. On November 21, 2014, the jury returned a verdict on liability in favor of plaintiffs. Specifically, the jury found that the CFO was liable to the plaintiffs and the class for each of the eight challenged misstatements. Then, on November 24, 2014, the jury returned its damages verdict, ascribing a certain amount of inflation to each day of the class period and apportioning liability for those damages amongst the three named defendants. The Longtop trial was only the 14th securities class action to be tried to a verdict since the passage of the Private Securities Litigation Reform Act in 1995 and represents a historic victory for investors.

Operative Plasterers and Cement Masons International Association Local 262 Annuity Fund v. Lehman Brothers Holdings, Inc., No. 1:08-cv-05523-LAK (S.D.N.Y.):

Kessler Topaz, on behalf of lead plaintiffs, asserted claims against certain individual defendants and underwriters of Lehman securities arising from misstatements and omissions regarding Lehman's financial condition, and its exposure to the residential and commercial real estate markets in the period leading to Lehman's unprecedented bankruptcy filing on September 14, 2008. In July 2011, the Court sustained the majority of the amended Complaint finding that Lehman's use of Repo 105, while technically complying with GAAP, still rendered numerous statements relating to Lehman's purported Net Leverage Ration materially false and misleading. The Court also found that Defendants' statements related to Lehman's risk management policies were sufficient to state a claim. With respect to loss causation, the Court also failed to accept Defendants' contention that the financial condition of the economy led to the losses suffered by the Class. As the case was being prepared for trial, a \$517 million settlement was reached on behalf of shareholders --- \$426 million of which came from various underwriters of the Offerings, representing a significant recovery for investors in this now bankrupt entity. In addition, \$90 million came from Lehman's former directors and officers, which is significant considering the diminishing assets available to pay any future judgment. Following these settlements, the litigation continued against Lehman's auditor, Ernst & Young LLP. A settlement for \$99 million was subsequently reached with Ernst & Young LLP and was approved by the Court.

Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al. Case No. 0:08-cv-06324-PAM-AJB (D. Minn.):

Kessler Topaz brought an action on behalf of lead plaintiffs that alleged that the company failed to disclose its reliance on illegal "off-label" marketing techniques to drive the sales of its INFUSE Bone Graft ("INFUSE") medical device. While physicians are allowed to prescribe a drug or medical device for any use they see fit, federal law prohibits medical device manufacturers from marketing devices for any uses not specifically approved by the United States Food and Drug Administration. The company's off-label marketing practices have resulted in the company becoming the target of a probe by the federal government

which was revealed on November 18, 2008, when the company's CEO reported that Medtronic received a subpoena from the United States Department of Justice which is "looking into off-label use of INFUSE." After hearing oral argument on Defendants' Motions to Dismiss, on February 3, 2010, the Court issued an order granting in part and denying in part Defendants' motions, allowing a large portion of the action to move forward. The Court held that Plaintiff successfully stated a claim against each Defendant for a majority of the misstatements alleged in the Complaint and that each of the Defendants knew or recklessly disregarded the falsity of these statements and that Defendants' fraud caused the losses experienced by members of the Class when the market learned the truth behind Defendants' INFUSE marketing efforts. While the case was in discovery, on April 2, 2012, Medtronic agreed to pay shareholders an \$85 million settlement. The settlement was approved by the Court by order issued on November 8, 2012.

### In re Brocade Sec. Litig., Case No. 3:05-CV-02042 (N.D. Cal. 2005) (CRB):

The complaint in this action alleges that Defendants engaged in repeated violations of federal securities laws by backdating options grants to top executives and falsified the date of stock option grants and other information regarding options grants to numerous employees from 2000 through 2004, which ultimately caused Brocade to restate all of its financial statements from 2000 through 2005. In addition, concurrent SEC civil and Department of Justice criminal actions against certain individual defendants were commenced. In August, 2007 the Court denied Defendant's motions to dismiss and in October, 2007 certified a class of Brocade investors who were damaged by the alleged fraud. Discovery is currently proceeding and the case is being prepared for trial. Furthermore, while litigating the securities class action Kessler Topaz and its co-counsel objected to a proposed settlement in the Brocade derivative action. On March 21, 2007, the parties in In re Brocade Communications Systems, Inc. Derivative Litigation, No. C05-02233 (N.D. Cal. 2005) (CRB) gave notice that they had obtained preliminary approval of their settlement. According to the notice, which was buried on the back pages of the Wall Street Journal, Brocade shareholders were given less than three weeks to evaluate the settlement and file any objection with the Court. Kessler Topaz client Puerto Rico Government Employees' Retirement System ("PRGERS") had a large investment in Brocade and, because the settlement was woefully inadequate, filed an objection. PRGERS, joined by fellow institutional investor Arkansas Public Employees Retirement System, challenged the settlement on two fundamental grounds. First, PRGERS criticized the derivative plaintiffs for failing to conduct any discovery before settling their claims. PRGERS also argued that derivative plaintiff's abject failure to investigate its own claims before providing the defendants with broad releases from liability made it impossible to weigh the merits of the settlement. The Court agreed, and strongly admonished derivative plaintiffs for their failure to perform this most basic act of service to their fellow Brocade shareholders. The settlement was rejected and later withdrawn. Second, and more significantly, PRGERS claimed that the presence of the well-respected law firm Wilson, Sonsini Goodrich and Rosati, in this case, created an incurable conflict of interest that corrupted the entire settlement process. The conflict stemmed from WSGR's dual role as counsel to Brocade and the Individual Settling Defendants, including WSGR Chairman and former Brocade Board Member Larry Sonsini. On this point, the Court also agreed and advised WSGR to remove itself from the case entirely. On May 25, 2007, WSGR complied and withdrew as counsel to Brocade. The case settled for \$160 million and was approved by the Court.

### In re Satyam Computer Services, Ltd. Sec. Litig., No. 09 MD 02027 (BSJ) (S.D.N.Y.):

Kessler Topaz served as Co-Lead Counsel in this securities fraud class action in the Southern District of New York. The action asserts claims by lead plaintiffs for violations of the federal securities laws against Satyam Computer Services Limited ("Satyam" or the "Company") and certain of Satyam's former officers and directors and its former auditor PricewaterhouseCoopers International Ltd. ("PwC") relating to the Company's January 7, 2009, disclosure admitting that B. Ramalinga Raju ("B. Raju"), the Company's former chairman, falsified Satyam's financial reports by, among other things, inflating its reported cash balances by more than \$1 billion. The news caused the price of Satyam's common stock (traded on the National Stock Exchange of India and the Bombay Stock Exchange) and American Depository Shares ("ADSs") (traded on the New York Stock Exchange ("NYSE")) to collapse. From a closing price of \$3.67

per share on January 6, 2009, Satyam's common stock closed at \$0.82 per share on January 7, 2009. With respect to the ADSs, the news of B. Raju's letter was revealed overnight in the United States and, as a result, trading in Satyam ADSs was halted on the NYSE before the markets opened on January 7, 2009. When trading in Satyam ADSs resumed on January 12, 2009, Satyam ADSs opened at \$1.14 per ADS, down steeply from a closing price of \$9.35 on January 6, 2009. Lead Plaintiffs filed a consolidated complaint on July 17, 2009, on behalf of all persons or entities, who (a) purchased or otherwise acquired Satyam's ADSs in the United States; and (b) residents of the United States who purchased or otherwise acquired Satyam shares on the National Stock Exchange of India or the Bombay Stock Exchange between January 6, 2004 and January 6, 2009. Co-Lead Counsel secured a settlement for \$125 million from Satyam on February 16, 2011. Additionally, Co-Lead Counsel was able to secure a \$25.5 million settlement from PwC on April 29, 2011, who was alleged to have signed off on the misleading audit reports.

### In re BankAtlantic Bancorp, Inc. Sec. Litig., Case No. 07-CV-61542 (S.D. Fla. 2007):

On November 18, 2010, a panel of nine Miami, Florida jurors returned the first securities fraud verdict to arise out of the financial crisis against BankAtlantic Bancorp. Inc., its chief executive officer and chief financial officer. This case was only the tenth securities class action to be tried to a verdict following the passage of the Private Securities Litigation Reform Act of 1995, which governs such suits. Following extensive post-trial motion practice, the District Court upheld all of the Jury's findings of fraud but vacated the damages award on a narrow legal issue and granted Defendant's motion for a judgment as a matter of law. Plaintiffs appealed to the U.S. Court of Appeals for the Eleventh Circuit. On July 23, 2012, a threejudge panel for the Appeals Court found the District Court erred in granting the Defendant's motion for a judgment as a matter of law based in part on the Jury's findings (perceived inconsistency of two of the Jury's answers to the special interrogatories) instead of focusing solely on the sufficiency of the evidence. However, upon its review of the record, the Appeals Court affirmed the District Court's decision as it determined the Plaintiffs did not introduce evidence sufficient to support a finding in its favor on the element of loss causation. The Appeals Court's decision in this case does not diminish the five years of hard work which Kessler Topaz expended to bring the matter to trial and secure an initial jury verdict in the Plaintiffs' favor. This case is an excellent example of the Firm's dedication to our clients and the lengths it will go to try to achieve the best possible results for institutional investors in shareholder litigation.

### In re AremisSoft Corp. Sec. Litig., C.A. No. 01-CV-2486 (D.N.J. 2002):

Kessler Topaz is particularly proud of the results achieved in this case before the Honorable Joel A. Pisano. This case was exceedingly complicated, as it involved the embezzlement of hundreds of millions of dollars by former officers of the Company, one of whom remains a fugitive. In settling the action, Kessler Topaz, as sole Lead Counsel, assisted in reorganizing AremisSoft as a new company to allow for it to continue operations, while successfully separating out the securities fraud claims and the bankrupt Company's claims into a litigation trust. The approved Settlement enabled the class to receive the majority of the equity in the new Company, as well as their pro rata share of any amounts recovered by the litigation trust. During this litigation, actions have been initiated in the Isle of Man, Cyprus, as well as in the United States as we continue our efforts to recover assets stolen by corporate insiders and related entities.

#### In re CVS Corporation Sec. Litig., C.A. No. 01-11464 JLT (D.Mass. 2001):

Kessler Topaz, serving as Co-Lead Counsel on behalf of a group of institutional investors, secured a cash recovery of \$110 million for the class, a figure which represents the third-largest payout for a securities action in Boston federal court. Kessler Topaz successfully litigated the case through summary judgment before ultimately achieving this outstanding result for the class following several mediation sessions, and just prior to the commencement of trial.

### In re Marvell Technology, Group, Ltd. Sec. Lit., Master File No. 06-06286 RWM:

Kessler Topaz served as Co-Lead Counsel in this securities class action brought against Marvell Technology Group Ltd. ("Marvell") and three of Marvell's executive officers. This case centered around an alleged options backdating scheme carried out by Defendants from June 2000 through June 2006, which enabled Marvell's executives and employees to receive options with favorable option exercise prices chosen with the benefit of hindsight, in direct violation of Marvell's stock option plan, as well as to avoid recording hundreds of millions of dollars in compensation expenses on the Marvell's books. In total, the restatement conceded that Marvell had understated the cumulative effect of its compensation expense by \$327.3 million, and overstated net income by \$309.4 million, for the period covered by the restatement. Following nearly three years of investigation and prosecution of the Class' claims as well as a protracted and contentious mediation process, Co-Lead Counsel secured a settlement for \$72 million from defendants on June 9, 2009. This Settlement represents a substantial portion of the Class' maximum provable damages, and is among the largest settlements, in total dollar amount, reached in an option backdating securities class action.

### In re Delphi Corp. Sec. Litig., Master File No. 1:05-MD-1725 (E.D. Mich. 2005):

In early 2005, various securities class actions were filed against auto-parts manufacturer Delphi Corporation in the Southern District of New York. Kessler Topaz its client, Austria-based mutual fund manager Raiffeisen Kapitalanlage-Gesellschaft m.b.H. ("Raiffeisen"), were appointed as Co-Lead Counsel and Co-Lead Plaintiff, respectively. The Lead Plaintiffs alleged that (i) Delphi improperly treated financing transactions involving inventory as sales and disposition of inventory; (ii) improperly treated financing transactions involving "indirect materials" as sales of these materials; and (iii) improperly accounted for payments made to and credits received from General Motors as warranty settlements and obligations. As a result, Delphi's reported revenue, net income and financial results were materially overstated, prompting Delphi to restate its earnings for the five previous years. Complex litigation involving difficult bankruptcy issues has potentially resulted in an excellent recovery for the class. In addition, Co-Lead Plaintiffs also reached a settlement of claims against Delphi's outside auditor, Deloitte & Touche, LLP, for \$38.25 million on behalf of Delphi investors.

# In re Royal Dutch Shell European Shareholder Litigation, No. 106.010.887, Gerechtshof Te Amsterdam (Amsterdam Court of Appeal):

Kessler Topaz was instrumental in achieving a landmark \$352 million settlement on behalf non-US investors with Royal Dutch Shell plc relating to Shell's 2004 restatement of oil reserves. This settlement of securities fraud claims on a class-wide basis under Dutch law was the first of its kind, and sought to resolve claims exclusively on behalf of European and other non-United States investors. Uncertainty over whether jurisdiction for non-United States investors existed in a 2004 class action filed in federal court in New Jersey prompted a significant number of prominent European institutional investors from nine countries, representing more than one billion shares of Shell, to actively pursue a potential resolution of their claims outside the United States. Among the European investors which actively sought and supported this settlement were Alecta pensionsförsäkring, ömsesidigt, PKA Pension Funds Administration Ltd., Swedbank Robur Fonder AB, AP7 and AFA Insurance, all of which were represented by Kessler Topaz.

### In re Computer Associates Sec. Litig., No. 02-CV-1226 (E.D.N.Y. 2002):

Kessler Topaz served as Co-Lead Counsel on behalf of plaintiffs, alleging that Computer Associates and certain of its officers misrepresented the health of the company's business, materially overstated the company's revenues, and engaged in illegal insider selling. After nearly two years of litigation, Kessler Topaz helped obtain a settlement of \$150 million in cash and stock from the company.

### In re The Interpublic Group of Companies Sec. Litig., No. 02 Civ. 6527 (S.D.N.Y. 2002):

Kessler Topaz served as sole Lead Counsel in this action on behalf of an institutional investor and received final approval of a settlement consisting of \$20 million in cash and 6,551,725 shares of IPG common stock. As of the final hearing in the case, the stock had an approximate value of \$87 million, resulting in a total

settlement value of approximately \$107 million. In granting its approval, the Court praised Kessler Topaz for acting responsibly and noted the Firm's professionalism, competence and contribution to achieving such a favorable result.

In re Digital Lightwave, Inc. Sec. Litig., Consolidated Case No. 98-152-CIV-T-24E (M.D. Fla. 1999): The firm served as Co-Lead Counsel in one of the nation's most successful securities class actions in history measured by the percentage of damages recovered. After extensive litigation and negotiations, a settlement consisting primarily of stock was worth over \$170 million at the time when it was distributed to the Class. Kessler Topaz took on the primary role in negotiating the terms of the equity component, insisting that the class have the right to share in any upward appreciation in the value of the stock after the settlement was reached. This recovery represented an astounding approximately two hundred percent (200%) of class members' losses.

In re Transkaryotic Therapies, Inc. Sec. Litig., Civil Action No.: 03-10165-RWZ (D. Mass. 2003):

After five years of hard-fought, contentious litigation, Kessler Topaz as Lead Counsel on behalf of the Class, entered into one of largest settlements ever against a biotech company with regard to non-approval of one of its drugs by the U.S. Food and Drug Administration ("FDA"). Specifically, the Plaintiffs alleged that Transkaryotic Therapies, Inc. ("TKT") and its CEO, Richard Selden, engaged in a fraudulent scheme to artificially inflate the price of TKT common stock and to deceive Class Members by making misrepresentations and nondisclosures of material facts concerning TKT's prospects for FDA approval of Replagal, TKT's experimental enzyme replacement therapy for Fabry disease. With the assistance of the Honorable Daniel Weinstein, a retired state court judge from California, Kessler Topaz secured a \$50 million settlement from the Defendants during a complex and arduous mediation.

#### In re PNC Financial Services Group, Inc. Sec. Litig., Case No. 02-CV-271 (W.D. Pa. 2002):

Kessler Topaz served as Co-Lead Counsel in a securities class action case brought against PNC bank, certain of its officers and directors, and its outside auditor, Ernst & Young, LLP ("E&Y"), relating to the conduct of Defendants in establishing, accounting for and making disclosures concerning three special purpose entities ("SPEs") in the second, third and fourth quarters of PNC's 2001 fiscal year. Plaintiffs alleged that these entities were created by Defendants for the sole purpose of allowing PNC to secretly transfer hundreds of millions of dollars worth of non-performing assets from its own books to the books of the SPEs without disclosing the transfers or consolidating the results and then making positive announcements to the public concerning the bank's performance with respect to its non-performing assets. Complex issues were presented with respect to all defendants, but particularly E&Y. Throughout the litigation E&Y contended that because it did not make any false and misleading statements itself, the Supreme Court's opinion in Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164 (1993) foreclosed securities liability for "aiding or abetting" securities fraud for purposes of Section 10(b) liability. Plaintiffs, in addition to contending that E&Y did make false statements, argued that Rule 10b-5's deceptive conduct prong stood on its own as an independent means of committing fraud and that so long as E&Y itself committed a deceptive act, it could be found liable under the securities laws for fraud. After several years of litigation and negotiations, PNC paid \$30 million to settle the action, while also assigning any claims it may have had against E&Y and certain other entities that were involved in establishing and/or reporting on the SPEs. Armed with these claims, class counsel was able to secure an additional \$6.6 million in settlement funds for the class from two law firms and a third party insurance company and \$9.075 million from E&Y. Class counsel was also able to negotiate with the U.S. government, which had previously obtained a disgorgement fund of \$90 million from PNC and \$46 million from the third party insurance carrier, to combine all funds into a single settlement fund that exceeded \$180 million and is currently in the process of being distributed to the entire class, with PNC paying all costs of notifying the Class of the settlement.

### In re SemGroup Energy Partners, L.P., Sec. Litig., No. 08-md-1989 (DC) (N.D. Okla.):

Kessler Topaz, which was appointed by the Court as sole Lead Counsel, litigated this matter, which ultimately settled for \$28 million. The defense was led by 17 of the largest and best capitalized defense law firms in the world. On April 20, 2010, in a fifty-page published opinion, the United States District Court for the Northern District of Oklahoma largely denied defendants' ten separate motions to dismiss Lead Plaintiff's Consolidated Amended Complaint. The Complaint alleged that: (i) defendants concealed SemGroup's risky trading operations that eventually caused SemGroup to declare bankruptcy; and (ii) defendants made numerous false statements concerning SemGroup's ability to provide its publicly-traded Master Limited Partnership stable cash-flows. The case was aggressively litigated out of the Firm's San Francisco and Radnor offices and the significant recovery was obtained, not only from the Company's principals, but also from its underwriters and outside directors.

### In re Liberate Technologies Sec. Litig., No. C-02-5017 (MJJ) (N.D. Cal. 2005):

Kessler Topaz represented plaintiffs which alleged that Liberate engaged in fraudulent revenue recognition practices to artificially inflate the price of its stock, ultimately forcing it to restate its earning. As sole Lead Counsel, Kessler Topaz successfully negotiated a \$13.8 million settlement, which represents almost 40% of the damages suffered by the class. In approving the settlement, the district court complimented Lead Counsel for its "extremely credible and competent job."

### In re Riverstone Networks, Inc. Sec. Litig., Case No. CV-02-3581 (N.D. Cal. 2002):

Kessier Topaz served as Lead Counsel on behalf of plaintiffs alleging that Riverstone and certain of its officers and directors sought to create the impression that the Company, despite the industry-wide downturn in the telecom sector, had the ability to prosper and succeed and was actually prospering. In that regard, plaintiffs alleged that defendants issued a series of false and misleading statements concerning the Company's financial condition, sales and prospects, and used inside information to personally profit. After extensive litigation, the parties entered into formal mediation with the Honorable Charles Legge (Ret.). Following five months of extensive mediation, the parties reached a settlement of \$18.5 million.

## Shareholder Derivative Actions

In re Facebook, Inc. Class C Reclassification Litig., C.A. No. 12286-VCL (Del. Ch. Sept. 25, 2017): Kessler Topaz served as co-lead counsel in this stockholder class action that challenged a proposed reclassification of Facebook's capital structure to accommodate the charitable giving goals of its founder and controlling stockholder Mark Zuckerberg. The Reclassification involved the creation of a new class of nonvoting Class C stock, which would be issued as a dividend to all Facebook Class A and Class B stockholders (including Zuckerberg) on a 2-for-1 basis. The purpose and effect of the Reclassification was that it would allow Zuckerberg to sell billions of dollars worth of nonvoting Class C shares without losing his voting control of Facebook. The litigation alleged that Zuckerberg and Facebook's board of directors breached their fiduciary duties in approving the Reclassification at the behest of Zuckerberg and for his personal benefit. At trial Kessler Topaz was seeking a permanent injunction to prevent the consummation of the Reclassification. The litigation was carefully followed in the business and corporate governance communities, due to the high-profile nature of Facebook, Zuckerberg, and the issues at stake. After almost a year and a half of hard fought litigation, just one business day before trial was set to commence, Facebook and Zuckerberg abandoned the Reclassification, granting Plaintiffs complete victory.

In re CytRx Stockholder Derivative Litig., Consol. C.A. No. 9864-VCL (Del. Ch. Nov. 20, 2015):

Kessher Topaz served as co-lead counsel in a shareholder derivative action challenging 2.745 million "spring-loaded" stock options. On the day before CytRx announced the most important news in the Company's history concerning the positive trial results for one of its significant pipeline drugs, the Compensation Committee of CytRx's Board of Directors granted the stock options to themselves, their

fellow directors and several Company officers which immediately came "into the money" when CytRx's stock price shot up immediately following the announcement the next day. Kessler Topaz negotiated a settlement recovering 100% of the excess compensation received by the directors and approximately 76% of the damages potentially obtainable from the officers. In addition, as part of the settlement, Kessler Topaz obtained the appointment of a new independent director to the Board of Directors and the implementation of significant reforms to the Company's stock option award processes. The Court complimented the settlement, explaining that it "serves what Delaware views as the overall positive function of stockholder litigation, which is not just recovery in the individual case but also deterrence and norm enforcement."

International Brotherhood of Electrical Workers Local 98 Pension Fund v. Black, et al., Case No. 37-2011-00097795-CU-SL-CTL (Sup. Ct. Cal., San Diego Feb. 5, 2016) ("Encore Capital Group, Inc."): Kessler Topaz, as co-lead counsel, represented International Brotherhood of Electrical Workers Local 98 Pension Fund in a shareholder derivative action challenging breaches of fiduciary duties and other violations of law in connection with Encore's debt collection practices, including robo-signing affidavits and improper use of the court system to collect alleged consumer debts. Kessler Topaz negotiated a settlement in which the Company implemented industry-leading reforms to its risk management and corporate governance practices, including creating Chief Risk Officer and Chief Compliance Officer positions, various compliance committees, and procedures for consumer complaint monitoring.

In re Southern Peru Copper Corp. Derivative Litigation, Consol. CA No. 961-CS (Del. Ch. 2011): Kessler Topaz served as co-lead counsel in this landmark \$2 billion post-trial decision, believed to be the largest verdict in Delaware corporate law history. In 2005, Southern Peru, a publicly-traded copper mining company, acquired Minera Mexico, a private mining company owned by Southern Peru's majority stockholder Grupo Mexico. The acquisition required Southern Peru to pay Grupo Mexico more than \$3 billion in Southern Peru stock. We alleged that Grupo Mexico had caused Southern Peru to grossly overpay for the private company in deference to its majority shareholder's interests. Discovery in the case spanned years and continents, with depositions in Peru and Mexico. The trial court agreed and ordered Grupo Mexico to pay more than \$2 billion in damages and interest. The Delaware Supreme Court affirmed on appeal.

Quinn v. Knight, No. 3:16-cv-610 (E.D. Va. Mar. 16, 2017) ("Apple REIT Ten"):

This shareholder derivative action challenged a conflicted "roll up" REIT transaction orchestrated by Glade M. Knight and his son Justin Knight. The proposed transaction paid the Knights millions of dollars while paying public stockholders less than they had invested in the company. The case was brought under Virginia law, and settled just ten days before trial, with stockholders receiving an additional \$32 million in merger consideration.

Kastis v. Carter, C.A. No. 8657-CB (Del. Ch. Sept. 19, 2016) ("Hemispherx Biopharma, Inc."):

This derivative action challenged improper bornses paid to two company exceedives of this small pharmaceutical company that had never turned a profit. In response to the complaint, Hemispherx's board first adopted a "fee-shifting" bylaw that would have required stockholder plaintiffs to pay the company's legal fees unless the plaintiffs achieved 100% of the relief they sought. This sort of bylaw, if adopted more broadly, could substantially curtail meritorious litigation by stockholders unwilling to risk losing millions of dollars if they bring an unsuccessful case. After Kessler Topaz presented its argument in court, Hemispherx withdrew the bylaw. Kessler Topaz ultimately negotiated a settlement requiring the two executives to forfeit several million dollars' worth of accrued but unpaid bonuses, future bonuses and director fees. The company also recovered \$1.75 million from its insurance carriers, appointed a new independent director to the board, and revised its compensation program.

Montgomery v. Erickson, Inc., et al., C.A. No. 8784-VCL (Del. Ch. Sept. 12, 2016):

Kessler Topaz represented an individual stockholder who asserted in the Delaware Court of Chancery class action and derivative claims challenging merger and recapitalization transactions that benefitted the company's controlling stockholders at the expense of the company and its minority stockholders. Plaintiff alleged that the controlling stockholders of Erickson orchestrated a series of transactions with the intent and effect of using Erickson's money to bail themselves out of a failing investment. Defendants filed a motion to dismiss the complaint, which Kessler Topaz defeated, and the case proceeded through more than a year of fact discovery. Following an initially unsuccessful mediation and further litigation, Kessler Topaz ultimately achieved an \$18.5 million cash settlement, 80% of which was distributed to members of the stockholder class to resolve their direct claims and 20% of which was paid to the company to resolve the derivative claims. The settlement also instituted changes to the company's governing documents to prevent future self-dealing transactions like those that gave rise to the case.

In re Helios Closed-End Funds Derivative Litig., No. 2:11-cy-02935-SHM-TMP (W.D. Tenn.):

Kessler Topaz represented stockholders of four closed-end mutual funds in a derivative action against the funds' former investment advisor, Morgan Asset Management. Plaintiffs alleged that the defendants mismanaged the funds by investing in riskier securities than permitted by the funds' governing documents and, after the values of these securities began to precipitously decline beginning in early 2007, cover up their wrongdoing by assigning phony values to the funds' investments and failing to disclose the extent of the decrease in value of the funds' assets. In a rare occurrence in derivative litigation, the funds' Boards of Directors eventually hired Kessler Topaz to prosecute the claims against the defendants on behalf of the funds. Our litigation efforts led to a settlement that recovered \$6 million for the funds and ensured that the funds would not be responsible for making any payment to resolve claims asserted against them in a related multi-million dollar securities class action. The fund's Boards fully supported and endorsed the settlement, which was negotiated independently of the parallel securities class action.

In re Viacom, Inc. Shareholder Derivative Litig., Index No. 602527/05 (New York County, NY 2005): Kessler Topaz represented the Public Employees' Retirement System of Mississippi and served as Lead Counsel in a derivative action alleging that the members of the Board of Directors of Viacom, Inc. paid excessive and unwarranted compensation to Viacom's Executive Chairman and CEO, Sumner M. Redstone, and co-COOs Thomas E. Freston and Leslie Moonves, in breach of their fiduciary duties. Specifically, we alleged that in fiscal year 2004, when Viacom reported a record net loss of \$17.46 billion, the board improperly approved compensation payments to Redstone, Freston, and Moonves of approximately \$56 million, \$52 million, and \$52 million, respectively. Judge Ramos of the New York Supreme Court denied Defendants' motion to dismiss the action as we overcame several complex arguments related to the failure to make a demand on Viacom's Board; Defendants then appealed that decision to the Appellate Division of the Supreme Court of New York. Prior to a decision by the appellate court, a settlement was reached in early 2007. Pursuant to the settlement, Sumner Redstone, the company's Executive Chairman and controlling shareholder, agreed to a new compensation package that, among other things, substantially reduces his annual salary and cash bonus, and ties the majority of his incentive compensation directly to shareholder returns.

In re Family Dollar Stores, Inc. Derivative Litig., Master File No. 06-CVS-16796 (Mecklenburg County, NC 2006):

Kessler Topaz served as Lead Counsel, derivatively on behalf of Family Dollar Stores, Inc., and against certain of Family Dollar's current and former officers and directors. The actions were pending in Mecklenburg County Superior Court, Charlotte, North Carolina, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of these shareholder derivative actions, Kessler Topaz was able to achieve substantial relief for Family Dollar and its shareholders. Through Kessler Topaz's litigation of this action, Family Dollar agreed to cancel hundreds of thousands of stock options

granted to certain current and former officers, resulting in a seven-figure net financial benefit for the company. In addition, Family Dollar has agreed to, among other things: implement internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; appoint two new independent directors to the board of directors; maintain a board composition of at least 75 percent independent directors; and adopt stringent officer stock-ownership policies to further align the interests of officers with those of Family Dollar shareholders. The settlement was approved by Order of the Court on August 13, 2007.

Carbon County Employees Retirement System, et al., Derivatively on Behalf of Nominal Defendant Southwest Airlines Co. v. Gary C. Kelly, et al. Cause No. 08-08692 (District Court of Dallas County, Texas):

As lead counsel in this derivative action, we negotiated a settlement with far-reaching implications for the safety and security of airline passengers.

Our clients were shareholders of Southwest Airlines Co. (Southwest) who alleged that certain officers and directors had breached their fiduciary duties in connection with Southwest's violations of Federal Aviation Administration safety and maintenance regulations. Plaintiffs alleged that from June 2006 to March 2007, Southwest flew 46 Boeing 737 airplanes on nearly 60,000 flights without complying with a 2004 FAA Airworthiness Directive requiring fuselage fatigue inspections. As a result, Southwest was forced to pay a record \$7.5 million fine. We negotiated numerous reforms to ensure that Southwest's Board is adequately apprised of safety and operations issues, and implementing significant measures to strengthen safety and maintenance processes and procedures.

The South Financial Group, Inc. Shareholder Litigation, C.A. No. 2008-CP-23-8395 (S.C. C.C.P. 2009):

Represented shareholders in derivative litigation challenging board's decision to accelerate "golden parachute" payments to South Financial Group's CEO as the company applied for emergency assistance in 2008 under the Troubled Asset Recovery Plan (TARP).

We sought injunctive relief to block the payments and protect the company's ability to receive the TARP funds. The litigation was settled with the CEO giving up part of his severance package and agreeing to leave the board, as well as the implementation of important corporate governance changes one commentator described as "unprecedented."

# **Options Backdating**

In 2006, the Wall Street Journal reported that three companies appeared to have "backdated" stock option grants to their senior executives, pretending that the options had been awarded when the stock price was at its lowest price of the quarter, or even year. An executive who exercised the option thus paid the company an artificially low price, which stole money from the corporate coffers. While stock options are designed to incentivize recipients to drive the company's stock price up, backdating options to artificially low prices undercut those incentives, overpaid executives, violated tax rules, and decreased shareholder value.

Kessler Topaz worked with a financial analyst to identify dozens of other companies that had engaged in similar practices, and filed more than 50 derivative suits challenging the practice. These suits sought to force the executives to disgorge their improper compensation and to revamp the companies' executive compensation policies. Ultimately, as lead counsel in these derivative actions, Kessler Topaz achieved significant monetary and non-monetary benefits at dozens of companies, including:

Converse Technology, Inc.: Settlement required Comverse's founder and CEO Kobi Alexander, who fled to Namibia after the backdating was revealed, to disgorge more than \$62 million in excessive backdated option compensation. The settlement also overhauled the company's corporate governance and internal controls, replacing a number of directors and corporate executives, splitting the Chairman and CEO positions, and instituting majority voting for directors.

Monster Worldwide, Inc.: Settlement required recipients of backdated stock options to disgorge more than \$32 million in unlawful gains back to the company, plus agreeing to significant corporate governance measures. These measures included (a) requiring Monster's founder Andrew McKelvey to reduce his voting control over Monster from 31% to 7%, by exchanging super-voting stock for common stock; and (b) implementing new equity granting practices that require greater accountability and transparency in the granting of stock options moving forward. In approving the settlement, the court noted "the good results, mainly the amount of money for the shareholders and also the change in governance of the company itself, and really the hard work that had to go into that to achieve the results...."

Affiliated Computer Services, Inc.: Settlement required executives, including founder Darwin Deason, to give up \$20 million in improper backdated options. The litigation was also a catalyst for the company to replace its CEO and CFO and revamp its executive compensation policies.

## Mergers & Acquisitions Litigation

City of Daytona Beach Police and Fire Pension Fund v. ExamWorks Group, Inc., et al., C.A. No. 12481-VCL (Del. Ch.):

On September 12, 2017, the Delaware Chancery Court approved one of the largest class action M&A settlements in the history of the Delaware Chancery Court, a \$86.5 million settlement relating to the acquisition of ExamWorks Group, Inc. by private equity firm Leonard Green & Partners, LP.

The settlement caused ExamWorks stockholders to receive a 6% improvement on the \$35.05 per share merger consideration negotiated by the defendants. This amount is unusual especially for litigation challenging a third-party merger. The settlement amount is also noteworthy because it includes a \$46.5 million contribution from ExamWorks' outside legal counsel, Paul Hastings LLP.

In re ArthroCare Corporation S'holder Litig., Consol. C.A. No. 9313-VCL (Del. Ch. Nov. 13, 2014): Kessler Topaz, as co-lead counsel, challenged the take-private of Arthrocare Corporation by private equity firm Smith & Nephew. This class action litigation alleged, among other things, that Arthrocare's Board breached their fiduciary duties by failing to maximize stockholder value in the merger. Plaintiffs also alleged that that the merger violated Section 203 of the Delaware General Corporation Law, which prohibits mergers with "interested stockholders," because Smith & Nephew had contracted with JP Morgan to provide financial advice and financing in the merger, while a subsidiary of JP Morgan owned more than 15% of Arthrocare's stock. Plaintiffs also alleged that the agreement between Smith & Nephew and the JP Morgan subsidiary violated a "standstill" agreement between the JP Morgan subsidiary and Arthrocare. The court set these novel legal claims for an expedited trial prior to the closing of the merger. The parties agreed to settle the action when Smith & Nephew agreed to increase the merger consideration paid to Arthrocare stockholders by \$12 million, less than a month before trial.

In re Safeway Inc. Stockholders Litig., C.A. No. 9445-VCL (Del. Ch. Sept. 17, 2014);

Kessler Topaz represented the Oklahoma Firefighters Pension and Retirement System in class action litigation challenging the acquisition of Safeway, Inc. by Albertson's grocery chain for \$32.50 per share in cash and contingent value rights. Kessler Topaz argued that the value of CVRs was illusory, and Safeway's shareholder rights plan had a prohibitive effect on potential bidders making superior offers to acquire

Safeway, which undermined the effectiveness of the post-signing "go shop." Plaintiffs sought to enjoin the transaction, but before the scheduled preliminary injunction hearing took place, Kessler Topaz negotiated (i) modifications to the terms of the CVRs and (ii) defendants' withdrawal of the shareholder rights plan. In approving the settlement, Vice Chancellor Laster of the Delaware Chancery Court stated that "the plaintiffs obtained significant changes to the transaction . . . that may well result in material increases in the compensation received by the class," including substantial benefits potentially in excess of \$230 million.

In re MPG Office Trust, Inc. Preferred Shareholder Litig., Cons. Case No. 24-C-13-004097 (Md. Cir. Oct. 20, 2015):

Kessler Topaz challenged a coercive tender offer whereby MPG preferred stockholders received preferred stock in Brookfield Office Properties, Inc. without receiving any compensation for their accrued and unpaid dividends. Kessler Topaz negotiated a settlement where MPG preferred stockholders received a dividend of \$2.25 per share, worth approximately \$21 million, which was the only payment of accrued dividends Brookfield DTLA Preferred Stockholders had received as of the time of the settlement.

In re Globe Specialty Metals, Inc. Stockholders Litig., C.A. 10865-VCG (Del. Ch. Feb. 15, 2016):

Kessler Topaz served as co-lead counsel in class action litigation arising from Globe's acquisition by Grupo Atlantica to form Ferroglobe. Plaintiffs alleged that Globe's Board breached their fiduciary duties to Globe's public stockholders by agreeing to sell Globe for an unfair price, negotiating personal benefits for themselves at the expense of the public stockholders, failing to adequately inform themselves of material issues with Grupo Atlantica, and issuing a number of materially deficient disclosures in an attempt to mask issues with the negotiations. At oral argument on Plaintiffs' preliminary injunction motion, the Court held that Globe stockholders likely faced irreparable harm from the Board's conduct, but reserved ruling on the other preliminary injunction factors. Prior to the Court's final ruling, the parties agreed to settle the action for \$32.5 million and various corporate governance reforms to protect Globe stockholders' rights in Ferroglobe.

In re Dole Food Co., Inc. Stockholder Litig., Consol. C.A. No. 8703-VCL, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015):

On August 27, 2015, Vice Chancellor J. Travis Laster issued his much-anticipated post-trial verdict in litigation by former stockholders of Dole Food Company against Dole's chairman and controlling stockholder David Murdock. In a 106-page ruling, Vice Chancellor Laster found that Murdock and his longtime lieutenant, Dole's former president and general counsel C. Michael Carter, unfairly manipulated Dole's financial projections and misled the market as part of Murdock's efforts to take the company private in a deal that closed in November 2013. Among other things, the Court concluded that Murdock and Carter "primed the market for the freeze-out by driving down Dole's stock price" and provided the company's outside directors with "knowingly false" information and intended to "mislead the board for Mr. Murdock's benefit."

Vice Chancellor Laster found that the \$13.50 per share going-private deal underpaid stockholders, and awarded class damages of \$2.74 per share, totaling \$148 million. That award represents the largest post-trial class recovery in the merger context. The largest post-trial derivative recovery in a merger case remains Kessler Topaz's landmark 2011 \$2 billion verdict in *In re Southern Peru*.

In re Genemech, Inc. Shareholders Lit., Cons. Civ. Action No. 3991-VCS (Del. Ch. 2008): Kessler Topaz served as Co-Lead Counsel in this shareholder class action brought against the directors of Genentech and Genentech's majority stockholder, Roche Holdings, Inc., in response to Roche's July 21, 2008 attempt to acquire Genentech for \$89 per share. We sought to enforce provisions of an Affiliation Agreement between Roche and Genentech and to ensure that Roche fulfilled its fiduciary obligations to Genentech's shareholders through any buyout effort by Roche. After moving to enjoin the tender offer, Kessler Topaz negotiated with Roche and Genentech to amend the Affiliation Agreement to allow a

negotiated transaction between Roche and Genentech, which enabled Roche to acquire Genentech for \$95 per share, approximately \$3.9 billion more than Roche offered in its hostile tender offer. In approving the settlement, then-Vice Chancellor Leo Strine complimented plaintiffs' counsel, noting that this benefit was only achieved through "real hard-fought litigation in a complicated setting."

In re GSI Commerce, Inc. Shareholder Litig., Consol. C.A. No. 6346-VCN (Del. Ch. Nov. 15, 2011): On behalf of the Erie County Employees' Retirement System, we alleged that GSI's founder breached his fiduciary duties by negotiating a secret deal with eBay for him to buy several GSI subsidiaries at below market prices before selling the remainder of the company to eBay. These side deals significantly reduced the acquisition price paid to GSI stockholders. Days before an injunction hearing, we negotiated an improvement in the deal price of \$24 million.

In re Amicas, Inc. Shareholder Litigation, 10-0174-BLS2 (Suffolk County, MA 2010): Kessler Topaz served as lead counsel in class action hitigation challenging a proposed private equity buyout of Amicas that would have paid Amicas shareholders \$5.35 per share in cash while certain Amicas executives retained an equity stake in the surviving entity moving forward. Kessler Topaz prevailed in securing a preliminary injunction against the deal, which then allowed a superior bidder to purchase the Company for an additional \$0.70 per share (\$26 million). The court complimented Kessler Topaz attorneys for causing an "exceptionally favorable result for Amicas' shareholders" after "expend[ing] substantial resources."

In re Harleysville Mutual, Nov. Term 2011, No. 02137 (C.C.P., Phila. Cnty.):

Kessler Topaz served as co-lead counsel in expedited merger litigation challenging Harleysville's agreement to sell the company to Nationwide Insurance Company. Plaintiffs alleged that policyholders were entitled to receive cash in exchange for their ownership interests in the company, not just new Nationwide policies. Plaintiffs also alleged that the merger was "fundamentally unfair" under Pennsylvania law. The defendants contested the allegations and contended that the claims could not be prosecuted directly by policyholders (as opposed to derivatively on the company's behalf). Following a two-day preliminary injunction hearing, we settled the case in exchange for a \$26 million cash payment to policyholders.

# Consumer Protection and Fiduciary Litigation

In re: J.P. Jeanneret Associates Inc., et al., No. 09-cv-3907 (S.D.N.Y.):

Kessler Topaz served as lead counsel for one of the plaintiff groups in an action against J.P. Jeanneret and Ivy Asset Management relating to an alleged breach of fiduciary and statutory duty in connection with the investment of retirement plan assets in Bernard Madoff-related entities. By breaching their fiduciary duties, Defendants caused significant losses to the retirement plans. Following extensive hard-fought litigation, the case settled for a total of \$216.5 million.

In re: National City Corp. Securities, Derivative and ERISA Litig, No. 08-nc-7000 (N.D. Ohio);

Kessler Topaz served as a lead counsel in this complex action alleging that certain directors and efficers of National City Corp. breached their fiduciary duties under the Employee Retirement Income Security Act of 1974. These breaches arose from an investment in National City stock during a time when defendants knew, or should have known, that the company stock was artificially inflated and an imprudent investment for the company's 401(k) plan. The case settled for \$43 million on behalf of the plan, plaintiffs and a settlement class of plan participants.

Alston, et al. v. Countrywide Financial Corp. et al., No. 07-cv-03508 (E.D. Pa.):

Kessler Topaz served as lead counsel in this novel and complex action which alleged that Defendants Countrywide Financial Corporation, Countrywide Home Loans, Inc. and Balboa Reinsurance Co. violated

the Real Estate Settlement Procedure Act ("RESPA") and ultimately cost borrowers millions of dollars. Specifically, the action alleged that Defendants engaged in a scheme related to private mortgage insurance involving kickbacks, which are prohibited under RESPA. After three and a half years of hard-fought litigation, the action settled for \$34 million.

Trustees of the Local 464A United Food and Commercial Workers Union Pension Fund, et al. v. Wachovia Bank, N.A., et al., No. 09-cv-00668 (DNJ):

For more than 50 years, Wachovia and its predecessors acted as investment manager for the Local 464A UFCW Union Funds, exercising investment discretion consistent with certain investment guidelines and fiduciary obligations. Until mid-2007, Wachovia managed the fixed income assets of the funds safely and conservatively, and their returns closely tracked the Lehman Aggregate Bond Index (now known as the Barclay's Capital Aggregate Bond Index) to which the funds were benchmarked. However, beginning in mid-2007 Wachovia significantly changed the investment strategy, causing the funds' portfolio value to drop drastically below the benchmark. Specifically, Wachovia began to dramatically decrease the funds' holdings in short-term, high-quality, low-risk debt instruments and materially increase their holdings in high-risk mortgage-backed securities and collateralized mortgage obligations. We represented the funds' trustees in alleging that, among other things, Wachovia breached its fiduciary duty by: failing to invest the assets in accordance with the funds' conservative investment guidelines; failing to adequately monitor the funds' fixed income investments; and failing to provide complete and accurate information to plaintiffs concerning the change in investment strategy. The matter was resolved privately between the parties.

In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litig., No. 1:12-md-02335 (S.D.N.Y.):

On behalf of the Southeastern Pennsylvania Transportation Authority Pension Fund and a class of similarly situated domestic custodial clients of BNY Mellon, we alleged that BNY Mellon secretly assigned a spread to the FX rates at which it transacted FX transactions on behalf of its clients who participated in the BNY Mellon's automated "Standing Instruction" FX service. BNY Mellon determining this spread by executing its clients' transactions at one rate and then, typically, at the end of the trading day, assigned a rate to its clients which approximated the worst possible rates of the trading day, pocketing the difference as riskless profit. This practice was despite BNY Mellon's contractual promises to its clients that its Standing Instruction service was designed to provide "best execution," was "free of charge" and provided the "best rates of the day." The case asserted claims for breach of contract and breach of fiduciary duty on behalf of BNY Mellon's custodial clients and sought to recover the unlawful profits that BNY Mellon earned from its unfair and unlawful FX practices. The case was litigated in collaboration with separate cases brought by state and federal agencies, with Kessler Topaz serving as lead counsel and a member of the executive committee overseeing the private litigation. After extensive discovery, including more than 100 depositions, over 25 million pages of fact discovery, and the submission of multiple expert reports, Plaintiffs reached a settlement with BNY Mellon of \$335 million. Additionally, the settlement is being administered by Kessler Topaz along with separate recoveries by state and federal agencies which bring the total recovery for BNY Mellon's custodial customers to \$504 million. The settlement was finally approved on September 24, 2015. In approving the settlement, Judge Lewis Kaplan praised counsel for a "wonderful job," recognizing that they were "fought tooth and nail at every step of the road." In further recognition of the efforts of counsel, Judge Kaplan noted that "[t]his was an outrageous wrong by the Bank of New York Mellon, and plaintiffs' counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job."

CompSource Oklahoma v. BNY Mellon Bank, N.A., No. CIV 08-469-KEW (E.D. Okla. October 25, 2012):

Kessler Topaz served as Interim Class Counsel in this matter alleging that BNY Mellon Bank, N.A. and the Bank of New York Mellon (collectively, "BNYM") breached their statutory, common law and contractual duties in connection with the administration of their securities lending program. The Second Amended

Complaint alleged, among other things, that BNYM imprudently invested cash collateral obtained under its securities lending program in medium term notes issued by Sigma Finance, Inc. -- a foreign structured investment vehicle ("SIV") that is now in receivership -- and that such conduct constituted a breach of BNYM's fiduciary obligations under the Employee Retirement Income Security Act of 1974, a breach of its fiduciary duties under common law, and a breach of its contractual obligations under the securities lending agreements. The Complaint also asserted claims for negligence, gross negligence and willful misconduct. The case recently settled for \$280 million.

# Transatlantic Holdings, Inc., et al. v. American International Group, Inc., et al., American Arbitration Association Case No. 50 148 T 00376 10:

Kessler Topaz served as counsel for Transatlantic Holdings, Inc., and its subsidiaries ("TRH"), alleging that American International Group, Inc. and its subsidiaries ("AIG") breached their fiduciary duties, contractual duties, and committed fraud in connection with the administration of its securities lending program. Until June 2009, AIG was TRH's majority shareholder and, at the same time, administered TRH's securities lending program. TRH's Statement of Claim alleged that, among other things, AIG breached its fiduciary obligations as investment advisor and majority shareholder by imprudently investing the majority of the cash collateral obtained under its securities lending program in mortgage backed securities, including Alt-A and subprime investments. The Statement of Claim further alleged that AIG concealed the extent of TRH's subprime exposure and that when the collateral pools began experiencing liquidity problems in 2007, AIG unilaterally carved TRH out of the pools so that it could provide funding to its wholly owned subsidiaries to the exclusion of TRH. The matter was litigated through a binding arbitration and TRH was awarded \$75 million.

# Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, N.A. - Consolidated Action No. 09-cv-00686 (SAS) (S.D.N.Y.):

On January 23, 2009, the firm filed a class action complaint on behalf of all entities that were participants in JPMorgan's securities lending program and that incurred losses on investments that JPMorgan, acting in its capacity as a discretionary investment manager, made in medium-term notes issue by Sigma Finance, Inc. – a now defunct structured investment vehicle. The losses of the Class exceeded \$500 million. The complaint asserted claims for breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA), as well as common law breach of fiduciary duty, breach of contract and negligence. Over the course of discovery, the parties produced and reviewed over 500,000 pages of documents, took 40 depositions (domestic and foreign) and exchanged 21 expert reports. The case settled for \$150 million. Trial was scheduled to commence on February 6, 2012.

### In re Global Crossing, Ltd. ERISA Litigation, No. 02 Civ. 7453 (S.D.N.Y. 2004):

Kessler Topaz served as Co-Lead Counsel in this novel, complex and high-profile action which alleged that certain directors and officers of Global Crossing, a former high-flier of the late 1990's tech stock boom, breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") to certain company-provided 401(k) plans and their participants. These breaches arose from the plans' alleged imprudent investment in Global Crossing stock during a time when defendants knew, or should have known, that the company was facing imminent bankruptcy. A settlement of plaintiffs' claims restoring \$79 million to the plans and their participants was approved in November 2004. At the time, this represented the largest recovery received in a company stock ERISA class action.

### In re AOL Time Warner ERISA Litigation, No. 02-CV-8853 (S.D.N.Y. 2006):

Kessler Topaz, which served as Co-Lead Counsel in this highly-publicized ERISA fiduciary breach class action brought on behalf of the Company's 401(k) plans and their participants, achieved a record \$100 million settlement with defendants. The \$100 million restorative cash payment to the plans (and, concomitantly, their participants) represents the largest recovery from a single defendant in a breach of fiduciary action relating to mismanagement of plan assets held in the form of employer securities. The

action asserted claims for breach of fiduciary duties pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA") on behalf of the participants in the AOL Time Warner Savings Plan, the AOL Time Warner Thrift Plan, and the Time Warner Cable Savings Plan (collectively, the "Plans") whose accounts purchased and/or held interests in the AOLTW Stock Fund at any time between January 27, 1999 and July 3, 2003. Named as defendants in the case were Time Warner (and its corporate predecessor, AOL Time Warner), several of the Plans' committees, as well as certain current and former officers and directors of the company. In March 2005, the Court largely denied defendants' motion to dismiss and the parties began the discovery phase of the case. In January 2006, Plaintiffs filed a motion for class certification, while at the same time defendants moved for partial summary judgment. These motions were pending before the Court when the settlement in principle was reached. Notably, an Independent Fiduciary retained by the Plans to review the settlement in accordance with Department of Labor regulations approved the settlement and filed a report with Court noting that the settlement, in addition to being "more than a reasonable recovery" for the Plans, is "one of the largest ERISA employer stock action settlements in history."

### In re Honeywell International ERISA Litigation, No. 03-1214 (DRD) (D.N.J. 2004):

Kessler Topaz served as Lead Counsel in a breach of fiduciary duty case under ERISA against Honeywell International, Inc. and certain fiduciaries of Honeywell defined contribution pension plans. The suit alleged that Honeywell and the individual fiduciary defendants, allowed Honeywell's 401(k) plans and their participants to imprudently invest significant assets in company stock, despite that defendants knew, or should have known, that Honeywell's stock was an imprudent investment due to undisclosed, wide-ranging problems stemming from a consummated merger with Allied Signal and a failed merger with General Electric. The settlement of plaintiffs' claims included a \$14 million payment to the plans and their affected participants, and significant structural relief affording participants much greater leeway in diversifying their retirement savings portfolios.

### Henry v. Sears, et. al., Case No. 98 C 4110 (N.D. III. 1999):

The Firm served as Co-Lead Counsel for one of the largest consumer class actions in history, consisting of approximately 11 million Sears credit card holders whose interest rates were improperly increased in connection with the transfer of the credit card accounts to a national bank. Kessler Topaz successfully negotiated a settlement representing approximately 66% of all class members' damages, thereby providing a total benefit exceeding \$156 million. All \$156 million was distributed automatically to the Class members, without the filing of a single proof of claim form. In approving the settlement, the District Court stated: ". . . I am pleased to approve the settlement. I think it does the best that could be done under the circumstances on behalf of the class. . . . The litigation was complex in both liability and damages and required both professional skill and standing which class counsel demonstrated in abundance."

## **Antitrust Litigation**

### In re: Flonase Antitrust Litigation, No. 08-cv-3149 (E.D. Pa.):

Kessler Topaz served as a lead counsel on behalf of a class of direct purchaser plaintiffs in an antitrust action brought pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, alleging, among other things, that defendant GlaxoSmithKline (GSK) violated Section 2 of the Sherman Act, 15 U.S.C. § 2, by engaging in "sham" petitioning of a government agency. Specifically, the Direct Purchasers alleged that GSK unlawfully abused the citizen petition process contained in Section 505(j) of the Federal Food, Drug, and Cosmetic Act and thus delayed the introduction of less expensive generic versions of Flonase, a highly popular allergy drug, causing injury to the Direct Purchaser Class. Throughout the course of the four year litigation, Plaintiffs defeated two motions for summary judgment, succeeded in having a class certified and conducted extensive discovery. After lengthy negotiations and shortly before trial, the action settled for \$150 million.

### In re: Wellbutrin SR Antitrust Litigation, No. 04-cv-5898 (E.D. Pa.):

Kessler Topaz was a lead counsel in an action which alleged, among other things, that defendant GlaxoSmithKline (GSK) violated the antitrust, consumer fraud, and consumer protection laws of various states. Specifically, Plaintiffs and the class of Third-Party Payors alleged that GSK manipulated patent filings and commenced baseless infringement lawsuits in connection wrongfully delaying generic versions of Wellbutrin SR and Zyban from entering the market, and that Plaintiffs and the Class of Third-Party Payors suffered antitrust injury and calculable damages as a result. After more than eight years of litigation, the action settled for \$21.5 million.

### In re: Metoprolol Succinate End-Payor Antitrust Litigation, No. 06-cv-71 (D. Del.):

Kessler Topaz was co-lead counsel in a lawsuit which alleged that defendant AstraZeneca prevented generic versions of Toprol-XL from entering the market by, among other things, improperly manipulating patent filings and filing baseless patent infringement lawsuits. As a result, AstraZeneca unlawfully monopolized the domestic market for Toprol-XL and its generic bio-equivalents. After seven years of litigation, extensive discovery and motion practice, the case settled for \$11 million.

#### In re Remeron Antitrust Litigation, No. 02-CV-2007 (D.N.J. 2004):

Kessler Topaz was Co-Lead Counsel in an action which challenged Organon, Inc.'s filing of certain patents and patent infringement lawsuits as an abuse of the Hatch-Waxman Act, and an effort to unlawfully extend their monopoly in the market for Remeron. Specifically, the lawsuit alleged that defendants violated state and federal antitrust laws in their efforts to keep competing products from entering the market, and sought damages sustained by consumers and third-party payors. After lengthy litigation, including numerous motions and over 50 depositions, the matter settled for \$36 million.

## **OUR PROFESSIONALS**

### **PARTNERS**

JULES D. ALBERT, a partner of the Firm, concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation. Mr. Albert received his law degree from the University of Pennsylvania Law School, where he was a Senior Editor of the University of Pennsylvania Journal of Labor and Employment Law and recipient of the James Wilson Fellowship. Mr. Albert also received a Certificate of Study in Business and Public Policy from The Wharton School at the University of Pennsylvania. Mr. Albert graduated magna cum laude with a Bachelor of Arts in Political Science from Emory University. Mr. Albert is licensed to practice law in Pennsylvania, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Mr. Albert has litigated in state and federal courts across the country, and has represented stockholders in numerous actions that have resulted in significant monetary recoveries and corporate governance improvements, including: *In re Sunrise Senior Living, Inc. Deriv. Litig.*, No. 07-00143 (D.D.C.); *Mercier v. Whittle, et al.*, No. 2008-CP-23-8395 (S.C. Ct. Com. Pl., 13th Jud. Cir.); *In re K-V Pharmaceutical Co. Deriv. Litig.*, No. 06-00384 (E.D. Mo.); *In re Progress Software Corp. Deriv. Litig.*, No. SUCV2007-01937-BLS2 (Mass. Super. Ct., Suffolk Cty.); *In re Quest Software, Inc. Deriv. Litig.* No 06CC00115 (Cal. Super. Ct., Orange Cty.); and *Quaco v. Balakrishnan, et al.*, No. 06-2811 (N.D. Cal.).

**NAUMON A. AMJED,** a partner of the Firm, concentrates his practice on new matter development with a focus on analyzing securities class action lawsuits, direct (or opt-out) actions, non-U.S. securities and shareholder litigation, SEC whistleblower actions, breach of fiduciary duty cases, antitrust matters, data

breach actions and oil and gas litigation. Mr. Amjed is a graduate of the Villanova University School of Law, *cum laude*, and holds an undergraduate degree in business administration from Temple University, *cum laude*. Mr. Amjed is a member of the Delaware State Bar, the Bar of the Commonwealth of Pennsylvania, the New York State Bar, and is admitted to practice before the United States Courts for the District of Delaware, the Eastern District of Pennsylvania and the Southern District of New York.

As a member of the Firm's lead plaintiff practice group, Mr. Amjed has represented clients serving as lead plaintiffs in several notable securities class action lawsuits including: *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litig.*, No. 09-MDL-2058 (PKC) (S.D.N.Y.) (\$2.425 billion recovery); *In re Wachovia Preferred Securities and Bond/Notes Litigation*, No. 09-cv-6351 (RJS) (S.D.N.Y.) (\$627 million recovery); *In re Lehman Bros. Equity/Debt Securities Litigation*, No. 08-cv-5523 (LAK) (S.D.N.Y.) (\$615 million recovery) and *In re JPMorgan Chase & Co. Securities Litigation*, No. 12-3852-GBD ("London Whale Litigation") (\$150 million recovery). Additionally, Mr. Amjed served on the national Executive Committee representing financial institutions suffering losses from Target Corporation's 2013 data breach – one of the largest data breaches in history. The Target litigation team was responsible for a landmark data breach opinion that substantially denied Target's motion to dismiss and was also responsible for obtaining certification of a class of financial institutions. *See In re Target Corp. Customer Data Sec. Breach Litig.*, No. MDL 14-2522 PAM/JJK, 2015 WL 5432115 (D. Minn. Sept. 15, 2015). At the time of its issuance, the class certification order in Target was the first of its kind in data breach litigation by financial institutions.

Mr. Amjed also has significant experience conducting complex litigation in state and federal courts including federal securities class actions, shareholder derivative actions, suits by third-party insurers and other actions concerning corporate and alternative business entity disputes. Mr. Amjed has litigated in numerous state and federal courts across the country, including the Delaware Court of Chancery, and has represented shareholders in several high profile lawsuits, including: *LAMPERS v. CBOT Holdings, Inc. et al.*, C.A. No. 2803-VCN (Del. Ch.); *In re Alstom SA Sec. Litig.*, 454 F. Supp. 2d 187 (S.D.N.Y. 2006); *In re Global Crossing Sec. Litig.*, 02—Civ. — 910 (S.D.N.Y.); *In re Enron Corp. Sec. Litig.*, 465 F. Supp. 2d 687 (S.D. Tex. 2006); and *In re Marsh McLennan Cos., Inc. Sec. Litig.* 501 F. Supp. 2d 452 (S.D.N.Y. 2006).

**STUART L. BERMAN**, a partner of the Firm, concentrates his practice on securities class action litigation in federal courts throughout the country, with a particular emphasis on representing institutional investors active in litigation. Mr. Berman received his law degree from George Washington University National Law Center, and is an honors graduate from Brandeis University. Mr. Berman is licensed to practice in Pennsylvania and New Jersey.

Mr. Berman regularly counsels and educates institutional investors located around the world on emerging legal trends, new case ideas and the rights and obligations of institutional investors as they relate to securities fraud class actions and individual actions. In this respect, Mr. Berman has been instrumental in courts appointing the Firm's institutional clients as lead plaintiffs in class actions as well as in representing institutions individually in direct actions. Mr. Berman is currently representing institutional investors in direct actions against Vivendi and Merck, and took a very active role in the precedent setting Shell settlement on behalf of many of the Firm's European institutional clients.

Mr. Berman is a frequent speaker on securities issues, especially as they relate to institutional investors, at events such as The European Pension Symposium in Florence, Italy; the Public Funds Symposium in Washington, D.C.; the Pennsylvania Public Employees Retirement (PAPERS) Summit in Harrisburg, Pennsylvania; the New England Pension Summit in Newport, Rhode Island; the Rights and Responsibilities

for Institutional Investors in Amsterdam, Netherlands; and the European Investment Roundtable in Barcelona, Spain.

**DAVID A. BOCIAN**, a partner of the Firm, focuses his practice on whistleblower representation and False Claims Act litigation. Mr. Bocian received his law degree from the University of Virginia School of Law and graduated *cum laude* from Princeton University. He is licensed to practice law in the Commonwealth of Pennsylvania, New Jersey, New York and the District of Columbia.

Mr. Bocian began his legal career in Washington, D.C., as a litigation associate at Patton Boggs LLP, where his practice included internal corporate investigations, government contracts litigation and securities fraud matters. He spent more than ten years as a federal prosecutor in the U.S. Attorney's Office for the District of New Jersey, where he was appointed Senior Litigation Counsel and managed the Trenton U.S. Attorney's office. During his tenure, Mr. Bocian oversaw multifaceted investigations and prosecutions pertaining to government corruption and federal program fraud, commercial and public sector kickbacks, tax fraud, and other white collar and financial crimes. He tried numerous cases before federal juries, and was a recipient of the Justice Department's Director's Award for superior performance by an Assistant U.S. Attorney, as well as commendations from federal law enforcement agencies including the FBI and IRS.

Mr. Bocian has extensive experience in the health care field. As an adjunct professor of law, he has taught Healthcare Fraud and Abuse at Rutgers School of Law – Camden, and previously was employed in the health care industry, where he was responsible for implementing and overseeing a system-wide compliance program for a complex health system.

**GREGORY M. CASTALDO,** a partner of the Firm, concentrates his practice in the area of securities litigation. Mr. Castaldo received his law degree from Loyola Law School, where he received the American Jurisprudence award in legal writing. He received his undergraduate degree from the Wharton School of Business at the University of Pennsylvania. He is licensed to practice law in Pennsylvania and New Jersey.

Mr. Castaldo served as one of Kessler Topaz's lead litigation partners in *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, Master File No. 09 MDL 2058, recovering \$2.425 billion settlement for the class. Mr. Castaldo also served as the lead litigation partner in *In re Tenet Healthcare Corp.*, No. 02-CV-8462 (C.D. Cal. 2002), securing an aggregate recovery of \$281.5 million for the class, including \$65 million from Tenet's auditor. Mr. Castaldo also played a primary litigation role in the following cases: *In re Liberate Technologies Sec. Litig.*, No. C-02-5017 (MJJ) (N.D. Cal. 2005) (settled — \$13.8 million); *In re Sodexho Marriott Shareholders Litig.*, Consol. C.A. No. 18640-NC (Del. Ch. 1999) (settled — \$166 million benefit); *In re Motive, Inc. Sec. Litig.*, 05-CV-923 (W.D.Tex. 2005) (settled — \$7 million cash, 2.5 million shares); and *In re Wireless Facilities, Inc., Sec. Litig.*, 04-CV-1589 (S.D. Cal. 2004) (settled — \$16.5 million). In addition, Mr. Castaldo served as one of the lead trial attorneys for shareholders in the historic *In re Longtop Financial Technologies Ltd. Securities Litigation*, No. 11-cv-3658 (S.D.N.Y.) trial, which resulted in a verdict in favor of investors on liability and damages.

**DARREN J. CHECK,** a partner of the Firm, concentrates his practice in the area of shareholder litigation and client relations. Mr. Check manages the Firm's Portfolio Monitoring Department and works closely with the Firm's Case Evaluation Department. Mr. Check received his law degree from Temple University School of Law and is a graduate of Franklin & Marshall College. Mr. Check is admitted to practice in numerous state and federal courts across the United States.

Currently, Mr. Check consults with institutional investors from around the world with regard to their investment rights and responsibilities. He currently works with clients in the United States, Canada, the

Netherlands, Sweden, Denmark, Norway, Finland, United Kingdom, Italy, Germany, Austria, Switzerland, France, Australia and throughout Asia and the Middle East.

Mr. Check assists Firm clients in evaluating and analyzing opportunities to take an active role in shareholder litigation, arbitration, and other loss recovery methods. This includes U.S. based litigation and arbitration, as well as an increasing number of cases from jurisdictions around the globe. With an increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional class actions, direct actions, non-U.S. opt-in actions, fiduciary actions, appraisal actions and arbitrations to name a few. Mr. Check is frequently called upon by his clients to help ensure they are taking an active role when their involvement can make a difference, and that they are not leaving money on the table.

Mr. Check regularly speaks on the subjects of shareholder litigation, corporate governance, investor activism, and recovery of investment losses at conferences around the world.

Mr. Check has also been actively involved in the precedent setting Shell and Fortis settlements in the Netherlands, the Olympus shareholder case in Japan, direct actions against Petrobras, BP, Vivendi, and Merck, and securities class actions against Bank of America, Lehman Brothers, Royal Bank of Scotland (U.K.), and Hewlett-Packard. Currently Mr. Check represents investors in numerous high profile actions in the United States, the Netherlands, Germany, Canada, France, Japan, and the United Kingdom.

**JOSHUA E. D'ANCONA,** a partner of the Firm, concentrates his practice in the securities litigation and lead plaintiff departments of the Firm. Mr. D'Ancona received his J.D., *magna cum laude*, from the Temple University Beasley School of Law in 2007, where he served on the Temple Law Review and as president of the Moot Court Honors Society, and graduated with honors from Wesleyan University. He is licensed to practice in Pennsylvania and New Jersey.

Before joining the Firm in 2009, he served as a law clerk to the Honorable Cynthia M. Rufe of the United States District Court for the Eastern District of Pennsylvania.

JONATHAN R. DAVIDSON, a partner of the Firm, concentrates his practice in the area of shareholder litigation. Mr. Davidson currently consults with institutional investors from around the world, including public pension funds at the state, county and municipal level, as well as Taft-Hartley funds across all trades, with regard to their investment rights and responsibilities. Mr. Davidson assists Firm clients in evaluating and analyzing opportunities to take an active role in shareholder litigation. With an increasingly complex shareholder litigation landscape that includes traditional securities class actions, shareholder derivative actions and takeover actions, non-U.S. opt-in actions, and fiduciary actions to name a few, Mr. Davidson is frequently called upon by his clients to help ensure they are taking an active role when their involvement can make a difference, and to ensure they are not leaving money on the table.

Mr. Davidson has been involved in the following successfully concluded shareholder litigation matters: City of Daytona Beach Police and Fire Pension Fund v. ExamWorks Group, Inc., C.A. No. 12481-VCL (Del. Ch.) (\$86.5 million settlement, including \$46.5 million funded by outside legal advisor); In re MGM Mirage Securities Litigation, Case No. 2:09-cv-01558-GMN-VCF (D. Nev.) (\$75 million settlement); In re Weatherford International Securities Litigation, No. 11-1646 (S.D.N.Y.) (\$52.5 million settlement); Beaver County Employees' Retirement Fund, et al. v. Tile Shop Holdings, Inc., et al., No. 0:14-CV-00786-ADM/TNL (D. Minn.) (\$9.5 million settlement); Bucks County Employees Retirement Fund vs. Hillshire Brands Co, No. 24-C-14-003492 (Md. Cir. Ct.) (Alternative deal struck paying a 71% premium to stockholders); and City of Sunrise Firefighters' Retirement Fund v. Schaeffer, No. 8703 (Del. Ch. Ct.) (Invalid bylaws repealed; board disclosed that it unlawfully adopted the bylaws).

Mr. Davidson is a frequent lecturer on shareholder litigation, corporate governance, fiduciary issues facing institutional investors, investor activism and the recovery of investment losses -- speaking on these subjects at conferences around the world each year, including the National Conference on Public Employee Retirement Systems' Annual Conference & Exhibition, the International Foundation of Employee Benefit Plans Annual Conference, the California Association of Public Retirement Systems Administrators Roundtable, the Florida Public Pension Trustees Association Trustee Schools and Wall Street Program, the Pennsylvania Association of Public Employees Retirement Systems Spring Forum, the Fiduciary Investors Symposium, the U.S. Markets' Institutional Investor Forum, and The Evolving Fiduciary Obligations of Pension Plans. Mr. Davidson is also a member of numerous professional and educational organizations, including the National Association of Public Pension Attorneys.

Mr. Davidson is a graduate of The George Washington University where he received his Bachelor of Arts, summa cum laude, in Political Communication. Mr. Davidson received his Juris Doctor and Dispute Resolution Certificate from Pepperdine University School of Law and is licensed to practice law in Pennsylvania and California.

RYAN T. DEGNAN, a partner of the Firm, concentrates his practice on new matter development with a specific focus on analyzing securities class action lawsuits, antitrust actions, and complex consumer actions. Mr. Degnan received his law degree from Temple University Beasley School of Law, where he was a Notes and Comments Editor for the Temple Journal of Science, Technology & Environmental Law, and earned his undergraduate degree in Biology from The Johns Hopkins University. While a law student, Mr. Degnan served as a Judicial Intern to the Honorable Gene E.K. Pratter of the United States District Court for the Eastern District of Pennsylvania. Mr. Degnan is licensed to practice in Pennsylvania and New Jersey.

As a member of the Firm's lead plaintiff litigation practice group, Mr. Degnan has helped secure the Firm's clients' appointments as lead plaintiffs in: *In re HP Sec. Litig.*, No. 12-cv-5090, 2013 WL 792642 (N.D. Cal. Mar. 4, 2013); *In re JPMorgan Chase & Co. Sec. Litig.*, No. 12-cv-03852 (S.D.N.Y.); *Freedman v. St. Jude Medical, Inc.*, et al., No. 12-cv-3070 (D. Minn.); *United Union of Roofers, Waterproofers & Allied Workers Local Union No. 8 v. Ocwen Fin. Corp.*, No. 14 Civ. 81057 (WPD), 2014 WL 7236985 (S.D. Fla. Nov. 7, 2014); *Louisiana Municipal Police Employees' Ret. Sys. v. Green Mountain Coffee Roasters, Inc.*, et al., No. 11-cv-289, 2012 U.S. Dist. LEXIS 89192 (D. Vt. Apr. 27, 2012); and *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 11-cv-3658, 2011 U.S. Dist. LEXIS 112970 (S.D.N.Y. Oct. 4, 2011). Additional representative matters include: *In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litig.*, No. 12-md-02335 (S.D.N.Y.) (\$335 million settlement); and *Policemen's Annuity and Benefit Fund of the City of Chicago, et al. v. Bank of America, NA, et al.*, No. 12-cv-02865 (S.D.N.Y.) (\$69 million settlement).

**ELI R. GREENSTEIN** is managing partner of the Firm's San Francisco office and a member of the Firm's federal securities litigation practice group. Mr. Greenstein concentrates his practice on federal securities law violations and white collar fraud, including violations of the Securities Act of 1933 and the Securities Exchange Act of 1934. Mr. Greenstein received his J.D. from Santa Clara University School of Law in 2001, and his M.B.A. from Santa Clara's Leavey School of Business in 2002. Mr. Greenstein received his B.A. in Business Administration from the University of San Diego in 1997 where he was awarded the Presidential Scholarship. He is licensed to practice in California.

Mr. Greenstein also was a judicial extern for the Honorable James Ware (Ret.), Chief Judge of the United States District Court for the Northern District of California. Prior to joining the Firm, Mr. Greenstein was a partner at Robbins Geller Rudman & Dowd LLP in its federal securities litigation practice group. His relevant background also includes consulting for PricewaterhouseCoopers LLP's International Tax and Legal Services division, and work on the trading floor of the Chicago Mercantile Exchange, S&P 500 futures and options division.

Mr. Greenstein has been involved in dozens of high-profile securities fraud actions resulting in more than \$1 billion in recoveries for clients and investors, including: Nieman v. Duke Energy Corp., 2013 U.S. Dist. LEXIS 110693 (W.D.N.C.) (\$146 million recovery); In re HP Secs. Litig., 2013 U.S. Dist. LEXIS 168292 (N.D. Cal.) (\$100 million recovery); In re VeriFone Holdings, Inc. Sec. Litig., 704 F.3d 694 (N.D. Cal) (\$95 million recovery); In re AOL Time Warner Sec. Litig. State Opt-Out Actions (Regents of the Univ. of Cal. v. Parsons (Cal. Super. Ct.), Ohio Pub. Emps. Ret. Sys. v. Parsons (Franklin County Ct. of Common Pleas) (\$618 million in total recoveries); Minneapolis Firefighters Relief Ass'n v. Medtronic, Inc., 278 F.R.D. 454 (D. Minn.) (\$85 million recovery); In re MGM Mirage Secs. Litig., 2014 U.S. Dist. LEXIS 165486 (D. Nev.) (\$75 million recovery); Dobina v. Weatherford Int'l, 909 F. Supp. 2d 228 (S.D.N.Y.) (\$52.5 million recovery); In re Sunpower Secs. Litig., 2011 U.S. Dist. LEXIS 152920 (N.D. Cal.) (\$19.7 million recovery); In re Am. Serv. Group, Inc., 2009 U.S. Dist. LEXIS 28237 (M.D. Tenn.) (\$15.1 million recovery); In re Terayon Communs. Sys. Sec. Litig., 2002 U.S. Dist. LEXIS 5502 (N.D. Cal.) (\$15 million recovery); In re Nuvelo, Inc. Sec. Litig., 668 F. Supp. 2d 1217 (N.D. Cal.) (\$8.9 million recovery); In re Endocare, Inc. Sec. Litig., No. CV02-8429 DT (CTX) (C.D. Cal.) (\$8.95 million recovery); Greater Pa. Carpenters Pension Fund v. Whitehall Jewellers, Inc., 2005 U.S. Dist. LEXIS 12971 (N.D. III.) (\$7.5) million recovery); In re Am. Apparel, Inc. S'holder Litig., 2013 U.S. Dist. LEXIS 6977 (C.D. Cal.) (\$4.8) million recovery); In re Purus Sec. Litig. No. C-98-20449-JF(RS) (N.D. Cal) (\$9.95 million recovery).

