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

AIMEE HICKMAN, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. SUBARU OF AMERICA, INC., *et al.*, Defendants.	Case No. 1:21-CV-02100-NLH-AMD Motion Date: September 18, 2023 PLAINTIFFS' UNOPPOSED MOTION FOR AN ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT

PLEASE TAKE NOTICE that on September 18, 2023 at 9:00 AM or as soon thereafter as the matter can be heard, Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn, Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode ("Plaintiffs"), individually and on behalf of all other similarly situated, move this Court before Hon. Noel L. Hillman, U.S.D.J., pursuant to Rule 23 of the Federal Rules of Civil Procedure for an Order: (1) granting preliminary approval of the Settlement; (2) conditionally certifying the proposed Settlement Class for settlement purposes; (3) conditionally appointing Plaintiffs as the Representative Plaintiffs and Plaintiffs' Counsel, Russell Paul, Amey Park, Abigail Gertner and Natalie Lesser of Berger Montague PC, as Settlement Class Counsel; (4) approving the Parties' proposed Class Notice form and plan for disseminating the Class Notice; (5) appointing JND Legal Administration as the Settlement Administrator; (6) setting

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

In support of this motion, Plaintiffs rely upon the accompanying brief in support, the Declaration of Russell D. Paul ("Paul Decl."), and a copy of the fully executed Settlement Agreement, which is attached as Exhibit 1 to the Paul Decl. The following Exhibits are appended to the Settlement Agreement:

- Exhibit A, proposed Claim Form
- Exhibit B, proposed First Class Notice
- Exhibit C, proposed Full Notice
- Exhibit D, proposed Final Approval Order
- Exhibit E, proposed Preliminary Approval Order
- Exhibit F, proposed Claim Decision and Option Letter
- Exhibit G, proposed Request for Exclusion template

Defendants Subaru of America, Inc. and Subaru Corporation do not oppose this motion.

Dated August 18, 2023

Respectfully submitted,

By: *s/ Russell D. Paul*

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

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I. INTRODUCTION

Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode ("Plaintiffs") respectfully seek preliminary approval of the proposed Class Settlement Agreement ("Settlement")[1] of this action entered into between Plaintiffs and Defendants Subaru of America, Inc. ("SOA") and Subaru Corporation ("SBR") (collectively, "Subaru" or "Defendants"; with Plaintiffs and Defendants, collectively, the "Parties"). The Settlement applies to all persons and entities who purchased or leased, in the United States, model year 2019-2020 Subaru Ascent vehicles, that were imported and distributed by SOA for sale or lease in the United States and manufactured by SBR ("Settlement Class Vehicles"). As discussed below, this Settlement, which affords substantial benefits to the Settlement Class consisting of present and former owners and lessees of approximately 160,000 vehicles, was the result of extensive arm's length negotiations of disputed claims by experienced class action counsel; is eminently fair, reasonable and adequate; and satisfies the criteria for preliminary approval under Rule 23.

Plaintiffs allege that the respective Settlement Class Vehicles contain one or more defects in the design, workmanship, materials, and/or manufacturing of the transmission installed in the Class Vehicles that causes hesitation, jerking, shuddering, lurching, squeaking, whining, or other loud noises; delays in

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

acceleration; inconsistent shifting; stalling; and a loss of power or ability to accelerate at all. Plaintiffs asserted claims under theories of, *inter alia*, breach of warranty and statutory and common law fraud. Defendants maintain that they believe strongly in the quality and performance of the Class Vehicles and that the Class Vehicles are not defective, but have chosen to resolve these allegations as a benefit to their customers, as well as to avoid the uncertainty, time, and expense of protracted litigation. Defendants further maintain that they have met all applicable obligations under the relevant express and implied warranties, and have adhered to all consumer statutes and common law duties.

The proposed Settlement was the culmination of extensive arm's-length negotiations and occurred over months during which certain information and discovery was also exchanged. The Settlement was ultimately reached with the assistance of a respected neutral mediator who is highly experienced in class action settlements. The Settlement, described more fully below, provides Settlement Class Members with immediate and valuable relief that directly addresses issues applicable to the Settlement Class Vehicles. It is fair, reasonable, and adequate, and it complies in all respects with Fed. R. Civ. P. 23 ("Rule 23"). The Settlement successfully addresses the alleged transmission issues going forward while also providing a reimbursement program for Settlement Class Members to recoup paid out-of-pocket expenses for qualifying covered repairs incurred in the past.

Plaintiffs accordingly request that this Court review their negotiated Settlement Agreement, attached as Exhibit 1 to the accompanying Declaration of Russell D. Paul ("Paul Decl."), and enter an order: (1) granting preliminary approval

of the Settlement; (2) conditionally certifying the proposed Settlement Class for settlement purposes; (3) conditionally appointing Plaintiffs as the Representative Plaintiffs and Plaintiffs' Counsel, Russell Paul, Abigail Gertner, Amey Park, and Natalie Lesser of Berger Montague PC, as Settlement Class Counsel; (4) approving the Parties' proposed First Class Notice and Full Notice forms and plan for disseminating the First Class Notice (the "Notice Plan"); (5) appointing JND Legal Administration, as the Settlement Administrator; (6) setting deadlines for the filing of any objections to, or requests for exclusion from, the Settlement, and for other submissions in connection with the Settlement approval process; and (7) setting a Final Fairness Hearing date and briefing schedule for Final Approval of the Settlement and for Plaintiffs' application for service awards and attorneys' fees and expenses.

II. FACTS AND PROCEDURE

a. Overview of the Litigation and Settlement Negotiations

1. Plaintiffs' Experiences

Plaintiffs Aimee and Jared Hickman purchased a new 2020 Subaru Ascent in June 2020 in Maryland. They complained to a Subaru dealership about their vehicle lurching, shuddering, slipping, and engine revving and were told there was nothing wrong with the vehicle, which was not repaired. Plaintiff William Treasurer purchased a new 2019 Subaru Ascent in November 2018 in North Carolina. The transmission in his vehicle suddenly failed when he was stopped at a traffic light and his vehicle would not move. His vehicle received a full transmission replacement at only 24,900 miles. Plaintiffs Kelly and Frank Drogowski purchased a new 2019

Subaru Ascent on December 1, 2018 in Pennsylvania. Soon after they purchased their vehicle, they felt the vehicle pulling, shuddering, and hesitating, and thereafter complained multiple times to a Subaru dealership. Finally, the dealership determined that chain in the transmission was slipping and replaced the transmission, which did not resolve the issues. Plaintiff John Taitano purchased a new 2020 Subaru Ascent on August 28, 2019 in California. He complained to a Subaru dealership multiple times about a lack of vehicle power, losing power, jerking, and emitting a white exhaust cloud. There were no attempted repairs to the transmission, which continues to malfunction. Plaintiff Richard Palermo leased a new 2019 Subaru Ascent in December 2018 in Massachusetts. He complained several times to a Subaru dealership and directly to Defendant SOA's service department of the transmission jolting and the vehicle stuttering and losing power, without receiving any repairs. Plaintiffs Lori and Shawn Woiwode leased a new 2019 Subaru Ascent in September 2018 in North Dakota. They complained to a Subaru dealership several times about transmission problems, including a loss of power, which were never fixed. Plaintiff Carolyn Patol purchased a certified pre-owned 2020 Subaru Ascent in January 2021 in New York. She complained to a Subaru dealership twice of the vehicle jerking, tugging, and making loud noises when shifting gears. No repairs were made and she continues to experience transmission issues in her vehicle. Plaintiffs Cassandra and Steven Sember purchased a new 2020 Subaru Ascent in October 2019 in Virginia. Cassandra Sember took her vehicle to a Subaru dealership seven times for transmission problems, including failing to Cassandra Sember took her vehicle to the dealership five times between June 2020 and January 2021 and complained about

the transmission problems, including failing to shift, jerking, hesitating and pulling. The ECM was reprogrammed one time, and no repairs were offered the others. The transmission issues persist.

2. The Litigation

Plaintiffs filed their initial complaint on February 8, 2021, alleging that their vehicles were defective and asserting claims against Defendants for, *inter alia*, alleged violation of the consumer statutes of their states of residence, including the Maryland Consumer Protection Act, the North Carolina Unfair and Deceptive Trade Practices Act, and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, breach of express and implied warranties, and fraud by concealment or omission, the Magnuson-Moss Warranty Act, and unjust enrichment. ECF 1. After SOA moved to dismiss Plaintiffs' Complaint, *see* ECF 14, Plaintiffs filed their First Amended Complaint ("FAC") on May 14, 2021. *See* ECF 16. SOA moved to dismiss the FAC on June 11, 2021. *See* ECF 18. Plaintiffs filed their opposition to the Motion to Dismiss the FAC on July 6, 2021. *See* ECF 21. SOA filed its Reply in Support of the Motion to Dismiss the FAC on July 19, 2021. *See* ECF 24.

Subsequently, on December 3, 2021, Defendant SBR filed a Motion to Dismiss the FAC. *See* ECF 28. On January 21, 2022, Plaintiffs filed an opposition to Defendant's SBR's Motion to Dismiss and a separate Motion for Judicial Notice of the 2021 Recall.[2] *See* ECF 31 and 32. Defendant SBR requested and received

[2] On December 10, 2021, Subaru announced on its dealership network Subarunet that it had initiated a recall on 160,941 2019-2020 Subaru Ascents, as well as

additional briefing to address the 2021 Recall, which it contended mooted the entire suit. ECF Nos. 38, 43. The Court denied both Defendants' Motions to Dismiss and allowed nearly every claim brought by Plaintiffs to proceed. *See* ECF Nos. 48, 49 (dismissing only the warranty claims of Plaintiff Treasurer and Plaintiffs' request for injunctive relief). On November 2, 2022, Defendants filed a Consolidated Answer to the First Amended Complaint. *See* ECF 51. The Parties entered into a Stipulated Confidentiality Order on November 21, 2022. *See* ECF 56.

Discovery began in earnest shortly thereafter and the Parties agreed to explore settlement negotiations and attend mediation. *See* ECF 60. On January 19, 2023, the Court stayed the action to allow the parties to explore settlement. *See* ECF 61.

3. Settlement Negotiations

Plaintiffs sent to Defendants a Settlement Proposal Letter dated October 20, 2022. On December 19, 2022, counsel for Defendants initiated settlement discussions with Plaintiffs. Paul Decl. ¶ 24. On January 11, 2023, the Parties engaged the services of Bradley A. Winters, Esq. as mediator, scheduled the first mediation date for February 24, 2023, and conferred in January and February 2023, beginning negotiations of a potential class settlement. Paul Decl. ¶ 25.

The Parties held a pre-mediation conference call on February 22, 2023, at which time Defendants responded to Plaintiffs' Settlement Proposal Letter dated October 20, 2022; provided detailed information regarding Defendants' 2019 and

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approximately 37,000 2020 Subaru Legacy and Outbacks, which also have the TR690 transmission (the "2021 Recall").

2021 Recalls related to the Class Vehicles' drive train and the separate clutch plate-related issue detailed in Service Bulletin 16-136-22 dated January 20, 2022 and subsequent revisions to the Recalls; and outlined the structure of a potential settlement. Paul Decl. ¶ 26.

During the course of settlement negotiations, the parties exchanged confidential engineering information subject to the Confidentiality Order regarding the nature of the alleged defective transmission in the Settlement Class Vehicles. Paul Decl. ¶ 27. The parties continued negotiations, exchanging additional information related to a potential settlement. Based on the discovery exchanged, Class Counsel gained an understanding of both the strengths and weaknesses of Plaintiffs' claims. Paul Decl. ¶ 28.

The parties then attended two mediation sessions with Mr. Winters on February 24, 2023 and March 1, 2023. During these arm's length settlement discussions, the Parties negotiated the material terms of a class settlement of this action. Paul Decl. ¶ 29. Following the mediation sessions, and after months of vigorous, arm's length negotiations, the Parties were eventually able to negotiate a class settlement of this action. The terms of the Settlement are set forth in detail in the Settlement Agreement ("S.A.") submitted herewith for the Court's preliminary approval. (Exhibit 1). At all times, the Parties' negotiations were adversarial and non-collusive, and the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. Paul Decl. ¶ 30.

Plaintiffs conducted confirmatory discovery by serving requests for production of documents and interrogatories on SOA and SBR on May 9, 2023, to

which Defendants responded on June 23, 2023, and Plaintiffs took the deposition of Subaru employee Davis Jose on August 15, 2023. Paul Decl. ¶31.

III. MATERIAL TERMS OF THE PROPOSED SETTLEMENT

A. The Settlement Benefits

1. Hesitation and Slippage Related to the CVT Chain

(a) Warranty Extension for Replaced CVTs Under Any Recall

SOA has initiated several voluntary safety and emissions recalls that were supervised by the National Highway Traffic Safety Administration (NHTSA) and that relate to the Continuously Variable Transmission (CVT) in the Settlement Class Vehicles, including Recall Nos. 21V-955 and 21V-485, Manufacturer Recall Nos. WRK-21 and WRK-22, and the earlier WUV-07 recall, which was superseded by WRK-21 and WRK-22. These recalls target specific Subaru vehicles, such as the Class Vehicles, where the CVT chain may slip and/or break and/or the vehicle may experience hesitation or slipping.

As part of the Settlement, Subaru will extend its Limited Warranty for Genuine Subaru Replacement Parts and Accessories for CVTs replaced under, or prior to, any recall to two years with no mileage limitation. This extension of the Limited Warranty follows the same terms as Subaru's Limited Warranty for Genuine Subaru Replacement Parts and Accessories, except for the extended duration.

(b) Voucher For Class Members Who Made Visits an Authorized Subaru Dealer to Address a Malfunction Associated with a Recall

The Settlement provides that a class member may receive a voucher with a

value of $400 if they made two visits to an Authorized Subaru Dealer for a repair, attempted repair, replacement, diagnosis or inspection in which the primary purpose was to address a malfunction associated with a recall, which addresses symptoms such as the CVT chain slipping and/or breaking that can result in the vehicle experiencing hesitation or slipping. This excludes any repairs or visits related to an Authorized Subaru Dealer implementing a recall. For three or more such visits, the Voucher value is $750. Vouchers must be used within one year from the date of issuance, after which they will expire and no longer be valid.

2. Malfunctioning MPT Clutch and Shudder, Judder or Vibration

The Settlement provides the following benefits for a specific type of malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions), that is characterized by the potential failure of the multiple plate transfer (MPT) clutch and can result in the vehicle experiencing judder, shudder and vibration.

(a) Extended Warranty

Where shudder, judder, and vibration issues related to the MPT clutch, as specified in Service Bulletin 16-136-22 occur, or where there is damage to any component (such as the engine shaft, transmission shaft, etc.) caused by a malfunctioning MPT clutch in Settlement Class Vehicles, Subaru will extend its Powertrain Limited Warranty for Settlement Class Vehicles to eight years or 100,000 miles, whichever occurs first, from the In-Service Date. Apart from the extended duration, this Settlement Extended Warranty adheres to the Powertrain Limited

Warranty terms. This extended warranty covers a onetime repair of any component damaged by a damaged or malfunctioning MPT clutch (i.e., the engine shaft, transmission shaft, etc.), and a onetime MPT clutch replacement if the one-time repair is not effective.

The Limited Warranty for Genuine Subaru Replacement Parts and Accessories, which applies to any such MPT clutch replacement, will be extended from 1 year to 2 years and will not include any mileage limitation. Subaru will cover any diagnostic fees related to complaints of shudder, judder, shaking, or vibration under this Settlement Extended Parts Warranty. This warranty extension follows the same terms as the Limited Warranty for Genuine Subaru Replacement Parts and Accessories, except for the extended duration.

(b) Reimbursement for Expenses

Under the Settlement, Subaru agrees to reimburse former and current owners and lessees of Settlement Class Vehicles upon providing sufficient proof for certain unreimbursed out-of-pocket expenses related to any repair, attempted repair, replacement, or inspection performed by an Authorized Subaru Dealer prior to the Notice Date in which the primary purpose was to address the occurrence of shudder, judder and vibration issues related to the MPT clutch, as specified in Service Bulletin 16-136-22 (including all revisions), or damage to any component (such as the engine shaft or transmission shaft) caused by a malfunctioning MPT clutch in Settlement Class Vehicles. Expenses related to other discrete component failures of the CVT not related to the occurrence of vibration, shudder, and/or judder or failures caused by misuse, abuse, or neglect do not qualify for reimbursement.

(c) Voucher For Class Members Who Made Visits to an Authorized Subaru Dealer to Address Malfunctioning MPT Clutch and Shudder, Judder or Vibration

The Settlement provides that a class member may receive a voucher with a value of $400 if they made two visits to an Authorized Subaru Dealer for a repair, attempted repair, replacement, diagnosis or inspection in which the primary purpose was to address a malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions), characterized by the potential failure of the MPT clutch that can result in the vehicle experiencing judder, shudder and vibration. For three or more such visits, the Voucher value is $750. Vouchers must be used within one year from the date of issuance, after which they will expire and no longer be valid.

B. Release of Claims/Liability

In consideration of the Settlement benefits, Defendants and their related entities and affiliates (the "Released Parties," as defined in S.A. II.¶ 26) will receive a release of claims and potential claims based on (1) a specific type of malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions), characterized by the potential failure of the MPT clutch that can result in the vehicle experiencing judder, shudder and vibration; and (2) a malfunction associated with a Recall, which addresses symptoms such as the CVT chain slipping and/or breaking that can result in a Settlement Class Vehicle experiencing hesitation or slipping, which are the subject of this litigation and Settlement, including the claims that were or could have been asserted in the litigation related to these two malfunctions (the "Released Claims," as defined in

S.A. ¶ II.25). The scope of the release properly reflects the issues, allegations and claims in this case and specifically excludes claims for death, personal injury and property damage (other than damage to the Settlement Class Vehicle itself).

C. Claim Submission and Administration

The Parties agreed to retain JND Legal Administration as the Settlement Administrator. S.A. ¶¶ III.3, II.28. The Settlement Administrator will carry out the Notice Plan (discussed below), disseminate the CAFA notice, administer any requests for exclusion, and administer the Claims process including the review and determination of reimbursement claims pursuant to the Settlement terms, and distribution of payments to eligible Claimants whose claims are complete and have been approved under the Settlement terms. S.A. §§ VII.A., VII.B., VIII. Pursuant to the Settlement, SOA will pay all class notice and claim administrative costs, separate and apart from any benefits to which the Settlement Class Members may be entitled. S.A. § VI.G. Thus, none of these costs will be borne by the Class Members in any way.

The Settlement also provides for a fair, equitable, and straightforward claims process for Settlement Class Members. For each complete claim that is approved, the Settlement Administrator will mail a reimbursement check to the Settlement Class Member within the later of 90 days after receipt of the completed Claim, or 90 days after the Effective Date of the Settlement, whichever is later. S.A. ¶ VII.A.1. Significantly, the Settlement provides that if a claim and/or its supporting documentation is incomplete or deficient, or qualifies for less than the full amount of the reimbursement sought by the Settlement Class Member, the Settlement Administrator, within the later of 90 days after receipt of the completed Claim, or 90 days after the

Effective Date of the Settlement, whichever is later, will mail the Settlement Class Member a letter or notice outlining the deficiencies and allowing the Class Member to initiate a Second Review of the Settlement Administrator's decision and supply any additional explanation and/or documents to cure any alleged deficiencies within 45 days upon receipt of the Claim Decision and Option Letter. S.A. ¶¶ VII.A.3-4. If a Second Review is requested, the Second Review will be made by a senior level employee of Settlement Administrator who is a different employee from the one that made the initial determination and will be independent of the initial review, and will not involve consultation with the employee who made the initial determination. S.A. § VII.B. Defendants shall bear all costs of the Second Review. S.A. ¶ VII.B.7.

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

D. The Proposed First Class Notice and Plan for Dissemination ("Notice Plan")

The Settlement Agreement contains an effective Notice Plan to be paid for solely by Defendants. S.A. § VIII. The First Class Notice will be mailed to Settlement Class Members via first class mail within 90 days after entry of the Court's Order

preliminarily approving this proposed Settlement. Settlement Class Members will be located based on Subaru's records and the Settlement Class Vehicles' vehicle identification numbers ("VINs") and using the services of Experian (or a reasonable substitute agreed to by the Class Counsel). S.A. ¶ VIII.B.1.b. Experian obtains vehicle ownership histories through state DMV title and registration records, thereby identifying the names and addresses of record of the Settlement Class Members.[3] The Settlement Administrator will then check the provided addresses against current U.S. Postal Service software and/or the National Change of Address Database. In addition, after the First Class Notice is mailed, for any individual mailed the First Class Notice that is returned as undeliverable, the Settlement Administrator will re-mail to any provided forwarding address, and for any undeliverable notice packets where no forwarding address is provided, the Settlement Administrator will perform an advanced address search (e.g., a skip trace) and re-mail any undeliverable First Class Notice packets to any new and current addresses located. S.A. ¶ VIII.B.1.c.

In addition to the mailing, the Settlement Administrator will, with input from counsel for both Parties, establish a dedicated settlement website that will include details regarding the lawsuit, the Settlement and its benefits, and the Settlement Class Members' legal rights and options including objecting to or requesting to be excluded from the Settlement and/or not doing anything; instructions on how to contact the Settlement Administrator by e-mail, mail or (toll-free) telephone; copies of the Full Notice, Claim Form,

[3] The 90-day time period for mailing of the First Class Notice is needed to obtain the vehicle ownership and history records from the DMVs and/or state agencies of the 50 states, which typically takes a long time to obtain, and for the Settlement Administrator to identify the names and last known addresses of the Settlement Class Member to whom the First Class Notice will be mailed.

Settlement Agreement, Motions and Orders relating to the Preliminary and Final Approval processes and determinations, and important submissions and documents relating thereto; important dates pertaining to the Settlement including the procedures and deadlines to opt-out of or object to the Settlement, the procedure and deadline to submit a claim for reimbursement, and the date, place and time of the Final Fairness Hearing; and answers to Frequently Asked Questions (FAQs). S.A. ¶ VIII.B.1.f.

The Full Notice (Ex. C to Settlement Agreement) is detailed and complies with Rule 23(c)(2)(B). It "clearly and concisely states in plain, easily understood language" the nature of the action; the Settlement Class definition; the class claims, issues and/or defendant's positions; the Settlement terms and benefits available under the Settlement; Class Counsel's requested fee/expense award, and/or the Plaintiffs' requested service awards; the claim submission process including details and instructions regarding how and when to submit a Claim for reimbursement and the required proof/documentation for a Claim; the release of claims under the Settlement; the manner of and deadline by which Settlement Class Members may object to the Settlement; the manner of and deadline by which a Settlement Class Member may request to be excluded from the Settlement; the binding effect of the Settlement and release upon Settlement Class Members that do not timely and properly exclude themselves from the Settlement; the procedure by which Settlement Class Members may, if they so wish, appear at the final fairness hearing individually and/or through counsel; the settlement website address; how to contact the Settlement Administrator (through the dedicated toll-free number, email or by mail) with any questions about the settlement or requests for assistance, the identities of and contact information for Class

Counsel; and other important information about the Settlement and the Settlement Class Members' rights. *See* S.A., Ex. C.

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

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

After the Parties had already agreed upon the Settlement relief, the Parties negotiated, and eventually resolved, the issues of Settlement Representative Plaintiff service awards and Class Counsel reasonable attorneys' fees and Expenses. Defendants have agreed to not oppose (a) Class Counsel's request for attorneys' fees and expenses in the combined aggregate amount of up to (and not exceeding) $750,000, and (b) service awards of $3,750 to each of the eight named Plaintiffs/ Representative Plaintiffs (for a total combined service award of $30,000), such that there will be one payment per vehicle owned or leased by the named Representative Plaintiffs, i.e. eight payments, as indicated in the operative complaint of the Action. Plaintiffs will seek Court approval of these payments before the deadline for Settlement Class Members to file objections, as described in the schedule below. Significantly, the awards for class counsel's reasonable fees/expenses and for the class representatives, up to the amounts agreed by the Parties, will not reduce or otherwise have any effect on the benefits the Settlement Class Members will receive.

The requested Class Counsel Fees and Expenses and Representative Plaintiff Service Awards will be the subject of a separate fee motion, to be filed pursuant to the schedule set forth in the Preliminary Approval Order.

IV. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Plaintiffs seek class certification for settlement purposes in connection with preliminary approval of the Settlement. Plaintiffs propose, and Defendant does not object to, for settlement purposes only, certification of the Settlement Class, as defined in the Settlement Agreement, namely:

All natural persons who are residents of the continental United States as well as Hawaii and Alaska, currently or previously owning or leasing a Settlement Class Vehicle originally purchased or leased in the continental United States, Alaska or Hawaii. [4]

"Rule 23 of the Federal Rules of Civil Procedure allows this Court to certify

[4] Excluded from the Settlement Class are (a) claims for personal injury and/or property damage, though claims for a Qualifying Failure in a Settlement Class Vehicle are included regardless of additional personal injury or property damage not claimed; (b) all Judges who presided over the Action and their spouses; (c) all current employees, officers, directors, agents, and representatives of Defendants and their family members; (d) any affiliate, parent, or subsidiary of Defendants and any entity in which Defendants have a controlling interest; (e) used car dealers; (f) anyone who purchased a Settlement Class Vehicle solely for resale; (g) anyone who purchased a Settlement Class Vehicle with a salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (h) any insurer of a Settlement Class Vehicle; (i) issuers of extended vehicle warranties and service contracts; (j) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released Defendants or any Released Parties from any Released Claims; (k) any Settlement Class Member filing a timely and proper Request for Exclusion from the Settlement Class; and (l) third-party issuers.

a class for settlement purposes only." *Chemi v. Champion Mortg*., 2009 WL 1470429, at *6 (D.N.J. May 26, 2009). In the Third Circuit, "a class action—whether certified for settlement or litigation purposes— must meet the class requisites enunciated in Rule 23." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig*., 55 F.3d 768, 800 (3d Cir. 1995). "First, the Court must determine whether Plaintiffs have satisfied the prerequisites for maintaining a class action as set forth in Fed.R.Civ.P. 23(a)." *Id.* The requirements of "Rule 23(a) are (1) numerosity (a 'class [so large] that joinder of all members is impracticable'); (2) commonality ('questions of law or fact common to the class'); (3) typicality (named parties' claims or defenses 'are typical … of the class'); and (4) adequacy of representation (representatives 'will fairly and adequately protect the interests of the class')." *In re Pet Food Prod. Liab. Litig*., 629 F.3d 333, at 341 at n. 14 (3d Cir. 2010). If Plaintiffs satisfy these requirements, then "the Court must then determine whether the alternative requirements of Rule 23(b)(2) or 23(b)(3) are met." *McGee v. Cont'l Tire N. Am., Inc.,* 2009 WL 539893, at *8 (D.N.J. Mar. 4, 2009). Plaintiffs seek to certify a Settlement Class under FRCP 23(a) and 23(b)(3).

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

1. Numerosity Is Satisfied

Rule 23(a)(1) requires that a class be "so numerous that joinder of all members is impracticable." Numerosity is presumed "if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40." *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001). The Settlement Class is comprised

of all owners and lessees of the Settlement Class Vehicles in the continental United States, Hawaii and Alaska. S.A. ¶ II.31. Based on information provided by Defendants, the number of Settlement Class Vehicles is approximately 160,000. Paul Decl., ¶ 32. Accordingly, numerosity is satisfied.

2. Commonality Is Satisfied

Rule 23(a)(2) requires the existence of "questions of law or fact common to the class." The test for commonality is "easily met." *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994). All that is required is that "the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001). "[C]ommonality is informed by the defendant's conduct as to all class members and any resulting injuries common to all class members." *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 297 (3d Cir. 2011). A single common question is enough to satisfy the requirements of Rule 23(a)(2). *See Baby Neal*, 43 F.3d at 56; *see also* W. Rubenstein & H. Newberg, *Newberg and Rubenstein on Class Actions (Sixth)*, § 22:69 (2022).

In this case, the commonality requirement is readily satisfied because Plaintiffs' allegations arise from the same common nucleus of operative facts and all members of the proposed Settlement Class would cite the same common evidence to prove their identical claims - in particular, whether the Settlement Class Vehicles contain CVT defects related to the CVT Chain resulting in hesitation and slippage and related to the CPT resulting in shudder, judder and vibration, and whether Defendants had the requisite notice of and a duty to disclose the alleged defects.

Such questions are common to classes alleging automobile defects.[5] These questions are common to the class, capable of class-wide resolution, and "will resolve an issue that is central to the validity of each one of the claims in one stroke." *In re Nat'l Football League Players Concussion Inj. Litig*., 821 F.3d at 427 (3d Cir. 2016) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

3. Typicality Is Satisfied

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

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

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

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

4. The Settlement Class Is Adequately Represented

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

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

First, the proposed Representative Plaintiffs have retained counsel with significant experience in federal class actions, in particular, consumer and

automotive class actions. *See* Paul Decl. ¶¶ 3-6, Ex. 2; *Bredbenner v. Liberty Travel, Inc.*, 2010 WL 11693610, at *4 (D.N.J. Nov. 19, 2010) ("Plaintiffs' attorneys are qualified, experienced, and generally able to conduct the proposed litigation…"); *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 962 F. Supp. 450, 519 (D.N.J. 1997) ("Plaintiffs' team of legal counsel is comprised of preeminent class action attorneys from throughout the country, many of whom have been qualified as lead counsel in other nationwide class actions."). Furthermore, Class Counsel has spent a significant amount of time investigating the issues in this action including reviewing the inquiries and interviewing scores of Settlement Class Members, as well as performing research into the technical specifications of the Settlement Class Vehicles, the nature of the alleged condition and the costs of repair. Paul Decl. ¶¶ 9-14.

Class Counsel have significant experience litigating consumer class-actions, including automobile-defect class actions. Paul Decl. ¶¶ 3-6; Ex. 2. By way of example, Class Counsel received the following appointments: *Francis v. General Motors, LLC*, No. 2:19-cv-11044-DML-DRG (E.D. Mich.), ECF 40 (appointed as member of Plaintiffs' Steering Committee); *Weston v. Subaru of America, Inc.*, No. 1:20-cv-05876 (D.N.J.), ECF 49 (appointed as Interim Co-Lead Counsel); *Miller v. Ford Motor Co.*, No. 2:20-cv-01796 (E.D. Cal.) ECF 60 (appointed to Interim Class Counsel Executive Committee) and *Powell v. Subaru of America, Inc.*, No. 1:19-cv-19114 (D.N.J.), ECF 26 (appointed as Interim Co-Lead Counsel). Paul Decl. ¶ 6. The extensive experience of Class Counsel is discussed more fully in the Declaration of Mr. Paul filed concurrently herewith.

Second, Plaintiffs have no interest adverse or "antagonistic" to the absent Class Members. Each of the Plaintiffs is an owner of a Settlement Class Vehicle who claims to have experienced the Transmission Defect which is the condition at issue. See First Amended Class Action Complaint, ECF 16, ¶ 2. Plaintiffs have no interests antagonistic to the other Settlement Class Members and will continue to vigorously represent the Settlement Class's interests. The interests of Plaintiffs and other Class Members are aligned in seeking to maximize the Class's recovery relating to the alleged defect. *See In re Philips/Magnavox Television Litig.*, 2012 WL 1677244, at *6 (D.N.J. May 14, 2012) (plaintiffs adequately represent the interests of class where they purchased the same allegedly defective televisions as the rest of the class and were allegedly injured in the same manner).

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

1. Common Issues of Law and Fact Predominate

Rule 23(b)(3)'s predominance inquiry "'tests whether [a] proposed class[ ] [is] sufficiently cohesive to warrant adjudication by representation.'" *Marchese v. Cablevision Sys. Corp.*, 2016 WL 7228739, at *2 (D.N.J. Mar. 9, 2016) (citation omitted). There is "a 'key' distinction between certification for settlement purposes and certification for litigation: when taking a proposed settlement into consideration, individual issues which are normally present in litigation usually become irrelevant, allowing the common issues to predominate." *Id.*; *see Amchem Prod., Inc. v. Windsor*, 521 U.S. 591,618 (1997).

For settlement purposes, common questions of law and fact, such as whether

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

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

The proposed Settlement delivers prompt, certain relief while avoiding the substantial judicial burdens and the risk of inconsistent rulings that would arise from repeated adjudication of the same issues in individual actions. *See Henderson*, 2013 WL 1192479, at *6 ("To litigate the individual claims of even a tiny fraction of the potential Class Members would place a heavy burden on the judicial system and require unnecessary duplication of effort by all parties. It would not be economically

feasible for the Class Members to seek individual redress.").

V. PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED.

A. Standard for Preliminary Approval in the Third Circuit

The Third Circuit favors settlement of class action litigation. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) ("Settlement Agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts."). Where the parties can resolve the litigation through good faith and arms-length negotiations, judicial resources can be preserved, and the public interest is furthered. *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 n.16 (3d Cir. 1993); *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333 (quoting *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004)) ("We reaffirm the 'overriding public interest is settling class action litigation.'").

"Compromises of disputed claims are favored by the courts." *Lachance v. Harrington*, 965 F. Supp. 630, 638 (E.D. Pa. 1997) (citing *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910)). Settlement spares the litigants the uncertainty, delay and expense of a trial, while simultaneously reducing the burden on judicial resources. This is particularly true "in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *Parks v. Portnoff L. Assocs.*, 243 F. Supp. 2d 244, 249 (E.D. Pa. 2003) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 784 ("*GM Trucks*")); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 535 ("[T]here

is an overriding public interest in settling class action litigation, and it should therefore be encouraged"); *In re Sch. Asbestos Litig.*, 921 F.2d 1330, 1333 (3d Cir. 1990) (the court "encourage[s] settlement of complex litigation 'that otherwise could linger for years'").

In class actions, the "court plays the important role of protector of the [absentee members'] interests, in a sort of fiduciary capacity." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*,55 F.3d at 784. The ultimate determination whether a proposed class action settlement warrants approval resides in the Court's discretion. *See Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). The Third Circuit has adopted the following four-factor test to determine the preliminary fairness of a class action settlement: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.[6] *In re Gen. Motors Corp. Pick-Up Fuel Tank Prod. Liab. Litig.*, 55 F.3d at 785. If such factors are satisfied, the settlement is presumed to be fair. *Id.* Preliminary

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

approval of a proposed settlement is granted unless the proposed settlement is obviously deficient. *See Jones v. Com. Bancorp, Inc.*, 2007 WL 2085357, at *2 (D.N.J. July 16, 2007); *Udeen*, 2019 WL 4894568, at *2 (internal quotation omitted). *See also Rudel Corp. v. Heartland Payment Sys., Inc.*, 2017 WL 4422416, at *2 (D.N.J. Oct. 4, 2017) (applying "obviously deficient" standard to preliminary approval of class action settlement). Generally, "[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted." *Udeen*, 2019 WL 4894568 at *2 (internal quotation omitted). As set forth below, these standards are easily met here.

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

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

Under Rule 23(e)(2)(A) and (B), the Court should "consider whether the settlement is proposed by experienced counsel who reached the agreed-upon terms through arms-length bargaining." *Alves v. Main*, 2012 WL 6043272, at *9 (D.N.J. Dec. 4, 2012). "A settlement is presumed fair when it results from 'arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Udeen*, 2019 WL 4894568, at *2 (citation omitted). This presumption applies here because this settlement was only reached after months of arm's length negotiation between the parties. Paul Decl. ¶¶ 24-30. Moreover, negotiations regarding service award to the named plaintiffs and attorneys' fees did not begin until the terms of the

settlement for the class were agreed. Paul Decl. ¶ 30.

In addition, counsel for all parties are experienced in litigating class action cases, including automotive class actions such as this one, and only entered into the Settlement Agreement after diligently exploring the strengths and weaknesses of the case. *See* V1. A. 4, *supra*; Paul Decl. ¶¶ 24-32, and Ex. 1. Courts recognize that the opinion of experienced counsel supporting a settlement is entitled to considerable weight. *See Glaberson v. Comcast Corp*., 2014 WL 7008539, at *4 (E.D. Pa. Dec. 12, 2014) (a settlement is presumed to be fair "when the negotiations were at arm's length, there was sufficient discovery, and the proponents of the settlement are experienced in similar litigation"); *Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000) ("When the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight."). Here, proposed Class Counsel have made a considered judgment based on adequate information derived from an exchange of information with SOA, as well as their independent research and investigation, that the Settlement is not only fair and reasonable, but a favorable result for the Class. Class Counsel's beliefs are based on their deep familiarity with the factual and legal issues in this case and risks associated with continued litigation. This further weighs in favor of the fairness of the settlement. *See* W. Rubenstein & H. Newberg ,*Newberg and Rubenstein on Class Actions*, § 13:13 (6th ed. 2022) (noting that courts usually adopt an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval.). As such, this

factor weighs in favor of preliminary approval.

2. There Has Been Sufficient Discovery

Proposed Class Counsel obtained sufficient discovery to enter into the proposed Settlement on a fully informed basis. First, Class Counsel conducted a detailed investigation into the origins and nature of the issues reported by owners of the vehicles who had contacted them. Then, during the course of settlement negotiations, the parties negotiated a protective order and following its approval by the Court, exchanged information regarding Defendant's internal records concerning the nature of the alleged condition of the Settlement Class Vehicles including the scope the Class Vehicles involved as well as the extent and sufficiency of the aforesaid Recall performed by Defendants related to those vehicles. Paul Decl. ¶ 31. In particular, Plaintiffs requested and obtained technical information from Defendant as to the nature of the alleged condition and the actions taken via the Recall to ameliorate the condition, which Class Counsel carefully reviewed and analyzed. *Id.* *See Udeen*, 2019 WL 4894568, at *3 (third *Girsh* factor supported preliminary approval even when discovery was not "overly extensive"); *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d at 436.

Based on this discovery, Class Counsel gained an understanding of both the strengths and weaknesses of Plaintiffs' claims and the viability of the Recall's corrective actions. In particular, both sides would face considerable risks were the litigation to proceed. In contrast to the complexity, delay, risk, and expense of continued litigation, the proposed Settlement will produce certain, prompt and substantial benefits for the Settlement Class in addition to that which is afforded by

the Recall.

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

While it is important to remember that "settlement is a compromise," the proposed Settlement is reasonable and confers a substantial benefit on the Settlement Class, namely ***recovery of monies expended*** for parts and labor of a Covered Repair of the Gateway Control Module pursuant to the settlement's reasonable terms. As a result, the 8th and 9th *Girsh* factors are also fulfilled because these factors involve analyzing the outcome of the Settlement in comparison to the potential risks of litigation. *See e.g., In re Nat'l Football League Players Concussion Injury Litig*., 821 F.3d at 440 ("In evaluating the eighth and ninth *Girsh* factors, we ask 'whether the settlement represents a good value for a weak case or a poor value for a strong case.'") (citation omitted).

The benefit provided to the Settlement Class is substantial, addresses the alleged defect/condition that is the basis of Plaintiffs' complaint, is in line with similar automotive class-action settlements, and is fair, reasonable, and adequate. *See e.g., Udeen*, 2019 WL 4894568, at *1 (preliminarily approving a settlement that reimbursement of certain repair-related expenses); *Parrish v. Volkswagen Grp. of Am., Inc*., No. 8:19-cv-01148 (C.D. Cal. Jan. 27, 2022), ECF 81 (preliminarily approving class action settlement, which provided a reimbursement for previous out

of pocket costs of specified transmission-related repairs, to owners and lessees of certain 2019 Volkswagen Jetta or 2018, 2019, or 2020 Volkswagen Tiguan vehicles); *Patrick v. Volkswagen Grp. of Am., Inc*., No. 8:19-cv-01908 (C.D. Cal. Mar. 10, 2021), ECF 72 (finally approving class action settlement, which provided reimbursement for previous out of pocket costs for repairs of specified engine stalling issues, to owners and lessees of certain 2019 and 2020 Volkswagen Golf GTI or Jetta GLI vehicles equipped with manual transmissions suffering from an alleged engine stalling defect); *In re Volkswagen Timing Chain Prod. Liab. Litig.,* No. 2:16-CV-02765 (D. N.J. Dec. 14, 2018), ECF 235 (finally approving class action settlement for allegedly defective timing chain tensioners which provided reimbursement of repair costs); *Saint v. BMW of N. Am., LLC*, 2015 WL 2448846 (D.N.J. May 21, 2015) (finding settlement that provided a warranty extension of three months and a reimbursement program to owners or lessees of service demo vehicles was fair reasonable and adequate and finally approving class-action settlement).

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

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

granting preliminary approval.

4. Plaintiffs Intend to Respond to and Resolve Any Objections

The fourth factor cannot be fully evaluated before the First Class Notice has been disseminated to the Class informing Settlement Class Members of the proposed Settlement and its terms. However, Class Counsel is committed to responding to and resolving any concerns from Class Members made known to them prior to the Final Fairness Hearing. Moreover, Class Counsel believes that because the settlement provides for reimbursement of out-of-pocket costs of past repairs/replacements of Gateway Control Modules which failed or malfunctioned due to liquid ingress or intrusion, and follows the issuance of Recall 90S9 which prevents any such occurrences in the future, one would anticipate minimal objections.

5. The *Girsh* Factors Support Preliminary Approval

Although the foregoing analysis is sufficient for the Court to grant preliminary approval, courts sometimes consider the final approval factors to mitigate any potential issues in the future. *Udeen*, 2019 WL 4894568, at *3.[7] The Third Circuit

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

directs district courts to analyze the following nine factors at the final approval stage:

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

Girsh, 521 F.2d at 157. All of the *Girsh* factors that the Court can analyze at this stage support preliminary approval.[8]

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

The third factor, the stage of the proceedings and the amount of discovery completed, also supports preliminary approval. The parties have exchanged detailed information regarding the Transmission Defect. In addition, Plaintiffs' counsel have conducted their own extensive independent investigation into the alleged defect and have taken the deposition of Davis Jose. The discovery that has been completed has

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

allowed Plaintiffs' counsel to understand the strengths and weaknesses of their case, and to analyze the risks of future litigation in comparison to the relief offered by the Settlement. *Udeen*, 2019 WL 4894568, at *3.

The fourth, fifth, and sixth factors all analyze the risks of continued litigation. If the parties had been unable to resolve this case through the Settlement, the litigation would likely have been protracted and costly. Plaintiffs' counsel have litigated many automotive class actions that have taken several years to conclude. Before ever approaching a trial in this case, the parties likely would have briefed, and the Court would have had to decide, at least extensive motions to dismiss, discovery-related motions, a motion for class certification (along with a potential Rule 23(f) appeal), motions for summary judgment, as well as *Daubert* motions and other pre-trial and trial-related motions. Additionally, considerable resources would have been expended on discovery, depositions, and expert witnesses. It is therefore unlikely that the case would have reached trial before 2024, with post-trial activity to follow. *See Haas v. Burlington Cnty*.,2019 WL 413530, at *6 (D.N.J. Jan. 31, 2019) (granting approval where plaintiffs estimate the time to judgment, including trial, would take another three years).

Moreover, there is a risk of not obtaining class certification should this action be litigated rather than settled. Defendants are likely to assert numerous defenses that may apply to many individual putative class members under the applicable laws of their respective states, such as lack of standing, privity, and others, which, if litigated, could substantially if not completely bar many Settlement Class Members' claim and/or recovery. Likewise, if this action is litigated, there are other potentially

predominating individualized issues relating to each putative class member's claim including the facts and circumstances of each putative class member's purchase or lease transaction; what, if anything, each putative class member viewed, heard and/or relied upon prior to purchase or lease; whether individual putative class members ever experienced the Transmission Defect; and the individual facts and circumstances of any putative class member's interactions, if any, with Subaru dealers with respect to the breach of warranty claims. In addition, outside the context of a class settlement, the numerous differences in the laws among the 50 states may preclude certification of a nationwide class in the litigation context.

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

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

Finally, the remaining *Girsh* factors – the range of reasonableness of the settlement both independently and weighed against the risk of further litigation – support preliminary approval. The settlement must be judged "against the realistic,

rather than theoretical potential for recovery after trial." *Sullivan*, 667 F.3d at 323. In conducting the analysis, the court must "guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Litig.*, 55 F.3d at 806; *see also In re Shop-Vac Mktg. & Sales Pracs. Litig*., 2016 WL 3015219, at *2 (M.D. Pa. May 26, 2016) ("The proposed settlement amount does not have to be dollar-for-dollar the equivalent of the claim…and a satisfactory settlement may only amount to a hundredth or even a thousandth part of a single percent of the potential recovery.") (internal citations and quotations omitted). While this is not a traditional common fund settlement, the settlement provides significant relief to the Class Members in the form of out-of-pocket reimbursements for any repair, attempted repair, replacement, or inspection performed by an Authorized Subaru Dealer of judder, shudder and vibration caused by the potential failure of the MPT Clutch. And the reasonable class notice expense, claim administration expense, counsel fees/expenses and/or service awards are paid by Defendants without reducing, in any way, any Settlement Class Member's available benefits.

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

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

- the work counsel has done in identifying or investigating potential claims in the action;

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

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

Proposed Class Counsel, Russell D. Paul, Abigail J. Gertner, Amey J. Park and Natalie Lesser of the law firm of Berger Montague PC, satisfy this criteria. The firm expended time, effort, and expense investigating this action and the bona fides of the Settlement herein. Further, as set forth in the Declaration of Mr. Paul submitted herewith, Berger Montague PC is highly experienced in consumer and other complex class action litigation. *See* Paul Decl. ¶¶ 4-6; Ex. 2. It is clear from the firm's track record of success that proposed Class Counsel are highly skilled and knowledgeable concerning consumer law and class action practice. As confirmed by the result obtained in this case, Class Counsel have made the investment and have the experience to represent the Class vigorously. Accordingly, the appointment of the proposed Class Counsel under Rule 23(g) is warranted.

VII. THE NOTICE PROGRAM SHOULD BE APPROVED

In an action certified for settlement purposes under Rule 23(b)(3) "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). "Generally speaking, the notice should contain sufficient information to enable class members to make

informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class." *In Re Nat'l Football League Players Concussion Injury Litig*., 821 F.3d at 435.

Here, the Notice Program includes: (1) mailing a First Class Notice to the Settlement Class; (2) a settlement website established to allow Settlement Class Members to obtain information regarding the Settlement and access important documents regarding the Settlement and (3) a toll-free number to provide Settlement Class Members with information regarding the Settlement. First Class Notices and Full Notices provided in this manner have been held to be sufficient. *Udeen*, 2019 WL 4894568, at *7; *Patrick v. Volkswagen Grp. Of Am.*, 2021 WL 3616105, at *5 (C.D. Cal. Mar. 10, 2021).

A. Contents of the First Class Notice

The First Class Notice was designed to provide information about the Settlement and the Settlement Class Members' legal rights in a clear and concise manner. The First Class Notice includes the case caption; a description of the subject matter of the Action and claims asserted; a description of the Settlement Class and Settlement Class Vehicles; a description of the Settlement's benefits, their terms and conditions, and how to obtain them; the Settlement Class Members' rights including the right to object to, or opt out of, the Settlement and the procedures and deadlines for doing so; the procedures and deadline for filing a Claim and the information and documentation required; the claims being released under the Settlement; the contact information of Settlement Class Counsel and the Claims Administrator; other pertinent information including the amounts of the requested Representative

Plaintiff service awards and Class Counsel's Fees and Expenses; the date, time and location of the Final Fairness Hearing; and the procedure for requesting permission to appear at the hearing if a Settlement Class Member who has not opted out wishes to do so. A Claim Form will be mailed with the First Class Notice for easy use by any Settlement Class Member that wishes to submit a Claim under the Settlement. And, while the First Class Notice sets forth in detail what information and documentation is required for a valid Claim for Reimbursement, the required information and documentation is also listed on the Claim Form itself. Finally, the settlement website address will be set forth in the First Class Notice, as well as the address and toll-free telephone number of the Settlement Administrator, so that any Settlement Class Member who so desires may obtain further information or any needed assistance. S.A., Ex. B. The information in the First Class Notice complies in all respects with Rule 23.

B. The Scope and Process of the Notice

The First Class Notice, together with a Claim Form, will be mailed by the Settlement Administrator to Settlement Class Members using the U.S. first-class mail, postage prepaid. S.A. ¶ VIII.B.1. As described in the Settlement Agreement, for purposes of identifying the Settlement Class Members, the Settlement Administrator shall obtain from Experian or an equivalent company the names and current or last known addresses of all current and former Settlement Class Vehicle owners and lessees that can reasonably be obtained from the various states' Departments of Motor Vehicles, based upon the VINs of Settlement Class Vehicles provided by Defendants. The Settlement Administrator will then check the provided

addresses against current U.S. Postal Service software and/or the National Change of Address Database. For each individual notice that is returned as undeliverable, the Settlement Administrator will perform an advanced address search (e.g., skip trace) and re-mail any undeliverable notices to the extent any new and current addresses are located.

Furthermore, the Settlement Administrator, with the input of the Parties, will set up a settlement website that will include, *inter alia*: the Complaint; the Settlement Agreement; the First Class Notice, Full Notice, Claim Forms and Declarations; the motions for preliminary approval, final approval, and Settlement Class Counsel's Fees and Expenses and Representative Plaintiff service awards; the Preliminary Approval Order; Frequently Asked Questions ("FAQs"); instructions on how to submit a Claim for reimbursement; instructions on how to contact the Claims Administrator with any questions or requests for assistance; a portal for Settlement Class Members to insert their VIN to confirm that their vehicle is a Settlement Class Vehicle; the deadlines and procedures for objecting to the Settlement, requesting exclusion, and for submitting claims; and the date, time and location of the Final Fairness Hearing. S.A. ¶ VIII.B.1.(f).

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

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request the Court enter an Order: (1) granting preliminary approval of the Settlement; (2) conditionally certifying the proposed Settlement Class for settlement purposes; (3) conditionally appointing Plaintiffs as the Representative Plaintiffs and Plaintiffs' Counsel, Russell D. Paul, Abigail J. Gertner, Amey J. Park, and Natalie Lesser of Berger Montague PC, as Settlement Class Counsel; (4) approving the Parties' proposed First Class Notice and Full Notice forms and plan for disseminating the Class Notice (the "Notice Plan"); (5) conditionally appointing JND Legal Administration, as the Settlement Administrator; (6) setting deadlines for the filing of any objections to, or requests for exclusion from, the Settlement, and for other submissions in connection with the Settlement approval process; and (7) setting a Final Fairness Hearing date and briefing schedule for Final Approval of the Settlement and Plaintiffs' application for service awards and attorneys' fees and expenses.

Dated: August 18, 2023

Respectfully submitted,

By: */s/ Russell D. Paul*

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

AIMEE HICKMAN, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. SUBARU OF AMERICA, INC., *et al.*, Defendants.	Case No. 1:21-CV-02100-NLH-AMD

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

I, Russell Paul, hereby declare as follows:

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

2. I am a shareholder at Berger Montague PC ("Berger Montague"). I make this declaration in support of the Motion for Preliminary Approval of Class Action Settlement. I have personal knowledge of the facts stated below and, if called upon, could competently testify thereto.

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

4. Berger Montague's successful class action settlements providing relief to automobile owners and lessees include: *Parrish v. Volkswagen Grp. of Am., Inc*., No. 8:19-cv-01148 (C.D. Cal. Jan. 27, 2022), ECF 81 (preliminarily approving class action settlement for owners and lessees of certain 2019 Volkswagen Jetta or 2018, 2019, and/or 2019 Volkswagen Tiguan vehicles equipped with 8-speed transmissions susceptible to possible oil leaks, rattling, hesitation, or jerking); *Patrick v. Volkswagen Grp. of Am., Inc*., No. 8:19-cv-01908 (C.D. Cal. Sept. 28, 2021), ECF 72 (final approval of class action settlement for

owners and lessees of certain 2019 and 2020 Volkswagen Golf GTI or Jetta GLI vehicles equipped with manual transmissions suffering from an alleged engine stalling defect); *Weckwerth v. Nissan N.A.,* No. 3:18-cv-00588 (M.D. Tenn. Mar. 10, 2020) (as co-lead counsel, obtained a settlement covering over 2 million class vehicles of an extended warranty and reimbursement of 100% of out-of-pocket costs); *Stringer v. Nissan N.A.,* 3:21-cv-00099 (M.D. Tenn. Sept. 7, 2021); *Norman v. Nissan N. Am., Inc.*, No. 18-cv-00588-EJR (M.D. Tenn. July, 16, 2019); ECF 102 *Batista v. Nissan N. Am., Inc*., No. 14-24728-RNS (S.D. Fla. June 29, 2017), ECF 191 (approving class action settlement for an alleged CVT defect, including a two-year warranty extension); *Soto v. American Honda Motor Co., Inc*., No. 3:12-cv-01377 (N.D. Cal. 2012) (as co- counsel, obtained a warranty extension and out-of-pocket expense reimbursements for consumers who purchased defective Hondas); *Vargas v. Ford Motor Co*., No. CV12-08388 AB (FFMX), 2017 WL 4766677 (C.D. Cal. Oct. 18, 2017) (finally approving class action settlement involving transmission defects for 1.8 million class vehicles); *Davis v. General Motors LLC,* No. 8:17-cv-2431 (M.D. Fla. 2017) (as co-lead counsel, obtained settlement for defects in Cadillac SRX headlights); *Yeager v. Subaru of America, Inc*., No. l:14-cv-04490 (D.N.J. Aug. 31, 2016) (approving class action settlement for damages from defect causing cars to burn excessive amounts of oil); *Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc*., No. ATL-1461-03 (N.J. Sup. Ct. 2007) (as co-lead counsel, obtained settlement for nationwide class alleging damages from defectively designed

timing belt tensioners); *In Re Volkswagen and Audi Warranty Extension Litigation*, No. 07-md-1790-JLT (D. Mass. 2007) (obtained settlement valued at $222 million for nationwide class, alleging engines were predisposed to formation of harmful sludge and deposits leading to engine damage).

5. Other consumer class action settlements in which our firm was co-lead counsel include: *Cole v. NIBCO, Inc.*, No. 3:13-cv-07871-FLW-TJB (D.N.J. 2013) (obtaining a $43.5 million settlement on behalf of nationwide class of consumers who purchased defective tubing manufactured by NIBCO and certain fittings and clamps used with the tubing); *In re: Certain Teed Fiber Cement Siding Litigation*, MDL No. 2270 (E.D. Pa.) (obtained a settlement of more than $103 million in a multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class); and *Tim George v. Uponor, Inc., et al.,* No. 12-CV-249 (D. Minn.) (achieving a $21 million settlement on behalf of a nationwide class of consumers who purchased defective plumbing parts).

6. Class Counsel in this case have received the following appointments in automobile defect class actions: *Francis v. General Motors, LLC*, No. 2:19-cv-11044-DML-DRG (E.D. Mich.), ECF 40 (appointed as member of Plaintiffs' Steering Committee); *Weston v. Subaru of America, Inc.*, No. 1:20-cv-05876 (D.N.J.), ECF 49 (appointed as Interim Co-Lead Counsel); *Miller v. Ford Motor Co.*, No. 2:20-cv-01796 (E.D. Cal.) ECF 60 (appointed to Interim Class Counsel Executive Committee); *Powell v. Subaru of America, Inc.*, No. 1:19-cv-19114

(D.N.J.), ECF 26 (appointed as Interim Co-Lead Counsel); *Rieger v. Volkswagen Group of America, Inc.*, No. 1:21-cv-10546-NLH-EAP (D.N.J.), ECF 65 (appointed as Interim Lead Counsel); and *Harrison v. General Motors, LLC*, No. 2:21-cv-12927-LJM-APP (E.D. Mich.), ECF 35 (appointed as Interim Co-Lead Counsel). A profile of our firm's experience in complex class actions, and specifically in consumer protection and products liability cases, is attached as Exhibit 2.

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

Overview of Case

8. Berger Montague represents Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn, Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode. These Plaintiffs filed a class action against Subaru of America, Inc. and Subaru Corporation (together, "Subaru"), stemming from the design and manufacture of 2019-2020 Subaru Ascent vehicles that contain a TR690 transmission, a type of Continuously Variable Transmission ("CVT"), with defects in the design, workmanship, materials, and/or manufacturing of that transmission that causes hesitation, jerking, shuddering, lurching, squeaking, whining, or other loud noises, delays in acceleration, inconsistent shifting, stalling, and a loss of power or ability to accelerate at all.

Pre-Suit Investigation

9. In July 2018, counsel observed that owners of the newly-introduced 2019 Subaru Ascent complaining about the functioning of the TR690 transmission in their vehicles on online forums. Counsel began to monitor these complaints and Subaru's subsequent response to those complaints, including the issuance of the first technical service bulletin regarding transmission problems in the 2019 Subaru Ascent in January 2019 and a recall for all 2019 Subaru Ascents manufactured between February 2018 and May 2019 (the "2019 Recall"). Counsel observed that the bulletins issued by Subaru, nor the 2019 Recall meaningfully reduced the complaints being posted by Subaru Ascent owners.

10. Beginning in December 2020, counsel began receiving communications from Subaru Ascent owners, complaining of issues with their vehicles' performance as a consequence of the poor functioning of the vehicles' TR690 transmission. Numerous complaints were investigated by Berger Montague prior to commencing action of the litigation.

11. Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode purchased 2019-2020 Subaru Ascent vehicles. All of these owners complained that their vehicles experienced hesitation, jerking, shuddering, lurching, squeaking, whining, or other loud noises, delays in acceleration, inconsistent shifting, stalling, and/or a loss of power or ability to accelerate at all.

12. Counsel researched the stories of Aimee and Jared Hickman, Frank and

Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode concerning their purchases of their vehicles, their service records, and their specific car malfunctions and failures before bringing this class action lawsuit.

13. In addition to interviewing and responding to Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode, regarding their potential claims, Berger Montague responded to 110 inquiries from Class Members and investigated their reported claims. From pre-suit investigation and continuing over the course of litigation, Berger Montague conducted detailed interviews with Class Members regarding their pre-purchase research, their purchasing decisions, their repair histories, and their specific damages attributable to the TR690 transmission. Thereafter, counsel developed a plan for litigation based on Class Members' reported experiences with their Class Vehicles.

14. Berger Montague also researched reported issues with the TR690 transmission in Subaru Ascent vehicles and Subaru's response to them through information available from the National Highway Traffic Safety Administration ("NHTSA"). Counsel also reviewed and researched consumer complaints and discussions of problems attributable to the TR690 transmission in articles and forums online, in addition to those which had been previously compiled. In addition, counsel reviewed Subaru manuals and TSBs discussing the TR690 transmission. Finally, counsel conducted research into the various causes of action

and analyzed similar automotive actions.

Procedural History

15. On February 4, 2021, Berger Montague sent via certified mail a notice letter to Defendants on behalf of Plaintiffs Aimee Hickman and Kelly and Frank Drogowski. On February 5, 2021, Berger Montague sent via certified mail a notice letter to Defendants on behalf of Plaintiff William Treasurer. On February 15, 2021, Berger Montague sent via certified mail a notice letter to Defendants on behalf of Plaintiffs John Taitano, Richard Palermo, and Cassandra and Steven Sember. On February 26, 2021, Berger Montague sent via certified mail a notice letter to Defendants on behalf of Shawn and Lori Woiwode.

16. Each of these letters specified the problems related to the TR690 transmission and invited Subaru to address those concerns via a class-wide settlement. However, these notices to Subaru did not lead to a class-wide resolution of potential damages relating to a defect in the TR690 transmission in Subaru Ascent vehicles.

17. Therefore, on February 28, 2021, Berger Montague filed a detailed class action complaint against Subaru in the United States District Court for the District of New Jersey. In the complaint, Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski and William Treasurer asserted claims individually and on behalf of similarly situated individuals who purchased or leased 2019 to present Subaru Ascent vehicles equipped with the TR690 transmission. These plaintiffs asserted violation of the consumer statutes of their states of residence, including the

Maryland Consumer Protection Act, North Carolina Unfair and Deceptive Acts and Practices Act, Pennsylvania Unfair Trade Practices and Consumer Protection Law, Fraud by Omission or Fraudulent Concealment, Unjust Enrichment, along with a nationwide class. (ECF No. 2.) The complaint included allegations of Subaru's knowledge of consumer complaints and consumers' concern about 2019-2020 Subaru Ascent transmissions.

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

19. Subaru of America filed its Motion to Dismiss the Class Action Complaint on April 12, 2021. (ECF No. 14.) In response, on May 14, 2021, Plaintiffs filed their First Amended Class Action Complaint. (ECF No. 16.) On July 6, 2021, Subaru of America filed its Motion to Dismiss the First Amended Class Action Complaint. (ECF No. 18.) On December 2, 2021, Subaru Corporation filed its Motion to Dismiss the First Amended Class Action Complaint. (ECF No. 28.)

20. Plaintiffs filed their opposition brief to Subaru Corporation's motion on January 21, 2022 (ECF No. 33), and that same day, Plaintiffs filed a motion for the Court to take judicial notice of a Part 573 Safety Recall Report, filed by Subaru of America with NHTSA on December 9, 2021, indicating an intent to initiate a voluntary recall of certain 2019 and 2020 Subaru Ascents, commencing with a notification of vehicle owners in February 2022 (the "2021 Recall"). (ECF No. 36.)

21. The Court allowed further briefing addressing the 2021 Recall and ordered Defendants to file a reply brief in further support of Subaru of America's

Motion to Dismiss and Subaru Corporation's Motion to Dismiss by February 18, 2022. Defendant Subaru Corporation then filed a Reply Brief in Further Support of its Motion to Dismiss (ECF No. 38), Plaintiffs filed a Sur-Reply on March 11, 2023 (ECF No. 38) and Subaru Corporation then filed a Sur-Sur Reply on March 18, 2023. (ECF No. 43.)

22. On October 19, 2022, the Court issued its Opinion and Order (ECF Nos. 48 and 49) granting in part and denying in part each of Subaru of America's and Subaru Corporation's Motions to Dismiss. Discovery commenced shortly thereafter, with Plaintiffs and Defendants both propounding discovery requests.

23. The Court entered a Confidentiality Order on November 21, 2022 (ECF No. 56), and a Scheduling Order on December 6, 2022. (ECF No. 58).

Settlement Negotiations

24. Plaintiffs sent to Defendants a Settlement Proposal Letter dated October 20, 2022. On December 19, 2022, counsel for Defendants initiated settlement discussions with Plaintiffs.

25. On January 11, 2023, the Parties engaged the services of Bradley A. Winters, Esq. as mediator, scheduled the first mediation date for February 24, 2023, and conferred in January and February 2023, beginning negotiations of a potential class settlement.

26. The Parties held a pre-mediation conference call on February 22, 2023, at which time Defendants responded to Plaintiffs' Settlement Proposal Letter dated October 20, 2022; provided detailed information regarding Defendants' 2019 and

2021 Recalls related to the Class Vehicles' drive train and the separate clutch plate-related issue detailed in Service Bulletin 16-136-22 dated January 20, 2022 and subsequent revisions to the Recalls; and outlined the structure of a potential settlement.

27. During the course of settlement negotiations, the exchanged confidential engineering information subject to the Confidentiality Order regarding the nature of the alleged defective transmission in the Settlement Class Vehicles.

28. The parties continued negotiations, exchanging additional information related to a potential settlement. Based on the discovery exchanged, Class Counsel gained an understanding of both the strengths and weaknesses of Plaintiffs' claims.

29. The parties then attended two mediation sessions with Mr. Winters on February 24, 2023 and March 1, 2023. During these arm's length settlement discussions, the Parties negotiated the material terms of a class settlement of this action.

30. Following the mediation sessions, an after months of vigorous, arm's length negotiations, the Parties were eventually able to negotiate a class settlement of this action. Negotiations regarding service award to the named plaintiffs and attorneys' fees did not begin until the terms of the settlement for the class were agreed. The terms of the Settlement are set forth in detail in the Settlement Agreement ("S.A.") submitted herewith for the Court's preliminary approval. (Exhibit 1). At all times, the Parties' negotiations were adversarial and non-collusive, and the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.

31. Plaintiffs conducted confirmatory discovery by serving requests for production of documents and interrogatories on SOA and SBR on May 9, 2023, to which Defendants responded on June 23, 2023, and Plaintiffs took the deposition of Subaru employee Davis Jose on August 15, 2023. The parties exchanged information regarding Defendant's internal records concerning the nature of the alleged condition of the Settlement Class Vehicles including the scope the Class Vehicles involved as well as the extent and sufficiency of the aforesaid Recall performed by Defendants related to those vehicles.

32. Based on information provided by Defendants, the number of Settlement Class Vehicles is approximately 160,000.

33. In contrast to the complexity, delay, risk, and expense of continued litigation, the proposed Settlement will produce certain, substantial recovery for the Settlement Class.

Conclusion

34. Based on my experience, the Settlement is fair, reasonable, and adequate and the Settlement treats all Settlement Class Members equitably. I ask that the Court preliminarily approve the Settlement and authorize notice of the settlement to go out to the class.

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

Dated: August 18, 2023

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

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Aimee Hickman, Jared Hickman, William Treasurer, Kelly Drogowski, Frank Drogowski, John Taitano, Richard Palermo, Lori Woiwode, Shawn Woiwode, Carolyn Patol, Cassandra Sember, and Steven Sember, individually and on behalf of all others similarly situated, Plaintiffs, v. **Subaru of America, Inc. and Subaru Corporation** Defendants.	Civil Action No. 1:21-CV-02100 **Settlement Agreement and Release**

This Class Action Settlement Agreement and Release ("**Agreement**" or "**Settlement Agreement**") is entered into between Plaintiffs Aimee Hickman, Jared Hickman, William Treasurer, Kelly Drogowski, Frank Drogowski, John Taitano, Richard Palermo, Lori Woiwode, Shawn Woiwode, Carolyn Patol, Cassandra Sember, and Steven Sember (collectively "**Plaintiffs**" or "**Representative Plaintiffs**"), individually and as representatives of the Class (as defined below), and Subaru of America, Inc. ("**SOA**") and Subaru Corporation ("**SBR**") (collectively, with SOA, "**Defendants**" or "**Subaru**"). Collectively, Plaintiffs and Defendants shall be referred to as the "Parties." The Agreement is intended to fully, finally, and forever resolve, discharge, and settle the lawsuit captioned *Hickman v. Subaru of America, Inc.*, No. 1:21-CV-02100 pending in the United States District Court for the District of New Jersey (the "**Action**"), and all matters raised or that could have been raised therein, subject to the terms and conditions hereof and approval by the Court.

I. RECITALS

1. WHEREAS, Plaintiffs have filed the Action as a putative class action against Defendants, claiming that the Settlement Class Vehicles are equipped with a defective continuously variable transmission ("**CVT**");

2. WHEREAS, Plaintiffs seek damages and injunctive relief, and assert that the litigation should proceed as a class action;

3. WHEREAS, Defendants deny Plaintiffs' allegations and claims and maintain that the Settlement Class Vehicles are not defective; that no applicable warranties were breached nor applicable statutes violated ; that the Settlement Class Vehicles were properly designed, manufactured, distributed, marketed, advertised, warranted, and sold; and that Defendants have not engaged in any wrongdoing;

4. WHEREAS, the Parties have conducted, and continue to conduct, extensive discovery, including:

a. Document production and review, including over 6000 pages produced to date, with further productions pending, regarding:

i. Vehicle service and warranty histories for each of the Plaintiffs;

ii. Original and revised Technical Service Bulletins;

iii. Settlement Class Vehicle owner's manuals and warranty and maintenance books;

iv. Settlement Class Vehicle warranty claims data; and

v. SOA and SBR's internal investigation, analysis and conclusions.

b. Independent investigations and analyses by Plaintiffs and Defendants, including consultation with class members, and consultation and research by consultants retained for the purposes of the Litigation.

c. Plaintiffs' confirmatory discovery requests, which included both Requests for Production and Interrogatories.

5. WHEREAS, the Parties, following discovery, investigation, and careful analysis of their respective claims and defenses, and with full understanding of the risks, expense, and uncertainty of continued litigation, desire to compromise and settle all issues and claims that were, or could have been, brought in the Action by, or on behalf of, Plaintiffs and Settlement Class Members with respect to any allegation of defective CVTs in the Settlement Class Vehicles;

6. WHEREAS, the Parties agree that neither this Settlement Agreement nor the underlying settlement shall constitute or be construed as any admission of liability or wrongdoing on the part of Defendants, which is expressly denied, or that the Plaintiffs' claims or similar claims are, or would be, suitable for class treatment if the Action proceeded through litigation and trial;

7. WHEREAS, this Settlement Agreement is the result of arm's length negotiations between the Parties and was reached with the assistance of two mediation sessions before Bradley A. Winters, Esq., of JAMS, and in the view of counsel for Parties, based upon the information exchanged to date, is fair, adequate, and reasonable;

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

II. DEFINITIONS

Whenever the following capitalized terms are used in this Agreement and in the attached Exhibits (in addition to any definitions provided elsewhere in this Agreement), they shall have the following meanings:

1. "**Action**" means the lawsuit captioned *Hickman, et al. v. Subaru of America, Inc., et al.*, No. 1:21-CV-02100 pending in the United States District Court for the District of New Jersey.