**SEAN M. HANDLER**, a partner of the Firm and member of Kessler Topaz's Management Committee, currently concentrates his practice on all aspects of new matter development for the Firm including securities, consumer and intellectual property. Mr. Handler earned his Juris Doctor, *cum laude*, from Temple University School of Law, and received his Bachelor of Arts degree from Colby College, graduating *with distinction* in American Studies. Mr. Handler is licensed to practice in Pennsylvania, New Jersey and New York.

As part of his responsibilities, Mr. Handler also oversees the lead plaintiff appointment process in securities class actions for the Firm's clients. In this role, Mr. Handler has achieved numerous noteworthy appointments for clients in reported decisions including *Foley v. Transocean*, 272 F.R.D. 126 (S.D.N.Y. 2011); *In re Bank of America Corp. Sec., Derivative & Employment Ret. Income Sec. Act (ERISA) Litig.*, 258 F.R.D. 260 (S.D.N.Y. 2009) and *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659 (C.D. Cal. 2005) and has argued before federal courts throughout the country.

Mr. Handler was also one of the principal attorneys in *In re Brocade Securities Litigation* (N.D. Cal. 2008), where the team achieved a \$160 million settlement on behalf of the class and two public pension fund class representatives. This settlement is believed to be one of the largest settlements in a securities fraud case in terms of the ratio of settlement amount to actual investor damages.

Mr. Handler also lectures and serves on discussion panels concerning securities litigation matters, most recently appearing at American Conference Institute's National Summit on the Future of Fiduciary Responsibility and Institutional Investor's The Rights & Responsibilities of Institutional Investors.

**GEOFFREY C. JARVIS**, a partner of the Firm, focuses on securities litigation for institutional investors. Mr. Jarvis graduated from Harvard Law School in 1984, and received his undergraduate degree from Cornell University in 1980. He is licensed to practice in Pennsylvania, Delaware, New York and Washington, D.C.

Following law school, Mr. Jarvis served as a staff attorney with the Federal Communications Commission, participating in the development of new regulatory policies for the telecommunications industry.

Mr. Jarvis had a major role in *Oxford Health Plans Securities Litigation*, *DaimlerChrysler Securities Litigation*, and *Tyco Securities Litigation* all of which were among the top ten securities settlements in U.S. history at the time they were resolved, as well as a large number of other securities cases over the past 16 years. He has also been involved in a number of actions before the Delaware Chancery Court, including a Delaware appraisal case that resulted in a favorable decision for the firm's client after trial, and a Delaware appraisal case that was tried in October, argued in 2016, which is still awaiting a final decision.

Mr. Jarvis then became an associate in the Washington office of Rogers & Wells (subsequently merged into Clifford Chance), principally devoted to complex commercial litigation in the fields of antitrust and trade regulations, insurance, intellectual property, contracts and defamation issues, as well as counseling corporate clients in diverse industries on general legal and regulatory compliance matters. He was previously associated with a prominent Philadelphia litigation boutique and had first-chair assignments in cases commenced under the Pennsylvania Whistleblower Act and in major antitrust, First Amendment, civil rights, and complex commercial litigation, including several successful arguments before the U.S. Court of Appeals for the Third Circuit. From 2000 until early 2016, Mr. Jarvis was a Director (Senior Counsel through 2001) at Grant & Eisenhofer, P.A., where he engaged in a number of federal securities, and state fiduciary cases (primarily in Delaware), including several of the largest settlements of the past 15 years. He also was lead trial counsel and/or associate counsel in a number of cases that were tried to a verdict (or are pending final decision).

**JENNIFER L. JOOST,** a partner in the Firm's San Francisco office, focuses her practice on securities litigation. Ms. Joost received her law degree, *cum laude*, from Temple University Beasley School of Law, where she was the Special Projects Editor for the *Temple International and Comparative Law Journal*. Ms. Joost earned her undergraduate degree with honors from Washington University in St. Louis. She is licensed to practice in Pennsylvania and California and is admitted to practice before the United States Courts of Appeals for the Second, Fourth, Ninth, and Eleventh Circuits, and the United States District Courts for the Eastern District of Pennsylvania, the Northern District of California and the Southern District of California.

Ms. Joost has represented institutional investors in numerous securities fraud class actions including *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation,* No. 09 MDL 2058 (S.D.N.Y.) (settled -- \$2.425 billion); *In re Citigroup, Inc. Bond Litig.*, No. 08 Civ. 9522 (SHS) (S.D.N.Y.) (settled -- \$730 million); *Luther, et al. v. Countrywide Financial Corp.*, No. BC 380698 (settled -- \$500 million); *In re JPMorgan & Co. Securities Litigation,* No. 12-cv-03852 (S.D.N.Y.) (settled -- \$150 million); *Minneapolis Firefighters' Relief Association v. Medtronic, Inc.*, No. 08-cv-06324-PAM-AJB (D. Minn.) (settled -- \$85 million); *In re MGM Mirage Securities Litigation,* No. 09-cv-01558-GMN-VCF (D. Nev.) (settled -- \$75 million); and *In re Weatherford Int'l Securities Litigation,* No. 11-cv-01646-LAK-JCF (S.D.N.Y.) (settled -- \$52.5 million).

STACEY KAPLAN, a partner in the Firm's San Francisco office, concentrates her practice on prosecuting securities class actions. Ms. Kaplan received her J.D. from the University of California at Los Angeles School of Law in 2005, and received her Bachelor of Business Administration from the University of Notre Dame in 2002, with majors in Finance and Philosophy. Ms. Kaplan is admitted to the California Bar and is licensed to practice in all California state courts, as well as the United States District Courts for the Northern and Central Districts of California.

During law school, Ms. Kaplan served as a Judicial Extern to the Honorable Terry J. Hatter, Jr., United States District Court, Central District of California. Prior to joining the Firm, Ms. Kaplan was an associate with Robbins Geller Rudman & Dowd LLP in San Diego, California.

**DAVID KESSLER**, a partner of the Firm, manages the Firm's internationally recognized securities department. Mr. Kessler graduated with distinction from the Emory School of Law, after receiving his undergraduate B.S.B.A. degree from American University. Mr. Kessler is licensed to practice law in Pennsylvania, New Jersey and New York, and has been admitted to practice before numerous United States District Courts. Prior to practicing law, Mr. Kessler was a Certified Public Accountant in Pennsylvania.

Mr. Kessler has achieved or assisted in obtaining Court approval for the following outstanding results in federal securities class action cases: *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation,* Master File No. 09 MDL 2058 (\$2.425 billion settlement); *In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002) (\$3.2 billion settlement); *In re Wachovia Preferred Securities and Bond/Notes Litigation,* Master File No. 09 Civ. 6351 (RJS) (\$627 million settlement); *In re: Lehman Brothers Securities and ERISA Litigation,* Master File No. 09 MD 2017 (LAK) (\$516,218,000 settlement); *In re Satyam Computer Services Ltd. Sec. Litig.*, Master File No. 09 MD 02027 (BSJ) (\$150.5 million settlement); *In re Tenet Healthcare Corp. Sec. Litig.*, No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002) (\$280 million settlement); *In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92(SAS) (\$586 million settlement).

Mr. Kessler is also currently serving as one of the Firm's primary litigation partners in the Citigroup, JPMorgan, Hewlett Packard, Pfizer and Morgan Stanley securities litigation matters.

In addition, Mr. Kessler often lectures and writes on securities litigation related topics and has been recognized as "Litigator of the Week" by the American Lawyer magazine for his work in connection with the Lehman Brothers securities litigation matter in December of 2011 and was honored by Benchmark as one of the preeminent plaintiffs practitioners in securities litigation throughout the country. Most recently Mr. Kessler co-authored *The FindWhat.com Case: Acknowledging Policy Considerations When Deciding Issues of Causation in Securities Class Actions* published in Securities Litigation Report.

JAMES A. MARO, JR., a partner of the Firm, concentrates his practice in the Firm's case development department. He also has experience in the areas of consumer protection, ERISA, mergers and acquisitions, and shareholder derivative actions. Mr. Maro received his law degree from the Villanova University School of Law, and received a B.A. in Political Science from the Johns Hopkins University. Mr. Maro is licensed to practice law in Commonwealth of Pennsylvania and New Jersey. He is admitted to practice in the United States Court of Appeals for the Third Circuit and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

**JOSEPH H. MELTZER,** a partner of the Firm, concentrates his practice in the areas of ERISA, fiduciary and antitrust complex litigation. Mr. Meltzer received his law degree with honors from Temple University School of Law and is an honors graduate of the University of Maryland. Honors include being named a Pennsylvania Super Lawyer. Mr. Meltzer is licensed to practice in Pennsylvania, New Jersey, New York, the Supreme Court of the United States, and the U.S. Court of Federal Claims.

Mr. Meltzer leads the Firm's Fiduciary Litigation Group which has excelled in the highly specialized area of prosecuting cases involving breach of fiduciary duty claims. Mr. Meltzer has served as lead or co-lead counsel in numerous nationwide class actions brought under ERISA. Since founding the Fiduciary Litigation Group, Mr. Meltzer has helped recover hundreds of millions of dollars for clients and class members including some of the largest settlements in ERISA fiduciary breach actions. Mr. Meltzer represented the Board of Trustees of the Buffalo Laborers Security Fund in its action against J.P. Jeanneret Associates which involved a massive, fraudulent scheme orchestrated by Bernard L. Madoff, No. 09-3907 (S.D.N.Y.). Mr. Meltzer also represented an institutional client in a fiduciary breach action against Wells Fargo for large losses sustained while Wachovia Bank and its subsidiaries, including Evergreen Investments, were managing the client's investment portfolio.

As part of his fiduciary litigation practice, Mr. Meltzer was actively involved in actions related to losses sustained in securities lending programs, including *Bd. of Trustees of the AFTRA Ret. Fund v. JPMorgan Chase Bank*, No. 09-00686 (S.D.N.Y.) (\$150 million settlement) and *CompSource Okla. v. BNY Mellon*, No. 08-469 (E.D. OK) (\$280 million settlement). In addition, Mr. Meltzer represented a publicly traded company in a large arbitration against AIG, Inc. related to securities lending losses, *Transatlantic Holdings*, *Inc. v. AIG*, No. 50-148T0037610 (AAA) (\$75million settlement).

A frequent lecturer on ERISA litigation, Mr. Meltzer is a member of the ABA and has been recognized by numerous courts for his ability and expertise in this complex area of the law. Mr. Meltzer is also a patron member of Public Justice and a member of the Class Action Preservation Committee.

Mr. Meltzer also manages the Firm's Antitrust and Pharmaceutical Pricing Groups. Here, Mr. Meltzer focuses on helping clients that have been injured by anticompetitive and unlawful business practices, including with respect to overcharges related to prescription drug and other health care expenditures. Mr. Meltzer served as co-lead counsel for direct purchasers in the *Flonase Antitrust Litigation*, No.08-3149 (E.D. PA) (\$150 million settlement) and has served as lead or co-lead counsel in numerous nationwide actions. Mr. Meltzer also serves as a special assistant attorney general for the states of Montana, Utah and Alaska. Mr. Meltzer also lectures on issues related to antitrust litigation.

MATTHEW L. MUSTOKOFF, a partner of the Firm, is an experienced securities and corporate governance litigator. He has represented clients at the trial and appellate level in numerous high-profile shareholder class actions and other litigations involving a wide array of matters, including financial fraud, market manipulation, mergers and acquisitions, fiduciary mismanagement of investment portfolios, and patent infringement. Mr. Mustokoff received his law degree from the Temple University School of Law, and is a Phi Beta Kappa honors graduate of Wesleyan University. At law school, Mr. Mustokoff was the articles and commentary editor of the *Temple Political and Civil Rights Law Review* and the recipient of the Raynes, McCarty, Binder, Ross and Mundy Graduation Prize for scholarly achievement in the law. He is admitted to practice before the state courts of New York and Pennsylvania, the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Pennsylvania and the District of Colorado, and the United States Courts of Appeals for the Eleventh and Federal Circuits.

Mr. Mustokoff is currently prosecuting several nationwide securities cases on behalf of U.S. and overseas institutional investors, including *In re JPMorgan Chase Securities Litigation* (S.D.N.Y.), arising out of the "London Whale" derivatives trading scandal which led to over \$6 billion in losses in the bank's proprietary trading portfolio. He serves as lead counsel for six public pension funds in the multi-district securities litigation against BP in Texas federal court stemming from the 2010 Deepwater Horizon disaster in the Gulf of Mexico. He successfully argued the opposition to BP's motion to dismiss, resulting in a landmark decision sustaining fraud claims under English law for purchasers of BP shares on the London Stock Exchange.

Mr. Mustokoff also played a major role in prosecuting *In re Citigroup Bond Litigation* (S.D.N.Y.), involving allegations that Citigroup concealed its exposure to subprime mortgage debt on the eve of the 2008 financial crisis. The \$730 million settlement marks the second largest recovery under Section 11 of the Securities Act in the history of the statute. Mr. Mustokoff's significant courtroom experience includes serving as one of the lead trial lawyers for shareholders in the only securities fraud class action arising out of the financial crisis to be tried to jury verdict. In addition to his trial practice in federal courts, he has successfully tried cases before the Financial Industry Regulatory Authority (FINRA).

Prior to joining the Firm, Mr. Mustokoff practiced at Weil, Gotshal & Manges LLP in New York, where he represented public companies and financial institutions in SEC enforcement and white collar criminal matters, shareholder litigation and contested bankruptcy proceedings.

SHARAN NIRMUL, a partner of the Firm, concentrates his practice in the area of securities, consumer and fiduciary class litigation, principally representing the interests of plaintiffs in class action and complex commercial litigation. Mr. Nirmul has represented clients in federal and state courts and in alternative dispute resolution forums. Mr. Nirmul received his law degree from The George Washington University Law School (J.D. 2001) where he served as an articles editor for the *Environmental Lawyer Journal* and was a member of the Moot Court Board. He was awarded the school's Lewis Memorial Award for excellence in clinical practice. He received his undergraduate degree from Cornell University (B.S. 1996). Mr. Nirmul is admitted to practice law in the state courts of New York, New Jersey, Pennsylvania and Delaware, and in the U.S. District Courts for the Southern District of New York, District of New Jersey, and District of Delaware.

Mr. Nirmul has represented institutional investors in a number of notable securities class action cases. These include *In re Bank of America Securities Litigation*, a case which represents the sixth largest recovery for shareholders under the federal securities laws (\$2.43 billion settlement) and which included significant corporate governance enhancements at Bank of America; *In re Global Crossing Securities Litigation* (recovery of over \$450 million); *In re Delphi Securities Litigation* (\$284 million settlement with Delphi, its former officers and directors and underwriters, and a separate \$38.25 million settlement with the auditors); and *Satyam Computer Services Securities Litigation*, (\$150.5 million settlement).

Mr. Nirmul has also been at the forefront of litigation on behalf of investors who suffered losses through fraud, breach of fiduciary and breach of contract by their custodians and investment fiduciaries. In a matter before the American Arbitration Association, Mr. Nirmul represented a publicly traded reinsurance company in a breach of contract and breach of fiduciary suit against its former controlling shareholder and fiduciary investment manager, arising out of its participation and losses through a securities lending program and securing a \$70 million recovery. Mr. Nirmul is also presently litigating breach of contract and Trust Indenture Act claims against the trustees of mortgage backed securities issued by Washington Mutual (Washington State Investments Board et al v. Bank of America National Association et al) on behalf of several state public pension funds. In connection with a scheme to manipulate foreign exchange rates assigned to its custodial clients, Mr. Nirmul is a member of the team litigating a consumer class action asserting contractual and fiduciary duty claims against BNY Mellon in the Southern District of New York (In re BNY Mellon Forex Litigation).

Mr. Nirmul regularly speaks on matters affecting institutional investors at conferences and symposiums. He has been a speaker and/or panelist at the annual Rights and Responsibilities of Institutional Investors in Amsterdam, The Netherlands and annual Evolving Fiduciary Obligations of Pension Plans in Washington, D.C.

**JUSTIN O. RELIFORD,** a partner of the Firm, concentrates his practice on mergers and acquisition litigation and shareholder derivative litigation. Mr. Reliford graduated from the University of Pennsylvania Law School in 2007 and received his B.A. from Williams College in 2003, majoring in Psychology with a concentration in Leadership Studies. Mr. Reliford is a member of the Pennsylvania and New Jersey bars, and he is admitted to practice in the Third Circuit Court of Appeals, the Eastern District of Pennsylvania, and the District of New Jersey.

Mr. Reliford has extensive experience representing clients in connection with nationwide class and collective actions. Most notably, Mr. Reliford, was part of the trial team *In re Dole Food Co., Inc. Stockholder Litig.*, C.A. No. 8703-VCL, that won a trial verdict in favor of Dole stockholders for \$148

million. He also litigated *In re GFI Group, Inc. Stockholder Litig.* Consol. C.A. No. 10136-VCL (Del. Ch.) (\$10.75 million cash settlement); *In re Globe Specialty Metals, Inc. Stockholders Litig.*, Consol. C.A. No. 10865-VCG (Del. Ch.) (\$32.5 million settlement); and *In re Harleysville Mutual* (CCP, Phila. Cnty. 2012) (an expedited merger litigation case challenging Harleysville's agreement to sell the company to Nationwide Insurance Company, which lead to a \$26 million cash payment to policyholders). Prior to joining the Firm, Mr. Reliford was an associate in the labor and employment practice group of Morgan Lewis & Bockius, LLP. There, Mr. Reliford concentrated his practice on employee benefits, fiduciary, and workplace discrimination litigation.

**LEE D. RUDY**, a partner of the Firm, manages the Firm's mergers and acquisition and shareholder derivative litigation. Mr. Rudy received his law degree from Fordham University, and his undergraduate degree, *cum laude*, from the University of Pennsylvania. Mr. Rudy is licensed to practice in Pennsylvania and New York.

Representing both institutional and individual shareholders in these actions, he has helped cause significant monetary and corporate governance improvements for those companies and their shareholders. Lee also co-chairs the Firm's qui tam and whistleblower practices, where he represents whistleblowers before administrative agencies and in court. Mr. Rudy regularly practices in the Delaware Court of Chancery, where he served as co-lead trial counsel in the landmark case of *In re S. Peru Copper Corp. S'holder Derivative Litig.*, C.A. No. 961-CS, a \$2 billion trial verdict against Southern Peru's majority shareholder. He previously served as lead counsel in dozens of high profile derivative actions relating to the "backdating" of stock options. Prior to civil practice, Mr. Rudy served for several years as an Assistant District Attorney in the Manhattan (NY) District Attorney's Office, and as an Assistant United States Attorney in the US Attorney's Office (DNJ).

**RICHARD A. RUSSO, JR.**, a partner of the Firm, focuses his practice on securities litigation. Mr. Russo received his law degree from the Temple University Beasley School of Law, where he graduated *cum laude* and was a member of the Temple Law Review, and graduated *cum laude* from Villanova University, where he received a Bachelor of Science degree in Business Administration. Mr. Russo is licensed to practice in Pennsylvania and New Jersey.

Mr. Russo has represented individual and institutional investors in obtaining significant recoveries in numerous class actions arising under the federal securities laws, including *In re Bank of American Securities Litigation*, No. 1:09-md-02058-PKC (S.D.N.Y.) (\$2.43 billion recovery), *In re Citigroup Bond Litigation*, No. 08-cv-09522-SHS (S.D.N.Y.) (\$730 million recovery), *In re Lehman Brothers Securities Litigation*, No. 1:09-md-02017-LAK (S.D.N.Y.) (\$616 million recovery).

MARC A. TOPAZ, a partner of the Firm, oversees the Firm's derivative, transactional and case development departments. Mr. Topaz received his law degree from Temple University School of Law, where he was an editor of the *Temple Law Review* and a member of the Moot Court Honor Society. He also received his Master of Law (L.L.M.) in taxation from the New York University School of Law, where he served as an editor of the *New York University Tax Law Review*. He is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Mr. Topaz has been heavily involved in all of the Firm's cases related to the subprime mortgage crisis, including cases seeking recovery on behalf of shareholders in companies affected by the subprime crisis, as well as cases seeking recovery for 401K plan participants that have suffered losses in their retirement plans. Mr. Topaz has also played an instrumental role in the Firm's option backdating litigation. These cases, which are pled mainly as derivative claims or as securities law violations, have served as an important vehicle both for re-pricing erroneously issued options and providing for meaningful corporate governance

changes. In his capacity as the Firm's department leader of case initiation and development, Mr. Topaz has been involved in many of the Firm's most prominent cases, including *In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92(SAS) (S.D.N.Y. Dec. 12, 2002); *Wanstrath v. Doctor R. Crants, et al.*, No. 99-1719-111 (Tenn. Chan. Ct., 20th Judicial District, 1999); *In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002) (settled — \$3.2 billion); and virtually all of the 80 options backdating cases in which the Firm is serving as Lead or Co-Lead Counsel. Mr. Topaz has played an important role in the Firm's focus on remedying breaches of fiduciary duties by corporate officers and directors and improving corporate governance practices of corporate defendants.

**MELISSA L. TROUTNER**, a partner of the Firm, concentrates her practice on new matter development with a specific focus on analyzing securities class action lawsuits, antitrust actions, and complex consumer actions. Ms. Troutner is also a member of the Firm's lead plaintiff litigation practice group. Ms. Troutner received her law degree, Order of the Coif, *cum laude*, from the University of Pennsylvania Law School in 2002 and her Bachelor of Arts, Phi Beta Kappa, *magna cum laude*, from Syracuse University in 1999. Ms. Troutner is licensed to practice law in Pennsylvania, New York and Delaware.

Prior to joining Kessler Topaz, Ms. Troutner practiced as a litigator with several large defense firms, focusing on complex commercial, products liability and patent litigation, and clerked for the Honorable Stanley S. Brotman, United States District Judge for the District of New Jersey.

MICHAEL C. WAGNER, a partner of the Firm, handles class-action merger litigation and shareholder derivative litigation for the Firm's individual and institutional clients. A graduate of the University of Pittsburgh School of Law and Franklin and Marshall College, Mr. Wagner has clerked for two appellate court judges and began his career at a Philadelphia-based commercial litigation firm, representing clients in business and corporate disputes across the United States. Mr. Wagner is admitted to practice in the courts of Pennsylvania, the United States Court of Appeals for the Third Circuit, and the United States District Courts for the Eastern and Western Districts of Pennsylvania, the Eastern District of Michigan, and the District of Colorado.

Frequently appearing in the Delaware Court of Chancery, Mr. Wagner has helped to achieve substantial monetary recoveries for stockholders of public companies in cases arising from corporate mergers and acquisitions. Mr. Wagner served as co-lead trial counsel in *In re Dole Food Co., Inc. Stockholder Litig.*, C.A. No. 8703-VCL, which won a trial verdict in favor of Dole stockholders for (\$148 million settlement). He has also achieved significant monetary results in similar cases such as: *In re Genentech, Inc. S'holders Litig.*, Consol. C.A. No. 3911-VCS (Del. Ch.) (litigation caused Genentech's stockholders to receive \$3.9 billion in additional merger consideration from Roche); *In re Anheuser Busch Companies, Inc. S'holders Litig.*, C.A. No. 3851-VCP (Del. Ch.) (settlement required enhanced disclosures to stockholders and resulted in a \$5 per share increase in the price paid by InBev in its acquisition of Anheuser-Busch); *In re GSI Commerce, Inc. S'holders Litig.*, C.A. No. 6346-VCN (Del. Ch.) (settlement required additional \$23.9 million to be paid to public stockholders as a part of the company's merger with eBay, Inc.); *In re GFI Group, Inc. Stockholder Litig.* Consol. C.A. No. 10136-VCL (Del. Ch.) (\$10.75 million); *In re Globe Specialty Metals, Inc. Stockholders Litig.*, Consol. C.A. No. 10865-VCG (Del. Ch.) (\$32.5 million settlement). Mr. Wagner was also a part of the team that prosecuted *In re S. Peru Copper Corp. S'holder Derivative Litig.*, C.A. No. 961-CS, which resulted in a \$2 billion post-trial judgment.

**JOHNSTON de F. WHITMAN, JR.**, a partner of the Firm, focuses his practice on securities litigation, primarily in federal court. Mr. Whitman received his law degree from Fordham University School of Law, where he was a member of the Fordham International Law Journal, and graduated *cum laude* from Colgate University. He is licensed to practice in Pennsylvania and New York., and is admitted to practice in courts around the country, including the United States Courts of Appeal for the Second, Third, and Fourth Circuits.

Mr. Whitman has represented institutional investors in obtaining substantial recoveries in numerous securities fraud class actions, including: (i) *In re Bank of America Securities Litigation*, a case which represents the sixth largest recovery for shareholders under the federal securities laws (settled --\$2.425 billion); (ii) *In re Royal Ahold Sec. Litig.*, No. 03-md-01539 (D. Md. 2003) (\$1.1 billion settlement); (iii) *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (D. Del. 2000) (\$300 million settlement); (iv) *In re Dollar General, Inc. Sec. Litig.*, No. 01-cv-0388 (M.D. Tenn. 2001) (\$162 million settlement); and (v) *In re JPMorgan & Co. Securities Litigation*, No. 12-cv-03852 (S.D.N.Y.) (\$150 million settlement). Mr. Whitman has also obtained favorable recoveries for institutional investors pursuing direct securities fraud claims, including cases against Merck & Co., Inc., Qwest Communications International, Inc. and Merrill Lynch & Co., Inc. In addition, Mr. Whitman represented a publicly traded company in a large arbitration against AIG, Inc. related to securities lending losses, *Transatlantic Holdings, Inc. v. AIG*, No. 50-148T0037610 (AAA) (\$75million settlement).

**ROBIN WINCHESTER**, a partner of the Firm, concentrated her practice in the areas of securities litigation and lead plaintiff litigation, when she joined the Firm. Presently, Ms. Winchester concentrates her practice in the area of shareholder derivative actions. Ms. Winchester earned her Juris Doctor degree from Villanova University School of Law, and received her Bachelor of Science degree in Finance from St. Joseph's University. Ms. Winchester is licensed to practice law in Pennsylvania and New Jersey.

Prior to joining Kessler Topaz, Ms. Winchester served as a law clerk to the Honorable Robert F. Kelly in the United States District Court for the Eastern District of Pennsylvania.

Ms. Winchester has served as lead counsel in numerous high-profile derivative actions relating to the backdating of stock options, including *In re Eclipsys Corp. Derivative Litigation*, Case No. 07-80611-Civ-MIDDLEBROOKS (S.D. Fla.); *In re Juniper Derivative Actions*, Case No. 5:06-cv-3396-JW (N.D. Cal.); *In re McAfee Derivative Litigation*, Master File No. 5:06-cv-03484-JF (N.D. Cal.); *In re Quest Software, Inc. Derivative Litigation*, Consolidated Case No. 06CC00115 (Cal. Super. Ct., Orange County); and *In re Sigma Designs, Inc. Derivative Litigation*, Master File No. C-06-4460-RMW (N.D. Cal.). Settlements of these, and similar, actions have resulted in significant monetary returns and corporate governance improvements for those companies, which, in turn, greatly benefits their public shareholders.

ERIC L. ZAGAR, a partner of the Firm, concentrates his practice in the area of shareholder derivative litigation. Mr. Zagar received his law degree from the University of Michigan Law School, *cum laude*, where he was an Associate Editor of the *Michigan Law Review*, and his undergraduate degree from Washington University in St. Louis. He is admitted to practice in Pennsylvania, California and New York. Mr. Zagar previously served as a law clerk to Justice Sandra Schultz Newman of the Pennsylvania Supreme Court.

Mr. Zagar has served as Lead or Co-Lead counsel in numerous derivative actions in courts throughout the nation, including *David v. Wolfen*, Case No. 01-CC-03930 (Orange County, CA 2001) (Broadcom Corp. Derivative Action); and *In re Viacom, Inc. Shareholder Derivative Litig.*, Index No. 602527/05 (New York County, NY 2005). He was a member of the trial team in the landmark case of *In re S. Peru Copper Corp. S'holder Derivative Litig.*, C.A. No. 961-CS, a \$2 billion trial verdict against Southern Peru's majority shareholder. Mr. Zagar has successfully achieved significant monetary and corporate governance relief for the benefit of shareholders, and has extensive experience litigating matters involving Special Litigation Committees.

**TERENCE S. ZIEGLER,** a partner of the Firm, concentrates a significant percentage of his practice to the investigation and prosecution of pharmaceutical antitrust actions, medical device litigation, and related anticompetitive and unfair business practice claims. Mr. Ziegler received his law degree from the Tulane University School of Law and received his undergraduate degree from Loyola University. Mr. Ziegler is

licensed to practice law in Pennsylvania and the State of Louisiana, and has been admitted to practice before several courts including the United States Court of Appeals for the Third Circuit.

Mr. Ziegler has represented investors, consumers and other clients in obtaining substantial recoveries, including: In re Flonase Antitrust Litigation; In re Wellbutrin SR Antitrust Litigation; In re Modafinil Antitrust Litigation; In re Guidant Corp. Implantable Defibrillators Products Liability Litigation (against manufacturers of defective medical devices — pacemakers/implantable defibrillators — seeking costs of removal and replacement); and In re Actiq Sales and Marketing Practices Litigation (regarding drug manufacturer's unlawful marketing, sales and promotional activities for non-indicated and unapproved uses).

**ANDREW L. ZIVITZ**, a partner of the Firm, received his law degree from Duke University School of Law, and received a Bachelor of Arts degree, with distinction, from the University of Michigan, Ann Arbor. Mr. Zivitz is licensed to practice in Pennsylvania and New Jersey.

Drawing on two decades of litigation experience, Mr. Zivitz concentrates his practice in the area of securities litigation and is currently litigating several of the largest federal securities fraud class actions in the U.S. Andy is skilled in all aspects of complex litigation, from developing and implementing strategies, to conducting merits and expert discovery, to negotiating resolutions. He has represented dozens of major institutional investors in securities class actions and has helped the firm recover more than \$1 billion for damaged clients and class members in numerous securities fraud matters in which Kessler Topaz was Lead or Co-Lead Counsel, including *David H. Luther*, et al., v. Countrywide Financial Corp., et. al., 2:12-cv-05125 (C.D.Cal. 2012) (settled -- \$500 million); In re Pfizer Sec. Litig., 1:04-cv-09866 (S.D.N.Y. 2004) (settled -- \$486 million); In re Tenet Healthcare Corp., 02-CV-8462 (C.D. Cal. 2002) (settled — \$281.5 million); In re JPMorgan Sec. Litig., 1:12-cv-03852 (S.D.N.Y. 2012) (settled -- \$150 million); In re Computer Associates Sec. Litig., No. 02-CV-122 6 (E.D.N.Y. 2002) (settled — \$150 million); In re Hewlett-Packard Sec. Litig., 12-cv-05980 (N.D.Cal. 2012) (settled -- \$100 million); and In re Medtronic Inc. Sec. Litig., 08-cv-0624 (D. Minn. 2008) (settled -- \$85 million).

Andy's extensive courtroom experience serves his clients well in trial situations, as well as pre-trial proceedings and settlement negotiations. He served as one of the lead plaintiffs' attorneys in the only securities fraud class action arising out of the financial crisis to be tried to a jury verdict, has handled a Daubert trial in the U.S. District Court for the Southern District of New York, and successfully argued back-to-back appeals before the Ninth Circuit Court of Appeals. Before joining Kessler Topaz, Andy worked at the international law firm Drinker Biddle and Reath, primarily representing defendants in large, complex litigation. His experience on the defense side of the bar provides a unique perspective in prosecuting complex plaintiffs' litigation.

### COUNSEL

JENNIFER L. ENCK, Counsel to the Firm, concentrates her practice in the area of securities litigation and settlement matters. Ms. Enck received her law degree, *cum laude*, from Syracuse University College of Law, where she was a member of the Syracuse Journal of International Law and Commerce, and her undergraduate degree in International Politics/International Studies from The Pennsylvania State University. Ms. Enck also received a Masters degree in International Relations from Syracuse University's Maxwell School of Citizenship and Public Affairs. She is licensed to practice in Pennsylvania and has been admitted to practice before the United States Court of Appeals for the Third and Eleventh Circuits and the United States District Court for the Eastern District of Pennsylvania.

Ms. Enck has been involved in documenting and obtaining the required court approval for many of the firm's largest and most complex securities class action settlements, including *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, Master File No. 09 MDL 2058 (S.D.N.Y.)* (settled -\$2.425 billion); *Luther v. Countrywide Financial Corp., et al.*, No. 2:12-cv-05125-MRP(MANx) (C.D. Cal.) (settled - \$500 million); *In re: Lehman Brothers Securities and ERISA Litigation, Master File No. 09 MD 2017 (LAK) (S.D.N.Y)* (settled - \$516,218,000); and *In re Satyam Computer Services, Ltd. Securities Litigation, No. 09 MD 02027 (BSJ) (S.D.N.Y.)* (settled - \$150.5 million).

**ERIC K. GERARD**, counsel to the Firm, is a former federal prosecutor and experienced trial lawyer whose practice focuses on securities fraud, antitrust, and consumer protection litigation. Eric received his law degree from the University of Virginia School of Law, earning Order of the Coif honors while completing a master's degree in international economics at the Johns Hopkins University.

Before joining Kessler Topaz, Eric served an Assistant District Attorney at the Manhattan District Attorney's Office, as a civil litigator at an international law firm in Houston and a prominent boutique in New Orleans, and as an Assistant U.S. Attorney in Florida. He has tried a range of complex cases to verdict, including international money laundering, wire fraud conspiracy, securities counterfeiting, identity theft, obstruction of justice, extraterritorial child exploitation, civil healthcare liability claims, and murder-for-hire.

MARK K. GYANDOH, Counsel to the Firm, concentrates his practice in the area of ERISA and consumer protection litigation. Mr. Gyandoh received his J.D. (2001) and LLM in trial advocacy (2011) from Temple University School of Law, where, during law school, Mr. Gyandoh served as the research editor for the Temple International and Comparative Law Journal. Mr. Gyandoh received his undergraduate degree from Haverford College (B.A. 1996). He is licensed to practice in New Jersey and Pennsylvania.

Mr. Gyandoh, has helped obtain substantial recoveries in numerous ERISA breach of fiduciary duty class actions, including: *In re Merck & Co., Inc. Securities, Derivative & ERISA Litigation*, \$49.5 million; *In re Colgate-Palmolive Co. ERISA Litigation*, \$45.9 million; and *In re National City ERISA Litigation*, \$43 million.

**DONNA SIEGEL MOFFA,** Counsel to the Firm, concentrates her practice in the area of consumer protection litigation. Ms. Siegel Moffa received her law degree, with honors, from Georgetown University Law Center in May 1982 and a masters degree in Public Administration from Rutgers, the State University of New Jersey, Graduate School-Camden in January 2017. She received her undergraduate degree, *cum laude*, from Mount Holyoke College in Massachusetts. Ms. Siegel Moffa is admitted to practice before the Third Circuit Court of Appeals, the United States Courts for the District of New Jersey and the District of Columbia, as well as the Supreme Court of New Jersey and the District of Columbia Court of Appeals.

Prior to joining the Firm, Ms. Siegel Moffa was a member of the law firm of Trujillo, Rodriguez & Richards, LLC, where she litigated, and served as co-lead counsel, in complex class actions arising under federal and state consumer protection statutes, lending laws and laws governing contracts and employee compensation. Prior to entering private practice, Ms. Siegel Moffa worked at both the Federal Energy Regulatory Commission (FERC) and the Federal Trade Commission (FTC). At the FTC, she prosecuted cases involving allegations of deceptive and unsubstantiated advertising. In addition, both at FERC and the FTC, Ms. Siegel Moffa was involved in a wide range of administrative and regulatory issues including labeling and marketing claims, compliance, FOIA and disclosure obligations, employment matters, licensing and rulemaking proceedings.

Ms. Siegel Moffa served as co-lead counsel for the class in *Robinson v. Thorn Americas, Inc.*, L-03697-94 (Law Div. 1995), a case that resulted in a significant monetary recovery for consumers and changes to rent-to-own contracts in New Jersey. Ms. Siegel Moffa was also counsel in *Muhammad v. County Bank of Rehoboth Beach, Delaware*, 189 N.J. 1 (2006), U.S. Sup. Ct. cert. denied, 127 S. Ct. 2032(2007), in which the New Jersey Supreme Court struck a class action ban in a consumer arbitration contract. She has served as class counsel representing consumers pressing TILA claims, e.g. *Cannon v. Cherry Hill Toyota, Inc.*, 184 F.R.D. 540 (D.N.J. 1999), and *Dal Ponte v. Am. Mortg. Express Corp.*, CV- 04-2152 (D.N.J. 2006), and has pursued a wide variety of claims that impact consumers and individuals including those involving predatory and sub-prime lending, mandatory arbitration clauses, price fixing, improper medical billing practices, the marketing of light cigarettes and employee compensation. Ms. Siegel Moffa's practice has involved significant appellate work representing individuals, classes, and non-profit organizations participating as amicus curiae, such as the National Consumer Law Center and the AARP. In addition, Ms. Siegel Moffa has regularly addressed consumer protection and litigation issues in presentations to organizations and professional associations.

MICHELLE M. NEWCOMER, Counsel to the Firm, concentrates her practice in the area of securities litigation. Ms. Newcomer earned her law degree from Villanova University School of Law in 2005, and earned her B.B.A. in Finance and Art History from Loyola University Maryland in 2002. Ms. Newcomer is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey and has been admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Second, Ninth and Tenth Circuits, and the United States District Court for the Districts of New Jersey and Colorado.

Ms. Newcomer has represented shareholders in numerous securities class actions in which the Firm has served as Lead or Co-Lead Counsel, through all aspects of pre-trial proceedings, including complaint drafting, litigating motions to dismiss and for summary judgment, conducting document, deposition and expert discovery, and appeal. Ms. Newcomer also has been involved in the Firm's securities class action trials, including most recently serving as part of the trial team in the Longtop Financial Technologies securities class action trial that resulted in a jury verdict on liability and damages in favor of investors. Ms. Newcomer began her legal career with the Firm in 2005. Prior to joining the Firm, she was a summer law clerk for the Hon. John T.J. Kelly, Jr. of the Pennsylvania Superior Court.

Ms. Newcomer's representative cases include: *In re Longtop Financial Technologies Ltd. Sec. Litig.* No. 11-cv-3658 (SAS) (S.D.N.Y.) – obtained on behalf of investors a jury verdict on liability and damages against the company's former CFO; *In re Lehman Brothers Sec. & ERISA Litig.*, No. 09 MD 2017 (LAK) (S.D.N.Y.) (\$616 million settlement); *In re Pfizer, Inc. Sec. Litig.*, No. 04-9866-LTS (S.D.N.Y.) – represents three of the court-appointed class representatives, and serves as additional counsel for the class in securities fraud class action based on alleged misrepresentations and omissions concerning cardiovascular risks associated with Celebrex® and Bextra®, which survived Defendants' motion for summary judgment; *Connecticut Retirement Plans & Trust Funds et al. v. BP p.l.c. et al.* (S.D. Tex.) – represents several public pension funds in direct action asserting claims under Section 10(b) and Rule 10b-5, for purchases of BP ADRs on the NYSE, and under English law for purchasers of BP ordinary shares on the London Stock Exchange, which recently survived Defendants' motion to dismiss; litigation is ongoing.

**RICHARD B. YATES**, Of Counsel to the Firm, focuses his practice on securities fraud litigation and portfolio monitoring. He received his law degree from Brooklyn Law School, cum laude, where he was the Business Editor of the Brooklyn Journal of International Law and did his undergraduate work at the University of Rochester. He is licensed to practice in the state of New York.

### ASSOCIATES & STAFF ATTORNEYS

ASHER S. ALAVI, an associate of the Firm, concentrates his practice in the area of qui tam litigation. Mr. Alavi received his law degree, cum laude, from Boston College Law School in 2011 where he served as Note Editor for the Boston College Journal of Law & Social Justice. He received his undergraduate degree in Communication Studies and Political Science Northwestern University in 2007. Mr. Alavi is licensed to practice law in Pennsylvania and Maryland. Prior to joining Kessler Topaz, Mr. Alavi was an associate with Pietragallo Gordon Alfano Bosick & Raspanti LLP in Philadelphia, where he worked on a variety of whistleblower and healthcare matters.

**LaMARLON R. BARKSDALE,** a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Barksdale received his law degree from Temple University, James E. Beasley School of Law in 2005 and his undergraduate degree, cum laude, from the University of Delaware in 2001. He is licensed to practice law in Pennsylvania and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Prior to joining Kessler Topaz, Mr. Barksdale worked in complex pharmaceutical litigation, commercial litigation, criminal law and bankruptcy law.

**ETHAN J. BARLIEB,** an associate of the Firm, concentrates his practice in the areas of ERISA, consumer protection and antitrust litigation. Mr. Barlieb received his law degree, *magna cum laude*, from the University of Miami School of Law in 2007 and his undergraduate degree from Cornell University in 2003. Mr. Barlieb is licensed to practice in Pennsylvania and New Jersey.

Prior to joining Kessler Topaz, Mr. Barlieb was an associate with Pietragallo Gordon Alfano Bosick & Raspanti, LLP, where he worked on various commercial, securities and employment matters. Before that, Mr. Barlieb served as a law clerk for the Honorable Mitchell S. Goldberg in the U.S. District Court for the Eastern District of Pennsylvania.

**ADRIENNE BELL,** an associate of the Firm, focuses her practice on case development and client relations. Ms. Bell received her law degree from Brooklyn Law School and her undergraduate degree in Music Theory and Composition from New York University, where she graduated *magna cum laude*. Ms. Bell is licensed to practice in Pennsylvania. Prior to joining the Firm, Ms. Bell practiced in the areas of entertainment law and commercial litigation.

**MATTHEW BENEDICT,** an associate of the Firm, concentrates his practice in the area of mergers and acquisitions litigation and shareholder derivative litigation. Mr. Benedict earned his law degree from Villanova University School of Law and his undergraduate degree from Haverford College. He is licensed to practice law in Pennsylvania and New Jersey. Prior to joining the firm, he worked as a staff attorney in the White Collar / Securities Litigation department at Dechert LLP.

**STACEY BERGER**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. She received her law degree from Widener University School of Law, and her undergraduate degree in Business Administration from George Washington University. Ms. Berger is licensed to practice in Pennsylvania.

While in law school, Ms. Berger was a law clerk for a general practice firm in Bucks County. Prior to joining Kessler Topaz, she worked as an associate for a Bucks County law firm.

**ELIZABETH WATSON CALHOUN,** a staff attorney of the Firm, focuses on securities litigation. She has represented investors in major securities fraud and has also represented shareholders in derivative and direct shareholder litigation. Ms. Calhoun received her law degree from Georgetown University Law Center (cum laude), where she served as Executive Editor of the Georgetown Journal of Gender and the Law. She received her undergraduate degree in Political Science from the University of Maine, Orono (with high distinction). Ms. Calhoun is admitted to practice before the state court of Pennsylvania and the U.S. District Court for the Eastern District of Pennsylvania. Prior to joining the Firm, Ms. Calhoun was employed with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A.

**QUIANA CHAPMAN-SMITH,** a staff attorney of the Firm, concentrates her practice in the area of securities litigation. She received her law degree from Temple University Beasley School of Law in Pennsylvania and her Bachelor of Science in Management and Organizations from The Pennsylvania State University. Ms. Chapman-Smith is licensed to practice law in the Commonwealth of Pennsylvania. Prior to joining Kessler Topaz, she worked in pharmaceutical litigation.

**EMILY N. CHRISTIANSEN**, an associate of the Firm, focuses her practice in securities litigation and international actions, in particular. Ms. Christiansen received her Juris Doctor and Global Law certificate, *cum laude*, from Lewis and Clark Law School in 2012. Ms. Christiansen is a graduate of the University of Portland, where she received her Bachelor of Arts, *cum laude*, in Political Science and German Studies. Ms. Christiansen is currently licensed to practice law in New York and Pennsylvania.

While in law school, Ms. Christiansen worked as an intern in Trial Chambers III at the International Criminal Tribunal for the Former Yugoslavia. Ms. Christiansen also spent two months in India as foreign legal trainee with the corporate law firm of Fox Mandal. Ms. Christiansen is a 2007 recipient of a Fulbright Fellowship and is fluent in German.

Ms. Christiansen devotes her time to advising clients on the challenges and benefits of pursuing particular litigation opportunities in jurisdictions outside the U.S. In those non-US actions where Kessler Topaz is actively involved, Emily liaises with local counsel, helps develop case strategy, reviews pleadings, and helps clients understand and successfully navigate the legal process. Her experience includes non-US optin actions, international law, and portfolio monitoring and claims administration. In her role, Ms. Christiansen has helped secure recoveries for institutional investors in the litigation in Japan against *Olympus Corporation* (settled - \$11 billion) and in the Netherlands against *Fortis Bank N.V.* (settled - \$1.2 billion).

**SARA A. CLOSIC**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Mrs. Closic earned her Juris Doctor degree from Widener University School of Law in Wilmington, Delaware, and her undergraduate degree from Pennsylvania State University. Mrs. Closic is admitted to practice in Pennsylvania and New Jersey.

During law school, Mrs. Closic interned at the U.S. Food and Drug Administration and the Delaware Department of Justice in the Consumer Protection & Fraud Division where she was heavily involved in protecting consumers within a wide variety of subject areas. Prior to joining the Firm, Mrs. Closic practiced in the areas of pharmaceutical & health law litigation, and was an Associate at a general practice firm in Bensalem, Pennsylvania.

**THERESA M. DEANGELIS,** an associate of the Firm, concentrates her practice in Whistleblower Litigation. Ms. DeAngelis received her law degree from Penn State Law in 2018 and her undergraduate degree from Penn State University in 2014. Ms. DeAngelis is licensed to practice in Pennsylvania.

**STEPHEN J. DUSKIN**, a staff attorney of the Firm, concentrates his practice in the area of antitrust litigation. Mr. Duskin received his law degree from Rutgers School of Law at Camden in 1985, and his undergraduate degree in Mathematics from the University of Rochester in 1976. Mr. Duskin is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Duskin practiced corporate and securities law in private practice and in corporate legal departments, and also worked for the U.S. Securities and Exchange Commission and the Resolution Trust Corporation.

**DONNA EAGLESON**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation discovery matters. She received her law degree from the University of Dayton School of Law in Dayton, Ohio. Ms. Eagleson is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Ms. Eagleson worked as an attorney in the law enforcement field, and practiced insurance defense law with the Philadelphia firm Margolis Edelstein.

**PATRICK J. EDDIS,** a staff attorney of the Firm, concentrates his practice in the area of corporate governance litigation. Mr. Eddis received his law degree from Temple University School of Law in 2002 and his undergraduate degree from the University of Vermont in 1995. Mr. Eddis is licensed to practice in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Eddis was a Deputy Public Defender with the Bucks County Office of the Public Defender. Before that, Mr. Eddis was an attorney with Pepper Hamilton LLP, where he worked on various pharmaceutical and commercial matters.

**SAMUEL C. FELDMAN**, an associate of the Firm, concentrates his practice in securities litigation. Mr. Feldman received his law degree, with honors, from the Emory University School of Law in 2018 and his undergraduate degree, with honors, from the University of Florida in 2015. Mr. Feldman is licensed to practice in Pennsylvania.

While in law school, Sam worked as an extern at The Coca-Cola Company, taught two lab sections of Advanced Legal Writing & Editing under Professor Timothy Terrell, and served as President of the Student Bar Association.

**MARK FRANEK**, an associate of the Firm, concentrates his practice on securities fraud, antitrust, and unfair business practices litigation. Mr. Franek received his law degree from Temple University Beasley School of Law, and graduated *with honors* from Duke University. He is licensed to practice in Pennsylvania and New Jersey.

Before joining the Firm, Mr. Franek was a Judicial Officer to the Honorable Annette M. Rizzo, Philadelphia Court of Common Pleas, and a Judicial Intern to the Honorable Gene E.K. Pratter, U.S. District Court for the Eastern District of Pennsylvania. In law school, Mr. Franek served on Temple's Law Review and was a member of Temple's Moot Court Honor Society.

Prior to law school, Mr. Franek worked for over 15 years in a variety of educational settings, including K-12 and higher education environments. Mr. Franek was the Dean of Students at the William Penn Charter School, a Quaker K-12 independent school in Philadelphia, and also taught at the University of Pennsylvania, in its Masters in School Leadership Program, and at Cabrini College and Philadelphia University, in their English departments.

**KIMBERLY V. GAMBLE**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. She received her law degree from Widener University, School of Law in Wilmington, DE. While in law school, she was a CASA/Youth Advocates volunteer and had internships with the Delaware County Public Defender's Office as well as The Honorable Judge Ann Osborne in Media, Pennsylvania. She received her Bachelor of Arts degree in Sociology from The Pennsylvania State University. Ms. Gamble is licensed to practice law in the Commonwealth of Pennsylvania. Prior to joining Kessler Topaz, she worked in pharmaceutical litigation.

**ABIGAIL J. GERTNER**, a staff attorney of the Firm, concentrates her practice in consumer and ERISA litigation. Ms. Gertner earned her Juris Doctor degree from Santa Clara University School of Law, and her Bachelor of Arts degree in Classical Studies and her Bachelor of Sciences degree in Psychology from Tulane University, *cum laude*. Ms. Gertner is licensed to practice in Pennsylvania and New Jersey. She is also admitted to practice before the Eastern District of Pennsylvania.

Ms. Gertner has experience in a wide range of litigation including securities, consumer, pharmaceutical, and toxic tort matters. Prior to joining the Firm, Ms. Gertner was an associate with the Wilmington, Delaware law firm of Maron, Marvel, Bradley & Anderson. Before that, she was employed by the Wilmington office of Grant & Eisenhofer, P.A.

**GRANT D. GOODHART**, an associate of the Firm, concentrates his practice in the areas of mergers and acquisitions litigation and stockholder derivative actions. Mr. Goodhart received his law degree, cum laude, from Temple University Beasley School of Law and his undergraduate degree, magna cum laude, from the University of Pittsburgh. He is licensed to practice law in Pennsylvania and New Jersey.

**TYLER S. GRADEN,** an associate of the Firm, focuses his practice on consumer protection and whistleblower litigation. Mr. Graden received his Juris Doctor degree from Temple Law School and his undergraduate degrees in Economics and International Relations from American University. Mr. Graden is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before numerous United States District Courts.

Prior to joining Kessler Topaz, Mr. Graden practiced with a Philadelphia law firm where he litigated various complex commercial matters, and also served as an investigator with the Chicago District Office of the Equal Employment Opportunity Commission.

Mr. Graden has represented individuals and institutional investors in obtaining substantial recoveries in numerous class actions, including *Board of Trustees of the Buffalo Laborers Security Fund v. J.P. Jeanneret Associates, Inc.*, Case No. 09 Civ. 8362 (S.D.N.Y.) (settled - \$219 million); *Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, NA.*, Case No. 09 Civ. 0686 (S.D.N.Y.) (settled - \$150 million); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, Case No. 09 Civ. 197 4 (D.N.J.) (settled - \$10.4 million); and *In re 2008 Fannie Mae ERISA Litigation*, Case No. 09-cv-1350 (S.D.N.Y.) (settled - \$9 million). Mr. Graden has also obtained favorable recoveries on behalf of multiple, nationwide classes of borrowers whose insurance was force-placed by their mortgage servicers.

**STACEY A. GREENSPAN,** an associate of the Firm, concentrates her practice in the areas of merger and acquisition litigation and shareholder derivative actions. Ms. Greenspan received her law degree from Temple University in 2007 and her undergraduate degree from the University of Michigan in 2001, with honors. Ms. Greenspan is licensed to practice in Pennsylvania.

Prior to joining Kessler Topaz, Ms. Greenspan served as an Assistant Public Defender in Philadelphia for almost a decade, litigating hundreds of trials to verdict. Ms. Greenspan also worked at the Trial and Capital

Habeas Units of the Federal Community Defender Office of the Eastern District of Pennsylvania throughout law school.

**KEITH S. GREENWALD,** a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Greenwald received his law degree from Temple University, Beasley School of Law in 2013 and his undergraduate degree in History, summa cum laude, from Temple University in 2004. Mr. Greenwald is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Greenwald was a contract attorney on various projects in Philadelphia and was at the International Criminal Tribunal for the Former Yugoslavia, at The Hague in The Netherlands, working in international criminal law.

**STEPHANIE M. GREY**, an associate of the Firm, concentrates her practice in the area of securities fraud litigation. Ms. Grey received her law degree, *cum laude*, from Temple University Beasley School of Law in 2017 and her undergraduate degree from University of Maryland in 2014. Ms. Grey is licensed to practice in Pennsylvania.

Prior to joining Kessler Topaz, Ms. Grey served as a law clerk for the Honorable Deborah Silverman Katz, A.J.S.C. in the New Jersey Superior Court.

**JOHN J. GROSSI**, a staff attorney at the Firm, focuses his practice on securities litigation. Mr. Grossi received his law degree from Widener University Delaware School of Law and graduated *cum laude* from Curry College. He is licensed to practice law in Pennsylvania. Prior to joining the Firm as a Staff Attorney, Mr. Grossi was employed in the Firm's internship program as a Summer Law Clerk, where he was also a member of the securities fraud department.

During his time as a Summer Law Clerk, Mr. Grossi conducted legal research for several securities fraud class actions on behalf of shareholders, including Bank of America related to its acquisition of Merrill Lynch, Lehman Brothers, St. Jude Medical and NII Holdings.

**NATHAN A. HASIUK**, an associate of the Firm, concentrates his practice on securities litigation. Mr. Hasiuk received his law degree from Temple University Beasley School of Law, and graduated *summa cum laude* from Temple University. He is licensed to practice in Pennsylvania and New Jersey and has been admitted to practice before the United States District Court for the District of New Jersey. Prior to joining the Firm, Mr. Hasiuk was an Assistant Public Defender in Philadelphia.

**BRANDON R. HERLING,** an associate of the Firm, concentrates his practice in the areas of securities litigation and lead plaintiff litigation. Mr. Herling received his law degree, *magna cum laude*, from Temple University Beasley School of Law, and received his undergraduate degree from Franklin & Marshall College. Mr. Herling is licensed to practice in Pennsylvania.

**EVAN R. HOEY**, an associate of the Firm, focuses his practice on securities litigation. Mr. Hoey received his law degree from Temple University Beasley School of Law, where he graduated *cum laude*, and graduated *summa cum laude* from Arizona State University. He is licensed to practice in Pennsylvania and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

**SUFEI HU**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. She received her J.D. from Villanova University School of Law, where she was a member of the Moot Court Board. Ms. Hu received her undergraduate degree from Haverford College in Political Science, with honors. She is licensed to practice law in Pennsylvania and New Jersey, and is admitted to the United States District

Court of the Eastern District of Pennsylvania. Prior to joining the Firm, Ms. Hu worked in pharmaceutical, anti-trust, and securities law.

**NATALIE LESSER,** an associate of the Firm, concentrates her practice in the area of consumer protection. Ms. Lesser received her law degree from the University of Pittsburgh School of Law in 2010 and her undergraduate degree in English from the State University of New York at Albany in 2007. While attending Pitt Law, Ms. Lesser served as Editor in Chief of the University of Pittsburgh Law Review. Ms. Lesser is licensed to practice law in Pennsylvania and New Jersey.

Prior to Joining Kessler Topaz, Ms. Lesser was an associate with Akin Gump Strauss Hauer & Feld LLP, where she worked on a number of complex commercial litigation cases, including defending allegations of securities fraud and violations of ERISA for improper calculation and processing of insurance benefits.

**JOSHUA A. LEVIN,** a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Levin received his law degree from Widener University School of Law, and earned his undergraduate degree from The Pennsylvania State University. Mr. Levin is licensed to practice in Pennsylvania and New Jersey. Prior to joining Kessler Topaz, he worked in pharmaceutical litigation.

JOSHUA A. MATERESE, an associate of the Firm, concentrates his practice at Kessler Topaz in the areas of securities and consumer protection litigation. Mr. Materese received his Juris Doctor from Temple University Beasley School of Law in 2012, graduating with honors. He received his undergraduate degree from the Syracuse University Newhouse School of Communications. Mr. Materese is licensed to practice in Pennsylvania and admitted to practice before the United States Courts of Appeals for the Second and Third Circuits, and the United States District Courts for the Eastern District of Pennsylvania, the District of New Jersey and the District of Colorado.

**MARGARET E. MAZZEO,** an associate of the Firm, focuses her practice on securities litigation. Ms. Mazzeo received her law degree, *cum laude*, from Temple University Beasley School of Law, where she was a Beasley Scholar and a staff editor for the Temple Journal of Science, Technology, and Environmental Law. Ms. Mazzeo graduated with honors from Franklin and Marshall College. She is licensed to practice in Pennsylvania and New Jersey.

Ms. Mazzeo has been involved in several nationwide securities cases on behalf of investors, including *In re Lehman Brothers Sec. & ERISA Litig.*, No. 09 MD 2017 (S.D.N.Y.) (settled - \$616 million, combined); and *Luther, et al. v. Countrywide Fin. Corp.*, No. 2:12-cv-05125 (C.D. Cal.) (settled - \$500 million, combined). Ms. Mazzeo also was a member of the trial team who won a jury verdict in favor of investors in the *In re Longtop Financial Technologies Ltd. Securities Litigation*, No. 11-cv-3658 (S.D.N.Y.) action.

**JOHN J. McCULLOUGH,** a staff attorney of the Firm, concentrates his practice in the area of securities litigation. In 2012, Mr. McCullough passed the CPA Exam. Mr. McCullough earned his Juris Doctor degree from Temple University School of Law, and his undergraduate degree from Temple University. Mr. McCullough is licensed to practice in Pennsylvania.

STEVEN D. McLAIN, a Staff Attorney of the Firm, concentrates his practice in megers and acquisition litigation and stockholder derivative litigation. He received his law degree from George Mason University School of Law, and his undergraduate degree from the University of Virginia. Mr. McLain is licensed to practice in Virginia. Prior to joining Kessler, Topaz, he practiced with an insurance defense firm in Virginia.

STEFANIE J. MENZANO, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Menzano received her law degree from Drexel University School of Law in 2012 and her

undergraduate degree in Political Science from Loyola University Maryland. Ms. Menzano is licensed to practice law in Pennsylvania and New Jersey.

Prior to joining Kessler Topaz, Ms. Menzano was a fact witness for the Institute for Justice. During law school, Ms. Menzano served as a case worker for the Pennsylvania Innocence Project and as a judicial intern under the Honorable Judge Mark Sandson in the Superior Court of New Jersey, Atlantic County.

JONATHAN F. NEUMANN, an associate of the Firm, concentrates his practice in the area of securities litigation and fiduciary matters. Mr. Neumann earned his Juris Doctor degree from Temple University Beasley School of Law, where he was an editor for the Temple International and Comparative Law Journal and a member of the Moot Court Honor Society. Mr. Neumann earned his undergraduate degree from the University of Delaware. Mr. Neumann is licensed to practice in Pennsylvania and New York. Prior to joining the Firm, Mr. Neumann served as a law clerk to the Honorable Douglas E. Arpert of the United States District Court for the District of New Jersey.

Mr. Neumann has represented institutional investors in obtaining substantial recoveries in numerous cases, including *In re Bank of New York Mellon Corp. Forex Transactions Litig.*, No. 12-md-2334 (S.D.N.Y.) (settled \$335 million); *Policemen's Annuity and Benefit Fund of the City of Chicago v. Bank of America, et al.*, No. 12-cv-2865 (S.D.N.Y.) (settled \$69 million); *In re NII Holdings Sec. Litig.*, No. 14-cv-227 (E.D. Va.) (settled \$41.5 million).

**ELAINE M. OLDENETTEL,** a staff attorney of the Firm, concentrates her practice in consumer and ERISA litigation. She received her law degree from the University of Maryland School of Law and her undergraduate degree in International Studies from the University of Oregon. While attending law school, Ms. Oldenettel served as a law clerk for the Honorable Robert H. Hodges of the United States Court of Federal Claims and the Honorable Marcus Z. Shar of the Baltimore City Circuit Court. Ms. Oldenettel is licensed to practice in Pennsylvania and Virginia.

**JENNY L. PAQUETTE**, an associate of the firm, concentrates her practice in securities litigation. Ms. Paquette received her law degree, *cum laude*, from Temple University's Beasley School of Law in 2017 and her undergraduate degree from Rutgers University, Camden, *cum laude*, in 2007. Ms. Paquette is licensed to practice in California.

**ALLYSON M. ROSSEEL**, a staff attorney of the Firm, concentrates her practice at Kessler Topaz in the area of securities litigation. She received her law degree from Widener University School of Law, and earned her B.A. in Political Science from Widener University. Ms. Rosseel is licensed to practice law in Pennsylvania and New Jersey. Prior to joining the Firm, Ms. Rosseel was employed as general counsel for a boutique insurance consultancy/brokerage focused on life insurance sales, premium finance and structured settlements.

MICHAEL J. RULLO, an associate of the Firm, focuses his practice on merger and acquisition litigation and shareholder derivative actions. Mr. Rullo received his law degree from Temple University Beasley School of Law in 2016, where he was a Staff Editor on the Temple Law Review. He obtained his B.A. from Temple University in 2013, graduating *summa cum laude*. Prior to joining the Firm, Mr. Rullo was a law clerk to the Honorable Francisco Dominguez, J.S.C., Camden Vicinage.

**NICOLE T. SCHWARTZBERG**, an associate of the Firm, concentrates her practice in the area of securities fraud litigation. Ms. Schwartzberg received her law degree from The University of California, Berkeley, School of Law in 2012, a masters in political science from Yale University in 2008, and her undergraduate degree from Cornell University, magna cum laude, in 2006. Ms. Schwartzberg is licensed to practice in New York.

Prior to joining Kessler Topaz, Ms. Schwartzberg was a litigation associate at Skadden, Arps, Slate, Meagher & Flom LLP in New York.

MICHAEL J. SECHRIST, a staff attorney at the Firm, concentrates his practice in the area of securities litigation. Mr. Sechrist received his law degree from Widener University School of Law in 2005 and his undergraduate degree in Biology from Lycoming College in 1998. Mr. Sechrist is licensed to practice law in Pennsylvania. Prior to joining Kessler Topaz, Mr. Sechrist worked in pharmaceutical litigation.

**IGOR SIKAVICA**, a staff attorney of the Firm, practices in the area of corporate governance litigation, with a focus on transactional and derivative cases. Mr. Sikavica received his J.D. from the Loyola University Chicago School of Law and his LL.B. from the University of Belgrade Faculty Of Law. Mr. Sikavica is licensed to practice in Pennsylvania. Mr. Sikavica's licenses to practice law in Illinois and the former Yugoslavia are no longer active.

Prior to joining Kessler Topaz, Mr. Sikavica has represented clients in complex commercial, civil and criminal matters before trial and appellate courts in the United States and the former Yugoslavia. Also, Mr. Sikavica has represented clients before international courts and tribunals, including – the International Criminal Tribunal for the Former Yugoslavia (ICTY), European Court of Human Rights and the UN Committee Against Torture.

**MELISSA J. STARKS**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Starks earned her Juris Doctor degree from Temple University--Beasley School of Law, her LLM from Temple University--Beasley School of Law, and her undergraduate degree from Lincoln University. Ms. Starks is licensed to practice in Pennsylvania.

MICHAEL P. STEINBRECHER, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Steinbrecher earned his Juris Doctor from Temple University James E. Beasley School of Law, and received his Bachelors of Arts in Marketing from Temple University. Mr. Steinbrecher is licensed to practice in Pennsylvania and New Jersey. Prior to joining Kessler Topaz, he worked in pharmaceutical litigation.

**JULIE SWERDLOFF**, a staff attorney of the Firm, concentrates her practice in the areas of consumer protection, antitrust, and whistleblower litigation. She received her law degree from Widener University School of Law, and her undergraduate degree in Real Estate and Business Law from The Pennsylvania State University. She is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

While attending law school, Ms. Swerdloff interned as a judicial clerk for the Honorable James R. Melinson of the United States District Court for the Eastern District of Pennsylvania. Prior to joining Kessler Topaz, Ms. Swerdloff managed major environmental claims litigation for a Philadelphia-based insurance company, and was an associate at a general practice firm in Montgomery County, PA. At Kessler Topaz, she has assisted the Firm in obtaining meaningful recoveries on behalf of clients in securities fraud litigation, including the historic Tyco case (*In re Tyco International, Ltd. Sec. Litig.*, No. 02-1335-B (D.N.H. 2002) (settled -- \$3.2 billion)), federal and state wage and hour litigation (*In re FootLocker Inc. Fair Labor Standards Act (FLSA) and Wage and Hour Litig.*, No. 11-mdl-02235 (E.D. Pa. 2007) (settled - \$7.15 million)), and numerous shareholder derivative actions relating to the backdating of stock options.

**BRIAN W. THOMER,** a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Thomer received his Juris Doctor degree from Temple University Beasley School of Law, and his undergraduate degree from Widener University. Mr. Thomer is licensed to practice in Pennsylvania.

**ALEXANDRA H. TOMICH,** a staff attorney of the Firm, concentrates her practice in the area of securities litigation. She received her law degree from Temple Law School and her undergraduate degree, from Columbia University, with a B.A. in English. She is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, she worked as an associate at Trujillo, Rodriguez, and Richards, LLC in Philadelphia. Ms. Tomich volunteers as an advocate for children through the Support Center for Child Advocates in Philadelphia and at Philadelphia VIP.

**JACQUELINE A. TRIEBL,** a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Triebl received her law degree, cum laude, from Widener University School of Law in 2007 and her undergraduate degree in English from The Pennsylvania State University in 1990. Ms. Triebl is licensed to practice law in Pennsylvania and New Jersey.

**KURT WEILER**, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. He received his law degree from Duquesne University School of Law, where he was a member of the Moot Court Board and McArdle Wall Honoree, and received his undergraduate degree from the University of Pennsylvania. Mr. Weiler is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Weiler was associate corporate counsel for a Philadelphia-based mortgage company, where he specialized in the area of foreclosures and bankruptcy.

**JAMES A. WELLS**, an associate of the Firm, represents whistleblowers in the Qui Tam Department of the Firm. Mr. Wells received his J.D. from Temple University Beasley School of Law in 1998 where he was published in the Temple Journal of International and Comparative Law, and received his undergraduate degree from Fordham University. He is licensed to practice in Pennsylvania.

Following graduation, Mr. Wells was an Assistant Defender at the Defender Association of Philadelphia for six years. Prior to joining the Firm in 2015, he worked at two prominent Philadelphia law firms practicing class action employment and whistleblower law.

**CHRISTOPHER M. WINDOVER,** an associate of the Firm, concentrates his practice in the areas of shareholder derivative actions and mergers and acquisitions litigation. Mr. Windover received his law degree from Rutgers University School of Law, *cum laude*, and received his undergraduate degree from Villanova University. He is licensed to practice in the Commonwealth of Pennsylvania and New Jersey. Prior to joining the Firm, Mr. Windover practiced litigation at a mid-sized law firm in Philadelphia.

**ANNE M. ZANESKI\***, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Zaneski received her J.D. from Brooklyn Law School where she was a recipient of the CALI Award of Excellence, and her B.A. from Wellesley College. She is licensed to practice law in New York and Pennsylvania.

Prior to joining the Firm, she was an associate with a boutique securities litigation law firm in New York City and served as a legal counsel with the New York City Economic Development Corporation in the areas of bond financing and complex litigation.

<sup>\*</sup> Admitted as Anne M. Zaniewski in Pennsylvania.

## **PROFESSIONALS**

WILLIAM MONKS, CPA, CFF, CVA, Director of Investigative Services at Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz"), brings nearly 30 years of white collar investigative experience as a Special Agent of the Federal Bureau of Investigation (FBI) and "Big Four" Forensic Accountant. As the Director, he leads the Firm's Investigative Services Department, a group of highly trained professionals dedicated to investigating fraud, misrepresentation and other acts of malfeasance resulting in harm to institutional and individual investors, as well as other stakeholders.

William's recent experience includes being the corporate investigations practice leader for a global forensic accounting firm, which involved widespread investigations into procurement fraud, asset misappropriation, financial statement misrepresentation, and violations of the Foreign Corrupt Practices Act (FCPA).

While at the FBI, William worked sophisticated white collar forensic matters involving securities and other frauds, bribery, and corruption. He also initiated and managed fraud investigations of entities in the manufacturing, transportation, energy, and sanitation industries. During his 25 year FBI career, William also conducted dozens of construction company procurement fraud and commercial bribery investigations, which were recognized as a "Best Practice" to be modeled by FBI offices nationwide.

William also served as an Undercover Agent for the FBI on long term successful operations targeting organizations and individuals such as the KGB, Russian Organized Crime, Italian Organized Crime, and numerous federal, state and local politicians. Each matter ended successfully and resulted in commendations from the FBI and related agencies.

William has also been recognized by the FBI, DOJ, and IRS on numerous occasions for leading multiagency teams charged with investigating high level fraud, bribery, and corruption investigations. His considerable experience includes the performance of over 10,000 interviews incident to white collar criminal and civil matters. His skills in interviewing and detecting deception in sensitive financial investigations have been a featured part of training for numerous law enforcement agencies (including the FBI), private sector companies, law firms and accounting firms.

Among the numerous government awards William has received over his distinguished career is a personal commendation from FBI Director Louis Freeh for outstanding work in the prosecution of the West New York Police Department, the largest police corruption investigation in New Jersey history.

William regards his work at Kessler Topaz as an opportunity to continue the public service that has been the focus of his professional life. Experience has shown and William believes, one person with conviction can make all the difference. William looks forward to providing assistance to any aggrieved party, investor, consumer, whistleblower, or other witness with information relative to a securities fraud, consumer protection, corporate governance, qui-tam, anti-trust, shareholder derivative, merger & acquisition or other matter.

### Education

Pace University: Bachelor of Business Administration (cum laude)

Florida Atlantic University: Masters in Forensic Accounting (cum laude)

**BRAM HENDRIKS**, European Client Relations Manager at Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz"), guides European institutional investors through the intricacies of U.S. class action litigation as well as securities litigation in Europe and Asia. His experience with securities litigation allows

him to translate complex document and discovery requirements into straightforward, practical action. For shareholders who want to effect change without litigation, Bram advises on corporate governance issues and strategies for active investment.

Bram has been involved in some of the highest-profile U.S. securities class actions of the last 20 years. Before joining Kessler Topaz, he handled securities litigation and policy development for NN Group N.V., a publicly-traded financial services company with approximately EUR 197 billion in assets under management. He previously oversaw corporate governance activities for a leading Amsterdam pension fund manager with a portfolio of more than 4,000 corporate holdings.

A globally-respected investor advocate, Bram has co-chaired the International Corporate Governance Network Shareholder Rights Committee since 2009. In that capacity, he works with investors from more than 50 countries to advance public policies that give institutional investors a voice in decision-making. He is a sought-after speaker, panelist and author on corporate governance and responsible investment policies. Based in the Netherlands, Bram is available to meet with clients personally and provide hands-on-assistance when needed.

### Education

University of Amsterdam, MSc International Finance, specialization Law & Finance, 2010

Maastricht Graduate School of Governance, MSc in Public Policy and Human Development, specialization WTO law, 2006

Tilburg University, Public Administration and administrative law B.A., 2004

## **EXHIBIT B**

In re: The Bank of New York Mellon ADR FX Litigation Case No. 16-CV-00212-JPO-JLC

## KESSLER TOPAZ MELTZER & CHECK, LLP TIME REPORT

Inception through April 22, 2019

NAME	HOURLY RATE	HOURS	LODESTAR
Partners			
Meltzer, Joseph	\$920.00	247.90	\$228,068.00
Nirmul, Sharan	\$850.00	670.50	\$569,925.00
Topaz, Marc A.	\$920.00	20.75	\$19,090.00
Counsel / Associates			
Arbitman, Zachary	\$450.00	36.50	\$16,425.00
Barlieb, Ethan	\$520.00	1,006.40	\$523,328.00
Bell, Adrienne O.	\$530.00	86.60	\$45,898.00
Enck, Jennifer	\$690.00	192.65	\$132,928.50
Koneski, Megan	\$450.00	78.55	\$35,347.50
Mulveny, Daniel C.	\$675.00	87.00	\$58,725.00
Neumann, Jonathan	\$505.00	750.60	\$379,053.00
Ware, Jason	\$525.00	21.20	\$11,130.00
Staff Attorneys			
Alsaleh, Sara	\$385.00	1,981.45	\$762,858.25
Chapman Smith, Quiana	\$385.00	2,231.70	\$859,204.50
Grossi, John	\$385.00	1621.30	\$624,200.50
McCullough, John J.	\$385.00	105.10	\$40,463.50
Menzano, Stefanie	\$385.00	347.10	\$133,633.50
Sechrist, Michael	\$385.00	308.10	\$118,618.50
Contract Attorneys			
Hegedus, Candice	\$325.00	1,303.00	\$423,475.00
Lewis, Lauren W.	\$325.00	326.25	\$106,031.25
Meravi, John	\$325.00	724.00	\$235,300.00
Palenscar, Lynn	\$325.00	1,325.50	\$430,787.50
Tochterman, Warren D.	\$300.00	1,374.00	\$412,200.00

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Paralegals			
Cashwell, Amy	\$250.00	14.90	\$3,725.00
Frankel, Karen	\$275.00	60.80	\$16,720.00
Moffo, Deborah	\$250.00	19.90	\$4,975.00
Paffas, Holly	\$260.00	13.00	\$3,380.00
Potts, Denise	\$250.00	11.50	\$2,875.00
Swift, Mary R.	\$295.00	329.10	\$97,084.50
Investigators			
Molina, Henry	\$315.00	44.50	\$14,017.50
Willard, Kimberly	\$250.00	11.50	\$2,875.00
TOTALS		15,351.35	\$6,312,342.50

## **EXHIBIT C**

In re: The Bank of New York Mellon ADR FX Litigation Case No. 16-CV-00212-JPO-JLC

## KESSLER TOPAZ MELTZER & CHECK, LLP EXPENSE REPORT

CATEGORY	AMOUNT
Court Fees	\$725.00
Service of Process	\$193.20
On-Line Legal / Factual Research*	\$2,936.45
Postage & Express Mail	\$387.03
External Reproduction Costs	\$892.57
Internal Reproduction Costs	\$7,965.30
Out of Town Travel	\$23,098.73
Working Meals	\$336.36
Local Transportation	\$92.85
Meeting / Deposition Hosting	\$399.50
Document Hosting / Management	\$1,438.07
Contributions to Litigation Fund	\$620,000.00
TOTAL EXPENSES:	\$658,465.06
Balance Remaining in the Litigation Expense Fund:	(\$17,447.11)
TOTAL EXPENSES TO BE REIMBURSED:	\$641,017.95

<sup>\*</sup> The expense incurred for research represents the amount billed by the vendor. There are no administrative changes in this charge.