2. "**Authorized Voucher Participant**" means any Class Member who has satisfied the Criteria for a Voucher. Status or rights as an Authorized Voucher Participant are not transferable.

3. "**Attorneys' Fees and Expenses**" means the amount awarded by the Court to Class Counsel to compensate them, and any other attorneys for Plaintiffs or the Settlement Class, and is inclusive of all attorneys' fees, costs, and expenses of any kind in connection with the Action. Attorneys' Fees and Expenses shall not, under any circumstances, exceed the sum of $750,000.00 ("seven hundred fifty thousand dollars"). Attorneys' Fees and Expenses shall be in addition to the benefits provided directly to the Settlement Class, and shall not reduce or otherwise have any effect on the benefits made available to the Settlement Class. Attorneys' Fees and Expenses shall not include the payment of Service Awards to settlement class representatives by Defendants, as discussed below.

4. "**Authorized Subaru Dealer**" means any authorized Subaru dealer in the continental United States, Hawaii or Alaska.

5. "**Claim**" or "**Claim for Reimbursement**" shall mean the timely submission of the required Claim Form and proof by which a Settlement Class Member seeks to claim the reimbursement or compensation available under this Settlement Agreement.

6. "**Claim Form**" means the forms attached hereto as **Exhibit A**, to be provided to the Settlement Class Members via the Settlement website.

7. "**Class Counsel**" shall mean Abigail Gertner of Berger Montague PC, Amey J. Park of Berger Montague PC, Natalie Lesser of Berger Montague PC, and Russell D. Paul of Berger Montague PC.

8. "**Court**" refers to the United States District Court for the District of New Jersey.

9. **"Criteria for a Voucher"** refers to the conditions a Class Member must meet to be eligible for a Voucher under this Settlement Agreement. To be eligible, a Class Member:

a. Must be a current or former owner/lessee of a Class Vehicle as of the Notice Date; and

b. Must provide Proof of Presentment showing that, while owning or leasing the Class Vehicle, the Settlement Class Member had at least two previous instances where they either:

i. Presented the vehicle to an Authorized Subaru Dealer for a repair, attempted repair, replacement, diagnosis or inspection for a Qualifying Voucher Failure but not for the implementation of a Recall; or

ii. Contacted SOA's customer service division about a Qualifying Voucher Failure, but not about the implementation of a Recall.

10. "**Defendants' Counsel**" means Ballard Spahr LLP, 700 East Gate Drive, Mt. Laurel 08054, who are the attorneys of record representing Subaru of America, Inc. and Subaru Corporation.

11. "**Effective Date**" means ten (10) business days after the later of (a) the date upon which the time for seeking appellate review of the Judgment (by appeal or otherwise) shall have expired; or (b) the date upon which the time for seeking appellate review of any appellate decision affirming the Judgment (by appeal or otherwise) shall have expired and all appellate

challenges to the Judgment shall have been dismissed with prejudice without any person having further right to seek appellate review thereof (by appeal or otherwise).

12. "**Fairness Hearing**" means the hearing at which the Court will consider whether to finally approve the Agreement as fair, reasonable, and adequate, certify the Class for settlement purposes, award Attorneys' Fees and Expenses, including settlement class representative Service Awards, enter the Final Judgment and Order, and make such other final rulings as are contemplated by this Settlement Agreement.

13. "**First Class Notice**" means the postcard notice, substantially in the form attached hereto as **Exhibit B**, to be provided to Settlement Class Members in accordance with the Preliminary Approval Order issued by the Court.

14. "**Full Notice**" means the notice substantially in the form attached hereto as **Exhibit C**, as approved by the Court, which will be provided to Settlement Class Members after the Effective Date via the Settlement website.

15. "**In-Service Date**" shall mean the date on which a Settlement Class Vehicle was delivered to the first retail purchaser or lessee; or if the vehicle was first placed in service as a "demonstrator" or "company" car, then the date on which the vehicle was placed in such service.

16. "**Final Judgment and Order**" or "**Judgment**" means the judgment, substantially in the form attached hereto as **Exhibit D**, to be entered by the Court in the Action finally approving this Agreement and dismissing the Action with prejudice.

17. "**Lemon Law Action**" means any action asserting individual claims under any federal or state statute defining and allowing suit for defective automobiles, and/or an individual action for the enforcement of express or implied warranties for the fitness of an automobile concerning a Qualifying Failure.

18. "**Notice Date**" means the date the Settlement Administrator provides the First Class Notice to the Settlement Class Members. Subject to the Court's approval, the Notice Date shall be within 90 (ninety) days after the Court enters a Preliminary Approval Order, substantially in the form attached hereto as **Exhibit E**.

19. "**Preliminary Approval Order**" means the Court's order preliminarily approving the terms of this Agreement as fair, adequate, and reasonable, including the Court's approval of the form and manner of giving notice to Settlement Class Members, substantially in the form attached hereto as Exhibit E.

20. **"Proof of Repair Expenses"** refers to reasonable documentation (e.g., repair order, receipt, credit card statement, bank statement, invoice, photograph, historical accounting record, or similar documents, in any combination) for a Qualifying Repair before the Notice Date. This documentation must include: (i) repair date; (ii) vehicle make and model; (iii) vehicle identification number; (iv) vehicle mileage at repair time; (v) repair facility; (vi) description of work, with a parts and labor cost breakdown; and (vii) proof of payment by (or on behalf of) the Settlement Class Member for a repair or replacement eligible for reimbursement under this Settlement Agreement.

21. "**Qualifying Voucher Failure**" in the context of this Settlement Agreement, is a criterion used to determine the eligibility of Class Members for compensation, benefits, or remedies as outlined in the terms of this Agreement. Specifically, it refers to:

a. A specific type of malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions) characterized by the potential failure of the multiple plate transfer ("**MPT**") clutch that can result in the vehicle experiencing judder, shudder and vibration, and

b. A malfunction associated with a Recall, which addresses symptoms such as the CVT chain slipping and/or breaking that can result in the vehicle experiencing hesitation or slipping.

A Qualifying Voucher Failure may be noticeable to the driver or passengers as hesitation, slip, shudder, vibrations, and/or judder. Other discrete component failures of the CVT not related to this hesitation, slip, shudder, vibration and/or judder or failures caused by misuse, abuse, or neglect are not Qualifying Voucher Failures.

22. "**Qualifying Extended Warranty Failure**" refers to the occurrence of shudder, judder and vibration issues related to the MPT clutch, as specified in the 16-136-22 Service Bulletin, or damage to any component (such as the engine shaft or transmission shaft) caused by a malfunctioning MPT clutch in Class Vehicles. In the context of this Settlement Agreement, a Qualifying Extended Warranty Failure is a criterion used to determine the eligibility of Class Members for compensation, benefits, or remedies as outlined in the terms of this Agreement. Other discrete component failures of the CVT not related to the occurrence of vibration, shudder and/or judder or failures caused by misuse, abuse, or neglect are not Qualifying Extended Warranty Failures.

23. "**Qualifying CVT Repair**" refers to any repair, attempted repair, replacement, or inspection performed by an Authorized Subaru Dealer in which the primary purpose is to address a Qualifying Extended Warranty Failure, excluding any repairs or visits related to a Recall. A Qualifying CVT Repair does not include repair work performed to address a condition that was unrelated to a Qualifying Extended Warranty Failure. Repairs performed pursuant to any Subaru recalls, including those related to the CVT, are governed by the National Traffic and Motor

Vehicle Safety Act, 49 U.S.C. §§ 30101–30505, and are not considered Qualifying CVT Repairs for the purposes of this Settlement Agreement.

24. "**Recall**" refers to any voluntary safety and emissions recalls initiated by SOA and supervised by the National Highway Traffic Safety Administration (NHTSA) that affect the CVT in the Settlement Class Vehicles, including Recall Nos. 21V-955 and 21V-485, Manufacturer Recall Nos. WRK-21 and WRK-22, and the earlier WUV-07 recall, which was superseded by WRK-21 and WRK-22. These recalls target specific Subaru vehicles, such as the 2019-2020 Subaru Ascent vehicles produced between February 22, 2018, and July 20, 2020, where the CVT chain may slip and/or break and/or the vehicle may experience hesitation or slipping. The definition encompasses any recalls addressing safety and emissions concerns related to the CVT and which prescribe the necessary corrective actions to be taken by the manufacturer and authorized dealers to ensure the safety, performance, and compliance of the impacted vehicles. The required reimbursement program under the Recall covers properly documented out-of-pocket expenses paid for diagnostic fees.

25. "**Released Claims**" or "**Settled Claims**" means any and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, actions, rights of action, remedies of any kind and/or causes of action of every nature and description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, regardless of any legal theory, existing now or arising in the future, by Plaintiffs and any and all Settlement Class Members based on a Qualifying Voucher Failure of Settlement Class Vehicles including claims for reimbursement for amounts spent on parts or related labor, or diminution in value of the vehicle, that were or could have been raised in the Action related to a Qualifying Voucher Failure. This applies to claims arising under statute, including a state lemon law, rule, regulation, common law or equity, and

including, but not limited to, any and all claims, causes of action, rights or entitlements under any federal, state, local or other statute, law, rule and/or regulation, any claims relating to violation of California Business and Professions Code Sections 17200-17209, California Business and Professions Code Section 17500, or the California Consumer Legal Remedies Act (California Civil Code Section 1750-1784), any consumer protection, consumer fraud, unfair business practices or deceptive trade practices laws, any legal or equitable theories, any claims or causes of action in tort, contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi contract, unjust enrichment, express warranty, implied warranty, secret warranty and/or any injuries, losses, damages or remedies of any kind, in law or in equity, under common law, statute, rule or regulation, including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, restitution, recovery of attorneys' fees or litigation costs, or any other legal or equitable relief. This also includes any related claims or counter claims that Defendants may have against Plaintiffs, the Settlement Class, or Plaintiffs' counsel. This release expressly exempts claims for death, personal injuries and property damage (other than damage to the Settlement Class Vehicle) that were not asserted in the Action. Nothing in this Settlement shall be construed as a waiver, release and/or compromise of any Lemon Law Action pending as of the Notice Date pertaining to the defective CVTs as alleged in the Action. Settlement Class Members expressly waive the provisions of Section 1542 of the California Civil Code and understand that such section provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

26. "**Released Parties**" shall mean Subaru of America, Inc., Subaru Corporation, Subaru Tecnica International, Inc., North American Subaru, Inc., Subaru Research & Development, Inc., Subaru of Indiana Automotive, Inc., all designers, manufacturers, assemblers, distributors, importers, marketers, advertisers, testers, inspectors, sellers, suppliers, component suppliers, lessors, warrantors, repairers and servicers of Settlement Class Vehicles and each of their component parts and systems, all dealers, lessors and retailers of Settlement Class Vehicles, and all of the aforementioned persons' or entities' past and present directors, officers, shareholders, principals, partners, employees, agents, servants, members, assigns, representatives, attorneys, insurers, trustees, vendors, contractors, heirs, executors, administrators, successor companies, parent companies, subsidiary companies, affiliated companies, divisions, trustees, vendors and representatives.

27. "**Service Awards**" means the $3,750 (combined total of $30,000) that Defendants have agreed to pay to the named Class Representatives, such that there will be one payment per vehicle owned or leased by the named Class Representative, i.e. eight payments, as indicated in the operative complaint of the Action, upon finalization of this Settlement Agreement and approval by the Court.

28. "**Settlement Administrator**" means JND Legal Administration, 1100 2nd Ave Suite 300, Seattle, WA.

29. **"Settlement Class"** means the stipulated certified class as described in Section III.

30. "**Settlement Class Vehicle**" and "**Vehicles**" means model year 2019-2020 Ascent vehicles.

31. "**Settlement Class Member**" means, subject to the exclusion in Section III, a natural person who is the current or former owner or lessee of a Settlement Class Vehicle, who purchased or leased in the continental United States, including Alaska or Hawaii, who purchased the vehicle for purposes other than for resale, who does not validly and timely opt out of the Settlement Class pursuant to the procedure set forth in the Court's Preliminary Approval Order. This definition is not intended to exclude military personnel stationed overseas.

32. "**Settlement Extended Warranty**" or "**Extended Warranty**" means the terms of extended warranty coverage as described in Section VI.A.

33. "**Settlement Extended Parts Warranty**" or "**Extended Parts Warranty**" means the terms of extended parts warranty coverage as described in Section VI.B.

34. "**Technical Service Bulletin**" or "**TSB**" means the document(s) issued by Subaru, which provide Authorized Subaru Retailers with the recommended diagnostic and repair procedures for Settlement Class Vehicles. Any future issued or revised TSB shall not diminish the relief provided to Class Members under the Settlement.

35. "**Unknown Claims**" means any Released Claim that any Plaintiff or Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release provided for herein, including without limitation those that, if known to him, her or it, might have affected his, her or its settlement and release pursuant to the terms of this Agreement, or might have affected his, her or its decision not to object to the settlement terms memorialized herein. As more fully discussed in Section V below, Settlement Class Members expressly waive all rights to pursue Unknown Claims and rights conferred upon them by the provisions of Section 1542 of the California Civil Code or any other law that arise from the same facts as were alleged in the Action and that were or could have been raised in the Action related to a

Qualifying Failure. As outlined above, and in furtherance of the same, the definitions of "Released Claims" and "Unknown Claims" shall both expressly exempt claims for death, personal injuries and property damage (other than damage to the Settlement Class Vehicle) that were not asserted in the Action.

36. "**Voucher**" means a one-time, non-transferable credit issued to qualifying Settlement Class Members, which can be applied towards the purchase of sales, services, or merchandise.

III. ESTABLISHMENT OF A SETTLEMENT CLASS

1. The Parties stipulate to certification, for settlement purposes only, of a Settlement Class defined as follows:

> All natural persons who are residents of the continental United States as well as Hawaii and Alaska, currently or previously owning or leasing a Settlement Class Vehicle originally purchased or leased in the continental United States, Alaska or Hawaii. Excluded from the Settlement Class are (a) claims for personal injury and/or property damage, though claims for a Qualifying Failure in a Settlement Class Vehicle are included regardless of additional personal injury or property damage not claimed; (b) all Judges who presided over the Action and their spouses; (c) all current employees, officers, directors, agents, and representatives of Defendants and their family members; (d) any affiliate, parent, or subsidiary of Defendants and any entity in which Defendants have a controlling interest; (e) used car dealers; (f) anyone who purchased a Settlement Class Vehicle solely for resale; (g) anyone who purchased a Settlement Class Vehicle with a salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (h) any insurer of a Settlement Class Vehicle; (i) issuers of extended vehicle warranties and service contracts; (j) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released Defendants or any Released Parties from any Released Claims; (k) any Settlement Class Member filing a timely and proper Request for Exclusion from the Settlement Class; and (l) third-party issuers.

2. Solely for purposes of implementing this Settlement Agreement and effectuating the settlement, Defendants stipulate to the Court entering an order preliminarily certifying the

Settlement Class, appointing Representative Plaintiffs as representatives of the Settlement Class, and appointing Class Counsel to serve as counsel for the Settlement Class.

3. For the purposes of implementing this Settlement Agreement and effectuating the settlement, the Parties stipulate to propose that JND Legal Administration will be appointed as the Settlement Administrator, subject to the approval of the Court. Defendants will pay all costs of notice of the settlement and settlement administration.

4. For the purposes of implementing this Settlement Agreement and effectuating the settlement, Subaru stipulates that Representative Plaintiffs and Class Counsel are adequate representatives of the Settlement Class.

IV. NO ADMISSION OF LIABILITY

1. The Parties acknowledge that the Settlement Consideration, described in Section VI, represents a compromise and final settlement of disputed claims. Neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute or be construed as an admission of the validity of any claim or any fact alleged in the Action or any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendants and the Released Parties, or any admissions by Defendants and the Released Parties of any claim or allegation made in any action or proceeding against them. The Parties understand and agree that neither this Agreement nor the negotiations that preceded it shall be offered or be admissible in evidence against Defendants, the Released Parties, the Plaintiffs, Plaintiffs' counsel, or the Settlement Class Members, or cited or referred to in the Action or any action or proceeding, except in an action or proceeding brought to enforce the terms of this Agreement or to raise the release provisions of this Agreement as a defense.

V. RELEASE AND WAIVER

1. The Parties agree to the following release and waiver ("Release"), which, except as noted in Section V.3, below, shall take effect upon the entry of the Final Judgment and Order.

2. In consideration of the Settlement, all parties, including Defendants, Representative Plaintiffs, Plaintiffs, and each Settlement Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through, or under them, agree to fully, finally, and forever release, relinquish, acquit, discharge, and hold harmless the Released Parties from any and all Released Claims.

3. Representative Plaintiffs, Plaintiffs, and Settlement Class Members who have not validly and timely excluded themselves from this Settlement Agreement may not initiate any action, including any Lemon Law Action, against the Released Parties beginning two (2) days after the Notice Date, to the extent that the action relates in any way to a Qualifying Failure.

4. Notwithstanding the foregoing, Representative Plaintiffs, Plaintiffs, and Class Members are not releasing claims for personal injury, wrongful death, or actual physical property damage alleged to be caused by a Qualifying Failure.

5. The Final Judgment and Order will reflect these terms.

6. Defendants, Representative Plaintiffs, Plaintiffs, and Settlement Class Members expressly agree that this Release, the Final Judgment and Order, will be, and may be raised as a complete defense to, and will preclude, any action or proceeding encompassed by this Release.

7. Representative Plaintiffs, Plaintiffs, and Settlement Class Members who have not validly and timely excluded themselves from this Settlement Agreement shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action, and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on

behalf of any other person or entity with respect to the claims, causes of action, and/or any other matters released through this Settlement Agreement.

8. In connection with this Settlement Agreement, Representative Plaintiffs, Plaintiffs, and Class Members acknowledge that they may hereafter discover Unknown Claims, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Release herein. Nevertheless, it is the intention of Class Counsel and Settlement Class Members in executing this Settlement Agreement to fully, finally, and forever settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) concerning the Action, except as otherwise stated in this Settlement Agreement.

9. Representative Plaintiffs expressly understand and acknowledge, that all Representative Plaintiffs, Plaintiffs, and Settlement Class Members will be deemed by the Final Judgment and Order to acknowledge and expressly waive, the provisions of Section 1542 of the California Civil Code and understand that such section provides:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Representative Plaintiffs, Plaintiffs, and Settlement Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

10. Representative Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under this Settlement Agreement. Representative Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Representative Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action. Settlement Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under this Settlement Agreement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Settlement Class Member(s) are not aware of anyone other than themselves claiming or sharing any interest in their respective Class Vehicle, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

11. Representative Plaintiffs, Class Counsel and any other attorneys who receive attorneys' fees and costs from this Settlement Agreement acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Settlement Agreement; and that this settlement was reached with the assistance of mediation before Bradley A. Winters, Esq., JAMS Mediator, Arbitrator and Referee/Special Master. By executing this Settlement Agreement, Representative Plaintiffs, Plaintiffs, and Settlement Class Members state that they have not relied upon any statements or representations made by the Released Parties or any

person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.

12. Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed herein.

13. Representative Plaintiffs and Plaintiffs' Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Settlement Agreement and shall be included in any Final Judgment and Order entered by the Court.

VI. SETTLEMENT CONSIDERATION

In consideration of the full and complete release of all Released Claims against all Released Parties, and the dismissal of the Action with prejudice, Defendants agree to provide the following benefits to the Settlement Class. The availability of settlement benefits upon the Notice Date is a negotiated term of the settlement, secured by Class Counsel as a direct result of the Class Action Settlement. If a final judgment is not entered for this Settlement, Subaru reserves the right to revert all warranties back to the limits set forth in the applicable Powertrain Limited Warranty and the Limited Warranty for Genuine Subaru Replacement Parts and Accessories.

A. Settlement Warranty Extension for Current Owners or Lessees

1. Effective on the Notice Date, Subaru will extend its Powertrain Limited Warranty for Settlement Class Vehicles concerning a Qualifying Extended Warranty Failure or components damaged by a malfunctioning MPT clutch (*i.e.*, engine shaft, transmission shaft, etc.), covering repair work performed by an Authorized Subaru Dealer to address a Qualifying Extended Warranty Failure. The extended warranty lasts for eight years or 100,000 miles, whichever occurs first, from the In-Service Date. Apart from the extended duration, the

Settlement Extended Warranty adheres to the Powertrain Limited Warranty terms. If a one-time repair is ineffective, the warranty shall provide for a CVT replacement, if required.

2. The Settlement Extended Warranty is transferable during its coverage period.

3. The Settlement Extended Warranty covers all costs associated with Qualifying Repairs performed by an Authorized Subaru Dealer.

4. The Settlement Extended Warranty is subject to the same terms and conditions set forth in the Settlement Class Vehicle's Powertrain Limited Warranty and the Warranty and Maintenance Booklet, except as specifically modified herein.

5. Vehicles are ineligible for warranty coverage under the Powertrain Limited Warranty's existing terms if declared a total loss, sold for salvage, dismantled, destroyed, or materially altered; or if the odometer mileage has been tampered with, rendering it indeterminable. Such vehicles are excluded from the Settlement Extended Warranty.

6. The Settlement Extended Warranty, the Settlement Parts Warranty Extension discussed in Part VI.B below, and the Settlement Agreement generally, do not add to, diminish, or otherwise affect any express or implied warranty, duty, or contractual obligation of Defendants regarding Settlement Class Vehicles, except for matters related to Qualifying Voucher Failures, Qualifying Extended Warranty Failures, and Qualifying CVT Repairs.

7. SOA may continue implementing vehicle service, customer satisfaction or goodwill policies, programs, or procedures at its discretion, extending goodwill consideration to individual Settlement Class Members on a case-by-case basis without considering their entitlement to relief under the Settlement Agreement. However, a Settlement Class Member cannot obtain more than one recovery for the same Qualifying CVT Repair. Any compensation paid under the Settlement Agreement for a Qualifying CVT Repair will be reduced by any cash

or cash-in-kind concession, excluding the value of any Voucher paid pursuant to this Settlement Agreement, related to a Qualifying CVT Repair provided by SOA, a Subaru Authorized Dealer, or any other entity, up to no reimbursement if the Class Member received payments equal to or exceeding the available settlement relief. There will be no offset for non-cash considerations previously provided (e.g., Bluetooth speakers, bags, vacuum cleaners). Interim goodwill decisions by SOA will not deprive a Settlement Class Member of the Settlement Extended Warranty, the Settlement Parts Warranty Extension discussed in Part VI.B below, or benefits under the Settlement Agreement not previously provided as goodwill.

B. Settlement Parts Warranty Extension for Current Owners or Lessees

1. Effective on the Notice Date, Subaru will extend its Limited Warranty for Genuine Subaru Replacement Parts and Accessories for any MPT clutch replacement to two years with no mileage limitation. The Settlement Extended Warranty follows the same terms as the Limited Warranty for Genuine Subaru Replacement Parts and Accessories, except for the extended duration.

2. Effective on the Notice Date, Subaru will extend its Limited Warranty for Genuine Subaru Replacement Parts and Accessories for CVTs replaced as part of, or prior to, the Recall to two years with no mileage limitation. The Settlement Extended Warranty follows the same terms as the Limited Warranty for Genuine Subaru Replacement Parts and Accessories, except for the extended duration.

3. The Settlement Extended Parts Warranty is transferable during its coverage period.

4. The Settlement Extended Parts Warranty covers all costs associated with Qualifying Repairs performed by an Authorized Subaru Dealer.

5. The Settlement Extended Parts Warranty is subject to the same terms and conditions set forth in the Settlement Class Vehicle's Limited Warranty for Genuine Subaru Replacement Parts and Accessories and the Warranty and Maintenance Booklet, except as specifically modified herein.

C. Voucher for Multiple Qualifying Repair Visits

1. An Authorized Voucher Participant satisfying the Criteria for a Voucher is entitled to receive a Voucher upon approval of a properly submitted Claim.

2. The value of the Voucher is determined by the number of Qualifying Voucher Failure visits made by the Settlement Class Member:

a. for two such visits, the Voucher value is $400; and

b. for three or more such visits, the Voucher value is $750.

3. Vouchers must be used within one year from the date of issuance, after which they will expire and no longer be valid.

D. Pre-Notice Qualifying Reimbursable Expenses

1. Reimbursement: SOA agrees to reimburse former and current owners and lessees of Settlement Class Vehicles for certain expenses related to obtaining a Qualifying CVT Repair for shudder, judder or vibration related to the MPT clutch, subject to sufficient Proof of Repair Expenses. If a Settlement Class Vehicle required a Qualifying CVT Repair from an Authorized Subaru Dealer prior to the Notice Date, and the Settlement Class Member paid out-of-pocket for that repair, they may be reimbursed for the unreimbursed cost of the Qualifying CVT Repair upon providing sufficient proof. The reimbursement program under the Recall covers properly documented out-of-pocket expenses paid for diagnostic fees.

2. Limitation on Consequential Damages. Settlement Class Members are not entitled to receive compensation for any additional forms of consequential damages not made expressly available under the Settlement Agreement.

E. Required Proof

1. Required Proof. The following proof must be submitted, and conditions satisfied, in order for a Settlement Class Member to be eligible for compensation under Sections VI.C and D of the Settlement Agreement:

a. A Claim is submitted online, no later than 90 days after the Notice Date, or mailed to Settlement Administrator, post-marked no later than 90 days after the Notice Date.

b. The Claim contains a properly completed online or mailed Claim Form.

c. If the claimant is not a person to whom the Class Notice or Claim Form was addressed, and/or the vehicle with respect to which a Claim is made is not the vehicle identified by VIN number on the Class Notice or mailing, the Claim contains proof that the claimant is in fact a Settlement Class Member.

d. The Claim contains the proper proof demonstrating the Settlement Class Member's right to receive compensation or reimbursement under the terms of this Settlement Agreement.

e. The Settlement Class Member has not previously been reimbursed by SOA, an Authorized Subaru Dealer, or any third party, by any means, including but not limited to Subaru Added Security or other extended warranty provider, for expenses provided by the Settlement Agreement. If a Settlement Class Member has previously received partial reimbursement for such expenses, then a claim

may be made pursuant to this Settlement Agreement for only the unreimbursed portion of those expenses.

f. The Qualifying Repair was not performed because of a Qualifying Failure caused by abuse, a collision or crash, vandalism and/or other impact.

F. Compensation Contingent on Final Approval

1. Compensation is contingent upon the Court's final approval of this Settlement Agreement.

G. Costs of Administration and Notice

The Parties agree that Defendants shall be responsible for the costs of First Class Notice and settlement administration. Plaintiffs retain the right to audit and review the First Class Notice and claims administration processes in accordance with Section VII below.

VII. CLAIMS ADMINISTRATION

A. Administration

1. Settlement Administrator shall mail to the Settlement Class Member, at the address listed on the Claim Form or at an address later updated by the Settlement Class Member, the Administrator's decision on the Claim, to be sent within ninety (90) days after receipt of the Claim, or within ninety (90) days of the Effective Date, whichever is later.

2. For each approved Claim for Reimbursement, the Settlement Administrator shall within this time period mail to the Settlement Class Member a reimbursement check for the unreimbursed permissible expenses to which the Settlement Class Member is entitled.

3. For any Claim for Reimbursement that is incomplete or deficient, or qualifies for less than the full amount of the reimbursement sought by the Settlement Class Member, Settlement Administrator shall, within the period set forth in Paragraph 1 above, mail to the

Settlement Class Member, at the address listed on the Claim Form, a "Claim Decision and Option Letter" (substantially in the form attached hereto as **Exhibit F**) stating:

a. That a partial reimbursement has been awarded and/or that the claim has been rejected;

b. The amount of the proposed reimbursement;

c. Whether rejection of the reimbursement sought was based on:

i. Lack of or insufficient Proof of Repair Expense and/or other required proof;

ii. Error in the Claim Form; or

iii. Any other applicable reason impacting payment of the full amount of the reimbursement sought by the Settlement Class Member.

d. The Settlement Class Member's right to a Second Review of the Settlement Administrator's decision, as described in Section VII.B below; and

4. Any Settlement Class Member who receives a Claim Decision and Option Letter under Paragraph 3 above, may:

a. Initiate a Second Review of the Settlement Administrator's decision by completing and mailing or emailing the Claim Decision and Option Letter along with any additional explanation and/or documents to cure any alleged deficiencies, postmarked within or emailed within forty-five (45) days of the mailing of the Claim Decision and Option Letter; or

b. Accept the reimbursement offered, which no response is required to accept.

5. If a Settlement Class Member accepts the reimbursement offer, Settlement Administrator shall mail the Settlement Class Member a reimbursement check within ninety (90)

days of the Effective Date or within ninety (90) days of the mailing of the Claim Decision and Option Letter after receipt of said acceptance by Settlement Administrator (determined either by Settlement Administrator's receipt of the completed Claim Decision and Option Letter from the Settlement Class Member accepting the reimbursement offered, or by the expiration of the above-referenced period of time in which acceptance will be presumed), whichever occurs later.

B. Second Review

1. A Settlement Class Member who initiates a Second Review may:

   a. rely solely on the documents submitted with the Claim; or

   b. also submit a written statement and/or additional documentation to cure any alleged deficiencies in advance of the Settlement Administrator's Second Review.

2. In each Second Review, the Settlement Administrator shall review the decision with regard to the reimbursement, including the criteria required under this Settlement Agreement.

3. The Second Review will be made by a senior level employee of Settlement Administrator who is a different employee from the one that made the initial determination. His or her Second Review will be independent of the initial review, and will not involve consultation with the employee who made the initial determination.

4. The reviewer will review the Settlement Administrator's initial determination and independently determine, based upon the claim and proof submitted by the Settlement Class Member, whether the initial determination should be adjusted. The reviewer will have the authority to increase the reimbursement amount originally offered up to the full amount of reimbursement sought, if the Settlement Class Member's Claim meets the requirements under this Agreement for justifying that amount.

5. The Second Review determination, along with any applicable payment, will be mailed to the Settlement Class Member within forty-five (45) days of the date in which the request for a Second Review was received by the Settlement Administrator, or within sixty (60) days of the Effective Date, whichever is later, along with any supporting documentation. The Second Review determination will state the reason(s) why the initial determination was either modified or not changed. The Settlement Administrator's decision shall be final and not appealable.

6. Class Counsel will have the right to reasonably monitor the claims administration process and ensure that the Settlement Administrator is acting in accordance with the Settlement Agreement.

7. Defendants shall bear all costs of the Second Review.

8. As soon as reasonably possible after the claims deadline, after all Claims have been processed to determine their validity, the Settlement Administrator will provide Class Counsel and Defendants' Counsel with a list of Claimants with valid claims, including the settlement payment for each Claimant; and a list of all Claims it deems invalid or untimely.

9. The Settlement Administrator will maintain a database of Claims, which will include all relevant information captured from Claimants' Claim Forms.

VIII. CLASS NOTICE AND PUBLICATION

A. To Attorney General

In compliance with the Attorney General notification provision of the Class Action Fairness Act, 28 U.S.C. § 1715, Defendants shall provide notice of this proposed Settlement to the Attorney General of the United States, and the Attorneys General of each state in which a Settlement Class Member resides. Defendants shall also provide contemporaneous notice to Class Counsel that notice to the Attorneys General was completed.

B. To Settlement Class

1. Settlement Administrator shall be responsible for the following Settlement Class Notice program:

a. Within ninety (90) days after entry of the Preliminary Approval Order discussed in Section II.19 of this Agreement, Settlement Administrator shall cause individual notice, substantially in the form attached hereto as Exhibit F, to be mailed, by first class mail, to the current or last known addresses of all reasonably identifiable Settlement Class Members. Notice shall be in made in the form of a postcard, that shall: (1) advise the Class Member to access the settlement website; or (2) call a toll free number for the Full Notice including instructions on seeking the Claim Form and the Request for Exclusion Form. The Parties may format the First Class Notice in such a way as to ensure legibility, and access to the Full Notice. The ability to receive a Full Notice via toll free number is to be prominently displayed. Settlement Administrator shall be responsible for dissemination of the First Class Notice.

b. For purposes of identifying Settlement Class Members, the Settlement Administrator shall obtain from Subaru's records and verify with Experian (or a reasonable substitute agreed to by the Class Counsel) the names and current or last known addresses of Settlement Class Vehicle owners and lessees that can reasonably be obtained, and the Vehicle Identification Numbers (VINs) of Settlement Class Vehicles.

c. Prior to mailing the First Class Notice, an address search through the United States Postal Service's National Change of Address database will be conducted to update the address information for Settlement Class Vehicle owners and lessees.

For each individual First Class Notice that is returned as undeliverable, Settlement Administrator shall re-mail the First Class Notice where a forwarding address has been provided. For the remaining undeliverable notice packets where no forwarding address is provided, Settlement Administrator shall perform an advanced address search (e.g. a skip trace) and re-mail any undeliverable notices to the extent any new and current addresses are located.

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

e. Settlement Administrator shall, upon request, provide Class Counsel with the names and addresses of all Settlement Class Members to whom Settlement Administrator sent a First Class Notice pursuant to this section.

f. Consistent with Section IX.B.1 and Paragraph 1.g defendants shall implement a Settlement website containing:

    i. a copy of the Claim Form, Full Notice, this Settlement Agreement, Court Orders regarding this Settlement, and other relevant Court documents, including Co-Lead Class Counsel's Motion for Approval of Attorneys' Fees, Costs, and Service Awards;

    ii. instructions on how to submit a Claim for reimbursement;

iii. information concerning deadlines for filing a Claim and the dates and locations of relevant Court proceedings, including the Fairness Hearing;

iv. instructions on how to contact the Settlement Administrator, Defendants, and Class Counsel for assistance;

v. online submissions forms; and

vi. any other relevant information agreed upon by counsel for the Parties.

g. The Settlement Administrator will also email a hyperlink to the Settlement Website and electronic versions of the Long Form Notice and Claim Form to Class Members for whom the Settlement Administrator may obtain an email address for.