## **EXHIBIT D**

In re: The Bank of New York Mellon ADR FX Litigation Case No. 16-CV-00212-JPO-JLC

## LITIGATION EXPENSE FUND

CONTRIBUTIONS TO THE LITIGATION EXPENSE FUND	
	Amount
Kessler Topaz Meltzer & Check, LLP	\$620,000.00
Lieff Cabraser Heimann & Bernstein, LLP	\$620,000.00
Total:	\$1,240,000.00

EXPENSES INCURRED BY THE LITIGATION EXPENSE FUND	
	Amount
Service of Process	\$329.40
Messenger / Courier Services	\$453.00
Document Hosting / Management	\$776.09
External Reproduction Costs	\$1,219.27
Court Reporting, Video and Transcripts	\$36,903.45
Mediation	\$51,380.00
Experts / Consultants	\$1,131,491.68
Total Expenses Paid from the Litigation Expense Fund:	\$1,222,552.89
Balance Remaining in the Litigation Expense Fund*	\$17,447.11

<sup>\*</sup> This amount is reflected in Exhibit C of this Declaration.

## EXHIBIT 4

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IN RE: THE BANK OF NEW YORK MELLON ADR FX LITIGATION	16-CV-00212-JPO-JLC
	ECF Case
This Document Relates to:	
ALL ACTIONS	

# DECLARATION OF DANIEL P. CHIPLOCK IN SUPPORT OF LEAD PLAINTIFFS' COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

- I, Daniel P. Chiplock, pursuant to 28 U.S.C. § 1746, hereby declare as follows:
- 1. I am a partner of the law firm of Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser," "LCHB," or the "Firm"). I submit this declaration in support of Lead Plaintiffs' Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would testify competently thereto. The facts supporting LCHB's fee request are more fully set forth in the Joint Declaration of Sharan Nirmul and Daniel P. Chiplock in Support of (1) Lead Plaintiffs' Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation; and (2) Lead Plaintiffs' Counsel's Application for Attorneys' Fees and Reimbursement of Litigation Expenses, Including Service Awards to Lead Plaintiffs ("Joint Declaration").
- Lieff Cabraser has offices in New York, NY, San Francisco, CA, and Nashville,
   TN. The Firm has litigated numerous class actions in the Southern District of New York and in

other courts around the country. A copy of the Firm's resume, as well as a brief biography of all Firm attorneys and support staff that billed time in this Action, is attached hereto as Exhibit A.

- 3. I personally rendered legal services and was responsible, along with my partners, Daniel E. Seltz and Michael J. Miarmi, along with the founder of the Firm (and current Of Counsel) Robert L. Lieff, for coordinating and supervising the activity carried out by attorneys and professional staff at Lieff Cabraser in this Action. In its capacity as interim co-Lead Counsel for Plaintiffs and the Proposed Class, and as fully set forth in the Joint Declaration, Lieff Cabraser was one of the principal contributors to the results achieved in this Action for the benefit of the Class.
- 4. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by attorneys and paraprofessionals at or on behalf of Lieff Cabraser in this Action ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit B hereto. This chart (i) identifies the names and positions (*i.e.*, titles) of the Firm's Timekeepers who undertook litigation activities in connection with the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through April 22, 2019; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of the work by each Timekeeper and the entire Firm. For Timekeepers who are no longer employed by the Firm, the hourly rate used is the billing rate in his or her final year of employment by the Firm. The Firm's billing records, which are regularly prepared from contemporaneous daily time records, are available at the request of

<sup>&</sup>lt;sup>1</sup> The information concerning each Timekeeper's hours and hourly rate is not based on my personal knowledge, but on the information reported by each such Timekeeper or the files and records of Lieff Cabraser, as well as my familiarity with the work undertaken by Lieff Cabraser in the Action.

the Court. Time expended in preparing any papers for this motion for fees and reimbursement of expenses has not been included in this request, nor has the time of any Timekeeper who devoted fewer than ten (10) hours to this Action.

- 5. The hourly rates charged by the Timekeepers are the Firm's regular rates for contingent cases and those generally charged to clients for their services in non-contingent/hourly matters, except in this case we have applied a reduced hourly rate for one contract attorney.<sup>2</sup> These rates (or materially similar rates) have been accepted by courts in other complex class actions for purposes of "cross-checking" lodestar against a proposed fee based on the percentage-of-fund method or determining a reasonable fee under the lodestar method.

  Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in their respective cities by attorneys and paraprofessionals of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements.
- 6. The total number of hours expended by Lieff Cabraser on this Action, from investigation through April 22, 2019, is 15,661.1 hours. The total lodestar for the Firm is \$7,282,330.50, consisting of \$6,709,614.00 for attorney time and \$572,716.50 for professional support staff time.
- 7. In my judgment, the number of hours expended and the services performed by the attorneys and paraprofessionals at Lieff Cabraser were reasonable and expended for the benefit of the Settlement Class in this Action.

<sup>&</sup>lt;sup>2</sup> On occasion and for a specific type of representation, the Firm may offer a discount on its regular hourly rates to longstanding clients in non-contingent cases. The majority of the Firm's clients, however, do not typically pay an hourly rate and instead retain the Firm's services on a contingent-fee basis.

- 8. Lieff Cabraser's lodestar figures are based on the Firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the Firm's billing rates.
- 9. As set forth in Exhibit C, Lieff Cabraser has incurred a total of \$728,437.02 in unreimbursed expenses in connection with this Action from inception to date. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.
- 10. These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of Lieff Cabraser's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

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

Executed this 29th day of April, 2019 in New York, New York.

Daniel P. Chiplock

## **EXHIBIT A**

## Lieff Cabraser Heimann& Bernstein

Attorneys at Law

275 Battery Street, 29th Floor San Francisco, CA 94111-3339 Telephone: 415.956.1000

Facsimile: 415.956.1008

250 Hudson Street, 8th Floor New York, NY 10013-1413 Telephone: 212.355.9500 Facsimile: 212.355.9592

222 2nd Avenue South, Suite 1640 Nashville, TN 37201 Telephone: 615.313.9000 Facsimile: 615.313.9965

Email: mail@lchb.com Website: www.lieffcabraser.com

### FIRM PROFILE:

Lieff Cabraser Heimann & Bernstein, LLP, is a 90-plus attorney AV-rated law firm founded in 1972 with offices in San Francisco, New York, and Nashville. We have a diversified practice, successfully representing plaintiffs in the fields of personal injury and mass torts, securities and financial fraud, employment discrimination and unlawful employment practices, product defect, consumer protection, antitrust and intellectual property, environmental and toxic exposures, False Claims Act, digital privacy and data security, and human rights. Our clients include individuals, classes and groups of people, businesses, and public and private entities.

Lieff Cabraser has served as Court-appointed Plaintiffs' Lead or Class Counsel in state and federal coordinated, multi-district, and complex litigation throughout the United States. With co-counsel, we have represented clients across the globe in cases filed in American courts. Lieff Cabraser is among the largest firms in the United States that only represent plaintiffs.

Described by *The American Lawyer* as "one of the nation's premier plaintiffs' firms," Lieff Cabraser enjoys a national reputation for professional integrity and the successful prosecution of our clients' claims. We possess sophisticated legal skills and the financial resources necessary for the handling of large, complex cases, and for litigating against some of the nation's largest corporations. We take great pride in the leadership roles our firm plays in many of this country's major cases, including those resulting in landmark decisions and precedent-setting rulings.

Lieff Cabraser has litigated and resolved thousands of individual lawsuits and hundreds of class and group actions, including some of the most important civil cases in the United States over the past four decades. We have assisted our clients in recovering over \$118 billion in verdicts and settlements. Twenty-seven cases were resolved for over \$1 billion; another 44 have resulted in verdicts or settlements at or in excess of \$100 million.

The National Law Journal has recognized Lieff Cabraser as one of the nation's top plaintiffs' law firms for fourteen years, and we are a member of its Plaintiffs' Hot List Hall of Fame, "representing the best qualities of the plaintiffs' bar and demonstrating unusual dedication and creativity." The National Law Journal separately recognized Lieff Cabraser as one of the 50 Leading Plaintiffs Firms in America.

In March 2019, Benchmark Litigation selected Lieff Cabraser as its "California Plaintiff Firm of the Year." Also for 2019, Lieff Cabraser saw 20 lawyers named to the "Best Lawyers in America" listing, and we were 2018 finalists for Benchmark Litigation's "Plaintiff Law Firm of the Year" and for the National Law Journal's "Elite Trial Lawyers" in the fields of Mass Tort/Personal Injury, Environmental Protection, and Cybersecurity/Data Breach. We were named the *Daily Journal's* "California Lawyers of the Year 2018" as well as having eight lawyers named to Benchmark Litigation's "40 and Under Hot List 2018," and 21 lawyers named to the 2018 Super Lawyers "Super Lawyer" and "Rising Star" lists.

*U.S. News* and *Best Lawyers* has selected Lieff Cabraser as a national "Law Firm of the Year" six times in the last eight years, in categories including Mass Torts Litigation/Class Actions — Plaintiffs and Employment Law — Individuals. In 2017, Lieff Cabraser's Digital Privacy and Data Security practice group was named "Privacy Group of the Year" by *Law360*, and the firm's Consumer Protection practice group was named "Consumer Protection Group of the Year" by the publication as well.

In 2017, Law360 named Lieff Cabraser one of six "California Powerhouse" firms for litigation, the only plaintiffs' firm so honored. In 2016, Benchmark Litigation named Lieff Cabraser to its "Top 10 Plaintiff Firms in America" list, The National Law Journal chose our firm as one of nine "Elite Trial Lawyers" nationwide, and Law360 selected Lieff Cabraser as one of the "Top 50 Law Firms Nationwide for Litigation." The publication separately noted that our firm "persists as a formidable agency of change, producing world class legal work against some of the most powerful corporate players in the world today."

## **CASE PROFILES:**

## I. Personal Injury and Products Liability Litigation

## A. Current Cases

 Jane Doe et al. v. George Tyndall and the University of Southern California, Case No. 2:18-cv-05010 (C.D. Cal.). In June of 2018, Lieff Cabraser and co-counsel filed a class action lawsuit on behalf of women who were sexually abused, harassed, and molested by gynecologist George Tyndall, M.D., while they were students at University of Southern California ("USC"). As alleged in the complaint, despite the

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fact that USC has publicly admitted that it received numerous complaints of Tyndall's sexually abusive behavior, dating back to at least the year 2000, USC actively and deliberately concealed Tyndall's sexual abuse for years, continuing to grant Tyndall unfettered sexual access to the female USC students in his care. USC hid the complaints despite the fact that many of the complaints came directly from its own employees and staff, including nurses and medical assistants who were physically present during the examinations as "chaperones," and witnessed the sexual misconduct firsthand. Despite receiving years of serious complaints of significant misconduct about Tyndall, including sexual misconduct, USC failed to take any meaningful action to address the complaints until it was finally forced to do so in June 2016.

On February 12, 2019, University of Southern California (USC) students and alumni filed a class action settlement agreement resolving claims related to gynecologist George Tyndall, M.D. that will require USC to adopt and implement significant and permanent procedures for identification, prevention, and reporting of sexual and racial misconduct, as well as recognize all of Tyndall's patients through a \$215 million fund that gives every survivor a choice in how to participate. The settlement proposes a tiered structure for recovery that allows victims to choose the level of engagement they wish to have with the claims process and how they wish to communicate their stories. All women who USC's records show saw Tyndall for a women's health visit will automatically get a \$2,500 check, and the further tiers are structured to allow victims to choose their level of engagement with the process – if they only want to submit claims in writing, they can choose that, which allows them a certain range of potential claim payments above the 2,500 floor; if they are willing and able to provide an interview, they can be eligible for a range up to the highest \$250,000 amount. But at all levels, the settlement is designed to provide victims with a safe process within which to come forward, where they have control over how much they want to engage at their chosen level of comfort.

2. Southern California Fire Cases (California Thomas Wildfire & Mudslide Litigation), JCCP No. 4965 (Cal. Supr. Ct.). Lieff Cabraser partners Lexi J. Hazam and Robert J. Nelson serve as Co-Lead Counsel in consolidated individual and class action lawsuits against Southern California Edison over the role of the utility's equipment in starting the devastating Thomas Fire that ravaged Southern California in December 2017 and the resulting subsequent mudslides in Montecito that killed 21 people. The action seeks restitution for personal and business losses alleged to have occurred as a result of Southern California Edison's failure to properly and safely maintain its electrical infrastructure in Santa Barbara and Ventura Counties.

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Thorough post-fire investigations through the spring of 2019 have determined that what became known as the Thomas Fire was a result of the merging of the Ventura County Koenigstein Fire (caused by the separation of an energized conductor near an insulator on an SCE-operated power pole, which then fell to the ground along with molten metal particles and ignited the dry vegetation below) and the Thomas Fire (caused by power lines owned by SCE coming into contact with each other during high winds). Both the Koenigstein Fire and the Thomas Fire started on the same electrical circuit; hours after they began, the Koenigstein Fire merged with the Thomas Fire and collectively became known as the Thomas Fire. The fire burned a total of 281,893 acres, destroying 1,063 structures and resulting in one civilian and one firefighter fatality.

3. 2017 California North Bay Fire Cases, JCCP No. 4955 (Cal. Supr. Ct.). Lieff Cabraser founding partner Elizabeth Cabraser and firm partner Lexi Hazam serve as Chairs of the Class Action Committee in the consolidated lawsuits against Pacific Gas & Electric relating to losses from the 2017 San Francisco Bay Wine Country Fires. Cabraser and Hazam also serve on the Individual Plaintiffs Executive Committee in the litigation. In November of 2017, Lieff Cabraser filed individual and class action lawsuits against PG&E for losses relating to the devastating October 2017 North Bay Fires. The lawsuit sought to hold PG&E accountable for damages to real and personal property, loss of income, and loss of business arising from the fires. In the wake of the devastating fires that burned throughout northern California in October of 2017, more than 50 separate lawsuits were filed in multiple courts seeking to hold PG&E liable.

In January 2018, the lawsuits were consolidated into a single action in San Francisco Superior Court. Cal Fire has determined that of the 21 major fires last fall in Northern California, at least 17 were caused by power lines, poles and other equipment owned by Pacific Gas and Electric Company. PG&E had attempted to coordinate the actions in five separate clusters, including in counties that to date have no pertinent cases, but the Court held that issues of commonality and efficiency mandated coordination on a single court in San Francisco.

PG&E made multiple demurrers to plaintiffs' inverse condemnation claims, seeking the outright dismissal of plaintiff's' claims for damages against the utility unless PG&E was granted the right to pass any damages award on to its ratepaying customers. In May 2018, the Court issued an order overruling PG&E's demurrers. The Court disagreed with PG&E's arguments on all counts, holding in favor of plaintiffs and directing PG&E to answer plaintiffs' pending complaints. In June of 2018, PG&E announced that it expected to be held liable for damage from most if not

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all of the deadly and widespread fires that coursed through the North San Francisco Bay Area in October of 2017, recording so far a \$2.5 billion charge to cover losses. PG&E noted that the \$2.5 billion charge represents the low end of its anticipated potential losses.

4. **Camp Fire Cases**, JCCP No. 4995 (Cal. Supr. Court). Lieff Cabraser represents the family of Ernest Francis "Ernie" Foss, beloved father and musician, who was killed in the November 2018 Camp Fire, the deadliest and most destructive wildfire in modern California history. The fire broke out in Northern California near Chico in early November 2018 and quickly grew to massive size, affecting over 140,000 acres and killing at least 80 people, destroying nearly 14,000 homes and nearly obliterating the town of Paradise, and causing the evacuation of over 50,000 area residents.

In addition, Lieff Cabraser represents plaintiffs in a class action lawsuit as well as hundreds of individual suits filed against PG&E for the devastating property damage, economic losses, and disruption to homes, businesses, and livelihoods caused by the Camp wildfire. The lawsuits allege the Camp Fire was started by unsafe electrical infrastructure owned, operated, and improperly maintained by PG&E. The plaintiffs further claim that despite PG&E's knowledge that electrical infrastructure was aging, unsafe, and vulnerable to environmental conditions, PG&E failed to take action that could have prevented the deadliest and most destructive wildfire in California's history.

- 5. In re PG&E Corporation, Case No. 19-30088 and In re Pacific Gas and Electric Company, Case No. 19-30089 (U.S. Bankruptcy Court, N.D. Cal. San Francisco Division). In January of 2019, in the face of overwhelming liability from pending wildfire litigation, including the North Bay and Camp Fire JCCPs, PG&E Corporation and Pacific Gas and Electric Company filed voluntary petitions for relief under Chapter 11 of the federal Bankruptcy Code. As a result of the bankruptcy filing, the Camp Fire and North Bay Fires proceedings in state court have been stayed. In February 2019, Andrew R. Vara, the Acting United States Trustee for Region 3, appointed an official committee of tort claimants to represent the interests and act on behalf of all persons with tort claims against PG&E, including wildfire victims, in the bankruptcy proceedings. Lieff Cabraser represents Angela Foss Loo as a member of the Official Committee of Tort Claimants.
- 6. In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2151 (C.D. Cal.). Lieff Cabraser serves as Co-Lead Counsel for the plaintiffs in the Toyota injury cases in federal court representing individuals injured, and families of loved ones who died, in Toyota unintended acceleration

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accidents. The complaints charge that Toyota took no action despite years of complaints that its vehicles accelerated suddenly and could not be stopped by proper application of the brake pedal. The complaints further allege that Toyota breached its duty to manufacture and sell safe automobiles by failing to incorporate a brake override system and other readily available safeguards that could have prevented unintended acceleration.

In December 2013, Toyota announced its intention to begin to settle the cases. In 2014, Lieff Cabraser played a key role in turning Toyota's intention into a reality through assisting in the creation of an innovative resolution process that has settled scores of cases in streamlined, individual conferences. The settlements are confidential. Before Toyota agreed to settle the litigation, plaintiffs' counsel overcame significant hurdles in the challenging litigation. In addition to defeating Toyota's motion to dismiss the litigation, Lieff Cabraser and co-counsel demonstrated that the highly-publicized government studies that denied unintended acceleration, or attributed it to mechanical flaws and driver error, were flawed and erroneous.

- 7. Individual General Motors Ignition Switch Defect Injury Lawsuits, MDL No. 2543 (S.D. N.Y.). Lieff Cabraser represents over 100 persons injured nationwide, and families of loved ones who died, in accidents involving GM vehicles sold with a defective ignition switch. Without warning, the defect can cause the car's engine and electrical system to shut off, disabling the air bags. For over a decade GM was aware of this defect and failed to inform government safety regulators and public. The defect has been has been implicated in the deaths of over 300 people in crashes where the front air bags did not deploy. On August 15, 2014, U.S. District Court Judge Jesse M. Furman appointed Elizabeth J. Cabraser as Co-Lead Plaintiffs' Counsel in the GM ignition switch litigation in federal court.
- 8. Retrievable Inferior Vena Cava Blood Filter Injuries, In re Bard IVC Filters Prods. Liab. Litig., MDL No. 2641 (D. Ariz.). Inferior Vena Cava blood filters or IVC filters are small, basket-like medical devices that are inserted into the inferior vena cava, the main blood vessel that returns blood from the lower half of the body to the heart. Tens of thousands of patients in the U.S. are implanted with IVC filters in order to provide temporary protection from pulmonary embolisms. However, these devices have resulted in multiple complications including device fracture, device migration, perforation of various organs, and an increased risk for venous thrombosis. Due to these complications, patients may have to undergo invasive device removal surgery or suffer heart attacks, hemorrhages, or other major injuries. We represent injured patients and their families in individual

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- personal injury and wrongful death lawsuits against IVC filter manufacturers, and Lieff Cabraser attorney Wendy R. Fleishman serves on the Plaintiffs Executive Committee in the IVC Filter cases in the federal multidistrict litigation.
- 9. Injury and Death Lawsuits Involving Wrongful Driver Conduct and Defective Tires, Transmissions, Cars and/or Vehicle Parts (Seat Belts, Roof Crush, Defective seats, and Other Defects). Lieff Cabraser has an active practice prosecuting claims for clients injured, or the families of loved ones who have died, by wrongful driver conduct and by unsafe and defective vehicles, tires, restraint systems, seats, and other automotive equipment. The firm also represent clients in actions involving fatalities and serious injuries from tire and transmission failures as well as rollover accidents (and defective roofs, belts, seat back and other parts) as well as defective transmissions and/or shifter gates that cause vehicles to self-shift from park or false park into reverse. Our attorneys have received awards and recognition from California Lawyer magazine (Lawyer of the Year Award), the Consumer Attorneys of California, and the San Francisco Trial Lawyers Association for their dedication to their clients and outstanding success in vehicle injury cases.
- 10. In Re: Abilify (Aripiprazole) Products Liability Litigation, MDL No. 2734 (N.D. Fla.). We represent clients who have incurred crippling financial losses and pain and suffering from compulsive gambling caused by the drug Abilify. In May 2016 the FDA warned that Abilify can lead to damaging compulsive behaviors, including uncontrollable gambling. The gambling additions can be so severe that patients lose their homes, livelihoods, and marriages. The \$6+ billion a year-earning drug was prescribed for nearly 9 million patients in 2014 alone. In December 2016, Lieff Cabraser partner Lexi Hazam was appointed by the court overseeing the nationwide Abilify gambling injuries MDL litigation to the Plaintiffs Executive Committee and Co-Chairs the Science and Expert Sub-Committee for the nationwide Abilify MDL litigation. Discovery in the case is ongoing.
- 11. *In re Engle Cases*, No. 3:09-cv-10000-J-32 JBT (M.D. Fl.). Lieff Cabraser represents Florida smokers, and the spouses and families of loved ones who died, in litigation against the tobacco companies for their 50-year conspiracy to conceal the hazards of smoking and the addictive nature of cigarettes.

On February 25th, 2015, a settlement was announced of more than 400 Florida smoker lawsuits against the major cigarette companies Philip Morris USA Inc., R.J. Reynolds Tobacco Company, and Lorillard Tobacco Company. As a part of the settlement, the companies will collectively pay

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\$100 million to injured smokers or their families. This was the first settlement ever by the cigarette companies of smoker cases on a group basis.

Lieff Cabraser attorneys tried over 20 cases in Florida federal court against the tobacco industry on behalf of individual smokers or their estates, and with co-counsel obtained over \$105 million in judgments for our clients. Two of the jury verdicts Lieff Cabraser attorneys obtained in the litigation were ranked by *The National Law Journal* as among the Top 100 Verdicts of 2014.

12. In re Takata Airbag Litigation, MDL No. 2599 (S.D. Fl.). Lieff Cabraser serves on the Plaintiffs' Steering Committee in the national litigation against Takata Corporation. Nearly 34 million vehicles, mostly manufactured prior to 2009, have been recalled worldwide due to defective and dangerous airbags manufactured by Japanese-based Takata Corporation. This is the largest automotive recall in U.S. history. At least 20 deaths and more than 130 injuries have been linked to the airbag defect.

The recalled Takata airbags contain a propellant that may cause the airbag to explode upon impact in an accident, shooting metal casing debris towards drivers and passengers. The complaints charge that the company knew of defects in its airbags a decade ago, after conducting secret tests of the products that showed dangerous flaws. Rather than alert federal safety regulators to these risks, Takata allegedly ordered its engineers to delete the test data.

In November 2017, the U.S. District Court in Florida granted final approval to an aggregate settlement of \$741 with Toyota, BMW, Subaru and Mazda over claims relating to vehicles containing dangerous and defective Takata airbags, linked to more than 100 injuries and 17 deaths worldwide.

13. **Stryker Metal Hip Implant Litigation**, MDL No. 2441 (D. Minn.). Lieff Cabraser represents over 60 hip replacement patients nationwide who received the recalled Stryker Rejuvenate and ABG II modular hip implant systems. Wendy Fleishman serves on the Plaintiffs' Lead Counsel Committee of the multidistrict litigation cases. These patients have suffered tissue damage and have high metal particle levels in their blood stream. For many patients, the Stryker hip implant failed necessitating painful revision surgery to extract and replace the artificial hip.

On November 3, 2014, a settlement was announced in the litigation against Stryker Corporation for the recall of its Rejuvenate and ABG II artificial hip implants. Under the settlement, Stryker will provide a base payment of \$300,000 to patients that received the Rejuvenate or ABG II

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hip systems and underwent revision surgery by November 3, 2014, to remove and replace the devices. Stryker's liability is not capped. It is expected that the total amount of payments under the settlement will far exceed \$1 billion dollars. Payments under the settlement program are projected for disbursement at the end of 2015.

14. **DePuy Metal Hip Implants Litigation**, MDL No. 2244 (N.D. Tex.). Lieff Cabraser represents nearly 200 patients nationwide who received the ASR XL Acetabular and ASR Hip Resurfacing systems manufactured by DePuy Orthopedics, a unit of Johnson & Johnson. In 2010, DePuy Orthopedics announced the recall of its all-metal ASR hip implants, which were implanted in approximately 40,000 U.S. patients from 2006 through August 2010. The complaints allege that DePuy Orthopedics was aware its ASR hip implants were failing at a high rate, yet continued to manufacture and sell the device. In January 2011, in *In re DePuy* Orthopaedics, Inc. ASR Hip Implant Products, MDL No. 2197, the Court overseeing all DePuy recall lawsuits in federal court appointed Lieff Cabraser attorney Wendy R. Fleishman to the Plaintiffs' Steering Committee for the organization and coordination of the litigation. In July 2011, in the coordinated proceedings in California state court, the Court appointed Lieff Cabraser attorney Robert J. Nelson to serve on the Plaintiffs' Steering Committee.

In 2013, Johnson & Johnson announced its agreement to pay at least \$2.5 billion to resolve thousands of defective DePuy ASR hip implant lawsuits. Under the settlement, J&J offers to pay a base award of \$250,000 to U.S. citizens and residents who are more than 180 days from their hip replacement surgery, and prior to August 31, 2013, had to undergo revision surgery to remove and replace their faulty DePuy hip ASR XL or ASR resurfacing hip. The \$250,000 base award payment will be adjusted upward or downward depending on medical factors specific to each patient. Lieff Cabraser also represents nearly 100 patients whose DePuy Pinnacle artificial hips containing a metal insert called the Ultamet metal liner have prematurely failed.

- 15. **Mirena Litigation**. A widely-used, plastic intrauterine device (IUD) that releases a hormone into the uterus to prevent pregnancy, Mirena is manufactured by Bayer Healthcare Pharmaceuticals. Lieff Cabraser represents patients who have suffered serious injuries linked to the IUD. These injuries include uterine perforation (the IUD tears through the cervix or the wall of the uterus), ectopic pregnancy (when the embryo implants outside the uterine cavity), pelvic infections and pelvic inflammatory disease, and thrombosis (blood clots).
- 16. **Birth Defects Litigation**. Lieff Cabraser represents children and their parents who have suffered birth defects as a result of problematic

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pregnancies and improper medical care, improper prenatal genetic screening, ingestion by the mother of prescription drugs during pregnancy which had devastating effects on their babies. These birth defects range from heart defects, physical malformations, and severe brain damage associated with complex emotional and developmental delays. Taking of antidepressants during pregnancy has been linked to multiple types of birth defects, neonatal abstinence syndrome from experiencing withdrawal of the drug, and persistent pulmonary hypertension of the newborn (PPHN).

- 17. **Vaginal Surgical Mesh Litigation**. Lieff Cabraser represents more than 300 women nationwide who have been seriously injured as a result of polypropylene vaginal surgical mesh implantation as a treatment for pelvic organ prolapse or stress urinary incontinence. Manufactured by Johnson & Johnson, Boston Scientific, AMS, Bard, Caldera, Coloplast, and others, these products have been linked to serious side effects including erosion into the vaginal wall or other organs, infection, internal organ damage, and urinary problems. As of early 2016, the firm is in all phases of litigation and settlement on these cases.
- 18. Xarelto Litigation. Lieff Cabraser represents patients prescribed Xarelto sold in the U.S. by Janssen Pharmaceuticals, a subsidiary of Johnson & Johnson. The complaints charge that Xarelto, approved to prevent blood clots, is a dangerous and defective drug because it triggers in certain patients uncontrolled bleeding and other life-threatening complications. Unlike Coumadin, an anti-clotting drug approved over 50 years ago, the concentration of Xarelto in a patient's blood cannot be reversed in the case of overdose or other serious complications. If a Xarelto patient has an emergency bleeding event -- such as from a severe injury or major brain or GI tract bleeding -- the results can be fatal.
- 19. **Benicar Litigation**, MDL No. 2606 (D. N.J.). Lieff Cabraser represents patients prescribed the high blood pressure medication Benicar who have experienced chronic diarrhea with substantial weight loss, severe gastrointestinal problems, and the life-threatening conditions of spruelike enteropathy and villous atrophy in litigation against Japan-based Daiichi Sankyo, Benicar's manufacturer, and Forest Laboratories, which marketed Benicar in the U.S.

The complaints allege that Benicar was insufficiently tested and not accompanied by adequate instructions and warnings to apprise consumers of the full risks and side effects associated with its use. Lieff Cabraser attorney Lexi J. Hazam serves on the Plaintiffs' Steering Committee for the nationwide Benicar MDL litigation and was appointed Co-Chair of the Benicar MDL Plaintiffs' Science and Experts Committee. Plaintiffs recently filed motions to compel defense to produce additional

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discovery. The judge ruled with plaintiffs in the fall of 2015. In August 2017, a settlement with Daiichi Sankyo Inc. and Forest Laboratories Inc. valued at \$300 million covering approximately 2,300 Benicar injury cases in both state and federal courts was announced.

20. **Risperdal Litigation**. In 2013, Johnson & Johnson and its subsidiary Janssen Pharmaceuticals, the manufacture of the antipsychotic prescription drugs Risperdal and Invega, entered into a \$2.2 billion settlement with the U.S. Department of Justice for over promoting the drugs. The government alleged that J&J and Janssen knew Risperdal triggered the production of prolactin, a hormone that stimulates breast development (gynecomastia) and milk production.

Lieff Cabraser represents parents whose sons developed abnormally large breasts while prescribed Risperdal and Invega in lawsuits charging that Risperdal is a defective and dangerous prescription drug and seeking monetary damages for the mental anguish and physical injuries the young men suffered. As of 2017, our firm is still filing new Risperdal cases in federal court in the Central District of California.

- 21. **Power Morcellators Litigation**, MDL No. 2652 (D. Kan.). Lieff Cabraser represents women who underwent a hysterectomy (the removal of the uterus) or myomectomy (the removal of uterine fibroids) in which a laparoscopic power morcellator was used. In November 2014, the FDA warned surgeons that they should avoid the use of laparoscopic power morcellators for removing uterine tissue in the vast majority of cases due to the risk of the devices spreading unsuspected cancer. Based on current data, the FDA estimates that 1 in 350 women undergoing hysterectomy or myomectomy for the treatment of fibroids have an unsuspected uterine sarcoma, a type of uterine cancer that includes leiomyosarcoma.
- 22. In re New England Compounding Pharmacy Inc. Products
  Liability Litigation, MDL No. 2419 (D. Mass.). Lieff Cabraser
  represents patients injured or killed by a nationwide fungal meningitis
  outbreak in 2012. More than 14,000 patients across the U.S. were injected
  with a contaminated medication that caused the outbreak. The New
  England Compounding Center ("NECC") in Framingham, Massachusetts,
  manufactured and sold the drug an epidural steroid treatment designed
  to relieve back pain. The contaminated steroid was sold to patients at a
  number of pain clinics. Nearly 800 patients developed fungal meningitis,
  and more than 70 patients died.

Lieff Cabraser is a member of the Plaintiffs' Steering Committee in the multi-district litigation, and our attorneys act as federal-state liaison counsel. In May 2015, the U.S. Bankruptcy Court approved a \$200 million partial settlement for victims of the outbreak. Bellwether trials against

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remaining defendants commenced in 2016. Lieff Cabraser is expected to play a lead role in the bellwether trials.

#### B. Successes

- 1. *Multi-State Tobacco Litigation*. Lieff Cabraser represented the Attorneys General of Massachusetts, Louisiana and Illinois, several additional states, and 21 cities and counties in California, in litigation against Philip Morris, R.J. Reynolds and other cigarette manufacturers. The suits were part of the landmark \$206 billion settlement announced in November 1998 between the tobacco industry and the states' attorneys general. The states, cities and counties sought both to recover the public costs of treating smoking-related diseases and require the tobacco industry to undertake extensive modifications of its marketing and promotion activities in order to reduce teenage smoking. In California alone, Lieff Cabraser's clients were awarded an estimated \$12.5 billion to be paid through 2025.
- 2. In re Vioxx Products Liability Litigation, MDL No. 1657 (E.D. La.). Lieff Cabraser represented patients who suffered heart attacks or strokes, and the families of loved ones who died, after having been prescribed the arthritis and pain medication Vioxx. In individual personal injury lawsuits against Merck, the manufacturer of Vioxx, our clients allege that Merck falsely promoted the safety of Vioxx and failed to disclose the full range of the drug's dangerous side effects. In April 2005, in the federal multidistrict litigation, the Court appointed Elizabeth J. Cabraser to the Plaintiffs' Steering Committee, which has the responsibility of conducting all pretrial discovery of Vioxx cases in federal court and pursuing all settlement options with Merck. In August 2006, Lieff Cabraser was cocounsel in Barnett v. Merck, which was tried in the federal court in New Orleans. Lieff Cabraser attorneys Don Arbitblit and Jennifer Gross participated in the trial, working closely with attorneys Mark Robinson and Andy Birchfield. The jury reached a verdict in favor of Mr. Barnett, finding that Vioxx caused his heart attack, and that Merck's conduct justified an award of punitive damages. In November 2007, Merck announced it had entered into an agreement with the executive committee of the Plaintiffs' Steering Committee as well as representatives of plaintiffs' counsel in state coordinated proceedings. Merck paid \$4.85 billion into a settlement fund for qualifying claims.
- 3. In re Silicone Gel Breast Implants Products Liability Litigation, MDL No. 926 (N.D. Ala.). Lieff Cabraser served on the Plaintiffs' Steering Committee and was one of five members of the negotiating committee which achieved a \$4.25 billion global settlement with certain defendants of the action. This was renegotiated in 1995, and is referred to as the Revised Settlement Program ("RSP"). Over 100,000

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- recipients have received initial payments, reimbursement for the explanation expenses and/or long term benefits.
- 4. Fen-Phen ("Diet Drugs") Litigation. Since the recall was announced in 1997, Lieff Cabraser has represented individuals who suffered injuries from the "Fen-Phen" diet drugs fenfluramine (sold as Pondimin) and/or dexfenfluramine (sold as Redux). The firm served as counsel for the plaintiff who filed the first nationwide class action lawsuit against the diet drug manufacturers alleging that they had failed to adequately warn physicians and consumers of the risks associated with the drugs. In In re Diet Drugs (Phentermine / Fenfluramine / Dexfenfluramine) Products Liability Litigation, MDL No. 1203 (E.D. Pa.), the Court appointed Elizabeth J. Cabraser to the Plaintiffs' Management Committee which organized and directed the Fen-Phen diet drugs litigation in federal court. In August 2000, the Court approved a \$4.75 billion settlement offering both medical monitoring relief for persons exposed to the drug and compensation for persons with qualifying damage. Lieff Cabraser represented over 2,000 persons that suffered valvular heart disease, pulmonary hypertension or other problems (such as needing echocardiogram screening for damage) due to and/or following exposure to Fen-Phen and obtained more than \$350 million in total for clients in individual cases and/or claims. The firm continues to represent persons who suffered valvular heart disease due to Fen-Phen and received compensation under the Diet Drugs Settlement who now require heart value surgery. These persons may be eligible to submit a new claim and receive additional compensation under the settlement.
- 5. *In re Actos (Pioglitazone) Products Liability Litigation*, MDL No. 2299 (W.D. La.). Lieff Cabraser represents 90 diabetes patients who developed bladder cancer after exposure to the prescription drug pioglitazone, sold as Actos by Japan-based Takeda Pharmaceutical Company and its American marketing partner, Eli Lilly.

Lieff Cabraser is a member of the Plaintiffs' Steering Committee in the Actos MDL. In 2014, Lieff Cabraser served on the trial team in the case of *Allen v. Takeda*, working closely with lead trial counsel in federal court in Louisiana. The jury awarded \$9 billion in punitive damages, finding that Takeda and Lilly failed to adequately warn about the bladder cancer risks of Actos and had acted with wanton and reckless disregard for patient safety. The trial judge reduced the punitive damage award but upheld the jury's findings of misconduct, and ruled that a multiplier of 25 to 1 for punitive damages was justified.

In April 2015, Takeda agreed to settle all bladder cancer claims brought by Type 2 diabetes patients who took Actos prior to December 1, 2011 and

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who were diagnosed with bladder cancer on or before April 28, 2015 and were represented by counsel by May 1, 2015. The settlement amount is \$2.4 billion. Average payments of about \$250,000 per person will be increased for more severe injuries.

- 6. **Yaz and Yasmin Litigation**. Lieff Cabraser represented women prescribed Yasmin and Yaz oral contraceptives who suffered blood clots, deep vein thrombosis, strokes, and heart attacks, as well as the families of loved ones who died suddenly while taking these medications. The complaints alleged that Bayer, the manufacturer of Yaz and Yasmin, failed to adequately warn patients and physicians of the increased risk of serious adverse effects from Yasmin and Yaz. The complaints also charged that these oral contraceptives posed a greater risk of serious side effects than other widely available birth control drugs. To date, Bayer has announced settlements of 7,660 claims totaling \$1.6 billion in the Yaz birth control lawsuits.
- 7. Sulzer Hip and Knee Prosthesis Liability Litigation. In December 2000, Sulzer Orthopedics, Inc., announced the recall of approximately 30,000 units of its Inter-Op Acetabular Shell Hip Implant, followed in May 2001 with a notification of failures of its Natural Knee II Tibial Baseplate Knee Implant. In coordinated litigation in California state court, In re Hip Replacement Cases, JCCP 4165, Lieff Cabraser served as Court-appointed Plaintiffs' Liaison Counsel and Co-Lead Counsel. In the federal litigation, In re Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation, MDL No. 1410, Lieff Cabraser played a significant role in negotiating a revised global settlement of the litigation valued at more than \$1 billion. The revised settlement, approved by the Court in May 2002, provided patients with defective implants almost twice the cash payment as under an initial settlement. On behalf of our clients, Lieff Cabraser objected to the initial settlement.
- 8. In re Bextra/Celebrex Marketing Sales Practices and Products Liability Litigation, MDL No. 1699 (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Liaison Counsel and Elizabeth J. Cabraser chaired the Plaintiffs' Steering Committee (PSC) charged with overseeing all personal injury and consumer litigation in federal courts nationwide arising out of the sale and marketing of the COX-2 inhibitors Bextra and Celebrex, manufactured by Pfizer, Inc. and its predecessor companies Pharmacia Corporation and G.D. Searle, Inc.

Under the global resolution of the multidistrict tort and consumer litigation announced in October 2008, Pfizer paid over \$800 million to claimants, including over \$750 million to resolve death and injury claims.

In a report adopted by the Court on common benefit work performed by the PSC, the Special Master stated:

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[L]eading counsel from both sides, and the attorneys from the PSC who actively participated in this litigation, demonstrated the utmost skill and professionalism in dealing with numerous complex legal and factual issues. The briefing presented to the Special Master, and also to the Court, and the development of evidence by both sides was exemplary. The Special Master particularly wishes to recognize that leading counsel for both sides worked extremely hard to minimize disputes, and when they arose, to make sure that they were raised with a minimum of rancor and a maximum of candor before the Special Master and Court.

- 9. In re Guidant Implantable Defibrillators Products Liability Litigation, MDL No. 1708 (D. Minn.). Lieff Cabraser served as Plaintiffs' Co-Lead Counsel in litigation in federal court arising out of the recall of Guidant cardiac defibrillators implanted in patients because of potential malfunctions in the devices. At the time of the recall, Guidant admitted it was aware of 43 reports of device failures, and two patient deaths. Guidant subsequently acknowledged that the actual rate of failure may be higher than the reported rate and that the number of associated deaths may be underreported since implantable cardio-defibrillators are not routinely evaluated after death. In January 2008, the parties reached a global settlement of the action. Guidant's settlements of defibrillator-related claims will total \$240 million.
- 10. In re Copley Pharmaceutical, Inc., "Albuterol" Products
  Liability Litigation, MDL No. 1013 (D. Wyo.). Lieff Cabraser served
  on the Plaintiffs' Steering Committee in a class action lawsuit against
  Copley Pharmaceutical, which manufactured Albuterol, a bronchodilator
  prescription pharmaceutical. Albuterol was the subject of a nationwide
  recall in January 1994 after a microorganism was found to have
  contaminated the solution, allegedly causing numerous injuries including
  bronchial infections, pneumonia, respiratory distress and, in some cases,
  death. In October 1994, the District Court certified a nationwide class on
  liability issues. In re Copley Pharmaceutical, 161 F.R.D. 456 (D. Wyo.
  1995). In November 1995, the District Court approved a \$150 million
  settlement of the litigation.
- 11. In re Telectronics Pacing Systems Inc., Accufix Atrial "J"
  Leads Products Liability Litigation, MDL No. 1057 (S.D. Ohio).
  Lieff Cabraser served on the Court-appointed Plaintiffs' Steering
  Committee in a nationwide products liability action alleging that
  defendants placed into the stream of commerce defective pacemaker
  leads. In April 1997, the District Court re-certified a nationwide class of
  "J" Lead implantees with subclasses for the claims of medical monitoring,

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negligence and strict product liability. A summary jury trial, utilizing jury instructions and interrogatories designed by Lieff Cabraser, occurred in February 1998. A partial settlement was approved thereafter by the District Court but reversed by the Court of Appeals. In March 2001, the District Court approved a renewed settlement that included a \$58 million fund to satisfy all past, present and future claims by patients for their medical care, injuries, or damages arising from the lead.

12. *Mraz v. DaimlerChrysler*, No. BC 332487 (Cal. Supr. Ct.). In March 2007, the jury returned a \$54.4 million verdict, including \$50 million in punitive damages, against DaimlerChrysler for intentionally failing to cure a known defect in millions of its vehicles that led to the death of Richard Mraz, a young father. Mr. Mraz suffered fatal head injuries when the 1992 Dodge Dakota pickup truck he had been driving at his work site ran him over after he exited the vehicle believing it was in park. The jury found that a defect in the Dodge Dakota's automatic transmission, called a park-to-reverse defect, played a substantial factor in Mr. Mraz's death and that DaimlerChrysler was negligent in the design of the vehicle for failing to warn of the defect and then for failing to adequately recall or retrofit the vehicle.

For their outstanding service to their clients in Mraz and advancing the rights of all persons injured by defective products, Lieff Cabraser partner Robert J. Nelson, the lead trial counsel, received the 2008 California Lawyer of the Year (CLAY) Award in the field of personal injury law, and was also selected as finalists for Attorney of the Year by the Consumer Attorneys of California and the San Francisco Trial Lawyers Association.

In March 2008, a Louisiana-state jury found DaimlerChrysler liable for the death of infant Collin Guillot and injuries to his parents Juli and August Guillot and their then 3-year-old daughter, Madison. The jury returned a unanimous verdict of \$5,080,000 in compensatory damages. The jury found that a defect in the Jeep Grand Cherokee's transmission, called a park-to-reverse defect, played a substantial factor in Collin Guillot's death and the severe injuries suffered by Mr. and Mrs. Guillot and their daughter. Lieff Cabraser served as co-counsel in the trial.

13. **Craft v. Vanderbilt University**, Civ. No. 3-94-0090 (M.D. Tenn.). Lieff Cabraser served as Lead Counsel of a certified class of over 800 pregnant women and their children who were intentionally fed radioactive iron isotopes without consent while receiving prenatal care at the Vanderbilt University hospital as part of a study on iron absorption during pregnancy. The women were not informed of the nature and risks of the study. Instead, they were told that the solution they were fed was a "vitamin cocktail." In the 1960's, Vanderbilt conducted a follow-up study to determine the health effects of the plaintiffs' prior radiation exposure.

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Throughout the follow-up study, Vanderbilt concealed from plaintiffs the fact that they had been involuntarily exposed to radiation, and that the purpose of the follow-up study was to determine whether there had been an increased rate of childhood cancers among those exposed *in utero*. Vanderbilt also did not inform plaintiffs of the results of the follow-up study, which revealed a disproportionately high incidence of cancers among the children born to the women fed the radioactive iron.

The facts surrounding the administration of radioactive iron to the pregnant women and their children in utero only came to light as a result of U.S. Energy Secretary Hazel O'Leary's 1993 disclosures of government-sponsored human radiation experimentation during the Cold War. Defendants' attempts to dismiss the claims and decertify the class were unsuccessful. 18 F. Supp.2d 786 (M.D. Tenn. 1998). The case was settled in July 1998 for a total of \$10.3 million and a formal apology from Vanderbilt.

- 14. **Simply Thick Litigation**. Lieff Cabraser represented parents whose infants died or suffered gave injuries linked to Simply Thick, a thickening agent for adults that was promoted to parents, caregivers, and health professional for use by infants to assist with swallowing. The individual lawsuits alleged that Simply Thick when fed to infants caused necrotizing enterocolitis (NEC), a life-threatening condition characterized by the inflammation and death of intestinal tissue. In 2014, the litigation was resolved on confidential terms.
- 15. **Medtronic Infuse Litigation**. Lieff Cabraser represented patients who suffered serious injuries from the off-label use of the Infuse bone graft, manufactured by Medtronic Inc. The FDA approved Infuse for only one type of spine surgery, the anterior lumbar fusion. Many patients, however, received an off-label use of Infuse and were never informed of the off-label nature of the surgery. Serious complications associated with Infuse included uncontrolled bone growth and chronic pain from nerve injuries. In 2014, the litigation was settled on confidential terms.
- 16. Wright Medical Hip Litigation. The Profemur-Z system manufactured by Wright Medical Technology consisted of three separate components: a femoral head, a modular neck, and a femoral stem. Prior to 2009, Profemur-Z hip system included a titanium modular neck adapter and stem which was implanted in 10,000 patients. Lieff Cabraser represented patients whose Profemur-Z hip implant fractured, requiring a revision surgery. In 2013 and 2014, the litigation was resolved on confidential terms.
- 17. *In re Zimmer Durom Cup Product Liability Litigation*, MDL No. 2158 (D. N.J.). Lieff Cabraser served as Co-Liaison Counsel for patients nationwide injured by the defective Durom Cup manufactured by Zimmer

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Holdings. First sold in the U.S. in 2006, Zimmer marketed its 'metal-on-metal' Durom Cup implant as providing a greater range of motion and less wear than traditional hip replacement components. In July 2008, Zimmer announced the suspension of Durom sales. The complaints charged that the Durom cup was defective and led to the premature failure of the implant. In 2011 and 2012, the patients represented by Lieff Cabraser settled their cases with Zimmer on favorable, confidential terms.

- 18. *Luisi v. Medtronic*, No. 07 CV 4250 (D. Minn.). Lieff Cabraser represented over seven hundred heart patients nationwide who were implanted with recalled Sprint Fidelis defibrillator leads manufactured by Medtronic Inc. Plaintiffs charge that Medtronic has misrepresented the safety of the Sprint Fidelis leads and a defect in the device triggered their receiving massive, unnecessary electrical shocks. A settlement of the litigation was announced in October 2010.
- 19. **Blood Factor VIII And Factor IX Litigation**, MDL No. 986 (D. II.) Working with counsel in Asia, Europe, Central and South America and the Middle East, Lieff Cabraser represented over 1,500 hemophiliacs worldwide, or their survivors and estates, who contracted HIV and/or Hepatitis C (HCV), and Americans with hemophilia who contracted HCV, from contaminated and defective blood factor products produced by American pharmaceutical companies. In 2004, Lieff Cabraser was appointed Plaintiffs' Lead Counsel of the "second generation" Blood Factor MDL litigation presided over by Judge Grady in the Northern District of Illinois. The case was resolved through a global settlement signed in 2009.
- 20. In Re Yamaha Motor Corp. Rhino ATV Products Liability Litigation, MDL No. 2016 (W.D. Ky.) Lieff Cabraser served as Plaintiffs' Lead Counsel in the litigation in federal court and Co-Lead Counsel in coordinated California state court litigation arising out of serious injuries and deaths in rollover accidents involving the Yamaha Rhino. The complaints charged that the Yamaha Rhino contained numerous design flaws, including the failure to equip the vehicles with side doors, which resulted in repeated broken or crushed legs, ankles or feet for riders. Plaintiffs alleged also that the Yamaha Rhino was unstable due to a narrow track width and high center of gravity leading to rollover accidents that killed and/or injured scores of persons across the nation.

On behalf of victims and families of victims and along with the Center for Auto Safety, and the San Francisco Trauma Foundation, Lieff Cabraser advocated for numerous safety changes to the Rhino in reports submitted to the U.S. Consumer Product Safety Commission (CPSC). On March 31, 2009, the CPSC, in cooperation with Yamaha Motor Corp. U.S.A., announced a free repair program for all Rhino 450, 660, and 700 models

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to improve safety, including the addition of spacers and removal of a rear only anti-sway bar.

- 21. Advanced Medical Optics Complete MoisturePlus Litigation. Lieff Cabraser represented consumers nationwide in personal injury lawsuits filed against Advanced Medical Optics arising out of the May 2007 recall of AMO's Complete MoisturePlus Multi-Purpose Contact Lens Solution. The product was recalled due to reports of a link between a rare, but serious eye infection, Acanthamoeba keratitis, caused by a parasite and use of AMO's contact lens solution. Though AMO promoted Complete MoisturePlus Multi-Purpose as "effective against the introduction of common ocular microorganisms," the complaints charged that AMO's lens solution was ineffective and vastly inferior to other multipurpose solutions on the market. In many cases, patients were forced to undergo painful corneal transplant surgery to save their vision and some have lost all or part of their vision permanently. The patients represented by Lieff Cabraser resolved their cases with AMO on favorable, confidential terms.
- 22. *Gol Airlines Flight 1907 Amazon Crash*. Lieff Cabraser served as Plaintiffs' Liaison Counsel and represents over twenty families whose loved ones died in the Gol Airlines Flight 1907 crash. On September 29, 2006, a brand-new Boeing 737-800 operated by Brazilian air carrier Gol plunged into the Amazon jungle after colliding with a smaller plane owned by the American company ExcelAire Service, Inc. None of the 149 passengers and six crew members on board the Gol flight survived the accident.

The complaint charged that the pilots of the ExcelAire jet were flying at an incorrect altitude at the time of the collision, failed to operate the jet's transponder and radio equipment properly, and failed to maintain communication with Brazilian air traffic control in violation of international civil aviation standards. If the pilots of the ExcelAire aircraft had followed these standards, the complaint charged that the collision would not have occurred.

At the time of the collision, the ExcelAire aircraft's transponder, manufactured by Honeywell, was not functioning. A transponder transmits a plane's altitude and operates its automatic anti-collision system. The complaint charged that Honeywell shares responsibility for the tragedy because it defectively designed the transponder on the ExcelAire jet, and failed to warn of dangers resulting from foreseeable uses of the transponder. The cases settled after they were sent to Brazil for prosecution.

23. *Comair CRJ-100 Commuter Flight Crash in Lexington, Kentucky*. A Bombardier CRJ-100 commuter plane operated by

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Comair, Inc., a subsidiary of Delta Air Lines, crashed on August 27, 2006 shortly after takeoff at Blue Grass Airport in Lexington, Kentucky, killing 47 passengers and two crew members. The aircraft attempted to take off from the wrong runway. The families represented by Lieff Cabraser obtained substantial economic recoveries in a settlement of the case.

- 24. *In re ReNu With MoistureLoc Contact Lens Solution Products Liability Litigation*, MDL No. 1785 (D. S.C.). Lieff Cabraser served on the Plaintiffs' Executive Committee in federal court litigation arising out of Bausch & Lomb's 2006 recall of its ReNu with MoistureLoc contact lens solution. Consumers who developed *Fusarium keratitis*, a rare and dangerous fungal eye infection, as well as other serious eye infections, alleged the lens solution was defective. Some consumers were forced to undergo painful corneal transplant surgery to save their vision; others lost all or part of their vision permanently. The litigation was resolved under favorable, confidential settlements with Bausch & Lomb.
- 25. Helios Airways Flight 522 Athens, Greece Crash. On August 14, 2005, a Boeing 737 operating as Helios Airways flight 522 crashed north of Athens, Greece, resulting in the deaths of all passengers and crew. The aircraft was heading from Larnaca, Cyprus to Athens International Airport when ground controllers lost contact with the pilots, who had radioed in to report problems with the air conditioning system. Press reports about the official investigation indicate that a single switch for the pressurization system on the plane was not properly set by the pilots, and eventually both were rendered unconscious, along with most of the passengers and cabin crew.

Lieff Cabraser represented the families of several victims, and filed complaints alleging that a series of design defects in the Boeing 737-300 contributed to the pilots' failure to understand the nature of the problems they were facing. Foremost among those defects was a confusing pressurization warning "horn" which uses the same sound that alerts pilots to improper takeoff and landing configurations. The families represented by Lieff Cabraser obtained substantial economic recoveries in a settlement of the case.

26. Legend Single Engine "Turbine Legend" Kit Plane Crash. On November 19, 2005, a single engine "Turbine Legend" kit plane operated by its owner crashed shortly after takeoff from a private airstrip in Tucson, Arizona, killing both the owner/pilot and a passenger. Witnesses report that the aircraft left the narrow runway during the takeoff roll and although the pilot managed to get the plane airborne, it rolled to the left and crashed.

Lieff Cabraser investigated the liability of the pilot and others, including the manufacturer of the kit and the operator of the airport from which the

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- plane took off. The runway was 16 feet narrower than the minimum width recommended by the Federal Aviation Administration. Lieff Cabraser represented the widow of the passenger, and the case was settled on favorable, confidential terms.
- 27. **Manhattan Tourist Helicopter Crash**. On June 14, 2005, a Bell 206 helicopter operated by Helicopter Flight Services, Inc. fell into the East River shortly after taking off for a tourist flight over New York City. The pilot and six passengers were immersed upside-down in the water as the helicopter overturned. Lieff Cabraser represented a passenger on the helicopter and the case was settled on favorable, confidential terms.
- 28. **U.S. Army Blackhawk Helicopter Tower Collision**. Lieff Cabraser represented the family of a pilot who died in the November 29, 2004 crash of a U.S. Army Black Hawk Helicopter. The Black Hawk was flying during the early morning hours at an altitude of approximately 500 feet when it hit cables supporting a 1,700 foot-tall television tower, and subsequently crashed 30 miles south of Waco, Texas, killing both pilots and five passengers, all in active Army service. The tower warning lights required by government regulations were inoperative. The case was resolved through a successful, confidential settlement.
- 29. Air Algerie Boeing 737 Crash. Together with French co-counsel, Lieff Cabraser represented the families of several passengers who died in the March 6, 2003 crash of a Boeing 737 airplane operated by Air Algerie. The aircraft crashed soon after takeoff from the Algerian city of Tamanrasset, after one of the engines failed. All but one of the 97 passengers were killed, along with six crew members. The families represented by Lieff Cabraser obtained economic recoveries in a settlement of the case.
- 30. In re Baycol Products Litigation, MDL No. 1431 (D. Minn.). Baycol was one of a group of drugs called statins, intended to reduce cholesterol. In August 2001, Bayer A.G. and Bayer Corporation, the manufacturers of Baycol, withdrew the drug from the worldwide market based upon reports that Baycol was associated with serious side effects and linked to the deaths of over 100 patients worldwide. In the federal multidistrict litigation, Lieff Cabraser served as a member of the Plaintiffs' Steering Committee (PSC) and the Executive Committee of the PSC. In addition, Lieff Cabraser represented approximately 200 Baycol patients who suffered injuries or family members of patients who died allegedly as a result of ingesting Baycol. In these cases, our clients reached confidential favorable settlements with Bayer.
- 31. **United Airlines Boeing 747 Disaster**. Lieff Cabraser served as Plaintiffs' Liaison Counsel on behalf of the passengers and families of passengers injured and killed in the United Airlines Boeing 747 cargo door catastrophe near Honolulu, Hawaii on February 24, 1989. Lieff

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Cabraser organized the litigation of the case, which included claims brought against United Airlines and The Boeing Company.

Among other work, Lieff Cabraser developed a statistical system for settling the passengers' and families' damages claims with certain defendants, and coordinated the prosecution of successful individual damages trials for wrongful death against the non-settling defendants.

32. Aeroflot-Russian International Airlines Airbus Disaster. Lieff Cabraser represented the families of passengers who were on Aeroflot-Russian International Airlines Flight SU593 that crashed in Siberia on March 23, 1994. The plane was en route from Moscow to Hong Kong. All passengers on board died.

According to a transcript of the cockpit voice recorder, the pilot's two children entered the cockpit during the flight and took turns flying the plane. The autopilot apparently was inadvertently turned off during this time, and the pilot was unable to remove his son from the captain's seat in time to avert the plane's fatal dive.

Lieff Cabraser, alongside French co-counsel, filed suit in France, where Airbus, the plane's manufacturer, was headquartered. The families Lieff Cabraser represented obtained substantial economic recoveries in settlement of the action.

33. **Lockheed F-104 Fighter Crashes**. In the late 1960s and extending into the early 1970s, the United States sold F-104 Star Fighter jets to the German Air Force that were manufactured by Lockheed Aircraft Corporation in California. Although the F-104 Star Fighter was designed for high-altitude fighter combat, it was used in Germany and other European countries for low-level bombing and attack training missions.

Consequently, the aircraft had an extremely high crash rate, with over 300 pilots killed. Commencing in 1971, the law firm of Belli Ashe Ellison Choulos & Lieff filed hundreds of lawsuits for wrongful death and other claims on behalf of the widows and surviving children of the pilots.

Robert Lieff continued to prosecute the cases after the formation of our firm. In 1974, the lawsuits were settled with Lockheed on terms favorable to the plaintiffs. This litigation helped establish the principle that citizens of foreign countries could assert claims in United States courts and obtain substantial recoveries against an American manufacturer, based upon airplane accidents or crashes occurring outside the United States.

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### II. Securities and Financial Fraud

#### A. Current Cases

- 1. BlackRock Global Allocation Fund, Inc., et al. v. Valeant Pharmaceuticals International, Inc., et al., No. 3:18-cv-00343 (D.N.J.); Senzar Healthcare Master Fund, LP, et al. v. Valeant Pharmaceuticals International, Inc., et al., No. 3:18-cv-02286-MAS-LHG (D.N.J.) (collectively, "Valeant"). Lieff Cabraser represents certain funds and accounts of institutional investors BlackRock and Senzar in these recently-filed individual actions against Valeant Pharmaceuticals International, Inc. and certain of Valeant's senior officers and directors for violations of the Securities Act of 1933 and/or the Securities Exchange Act of 1934 arising from Defendants' scheme to generate revenues through massive price increases for Valeant-branded drugs while concealing from investors the truth regarding the Company's business operations, financial results, and other material facts. In September 2018, the court denied defendants' partial motions to dismiss in both action, and BlackRock plaintiffs filed an amended complaint.
- 2. In re Wells Fargo & Company Shareholder Derivative *Litigation*, No. 3:16-cv-05541 (N.D. Cal.). Lieff Cabraser was appointed as Co-Lead Counsel for Lead Plaintiffs FPPACO and The City of Birmingham Retirement and Relief System in this consolidated shareholder derivative action alleging that, since at least 2011, the Board and executive management of Wells Fargo knew or consciously disregarded that Wells Fargo employees were illicitly creating millions of deposit and credit card accounts for their customers, without those customers' consent, as part of Wells Fargo's intense effort to drive up its "cross-selling" statistics. Revelations regarding the scheme, and the defendants' knowledge or blatant disregard of it, have deeply damaged Wells Fargo's reputation and cost it millions of dollars in regulatory fines and lost business. In May and October 2017, the court largely denied Wells Fargo's and the Director and Officer Defendants' motions to dismiss Lead Plaintiffs' amended complaint. Discovery is ongoing.
- 3. Houston Municipal Employees Pension System v. Bofl Holding, Inc., et al., No. 3:15-cv-02324-GPC-KSC (S.D. Cal.). Lieff Cabraser serves as lead counsel for court-appointed lead plaintiff, Houston Municipal Employees Pension System ("HMEPS"), in this securities fraud class action against Bofl Holding, Inc. and certain of its senior officers. The action charges defendants with issuing materially false and misleading statements and failing to disclose material adverse facts about Bofl's business, operations, and performance The action charges defendants with issuing materially false and misleading statements and failing to disclose material adverse facts about Bofl's business, operations, and performance. On March 21, 2018, the court

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- issued an order and entered judgment dismissing the third amended complaint, which HMEPS appealed to the Ninth Circuit. Parties are currently briefing the appeal.
- 4. Lord Abbett Affiliated Fund, Inc., et al. v. Navient Corporation, et al., No. 1:16-cv-112-GMS (D. Del.). Lieff Cabraser served as lead counsel for the court-appointed lead plaintiff, a group of Lord Abbett funds, in this securities fraud class action arising under the PSLRA against Navient, certain of Navient's senior officers and directors, and the underwriters of certain of Navient's public debt offerings. The consolidated actions allege that defendants misrepresented or failed to disclose that (i) Navient's loan-servicing practices violated applicable federal regulations and jeopardized a contingency collection contract with the U.S. Department of Education; (ii) the Company had an increased number of higher-risk borrowers who were not repaying their loans and Navient failed to properly account for this increased risk of loss in its reported financial results; (iii) Navient's operating structure was inefficient as a result of its spin-off from Sallie Mae; and (iv) a significant portion of the Company's low-rate credit facilities were at risk of being reduced or eliminated. In January 2019, the case was allowed to proceed past defendants' motion to dismiss, and is now in discovery.
- 5. Normand, et al. v. Bank of New York Mellon Corp., No. 1:16-cv-00212-LAK-JLC (S.D.N.Y.). Lieff Cabraser, together with co-counsel, represents a proposed class of holders of American Depositary Receipts ("ADRs") (negotiable U.S. securities representing ownership of publicly traded shares in a non-U.S. corporation), for which BNY Mellon served as the depositary bank. Plaintiffs allege that under the contractual agreements underlying the ADRs, BNY Mellon was responsible for "promptly" converting cash distributions (such as dividends) received for ADRs into U.S. dollars for the benefit of ADR holders, and was required to act without bad faith. Plaintiffs allege that, instead, when doing the ADR cash conversions, BNY Mellon used the range of exchange rates available during the trading session in a manner that was unfavorable for ADR holders, and in doing so, improperly skimmed profits from distributions owed and payable to the class. In September 2016, the court denied, in substantial part, defendant's motion to dismiss, and plaintiffs subsequently filed a consolidated amended complaint. The case proceeded through substantial discovery and full briefing on class certification before the parties reached a proposed classwide settlement in late 2018.
- 6. In re Facebook, Inc. IPO Securities And Derivative Litigation, MDL No. 12-2389 (RWS) (S.D.N.Y.). Lieff Cabraser is counsel for two individual investor class representatives in the securities class litigation arising under the Private Securities Litigation Reform Act of 1995 (the

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"PSLRA") concerning Facebook's initial public offering in May 2012. In February 2018, the court granted plaintiffs' motion for preliminary approval of a settlement of the litigation. A motion for final approval of the settlement is now pending before the court.

#### B. Successes

1. Arkansas Teacher Retirement System v. State Street Corp.,
Case No. 11cv10230 (MLW) (D. Mass.). Lieff Cabraser served as cocounsel for a nationwide class of institutional custodial clients of State
Street, including public pension funds and ERISA plans, who allege that
defendants deceptively charged class members on FX trades done in
connection with the purchase and sale of foreign securities. The
complaint charged that between 1999 and 2009, State Street consistently
incorporated hidden and excessive mark-ups or mark-downs relative to
the actual FX rates applicable at the times of the trades conducted for
State Street's custodial FX clients.

State Street allegedly kept for itself, as an unlawful profit, the "spread" between the prices for foreign currency available to it in the FX marketplace and the rates it charged to its customers. Plaintiffs sought recovery under Massachusetts' Consumer Protection Law and common law tort and contract theories. On November 2, 2016, U.S. District Senior Judge Mark L. Wolf granted final approval to a \$300 million settlement of the litigation.

- 2. Janus Overseas Fund, et al. v. Petróleo Brasileiro S.A. -Petrobras, et al., No. 1:15-cv-10086-JSR (S.D.N.Y.); Dodge & Cox Global Stock Fund, et al. v. Petróleo Brasileiro S.A. -Petrobras, et al., No. 1:15-cv-10111-JSR (S.D.N.Y.). Lieff Cabraser represented certain Janus and Dodge & Cox funds and investment managers in these individual actions against Petróleo Brasileiro S.A. – Petrobras ("Petrobras"), related Petrobras entities, and certain of Petrobras's senior officers and directors for misrepresenting and failing to disclose a pervasive and long-running scheme of bribery and corruption at Petrobras. As a result of the misconduct, Petrobras overstated the value of its assets by billions of dollars and materially misstated its financial results during the relevant period. The actions charged defendants with violations of the Securities Act of 1933 (the "Securities Act") and/or the Securities Exchange Act of 1934 ("Exchange Act"). The action recently settled on confidential terms favorable to plaintiffs.
- 3. The Regents of the University of California v. American International Group, No. 1:14-cv-01270-LTS-DCF (S.D.N.Y.). Lieff Cabraser represented The Regents of the University of California in this individual action against American International Group, Inc. ("AIG") and certain of its officers and directors for misrepresenting and omitting

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- material information about AIG's financial condition and the extent of its exposure to the subprime mortgage market. The complaint charged defendants with violations of the Exchange Act, as well as common law fraud and unjust enrichment. The litigation settled in 2015.
- 4. **Biotechnology Value Fund, L.P. v. Celera Corp.**, 3:13-cv-03248-WHA (N.D. Cal.). Lieff Cabraser represented a group of affiliated funds investing in biotechnology companies in this individual action arising from misconduct in connection with Quest Diagnostics Inc.'s 2011 acquisition of Celera Corporation. Celera, Celera's individual directors, and Credit Suisse were charged with violations of Sections 14(e) and 20(a) of the Exchange Act and breach of fiduciary duty. In February 2014, the Court denied in large part defendants' motion to dismiss the second amended complaint. In September 2014, the plaintiffs settled with Credit Suisse for a confidential amount. After the completion of fact and expert discovery, and prior to a ruling on defendants' motion for summary judgment, the plaintiffs settled with the Celera defendants in January 2015 for a confidential amount.
- 5. The Charles Schwab Corp. v. BNP Paribas Sec. Corp., No. CGC-10-501610 (Cal. Super. Ct.); The Charles Schwab Corp. v. J.P. Morgan Sec., Inc., No. CGC-10-503206 (Cal. Super. Ct.); The Charles Schwab Corp. v. J.P. Morgan Sec., Inc., No. CGC-10-503207 (Cal. Super. Ct.); and *The Charles Schwab Corp. v. Banc of America* Sec. LLC, No. CGC-10-501151 (Cal. Super. Ct.). Lieff Cabraser, along with co-counsel, represents Charles Schwab in four separate individual securities actions against certain issuers and sellers of mortgage-backed securities ("MBS") for materially misrepresenting the quality of the loans underlying the securities in violation of California state law. Charles Schwab Bank, N.A., a subsidiary of Charles Schwab, suffered significant damages by purchasing the securities in reliance on defendants' misstatements. The court largely overruled defendants' demurrers in January 2012. Settlements have been reached with dozens of defendants for confidential amounts.
- 6. Honeywell International Inc. Defined Contribution Plans
  Master Savings Trust. v. Merck & Co., No. 14-cv 2523-SRC-CLW
  (S.D.N.Y.); Janus Balanced Fund v. Merck & Co., No. 14-cv-3019SRC-CLW (S.D.N.Y.); Lord Abbett Affiliated Fund v. Merck & Co.,
  No. 14-cv-2027-SRC-CLW (S.D.N.Y.); Nuveen Dividend Value Fund
  (f/k/a Nuveen Equity Income Fund), on its own behalf and as
  successor in interest to Nuveen Large Cap Value Fund (f/k/a
  First American Large Cap Value Fund) v. Merck & Co., No. 14cv-1709-SRC-CLW (S.D.N.Y.). Lieff Cabraser represented certain
  Nuveen, Lord Abbett, and Janus funds, and two Honeywell International
  trusts in these individual actions against Merck & Co., Inc. ("Merck") and

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certain of its senior officers and directors for misrepresenting the cardiovascular safety profile and commercial viability of Merck's purported "blockbuster" drug, VIOXX. The actions charged defendants with violations of the Exchange Act. The action settled on confidential terms.

- 7. In re First Capital Holdings Corp. Financial Products
  Securities Litigation, MDL No. 901 (C.D. Cal.). Lieff Cabraser served
  as Co-Lead Counsel in a class action brought to recover damages
  sustained by policyholders of First Capital Life Insurance Company and
  Fidelity Bankers Life Insurance Company policyholders resulting from the
  insurance companies' allegedly fraudulent or reckless investment and
  financial practices, and the manipulation of the companies' financial
  statements. This policyholder settlement generated over \$1 billion in
  restored life insurance policies. The settlement was approved by both
  federal and state courts in parallel proceedings and then affirmed by the
  Ninth Circuit on appeal.
- 8. In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litigation, MDL 2335 (S.D. N.Y.). Lieff Cabraser served as co-lead class counsel for a proposed nationwide class of institutional custodial customers of The Bank of New York Mellon Corporation ("BNY Mellon"). The litigation stemmed from alleged deceptive overcharges imposed by BNY Mellon on foreign currency exchanges (FX) that were done in connection with custodial customers' purchases or sales of foreign securities. Plaintiffs alleged that for more than a decade, BNY Mellon consistently charged its custodial customers hidden and excessive mark-ups on exchange rates for FX trades done pursuant to "standing instructions," using "range of the day" pricing, rather than the rates readily available when the trades were actually executed.

In addition to serving as co-lead counsel for a nationwide class of affected custodial customers, which included public pension funds, ERISA funds, and other public and private institutions, Lieff Cabraser was one of three firms on Plaintiffs' Executive Committee tasked with managing all activities on the plaintiffs' side in the multidistrict consolidated litigation. Prior to the cases being transferred and consolidated in the Southern District of New York, Lieff Cabraser defeated, in its entirety, BNY Mellon's motion to dismiss claims brought on behalf of ERISA and other funds under California's and New York's consumer protection laws.

The firm's clients and class representatives in the consolidated litigation included the Ohio Police & Fire Pension Fund, the School Employees Retirement System of Ohio, and the International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund.

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In March 2015, a global resolution of the private and governmental enforcement actions against BNY Mellon was announced, in which \$504 million will be paid back to BNY Mellon customers (\$335 million of which is directly attributable to the class litigation).

On September 24, 2015, U.S. District Court Judge Lewis A. Kaplan granted final approval to the settlement. Commenting on the work of plaintiffs' counsel, Judge Kaplan stated, "This really was an extraordinary case in which plaintiff's counsel performed, at no small risk, an extraordinary service. They did a wonderful job in this case, and I've seen a lot of wonderful lawyers over the years. This was a great performance. They were fought tooth and nail at every step of the road. It undoubtedly vastly expanded the costs of the case, but it's an adversary system, and sometimes you meet adversaries who are heavily armed and well financed, and if you're going to win, you have to fight them and it costs money. This was an outrageous wrong committed by the Bank of New York Mellon, and plaintiffs' counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job."

9. In re Broadcom Corporation Derivative Litigation, No. CV 06-3252-R (C.D. Cal.). Lieff Cabraser served as Court-appointed Lead Counsel in a shareholders derivative action arising out of stock options backdating in Broadcom securities. The complaint alleged that defendants intentionally manipulated their stock option grant dates between 1998 and 2003 at the expense of Broadcom and Broadcom shareholders. By making it seem as if stock option grants occurred on dates when Broadcom stock was trading at a comparatively low per share price, stock option grant recipients were able to exercise their stock option grants at exercise prices that were lower than the fair market value of Broadcom stock on the day the options were actually granted. In December 2009, U.S. District Judge Manuel L. Real granted final approval to a partial settlement in which Broadcom Corporation's insurance carriers paid \$118 million to Broadcom. The settlement released certain individual director and officer defendants covered by Broadcom's directors' and officers' policy.

Plaintiffs' counsel continued to pursue claims against William J. Ruehle, Broadcom's former Chief Financial Officer, Henry T. Nicholas, III, Broadcom's co-founder and former Chief Executive Officer, and Henry Samueli, Broadcom's co-founder and former Chief Technology Officer. In May 2011, the Court approved a settlement with these defendants. The settlement provided substantial consideration to Broadcom, consisting of the receipt of cash and cancelled options from Dr. Nicholas and Dr. Samueli totaling \$53 million in value, plus the release of a claim by Mr. Ruehle, which sought damages in excess of \$26 million.

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Coupled with the earlier \$118 million partial settlement, the total recovery in the derivative action was \$197 million, which constitutes the third-largest settlement ever in a derivative action involving stock options backdating.

10. In re Scorpion Technologies Securities Litigation I, No. C-93-20333-EAI (N.D. Cal.); *Dietrich v. Bauer*, No. C-95-7051-RWS (S.D.N.Y.); Claghorn v. Edsaco, No. 98-3039-SI (N.D. Cal.). Lieff Cabraser served as Lead Counsel in class action suits arising out of an alleged fraudulent scheme by Scorpion Technologies, Inc., certain of its officers, accountants, underwriters and business affiliates to inflate the company's earnings through reporting fictitious sales. In Scorpion I, the Court found plaintiffs had presented sufficient evidence of liability under Federal securities acts against the accounting firm Grant Thornton for the case to proceed to trial. In re Scorpion Techs., 1996 U.S. Dist. LEXIS 22294 (N.D. Cal. Mar. 27, 1996). In 1988, the Court approved a \$5.5 million settlement with Grant Thornton. In 2000, the Court approved a \$950,000 settlement with Credit Suisse First Boston Corporation. In April 2002, a federal jury in San Francisco, California returned a \$170.7 million verdict against Edsaco Ltd. The jury found that Edsaco aided Scorpion in setting up phony European companies as part of a scheme in which Scorpion reported fictitious sales of its software to these companies, thereby inflating its earnings. Included in the jury verdict, one of the largest verdicts in the U.S. in 2002, was \$165 million in punitive damages. Richard M. Heimann conducted the trial for plaintiffs.

On June 14, 2002, U.S. District Court Judge Susan Illston commented on Lieff Cabraser's representation: "[C]ounsel for the plaintiffs did a very good job in a very tough situation of achieving an excellent recovery for the class here. You were opposed by extremely capable lawyers. It was an uphill battle. There were some complicated questions, and then there was the tricky issue of actually collecting anything in the end. I think based on the efforts that were made here that it was an excellent result for the class. . . [T]he recovery that was achieved for the class in this second trial is remarkable, almost a hundred percent."

11. In re Diamond Foods, Inc., Securities Litigation, No. 11-cv-05386-WHA (N.D. Cal.). Lieff Cabraser served as local counsel for Lead Plaintiff Public Employees' Retirement System of Mississippi ("MissPERS") and the class of investors it represented in this securities class action lawsuit arising under the PSLRA. The complaint charged Diamond Foods and certain senior executives of the company with violations of the Exchange Act for knowingly understating the cost of walnuts Diamond Foods purchased in order to inflate the price of Diamond Foods' common stock. In January 2014, the Court granted final approval of a settlement of the action requiring Diamond Foods to pay \$11

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- million in cash and issue 4.45 million common shares worth \$116.3 million on the date of final approval based on the stock's closing price on that date.
- 12. Merrill Lynch Fundamental Growth Fund and Merrill Lynch Global Value Fund v. McKesson HBOC, No. 02-405792 (Cal. Supr. Ct.). Lieff Cabraser served as counsel for two Merrill Lynch sponsored mutual funds in a private lawsuit alleging that a massive accounting fraud occurred at HBOC & Company ("HBOC") before and following its 1999 acquisition by McKesson Corporation ("McKesson"). The funds charged that defendants, including the former CFO of McKesson HBOC, the name McKesson adopted after acquiring HBOC, artificially inflated the price of securities in McKesson HBOC, through misrepresentations and omissions concerning the financial condition of HBOC, resulting in approximately \$135 million in losses for plaintiffs. In a significant discovery ruling in 2004, the California Court of Appeal held that defendants waived the attorney-client and work product privileges in regard to an audit committee report and interview memoranda prepared in anticipation of shareholder lawsuits by disclosing the information to the U.S. Attorney and SEC. McKesson HBOC, Inc. v. Supr. Court, 115 Cal. App. 4th 1229 (2004). Lieff Cabraser's clients recovered approximately \$145 million, representing nearly 104% of damages suffered by the funds. This amount was approximately \$115-120 million more than the Merrill Lynch funds would have recovered had they participated in the federal class action settlement.
- 13. Informix/Illustra Securities Litigation, No. C-97-1289-CRB (N.D. Cal.). Lieff Cabraser represented Richard H. Williams, the former Chief Executive Officer and President of Illustra Information Technologies, Inc. ("Illustra"), and a class of Illustra shareholders in a class action suit on behalf of all former Illustra securities holders who tendered their Illustra preferred or common stock, stock warrants or stock options in exchange for securities of Informix Corporation ("Informix") in connection with Informix's 1996 purchase of Illustra. Pursuant to that acquisition, Illustra stockholders received Informix securities representing approximately 10% of the value of the combined company. The complaint alleged claims for common law fraud and violations of Federal securities law arising out of the acquisition. In October 1999, U.S. District Judge Charles E. Breyer approved a global settlement of the litigation for \$136 million, constituting one of the largest settlements ever involving a high technology company alleged to have committed securities fraud. Our clients, the Illustra shareholders, received approximately 30% of the net settlement fund.
- 14. In re Qwest Communications International Securities and "ERISA" Litigation (No. 11), No. 06-cv-17880-REB-PAC (MDL

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No. 1788) (D. Colo.). Lieff Cabraser represented the New York State Common Retirement Fund, Fire and Police Pension Association of Colorado, Denver Employees' Retirement Plan, San Francisco Employees' Retirement System, and over thirty BlackRock managed mutual funds in individual securities fraud actions ("opt out" cases) against Qwest Communications International, Inc., Philip F. Anschutz, former cochairman of the Qwest board of directors, and other senior executives at Qwest. In each action, the plaintiffs charged defendants with massively overstating Qwest's publicly-reported growth, revenues, earnings, and earnings per share from 1999 through 2002. The cases were filed in the wake of a \$400 million settlement of a securities fraud class action against Qwest that was announced in early 2006. The cases brought by Lieff Cabraser's clients settled in October 2007 for recoveries totaling more than \$85 million, or more than 13 times what the clients would have received had they remained in the class.

- 15. In re AXA Rosenberg Investor Litigation, No. CV 11-00536 JSW (N.D. Cal). Lieff Cabraser served as Co-Lead Counsel for a class of institutional investors, ERISA-covered plans, and other investors in quantitative funds managed by AXA Rosenberg Group, LLC and its affiliates ("AXA"). Plaintiffs alleged that AXA breached its fiduciary duties and violated ERISA by failing to discover a material computer error that existed in its system for years, and then failing to remedy it for months after its eventual discovery in 2009. By the time AXA disclosed the error in 2010, investors had suffered losses and paid substantial investment management fees to AXA. After briefing motions to dismiss and working with experts to analyze data obtained from AXA relating to the impact of the error, Lieff Cabraser reached a \$65 million settlement with AXA that the Court approved in April 2012.
- 16. In re National Century Financial Enterprises, Inc. Investment Litigation, MDL No. 1565 (S.D. Ohio). Lieff Cabraser served as outside counsel for the New York City Employees' Retirement System, Teachers' Retirement System for the City of New York, New York City Police Pension Fund, and New York City Fire Department Pension Fund in this multidistrict litigation arising from fraud in connection with NCFE's issuance of notes backed by healthcare receivables. The New York City Pension Funds recovered more than 70% of their \$89 million in losses, primarily through settlements achieved in the federal litigation and another NCFE-matter brought on their behalf by Lieff Cabraser.
- 17. BlackRock Global Allocation Fund v. Tyco International Ltd., et al., No. 2:08-cv-519 (D. N.J.); Nuveen Balanced Municipal and Stock Fund v. Tyco International Ltd., et al., No. 2:08-cv-518 (D. N.J.). Lieff Cabraser represented multiple funds of the investment firms BlackRock Inc. and Nuveen Asset Management in separate, direct

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securities fraud actions against Tyco International Ltd., Tyco Electronics Ltd., Covidien Ltd, Covidien (U.S.), L. Dennis Kozlowski, Mark H. Swartz, and Frank E. Walsh, Jr. Plaintiffs alleged that defendants engaged in a massive criminal enterprise that combined the theft of corporate assets with fraudulent accounting entries that concealed Tyco's financial condition from investors. As a result, plaintiffs purchased Tyco common stock and other Tyco securities at artificially inflated prices and suffered losses upon disclosures revealing Tyco's true financial condition and defendants' misconduct. In 2009, the parties settled the claims against the corporate defendants (Tyco International Ltd., Tyco Electronics Ltd., Covidien Ltd., and Covidien (U.S.). The litigation concluded in 2010. The total settlement proceeds paid by all defendants were in excess of \$57 million.

- 18. Kofuku Bank and Namihaya Bank v. Republic New York Securities Corp., No. 00 CIV 3298 (S.D.N.Y.); and Kita Hyogo Shinyo-Kumiai v. Republic New York Securities Corp., No. 00 CIV 4114 (S.D.N.Y.). Lieff Cabraser represented Kofuku Bank, Namihaya Bank and Kita Hyogo Shinyo-Kumiai (a credit union) in individual lawsuits against, among others, Martin A. Armstrong and HSBC, Inc., the successor-ininterest to Republic New York Corporation, Republic New York Bank and Republic New York Securities Corporation for alleged violations of federal securities and racketeering laws. Through a group of interconnected companies owned and controlled by Armstrong—the Princeton Companies—Armstrong and the Republic Companies promoted and sold promissory notes, known as the "Princeton Notes," to more than eighty of the largest companies and financial institutions in Japan. Lieff Cabraser's lawsuits, as well as the lawsuits of dozens of other Princeton Note investors, alleged that the Princeton and Republic Companies made fraudulent misrepresentations and non-disclosures in connection with the promotion and sale of Princeton Notes, and that investors' monies were commingled and misused to the benefit of Armstrong, the Princeton Companies and the Republic Companies. In December 2001, the claims of our clients and those of the other Princeton Note investors were settled. As part of the settlement, our clients recovered more than \$50 million, which represented 100% of the value of their principal investments less money they received in interest or other payments.
- 19. Alaska State Department of Revenue v. America Online,
  No. 1JU-04-503 (Alaska Supr. Ct.). In December 2006, a \$50 million
  settlement was reached in a securities fraud action brought by the Alaska
  State Department of Revenue, Alaska State Pension Investment Board
  and Alaska Permanent Fund Corporation against defendants America
  Online, Inc. ("AOL"), Time Warner Inc. (formerly known as AOL Time
  Warner ("AOLTW")), Historic TW Inc. When the action was filed, the
  Alaska Attorney General estimated total losses at \$70 million. The

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recovery on behalf of Alaska was approximately 50 times what the state would have received as a member of the class in the federal securities class action settlement. The lawsuit, filed in 2004 in Alaska State Court, alleged that defendants misrepresented advertising revenues and growth of AOL and AOLTW along with the number of AOL subscribers, which artificially inflated the stock price of AOL and AOLTW to the detriment of Alaska State funds.

The Alaska Department of Law retained Lieff Cabraser to lead the litigation efforts under its direction. "We appreciate the diligence and expertise of our counsel in achieving an outstanding resolution of the case," said Mark Morones, spokesperson for the Department of Law, following announcement of the settlement.

20. Allocco v. Gardner, No. GIC 806450 (Cal. Supr. Ct.). Lieff Cabraser represented Lawrence L. Garlick, the co-founder and former Chief Executive Officer of Remedy Corporation and 24 other former senior executives and directors of Remedy Corporation in a private (non-class) securities fraud lawsuit against Stephen P. Gardner, the former Chief Executive Officer of Peregrine Systems, Inc., John J. Moores, Peregrine's former Chairman of the Board, Matthew C. Gless, Peregrine's former Chief Financial Officer, Peregrine's accounting firm Arthur Andersen and certain entities that entered into fraudulent transactions with Peregrine. The lawsuit, filed in California state court, arose out of Peregrine's August 2001 acquisition of Remedy. Plaintiffs charged that they were induced to exchange their Remedy stock for Peregrine stock on the basis of false and misleading representations made by defendants. Within months of the Remedy acquisition, Peregrine began to reveal to the public that it had grossly overstated its revenue during the years 2000-2002, and eventually restated more than \$500 million in revenues.

After successfully defeating demurrers brought by defendants, including third parties who were customers of Peregrine who aided and abetted Peregrine's accounting fraud under California common law, plaintiffs reached a series of settlements. The settling defendants included Arthur Andersen, all of the director defendants, three officer defendants and the third party customer defendants KPMG, British Telecom, Fujitsu, Software Spectrum and Bindview. The total amount received in settlements was approximately \$45 million.

21. *In re Cablevision Systems Corp. Shareholder Derivative Litigation*, No. 06-cv-4130-DGT-AKT (E.D.N.Y.). Lieff Cabraser served as Co-Lead Counsel in a shareholders' derivative action against the board of directors and numerous officers of Cablevision. The suit alleged that defendants intentionally manipulated stock option grant dates to Cablevision employees between 1997 and 2002 in order to enrich certain

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officer and director defendants at the expense of Cablevision and Cablevision shareholders. According to the complaint, Defendants made it appear as if stock options were granted earlier than they actually were in order to maximize the value of the grants. In September 2008, the Court granted final approval to a \$34.4 million settlement of the action. Over \$24 million of the settlement was contributed directly by individual defendants who either received backdated options or participated in the backdating activity.

- 22. In re Media Vision Technology Securities Litigation, No. CV-94-1015 (N.D. Cal.). Lieff Cabraser served as Co-Lead Counsel in a class action lawsuit which alleged that certain Media Vision's officers, outside directors, accountants and underwriters engaged in a fraudulent scheme to inflate the company's earnings and issued false and misleading public statements about the company's finances, earnings and profits. By 1998, the Court had approved several partial settlements with many of Media Vision's officers and directors, accountants and underwriters which totaled \$31 million. The settlement proceeds have been distributed to eligible class members. The evidence that Lieff Cabraser developed in the civil case led prosecutors to commence an investigation and ultimately file criminal charges against Media Vision's former Chief Executive Officer and Chief Financial Officer. The civil action against Media Vision's CEO and CFO was stayed pending the criminal proceedings against them. In the criminal proceedings, the CEO pled guilty on several counts, and the CFO was convicted at trial. In October 2003, the Court granted Plaintiffs' motions for summary judgment and entered a judgment in favor of the class against the two defendants in the amount of \$188 million.
- 23. In re California Micro Devices Securities Litigation, No. C-94-2817-VRW (N.D. Cal.). Lieff Cabraser served as Liaison Counsel for the Colorado Public Employees' Retirement Association and the California State Teachers' Retirement System, and the class they represented. Prior to 2001, the Court approved \$19 million in settlements. In May 2001, the Court approved an additional settlement of \$12 million, which, combined with the earlier settlements, provided class members an almost complete return on their losses. The settlement with the company included multimillion dollar contributions by the former Chairman of the Board and Chief Executive Officer.

Commenting in 2001 on Lieff Cabraser's work in Cal Micro Devices, U.S. District Court Judge Vaughn R. Walker stated, "It is highly unusual for a class action in the securities area to recover anywhere close to the percentage of loss that has been recovered here, and counsel and the lead plaintiffs have done an admirable job in bringing about this most satisfactory conclusion of the litigation." One year later, in a related proceeding and in response to the statement that the class had received

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- nearly a 100% recovery, Judge Walker observed, "That's pretty remarkable. In these cases, 25 cents on the dollar is considered to be a magnificent recovery, and this is [almost] a hundred percent."
- 24. *In re Network Associates, Inc. Securities Litigation*, No. C-99-1729-WHA (N.D. Cal.). Following a competitive bidding process, the Court appointed Lieff Cabraser as Lead Counsel for the Lead Plaintiff and the class of investors. The complaint alleged that Network Associates improperly accounted for acquisitions in order to inflate its stock price. In May 2001, the Court granted approval to a \$30 million settlement.
  - In reviewing the *Network Associates* settlement, U.S. District Court Judge William H. Alsup observed, "[T]he class was well served at a good price by excellent counsel . . . We have class counsel who's one of the foremost law firms in the country in both securities law and class actions. And they have a very excellent reputation for the conduct of these kinds of cases . . ."
- 25. In re FPI/Agretech Securities Litigation, MDL No. 763 (D. Haw., Real, J.). Lieff Cabraser served as Lead Class Counsel for investors defrauded in a "Ponzi-like" limited partnership investment scheme. The Court approved \$15 million in partial, pretrial settlements. At trial, the jury returned a \$24 million verdict, which included \$10 million in punitive damages, against non-settling defendant Arthur Young & Co. for its knowing complicity and active and substantial assistance in the marketing and sale of the worthless limited partnership offerings. The Appellate Court affirmed the compensatory damages award and remanded the case for a retrial on punitive damages. In 1994, the Court approved a \$17 million settlement with Ernst & Young, the successor to Arthur Young & Co.
- 26. **Nguyen v. FundAmerica**, No. C-90-2090 MHP (N.D. Cal., Patel, J.), 1990 Fed. Sec. L. Rep. (CCH) ¶¶ 95,497, 95,498 (N.D. Cal. 1990). Lieff Cabraser served as Plaintiffs' Class Counsel in this securities/RICO/tort action seeking an injunction against alleged unfair "pyramid" marketing practices and compensation to participants. The District Court certified a nationwide class for injunctive relief and damages on a mandatory basis and enjoined fraudulent overseas transfers of assets. The Bankruptcy Court permitted class proof of claims. Lieff Cabraser obtained dual District Court and Bankruptcy Court approval of settlements distributing over \$13 million in FundAmerica assets to class members.
- 27. *In re Brooks Automation, Inc. Securities Litigation*, No. 06 CA 11068 (D. Mass.). Lieff Cabraser served as Court-Appointed Lead Counsel for Lead Plaintiff the Los Angeles County Employees Retirement Association and co-plaintiff Sacramento County Employees' Retirement System in a class action lawsuit on behalf of purchasers of Brooks

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Automation securities. Plaintiffs charged that Brooks Automation, its senior corporate officers and directors violated federal securities laws by backdating company stock options over a six-year period, and failed to disclose the scheme in publicly filed financial statements. Subsequent to Lieff Cabraser's filing of a consolidated amended complaint in this action, both the Securities and Exchange Commission and the United States Department of Justice filed complaints against the Company's former C.E.O., Robert Therrien, related to the same alleged practices. In October 2008, the Court approved a \$7.75 million settlement of the action.

- 28. In re A-Power Energy Generation Systems, Ltd. Securities Litigation, No. 2:11-ml-2302-GW- (CWx) (C.D. Cal.). Lieff Cabraser served as Court-appointed Lead Counsel for Lead Plaintiff in this securities class action that charged defendants with materially misrepresenting A-Power Energy Generation Systems, Ltd.'s financial results and business prospects in violation of the antifraud provisions of the Securities Exchange Act of 1934. The Court approved a \$3.675 million settlement in August 2013.
- 29. Bank of America-Merrill Lynch Merger Securities Cases. In two cases—DiNapoli, et al. v. Bank of America Corp., No. 10 CV 5563 (S.D. N.Y.) and Schwab S&P 500 Index Fund, et al. v. Bank of America Corp., et al., No. 11-cv- 07779 PKC (S.D. N.Y.). Lieff Cabraser sought recovery on a direct, non-class basis for losses that a number of public pension funds and mutual funds incurred as a result of Bank of America's alleged misrepresentations and concealment of material facts in connection with its acquisition of Merrill Lynch & Co., Inc. Lieff Cabraser represented the New York State Common Retirement Fund, the New York State Teachers' Retirement System, the Public Employees' Retirement Association of Colorado, and fourteen mutual funds managed by Charles Schwab Investment Management. Both cases settled in 2013 on confidential terms favorable for our clients.
- 30. Albert v. Alex. Brown Management Services; Baker v. Alex. Brown Management Services (Del. Ch. Ct.). In May 2004, on behalf of investors in two investment funds controlled, managed and operated by Deutsche Bank and advised by DC Investment Partners, Lieff Cabraser filed lawsuits for alleged fraudulent conduct that resulted in an aggregate loss of hundreds of millions of dollars. The suits named as defendants Deutsche Bank and its subsidiaries Alex. Brown Management Services and Deutsche Bank Securities, members of the funds' management committee, as well as DC Investments Partners and two of its principals. Among the plaintiff-investors were 70 high net worth individuals. In the fall of 2006, the cases settled by confidential agreement.

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# III. Employment Discrimination and Unfair Employment Practices

#### A. Current Cases

- 1. Kennicott v. Sandia National Laboratories, No. 17-cv-188 (D.N.M.). Lieff Cabraser represents female employees in a gender a discrimination class action lawsuit against Sandia National Laboratories, a major defense contractor for the United States Department of Energy. Sandia's research focuses on nuclear weapons and other security technologies with major facilities in California and New Mexico. The lawsuit alleges that Sandia discriminates against female employees with respect to compensation, promotion, and performance evaluation. Plaintiffs contend that Sandia has implemented its policies despite knowing of their discriminatory effect—and that when women complain of gender discrimination, Sandia retaliates against them. With its work shrouded in secrecy, the defense industry has not been held accountable for gender inequity and a hostile environment for women. This lawsuit seeks to change the policies and practices that perpetuate gender discrimination, as well as to compensate women whose careers have suffered because of this discrimination. The lawsuit alleges violations of Title VII of the Civil Rights Act of 1964 and the New Mexico Human Rights Act, and has received significant media coverage.
- Chen-Oster v. Goldman Sachs, No. 10-6950 (S.D.N.Y.). Lieff Cabraser serves as Co-Lead Counsel for plaintiffs in a gender discrimination class action lawsuit against Goldman Sachs alleging Goldman Sachs has engaged in systemic and pervasive discrimination against its female professional employees in violation of Title VII of the Civil Rights Act of 1964 and New York City Human Rights Law. The complaint charges that, among other things, Goldman Sachs pays its female professionals less than similarly situated males, disproportionately promotes men over equally or more qualified women, and offers better business opportunities and professional support to its male professionals. In 2012, the Court denied defendant's motion to strike class allegations.

On March 10, 2015, Magistrate Judge James C. Francis IV issued a recommendation against certifying the class. In April of 2017, District Court Judge Analisa Torres granted plaintiffs' motion to amend their complaint and add new representative plaintiffs, denied Goldman Sachs' motions to dismiss the new plaintiffs' claims, and ordered the parties to submit proposals by April 26, 2017, on a process for addressing Magistrate Judge Francis' March 2015 Report and Recommendation on class certification.

On March 30, 2018, Judge Torres issued an order certifying the plaintiffs' damages class under Federal Rule of Civil Procedure Rule 23(b)(3). Judge Torres certified plaintiffs' claims for both disparate impact and disparate

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treatment discrimination, relying on statistical evidence of discrimination in pay, promotions, and performance evaluations, as well as anecdotal evidence of Goldman's hostile work environment. In so ruling, the court also granted plaintiffs' motion to exclude portions of Goldman's expert evidence as unreliable, and denied all of Goldman's motions to exclude plaintiffs' expert evidence.

3. Moussouris v. Microsoft Corp., No. 15-cv-01483 (W.D. Wash.). Lieff Cabraser and co-counsel represent a former female Microsoft technical professional in a gender discrimination class action lawsuit on behalf of herself and all current and former female technical professionals employed by Microsoft in the U.S. since September 16, 2009. The complaint alleges that Microsoft has engaged in systemic and pervasive discrimination against female employees in technical and engineering roles with respect to performance evaluations, pay, promotions, and other terms and conditions of employment. The unchecked gender bias that pervades Microsoft's corporate culture has resulted in female technical professionals receiving less compensation than similar men, the promotion of men over equally or more qualified women, and less favorable performance evaluation of female technical professionals compared to male peers. Microsoft's continuing policy, pattern, and practice of sex discrimination against female technical employees, the complaint alleges, violates federal and state laws, including Title VII of the Civil Rights Act of 1964 and the Washington Law Against Discrimination.

Plaintiffs filed a motion for class certification on October 27, 2017, and subsequently filed a reply brief in support of the motion on February 9, 2018. The motion seeks certification of a class of female employees who worked in the Engineering or I/T Operations Professions and in stock levels 59-67 from September 16, 2012 to the present. In June 2018, the district court denied plaintiffs' motion for class certification. In July 2018, plaintiffs petitioned the court for permission to appeal that denial.

4. **Benedict v. Hewlett-Packard Company**, No. C13-0119 (N.D. Cal.). Lieff Cabraser represents former Hewlett-Packard ("HP") technical support employees who filed a nationwide class action lawsuit charging that HP failed to pay them and other former and current technical support employees for all overtime hours worked in violation of the federal Fair Labor Standards Act ("FLSA") and state law. The complaint charges that HP has a common practice of misclassifying its technical support workers as exempt and refusing to pay them overtime. On February 13, 2014, the Court granted plaintiffs' motion for conditional certification of a FSLA overtime action.

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5. **Kassman v. KPMG, LLP**, Case No. 11-03743 (S.D.N.Y.). Lieff Cabraser serves as Co-Lead Counsel for plaintiffs in a gender discrimination class and collective action lawsuit alleging that KPMG has engaged in systemic and pervasive discrimination against its female Client Service and Support Professionals in pay and promotion, discrimination based on pregnancy, and chronic failure to properly investigate and resolve complaints of discrimination and harassment. The complaint alleges violations of the Equal Pay Act, Title VII of the Civil Rights Act of 1964, the New York Executive Law § 296, and the New York City Administrative Code § 8-107. For purposes of the Equal Pay Act claim, plaintiffs represent a conditionally-certified collective of 1,100 female Client Service and Support Professionals who have opted in to the lawsuit.

On November 27, 2018, Plaintiffs filed a motion in U.S. District Court for the Southern District of New York seeking class certification in the long-running lawsuit challenging gender disparities in pay and promotion on behalf of approximately 10,000 female Advisory and Tax professionals. Plaintiffs also sought final certification of the Equal Pay Act collective on behalf of the approximately 1,100 opt-in plaintiffs.

On November 30, 2018, the Court declined to certify the class and decertified the Equal Pay Act collective. While the Court acknowledged KPMG's common pay and promotion policies and its gender disparities in pay and promotion, the Court held that the women challenging KPMG's pay and promotion policies cannot pursue their claims together. On December 14, 2018, Plaintiffs filed a Petition to Appeal the Denial of Class Certification under Rule 23(f) with the United States Court of Appeals for the Second Circuit. Plaintiffs are awaiting a decision from the Court of Appeals about whether to hear the appeal.

6. Strauch v. Computer Sciences Corporation, No. 2:14-cv-00956 (D. Conn.). In 2005, Computer Sciences Corporation ("CSC") settled for \$24 million a nationwide class and collective action lawsuit alleging that CSC misclassified thousands of its information technology support workers as exempt from overtime pay in violation of in violation of the federal Fair Labor Standards Act ("FLSA") and state law. Notwithstanding that settlement, a complaint filed on behalf of current and former CSC IT workers in 2014 by Lieff Cabraser and co-counsel alleges that CSC misclassifies many information technology support workers as exempt even though they perform primarily nonexempt work. Plaintiffs are current and former CSC System Administrators assigned the primary duty of the installation, maintenance, and/or support of computer software and/or hardware for CSC clients. On June 9, 2015, the Court granted plaintiffs' motion for conditional certification of a FLSA collective action. Since then, more than 1,000 System Administrators have opted into the case. On June 30, 2017, the Court granted plaintiffs motion for

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certification of Rule 23 classes for System Administrators in California and Connecticut.

On December 20, 2017, a jury in federal court in Connecticut ruled that Computer Sciences Corporation (CSC), which recently merged with Hewlett Packard Enterprise Services to form DXC Technology (NYSE: DXC), wrongly and willfully denied overtime pay to approximately 1,000 current and former technology support workers around the country. After deliberating over two days, the Connecticut jury unanimously rejected CSC's claim that its System Administrators in the "Associate Professional" and "Professional" job titles are exempt under federal, Connecticut and California law, ruling instead that the workers should have been classified as nonexempt and paid overtime. The jury found CSC's violations to be willful, triggering additional damages. The misclassifications were made despite the fact that, in 2005, CSC paid \$24 million to settle similar claims from a previous group of technical support workers. The case will next proceed to a damages phase, where the court will determine how much CSC owes each class member.

- 7. **Senne v. Major League Baseball**, No. 14-cv-00608 (N.D. Cal.). Lieff Cabraser represents current and former Minor League Baseball players employed under uniform player contracts in a class and collective action seeking unpaid overtime and minimum wages under the Fair Labor Standards Act and state laws. The complaint alleges that Major League Baseball ("MLB"), the MLB franchises, and other defendants paid minor league players a uniform monthly fixed salary that, in light of the hours worked, amounts to less than the minimum wage and an unlawful denial of overtime pay.
- 8. Jang v. E.I. Du Pont De Nemours & Co., No. 15-03719-NC (N.D. Cal.). Lieff Cabraser represents certain former DuPont employees in a breach of contract action alleging that DuPont unlawfully terminated employees' unvested stock options. DuPont's standard stock option award contract states that unvested options will continue to vest in accordance with their vesting schedule. In practice, however, DuPont unilaterally cancelled unvested stock options one year from employees' termination, regardless of whether the options had vested. The complaint was filed on August 15, 2015. DuPont filed a motion to dismiss the complaint, which was granted by United States Magistrate Judge Nathanael Cousins on November 19, 2015. Plaintiffs appealed the decision to the Ninth Circuit Court of Appeals, and oral argument was held on April 21, 2017. The Ninth Circuit has not yet issued a decision.

### B. Successes

1. **Butler v. Home Depot**, No. C94-4335 SI (N.D. Cal.). Lieff Cabraser and co-counsel represented a class of approximately 25,000 female

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employees and applicants for employment with Home Depot's West Coast Division who alleged gender discrimination in connection with hiring, promotions, pay, job assignment, and other terms and conditions of employment. The class was certified in January 1995. In January 1998, the Court approved a \$87.5 million settlement of the action that included comprehensive injunctive relief over the term of a five-year Consent Decree. Under the terms of the settlement, Home Depot modified its hiring, promotion, and compensation practices to ensure that interested and qualified women were hired for, and promoted to, sales and management positions.

On January 14, 1998, U.S. District Judge Susan IIIston commented that the settlement provides "a very significant monetary payment to the class members for which I think they should be grateful to their counsel. . . . Even more significant is the injunctive relief that's provided for . . ." By 2003, the injunctive relief had created thousands of new job opportunities in sales and management positions at Home Depot, generating the equivalent of over approximately \$100 million per year in wages for female employees.

In 2002, Judge Illston stated that the injunctive relief has been a "win/win... for everyone, because... the way the Decree has been implemented has been very successful and it is good for the company as well as the company's employees."

- 2. **Rosenburg v. IBM**, No. C 06-0430 PJH (N.D. Cal.). In July 2007, the Court granted final approval to a \$65 million settlement of a class action suit by current and former technical support workers for IBM seeking unpaid overtime. The settlement constitutes a record amount in litigation seeking overtime compensation for employees in the computer industry. Plaintiffs alleged that IBM illegally misclassified its employees who install or maintain computer hardware or software as "exempt" from the overtime pay requirements of federal and state labor laws.
- 3. Satchell v. FedEx Express, No. C 03-2659 SI; C 03-2878 SI (N.D. Cal.). In 2007, the Court granted final approval to a \$54.9 million settlement of the race discrimination class action lawsuit by African American and Latino employees of FedEx Express. The settlement requires FedEx to reform its promotion, discipline, and pay practices. Under the settlement, FedEx will implement multiple steps to promote equal employment opportunities, including making its performance evaluation process less discretionary, discarding use of the "Basic Skills Test" as a prerequisite to promotion into certain desirable positions, and changing employment policies to demonstrate that its revised practices do not continue to foster racial discrimination. The settlement, covering 20,000 hourly employees and operations managers who have worked in

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- the western region of FedEx Express since October 1999, was approved by the Court in August 2007.
- 4. Gonzalez v. Abercrombie & Fitch Stores, No. C03-2817 SI (N.D. Cal.). In April 2005, the Court approved a settlement, valued at approximately \$50 million, which requires the retail clothing giant Abercrombie & Fitch to provide monetary benefits of \$40 million to the class of Latino, African American, Asian American and female applicants and employees who charged the company with discrimination. The settlement included a six-year period of injunctive relief requiring the company to institute a wide range of policies and programs to promote diversity among its workforce and to prevent discrimination based on race or gender. Lieff Cabraser served as Lead Class Counsel and prosecuted the case with a number of co-counsel firms, including the Mexican American Legal Defense and Education Fund, the Asian Pacific American Legal Center and the NAACP Legal Defense and Educational Fund, Inc.
- 5. *Giles v. Allstate*, JCCP Nos. 2984 and 2985. Lieff Cabraser represented a class of Allstate insurance agents seeking reimbursement of out-of-pocket costs. The action settled for approximately \$40 million.
- 6. Calibuso v. Bank of America Corporation, Merrill Lynch & Co., No. CV10-1413 (E.D. N.Y.). Lieff Cabraser served as Co-Lead Counsel for female Financial Advisors who alleged that Bank of America and Merrill Lynch engaged in a pattern and practice of gender discrimination with respect to business opportunities and compensation. The complaint charged that these violations were systemic, based upon company-wide policies and practices. In December 2013, the Court approved a \$39 million settlement. The settlement included three years of programmatic relief, overseen by an independent monitor, regarding teaming and partnership agreements, business generation, account distributions, manager evaluations, promotions, training, and complaint processing and procedures, among other things. An independent consultant also conducted an internal study of the bank's Financial Advisors' teaming practices.
- 7. *Frank v. United Airlines*, No. C-92-0692 MJJ (N.D. Cal.). Lieff Cabraser and co-counsel obtained a \$36.5 million settlement in February 2004 for a class of female flight attendants who were required to weigh less than comparable male flight attendants. Former U.S. District Court Judge Charles B. Renfrew (ret.), who served as a mediator in the case, stated, "As a participant in the settlement negotiations, I am familiar with and know the reputation, experience and skills of lawyers involved. They are dedicated, hardworking and able counsel who have represented their clients very effectively." U.S. District Judge Martin J. Jenkins, in granting final approval to the settlement, found "that the results achieved here

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could be nothing less than described as exceptional," and that the settlement "was obtained through the efforts of outstanding counsel."

8. **Barnett v. Wal-Mart**, No. 01-2-24553-SNKT (Wash.). The Court approved in July 2009 a settlement valued at up to \$35 million on behalf of workers in Washington State who alleged they were deprived of meal and rest breaks and forced to work off-the-clock at Wal-Mart stores and Sam's Clubs. In addition to monetary relief, the settlement provided injunctive relief benefiting all employees. Wal-Mart was required to undertake measures to prevent wage and hour violations at its 50 stores and clubs in Washington, measures that included the use of new technologies and compliance tools.

Plaintiffs filed their complaint in 2001. Three years later, the Court certified a class of approximately 40,000 current and former Wal-Mart employees. The eight years of litigation were intense and adversarial. Wal-Mart, currently the world's third largest corporation, vigorously denied liability and spared no expense in defending itself.

This lawsuit and similar actions filed against Wal-Mart across America served to reform the pay procedures and employment practices for Wal-Mart's 1.4 million employees nationwide. In a press release announcing the Court's approval of the settlement, Wal-Mart spokesperson Daphne Moore stated, "This lawsuit was filed years ago and the allegations are not representative of the company we are today." Lieff Cabraser served as Court-appointed Co-Lead Class Counsel.

- 9. Amochaev. v. Citigroup Global Markets, d/b/a Smith Barney, No. C 05-1298 PJH (N.D. Cal.). In August 2008, the Court approved a \$33 million settlement for the 2,411 members of the Settlement Class in a gender discrimination case against Smith Barney. Lieff Cabraser represented Female Financial Advisors who charged that Smith Barney, the retail brokerage unit of Citigroup, discriminated against them in account distributions, business leads, referral business, partnership opportunities, and other terms of employment. In addition to the monetary compensation, the settlement included comprehensive injunctive relief for four years designed to increase business opportunities and promote equality in compensation for female brokers.
- 10. **Vedachalam v. Tata Consultancy Services**, C 06-0963 CW (N.D. Cal.). Lieff Cabraser served as Co-Lead Counsel for 12,700 foreign nationals sent by the Indian conglomerate Tata to work in the U.S. After 7 years of hard-fought litigation, the District Court in July 2013 granted final approval to a \$29.75 million settlement. The complaint charged that Tata breached the contracts of its non-U.S.-citizen employees by requiring them to sign over their federal and state tax refund checks to Tata, and by failing to pay its non-U.S.-citizen employees the monies promised to those

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employees before they came to the United States. In 2007 and again in 2008, the District Court denied Tata's motions to compel arbitration of Plaintiffs' claims in India. The Court held that no arbitration agreement existed because the documents purportedly requiring arbitration in India applied one set of rules to the Plaintiffs and another set to Tata. In 2009, the Ninth Circuit Court of Appeals affirmed this decision. In July 2011, the District Court denied in part Tata's motion for summary judgment, allowing Plaintiffs' legal claims for breach of contract and certain violations of California wage laws to go forward. In 2012, the District Court found that the plaintiffs satisfied the legal requirements for a class action and certified two classes.

- 11. **Giannetto v. Computer Sciences Corporation**, No. 03-CV-8201 (C.D. Cal.). In one of the largest overtime pay dispute settlements ever in the information technology industry, the Court approved a \$24 million settlement with Computer Sciences Corporation in 2005. Plaintiffs charged that the global conglomerate had a common practice of refusing to pay overtime compensation to its technical support workers involved in the installation and maintenance of computer hardware and software in violation of the Fair Labor Standards Act, California's Unfair Competition Law, and the wage and hour laws of 13 states.
- 12. Curtis-Bauer v. Morgan Stanley & Co., Case No. C-06-3903 (TEH). In October 2008, the Court approved a \$16 million settlement in the class action against Morgan Stanley. The complaint charged that Morgan Stanley discriminated against African-American and Latino Financial Advisors and Registered Financial Advisor Trainees in the Global Wealth Management Group of Morgan Stanley in compensation and business opportunities. The settlement included comprehensive injunctive relief regarding account distributions, partnership arrangements, branch manager promotions, hiring, retention, diversity training, and complaint processing, among other things. The settlement also provided for the appointment of an independent Diversity Monitor and an independent Industrial Psychologist to effectuate the terms of the agreement.
- 13. Church v. Consolidated Freightways, No. C90-2290 DLJ (N.D. Cal.). Lieff Cabraser was the Lead Court-appointed Class Counsel in this class action on behalf of the exempt employees of Emery Air Freight, a freight forwarding company acquired by Consolidated Freightways in 1989. On behalf of the employee class, Lieff Cabraser prosecuted claims for violation of the Employee Retirement Income Security Act, the securities laws, and the Age Discrimination in Employment Act. The case settled in 1993 for \$13.5 million.
- 14. *Gerlach v. Wells Fargo & Co.*, No. C 05-0585 CW (N.D. Cal.). In January 2007, the Court granted final approval to a \$12.8 million

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- settlement of a class action suit by current and former business systems employees of Wells Fargo seeking unpaid overtime. Plaintiffs alleged that Wells Fargo illegally misclassified those employees, who maintained and updated Wells Fargo's business tools according to others' instructions, as "exempt" from the overtime pay requirements of federal and state labor laws.
- 15. **Buccellato v. AT&T Operations**, No. C10-00463-LHK (N.D. Cal.). Lieff Cabraser represented a group of current and former AT&T technical support workers who alleged that AT&T misclassified them as exempt and failed to pay them for all overtime hours worked, in violation of federal and state overtime pay laws. In June 2011, the Court approved a \$12.5 million collective and class action settlement.
- 16. **Buttram v. UPS**, No. C-97-01590 MJJ (N.D. Cal.). Lieff Cabraser and several co-counsel represented a class of approximately 14,000 African-American part-time hourly employees of UPS's Pacific and Northwest Regions alleging race discrimination in promotions and job advancement. In 1999, the Court approved a \$12.14 million settlement of the action. Under the injunctive relief portion of the settlement, Class Counsel monitored the promotions of African-American part-time hourly employees to part-time supervisor and full-time package car drivers.
- 17. Goddard, et al. v. Longs Drug Stores Corporation, et al.,
  No. RG04141291 (Cal. Supr. Ct.). Store managers and assistant store
  managers of Longs Drugs charged that the company misclassified them as
  exempt from overtime wages. Managers regularly worked in excess of
  8 hours per day and 40 hours per week without compensation for their
  overtime hours. Following mediation, in 2005, Longs Drugs agreed to
  settle the claims for a total of \$11 million. Over 1,000 current and former
  Longs Drugs managers and assistant managers were eligible for
  compensation under the settlement, over 98% of the class submitted
  claims.
- 18. Trotter v. Perdue Farms, No. C 99-893-RRM (JJF) (MPT) (D. Del.). Lieff Cabraser represented a class of chicken processing employees of Perdue Farms, Inc., one of the nation's largest poultry processors, for wage and hour violations. The suit challenged Perdue's failure to compensate its assembly line employees for putting on, taking off, and cleaning protective and sanitary equipment in violation of the Fair Labor Standards Act, various state wage and hour laws, and the Employee Retirement Income Security Act. Under a settlement approved by the Court in 2002, Perdue paid \$10 million for wages lost by its chicken processing employees and attorneys' fees and costs. The settlement was in addition to a \$10 million settlement of a suit brought by the Department of Labor in the wake of Lieff Cabraser's lawsuit.

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- 19. **Gottlieb v. SBC Communications**, No. CV-00-04139 AHM (MANx) (C.D. Cal.). With co-counsel, Lieff Cabraser represented current and former employees of SBC and Pacific Telesis Group ("PTG") who participated in AirTouch Stock Funds, which were at one time part of PTG's salaried and non-salaried savings plans. After acquiring PTG, SBC sold AirTouch, which PTG had owned, and caused the AirTouch Stock Funds that were included in the PTG employees' savings plans to be liquidated. Plaintiffs alleged that in eliminating the AirTouch Stock Funds, and in allegedly failing to adequately communicate with employees about the liquidation, SBC breached its duties to 401k plan participants under the Employee Retirement Income Security Act. In 2002, the Court granted final approval to a \$10 million settlement.
- 20. Ellis v. Costco Wholesale Corp., No. 04-03341-EMC (N.D. Cal.). Lieff Cabraser served as Co-Lead Counsel for current and former female employees who charged that Costco discriminated against women in promotion to management positions. In January 2007, the Court certified a class consisting of over 750 current and former female Costco employees nationwide who were denied promotion to General Manager or Assistant Manager since January 3, 2002. Costco appealed. In September 2011, the U.S. Court of Appeals for the Ninth Circuit remanded the case to the District Court to make class certification findings consistent with the U.S. Supreme Court's ruling in Wal-Mart v. Dukes, 131 S.Ct. 2541 (2011). In September 2012, U.S. District Court Judge Edward M. Chen granted plaintiffs' motion for class certification and certified two classes of over 1,250 current and former female Costco employees, one for injunctive relief and the other for monetary relief. On May 27, 2014, the Court approved an \$8 million settlement.
- 21. In Re Farmers Insurance Exchange Claims Representatives'
  Overtime Pay Litigation, MDL No. 1439 (D. Ore.). Lieff Cabraser and
  co-counsel represented claims representatives of Farmers' Insurance
  Exchange seeking unpaid overtime. Lieff Cabraser won a liability phase
  trial on a classwide basis, and then litigated damages on an individual
  basis before a special master. The judgment was partially upheld on
  appeal. In August 2010, the Court approved an \$8 million settlement.
- 22. Zuckman v. Allied Group, No. 02-5800 SI (N.D. Cal.). In September 2004, the Court approved a settlement with Allied Group and Nationwide Mutual Insurance Company of \$8 million plus Allied/Nationwide's share of payroll taxes on amounts treated as wages, providing plaintiffs a 100% recovery on their claims. Plaintiffs, claims representatives of Allied / Nationwide, alleged that the company misclassified them as exempt employees and failed to pay them and other claims representatives in California overtime wages for hours they worked in excess of eight hours or forty hours per week. In approving the settlement, U.S. District Court

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- Judge Susan Illston commended counsel for their "really good lawyering" and stated that they did "a splendid job on this" case.
- 23. **Thomas v. California State Automobile Association**, No. CH217752 (Cal. Supr. Ct.). With co-counsel, Lieff Cabraser represented 1,200 current and former field claims adjusters who worked for the California State Automobile Association ("CSAA"). Plaintiffs alleged that CSAA improperly classified their employees as exempt, therefore denying them overtime pay for overtime worked. In May 2002, the Court approved an \$8 million settlement of the case.
- 24. *Higazi v. Cadence Design Systems*, No. C 07-2813 JW (N.D. Cal.). In July 2008, the Court granted final approval to a \$7.664 million settlement of a class action suit by current and former technical support workers for Cadence seeking unpaid overtime. Plaintiffs alleged that Cadence illegally misclassified its employees who install, maintain, or support computer hardware or software as "exempt" from the overtime pay requirements of federal and state labor laws.
- 25. Zaborowski v. MHN Government Services, No. 12-CV-05109-SI (N.D. Cal.) Lieff Cabraser represented current and former Military and Family Life Consultants ("MFLCs") in a class action lawsuit against MHN Government Services, Inc. ("MHN") and Managed Health Network, Inc., seeking overtime pay under the federal Fair Labor Standards Act and state laws. The complaint charged that MHN misclassified the MFLCs as independent contractors and as "exempt" from overtime and failed to pay them overtime pay for hours worked over 40 per week. In April 2013, the Court denied MHN's motion to compel arbitration and granted plaintiff's motion for conditional certification of a FLSA collective action. In December 2014, the U.S. Court of Appeals for the Ninth Circuit upheld the district court's determination that the arbitration clause in MHN's employee contract was procedurally and substantively unconscionable. MHN appealed to the United States Supreme Court.

MHN did not contest that its agreement had several unconscionable components; instead, it asked the Supreme Court to sever the unconscionable terms of its arbitration agreement and nonetheless send the MFLCs' claims to arbitration. The Supreme Court granted MHN's petition for certiorari on October 1, 2015, and was scheduled to hear the case in the 2016 spring term in *MHN Gov't Servs., Inc. v. Zaborowski*, No. 14-1458. While the matter was pending before the Supreme Court, an arbitrator approved a class settlement in the matter, which resulted in payment of \$7,433,109.19 to class members.

26. **Sandoval v. Mountain Center, Inc., et al.**, No. 03CC00280 (Cal. Supr. Ct.). Cable installers in California charged that defendants owed them overtime wages, as well as damages for missed meal and rest breaks

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- and reimbursement for expenses incurred on the job. In 2005, the Court approved a \$7.2 million settlement of the litigation, which was distributed to the cable installers who submitted claims.
- 27. *Martin v. Bohemian Club*, No. SCV-258731(Cal. Supr. Ct.). Lieff Cabraser and co-counsel represented a class of approximately 659 individuals who worked seasonally as camp valets for the Bohemian Club. Plaintiffs alleged that they had been misclassified as independent contractors, and thus were not paid for overtime or meal-and-rest breaks as required under California law. The Court granted final approval of a \$7 million settlement resolving all claims in September 2016.
- 28. **Lewis v. Wells Fargo**, No. 08-cv-2670 CW (N.D. Cal.). Lieff Cabraser served as Lead Counsel on behalf of approximately 330 I/T workers who alleged that Wells Fargo had a common practice of misclassifying them as exempt and failing to pay them for all overtime hours worked in violation of federal and state overtime pay laws. In April 2011, the Court granted collective action certification of the FLSA claims and approved a \$6.72 million settlement of the action.
- 29. **Kahn v. Denny's**, No. BC177254 (Cal. Supr. Ct.). Lieff Cabraser brought a lawsuit alleging that Denny's failed to pay overtime wages to its General Managers and Managers who worked at company-owned restaurants in California. The Court approved a \$4 million settlement of the case in 2000.
- 30. **Wynne v. McCormick & Schmick's Seafood Restaurants**, No. C 06-3153 CW (N.D. Cal.). In August 2008, the Court granted final approval to a settlement valued at \$2.1 million, including substantial injunctive relief, for a class of African American restaurant-level hourly employees. The consent decree created hiring benchmarks to increase the number of African Americans employed in front of the house jobs (*e.g.*, server, bartender, host/hostess, waiter/waitress, and cocktail server), a registration of interest program to minimize discrimination in promotions, improved complaint procedures, and monitoring and enforcement mechanisms.
- 31. **Sherrill v. Premera Blue Cross**, No. 2:10-cv-00590-TSZ (W.D. Wash.). In April 2010, a technical worker at Premera Blue Cross filed a lawsuit against Premera seeking overtime pay from its misclassification of technical support workers as exempt. In June 2011, the Court approved a collective and class action settlement of \$1.45 million.
- 32. *Holloway v. Best Buy*, No. C05-5056 PJH (N.D. Cal.). Lieff Cabraser, with co-counsel, represented a class of current employees of Best Buy that alleged Best Buy stores nationwide discriminated against women, African Americans, and Latinos. The complaint charged that these employees

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were assigned to less desirable positions and denied promotions, and that class members who attained managerial positions were paid less than white males. In November 2011, the Court approved a settlement of the class action in which Best Buy agreed to changes to its personnel policies and procedures that will enhance the equal employment opportunities of the tens of thousands of women, African Americans, and Latinos employed by Best Buy nationwide.

- 33. **Lyon v. TMP Worldwide**, No. 993096 (Cal. Supr. Ct.). Lieff Cabraser served as Class Counsel for a class of certain non-supervisory employees in an advertising firm. The settlement, approved in 2000, provided almost a 100% recovery to class members. The suit alleged that TMP failed to pay overtime wages to these employees.
- 34. Lusardi v. McHugh, Secretary of the Army, No. 0120133395 (U.S. EEOC). Lieff Cabraser and the Transgender Law Center represent Tamara Lusardi, a transgender civilian software specialist employed by the U.S. Army. In a groundbreaking decision in April 2015, the Equal Employment Opportunity Commission reversed a lower agency decision and held that the employer subjected Lusardi to disparate treatment and harassment based on sex in violation of Title VII of the Civil Rights Act of 1964 when (1) the employer restricted her from using the common female restroom (consistent with her gender identity) and (2) a team leader intentionally and repeatedly referred to her by male pronouns and made hostile remarks about her transition and gender.

Lieff Cabraser attorneys have had experience representing employees in additional cases, including cases involving race, gender, sexual orientation, gender identity, and age discrimination; False Claims Act (whistleblower) claims; breach of contract claims; unpaid wages or exempt misclassification (wage/hour) claims; pension plan abuses under ERISA; and other violations of the law. For example, as described in the Antitrust section of this resume, Lieff Cabraser serves as plaintiffs' Co-Lead Counsel in a class action charging that Adobe Systems Inc., Apple Inc., Google Inc., and Intel Corporation violated antitrust laws by conspiring to suppress the wages of certain salaried employees.

Lieff Cabraser is currently investigating charges of discrimination, wage/hour violations, and wage suppression claims against several companies. In addition, our attorneys frequently write amicus briefs on cutting-edge legal issues involving employment law.

In 2015, *The Recorder* named Lieff Cabraser's employment group as a Litigation Department of the Year in the category of California Labor and Employment Law. The Litigation Department of the Year awards recognize "California litigation practices that deliver standout results on their clients' most critical matters." *The Recorder* editors consider the degree of difficulty, dollar value and importance of each matter to the client; the depth and breadth of the practice; and the use of innovative approaches.

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*U.S. News* and Best Lawyers selected Lieff Cabraser as a 2013 national "Law Firm of the Year" in the category of Employment Law – Individuals. *U.S. News* and Best Lawyers ranked firms nationally in 80 different practice areas based on extensive client feedback and evaluations from 70,000 lawyers nationwide. Only one law firm in the U.S. in each practice area receives the "Law Firm of the Year" designation.

Benchmark Plaintiff, a guide to the nation's leading plaintiffs' firms, has given Lieff Cabraser's employment practice group a Tier 1 national ranking, its highest rating. The Legal 500 guide to the U.S. legal profession has recognized Lieff Cabraser as having one of the leading plaintiffs' employment practices in the nation for the past four years.

Kelly M. Dermody chairs the firm's employment practice group and leads the firm's employment cases. She also serves as Managing Partner of Lieff Cabraser's San Francisco office.

In 2015, the College of Labor and Employment Lawyers named Ms. Dermody a Fellow. Nomination to the College is by ones colleagues only, and recognizes those lawyers who have demonstrated sustained and exceptional services to their clients, bar, bench, and public, and the highest level of character, integrity, professional expertise, and leadership.

The Daily Journal has selected Ms. Dermody as one of the top 100 attorneys in California (2012-2015), top 75 labor and employment lawyers in California (2011-2015), and top 100 women litigators in California (2007, 2010, 2012-2016). She has been named a Northern California "Super Lawyer" every year since 2004, including being named a "Top 10 Lawyer" in 2014.

Since 2010, Ms. Dermody has annually been recognized by her peers for inclusion in *The Best Lawyers in America* in the fields of Employment Law – Individuals and Litigation – Labor and Employment. In 2014, she was named "Lawyer of the Year" by Best Lawyers in the category of Employment Law – Individuals in San Francisco. In 2007, *California Lawyer* magazine awarded Ms. Dermody its prestigious California Lawyer Attorney of the Year (CLAY) Award.

## IV. Consumer Protection

### A. Current Cases

1. In re Arizona Theranos, Inc. Litigation, No. 2:16-cv-2138-HRH (D. Ariz.). This class action alleges that Walgreens and startup company Theranos Inc. (along with its two top executives) committed fraud and battery by prematurely marketing to consumers blood testing services that were still in-development, not ready-for-market, and dangerously unreliable. Hundreds of thousands of consumers in Arizona and California submitted to these "testing" services and blood draws under false pretenses. Consumers also made major health decisions (including taking actions and medication, and refraining from taking actions and medications) in reliance on these unreliable tests. Plaintiffs allege that

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Walgreens' and Theranos' conduct violates Arizona and California consumer protection statutes and common law.

- 2. Fiat Chrysler Dodge Jeep Ecodiesel Litigation, 17-MD-02777-EMC. Lieff Cabraser represents owners and lessors of affected Fiat Chrysler vehicles in litigation accusing Fiat Chrysler of using secret software to allow excess emissions in violation of the law for at least 104,000 2014-2016 model year diesel vehicles, including Jeep Grand Cherokees and Dodge Ram 1500 trucks with 3-liter diesel engines sold in the United States from late 2013 through 2016 (model years 2014, 2015, and 2016). In June 2017, Judge Edward M. Chen of the Northern District of California named Elizabeth Cabraser sole Lead Counsel for Plaintiffs and Chair of the Plaintiffs' Steering Committee for consolidated litigation of the case.
- 3. In Re: General Motors Corp. Air Conditioning Marketing and Sales Practices Litigation, MDL No. 2818 (E.D. Mich.). Lieff Cabraser serves as Co-Lead Plaintiffs' Counsel in a consumer fraud class action MDL against General Motors Company consolidated in Michigan federal court on behalf of all persons who purchased or leased certain GM vehicles equipped with an allegedly defective air conditioning systems. The lawsuit claims the vehicles have a serious defect that causes the air conditioning systems to crack and leak refrigerant, lose pressure, and fail to function properly to provide cooled air into the vehicles. These failures lead owners and lessees to incur significant costs for repair, often successive repairs as the repaired parts prove defective as well. The complaint lists causes of action for violations of various states' Consumer Protection Acts, fraudulent concealment, breach of warranty, and unjust enrichment, and seeks declaratory and injunctive relief, including an order requiring GM to permanently repair the affected vehicles within a reasonable time period, as well as compensatory, exemplary, and statutory damages.
- 4. In re Checking Account Overdraft Litigation, MDL No. 2036 (S.D. Fl.). Lieff Cabraser serves on the Plaintiffs' Executive Committee ("PEC") in Multi-District Litigation against 35 banks, including Bank of America, Chase, Citizens, PNC, Union Bank, and U.S. Bank. The complaints alleged that the banks entered debit card transactions from the "largest to the smallest" to draw down available balances more rapidly and maximize overdraft fees. In March 2010, the Court denied defendants' motions to dismiss the complaints. The Court has approved nearly \$1 billion in settlements with the banks.

In November 2011, the Court granted final approval to a \$410 million settlement of the case against Bank of America. Lieff Cabraser was the lead plaintiffs' law firm on the PEC that prosecuted the case against Bank

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of America. In approving the settlement with Bank of America, U.S. District Court Judge James Lawrence King stated, "This is a marvelous result for the members of the class." Judge King added, "[B]ut for the high level of dedication, ability and massive and incredible hard work by the Class attorneys . . . I do not believe the Class would have ever seen . . . a penny."

In September 2012, the Court granted final approval to a \$35 million of the case against Union Bank. In approving the settlement, Judge King again complimented plaintiffs' counsel for their outstanding work and effort in resolving the case: "The description of plaintiffs' counsel, which is a necessary part of the settlement, is, if anything, understated. In my observation of the diligence and professional activity, it's superb. I know of no other class action case anywhere in the country in the last couple of decades that's been handled as efficiently as this one has, which is a tribute to the lawyers."

5. Hale, et al. v. State Farm Mut. Auto. Ins. Co., et al., Case No. 3:12-cv-00660-DRH-SCW. In 1997, Lieff Cabraser and co-counsel filed a class action in Illinois state court, accusing State Farm of approving the use of lower-quality non-original equipment manufacturer (non-OEM) automotive parts for repairs to the vehicles of more than 4 million State Farm policyholders, contrary to the company's policy language. Plaintiffs won a verdict of more than nearly \$1.2 billion that included \$600 million in punitive damages. The state appeals court affirmed the judgment, but reduced it slightly to \$1.05 billion. State Farm appealed to the Illinois Supreme Court in May 2013.

A two-plus-year delay in that Court's decision led to a vacancy in the Illinois Supreme Court. Plaintiffs alleged that State Farm recruited a little-known trial judge, Judge Lloyd A. Karmeier, to run for the vacant Supreme Court seat, and then managed his campaign behind the scenes, and secretly funded it to the tune of almost \$4 million. Then, after Justice Karmeier was elected, State Farm hid its involvement in his campaign to ensure that Justice Karmeier could participate in the pending appeal of the \$1.05 billion judgment. State Farm's scheme was successful: Justice Karmeier joined the otherwise "deadlocked" deliberations and voted to decertify the class and overturn the judgment.

In a 2012 lawsuit filed in federal court, Plaintiffs alleged that this secretive scheme to seat a sympathetic justice—and then to lie about it, so as secure that justice's participation in the pending appeal—violated the Racketeer Influenced and Corrupt Organization Act ("RICO"), and deprived Plaintiffs of their interest in the billion-dollar judgment. Judge David R. Herndon certified the class in October 2016, and the Seventh Circuit denied State Farm's petition to appeal the ruling in December 2016 and

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again in May 2017. On August 21, 2018, Judge David R. Herndon issued two new Orders favorable to plaintiffs relating to evidence and testimony to be included in the trial. On September 4, 2018, the day the trial was to begin, Judge Herndon gave preliminary approval to a \$250 million settlement of the case, and on December 13, 2018, Judge Herndon gave the settlement final approval.

6. Carrollton Family Clinic, LLC, et al. v. eClinicalWorks, LLC, No. 17-cv-12530-RGS (E.D. Mass.). Lieff Cabraser represents healthcare providers in a class action lawsuit against eClinicalWorks, LLC, a provider of electronic health record ("EHR") software. According to the complaint, a critical component of eClinicalWorks' products and services relating to Electronic Health Records ("EHR") are its guarantees to client healthcare providers that its products meet certain federal standards by, for example, using a government-approved code set for electronically-transmitted prescriptions ("ePrescriptions") and ensuring that patient records can be transferred easily and accurately.

eClinicalWorks' customers claim the company's software failed to meet these and other requirements for years. In May 2017, eClinicalWorks paid \$155 million and entered into a Corporate Integrity Agreement to settle a lawsuit by the United States and a qui tam relator based in part on these same false statements, but that settlement does not call for any compensatory payments to the customers harmed by eClinicalWorks' misconduct and its customers have not been made whole for their losses, including payments to eClinicalWorks that should be refunded, out-of-pocket costs, and, in some cases, lost or forfeited incentive payments made by government programs.

7. Dover v. British Airways, Case No. 1:12-cv-05567 (E.D.N.Y.). Lieff Cabraser represents participants in British Airways' ("BA") frequent flyer program, known as the Executive Club, in a breach of contract class action lawsuit. BA imposes a very high "fuel surcharge," often in excess of \$500, on Executive Club reward tickets. Plaintiffs alleged that the "fuel surcharge" was not based upon the price of fuel, and that it therefore violated the terms of the contract. The case was heavily litigated for five years, and settled on the verge of trial for a \$42.5 million common fund. Class members have the choice of a cash refund or additional flyer miles based on the number of tickets redeemed during the class period. If all class members claim the miles instead of the cash, the total settlement value will be up to \$63 million. U.S. Magistrate Judge Cheryl Pollak signed off on the settlement on May 30, 2018: "In light of the court's experience throughout the course of this litigation — and particularly in light of the contentiousness of earlier proceedings, the inability of the parties to settle during previous mediation attempts and the parties' initial positions when they appeared for the settlement conferences with

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- the court the significant benefit that the settlement will provide to class members is remarkable."
- 8. Telephone Consumer Protection Act Litigation. Lieff Cabraser serves as a leader in nationwide Telephone Consumer Protection Act ("TCPA") class actions challenging abusing and harassing automated calls. Based on Lieff Cabraser's experience and expertise in these cases, Judge Amy J. St. Eve appointed Lieff Cabraser as lead counsel in consolidated TCPA class actions against State Farm. Smith v. State Farm Mut. Auto. Ins. Co., 301 F.R.D. 284 (N.D. III. 2014). Lieff Cabraser also maintains leadership roles in ongoing nationwide class actions against American Express (Ossola v. American Express Co., et al., Case No. 1:13-CV-4836 (N.D. III)), DirecTV (Brown v. DirecTV LLC, Case No. 2:13-cv-01170-DMG-E (C.D. Cal.)), National Grid (Jenkins v. National Grid USA, et al., Case No. 2:15-cv-01219-JS-GRB (E.D.N.Y.), and several other companies that make automated debt-collection or telemarketing calls.
- 9. Rushing v. The Walt Disney Company, et al., Case No. 3:17-cv-4419 (N.D. Cal.); Rushing v. Viacom, Inc., et al., Case No. 3:17-cv-4492 (N.D. Cal.); McDonald, et al. v. Kiloo Aps, et al., Case No. Case No. 3:17-cv-4344 (N.D. Cal.). Lieff Cabraser represents parents, on behalf of their children, in federal class action litigation against numerous online game and app producers including Disney, Viacom, and the makers of the vastly popular Subway Surfers game (Kiloo), over allegations the companies unlawfully collected, used, and disseminated the personal information of children who played the gaming apps on smart phones, tablets, and other mobile device. The actions are proceeding under timehonored laws protecting privacy: a California common law invasion of privacy claim, a California Constitution right of privacy claim, a California unfair competition claim, a New York General Business Law claim, a Massachusetts Unfair and Deceptive Trade Practices claim, and a Massachusetts statutory right to privacy claim.
- 10. The People of the State of California v. J.C. Penny Corporation, Inc., Case No. BC643036 (Los Angeles County Sup. Ct); The People of the State of California v. Kohl's Department Stores, Inc., Case No. BC643037 (Los Angeles County Sup. Ct); The People of the State of California v. Macy's, Inc., Case No. BC643040 (Los Angeles County Sup. Ct); The People of the State of California v. Sears, Roebuck and Co., et al., Case No. BC643039 (Los Angeles County Sup. Ct). Working with the office of the Los Angeles City Attorney, Lieff Cabraser and co-counsel represent the People of California in consumer fraud and false advertising civil enforcement actions against national retailers J.C. Penney, Kohl's, Macy's, and Sears alleging that each of these companies has pervasively used "false reference pricing" schemes —

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- whereby the companies advertise products at a purported "discount" from false "original" or "regular" prices to mislead customers into believing they are receiving bargains. Because such practices are misleading and effective California law prohibits them. The suits seek civil penalties and injunctive relief. The cases are ongoing.
- 11. Cody v. SoulCycle, Inc., Case No. 2:15-cv-06457 (C.D. Cal.). Lieff Cabraser represents consumers in a class action lawsuit alleging that indoor cycling fitness company SoulCycle sells illegally expiring gift certificates. The suit alleges that SoulCycle defrauded customers by forcing them to buy gift certificates with short enrollment windows and keeping the expired certificates' unused balances in violation of the U.S. Electronic Funds Transfer Act and California's Unfair Competition Law, and seeks reinstatement of expired classes or customer reimbursements as well as policy changes. In October of 2017, U.S. District Judge Michael W. Fitzgerald granted final approval to a settlement of the litigation valued between \$6.9 million and \$9.2 million that provides significant economic consideration to settlement class members as well as meaningful changes to SoulCycle's business practices.
- Moore v. Verizon Communications, No. 09-cv-01823-SBA (N.D. 12. Cal.); Nwabueze v. AT&T, No. 09-cv-1529 SI (N.D. Cal.); Terry v. Pacific Bell Telephone Co., No. RG 09 488326 (Alameda County Sup. Ct.). Lieff Cabraser, with co-counsel, represents nationwide classes of landline telephone customers subjected to the deceptive business practice known as "cramming." In this practice, a telephone company bills customers for unauthorized third-party charges assessed by billing aggregators on behalf of third-party providers. A U.S. Senate committee has estimated that Verizon, AT&T, and Qwest place 300 million such charges on customer bills each year (amounting to \$2 billion in charges), many of which are unauthorized. Various sources estimate that 90-99% of third-party charges are unauthorized. Both Courts have granted preliminary approval of settlements that allow customers to receive 100% refunds for all unauthorized charges from 2005 to the present, plus extensive injunctive relief to prevent cramming in the future. The Nwabueze and Terry cases are ongoing.
- 13. James v. UMG Recordings, Inc., No. CV-11-1613 (N.D. Cal);
  Zombie v. UMG Recordings, Inc., No. CV-11-2431 (N.D. Cal). Lieff
  Cabraser and its co-counsel represent music recording artists in
  a proposed class action against Universal Music Group. Plaintiffs allege
  that Universal failed to pay the recording artists full royalty
  income earned from customers' purchases of digitally downloaded music
  from vendors such as Apple iTunes. The complaint alleges that Universal
  licenses plaintiffs' music to digital download providers, but in its
  accounting of the royalties plaintiffs have earned, treats such licenses as

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- "records sold" because royalty rate for "records sold" is lower than the royalty rate for licenses. Plaintiffs legal claims include breach of contract and violation of California unfair competition laws. In November 2011 the Court denied defendant's motion to dismiss plaintiffs' unfair competition law claims.
- 14. White v. Experian Information Solutions, No. 05-CV-1070 DOC (C.D. Cal.). In 2005, plaintiffs filed nationwide class action lawsuits on behalf of 750,000 claimants against the nation's three largest repositories of consumer credit information, Experian Information Solutions, Inc., Trans Union, LLC, and Equifax Information Services, LLC. The complaints charged that defendants violated the Fair Credit Reporting Act ("FCRA") by recklessly failing to follow reasonable procedures to ensure the accurate reporting of debts discharged in bankruptcy and by refusing to adequately investigate consumer disputes regarding the status of discharged accounts. In April 2008, the District Court approved a partial settlement of the action that established an historic injunction. This settlement required defendants comply with detailed procedures for the retroactive correction and updating of consumers' credit file information concerning discharged debt (affecting one million consumers who had filed for bankruptcy dating back to 2003), as well as new procedures to ensure that debts subject to future discharge orders will be similarly treated. As noted by the District Court, "Prior to the injunctive relief order entered in the instant case, however, no verdict or reported decision had ever required Defendants to implement procedures to cross-check data between their furnishers and their public record providers." In 2011, the District Court approved a \$45 million settlement of the class claims for monetary relief. In April 2013, the Court of Appeals for the Ninth Circuit reversed the order approving the monetary settlement and remanded the case for further proceedings.
- 15. Healy v. Chesapeake Appalachia, No. 1:10cv00023 (W.D. Va.); Hale v. CNX Gas, No. 1:10cv00059 (W.D. Va.); Estate of Holman v. Noble Energy, No. 03 CV 9 (Dist. Ct., Co.); Droegemueller v. Petroleum Development Corporation, No. 07 CV 2508 JLK (D. Co.); Anderson v. Merit Energy Co., No. 07 CV 00916 LTB (D. Co.); Holman v. Petro-Canada Resources (USA), No. 07 CV 416 (Dist. Ct., Co.). Lieff Cabraser serves as Co-Lead Counsel in several cases pending in federal court in Virginia, in which plaintiffs allege that certain natural gas companies improperly underpaid gas royalties to the owners of the gas. In one case that recently settled, the plaintiffs recovered approximately 95% of the damages they suffered. Lieff Cabraser also achieved settlements on behalf of natural gas royalty owners in five other class actions outside Virginia. Those settlements -- in which class members recovered between 70% and 100% of their damages, excluding interest -- were valued at more than \$160 million.

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- Adkins v. Morgan Stanley, No. 12 CV 7667 (S.D.N.Y.). Five African-American residents from Detroit, Michigan, joined by Michigan Legal Services, have brought a class action lawsuit against Morgan Stanley for discrimination in violation of the Fair Housing Act and other civil rights laws. The plaintiffs charge that Morgan Stanley actively ensured the proliferation of high-cost mortgage loans with specific risk factors in order to bundle and sell mortgage-backed securities to investors. The lawsuit is the first to seek to hold a bank in the secondary market accountable for the adverse racial impact of such policies and conduct. Plaintiffs seek certification of the case as a class action for as many as 6,000 African-Americans homeowners in the Detroit area who may have suffered similar discrimination. Lieff Cabraser serves as plaintiffs' counsel with the American Civil Liberties Union, the ACLU of Michigan, and the National Consumer Law Center.
- 17. *Marcus A. Roberts et al. v. AT&T Mobility LLC*, No. 3:15-cv-3418 (N.D. Cal.). Lieff Cabraser represents consumers in a proposed class action lawsuit against AT&T claiming that AT&T falsely advertised that its "unlimited" mobile phone plans provide "unlimited" data, while purposefully failing to disclose that it regularly "throttles" (*i.e.*, intentionally slows) customers' data speed once they reach certain data usage thresholds. The lawsuit also challenges AT&T's attempts to force consumers into non-class arbitration, claiming that AT&T's arbitration clause in its Wireless Customer Agreement violates consumers' fundamental constitutional First Amendment right to petition courts for a redress of grievances.

### B. Successes

1. In re Volkswagen 'Clean Diesel' Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2672 (N.D. Cal.). In September of 2015, the U.S. Environmental Protection Agency issued a Notice of Violation to Volkswagen relating to 475,000 diesel-powered cars in the United States sold since 2008 under the VW and Audi brands on which VW installed "cheat device" software that intentionally changed the vehicles' emissions production during official testing. Only when the programming detected that the vehicles were undergoing official emissions testing did the cars turn on their full emission control systems. The controls were turned off during actual road use, producing up to 40x more pollutants than the testing amounts in an extraordinary violation of U.S. clean air laws.

Private vehicle owners, state governments, agencies, and attorneys general, as well as federal agencies, all sought compensation and relief from VW through litigation in U.S. courts. More than 1,000 individual civil cases and numerous accompanying government claims were

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consolidated in federal court in Northern California, and U.S. District Judge Charles R. Breyer appointed Lieff Cabraser founding partner Elizabeth Cabraser as Lead Counsel and Chair of the 22-member Plaintiffs Steering Committee in February of 2016.

After nine months of intensive negotiation and extraordinary coordination led on the class plaintiffs' side by Elizabeth Cabraser, a set of interrelated settlements totaling \$14.7 billion were given final approval by Judge Breyer on October 25, 2016. The settlements offer owners and lessees of Volkswagen and Audi 2.0-liter diesel vehicles substantial compensation through buybacks and lease terminations, government-approved emissions modifications, and cash payments, while fixing or removing these polluting vehicles from the road. On May 11, 2017, a further settlement with a value of at least \$1.2 billion relating to VW's 3.0-liter engine vehicles received final approval. This deal offers a combination of a projected emissions modification or buybacks for older 3.0-liter models. If a government-approved modification can't be found, VW will have to buy back all the vehicles, which could increase its costs for the 3.0-liter model settlement to as much as \$4 billion.

The consumer class settlements have garnered overwhelming approval and response. Over 380,000 diesel owners have already signed up for the settlement, most doing so even before final approval was granted by Judge Breyer, who is overseeing all federal "clean diesel" litigation.

The Volkswagen emissions settlement is one of the largest payments in American history and the largest known consumer class settlement. It exemplifies the best of the American judicial system, illustrating the resolution of a significant portion of one of the most massive multidistrict class actions at what *Law360* referred to as "lightning speed." The settlements are unprecedented also for their scope and complexity, involving the Department of Justice, Environmental Protection Agency (EPA), California Air Resources Board (CARB) and California Attorney General, the Federal Trade Commission (FTC) and private plaintiffs.