2. No later than ten (10) days before the Fairness Hearing, Defendants and the Settlement Administrator shall provide an affidavit(s) to Class Counsel, attesting that the First Class Notice was disseminated in a manner consistent with the terms of this Agreement or those required by the Court.

IX. RESPONSE TO NOTICE

A. Objection to Settlement

1. Any Settlement Class Member who intends to object to the fairness of this Settlement Agreement must, by the date specified in the Preliminary Approval Order and recited in the Full Notice, file any such objection via the Court's electronic filing system, and if not filed via the Court's electronic system, must mail, postmarked by the date specified in the Preliminary Approval Order, the objection to the Court and also serve by first-class mail copies of the objection upon:

Clerk of the Court
United States District Court
District of New Jersey

Mitchell H. Cohen Building
& U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101

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

Neal Walters
Ballard Spahr, LLP
700 East Gate Drive
Suite 300
Mount Laurel, NJ 08054

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

a. the objector's full name, current address, and telephone number;

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

c. a written statement that the objector has reviewed the Settlement Class definition and understands in good faith that he or she is a Settlement Class Member;

d. a written statement of all grounds for the objection accompanied by any legal support for such objection sufficient to enable the parties to respond to those specific objections;

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

f. a statement whether the Settlement Class Member complained to Defendants or an Authorized Subaru Dealer about a Qualifying Failure or has had any Qualifying Repairs and, if so, provide evidence of any such complaint or repairs.

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

4. Moreover, subject to the approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Fairness Hearing to explain why the proposed settlement should not be approved as fair, reasonable, and adequate, or to object to any petitions for Class Counsel Fees and Expenses or Service Awards. If the objecting Settlement Class Member intends to appear at the Fairness Hearing, the objecting Settlement Class Member must file with the Clerk of the Court and serve upon all counsel designated in the Notice a notice of intention to appear at the Fairness Hearing by the objection deadline as specified in the Preliminary Approval Order. The notice of intention to appear must include copies of any papers, exhibits, or other evidence, and the identity of witnesses, that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) will present to the Court in connection with the Fairness Hearing. A Settlement Class Member who fails to adhere to the requirements of this section may be deemed to have waived any objections to the settlement, any

adjudication or review of the Settlement Agreement, by appeal or otherwise, and/or any right to appear at the Fairness Hearing.

5. Upon the filing of an objection, Class Counsel and Defendants' Counsel may take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Service of the subject deposition notice may be accomplished by e-mail upon the objector. Failure by an objector to make himself of herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

B. Request for Exclusion from the Settlement

1. Any Settlement Class Member who wishes to be excluded from the Settlement Class must submit a request for exclusion ("**Request for Exclusion**"), online at the settlement website, or mailed substantially in the form attached hereto as **Exhibit G**, to Settlement Administrator at the address specified in the Full Notice by the date specified in the Preliminary Approval Order and recited in the Full Notice. To be effective, the Request for Exclusion must be submitted on the settlement website or sent to the specified address and:

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

b. specifically and unambiguously state in writing his or her desire to be excluded from the Settlement Class and election to be excluded from any judgment entered pursuant to the settlement.

2. Any Settlement Class Member who obtains relief pursuant to the terms of this Settlement Agreement after the receipt of the First Class Notice gives up the right to exclude him or herself from this settlement.

3. Any request or exclusion must be submitted online or postmarked on or before the deadline set by the Court, which date shall be approximately forty-five (45) days after the date of the mailing of Notice to Settlement Class Members. Any Settlement Class Member, who fails to submit a timely and complete Request for Exclusion sent to the proper address, shall be subject to and bound by this Settlement Agreement, the Release and every order or judgment entered relating to this Settlement Agreement.

4. Settlement Administrator will receive Requests for Exclusion and will follow guidelines developed jointly by Class Counsel and Defendants' counsel for determining whether they meet the requirements of a Request for Exclusion. Any communications from Settlement Class Members (whether styled as an exclusion request, an objection or a comment) as to which it is not readily apparent whether the Settlement Class Member meant to exclude himself or herself from the Settlement Class will be evaluated jointly by counsel for the Parties, who will make a good faith evaluation, if possible, and may contact the Settlement Class Member for clarification. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class will be submitted to the Court for resolution. Settlement Administrator will maintain a database of all Requests for Exclusion, and will send the original written communications memorializing those Requests for Exclusion to Class Counsel. Settlement Administrator shall report the names and addresses of all such persons and entities requesting exclusion to the Court and Class Counsel within thirty (30) days prior to the Fairness

Hearing, and the list of persons and entities deemed by the Court to have excluded themselves from the Settlement Class will be attached as an exhibit to the Final Judgment and Order.

5. Objections and Requests for exclusions shall be permitted on an individual basis only. Any purported "class-wide" objections or opt-outs will be construed as being submitted only on behalf of the person who actually submitted the exclusion.

6. Settlement Class Members who obtain relief under this Settlement Agreement after receiving the Class Notice relinquish their right to exclude themselves from the settlement.

X. WITHDRAWAL FROM SETTLEMENT

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

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

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

c. Entry of the Final Judgment and Order described in this Agreement is vacated by the Court or reversed or substantially modified by an appellate court; or

d. If 1,000 or more Class Members properly and timely exercise their right to opt out of the Settlement, Defendants or Plaintiffs shall have the right to terminate this Settlement Agreement without penalty or sanctions, without prejudice to its position on the issue of class certification and the amenability of the claims asserted in the Action to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Settlement Agreement.

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

the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

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

XI. ADMINISTRATIVE OBLIGATIONS

A. Preliminary Approval of Settlement

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

B. Final Approval of Settlement

If this Agreement is preliminarily approved by the Court, Class Counsel shall present a motion requesting that the Court issue a Final Judgment and Order directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b) substantially in the form attached as **Exhibit D**.

XII. FORM AND SCOPE OF JUDGMENT

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

2. Upon the Effective Date, with respect to the Released Claims, the Plaintiffs and Settlement Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of §1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. Upon the Effective Date, the Action will be deemed dismissed with prejudice.

XIII. ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

1. Class Counsel may apply to the Court for an award of reasonable attorneys' fees and expenses, inclusive of costs up to, but not to exceed, the total combined sum of $750,000 (seven hundred and fifty thousand dollars). Defendants will not oppose Class Counsel's application for Attorneys' Fees and Expenses up to and not exceeding the above amount, and Class Counsel may not be awarded, and shall not accept, any amount for attorneys' fees and expenses in excess of the above amount. Each party shall have the right of appeal to the extent the award is inconsistent with this Agreement. Attorneys' Fees and Expenses shall be in addition to the benefits provided directly to the Settlement Class (and shall be in addition to the Representative Plaintiffs' Service Awards), and shall not reduce or otherwise have any effect on the benefits made available to the Settlement Class.

2. Upon finalization of this Settlement Agreement, the Parties have agreed that Defendants will not oppose Plaintiffs' request, made as part of the Fee and Expense Application, that Defendants separately pay Service Awards of $3,750.00 (combined total of $30,000) for each named Class Representative, such that there will be one payment per vehicle owned or leased by the named Class Representatives, i.e. eight payments, as indicated in the operative complaint of the Action. If awarded by the Court, the fee, cost, and expense award shall be payable by Defendants within 60 days after the date of entry of the Final Judgment and Order, notwithstanding the existence of any Objections, pending or forthcoming appeals, or collateral attack on the Settlement, the fee, cost, and expense Award, or the Service Awards. At least 30 days prior to payment of the fee, cost, and expense Award, Class Counsel shall furnish Defendants' Counsel with all necessary payment and routing information to facilitate the transfer.

3. If the Final Judgment and Order is vacated, overturned, reversed, or rendered void or unenforceable as a result of an appeal, or if the Settlement Agreement is voided, rescinded, or otherwise terminated, then Class Counsel shall, within 30 days, repay to Defendants the fee, cost, and expense award it received, plus interest Class Counsel earned on that amount, if any.

4. If the fee, cost, and expense award is reduced on appeal, but all other terms of the Settlement Agreement remain in full effect, Class Counsel shall only repay the portion of the fee, cost, and expense award by which it is reduced.

5. Payment to the Class Counsel payee shall fully satisfy and discharge all obligations of Subaru with respect to payment of the Attorneys' Fees and Expenses and settlement class representative Service Awards.

6. The Class Counsel payee will be selected by Class Counsel within ten (10) days after the date the Final Judgment and Order is entered. The Class Counsel payee shall distribute Attorneys' Fees and Expenses awarded by the Court between and among Class Counsel as Class Counsel mutually agree amongst themselves.

7. The procedure for the grant, denial, allowance or disallowance by the Court of the Attorneys' Fee and Expenses application are not part of the Settlement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Any order or proceedings relating solely to the Fee and Expense Application, or any appeal from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Effective Date of this Agreement. Payment of Attorneys' Fees and Expenses and Representative Plaintiffs' Service Awards will not reduce the benefit being made available to the Settlement Class Members, and

the Settlement Class Members will not be required to pay any portion of the Representative Plaintiffs' Service Awards or Attorneys' Fees and Expenses.

8. The Parties agree that Defendants are in no way liable for any taxes Class Counsel, Plaintiffs, Representative Plaintiffs, Settlement Class Members, or others may be required to pay as a result of the receipt of any settlement benefits.

XIV. MISCELLANEOUS PROVISIONS

A. Publicity

The Parties agree that any statements made to the press shall be agreed upon by counsel for all parties. In no event shall any reference be made to information designated as "Confidential."

B. Effect of Exhibits

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

C. Entire Agreement

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

D. Arm's-Length Negotiations and Good Faith

The Parties have negotiated all of the terms and conditions of this Agreement at arm's length and as an extension of the mediation efforts conducted by Bradley A. Winters, Esq. The Parties agree that during the course of this Litigation, the Parties and their respective counsel have acted in good faith. All terms, conditions and exhibits in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. The Parties agree to act in good faith during the claims administration process.

E. Continuing Jurisdiction

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

F. Binding Effect of Settlement Agreement

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

G. Extensions of Time

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

H. Authority to Execute Settlement Agreement

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

I. Return of Confidential Materials

All documents and information designated as "confidential" and produced or exchanged in the Action, shall be returned or destroyed in accordance with the terms of the Discovery Confidentiality Order entered in the Action on November 21, 2022 (ECF No. 56).

J. No Assignment

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

K. No Third-Party Beneficiaries

This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party (other than Settlement Class Members themselves) as a beneficiary of this Agreement.

L. Construction

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

M. Choice of Law

New Jersey law will apply to any disputes regarding the settlement agreement. Federal law shall govern approval of the settlement, preliminary and final certification of the Settlement Class, and all related issues, such as Plaintiffs' fee and expense petition.

N. Captions

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

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

BERGER MONTAGUE PC

BY: _____
Russell D. Paul
Amey J. Park
Abigail J. Gertner
Natalie Lesser
1818 Market St., Suite 3600
Philadelphia, PA 19103

Attorneys for Plaintiffs

Dated: 7/25/2023

BALLARD SPAHR LLP

BY: _____
Neal D. Walters
Casey G. Watkins
Kristen Petagna
700 East Gate Dr., Suite 330
Mount Laurel, NJ 08054

Attorneys for Defendants Subaru of America, Inc. and Subaru Corporation

Dated: 08/18/2023

Dated: 7/19/2023

DocuSigned by:
Aimee Hickman
2C569B8C48B5430...
Aimee Hickman, Plaintiff

Dated: _____

_____
Jared Hickman, Plaintiff

Dated: _____

_____
William Treasurer, Plaintiff

Dated: _____

_____
Kelly Drogowski, Plaintiff

Dated: _____

_____
Frank Drogowski, Plaintiff

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

BERGER MONTAGUE PC

BY: _____

Russell D. Paul
Amey J. Park
Abigail J. Gertner
Natalie Lesser
1818 Market St., Suite 3600
Philadelphia, PA 19103

Attorneys for Plaintiffs

Dated: _____

BALLARD SPAHR LLP

BY: _____

Neal D. Walters
Casey G. Watkins
Kristen Petagna
700 East Gate Dr., Suite 330
Mount Laurel, NJ 08054

Attorneys for Defendants Subaru of America, Inc. and Subaru Corporation

Dated: _____

Dated: _____

_____
Aimee Hickman, Plaintiff

Dated: 7/23/2023

DocuSigned by:
Jared Hickman
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Jared Hickman, Plaintiff

Dated: _____

_____
William Treasurer, Plaintiff

Dated: _____

_____
Kelly Drogowski, Plaintiff

Dated: _____

_____
Frank Drogowski, Plaintiff

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

BERGER MONTAGUE PC

BY: _____
Russell D. Paul
Amey J. Park
Abigail J. Gertner
Natalie Lesser
1818 Market St., Suite 3600
Philadelphia, PA 19103

Attorneys for Plaintiffs

Dated: _____

BALLARD SPAHR LLP

BY: _____
Neal D. Walters
Casey G. Watkins
Kristen Petagna
700 East Gate Dr., Suite 330
Mount Laurel, NJ 08054

Attorneys for Defendants Subaru of America, Inc. and Subaru Corporation

Dated: _____

Dated: _____

_____
Aimee Hickman, Plaintiff

Dated: _____

_____
Jared Hickman, Plaintiff

Dated: 7/12/2023

DocuSigned by:
William Treasurer
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William Treasurer, Plaintiff

Dated: _____

_____
Kelly Drogowski, Plaintiff

Dated: _____

_____
Frank Drogowski, Plaintiff

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

BERGER MONTAGUE PC

BY: _____
Russell D. Paul
Amey J. Park
Abigail J. Gertner
Natalie Lesser
1818 Market St., Suite 3600
Philadelphia, PA 19103

Attorneys for Plaintiffs

Dated: _____

BALLARD SPAHR LLP

BY: _____
Neal D. Walters
Casey G. Watkins
Kristen Petagna
700 East Gate Dr., Suite 330
Mount Laurel, NJ 08054

Attorneys for Defendants Subaru of America, Inc. and Subaru Corporation

Dated: _____

Dated: _____

_____
Aimee Hickman, Plaintiff

Dated: _____

_____
Jared Hickman, Plaintiff

Dated: _____

_____
William Treasurer, Plaintiff

Dated: _____

_____
Kelly Drogowski, Plaintiff

Dated: 7/12/2023

DocuSigned by:
Frank Drogowski
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Frank Drogowski, Plaintiff

Dated: 7/12/2023

DocuSigned by:
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John Taitano, Plaintiff

Dated: _____

_____
Richard Palermo, Plaintiff

Dated: _____

_____
Lori Woiwode, Plaintiff

Dated: _____

_____
Shawn Woiwode, Plaintiff

Dated: _____

_____
Carolyn Patol, Plaintiff

Dated: _____

_____
Cassandra Sember, Plaintiff

Dated: _____

_____
Steven Sember, Plaintiff

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

BERGER MONTAGUE PC

BY: _____
Russell D. Paul
Amey J. Park
Abigail J. Gertner
Natalie Lesser
1818 Market St., Suite 3600
Philadelphia, PA 19103

Attorneys for Plaintiffs

Dated: _____

BALLARD SPAHR LLP

BY: _____
Neal D. Walters
Casey G. Watkins
Kristen Petagna
700 East Gate Dr., Suite 330
Mount Laurel, NJ 08054

Attorneys for Defendants Subaru of America, Inc. and Subaru Corporation

Dated: _____

Dated: _____

_____
Aimee Hickman, Plaintiff

Dated: _____

_____
Jared Hickman, Plaintiff

Dated: _____

_____
William Treasurer, Plaintiff

Dated: 7/12/2023

DocuSigned by:
Kelly Drogowski
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Kelly Drogowski, Plaintiff

Dated: _____

_____
Frank Drogowski, Plaintiff

Dated: _____

_____
John Taitano, Plaintiff

Dated: 7/13/2023

DocuSigned by:
Richard Palermo
5144AFB1E16C4DD...
Richard Palermo, Plaintiff

Dated: _____

_____
Lori Woiwode, Plaintiff

Dated: _____

_____
Shawn Woiwode, Plaintiff

Dated: _____

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Carolyn Patol, Plaintiff

Dated: _____

_____
Cassandra Sember, Plaintiff

Dated: _____

_____
Steven Sember, Plaintiff

Dated: _____

_____
John Taitano, Plaintiff

Dated: _____

_____
Richard Palermo, Plaintiff

Dated: 7/12/2023

DocuSigned by:
Lori Woiwode
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Lori Woiwode, Plaintiff

Dated: _____

_____
Shawn Woiwode, Plaintiff

Dated: _____

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Carolyn Patol, Plaintiff

Dated: _____

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Cassandra Sember, Plaintiff

Dated: _____

_____
Steven Sember, Plaintiff

Dated: _____

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John Taitano, Plaintiff

Dated: _____

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Richard Palermo, Plaintiff

Dated: _____

_____
Lori Woiwode, Plaintiff

Dated: 7/12/2023

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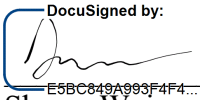
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Shawn Woiwode, Plaintiff

Dated: _____

_____
Carolyn Patol, Plaintiff

Dated: _____

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Cassandra Sember, Plaintiff

Dated: _____

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Steven Sember, Plaintiff

Dated: _____

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John Taitano, Plaintiff

Dated: _____

_____
Richard Palermo, Plaintiff

Dated: _____

_____
Lori Woiwode, Plaintiff

Dated: _____

_____
Shawn Woiwode, Plaintiff

Dated: 7/12/2023

DocuSigned by:
Carolyn Patol
ADD01D4017E2441...
Carolyn Patol, Plaintiff

Dated: _____

_____
Cassandra Sember, Plaintiff

Dated: _____

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Steven Sember, Plaintiff

Dated: _____

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John Taitano, Plaintiff

Dated: _____

_____
Richard Palermo, Plaintiff

Dated: _____

_____
Lori Woiwode, Plaintiff

Dated: _____

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Shawn Woiwode, Plaintiff

Dated: _____

_____
Carolyn Patol, Plaintiff

Dated: 7/12/2023

DocuSigned by:
_____
EA8F5EC599894CD...
Cassandra Sember, Plaintiff

Dated: _____

_____
Steven Sember, Plaintiff

Dated: _____

_____
John Taitano, Plaintiff

Dated: _____

_____
Richard Palermo, Plaintiff

Dated: _____

_____
Lori Woiwode, Plaintiff

Dated: _____

_____
Shawn Woiwode, Plaintiff

Dated: _____

_____
Carolyn Patol, Plaintiff

Dated: _____

_____
Cassandra Sember, Plaintiff

Dated: 7/12/2023

DocuSigned by:
EA8F5EC599894CD...
As power of attorney for Steven Sember

_____
Steven Sember, Plaintiff

APPROVED AND AGREED TO BY AND ON BEHALF OF DEFENDANTS, SUBARU OF AMERICA, INC. and SUBARU CORPORATION

Dated: 8/17/2023

SUBARU OF AMERICA, INC.

By: MICHAEL D. CAMPBELL
VICE PRESIDENT SERVICE & QUALITY

EXHIBIT A

REIMBURSEMENT AND VOUCHER CLAIM FORM MUST BE SUBMITTED OR POSTMARKED BY [MONTH DAY, YEAR]

Hickman v. Subaru of America, Inc., No. 1:21-cv-02100-NLH-AMD (D.N.J.)

This Claim Form is for seeking reimbursement for previous out-of-pocket expenses, or claiming a Voucher for multiple Qualifying CVT Repairs. You do not need to submit this Claim Form to benefit from the Settlement Extended Warranty or Settlement Extended Parts Warranty coverage.

Please submit your claim either through the Settlement Website or via email within 90 days after the Notice Date. For mailed submissions, send your completed Claim Form with all necessary supporting documentation, postmarked within 90 days from the Notice Date to:

Subaru CVT Settlement Administrator
c/o JND Legal Administration
P.O. Box 91305
Seattle, WA 98111

For more information, please consult the Class Notice, contact the Settlement Administrator at [emailaddress] or (xxx) xxx-xxxx, or visit [settlement website].

Before proceeding, please go through the instructions on page 3. If the pre-printed information below is incorrect or absent, print, fill out, and submit copies of the pages containing Sections I, II, III, and IV with the corrected or completed information.

I. CLAIMANT CONTACT INFORMATION

Full Name

Mailing Address – Line 1

Mailing Address – Line 2 (If Applicable)

City | State | Zip Code

Telephone Number

Email Address

II. VEHICLE INFORMATION

If you are seeking reimbursement for out-of-pocket expenses incurred for more than one vehicle, or if you are claiming a Voucher for multiple Qualifying CVT Repairs for more than one vehicle, a separate Claim Form must be submitted for each vehicle.

Vehicle Identification Number (VIN) | In-Service Date*

* The In-Service Date refers to the date when a Settlement Class Vehicle was first delivered to the retail purchaser or lessee; or if the vehicle was initially used as a "demonstrator" or "company" car, it is the date on which the vehicle was put into such service.

III. REPAIR INFORMATION AND VOUCHER CLAIM

Class Members can seek reimbursement for certain expenses associated with obtaining a Qualifying CVT Repair performed by an Authorized Subaru Dealer for shudder, judder, and/or hesitation related to the multiple plate transfer (MPT) clutch. Reimbursement applies to out-of-pocket expenses related to diagnostic fees, provided the Settlement Class Vehicle required a Qualifying CVT Repair prior to the Notice Date.

If you had two Qualifying CVT Repair visits, you may be eligible for a Voucher valued at $400, and if you had three or more such visits, you may be eligible for a Voucher valued at $750.

Vouchers are valid for one year from the date of issuance, after which they will expire.

Please be aware that you are not entitled to compensation for any forms of consequential damages not expressly available under the Settlement Agreement.

Appropriate documentation is required for all claimed repair costs and Voucher claims. Detailed information concerning the required types of documentation is provided in the instructions on page 3 of this Claim Form.

Please check the box(es) corresponding to the type(s) of relief for which you are filing a claim:

☐ Reimbursement for Pre-Notice Out-of-Pocket CVT Repair Expenses

☐ Voucher for Subaru purchases, services, or merchandise.

IV. SIGN & DATE

*By signing this form, you are certifying under oath that you **HAVE NOT** already been reimbursed for any of the above products and/or services except as reflected on the documents you have submitted.*

Name (printed) | Signature | Date

V. INSTRUCTIONS

Supporting documentation is a necessary prerequisite for ALL claims. For any queries related to completing this Claim Form, please contact the Settlement Administrator at [emailaddress] or (xxx) xxx-xxxx.

If you are claiming costs for repairs carried out by an Authorized Subaru Dealer, you must include an invoice or other relevant document(s) for EACH diagnosis, testing, or repair that clearly indicates:

- The VIN of the vehicle
- Make and model of the vehicle
- Date of the diagnosis, testing, and/or repair
- Vehicle mileage at the time of repair
- A detailed account of the work performed (including, if available, a breakdown of parts and labor costs)
- Proof of the total amount paid (for both parts and labor)
- The facility that executed the repair, replacement, test, or diagnosis

Should your name or VIN not be correctly pre-printed on the Claim Form, you must also provide one or more documents to verify:

- Your ownership or leasing of a class vehicle (e.g., copy of an insurance card or repair invoice)
- The VIN of your class vehicle

Please note that a Claim must be submitted online or mailed to the Settlement Administrator, postmarked no later than 90 days after the Notice Date. Your claim should include a properly filled online or mailed Claim Form.

If you have already received any form of reimbursement from SOA, an Authorized Subaru Dealer, or any third party, for expenses included in the Settlement Agreement, you can only claim for the unreimbursed portion of those expenses.

Please be informed that you are not eligible for a claim if the Qualifying Repair was due to a Qualifying Failure resulting from abuse, a collision or crash, vandalism, and/or other impact.

EXHIBIT B

Legal Notice

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

If you bought or leased certain Subaru vehicles, you may benefit from a class action settlement

Questions?
Visit [website url] or Call 1-XXX-XXX-XXXX

include Spanish language tag

Subaru CVT Settlement Administrator
c/o JND Legal Administration
P.O. Box 91305
Seattle, WA 98111

FIRST CLASS
MAIL
US POSTAGE
PAID
Permit#__

||||||||||||||||||||||

Postal Service: Please do not mark barcode

Unique ID: «CF_PRINTED_ID»

«Full_Name»
«CF_CARE_OF_NAME»
«CF_ADDRESS_1»
«CF_ADDRESS_2»
«CF_CITY», «CF_STATE» «CF_ZIP»
«CF_COUNTRY»

A proposed settlement has been reached in a class action lawsuit called *Hurlbut, et al. v. Subaru of America, Inc., et al.,* No. 1:21-cv-02100-NLH-AMD (the "Settlement"). Records indicate that you may be a Settlement Class Member. This notice summarizes your rights and options. More details are available at [website url].

What is this about? Plaintiffs filed a class action lawsuit against Subaru of America, Inc. ("SOA") and Subaru Corporation ("SBR"), collectively the "Defendants" or "Subaru," alleging that Settlement Class Vehicles suffer from a design defect in some vehicles' continuously variable transmissions; and that Defendants violated certain consumer statutes and breached certain warranties. Defendants deny Plaintiffs' claims and maintain that the Settlement Class Vehicles are not defective and that they have not violated any warranties, statutes, or laws. The Court has not decided who is right or wrong. Instead, both sides agreed to a Settlement.

Who is affected? Settlement Class Members include residents of the continental United States, including Hawaii and Alaska, who currently own or lease, or previously owned or leased, a Settlement Class Vehicle originally purchased or leased in the continental United States, including Alaska and Hawaii. Settlement Class Vehicles include model year 2019-2020 Ascents. There are several exclusions to the Settlement Class. However, the Settlement Class is not intended to exclude military personnel stationed overseas. For more details about who is affected, visit [website url].

What does the Settlement provide? The Settlement provides extended warranty and extended parts warranty coverage for Qualifying Failures experienced on or after the date of this Notice. The Settlement also provides, where applicable, a cash reimbursement for Qualifying CVT Repairs prior to the date of this Notice. Finally, the Settlement provides for a voucher in the amount of $400 for two visits to address a Qualifying Voucher Failure and $750 for three or more visits to address a Qualifying Voucher Failure prior to the date of this Notice.

How do I get the settlement benefits? You may be entitled to automatically receive the extended warranty or extended parts warranty. However, you must submit a valid claim for cash reimbursement. Go to [website url] to file or download a Claim Form. You can also write Subaru CVT Settlement Administrator, c/o JND Legal Administration, P.O. Box 91305, Seattle, WA 98111, or email: [email address]. Claim Forms and supporting documentation must be submitted online or postmarked **by [MONTH DAY, YEAR]** or they will not be considered. Go to [website url] to learn more.

What are my other options? You can do nothing, exclude yourself, or object to the Settlement. Do nothing. You will remain part of the Settlement Class and receive the right to extended warranty or extended parts warranty coverage, but you must file a claim to receive a cash payment. You will be bound by the Court's decision, and you will give up your right to sue or continue to sue Subaru for the claims in this case. Exclude yourself. You will not receive any cash reimbursements or extended warranty or extended parts warranty coverage. However, this is the only option that allows you to keep your right to sue Subaru at your own expense and with your own attorney about the legal claims in this case. Object. If you do not exclude yourself from the Settlement Class, you may object or tell the Court what you do not like about the Settlement. The deadline for exclusion requests and objections is **[MONTH DAY, YEAR]**. For more details about your rights and options and how to exclude yourself or object, go to [website url].

What happens next? The Court will hold a Fairness Hearing on [MONTH, DAY] 2023 at [TIME] to consider whether to approve the Settlement; Class Counsel's attorneys' fees and expenses up to $750,000; and service awards of $3,750 for each of the named Plaintiffs (Aimee Hickman, Jared Hickman, William Treasurer, Kelly Drogowski, Frank Drogowski, John Taitano, Richard Palermo, Lori Woiwode, Shawn Woiwode, Carolyn Patol, Cassandra Sember, and Steven Sember), such that there will be one payment per vehicle owned or leased by the named Plaintiffs. Class Counsel fees and expenses and Class Representative service awards will be paid by Defendants and will not reduce any settlement benefits. The Court has appointed the law firm of Berger Montague PC as Class Counsel. You or your attorney may ask to speak at the hearing at your own expense, but you do not have to.

How do I get more information? For more information, visit [website url], call toll-free 1-XXX-XXX-XXXX, write Subaru CVT Settlement Administrator, c/o JND Legal Administration, P.O. Box 91305, Seattle, WA 98111, or email [email address].

Please do not contact the Court regarding this Notice.

Carefully separate this Address Change Form at the perforation

Name: ___________________________________

PLACEHOLDER

Place Stamp Here

Current Address: _____

_____

_____

Address Change Form

To make sure your information remains up-to-date in our records, please confirm your address by filling in the above information and depositing this postcard in the U.S. Mail.

JND Legal Administration
Attn: Subaru CVT Settlement Administrator
P.O. Box xxxxx
Seattle, WA 98111

EXHIBIT C

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.
IT IMPACTS YOUR LEGAL RIGHTS AND DESCRIBES THE STEPS YOU MAY WISH TO TAKE.**

NOTICE OF CLASS SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

If you have bought or leased specific Subaru vehicles, you might be eligible for benefits from a class action settlement.

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

- A proposed Settlement has been reached in a class action lawsuit called *Hickman, et al. v. Subaru of America, Inc.*, No. 1:21-CV-02100-NLH-AMD.
- The Settlement provides extended warranty and extended parts warranty service for Qualifying Extended Warranty Failures experienced on or after the date of this Notice.
- The Settlement also provides, where applicable, a cash reimbursement for Qualifying CVT Repairs prior to the date of this Notice ("Pre-Notice").
- The Settlement also provides for a Voucher in the amount of either $400 or $750 depending on the amount of visits made for a Qualifying Voucher Failure prior to the date of this Notice
- To qualify for settlement benefits, you must have bought or leased a model year 2019-2020 Subaru Ascent.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT INCLUDE:	
SUBMIT A CLAIM FOR CASH REIMBURSEMENT	To receive a reimbursement, you must submit a claim. Claims can be made online or mailed and must be submitted or postmarked by **[Month Day, Year]**. This is the only way to receive a cash reimbursement.
GET AN EXTENDED WARRANTY OR EXTENDED PARTS WARRANTY	You do not need to do anything to ensure coverage under the Settlement Extended Warranty or Settlement Extended Parts Warranty.
EXCLUDE YOURSELF	By excluding yourself, you forfeit the right to a reimbursement, Settlement Extended Warranty, Settlement Extended Parts Warranty coverage, and any Voucher. However, this is the only way you can be part of another lawsuit against Subaru regarding the legal claims in this case. The deadline to exclude yourself is **[Month Day, Year]**.
OBJECT	Write to the Court about why you don't like the Settlement. The deadline to object is **[Month Day, Year].**
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement. Your notice of intention to appear must be postmarked **by [Month Day, Year].**
DO NOTHING	If you take no action, you will still be entitled to a Settlement Extended Warranty or Settlement Extended Parts Warranty, but you will forfeit your right to seek a reimbursement payment.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice. The Court in charge of this case still must decide whether to approve the Settlement. Reimbursements will be made if the Court approves the Settlement and after appeals are resolved.

What This Notice Contains

[INSERT TOC]

BASIC INFORMATION

1. Why did I receive a notice?

This Notice was sent to you because Subaru of America, Inc.'s records suggest that you might be a current or former buyer or lessee of a Settlement Class Vehicle. It explains the proposed Settlement, the upcoming court hearing to evaluate the Settlement's fairness, and your rights and possible actions related to the Settlement.

2. What is the lawsuit about?

A class action lawsuit was filed against Subaru of America, Inc. (SOA) and Subaru Corporation (SBR), collectively the "Defendants" or "Subaru." The lawsuit alleges that some of Subaru's vehicles have a design defect in their continuously variable transmissions (CVT). It also claims that Subaru violated consumer laws and breached warranties. The lawsuit aims to represent all current and former buyers and lessees of these vehicles.

Subaru, however, denies these claims. They maintain that their vehicles are not defective and have functioned properly. They further claim that they haven't violated any warranties, laws, or statutes and have provided warranty coverage when necessary.

3. Why is there a Settlement?

In a class action, one or more people (class representatives) sue on behalf of others with similar claims. These people form a class, with the class representatives and class members being the plaintiffs, and the companies they sued are the defendants.

Rather than a court verdict, both sides have agreed to a Settlement without any admission of fault. This allows everyone to avoid the risk and cost of a trial, ensuring quicker compensation for those affected (the "Settlement Class Members").

Plaintiffs' counsel evaluated the significant settlement benefits to Settlement Class Members against the risks and costs of ongoing litigation. They considered the immediate benefit to Settlement Class Members versus the costs and delays of continued litigation, potential trial and appeals, and the risk of the proposed class not getting court certification. Even with litigation success, it might take years for Settlement Class Members to receive any benefits.

The Settlement is not final yet. The court will hold a hearing to approve or disapprove it.

WHO IS PART OF THE SETTLEMENT CLASS?

4. Am I a Settlement Class Member?

You are eligible as a Settlement Class Member if you are a resident of the continental United States, including Hawaii or Alaska, and are a current or former owner or lessee of a Settlement Class Vehicle originally purchased or leased in the United States, including Alaska or Hawaii. Settlement Class Vehicles encompass 2019–2020 Subaru Ascent models. This eligibility applies

to you if the vehicle was purchased for reasons other than resale. Please note that the definition of a Settlement Class Member also includes military personnel stationed overseas.

However, the following entities are explicitly excluded from the Settlement Class:

a. Claims for personal injury and/or property damage, although claims for a Qualifying Failure in a Settlement Class Vehicle are included, not considering any unclaimed additional personal injury or property damage.

b. All Judges managing the Action and their spouses.

c. All current employees, officers, directors, agents, and representatives of Defendants and their family members.

d. Any affiliate, parent, or subsidiary of Defendants and any entity in which Defendants have a controlling interest.

e. Used car dealers.

f. Anyone who purchased a Settlement Class Vehicle solely for resale.

g. Anyone who purchased a Settlement Class Vehicle with a salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a total loss.

h. Any insurer of a Settlement Class Vehicle.

i. Issuers of extended vehicle warranties and service contracts.

j. Any Settlement Class Member who, before the date of the Settlement Agreement, settled with and released Defendants or any Released Parties from any Released Claims.

k. Any Settlement Class Member filing a timely and proper Request for Exclusion from the Settlement Class.

l. Third-party issuers.