2. **Williamson v. McAfee, Inc.**, No. 14-cv-00158-EJD (N.D. Cal.). This nationwide class action alleged that McAfee falsely represented the prices of its computer anti-virus software to customers enrolled in its "autorenewal" program. Plaintiffs alleged that McAfee: (a) offers *non*-autorenewal subscriptions at stated "discounts" from a "regular" sales price; however, the stated discounts are false because McAfee does not ever sell subscriptions at the stated "regular" price to *non*-auto-renewal customers; and (b) charges the auto-renewal customers the amount of the false "regular" sales price, claiming it to be the "current" regular price even though it does not sell subscriptions at that price to any other customer. Plaintiffs alleged that McAfee's false reference price scheme

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- violated California's and New York's unfair competition and false advertising laws. In 2017, a class settlement was approved that included monetary payments to claimants and practice changes.
- 3. Hansell v. TracFone Wireless, No. 13-cv-3440-EMC (N.D. Cal.); **Blagmoor v. TracFone Wireless**, No. 13-cv-05295-EMC (N.D. Cal.); Gandhi v. TracFone Wireless, No. 13-cv-05296-EMC (N.D. Cal.). In January 2015, Michael W. Sobol, the chair of Lieff Cabraser's consumer protection practice group, announced that consumers nationwide who purchased service plans with "unlimited data" from TracFone Wireless, Inc., were eligible to receive payments under a \$40 million settlement of a series of class action lawsuits. One of the nation's largest wireless carriers, TracFone uses the brands Straight Talk, Net10, Telcel America, and Simple Mobile to sell mobile phones with prepaid wireless plans at Walmart and other retail stores nationwide. The class action alleged that TracFone falsely advertised its wireless mobile phone plans as providing "unlimited data," while actually maintaining monthly data usage limits that were not disclosed to customers. It further alleged that TracFone regularly throttled (i.e. significantly reduces the speed of) or terminated customers' data plans pursuant to the secret limits. Approved by the Court in July 2015, the settlement permanently enjoins TracFone from making any advertisement or other representation about amount of data its cell phone plans offer without disclosing clearly and conspicuously all material restrictions on the amount and speed of the data plan. Further, TracFone and its brands may not state in their advertisements and marketing materials that any plan provides "unlimited data" unless there is also clear, prominent, and adjoining disclosure of any applicable throttling caps or limits. The litigation is notable in part because, following two years of litigation by class counsel, the Federal Trade Commission joined the litigation and filed a Consent Order with TracFone in the same federal court where the class action litigation is pending. All compensation to consumers will be provided through the class action settlement.
- 4. **Gutierrez v. Wells Fargo Bank**, No. C 07-05923 WHA (N.D. Cal.). Following a two week bench class action trial, U.S. District Court Judge William Alsup in August 2010 issued a 90-page opinion holding that Wells Fargo violated California law by improperly and illegally assessing overdraft fees on its California customers and ordered \$203 million in restitution to the certified class. Instead of posting each transaction chronologically, the evidence presented at trial showed that Wells Fargo deducted the largest charges first, drawing down available balances more rapidly and triggering a higher volume of overdraft fees.

Wells Fargo appealed. In December 2012, the Appellate Court issued an opinion upholding and reversing portions of Judge Alsup's order, and

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remanded the case to the District Court for further proceedings. In May 2013, Judge Alsup reinstated the \$203 million judgment against Wells Fargo and imposed post-judgment interest bringing the total award to nearly \$250 million. On October 29, 2014, the Appellate Court affirmed the Judge Alsup's order reinstating the judgment.

For his outstanding work as Lead Trial Counsel and the significance of the case, *California Lawyer* magazine recognized Richard M. Heimann with a California Lawyer Attorney of the Year (CLAY) Award. In addition, the Consumer Attorneys of California selected Mr. Heimann and Michael W. Sobol as Finalists for the Consumer Attorney of the Year Award for their success in the case.

In reviewing counsel's request for attorneys' fees, Judge Alsup stated on May 21, 2015: "Lieff, Cabraser, on the other hand, entered as class counsel and pulled victory from the jaws of defeat. They bravely confronted several obstacles including the possibility of claim preclusion based on a class release entered in state court (by other counsel), federal preemption, hard-fought dispositive motions, and voluminous discovery. They rescued the case [counsel that originally filed] had botched and secured a full recovery of \$203 million in restitution plus injunctive relief. Notably, Attorney Richard Heimann's trial performance ranks as one of the best this judge has seen in sixteen years on the bench. Lieff, Cabraser then twice defended the class on appeal. At oral argument on the present motion, in addition to the cash restitution, Wells Fargo acknowledged that since 2010, its posting practices changed nationwide, in part, because of the injunction. Accordingly, this order allows a multiplier of 5.5 mainly on account of the fine results achieved on behalf of the class, the risk of non-payment they accepted, the superior quality of their efforts, and the delay in payment."

- 5. Kline v. The Progressive Corporation, Circuit No. 02-L-6 (Circuit Court of the First Judicial Circuit, Johnson County, Illinois). Lieff Cabraser served as settlement class counsel in a nationwide consumer class action challenging Progressive Corporation's private passenger automobile insurance sales practices. Plaintiffs alleged that the Progressive Corporation wrongfully concealed from class members the availability of lower priced insurance for which they qualified. In 2002, the Court approved a settlement valued at approximately \$450 million, which included both cash and equitable relief. The claims program, implemented upon a nationwide mail and publication notice program, was completed in 2003.
- Catholic Healthcare West Cases, JCCP No. 4453 (Cal. Supr. Ct.).
   Plaintiff alleged that Catholic Healthcare West ("CHW") charged uninsured patients excessive fees for treatment and services, at rates far

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higher than the rates charged to patients with private insurance or on Medicare. In January 2007, the Court approved a settlement that provides discounts, refunds and other benefits for CHW patients valued at \$423 million. The settlement requires that CHW lower its charges and end price discrimination against all uninsured patients, maintain generous charity case policies allowing low-income and uninsured patients to receive free or heavily discounted care, and protect uninsured patients from unfair collections practices. Lieff Cabraser served as Lead Counsel in the coordinated action.

- 7. In re Neurontin Marketing and Sales Practices Litigation, MDL No. 1629 (D. Mass.). Lieff Cabraser served on the Plaintiffs' Steering Committee in multidistrict litigation arising out of the sale and marketing of the prescription drug Neurontin, manufactured by Parke-Davis, a division of Warner-Lambert Company, which was later acquired by Pfizer, Inc. Lieff Cabraser served as co-counsel to Kaiser Foundation Health Plan, Inc. and Kaiser Foundation Hospitals ("Kaiser") in Kaiser's trial against Pfizer in the litigation. On March 25, 2010, a federal court jury determined that Pfizer violated a federal antiracketeering law by promoting its drug Neurontin for unapproved uses and found Pfizer must pay Kaiser damages up to \$142 million. At trial, Kaiser presented evidence that Pfizer knowingly marketed Neurontin for unapproved uses without proof that it was effective. Kaiser said it was misled into believing neuropathic pain, migraines, and bipolar disorder were among the conditions that could be treated effectively with Neurontin, which was approved by the FDA as an adjunctive therapy to treat epilepsy and later for post-herpetic neuralgia, a specific type of neuropathic pain. In November 2010, the Court issued Findings of Fact and Conclusions of Law on Kaiser's claims arising under the California Unfair Competition Law, finding Pfizer liable and ordering that it pay restitution to Kaiser of approximately \$95 million. In April 2013, the First Circuit Court of Appeals affirmed both the jury's and the District Court's verdicts. In November 2014, the Court approved a \$325 million settlement on behalf of a nationwide class of third party payors.
- 8. Sutter Health Uninsured Pricing Cases, JCCP No. 4388 (Cal. Supr. Ct.). Plaintiffs alleged that they and a Class of uninsured patients treated at Sutter hospitals were charged substantially more than patients with private or public insurance, and many times above the cost of providing their treatment. In December 2006, the Court granted final approval to a comprehensive and groundbreaking settlement of the action. As part of the settlement, Class members were entitled to make a claim for refunds or deductions of between 25% to 45% from their prior hospital bills, at an estimated total value of \$276 million. For a three year period, Sutter agreed to provide discounted pricing policies for uninsureds. In addition, Sutter agreed to maintain more compassionate collections policies that

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- will protect uninsureds who fall behind in their payments. Lieff Cabraser served as Lead Counsel in the coordinated action.
- 9. Citigroup Loan Cases, JCCP No. 4197 (San Francisco Supr. Ct., Cal.). In 2003, the Court approved a settlement that provided approximately \$240 million in relief to former Associates' customers across America. Prior to its acquisition in November 2000, Associates First Financial, referred to as The Associates, was one of the nation's largest "subprime" lenders. Lieff Cabraser represented former customers of The Associates charging that the company added unwanted and unnecessary insurance products onto mortgage loans and engaged in improper loan refinancing practices. Lieff Cabraser served as nationwide Plaintiffs' Co-Liaison Counsel.
- 10. Telephone Consumer Protection Act Litigation. Lieff Cabraser has spearheaded a series of groundbreaking class actions under the Telephone Consumer Protection Act ("TCPA"), which prohibits abusive telephone practices by lenders and marketers, and places strict limits on the use of autodialers to call or send texts to cell phones. The settlements in these cases have collectively put a stop to millions of harassing calls by debt collectors and others and resulted in the recovery by consumers across America of over \$300 million.

In 2012, Lieff Cabraser achieved a \$24.15 million class settlement with Sallie Mae – the then-largest settlement in the history of the TCPA. See *Arthur v. Sallie Mae, Inc.*, No. C10-0198 JLR, 2012 U.S. Dist. LEXIS 132413 (W.D. Wash. Sept. 17, 2012). In subsequent cases, Lieff Cabraser and co-counsel eclipsed this record, including a \$32,083,905 settlement with Bank of America (*Duke v. Bank of America*, No. 5:12-cv-04009-EJD (N.D. Cal.)), a \$39,975,000 settlement with HSBC (*Wilkins v. HSBC Bank Nev., N.A.*, Case No. 14-cv-190 (N.D. III.)), and a \$75,455,098.74 settlement with Capital One (*In re Capital One Telephone Consumer Protection Act Litigation*, Master Docket No. 1:12-cv-10064 (N.D. III.)). In the *HSBC* matter, Judge James F. Holderman commented on "the excellent work" and "professionalism" of Lieff Cabraser and its co-counsel. As noted above, Lieff Cabraser's class settlements in TCPA cases have collectively resulted in the recovery by consumers of over \$300 million.

11. Thompson v. WFS Financial, No. 3-02-0570 (M.D. Tenn.); Pakeman v. American Honda Finance Corporation, No. 3-02-0490 (M.D. Tenn.); Herra v. Toyota Motor Credit Corporation, No. CGC 03-419 230 (San Francisco Supr. Ct.). Lieff Cabraser with cocunsel litigated against several of the largest automobile finance companies in the country to compensate victims of—and stop future instances of—racial discrimination in the setting of interest rates in

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automobile finance contracts. The litigation led to substantial changes in the way Toyota Motor Credit Corporation ("TMCC"), American Honda Finance Corporation ("American Honda") and WFS Financial, Inc. sell automobile finance contracts, limiting the discrimination that can occur. In approving the settlement in *Thompson v. WFS Financial*, the Court recognized the "innovative" and "remarkable settlement" achieved on behalf of the nationwide class. In 2006 in *Herra v. Toyota Motor Credit Corporation*, the Court granted final approval to a nationwide class action settlement on behalf of all African-American and Hispanic customers of TMCC who entered into retail installment contracts that were assigned to TMCC from 1999 to 2006. The monetary benefit to the class was estimated to be between \$159-\$174 million.

- 12. In re John Muir Uninsured Healthcare Cases, JCCP No. 4494 (Cal. Supr. Ct.). Lieff Cabraser represented nearly 53,000 uninsured patients who received care at John Muir hospitals and outpatient centers and were charged inflated prices and then subject to overly aggressive collection practices when they failed to pay. In November 2008, the Court approved a final settlement of the John Muir litigation. John Muir agreed to provide refunds or bill adjustments of 40-50% to uninsured patients who received medical care at John Muir over a six year period, bringing their charges to the level of patients with private insurance, at a value of \$115 million. No claims were required. Every class member received a refund or bill adjustment. Furthermore, John Muir was required to (1) maintain charity care policies to give substantial discounts—up to 100%—to low income, uninsured patients who meet certain income requirements; (2) maintain an Uninsured Patient Discount Policy to give discounts to all uninsured patients, regardless of income, so that they pay rates no greater than those paid by patients with private insurance; (3) enhance communications to uninsured patients so they are better advised about John Muir's pricing discounts, financial assistance, and financial counseling services; and (4) limit the practices for collecting payments from uninsured patients.
- 13. **Providian Credit Card Cases**, JCCP No. 4085 (San Francisco Supr. Ct.). Lieff Cabraser served as Co-Lead Counsel for a certified national Settlement Class of Providian credit cardholders who alleged that Providian had engaged in widespread misconduct by charging cardholders unlawful, excessive interest and late charges, and by promoting and selling to cardholders "add-on products" promising illusory benefits and services. In November 2001, the Court granted final approval to a \$105 million settlement of the case, which also required Providian to implement substantial changes in its business practices. The \$105 million settlement, combined with an earlier settlement by Providian with Federal and state agencies, represents the largest

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settlement ever by a U.S. credit card company in a consumer protection case.

- 14. In re Chase Bank USA, N.A. "Check Loan" Contract Litigation, MDL No. 2032 (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Liaison Counsel and on the Plaintiffs' Executive Committee in Multi-District Litigation ("MDL") charging that Chase Bank violated the implied covenant of good faith and fair dealing by unilaterally modifying the terms of fixed rate loans. The MDL was established in 2009 to coordinate more than two dozen cases that were filed in the wake of the conduct at issue. The nationwide, certified class consisted of more than 1 million Chase cardholders who, in 2008 and 2009, had their monthly minimum payment requirements unilaterally increased by Chase by more than 150%. Plaintiffs alleged that Chase made this change, in part, to induce cardholders to give up their promised fixed APRs in order to avoid the unprecedented minimum payment hike. In November 2012, the Court approved a \$100 million settlement of the case.
- 15. In re Synthroid Marketing Litigation, MDL No. 1182 (N.D. III.). Lieff Cabraser served as Co-Lead Counsel for the purchasers of the thyroid medication Synthroid in litigation against Knoll Pharmaceutical, the manufacturer of Synthroid. The lawsuits charged that Knoll misled physicians and patients into keeping patients on Synthroid despite knowing that less costly, but equally effective drugs, were available. In 2000, the District Court gave final approval to a \$87.4 million settlement with Knoll and its parent company, BASF Corporation, on behalf of a class of all consumers who purchased Synthroid at any time from 1990 to 1999. In 2001, the Court of Appeals upheld the order approving the settlement and remanded the case for further proceedings. 264 F.3d 712 (7th Cir. 2001). The settlement proceeds were distributed in 2003.
- 16. R.M. Galicia v. Franklin; Franklin v. Scripps Health, No. 10 859468 (San Diego Supr. Ct., Cal.). Lieff Cabraser served as Lead Class Counsel in a certified class action lawsuit on behalf of 60,750 uninsured patients who alleged that the Scripps Health hospital system imposed excessive fees and charges for medical treatment. The class action originated in July 2006, when uninsured patient Phillip Franklin filed a class action cross-complaint against Scripps Health after Scripps sued Mr. Franklin through a collection agency. Mr. Franklin alleged that he, like all other uninsured patients of Scripps Health, was charged unreasonable and unconscionable rates for his medical treatment. In June 2008, the Court granted final approval to a settlement of the action which includes refunds or discounts of 35% off of medical bills, collectively worth \$73 million. The settlement also required Scripps Health to modify its pricing and collections practices by (1) following an Uninsured Patient Discount Policy, which includes automatic discounts

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from billed charges for Hospital Services; (2) following a Charity Care Policy, which provides uninsured patients who meet certain income tests with discounts on Health Services up to 100% free care, and provides for charity discounts under other special circumstances; (3) informing uninsured patients about the availability and terms of the above financial assistance policies; and (4) restricting certain collections practices and actively monitoring outside collection agents.

- 17. In re Lawn Mower Engine Horsepower Marketing and Sales Practices Litigation, MDL No. 1999 (E.D. Wi.). Lieff Cabraser served as co-counsel for consumers who alleged manufacturers of certain gasoline-powered lawn mowers misrepresented, and significantly overstated, the horsepower of the product. As the price for lawn mowers is linked to the horsepower of the engine -- the higher the horsepower, the more expensive the lawn mower -- defendants' alleged misconduct caused consumers to purchase expensive lawn mowers that provided lower horsepower than advertised. In August 2010, the Court approved a \$65 million settlement of the action.
- 18. **Strugano v. Nextel Communications**, No. BC 288359 (Los Angeles Supr. Ct). In May 2006, the Los Angeles Superior Court granted final approval to a class action settlement on behalf of all California customers of Nextel from January 1, 1999 through December 31, 2002, for compensation for the harm caused by Nextel's alleged unilateral (1) addition of a \$1.15 monthly service fee and/or (2) change from second-by-second billing to minute-by-minute billing, which caused "overage" charges (i.e., for exceeding their allotted cellular plan minutes). The total benefit conferred by the Settlement directly to Class Members was between approximately \$13.5 million and \$55.5 million, depending on which benefit Class Members selected.
- 19. Curry v. Fairbanks Capital Corporation, No. 03-10895-DPW (D. Mass.). In 2004, the Court approved a \$55 million settlement of a class action lawsuit against Fairbanks Capital Corporation arising out of charges against Fairbanks of misconduct in servicing its customers' mortgage loans. The settlement also required substantial changes in Fairbanks' business practices and established a default resolution program to limit the imposition of fees and foreclosure proceedings against Fairbanks' customers. Lieff Cabraser served as nationwide Co-Lead Counsel for the homeowners.
- 20. **Payment Protection Credit Card Litigation**. Lieff Cabraser represented consumers in litigation in federal court against some of the nation's largest credit card issuers, challenging the imposition of charges for so-called "payment protection" or "credit protection" programs. The complaints charged that the credit card companies imposed payment

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protection without the consent of the consumer and/or deceptively marketed the service, and further that the credit card companies unfairly administered their payment protection programs to the detriment of consumers. In 2012 and 2013, the Courts approved monetary settlements with HSBC (\$23.5 million), Bank of America (\$20 million), and Discover (\$10 million) that also required changes in the marketing and sale of payment protection to consumers.

- 21. California Title Insurance Industry Litigation. Lieff Cabraser, in coordination with parallel litigation brought by the Attorney General, reached settlements in 2003 and 2004 with the leading title insurance companies in California, resulting in historic industry-wide changes to the practice of providing escrow services in real estate closings. The settlements brought a total of \$50 million in restitution to California consumers, including cash payments. In the lawsuits, plaintiffs alleged, among other things, that the title companies received interest payments on customer escrow funds that were never reimbursed to their customers. The defendant companies include Lawyers' Title, Commonwealth Land Title, Stewart Title of California, First American Title, Fidelity National Title, and Chicago Title.
- 22. Vytorin/Zetia Marketing, Sales Practices & Products Liability Litigation, MDL No. 1938 (D. N.J.). Lieff Cabraser served on the Executive Committee of the Plaintiffs' Steering Committee representing plaintiffs alleging that Merck/Schering-Plough Pharmaceuticals falsely marketed anti-cholesterol drugs Vytorin and Zetia as being more effective than other anti-cholesterol drugs. Plaintiffs further alleged that Merck/Schering-Plough Pharmaceuticals sold Vytorin and Zetia at higher prices than other anti-cholesterol medication when they were no more effective than other drugs. In 2010, the Court approved a \$41.5 million settlement for consumers who bought Vytorin or Zetia between November 2002 and February 2010.
- 23. Morris v. AT&T Wireless Services, No. C-04-1997-MJP (W.D. Wash.). Lieff Cabraser served as class counsel for a nationwide settlement class of cell phone customers subjected to an end-of-billing cycle cancellation policy implemented by AT&T Wireless in 2003 and alleged to have breached customers' service agreements. In May 2006, the New Jersey Superior Court granted final approval to a class settlement that guarantees delivery to the class of \$40 million in benefits. Class members received cash-equivalent calling cards automatically, and had the option of redeeming them for cash. Lieff Cabraser had been prosecuting the class claims in the Western District of Washington when a settlement in New Jersey state court was announced. Lieff Cabraser objected to that settlement as inadequate because it would have only provided \$1.5 million in benefits without a cash option, and the Court agreed, declining to

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- approve it. Thereafter, Lieff Cabraser negotiated the new settlement providing \$40 million to the class, and the settlement was approved.
- 24. Berger v. Property I.D. Corporation, No. CV 05-5373-GHK (C.D. Cal.). In January 2009, the Court granted final approval to a \$39.4 million settlement with several of the nation's largest real estate brokerages, including companies doing business as Coldwell Banker, Century 21, and ERA Real Estate, and California franchisors for RE/MAX and Prudential California Realty, in an action under the Real Estate Settlement Procedures Act on behalf of California home sellers. Plaintiffs charged that the brokers and Property I.D. Corporation set up straw companies as a way to disguise kickbacks for referring their California clients' natural hazard disclosure report business to Property I.D. (the report is required to sell a home in California). Under the settlement, hundreds of thousands of California home sellers were eligible to receive a full refund of the cost of their report, typically about \$100.
- 25. In re Tri-State Crematory Litigation, MDL No. 1467 (N.D. Ga.). In March 2004, Lieff Cabraser delivered opening statements and began testimony in a class action by families whose loved ones were improperly cremated and desecrated by Tri-State Crematory in Noble, Georgia. The families also asserted claims against the funeral homes that delivered the decedents to Tri-State Crematory for failing to ensure that the crematory performed cremations in the manner required under the law and by human decency. One week into trial, settlements with the remaining funeral home defendants were reached and brought the settlement total to approximately \$37 million. Trial on the class members' claims against the operators of crematory began in August 2004. Soon thereafter, these defendants entered into a \$80 million settlement with plaintiffs. As part of the settlement, all buildings on the Tri-State property were razed. The property will remain in a trust so that it will be preserved in peace and dignity as a secluded memorial to those whose remains were mistreated, and to prevent crematory operations or other inappropriate activities from ever taking place there. Earlier in the litigation, the Court granted plaintiffs' motion for class certification in a published order. 215 F.R.D. 660 (2003).
- 26. In re American Family Enterprises, MDL No. 1235 (D. N.J.). Lieff Cabraser served as Co-Lead Counsel for a nationwide class of persons who received any sweepstakes materials sent under the name "American Family Publishers." The class action lawsuit alleged that defendants deceived consumers into purchasing magazine subscriptions and merchandise in the belief that such purchases were necessary to win an American Family Publishers' sweepstakes prize or enhanced their chances of winning a sweepstakes prize. In September 2000, the Court granted

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final approval of a \$33 million settlement of the class action. In April 2001, over 63,000 class members received refunds averaging over \$500 each, representing 92% of their eligible purchases. In addition, American Family Publishers agreed to make significant changes to the way it conducts the sweepstakes.

27. Walsh v. Kindred Healthcare Inc., No. 3:11-cv-00050 (N.D. Cal.). Lieff Cabraser and co-counsel represented a class of 54,000 current and former residents, and families of residents, of skilled nursing care facilities in a class action against Kindred Healthcare for failing to adequately staff its nursing facilities in California. Since January 1, 2000, skilled nursing facilities in California have been required to provide at least 3.2 hours of direct nursing hours per patient day (NHPPD), which represented the minimum staffing required for patients at skilled nursing facilities.

The complaint alleged a pervasive and intentional failure by Kindred Healthcare to comply with California's required minimum standard for qualified nurse staffing at its facilities. Understaffing is uniformly viewed as one of the primary causes of the inadequate care and often unsafe conditions in skilled nursing facilities. Studies have repeatedly shown a direct correlation between inadequate skilled nursing care and serious health problems, including a greater likelihood of falls, pressure sores, significant weight loss, incontinence, and premature death. The complaint further charged that Kindred Healthcare collected millions of dollars in payments from residents and their family members, under the false pretense that it was in compliance with California staffing laws and would continue to do so.

In December 2013, the Court approved a \$8.25 million settlement which included cash payments to class members and an injunction requiring Kindred Healthcare to consistently utilize staffing practices which would ensure they complied with applicable California law. The injunction, subject to a third party monitor, was valued at between \$6 to \$20 million.

28. Cincotta v. California Emergency Physicians Medical Group,
No. 07359096 (Cal. Supr. Ct.). Lieff Cabraser served as class counsel for
nearly 100,000 uninsured patients that alleged they were charged
excessive and unfair rates for emergency room service across 55 hospitals
throughout California. The settlement, approved on October 31, 2008,
provided complete debt elimination, 100% cancellation of the bill, to
uninsured patients treated by California Emergency Physicians Medical
Group during the 4-year class period. These benefits were valued at
\$27 million. No claims were required, so all of these bills were cancelled.
In addition, the settlement required California Emergency Physicians
Medical Group prospectively to (1) maintain certain discount policies for

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- all charity care patients; (2) inform patients of the available discounts by enhanced communications; and (3) limit significantly the type of collections practices available for collecting from charity care patients.
- 29. In re Ameriquest Mortgage Co. Mortgage Lending Practices Litigation, MDL No. 1715. Lieff Cabraser served as Co-Lead Counsel for borrowers who alleged that Ameriquest engaged in a predatory lending scheme based on the sale of loans with illegal and undisclosed fees and terms. In August 2010, the Court approved a \$22 million settlement.
- 30. ING Bank Rate Renew Cases, Case No. 11-154-LPS (D. Del.). Lieff Cabraser represented borrowers in class action lawsuits charging that ING Direct breached its promise to allow them to refinance their mortgages for a flat fee. From October 2005 through April 2009, ING promoted a \$500 or \$750 flat-rate refinancing fee called "Rate Renew" as a benefit of choosing ING for mortgages over competitors. Beginning in May 2009, however, ING began charging a higher fee of a full monthly mortgage payment for refinancing using "Rate Renew," despite ING's earlier and lower advertised price. As a result, the complaint alleged that many borrowers paid more to refinance their loans using "Rate Renew" than they should have, or were denied the opportunity to refinance their loan even though the borrowers met the terms and conditions of ING's original "Rate Renew" offer. In August 2012, the Court certified a class of consumers in ten states who purchased or retained an ING mortgage from October 2005 through April 2009. A second case on behalf of California consumers was filed in December 2012. In October 2014, the Court approved a \$20.35 million nationwide settlement of the litigation. The settlement provided an average payment of \$175 to the nearly 100,000 class members, transmitted to their accounts automatically and without any need to file a claim form.
- 31. Yarrington v. Solvay Pharmaceuticals, No. 09-CV-2261 (D. Minn.). In March 2010, the Court granted final approval to a \$16.5 million settlement with Solvay Pharmaceuticals, one of the country's leading pharmaceutical companies. Lieff Cabraser served as Co-Lead Counsel, representing a class of persons who purchased Estratest—a hormone replacement drug. The class action lawsuit alleged that Solvay deceptively marketed and advertised Estratest as an FDA-approved drug when in fact Estratest was not FDA-approved for any use. Under the settlement, consumers obtained partial refunds for up to 30% of the purchase price paid of Estratest. In addition, \$8.9 million of the settlement was allocated to fund programs and activities devoted to promoting women's health and well-being at health organizations, medical schools, and charities throughout the nation.

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- 32. **Reverse Mortgage Cases**, JCCP No. 4061 (San Mateo County Supr. Ct., Cal.). Transamerica Corporation, through its subsidiary Transamerica Homefirst, Inc., sold "reverse mortgages" marketed under the trade name "Lifetime." The Lifetime reverse mortgages were sold exclusively to seniors, *i.e.*, persons 65 years or older. Lieff Cabraser, with co-counsel, filed suit on behalf of seniors alleging that the terms of the reverse mortgages were unfair, and that borrowers were misled as to the loan terms, including the existence and amount of certain charges and fees. In 2003, the Court granted final approval to an \$8 million settlement of the action.
- as Class Counsel representing a certified class of online consumers in California who purchased certain Dell computers based on the advertisement of an instant-off (or "slash-through") discount. The complaint challenged Dell's pervasive use of "slash-through" reference prices in its online marketing. Plaintiffs alleged that these "slash-through" reference prices were interpreted by consumers as representing Dell's former or regular sales prices, and that such reference prices (and corresponding representations of "savings") were false because Dell rarely, if ever, sold its products at such prices. In October 2011, the Court approved a settlement that provided a \$50 payment to each class member who submitted a timely and valid claim. In addition, in response to the lawsuit, Dell changed its methodology for consumer online advertising, eliminating the use of "slash-through" references prices.
- 34. Hepting v. AT&T Corp., Case No. C-06-0672-VRW (N.D. Cal.). Plaintiffs alleged that AT&T collaborated with the National Security Agency in a massive warrantless surveillance program that illegally tracked the domestic and foreign communications and communications records of millions of Americans in violation of the U.S. Constitution, Electronic Communications Privacy Act, and other statutes. The case was filed on January 2006. The U.S. government guickly intervened and sought dismissal of the case. By the Spring of 2006, over 50 other lawsuits were filed against various telecommunications companies, in response to a USA Today article confirming the surveillance of communications and communications records. The cases were combined into a multi-district litigation proceeding entitled *In re National Security* Agency Telecommunications Record Litigation, MDL No. 06-1791. In June of 2006, the District Court rejected both the government's attempt to dismiss the case on the grounds of the state secret privilege and AT&T's arguments in favor of dismissal. The government and AT&T appealed the decision and the U.S. Court of Appeals for the Ninth Circuit heard argument one year later. No decision was issued. In July 2008, Congress granted the government and AT&T "retroactive immunity" for liability for their wiretapping program under amendments to the Foreign Intelligence

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Surveillance Act that were drafted in response to this litigation. Signed into law by President Bush in 2008, the amendments effectively terminated the litigation. Lieff Cabraser played a leading role in the litigation working closely with co-counsel from the Electronic Frontier Foundation.

35. In Re Apple and AT&T iPad Unlimited Data Plan Litigation, No. 5:10-cv-02553 RMW (N.D. Ca.). Lieff Cabraser served as class counsel in an action against Apple and AT&T charging that Apple and AT&T misrepresented that consumers purchasing an iPad with 3G capability could choose an unlimited data plan for a fixed monthly rate and switch in and out of the unlimited plan on a monthly basis as they wished. Less than six weeks after its introduction to the U.S. market, AT&T and Apple discontinued their unlimited data plan for any iPad 3G customers not currently enrolled and prohibited current unlimited data plan customers from switching back and forth from a less expensive, limited data plan. In March 2014, Apple agreed to compensate all class members \$40 and approximately 60,000 claims were paid. In addition, sub-class members who had not yet entered into an agreement with AT&T were offered a data plan.

# V. <u>Economic Injury Product Defects</u>

### A. Current Cases

- 1. McClellan, et al. v. Fitbit, Inc., Case Nos. 16-cv-00036-JD; 16-cv-00777-JD (N.D. Cal.). Lieff Cabraser represents consumers nationwide in litigation against Fitbit that alleges the Fitbit Blaze, Charge HR and Fitbit Surge heart monitors do not and cannot consistently record accurate heart rates during the intense physical activity for which Fitbit expressly markets the devices in widespread advertising. The lawsuit contends and expert testing confirms — that the Fitbit heart rate monitors consistently mis-record heart rates by a significant margin, particularly during intense exercise. Not only are accurate heart readings important for those engaging in fitness, they can be critical to the health and wellbeing of people whose medical conditions require them to maintain (or not exceed) a certain heart rate. In May 2016, plaintiffs filed an amended complaint including comprehensive new studies conducted by researchers at California State Polytechnic University, Pomona confirming that Fitbit's monitors are "highly inaccurate during elevated physical activity." The litigation is ongoing.
- 2. Front-Loading Washer Products Liability Litigation. Lieff Cabraser represents consumers in multiple states who have filed separate class action lawsuits against Whirlpool, Sears and LG Corporations. The complaints charge that certain front-loading automatic washers manufactured by these companies are defectively designed and that the

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design defects create foul odors from mold and mildew that permeate washing machines and customers' homes. Many class members have spent money for repairs and on other purported remedies. As the complaints allege, none of these remedies eliminates the problem.

- 3. In Re General Motors LLC Ignition Switch Litigation, MDL No. 2543 (S.D. N.Y.). Lieff Cabraser represents proposed nationwide classes of GM vehicle owners and lessees whose cars include defective ignition switches in litigation focusing on economic loss claims. On August 15, 2014, U.S. District Court Judge Jesse M. Furman appointed Elizabeth J. Cabraser as Co-Lead Plaintiffs' Counsel in the litigation, which seeks compensation on behalf of consumers who purchased or leased GM vehicles containing a defective ignition switch, over 500,000 of which have now been recalled. The consumer complaints allege that the ignition switches in these vehicles share a common, uniform, and defective design. As a result, these cars are of a lesser quality than GM represented, and class members overpaid for the cars. Further, GM's public disclosure of the ignition switch defect has caused the value of these cars to materially diminish. The complaints seek monetary relief for the diminished value of the class members' cars.
- 4. Honda Window Defective Window Litigation. Case No. 2:21-cv-01142-SVW-PLA (C.D. CA). Lieff Cabraser represents consumers in a class action lawsuit filed against Honda Motor Company, Inc. for manufacturing and selling vehicles with allegedly defective window regulator mechanisms. Windows in these vehicles allegedly can, without warning, drop into the door frame and break or become permanently stuck in the fully-open position.

The experience of one Honda Element owner, as set forth in the complaint, exemplifies the problem: The driver's side window in his vehicle slid down suddenly while he was driving on a smooth road. A few months later, the window on the passenger side of the vehicle also slid down into the door and would not move back up. The owner incurred more than \$300 in repair costs, which Honda refused to pay for. Discovery in the action is ongoing.

5. Moore, et al. v. Samsung Electronics America and Samsung Electronics Co., Ltd., Case No. 2:16-cv-4966 (D.N.J.). Lieff Cabraser represents consumers in federal court in New Jersey in cases focusing on complaints about Samsung top-loading washing machines that explode in the home, causing damage to walls, doors, and other equipment and presenting significant injury risks. Owners report Samsung top-load washers exploding as early as the day of installation, while others have seen their machines explode months or even more than a year after

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purchase. The lawsuit seeks injunctive relief as well as remedial and restitutionary actions and damages.

6. In re Chinese-Manufactured Drywall Products Liability Litigation, No. 10-30568 (E.D. La.). Lieff Cabraser with co-counsel represents a proposed class of builders who suffered economic losses as a result of the presence of Chinese-manufactured drywall in homes and other buildings they constructed. From 2005 to 2008, hundreds-of-millions of square feet of gypsum wallboard manufactured in China were exported to the U.S., primarily to the Gulf Coast states, and installed in newly-constructed and reconstructed properties. After installation of this drywall, owners and occupants of the properties began noticing unusual odors, blackening of silver and copper items and components, and the failure of appliances, including microwaves, refrigerators, and airconditioning units. Some residents of the affected homes also experienced health problems, such as skin and eye irritation, respiratory issues, and headaches.

Lieff Cabraser's client, Mitchell Company, Inc., was the first to perfect service on Chinese defendant Taishan Gypsum Co. Ltd. ("TG"), and thereafter secured a default judgment against TG. Lieff Cabraser participated in briefing that led to the District Court's denial of TG's motion to dismiss the class action complaint for lack of personal jurisdiction. On May 21, 2014, the U.S. Court of Appeals for the Fifth Court affirmed the District Court's default judgment against TG, finding jurisdiction based on ties of the company and its agent with state distributors. 753 F.3d 521 (5th Cir. 2014).

### B. Successes

- 1. **Allagas v. BP Solar**, No. 3:14-cv-00560-SI (N.D. Cal.). Lieff Cabraser and co-counsel represented California consumers in a class action lawsuit against BP Solar and Home Depot charging the companies sold solar panels with defective junction boxes that caused premature failures and fire risks. In January 2017, Judge Susan Illston granted final approval to a consumer settlement valued at more than \$67 million that extends relief to a nationwide class as well as eliminating the serious fire risks.
- 2. In re Mercedes-Benz Tele-Aid Contract Litigation, MDL No. 1914 (D. N.J.). Lieff Cabraser represented owners and lessees of Mercedes-Benz cars and SUVs equipped with the Tele-Aid system, an emergency response system which links subscribers to road-side assistance operators by using a combination of global positioning and cellular technology. In 2002, the Federal Communications Commission issued a rule, effective 2008, eliminating the requirement that wireless phone carriers provide analog-based networks. The Tele-Aid system offered by Mercedes-Benz relied on analog signals. Plaintiffs charged that Mercedes-Benz

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committed fraud in promoting and selling the Tele-Aid system without disclosing to buyers of certain model years that the Tele-Aid system as installed would become obsolete in 2008.

In an April 2009 published order, the Court certified a nationwide class of all persons or entities in the U.S. who purchased or leased a Mercedes-Benz vehicle equipped with an analog-only Tele Aid system after August 8, 2002, and (1) subscribed to Tele Aid service until being informed that such service would be discontinued at the end of 2007, or (2) purchased an upgrade to digital equipment. In September 2011, the Court approved a settlement that provided class members between a \$650 check or a \$750 to \$1,300 certificate toward the purchase or lease of new Mercedes-Benz vehicle, depending upon whether or not they paid for an upgrade of the analog Tele Aid system and whether they still owned their vehicle. In approving the settlement, U.S. District Court Judge Dickinson R. Debevoise stated, "I want to thank counsel for the . . . very effective and good work . . . . It was carried out with vigor, integrity and aggressiveness with never going beyond the maxims of the Court."

- 3. McLennan v. LG Electronics USA, No. 2:10-cv-03604 (D. N.J.). Lieff Cabraser represented consumers who alleged several LG refrigerator models had a faulty design that caused the interior lights to remain on even when the refrigerator doors were closed (identified as the "light issue"), resulting in overheating and food spoilage. In March 2012, the Court granted final approval to a settlement of the nationwide class action lawsuit. The settlement provides that LG reimburse class members for all out-of-pocket costs (parts and labor) to repair the light issue prior to the mailing of the class notice and extends the warranty with respect to the light issue for 10 years from the date of the original retail purchase of the refrigerator. The extended warranty covers in-home refrigerator repair performed by LG and, in some cases, the cost of a replacement refrigerator. In approving the settlement, U.S. District Court Judge William J. Martini stated, "The Settlement in this case provides for both the complete reimbursement of out-of-pocket expenses for repairs fixing the Light Issue, as well as a warranty for ten years from the date of refrigerator purchase. It would be hard to imagine a better recovery for the Class had the litigation gone to trial. Because Class members will essentially receive all of the relief to which they would have been entitled after a successful trial, this factor weighs heavily in favor of settlement."
- 4. *Grays Harbor Adventist Christian School v. Carrier Corporation*, No. 05-05437 (W.D. Wash.). In April 2008, the Court approved a nationwide settlement for current and past owners of highericiency furnaces manufactured and sold by Carrier Corporation and equipped with polypropylene-laminated condensing heat exchangers ("CHXs"). Carrier sold the furnaces under the Carrier, Bryant, Day &

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Night and Payne brand-names. Plaintiffs alleged that starting in 1989 Carrier began manufacturing and selling high efficiency condensing furnaces manufactured with a secondary CHX made of inferior materials. Plaintiffs alleged that as a result, the CHXs, which Carrier warranted and consumers expected to last for 20 years, failed prematurely. The settlement provides an enhanced 20-year warranty of free service and free parts for consumers whose furnaces have not yet failed. The settlement also offers a cash reimbursement for consumers who already paid to repair or replace the CHX in their high-efficiency Carrier furnaces.

An estimated three million or more consumers in the U.S. and Canada purchased the furnaces covered under the settlement. Plaintiffs valued the settlement to consumers at over \$300 million based upon the combined value of the cash reimbursement and the estimated cost of an enhanced warranty of this nature.

- 5. Carideo v. Dell, No. C06-1772 JLR (W.D. Wash.). Lieff Cabraser represented consumers who owned Dell Inspiron notebook computer model numbers 1150, 5100, or 5160. The class action lawsuit complaint charged that the notebooks suffered premature failure of their cooling system, power supply system, and/or motherboards. In December 2010, the Court approved a settlement which provided class members that paid Dell for certain repairs to their Inspiron notebook computer a reimbursement of all or a portion of the cost of the repairs.
- 6. Cartwright v. Viking Industries, No. 2:07-cv-2159 FCD (E.D. Cal.) Lieff Cabraser represented California homeowners in a class action lawsuit which alleged that over one million Series 3000 windows produced and distributed by Viking between 1989 and 1999 were defective. The plaintiffs charged that the windows were not watertight and allowed for water to penetrate the surrounding sheetrock, drywall, paint or wallpaper. Under the terms of a settlement approved by the Court in August 2010, all class members who submitted valid claims were entitled to receive as much as \$500 per affected property.
- 7. Pelletz v. Advanced Environmental Recycling Technologies (W.D. Wash.). Lieff Cabraser served as Co-Lead Counsel in a case alleging that ChoiceDek decking materials, manufactured by AERT, developed persistent and untreatable mold spotting throughout their surface. In a published opinion in January 2009, the Court approved a settlement that provided affected consumers with free and discounted deck treatments, mold inhibitor applications, and product replacement and reimbursement.
- 8. *Create-A-Card v. Intuit*, No. C07-6452 WHA (N.D. Cal.). Lieff Cabraser, with co-counsel, represented business users of QuickBooks Pro for accounting that lost their QuickBooks data and other files due to faulty

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software code sent by Intuit, the producer of QuickBooks. In September 2009, the Court granted final approval to a settlement that provided all class members who filed a valid claim with a free software upgrade and compensation for certain data-recovery costs. Commenting on the settlement and the work of Lieff Cabraser on September 17, 2009, U.S. District Court Judge William H. Alsup stated, "I want to come back to something that I observed in this case firsthand for a long time now. I think you've done an excellent job in the case as class counsel and the class has been well represented having you and your firm in the case."

- 9. Weekend Warrior Trailer Cases, JCCP No. 4455 (Cal. Supr. Ct.). Lieff Cabraser, with co-counsel, represented owners of Weekend Warrior trailers manufactured between 1998 and 2006 that were equipped with frames manufactured, assembled, or supplied by Zieman Manufacturing Company. The trailers, commonly referred to as "toy haulers," were used to transport outdoor recreational equipment such as motorcycles and allterrain vehicles. Plaintiffs charged that Weekend Warrior and Zieman knew of design and performance problems, including bent frames, detached siding, and warped forward cargo areas, with the trailers, and concealed the defects from consumers. In February 2008, the Court approved a \$5.5 million settlement of the action that provided for the repair and/or reimbursement of the trailers. In approving the settlement, California Superior Court Judge Thierry P. Colaw stated that class counsel were "some of the best" and "there was an overwhelming positive reaction to the settlement" among class members.
- 10. **Lundell v. Dell**, No. C05-03970 (N.D. Cal.). Lieff Cabraser served as Lead Class Counsel for consumers who experienced power problems with the Dell Inspiron 5150 notebook. In December 2006, the Court granted final approval to a settlement of the class action which extended the one-year limited warranty on the notebook for a set of repairs related to the power system. In addition, class members that paid Dell or a third party for repair of the power system of their notebook were entitled to a 100% cash refund from Dell.
- 11. **Kan v. Toshiba American Information Systems**, No. BC327273 (Los Angeles Super. Ct.). Lieff Cabraser served as Co-Lead Counsel for a class of all end-user persons or entities who purchased or otherwise acquired in the United States, for their own use and not for resale, a new Toshiba Satellite Pro 6100 Series notebook. Consumers alleged a series of defects were present in the notebook. In 2006, the Court approved a settlement that extended the warranty for all Satellite Pro 6100 notebooks, provided cash compensation for certain repairs, and reimbursed class members for certain out-of-warranty repair expenses.

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- Pipe Company, No. C-00-20749 (N.D. Cal.). In June 2004, the Court approved the creation of a settlement fund of up to \$14.5 million for property owners nationwide with Poz-Lok fire sprinkler piping that fails. Since 1990, Poz-Lok pipes and pipe fittings were sold in the U.S. as part of fire suppression systems for use in residential and commercial buildings. After leaks in Poz-Lok pipes caused damage to its DeAnza Campus Center building, Foothill/DeAnza Community College District in California retained Lieff Cabraser to file a class action lawsuit against the manufacturers of Poz-Lok. The college district charged that Poz-Lok pipe had manufacturing and design defects that resulted in the premature corrosion and failure of the product. Under the settlement, owners whose Poz-Lok pipes are leaking today, or over the next 15 years, may file a claim for compensation.
- 13. **Toshiba Laptop Screen Flicker Settlement**. Lieff Cabraser negotiated a settlement with Toshiba America Information Systems, Inc. ("TAIS") to provide relief for owners of certain Toshiba Satellite 1800 Series, Satellite Pro 4600 and Tecra 8100 personal notebook computers whose screens flickered, dimmed or went blank due to an issue with the FL Inverter Board component. In 2004 under the terms of the Settlement, owners of affected computers who paid to have the FL Inverter issue repaired by either TAIS or an authorized TAIS service provider recovered the cost of that repair, up to \$300 for the Satellite 1800 Series and the Satellite Pro 4600 personal computers, or \$400 for the Tecra 8100 personal computers. TAIS also agreed to extend the affected computers' warranties for the FL Inverter issue by 18 months.
- 14. *McManus v. Fleetwood Enterprises, Inc.*, No. SA-99-CA-464-FB (W.D. Tex.). Lieff Cabraser served as Class Counsel on behalf of original owners of 1994-2000 model year Fleetwood Class A and Class C motor homes. In 2003, the Court approved a settlement that resolved lawsuits pending in Texas and California about braking while towing with 1994 Fleetwood Class A and Class C motor homes. The lawsuits alleged that Fleetwood misrepresented the towing capabilities of new motor homes it sold, and claimed that Fleetwood should have told buyers that a supplemental braking system is needed to stop safely while towing heavy items, such as a vehicle or trailer. The settlement paid \$250 to people who bought a supplemental braking system for Fleetwood motor homes that they bought new. Earlier, the appellate court found that common questions predominated under purchasers' breach of implied warranty of merchantability claim. 320 F.3d 545 (5th Cir. 2003).
- 15. **Richison v. American Cemwood Corp.**, No. 005532 (San Joaquin Supr. Ct., Cal.). Lieff Cabraser served as Co-Lead Class Counsel for an estimated nationwide class of 30,000 owners of homes and other

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structures on which defective Cemwood Shakes were installed. In November 2003, the Court granted final approval to a \$75 million Phase 2 settlement in the American Cemwood roofing shakes national class action litigation. This amount was in addition to a \$65 million partial settlement approved by the Court in May 2000, and brought the litigation to a conclusion.

16. ABS Pipe Litigation, JCCP No. 3126 (Contra Costa County Supr. Ct., Cal.). Lieff Cabraser served as Lead Class Counsel on behalf of property owners whose ABS plumbing pipe was allegedly defective and caused property damage by leaking. Six separate class actions were filed in California against five different ABS pipe manufacturers, numerous developers of homes containing the ABS pipe, as well as the resin supplier and the entity charged with ensuring the integrity of the product. Between 1998 and 2001, Lieff Cabraser achieved 12 separate settlements in the class actions and related individual lawsuits for approximately \$78 million.

Commenting on the work of Lieff Cabraser and co-counsel in the case, California Superior Court (now appellate) Judge Mark B. Simons stated on May 14, 1998: "The attorneys who were involved in the resolution of the case certainly entered the case with impressive reputations and did nothing in the course of their work on this case to diminish these reputations, but underlined, in my opinion, how well deserved those reputations are."

- 17. Williams v. Weyerhaeuser, No. 995787 (San Francisco Supr. Ct.). Lieff Cabraser served as Class Counsel on behalf of a nationwide class of hundreds of thousands or millions of owners of homes and other structures with defective Weyerhaeuser hardboard siding. A California-wide class was certified for all purposes in February 1999, and withstood writ review by both the California Court of Appeals and Supreme Court of California. In 2000, the Court granted final approval to a nationwide settlement of the case which provides class members with compensation for their damaged siding, based on the cost of replacing or, in some instances, repairing, damaged siding. The settlement has no cap, and requires Weyerhaeuser to pay all timely, qualified claims over a nine year period.
- 18. **Naef v. Masonite**, No. CV-94-4033 (Mobile County Circuit Ct., Ala.). Lieff Cabraser served as Co-Lead Class Counsel on behalf of a nationwide Class of an estimated 4 million homeowners with allegedly defective hardboard siding manufactured and sold by Masonite Corporation, a subsidiary of International Paper, installed on their homes. The Court certified the class in November 1995, and the Alabama Supreme Court twice denied extraordinary writs seeking to decertify the Class, including

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in *Ex Parte Masonite*, 681 So. 2d 1068 (Ala. 1996). A month-long jury trial in 1996 established the factual predicate that Masonite hardboard siding was defective under the laws of most states. The case settled on the eve of a second class-wide trial, and in 1998, the Court approved a settlement. Under a claims program established by the settlement that ran through 2008, class members with failing Masonite hardboard siding installed and incorporated in their property between January 1, 1980 and January 15, 1998 were entitled to make claims, have their homes evaluated by independent inspectors, and receive cash payments for damaged siding. Combined with settlements involving other alleged defective home building products sold by Masonite, the total cash paid to homeowners exceeded \$1 billion.

- 19. *In re General Motors Corp. Pick-Up Fuel Tank Products Liability Litigation*, MDL No. 961 (E.D. Pa.). Lieff Cabraser served as Court-appointed Co-Lead Counsel representing a class of 4.7 million plaintiffs who owned 1973-1987 GM C/K pickup trucks with allegedly defective gas tanks. The Consolidated Complaint asserted claims under the Lanham Act, the Magnuson-Moss Act, state consumer protection statutes, and common law. In 1995, the Third Circuit vacated the District Court settlement approval order and remanded the matter to the District Court for further proceedings. In July 1996, a new nationwide class action was certified for purposes of an enhanced settlement program valued at a minimum of \$600 million, plus funding for independent fuel system safety research projects. The Court granted final approval of the settlement in November 1996.
- 20. In re Louisiana-Pacific Inner-Seal Siding Litigation, No. C-95-879-JO (D. Ore.). Lieff Cabraser served as Co-Lead Class Counsel on behalf of a nationwide class of homeowners with defective exterior siding on their homes. Plaintiffs asserted claims for breach of warranty, fraud, negligence, and violation of consumer protection statutes. In 1996, U.S. District Judge Robert E. Jones entered an Order, Final Judgment and Decree granting final approval to a nationwide settlement requiring Louisiana-Pacific to provide funding up to \$475 million to pay for inspection of homes and repair and replacement of failing siding over the next seven years.
- 21. *In re Intel Pentium Processor Litigation*, No. CV 745729 (Santa Clara Supr. Ct., Cal.). Lieff Cabraser served as one of two Courtappointed Co-Lead Class Counsel, and negotiated a settlement, approved by the Court in June 1995, involving both injunctive relief and damages having an economic value of approximately \$1 billion.
- 22. *Cox v. Shell*, No. 18,844 (Obion County Chancery Ct., Tenn.). Lieff Cabraser served as Class Counsel on behalf of a nationwide class of

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- approximately 6 million owners of property equipped with defective polybutylene plumbing systems and yard service lines. In November 1995, the Court approved a settlement involving an initial commitment by Defendants of \$950 million in compensation for past and future expenses incurred as a result of pipe leaks, and to provide replacement pipes to eligible claimants. The deadline for filing claims expired in 2009.
- 23. *Hanlon v. Chrysler Corp.*, No. C-95-2010-CAL (N.D. Cal.). In 1995, the District Court approved a \$200+ million settlement enforcing Chrysler's comprehensive minivan rear latch replacement program, and to correct alleged safety problems with Chrysler's pre-1995 designs. As part of the settlement, Chrysler agreed to replace the rear latches with redesigned latches. The settlement was affirmed on appeal by the Ninth Circuit in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (1998).
- 24. *Gross v. Mobil*, No. C 95-1237-SI (N.D. Cal.). Lieff Cabraser served as Plaintiffs' Class Counsel in this nationwide action involving an estimated 2,500 aircraft engine owners whose engines were affected by Mobil AV-1, an aircraft engine oil. Plaintiffs alleged claims for strict liability, negligence, misrepresentation, violation of consumer protection statutes, and for injunctive relief. Plaintiffs obtained a preliminary injunction requiring Defendant Mobil Corporation to provide notice to all potential class members of the risks associated with past use of Defendants' aircraft engine oil. In addition, Plaintiffs negotiated a proposed Settlement, granted final approval by the Court in November 1995, valued at over \$12.5 million, under which all Class Members were eligible to participate in an engine inspection and repair program, and receive compensation for past repairs and for the loss of use of their aircraft associated with damage caused by Mobil AV-1.

## VI. Antitrust/Trade Regulation/Intellectual Property

## A. Current Cases

1. In Re: Railway Industry Employee No-Poach Antitrust
Litigation, MDL No. 2850 (W.D. Pa.). Lieff Cabraser partner Dean M.
Harvey serves as Co-Lead Counsel for plaintiffs in the aggregate "no-poach" employee antitrust litigation against rail equipment companies
Knorr-Bremse and Wabtac Railway Electronics. Four groups competed
for selection as lead counsel for the plaintiffs, with Lieff Cabraser standing
out because of our prior experience and success in no-poach cases,
including our firm's proven ability to combine employment and antitrust
lawyers to bring a unique concentration of legal acumen and
multidimensional approaches to the case. Twenty-one separate antitrust
actions were filed alleging these companies illegally agreed not to hire
each other's employees. Such improper "no-poach" agreements, intended
to restrict employee mobility and artificially depress employee salaries for

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the benefit of the companies, are facing increasing scrutiny from the U.S. Department of Justice as well as private plaintiffs.

2. Charles Schwab Bank, N.A. v. Bank of America Corp., MDL No. 2262 (N.D. Cal.). Lieff Cabraser serves as counsel for The Charles Schwab Corporation and several of The Charles Schwab Family of Funds and the Bay Area Toll Authority ("BATA") in individual lawsuits against Bank of America Corporation, Credit Suisse Group AG, J.P. Morgan Chase & Co., Citibank, Inc., and additional banks for allegedly manipulating the London Interbank Offered Rate ("LIBOR").

The complaints allege that beginning in 2007, the defendants conspired to understate their true costs of borrowing, causing the calculation of LIBOR to be set artificially low. As a result, Schwab, the Schwab Fund Series, and BATA received less than their rightful rates of return on their LIBOR-based investments. The complaints assert claims under federal and state law, including the Sherman Act and the statutory and common law of California. The cases are pending.

3. In Re: Generic Pharmaceuticals Pricing Antitrust Litigation, MDL No. 2724 (E.D. Pa.). Beginning in February 2015, Lieff Cabraser conducted an extensive investigation into dramatic price increases of certain generic prescription drugs. Lieff Cabraser worked alongside economists and industry experts and interviewed industry participants to evaluate possible misconduct.

In December of 2016, Lieff Cabraser, with co-counsel, filed the first case alleging price-fixing of Levothyroxine, the primary treatment for hypothyroidism, among the most widely prescribed drugs in the world. Lieff Cabraser also played a significant role in similar litigation over the drug Propranolol, and the drug Clomipramine. These cases, and other similar cases, were consolidated and transferred to the Eastern District of Pennsylvania as *In Re: Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724. Lieff Cabraser is a member of the End-Payer Plaintiffs' Steering Committee.

4. In re Lithium-Ion Batteries Antitrust Litigation, MDL No. 2420 (N.D. Cal.). Lieff Cabraser serves as Interim Co-Lead Indirect Purchaser Counsel representing consumers in a class action filed against LG, GS Yuasa, NEC, Sony, Sanyo, Panasonic, Hitachi, LG Chem, Samsung, Toshiba, and Sanyo for allegedly conspiring from 2002 to 2011 to fix and raise the prices of lithium-ion rechargeable batteries. The defendants are the world's leading manufacturers of lithium-ion rechargeable batteries, which provide power for a wide variety of consumer electronic products. As a result of the defendants' alleged anticompetitive and unlawful conduct, consumers across the U.S. paid artificially inflated prices for lithium-ion rechargeable batteries. In late 2014, the Court denied in large

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part defendants' motion to dismiss. Indirect Purchasers have settled with Hitachi, LG Chem, NEC Corp., and Sony for a combined total of \$64.45 million. Indirect Purchasers have moved for class certification, which is currently pending before the court.

5. In re Restasis Antitrust Litigation, MDL No. 2819 (pending). Lieff Cabraser serves as interim co-lead counsel for indirect purchasers (i.e., consumers) of Restasis, a blockbuster drug used to treat dry-eye disease, in a case alleging a broad-based and ongoing anticompetitive scheme by pharmaceutical giant Allergan, Inc. ("Allergan"). The alleged scheme's goal was and is to maintain Allergan's monopoly. Lieff Cabraser, together with co-counsel, filed the first two class actions on behalf of indirect purchasers.

The complaints allege that Allergan (1) fraudulently procured patents it knew were invalid, (2) caused those invalid patents to be listed in the FDA's "Orange Book" as being applicable to Restasis, (3) used the improper Orange Book listings as grounds for filing baseless patent-infringement litigation, (4) abused the FDA's "citizen petition" process, and (5) used a "sham" transfer of the invalid patents to the Saint Regis Mohawk Tribe to obtain tribal sovereign immunity and protect the patents from challenge. This alleged scheme of government petitioning delayed competition from generic equivalents to Restasis that would have been just as safe and cheaper for consumers.

The complaints assert claims under federal and state law, including the Sherman Act and the statutory and common law of numerous states. Several similar lawsuits have since been filed, and the Judicial Panel on Multidistrict Litigation has granted Lieff Cabraser's motion to centralize all cases for pretrial proceedings in the Eastern District of New York before the Hon, Nina Gershon.

6. **Nashville General v. Momenta Pharmaceuticals, et al.**, No. 3:15-cv-01100 (M.D. Tenn.). Lieff Cabraser represents Nashville General Hospital (the Hospital Authority of Metropolitan Government of Nashville) and American Federation of State, County and Municipal Employees District Council 37 Health & Security Plan in a proposed classaction antitrust case against defendants Momenta Pharmaceuticals and Sandoz, Inc., for their alleged price-fixing of enoxaparin, the generic version of the anti-coagulant blood clotting drug Lovenox.

Lovenox, developed by Sanofi-Aventis, is a highly profitable drug with annual sales of more than \$1 billion. The drug entered the market in 1995 and its patent was invalidated by the federal government in 2008, making generic production possible. The complaint alleges Momenta and Sandoz colluded to manipulate the process by which the federal government allows drugs to become generic in order to ensure that defendants were

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the only producers of generic enoxaparin, thereby restraining trade and disrupting the market at consumers' expense.

Plaintiffs filed an amended complaint in December 2017. Discovery is ongoing.

7. In re Capacitors Antitrust Litigation, No. 3:14-cv-03264 (N.D. Cal.). Lieff Cabraser is a member of the Plaintiffs' Steering Committee representing indirect purchasers in an electrolytic and film price-fixing class action lawsuit filed against the world's largest manufacturers of capacitors, used to store and regulate current in electronic circuits and computers, phones, appliances, and cameras worldwide. The defendants include Panasonic Corp., Elna Co. Ltd., Hitachi Chemical Co., Ltd., Nitsuko Electronics Corp., NEC Tokin Corp., SANYO Electric Co., Ltd., Matsuo Electric Co., Okaya Electric Industries Co., Nippon Chemi-con Corp., Nichicon Corp., Rubycon Corp., Taitsu Corp., and Toshin Kogyo Co., Ltd. Lieff Cabraser has played a central role in discovery efforts, and assisted in opposing Defendants' motions for summary judgment.

Settlements with defendants NEC Tokin Corp., Nitsuko Electronics Corp., and Okaya Electric Industries Co., Ltd. have received final approval, and a settlement with Hitachi Chemical and Soshin Electric Co., Ltd. has received preliminary approval. Discovery continues with respect to the remaining defendants.

- 8. In re Disposable Contact Lens Antitrust Litigation, MDL No. 2626 (M.D. Fla.). Lieff Cabraser represents consumers who purchased disposable contact lenses manufactured by Alcon Laboratories, Inc., Johnson & Johnson Vision Care, Inc., Bausch + Lomb, and Cooper Vision, Inc. The complaint challenges the use by contact lens manufacturers of minimum resale price maintenance agreements with independent eye care professionals (including optometrists and ophthalmologists) and wholesalers. These agreements, the complaint alleges, operate to raise retail prices and eliminate price competition and discounts on contact lenses, including from "big box" retail stores, discount buying clubs, and online retailers. As a result, the consumers across the United States have paid artificially inflated prices.
- 9. In re Domestic Airline Travel Antitrust Litigation, 1:15-mc-01404 (District of Columbia). Lieff Cabraser represents consumers in a class action lawsuit against the four largest U.S. airline carriers: American Airlines, Delta Air, Southwest, and United. These airlines collectively account for over 80 percent of all domestic airline travel. The complaint alleges that for years the airlines colluded to restrain capacity, eliminate competition in the market, and increase the price of domestic airline airfares in violation of U.S. antitrust law. The proposed class

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consists of all persons and entities who purchased domestic airline tickets directly from one or more defendants from July 2, 2011 to the present. In February 2016, Judge Kollar-Kotelly appointed Lieff Cabraser to the three-member Plaintiffs' Executive Committee overseeing this multidistrict airline price-fixing litigation. Defendants filed a motion to dismiss, which was denied in October 2016. Subsequently, a settlement with Southwest Airlines was granted preliminary approval. Discovery as to the remaining defendants is underway.

10. **Seaman v. Duke University**, No. 1:15-cv-00462 (M.D. N.C.). Lieff Cabraser represents Dr. Danielle M. Seaman in a class action lawsuit against Duke University; Duke University Health System; and Dr. William L. Roper in his official capacity as Dean and Vice-Chancellor of Medical Affairs for University of North Carolina at Chapel Hill School of Medicine. The complaint charges that Duke and UNC entered into an express, secret agreement not to hire or attempt to hire certain medical faculty and staff that they each employed. The lawsuit seeks to recover damages and obtain injunctive relief, including treble damages, for defendants' alleged violations of federal and North Carolina antitrust law.

In February 2016, Judge Eagles denied defendants' motions to dismiss the case on a variety of grounds, including a denial of state action immunity to antitrust liability. The Court rejected Defendants' argument that they should be exempt from the nation's antitrust laws because Dr. Roper, an alleged co-conspirator, is an administrator of a state university and health system. Defendants sought permission to appeal from the Fourth Circuit Court of Appeals. In June 2016, a unanimous three-judge panel denied the request.

On January 5, 2018, Judge Eagles granted final approval to a partial settlement of antitrust class action claims against Duke University, UNC, and other related parties. The partial settlement implements a variety of measures by the UNC Defendants to ensure that they will not enter into or enforce any unlawful no-hire agreements or similar restraints on competition. The settlement also requires the UNC Defendants to cooperate in providing documents, data and testimony to Dr. Seaman as she continues to pursue her case against the Duke Defendants.

On February 1, 2018, Judge Eagles issued an order certifying a faculty class in the antitrust class action lawsuit against Duke University, UNC, and other related parties over their alleged agreement not to compete for certain of each other's employees. The case is ongoing.

# B. Successes

 In re High-Tech Employee Antitrust Litigation, No. 11 CV 2509 (N.D. Cal.). Lieff Cabraser served as Co-Lead Class Counsel in a

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consolidated class action charging that Adobe Systems Inc., Apple Inc., Google Inc., Intel Corporation, Intuit Inc., Lucasfilm Ltd., and Pixar violated antitrust laws by conspiring to suppress the pay of technical, creative, and other salaried employees. The complaint alleged that the conspiracy among defendants restricted recruiting of each other's employees. On October 24, 2013, U.S. District Court Judge Lucy H. Koh certified a class of approximately 64,000 persons who worked in Defendants' technical, creative, and/or research and development jobs from 2005-2009. On September 2, 2015, the Court approved a \$415 million settlement with Apple, Google, Intel, and Adobe. Earlier, on May 15, 2014, the Court approved partial settlements totaling \$20 million resolving claims against Intuit, Lucasfilm, and Pixar. The *Daily Journal* described the case as the "most significant antitrust employment case in recent history," adding that it "has been widely recognized as a legal and public policy breakthrough."

Cipro Cases I and II, JCCP Nos. 4154 and 4220 (Cal. Supr. Ct.). Lieff Cabraser represented California consumers and third party payors in a class action lawsuit filed in California state court charging that Bayer Corporation, Barr Laboratories, and other generic prescription drug manufacturers conspired to restrain competition in the sale of Bayer's blockbuster antibiotic drug Ciprofloxacin, sold as Cipro. Between 1997 and 2003, Bayer paid its would-be generic drug competitors nearly \$400 million to refrain from selling more affordable versions of Cipro. As a result, consumers were forced to pay inflated prices for the drug -- frequently prescribed to treat urinary tract, prostate, abdominal, and other infections.

The Trial Court granted defendants' motion for summary judgment, which the Appellate Court affirmed in October 2011. Plaintiffs sought review before the California Supreme Court and were successful. Following briefing, the case was stayed pending the U.S. Supreme Court's decision in *FTC v. Actavis*. After the U.S. Supreme Court in *Actavis* overturned the Appellate Court's ruling that pay-for-delay deals in the pharmaceutical industry are generally legal, plaintiffs and Bayer entered into settlement negotiations. In November 2013, the Trial Court approved a \$74 million settlement with Bayer.

On May 7, 2015, the California Supreme Court reversed the grant of summary judgment to Defendants and resoundingly endorsed the rights of consumers to challenge pharmaceutical pay-for-delay settlements under California competition law. The Court held that "[p]arties illegally restrain trade when they privately agree to substitute consensual monopoly in place of potential competition."

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Additional settlements were reached with the remaining defendants, bringing total settlements to \$399 million (exceeding plaintiffs' damages estimate by approximately \$68 million), a result the Trial Court described as "extraordinary." The Trial Court granted final approval on April 21, 2017, adding that it was "not aware of any case" that "has taken roughly 17 years," where, net of fees, end-payor "claimants will get basically 100 cents on the dollar[.]"

Some objectors are appealing the settlements. Objectors and their counsel objected to part of the settlement notice and to the attorneys' fees. As of early 2018, the appeals are slowly progressing.

In 2017, the American Antitrust Institute honored Lieff Cabraser's *Cipro* team with its Outstanding Private Practice Antitrust Achievement Award for their extraordinary work on the *Cipro* price-fixing and exclusionary drug-pricing agreements case. In addition, their work on the *Cipro* case led Lieff Cabraser attorneys Eric B. Fastiff, Brendan P. Glackin, and Dean M. Harvey to recognition by *California Lawyer* and the *Daily Journal* with the 2016 California Lawyer of the Year Award.

3. In re Municipal Derivatives Litigation, MDL No. 1950 (S.D.N.Y.). Lieff Cabraser represented the City of Oakland, the County of Alameda, City of Fresno, Fresno County Financing Authority, and East Bay Delta Housing and Finance Agency in a class action lawsuit brought on behalf of themselves and other California entities that purchased guaranteed investment contracts, swaps, and other municipal derivatives products from Bank of America, N.A., JP Morgan Chase & Co., Piper Jaffray & Co., Societe Generale SA, UBS AG, and other banks, brokers and financial institutions. The complaint charged that Defendants conspired to give cities, counties, school districts, and other governmental agencies artificially low bids for guaranteed investment contracts, swaps, and other municipal derivatives products, which are used by public entities to earn interest on bond proceeds.

The complaint further charged that Defendants met secretly to discuss prices, customers, and markets of municipal derivatives sold in the U.S. and elsewhere; intentionally created the false appearance of competition by engaging in sham auctions in which the results were pre-determined or agreed not to bid on contracts; and covertly shared their unjust profits with losing bidders to maintain the conspiracy.

4. **Natural Gas Antitrust Cases**, JCCP Nos. 4221, 4224, 4226 & 4228 (Cal. Supr. Ct.). In 2003, the Court approved a landmark of \$1.1 billion settlement in class action litigation against EI Paso Natural Gas Co. for manipulating the market for natural gas pipeline transmission capacity into California. Lieff Cabraser served as Plaintiffs' Co-Lead Counsel and Co-Liaison Counsel in the *Natural Gas Antitrust Cases I-IV*.

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In June 2007, the Court granted final approval to a \$67.39 million settlement of a series of class action lawsuits brought by California business and residential consumers of natural gas against a group of natural gas suppliers, Reliant Energy Services, Inc., Duke Energy Trading and Marketing LLC, CMS Energy Resources Management Company, and Aguila Merchant Services, Inc.

Plaintiffs charged defendants with manipulating the price of natural gas in California during the California energy crisis of 2000-2001 by a variety of means, including falsely reporting the prices and quantities of natural gas transactions to trade publications, which compiled daily and monthly natural gas price indices; prearranged wash trading; and, in the case of Reliant, "churning" on the Enron Online electronic trading platform, which was facilitated by a secret netting agreement between Reliant and Enron.

The 2007 settlement followed a settlement reached in 2006 for \$92 million partial settlement with Coral Energy Resources, L.P.; Dynegy Inc. and affiliates; EnCana Corporation; WD Energy Services, Inc.; and The Williams Companies, Inc. and affiliates.

- 5. In the Matter of the Arbitration between CopyTele and AU Optronics, Case No. 50 117 T 009883 13 (Internat'l Centre for Dispute Resolution). Lieff Cabraser successfully represented CopyTele, Inc. in a commercial dispute involving intellectual property. In 2011, CopyTele entered into an agreement with AU Optronics ("AUO") under which both companies would jointly develop two groups of products incorporating CopyTele's patented display technologies. CopyTele charged that AUO never had any intention of jointly developing the CopyTele technologies, and instead used the agreements to fraudulently obtain and transfer licenses of CopyTele's patented technologies. The case required the review of thousands of pages of documents in Chinese and in English culminating in a two week arbitration hearing. In December 2014, after the hearing, the parties resolved the matter, with CopyTele receiving \$9 million.
- 6. Wholesale Electricity Antitrust Cases I & II, JCCP Nos. 4204 & 4205 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Lead Counsel in the private class action litigation against Duke Energy Trading & Marketing, Reliant Energy, and The Williams Companies for claims that the companies manipulated California's wholesale electricity markets during the California energy crisis of 2000-2001. Extending the landmark victories for California residential and business consumers of electricity, in September 2004, plaintiffs reached a \$206 million settlement with Duke Energy Trading & Marketing, and in August 2005, plaintiffs reached a \$460 million settlement with Reliant Energy, settling claims that the

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- companies manipulated California's wholesale electricity markets during the California energy crisis of 2000-01. Lieff Cabraser earlier entered into a settlement for over \$400 million with The Williams Companies.
- 7. In re TFT-LCD (Flat Panel) Antitrust Litigation, MDL No. 1827 (N.D. Cal.). Lieff Cabraser served as Court-appointed Co-Lead Counsel for direct purchasers in litigation against the world's leading manufacturers of Thin Film Transistor Liquid Crystal Displays. TFT-LCDs are used in flat-panel televisions as well as computer monitors, laptop computers, mobile phones, personal digital assistants, and other devices. Plaintiffs charged that defendants conspired to raise and fix the prices of TFT-LCD panels and certain products containing those panels for over a decade, resulting in overcharges to purchasers of those panels and products. In March 2010, the Court certified two nationwide classes of persons and entities that directly purchased TFT-LCDs from January 1, 1999 through December 31, 2006, one class of panel purchasers, and one class of buyers of laptop computers, computer monitors, and televisions that contained TFT-LCDs. Over the course of the litigation, the classes reached settlements with all defendants except Toshiba. The case against Toshiba proceeded to trial. In July 2012, the jury found that Toshiba participated in the price-fixing conspiracy. The case was subsequently settled, bringing the total settlements in the litigation to over \$470 million. For his outstanding work in the precedent-setting litigation, California Lawyer recognized Richard M. Heimann with a 2013 California Lawyer of the Year award.
- 8. **Sullivan v. DB Investments**, No. 04-02819 (D. N.J.). Lieff Cabraser served as Class Counsel for consumers who purchased diamonds from 1994 through March 31, 2006, in a class action lawsuit against the De Beers group of companies. Plaintiffs charged that De Beers conspired to monopolize the sale of rough diamonds in the U.S. In May 2008, the District Court approved a \$295 million settlement for purchasers of diamonds and diamond jewelry, including \$130 million to consumers. The settlement also barred De Beers from continuing its illegal business practices and required De Beers to submit to the jurisdiction of the Court to enforce the settlement. In December 2011, the Third Circuit Court of Appeals affirmed the District Court's order approving the settlement. 667 F.3d 273 (3rd Cir. 2011).

For sixty years, De Beers has flouted U.S. antitrust laws. In 1999, De Beers' Chairman Nicholas Oppenheimer stated that De Beers "likes to think of itself as the world's . . . longest-running monopoly. [We seek] to manage the diamond market, to control supply, to manage prices and to act collusively with our partners in the business." The hard-fought litigation spanned several years and nations. Despite the tremendous resources available to the U.S. Department of Justice and state attorney

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generals, it was only through the determination of plaintiffs' counsel that De Beers was finally brought to justice and the rights of consumers were vindicated. Lieff Cabraser attorneys played key roles in negotiating the settlement and defending it on appeal. Discussing the DeBeers case, The National Law Journal noted that Lieff Cabraser was "among the plaintiffs' firms that weren't afraid to take on one of the business world's great white whales."

9. Haley Paint Co. v. E.I. Dupont De Nemours and Co. et al., No. 10-cv-00318-RDB (D. Md.). Lieff Cabraser served as Co-Lead Counsel for direct purchasers of titanium dioxide in a nationwide class action lawsuit against Defendants E.I. Dupont De Nemours and Co., Huntsman International LLC, Kronos Worldwide Inc., and Cristal Global (fka Millennium Inorganic Chemicals, Inc.), alleging these corporations participated in a global cartel to fix the price of titanium dioxide. Titanium dioxide, a dry chemical powder, is the world's most widely used pigment for providing whiteness and brightness in paints, paper, plastics, and other products. Plaintiffs charged that defendants coordinated increases in the prices for titanium dioxide despite declining demand, decreasing raw material costs, and industry overcapacity.

Unlike some antitrust class actions, Plaintiffs proceeded without the benefit of any government investigation or proceeding. Plaintiffs overcame attacks on the pleadings, discovery obstacles, a rigorous class certification process that required two full rounds of briefing and expert analysis, and multiple summary judgment motions. In August 2012, the Court certified the class. Plaintiffs prepared fully for trial and achieved a settlement with the final defendant on the last business day before trial. In December 2013, the Court approved a series of settlements with defendants totaling \$163 million.