If you received this Notice, Subaru's records indicate that you are or were a purchaser or lessee of one or more of the aforementioned Settlement Class Vehicles covered under this Settlement. You are not obligated to submit a Claim Form to be eligible for Settlement Extended Warranty or Settlement Extended Parts Warranty coverage, but to request reimbursements or a Voucher as part of the Settlement, you must submit a Claim Form by [Month Day, Year]. If you experience a Qualifying CVT Failure on or after the date of this Notice, visit [website url] to learn more about Settlement Extended Warranty or Settlement Extended Parts Warranty coverage.

SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the Settlement provide?

The Settlement provides the following:

1. An Extended Warranty and Extended Parts Warranty for specified failures.

2. A possible cash reimbursement if a Settlement Class Member paid out-of-pocket for an authorized pre-notice qualifying CVT repair.

3. A Voucher worth $400 or $750, depending on the number of visits for a qualifying failure before this notice's date.

Settlement Extended Warranty Coverage: Effective from the Notice Date, Subaru will extend its Powertrain Limited Warranty to include qualifying failures or components damaged by a faulty MPT clutch, such as the transmission shaft. This Settelement Extended Warranty, which covers repair work performed by an Authorized Subaru Dealer, extends for eight years or 100,000 miles from the In-Service Date, whichever comes first. If an initial repair doesn't rectify the problem, the warranty provides for a CVT replacement if necessary. All costs associated with qualifying repairs performed by an Authorized Subaru Dealer are covered. The Extended Warranty is transferable within its coverage period.

This Settlement Extended Warranty aligns with the terms and conditions of the original Powertrain Limited Warranty and Warranty and Maintenance Booklet, except for modifications specified in the Settlement Agreement.

You can't opt out or exclude yourself from the Settlement Class if you have repairs performed under the Extended Warranty. You can't recover more than one benefit or reimbursement for the same repair.

Settlement Extended Parts Warranty Coverage: From the Notice Date, Subaru will extend its Limited Warranty for Genuine Subaru Replacement Parts and Accessories for any MPT clutch replacement to two years with no mileage limit. This Settlement Extended Parts Warranty covers all associated costs of qualifying repairs performed by an Authorized Subaru Dealer and is transferable within its coverage period.

Except as specifically modified in the Settlement Agreement, the Settlement Extended Parts Warranty is subject to the same terms and conditions as outlined in the Limited Warranty for Genuine Subaru Replacement Parts and Accessories and Warranty and Maintenance Booklet originally provided with your vehicle.

You can't opt out or exclude yourself from the Settlement Class if you have repairs performed under the Extended Parts Warranty. You can't recover more than one benefit or reimbursement for the same repair.

Voucher for Multiple Qualifying Repair Visits: To qualify for a Voucher, a Class Member must be a current or former owner/lessee of a Class Vehicle as of the Notice Date. You must provide

proof that you have had at least two previous instances of presenting the vehicle to an Authorized Subaru Dealer for a Qualifying CVT Failure or contacted SOA's customer service division about a Qualifying CVT Failure. Voucher value depends on the number of qualifying repair visits: $400 for two visits, and $750 for three or more visits. The Voucher must be used within a year of issuance and is non-transferable. Recall-related visits or repairs do not count towards voucher eligibility.

If you receive a Voucher, you can't opt out or exclude yourself from the Settlement Class. You can't recover more than one benefit or reimbursement for the same repair.

Pre-Notice Qualifying Reimbursable Expenses: Unless previously reimbursed, a cash reimbursement might be available if you paid out-of-pocket costs for any repair, attempted repair, replacement, or inspection performed by an Authorized Subaru Dealer primarily addressing a Qualifying CVT Failure, excluding any Recall-related repairs or visits, prior to this Notice's date. Settlement Class Members may not receive reimbursement for repair work addressing a condition unrelated to a Qualifying CVT Failure or repairs performed due to any Subaru recalls, including those related to the CVT, which fall under the National Traffic and Motor Vehicle Safety Act,, 49 U.S.C. §§ 30101–30505.

6. How do I submit a claim for cash reimbursement?

To receive reimbursement, you must submit a Claim Form. You may file a claim electronically at [website url]. You may also download a copy of the Claim Form from the Important Documents page at [website url]. Complete, print, sign, and date the Claim Form. Keep a copy of the completed Claim Form for your own records. Mail or email the Claim Form with the required documentation to the Settlement Administrator at:

Subaru CVT Settlement Administrator
c/o JND Legal Administration
P.O. Box 91305
Seattle, WA 98111
[email address]

Claim Forms and supporting documentation must be submitted online or postmarked by **[Month Day, Year]** or they will not be considered. If you fail to submit or mail the Claim Form and supporting documents by the required deadline, you will not get paid. Submitting a Claim Form late or without documentation will be the same as doing nothing. Cash reimbursements will be made only if the Court approves the Settlement.

7. What type of supporting documentation must I submit with my Claim Form in order to receive a cash reimbursement?

The Claim Form, available at [website url], describes in detail the documentation and information that must be submitted in support of your claim. The Settlement Administrator needs documentation showing the specific nature of your out-of-pocket expenses, proving that you are a Settlement Class Member and that your claim satisfies the requirements for a reimbursement. To prove out-of-pocket payment, you must submit genuine and legible copies of any of the following: receipts, credit card statements, bank statements, invoices, or historical accounting records receipts.

8. When will I receive my payment?

The Court will hold a Fairness Hearing on _____ at _____, to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals which may delay the conclusion of the case. It is always uncertain whether these appeals can be resolved, and resolving them can take time, so please be patient. Information about the progress of the case will be available at, [website url].

9. What am I giving up by staying in the Settlement Class?

Unless you exclude yourself, you will be part of the Settlement Class. By staying in the Settlement Class, you will be allowed to participate in any and all settlement benefits to which you are entitled, and you will be releasing the Defendants and all Released Parties from any liability, cause of action, claim, right to damages or other relief, and any other legal rights to which you may otherwise be entitled under the law(s) of your state or any other applicable law, relating to a Qualifying Failure and related services in your Settlement Class Vehicle. By staying in the Settlement Class, you will give up your right to be a part of any lawsuit or arbitration, or pursue any claim, against Defendants and any Released Parties relating to the claims in this lawsuit. Staying in the Class also means that all of the Court's orders will apply to you and legally bind you.

This Settlement does not release any claims for personal injury or damage to property (other than damage to the Settlement Class Vehicle related to a Qualifying CVT Failure).

The scope of the claims and causes of action being released and the parties being released are outlined in Section V of the Settlement Agreement, a copy of which is available at [website url], should you wish to review it. You may also contact Class Counsel, listed below, with any questions you may have:

Abigail Gertner
Berger Montague PC
1818 Market Street
Suite 3600
Philadelphia, PA 19103
Email: agertner@bm.net

Amey J. Park
Berger Montague PC
1818 Market Street
Suite 3600
Philadelphia, PA 19103
Email: apark@bm.net

Russell D. Paul
Berger Montague PC
1818 Market Street
Suite 3600
Philadelphia, PA 19103
Email: rpaul@bm.net

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement, you must complete and submit the Request for Exclusion Form available at [website url] no later than ____. You may also download and sign and return the Request for Exclusion Form by U.S. mail (or an express mail carrier) so that it is postmarked on or before _____ to:

Subaru CVT Settlement Administrator - Exclusions
c/o JND Legal Administration
P.O. Box 91305
Seattle, WA 98111

By submitting a timely and valid Request for Exclusion Form online or by U.S. mail or express mail, you will not be able to receive any benefits of the Settlement and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit.

11. If I do not exclude myself, can I sue Subaru for the same thing later?

No. If you do not timely exclude yourself from the Settlement, you cannot sue Subaru for any matters, legal claims or damages (other than for personal injury or damage to property) relating to a Qualifying CVT Failure and related services in your Settlement Class Vehicle(s).

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

No. If you exclude yourself from the Settlement Class you will not be able to take advantage of any benefits from this Settlement. If you exclude yourself, you should not submit a Claim Form to ask for money from the Settlement. You cannot do both.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

Yes. The Court has appointed Abigail Gertner, Amey J. Park, and Russell Paul of Berger Montague PC to represent the Settlement Class which includes you and all other Settlement Class Members. Together these lawyers are called "Class Counsel." However, if you want your own lawyer, you may hire one at your own cost.

14. How will the lawyers be paid?

Class Counsel will apply to the Court for an award of reasonable attorney fees in an amount up to but not exceeding seven hundred and fifty thousand dollars ($750,000), inclusive of expenses and

costs (collectively referred to as "fees and expenses"), based upon factors that will be provided in Class Counsel's application for fees and expenses. Defendants have agreed not to oppose Class Counsel's application for fees and expenses not exceeding this amount, and Class Counsel have agreed not to accept any fees and expenses in excess of that amount. Class Counsel fees and expenses will be paid by Defendants and will not reduce any benefits available to Settlement Class Members.

Class Counsel's motion for fees and expenses will be made available for review at the Important Documents page of the Settlement Website, [website url], after it is filed with the Court.

15. Will the Settlement Class Representatives receive service payments?

Yes. Class Counsel will also apply to the Court for service awards of $3,750 for each named Class Representative, such that there will be one payment per vehicle owned or leased by the named Class Representatives, who have conditionally been approved as Settlement Class Representatives (Aimee Hickman, Jared Hickman, William Treasurer, Kelly Drogowski, Frank Drogowski, John Taitano, Richard Palermo, Lori Woiwode, Shawn Woiwode, Carolyn Patol, Cassandra Sember, and Steven Sember) for their initiative and effort in pursuing this litigation for the benefit of the Settlement Class. Service awards to the named Class Representatives will be paid by Defendants, and will not reduce any benefits available to Settlement Class Members.

OBJECTING TO THE SETTLEMENT

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

If you are a member of the Settlement Class and do not request to be excluded, you can object to the Settlement if you do not like all or any part of it. The Court will consider all timely and valid comments from Settlement Class Members. As a Settlement Class Member, you will be bound by the Court's final decision regarding the approval of this Settlement.

To object, you must submit a letter to the Court, with copies to Class Counsel and defense counsel, at the addresses listed below. Your letter must include:

- Your full name, current address, and telephone number;
- The model, model year, date of acquisition, and VIN of your Settlement Class Vehicle and proof that you own(ed) or lease(d) it (i.e., a true copy of a vehicle title, registration, or license receipt);
- A written statement that you have reviewed the Settlement Class definition and understand in good faith that you are a Settlement Class Member;
- A written statement of all grounds for your objection and any legal support for your objection;
- Copies of any papers, briefs, or other documents upon which your objection is based and which are pertinent to the objection;
- A statement whether you complained to Defendants or an Authorized Subaru Retailer about a Qualifying Failure or had any Qualifying Repairs and, if so, provide evidence of any such complaint or repairs

- A statement of whether you intend to appear at the Fairness Hearing;
- The identity of all attorneys representing you, if any, who will appear at the Fairness Hearing;
- A list of all other objections (if any) you, or your counsel, made within the past five (5) years to any class action settlement in any court in the United States, including, for each, the full case name, the court in which it was filed, and the docket number, OR if you have not made any such prior objection, an affirmative statement to that effect; and
- Your signature.

You must send your objection via the Court's electronic filing system, or by mail to the addresses below, postmarked by _____:

The Court:
Clerk, United States District Court
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101

Class Counsel:
[_____]
Berger Montague PC
1818 Market Street
Suite 3600
Philadelphia, PA 19103

Defense Counsel:
Neal Walters
Ballard Spahr, LLP
700 East Gate Drive
Suite 300
Mount Laurel, NJ 08054

17. What is the difference between objecting and excluding?

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

FAIRNESS HEARING

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

The Court will hold a Fairness Hearing at _____ on _____, _____, in Courtroom ____ of the United States District Court for the District of New Jersey, Camden Division, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel and whether to approve service awards. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long it will take for the Court to make its decision.

19. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have. However, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it.

As long as your written objection is timely, the Court will consider it. You may also attend or pay your own lawyer to attend, but it is not required.

20. May I speak at the hearing?

Yes. If you do not exclude yourself, you may ask the Court's permission to speak at the hearing. If you intend to appear at the Fairness Hearing personally or through counsel, you or your attorney must file with the Clerk of the Court and serve on all counsel designated in Question 16 a notice of intention to appear at the hearing. The notice of intention to appear must include copies of any papers, exhibits, or other evidence and identity of witnesses that will be presented at the hearing. Your notice of intention to appear must be postmarked by _____, or it will not be considered, and you will not be allowed to speak at the hearing.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you do nothing, you will be bound by the Settlement if the Court approves it, and release the claims described under Section ____ of the Settlement Agreement. You will also be entitled to Settlement Extended Warranty and Settlement Extended Parts Warranty coverage. You must file a claim to seek a reimbursement payment.

22. Will I receive further notices if the Settlement is approved?

No. You will receive no further notice concerning approval of this proposed Settlement.

ADDITIONAL INFORMATION

23. How can I obtain more information?

For more information, visit [website url], call toll-free 1-XXX-XXX-XXXX, write Subaru CVT Settlement Administrator, c/o JND Legal Administration, P.O. Box 91305, Seattle, WA 98111, or email [email address].

For definitions of any capitalized terms used in this Notice, please see the Settlement Agreement, available on the Important Documents page of the Settlement Website, [website url].

DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

EXHIBIT D

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

AIMEE HICKMAN, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. SUBARU OF AMERICA, INC., *et al.*, Defendants.	Case No. 1:21-CV-02100-NLH-AMD **[PROPOSED] FINAL ORDER AND JUDGMENT**

This matter came before the Court for hearing pursuant to the Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, dated ___ ("Preliminary Approval Order"), on the motions of Plaintiffs for approval of proposed class action settlement with Defendants Subaru of America, Inc. and Subaru Corporation (collectively, "Defendants") and approval of attorneys' fees, expenses, and service awards. Due and adequate notice having been given of the Settlement as required by the Preliminary Approval Order, the Court having considered all papers filed and proceedings conducted herein, and good cause appearing therefor, it is hereby ORDERED, ADJUDGED and DECREED as follows:

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

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

3. The Court reaffirms and makes final its provisional findings, rendered in the Preliminary Approval Order, that, for purposes of the Settlement, all prerequisites for maintenance of a class action set forth in Federal Rules of Civil Procedure 23(a) and (b) are satisfied. The Court hereby makes final its appointments of Class Counsel and the Representative Plaintiffs and certifies the following Settlement Class:

> A natural person who is the current or former owner or lessee of a Settlement Class Vehicle, who purchased or leased in the continental United States, including Alaska or Hawaii, who purchased the vehicle for purposes other than for resale.

Excluded from the Settlement Class are (a) claims for personal injury and/or property damage, though claims for a Qualifying Failure in a Settlement Class Vehicle are included regardless of additional personal injury or property damage not claimed; (b) all Judges who presided over the Action and their spouses; (c) all current employees, officers, directors, agents, and representatives of Defendants and their family members; (d) any affiliate, parent, or subsidiary of Defendants and any entity in which Defendants have a controlling interest; (e) used car dealers; (f) anyone who purchased a Settlement Class Vehicle solely for resale; (g) anyone who purchased a

Settlement Class Vehicle with a salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (h) any insurer of a Settlement Class Vehicle; (i) issuers of extended vehicle warranties and service contracts; (j) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released Defendants or any Released Parties from any Released Claims; (k) any Settlement Class Member filing a timely and proper Request for Exclusion from the Settlement Class; and (l) third-party issuers.

4. For purposes of this Order and the Settlement, Settlement Class Vehicles mean model year 2019-2020 Subaru Ascent vehicles.

5. The Court appoints Russell D. Paul, Abigail J. Gertner, Natalie Lesser, and Amey J. Park of Berger Montague PC as Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are satisfied by this appointment.

6. The Court hereby appoints Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn, Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode ("Plaintiffs") to serve as Representative Plaintiffs for settlement purposes only on behalf of the Settlement Class.

7. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby grants final approval of the Settlement and finds that it is, in all respects, fair, reasonable, and adequate and in the best interests of the Settlement Class.

Specifically, the Court has analyzed each of the factors set forth in Fed. R. Civ. P. 23(e)(2), *Girsh v. Jepson*, 521F.2153, 157 (3d Cir. 1975) and *In re Prudential Ins. Co. Am. Sales Practice Litig*., 148 F.3d 283,323 (3d Cir. 1998) and finds the factors support final approval of the settlement, including, including an assessment of the likelihood that the Representative Plaintiffs would prevail at trial; the range of possible recovery; the consideration provided to Settlement Class Members as compared to the range of possible recovery discounted for the inherent risks of litigation; the complexity, expense, and possible duration of litigation in the absence of a settlement; the nature and extent of any objections to the settlement; the stage of the proceedings and the amount of discovery requested; the risk of establishing liability and damages, the ability of the defendants to withstand a greater judgment, the range of reasonableness of the settlement; the underlying substantive issues in the case; the existence and probable outcome of claims by other classes; the results achieved; whether the class can opt-out of the settlement; whether the attorneys' fees are reasonable, and whether the procedure for processing claims is fair and reasonable.

8. The Court finds the factors recently added to Fed. R. Civ. P. 23(e)(2) substantially overlap with the factors the Third Circuit has enumerated in *Girsh* and *In re Prudential*, and that each supports final approval of the settlement.

9. The Court also finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and

that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Here, Settlement Class Members share a common legal grievance arising from Defendants' alleged failure to disclose or adequately disclose material facts about the Settlement Class Vehicles. Common legal and factual questions predominate over any individual questions that may exist for purposes of this settlement, and the fact that the Parties are able to resolve the case on terms applicable to all Settlement Class Members underscores the predominance of common legal and factual questions for purposes of this settlement. In concluding that the Settlement Class should be certified pursuant to Rule 23(b)(3) for settlement purposes, the Court further finds that a class action is superior for purposes of resolving these claims because individual class members have not shown any interest in individually controlling the prosecution of separate actions. Moreover, the cost of litigation likely outpaces the individual recovery available to any Settlement Class Members. *See* Fed. R. Civ. P. 23(b)(3)(A). Accordingly, the Court finds that, for purposes of this settlement, Rule 23(b)(3) has also been satisfied.

10. The Court finds that notice of this Settlement was given to Settlement Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Settlement, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

11. The Court directs the Parties and the Settlement Administrator to implement the Settlement according to its terms and conditions.

12. Upon the Effective Date, Releasing named Plaintiffs and all Releasing Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Releasees from all Released Claims.

13. The Persons identified in **Exhibit 1** hereto requested exclusion from the Settlement Class as of the Exclusion Deadline. These Persons shall not share in the benefits of the Settlement, and this Final Order and Judgment does not affect their legal rights to pursue any claims they may have against Defendants. All other members of the Settlement Class are hereinafter barred and permanently enjoined from prosecuting any Released Claims against Defendants in any court, administrative agency, arbitral forum, or other tribunal.

14. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement, is or may be deemed to be or may be used as an addition of, or evidence of, (a) the validity of any Released Claim, (b) any wrongdoing or liability of Defendants, or (c) any fault or omission of Defendants in any proceeding in any court, administrative agency, arbitral forum, or other tribunal.

15. Without affecting the finality of this Judgment, this Court reserves exclusive jurisdiction over all matters related to administration, consummation,

enforcement, and interpretation of the Settlement, and this Final Order and Judgment, including (a) further proceedings, if necessary, on the application for attorneys' fees, reimbursement of litigation expenses, and service awards for named Plaintiffs; and (b) the Parties for the purpose of construing, enforcing, and administering the Settlement. If any Party fail(s) to fulfill its or their obligations under the Settlement, the Court retains authority to vacate the provisions of this Judgment releasing, relinquishing, discharging, barring and enjoining the prosecution of, the Released Claims against the Releasees, and to reinstate the Released Claims against the Releasees.

16. If the Settlement does not become effective, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement.

17. The Court has considered each of the objections, and finds that they are unpersuasive and therefore overrules all of them.

18. The Court hereby enters a judgment of dismissal, pursuant to Federal Rule of Civil Procedure 54(b), of the claims by the Settlement Class Members, with prejudice and without costs, except as specified in this order, and except as provided in the Courts order related to Plaintiffs' Unopposed Motion

for Attorneys' Fees, Expenses, and Service Awards. The Clerk of the Court is directed to close this docket.

IT IS SO ORDERED on this _____ day of _____, 2023.

_____
HONORABLE NOEL L. HILLMAN
UNITED STATES DISTRICT JUDGE

EXHIBIT E

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

AIMEE HICKMAN, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. SUBARU OF AMERICA, INC., *et al.*, Defendants.	Case No. 1:21-CV-02100-NLH-AMD **[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the parties seek entry of an order preliminarily approving the settlement of this action pursuant to the Settlement Agreement fully executed on August 18, 2023 (the "Settlement Agreement" or "Agreement"), which, together with its attached exhibits, sets forth the terms and conditions for a proposed Settlement of the Action and dismissal of the Action with prejudice; and

WHEREAS, the Court having read and considered the Agreement and its exhibits, and Plaintiffs' Unopposed Motion for Preliminary Approval, Plaintiffs' motion is GRANTED.

IT IS HEREBY ORDERED as follows:

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

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

3. The Settlement is the product of non-collusive arm's-length negotiations between experienced counsel who were thoroughly informed of the strengths and weaknesses of the Action, including through discovery and motion practice, and whose negotiations were supervised by an experienced mediator. The Settlement confers substantial benefits upon the Settlement Class and avoids the costs, uncertainty, delays, and other risks associated with continued litigation, trial, and/or appeal. The Settlement falls within the range of possible recovery, compares favorably with the potential recovery when balanced against the risks of continued litigation, does not grant preferential treatment to Plaintiffs, their counsel, or any subgroup of the Settlement Class, and has no obvious deficiencies.

4. The Court preliminarily approves the Settlement as being fair, reasonable, and adequate, and finds that it otherwise meets the criteria for approval, subject to further consideration at the Final Fairness Hearing described below, and warrants issuance of notice to the Settlement Class.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finds, upon preliminary evaluation and for purposes of Settlement only, that it will likely be able to certify the Settlement Class as follows:

> A natural person who is the current or former owner or lessee of a Settlement Class Vehicle, who purchased or

> leased in the continental United States, including Alaska or Hawaii, who purchased the vehicle for purposes other than for resale.

Excluded from the Settlement Class are (a) claims for personal injury and/or property damage, though claims for a Qualifying Failure in a Settlement Class Vehicle are included regardless of additional personal injury or property damage not claimed; (b) all Judges who presided over the Action and their spouses; (c) all current employees, officers, directors, agents, and representatives of Defendants and their family members; (d) any affiliate, parent, or subsidiary of Defendants and any entity in which Defendants have a controlling interest; (e) used car dealers; (f) anyone who purchased a Settlement Class Vehicle solely for resale; (g) anyone who purchased a Settlement Class Vehicle with a salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (h) any insurer of a Settlement Class Vehicle; (i) issuers of extended vehicle warranties and service contracts; (j) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released Defendants or any Released Parties from any Released Claims; (k) any Settlement Class Member filing a timely and proper Request for Exclusion from the Settlement Class; and (l) third-party issuers.

6. For purposes of this Order and the Settlement, Settlement Class Vehicles mean model year 2019-2020 Subaru Ascent vehicles.

7. The Court preliminarily finds that the settlement is likely to receive final approval and the Settlement Class will likely be certified for settlement

purposes only. The Court concludes that the Settlement Class satisfies the requirements of Rule 23(a) and (b)(3): (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class; (d) Plaintiffs and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

8. The Court appoints Russell D. Paul, Abigail J. Gertner, Natalie Lesser, and Amey J. Park of Berger Montague PC as Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are satisfied by this appointment.

9. The Court hereby appoints Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn, Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode ("Plaintiffs") to serve as Representative Plaintiffs for settlement purposes only on behalf of the Settlement Class.

10. The Court approves the form and content of the Class Notice. The Court finds that the mailing of the Class Notice substantially in the manner and form set forth in the Agreement satisfies due process. The foregoing is the best notice

practicable under the circumstances and shall constitute due and sufficient notice to all Settlement Class Members entitled to such Class Notice.

(a) Within 90 days after entry of the Preliminary Approval Order, the Settlement Administrator, at Subaru's expense, shall cause the First Class Notice, substantially in the form attached as Exhibit B to the Settlement Agreement, to be disseminated to Settlement Class Members in the form and manner set forth in the Agreement. The Court authorizes the Parties to make non-material modifications to the Class Notice prior to publication if they jointly agree that any such changes are necessary under the circumstances.

(b) Subaru shall also provide through the Settlement Administrator-also at its expense-a toll-free number with live operators to field questions from Settlement Class Members; set up a dedicated website that will include:

(i) a copy of the Claim Form, Full Notice, this Settlement Agreement, Court Orders regarding this Settlement, and other relevant Court documents, including Class Counsel's Motion for Approval of Attorneys' Fees, Costs, and Service Awards;

(ii) instructions on how to submit a Claim for reimbursement;

(iii) information concerning deadlines for filing a Claim and the dates and locations of relevant Court proceedings, including the Fairness Hearing;

(iv) instructions on how to contact the Settlement Administrator, Defendants, and Class Counsel for assistance; online submissions forms; and

(v) any other relevant information agreed upon by counsel for the Parties.

(c) The Settlement Administrator will also email a hyperlink to the Settlement Website and electronic versions of the Long Form Notice and Claim Form to Class Members for whom the Settlement Administrator may obtain an email address for.

(d) No later than ten (10) days before the Fairness Hearing, Defendants and the Settlement Administrator shall provide an affidavit(s) to Class Counsel, attesting that the First Class Notice was disseminated in a manner consistent with the terms of this Agreement or those required by the Court.

11. The Claim Form is approved for dissemination to the Settlement Class Members, subject to any non-material changes to which the parties may agree.

12. The Court hereby appoints JND Legal Administration to serve as the Settlement Administrator to supervise and administer the notice procedures, administer the claims processes, distribute payments according to the processes and

criteria set forth in the Settlement Agreement, and perform any other duties of the Settlement Administrator that are reasonably necessary or provided for in the Settlement Agreement.

13. If Settlement Class Members do not wish to participate in the Settlement Class, Settlement Class Members may exclude themselves by filling out and returning the Request for Exclusion Form, substantially in the form attached to the Agreement as Exhibit G. All requests by Settlement Class Members to be excluded from the Settlement Class must be in writing and postmarked on or before forty-five (45) days after the date of the mailing of Notice to Settlement Class Members. The Settlement Administrator shall report the names and addresses of all such persons and entities requesting exclusion to the Court and Class Counsel within thirty (30) days prior to the Final Hearing, and the list of persons and entities deemed by the Court to have excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

14. If a Settlement Class Member wishes to be excluded from the Settlement Class, the Settlement Class Member's written Request for Exclusion shall state in writing (a) the Settlement Class Member’s full name, current address and telephone number; and (b) specifically and unambiguously state in writing his or her desire to be excluded from the Settlement Class and election to be excluded from any judgment entered pursuant to the settlement. No Request for Exclusion will be valid unless all of the information described above is included. All Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to

receive any benefits under the Settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against Defendants.

15. To state a valid objection to the Settlement, an objecting Settlement Class Member must: (a) set forth the objector's full name, current address, and telephone number; (b) the model, model year, date of acquisition and vehicle identification number of the Settlement Class Vehicle, along with proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt); (c) a written statement that the objector has reviewed the Settlement Class definition and understands in good faith that he or she is a Settlement Class Member; (d) a written statement of all grounds for the objection accompanied by any legal support for such objection sufficient to enable the parties to respond to those specific objections; (e) copies of any papers, briefs, or other documents upon which the objection is based and which are pertinent to the objection; (f) a statement whether the Settlement Class Member complained to Defendants or an Authorized Subaru Dealer about a Qualifying Failure or has had any Qualifying Repairs and, if so, provide evidence of any such complaint or repairs; and (g) shall provide a list of all other objections submitted by the objector, and/or the objector's counsel, to any class action settlements submitted in any state or federal court in the United States in the previous five (5) years, including the full case name with jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his, her, or its counsel has not objected to any other

class action settlement in the United States in the previous five (5) years, he or she shall affirmatively so state in the objection. Objections shall be filed via the Court's electronic filing system, and if not filed via the Court's electronic system, must mail, postmarked on or before forty-five (45) days after the date of the mailing of Notice to Settlement Class Members ("Objection Deadline"), the objection to the Court and also serve by first-class mail copies of the objection upon:

Clerk of the Court
United States District Court District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets Camden, New Jersey 08101

Russell D. Paul
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103

Neal Walters
Ballard Spahr, LLP
700 East Gate Drive, Suite 300
Mount Laurel, NJ 08054.

16. Any objecting Settlement Class Member may appear, in person or by counsel, at the Fairness Hearing to explain why the proposed settlement should not be approved as fair, reasonable, and adequate, or to object to any petitions for Class Counsel Fees and Expenses or Service Awards. If the objecting Settlement Class Member intends to appear at the Fairness Hearing, the objecting Settlement Class Member must file with the Clerk of the Court and serve upon all counsel designated in the Notice a notice of intention to appear at the Fairness Hearing by the Objection Deadline. The notice of intention to appear must include copies of any papers,

exhibits, or other evidence, and the identity of witnesses, that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) will present to the Court in connection with the Fairness Hearing.

17. Upon the filing of an objection, Class Counsel and Defendants' Counsel may take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Service of the subject deposition notice may be accomplished by e-mail upon the objector. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

18. Any Settlement Class Member who does not make his or her objections in the manner provided herein shall be deemed to have waived such objections and shall forever be foreclosed from making any objections to the fairness, reasonableness, or adequacy of the proposed Settlement and the judgment approving the Settlement.

19. The Final Fairness Hearing shall be held 180 days following this Order Preliminarily Approving Settlement. The Court hereby schedules the Final Fairness Hearing for _____, at 11:00 a.m. in Courtroom 3A of the United States District Court for the District of New Jersey, Camden Division, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, to determine whether

the proposed Settlement should be approved as fair, reasonable and adequate, whether a judgment should be entered approving such Settlement, and whether Class Counsel's application for attorneys' fees and for service awards to the class representatives should be approved. The Court may adjourn the Final Fairness Hearing without further notice to Settlement Class Members.

20. Class Counsel's application for an award of attorneys' fees, expenses, and costs and for service awards will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. Any appeal from any order relating solely to Class Counsel's application for an award of attorneys' fees, costs, and expenses, and/or to Class Counsel's application for service awards, or any reversal or modification of any such order, shall not operate to terminate or cancel the Settlement or to affect or delay the finality of a judgment approving the Settlement.

21. Papers in support of final approval of the Settlement and Class Counsel's application for attorneys' fees, expenses and costs and for service awards shall be filed no later than 30 days prior to the objection and opt-out deadline.

22. Settlement Class Members shall have until ninety (90) days after the Notice Date to submit claim forms. Claim forms must be postmarked by that date to be considered timely.

23. If the Settlement fails to become effective in accordance with its terms, or if the Final Order and Judgment is not entered or is reversed or vacated on appeal, this Order shall be null and void, the Settlement Agreement shall be deemed

terminated, and the Parties shall return to their positions without any prejudice, as provided for in the Settlement Agreement.

24. The fact and terms of this Order or the Settlement, all negotiations, discussions, drafts and proceedings in connection with this Order or the Settlement, and any act performed or document signed in connection with this Order or the Settlement, shall not, in this or any other Court, administrative agency, arbitration forum, or other tribunal, constitute an admission, or evidence, or be deemed to create any inference (i) of any acts of wrongdoing or lack of wrongdoing, (ii) of any liability on the part of Defendant to Plaintiffs, the Settlement Class, or anyone else, (iii) of any deficiency of any claim or defense that has been or could have been asserted in this Action, (iv) of any damages or absence of damages suffered by Plaintiffs, the Settlement Class, or anyone else, or (v) that any benefits obtained by the Settlement Class under the Settlement represent the amount that could or would have been recovered from Defendant in this Action if it were not settled at this time. The fact and terms of this Order or the Settlement, and all negotiations, discussions, drafts, and proceedings associated with this Order or the Settlement, including the judgment and the release of the Released Claims provided for in the Settlement Agreement, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum, or other tribunal, except as necessary to enforce the terms of this Order, the Final Order and Judgment, and/or the Settlement.

25. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

26. Pending further order of the Court, all litigation activity and events, except those contemplated by this Order or in the Settlement Agreement, are hereby STAYED, and all hearings, deadlines, and other proceedings in the Litigation, except the Final Fairness Hearing and the matters set forth in this Order, are VACATED.

IT IS SO ORDERED on this _____ day of _____, 2023.

_____
HONORABLE NOEL L. HILLMAN
UNITED STATES DISTRICT JUDGE

EXHIBIT F

Subaru CVT Settlement
c/o JND Legal Administration
1100 2nd Ave, Suite 300
Seattle, WA 98101
[website url]
[email address]
Toll-free: 1-XXX-XXX-XXXX

Claim Number: XXXXX-XXXXX
VIN: XXXXXXXXXXXXXXXXX

[Month Day, Year]

Claim Decision and Option Letter

Your claim in the Subaru CVT Settlement for the vehicle identified above was reviewed and [approved for reimbursement in the amount of $ _____ /rejected]. [The reasons for this rejection are detailed below.]

- Not a Class Vehicle
- Insufficient Proof of Claimed Expenses
- Missing Proof of Ownership or Lease [only if required for claims where owner name/VIN not pre-populated]
- Missing Signature

You have a right to a Second Review of this decision if you disagree with it. To exercise this option and initiate a Second Review, you must return a copy of this letter by mail or email, along with any additional explanation and/or documents [to support your claim for reimbursement/to cure the deficiencies detailed above], postmarked or emailed by [Month Day, Year].

Subaru CVT Settlement
c/o JND Legal Administration
1100 2nd Ave, Suite 300
Seattle, WA 98101
[email address]

This decision will become final if you do not timely respond to initiate a Second Review. You do not need to respond if you accept this determination. [A check will be issued to you in the amount specified above.]

If you have any questions about this decision, please contact the Settlement Administrator by calling toll-free 1-XXX-XXX-XXXX or emailing [email address].

EXHIBIT G

SUBARU CVT SETTLEMENT

REQUEST FOR EXCLUSION FORM

Please enter the Unique ID and PIN from the Notice packet you received to file a Request for Exclusion Form. If you do not have your Unique ID and PIN, enter the VIN of your Class Vehicle.

Unique ID:

PIN:

The Unique ID and/or PIN you entered is not valid. Please try again.

VIN:

The VIN you entered does not belong to a Settlement Class Vehicle. Please try again.

File a Request for Exclusion Form

SECTION I: CLAIMANT CONTACT INFORMATION

Please review the information below and confirm that it is accurate. If the name and/or VIN listed is not correct, please return here and enter the VIN of your Settlement Class Vehicle to continue.

Full Name:

Pre-populated

VIN:

Pre-populated

In-Service Date

Pre-populated

Mailing Address – Line 1:

Pre-populated

Mailing Address – Line 2:

Pre-populated

City:

Pre-populated

State:

Pre-populated

Zip Code:

Pre-populated

Phone Number: *This is required.*

By signing below, I affirm my desire to be excluded from the Settlement Class and from any judgement entered pursuant to the settlement.

Signature: *This is required.*

4/22/2022

Submit

SECTION I: CLAIMANT CONTACT INFORMATION

Please provide your name, address, and contact information below.

VIN:

Pre-populated

In-Service Date

Pre-populated

Full Name: *This is required.*

Mailing Address – Line 1:*This is required.*

Mailing Address – Line 2:

City: *This is required.*

State: *This is required.*

Zip Code: *This is required.*

Phone Number: *This is required.*

By signing below, I affirm my desire to be excluded from the Settlement Class and from any judgement entered pursuant to the settlement.

Signature: *This is required.*

4/22/2022

Submit

SUCCESS

Your Request for Exclusion Form has been submitted. Your Exclusion Number is: PFWX2-4JFN4. Please save your Exclusion Number for recordkeeping purposes.

SUMMARY

Full Name:

VIN:

Mailing Address – Line 1:

Mailing Address – Line 2:

City:

State:

Zip:

Phone:

Print

EXHIBIT 2

1818 Market Street | Suite 3600 | Philadelphia, PA 19103
info@bm.net
bergermontague.com
800-424-6690

About Berger Montague

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

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

Currently, the firm consists of 87 lawyers; 19 paralegals; and an experienced support staff. Few firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

History of the Firm

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

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

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

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

Diversity, Equity and Inclusion Initiatives

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

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

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

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

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

Commitment to *Pro Bono*

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

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

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

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

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

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

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

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

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

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

Practice Areas and Case Profiles

Antitrust

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

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

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

- ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation:*** Berger Montague served as co-lead counsel for a national class including millions of merchants in the *Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* against Visa, MasterCard, and several of the largest banks in the U.S. (*e.g.*, Chase, Bank of America, and Citi). The lawsuit alleged that merchants paid excessive fees to accept Visa and MasterCard cards because the payment cards, individually and together with their respective member banks, violated the antitrust laws. The challenged conduct included, *inter alia*, the collective fixing of interchange fees and adoption of rules that hindered any competitive pressure by merchants to reduce those fees. The lawsuit further alleged that defendants maintained their conspiracy even after both Visa and MasterCard changed their corporate forms from joint ventures owned by member banks to publicly-owned corporations following commencement of this litigation. On September 18, 2018, after thirteen years of hard-fought litigation, Visa and MasterCard agreed to pay as much as approximately $6.26 billion, but no less than approximately $5.56 billion, to settle the case. This result is the largest-ever class action settlement of an antitrust case. The settlement received preliminary approval on January 24, 2019. The settlement received final approval on December 16, 2019, for approximately $5.6 billion.

- ***Contant, et al. v. Bank of America Corp., et al.:*** Berger Montague served as lead class counsel in the multistate indirect purchaser antitrust class action *Contant, et al. v. Bank of America Corp., et al.*, against 16 of the world's largest dealer banks. Plaintiffs alleged that the defendants colluded to manipulate prices on foreign currency ("FX") instruments, using a number of methods to carry out their conspiracies, including sharing confidential price and order information through electronic chat rooms, thereby enabling the defendants to coordinate pricing and eliminate price competition. As with prior bank rigging scandals involving conspiracies to manipulate prices on other financial instruments, the defendants' alleged conspiracy to manipulate FX prices was the subject of numerous governmental investigations as well as direct purchaser class actions brought under antitrust federal law. However, the *Contant* action was the first of such cases to bring claims under state indirect purchaser antitrust laws on behalf of state-wide classes of retail investors of those financial instruments and whose claims have never been redressed. On July 29, 2019, U.S. District Judge Lorna G. Schofield granted preliminary approval of a $10 million settlement with Citigroup and a $985,000 settlement with MUFG Bank Ltd. On July 17, 2020, the Court granted preliminary approval of three settlements with all remaining defendants for a combined $12.695 million. Each of the five settlements, totaling $23.63 million, received final approval on November 19, 2020.

- ***In re Dental Supplies Antitrust Litigation:*** Berger Montague served as co-lead counsel for a class of dental practices and dental laboratories in *In re Dental Supplies Antitrust Litigation*, a suit brought against Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company, the three largest distributors of dental supplies in the United States. On September 7, 2018, co-lead counsel announced that they agreed with defendants to settle on a classwide basis for $80 million. The settlement received final

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

- ***In re Domestic Drywall Antitrust Litigation:*** Berger Montague served as co-lead counsel on behalf of a class of direct purchasers of drywall, in a case alleging that the dominant manufacturers of drywall engaged in a conspiracy to fix drywall prices in the U.S. and to abolish the industry's long-standing practice of limiting price increases for the duration of a construction project through "job quotes." Berger Montague represented a class of direct purchasers of drywall from defendants for the period from January 1, 2012 to January 31, 2013. USG Corporation and United States Gypsum Company (collectively, "USG"), New NGC, Inc., Lafarge North America Inc., Eagle Materials, Inc., American Gypsum Company LLC, TIN Inc. d/b/a Temple-Inland Inc., and PABCO Building Products, LLC were named as defendants in this action. On August 20, 2015, the district court granted final approval of two settlements—one with USG and the other with TIN Inc.—totaling $44.5 million. On December 8, 2016, the district court granted final approval of a $21.2 million settlement with Lafarge North America, Inc. On February 18, 2016, the district court denied the motions for summary judgment filed by American Gypsum Company, New NGC, Inc., Lafarge North America, Inc., and PABCO Building Products. On August 23, 2017, the district court granted direct purchaser plaintiffs' motion for class certification. On January 29, 2018, the district court granted preliminary approval of a joint settlement with the remaining defendants, New NGC, Inc., Eagle Materials, Inc., American Gypsum Company LLC, and PABCO Building Products, LLC, for $125 million. The settlement received final approval on July 17, 2018, bringing the total amount of settlements for the class to $190.7 million.

- ***In re Currency Conversion Fee Antitrust Litigation:*** Berger Montague, as one of two co-lead counsel, spearheaded a class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of $336 million was approved in October 2009, with a Final Judgment entered in November 2009. Following the resolution of eleven appeals, the District Court, on October 5, 2011, directed distribution of the settlement funds to more than 10 million timely filed claimants, among the largest class of claimants in an antitrust consumer class action. A subsequent settlement with American Express increased the settlement amount to $386 million. (MDL No. 1409 (S.D.N.Y)).

- ***In re Marchbanks Truck Service Inc., et al. v. Comdata Network, Inc.:*** Berger Montague was co-lead counsel in this antitrust class action brought on behalf of a class of thousands of Independent Truck Stops. The lawsuit alleged that defendant Comdata Network, Inc. had monopolized the market for specialized Fleet Cards used by long-haul truckers. Comdata imposed anticompetitive provisions in its agreements with Independent Truck Stops that artificially inflated the fees Independents paid when accepting the Comdata's Fleet Card for payment. These contractual provisions, commonly referred to as anti-steering provisions or merchant restraints, barred Independents from taking various competitive steps that could have been used to steer fleets to rival payment cards. The settlement for $130 million and valuable prospective relief was preliminary approved on March 17, 2014, and finally approved on July 14, 2014. In its July 14, 2014 order approving Class Counsel's fee request, entered contemporaneously with its order finally approving the settlement, the Court described this outcome as "substantial, both in absolute terms, and when assessed in light of the risks of establishing liability and damages in this case."

- ***Ross, et al. v. Bank of America (USA) N.A., et al.:*** Berger Montague, as lead counsel for the cardholder classes, obtained final approval of settlements reached with Chase, Bank of America, Capital One and HSBC, on claims that the defendant banks unlawfully acted in concert to require cardholders to arbitrate disputes, including debt collections, and to preclude cardholders from participating in any class actions. The case was brought for injunctive relief only. The settlements remove arbitration clauses nationwide for 3.5 years from the so-called "cardholder agreements" for over 100 million credit card holders. This victory for consumers and small businesses came after nearly five years of hard-fought litigation, including obtaining a decision by the Court of Appeals reversing the order dismissing the case, and will aid consumers and small businesses in their ability to resist unfair and abusive credit card practices. In June 2009, the National Arbitration Forum (or "NAF") was added as a defendant. Berger Montague also reached a settlement with NAF. Under that agreement, NAF ceased administering arbitration proceedings involving business cards for a period of three and one-half (3.5) years, which relief is in addition to the requirements of a Consent Judgment with the State of Minnesota, entered into by the NAF on July 24, 2009.

- ***Johnson, et al. v AzHHA, et al.:*** Berger Montague was co-lead counsel in this litigation on behalf of a class of temporary nursing personnel, against the Arizona Hospital and Healthcare Association, and its member hospitals, for agreeing and conspiring to fix the rates and wages for temporary nursing personnel, causing class members to be underpaid. The court approved $24 million in settlements on behalf of this class of nurses. (Case No. 07-1292 (D. Ariz.)).

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

- ***In re: Namenda Direct Purchaser Antitrust Litigation:*** Berger Montague is co-lead counsel for the class in this antitrust action brought on behalf of a class of direct purchasers of branded and/or generic Namenda IR and/or branded Namenda XR. It settled for $750 million on the very eve of trial. The $750 million settlement received final approval on May 27, 2020, and is the largest single-defendant settlement ever for a case alleging delayed generic competition. (Case No. 15-cv-7488 (S.D.N.Y.)).

- ***King Drug Co. v. Cephalon, Inc.:*** Berger Montague played a major role (serving on the executive committee) in this antitrust class action on behalf of direct purchasers of the prescription drug Provigil (modafinil). After nine years of hard-fought litigation, the court approved a $512 million partial settlement, then the largest settlement ever for a case alleging delayed generic competition. (Case No. 2:06-cv-01797 (E.D. Pa.)). Subsequent non-class settlements pushed the total settlement figure even higher.

- ***In re Aggrenox Antitrust Litigation:*** Berger Montague represented a class of direct purchasers of Aggrenox in in an action alleging that defendants delayed the availability of less expensive generic Aggrenox through, *inter alia*, unlawful reverse payment agreements. The case settled for $146 million. (Case No. 14-02516 (D. Conn.)).

- ***In re Asacol Antitrust Litigation:*** The firm served as class counsel for direct purchasers of Asacol HS and Delzicol in a case alleging that defendants participated in a scheme to block generic competition for the ulcerative colitis drug Asacol. The case settled for $15 million. (Case No. 15-cv-12730-DJC (D. Mass.)).

- ***In re Celebrex (Celecoxib) Antitrust Litigation***: The firm represented a class of direct purchasers of brand and generic Celebrex (celecoxib) in an action alleging that Pfizer, in violation of the Sherman Act, improperly obtained a patent for Celebrex from the U.S. Patent and Trademark Office in a scheme to unlawfully extend patent protection and delay market entry of generic versions of Celebrex. The case settled for $94 million. (Case No. 14-cv-00361 (E.D. VA.)).

- ***In re DDAVP Direct Purchaser Antitrust Litigation:*** Berger Montague served as co-lead counsel in a case that charged defendants with using sham litigation and a fraudulently obtained patent to delay the entry of generic versions of the prescription drug DDAVP. Berger Montague achieved a $20.25 million settlement only after winning a precedent-setting victory before the United States Court of Appeals for the Second Circuit that ruled that direct purchasers had standing to recover overcharges arising from a patent-holder's misuse of an allegedly fraudulently obtained patent. (Case No. 05-2237 (S.D.N.Y.)).

- ***In re K-Dur Antitrust Litigation:*** Berger Montague served as co-lead counsel for the class in this long-running antitrust litigation. Berger Montague litigated the case before the Court of Appeals and won a precedent-setting victory and continued the fight before the Supreme Court. On remand, the case settled for $60.2 million. (Case No. 01-1652 (D.N.J.)).

- ***In re Loestrin 24 Fe Antitrust Litigation:*** Berger Montague served as co-lead counsel for the class of direct purchasers of brand Loestrin, generic Loestrin, and/or brand Minastrin. The direct purchaser class alleged that defendants violated federal antitrust laws by unlawfully impairing the introduction of generic versions of the prescription drug Loestrin 24 Fe. The case settled shortly before trial for $120 million (Case No. 13-md-2472) (D.R.I.).

- ***Meijer, Inc., et al. v. Abbott Laboratories:*** Berger Montague served as co-lead counsel in a class action on behalf of pharmaceutical wholesalers and pharmacies charging Abbott Laboratories with illegally maintaining monopoly power and overcharging purchasers in violation of the federal antitrust laws. Plaintiffs alleged that Abbott had used its monopoly with respect to its anti-HIV medicine Norvir (ritonavir) to protect its monopoly power for another highly profitable Abbott HIV drug, Kaletra. This antitrust class action settled for $52 million after four days of a jury trial in federal court in Oakland, California. (Case No. 07-5985 (N.D. Cal.)).

- ***Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Ltd. Co.:*** Berger Montague served as co-lead counsel in a case challenging Warner Chilcott's alleged anticompetitive practices with respect to the branded drug Doryx. The case settled for $15 million. (Case No. 2:12-cv-03824 (E.D. Pa.)).

- ***In re Oxycontin Antitrust Litigation:*** Berger Montague served as co-lead counsel on behalf of direct purchasers of the prescription drug Oxycontin. The case settled in 2011 for $16 million. (Case No. 1:04-md-01603 (S.D.N.Y)).

- ***In re Prandin Direct Purchaser Antitrust Litigation:*** Berger Montague served as co-lead counsel and recovered $19 million on behalf of direct purchasers of the diabetes medication Prandin. (Case No. 2:10-cv-12141 (E.D. Mich.)).

- ***Rochester Drug Co-Operative, Inc. v. Braintree Labs., Inc.*:** Berger Montague served as co-lead counsel on behalf of direct purchasers alleging sham litigation led to the delay of generic forms of the brand drug Miralax. The case settled for $17.25 million. (Case No. 07-142 (D. Del.)).

- ***In re Skelaxin Antitrust Litigation:*** Berger Montague was among a small group of firms litigating on behalf of direct purchasers of the drug Skelaxin. The case settled for $73 million. (Case No. 2:12-cv-83 / 1:12-md-02343) (E.D. Tenn.)).

- ***In re Solodyn Antitrust Litigation:*** Berger Montague served as co-lead counsel representing a class of direct purchasers of brand and generic Solodyn (extended-release minocycline hydrochloride tablets) alleging that defendants entered into agreements not to compete in the market for extended-release minocycline hydrochloride tablets in violation of the Sherman Act. With a final settlement on the eve of trial, the case settled for a total of more than $76 million. (Case No. 14-MD-2503-DJC (D. Mass.)).

- ***In re Tricor Antitrust Litigation:*** Berger Montague was one of a small group of counsel in a case alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Tricor. The case settled for $250 million. (No. 05-340 (D. Del.)).

- ***In re Wellbutrin XL Antitrust Litigation:*** Berger Montague served as co-lead counsel for a class of direct purchasers of the antidepressant Wellbutrin XL. A settlement of $37.5 million was reached with Valeant Pharmaceuticals (formerly Biovail), one of two defendants in the case. (Case No. 08-cv-2431 (E.D. Pa.)).

Commercial Litigation

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

- ***Robert S. Spencer, et al. v. The Arden Group, Inc., et al.*:** Berger Montague represented an owner of limited partnership interests in several commercial real estate partnerships in a lawsuit against the partnerships' general partner. The terms of the settlement are subject to a confidentiality agreement. (Aug. Term, 2007, No. 02066 (Pa. Ct. Com. Pl., Phila. Cty. - Commerce Program)).

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

Commodities & Financial Instruments

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

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

- ***In re MF Global Holdings Ltd. Investment Litigation*:** Berger Montague is one of two co-lead counsel that represented thousands of commodities account holders who fell victim to the alleged massive theft and misappropriation of client funds at the former major global commodities brokerage firm MF Global. Berger Montague reached a variety of settlements, including with JPMorgan Chase Bank, the MF Global SIPA Trustee, and the CME Group, that collectively helped to return approximately $1.6 billion to the class. Ultimately, class members received more than 100% of the funds allegedly misappropriated by MF Global even after all fees and expenses. (No. 11-cv-07866 (S.D.N.Y.).

- ***In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*:** Berger Montague is one of two co-lead counsel representing traders of traders of gold-based derivative contracts, physical gold, and gold-based securities against The Bank of Nova Scotia, Barclays Bank plc, Deutsche Bank AG, HSBC Bank plc, Société Générale and the London Gold Market Fixing Limited. Plaintiffs allege that the defendants, members of the London Gold Market Fixing Limited, which sets an important benchmark price for gold, conspired to manipulate this benchmark for their collective benefit. (1:14-md-02548 (S.D.N.Y.)).

- ***In re Libor-Based Financial Instruments Antitrust Litigation*:** Berger Montague represents exchange-based investors in this sprawling litigation alleging a conspiracy among many of the world's largest banks to manipulate the key LIBOR benchmark rate. LIBOR plays an important role in valuing trillions of dollars of financial instruments worldwide. The case, filed in 2011, alleges that the banks colluded to misreport and manipulate LIBOR rates for their own benefit. The banks' conduct damaged, among others, exchange-based investors who transacted in Eurodollar futures and options on the CME between 2005 and 2010. Eurodollar futures and options are keyed to LIBOR and are the world's most heavily traded short-term interest rate contracts. Following years of hotly contested litigation on behalf of these exchange-based investors, Berger Montague and its co-counsel achieved settlements with seven banks totaling more than $180 million. In September 2019, the Court granted preliminary approval of a plan of distribution for these settlement funds. A final approval hearing on the settlement is scheduled in September 2020. (No. 1:11-md-02262-NRB (S.D.N.Y.)).

Consumer Protection

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

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

- ***In re: CertainTeed Fiber Cement Siding Litigation***: The firm, as one of two Co-Lead Counsel firms obtained a settlement of more than $103 million in this multidistrict products liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class. (MDL No. 2270 (E.D. Pa.)).

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

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

- ***In re Pet Foods Product Liability Litigation***: The firm served as one of plaintiffs' co-lead counsel in this multidistrict class action suit seeking to redress the harm resulting from the manufacture and sale of contaminated dog and cat food. The case settled for $24 million. Many terms of the settlement are unique and highly beneficial to the class, including allowing class members to recover up to 100% of their economic damages without any limitation on the types of economic damages they may recover. (1:07-cv-02867 (D.N.J.), MDL Docket No. 1850 (D.N.J.)).

- ***In re TJX Companies Retail Security Breach Litigation***: The firm served as co-lead counsel in this multidistrict litigation brought on behalf of individuals whose personal and financial data was compromised in the then-largest theft of personal data in history. The breach involved more than 45 million credit and debit card numbers and 450,000 customers' driver's license numbers. The case was settled for benefits valued at over $200 million. Class members whose driver's license numbers were at risk were entitled to 3 years of credit monitoring and identity theft insurance (a value of $390 per person based

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

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

- ***In re: Countrywide Financial Corp. Customer Data Security Breach Litigation***: The firm served on the Executive Committee of this multidistrict litigation and obtained a settlement for a class of 17 million individuals whose personal information was at risk when a rogue employee sold their information to unauthorized third parties. Settlement benefits included: (i) reimbursement of several categories of out-of-pocket costs; (ii) credit monitoring and identity theft insurance for 2 years for consumers who did not accept Countrywide's prior offer of credit monitoring; and (iii) injunctive relief. The settlement was approved by the court in 2010. (3:08-md-01998-TBR (W.D. Ky. 2008)).

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

- ***Salvucci v. Volkswagen of America, Inc. d/b/a Audi of America, Inc.*:** The firm served as co-lead counsel in litigation brought on behalf of a nationwide class alleging that defendants failed to disclose that its vehicles contained defectively designed timing belt tensioners and associated parts and that defendants misrepresented the appropriate service interval for replacement of the timing belt tensioner system. After extensive discovery, a settlement was reached. (Docket No. ATL-1461-03 (N.J. Sup. Ct. 2007)).

Corporate Governance and Shareholder Rights

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

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

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

Employee Benefits & ERISA

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

- ***Diebold v. Northern Trust Investments, N.A.*:** As co-lead counsel in this ERISA breach of fiduciary duty case, the firm secured a $36 million settlement on behalf of participants in retirement plans who participated in Northern Trust's securities lending program. Plaintiffs alleged that defendants breached their ERISA fiduciary duties by failing to manage properly two collateral pools that held cash collateral received from the securities lending program. The settlement represented a recovery of more than 25% of alleged class member losses. (No. 1:09-cv-01934 (N.D. Ill.)).

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

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

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

Employment & Unpaid Wages

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

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

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

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

Representative cases include the following:

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

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

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

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

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

- ***Jantz v. Social Security Administration:*** The firm served as co-lead counsel and obtained a settlement on behalf of employees with targeted disabilities ("TDEs") alleged

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

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

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

- ***Chabrier v. Wilmington Finance, Inc.:*** The firm served as co-lead counsel and obtained a settlement of $2,925,000 on behalf of loan officers who worked in four offices to resolve claims for unpaid overtime wages. A significant opinion issued in the case is *Chabrier v. Wilmington Finance, Inc.*, 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant's motion to decertify the class). (No. 06-4176 (E.D. Pa.)).

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

Environment & Public Health

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

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

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

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

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

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

Insurance Fraud

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

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

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

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

Predatory Lending and Borrowers' Rights

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

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

- ***Arnett v. Bank of America, N.A.***: The firm, as Co-Lead Counsel, prosecuted this national class action against Bank of America and its affiliates in the United States District Court for the District of Oregon concerning alleged kickbacks received in connection with its force-placed flood insurance program. The firm obtained a settlement of $31 million on behalf of a class of hundreds of thousands of borrowers.

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

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

Securities & Investor Protection

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

- ***In re Merrill Lynch Securities Litigation:*** Berger Montague, as co-lead counsel, obtained a recovery of $475 million for the benefit of the class in one of the largest recoveries among the recent financial crisis cases. (No. 07-cv-09633 (S.D.N.Y.)).

- ***In re: Oppenheimer Rochester Funds Group Securities Litigation:*** The firm, as co-lead counsel, obtained a $89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc. (No. 09-md-02063-JLK (D. Col.)).

- ***In re KLA Tencor Securities Litigation:*** The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of $65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.)).

- ***In re NetBank, Inc. Securities Litigation:*** The firm served as lead counsel in this certified class action on behalf of the former common shareholders of NetBank, Inc. The $12.5

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

- ***The City Of Hialeah Employees' Retirement System v. Toll Brothers, Inc.:*** The firm, as co-lead counsel, obtained a class settlement of $25 million against Home Builder Toll Brothers, Inc. (No. 07-cv-1513 (E.D. Pa.)).

- ***In re Alcatel Alsthom Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement for investors of $75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.)).

- ***Qwest Securities Action:*** The firm represented New Jersey in an opt-out case against Qwest and certain officers, which was settled for $45 million. (C.A. No. L-3838-02 (Superior Court New Jersey, Law Division)).

Whistleblower, *Qui Tam*, and False Claims Act

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

Judicial Praise for Berger Montague Attorneys

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

Antitrust Cases

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression."
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> * * *
>
> "Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues …. The law firms of Berger Montague and Coughlin Stoia were indefatigable. They represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Securities & Investor Protection Cases

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "Thanks to the nimble class counsel, this sum, which once included securities worth $149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received $145,754,922.00. The class also received $14,435,104 in interest on the Notes."
>
> "Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over $1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here."

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

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

> "In order to bring about this result [partial settlements then totaling $54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District."
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> * * *
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> "Throughout the course of their representation, the attorneys at Berger Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence."

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

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

> "[T]he co-lead attorneys have extensive experience in large class actions, experience that has enabled this case to proceed efficiently and professionally even under short deadlines and the pressure of handling thousands of documents in a large multi-district action... These counsel have also acted vigorously in their clients' interests...."
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> * * *
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> "The management of the case was also of extremely high quality.... [C]lass counsel is of high caliber and has extensive experience in similar class action litigation.... The submissions were of consistently high quality, and class counsel has been notably diligent in preparing filings in a timely manner even when under tight deadlines."

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

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

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

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

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

Consumer Protection Cases

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

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

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

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

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

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

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

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

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

Civil/Human Rights Cases

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

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

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

Insurance Litigation

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

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

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

Customer/Broker Arbitrations

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

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

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

Employment & Unpaid Wages Cases

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

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

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

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

> "At the final approval hearing, class counsel reiterated in detail the arguments set forth in the named plaintiffs' briefing. … The court lauded the parties for their extensive work in reaching a settlement the court deemed fair and reasonable.
>
> * * *
>
> "The court is confident that [class counsel] are highly skilled in FLSA collective and hybrid actions, as seen by their dealings with the court and the results achieved in both negotiating and handling the settlement to date."

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

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

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

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

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

> "The nature of the instant application obliges the Court to make this point clear: In my fifteen years on the bench, no case has been litigated with more skill, tenacity and legal professionalism than this case. The clients, corporate and individual, should be proud of the manner in which their legal interests were brought before and presented to the Court by their lawyers and law firms."
>
> and
>
> "…the Court would be remiss if it did not commend class counsel and all those who worked for firms representing the thousands of current and former employees of Kodak for the outstanding job they did in representing the interests of their clients. For the last several years, lead counsel responsibilities were shared by Shanon Carson …. Their legal work in an extraordinarily complex case was exemplary, their tireless commitment to seeking justice for their clients was unparalleled and their conduct as officers of the court was beyond reproach."

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

Other Cases

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

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

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

Our Founding Partner and Attorneys

Founding Partner

David Berger – *1912-2007*

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

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

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

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

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

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

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

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

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

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

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

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

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

Firm Chair

Eric L. Cramer – Chairman

Eric L. Cramer is Chairman of Berger Montague and Co-Chair of its antitrust department. He has a national practice in the field of complex litigation, primarily in the area of antitrust class actions. He is currently co-lead counsel in multiple significant antitrust class actions across the country in a variety of industries and is responsible for winning numerous significant settlements for his clients totaling well over $3 billion. Most recently, he has focused on representing workers claiming that anticompetitive practices have suppressed their pay, including cases on behalf of mixed-martial-arts fighters, healthcare and luxury retail workers, and chicken growers. Further, in late 2021, Mr. Cramer served as one of the main trial counsel in an antitrust class action relating to an alleged international cartel of capacitors' suppliers, which was tried to a jury and settled after nearly three weeks of trial.

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

Mr. Cramer is also a frequent speaker at antitrust and litigation related conferences and a leader of multiple non-profit advocacy groups. He is a past President of the Board of Directors of Public Justice, a national public interest advocacy group and law firm; a former Vice President of the Board of Directors of the American Antitrust Institute; a past President of COSAL (Committee to

Support the Antitrust Laws), a leading industry group; and a member of the Advisory Board of the Institute of Consumer Antitrust Studies of the Loyola University Chicago School of Law.

He has written widely in the fields of class certification and antitrust law. Among other writings, Mr. Cramer has co-authored *Antitrust as Antiracism: Antitrust as a Partial Cure for Systemic Racism* (*and Other Systemic "Isms"*), Vol. 66(3) The Antitrust Bulletin 359-393 (2021) and *Antitrust, Class Certification, and the Politics of Procedure*, 17 George Mason Law Review 4 (2010), the latter of which was cited by both the First Circuit in *In re Nexium Antitrust Litig*., 777 F.3d 9, 27 (1st Cir. 2015), and the Third Circuit in *Behrend v. Comcast Corp*., 655 F.3d 182, 200, n.10 (3d Cir. 2011), *rev'd on other grounds*, 133 S. Ct. 1426 (2013). He has also co-written a number of other pieces, including: *Of Vulnerable Monopolists?: Questionable Innovation in the Standard for Class Certification in Antitrust Cases*, 41 Rutgers Law Journal 355 (2009-2010); *A Questionable New Standard for Class Certification in Antitrust Cases*, published in the ABA's Antitrust Magazine, Vol. 26, No. 1 (Fall 2011); a Chapter of American Antitrust Institute's Private International Enforcement Handbook (2010), entitled "Who May Pursue a Private Claim?;" and a chapter of the American Bar Association's Pharmaceutical Industry Handbook (July 2009), entitled "Assessing Market Power in the Prescription Pharmaceutical Industry."

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

Executive Shareholders

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

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

- ***In re Alcatel Alsthom Securities Litigation:*** The firm, as co-lead counsel, obtained a class settlement for investors of $75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.));
- ***In re CIGNA Corp. Securities Litigation:*** The firm, as co-lead counsel, obtained a settlement of $93 million for the benefit of the class. (Master File No. 2:02-cv-8088 (E.D. Pa.));
- ***In re Fleming Companies, Inc. Securities Litigation:*** The firm, as lead counsel, obtained a class settlement of $94 million for the benefit of the class. (No. 5-03-MD-1530 (TJW) (E.D. Tex.));
- ***In re KLA Tencor Securities Litigation*:** The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of $65 million in an action on behalf of

investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.));

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

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

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

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

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

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

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

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

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

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

In 2015 and 2016, she served as a panelist in American Law Institute programs held in New York City called "Securities and Shareholder Litigation: Cutting-Edge Developments, Planning and Strategy." Ms. Savett also spoke at the 2013 ABA Litigation Section Annual Conference in Chicago on two panels. One program on securities litigation was entitled "The Good, The Bad,

and The Ugly: Ethical Issues in Class Action Settlements and Opt Outs." The other program focused on consumer class actions in the real estate area and was entitled "The Foreclosure Crisis Puzzle: Navigating the Changing Landscape of Foreclosure."

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

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

- "After the Fall – A Plaintiff's Perspective," with Phyllis M. Parker, *PLI Corporate Law and Practice Course Handbook Series No. B-2475*, pg. 73-105, April 2019
- "Plaintiffs' Vision of Securities Litigation: Current Trends and Strategies," 1762 *PLL* October 2009
- "Primary Liability of 'Secondary' Actors Under the PSLRA," I *Securities Litigation Report*, (Glasser) November 2004
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," 1442 *PLI! Corp.13*, September – October 2004
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," SJ084 ALI-ABA 399, May 13-14, 2004
- "The 'Indispensable Tool' of Shareholder Suits," *Directors & Boards*, Vol. 28, February 18, 2004
- "Plaintiffs Perspective on How to Obtain Class Certification in Federal Court in a Non-Federal Question Case," 679 *PLI*, August 2002
- "Hurdles in Securities Class Actions: The Impact of Sarbanes-Oxley From a Plaintiffs Perspective," 9 *Securities Litigation and Regulation Reporter* (Andrews), December 23, 2003
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," SG091 ALI-ABA, May 2-3, 2002
- "Securities Class Actions Since the 1995 Reform Act: A Plaintiffs Perspective," SF86 ALI-ABA 1023, May 10, 2001
- "Greetings From the Plaintiffs' Class Action Bar: We'll be Watching," SE082 ALI-ABA739, May 11, 2000
- "Preventing Financial Fraud," B0-00E3 *PLJB0-00E3* April – May 1999
- "Shareholders Class Actions in the Post Reform Act Era," SD79 ALI-ABA 893, April 30, 1999
- "What to Plead and How to Plead the Defendant's State of Mind in a Federal Securities Class Action," with Arthur Stock, *PLI*, ALI/ABA 7239, November 1998
- "The Merits Matter Most: Observations on a Changing Landscape Under the Private Securities Litigation Reform Act of 1995," 39 *Arizona Law Review* 525, 1997

- "Everything David Needs to Know to Battle Goliath," ABA Tort & Insurance Practice Section, The Brief, Vol. 20, No.3, Spring 1991
- "The Derivative Action: An Important Shareholder Vehicle for Insuring Corporate Accountability in Jeopardy," *PLIH4-0528*, September 1, 1987
- "Prosecution of Derivative Actions: A Plaintiffs Perspective," *PLIH4-5003*, September 1, 1986

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

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

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

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

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

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

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

Ms. Savett has aggressively sought to hire women, without regard to age or whether they are "right out of law school." Several of the women who have children are able to continue working at the firm because Ms. Savett has instituted a policy of flexible work time and fosters an atmosphere of cooperation, teamwork and mutual respect. As a result, the women attorneys stay on and have long and productive careers while still maintaining a balanced life. Ms. Savett has a personal understanding of the challenges and satisfactions that women experience in practicing law while

raising a family. Ms. Savett has three children and five grandchildren. One of her daughters and her daughter-in-law are lawyers.

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

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

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

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

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

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

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

Daniel Berger – Executive Shareholder

Daniel Berger graduated with honors from Princeton University and Columbia Law School, where he was a Harlan Fiske Stone academic scholar. He is a senior member and Executive Shareholder. Over the last two decades, he has been involved in complicated commercial litigation including class action securities, antitrust, consumer protection and bankruptcy cases. In addition, he has prosecuted important environmental, mass tort and civil rights cases during this period. He has led the Firm's practice involving improprieties in the marketing of prescription drugs and the abuse of marketing exclusivities in the pharmaceutical industry, including handling

landmark cases involving the suppression of generic competition in the pharmaceutical industry. For this work, he has been recognized by the *Law360* publication as a "titan" of the plaintiffs' Bar ("Titan of the Plaintiffs Bar: Daniel Berger" *Law360*, September 23, 2014).

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

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

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

Mr. Berger has been active in city government in Philadelphia and was a member of the Mayor's Cultural Advisory Council, advising the Mayor of Philadelphia on arts policy, and the Philadelphia Cultural Fund, which was responsible for all City grants to arts organizations. Mr. Berger was also a member of the Pennsylvania Humanities Council, one of the State organizations through which the NEA makes grants. Mr. Berger also serves on the board of the Wilma Theater, Philadelphia's pre-eminent theater for new plays and playwrights.