10. In re Lupron Marketing and Sales Practices Litigation, MDL No. 1430 (D. Mass.). In May 2005, the Court granted final approval to a settlement of a class action lawsuit by patients, insurance companies and health and welfare benefit plans that paid for Lupron, a prescription drug used to treat prostate cancer, endometriosis and precocious puberty. The settlement requires the defendants, Abbott Laboratories, Takeda Pharmaceutical Company Limited, and TAP Pharmaceuticals, to pay \$150 million, inclusive of costs and fees, to persons or entities who paid for Lupron from January 1, 1985 through March 31, 2005. Plaintiffs charged that the defendants conspired to overstate the drug's average wholesale price ("AWP"), which resulted in plaintiffs paying more for Lupron than they should have paid. Lieff Cabraser served as Co-Lead Plaintiffs' Counsel.

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- Marchbanks Truck Service v. Comdata Network, No. 07-cv-11. 01078 (E.D. Pa.). In July 2014, the Court approved a \$130 million settlement of a class action brought by truck stops and other retail fueling facilities that paid percentage-based transaction fees to Comdata on proprietary card transactions using Comdata's over-the-road fleet card. The complaint challenged arrangements among Comdata, its parent company Ceridian LLC, and three national truck stop chains: defendants TravelCenters of America LLC and its wholly owned subsidiaries, Pilot Travel Centers LLC and its predecessor Pilot Corporation, and Love's Travel Stops & Country Stores, Inc. The alleged anticompetitive conduct insulated Comdata from competition, enhanced its market power, and led to independent truck stops' paying artificially inflated transaction fees. In addition to the \$130 million payment, the settlement required Comdata to change certain business practices that will promote competition among payment cards used by over-the-road fleets and truckers and lead to lower merchant fees for the independent truck stops. Lieff Cabraser served as Co-Lead Class Counsel in the litigation.
- 12. California Vitamins Cases, JCCP No. 4076 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Liaison Counsel and Co-Chairman of the Plaintiffs' Executive Committee on behalf of a class of California indirect vitamin purchasers in every level of the chain of distribution. In January 2002, the Court granted final approval of a \$96 million settlement with certain vitamin manufacturers in a class action alleging that these and other manufacturers engaged in price fixing of particular vitamins. In December 2006, the Court granted final approval to over \$8.8 million in additional settlements.
- 13. In re Buspirone Antitrust Litigation, MDL No. 1413 (S.D. N.Y.). In November 2003, Lieff Cabraser obtained a \$90 million cash settlement for individual consumers, consumer organizations, and third party payers that purchased BuSpar, a drug prescribed to alleviate symptoms of anxiety. Plaintiffs alleged that Bristol-Myers Squibb Co. (BMS), Danbury Pharmacal, Inc., Watson Pharmaceuticals, Inc. and Watson Pharma, Inc. entered into an unlawful agreement in restraint of trade under which BMS paid a potential generic manufacturer of BuSpar to drop its challenge to BMS' patent and refrain from entering the market. Lieff Cabraser served as Plaintiffs' Co-Lead Counsel.
- 14. *Meijer v. Abbott Laboratories*, Case No. C 07-5985 CW (N.D. Cal.). Lieff Cabraser served as co-counsel for the group of retailers charging that Abbott Laboratories monopolized the market for AIDS medicines used in conjunction with Abbott's prescription drug Norvir. These drugs, known as Protease Inhibitors, have enabled patients with HIV to fight off the disease and live longer. In January 2011, the Court denied Abbott's motion for summary judgment on plaintiffs' monopolization claim. Trial

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- commenced in February 2011. After opening statements and the presentation of four witnesses and evidence to the jury, plaintiffs and Abbott Laboratories entered into a \$52 million settlement. The Court granted final approval to the settlement in August 2011.
- 15. In re Carpet Antitrust Litigation, MDL No. 1075 (N.D. Ga.). Lieff Cabraser served as Class Counsel and a member of the trial team for a class of direct purchasers of twenty-ounce level loop polypropylene carpet. Plaintiffs, distributors of polypropylene carpet, alleged that Defendants, seven manufacturers of polypropylene carpet, conspired to fix the prices of polypropylene carpet by agreeing to eliminate discounts and charge inflated prices on the carpet. In 2001, the Court approved a \$50 million settlement of the case.
- 16. In re Lasik/PRK Antitrust Litigation, No. CV 772894 (Cal. Supr. Ct.). Lieff Cabraser served as a member of Plaintiffs' Executive Committee in class actions brought on behalf of persons who underwent Lasik/PRK eye surgery. Plaintiffs alleged that defendants, the manufacturers of the laser system used for the laser vision correction surgery, manipulated fees charged to ophthalmologists and others who performed the surgery, and that the overcharges were passed onto consumers who paid for laser vision correction surgery. In December 2001, the Court approved a \$12.5 million settlement of the litigation.
- 17. **Methionine Cases I and II**, JCCP Nos. 4090 & 4096 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Lead Counsel on behalf of indirect purchasers of methionine, an amino acid used primarily as a poultry and swine feed additive to enhance growth and production. Plaintiffs alleged that the companies illegally conspired to raise methionine prices to supercompetitive levels. The case settled.
- 18. *In re Electrical Carbon Products Antitrust Litigation*, MDL No. 1514 (D.N.J.). Lieff Cabraser represented the City and County of San Francisco and a class of direct purchasers of carbon brushes and carbon collectors on claims that producers fixed the price of carbon brushes and carbon collectors in violation of the Sherman Act.

# VII. <u>Environmental and Toxic Exposures</u>

## A. Current Cases

1. In Re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, MDL No. 2179 (E.D. La.). Lieff Cabraser serves on the Courtappointed Plaintiffs' Steering Committee ("PSC") and with co-counsel represents fishermen, property owners, business owners, wage earners, and other harmed parties in class action litigation against BP, Transocean, Halliburton, and other defendants involved in the Deepwater

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Horizon oil rig blowout and resulting oil spill in the Gulf of Mexico on April 20, 2010. The Master Complaints allege that the defendants were insouciant in addressing the operations of the well and the oil rig, ignored warning signs of the impending disaster, and failed to employ and/or follow proper safety measures, worker safety laws, and environmental protection laws in favor of cost-cutting measures.

In 2012, the Court approved two class action settlements that will fully compensate hundreds of thousands of victims of the tragedy. The settlements resolve the majority of private economic loss, property damage, and medical injury claims stemming from the Deepwater Horizon Oil Spill, and hold BP fully accountable to individuals and businesses harmed by the spill. Under the settlements, there is no dollar limit on the amount BP will pay. In 2014, the U.S. Supreme Court denied review of BP's challenge to its own class action settlement. Approval of that settlement is now final, and has so far delivered \$11.2 billion to compensate claimants' losses. The medical settlement is also final, and an additional \$1 billion settlement has been reached with defendant Halliburton.

2. Andrews, et al. v. Plains All American Pipeline, et al., No. 2:15-cv-04113-PSG-JEM (C.D. Cal.). Lieff Cabraser is Court-appointed Class Counsel in this action arising from an oil spill in Santa Barbara County in May 2015. A pipeline owned by Plains ruptured, and oil from the pipeline flowed into the Pacific Ocean, soiling beaches and impacting local fisheries. Lieff Cabraser represents homeowners who lost the use of the beachfront amenity for which they pay a premium, local oil platform workers who were laid off as a result of the spill and subsequent closure of the pipeline, as well as fishers whose catch was impacted by the oil spill. Plaintiffs allege that defendants did not follow basic safety protocols when they installed the pipeline, failed to properly monitor and maintain the pipeline, ignored clear signs that the pipeline was corroded and in danger of bursting, and failed to promptly respond to the oil spill when the inevitable rupture occurred.

The Federal District Court recently certified a plaintiff class composed of fishers whose catch diminished as a result of the spill and fish industry businesses that were affected as a result of the decimated fish population. Lieff Cabraser has recently filed a motion to certify additional classes of groups harmed by the spill, including private property owners and lessees near the soiled shoreline, and oil industry workers and businesses that suffered economic injuries associated with the closure of the pipeline.

3. **Southern California Gas Leak Cases**, JCCP No. 4861. Lieff Cabraser has been selected by the Los Angeles County Superior Court to help lead two important class action cases on behalf of homeowners and businesses

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that suffered economic injuries in the wake of the massive Porter Ranch gas leak, which began in October of 2015 and lasted into February of 2016. During this time, huge quantities of natural gas spewed out of an old well at Southern California Gas's Aliso Canyon Facility and into the air of Porter Ranch, a neighborhood located adjacent to the Facility and 25 miles northwest of Los Angeles.

This large-scale environmental disaster forced thousands of residents to leave their homes for months on end while the leak continued and for several months thereafter. It also caused local business to dry up during the busy holiday season, as many residents had evacuated the neighborhood and visitors avoided the area. Evidence suggests the leak was caused by at least one old and malfunctioning well used to inject and retrieve gas. Southern California Gas Company allegedly removed the safety valve on the well that could have prevented the leak. As a result, the gas leak has left a carbon footprint larger than the *Deepwater Horizon* oil spill.

Together with other firms chosen to pursue class relief for these victims, Lieff Cabraser filed two class action complaints – one on behalf of Porter Ranch homeowners, and another on behalf of Porter Ranch businesses. Southern California Gas argued in response that the injuries suffered by homeowners and businesses cannot proceed as class actions. In May 2017, the Superior Court rejected these arguments. The class action cases are proceeding with discovery into Southern California Gas Company's role in this disaster.

#### B. Successes

1. In re Exxon Valdez Oil Spill Litigation, No. 3:89-cv-0095 HRH (D. Al.). The Exxon Valdez ran aground on March 24, 1989, spilling 11 million gallons of oil into Prince William Sound. Lieff Cabraser served as one of the Court-appointed Plaintiffs' Class Counsel. The class consisted of fisherman and others whose livelihoods were gravely affected by the disaster. In addition, Lieff Cabraser served on the Class Trial Team that tried the case before a jury in federal court in 1994. The jury returned an award of \$5 billion in punitive damages.

In 2001, the Ninth Circuit Court of Appeals ruled that the original \$5 billion punitive damages verdict was excessive. In 2002, U.S. District Court Judge H. Russell Holland reinstated the award at \$4 billion. Judge Holland stated that, "Exxon officials knew that carrying huge volumes of crude oil through Prince William sound was a dangerous business, yet they knowingly permitted a relapsed alcoholic to direct the operation of the *Exxon Valdez* through Prince William Sound." In 2003, the Ninth Circuit again directed Judge Holland to reconsider the punitive damages award under United States Supreme Court punitive damages quidelines.

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In January 2004, Judge Holland issued his order finding that Supreme Court authority did not change the Court's earlier analysis.

In December 2006, the Ninth Circuit Court of Appeals issued its ruling, setting the punitive damages award at \$2.5 billion. Subsequently, the U.S. Supreme Court further reduced the punitive damages award to \$507.5 million, an amount equal to the compensatory damages. With interest, the total award to the plaintiff class was \$977 million.

2. In re Imprelis Herbicide Marketing, Sales Practices and Products Liability Litigation, MDL No. 2284 (E.D. Pa.). Lieff Cabraser served as Co-Lead Counsel for homeowners, golf course companies and other property owners in a nationwide class action lawsuit against E.I. du Pont de Nemours & Company ("DuPont"), charging that its herbicide Imprelis caused widespread death among trees and other nontargeted vegetation across the country. DuPont marketed Imprelis as an environmentally friendly alternative to the commonly used 2,4-D herbicide. Just weeks after Imprelis' introduction to the market in late 2010, however, complaints of tree damage began to surface. Property owners reported curling needles, severe browning, and dieback in trees near turf that had been treated with Imprelis. In August 2011, the U.S. Environmental Protection Agency banned the sale of Imprelis.

The complaint charged that DuPont failed to disclose the risks Imprelis posed to trees, even when applied as directed, and failed to provide instructions for the safe application of Imprelis. In response to the litigation, DuPont created a process for property owners to submit claims for damages. Approximately \$400 million was paid to approximately 25,000 claimants. In October 2013, the Court approved a settlement of the class action that substantially enhanced the DuPont claims process, including by adding an extended warranty, a more limited release of claims, the right to appeal the denial of claim by DuPont to an independent arborist, and publication of DuPont's tree payment schedule.

- 3. In re GCC Richmond Works Cases, JCCP No. 2906 (Cal. Supr. Ct.). Lieff Cabraser served as Co-Liaison Counsel and Lead Class Counsel in coordinated litigation arising out of the release on July 26, 1993, of a massive toxic sulfuric acid cloud which injured an estimated 50,000 residents of Richmond, California. The Coordination Trial Court granted final approval to a \$180 million class settlement for exposed residents.
- 4. In re Unocal Refinery Litigation, No. C 94-04141 (Cal. Supr. Ct.). Lieff Cabraser served as one of two Co-Lead Class Counsel and on the Plaintiffs' Steering Committee in this action against Union Oil Company of California ("Unocal") arising from a series of toxic releases from Unocal's San Francisco refinery in Rodeo, California. The action was

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settled in 1997 on behalf of approximately 10,000 individuals for \$80 million.

5. **West v. G&H Seed Co., et al.**, No. 99-C-4984-A (La. State Ct.). With co-counsel, Lieff Cabraser represented a certified class of 1,500 Louisiana crawfish farmers who charged in a lawsuit that Fipronil, an insecticide sold under the trade name ICON, damaged their pond-grown crawfish crops. In Louisiana, rice and crawfish are often farmed together, either in the same pond or in close proximity to one another.

After its introduction to the market in 1999, ICON was used extensively in Louisiana to kill water weevils that attacked rice plants. The lawsuit alleged that ICON also had a devastating effect on crawfish harvests with some farmers losing their entire crawfish crop. In 2004, the Court approved a \$45 million settlement with Bayer CropScience, which during the litigation purchased Aventis CropScience, the original manufacturer of ICON. The settlement was reached after the parties had presented nearly a month's worth of evidence at trial and were on the verge of making closing arguments to the jury.

- 6. Kingston, Tennessee TVA Coal Ash Spill Litigation, No. 3:09-cv-09 (E.D. Tenn.). Lieff Cabraser represented hundreds of property owners and businesses harmed by the largest coal ash spill in U.S. history. On December 22, 2008, more than a billion gallons of coal ash slurry spilled when a dike burst on a retention pond at the Kingston Fossil Plant operated by the Tennessee Valley Authority (TVA) in Roane County, Tennessee. A wall of coal ash slurry traveled across the Emory River, polluting the river and nearby waterways, and covering nearly 300 acres with toxic sludge, including 12 homes and damaging hundreds of properties. In March 2010, the Court denied in large part TVA's motion to dismiss the litigation. In the Fall of 2011, the Court conducted a four week bench trial on the question of whether TVA was liable for releasing the coal ash into the river system. The issue of damages was reserved for later proceedings. In August 2012, the Court found in favor of plaintiffs on their claims of negligence, trespass, and private nuisance. In August 2014, the case came to a conclusion with TVA's payment of \$27.8 million to settle the litigation.
- 7. In re Sacramento River Spill Cases I and II, JCCP Nos. 2617 & 2620 (Cal. Supr. Ct.). On July 14, 1991, a Southern Pacific train tanker car derailed in northern California, spilling 19,000 gallons of a toxic pesticide, metam sodium, into the Sacramento River near the town of Dunsmir at a site along the rail lines known as the Cantara Loop. The metam sodium mixed thoroughly with the river water and had a devastating effect on the river and surrounding ecosystem. Within a week, every fish, 1.1 million in total, and all other aquatic life in a 45-mile

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stretch of the Sacramento River was killed. In addition, many residents living along the river became ill with symptoms that included headaches, shortness of breath, and vomiting. The spill considered the worst inland ecological disaster in California history.

Lieff Cabraser served as Court-appointed Plaintiffs' Liaison Counsel and Lead Class Counsel, and chaired the Plaintiffs' Litigation Committee in coordinated proceedings that included all of the lawsuits arising out of this toxic spill. Settlement proceeds of approximately \$16 million were distributed pursuant to Court approval of a plan of allocation to four certified plaintiff classes: personal injury, business loss, property damage/diminution, and evacuation.

- 8. **Kentucky Coal Sludge Litigation**, No. 00-CI-00245 (Cmmw. Ky.). On October 11, 2000, near Inez, Kentucky, a coal waste storage facility ruptured, spilling 1.25 million tons of coal sludge (a wet mixture produced by the treatment and cleaning of coal) into waterways in the region and contaminating hundreds of properties. This was one of the worst environmental disasters in the Southeastern United States. With cocounsel, Lieff Cabraser represented over 400 clients in property damage claims, including claims for diminution in the value of their homes and properties. In April 2003, the parties reached a confidential settlement agreement on favorable terms to the plaintiffs.
- 9. Toms River Childhood Cancer Incidents, No. L-10445-01 MT (Sup. Ct. NJ). With co-counsel, Lieff Cabraser represented 69 families in Toms River, New Jersey, each with a child having cancer, that claimed the cancers were caused by environmental contamination in the Toms River area. Commencing in 1998, the parties—the 69 families, Ciba Specialty Chemicals, Union Carbide and United Water Resources, Inc., a water distributor in the area—participated in an unique alternative dispute resolution process, which lead to a fair and efficient consideration of the factual and scientific issues in the matter. In December 2001, under the supervision of a mediator, a confidential settlement favorable to the families was reached.

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# VIII. False Claims Act

#### A. Current Cases

Lieff Cabraser represents whistleblowers in a wide range of False Claims Act cases, including Medicare kickback and healthcare fraud, defense contractor fraud, and securities and financial fraud. We have more than a dozen whistleblower cases currently under seal and investigation in federal and state jurisdictions across the U.S. For that reason, we do not list all of our current False Claims Act and qui tam cases in our resume.

1. United States ex rel. Matthew Cestra v. Cephalon, No. 14-01842 (E.D. Pa.); United States ex rel. Bruce Boise et al. v. Cephalon, No. 08-287 (E.D. Pa.) Lieff Cabraser, with co-counsel, represents four whistleblowers bringing claims on behalf of the U.S. Government and various states under the federal and state False Claims Acts against Cephalon, Inc., a pharmaceutical company. The complaints allege that Cephalon has engaged in unlawful off-label marketing of certain of its drugs, largely through misrepresentations, kickbacks, and other unlawful or fraudulent means, causing the submission of hundreds of thousands of false claims for reimbursement to federal and state health care programs. The Boise case involves Provigil and its successor drug Nuvigil, limitedindication wakefulness drugs that are unsafe and/or not efficacious for the wide array of off-label psychiatric and neurological conditions for which Cephalon has marketed them, according to the allegations. The Cestra case involves an expensive oncological drug called Treanda, which is approved only for second-line treatment of indolent non-Hodgkin's Lymphoma despite what the relators allege to be the company's off-label marketing of the drug for first-line treatment. Various motions are pending.

## B. Successes

1. United States ex rel. Mary Hendow and Julie Albertson v. University of Phoenix, No. 2:03-cv-00457-GEB-DAD (E.D. Cal.). Lieff Cabraser obtained a record whistleblower settlement against the University of Phoenix that charged the university had violated the incentive compensation ban of the Higher Education Act (HEA) by providing improper incentive pay to its recruiters. The HEA prohibits colleges and universities whose students receive federal financial aid from paying their recruiters based on the number of students enrolled, which creates a risk of encouraging recruitment of unqualified students who, Congress has determined, are more likely to default on their loans. High student loan default rates not only result in wasted federal funds, but the students who receive these loans and default are burdened for years with tremendous debt without the benefit of a college degree.

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The complaint alleged that the University of Phoenix defrauded the U.S. Department of Education by obtaining federal student loan and Pell Grant monies from the federal government based on false statements of compliance with HEA. In December 2009, the parties announced a \$78.5 million settlement. The settlement constitutes the second-largest settlement ever in a False Claims Act case in which the federal government declined to intervene in the action and largest settlement ever involving the Department of Education. The University of Phoenix case led to the Obama Administration passing new regulations that took away the so-called "safe harbor" provisions that for-profit universities relied on to justify their alleged recruitment misconduct. For his outstanding work as Lead Counsel and the significance of the case, *California Lawyer* magazine recognized Lieff Cabraser attorney Robert J. Nelson with a California Lawyer of the Year (CLAY) Award.

- 2. State of California ex rel. Sherwin v. Office Depot, No. BC410135 (Cal. Supr. Ct.). In February 2015, the Court approved a \$77.5 million settlement with Office Depot to settle a whistleblower lawsuit brought under the California False Claims Act. The whistleblower was a former Office Depot account manager. The City of Los Angeles, County of Santa Clara, Stockton Unified School District, and 16 additional California cities, counties, and school districts intervened in the action to assert their claims (including common-law fraud and breach of contract) against Office Depot directly. The governmental entities purchased office supplies from Office Depot under a nationwide supply contract known as the U.S. Communities contract. Office Depot promised in the U.S. Communities contract to sell office supplies at its best governmental pricing nationwide. The complaint alleged that Office Depot repeatedly failed to give most of its California governmental customers the lowest price it was offering other governmental customers. Other pricing misconduct was also alleged.
- 3. **State of California ex rel. Rockville Recovery Associates v. Multiplan**, No. 34-2010-00079432 (Sacramento Supr. Ct., Cal.). In a case that received widespread media coverage, Lieff Cabraser represented whistleblower Rockville Recovery Associates in a qui tam suit for civil penalties under the California Insurance Frauds Prevention Act ("IFPA"), Cal. Insurance Code § 1871.7, against Sutter Health, one of California's largest healthcare providers, and obtained the largest penalty ever imposed under the statute. The parties reached a \$46 million settlement that was announced in November 2013, shortly before trial was scheduled to commence.

The complaint alleged that the 26 Sutter hospitals throughout California submitted false, fraudulent, or misleading charges for anesthesia services

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(separate from the anesthesiologist's fees) during operating room procedures that were already covered in the operating room bill.

After Lieff Cabraser defeated Sutter Health's demurrer and motion to compel arbitration, California Insurance Commissioner Dave Jones intervened in the litigation in May 2011. Lieff Cabraser attorneys continued to serve as lead counsel, and litigated the case for over two more years. In all, plaintiffs defeated no less than 10 dispositive motions, as well as three writ petitions to the Court of Appeals.

In addition to the monetary recovery, Sutter Health agreed to a comprehensive series of billing and transparency reforms, which California Insurance Commissioner Dave Jones called "a groundbreaking step in opening up hospital billing to public scrutiny." On the date the settlement was announced, the California Hospital Association recognized its significance by issuing a press release stating that the settlement "compels industry-wide review of anesthesia billing." Defendant Multiplan, Inc., a large leased network Preferred Provider Organization, separately paid a \$925,000 civil penalty for its role in enabling Sutter's alleged false billing scheme.

- 4. United States ex rel. Dye v. ATK Launch Systems, No. 1:06-CV-39-TS (D. Utah). Lieff Cabraser served as co-counsel for a whistleblower who alleged that ATK Launch Systems knowingly sold defective and potentially dangerous illumination flares to the United States military in violation of the federal False Claims Act. The specialized flares were used in nighttime combat, covert missions, and search and rescue operations. A key design specification set by the Defense Department was that these highly flammable and dangerous items ignite only under certain conditions. The complaint alleged that the ATK flares at issue could ignite when dropped from a height of less than 10 feet and, according to ATK's own analysis, from as little as 11.6 inches notwithstanding contractual specifications that they be capable of withstanding such a drop. In April 2012, the parties reached a settlement valued at \$37 million.
- 5. United States ex rel. Mauro Vosilla and Steven Rossow v. Avaya, Inc., No. CV04-8763 PA JTLx (C.D. Cal.). Lieff Cabraser represented a whistleblower in litigation alleging that defendants Avaya, Lucent Technologies, and AT&T violated the Federal False Claims Act and state false claims statutes. The complaint alleged that defendants charged governmental agencies for the lease, rental, and post-warranty maintenance of telephone communications systems and services that the governmental agencies no longer possessed and/or were no longer maintained by defendants. In November 2010, the parties entered into a \$21.75 million settlement of the litigation.

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6. **State of California ex rel. Associates Against FX Insider State Street Corp.**, No. 34-2008-00008457 (Sacramento Supr. Ct., Cal.)
("**State Street I**"). Lieff Cabraser served as co-counsel for the whistleblowers in this action against State Street Corporation. The Complaint alleged that State Street violated the California False Claims Act with respect to certain foreign exchange transactions it executed with two California public pension fund custodial clients. The California Attorney General intervened in the case in October 2009.

# IX. <u>Digital Privacy and Data Security</u>

## A. Current Cases

- 1. Balderas v. Tiny Lab Productions, et al., Case 6:18-cv-00854 (D. New Mexico). Lieff Cabraser, with co-counsel, is working with the Attorney General of the State of New Mexico to represent parents, on behalf of their children, in a federal lawsuit seeking to protect children in the state from a foreign developer of child-directed apps and its marketing partners. The lawsuit alleges that the child-app developer Tiny Lab Productions and its co-defendants (including Google, Twitter, and AdMob) surreptitiously harvest children's personal information for the purpose of profiling and targeting children for commercial exploitation, without adequate disclosures and verified parental consent. When children play Tiny Lab's gaming apps on their mobile devices, their geolocation, demographic characteristics, online activity, and other personal data, are exfiltrated to third-parties and their marketing networks in order to target the children with advertisements. The apps at issue, clearly and indisputably designed for children, include Fun Kid Racing, Candy Land Racing, and GummyBear and Friends Speed Racing. The action brings claims under the federal Children's Online Privacy Protection Act, as well as New Mexico state laws.
- 2. In re Google Inc. Street View Electronic Communications
  Litigation, No. 3:10-md-021784-CRB (N.D. Cal.). Lieff Cabraser
  represents individuals whose right to privacy was violated when Google
  intentionally equipped its Google Maps "Street View" vehicles with Wi-Fi
  antennas and software that collected data transmitted by those persons'
  Wi-Fi networks located in their nearby homes. Google collected not only
  basic identifying information about individuals' Wi-Fi networks, but also
  personal, private data being transmitted over their Wi-Fi networks such
  as emails, usernames, passwords, videos, and documents. Plaintiffs allege
  that Google's actions violated the federal Wiretap Act, as amended by the
  Electronic Communications Privacy Act. On September 10, 2013, the
  Ninth Circuit Court of Appeals held that Google's actions are not exempt
  from the Act.

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- 3. Campbell v. Facebook, No. 4:13-cv-05996 (N.D. Cal.). Lieff Cabraser serves as Co-Lead Counsel in a nationwide class action lawsuit alleging that Facebook intercepts certain private data in users' personal and private messages on the social network and profits by sharing that information with third parties. When a user composes a private Facebook message and includes a link (a "URL") to a third party website, Facebook allegedly scans the content of the message, follows the URL, and searches for information to profile the message-sender's web activity. This enables Facebook to data mine aspects of user data and profit from that data by sharing it with advertisers, marketers, and other data aggregators. In December 2014, the Court in large part denied Facebook's motion to dismiss. In rejecting one of Facebook's core arguments, U.S. District Court Judge Phyllis Hamilton stated: "An electronic communications service provider cannot simply adopt any revenue-generating practice and deem it 'ordinary' by its own subjective standard." In August of 2017, Judge Hamilton granted final approval to an injunctive relief settlement of the action. As part of the settlement, Facebook has ceased the offending practices and has made changes to its operative relevant user disclosures.
- 4. In re Carrier IO Privacy Litigation, MDL No. 2330 (N.D. Cal.). Lieff Cabraser represents a plaintiff in Multi-District Litigation against Samsung, LG, Motorola, HTC, and Carrier IQ alleging that smartphone manufacturers violated privacy laws by installing tracking software, called IQ Agent, on millions of cell phones and other mobile devices that use the Android operating system. Without notifying users or obtaining consent, IQ Agent tracks users' keystrokes, passwords, apps, text messages, photos, videos, and other personal information and transmits this data to cellular carriers. In a 96-page order issued in January 2015, U.S. District Court Judge Edward Chen granted in part, and denied in part, defendants' motion to dismiss. Importantly, the Court permitted the core Wiretap Act claim to proceed as well as the claims for violations of the Magnuson-Moss Warranty Act and the California Unfair Competition Law and breach of the common law duty of implied warranty.
- 5. **Diaz v. Intuit**, No. 5:15-CV-01778-PSG (N.D. Cal.). Lieff Cabraser represents identity theft victims in a nationwide class action lawsuit against Intuit for allegedly failing to protect consumers' data from foreseeable and preventable breaches, and by facilitating the filing of fraudulent tax returns through its TurboTax software program. The complaint alleges that Intuit failed to protect data provided by consumers who purchased TurboTax, used to file an estimated 30 million tax returns for American taxpayers every year, from easy access by hackers and other cybercriminals. The complaint further alleges that Intuit was aware of the widespread use of TurboTax exclusively for the filing of fraudulent tax returns. Yet, Intuit failed to adopt basic cyber security policies to prevent this misuse of TurboTax. As a result, fraudulent tax returns were filed in

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- the names of the plaintiffs and thousands of other individuals across America, including persons who never purchased TurboTax.
- 6. Henson v. Turn, No. 3:15-CV-01497 (N.D. Cal.). Lieff Cabraser represents plaintiffs in class action litigation alleging that internet marketing company Turn, Inc. violates users' digital privacy by installing software tracking beacons on smartphones, tablets, and other mobile computing devices. The complaint alleges that in an effort to thwart standard privacy settings and features, Turn deploys so-called "zombie cookies" that cannot be detected or deleted, and that track smartphone activity across various browsers and applications. Turn uses the data harvested by these cookies to build robust user profiles and sell targeted and profitable advertising, all without the user's knowledge or consent. The complaint alleges that Turn's conduct violates consumer protection laws and amounts to trespass.
- 7. McDowell v. CGI Group, No. 1:15-cv-01157-GK (D.D.C.). Lieff Cabraser represents individuals in class action litigation against CGI Group, Inc. and CGI Federal, Inc. (collectively "CGI") for allegedly facilitating a data breach affecting more than 1,000 U.S. citizens. The U.S. government contracts with CGI to manage all U.S. passport application activities. Passport applicants must provide their name, date of birth, city of birth, state of birth, country of birth, social security number, sex, height, hair color, eye color, occupation, and evidence of U.S. citizenship, such as a previously issued U.S. passport, or U.S. birth certificate. Between 2010 and May 2, 2015, CGI employees allegedly stole and sold personal information of passport applicants to cybercriminals. The mass identity theft allowed cybercriminals to use stolen information to buy cell phones and computers, and to obtain lines of credit. The complaint alleges that CGI failed to fulfill its legal duty to protect customers' sensitive personal and financial information.

#### B. Successes

1. *Fowles v. Anthem*, No. 3:15-cv-2249 (N.D. Cal.). Lieff Cabraser represents individuals in a class action lawsuit against Anthem for its alleged failure to safeguard and secure the medical records and other personally identifiable information of its members. The second largest health insurer in the U.S., Anthem provides coverage for 37.5 million Americans. Anthem's customer database was allegedly attacked by international hackers on December 10, 2014. Anthem says it discovered the breach on January 27, 2015, and reported it about a week later on February 4, 2015. California customers were informed around March 18, 2015. The theft included names, birth dates, social security numbers, billing information, and highly confidential health information. The complaint charged that Anthem violated its duty to safeguard and protect

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consumers' personal information, and violated its duty to disclose the breach to consumers in a timely manner. In addition, the complaint charged that Anthem was on notice about the weaknesses in its computer security defenses for at least a year before the breach occurred.

In August 2018, Judge Lucy H. Koh of the U. S. District Court for the Northern District of California granted final approval to a class action settlement which required Anthem to undertake significant additional cybersecurity measures to better safeguard information going forward, and to pay \$115 million into a settlement fund from which benefits to settlement class members will be paid.

- 2. Matera v. Google Inc., No. 5:15-cv-04062 (N.D. Cal.). Lieff Cabraser represented consumers in a digital privacy class action against Google Inc. over claims the popular Gmail service conducted unauthorized scanning of email messages to build marketing profiles and serve targeted ads. The complaint alleged that Google routinely scanned email messages that were sent by non-Gmail users to Gmail subscribers, analyzed the content of those messages, and then shared that data with third parties in order to target ads to Gmail users, an invasion of privacy that violated the California Invasion of Privacy Act and the federal Electronic Communications Privacy Act. In February 2018, the Court granted final approval to a \$2.2 million settlement of the action. Under the settlement, Google made business-related changes to its Gmail service, as part of which, Google will no longer scan the contents of emails sent to Gmail accounts for advertising purposes, whether during the transmission process or after the emails have been delivered to the Gmail user's inbox. The proposed changes, which will not apply to scanning performed to prevent the spread of spam or malware, will run for at least three years.
- 3. **Ebarle et al. v. LifeLock Inc.**, No. 3:15-cv-00258 (N.D. Cal.). Lieff Cabraser represented consumers who subscribed to LifeLock's identity theft protection services in a nationwide class action fraud lawsuit. The complaint alleged LifeLock did not protect the personal information of its subscribers from hackers and criminals, and specifically that, contrary to its advertisements and statements, LifeLock lacked a comprehensive monitoring network, failed to provide "up-to-the-minute" alerts of suspicious activity, and did an inferior job of providing the same theft protection services that banks and credit card companies provide, often for free. On September 21, 2016, U.S. District Judge Haywood Gilliam, Jr. granted final approval to a \$68 million settlement of the case.
- 4. **Perkins v. LinkedIn**, No. 13-CV-04303-LHK (N.D. Cal.). Lieff Cabraser represented individuals who joined LinkedIn's network and, without their consent or authorization, had their names and likenesses used by LinkedIn to endorse LinkedIn's services and send repeated emails

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to their contacts asking that they join LinkedIn. On February 16, 2016, the Court granted final approval to a \$13 million settlement, one of the largest per-class member settlements ever in a digital privacy class action. In addition to the monetary relief, LinkedIn agreed to make significant changes to Add Connections disclosures and functionality. Specifically, LinkedIn revised disclosures to real-time permission screens presented to members using Add Connections, agreed to implement new functionality allowing LinkedIn members to manage their contacts, including viewing and deleting contacts and sending invitations, and to stop reminder emails from being sent if users have sent connection invitations inadvertently.

5. Corona v. Sony Pictures Entertainment, No. 2:14-CV-09660-RGK (C.D. Cal.). Lieff Cabraser served as Plaintiffs' Co-Lead Counsel in class action litigation against Sony for failing to take reasonable measures to secure the data of its employees from hacking and other attacks. As a result, personally identifiable information of thousands of current and former Sony employees and their families was obtained and published on websites across the Internet. Among the staggering array of personally identifiable information compromised were medical records, Social Security Numbers, birth dates, personal emails, home addresses, salaries, tax information, employee evaluations, disciplinary actions, criminal background checks, severance packages, and family medical histories. The complaint charged that Sony owed a duty to take reasonable steps to secure the data of its employees from hacking. Sony allegedly breached this duty by failing to properly invest in adequate IT security, despite having already succumbed to one of the largest data breaches in history only three years ago. In October 2015, an \$8 million settlement was reached under which Sony agreed to reimburse employees for losses and harm.

# X. <u>International and Human Rights Litigation</u>

#### A. Successes

1. Holocaust Cases. Lieff Cabraser was one of the leading firms that prosecuted claims by Holocaust survivors and the heirs of Holocaust survivors and victims against banks and private manufacturers and other corporations who enslaved and/or looted the assets of Jews and other minority groups persecuted by the Nazi Regime during the Second World War era. The firm served as Settlement Class Counsel in the case against the Swiss banks for which the Court approved a U.S. \$1.25 billion settlement in July 2000. Lieff Cabraser donated its attorneys' fees in the Swiss Banks case, in the amount of \$1.5 million, to endow a Human Rights clinical chair at Columbia University Law School. The firm was also active in slave labor and property litigation against German and Austrian defendants, and Nazi-era banking litigation against French

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banks. In connection therewith, Lieff Cabraser participated in multinational negotiations that led to Executive Agreements establishing an additional approximately U.S. \$5 billion in funds for survivors and victims of Nazi persecution.

Commenting on the work of Lieff Cabraser and co-counsel in the litigation against private German corporations, entitled *In re Holocaust Era German Industry, Bank & Insurance Litigation* (MDL No. 1337), U.S. District Court Judge William G. Bassler stated on November 13, 2002:

Up until this litigation, as far as I can tell, perhaps with some minor exceptions, the claims of slave and forced labor fell on deaf ears. You can say what you want to say about class actions and about attorneys, but the fact of the matter is, there was no attention to this very, very large group of people by Germany, or by German industry until these cases were filed. . . . What has been accomplished here with the efforts of the plaintiffs' attorneys and defense counsel is quite incredible. . . . I want to thank counsel for the assistance in bringing us to where we are today. Cases don't get settled just by litigants. It can only be settled by competent, patient attorneys.

2. Cruz v. U.S., Estados Unidos Mexicanos, Wells Fargo Bank, et al., No. 01-0892-CRB (N.D. Cal.). Working with co-counsel, Lieff Cabraser succeeded in correcting an injustice that dated back 60 years. The case was brought on behalf of Mexican workers and laborers, known as Braceros ("strong arms"), who came from Mexico to the United States pursuant to bilateral agreements from 1942 through 1946 to aid American farms and industries hurt by employee shortages during World War II in the agricultural, railroad, and other industries. As part of the Braceros program, employers held back 10% of the workers' wages, which were to be transferred via United States and Mexican banks to savings accounts for each Bracero. The Braceros were never reimbursed for the portion of their wages placed in the forced savings accounts.

Despite significant obstacles including the aging and passing away of many Braceros, statutes of limitation hurdles, and strong defenses to claims under contract and international law, plaintiffs prevailed in a settlement in February 2009. Under the settlement, the Mexican government provided a payment to Braceros, or their surviving spouses or children, in the amount of approximately \$3,500 (USD). In approving the settlement on February 23, 2009, U.S. District Court Judge Charles Breyer stated:

I've never seen such litigation in eleven years on the bench that was more difficult than this one. It was enormously

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challenging. . . . It had all sorts of issues . . . that complicated it: foreign law, constitutional law, contract law, [and] statute of limitations. . . . Notwithstanding all of these issues that kept surfacing . . . over the years, the plaintiffs persisted. I actually expected, to tell you the truth, at some point that the plaintiffs would just give up because it was so hard, but they never did. They never did. And, in fact, they achieved a settlement of the case, which I find remarkable under all of these circumstances.

## FIRM BIOGRAPHY:

## **PARTNERS**

ELIZABETH J. CABRASER, Admitted to practice in California, 1978; U.S. Supreme Court, 1996; U.S. Tax Court, 1979; California Supreme Court, 1978; U.S. District Court, Northern District of California, 1978; U.S. District Court, Eastern District of California, 1979; U.S. District Court, Central District of California and Southern District of California, 1992; U.S. District Court, Eastern District of Michigan, 2005; U.S. Court of Appeals, First Circuit, 2011; U.S. Court of Appeals, Second Circuit, 2009; U.S. Court of Appeals, Third Circuit, 1994; U.S. Court of Appeals, Fifth Circuit, 1992; U.S. Court of Appeals, Sixth Circuit, 1992; U.S. Court of Appeals, Seventh Circuit, 2001; U.S. Court of Appeals, Ninth Circuit, 1979; U.S. Court of Appeals, Tenth Circuit, 1992; U.S. Court of Appeals, Eleventh Circuit, 1992; U.S. District Court, District of Hawaii, 1986; Fourth Circuit Court of Appeals, 2013. Education: University of California, Berkeley, School of Law (Berkeley Law), Berkeley, California (J.D., 1978); University of California at Berkeley (A.B., 1975). Awards and Honors: AV Preeminent Peer Review Rated, Martindale-Hubbell; ; selected for inclusion by peers in The Best Lawyers in America in the fields of "Mass Tort Litigation/Class Actions – Plaintiffs" and "Personal Injury Litigation – Plaintiffs, Product Liability Litigation – Plaintiffs," 2005-2019; "Northern California Super Lawyer," Super Lawyers, 2004-2019; "Lawyer of the Year," Best Lawyers, recognized in the category of Mass Tort Litigation/Class Actions - Plaintiffs and Product Liability Litigation -Plaintiffs for San Francisco, 2014, 2016, 2018; "Elite Women of the Plaintiffs Bar," National Law Journal, 2018; "Champion of Justice," Public Justice, 2018; "Titan of the Plaintiffs' Bar," Law360, 2018; "Top California Women Lawyers," Daily Journal, 2007-2018; "National Trial Lawyers Hall of Fame," National Trial Lawyers Association, 2018; "Lifetime Achievement Award," National Law Journal, 2017; "Plaintiff Lawyer of the Year," Benchmark Litigation, 2017; "Top 250 Women in Litigation," Benchmark Litigation, 2016-2018; "Top Plaintiff Lawyers," Daily Journal, 2016-2017; "Leader in the Field" for General Commercial Litigation (California); Product Liability – Plaintiffs (Nationwide), Chambers USA, 2017; "Energy and Environmental Law Trailblazer," National Law Journal, 2017; "Top 10 Northern California Super Lawyers," Super Lawyers, 2018; "Top 50 Women Northern California Super Lawyers," Super Lawyers, 2005-2018; "Top 100 Northern California Super Lawyers," Super Lawyers, 2005-2018; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2017; "California Litigation Star," Benchmark Litigation, 2012-2017; "Litigator of the Week,"

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on Class Actions and Derivative Suits; Tort and Insurance Practice Section; Rules & Procedures Committee, Past Vice-Chair; Civil Procedure & Evidence News Letter, Contributor; Business Law Section); American Constitution Society, Board of Advisors; American Law Institute (1993 present; Council, 1999 - present; Adviser, the Restatement Third, Consumer Contracts project and the Restatement Third, Torts: Liability for Economic Harm; Members Consultative Group, the Restatement Third, Torts: Liability for Physical Harm; past Adviser, the Recognition & Enforcement of Foreign Judgments project and the Principles of the Law of Aggregate Litigation project); Association of Business Trial Lawyers; Bar Association of the Fifth Federal Circuit; Bar Association of San Francisco (Past President, Securities Litigation Section; Board of Directors, 1997 - 1998; Judiciary Committee); Bay Area Lawyers for Individual Freedom; California Constitution Revision Commission (1993 -1996); California Women Lawyers; Consumer Attorneys of California; Federal Bar Association; Federal Bar Association (Northern District of California Chapter); Federal Civil Rules Advisory Committee (Appointed by Supreme Court, 2011); Lawyers Club of San Francisco; National Center for State Courts (Board Member; Mass Tort Conference Planning Committee); National Judicial College (Board of Trustees); Ninth Circuit Judicial Conference (Lawyer Delegate, 1992 - 1995); Northern District of California Civil Justice Reform Act (Advisory Committee; Advisory Committee on Professional Conduct); Northern District of California Civil Justice Reform Act (CJRA) Advisory Committee; Public Justice Foundation; Queen's Bench; State Bar of California.

RICHARD M. HEIMANN, Admitted to practice in Pennsylvania, 1972; District of Columbia, 1974; California, 1975; New York, 2000; U.S. Supreme Court, 1980; U.S. Court of Appeals, Second Circuit, 2013; U.S. Court of Appeals, Ninth Circuit, 1999; U.S. Court of Appeals, Eleventh Circuit, 2015; U.S. Court of Appeals, D.C. Circuit, 1973; U.S. District Court, Central District of California, 2001; U.S. District Court, Northern District of California, 1975; U.S. District Court, Southern District of California, 2005; U.S. District Court, District of Hawaii, 1985; U.S. District Court, District of Colorado, 2006. Education: Georgetown University (J.D., 1972); Georgetown Law Journal, 1971-72; University of Florida (B.S.B.A., with honors, 1969). Prior Employment: Mr. Heimann served as Deputy District Attorney and Acting Assistant District Attorney for Tulare County, California, 1974-75, and as an Assistant Public Defender in Philadelphia, Pennsylvania, 1972-74. As a private civil law attorney, Mr. Heimann has tried over 30 civil jury cases, including complex cases such as the successful FPI/Agretech and Edsaco securities class action trials. In April 2002 in the Edsaco case, a federal jury in San Francisco, California returned a \$170.7 million verdict against Edsaco Ltd., which included \$165 million in punitive damages. Awards & Honors: AV Preeminent Peer Review Rated, Martindale-Hubbell; Selected for inclusion by peers in The Best Lawyers in America in fields of "Bet the Company Litigation," "Litigation – Antitrust," "Litigation – Securities," and "Mass Tort Litigation/Class Actions – Plaintiffs," 2007-2019; "Lawdragon 500 Leading Lawyers in America," Lawdragon, 2019; "Northern California Super Lawyer," Super Lawyers, 2004-2019; "Lawyer of the Year," Best Lawyers, Litigation-Securities for San Francisco, 2017; "Top 100 Trial Lawyers in America," Benchmark Litigation, 2017; "Outstanding Private Practice Antitrust Achievement," American Antitrust Institute, 2017; "Lawyer of the Year," Best Lawyers, Litigation-Securities for San Francisco, 2016; "California Litigation Star," Benchmark Litigation, 2013-2016; "Trial Ace," Law360 (one of 50 attorneys in the U.S. recognized by Law360 in 2015 as the foremost trial lawyers in America); Legal 500 recommended lawyer, LegalEase, 2013; "Top 100 Northern California Super Lawyers, "Super Lawyers, 2013; "Consumer Attorney of the Year Finalist,"

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Consumer Attorneys of California, 2011; California Lawyer of the Year (CLAY) Award, *California Lawyer*, 2011, 2013; "Lawdragon Finalist," Lawdragon, 2009-2011; "Top 100 Attorneys in California," *Daily Journal*, 2010-2011; "Top Attorneys In Securities Law," Super Lawyers Corporate Counsel Edition, 2010, 2012. *Publications & Presentations:* Securities Law Roundtable, *California Lawyer* (March 2013); Securities Law Roundtable, *California Lawyer* (March 2009); Securities Law Roundtable, *California Lawyer* (April 2008); Securities Law Roundtable, *California Lawyer* (April 2007); Co-Author, "Preliminary Issues Regarding Forum Selection, Jurisdiction, and Choice of Law in Class Actions" (December 1999). *Member*: State Bar of California; Bar Association of San Francisco.

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**DONALD C. ARBITBLIT**, Admitted to practice in Vermont, 1979; California and U.S. District Court, Northern District of California, 1986. *Education*: University of California, Berkeley, School of Law (Berkeley Law) (J.D., 1979); Order of the Coif; Tufts University (B.S., magna cum laude, 1974). *Awards and Honors:* AV Preeminent Peer Review Rated, Martindale-Hubbell; Selected for inclusion by peers in *The Best Lawyers in America* in fields of "Mass Tort Litigation/Class Actions - Plaintiffs" and "Personal Injury Litigation — Plaintiffs," 2012-2019; Northern California Super Lawyers," *Super Lawyers*, 2004, 2006-2008, 2014-2019; Legal 500 recommended lawyer, *LegalEase*, 2013; "Lawdragon Finalist," Lawdragon, 2009-2011. *Publications & Presentations*: Co-Author with Wendy Fleishman, "The Risky Business of

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STEVEN E. FINEMAN, Managing Partner. Admitted to practice in California, 1989; U.S. District Court, Northern, Eastern and Central Districts of California and U.S. Court of Appeals, Ninth Circuit, 1995; U.S. Court of Appeals, Fifth Circuit, 1996; New York, U.S. District Court, Eastern and Southern Districts of New York, U.S. District Court, District of Colorado, 2006; U.S. Court of Appeals, Second Circuit and U.S. Supreme Court, 1997; U.S. District Court for the District of Columbia, 1997. Education: University of California, Hastings College of the Law (J.D., 1988); University of California, San Diego (B.A., 1985); Stirling University, Scotland (English Literature and Political Science, 1983-84). Awards & Honors: Selected for inclusion by peers in The Best Lawyers in America in the fields of "Mass Tort Litigation/Class Actions — Plaintiffs," 2006-2019; "Super Lawyer for New York Metro," Super Lawyers, 2006-2017; "Lawyer of the Year," Best Lawyers, recognized in the category of Mass Tort Litigation/Class Actions - Plaintiffs for New York City, 2016; "New York Litigation Star," Benchmark Litigation, 2013-2016; Member, Best Lawyers Advisory Board, a select group of U.S. and international law firm leaders and general counsel, 2011-2012; "Lawdragon Finalist," Lawdragon, 2009-present; "Top Attorneys In Securities Law," Super Lawyers Business Edition, 2008-present; Consultant to the Office of Attorney General, State of New York, in connection with an industry-wide investigation and settlement concerning health insurers' use of the "Ingenix database" to determine usual and customary rates for out-of-network services, April 2008-February 2009; "100 Managing Partners You Need to Know," Lawdragon, 2008; "40 Under 40," selected as one of the country's most successful litigators under the age of 40, The National Law Journal, 2002. Publications & Presentations: American Association for Justice, The Future of Class Actions: Teamwork, Savvy Defense, and Smart Offense, Panel Member, "Going on Offense: Developing a Proactive Plan" (May 11, 2017, Nashville, Tennessee); University of Haifa Faculty of Law, Dispute Resolution of Consumer Mass Disputes, Panelist, "The Role of the Lead Lawyer in Consumer Class Actions" (March 17, 2017, Haifa, Israel); Global Justice Forum, Presented by Robert L. Lieff – Moderator of Financial Fraud Litigation Panel and Participant on Financing of Litigation Panel (October 4, 2011, Columbia Law School, New York, New York); The Canadian Institute, The 12th Annual Forum on Class Actions – Panel Member, Key U.S. and Cross-Border Trends: Northbound Impacts and Must-Have Requirements (September 21, 2011, Toronto, Ontario, Canada); Co-Author with Michael J. Miarmi, "The Basics of Obtaining Class Certification in Securities Fraud Cases: U.S. Supreme Court Clarifies Standard, Rejecting Fifth Circuit's 'Loss Causation' Requirement," Bloomberg Law Reports (July 5, 2011); Stanford

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University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, Representing Plaintiffs in Large-Scale Litigation (March 2, 2011, Stanford, California); Stanford University Law School — Panel Member, Symposium on the Future of the Legal Profession, (March 1, 2011, Stanford, California); Stanford University Law School, Member, Advisory Forum, Center of the Legal Profession (2011-Present); 4th Annual International Conference on the Globalization of Collective Litigation — Panel Member, Funding Issues: Public versus Private Financing (December 10, 2010, Florida International University College of Law, Miami, Florida); "Bill of Particulars, A Review of Developments in New York State Trial Law," Column, The Supreme Court's Decisions in Igbol and Twombly Threaten Access to Federal Courts (Winter 2010); American Constitution Society for Law and Policy, Access to Justice in Federal Courts — Panel Member, The Igbal and Twombly Cases (January 21, 2010, New York, New York); American Bar Association, Section of Litigation, The 13th Annual National Institute on Class Actions — Panel Member, Hydrogen Peroxide Will Clear It Up Right Away: Developments in the Law of Class Certification (November 20, 2009, Washington, D.C.); Global Justice Forum, Presented by Robert L. Lieff and Lieff, Cabraser, Heimann & Bernstein, LLP — Conference Co-Host and Moderator of Mediation/Arbitration Panel (October 16, 2009, Columbia Law School, New York, New York); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, Foreign Claimants in U.S. Courts/U.S. Lawyers in Foreign Courts (April 6, 2009, Stanford, California); Consultant to the Office of Attorney General, State of New York, in connection with an industry-wide investigation and settlement concerning health insurers' use of the "Ingenix database" to determine usual and customary rates for out-of-network services, April 2008-February 2009; Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, Foreign Claimants in U.S. Courts/U.S. Lawyers in Foreign Courts (April 16, 2008, Stanford, California); Benjamin N. Cardozo Law School, The American Constitution Society for Law & Policy, and Public Justice, Co-Organizer of conference and Master of Ceremonies for conference, Justice and the Role of Class Actions (March 28, 2008, New York, New York); Stanford University Law School and The Centre for Socio-Legal Studies, Oxford University, Conference on The Globalization of Class Actions, Panel Member, Resolution of Class and Mass Actions (December 13 and 14, 2007, Oxford, England); Editorial Board and Columnist, "Federal Practice for the State Court Practitioner," New York State Trial Lawyers Association's "Bill of Particulars," (2005-present); "Bill of Particulars, A Review of Developments in New York State Trial Law," Federal Multidistrict Litigation Practice (Fall 2007); "Bill of Particulars, A Review of Developments in New York State Trial Law," Pleading a Federal Court Complaint (Summer 2007); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, Foreign Claimants in U.S. Courts (April 17, 2007, Palo Alto, California); "Bill of Particulars, A Review of Developments in New York State Law," Initiating Litigation and Electronic Filing in Federal Court (Spring 2007); "Bill of Particulars, A Review of Developments in New York State Trial Law," Column, Federal Court Jurisdiction: Getting to Federal Court By Choice or Removal (Winter 2007); American Constitution Society for Law and Policy, 2006 National Convention, Panel Member, Finding the Balance: Federal Preemption of State Law (June 16, 2006, Washington, D.C.); Global Justice Forum, Presented by Lieff, Cabraser, Heimann & Bernstein, LLP — Conference Moderator and Panel Member on Securities Litigation (May 19, 2006, Paris, France); Stanford University Law School, Guest Lecturer for Professor Deborah Hensler's course on Complex Litigation, Foreign Claimants in U.S. Court (April 25, 2006, Stanford, California); Global Justice Forum, Presented by Lieff, Cabraser,

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"Federal Practice for the State Court Practitioner," 2005-present); Plaintiff Toxic Tort Advisory Council (Lexis/Nexis, Mealey's Publications and Conferences Group, 2002-2005); Public Justice Foundation (President, 2011-2012; Executive Committee, July 2006-present; Board of Directors, July 2002-present); Co-Chair, Major Donors/Special Gifts Committee, July 2009-present; Class Action Preservation Project Committee, July 2005-present); State Bar of California; Supreme Court Historical Society.

ROBERT J. NELSON, Admitted to practice in California, 1987; California Supreme Court; U.S. District Court, Central District of California, 1987; U.S. District Court, Northern District of California, 1988; U.S. Court of Appeals, Ninth Circuit, 1988; U.S. Court of Appeals, Sixth Circuit, 1995; U.S. Court of Appeals, Seventh Circuit, 2016; District of Columbia, 1998; U.S. District Court, Eastern District of California, 2006; U.S. District Court, Northern District of Ohio; U.S. District Court, Southern District of Ohio; U.S. District Court, Middle District of Tennessee. Education: New York University School of Law (J.D., 1987): Order of the Coif, Articles Editor, New York University Law Review; Root-Tilden-Kern Scholarship Program. Cornell University (A.B., cum laude 1982): Member, Phi Beta Kappa; College Scholar Honors Program. London School of Economics (General Course, 1980-81): Graded First. Prior Employment: Judicial Clerk to Judge Stephen Reinhardt, U.S. Court of Appeals, Ninth Circuit, 1987-88; Assistant Federal Public Defender, Northern District of California, 1988-93; Legal Research and Writing Instructor, University of California-Hastings College of the Law, 1989-91 (Part-time position). Awards & Honors: Selected for inclusion by peers in The Best Lawyers in America in fields of "Personal Injury Litigation – Plaintiffs" and "Product Liability Litigation – Plaintiffs," 2012-2019; "Northern California Super Lawyer," Super Lawyers, 2004-2019; "California Litigation Star," Benchmark Litigation, 2013-2016; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2007, 2010, 2014-2015; Legal 500 recommended lawyer, LegalEase, 2013-Present; "Lawdragon Finalist," Lawdragon, 2009-2011; "California Lawyer Attorney of the Year (CLAY)" Award, California Lawyer, 2008, 2010; "San Francisco Trial Lawyer of the Year Finalist," San Francisco Trial Lawyers' Association, 2007. Publications: False Claims Roundtable, California Lawyer (January 2013); False Claims Roundtable, California Lawyer (April 2012); False Claims Roundtable, California Lawyer (June 2011); False Claims Roundtable, California Lawyer (June 2010); Product Liability Roundtable, California Lawyer (March 2010); Product Liability Roundtable, California Lawyer (July 2009); "Class Action Treatment of Punitive Damages Issues after Philip Morris v. Williams: We Can Get There from Here," 2 Charleston Law Review 2 (Spring 2008) (with Elizabeth J. Cabraser); Product Liability Roundtable, California Lawyer (December 2007); Contributing Author, California Class Actions Practice and Procedures (Elizabeth J. Cabraser editor in chief, 2003); "The Importance of Privilege Logs," The Practical Litigator, Vol. II, No. 2 (March 2000) (ALI-ABA Publication); "To Infer or Not to Infer a Discriminatory Purpose: Rethinking Equal Protection Doctrine," 61 New York University Law Review 334 (1986). Member: American Association for Justice, Fight for Justice Campaign; American Bar Association; American Civil Liberties Union of Northern California; Bar Association of San Francisco; Bar of the District of Columbia; Consumer Attorneys of California; Human Rights Watch California Committee North; RE-volv, Board Member; San Francisco Trial Lawyers Association; State Bar of California.

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KELLY M. DERMODY, Admitted to practice in California (1994); U.S. Supreme Court (2013); U.S. Court of Appeals for the First Circuit (2012); U.S. Court of Appeals for the Second Circuit (2010); U.S. Court of Appeals for the Third Circuit (2001); U.S. Court of Appeals for the Fourth Circuit (2008); U.S. Court of Appeals for the Sixth Circuit (2008); U.S. Court of Appeals for the Seventh Circuit (2006); U.S. Court of Appeals for the Ninth Circuit (2007); U.S. District Court, Northern District of California (1995); U.S. District Court, Central District of California (2005); U.S. District Court, Eastern District of California (2012); U.S. District Court of Colorado (2007). Education: University of California, Berkeley, School of Law (Berkeley Law) (J.D. 1993); Moot Court Executive Board (1992-1993); Articles Editor, Industrial Relations Law Journal/Berkeley Journal of Employment and Labor Law (1991-1992); Harvard University (A.B. magna cum laude, 1990), Senior Class Ames Memorial Public Service Award. Prior Employment: Law Clerk to Chief Judge John T. Nixon, U.S. District Court, Middle District of Tennessee, 1993-1994; Adjunct Professor of Law, Golden Gate University School of Law, Employment Law (Spring 2001). Awards & Honors: AV Preeminent Peer Review Rated, Martindale-Hubbell; "Margaret Brent Women Lawyers of Achievement Award," American Bar Association Commission on Women in the Profession, 2019; "Top California Women Lawyers," Daily Journal, 2007, 2010, 2012-2018; Selected for inclusion by peers in The Best Lawyers in America in fields of "Employment Law – Individuals" and "Litigation – Labor and Employment," 2010-2019; "500 Leading Lawyers in America," Lawdragon, 2010-2017, 2019; "Employment Law Trailblazer, National Law Journal, 2019; "Northern California Super Lawyer," Super Lawyers, 2004-2019; "Lawyer of the Year," Best Lawyers, Employment Law-Individuals for San Francisco, 2014, 2018; "Top Labor & Employment Lawyers," Daily Journal, 2018; "Top 250 Women in Litigation," Benchmark Litigation, 2016-2018; "Gender Justice Honoree," Equal Rights Advocates, 2017; "California Litigation Star," Benchmark Litigation, 2013-2016; Fellow, The College of Labor and Employment Lawyers, 2015; "Top 100 Attorneys in California, Daily Journal, 2012-2015; "Top 75 Labor and Employment Attorneys in California," Daily Journal, 2011-2015; "Top 50 Women Northern California Super Lawyers," Super Lawyers, 2007-2015, 2018; "Top 100 Northern California Super Lawyers," Super Lawyers, 2007, 2009-2015, 2018; Distinguished Jurisprudence Award, Anti-Defamation League, 2014; "Lawyer of the Year," Best Lawyers, recognized in the category of Employment Law — Individuals for San Francisco, 2014; "Top 10 Northern California Super Lawyers, Super Lawyers, 2014; "Dolores Huerta Adelita Award," California Rural Assistance, 2013; "Recommended Lawyer," The Legal 500 (U.S. edition, 2013); "Women of Achievement Award," Legal Momentum (formerly the NOW Legal Defense & Education Fund), 2011; "Irish Legal 100" Finalist, The Irish Voice, 2010; "Florence K. Murray Award," National Association of Women Judges, 2010 (for influencing women to pursue legal careers, opening doors for women attorneys, and advancing opportunities for women within the legal profession); "Lawdragon Finalist," Lawdragon, 2007-2009; "Community Service Award," Bay Area Lawyers for Individual Freedom, 2008; "Community Justice Award," Centro Legal de la Raza, 2008; "Award of Merit," Bar Association of San Francisco, 2007; "California Lawyer Attorney of the Year (CLAY) Award," California Lawyer, 2007; "500 Leading Plaintiffs' Lawyers in America," Lawdragon, Winter 2007; "Trial Lawyer of the Year Finalist," Public Justice Foundation, 2007; "Consumer Attorney of the Year" Finalist, Consumer Attorneys of California, 2006; "California's Top 20 Lawyers Under 40," Daily Journal, 2006; "Living the Dream Partner," Lawyers' Committee for Civil Rights of the San Francisco Bay Area, 2005; "Top Bay Area Employment Attorney," The Recorder, 2004. Member: American Law Institute, Elected Member, 2019;

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American Bar Association, Labor and Employment Law Section (Governing Council, 2009present; Co-Chair, Section Conference, 2008-2009; Vice-Chair, Section Conference, 2007-2008; Co-Chair, Committee on Equal Opportunity in the Legal Profession, 2006-2007); American Bar Association, Section of Litigation (Attorney Client Privilege Task Force, 2017-2018); Bar Association of San Francisco (Board of Directors, 2005-2012; President, 2011-2012; President-Elect, 2010-2011; Treasurer, 2009-2010; Secretary, 2008-2009; Litigation Section; Executive Committee, 2002-2005); Bay Area Lawyers for Individual Freedom; Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Board of Directors, 1998-2005; Secretary, 1999-2003; Co-Chair, 2003-2005; Member, 1997-Present); Carver Healthy Environments and Response to Trauma in Schools (Steering Committee, 2007); College of Labor and Employment Lawyers (Fellow, 2015); Consumer Attorneys of California; Equal Rights Advocates (Litigation Committee, 2000-2002); National Association of Women Judges (Independence of the Judiciary Co-Chair, 2011-2014; Resource Board, Co-Chair, 2009-2011, Member, 2005-2014); National Center for Lesbian Rights (Board of Directors, 2002-2008; Co-Chair, 2005-2006); National Employment Lawyers' Association; Northern District of California Historical Society (Board of Directors, 2015- Present); Northern District of California Lawyer Representative to the Ninth Circuit Judicial Conference (2007-2010); Pride Law Fund (Board of Directors, 1995-2002; Secretary, 1995-1997; Chairperson, 1997-2002); Public Justice Foundation; State Bar of California.

JONATHAN D. SELBIN, Admitted to practice in California, 1994; District of Columbia, 2000; New York, 2001; U.S. Supreme Court, 2012; U.S. Court of Appeals, Second Circuit, 2016; U.S. Court of Appeals, Third Circuit, 2009; U.S. Court of Appeals, Fifth Circuit, 2002; U.S. Court of Appeals, Sixth Circuit, 2012; U.S. Court of Appeals, Ninth Circuit, 2007; U.S. Court of Appeals, Tenth Circuit, 2014; U.S. District Court, Northern District of California, 1997; U.S. District Court, Central District of California, 1995; U.S. District Court, Northern District of Florida, 2009; U.S. District Court Northern District of Illinois, 2010; U.S. District Court, Southern District of New York, 2001; U.S. District Court, Eastern District of New York, 2008; U.S. District Court, Eastern District of Michigan, 2007; U.S. District Court, Eastern District of Wisconsin, 2013. Education: Harvard Law School (J.D., magna cum laude, 1993); University of Michigan (B.A., summa cum laude, 1989). Prior Employment: Law Clerk to Judge Marilyn Hall Patel, U.S. District Court, Northern District of California, 1993-95. Awards & Honors: Selected for inclusion by peers in The Best Lawyers in America in field of "Product Liability Litigation – Plaintiffs," 2013-2019; "New York Super Lawyers," Super Lawyers, 2006-2018; Distinguished Service Award, American Association for Justice, 2016; "New York Litigation Star," Benchmark Litigation, 2013-2016; "Lawdragon Finalist," Lawdragon, 2009. Publications & Presentations: On Class Actions (2009); Contributing Author, "Ninth Circuit Reshapes California Consumer-Protection Law," American Bar Association (July 2012); Contributing Author, California Class Actions Practice and Procedures (Elizabeth J. Cabraser editor-in-chief, 2003); "Bashers Beware: The Continuing Constitutionality of Hate Crimes Statutes After R.A.V.," 72 Oregon Law Review 157 (Spring, 1993). Member: American Association for Justice; American Bar Association; District of Columbia Bar Association; Equal Justice Works, Board of Counselors; New York Advisory Board, Alliance for Justice; New York State Bar Association; New York State Trial Lawyers Association; State Bar of California.

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MICHAEL W. SOBOL, Admitted to practice in Massachusetts, 1989; California, 1998; United States District Court, District of Massachusetts, 1990; U.S. District Court, Northern District of California, 2001; U.S. District Court, Central District of California, 2005; U.S. District Court, Eastern District of California, 2011; U.S. District Court, Southern District of California, 2010; U.S. Court of Appeals for the Ninth Circuit (2009); U.S. Court of Appeals for the Eleventh Circuit (2012). Education: Boston University (J.D., 1989); Hobart College (B.A., cum laude, 1983). Prior Employment: Lecturer in Law, Boston University School of Law, 1995-1997. Awards & Honors: Selected for inclusion by peers in The Best Lawyers in America in fields of "Mass Tort Litigation/Class Actions – Plaintiffs" and "Product Liability Litigation – Plaintiffs," 2013-2019; "Super Lawyer for Northern California," Super Lawyers, 2012 – 2019; "Top Cyber/Artificial Intelligence Lawyer," Daily Journal, 2018; "MVP for Cybersecurity and Privacy," Law360, 2017; "Cybersecurity & Data Privacy Trailblazer," The National Law Journal, 2017; California Litigation Star," Benchmark Litigation, 2013-2015; "Top 100 Northern California Super Lawyers, "Super Lawyers, 2013; "Top 100 Attorneys in California," Daily Journal, 2012-2013; "Trial Lawyer of the Year Finalist," Public Justice, 2012; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2011; "Lawdragon Finalist," Lawdragon, 2009. Publications & Presentations: Panelist, National Consumer Law Center's 15th Annual Consumer Rights Litigation Conference, Class Action Symposium; Panelist, Continuing Education of the Bar (C.E.B.) Seminar on Unfair Business Practices—California's Business and Professions Code Section 17200 and Beyond; Columnist, On Class Actions, Association of Business Trial Lawyers, 2005 to present; The Fall of Class Action Waivers (2005); The Rise of Issue Class Certification (2006); Proposition 64's Unintended Consequences (2007); The Reach of Statutory Damages (2008). Member: State Bar of California; Bar Association of San Francisco; Consumer Attorneys of California, Board of Governors, (2007-2008, 2009-2010); National Association of Consumer Advocates.

FABRICE N. VINCENT, Admitted to practice in California, 1992; U.S. District Court, Northern District of California, Central District of California, Eastern District of California, Ninth Circuit Court of Appeals, 1992. Education: Cornell Law School (J.D., cum laude, 1992); University of California at Berkeley (B.A., 1989). Awards & Honors: Selected for inclusion by peers in The Best Lawyers in America in fields of "Mass Tort Litigation/Class Actions -Plaintiffs," "Product Liability Litigation – Plaintiffs," and "Personal Injury Litigation – Plaintiffs," 2012-2019; "Super Lawyer for Northern California," Super Lawyers, 2006–2019; "Outstanding Subcommittee Chair for the Class Actions & Derivative Suits," ABA Section of Litigation, 2013. Publications & Presentations: Lead Author, Citizen Report on Utility Terrain Vehicle (UTV) Hazards and Urgent Need to Improve Safety and Performance Standards; and Request for Urgent Efforts To Increase Yamaha Rhino Safety and Avoid Needless New Catastrophic Injuries, Amputations and Deaths, Lieff Cabraser Heimann & Bernstein, LLP (2009); Co-Author with Elizabeth J. Cabraser, "Class Actions Fairness Act of 2005," California Litigation, Vol. 18, No. 3 (2005); Co-Editor, California Class Actions Practice and Procedures (2003-06); Co-Author, "Ethics and Admissibility: Failure to Disclose Conflicts of Interest in and/or Funding of Scientific Studies and/or Data May Warrant Evidentiary Exclusions," Mealey's December Emerging Drugs Reporter (December 2002); Co-author, "The Shareholder Strikes Back: Varied Approaches to Civil Litigation Claims Are Available to Help Make Shareholders Whole," *Mealey's Emerging Securities Litigation Reporter* (September 2002); Co-Author, "Decisions Interpreting California's Rules of Class Action Procedure," Survey of

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State Class Action Law (ABA 2000-09), updated and re-published in 5 Newberg on Class Actions (2001-09); Coordinating Editor and Co-Author of California section of the ABA State Class Action Survey (2001-06); Co-Editor-In-Chief, Fen-Phen Litigation Strategist (Leader Publications 1998-2000); Author of "Off-Label Drug Promotion Permitted" (Oct. 1999); Co-Author, "The Future of Prescription Drug Products Liability Litigation in a Changing Marketplace," and "Six Courts Certify Medical Monitoring Claims for Class Treatment," 29 Forum 4 (Consumer Attorneys of California 1999); Co-Author, Class Certification of Medical Monitoring Claims in Mass Tort Product Liability Litigation (ALI-ABA Course of Study 1999); Co-Author, "How Class Proofs of Claim in Bankruptcy Can Help in Medical Monitoring Cases," (Leader Publications 1999); Author, "AHP Loses Key California Motion In Limine," (February 2000); Co-Author, Introduction, "Sanctioning Discovery Abuses in the Federal Court," (LRP Publications 2000); "With Final Approval, Diet Drug Class Action Settlement Avoids Problems That Doomed Asbestos Pact," (Leader Publications 2000); Author, "Special Master Rules Against SmithKline Beecham Privilege Log," (November 1999). Member: American Association for Justice; Association of Business Trial Lawyers; State Bar of California; Bar Association of San Francisco; American Bar Association; Fight for Justice Campaign; Association of Business Trial Lawyers: Society of Automotive Engineers.

DAVID S. STELLINGS, Admitted to practice in New York, 1994; New Jersey; 1994; U.S. District Court, Southern District of New York, 1994. Education: New York University School of Law (J.D., 1993); Editor, Journal of International Law and Politics; Cornell University (B.A., cum laude, 1990). Awards & Honors: "Super Lawyer for New York Metro," Super Lawyers, 2012-2017; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2017; "Trial Lawyer of the Year Finalist," Public Justice, 2012; "Lawdragon Finalist, Lawdragon, 2009. Member: New York State Bar Association; New Jersey State Association; Bar Association of the City of New York; American Bar Association.

ERIC B. FASTIFF, Admitted to practice in California, 1996; District of Columbia, 1997; U.S. Courts of Appeals for the Third, Ninth and Federal Circuit; U.S. District Courts for the Northern, Southern, Eastern, and Central Districts of California, District of Columbia; U.S. District Court, Eastern District of Wisconsin; U.S. Court of Federal Claims. Education: Cornell Law School (J.D., 1995); Editor-in-Chief, Cornell International Law Journal; London School of Economics (M.Sc.(Econ.), 1991); Tufts University (B.A., cum laude, magno cum honore in thesi, 1990). Prior Employment: Law Clerk to Hon. James T. Turner, U.S. Court of Federal Claims, 1995-1996; International Trade Specialist, Eastern Europe Business Information Center, U.S. Department of Commerce, 1992. Awards & Honors: Selected for inclusion by peers in The Best Lawyers in America in the field of "Litigation - Antitrust," 2013-2019; "Lawdragon 500 Leading Lawyers in America," Lawdragon, 2019; "Northern California Super Lawyer," Super Lawyers, 2010-2019; "Top Plaintiff Lawyers," Daily Journal, 2016-2017; "Plaintiffs' Law Trailblazer," National Law Journal, 2018; "Leader in the Field" for Antitrust (California), Antitrust (National), Chambers USA, 2017; "Outstanding Private Practice Antitrust Achievement," American Antitrust Institute, 2017; "California Litigation Star," Benchmark Litigation, 2013-2015; Legal 500 recommended lawyer, LegalEase, 2013; "Top 100 Lawyers in California," Daily Journal, 2013; "Top Attorneys in Business Law," Super Lawyers Corporate Counsel Edition, 2012; "Lawdragon Finalist," Lawdragon, 2009. Publications & Presentations: General Editor, California Class Actions Practice and Procedures, (2003-2009); Coordinating Editor and Co-

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Author of California section of the *ABA State Class Action Survey* (2003-2008); Author, "US Generic Drug Litigation Update," 1 *Journal of Generic Medicines* 212 (2004); Author, "The Proposed Hague Convention on the Recognition and Enforcement of Civil and Commercial Judgments: A Solution to Butch Reynolds's Jurisdiction and Enforcement Problems," 28 *Cornell International Law Journal* 469 (1995). *Member*: American Antitrust Institute (Advisory Board, 2012-Present); Committee to Support the Antitrust Laws, President, 2017; Bar Association of San Francisco; Children's Day School (Board of Trustees); District of Columbia Bar Association; *Journal of Generic Medicines* (Editorial Board Member, 2003-Present); State Bar of California; U.S. Court of Federal Claims Bar Association.

WENDY R. FLEISHMAN, Admitted to practice in New York, 1992; Pennsylvania, 1977; U.S. Supreme Court, 2000; U.S. Court of Appeals 2nd Circuit, 1998; U.S. Court of Appeals 3rd Circuit, 2010; U.S. Court of Appeals 8th Circuit, 2009; U.S. Court of Appeals 9th Circuit, 2010; U.S. District Court, District of Arizona, 2013; U.S. District Court, Western District of New York, 2012; U.S. District Court Eastern District of New York, 1999; U.S. District Court Northern District of New York, 1999; U.S. District Court Southern District of New York, 1995; U.S. District Court, Eastern District of Wisconsin, 2013; U.S. District Court, Eastern District of Pennsylvania, 1984; U.S. District Court, Western District of Pennsylvania, 2001; U.S. Court of Appeals 5th Circuit, March 5, 2014. Education: University of Pennsylvania (Post-Baccalaureate Pre-Med, 1982); Temple University (J.D., 1977); Sarah Lawrence College (B.A., 1974). Prior Employment: Skadden, Arps, Slate, Meagher & Flom LLP in New York (Counsel in the Mass Torts and Complex Litigation Department), 1993-2001; Fox, Rothschild O'Brien & Frankel (partner), 1988-93 (tried more than thirty civil, criminal, employment and jury trials, and AAA arbitrations, including toxic tort, medical malpractice and serious injury and wrongful death cases); Ballard Spahr Andrews & Ingersoll (associate), 1984-88 (tried more than thirty jury trials on behalf of the defense and the plaintiffs in civil personal injury and tort actions as well as employment—and construction—related matters); Assistant District Attorney in Philadelphia, PA, 1977-84 (in charge of and tried major homicide and sex crime cases). Awards and Honors: Fellow, American Bar Foundation; AV Preeminent Peer Review Rated, Martindale-Hubbell; "Top 100 Trial Lawyers," The National Trial Lawyers; Selected for inclusion by peers in The Best Lawyers in America in the field of "Mass Tort Litigation/Class Actions – Plaintiffs," 2019; "New York Super Lawyers," Super Lawyers, 2006-2018; "New York Litigation Star," Benchmark Litigation, 2013-2016; Legal 500 recommended lawyer, LegalEase, 2013; Officer of New York State Trial Lawyers Association, 2010-present; New York State Academy of Trial Lawyers, 2011; "Lawdragon Finalist," Lawdragon, 2009. Publications & Presentations: Moderator, "Jurisdiction: Defining State Courts' Authority," Pound Civil Justice Institute Judges Forum; Boston, MA, July 2017; Speaker, "Diversity in Mass Torts," AAJ Education Programs, Boston, MA, July 2017; Speaker, "Mass Torts & Criminality," JAMS Mass Torts Judicial Forum, New York, NY, April 2017; Speaker, "Settling Strategies for MDLs," JAMS Mass Torts Judicial Forum, New York, NY, April 2016; Moderator & Chair, "Toxic, Environmental & Pharmaceutical Torts," American Association for Justice Annual Convention, Baltimore, MD, July 2014; "Where Do You Want To Be? Don't Get Left Behind, Creating a Vision for Your Practice," Minority Caucus and Women Trial Lawyers Caucus (July 22, 2013); Editor, Brown & Fleishman, "Proving and Defending Damage Claims: A Fifty-State Guide" (2007-2010); Co-Author with Donald Arbitblit, "The Risky Business of Off-Label Use," Trial (March 2005); Co-Author, "From the Defense Perspective," Scientific Evidence, Chapter 6, Aspen Law Pub (1999); Editor, Trial

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Techniques Newsletter, Tort and Insurance Practices Section, American Bar Association (1995-1996; 1993-1994); "How to Find, Understand, and Litigate Mass Torts," NYSTLA Mass Torts Seminar (April 2009); "Ethics of Fee Agreements in Mass Torts," AAJ Education Programs (July 2009). Appointments: Plaintiffs' Executive Committee, IVC Filters Litigation; Lead Counsel, Joint Coordinated California Litigation, Amo Lens Solution Litigation; Co-Liaison, In re Zimmer Durom Cup Hip Implant Litigation; Plaintiffs' Steering Committee, DePuy ASR Hip Implant Litigation; Liaison, NJ Ortho Evra Patch Product Liability Litigation; Co-Liaison, NJ Reglan Mass Tort Litigation; Co-Chair, Mealey's Drug & Medical Device Litigation Conference (2007); Executive Committee, In re ReNu MoistureLoc Product Liability Litigation, MDL; Discovery Chair, In re Guidant Products Liability Litigation; Co-Chair Science Committee, In re Baycol MDL Litigation; Pricing Committee, In re Vioxx MDL Litigation. Member: New York State Trial Lawyers Association (Treasurer, 2010-present; Board of Directors, 2004-Present); Association of the Bar of the City of New York (Product Liability Committee, 2007-present; Judiciary Committee, 2004-Present); American Bar Association (Annual Meeting, Torts & Insurance Practices Section, NYC, Affair Chair, 1997; Trial Techniques Committee, Torts and Insurance Practices, Chair-Elect, 1996); American Association for Justice (Board of Governors); American Association for Justice (Board of Governors, Women Trial Lawyers' Caucus); Pennsylvania Bar Association (Committee on Legal Ethics and Professionalism, 1993-Present; Committee on Attorney Advertising, 1993-Present; Vice-Chair, Task Force on Attorney Advertising, 1991-92); State Bar of New York; Federal Bar Association; Member, Gender and Race Bias Task Force of the Second Circuit, 1994-present; Deputy Counsel, Governor Cuomo's Screening Committee for New York State Judicial Candidates, 1993-94; New York Women's Bar Association; New York County Lawyers; Fight for Justice Campaign; PATLA; Philadelphia Bar Association (Member of Committee on Professionalism 1991-92).

RACHEL GEMAN, Admitted to practice in New York, 1998; Southern and Eastern Districts of New York, 1999; U.S. District Court, Eastern District of Michigan, 2005; U.S. District Court of Colorado, 2007; U.S. Supreme Court, 2013. Education: Columbia University School of Law (J.D. 1997); Stone Scholar; Equal Justice America Fellow; Human Rights Fellow; Editor, Columbia Journal of Law and Social Problems; Harvard University (A.B. cum laude 1993). Prior Employment: Adjunct Professor, New York Law School; Special Advisor, United States Mission to the United Nations, 2000; Law Clerk to Judge Constance Baker Motley, U.S. District Court, Southern District of New York, 1997-98. Awards & Honors: AV Preeminent Peer Review Rated, Martindale-Hubbell; Selected for inclusion by peers in *The Best Lawyers in* America in field of "Employment Law – Individuals," 2012-2019; "Lawyer of the Year," Best Lawyers, recognized in the category of Employment Law – Individuals for San Francisco, 2014, 2019; "Super Lawyer for New York Metro," Super Lawyers, 2013-2017; Legal 500 recommended lawyer, LegalEase, 2013; "Rising Star for New York Metro," Super Lawyers, 2011; Distinguished Honor Award, United States Department of State, 2001. Publications & Presentations: Speaker and Moderator, "Statistics for Lawyers - Even Those Who Hate Math," National Employment Lawyers Association Annual Convention (2015); Speaker, "Gender Pay Disparities: Enforcement, Litigation, and Remedies," New York City Conference on Representing Employees (2015); Speaker, "Protecting Pay: Representing Workers With Wage and Hour Claims," National Employment Lawyers Association (2015); Speaker and Author, "What Employment Lawyers Need to Know About Non-Employment Class Actions," ABA Section of Labor and Employment Law Conference (2014); Moderator, "Dodd-Frank and

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Sarbanes-Oxley Whistleblower Issues," National Employment Lawyers Association/New York (2014); Author, "Whistleblower Under Pressure," Trial Magazine (April 2013); Panelist, "Class Certification Strategies: Dukes in the Rear View Mirror," Impact Fund Class Action Conference (2013); Author & Panelist, "Who is an Employer Under the FLSA?" National Employment Lawyers Association Conference (2013); Panelist, "Fraud and Consumer Protection: Plaintiff and Defense Strategies," Current Issues in Pharmaceutical and Medical Device Litigation, ABA Section of Litigation (2012); Participant and Moderator, "Ask the EEOC: Current Insights on Enforcement and Litigation," ABA Section of Labor and Employment Law (2011); Panelist, "Drafting Class Action Complaints," New York State Bar Association (2011); Participant and Moderator, "Ask the EEOC: Current Insights on Enforcement and Litigation," ABA Section of Labor and Employment Law (2011); The New York Employee Advocate, Co-Editor (2005-2009), Regular Contributor (2008-present); Moderator, "Hot Topics in Wage and Hour Class and Collective Actions," American Association for Justice Tele-Seminar (2010); Author & Panelist, "Class Action Considerations: Certification, Settlement, and More," American Conference Institute Advanced Forum (2009); Panelist, "Rights Without Remedies," American Constitutional Society National Convention, Revitalizing Our Democracy: Progress and Possibilities (2008); Panelist, Fair Measure: Toward Effective Attorney Evaluations, American Bar Association Annual Meeting (2008); Panelist, "Getting to Know You: Use and Misuse of Selection Devices for Hiring and Promotion," ABA Labor & Employment Section Annual Meeting (2008); Author, "'Don't I Think I Know You Already?': Excessive Subjective Decision-Making as an Improper Tool for Hiring and Promotion," ABA Labor & Employment Section Annual Meeting (2008); Author & Panelist, "Ethical Issues in Representing Workers in Wage & Hour Actions," Representing Workers in Individuals & Collective Actions under the FLSA (2007); Author & Panelist, "Evidence and Jury Instructions in FLSA Actions," Georgetown Law Center/ACL-ABA (2007); Author & Panelist, "Crucial Events in the 'Life' of an FLSA Collective Action: Filing Considerations and the Two-step 'Similarly-Situated' Analysis," National Employment Lawyers Association, Annual Convention (2006); Author & Panelist, "Time is Money, Except When It's Not: Compensable Time and the FLSA," National Employment Lawyers Association, Impact Litigation Conference (2005); Panelist, "Electronic Discovery," Federal Judicial Center & Institute of Judicial Administration, Workshop on Employment Law for Federal Judges (2005); "Image-Based Discrimination and the BFOQ Defense," EEO Today: The Newsletter of the EEO Committee of the ABA's Section of Labor and Employment Law, Vol. 9, Issue 1 (2004); "Fair Labor Standards Act Overtime Exemptions: Proposed Regulatory Changes," New York State Bar Association Labor and Employment Newsletter (2004); Chair & Panelist, "Current Topics in Fair Labor Standards Act Litigation," Conference, Association of the Bar of the City of New York (2003); Moderator, "Workforce Without Borders," ABA Section of Labor & Employment Law, EEOC Midwinter Meeting (2003). Member: American Bar Association [Labor and Employment Law Section, Standing Committee on Equal Employment Opportunity (Member, Past Employee Co-Chair, 2009-2011)]; Association of the Bar of the City of New York; Certified Fraud Examiners, New York Chapter, Member; National Employment Lawyers' Association - New York Chapter (Chair of Amicus Committee, 2017; Board Member, 2005-2011); National Employment Lawyers' Association – National; Public Justice Foundation; Rutter Federal Employment Guide, Contributing Editor (2017-present); Taxpayers Against Fraud Education Fund.

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BRENDAN P. GLACKIN, Admitted to practice in California, 1998; New York, 2000; U.S. District Court, Northern, Central, Eastern and Southern Districts of California, 2001; U.S. Court of Appeals for the Ninth Circuit, 2004; U.S. District Court, Southern District of New York, 2001; U.S. Court of Appeals for the Second Circuit, 2013; U.S. Court of Appeals for the Fourth Circuit, 2016; U.S. Court of Appeals for the Ninth Circuit. Education: Harvard Law School (J.D., cum laude, 1998); University of Chicago (A.B., Phi Beta Kappa, 1995). Prior Employment: Contra Costa Public Defender, 2005-2007; Boies, Schiller & Flexner, 2000-2005; Willkie Farr & Gallagher, 1999-2000; Law Clerk to Honorable William B. Shubb, U.S. District Court, Eastern District of California, 1998-1999. Awards & Honors: "Northern California Super Lawyer," Super Lawyers, 2013-2019; "California Lawyer Attorney of the Year," California Lawyer, 2016. Member: State Bar of California; BASF Antitrust Section, Executive Committee. Seminars: Ramifications of American Needle, Inc. v. National Football League, 2010; Antitrust Institute 2011: Developments & Hot Topics, 2011; Antitrust Trials: The View From the Trenches, 2013; Applying Settlement Offsets to Antitrust Judgments, ABA Spring Meetings, 2013; California Trial Advocacy, PLI, 2013; Building Trial Skills, NITA, 2013, California Trial Advocacy, PLI, 2013, Applying Settlements Offsets to Antiftust Judgments, ABA Spring Meetings, 2013, Antitrust Trials: The View From the Trenches, 2013, Antitrust and Silicon Valley: New Themes and Direction in Competition Law and Policy, Santa Clara University School of Law, March 2019.

MARK P. CHALOS, Admitted to practice in Tennessee, 1998; U.S. Court of Appeals, Sixth Circuit, 1998; U.S. Court of Appeals, Seventh Circuit, 2012; U.S. District Court, Middle District of Tennessee, 2000; U.S. District Court, Western District of Tennessee, 2002; U.S. District Court, Eastern District of Tennessee, 2006; U.S. District Court, Northern District of Florida, 2006; U.S. District Court, Northern District of California, 2007; U.S. Supreme Court, 2012. Education: Emory University School of Law (J.D., 1998); Dean's List; Award for Highest Grade, Admiralty Law; Research Editor, Emory International Law Review; Phi Delta Phi Legal Fraternity; Vanderbilt University (B.A., 1995). Honors & Awards: AV Peer Review Rated, Martindale-Hubbell; Selected for inclusion by peers in *The Best Lawyers in America* in the field of "Mass Tort Litigation/Class Actions – Plaintiffs," 2012-2019; American Bar Foundation Fellow, 2016; "Tennessee Litigation Star," Benchmark Litigation, 2013-2015; "Best of the Bar," Nashville Business Journal, 2008-2010, 2015-2016; "Super Lawyer for Mid-South," Super Lawyers, 2011 - 2017; "Tennessee Top 100," Super Lawyers, 2015; "Rising Star for Mid-South," Super Lawyers, 2008 - 2010; "Top 40 Under 40," The Tennessean, 2004. Publications & Presentations: "Supreme Court Limits The Reach Of Alien Tort Statute In Kiobel," Legal Solutions Blog, April 2013; "The Rise of Bellwether Trials," Legal Solutions Blog, March 2013; "Amgen: The Supreme Court Refuses to Erect New Class Action Bar," Legal Solutions Blog, March 2013; "Are International Wrongdoers Above the Law?," The Trial Lawyer Magazine, January 2013; "Kiobel v. Royal Dutch Petroleum: Supreme Court to Decide Role of US Courts Abroad," ABA Journal, January 2013. "Legislation Protects the Guilty [in Deadly Meningitis Outbreak]," The Tennessean, December 2012; Litigating International Torts in United States Courts, 2012 ed., Thomson Reuters/West (2012); "Successfully Suing Foreign Manufacturers," TRIAL Magazine, November 2008; "Washington Regulators Versus American Juries: The United States Supreme Court Shifts the Balance in Riegel v. Medtronic," Nashville Bar Journal, 2008; "Washington Bureaucrats Taking Over American Justice System," The Tennessean (December 2007); "The End of Meaningful Punitive Damages," Nashville Bar Journal,

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November 2001; "Is Civility Dead?" *Nashville Bar Journal*, October 2003; "The FCC: The Constitution, Censorship, and a Celebrity Breast," *Nashville Bar Journal*, April 2005. *Member*: American Bar Foundation (Fellow, 2016); American Association for Justice (Chair, Public Education Committee, 2015); American Bar Association (Past-Chair, YLD Criminal & Juvenile Justice Committee; Tort Trial and Insurance Practice Section Professionalism Committee); First Center for the Visual Arts (Founding Member, Young Professionals Program); Harry Phillips American Inn of Court; Kappa Chapter of Kappa Sigma Fraternity Alumni Association (President); Metropolitan Nashville Arts Commission (Grant Review Panelist); Nashville Bar Association (YLD Board of Directors; Nashville Bar Association YLD Continuing Legal Education and Professional Development Director); Nashville Bar Journal (Editorial Board); Tennessee Association (Continuing Legal Education Committee); Tennessee Trial Lawyers Association (Board of Directors); Historic Belcourt Theatre (Past Board Chair; Board of Directors); Nashville Cares (Board of Directors).

**PAULINA do AMARAL**, Admitted to practice in New York, 1997; California, 1998; U.S. Court of Appeals, Ninth Circuit, 1999; U.S. District Court, Southern District of New York, 2004; U.S. District Court, Western District of Michigan, 2004; U.S. District Court, Eastern District of Michigan, 2007. Education: University of California Hastings College of Law (J.D., 1996); Executive Editor, Hastings Constitutional Law Quarterly; National Moot Court Competition Team, 1995; Moot Court Executive Board; University of Rochester (B.A., 1988). Employment: Law Clerk to Chief Judge Richard Alan Enslen, U.S. District Court, Western District of Michigan, 1996-98. Publications & Presentations: Co-Chair, HarrisMartin Opioid Litigation Conference, San Francisco, 2018; "Rapid Response: Opioid Litigation," American Association for Justice Seminar, September 2017; Co-Author, "Class Action Fairness Act of 2005," California Litigation, Vol. 18, No. 3, 2005. Awards & Honors: Selected for inclusion by peers in The Best Lawyers in America in the field of "Mass Tort Litigation/Class Actions — Plaintiffs," 2017-2019; Legal 500 recommended lawyer, LegalEase, 2013. Member: Association of the Bar of the City of New York, (2007-2010, Committee on the Judiciary); American Bar Association; State Bar of New York; State Bar of California; Bar Association of San Francisco; American Trial Lawyers Association; New York State Trial Lawyers Association.

KENNETH S. BYRD, Admitted to practice in Tennessee, 2004; U.S. District Court of Appeals, 6th Circuit, 2009; U.S. District Court, Western District of Tennessee, 2007; U.S. District Court, Eastern District of Tennessee, 2006; U.S. District Court, Middle District of Tennessee, 2005. Education: Boston College Law School (J.D., cum laude, 2004), Law Student Association (President, 2003-2004), National Moot Court Team (Regional Champion, 2003-2004), American Constitution Society (Secretary, 2002-2003), Judicial Process Clinic (2003), Criminal Justice Clinic (2003-2004); Samford University (B.S., cum laude, in Mathematics with Honors, minor in Journalism, 1995). Prior Employment: Harwell Howard Hyne Gabbert & Manner, P.C., 2004-2010; Summer Associate, Harwell Howard Hyne Gabbert & Manner, P.C., 2003; Summer Associate, Edward, Angell, Palmer, Dodger, LLP, 2003. Awards: Selected for inclusion by peers in The Best Lawyers in America in fields of Consumer Protection Law, Personal Injury Litigation-Plaintiffs, and Product Liability Litigation-Plaintiffs, 2018-2019; "Paladin Award," Tennessee Association for Justice, 2015; "Rising Star for Mid-South," Super Lawyers, 2014. Member: American Bar Association; American Constitution Society, Nashville

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Chapter (Member & Chair of 2008 Supreme Court Preview Event); Camp Ridgecrest Alumni & Friends (Board Member); Harry Phillips American Inn of Court, Nashville Chapter (Associate Member, 2008-2010; Barrister, 2010-2014); Historic Edgefield, Inc. (President, 2009-2011); Nashville Bar Association; Tennessee Bar Association.

LIN Y. CHAN, Admitted to practice in California, 2008; U.S. District Court, Northern District of California, 2008; U.S. District Court, Central District of California, 2010; U.S. Court of Appeals for the Fifth Circuit, 2011; U.S. Court of Appeals for the Ninth Circuit, 2011; U.S. Court of Appeals for the Tenth Circuit, 2010. Education: Wellesley College (B.A. summa cum laude 2001); Stanford Law School (J.D. 2007); Editor-in-Chief, Stanford Journal of Civil Rights and Civil Liberties; Fundraising Chair, Shaking the Foundations Progressive Lawyering Conference. Prior Employment: Associate, Goldstein, Borgen, Dardarian & Ho (formerly Goldstein, Demchak Baller Borgen & Dardarian), 2008-2013; Law Clerk to Judge Damon J. Keith, Sixth Circuit Court of Appeals, 2007-2008; Clinic Student, Stanford Immigrants' Rights Clinic, 2006-2007; Union Organizer, SEIU and SEIU Local 250, 2002-2004; Wellesley-Yenching Teaching Fellow, Chinese University of Hong Kong, 2001-2002. Awards & Honors: "Super Lawyer for Northern California," Super Lawyers, 2019; "Rising Star for Northern California," Super Lawyers, 2015-2018; "Outstanding Antitrust Litigation Achievement by a Young Lawyer," American Antitrust Institute, 2017; "Outstanding Private Practice Antitrust Achievement," American Antitrust Institute, 2017. Presentations & Publications: Moderator, "Antitrust for HR: No-Poach and Wage Fixing Agreements," Bar Association of San Francisco (January 2018); Author, "Do Federal Associated General Contractors Standing Requirements Apply to State Illinois Brick Repealer Statutes?," Business Torts & Rico News, Winter 2015; Panelist, "Federal and State Whistleblower Laws: What You Need to Know," Asian American Bar Association (November 2014); Author, "California Supreme Court Clarifies State Class Certification Standards in Brinker," American Bar Association Labor & Employment Law Newsletter (April 2013); Presenter, "Rule 23 Basics in Employment Cases," Impact Fund's 11th Annual Employment Discrimination Class Action Conference (February 2013); Chapter Author, The Class Action Fairness Act: Law and Strategies; Co-Author, "Clash of the Titans: Igbal and Wage and Hour Class/Collective Actions," BNA, Daily Labor Report, 80 DLR L-1 (April 2010); Chapter Co-Chair, Lindemann & Grossman, Employment Discrimination Law Treatise, Fifth Edition; Chapter Monitor, Lindemann & Grossman, Employment Discrimination Law Treatise 2010 Cumulative Supplement. *Member:* American Antitrust Institute, Advisory Board, 2018; Asian Americans Advancing Justice - Asian Law Caucus, Board Member, 2013 - Present, Annual Dinner Committee Co-Chair, 2015; Asian American Bar Association, Civil Rights Committee Co-Chair, 2011 - Present; American Bar Association, Fair and Impartial Courts Committee Vice-Chair, 2014 – Present; Bar Association of San Francisco; Public Justice; State Bar of California.

**DANIEL P. CHIPLOCK**, Admitted to practice in New York, 2001; U.S. District Court, Southern District of New York, 2001; U.S. District Court, Eastern District of New York, 2001; U.S. District Court, District of Colorado, 2006; U.S. Court of Appeals for the Second Circuit, 2009; U.S. Court of Appeals for the Third Circuit, 2016; U.S. Court of Appeals for the Sixth Circuit, 2011; U.S. Supreme Court, 2011. *Education*: Stanford Law School (J.D., 2000); Article Review Board, *Stanford Environmental Law Journal*; Recipient, Keck Award for Public Service; Columbia University (B.A., *summa cum laude*, 1994); Phi Beta Kappa. *Awards & Honors:* 

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"Super Lawyer for New York Metro," Super Lawyers, 2016-2017. Member: State Bar of New York; American Association for Justice; Fight for Justice Campaign; Public Justice; National Association of Shareholder and Consumer Attorneys (Executive Committee/Secretary); American Constitution Society for Law and Policy (Advocate's Circle). Classes/Seminars: "Fraud on the Market," Federal Bar Council, Feb. 25, 2014 (CLE panel participant).

**DOUGLAS CUTHBERTSON**, Admitted to practice in New York, 2008; U.S. Court of Appeals for the Eleventh Circuit, 2017; U.S. Court of Appeals for the Second Circuit, 2016; U.S. Court of Appeals for the Seventh Circuit, 2015; U.S. District Court, District of Connecticut, 2017; U.S. District Court, Northern District of New York, 2018; U.S. District Court, Eastern District of New York, 2008; U.S. District Court, Southern District of New York, 2008; U.S. District Court, District of Colorado, 2013; U.S. District Court, Eastern District of Wisconsin, 2013; U.S. District Court, Western District of Wisconsin, 2014; U.S. District Court, Northern District of Illinois, 2014. Education: Fordham University School of Law (J.D. cum laude 2007); President, Fordham Law School Chapter of Just Democracy; Senior Articles Editor, Fordham Urban Law Journal; Fordham University School of Law Legal Writing Award, 2004-2005; Legal Writing Teaching Assistant, 2005-2006; Dean's List, 2004-2007; Alpha Sigma Nu Jesuit Honor Society. Bowdoin College (B.A. summa cum laude, 1999), Sarah and James Bowdoin Scholar for Academic Excellence (1995-1999). Prior Employment: Associate, Debevoise & Plimpton, LLP, 2009-2012; Law Clerk to Honorable Magistrate Judge Andrew J. Peck, U.S. District Court, Southern District of New York, 2007-2009. Awards & Honors: "Rising Star for New York Metro," Super Lawyers, 2013-2017. Member: Federal Bar Council; New York Civil Liberties Union, Board of Directors; New York State Bar Association.

NIMISH R. DESAI, Admitted to practice in Texas, 2017; Admitted to practice in California, 2006; U.S. Court of Appeals, Ninth Circuit, 2009; US District Court, Northern District of California, 2007; Texas, 2017; US District Court, Central District of California, 2008; US District Court, Northern District of Florida, 2009; US District Court, Eastern District of Texas, 2017; US District Court, Southern District of Texas, 2019. Education: University of California, Berkeley, School of Law (Berkeley Law) (J.D., 2006), Finalist and Best Brief, McBaine Moot Court Competition (2006), Moot Court Best Brief Award (2004); University of Texas, Austin, (B.S. & B.A., High Honors, 2002). Prior Employment: Extern, Sierra Club Environmental Law Program, 2004; Researcher, Public Citizen, 2003; Center for Energy and Environmental Resources, 2001-2002. Awards & Honors: Selected for inclusion by peers in The Best Lawyers in America in field of "Qui Tam Law," 2016-2019; "Northern California Super Lawyer," Super Lawyers, 2013-2019; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2014; "Rising Star for Northern California," Super Lawyers, 2012. Publications & Presentations: "BP, Exxon Valdez, and Class-Wide Punitive Damages," 21 Class Action and Derivative Suit Committee Newsletter (Fall 2010); "American Chemistry Council v. Johnson: Community Right to Know, But About What? D.C. Circuit Takes Restrictive View of EPCRA," 33 Ecology L.Q. 583 (Winter 2006); "Lessons Learned and Unlearned: A Case Study of Medical Malpractice Award Caps in Texas," The Subcontinental, (Winter 2004, Vol. 1, Issue 4, pp. 81-87); "Separation of Fine Particulate Matter Emitted from Gasoline and Diesel Vehicles Using Chemical Mass Balancing Techniques," Environmental Science Technology, (2003; 37(17) pp. 3904-3909); "Analysis of Motor Vehicle Emissions in a Houston Tunnel during Texas Air Quality Study 2000," Atmospheric Environment, 38, 3363-3372 (2004). Member: State Bar

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of California; Bar Association of San Francisco; Consumer Attorneys of California; American Bar Association; American Constitution Society; East Bay Community Law Center (Board Member, 2010-present); South Asian Bar Association (Board Member, 2010-present). *Languages*: Gujarati (conversational).

NICHOLAS DIAMAND, Admitted to practice in England & Wales, 1999; New York, 2003; U.S. District Court for the District of Colorado, 2007; U.S. District Court, Southern, Eastern, and Western Districts of New York; US. Court of Appeals, Seventh Circuit, Ninth Circuit; U.S. Supreme Court, 2013; U.S. Court of Appeals, Second Circuit, 2016. Education: Columbia University School of Law (LL.M., Stone Scholar, 2002); College of Law, London, England (C.P.E.; L.P.C.; Commendation, 1997); Columbia University (B.A., magna cum laude, 1992). Awards & Honors: "Super Lawyer for New York Metro," Super Lawyers, 2013-2017; "Rising Star for New York Metro," Super Lawyers, 2012. Prior Employment: Solicitor, Herbert Smith, London (1999-2001); Law Clerk to the Honorable Edward R. Korman, Chief Judge, U.S. District Court, Eastern District of New York (2002-03). Publications & Presentations: Panelist, Federal Bar Council: Webinar on Amendment to Fed R. Civ. P. 23: Impact on Securities, Antitrust, Consumer & Date Breach Class Action Practice, December 2018; "Spokeo Still Standing: No Sign of a Circuit Split" (with Andrew Kaufman), Law360, 2016; "Spotlight on Spokeo: A Win for Consumers" (with Andrew Kaufman), Law360, 2016; "U.S. Securities Litigation & Enforcement Action," Corporate Disputes magazine, April-June 2015; Speaker, Strafford CLE webinar "Ethical Risks in Class Litigation," 2015; Speaker, International Corporate Governance Network Conference, 2014; "Fraud on the Market in a Post-Amgen World" (with M. Miarmi), Trial Magazine, November 2013; Contributing Author, California Class Actions Practice and Procedure (Elizabeth J. Cabraser, Editor-in-Chief), 2006; Panelist, "Obstacles to Access to Justice in Pharmaceutical Cases," Pharmaceutical Regulation and Product Liability, British Institute of International and Comparative Law, April 21, 2006; Panelist, "Pre-Trial Discovery in the United States," Union Internationale des Avocats, Winter Seminar, February 2006. Member: American Association for Justice (Chair, Consumer Privacy/Data Breach Litigation Group, 2016); New York City Bar Association; New York State Bar Association; Public Justice Foundation; International Corporate Governance Network; Peer Articles Reviewer; Trial magazine.

**DEAN M. HARVEY**, Admitted to practice in California, 2007; U.S. District Court, Northern District of California, 2007; U.S. District Court, Central District of California, 2007; U.S. District Court, Eastern District of California, 2008; U.S. District Court, Southern District of California, 2008; U.S. Court of Appeals for the Ninth Circuit, 2008; U.S. District Court, Eastern District of Wisconsin, 2013; U.S. Court of Appeals for the Fourth Circuit, 2016; U.S. Supreme Court, 2018. *Education*: University of California, Berkeley, School of Law (Berkeley Law) (J.D. 2006); Articles Editor, *California Law Review* (2005-2006); Assistant Editor, *Berkeley Journal of International Law* (2004); University of Minnesota, Twin Cities (B.A. *summa cum laude*, 2002). *Prior Employment*: Partner, Lieff Cabraser Heimann & Bernstein, LLP (2013-Present); Associate, Lieff Cabraser Heimann & Bernstein, LLP (2009-2013); Associate, Boies, Schiller & Flexner LLP (2007-2008); Law Clerk, The Honorable James V. Selna, U.S. District Court for the Central District of California (2006-2007); Law Clerk, U.S. Department of Justice, Antitrust Division, San Francisco Field Office (2006); Summer Law Intern, U.S. Department of Justice (2005); Summer Associate, Boies, Schiller & Flexner LLP (2005). *Awards & Honors*: "Super

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Lawyer for Northern California," Super Lawyers, 2013-2019; "On the Rise – Top 40 Young Lawyers," American Bar Association, 2017; "Top 40 Under 40" Lawyer in California, Daily Journal, 2017; "Outstanding Private Practice Antitrust Achievement," American Antitrust Institute, 2017; "California Lawyer Attorney of the Year (CLAY) Award," California Lawyer, 2016; "Lawyers on the Fast Track," *The Recorder*, 2013; "Rising Star for Northern California," Super Lawyers, 2010-2012; "William E. Swope Antitrust Writing Prize," 2006. Publications & Presentations: Speaker, "Current and Future Antitrust and Labor Issues," National Association of Attorneys General, April 2019; Panelist, "Competition Tort Claims Around the Globe," ABA Antitrust Section Spring Meeting, March 2019; Speaker, "Antitrust and Silicon Valley: New Themes and Direction in Competition Law and Policy," Santa Clara University School of Law, March 2019Speaker, "Antitrust Analysis in Two-Sided Markets," California Lawyers Association, February 2019; Speaker, "Latest Developments in No-Poach Agreements," California Lawyers Association (January 2019); Panelist, "Antitrust and Workers — Agreements, Mergers, and Monopsony," American Antitrust Institute Conference (June 2018); Speaker, "Anticompetitive Practices in the Labor Market," Unrigging the Market Program, Harvard Law School (June 2018); Speaker, "Tech-Savvy and Talented: Competition in Employment Practices," American Bar Association (May 2018); Speaker, "Antitrust for HR: No-Poach and Wage Fixing Agreements," Bar Association of San Francisco (January 2018); Moderator, "Competition Torts in the Trenches: Lessons From Recent High-Profile Cases," American Bar Association (November 2016); Speaker, "Are Computers About to Eat Your Lunch (Or At Least Change the Way You Practice)?", Association of Business Trial Lawyers Panel (August 2016); Moderator, "The Law and Economics of Employee Non-Compete Agreements," American Bar Association Panel (June 2016); Speaker, "Lessons from the Headlines: In re: High-Tech Employee Antitrust Litigation," The Recorder and Corporate Counsel's 13th Annual General Counsel Conference West Coast (November 2015); Speaker, "The Future of Private Antitrust Enforcement," American Antitrust Institute Panel (November 2015); Moderator, "From High-Tech Labor to Sandwich Artists: The Law and Economics of Employee Solicitation and Hiring," American Bar Association Panel (March 2015); Panelist, "Tech Sector 'No Poaching' Case Update - What Antitrust Counselors and HR Departments Need to Know," American Bar Association (2015); Speaker, "Cases at the Intersection of Class Actions and Employee Protection Regulations," Law Seminars International (2015); Speaker, Town Hall Meeting, American Bar Association Section of Antitrust Law Business Torts & Civil RICO Committee (December 2014); Panelist, "If You Don't Steal My Employees, I Won't Steal Yours: The Antitrust Treatment of Non-Poaching and Non-Solicitation Agreements," American Bar Association (2013); Panelist, "In the Wake of AT&T Mobility v. Concepcion: Perspectives on the Future of Class Litigation," American Bar Association (2011); Co-Author, "Play Ball: Potential Private Rights of Action Emerging From the FIFA Corruption Scandal," 11 Business Torts & RICO News 1 (Summer 2015); Contributing Author, The Class Action Fairness Act: Law and Strategy, American Bar Association, 2013; Contributing Author, Concurrent Antitrust Criminal and Civil Proceedings: Identifying Problems and Planning for Success, American Bar Association (2013); Co-Editor, California Class Actions Practice and Procedures (2010-2013); Articles Editor, Competition (the Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California) (2012); Contributing Author, ABA Annual Review of Antitrust Law Developments (2011); New Guidance for Standard Setting Organizations: Broadcom Corp. v. Qualcomm Inc. and In the Matter of Rambus, Inc., 5 ABA Sherman Act Section 1 Newsl. 35 (2008); Anticompetitive Social Norms as Antitrust Violations, 94 Calif. L. Rev. 769 (2006). Member: American Antitrust

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Institute, Advisory Board, 2018; American Bar Association (Antitrust Section), and Co-Chair, Competition Torts Committee; Bar Association of San Francisco; San Francisco Trial Lawyers Association.

LEXI J. HAZAM, Admitted to practice in California, 2003; U.S. Court of Appeals for the Second Circuit, 2008; U.S. Court of Appeals for the Seventh Circuit, 2006; U.S. Court of Appeals for the Eighth Circuit, 2008; U.S. District Court, Northern District of California, 2003; U.S. District Court, Southern District of CA, 2013; U.S. District Court, Western District of Michigan, 2017. Education: Stanford University (B.A., 1995, M.A., 1996), Phi Beta Kappa. University of California, Berkeley, School of Law (Berkeley Law) (J.D., 2001); California Law Review and La Raza Law Journal (Articles Editor); Berkeley Law Foundation Summer Grant for Public Service; Federal Practice Clinic; Hopi Appellate Clinic). Prior Employment: Law Clerk, Mexican American Legal Defense and Education Fund, 1999; Law Clerk, Judge Henry H. Kennedy, Jr., U.S. District Court for the District of Columbia, 2001-2002; Associate, Lieff Cabraser Heimann & Bernstein, LLP, 2002-2006; Partner, Lieff Global LLP, 2006-2008. Honors & Awards: Selected for inclusion by peers in The Best Lawyers in America in the field of "Mass Tort Litigation/Class Actions – Plaintiffs" and "Qui Tam Law," 2015-2019; "Northern California Super Lawyer," Super Lawyers, 2015-2019; "Lawyer of the Year," The Best Lawyers in America, Mass Tort Litigation/Class Actions-Plaintiffs for San Francisco, 2017; "California Litigation Star," Benchmark Litigation, 2016; "California Future Star," Benchmark Litigation, 2015; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2015; Legal 500 recommended lawyer, LegalEase, 2013; "Northern California Rising Stars," Super Lawvers, 2009-2011, 2013. Publications & Presentations: "Supreme Court Review of Escobar," Qui Tam Litigation Group and "Opioid Litigation: the Next Tobacco?" Litigation at Sunrise, American Association for Justice Annual Convention, Boston, 2017; "Discovery Following the 2015 Federal Rules Amendments: What Does Proportionality Mean in the Class Action and Mass Tort Contexts?" ABA 4th Annual Western Regional CLE on Class Actions & Mass Torts, San Francisco, 2017; "Increasing the Number of Women & Minority Lawyers Appointed to Leadership Positions in Class Actions & MDLs," Duke Law Center for Judicial Studies Conference, Atlanta, 2017; "2015 Rules Amendments," "Search Methodology and Technology," "New Forms of Communications and Data Protection," Innovation in eDiscovery Conference, San Francisco, 2016; "Technology-Assisted Review: Advice for Requesting Parties," Practical Law, October/November 2016; "Technology-Assisted Review," Sedona Conference Working Group 1 Drafting Team, 2015; "The Benicar Litigation," Mass Torts Made Perfect, Las Vegas, 2015; "The Benicar Litigation," HarrisMartin's MDL Conference, San Diego, 2015; "Now You See Them, Now You Don't: The Skill of Finding, Retaining, and Preparing Expert Witnesses For Trial," Women En Mass, Aspen; 2014. Member: American Association for Justice (Chair, Section on Toxic, Environmental, and Pharmaceutical Torts, 2017); American Association for Justice (Co-Secretary, Section on Qui Tam Litigation, 2016); Consumer Attorneys of California; Board of Governors, Consumer Attorneys of California (2015); Bar Association of San Francisco; San Francisco Trial Lawyers Association; State Bar of California.

**ROGER N. HELLER**, Admitted to practice in California, 2001; U.S. District Court, Northern District of California, 2001; U.S. District Court, Eastern District of California, 2017; U.S. District Court, District of Colorado, 2015; U.S. Court of Appeals for the Second Circuit, 2017; U.S. Court of Appeals for the Ninth Circuit, 2001. *Education*: Columbia University School

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of Law (J.D., 2001); Columbia Law Review, Senior Editor. Emory University (B.A., 1997). *Prior Employment*: Extern, Honorable Michael Dolinger, U.S. District Court, Southern District of New York, 1999; Associate, O'Melveny & Myers LLP, 2001-2005; Senior Staff Attorney, Disability Rights Advocates, 2005-2008. *Honors & Awards*: "Northern California Super Lawyer," *Super Lawyers*, 2013-2019; "Partners Council Rising Star," National Consumer Law Center, 2015; "Rising Star," *Law 360*, 2014-2015; "Finalist for Consumer Attorney of the Year," Consumer Attorneys of California, 2012-2013; "Trial Lawyer of the Year Finalist," Public Justice, 2012; "Northern California Rising Star," *Super Lawyers*, 2011-2012; Harlan Fiske Stone Scholar, 1998-2001. *Publications & Presentations*: Co-author, Fighting For Troops on the Homefront, Trial Magazine (September 2006). *Member*: American Bar Association; Bar Association of San Francisco; Consumer Attorneys of California; State Bar of California; Advisory Committee Member, Santa Venetia Community Plan.

DANIEL M. HUTCHINSON, Admitted to practice in California, 2005; U.S. District Court, Central District of California, 2012; U.S. District Court, Southern District of California, 2012; U.S. Court of Appeals for the Eleventh Circuit, 2018; U.S. Court of Appeals for the First Circuit, 2012; U.S. Court of Appeals for the Ninth Circuit, 2006; U.S. District Court, Northern District of California, 2006; U.S. Court of Appeals for the Fourth Circuit, 2008; U.S. District Court Eastern District of Wisconsin, 2013; U.S. District, Northern District of Illinois, 2014. Education: University of California, Berkeley, School of Law (Berkeley Law) (J.D., 2005), Senior Articles Editor, African-American Law & Policy Report, Prosser Prizes in Constitutional Law and Employment Law; University of California, Berkeley, School of Law (Berkeley Law) Teaching & Curriculum Committee (2003-2004); University of California, Berkeley Extension (Multiple Subject Teaching Credential, 2002); Brown University (B.A., 1999), Mellon Mays Fellowship (1997-1999). Prior Employment: Judicial Extern to the Hon. Martin J. Jenkins, U.S. District Court, Northern District of California, 2004; Law Clerk, Lewis & Feinberg, P.C., 2003-2004; Teacher, Oakland Unified School District, 1999-2002. Honors & Awards: "Northern California Super Lawyer," Super Lawyers, 2013-2019; "Rising Star," Law360, 2014; Legal 500 recommended lawyer, LegalEase, 2013; "50 Lawyers on the Fast Track," The Recorder, 2012; "Northern California Rising Stars," Super Lawyers, 2009-2012. Publications & Presentations: Panelist, "Ascertainability isn't a thing. Or is it?" Impact Fund Class Action Conference, February 2019; Panelist, "Employment Discrimination Class Actions Post-Dukes," Consumer Attorneys of California 50th Annual Convention (2011); "Ten Points from Dukes v. Wal-Mart Stores, Inc.," 20(3) CADS Report 1 (Spring 2010); Panelist, "Rethinking Pro Bono: Private Lawyers and Public Service in the 21st Century," UCLA School of Law (2008); Author and Panelist, "Pleading an Employment Discrimination Class Action" and "EEO Litigation: From Complaint to the Courthouse Steps," ABA Section of Labor and Employment Law Second Annual CLE Conference (2008); Co-Presenter, "Rule 23 Basics in Employment Cases," Strategic Conference on Employment Discrimination Class Actions (2008). Member: American Bar Association (Section of Labor & Employment Law Leadership Development Program, 2009 -2010); Association of Business Trial Lawyers (Leadership Development Committee, 2008 -2010); Bar Association of San Francisco (Vice Chair, Cybersecurity and Privacy Law Section); Consumer Attorneys of California; Lawyer's Committee for Civil Rights of the San Francisco Bay Area (Board Chair, 2015; Chair-Elect, 2014; Board Secretary, 2011 - 2013; Board of Directors, 2009 - Present); National Bar Association; National Employment Lawyers Association; State Bar of California.

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SHARON M. LEE, Admitted to practice in New York, 2002; U.S. District Court, Southern District of New York, 2003; U.S. District Court, Eastern District of New York, 2003; Washington State, 2005; U.S. District Court, Western District of Washington, 2015. Education: St. John's University School of Law (J.D. 2001); New York International Law Review, Notes & Comments Editor, 2000-2001; St. John's University (M.A. 1998); St. John's University (B.A. 1997). Prior Employment: Milberg Weiss & Bershad, LLP, 2003-2007. Publications & Presentations: Author, The Development of China's Securities Regulatory Framework and the Insider Trading Provisions of the New Securities Law, 14 N.Y. Int'l L.Rev. 1 (2001); Co-author, Post-Tellabs Treatment of Confidential Witnesses in Federal Securities Litigation, 2 J. Sec. Law, Reg. and Compliance 205 (3d ed. 2009). Member: American Bar Association; Asian Bar Association of Washington; Washington State Bar Association; Washington State Joint Asian Judicial Evaluation Committee.

BRUCE W. LEPPLA, Admitted to practice in California, 1976; New York, 1978; Colorado, 2006; U.S. Court of Appeals Ninth Circuit, 1976; U.S. District Court Central District of California, 1976; U.S. District Court Eastern District of California, 1976; U.S. District Court Northern District of California, 1976; U.S. District Court Southern District of New York, 2015. Education: University of California, Berkeley, School of Law (Berkeley Law) (J.D., M.G. Reade Scholarship Award); University of California at Berkeley (M.S., Law and Economics, Quantitative Economics); Yale University (B.A., magna cum laude, Highest Honors in Economics). Prior Employment: California-licensed Real Estate Broker (2009-present); FINRA and California-licensed Registered Investment Adviser (2008-present); Chairman, Leppla Capital Management LLC (2008-present); Chairman, Susquehanna Corporation (2006present); Partner, Lieff Cabraser Heimann & Bernstein, LLP (2004-2008), Counsel (2002-2003); CEO and President, California Bankers Insurance Services Inc., 1999-2001; CEO and President, Redwood Bank (1985-1998), CFO and General Counsel (1981-1984); Brobeck, Phleger & Harrison (1980); Davis Polk & Wardwell (1976-80). Publications: Author or coauthor of 11 different U.S. and International patents in electronic commerce and commercial product design, including "A Method for Storing and Retrieving Digital Data Transmissions," United States Patent No. 5,659,746, issued August 19, 1997; "Stay in the Class or Opt-Out? Institutional Investors Are Increasingly Opting-Out of Securities Class Litigation," Securities Litigation Report, Vol. 3, No. 8, September 2006, West LegalWorks; reprinted by permission of the author in Wall Street Lawyer, October 2006, Vol. 10, No. 10, West LegalWorks; "Selected Waiver: Recent Developments in the Ninth Circuit and California, Part 1;" Elizabeth J. Cabraser, Joy A. Kruse and Bruce W. Leppla; Securities Litigation Report, May 2005, Vol. I, No. 9, pp. 1, 3-7; "Selected Waiver: Recent Developments in the Ninth Circuit and California, Part 2;" Elizabeth J. Cabraser, Joy A. Kruse and Bruce W. Leppla; Securities Litigation Report, June 2005, Vol. I, No. 10, pp. 1, 3-9; Author, "Securities Powers for Community Banks," California Bankers Association Legislative Journal (Nov. 1987). Teaching Positions: Lecturer, University of California at Berkeley, Haas School of Business, Real Estate Law and Finance (1993-96); Lecturer, California Bankers Association General Counsel Seminars, Lending Documentation, Financial Institutions Litigation and similar topics (1993-96). Panel Presentations: Union Internationale des Avocats, Spring Meeting 2010, Frankfurt, Germany, "Recent Developments in Cross-Border Litigation;" Union Internationale des Avocats, Winter Meeting 2010, Park City, Utah, "Legal and Economic Aspects of Securities Class and Opt-out Litigation: "EPI European Pension Fund Summit, Montreux, Switzerland, "Legal and Global

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Economic Implications of the U.S. Subprime Lending Crisis," May 2, 2008; Bar Association of San Francisco, "Impact of Spitzer's Litigation and Attempted Reforms on the Investment Banking and Insurance Industries," May 19, 2005; Opal Financial Conference, National Public Fund System Legal Conference, Phoenix, AZ, "Basic Principles of Securities Litigation," January 14, 2005; American Enterprise Institute, "Betting on the Horse After the Race is Over— In Defense of Mutual Fund Litigation Related to Undisclosed After Hours Order Submission," September 30, 2004. Member: American Association for Justice; Bar Association of San Francisco, Barrister's Club, California Bankers Association, Director, 1993 – 1999, California State Small Business Development Board, 1989 – 1997, Community Reinvestment Institute, Founding Director, 1989 – 1990, National Association of Public Pension Attorneys, New York State Bar Association, San Francisco Chamber of Commerce, Leadership Council, 1990 – 1992, State Bar of California, Union Internationale des Avocats, Winter Corporate Governance Seminar, Seminar Chairman, 2012; University of California at Berkeley, University of California, Berkeley, School of Law (Berkeley Law) Alumni, Board of Directors, 1993 – 1996, Wall Street Lawyer, Member, Editorial Board, Yale University Alumni Board of Directors, Director, 2001 -2005.

JASON L. LICHTMAN, Admitted to practice in Illinois, 2006; New Jersey, 2011; New York, 2011; U.S. Supreme Court, 2012; District of Columbia, 2007; U.S. Court of Appeals, Second Circuit, 2016; U.S. Court of Appeals, Third Circuit, 2012; U.S. Court of Appeals, Fifth Circuit, 2016; U.S. Court of Appeals, Sixth Circuit, 2010; U.S. Court of Appeals, Seventh Circuit, 2011; U.S. Court of Appeals, Ninth Circuit, 2012; U.S. Court of Appeals, Tenth Circuit, 2014; U.S. Court of Appeals, Eleventh Circuit, 2013; U.S. District Court, Northern District of Illinois, 2006; U.S. District Court, New Jersey, 2011; U.S. District Court, Northern District of Ohio, 2010; U.S. District Court, Eastern District of New York, 2012, U.S. District Court, Southern District of New York, 2012; U.S. Court of Appeals Federal Circuit, 2015; U.S. District Court, Eastern District of Wisconsin, 2014; U.S. District Court, Eastern District of Texas, 2016. Education: University of Michigan Law School (J.D., cum laude, 2006), Campbell Moot Court Executive Board; Clarence T. Darrow Scholar; Northwestern University (B.A. in Economics, 2000). Prior Employment: Judicial Law Clerk to Honorable Kathleen M. O'Malley, United States District Court, Northern District of Ohio, 2008-2010; Litigation Associate, Howrey LLP, 2006-2008; Summer Associate, Howrey LLP, 2005; Summer Associate, Reed Smith LLP, 2004. Awards & Honors: "Rising Star," Consumer Protection, Law360, 2017; "Super Lawyer for New York Metro," Super Lawyers, 2017; "Rising Star for New York Metro," Super Lawyers, 2013-2016. Member: American Association for Justice; Public Justice; Chair, Class Action Committee, Public Justice; Sedona Conference. Publications and Presentations: Contributing Author, "Ninth Circuit Reshapes California Consumer-Protection Law," American Bar Association (July 2012).

SARAH R. LONDON, Admitted to practice in California, 2009; U.S. District Court, Northern District of California, 2009; U.S. Court of Appeals for the Ninth Circuit, 2009; U.S. District Court, Central District of California, 2010; U.S. Court of Appeals for the Eleventh Circuit, 2012. Education: National Institute for Trial Advocacy, Building Trial Skills: Boston (Winter 2013); University of California, Berkeley, School of Law (Berkeley Law) (J.D., 2009), Order of the Coif, National Runner-Up Constance Baker Motley Moot Court Competition; Northwestern University (B.A., cum laude, 2002). Prior Employment: Public Policy Manager,

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Planned Parenthood of Kansas and Mid-Missouri (2004-2006). *Publications & Presentations:* "Reproductive Justice: Developing a Lawyering Model," *Berkeley Journal of African-American Law & Policy* (Volume 13, Numbers 1 & 2, 2011); "Building the Case for Closing Argument: Mass Torts," Presentation at Consumer Attorneys of California Annual Conference (Fall 2014). *Awards & Honors*: Selected for inclusion by peers in The Best Lawyers in America in the fields of "Mass Tort Litigation/Class Actions - Plaintiffs," 2017-2019; "Rising Star for Northern California," *Super Lawyers*, 2012-2019; "Street Fighter of the Year Award Finalist," Consumer Attorneys of California," 2015; Coro Fellow in Public Affairs (St. Louis, 2002-2003). *Member*: American Association for Justice (Executive Committee Member, Section on Toxic, Environmental, and Pharmaceutical Torts, 2016); The Bar Association of San Francisco; Consumer Attorneys of California; Bar Association San Francisco; American Association for Justice; YWCA San Francisco and Marin County (Board of Directors 2014-2016).

ANNIKA K. MARTIN, Admitted to practice in New York, 2005; U.S. District Court, Southern District of New York, 2005; U.S. District Court Eastern District of New York, 2005. Education: Law Center, University of Southern California (J.D., 2004); Review of Law & Women's Studies; Jessup Moot Court; Medill School of Journalism, Northwestern University (B.S.J., 2001); Stockholm University (Political Science, 1999). Publications & Presentations: Faculty Member, "Mass Tort MDL Certificate Program," Duke Law School Bolch Judicial Institute, March 2019; Speaker, "Certifying a Class on Women's Issues – Pay Equity, Sexual Assault, and More," Women's Issues in Litigation Conference, Santa Monica, CA, October 25, 2018; Co-founder and Producer, "Complex Litigation E-Discovery Forum; Speaker, "Proportionality: What's Happened since the Amendments," Minneapolis, MN, September 28, 2018; Producer & Speaker, "Getting the Most Out of Your Team," AAJ Class Action Litigation Group CLE, Denver, CO, July 18, 2018; Speaker, "Careful What You Wish For: Protecting Data Security in Discovery," ABA 12th Annual National Institute on E-Discovery, Chicago, IL, May 18, 2018; Speaker, "Class Certification," HB Class Action Mastery Conference, New York, NY, May 9, 2018; Producer & Faculty Member, AAJ Effective Legal Writing Workshop, New York, NY, April 12-13, 2018; Co-Editor-in-Chief, "The Sedona Conference Federal Rule of Civil Procedure 34 Primer," 19 Sedona Conf. J. 447, March 2018; aserSpeaker, "Lawyers as Managers," Emory Law's Institute for Complex Litigation & Mass Claims Leadership Conference - Atlanta, GA, January 19, 2018; Speaker, "From Terabytes to Binders: Fusing Discovery and Advocacy Strategies," Georgetown Law's 14th Annual Advanced eDiscovery Institute - Washington DC, November 17, 2017; Co-Editor-in-Chief & Steering Committee Liaison, "The Sedona Conference Federal Rule of Civil Procedure 34 Primer," The Sedona Conference Working Group Series, September 2017; Drafting Team Member, "The Sedona Conference Commentary on Proportionality in Electronic Discovery," The Sedona Conference Journal, Volume 18, May 2017; Producer & Moderator, "The Future of Class Actions," AAJ Class Action Litigation Group seminar – Nashville, TN, May 11, 2017; Producer & Speaker, "Examining Amended Rule 34," The Sedona Conference Working Group 1 Mid-Year Meeting – Minneapolis, MN, May 4-5, 2017; Speaker, "The Economic Influence and Role of the Class Representative – Ethical and Policy Issues," Class Action Money & Ethics Conference – New York, NY, May 1, 2017; Producer & Speaker, "Diversity in Law: The Challenges and How to Overcome Them," AAJ Education webinar, March 27, 2017; Co-chair, "Staying Ahead of the eDiscovery Curve: Retooling Your Practice Under the New Federal Rules," 10th Annual Sedona Conference Institute Program on

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eDiscovery, March 2-3, 2017; Faculty Member, "The Sedona Conference eDiscovery Negotiation Training: Practical Cooperative Strategies," Miami, FL, February 8-9, 2017; Speaker, "Proportionality: What's Happened since the Amendments," Western Trial Lawyers Association CLE, Steamboat Springs, CO, February 2017; "Quality In, Quality Out," Trial Magazine, January 2017; Testified before the Federal Rules Advisory Committee concerning proposed amendments to Federal Rule 23, Phoenix, AZ, January 4, 2017; Profiled in "Women of Legal Tech: From Journalism to Law", LegalTech News – December 8, 2016; Speaker, "Closure Mechanisms," Federal Judicial Center / Judicial Panel on Multidistrict Litigation Conference, Atlanta, GA, December 15, 2016; Speaker, "Getting Selected for Leadership – What Decisionmakers Look For and How to Overcome Common Barriers," Emory Law Insitute for Complex Litigation & Mass Claims, Atlanta, GA, December 14, 2016; Producer & Speaker, "Mitigating Explicit and Implicit Bias in Associate Recruitment and Retention," AAJ Hot Topics: Diversity in the Law, Charlotte, NC, November 30, 2016; Speaker, "The New Rules x 1 Year: Sanctions," Georgetown Law Advanced E-Discovery Institute, Washington DC, November 10-11, 2016; Faculty Member, AAJ Effective Legal Writing Workshop, Washington DC, November 3-4, 2016; Speaker, "Proportionality under the Amended FRCP 26", Complex Litigation E-Discovery Forum, Minneapolis, MN, September 25, 2016; Speaker, "Proportionality: What's Happened since the Amendments," Complex Litigation E-Discovery Forum, Minneapolis, MN, September 23, 2016; Moderator, "Who Will Write Your Rules—Your State Court or the Federal Judiciary?," Pound Civil Justice Institute Forum for State Appellate Court Judges, Los Angeles, CA, July 23, 2016; Producer, Moderator & Speaker, "Dissecting the U.S. Supreme Court Decision in Spokeo, Inc. v. Robins," American Association for Justice webinar, May 26, 2016; Moderator & Speaker, "Consumer Class Actions," HB Litigation Conference, San Juan, PR, May 4, 2016; Faculty Member, The Sedona Conference eDiscovery Negotiation Training: Practical Cooperative Strategies, Washington, DC, March 1-2, 2016; Producer & Speaker, "The 2015 Amendments to the Federal Rules of Civil Procedure," New York, NY, February 9, 2016; "How to Stop Worrying and Love Predictive Coding," Trial Magazine, January 2016; Speaker, "How Will New Rule 26(b)(1) on Proportionality Impact Search and the Use of Search Technology?," Innovation in E-Discovery Conference, New York, NY, December 9, 2015; Speaker, "New Forms of Communication," Innovation in E-Discovery Conference, New York, NY, December 9, 2015; Speaker, "2015 Amendments to Federal Civil Rules," Tennessee Bar Association CLE, Nashville, TN, December 2, 2015; "Discovery Proportionality Guidelines and Practices," 99 Judicature, no. 3, Winter 2015, at 47-60 (Complex Litigation Drafting Team Leader); Speaker, "Check Your Sources: Understanding the Technical Aspects of Data Collection", Georgetown Advanced E-Discovery Institute, Washington, DC, November 19, 2015; Speaker, "The Contentious Battle over Search Protocols in e-Discovery", Association of Certified E-Discovery Specialists webinar, October 8, 2015; Speaker, "Proportionality in Preservation and Discovery," The Sedona Conference Working Group 1 Mid-Year Meeting, Dallas, TX, April 30, 2015; Speaker, "Ethical Challenges in eDiscovery: Representing Clients Responsibly," The Sedona Conference Institute, Nashville, TN, March 20, 2015; Speaker, "Issue Classes under Rule 23," Western Trial Lawyers Association CLE, Squaw Valley, NV, February 2015; Speaker, "Issue Classes under Rule 23," American Association for Justice Winter Convention, Palm Desert, CA, February 24, 2015; "An Introduction to Issue Classes under Rule 23(c)(4)," American Association for Justice Winter Convention published materials, February 2015; Speaker, "Shifting and Sharing the Costs of Preservation and Discovery: How, When, and Why," Bloomberg BNA webinar, November 18, 2014; Speaker, "Application of Proportionality in Preservation and Discovery," The Sedona

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Conference All Voices Meeting, New Orleans, LA, November 5, 2014; Speaker, "A Tour of TAR (Technology-Assisted Review)," The Sedona Conference All Voices Meeting, New Orleans, LA, November 7, 2014; Speaker, "Data Privacy and Security Are Front and Center in Litigation News Substantive Claims and eDiscovery Issues Abound," Georgetown Advanced E-Discovery Institute, Tysons Corner, VA, November 21, 2014; Interviewed re class action litigation regarding defective products on China Central Television for China's national "Consumer Protection Week" feature programming – CCTV, March 15, 2014; Organizer & Speaker, "Introduction to TAR," Lieff Cabraser Heimann & Bernstein CLE, New York, NY, August 18, 2014; Speaker, "Motions to Strike Class Allegations Using 'Predominance'," Strafford webinar, August 6, 2014; "Wit and Wisdom," Trial Magazine, Volume 49, No. 12, December 2013; Speaker, "Status of Subsistence Claims in BP Oil Spill Settlement," American Association for Justice Annual Convention, San Francisco, CA, July 2013; "Stick a Toothbrush Down Your Throat: An Analysis of the Potential Liability of Pro-Eating Disorder Websites," Texas Journal of Women & the Law, Volume 14 Issue 2, Spring 2005; "The Gift of Legal Vision," USC Law, Spring 2003; "Welcome to Law School," monthly column on www.vault.com, 2001 - 2004. Awards and Honors: "Leaders in the Field - Litigation: E-Discovery," Chambers USA, 2017; "Rising Star for New York Metro," Super Lawyers, 2013-2015; Wiley W. Manuel Award for Pro Bono Legal Services awarded by the State Bar of California for voluntary provision of legal services to the poor, 2005. Member: American Association for Justice (Co-Chair, Class Action Litigation Group, 2016); American Association for Justice (Steering Committee of the Public Education Committee); Barrister of the New York American Inn of Court; Emory University Law School Institute for Complex Litigation & Mass Claims (Next Generation Advisory Board Member); Georgetown Law Advanced E-Discovery Institute (Advisory Board and Planning Committee); New York City Bar Association; New York County Lawyer's Association; New York State Bar Association; Swedish American Bar Association; The Sedona Conference Working Group 1 (Steering Committee Member). Languages: Swedish (fluent); French (DFA1-certified in Business French); Spanish (conversational).

MICHAEL J. MIARMI, Admitted to practice New York, 2006; U.S. District Court, Eastern District of New York, 2012; U.S. District Court, Southern District of New York, 2012; U.S. Court of Appeals for the Second Circuit, 2011; U.S. Court of Appeals for the Third Circuit, 2007; U.S. Court of Appeals for the Eighth Circuit, 2007; U.S. Supreme Court, 2011. Education: Fordham Law School (J.D., 2005); Yale University (B.A., cum laude, 2000). Prior Employment: Milberg Weiss LLP, Associate, 2005-2007. Awards & Honors: "Rising Star for New York Metro," Super Lawyers, 2013-2017. Publications & Presentations: Co-Author with Steven E. Fineman, "The Basics of Obtaining Class Certification in Securities Fraud Cases: U.S. Supreme Court Clarifies Standard, Rejecting Fifth Circuit's 'Loss Causation' Requirement," Bloomberg Law Reports (July 5, 2011). Member: State Bar of New York; New York State Trial Lawyers Association; Public Justice Foundation; American Bar Association; New York State Bar Association.

**DAVID RUDOLPH**, Admitted to practice in California, 2004; U.S. District Court, Northern District of California, 2008; U.S. District Court, Southern District of California, 2008; U.S. Court of Appeals for the Ninth Circuit, 2009; U.S. Court of Appeals for the Federal Circuit, 2012. *Education:* University of California, Berkeley, School of Law (Berkeley Law) (J.D. 2004); Moot Court Board; Appellate Advocacy Student Advisor; Berkeley Technology Law Journal;

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Berkeley Journal of International Law; Rutgers University (Ph.D. Program, 1999-2001); University of California, Berkeley (B.A. 1998). *Awards & Honors:* "Outstanding Private Practice Antitrust Achievement," American Antitrust Institute, 2017. *Prior Employment:* Associate, Quinn Emanuel Urquhart & Sullivan, LLP, 2008-2012; Law Clerk to the Honorable Saundra Brown Armstrong, U.S. District Court for the Northern District of California, 2007-2008.

**DANIEL E. SELTZ**, Admitted to practice in New York, 2004; U.S. District Court, Southern District of New York, 2005; U.S. District Court, Eastern District of New York, 2011; U.S. Court of Appeals for the First Circuit, 2011; U.S. Court of Appeals for the Fourth Circuit, 2013; U.S. Court of Appeals for the Ninth Circuit, 2011. *Education*: New York University School of Law (J.D., 2003); Review of Law and Social Change, Managing Editor; Hiroshima University (Fulbright Fellow, 1997-98); Brown University (B.A., magna cum laude, Phi Beta Kappa, 1997). Awards & Honors: Super Lawyers, 2016-2017. Prior Employment: Law Clerk to Honorable John T. Nixon, U.S. District Court, Middle District of Tennessee, 2003-04. Publications & Presentations: Co-Author with Jordan Elias, "The Limited Scope of the Ascertainability Requirement," American Bar Association, Section of Litigation, March 2013; Panelist, "Taking and Defending Depositions," New York City Bar, May 20, 2009; Contributing Author, California Class Actions Practice & Procedures (Elizabeth J. Cabraser, Editor-in-Chief, 2008); "Remembering the War and the Atomic Bombs: New Museums, New Approaches," in Memory and the Impact of Political Transformation in Public Space (Duke University Press, 2004), originally published in Radical History Review, Vol. 75 (1998); "Issue Advocacy in the 1998 Congressional Elections," with Jonathan S. Krasno (Urban Institute, 2001); Buying Time: Television Advertising in the 1998 Congressional Elections, with Jonathan S. Krasno (Brennan Center for Justice, 2000); "Going Negative," in *Playing Hardball*, with Kenneth Goldstein, Jonathan S. Krasno and Lee Bradford (Prentice-Hall, 2000). Member: American Association for Justice; State Bar of New York.

ANNE B. SHAVER, Admitted to practice in California, 2008; Colorado, 2008; U.S. District Court, Northern District of California, 2009; U.S. Court of Appeals for the Second Circuit, 2012; U.S. Supreme Court, 2013; U.S. Court of Appeals of the Ninth Circuit, 2009. Education: University of California, Berkeley, School of Law (Berkeley Law) (J.D., 2007), Order of the Coif; University of California, Santa Cruz (B.A. cum laude, 2003), Phi Beta Kappa. Awards & Honors: "Rising Star for Northern California," Super Lawyers, 2012-2019; "40 & Under Hot List," Benchmark Litigation, 2018, "Top Labor & Employment Lawyers," Daily Journal, 2018; "Plaintiff Employment Lawyers," Lawdragon 500, 2018. Prior Employment: Law Clerk to Honorable Betty Fletcher, U.S. Court of Appeals for the Ninth Circuit, 2008-2009; Davis, Graham & Stubbs, LLP, Litigation Associate, 2008; Public Defender's Office of Contra Costa County, 2007; Davis, Cowell & Bowe, LLP, Summer Law Clerk, 2006; Centro Legal de la Raza, Student Director, Workers' Rights Clinic, 2005-2006; Human Rights Watch, Legal Intern, 2005. Publications: "Winning Your Class Certification Motion Post-Brinker," Consumer Attorneys of California, November 2013 (panelist); "Counseling HR on National Origin & Language Issues in the Workplace," ABA Labor & Employment Section, November 2012 (moderator); "U.S. v. Fort and the Future of Work-Product in Criminal Discovery," 44 Cal. W. L. Rev. 127, 12293 (Fall 2007); "Rule 23 Basics," Impact Fund Class Action Training Institute, May 2011; "A Place At The Table? Recent Developments in LBGT Rights," ABA Labor & Employment Section Conference, April 2012 (moderator); "Transgender Workplace Issues After the EEOC's

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Landmark Macy Ruling," Bar Association of San Francisco, September 2012 (moderator); CAOC, "Latest Developments in Employment and Wage and Hour Law," February 25, 2014 (speaker). *Member*: Bar Association of San Francisco; Consumer Attorneys of California; National Employment Lawyers Association; American Bar Association Equal Employment Opportunity Committee (Co-Chair); Programs Committee.

KATHERINE LUBIN BENSON, Admitted to practice in California, 2008; Ninth Circuit Court of Appeals; U.S. District Court, Northern District of California; U.S. District Court, Southern District of California; U.S. District Court, Central District of California. Education: University of California, Berkeley, School of Law (Berkeley Law) (J.D., 2008); University of California, Berkeley, School of Law (Berkeley Law) Mock Trial Team, 2006-2008; First Place, San Francisco Lawyer's Mock Trial Competition. University of California Los Angeles (B.A., Political Science, minor in Spanish, cum laude); Phi Beta Kappa; UCLA Honors Program; Political Science Departmental Honors; GPA 3.8. Universidad de Sevilla (2003). Awards & Honors: "Rising Star for Northern California," Super Lawyers, 2016-2019. Prior Employment: Associate, Orrick, Herrington & Sutcliff, LLP, 2008-2013; Summer Associate, Orrick, Herrington & Sutcliff, LLP, 2007; Judicial Extern to Honorable Dean D. Pregerson, 2006. Member: American Bar Association; State Bar of California; Board of Directors, Northern District Court Practice Program; Board of Directors, East Bay Community Law Center.

**KEVIN R. BUDNER**, Admitted to practice in California; U.S. Court of Appeals, Seventh Circuit, 2016; U.S. Court of Appeals, Ninth Circuit, 2016; U.S. District Court, Northern District of California, 2014; U.S. District Court, Central District of California, 2014; U.S. District Court of Colorado, February 25, 2014. Education: University of California, Berkeley, School of Law (Berkeley Law) (J.D. 2012); American Jurisprudence Award in Advanced Legal Research (first in class); Prosser Prize in Negotiation (second in class); Edwin A. Heafey, Jr. Trial Fellowship Recipient; Board of Advocates Trial Team Member; American Association of Justice Trial Competition, 2012 National Semi-finalist, 2011 Regional Finalist; Berkeley Journal of International Law, Senior Editor. University of California Hastings College of the Law (2009-2010); CALI and Witkins Awards (first in class); Wesleyan University (B.A., Political Science, 2005). Honors & Awards: "Rising Star for Northern California," Super Lawyers, 2019; "California Lawyer of the Year," California Daily Journal, 2018; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2017. Prior Employment: Judicial Clerk to U.S. District Judge Barbara M.G. Lynn, 2012-2013; Certified Student Counsel, East Bay Community Law Center, 2011-2012; Research Assistant, Duckworth Peters Lebowitz Olivier, LLP, 2011-2012; Summer Associate, Lieff Cabraser Heimann & Bernstein, LLP, 2011-2012; Judicial Extern to U.S. District Judge Phyllis J. Hamilton, 2010; Homeless Policy Assistant, Office of Mayor Gavin Newsom, 2009; Project Manager, Augustyn & Co. 2007-2009; Visiting Professor, University of Liberal Arts Bangladesh, 2006-2007; Researcher, Rockridge Institute, 2005, 2006. Languages: Spanish (proficient), Portuguese (proficient), Bengali (basic). Publications: Co-Author, "Play Ball: Potential Private Rights of Action Emerging From the FIFA Corruption Scandal," 11 Business Torts & RICO News 1 (Summer 2015). Member: American Association for Justice, Bar Association of San Francisco, Consumer Attorneys of California, State Bar of California, San Francisco Trial Lawyers Association.

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PHONG-CHAU G. NGUYEN, Admitted to practice in California, 2012; U.S. District Court, Northern District of California, 2013; U.S. District Court, Central District of California, 2013; U.S. Court of Appeals for the Ninth Circuit, 2013. Education: University of San Francisco School of Law (J.D. 2012); Development Director, USF Moot Court Board; Merit Scholar; Zief Scholarship Recipient; University of California, Berkeley (B.A., Highest Honors; Distinction in General Scholarship, 2008). Honors & Awards: "Rising Star for Northern California," Super Lawyers, 2018-2019; "California Lawyer of the Year," California Daily Journal, 2018; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2017. Prior Employment: Attorney, Minami Tamaki, 2013; Post-Bar Law Clerk, Velton Zegelman PC, 2012; Law Clerk, Minami Tamaki, 2011-2012; Housing and Economic Rights Advocates, 2011; Greenlining Institute, 2008-2009, 2012. Member: State Bar of California; Asian American Bar Association for the Greater Bay Area; Barristers Club of the San Francisco Bar Association, Board of Directors; San Francisco Trial Lawyers Association.

*MELISSA GARDNER*, Admitted to practice in California, 2013; New York, 2013; U.S. District Court, Northern District of California, 2013; Central District of California, 2019. *Education*: Harvard Law School (J.D. 2011); Student Attorney, Harvard Prison Legal Assistance Project and South Brooklyn Legal Services; Semi-Finalist, Harvard Ames Moot Court Competition; *Harvard International Law Journal*. Western Washington University (B.A. *magna cum laude*, 2005). *Awards & Honors:* "Rising Star for Northern California," *Super Lawyers*, 2017-2019. *Prior Employment*: Associate, Emery Celli Brinckherhoff & Abady (2012); Law Clerk, South Brooklyn Legal Services (2011-2012); Peace Corps Volunteer, China (2005-2008). *Publications*: Co-Author, "Play Ball: Potential Private Rights of Action Emerging From the FIFA Corruption Scandal," 11 Business Torts & RICO News 1 (Summer 2015). *Member*: American Association for Justice; American Bar Association; Bar Association of San Francisco; California Women Lawyers; Consumer Attorneys of California; Ms. JD; State Bar of New York; State Bar of California.

#### **OF COUNSEL**

ROBERT L. LIEFF, Admitted to practice in California, 1966; U.S. District Court, Northern District of California and U.S. Court of Appeals, Ninth Circuit, 1969; U.S. Supreme Court, 1969; U.S. Court of Appeals, Seventh Circuit, 1972; U.S. Tax Court, 1974; U.S. District Court, District of Hawaii, 1986. Education: Columbia University (M.B.A., 1962; J.D., 1962); Cornell University; University of Bridgeport (B.A., 1958). Member, Columbia Law School Dean's Council; Member, Columbia Law School Board of Visitors (1992-2006); Member, Columbia Law School Center on Corporate Governance Advisory Board (2004). Awards & Honors: AV Preeminent Peer Review Rated, Martindale-Hubbell; Selected for inclusion by peers in The Best Lawyers in America in fields of "Mass Tort Litigation/Class Actions – Plaintiffs," 2015-2019; "Super Lawyer for Northern California," Super Lawyers, 2005-2009, "Lawdragon Finalist," Lawdragon, 2005. Member: Bar Association of San Francisco; State Bar of California (Member: Committee on Rules of Court, 1971-74; Special Committee on Multiple Litigation and Class Actions, 1972-73); American Bar Association (Section on Corporation, Banking and Business Law); Lawyers Club of San Francisco; San Francisco Trial Lawyers Association; California Trial Lawyers Association; Consumer Attorneys of California; Fight for Justice Campaign.