Shanon J. Carson – Executive Shareholder

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

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

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

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

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

Michael Dell'Angelo – Executive Shareholder

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

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

Mr. Dell'Angelo also serves or has recently served as co-lead counsel or class counsel in numerous cases alleging price-fixing or other wrongdoing affecting a variety of financial

instruments, including In re Commodity Exchange, Inc., Gold Futures and Options Trading Litig., 1:14-MD-2548-VEC (S.D.N.Y) ($152 million settlements); In re Platinum and Palladium Antitrust Litig., No. 14-cv-09391-GHW (S.D.N.Y.); Contant, et al. v. Bank of America Corp., et al., 1:17-cv-03139-LGS (S.D.N.Y.) ($23.6 million in settlements); In re Libor-Based Financial Instruments Antitrust Litig., No. 11-md-2262 (S.D.N.Y.) ($187 million in settlements pending final approval); Alaska Elec. Pension Fund, et al. v. Bank of Am. Corp., et al., No. 14 Civ. 7126-JMF (S.D.N.Y.) ($504.5 million in settlements); In re Crude Oil Commodity Futures Litig., No. 11-cv-3600 (S.D.N.Y.); and In re London Silver Fixing, Ltd. Antitrust Litig., No. 14-md-2573 (S.D.N.Y.) ($38 million partial settlement).

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

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

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

E. Michelle Drake – Executive Shareholder

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

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

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

Michelle was admitted to the bar in 2001 and has since served as lead class counsel in over fifty class and collective actions alleging violations of the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Fair Labor Standards Act, various states' unfair and deceptive trade practices acts, breach of contract and numerous other pro-consumer and pro-employee causes of action.

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

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

David F. Sorensen – Executive Shareholder

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

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

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

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

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

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

Shareholders

John G. Albanese – Shareholder

John Albanese is a Shareholder in the Minneapolis office. Mr. Albanese concentrates his practice on consumer protection with a focus on Fair Credit Reporting Act violations related to criminal background checks. Mr. Albanese has also prosecuted class actions related to illegal online lending, unfair debt collection, privacy breaches, and other consumer law issues. Mr. Albanese is

regularly invited to speak on consumer law and litigation issues. Mr. Albanese has obtained favorable decisions for consumers in state and federal courts all over the country. He also frequently represents consumer advocacy groups as *amici curiae* at the appellate level.

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

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

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

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

> ***United States ex rel. Streck v. AstraZeneca, LP, et al.*, C.A. No. 08-5135 (E.D. Pa.):** a Medicaid rebate fraud case which settled in 2015 for a total of $55.5 million against three pharmaceutical manufacturers, AstraZeneca, Cephalon, and Biogen. The case alleged that the defendants did not properly account for millions of dollars of payments to wholesalers for drug distribution and other services. As a result, the defendants underpaid the government in rebates owed under the Medicaid Drug Rebate Program.
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> ***United States ex rel. Kieff and LaCorte v. Wyeth and Pfizer, Inc.*, Nos. 03-12366 and 06-11724-DPW (D. Mass.):** a Medicaid rebate fraud case involving Wyeth's acid-reflux drug, Protonix, which settled for $784.6 million in April 2016.
>
> ***"AWP"* Cases:** a series of cases in federal and state courts against many of the largest pharmaceutical manufacturers, including Bristol-Myers Squibb, Boehringer Ingelheim, and GlaxoSmithKline, for defrauding the government through false and inflated price reports for their drugs, which resulted in more than $2 billion in recoveries for the government.

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

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

Caitlin G. Coslett – Shareholder
Caitlin G. Coslett is a Shareholder and Co-Chair of the Firm's Antitrust Department. She also serves on the Firm's Diversity, Equity, and Inclusion Task Force and as the Work Assignment Coordinator. Ms. Coslett concentrates her practice on complex litigation, including antitrust and mass tort litigation.

Ms. Coslett represents classes of direct purchasers of pharmaceutical drugs who allege that drug manufacturers have violated federal antitrust law by wrongfully keeping less-expensive generic drugs off the market and/or by wrongfully impeding generic competition. Her work on generic suppression cases has contributed to significant settlements totaling hundreds of millions of dollars, including in the cases of In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation (for which Ms. Coslett served as Co-Lead Counsel), In re Lidoderm Antitrust Litigation, and In re Skelaxin (Metaxalone) Antitrust Litigation. Ms. Coslett is currently litigating several similar antitrust pharmaceutical cases, such as In re Effexor XR Antitrust Litigation, In re Bystolic Antitrust Litigation, In re Intuniv Antitrust Litigation, In re Lamictal Antitrust Litigation, In re Novartis and Par Antitrust Litigation, In re Opana ER Antitrust Litigation, and In re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litigation. She was honored for "Outstanding Antitrust Litigation Achievement by a Young Lawyer" for her work in In re Lidoderm Antitrust Litigation.

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

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

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

A Philadelphia native, Ms. Coslett graduated magna cum laude from Haverford College with a B.S. in mathematics and economics and graduated cum laude from New York University School of Law. At NYU Law, Ms. Coslett was a Lederman/Milbank Fellow in Law and Economics and an articles selection editor for the NYU Review of Law and Social Change. Prior to law school, she

was an economics research assistant at the Federal Reserve Board in Washington, D.C. Ms. Coslett was formerly one of the top 75 rated female chess players in the U.S.

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

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

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

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

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

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

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

Josh graduated from N.Y.U. School of Law in 1993, where he won the Frank H. Sommer Memorial Award for top general scholarship and achievement in his class, served as the Articles Editor for the N.Y.U. Law Review, and was admitted to the Order of the Coif. After law school, he was a law clerk for Patrick E. Higginbotham of the U.S. Court of Appeals for the Fifth Circuit. He was a partner at Lieff, Cabraser, Heimann & Bernstein, LLP, until 2000, when he entered full-time legal academia until joining the Firm in 2022.

Lawrence Deutsch – Shareholder

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

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

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

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

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

Mr. Deutsch served on a team of lead counsel in *In Re: CertainTeed Fiber Cement Siding Litigation*, E.D.Pa. MDL NO. 11-2270 ($103.9 million settlement); *Tim George v. Uponor, Inc., et al.*, United States District Court, District of Minnesota, Case No. 12-CV-249 (ADM/JJK) ($21 million settlement); *Batista, et al. v. Nissan North America, Inc.*, United States District Court, Southern District of Florida, Miami Division, Case No 1;14-cv-24728 (settlement valued at $65,335,970.00).

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

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

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

William H. Ellerbe – Shareholder

William H. Ellerbe is a Shareholder in the Philadelphia office and practices in the firm's Whistleblower, *Qui Tam* & False Claims Act group, which has collectively recovered more than $3 billion for federal and state governments, as well as over $500 million for the firm's whistleblower clients. Mr. Ellerbe represents whistleblowers in litigation across the country and

also actively assists in investigating and evaluating potential whistleblower claims before a lawsuit is filed.

Mr. Ellerbe received an A.B. in English from Princeton University. He graduated *magna cum laude* from the University of Michigan Law School and also received a certificate in Science, Technology, and Public Policy from the Ford School of Public Policy. During law school, Mr. Ellerbe was an Associate Editor of the *Michigan Telecommunications and Technology Law Review* and an active member of both the Environmental Law Society and the Native American Law Students Association.

Prior to joining the firm, Mr. Ellerbe clerked for the Honorable Anne E. Thompson of the United States District Court for the District of New Jersey. He also worked as a white collar and commercial litigation associate at two large corporate defense firms.

Mr. Ellerbe is admitted to practice in the state courts of Pennsylvania, New Jersey, and New York, as well as the Third and Fourth Circuit Courts of Appeals and the United State District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the District of New Jersey, the Southern District of New York, and the Eastern District of New York.

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

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

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

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

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

Notable security fraud cases in which Mr. Fantini was principally involved include: *In re PSINet Securities Litigation*, No: 00-1850-A (E.D. Va.) (settlement in excess of $17 million); *Ahearn v. Credit Suisse First Boston, LLC*, No: 03-10956 (D. Mass.) (settlement of $8 million); and *In re Nesco Securities Litigation*, 4:0l-CV-0827 (N.D. Okla.).

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

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

Michael J. Kane – Shareholder

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

Mr. Kane joined the antitrust practice in 2005. Prior to joining the firm, Mr. Kane was affiliated with Mager, White & Goldstein, LLP where he represented clients in complex commercial litigation involving alleged unlawful business practices including: violations of federal and state antitrust and securities laws, breach of contract and other unfair and deceptive trade practices. Mr. Kane has extensive experience working with experts on economic issues in antitrust cases, including

impact and damages. Mr. Kane has served in prominent roles in high profile antitrust, securities, and unfair trade practice cases filed in courts around the country.

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

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

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

Robert Litan – Shareholder

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

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

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

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

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

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

Hans Lodge – Shareholder

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

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

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

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

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

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

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

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

In addition to practicing law, Hans is an Adjunct Professor at Concordia University, St. Paul, where he teaches a sports law course in the Master of Arts in Sports Management program.

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

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

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

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

Ellen T. Noteware – Shareholder
Ms. Noteware has successfully represented investors, retirement plan participants, employees, consumers, and direct purchasers of prescription drug products in a variety of class action cases. She currently chairs the firm’s Pro Bono Committee.

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

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

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

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

Russell D. Paul – Shareholder

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

Mr. Paul has successfully litigated and led consumer protection and product defect actions in the automotive, pet food, soft drink, and home products industries. He has been appointed to a leadership position in several automotive defect cases. See Francis v. General Motors, LLC, No. 2:19-cv-11044-DML-DRG (E.D. Mich.), ECF No. 40 (appointed as member of Plaintiffs' Steering Committee); Weston v. Subaru of America, Inc., No. 1:20-cv-05876 (D.N.J.), ECF No. 49 (appointed as Interim Co-Lead Counsel); Miller v. Ford Motor Co., No. 2:20-cv-01796 (E.D. Cal.) ECF No. 60 (appointed to Interim Class Counsel Executive Committee) and Powell v. Subaru of America, Inc., No. 1:19-cv-19114 (D.N.J.), ECF No. 26 (appointed as Interim Co-Lead Counsel).

Mr. Paul has litigated securities class actions against Tyco International Ltd., Baxter Healthcare Corp., ALSTOM S.A., Able Laboratories, Inc., Refco Inc., Toll Brothers and the Federal National Mortgage Association (Fannie Mae). He has also litigated derivative actions in various state courts around the country, including in the Delaware Court of Chancery. Mr. Paul has also briefed and argued several federal appeals, including in the Third, Sixth and Ninth Circuits.

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

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

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

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

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

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

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

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

laws. She is also the Diversity, Equity, and Inclusion Coordinator and leads the Firm's DEI Task Force, which enacts a broad range of diversity efforts, including efforts to hire and retain attorneys and non-attorneys from diverse backgrounds and to foster an inclusive work environment, including through Firmwide trainings on implicit bias issues that may impact the workplace.

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

Ms. Rodriguez was recently named a 2023 The Best Lawyers in America: Ones to Watch. She was also a Pennsylvania Super Lawyer "Rising Star" in 2022. In 2021, Ms. Rodriguez was named a "Rising Star" by *Law360*, a "Rising Star of the Plaintiffs Bar" by the *National Law Journal*, and "Lawyer on the Fast Track" by *The Legal Intelligencer*. She also has been a Pennsylvania Super Lawyer "Rising Star" between 2017 and 2021.

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

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

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

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

Global's collapse and a member of the trial team that successfully represented the Washington Mutual stockholders seeking to recover investments lost in the bankruptcy.

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

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

Michaela Wallin – Shareholder
Michaela Wallin is a Shareholder in the Antitrust and Employment Law practice groups. Ms. Wallin's work in the Antitrust group involves complex class actions, including those alleging that pharmaceutical manufacturers have wrongfully kept less expensive drugs off the market, in violation of the antitrust laws. In the Employment Law Group, Ms. Wallin focuses on wage and hour class and collective actions arising under federal and state law.

Prior to joining the firm, Ms. Wallin served as a law clerk for the Honorable James L. Cott of the United States District Court of the Southern District of New York. She also completed an Equal Justice Works Fellowship at the ACLU Women's Rights Project, where she worked to challenge local laws that target domestic violence survivors for eviction and impede tenants' ability to call the police.

Ms. Wallin is a graduate of Columbia Law School, where she was a Harlan Fiske Stone Scholar. Ms. Wallin graduated *magna cum laude* from Bowdoin College, where she was Phi Beta Kappa and a Sarah and James Bowdoin Scholar.

Alfred W. Zaher – Shareholder
Alfred Zaher is a Shareholder with the firm’s Intellectual Property Department and he focuses his practice on patent, trademark, and trade secret litigation, licensing, and counseling. He has experience representing clients before the U.S. Patent and Trademark Office and the U.S. Copyright Office. He counsels companies in the biotechnology, pharmaceuticals, medical devices, electronics, and software industries. Having close relationships with Chinese officials and law firms, Alfred has a particular focus on managing clients’ patent and trademark portfolios in China, including securing and prosecuting infringers in the Chinese court system. In his role as the firm’s Chief Diversity & Inclusion Officer, Alfred is responsible for overseeing, implementing, and providing leadership to Montgomery McCracken’s diversity initiatives. Prior to his legal career, Alfred was a research engineer and electrical engineer with more than 10 years of technical experience with companies like The Boeing Company and Litton Industries.

Senior Counsel

Andrew Abramowitz – Senior Counsel

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

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

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

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

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

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

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

Natisha Aviles – Senior Counsel

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

Stephanie K. Benecchi – Senior Counsel
Stephanie K. Benecchi is Senior Counsel with the firm's Intellectual Property Department in Philadelphia. Prior to joining Berger Montague, Stephanie was a partner at Montgomery McCracken Walker & Rhoads in their Philadelphia and Cherry Hill, NJ offices, where she focused her practice on commercial litigation, including class action defense, as well as white collar defense and government investigations. Prior to her time at MMWR, Stephanie was an associate at Kasowitz Benson Torres in New York.

Stephanie manages an interdisciplinary litigation team representing a medical device manufacturer in multiple patent infringement suits. Stephanie's experience focuses on health care, where she represents both entities and individuals from health systems, medical practices, and medical device and pharmaceutical manufacturers in conjunction with government investigations including billing, labeling and monitoring of medical devices, and pharmaceutical sales practices.

Stephanie is a member of the Legal Ethics and Professional Responsibility committee for the Pennsylvania Bar Association, and has devoted time to speaking and writing on legal ethics issues. Her presentations have yielded "wow" reviews from attendees impressed with her ability to tackle difficult issues like mental health services on campus. Her publications regarding the ethics of representing clients at risk of suicide provided valuable guidance to the bar. Stephanie co-wrote articles on the merits of removing "zeal" from the ABA model rules of professional conduct, published by the ABA Section of Litigation Ethics and Professionalism ("Exploring the Bounds of Professionalism: Is it Time to Remove 'Zeal' from the ABA Model Rules of Professional Conduct?") and the Pennsylvania Lawyer ("The Pennsylvania Supreme Court Should Remove the 'Z' Words from the Rules of Professional Conduct").

Stephanie is a graduate of Fordham Law School, where she served as a staff member on the Fordham Journal of Corporate & Financial Law, and received the Archibald R. Murray Public Service Award for externing at the NYSE. Stephanie also graduated from Columbia University with a B.A. in Psychology, where she was a member of the Varsity Women's Swim Team.

Mark DeSanto – Senior Counsel
Mark B. DeSanto is Senior Counsel in the Firm's Consumer Protection department in Philadelphia. Prior to joining Berger Montague, Mark was an associate at Sauder Schelkopf where he litigated various consumer class actions with a particular emphasis on automotive defect cases, Chimicles Schwartz Kriner & Donaldson-Smith where he litigated various consumer, data breach, and ERISA class actions that helped recover over $82 million for aggrieved class members and was a member of the firm's securities financial institution marketing committee, and Kessler Topaz Meltzer & Check where he worked as an associate in the securities department and helped secure over $220 million for investors in securities fraud class actions. In April 2023, Mark was selected by the Legal Intelligencer as a "Lawyer on the Fast Track."

Mark graduated from the University of Miami School of Law, cum laude, in 2013, where he was a member of the National Security and Armed Conflict Law Review and earned President's Honor

Roll and Dean's List distinction in multiple semesters. Mark also earned his Bachelor of Business Administration in Finance from the University of Miami in 2009. Mark is admitted to practice law in Florida, Pennsylvania, and New Jersey.

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

Patrick J. Farley – Senior Counsel
Patrick J. Farley is Senior Counsel in the firm's Intellectual Property Department. Mr. Farley has over 20 years of international experience in intellectual property law and concentrates his practice on all aspects of intellectual property, including patent drafting, patent prosecution, patent litigation, patent and trademark portfolio management, and licensing. Patrick counsels companies in the biotechnology and pharmaceuticals industries with a particular focus on patent and trademark portfolios, agreements, and due diligence. Prior to joining Berger Montague, Patrick was a partner at a Philadelphia law firm.

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

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

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

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

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

Aaron Haleva – Senior Counsel
Aaron Haleva is Senior Counsel in the firm's Intellectual Property Department where he focuses his practice on intellectual property litigation, trademarks, and patent preparation and prosecution in various industries including healthcare, pharmaceuticals and immunology, chemical preparations and manufacture, computing systems and architectures, digital

technology and coding, memory devices and interfaces, large data mining and artificial intelligence. Aaron has developed on-board interactive vision systems for mobile autonomous robots, created big data analytical tools for immunology-based patient data to predict onset of disease and severity of conditions, and has navigated the patent procurement process both as an inventor and as an attorney. Prior to joining Berger Montague, Aaron was an attorney at a national law firm.

Karen L. Handorf – Senior Counsel

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

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

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

Matthew Hartman – Senior Counsel

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

Joseph C. Hashmall – Senior Counsel

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

Mr. Hashmall is a graduate of the Grinnell College and the Cornell University School of Law. During law school, Mr. Hashmall served as the Executive Editor of the Cornell Legal

Information Institute's Supreme Court Bulletin and as an Editor for the Cornell International Law Journal. Mr. Hashmall has also worked as law clerk for President Judge Bonnie B. Leadbetter of the Pennsylvania Commonwealth Court and for the Honorable David J. Ten Eyck of the Minnesota District Court.

Mariyam Hussain – Senior Counsel
Mariyam Hussain is Senior Counsel with the Firm's Employment department. Before joining Berger Montague, Mariyam was counsel at Justice Catalyst Law, where she developed interdisciplinary impact litigation cases and legal strategies to advance economic and social justice. Prior to that, Mariyam served as a supervising attorney with Legal Aid Chicago's Immigrant and Workers' Rights Practice Group, managing a team of attorneys and paralegals in complex multi-plaintiff litigation on behalf of migrant farmworkers in Illinois. During her time with Legal Aid Chicago, Mariyam played a leading role in the filing of a federal complaint in U.S. Bankruptcy Court alleging racketeering, human trafficking, forced labor, and FLSA violations and other wrongful conduct against H-2A employers doing business under various names. Mariyam also previously worked as a senior associate doing class-action and wage-and-hour litigation at a plaintiff side law firm in New York, and as staff attorney with the New York City Commission on Human Rights.

Mariyam received her Juris Doctorate and undergraduate degrees from DePaul University and a Masters in Comparative Literature from the University of London.

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

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

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

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

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

David A. Langer – Senior Counsel

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

Mr. Langer has had a primary role in the prosecution of the following antitrust class actions: *In re Currency Conversion Fee Antitrust Litigation* (S.D.N.Y.) (after 5½ years of litigation, through the close of fact and expert discovery, achieved a settlement consisting of $336 million and injunctive relief for a class of U.S. Visa and MasterCard cardholders; extraordinary settlement participation from class members drawing more than 10 million claimants in one of the largest consumer antitrust class actions); *Ross and Wachsmuth v. American Express Co., et al.* (S.D.N.Y.) ($49.5 million settlement achieved after more than 7 years of litigation and after summary judgment was denied); *Ross, et al. v. Bank of America, N.A. (USA), et al.* (S.D.N.Y.) (obtained settlements with four of the nations' largest card issuers (Bank of America, Capital One, Chase and HSBC) to drop their arbitration clauses for their credit cards for 3.5 years, and a settlement with the non-bank defendant arbitration provider (NAF), who agreed to cease administering arbitration proceedings involving business cards for 3.5 years); and *In re Linerboard Antitrust Litigation* (E.D. Pa.) (helped obtain settlements of more than $200 million dollars).

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

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

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

Natalie Lesser – Senior Counsel

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

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

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

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

Shawn S. Li – Senior Counsel

Dr. Shawn Li is Senior Counsel in the firm's Intellectual Property Department. Dr. Li has developed global protection strategies, drafted, and prosecuted U.S. and international patent applications, prosecuted patent reexaminations, and negotiated and prepared complex licenses and related agreements. Relying on his education in the medical sciences, he provides counsel to clients in biotechnology, pharmaceutical, chemical, medical device, and other technology related industries. He also advises U.S. and multinational clients on issues related to protecting intellectual property in China, including patent, trademark, and trade secret enforcement actions, as well as cross border technology transfers and joint ventures. Prior to joining Berger Montague, Shawn gained experience working for nationally recognized law firms in Philadelphia. He has conducted patent infringement, validity, and inequitable conduct analysis and assisted in preparation for expert reports and prepared expert witnesses. Shawn worked as a postdoctoral research fellow in the department of physiology at the University of Pennsylvania School of Medicine and as a graduate research assistant at the Skirball Institute of Biomolecular Medicine at the New York University School of Medicine.

James Maro – Senior Counsel

James Maro is Senior Counsel with the Firm's Securities department in Philadelphia. Prior to joining Berger Montague, Jim was a partner at Kessler Topaz Meltzer & Check, LLP, where he focused his practice on securities fraud and consumer protection class action litigation. Jim also represented investors in derivative, as well as mergers and acquisitions litigation. Most recently, Jim managed Kessler Topaz's "startup" department where he developed policies and practices regarding the firm's marketing efforts, potential investor and client communications, and client retention.

Jim graduated from Villanova University School of Law and received his undergraduate degree from the Johns Hopkins University.

Richard L. Moss – Senior Counsel

Richard L. Moss is Senior Counsel in the firm's Intellectual Property Department. He focuses his practice on U.S. and foreign patent prosecution matters in electrical, electromechanical, general mechanical, medical device, computer software, and process technology areas. Richard also represents and counsels clients in intellectual property litigation matters and post-grant proceedings before the U.S. Patent and Trademark Office Patent Trial and Appeal Board, as well

as in business transactions involving intellectual property assets, including licensing and corporate due diligence matters.

Prior to joining Berger Montague, Richard was a Partner at a Philadelphia law firm and, before that, a Special Counsel at a prominent New York City based international law firm.

Eric Moura – Senior Counsel

Eric Moura is Senior Counsel with the Firm's Antitrust department. Prior to his current role, Eric was a partner at a Big Law firm in Brazil representing large Brazilian corporations in sophisticated litigation and assisting institutional investors and litigation funders in making and maintaining investments in Brazil.

Eric led diligence teams analyzing Brazilian legal claims for institutional investors interested in emerging markets and monitored investors' legal claims portfolios. Eric has also led due diligence procedures for litigation funders that utilized his assessment to determine the strength of the claims being considered for acquisition, providing the necessary risk analysis to guide investors through the Brazilian market.

Academically, during Eric's LL.M in Political and Economic Law at Mackenzie University in Brazil, he acted as the Executive Secretary for ASAP: Academics Stand Against Poverty – Chapter Brazil, obtaining a full scholarship. He has also participated in Columbia's Business Law Academy and Temple's Excelling in Evidence Law programs. In addition to his role at Ever Corp., Eric researches legal developments connecting the Brazilian and American legal systems focusing on opportunities for companies and institutional investors as a Visiting Scholar at Columbia University.

Jeffrey L. Osterwise – Senior Counsel

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

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

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

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

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

Kerri Petty – Senior Counsel

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

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

Ms. Piazza is a graduate of the University of Pennsylvania and Villanova University School of Law. During law school, Ms. Piazza served as a managing editor of the Villanova Sports and Entertainment Law Journal and as president of the Labor and Employment Law Society. Ms. Piazza also interned at the United States Attorney's Office and served as a summer law clerk for the Honorable Eduardo C. Robreno of the United States District Court for the Eastern District of Pennsylvania.

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

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

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

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

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

Mr. Polakoff is a 2006 graduate of the joint J.D./M.B.A. program at the University of Miami, where he was the recipient of the Dean's Certificate of Achievement in Legal Research & Writing, was

awarded a Graduate Assistantship and was honored with the Award for Academic Excellence in Graduate Studies.

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

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

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

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

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

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

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

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

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

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

Ms. Selesnick is an accomplished writer and has written numerous legal and non-legal articles and blog posts. She has also contributed to ERISA Litigation textbooks and cumulative supplements, and written materials for use in health-care litigation conferences.

Ms. Selesnick graduated with a B.A., cum laude, from the San Diego State University and was elected Phi Beta Kappa and Pi Sigma Alpha, and she received her J.D., from the George Washington University School of Law, where she was a member of the George Washington University Law Review and was inducted into the Order of the Coif.

Zachary M. Vaughan – Senior Counsel

Zach Vaughan is Senior Counsel who works with the Firm's consumer department remotely from New York. Prior to joining Berger Montague, Zach was an associate at Scott+Scott Attorneys at Law LLP in New York, where he represented institutional and retail investors in securities class actions under the '33 and '34 Acts. Prior to that, Zach was a general commercial litigator at Patterson Belknap Webb & Tyler LLP, also in New York.

Zach graduated from the Georgetown University Law Center in 2011. Before beginning his career as a litigator, he served as a law clerk to Judge D. Michael Fisher of the U.S. Court of Appeals for the Third Circuit in Pittsburgh and to Judge Colleen McMahon of the U.S. District Court for the Southern District of New York.

Lane L. Vines – Senior Counsel

Lane L. Vines's practice is concentrated in the areas of securities/investor fraud, consumer and *qui tam* litigation. For more than 17 years, Mr. Vines has prosecuted both class action

and individual opt-out securities cases for state government entities, public pension funds, and other large investors. Mr. Vines also represents consumers in class actions involving unlawful and deceptive practices, as well as relators in *qui tam*, whistleblower and False Claims Act litigations. Mr. Vines is admitted to practice law in Pennsylvania, New Jersey and numerous federal courts.

Mr. Vines also has experience in the defense of securities and commercial cases. For example, he was one of the firm's principal attorneys defending a public company which obtained a pre-trial dismissal in full of a proposed securities fraud class action against a gold mining company based in South Africa. See *In re DRDGold Ltd. Securities Litigation*, 05-cv-5542 (VM), 2007 U.S. Dist. LEXIS 7180 (S.D.N.Y. Jan. 31, 2007).

During law school, Mr. Vines was a member of the Villanova Law Review and served as a Managing Editor of Outside Works. In that role, he selected outside academic articles for publication and oversaw the editorial process through publication.

Prior to law school, Mr. Vines worked as an auditor for a Big 4 public accounting firm and a property controller for a commercial real estate development firm, and served as the Legislative Assistant to the Minority Leader of the Philadelphia City Council.

Mr. Vines has achieved the highest peer rating, "AV Preeminent" in Martindale-Hubbell for legal abilities and ethical standards. Mr. Vines is admitted to practice law in Pennsylvania, New Jersey and several federal courts.

William Walsh – Senior Counsel

William Walsh is Senior Counsel within the Environmental Department. Prior to joining Berger Montague, he was part of the environmental team at Weitz & Luxenberg for 16 years. There, Will played a significant role representing several states and municipal water providers in actions against polluters for groundwater contamination. He was also directly involved in PFOA/PFOS litigation and the Roundup litigation, representing individuals who developed non-Hodgkin's lymphoma from their exposure to glyphosate.

Will graduated from Haverford College with a degree in political science and worked as a legislative assistant on a Senate staff for two years before attending law school. At the University of Minnesota Law School, Will assisted in the rewriting of the law school's Honor Code and was a member of the Minnesota Law Review and served as a moot court director.

Dena Young – Senior Counsel

Dena Young is Senior Counsel in the firm's Consumer Protection practice group. She concentrates her practice in the area of complex consumer litigation, prosecuting actions against pharmaceutical and product manufacturers for violations of state and federal law.

Before joining the firm, Dena worked for prominent law firms in the Philadelphia region where she worked on personal injury and mass tort cases involving dangerous and defective medical

devices, pharmaceutical, and consumer products including Talcum Powder, Transvaginal Mesh, Roundup, Risperdal, Viagra, Zofran, and Xarelto. She also assisted in the prosecution of cases on behalf of the U.S. Government and other government entities for violations of federal and state false claims acts and anti-kickback statutes.

Recently, the Honorable Brian R. Martinotti appointed Dena to serve on the plaintiffs' steering committee (PSC) of MDL 2921 in the *Allergan BIOCELL Textured Breast Implant Products Liability Litigation*, situated in the United States District Court for the District of New Jersey. In this case, Dena represents plaintiffs diagnosed with breast implant associated anaplastic large cell lymphoma (BIA-ALCL), a deadly form of cancer caused by Allergan's textured breast implants.

Early in her legal career, Dena represented clients diagnosed with devastating asbestos-related diseases, including mesothelioma and lung cancer. Cases she handled resulted in millions of dollars in settlements for her clients.

During law school, Dena represented defendants in preliminary hearings and misdemeanor trials while working for the Defender Association of Philadelphia. She also clerked for the Animal Protection Litigation section of the United States Humane Society. In 2008-2009, Young worked for the Honorable Renee Cardwell Hughes of Philadelphia's Court of Common Pleas.

In 2010, she received her Juris Doctor degree, with honors, from Drexel University's Thomas R. Kline School of Law where she founded the School's Student Animal Legal Defense Fund chapter.

Dena is admitted to practice in state courts in Pennsylvania and New Jersey, the U.S. District Court for the Eastern District of Pennsylvania, and the U.S. District Court for the District of New Jersey.

Associates

Michael Anderson – Associate

Michael Anderson is an Associate in the Wage and Hour department based out of the Firm's Philadelphia office. Michael graduated cum laude from William & Mary Law School and was recognized for his work in public service. Michael represented his third-year class on the Student Bar Association, participated in the Leadership Institute, and served as a member of the William & Mary Journal of Race, Gender, and Social Justice.

During law school, Michael completed two federal judicial externships with the Hon. Raymond A. Jackson and the Hon. John A. Gibney in the Eastern District of Virginia. In his final year, Michael spent much of his time advocating for students with disabilities through William & Mary's Special Education Advocacy Clinic. In the clinic, Michael counseled families, represented clients at special education meetings, and negotiated with school districts to provide appropriate special education services under the Individuals with Disabilities Education Act (IDEA). Michael also worked as a law clerk at Victor M. Glasberg & Associates, where he assisted the firm with litigating complex

civil rights cases involving law enforcement misconduct, police brutality, and employment discrimination under federal laws.

Prior to law school, Michael worked as the Director of Auxiliary Programs and taught a high school philosophy course at a nationally recognized charter school in southern Arizona.

Robert Berry – Associate*
**not yet admitted, pending admission*

Robert Berry is with the Firm's Antitrust department in Philadelphia. Robert graduated Magna Cum Laude from the University of Pennsylvania Carey Law School in May 2022. At Penn, Robert served on the editorial board of the University of Pennsylvania Journal of Law and Public Affairs as Research Editor. Robert was heavily engaged in clinic programs, directly representing clients in landlord-tenant disputes, social security matters, and asylum-seeking matters with the Civil Practice Clinic and the Transnational Legal Clinic. Robert also worked heavily with Professor Herbert Hovenkamp on antitrust matters, taking two separate antitrust classes from the professor, serving as the professor's antitrust TA during the summer of 2021, and working with the professor on an independent study project examining the current state of horizontal merger law.

Prior to law school, Robert graduated from Cornell University with a bachelor's degree in history with a minor in classical civilizations. While at Cornell Robert was inducted into the Phi Beta Kappa honor society for academic excellence.

Hope Brinn – Associate
Hope Brinn is an Associate in the firm's Antitrust group. Prior to joining the firm, Ms. Brinn clerked for the Honorable Janet Bond Arterton in the District of Connecticut. Ms. Brinn graduated from the University of Michigan Law School, where she was a senior editor for the Michigan Law Review, and the executive notes editor for the Michigan Journal of Race & the Law.

Prior to law school, Ms. Brinn worked at The Philadelphia School and Breakthrough of Greater Philadelphia.

William H. Fedullo – Associate
William H. Fedullo is an Associate in the firm's Philadelphia office, practicing in the Whistleblower, *Qui Tam* & False Claims Act group, which has collectively recovered more than $3 billion for federal and state governments, as well as over $500 million for the firm's whistleblower clients. Mr. Fedullo represents whistleblowers in active litigation throughout the country. He also assists in the pre-litigation investigation and evaluation of potential whistleblower claims.

Prior to joining the firm, Mr. Fedullo was a commercial litigation associate at a large full-service Philadelphia law firm. His practice there focused on protecting small businesses that had been the victims of usurious "merchant cash advance" lending practices. He also took an active role in franchisee rights litigation in the hospitality industry. He served as lead associate in numerous state and federal litigations as well as AAA and JAMS arbitrations. His accomplishments included

primarily authoring briefs that obtained critical injunctive relief in bet-the-business arbitration; primarily authoring dispositive and appellate briefs in parallel state and federal actions against one of the largest debt collection companies in the world, resulting in a federal court denying a motion to dismiss a consumer's Fair Debt Collections Practices Act claims; and authoring a complaint brought by over ninety hotel franchisees against a prominent international hotel franchisor. Additionally, Mr. Fedullo played key roles in several other cases that resulted in favorable verdicts or settlements for his clients.

Mr. Fedullo received a Bachelor of Arts from Swarthmore College with High Honors, with a major in Philosophy and minor in English Literature. He graduated from the University of Pennsylvania Law School *cum laude*. In law school, he was an executive editor of the Penn Law Journal of Constitutional Law, where he published a Comment, "Classless and Uncivil." He also worked as a research assistant for the reporter for the forthcoming Restatement (Third) of Conflicts of Law, and as a teaching assistant at the Wharton School of Business for the undergraduate class "Constitutional Law and Free Enterprise." He was the recipient of the 2019 Penn Law Fred G. Leebron Memorial Prize for Best Paper in Constitutional Law for his paper "Original Public Meaning Originalism and Women Presidents." Finally, he received honors from both the Philadelphia Bar Association and Penn Law for his involvement in pro bono activities, which included serving as a board member for the Custody and Support Assistance Clinic, a student-run organization that provides legal assistance to low-income Philadelphians facing family law issues; working on low-income housing and utility issues at Community Legal Services; and working as a certified legal intern in the Civil Practice Clinic, litigating several cases for low-income Philadelphians before the Philadelphia Court of Common Pleas.