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LYDIA LEE, Admitted to practice in Oklahoma 1983; U.S. District Court, Western and Eastern Districts of Oklahoma; U.S. Court of Appeals, 10th Circuit. Education: Oklahoma City University, School of Law (J.D., 1983); University of Central Oklahoma (B.A., 1980). Prior Employment: Partner, Law Office of Lydia Lee (2005-2008); Partner, Oklahoma Public Employees Retirement System (1985-2005); Associate, law firm of Howell & Webber (1983-1985). Publications & Presentations: "QDROs for Oklahoma's Public Pension Plans," Oklahoma Family Law Journal, Vol. 13, September, 1998; Co-Author, "Special Problems in Dividing Retirement for Employees of the State of Oklahoma," OBA/FLS Practice Manual, Chapter 27.3, 2002; Featured Guest Speaker, Saturday Night Law, KTOK Radio; Contributor and Editor, INFRE Course Books for CRA program. Member: Ruth Bader Ginsberg Inn of Court (2015present), Outstanding Master of the Bench (2016-2017); Edmond Neighborhood Alliance Board of Directors (2005-Present), President (2012-2013, 2006-2007); Oklahoma Bar Association, Member (1983-present); OBA Women in Law Committee (2007-2013); Bench and Bar Committee (2013-present); National Association of Public Pension Attorneys (1988-Present), President (2002-2004), Vice-President (2001-2002), Executive Board member (1998-2004), Chair of Benefits Section, Emeritus Board member (2004); Edmond Planning Commission (2008-2010); Central Edmond Urban Development Board (2006-2008); Midwest City Regional Hospital, Board of Governors, Served on Physician/Hospital Organization Board, Pension and Insurance Trust Committees, and Chairman of Woman's Health Committee (1992-1996); City of Midwest City, Planning Commission (1984-1998), Chairman (1990-1995), Vice-Chairman (1987-1990), Served on Capital Improvement Committee, Airport Zoning Commission (Tinker AFB), and Parkland Review Board, served on Midwest City Legislative Reapportionment Committee (1991).

#### **ASSOCIATES**

**EVAN J. BALLAN**, Admitted to practice in California, 2017; U.S. Court of Appeals, Fourth Circuit, 2018; U.S. District Court, Northern District of California, 2018. *Education:* University of Michigan Law School (J.D. Magna cum laude, Order of the Coif, 2017); Articles Editor, Michigan Law Review; McGill University (B.A., 2010). *Publications:* Protecting Whistleblowing (and Not Just Whistleblowers), Note, 116 Mich. L. Rev. 475 (2017). *Prior Employment:* Clerk to the Honorable Albert Diaz of the U.S. Court of Appeals for the Fourth Circuit. *Member:* State Bar of California.

FACUNDO BOUZAT, Admitted to practice in California, 2017; U.S. District Court, Northern District of California, 2017; U.S. District Court, Central District of California, 2019. Education: University of Michigan Law School (J.D. 2017); Michigan Law Review, Associate Editor; Judge Avern Cohn Summer Fellowship; Vice-President, ACLU Michigan Law Chapter; Bowling Green State University(B.A., summa cum laude, 2013). Publications: American Medical Tourism: Regulating a Cure that Can Damage Consumer Health, 25 L. Consumer L. Rev. 319 (2013); The Contingent Ethics of Market Transactions: Linking the Regulation of Business to Specific Forms of Markets, 6 Charleston L. Rev. 163 (2012); Changing Demographics and Language: A New Challenge to Legal Services Programs, 26 J. Mgmt. Info. Exchange (Winter Issue) 9 (2011). Member: State Bar of California.

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WILSON M. DUNLAVEY, Admitted to practice in California, 2015; U.S. Court of Appeals, Ninth Circuit, 2016; U.S. District Court, Central District of California, 2016; U.S. District Court, Northern District of California, 2016; U.S. District Court, Middle District of North Carolina, 2016. Education: University of California, Berkeley, School of Law (Berkeley, Law) (J.D. 2015); Berkeley Technology Law Journal, Associate Editor; University of California, Berkeley, School of Law (Berkeley Law) Queer Caucus, Co-Chair; Board of Advocates Moot Court Team. Humboldt University in Berlin (Ph.D., cum laude, Modern History, 2015; Dual M.A., Magister Artium, History and Philosophy, 2015); Friedrich-Naumann Foundation; Master's and Ph.D. Fellow; Queer Initiative, Director; Student Government, Executive Counsel. St. John's College (B.A., History of Math and Science, Philosophy, 2003); Faculty Toast Prize; Delegate Council. Honors & Awards: "Rising Star for Northern California," Super Lawyers, 2019; "California Lawyer of the Year," California Daily Journal, 2018; "Consumer Attorney of the Year Finalist," Consumer Attorneys of California, 2017; "Outstanding Private Practice Antitrust Achievement," American Antitrust Institute, 2017. Prior Employment: Summer Associate, McDermott Will & Emery (2014); Law Clerk, Transgender Law Center (2014); Legal Research and Writing Teaching Assistant, First Year Skills Program, UC Berkeley School of Law (2013-2014); Judicial Extern to the Honorable William A. Alsup, U.S. District Court for the Northern District of California (2013); Legal Counselor, Berkeley Workers' Rights Clinic (2012-2013). Member: State Bar of California.

ADAM GITLIN, Admitted to practice in California, 2017; New York, 2009; U.S. District Court, Central District of California, 2018; U.S. District Court, Southern District of California, 2018. Education: University of Michigan Law School (J.D., 2007), Executive Editor and Editorial Board Member, University of Michigan Law Review. Princeton University (A.B., 2003). Honors & Awards: "Rising Star for Northern California," Super Lawyers, 2019. Publications & Presentations: The Justice Department's Voter Fraud Scandal: Lessons (with Wendy Weiser), New York: Brennan Center for Justice (January 2017); Lecturer, "Voter Intimidation and Discrimination in the 2016 Election: Rhetoric and Reality," U.S. Presidential Election of 2016 Conference on Domestic & International Aspects, Inter-Disciplinary Center, Herzliya, Israel (January 2017); Lecturer, "Modernizing Elections," Washington House of Representatives State Government Committee (January 2017); Dangers of "Ballot Security" Operations: Preventing Intimidation, Discrimination, and Disruption (with Wendy Weiser), New York: Brennan Center for Justice (August 2016); Automatic Motor-Voter Registration Now Law in Four States, BillMoyers.com (May 2016); Lecturer, "Nonpartisan Voter Education Workshop," Nassau County, NY (October 2016); Lecturer, "Voting in 2016: The Good, the Bad, and the Potentially Very Ugly," Westchester Women's Bar Association, White Plains, NY (September 2016); Witness, Voting Rights Town Hall Meeting: "Setting the Democracy Agenda," Hon. John Conyers & Hon. Brenda Lawrence, U.S. House of Representatives, Detroit, MI (June 2016); Witness, Congressional Forum: "Fragile at fifty: The urgent need to strengthen and restore the Voting Rights Act," Hon. Nydia Velazquez, Hon. Hakeem Jeffries, and Hon. Grace Meng, U.S. House of Representatives Democratic Outreach and Engagement Task Force, New York, NY (May 2016); Witness, Hearing on SB 350 [automatic voter registration bill], Senate Education, Health, and Environmental Affairs Committee, Maryland Senate (February 2016); Christie Misses a Golden Opportunity for the Garden State, The Huffington Post (November 2015); Panelist, "Voting Rights Panel," SiX National Legislator Conference, Washington, DC (October 2015). Prior Employment: Counsel, Brennan Center for Justice at NYU School of Law

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(2015-2017); Trial Attorney, U.S. Department of Justice Antitrust Division, Litigation I Section (2008-2015); Law Clerk to Judge Noël A. Kramer, District of Columbia Court of Appeals (2007-2008).

**AVERY S. HALFON**, Admitted to practice in New York, 2016; District of Columbia, 2017; U.S. Court of Appeals for the Sixth Circuit, 2017; U.S. Court of Appeals for the Second Circuit, 2017; U.S. District Court, Eastern District of New York, 2018. *Education*: Harvard Law School (J.D. *cum laude* 2015); Editor-in-Chief, Harvard Law & Policy Review; Dean's Scholar Prizes in Law and the Political Process, Transnational Corruption, and Environmental Law. Stanford University (B.A. 2010). *Prior employment*: Law Clerk to the Honorable Jane B. Stranch of the U.S. Court of Appeals for the Sixth Circuit (2016-2017); Fellow, Cohen Milstein Sellers & Toll, PLLC (2015-2016). *Member*: American Association of Justice; New York State Academy of Trial Lawyers.

ANDREW KAUFMAN, Admitted to practice in New York, 2013; Tennessee, 2015; U.S. District Court, Middle District of Tennessee, 2015. Education: Harvard Law School (J.D. cum laude, 2012); Executive Editor, Harvard Law and Policy Review; Dean's Scholar Prizes in Federal Courts, Civil Procedure, and Legislation & Regulation. Carleton College (B.A. magna cum laude, Political Science, 2007). Professional Associations & Memberships: Member, Nashville Bar Foundation Leadership Forum, 2017 – 2018, Publications: "Spokeo Still Standing: No Sign of a Circuit Split" (with Nicholas Diamand), Law360, 2016; "Spotlight on Spokeo: A Win for Consumers" (with Nicholas Diamand), Law360, 2016; "Lochner for the Executive Branch: The Torture Memo as Anticanon," 7 Harv. L. & Pol'y Rev. 199 (2013); "American Foreign Policy Opinion in 2004: Exploring Underlying Beliefs," 27 Am. Rev. of Pol. 295 (2007). Prior Employment: Law clerk to the Honorable Martha Craig Daughtrey, U.S. Court of Appeals, Sixth Circuit (2014-15); Law Clerk to the Honorable Stephen Glickman, D.C. Court of Appeals (2013-14); Fellow, Public Citizen Litigation Group (2012-13).

*MICHELLE LAMY*, Admitted to practice in California, 2015; U.S. Court of Appeals for the Ninth Circuit, 2017; U.S. District Court, Northern District of California, 2017; U.S. District Court, Western District of Wisconsin, 2016. *Education:* Stanford Law School (J.D. 2015); Gerald Gunther Prize for Outstanding Performance in Research and Legal Writing; Gerald Gunther Prize for Outstanding Performance in Statutory Interpretation; Executive Board, Stanford Journal of Civil Rights & Civil Liberties. College of Arts & Sciences, Boston College (B.A. *summa cum laude*, 2009); Phi Beta Kappa; Dean's List First Honors, Dean's Scholar - Economics; Rev. Robert Cheney Economics Scholar. *Prior Employment:* Law Clerk to the Honorable Thelton E. Henderson, U.S. District Court for the Northern District of California. *Member:* American Bar Association; State Bar of California. *Honors & Awards:* "Rising Star for Northern California," Super Lawyers, 2019.

**DANIEL R. LEATHERS**, Admitted to practice in New Jersey, 2010; New York, 2010; Pennsylvania, 2009; U.S. Court of Appeals, 3rd Circuit, 2012; U.S. District Court, District of New Jersey, 2010; U.S. District Court, Eastern District of New York, 2012; U.S. District Court, Southern District of New York, 2012; U.S. District Court, Eastern District of Wisconsin, 2013. *Education:* Case Western Reserve University Law School, Cleveland, Ohio (J.D. cum laude, 2009), Case Western Reserve Journal of International Law, Executive Articles Editor;

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Pennsylvania State University (B.A., History & Journalism, 2005). *Professional Associations:* American Association of Justice; American Bar Association; New Jersey Association of Justice. *Honors & Awards:* "Rising Star for New York Metro Area in Class Action/Mass Torts," Super Lawyers, 2013, 2014, 2015, 2016, 2017; "Rising Star for New Jersey in Class Action/Mass Torts," Super Lawyers, 2019; Federal Bar Association Award for Excellence in Constitutional Law, 2009; International Academy of Trial Lawyers Award for Overall Trial Advocacy Excellence, 2009; CALI Excellence for the Future Awards: Trial Tactics, 2009; Constitutional Law II, 2007. *Prior Employment:* Clerk to the Honorable Carol Higbee, New Jersey Superior Court Civil Division Presiding Judge (deceased). *Member:* New Jersey State Bar Association; New York State Bar Association; Pennsylvania State Bar Association.

MICHAEL LEVIN-GESUNDHEIT, Admitted to practice in California, 2013; U.S. District Court, District of New Mexico, 2017; U.S. District Court, Northern District of California, 2015; U.S. Court of Appeals for the Second Circuit, 2019; U.S. Court of Appeals for the Ninth Circuit, 2018. Education: Stanford Law School (J.D. 2013), Managing Editor, Stanford Law & Policy Review; Gerald Gunther Prize for Outstanding Performance in Intellectual Property. Harvard University (A.B. magna cum laude, 2008). Professional Associations: American Bar Association, Equal Employment Opportunity Committee; Bar Association of San Francisco; Consumer Attorneys of California. Prior Employment: Law Clerk to the Honorable Jacqueline Nguyen, Ninth Circuit Court of Appeals (2014-2015); Law Clerk to the Honorable Garland Burrell, Jr., U.S. District Court, Sacramento, California (2013-2014).

KATHERINE MCBRIDE, Admitted to practice in New York, 2016. Education: Stanford Law School (J.D. pro bono distinction 2015) (Levin Center Public Interest Fellow; Stanford Law Association; Stanford Journal of International Law; Iraqi Legal Education Initiative Rule of Law Project; Policy Director, Iraqi Refugee Assistance Project; Student Leader, DACA Pro Bono Project). Boston College (B.A. summa cum laude, 2011) (Phi Beta Kappa, Alpha Sigma Nu). Prior employment: Judicial Clerk to Judge I. Leo Glasser of the U.S. District Court for the Eastern District of New York; Ford Foundation Public Interest Fellow, Human Rights First. Member: State Bar of New York.

*KELLY MCNABB*, Admitted to practice in Minnesota, 2012; New York, 2015; U.S. District Court, District of Minnesota, 2012. *Education:* University of Minnesota Law School (J.D. *cum laude* 2012); Managing/Research Editor, *Minnesota Law Review*, 2010-2012; University of Minnesota Twin Cities College of Liberal Arts (B.A. 2008). *Honors & Awards:* "Rising Star for NY Metro," Super Lawyers, 2016-2017; Attorney of the Year – Pritzker Trial Team, *Minnesota Lawyer*, 2014. *Publications:* "The Relevant Scope of General Causation: Internal Company Documents and Communications," *American Association for Justice Newsletter*, 2018; "What 'Being a Watchdog' Really Means: Removing the Attorney General from the Supervision of Charitable Trusts," *Minnesota Law Review*, 2012. *Prior Employment:* Pritzker Olsen, P.A., Attorney, 2012-2014. *Member:* American Association for Justice, Minnesota Association for Justice, Minnesota Women Lawyers.

VALERIE COMENENCIA ORTIZ, Admitted to practice in California, 2018. Education: Yale Law School (J.D. 2018), Articles Editor, Yale Journal of International Law; Community Service Chair, Black Law Students Association & Latino Law Students Association;

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Vice President for Membership and Community Engagement, American Constitution Society. Columbia University, School of International and Public Affairs (M.A. 2015). Columbia University (B.A. 2014). *Prior Employment*: Jerome N. Frank Legal Services Organization; Asylum Seeker Advocacy Project. *Member*: State Bar of California.

**SEAN A. PETTERSON**, Admitted to practice in New York, 2016; U.S. District Court, Eastern District of New York, 2017; U.S. District Court, Southern District of New York, 2017. *Education:* New York University School of Law (J.D., 2015); Senior Quorum Editor, Journal of Legislation and Public Policy; Robert McKay Scholar; Brandeis University (B.A., Summa Cum Laude 2011). *Prior Employment:* Civil Litigation Extern, U.S. District Court for the Southern District of New York; Boies Schiller Flexner, LLP. *Member:* State Bar of New York.

*YAMAN SALAHI*, Admitted to practice in California, 2013; U.S. District Court, Central District of California, 2013; U.S. District Court, Northern District of California, 2014; U.S. Court of Appeals, Ninth Circuit, 2013. *Education:* Yale Law School (J.D. 2012); University of California, Berkeley (B.A. 2009). *Prior Employment:* Judicial Clerk to Judge Edward M. Chen in the U.S. District Court for the Northern District of California; Arthur Liman Fellow, American Civil Liberties Union of Southern California; National Security and Civil Rights program, Advancing Justice-Asian Law Caucus. *Awards & Honors:* Kathi Pugh Award for Exceptional Mentorship, U.C. Berkeley School of Law; American Antitrust Institute's 2017 Antitrust Enforcement Award for Outstanding Antitrust Litigation Achievement in Private Law Practice in *In re Cipro Cases I & II. Member:* State Bar of California.

MIKE SHEEN, Admitted to practice in California, 2012; U.S. District Court, Northern District of California, 2013; U.S. District Court, Southern District of California, 2013; U.S. Court of Appeals, Ninth Circuit, 2018; U.S. Court of Appeals, Federal Circuit, 2015. Education: University of California, Berkeley, School of Law (Berkeley Law) (J.D. 2012); Articles Editor (2010-2012), Executive Editor (2011-2012), Berkeley Technology Law Journal; Senior Articles Editor, Asian American Law Journal; Student Member, Berkeley Law Admissions Committee; Funding Officer, U.C. Berkeley Graduate Assembly. University of California, Berkeley (B.A. 2004). Prior Employment: Judicial Clerk to Judge Dale A. Drozd of the U.S. District Court for the Eastern District of California; Milbank, Tweed, Hadley & McCloy LLP. Member: State Bar of California.

JOHN T. SPRAGENS, Admitted to practice in Tennessee, 2012; U.S. District Court, Middle District of Tennessee, 2014, U.S. District Court, Northern District of Ohio, 2015, U.S. District Court, Northern District of Illinois, 2015, U.S. District Court, Eastern District of Texas, 2016. Education: Vanderbilt University Law School, Nashville, Tennessee (J.D. 2012); Executive Editor, Environmental Law and Policy Annual Review. Kenyon College (B.A., magna cum laude, International Studies, 2004); Phi Beta Kappa. Honors & Awards: "Rising Star for Mid-South," Super Lawyers, 2016-2018; "Top 40 Young Lawyer," American Bar Association, 2018; "Top 100 Trial Lawyers in Tennessee," National Trial Lawyers. Prior Employment: Associate, Bass, Berry & Sims, 2013-14; Law Clerk, United States District Judge Kevin H. Sharp, 2012-13; Legal Intern, Metropolitan Nashville Public Defender's Office, 2011; Summer Associate, Lieff Cabraser Heimann & Bernstein, 2011; Legal Clerk, New Orleans Workers' Center for Racial Justice, 2010; Strategic Advisor, Center for Charter School Excellence, 2010;

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Communications Director and Legislative Assistant to U.S. Congressman Jim Cooper, 2006-09; Staff Writer, *Nashville Scene*, 2004-06. *Member:* Tennessee Bar Association; Tennessee Association for Justice.

ABBY R. WOLF, Admitted to practice in California, 2016; U.S. Court of Appeals, 4th Circuit, 2017. Education: University of California, Davis School of Law (J.D. 2016) (Senior Articles Editor, Business Law Journal; Co-Chair, King Hall Women's Law; Member of Civil Rights Clinic; Four Witkin Awards for Excellence). University of California, Berkeley (B.A. 2011) (Phi Alpha Theta). Prior employment: Judicial Clerk to Judge Joseph R. Goodwin of the U.S. District Court for the Southern District of West Virginia. Member: State Bar of California.

TISEME ZEGEYE, Admitted to practice in California, 2018; New York, 2013; U.S. Court of Appeals for the 2nd Circuit, 2014; U.S. Court of Appeals for the Ninth Circuit, 2014; U.S. Supreme Court, 2016. Education: New York University School of Law (J.D. 2011), BLAPA Kim Barry '98 Memorial Graduation Prize for Academic Excellence and Commitment to International and Human Rights Work; Dean's Scholarship. The College of William and Mary (B.A. cum laude, 2008). Prior Employment: Staff Attorney, Center for Reproductive Rights, New York; Legal Fellow, American Civil Liberties Union Women's Rights Project. Member: American Bar Association, Labor & Employment Law Section (Employee-side Vice-Chair of the Member Services Committee); American Constitution Society Bay Area Lawyer Chapter (Board Member); Equal Rights Advocates (Litigation Committee Member).

Notice on the Firm's AV Rating: AV is a registered certification mark of Reed Elsevier Properties, Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies. Martindale-Hubbell is the facilitator of a peer review process that rates lawyers. Ratings reflect the confidential opinions of members of the Bar and the Judiciary. Martindale-Hubbell Ratings fall into two categories—legal ability and general ethical standards.

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### **EXHIBIT B**

### Case 1:16-cv-00212-JPO-JLC Document 155-4 Filed 04/29/19 Page 151 of 153 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Matter Number: 3757-0001           PARTNER           NAME         HOURS         RATE         TOTAL           MICHAEL MIRABMI         555.60         50.00         361.790.00           MICHAEL MIRABMI         555.60         60.00         361.790.00           DANIEL SELTZ         2,601.40         50.00         361.60.00           ASSOCIATE         WATER         NOTAL           KATHERINE MICRIPOR         9.00         40.00         12.780.00           10° INNINCIDACIO         48.00         10.00         2.886.00           STAFF ATTORNEY           WATER MICRIPOR         40.00         12.780.00           STAFF ATTORNEY           NAME         HOURS         RATE         TOTAL           KANYA ASHUR         2,243.40         415.00         361.422.00           COREY SERNETT         49.00         11.00         361.00         361.00           CAMES COLSTAN         1,933.00         415.00         361.00         361.00         361.00         361.00         361.00         361.00         361.00         361.00         361.00         361.00         361.00         361.00         361.00         361	Report created on	04/25/2019 01:37:20 PM		From	inception
NAME	Matter Number: 2757-0001			То	04/22/19
DANIEL CHIPLOCK   1,522,50   776,00   1,179,837,50   MICHAEL MARMI   556,86   550,00   351,780					
DANIEL CHIPLOCK   1,522,50   776,00   1,179,837,50   MICHAEL MARMI   556,86   550,00   351,780	NAME		HOLIDS	DATE	TOTAL
MICHAEL MIARMI					
DANIEL SELTZ   572.30   690.00   389.164.00   1,930.891.50   1,9					
ASSOCIATE					
NAME   HOURS   RATE   TOTAL   KATHERINE MCBRIDE   29.00   440.00   12.760.00   28.986.00   65.80   51.00   28.986.00   28.98					1,930,891.50
KATHERINE MCBRIDE   29.00   40.00   12.760.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.00   10.00   28.686.0	ASSOCIATE				
STAFF ATTORNEY	NAME		HOURS	RATE	TOTAL
STAFF ATTORNEY	KATHERINE MCBRIDE		29.00	440.00	12,760.00
NAME	JOHN NICOLAOU		56.80	510.00	28,968.00
NAME         HOURS         RATE         TOTAL           TANYA ASHUR         2,332.40         415.00         967.946.00           COREY BENNETT         436.80         415.00         789.869.50           LORISTOPIER JORDAN         1,903.30         415.00         789.869.50           JASCON KIM         1,352.00         415.00         561.080.00           JAMES LEGGETT         2,274.70         415.00         569.735.50           JONATHAN ZAUL         463.70         415.00         569.735.50           JONATHAN ZAUL         463.70         415.00         192.435.50           CONTRACT ATTORNEY         TOTAL         463.70         415.00         420.910.00           VIRGINIA WEISS         1,322.80         25.00         429.910.00         429.910.00           OF COUNSEL         1,322.80         25.00         429.910.00			85.80		41,728.00
TANYA ASHUR	STAFF ATTORNEY				
COREY BENNETT	NAME		HOURS	RATE	TOTAL
CHRISTOPHER JORDAN         1,933.00         415.00         789,869.50           JASON KIM         1,352.00         415.00         561,080.00           JAMES LEGGETT         2,274.70         415.00         94,000.50           CAMERON SAUNDERS         1,372.90         415.00         192,435.50           JONATHAN ZAUL         463.70         415.00         192,435.50           CONTRACT ATTORNEY           VIRGINIA WEISS         1,322.80         RATE         TOTAL           VIRGINIA WEISS         1,322.80         325.00         429,910.00           OF COUNSEL           NAME         HOURS         RATE         TOTAL           ROBERT LIEFF         93.70         1,075.00         100,727.50           PARALEGAL/CLERK           NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         18.40         345.00         6,348.00           NIKKH BELUSHKO BARROWS         10.00         360.00         36,000           ALEXANDER ZANE         15.60         390.00         6,048.00           LITIGATION SUPPORT / RESEARCH         103.70         405.00         99.97.50	TANYA ASHUR		2,332.40	415.00	967,946.00
JASON KIM	COREY BENNETT		436.80	415.00	181,272.00
JAMES LEGGETT	CHRISTOPHER JORDAN		1,903.30	415.00	789,869.50
CAMERON SAUNDERS         1,372.90         415.00         569,753.50         192,435.50         192,435.50         192,435.50         192,435.50         4,206,357.00         192,435.50         4,206,357.00         192,435.50         4,206,357.00         192,435.50         4,206,357.00         192,406,357.00         192,406,357.00         192,406,357.00         192,406,357.00         192,406,357.00         192,406,357.00         192,406,357.00         192,406,357.00         192,406,357.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,406,307.00         192,407.50	JASON KIM		1,352.00	415.00	561,080.00
DANTHAN ZAUL	JAMES LEGGETT		2,274.70	415.00	944,000.50
NAME	CAMERON SAUNDERS		1,372.90	415.00	569,753.50
CONTRACT ATTORNEY           NAME         HOURS         RATE         TOTAL           VIRGINIA WEISS         1,322.80         325.00         429.910.00           OF COUNSEL           NAME         HOURS         RATE         TOTAL           ROBERT LIEFF         93.70         1,075.00         100,727.50           PARALEGAL/CLERK           NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         18.40         345.00         6,348.00           NIKKI BELUSHKO BARROWS         10.00         360.00         3,600.00           ALEXANDER ZANE         15.60         390.00         88,725.00           ALEXANDER ZANE         15.60         390.00         6,084.00           LITIGATION SUPPORT / RESEARCH         15.60         390.00         405.00         99.947.50           LITIGATION SUPPORT / RESEARCH         103.70         405.00         92,947.50           MARGIE CALANGAN         229.50         405.00         92,947.50           MARGIE CALANGAN         229.50         405.00         92,947.50           ANIL NAMBIAR         237.00         405.00         78,084.00           ANIL NAMBIAR         237.00 <td>JONATHAN ZAUL</td> <td></td> <td></td> <td>415.00</td> <td>192,435.50</td>	JONATHAN ZAUL			415.00	192,435.50
NAME			10,135.80		4,206,357.00
NAME	CONTRACT ATTORNEY				
1,322.80         429,910.00           OF COUNSEL           NAME         HOURS         RATE         TOTAL           93.70         1,075.00         100,727.50           PARALEGAL/CLERK           NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         18.40         345.00         6,348.00           NIKKI BELUSHKO BARROWS         10.00         360.00         3,600.00           JLE TARPEH         227.50         390.00         88,725.00           ALEXANDER ZANE         15.60         390.00         6,084.00           LITIGATION SUPPORT / RESEARCH         HOURS         RATE         TOTAL           RICHARD ANTHONY         103.70         405.00         41,986.50           KIRTI DUGAR         29.50         405.00         92,947.50           KIRTI DUGAR         249.10         495.00         123,304.50           ANTHONY GRANT         192.80         405.00         78,084.00           ANTHONY GRANT         192.80         405.00         95,985.00           FAWAD RAHIMI         88.00         405.00         35,640.00           1,100.10         467,959.50         467,959.50	NAME		HOURS	RATE	TOTAL
OF COUNSEL           NAME         HOURS         RATE         TOTAL           ROBERT LIEFF         93.70         1,075.00         100,727.50           PARALEGAL/CLERK           NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         18.40         345.00         6,348.00           NIKKI BELUSHKO BARROWS         10.00         360.00         3,600.00           JLE TARPEH         227.50         390.00         88,725.00           ALEXANDER ZANE         15.60         390.00         6,084.00           LITIGATION SUPPORT / RESEARCH           LITIGATION SUPPORT / RESEARCH           HOURS         RATE         TOTAL           RICHARD ANTHONY         103.70         405.00         41,998.50           KIRTI DUGAR         29.95         405.00         92,947.50           KIRTI DUGAR         249.10         495.00         123,304.50           ANTHONY GRANT         192.80         405.00         78,084.00           ANTHONY GRANT         192.80         405.00         95,985.00           ANTHONY GRANT         192.80         405.00         95,985.00           ANIL NAMBIAR         237.00 </td <td>VIRGINIA WEISS</td> <td></td> <td>1,322.80</td> <td>325.00</td> <td>429,910.00</td>	VIRGINIA WEISS		1,322.80	325.00	429,910.00
NAME         HOURS         RATE         TOTAL           ROBERT LIEFF         93.70         1,075.00         100,727.50           PARALEGAL/CLERK         NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         18.40         345.00         6,348.00           NIKKI BELUSHKO BARROWS         10.00         360.00         3600.00           JLE TARPEH         227.50         390.00         88,725.00           ALEXANDER ZANE         15.60         390.00         6,084.00           LITIGATION SUPPORT / RESEARCH         NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         103.70         405.00         41,998.50           MARGIE CALANGIAN         229.50         405.00         92,947.50           KIRTI DUGAR         249.10         495.00         123,304.50           ANTHONY GRANT         192.80         405.00         78,084.00           ANIL NAMBIAR         237.00         405.00         95,985.00           FAWAD RAHIMI         467,959.50         467,959.50			1,322.80		429,910.00
PARALEGAL/CLERK   93.70   100,727.50   100	OF COUNSEL				
PARALEGAL/CLERK   NAME   HOURS   RATE   TOTAL	NAME		HOURS	RATE	TOTAL
PARALEGAL/CLERK           NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         18.40         345.00         6,348.00           NIKKI BELUSHKO BARROWS         10.00         360.00         360.00           JLE TARPEH         227.50         390.00         88,725.00           ALEXANDER ZANE         15.60         390.00         6,084.00           LITIGATION SUPPORT / RESEARCH         HOURS         RATE         TOTAL           RICHARD ANTHONY         103.70         405.00         41,998.50           MARGIE CALANGIAN         229.50         405.00         92,947.50           KIRTI DUGAR         249.10         495.00         123,304.50           ANTHONY GRANT         192.80         405.00         78,084.00           ANIL NAMBIAR         237.00         405.00         95,985.00           FAWAD RAHIMI         88.00         405.00         35,640.00           1,100.10         467,959.50         1,000.00         1,000.00         1,000.00	ROBERT LIEFF		93.70	1,075.00	100,727.50
NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         18.40         345.00         6,348.00           NIKKI BELUSHKO BARROWS         10.00         360.00         3,600.00           JLE TARPEH         227.50         390.00         88,725.00           ALEXANDER ZANE         15.60         390.00         6,084.00           LITIGATION SUPPORT / RESEARCH           NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         103.70         405.00         41,998.50           MARGIE CALANGIAN         229.50         405.00         92,947.50           KIRTI DUGAR         249.10         495.00         123,304.50           ANTHONY GRANT         192.80         405.00         78,084.00           ANIL NAMBIAR         237.00         405.00         95,985.00           FAWAD RAHIMI         88.00         405.00         35,640.00           1,100.10         467,959.50         467,959.50			93.70		100,727.50
RICHARD ANTHONY   18.40   345.00   6,348.00   6,348.00   0	PARALEGAL/CLERK				
NIKKI BELUSHKO BARROWS	NAME		HOURS	RATE	TOTAL
Second Registration   Support / Research   Second Registration   Seco	RICHARD ANTHONY		18.40	345.00	6,348.00
ALEXANDER ZANE         15.60         390.00         6,084.00           104,757.00           LITIGATION SUPPORT / RESEARCH           NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         103.70         405.00         41,998.50           MARGIE CALANGIAN         229.50         405.00         92,947.50           KIRTI DUGAR         249.10         495.00         123,304.50           ANTHONY GRANT         192.80         405.00         78,084.00           ANIL NAMBIAR         237.00         405.00         95,985.00           FAWAD RAHIMI         88.00         405.00         35,640.00           1,100.10         467,959.50	NIKKI BELUSHKO BARROWS		10.00	360.00	3,600.00
LITIGATION SUPPORT / RESEARCH         HOURS         RATE         TOTAL           NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         103.70         405.00         41,998.50           MARGIE CALANGIAN         229.50         405.00         92,947.50           KIRTI DUGAR         249.10         495.00         123,304.50           ANTHONY GRANT         192.80         405.00         78,084.00           ANIL NAMBIAR         237.00         405.00         95,985.00           FAWAD RAHIMI         88.00         405.00         35,640.00           1,100.10         467,959.50         467,959.50	JLE TARPEH		227.50	390.00	88,725.00
LITIGATION SUPPORT / RESEARCH           NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         103.70         405.00         41,998.50           MARGIE CALANGIAN         229.50         405.00         92,947.50           KIRTI DUGAR         249.10         495.00         123,304.50           ANTHONY GRANT         192.80         405.00         78,084.00           ANIL NAMBIAR         237.00         405.00         95,985.00           FAWAD RAHIMI         88.00         405.00         35,640.00           1,100.10         467,959.50	ALEXANDER ZANE		15.60	390.00	6,084.00
NAME         HOURS         RATE         TOTAL           RICHARD ANTHONY         103.70         405.00         41,998.50           MARGIE CALANGIAN         229.50         405.00         92,947.50           KIRTI DUGAR         249.10         495.00         123,304.50           ANTHONY GRANT         192.80         405.00         78,084.00           ANIL NAMBIAR         237.00         405.00         95,985.00           FAWAD RAHIMI         88.00         405.00         35,640.00           1,100.10         467,959.50         467,959.50			271.50		104,757.00
RICHARD ANTHONY  MARGIE CALANGIAN  KIRTI DUGAR  ANTHONY GRANT  ANIL NAMBIAR  FAWAD RAHIMI  RICHARD ANTHONY  103.70 405.00 41,998.50  92,947.50  123,304.50  123,30		СН			
MARGIE CALANGIAN       229.50       405.00       92,947.50         KIRTI DUGAR       249.10       495.00       123,304.50         ANTHONY GRANT       192.80       405.00       78,084.00         ANIL NAMBIAR       237.00       405.00       95,985.00         FAWAD RAHIMI       88.00       405.00       35,640.00         1,100.10       467,959.50					TOTAL
KIRTI DUGAR       249.10       495.00       123,304.50         ANTHONY GRANT       192.80       405.00       78,084.00         ANIL NAMBIAR       237.00       405.00       95,985.00         FAWAD RAHIMI       88.00       405.00       35,640.00         1,100.10       467,959.50					41,998.50
ANTHONY GRANT 192.80 405.00 78,084.00 ANIL NAMBIAR 237.00 405.00 95,985.00 FAWAD RAHIMI 88.00 405.00 35,640.00 1,100.10 467,959.50					92,947.50
ANIL NAMBIAR 237.00 405.00 95,985.00					
FAWAD RAHIMI 88.00 405.00 35,640.00 1,100.10 467,959.50					
1,100.10 467,959.50					
MATTER TOTALS 15,661.10 7,282,330.50	I AWAD KAHIIVII			400.00	467,959.50
	MATTER TO	TALS	15,661.10		7,282,330.50

## **EXHIBIT C**

#### Case 1:16-cv-00212-JPO-JLC Document 155-4 Filed 04/29/19 Page 153 of 153

#### LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

 Report created on
 04/25/2019 01:39:49 PM
 Current = 04/01/19
 To
 04/25/19

 Matter-to-Date = Inception
 Present

To

BNYM - ADRs - General Matter Matter Matter Matter Number: 3757-0001

#### **Soft Costs Incurred**

	Matter-to-Date
In-House Copies	\$1,135.60
Postage	\$51.25
Print	\$22,111.40
Telephone	\$1.742.60

Total Soft Costs: \$25,040.85

#### **Hard Costs Incurred**

	Matter-to-Date
Computer Research	\$6,278.03
Cost Funds	\$620,000.00
Deposition/Transcripts	\$4,415.11
Electronic Database	\$63,660.00
Federal Express/Messenger	\$225.80
Filing Fees	\$570.00
Other Charges	\$674.95
Travel	\$7,572.28

Total Hard Costs: \$703,396.17

Total Matter Costs: \$728,437.02

Total Cost Receipts: \$0.00

Net Costs: \$728,437.02

### **EXHIBIT 5**

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

IN RE: THE BANK OF	<b>NEW YORK</b>
MELLON ADR FX LIT	IGATION

16-CV-00212-JPO-JLC

**ECF** Case

This Document Relates to:

**ALL ACTIONS** 

# DECLARATION OF FRANK R. SCHIRRIPA IN SUPPORT OF LEAD PLAINTIFFS' COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF HACH ROSE SCHIRRIPA & CHEVERIE LLP

- I, Frank R. Schirripa, pursuant to 28 U.S.C. § 1746, hereby declare as follows:
- 1. I am a partner of the law firm of Hach Rose Schirripa & Cheverie LLP ("HRS&C" or the "Firm"). I submit this declaration in support of Lead Plaintiffs' Counsel's motion for an award of attorneys' fees and reimbursement of expenses. Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would testify competently thereto. The facts supporting HRS&C's fee request are more fully set forth in the Joint Declaration of Sharan Nirmul and Daniel P. Chiplock in Support of (1) Lead Plaintiffs' Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation; and (2) Lead Plaintiffs' Counsel's Application for Attorneys' Fees and Reimbursement of Litigation Expenses, Including Service Awards to Lead Plaintiffs ("Joint Declaration").
- 2. Hach Rose Schirripa & Cheverie LLP has offices in New York, NY. The Firm has litigated numerous class actions in the Southern District of New York and in other courts around

the country. A copy of the Firm's resume, as well as a brief biography of all Firm attorneys and support staff that billed time in this Action, is attached hereto as Exhibit A.

- 3. I personally rendered legal services and was responsible for coordinating and supervising the activity carried out by attorneys and professional staff at HRS&C in this Action. In its capacity as Additional Plaintiffs' Counsel and as counsel for the International Union of Operating Engineers Local 138 Annuity Fund ("IUOE Local 138"), HRS&C contributed to this Action and performed work on behalf of and for the benefit of the Class. HRS&C has been actively involved in the prosecution of this Action since inception. HRS&C investigated IUOE Local 138 and the putative class' claims, participated in the drafting the initial and amended complaints, briefing on both the motion to dismiss and class certification motion, as well as conducting class certification discovery and defending client depositions. HRS&C worked under the direction of co-lead class counsel to address discovery requests directed at IUOE Local 138, including preparing and defending additional client depositions and reviewing documents assigned to the Firm.
- 4. Based on my work performed in this Action as well as my receipt and review of the billing records reflecting work performed by attorneys and paraprofessionals at or on behalf of HRS&C in this Action ("Timekeepers") as reported by the Timekeepers, I directed the preparation of the chart set forth as Exhibit B hereto. This chart (i) identifies the names and positions (*i.e.*, titles) of the firm's Timekeepers who undertook litigation activities in connection with the Action; (ii) provides the total number of hours each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through April 22, 2019; (iii) provides each Timekeeper's current hourly rate, as noted in the chart; and (iv) provides the total billable amount, in dollars, of the work by each Timekeeper and the entire

firm.<sup>1</sup> For Timekeepers who are no longer employed by the Firm, the hourly rate used is the billing rate in his or her final year of employment by the Firm. The Firm's billing records, which are regularly prepared from contemporaneous daily time records, are available at the request of the Court. Time expended in preparing any papers for this motion for fees and reimbursement of expenses has not been included in this request, nor has the time of any Timekeeper who devoted fewer than ten (10) hours to this Action.

- 5. The hourly rates charged by the Timekeepers are the Firm's regular rates for contingent cases and those generally charged to clients for their services in non-contingent/hourly matters.<sup>2</sup> These rates (or materially similar rates) have been accepted by courts in other complex class actions for purposes of "cross-checking" lodestar against a proposed fee based on the percentage-of-fund method or determining a reasonable fee under the lodestar method. Based on my knowledge and experience, these rates are also within the range of rates normally and customarily charged in their respective cities by attorneys and paraprofessionals of similar qualifications and experience in cases similar to this litigation, and have been approved in connection with other class action settlements.
- 6. The total number of hours expended by HRS&C on this Action, from investigation through April 22, 2019, is 1,523 hours. The total lodestar for the Firm is \$878,876.25, consisting of \$875,726.25 for attorney time and \$3,150.00 for professional support staff time.

<sup>&</sup>lt;sup>1</sup> The information concerning each Timekeeper's hours and hourly rate is not based on my personal knowledge, but on the information reported by each such Timekeeper or the files and records of HRS&C, as well as my familiarity with the work undertaken by HRS&C in the Action.

<sup>&</sup>lt;sup>2</sup> On occasion and for a specific type of representation, the Firm may offer a discount on its regular hourly rates to longstanding clients in non-contingent cases. The majority of the Firm's clients, however, do not typically pay an hourly rate and instead retain the Firm's services on a contingent-fee basis.

- 7. In my judgment, the number of hours expended and the services performed by the attorneys and paraprofessionals at HRS&C were reasonable and expended for the benefit of the Settlement Class in this Action.
- 8. HRS&C's lodestar figures are based on the Firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the Firm's billing rates.
- 9. As set forth in Exhibit C, HRS&C has incurred a total of \$7,928.96 in unreimbursed expenses in connection with this Action from inception to date. In my judgment, these expenses were reasonable and expended for the benefit of the Settlement Class in this Action.
- These expenses are reflected on the books and records of the Firm. It is the Firm's policy and practice to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of HRS&C's work in connection with this litigation and my review of these records, I believe them to constitute an accurate record of the expenses actually incurred by the Firm in connection with this litigation.

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

Executed this 29th day of April, 2019 in New York, New York.

Frank R. Schirripa

## **EXHIBIT A**



#### FIRM BIOGRAPHY

HACH ROSE SCHIRRIPA & CHEVERIE, LLP ("HRS&C" or the "Firm") specializes in large, complex litigation in the fields of securities, mergers and acquisitions, corporate governance, antitrust, consumer protection, investor arbitration and employment litigation on behalf of Taft-Hartley funds and their members. With over 100 years of combined experience, the Firm's attorneys have established themselves as leading representatives of Taft-Hartley pension and benefit funds in these areas of the law. The Firm's attorneys have litigated hundreds of cases in both state and federal courts through the United States, and are committed to protecting pension fund assets and victims of corporate wrongdoing.

HRS&C is headquartered in New York. Its attorneys are licensed to practice law in New York, New Jersey, Connecticut, Massachusetts and Washington, D.C., and have practiced in numerous federal district and appellate courts and state courts throughout the United States and Puerto Rico.

### NOTABLE CURRENT AND FORMER REPRESENTATION OF INSTITUTIONAL INVESTORS, <u>TAFT-HARTLEY PENSION AND BENEFIT FUNDS AND INDIVIDUALS</u>

#### Securities Fraud Class Actions and Corporate Governance Actions

- O Court appointed Co-lead Counsel, and representation of Taft-Harley pension fund, as lead plaintiff, in a securities fraud class action against Cemex, S.A.B. de C.V. arising from material misrepresentations concerning allegations that Cemex executives had engaged in an unlawful bribery scheme in connection with the company's dealings in Columbia, which subjected the company to heightened regulatory scrutiny and potential criminal sanctions.
- Representation of Taft-Hartley pension fund, as lead plaintiff in a Delaware Section 220 action against the Board of Directors of AmeriSource Bergen, in connection with the Board's refusal to produce books and records relating to the company's \$260 million penalty for operating an illegal pre-filled syringe program, in violation of the Food Drug and Cosmetic Act ("FDCA").
- o Representation of Taft-Hartley pension fund, as lead plaintiff and proposed class representative, in a derivative action against Wells Fargo's Board of Directors alleging a breach of fiduciary duty by willfully ignoring the wide-spread fraud by the illegal practice of opening unauthorized deposit and credit accounts for Wells Fargo customers.
- Representation of Taft-Hartley benefits fund, as lead plaintiff and proposed class representative, in a derivative action against Western Union's Board of Directors alleging a

breach of fiduciary duty by willfully ignoring its participation in cross-border money laundering.

- Representing a Taft-Hartley benefits fund as lead plaintiff and proposed class representative in a derivative action against current and former directors of DreamWorks Animation SKG. Inc. for breaches of fiduciary duty and corporate malfeasance in violation of Delaware law.
- Representation of three individual investors as proposed class representatives on behalf of the Retail Investor Subclass in a securities class action against Facebook, Inc., several of its officer and directors and the lead underwriter arising from material misrepresentations made to investors in connection with Facebook's Initial Public Offering.
- Representation of a Taft-Hartley pension fund, as lead plaintiff and proposed class representative, on behalf of all Taft-Hartley and employee benefit plans covered by ERISA, other non-public institutional investors, including private pension funds, mutual funds, endowment funds, and investment manager funds in a class action against The Bank of New York Mellon Corporation and its predecessors and subsidiaries, alleging that defendants charged class members fictitious foreign currency exchange ("FX") rates in connection with the purchase and sale of foreign securities. Following four-years of intense litigation, which included over 19 million pages of document discovery, over 100 depositions, counterclaims against the named plaintiffs and their trustees, counsel for co-lead plaintiffs secured a courtapproved settlement that returned, in aggregate, \$504 million to BNY Mellon's custodial banking customers. At the final settlement hearing in BNY Mellon (Sept. 24, 2015), Judge Kaplan noted:

This really was an extraordinary case in which plaintiffs' counsel performed, at no small risk, an extraordinary service, .... They did a wonderful job in this case, and I've seen a lot of wonderful lawyers over the years. This was a great performance.

This was an outrageous wrong committed by the Bank of New York Mellon, and plaintiffs' counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job.

- Representation of a Taft- Hartley pension fund, as a named plaintiff in a class action against The Bank of New York Mellon Corporation and its predecessors and subsidiaries, for harm suffered as a result of BNYM's conversion of dividends or other cash distributions by foreign companies to holders of American Depositary Receipts ("ADRs") into U.S. Dollars, a process referred to as "ADR FX Conversions," in a manner that breached BNYM's contractual obligations to holders of those ADRs.
- Representation of a Taft-Hartley benefits fund, as lead plaintiff and proposed class representative, in a derivative action against Darden Restaurants Inc.'s Board of Directors alleging a breach of fiduciary duty in connection with their approval of the Bylaw Amendments and the Dead Head Proxy Put and corporate waste in connection with their approval of the Red Lobster Transaction. This matter was successfully litigated and resulted in a settlement in which the Board of Directors agreed to restore and enhance core franchise rights of Darden

- shareholders by repealing certain Bylaw Amendments, enhancing voting rights and terminating a "poison pill."
- Representation of a Taft-Hartley pension fund, as lead plaintiff in a direct shareholder action against Globe Specialty Metals' Board of Directors and certain other defendants alleging a breach of fiduciary duty in connection with the Board's approval of the sale of Globe Specialty Metals to Grupo FerroAtlantica, S.A.U. This matter was successfully litigated and resulted in a \$32.5 million settlement, as well as post-transaction protections for Globe's former shareholders, including amendments to the acquiring company's Articles of Association.
- Representation of a Taft-Hartley benefits fund, as lead plaintiff and proposed class representative, in a derivative action against Impax Laboratories Inc.'s Board of Directors alleging a breach of fiduciary duty by willfully ignoring problems in the manufacturing and quality control processes at Impax's primary manufacturing facility, causing it common stock price to drop from \$28 per share to \$24 per share. Following the aggressive litigation of this matter, the Company corrected its FDA regulatory violations, and the common stock price rebounded to \$52 per share within one year.
- Representation a Taft-Hartley benefits fund and the interests of the derivative class as Additional Plaintiff's Counsel, in a derivative action against Nu Skin Enterprises Inc.'s Board of Directors alleging a breach of fiduciary duty in connection with the company's violations of Chinese regulation against multi-level "pyramid" marketing that resulted in regulatory investigations, fines and drastic reduction in Nu Skin's China sales revenue.
- Representation of a Taft-Hartley pension fund in securities fraud class action against Nicor, Inc. arising from material misrepresentations concerning Nicor's accounting for natural gas reserves which resulted in a multi-year restatement. This matter was successfully litigated and resulted in a \$39 million settlement.
- Representation of a Taft-Hartley pension fund in securities fraud class action against Westar Energy, Inc. arising from material misrepresentations about Westar's acquisition of nonregulated businesses. This matter was successfully litigated and resulted in a \$30 million settlement.
- Representation of a Taft-Hartley pension fund in securities fraud class action against SPX Corporation arising from material misrepresentations about SPX's business segments, free cash flow, and \$45 million of alleged insider sales in the weeks leading up to SPX's negative disclosure. This matter was successfully litigated and resulted in a \$10 million settlement.
- Representation of a Taft-Hartley pension fund in a securities fraud class action against Leap Wireless Inc. arising from material misrepresentations about Leap Wireless's financial condition and internal controls that resulted in a massive twelve quarter financial restatement. This matter was successfully litigated and resulted in a \$13.75 million settlement and the implementation of various operational and corporate governance measures.

- Representation of numerous Taft-Hartley pension funds in securities class actions arising from material misstatements in Registration Statements and Prospectuses issued in connection with their purchase of Residential Mortgage-Backed Securities (RMBS) collateralized with "toxic loans," including sub-prime, Alt-A and other fraudulently originated mortgages.
- Representation of shareholders of Bank of America Corporation in a derivative action against the company's Board of Directors alleging breaches of fiduciary duties in connection with the merger of Merrill Lynch & Co., Inc.
- o Representation of shareholders of Huron Consulting Group in a derivative action against the company's Board of Directors alleging a breach of fiduciary duty in connection with the accounting firm's restatement of \$63 million of revenue over a period of 12 fiscal quarters.
- o Representation of bank customers whose certificates of deposit were automatically renewed upon maturity at rates much lower than the bank was currently offering to new customers despite being assured that their CD would be invested at the current rate.

#### Antitrust, Consumer, Environmental and Product Liability Class Actions

- Representation of a Taft-Hartley welfare fund as named plaintiff and serving as Interim Co-Lead Counsel in an antitrust class action lawsuit against Celgene Corporation arising from the defendant's anticompetitive scheme to delay the entry of generic version of Thalomid and Revlimid, two leading cancer treatments, into the market.
- Representation of a putative class of New York personal injury, podiatric and medical malpractice plaintiffs against Oxford Health Plans and its subrogation recovery agent, The Rawlings Company, seeking a monetary damages and a declaration under NY G.O.L § 5-335 ("Anti-subrogation law") that Oxford/Rawlings does not have the right to seek subrogation of medical benefits against their settlements.
- Representation of a Taft-Hartley welfare fund in an antitrust class action lawsuit against Pfizer,
   Inc. arising from defendant's anticompetitive scheme to delay the entry of generic versions of
   Lipitor into the market.
- Representation of two Taft-Hartley welfare funds as named plaintiffs and serving the proposed class as a member of the Executive Committee in an antitrust class action lawsuit against Reckitt Benckiser, Inc. arising from defendants' anticompetitive scheme to delay the entry of generic versions of Suboxone into the market.
- Representation of a Taft-Hartley welfare fund as a named plaintiff and serving the proposed class as a member of the Executive Committee in an antitrust class action lawsuit against the brand and generic manufacturers of Loestrin24 arising from defendants' anticompetitive scheme to delay the entry of generic versions of Loestrin24 into the market.
- o Representation of two Taft-Hartley welfare funds, as named plaintiffs and certified class representatives, in an antitrust class action lawsuit against Astrazenceca LP. arising from

defendant's anticompetitive scheme to delay the entry of generic versions of Nexium into the market. This matter was extensively litigated through a jury verdict; the End-Payor Plaintiffs obtained a \$25 million settlement from generic manufacturer Dr. Reddy's Laboratories.

- Representation of citizens of Paulsboro, New Jersey and the surrounding towns in a environmental mass tort case against Consolidated Rail Corporation ("Conrail") and other defendants where defendants' negligence caused a train derailment caused a tanker to breach while crossing the Mantua Creek Bridge and spew who were exposed to 24,000 gallons (or 180,000 pounds) of Vinyl Chloride a known human carcinogen.
- o Representation of purchasers of Volkswagen and Audi vehicles equipped with defective plenum drains, pollen filter seals and sunroof drains permitting water ingress which compromised the vehicles' brake booster, transmission control module, other electrical components and the vehicles interior. This action was successfully litigated.
- Representation of a class of silver bullion purchasers and holders that were being overcharged for the storage of unallocated silver bullion. This matter was successfully litigated and resulted in a 100% recovery of storage charges.

#### Employment: Discrimination and Wage & Hour Litigation

- Successfully represented a conditionally certified collective class of licensed social workers employed at a major New York City-based hospital who were forced to work off-the-clock in violation of the FSLA and NYLL. A \$1,500,000 settlement was reached after lengthy negotiations, and several years of intense fact discovery, motion practice, and extensive trial preparation.
- Successfully represented thirteen entertainers in an action filed in federal court to recover unpaid wages and overtime alleging violations of the Fair Labor Standards Act ("FLSA") and New York Labor Law ("NYLL"). This matter was settled for \$1 million.
- Successfully represented a group of 46 employees employed at an international television news network arising from the company and its owners' willful refusal to pay wages for multiple pay cycles and willfully failing to pay wages in a timely manner. This matter was settled for \$300,000.
- Successfully represented a conditionally certified collective class of maintenance and service workers employed at all New York locations of a national cooperative residential housing company that improperly labeled workers time as "non-productive hours" and wrongfully denied overtime compensation in violation of the FSLA and NYLL. This matter was resolved for approximately \$300,000.
- Successfully represented an American single mother in a national-origin and pregnancy discrimination action alleging violations of Title VII, New York City Human Rights Law ("NYCHRL") and the Pregnancy Discrimination Act against a Japanese financial services company operating in New York. This matter was successfully resolved for \$196,000.

- Successfully represented a sixty-three year old engineer in an age discrimination lawsuit alleging violations of Title VII, New York State Human Rights Law ("NYSHRL") and NYCHRL against a dominant private New York City-based health services company. This matter was settled for \$175,000.
- Successfully represented numerous female employees who were victims of unwelcomed sexual harassment in the workplace in violation of Title VII, NYSHRL and NYCHRL. The firm has recovered multiple six-figure settlements for these clients.
- o Representing seven African-American field technicians employed by Verizon New Jersey arising from Verizon violations of the New Jersey Law Against Discrimination.

#### THE FIRM'S ATTORNEYS

#### Gregory S. Hach, Partner

Greg Hach is well-known for representing members of organized labor in mass tort actions including prescription drug liability, personal injury actions, and asbestos litigation. He is responsible for developing LOHRSOFT, or Labor Organization Healthcare Reimbursement Software. LOHRSOFT revolutionizes the way Taft-Hartley health plan and other third-party payors service their members and recover funds from responsible third-parties. This program is actively used in the marketplace today. Through his efforts, Mr. Hach has obtained millions of dollars for union families nationwide. Mr. Hach was recently welcomed into the Who's Who 2010 Strathmore Roundtable.

He is a proud member of the International Union of Operating Engineers, the New York Bar Association, the New York State Trial Lawyers Association, and the Washington, D.C. Bar Association. Outside the office, Mr. Hach is an enthusiastic private pilot and aircraft owner. He is a member of the Aircraft Owners and Pilots Association and regularly flies to visit his clients in outlying areas.

Mr. Hach is admitted to practice in New York, Washington, DC, and the United States District Court for the Eastern and Southern District. He received B.S. from John Jay College of Criminal Justice in 1996 and his J.D. from Ohio Northern University, Claude W. Pettit College of Law in 1999.

#### Michael A. Rose, Partner

Michael Rose focuses his practice on civil litigation. Mr. Rose has had extensive experience prosecuting a broad range of cases on behalf of Taft-Hartley participants, dependents and other individuals, including personal injury, wrongful death, product liability and mass tort. He has tried numerous cases to verdict, handled appeals, and settled many claims resulting in tens of millions of dollars in recovery for clients. Many of these cases have resulted in seven figure

jury verdicts and settlements. Mr. Rose has recently tried two cases each of which resulted in eight-figure jury verdict. And during a six-month timespan, Mr. Rose tried three cases each of which resulted in seven figure jury verdicts.

He is a frequent lecturer to members of the Bar Association, covering topics such as construction site accidents, vocational rehabilitation, and expert witness examinations. Mr. Rose is a lifetime member of the Million Dollar and Multi-Million Dollar Advocates Forum. Additionally, he is a member of the New York State Bar Association, The Association of the Bar of the City of New York, where he was a member of the Tort Litigation Committee, the New York State Trial Lawyers Association, and the Association of the Trial Law Lawyers of America. Mr. Rose is AV rated by Martindale Hubble.

Mr. Rose is admitted to practice in New York, Massachusetts, and the United States District Court for the Eastern, Northern and Southern Districts. He received B.S. from Ithaca College in 1993 and his J.D. from New England School of Law in 1996.

#### Frank R. Schirripa, Partner

Frank Schirripa focuses his practice on representing institutional investors – predominantly Taft-Hartley pension and benefit funds – that have been damaged as the result of securities fraud or corporate malfeasance. Throughout his career, Mr. Schirripa has specialized in handling highly complex multi-party litigation in federal and state courts throughout the United States and has served in a lead, co-lead or representative capacity across a full spectrum of industries (cellular and landline telecommunications, financial services, healthcare, insurance, manufacturing, pharmaceuticals, retail, stock broker and exchange, technology, and utilities) and practices (antitrust, consumer and investor fraud and protection, employment, and shareholder derivative actions) that encompass HRSC's complex litigation practice. Mr. Schirripa has represented the rights of consumers, shareholders and investors in high profile and precedent-setting class action litigation involving such companies as BNY Mellon, Bombardier, Inc., Consolidated Rail Company, Darden Restaurants, Inc., Dynex Capital, Inc., Facebook, Inc., Leap Wireless, Inc., Nicor Corp., The Rawlings Company, SPX Corp., Tidel Technologies, Inc., Volkswagen AG, Westar Energy, Inc., and Williams Companies, Inc.

Prior to founding the Firm, Mr. Schirripa practiced securities and consumer class action law at two prominent New York class action law firms.

Mr. Schirripa's skills and expertise as a class action litigator have been recognized by colleagues, courts and private institutions. Mr. Schirripa's skill, perseverance and diligent advocacy was acknowledged by the Courts. Most recently, in *In re BNY Mellon FOREX Transaction Litigation*, MDL No. 2335 (S.D.N.Y. Sept. 24, 2015), Judge Kaplan noted:

This really was an extraordinary case in which plaintiffs' counsel performed, at no small risk, an extraordinary service, .... They did a wonderful job in this case, and I've seen a lot of wonderful lawyers over the years. This was a great performance.

This was an outrageous wrong committed by the Bank of New York Mellon, and plaintiffs' counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job.

In *In re SPX Corp. Securities Litigation*, 3:04-CV-99 (W.D.N.C.), the Court commended class counsel for its "skill perseverance[,] ... diligent advocacy" and "aggressive representation" of the class in achieving "from a financial standpoint. A very fair settlement" aggregating \$10 million, or approximately 22 percent of the maximum recoverable damages, noting that class counsel is among the "leading attorneys in the country in the area of class actions" and is "extremely competent" and "very experienced."

Mr. Schirripa has been recognized by his peers as a *New York Super Lawyer* in Securities and Class Action Litigation. Mr. Schirripa regularly lectures to Taft-Hartley and multi-employer pension and welfare funds on securities and antitrust related legal issues.

Mr. Schirripa is a member of the American Bar Association, Litigation Section; the Federal Bar Council; New York State Trial Lawyers and the New York Court Lawyers' Association

Mr. Schirripa is admitted to the Bars of the states of New York and New Jersey, the United States District Courts for the District of Colorado, New Jersey, and the Eastern, Northern and Southern Districts of New York, and the United States Court of Appeals for the Second Circuit. Mr. Schirripa received his B.S. in Business Administration with a concentration in Finance from the State University of New York at Albany in 1999 and his J.D., *cum laude*, from New York Law School in 2002, where he served as the Chairman of the Moot Court Association. Mr. Schirripa was inducted into the Order of the Barristers.

#### David R. Cheverie, *Partner*

David Cheverie focuses on institutional investor and client outreach, as well as new case development. Mr. Cheverie advises Taft-Hartley pension and benefit fund clients regarding their rights and fiduciary responsibilities with respect to their investments and taking an active role in shareholder litigation. Mr. Cheverie assists clients in evaluating systems to identify and monitor shareholder litigation and the impact on their investments. Mr. Cheverie also counsels them in evaluating the strength of such cases and to whether or not they should seek lead plaintiff status or otherwise actively participate in the litigation. In addition to securities fraud and corporate governance matters, Mr. Cheverie advises and assists Taft-Hartley health funds in participating in pharmaceutical, product defect, and consumer class actions to recover fund losses.

Mr. Cheverie received his B.A. from the University of Connecticut, and his J.D., *cum laude*, from Roger Williams Law School where he received several awards for excellence. He is also a proud member of Laborers' Local 230. Mr. Cheverie is a member of the New York Bar Association, the New York County Lawyers' Association, and is admitted to Bars of the states of New York and Connecticut, the Commonwealth of Massachusetts, and the United States District Court for the Southern and Eastern Districts of New York, District of Connecticut and the District of Massachusetts.

#### Daniel B. Rehns, Partner

Mr. Rehns primarily represents institutional investors – predominantly Taft-Hartley pension and benefit funds – that have been damaged as the result of securities fraud or corporate malfeasance. Additionally, Mr. Rehns also represents investors and consumers who had been damaged by unfair business practices.

Throughout his career, Mr. Rehns has specialized in handling highly complex multi-party litigation in federal and state courts throughout the United States. His concentration is on large complex cases and shareholder actions, in which he focuses on all aspects of litigation ranging from case development through settlement and trial. Notably, Mr. Rehns specializes in new case investigation, complex issue briefing and overseeing all aspects of large-scale discovery, including electronic discovery protocols and review, depositions and expert discovery. Prior to joining HRSC, Mr. Rehns was an Associate in Cohen Milstein's Securities Litigation & Investor Protection Practice Group. Mr. Rehns played an important role in litigating many of the most significant mortgage-backed securities (MBS) class-action lawsuits to emerge from the 2008 financial crisis, and was part of the team named an Elite Trial Lawyer Firm by the National Law Journal (in the MBS litigation category) in 2014 and 2015. Mr. Rehns has be recognized by his peers and has been named in *New York Super Lawyers*.

#### Mr. Rehns' MBS successes include:

- Maine State Retirement System v. Countrywide Financial Corporation (C.D. Cal): \$500 million settlement with Bank of America, as successor to Countrywide Financial Corp.
- In re Bear Stearns Mortgage Pass-Through Certificates Litigation (SDNY): \$505 million settlement with JPMorgan Chase as successor to Bear Stearns & Co., Inc.
- New Jersey Carpenters Health Fund v. Residential Capital LLC ("RALI") (SDNY): \$335 million settlement with Ally Securities as successor to Residential Capital LLC, as well as Underwriters Citigroup Global Capital Markets, Inc., Goldman Sachs & Co. and UBS Securities LLC.
- New Jersey Carpenters Vacation Fund v. Royal Bank of Scotland plc ("Harborview") (SDNY): \$275 million settlement with RBS Securities LLC and related entities.
- *In re Washington Mutual MBS Litigation* (W.D. Wash): \$26 million settlement in this complex class action lawsuit alleging violations of the Securities Act by Washington Mutual entities in connection with their issuance of residential MBS.
- *In re Dynex Capital, Inc. Securities Litigation* (SDNY): \$7.5 million settlement where Defendants were alleged to have committed securities fraud in connection with the sale of asset-backed securities to the public.

In addition to the above, Mr. Rehns has served a central role on successful litigation teams in various securities and shareholder matters including: *In re Lehman Brothers MBS Litigation, New Jersey Carpenters Health Fund v. DLJ Capital, Inc., In re American Greetings Shareholder Litigation, HCL Partners Limited Partnership v. Leap Wireless International, Inc., In re Ebix Securities Litigation, Ladman Partners v. Globalstar, Inc., In re SPX Corp. Securities Litigation and In re BP plc Securities Litigation; Porat v. Bank Leumi Le-Israel (Double Derivative);* 

Sokolowski v. Erbey (Shareholder Derivative Action); Louisiana Mun. Police Employees v. Stephen Wynn;

Mr. Rehns is admitted to the Bars of the state of New York, the United States District Courts for the District of New Jersey, and the Eastern and Southern Districts of New York, and the United States Court of Appeals for the First, Second, Third and Ninth Circuits. Mr. Rehns is a member of the New York Bar Association, the New York County Lawyers' Association, the American Bar Association and the Federal Bar Council. Mr. Rehns began his career at Schoengold Sporn Laitman & Lometti, P.C., where he practiced in the areas of securities fraud and consumer class action litigation. Mr. Rehns attended Bucknell University, graduating with a double major in Economics and Finance, and minors in Legal Studies and Philosophy. He earned his J.D. at New York Law School, where he was a Dean's List recipient. Mr. Rehns was and continues to be an active member in the Sigma Alpha Epsilon Fraternity Organization and Big Brothers Big Sisters of America. Mr. Rehns also competed in Moot Court and co-authored the first edition of West's Nutshell on Corporate Financial Law.

#### Jay P. Saltzman, Counsel

Mr. Saltzman materially contributed to the litigation of dozens of highly complex securities class and derivative actions and consumer class actions throughout the country and helped recover billions of dollars for injured shareholders and consumers, including *In re WorldCom, Inc. Securities Litigation* (S.D.N.Y.), which settled in 2005 for over \$6.13 billion, among the largest securities fraud settlements of all time; *Silberblatt v. Morgan Stanley Dean Witter & Co.* (S.D.N.Y.) (recovering 100% of consumers' claimed overcharges for storage of silver bullion); *Danis v. USN Communications, Inc.* (N.D. Ill.) (\$44.7 million recovery); *In re PNC Financial Services Group, Inc. Securities Litigation* (W.D. Pa.) (\$46.675 million recovery).

Federal courts throughout the country have noted the ability to pursue successfully complex litigation where Mr. Saltzman took a prominent role, including:

Maley v. Del Global Technologies Corp., 00-CV-8495 (S.D.N.Y.), where Judge McMahon commended the firm for "going the extra mile" in obtaining a settlement representing approximately 41 percent of the maximum recoverable damages incurred by the class, observing: "Through [Class Counsel]'s efforts, after intensive investigation, concentrated litigation and extensive arm's-length bargaining, and without the benefit of any governmental agency's investigation, Class Counsel have secured a settlement fund which confers an excellent benefit to the Class ... I can't ever remember having participated as a lawyer or a judge in a settlement of a securities fraud class action that yielded in excess of a forty percent rate of recovery."

In *Behr v. APAC Teleservices, Inc.*, 97-CV-9145 (S.D.N.Y.), Judge Jones recognized the "long efforts" of counsel in litigating the case and their "thorough investigation" of plaintiffs' claims, concluding that the "substantial settlement" obtained "saved [the class] a lot of years of complex litigation."

Mr. Saltzman is admitted to practice in the courts of the States of New York and New Jersey, in the Southern and Eastern Districts of New York, the District of New Jersey and the U.S. Courts of Appeals for the Second and Third Circuits.

Mr. Saltzman graduated from Columbia University in 1983 with a Bachelor of Arts degree where he was on the Dean's List throughout his attendance. From 1985-1990, Mr. Saltzman worked as an officer in the Corporate Trust department of the Bankers Trust Company, responsible for all aspects of Corporate Trust, from integrating new issues to ensuring the accuracy of dividends and stock splits. Mr. Saltzman earned a Masters of Business Administration degree with a major in Corporate Finance from New York University's Stern School of Business in 1991. He received his J.D. degree from the Benjamin N. Cardozo School of Law in June, 1994. Mr. Saltzman was a member of the *Cardozo Law Review* for which he wrote his Note on International and Labor Law. While at Cardozo, he was an intern with the New York State Attorney General's Office and with the Lawyers' Committee for Human Rights.

#### John Blyth, Associate

John Blyth is an associate at Hach Rose Schirripa & Cheverie and practices in the field of complex civil litigation. Mr. Blyth's focus is securities fraud, antitrust and consumer class actions, and employment law. His additional responsibilities at the firm include investigating new cases, drafting pleadings and motions, all aspects of discovery, as well as participating in court conferences, mediations and arbitration hearings.

Mr. Blyth is admitted to the Bars of the states of New York and New Jersey, and to the United States District Court for the District of New Jersey and the Eastern, Northern and Southern Districts of New York. Mr. Blyth received a bachelor's degree in Communications from the State University of New York at Albany and worked as a personal banker for JPMorgan Chase & Co. prior to earning his J.D. from the Benjamin N. Cardozo School of Law. Mr. Blyth is a member of the New York City Bar Association and the New York State Trial Lawyers Association. Prior to joining the firm, Mr. Blyth clerked for the Honorable Philip Straniere, supervising judge of the New York Civil Court, Richmond County.

#### Kathryn A. Hettler, Associate

Kathryn Hettler is an associate at Hach Rose Schirripa & Cheverie. Ms. Hettler primarily focuses on discovery related aspects of the Firm's securities fraud, antitrust and consumer class actions. Her responsibilities at the Firm include investigating new cases; drafting pleadings and motions; document review; deposition preparation; drafting discovery related memoranda and legal research.

Ms. Hettler is admitted to practice law in the states of New York and New Jersey the United States District Court for the Southern and Eastern Districts of New York and the District of New Jersey. She received a B.S. in Business Management from Bucknell University in 2004 and an M.B.A. from Florida Atlantic University in 2007. In 2012, Ms. Hettler received her J.D. from Widener University, where she served as an executive member of the Moot Court Association.

During law school, she also had the opportunity to intern with the King's County District Attorney's Office.

#### Hillary M. Nappi, Associate

Hillary M. Nappi is an associate at Hach Rose Schirripa & Cheverie LLP and practices in the area of complex civil litigation.

Ms. Nappi earned her Bachelors of Science Degree in Criminal Justice from Pace University's Pleasantville Campus in 2005. In the spring of 2013, Ms. Nappi received her Juris Doctor from Pace University School of Law (now the Elisabeth Haub School of Law). Ms. Nappi was a participant in NAAC Moot Court Competition and a member of Pace Law School's Moot Court Board. During law school, Ms. Nappi was also heavily involved in the ABA through its Law Students Division where she was the Second Circuit Lt. Governor for Non-Traditional Law Student Relations from 2011 through 2013.

Ms. Nappi is admitted to the Bars of the states of New York and New Jersey, and to the United States District Court for the Southern and Eastern Districts of New York. Prior to joining the Firm, Ms. Nappi spent nine years working at the law offices of Boies, Schiller & Flexner LLP. While in law school, Ms. Nappi worked as a legal assistant/paralegal to the firm's Chairman, David Boies. After her admission to the bar, Ms. Nappi was promoted to Staff Attorney. As a Staff Attorney, Ms. Nappi worked on large complex litigation matters as well as conducted regulatory investigations. In 2015, Ms. Nappi joined the firm of Tilem & Associates P.C. where she honed her trial skills in the areas of criminal defense, commercial litigation, family law, and estate litigation. In 2018, Ms. Nappi was named "Top 40 Under 40 Criminal Defense Attorneys" by National Trial Lawyers and a 2018 Super Lawyers Metro Rising Star.

#### Seth M. Pavsner, Associate

Seth M. Pavsner is an associate at Hach Rose Schirripa & Cheverie. Mr. Pavsner primarily focuses on discovery related aspects of the Firm's antitrust and consumer class actions. His responsibilities at the Firm include investigating new cases; drafting pleadings and motions; document review; deposition preparation; drafting discovery related memoranda and legal research.

Mr. Pavsner is admitted to the Bars of the states of Massachusetts and New York and to the United States District Court for the Southern and Eastern Districts of New York. Mr. Pavsner Graduated in 2005 from the University of Pennsylvania, B.A. in Psychology, *magna cum laude*, with departmental honors. Graduated in 2009 from the Boston University School of Law, J.D. While in law school, Mr. Pavsner participated in Stone Moot Court Competition and Phi Alpha Delta legal fraternity. Mr. Pavsner is a member of the New York State Bar Association.

#### Tim Staines, Of Counsel (no longer with the Firm)

Tim Staines represents clients in complex, multiparty litigation in state and federal courts. Before joining the firm, he was a partner in the Manhattan office of a prominent litigation firm. He gained trial experience early in his career as an Assistant Corporation Counsel in the Special Litigation Unit of the New York City Law Department. He has handled diverse matters including class actions, products liability claims concentrating on consumer appliances and electrical equipment, construction defects, property damage, construction accidents and New York Labor Law §§ 240 and 241, toxic exposure concentrating on lead paint and industrial accidents, wrongful death, municipal liability, *Jones Act* maritime claims, and employment law.

Mr. Staines is admitted to the Bar of the State of New York and to the Southern and Eastern Districts of New York. He is a member of the Federal Bar Association. Mr. Staines received a bachelor's degree in Finance from Georgetown University and a J.D. from Fordham University. He has been selected as a New York Super Lawyer since 2014.

## **EXHIBIT B**

IN RE: THE BANK OF NEW YORK
MELLON ADR FX LITIGATION
Case No. 16 Civ. 00212 (JPO)

#### HACH ROSE SCHIRRIPA & CHEVERIE LLP

#### TIME REPORT

Inception through April 22, 2019

		HOURLY	
NAME	HOURS	RATE	LODESTAR
Partners			
Gregory S. Hach	10.50	\$815.00	\$8,557.50
Frank R. Schirripa	394.25	\$775.00	\$305,543.75
David R. Cheverie	28.00	\$625.00	\$17,500.00
Daniel B. Rehns	210.50	\$725.00	\$152,612.50
Of Counsel			
Timothy Staines	11.00	\$625.00	\$6,875.00
Associate			
Kathryn Hettler	854.75	\$450.00	\$384,637.50
Paralegal			
Sonia Akter	14.00	\$225.00	\$3,150.00
TOTALS	1,523.00		\$878,876.25

## EXHIBIT C

#### In re Bank of New York Mellon ADR FX Litigation No. 16-CV-00212 (JPO) EXPENSE REPORT

FIRM NAME: HACH ROSE SCHIRRIPA & CHEVERIE LLP REPORTING PERIOD: INCEPTION TO APRIL 22, 2019

DESCRIPTION	CUMULATIVE TOTAL
Internal Reproduction/Printing	\$1,256.25
Court Fees (Filing costs etc.)	\$400.00
Court Reporters/Transcripts	\$4,540.60
Computer Research	\$317.12
ESI Retrieval	\$300.00
Postage/Express Delivery/Messenger	\$112.78
Meals, Hotels and Transportation	\$1,002.21
TOTAL EXPENSES	\$7,928.96