Mr. Fedullo is admitted to practice law in the state courts of the Commonwealth of Pennsylvania as well as the United States District Court for the Eastern District of Pennsylvania.

Taylor Hollinger – Associate*
**not yet admitted, pending admission*

Taylor is in the Firm's Antitrust group in the Philadelphia office. Taylor is a recent graduate of Georgetown Law. There, Taylor was an Articles Editor with The Georgetown Law Journal and Treasurer for the First Generation Student Union. During her time as a law student in D.C., Taylor externed with the Division of Enforcement of the CFTC, the Bureau of Competition of the FTC, and the Antitrust Division of the DOJ. Taylor received her undergraduate degree from Pitzer College in Claremont, California, with a major in Creative Writing.

Najah Jacobs – Associate
Ms. Jacobs is an Associate in the firm's Consumer Protection & ERISA Departments.

Prior to joining Berger Montague, Najah Jacobs was an associate at Stevens & Lee, P.C., where she focused her practice on commercial litigation matters with an emphasis on litigation involving financial products and representation of broker-dealers in FINRA arbitration matters related to the purchase and sale of securities and insurance products. Prior to that, Najah was an associate at

a large New Jersey law firm, where she defended large oil companies in complex statewide environmental litigation. During her time there, Najah played a major role in formulating a defense strategy and obtaining a favorable disposition for the City of Philadelphia in a constitutional rights case brought by the Fraternal Order of Police over an alleged "do not call list."

Najah graduated from Drexel University Thomas R. Kline School of Law, where she was an active leader. Najah served as the President of the Black Law Students Association, a Law School Ambassador, a Diversity and Inclusion Fellow, and as a Marshall Brennan Constitutional Literacy Fellow, where she taught high school students about their constitutional rights. Najah was also the Executive Symposium Editor of the Drexel Law Review and a competitor on Drexel's nationally recognized Trial Team, leading the group to back-to-back victories in national mock trial competitions against some of the nation's top law schools. During law school, Najah served as a judicial extern for the Honorable Robert B. Kugler of the United States District Court for the District of New Jersey and also served as an intern for the Philadelphia District Attorney's Office. At graduation, Najah received the Faculty Award for Contributions to the Intellectual Life of the Law School and the Thomas R. Kline School of Law Trial Team Award for Outstanding Advocacy.

Najah is currently an adjunct faculty member at the Kline School of Law, serving as a coach and mentor for teams competing in national trial advocacy competitions. In her spare time, Najah enjoys playing basketball, mentoring high school and college students, and hosting events for her non-profit organization, which focuses on giving back to underserved communities.

Ariana B. Kiener – Associate

Ariana B. Kiener is an Associate in the firm's Minneapolis office and practices in the firm's Consumer Protection group.

Before joining the firm, Ms. Kiener worked for several years in education, first as a classroom teacher (through a Fulbright Scholarship in Northeastern Thailand) and eventually as the communications director for an education advocacy nonprofit organization. While in law school, she clerked at the Firm and served as a Certified Student Attorney and Student Director with the Mitchell Hamline Employment Discrimination Mediation Representation Clinic.

Olivia Lanctot – Associate

Olivia Lanctot is an Associate with the Firm's Wage and Hour department in Philadelphia. Prior to joining Berger Montague, she was an associate at Comegno Law Group in Moorestown, NJ, where she focused her practice on education and employment law.

Olivia received her law degree from William & Mary Law School and her B.A. from Gettysburg College.

During law school, she was heavily involved with William & Mary's Special Education Advocacy Clinic, where she negotiated with school districts to provide students with the appropriate accommodations and services necessary to access their education. During her final year, Olivia

also worked as a law clerk for a plaintiffs' employment litigation firm, assisting with employee rights violations and discrimination cases before the Equal Employment Opportunity Commission (EEOC) and the Merit Systems Protection Board (MSPB).

Julia McGrath – Associate
Julia McGrath is an Associate in the firm's Antitrust practice group. She represents consumers, businesses, and public entities in complex class action litigation, prosecuting anticompetitive conduct such as price-fixing, bid-rigging, and illegal monopolization.

Ms. McGrath has challenged anticompetitive conduct in a variety of industries, including the single-serve coffee industry in *In Re Keurig Green Mountain Single-Serve Antitrust Litigation*; the pharmaceutical industry in *In Re: Ranbaxy Generic Drug Application Antitrust Litigation* (D. Mass) and *In Re: Generic Pharmaceuticals Pricing Antitrust Litigation* (E.D. Pa.); and the financial industry in *In re London Silver Fixing Ltd. Antitrust Litigation* (S.D.N.Y.) and *In re: GSE Bonds Antitrust Litigation* (S.D.N.Y.).

Prior to law school, Ms. McGrath had a successful career in government and politics. She worked on political campaigns at the local, state, and federal level. She's advised top-tier congressional, gubernatorial, and U.S. Senate candidates in Pennsylvania and New Jersey and served as the Finance Director for U.S. Senator Bob Casey. In 2013, she was appointed by President Obama to serve as Special Assistant to the Mid-Atlantic Regional Administrator of the U.S. General Services Administration.

Ms. McGrath earned her J.D., *cum laude*, from Temple University Beasley School of Law and her B.A. in History from Boston University.

Amey J. Park – Associate
Amey J. Park is an Associate in the firm's Philadelphia office and practices in the firm's Consumer Protection and Commercial Litigation practice groups.

Before joining the firm, Ms. Park was an associate in the litigation department of a large corporate defense firm. She represented corporate and individual clients in complex commercial litigation, product liability, and personal injury matters in a wide variety of industries, including financial services, insurance, trust administration, and real estate. Ms. Park also represented clients *pro bono*, serving as first-chair counsel in a federal jury trial for violations of an inmate's constitutional rights by law enforcement officers and assisting a young refugee seeking asylum in federal immigration court.

Ms. Park is admitted to practice in state courts in Pennsylvania and New Jersey; the United States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, and the District of New Jersey; and the United States Court of Appeals for the Third Circuit.

Julie Pollock – Associate*
Julie Pollock is part of the Firm's San Francisco Bay Area office in the Antitrust Department.

Julie graduated summa cum laude from USF School of Law. While in law school, Julie clerked in the Firm's Antitrust Department, and served as a judicial extern to Chief Justice Cantil-Sakauye of the California Supreme Court. Julie also served on the Board of Directors for the Legal Aid Association of California, advocating to expand access to critical legal services for low-income Californians.

Julie is passionate about social and economic justice. Prior to joining the firm, she earned a Master's Degree in Social Welfare from UCLA, and started her career doing policy work to improve healthcare and housing access for low-income older adults. Julie believes in aggressive antitrust enforcement as a tool to combat the excessive concentration of economic power and its resulting structural inequities.

Radha Raghavan – Associate

Radha Raghavan is an associate with the Firm's Consumer Department. Prior to joining Berger Montague, Radha was an associate at Wolf Popper LLP, where she focused her practice on consumer fraud, healthcare and securities class action litigation representing clients in state and federal courts across the country. Prior to that, Radha worked with well-respected dispute resolution firms in India and New York focusing on international disputes. At these firms, she represented clients in both international commercial and investor-state arbitrations under the ICC and UNCITRAL rules respectively.

Radha graduated from University Law College, Bangalore University with a law degree (BA.L., LL.B.) in 2014, where she was valedictorian for the Bachelor of Academic Law (BA.L.) program. Subsequently, Radha received her masters of law degree (LL.M.) from NYU in 2015. After her LL.M., Radha served as a judicial extern for Judge Gerald Lebovits at the New York State Supreme Court.

Sophia Rios – Associate

Sophia Rios is an associate in the firm's San Diego office and practices in the Consumer Protection and Antitrust practice groups.

Before joining the firm, Sophia was an associate in the litigation department of a large international law firm. She represented corporate and individual clients in consumer protection, complex commercial litigation, securities, and Americans with Disabilities Act (ADA) matters. In her pro bono practice, Sophia assisted refugees seeking asylum in the United States.

Sophia is committed to furthering diversity and inclusion in law firms. She serves on the firm's Diversity, Equity & Inclusion Task Force. Sophia has also participated in the Leadership Council on Legal Diversity's Pathfinder Program.

While at Stanford Law School, Sophia served as an extern Legal Adviser in the Office of Commissioner Julie Brill at the Federal Trade Commission in Washington, DC. Sophia co-founded the Stanford Critical Law Society, which serves as a student forum for the discussion of

the relationship between law and race. Sophia was a Lead Article Editor for the Stanford Environmental Law Journal.

Before beginning law school, Sophia attended UC Berkeley and served as an intern on the White House Council of Environmental Quality. She is a first-generation college student and a San Diego native.

Sonjay Singh – Associate
Sonjay Singh is an Associate in the Firm's Consumer Protection department, working out of the Washington, D.C. office.

Sonjay comes to Berger Montague from Chaikin, Sherman, Cammarata & Siegel, a D.C. plaintiff's firm, where he litigated personal injury, medical malpractice, defective premises, and other tort cases as a trial attorney. Before that, Sonjay worked for Sauder Schelkopf, a Pennsylvania class action firm, where he participated in a variety of consumer protection litigation, including in the areas of products liability, data privacy, and institutional abuse. As an undergraduate, Sonjay co-founded a DEI hiring and recruiting technology startup in New York City, and managed its sales, marketing, and client relations for two years before leaving to pursue his J.D.

Sonjay graduated from Temple University's Beasley School of Law with both his J.D. and a certificate in Trial Advocacy and Litigation in 2020. During his time in law school, he was active on campus, and served as Vice President of the Student Bar Association. Sonjay also competed on Temple's Trial Team, winning the Inter-American Invitational at the University of Puerto Rico among other honors. For his dedication to plaintiff's litigation, Sonjay was named the Eisenberg Scholar, a scholarship given yearly to the outstanding student in civil litigation, and received the Trial Program Award for civil trial advocacy upon graduating.

Y. Michael Twersky – Associate
Y. Michael Twersky concentrates his practice primarily on representing plaintiffs in complex litigation, including on insurance, antitrust, and environmental matters.

In the past, Mr. Twersky has worked on a wide variety of insurance matters including an insurance case in which a Federal District Court found on Summary Judgement that a large insurance company had breached its policy when it denied benefits under an accidental death insurance plan. Mr. Twersky has also worked on a number of antitrust class actions alleging that pharmaceutical manufacturers wrongfully kept less expensive generic drugs off the market, in violation of the antitrust laws, including: *In re Skelaxin (Metaxalone) Antitrust Litigation*, 1:12-md-02343 (E.D. Tenn.) ($73 million settlement in 2014), and *In re Solodyn Antitrust Litig.*, 14 MD 2503 (D. Mass.) (combined settlements in excess of $76 million in 2018). Mr. Twersky has also represented inmates in connection with allegations that various inmate calling services charged unreasonable rates and fees in violation of the Federal Communication Act.

Currently, Mr. Twersky is litigating a number of complex class actions related to insurance products, including proposed class actions in multiple forums against a workers' compensation

insurance company alleging that the company deceptively sold illegal workers' compensation programs that were not properly filed with state regulators. *E.g.*, *Shasta Linen Supply, Inc. v Applied Underwriters et al.*, No. 2:16-cv-0158 (N.D. Cal.). Mr. Twersky is also involved in a proposed class action in Federal Court brought on behalf of Alaska-enrolled Medicaid Healthcare Providers against the developers of the Alaska Medicaid Management Information System Company alleging that providers were harmed as a result of the negligent and faulty design and implementation of the MMIS system. *See South Peninsula Hospital et al v. Xerox State Healthcare, LLC*, 3:15-cv-00177 (D. Alaska). Mr. Twersky is also involved in environmental litigation on behalf of various states to recover the costs of remediation for contamination to groundwater resources.

Mr. Twersky graduated from Temple University Beasley School of Law in 2011, where he was a member of the Rubin Public Interest Law Honors Society and a Class Senator. In addition, Mr. Twersky advised various clients in business matters as part of Temple University's Business Law Clinic.

Counsel

Zubair Ahmad – Counsel
Zubair Ahmad is Counsel with the Antitrust department in the Philadelphia office. He has extensive experience with e-discovery in large scale litigation and has also spent time as associate in-house counsel with a developer of ambulatory surgical centers as well as a large regional hospital.

Mr. Ahmad graduated from the University of Michigan Law School where he was a member of the Journal of Law Reform. He received his undergraduate degree from Franklin & Marshall College where he was pre-med with a physics and sociology double major.

Alexandra Antoniou – Counsel
Alexandra Antoniou is an attorney in the firm's Philadelphia office, and works in the firm's Auto Defect practice area.

Samantha Arluck – Counsel
Samantha Arluck is Counsel with Berger Montague. Prior to joining Berger Montague, Sam worked at several different law firms as a staff attorney performing e-discovery and deposition work for securities matters. She worked for several years as an associate in New York law firms doing litigation.

Samantha graduated from the University of Pennsylvania with honors where she majored in Diplomatic History. After graduating from Boston University School of Law, she moved to New York City.

David Catherine – Counsel

David M. Catherine is Counsel with the Firm's Antitrust department in Philadelphia. Prior to joining Berger Montague, David was an Attorney in a boutique law firm, representing numerous plaintiffs in class-action pharmaceutical antitrust litigation, specializing in electronic discovery as well as legal research and deposition preparation. Prior to that, David was a Project Attorney at a large American multinational firm, representing clients in pharmaceutical products liability multi-district litigation, specializing in discovery and evidentiary preparation. Before that, David spent several years assisting several firms throughout the Philadelphia region with various aspects of discovery, legal research and litigation preparation.

David graduated from Syracuse University College of Law, where he also served in the Criminal Law Clinic, representing indigent clients in Syracuse City Court. David also graduated from Duquesne University, earning a Bachelor of Arts with a major in English while also serving in the Student Government Association and as an Officer in the National Service Fraternity, Alpha Phi Omega.

James P.A. Cavanaugh – Counsel

James P.A. Cavanaugh has experience working in antitrust matters, with a focus on the suppression of generic competition by major pharmaceutical manufacturers. Jim is an experienced litigator having previously established and managed for some years his own general practice law firm, prior to working in antitrust matters in more recent years. That law practice emphasized litigation, including workers' compensation, employment law, civil rights, and personal injury claims.

In that practice, Jim advocated for the establishment of case law precedent in Dr. Joe John Doe v. TRIS Mental Health Services, 298 N.J. Super. 677 (1996) permitting the disabled, for the first time, to proceed anonymously in the New Jersey Superior Courts.

Jim's experience included investigating the facts of a workplace explosion involving a faulty truck rim, coordination of physical evidence, close consultation with a Drexel University engineering expert, and ultimate settlement for injured plaintiff.

Jim's community contributions include pro bono representation of an amicus curiae (friend of the court) the National Association of Social Workers opposing discriminatory policies in the widely followed James Dale v. Boy Scouts of America, 160 N.J. 562 (1999) case [see also 530 U.S. 640 (2000)].

Jim was appointed by the Chief Justice of the New Jersey Supreme Court to sit on the NJ Supreme Court Task Force on Lesbian & Gay Issues, whose purpose was to examine discrimination in the courts and the legal profession and to adopt recommendations.

Carl Copenhaver – Counsel

Carl Copenhaver is Counsel in the Firm's Antitrust Department. Carl has almost 18 years of experience in complex securities and antitrust class action litigation as a discovery specialist. Over that span, he has worked independently, and later through his own discovery firm, with a wide variety of firms on a range of cases assisting in discovery and evidentiary-related matters.

Mr. Copenhaver received his Bachelor of Arts with Scholastic Distinction in History and a concentration in African American Studies from Carleton College, graduating magna cum laude. He was a member of the Mortar Board National Honor Society and was a nationally ranked member of the tennis team while winning multiple All-Conference Awards.

Mr. Copenhaver attended The George Washington University Law School where he was a Murray Snyder Public Interest Fellow and worked with local and national civil rights organizations on Fair Housing issues.

Cate Crowe – Counsel

Cate Crowe is Counsel in the Firm's antitrust department. She joined Berger Montague from Lockridge Grindal Nauen P.L.L.P. where her practice focused on private enforcement of antitrust laws against price fixing cartels and pay-for-delay schemes. Cate has supported plaintiff-side discovery and trial teams in complex consumer fraud, data breach, and antitrust litigations. She has experience identifying and vetting damages experts, mining evidence from document databases and phone records, and synthesizing evidence to develop narratives of overarching conspiracies for depositions and trial.

Cate also managed large-scale document reviews and is comfortable drafting coding instructions, administering document databases, and supervising coders. Before that, she operated a general litigation practice in Iowa where she practiced family law, juvenile law, and criminal defense.

Cate is active in Complex Litigation E-Discovery Forum and with the Committee to Support the Antitrust Laws.

Stephen Farese – Counsel

Stephen Farese is Counsel in the Firm's Antitrust Department.

Stephen has over eighteen years of solid e-discovery experience and has developed significant technical skills on various e-discovery software platforms. Since 2004, he has helped large and small firms with their e-discovery needs including document productions, witness preparation, and quality control. He has interfaced with and assisted partners and associates in finding optimal ways to cull large document collections and has assisted them in the development of protocols setting the rules upon which the remaining documents are to be coded by reviewers.

Stephen has significant document review experience and is fully capable of handling a review from its initial stage (raw document collection) through to the use of legally supportable search terms to cull the initial population of documents into a subset to be reviewed by reviewers for responsiveness and privilege. He has an in-depth knowledge of attorney-client privilege and work product rules and has been instrumental in 2nd level (QC) and privilege reviews including privilege log creation.

Stephen has been hired as an E-discovery Subject Matter Expert on the document review side of the e-discovery equation. He is proficient in dealing with clients in answering their questions and presenting PowerPoint presentations illustrating costs and workflow. His legal background also positions him in a unique position of being able to assist in the writing of substantive review

protocols and have the technical expertise to design and implement the necessary review coding panels.

Stephen Received his JD from Widener University School of Law in 1998. He is actively licensed in the Commonwealth of Pennsylvania and the State of New York.

Clare Kirui – Counsel
Clare Kirui is Counsel practicing in the Firm's Antitrust practice group. Clare has extensive experience working in eDiscovery. Prior to joining Berger Montague, she worked on eDiscovery reviews and managed complex review projects. Clare has extensive experience conducting fact development for large-scale litigations, culling through large volumes of documents and analyzing and summarizing pertinent factual findings for relevance to legal issues.

Clare has served in an eDiscovery project management role during various phases of litigation. Clare has worked on multiple Antitrust matters conducting fact development for depositions, expert discovery, and trial preparation.

Clare is a California licensed attorney. She received her undergraduate degree from UCLA and earned her J.D. from the George Washington University Law School.

Daniel E. Listwa – Counsel
Daniel E. Listwa has worked on a number of antitrust matters, with a focus on the suppression of generic competition by major pharmaceutical manufacturers. Before joining the firm, Mr. Listwa clerked for the Honorable J. Brian Johnson of the Lehigh County Court of Common Pleas, and was an associate at a medical malpractice defense firm in Blue Bell, PA. While in law school, Mr. Listwa was a staff writer for the Boston College Environmental Affairs Law Review, and interned at the U.S. District Court for the Eastern District of Pennsylvania.

Ivy Marsnik – Counsel
Ivy L. Marsnik is a litigation attorney based out of the Firm's Minneapolis office where she focuses her current practice on representing individuals who have been harmed by violations of the Fair Credit Reporting Act.

Prior to joining Berger Montague, Ms. Marsnik worked on behalf of individual plaintiffs at a premier employment and civil rights law firm and in several legal counsel positions at the Minnesota state legislature. She has also provided legal services to individual clients at Tubman, a nonprofit serving survivors of domestic violence, and at a University of Minnesota Law School clinic where she worked primarily as an advocate for tenants' rights.

Bryan Plaster – Counsel
Bryan L. Plaster is based out of the Firm's Minneapolis office and serves as Counsel to the Credit Reporting and Background Checks practice group. Prior to joining Berger Montague, Bryan was employed as in-house counsel through a fellowship with SICK, Inc., an international manufacturer of industrial sensor technology. During his time at the University of Minnesota Law School, he

served as a Student Attorney in the Consumer Protection Clinic, clerked at a mid-sized commercial litigation firm, and completed two judicial internships.

Bryan graduated cum laude from the University of Minnesota Law School and completed a B.A. with distinction in Economics and Geography at the University of Wisconsin-Madison. Prior to embarking on a career in law, he spent five years in a variety of positions in the technology industry, including leadership roles in a late-stage startup where, in part, he assisted in guiding the company through various stages of growth and acquisition.

Of Counsel

H. Laddie Montague Jr. – Chair *Emeritus* & Of Counsel
H. Laddie Montague Jr. is Chairman *Emeritus* of the firm, in addition to his continuing work as Of Counsel. Mr. Montague was Chairman of the firm from 2003 to 2016 and served as a member of the firm's Executive Committee for decades, having joined the firm's predecessor David Berger, P.A., at its inception in 1970.

In addition to being one of the courtroom trial counsel for plaintiffs in the mandatory punitive damage class action in the *Exxon Valdez Oil Spill Litigation*, Mr. Montague has served as lead or co-lead counsel in many class actions, including, among others, *High Fructose Corn Syrup Antitrust Litigation* (2006), *In re Infant Formula Antitrust Litigation* (1993) and *Bogosian v. Gulf Oil Corp.* (1984), a nationwide class action against thirteen major oil companies. Mr. Montague was co-lead counsel for the State of Connecticut in its litigation against the tobacco industry. He is currently co-lead counsel in several pending class actions. In addition to the *Exxon Valdez Oil Spill Litigation*, he has tried several complex and protracted cases to the jury, including three class actions: *In re Master Key Antitrust Litigation* (1977), *In re Corrugated Container Antitrust Litigation* (1980) and *In re Brand Name Prescription Drugs Antitrust Litigation*, M.D.L. (1997-1998). For his work as trial counsel in the *Exxon Valdez Oil Spill Litigation*, Mr. Montague shared the Trial Lawyers for Public Justice 1995 Trial Lawyer of the Year Award.

Mr. Montague has been repeatedly singled out by *Chambers USA: America's Leading Lawyers for Business* as one of the top antitrust attorneys in the Commonwealth of Pennsylvania. He is lauded for his stewardship of the firm's antitrust department, referred to as "the dean of the Bar," stating that his peers in the legal profession hold him in the "highest regard," and explicitly praised for, among other things, his "fair minded[ness]." He also is or has been listed in *Lawdragon, An International Who's Who of Competition Lawyers*, and *The Legal 500: United States (Litigation)*. He has repeatedly been selected by *Philadelphia Magazine* as one of the top 100 lawyers in Pennsylvania. Mr. Montague has also been one of the only two inductees in the American Antitrust Institute's inaugural Private Antitrust Enforcement Hall of Fame.

He has been invited and made a presentation at the Organization for Economic Cooperation and Development (Paris, 2006); the European Commission and International Bar Association Seminar

(Brussels, 2007); the Canadian Bar Association, Competition Section (Ottawa, 2008); and the 2010 Competition Law & Policy Forum (Ontario).

Mr. Montague is a graduate of the University of Pennsylvania (B.A. 1960) and the Dickinson School of Law (L.L.B. 1963), where he was a member of the Board of Editors of the Dickinson Law Review. He is the former Chairman of the Board of Trustees of the Dickinson School of Law of Penn State University and current Chairman of the Dickinson Law Association.

Harold Berger –Of Counsel, Executive Shareholder *Emeritus*

Judge Berger is an Executive Shareholder *Emeritus* & Of Counsel. He participated in many complex litigation matters, including the *Exxon Valdez Oil Spill Litigation*, No. A89-095, in which he served on the case management committee and as Co-Chair of the national discovery team. He also participated in the *Three Mile Island Litigation*, No. 79-0432 (M.D. Pa.), where he acted as liaison counsel, and in the nationwide school asbestos property damage class action, *In re Asbestos School Litigation*, Master File No. 83-0268 (E.D. Pa.), where the firm served as co-lead counsel.

A former Judge of the Court of Common Pleas of Philadelphia, he has long given his service to the legal community and the judiciary. He is also active in law and engineering alumni affairs at the University of Pennsylvania and in other philanthropic endeavors. He serves as a member of Penn's Board of Overseers and as Chair of the Friends of Penn's Biddle Law Library, having graduated from both the engineering and law schools at Penn. Judge Berger also serves on the Executive Board of Penn Law's Center for Ethics and Rule of Law. In 2017, he was the recipient of Penn Law's Inaugural Lifetime Commitment Award, which recognizes graduates "who through a lifetime of service and commitment to Penn Law have truly set a new standard of excellence."

He is past Chair of the Federal Bar Association's National Committee on the Federal and State Judiciary and past President of the Federal Bar Association's Eastern District Chapter. He is the author of numerous law review articles, has lectured extensively before bar associations and at universities, and has served as Chair of the International Conferences on Global Interdependence held at Princeton University. Judge Berger has served as Chair of the Aerospace Law Committees of the American, Federal and Inter-American Bar Associations and, in recognition of the importance and impact of his scholarly work, was elected to the International Academy of Astronautics in Paris.

As his biographies in *Who's Who in America*, *Who's Who in American Law* and *Who's Who in the World* outline, he is the recipient of numerous awards, including the Special Service Award of the Pennsylvania Conference of State Trial Judges, a Special American Bar Association Presidential Program Award and Medal, and a Special Federal Bar Association Award for distinguished service to the Federal and State Judiciary. He has been given the highest rating (AV Preeminent) for legal ability as well as the highest rating for ethical standards by Martindale-Hubbell. Judge Berger was also presented with a Lifetime Achievement Award in 2014 by *The Legal Intelligencer* in recognition of figures who have helped shape the law in Pennsylvania and who had a distinct impact on the legal profession in the Commonwealth.

He is a permanent member of the Judicial Conference of the United States Court of Appeals for the Third Circuit and has served as Chair of both the Judicial Liaison and International Law Committees of the Philadelphia Bar Association. He has also served as National Chair of the FBA's Alternate Dispute Resolution Committee.

Recipient of the Alumnus of the Year Award of the Thomas McKean Law Club of the University of Pennsylvania Law School, he was further honored by the University's School of Engineering and Applied Science by the dedication of the Harold Berger Biennial Distinguished Lecture and Award given to a technical innovator who has made a lasting contribution to the quality of our lives. He was also honored by the University by the dedication of an auditorium and lobby bearing his name and by the dedication of a student award in his name for engineering excellence.

Long active in diverse, philanthropic, charitable, community and inter-faith endeavors Judge Berger serves as a Lifetime Honorary Trustee of the Federation of Jewish Charities of Greater Philadelphia, as a Director of the National Museum of Jewish History, as a National Director of the Hebrew Immigrant Aid Society (HIAS) in its endeavors to assist refugees and indigent souls of all faiths, as A Charter Fellow of the Foundation of the Federal Bar Association and as a member of the Hamilton Circle of the Philadelphia Bar Foundation.

Among other honors and awards, as listed above, Judge Berger was honored by the University of Pennsylvania Law School at its annual Benefactors' Dinner and is the recipient of the "Children of the American Dream" award of HIAS for his leadership in the civic, legal, academic and Jewish communities.

Gary E. Cantor – Of Counsel
Gary E. Cantor is Of Counsel in the Philadelphia office. He concentrates his practice on securities and commercial litigation and derivatives valuations.

Mr. Cantor served as co-lead counsel in *Steiner v. Phillips, et al. (Southmark Securities)*, Consolidated C.A. No. 3-89-1387-X (N.D. Tex.), (class settlement of $82.5 million), and *In re Kenbee Limited Partnerships Litigation*, Civil Action No. 91-2174 (GEB), (class settlement involving 119 separate limited partnerships resulting in cash settlement, oversight of partnership governance and debt restructuring (with as much as $100 million in wrap mortgage reductions)). Mr. Cantor also represented plaintiffs in numerous commodity cases.

In recent years, Mr. Cantor played a leadership role in *In re Oppenheimer Rochester Funds Group Securities Litigation* ($89.5 million settlement on behalf of investors in six tax-exempt bond mutual funds managed by OppenheimerFunds, Inc.), No. 09-md-02063-JLK (D. Col.); *In re KLA-Tencor Corp. Securities Litigation*, Master File No. C-06-04065-CRB (N.D. Cal.) ($65 million class settlement); *In re Sepracor Inc. Securities Litigation*, Civil Action no. 02-12235-MEL (D. Mass.) ($52.5 million settlement.); *In re Sotheby's Holding, Inc. Securities Litigation*, No. 00 Civ. 1041 (DLC) (S.D.N.Y.) ($70 million class settlement). He was also actively involved in the *Merrill Lynch Securities Litigation* (class settlement of $475 million) and *Waste Management Securities Litigation* (class settlement of $220 million).

For over 20 years, Mr. Cantor also has concentrated on securities valuations and the preparation of event or damage studies or the supervision of outside damage experts for many of the firm's cases involving stocks, bonds, derivatives, and commodities. Mr. Cantor's work in this regard has focused on statistical analysis of securities trading patterns and pricing for determining materiality, loss causation and damages as well as aggregate trading models to determine class-wide damages.

Mr. Cantor was a member of the Moot Court Board at University of Pennsylvania Law School where he authored a comment on computer-generated evidence in the University of Pennsylvania Law Review. He graduated from Rutgers College with the highest distinction in economics and was a member of Phi Beta Kappa.

Peter R. Kahana –Of Counsel

Peter R. Kahana is Of Counsel in the Insurance and Antitrust practice groups. He concentrates his practice in complex civil and class action litigation involving relief for insurance policyholders and consumers of other types of products or services who have been victimized by fraudulent conduct and unfair business practices.

Significant class cases vindicating the rights of insurance policyholders or consumers in which Mr. Kahana was appointed as co-class counsel have included: settlement in 2012 for $90 million of breach of fiduciary duty and negligence claims (certified for trial in 2009) on behalf of a class of former policyholder-members of Anthem Insurance Companies, Inc. ("Anthem") alleging the class was paid insufficient cash compensation in connection with Anthem's conversion from a mutual insurance company to a publicly-owned stock insurance company (a process known as "demutualization") (*Ormond v. Anthem, Inc., et al.*, USDC, S.D. Ind., Case No. 1:05-cv-01908 (S.D. Ind. 2012)); settlement in 2010 for $72.5 million of a nationwide civil RICO and fraud class action (certified for trial in 2009) against The Hartford and its affiliates on behalf of a class of personal injury and workers compensation claimants for the Hartford's alleged deceptive business practices in settling these injury claims for Hartford insureds with the use of structured settlements (*Spencer, et al. v. The Hartford Financial Services Group, Inc., et al.*, 256 F.R.D. 284 (D. Conn. 2009)); settlement in 2009 for $75 million of breach of contract, Unfair Trade Practices Act and insurance bad faith tort claims on behalf of a class of West Virginia automobile policyholders (certified for trial in 2007) alleging that Nationwide Mutual Insurance Company failed to properly offer and provide them with state-required optional levels of uninsured and underinsured motorist coverage (*Nationwide Mutual Insurance Company v. O'Dell, et al.*, Circuit Court of Roane County, W. Va., Civ. Action No. 00-C-37); and, settlement in 2004 for $20 million on behalf of a class of cancer victims alleging that their insurer refused to pay for health insurance benefits for chemotherapy and radiation treatment (*Bergonzi v. CSO, USDC, D.S.D.*, Case No. C2-4096). For his efforts in regard to the Bergonzi matter, Mr. Kahana was named as the recipient of the American Association for Justice's Steven J. Sharp Public Service Award, which is presented annually to those attorneys whose cases tell the story of American civil justice and help educate state and national policymakers and the public about the importance of consumers' rights.

Mr. Kahana has also played a leading role in major antitrust and environmental litigation, including cases such as *In re Brand Name Prescription Drugs Antitrust Litigation* ($723 million settlement), *In re Ashland Oil Spill Litigation* ($30 million settlement), and *In re Exxon Valdez* ($287 million compensatory damage award and $507.5 million punitive damage award). In connection with his work as a member of the trial team that prosecuted *In re The Exxon Valdez*, Mr. Kahana was selected in 1995 to share the Trial Lawyer of the Year Award by the Public Justice Foundation.

Maryellen Madden – Of Counsel
Maryellen Madden focuses her practice on complex litigation and commercial disputes, including securities, corporate governance, real estate, commercial contracts, health care and the sale and distribution of goods. She has handled litigation, including complex, multi-district litigation, in 22 states, as well as before domestic and international arbitration panels, administrative agencies and industry self-regulatory organizations. Prior to joining Berger Montague, she was an attorney with a national law firm.

Susan Schneider Thomas – Of Counsel
Susan Schneider Thomas concentrates her practice on *qui tam* litigation.

Ms. Thomas has substantial complex litigation experience. Before joining the firm, she practiced law at two Philadelphia area firms, Schnader, Harrison, Segal & Lewis and Greenfield & Chimicles, where she was actively involved in the litigation of complex securities fraud and derivative actions.

Upon joining the firm, Ms. Thomas concentrated her practice on complex securities and derivative actions. In 1986, she joined in establishing Zlotnick & Thomas where she was a partner with primary responsibility for the litigation of several major class actions including *Geist v. New Jersey Turnpike Authority, C.A.* No. 92-2377 (D.N.J.), a bond redemption case that settled for $2.25 million and *Burstein v. Applied Extrusion Technologies, C.A.* No. 92-12166-PBS (D. Mass.), which settled for $3.4 million.

Upon returning to the firm, Ms. Thomas has had major responsibilities in many securities and consumer fraud class actions, including *In re CryoLife Securities Litigation, C.A.* No. 1:02-CV-1868 BBM (N.D.Ga.), which settled in 2005 for $23.25 million and *In re First Alliance Mortgage Co.*, Civ. No. SACV 00-964 (C.D.Cal.), a deceptive mortgage lending action which settled for over $80 million in cooperation with the FTC. More recently, Ms. Thomas has concentrated her practice in the area of healthcare *qui tam* litigation. As co-counsel for a team of whistleblowers, she worked extensively with the U.S. Department of Justice and various State Attorney General offices in the prosecution of False Claims Act cases against pharmaceutical manufacturers that recovered more than $2 billion for Medicare and Medicaid programs and over $350 million for the whistleblowers. She has investigated or is litigating False Claims Act cases involving defense contractors, off-label marketing by drug and medical device companies, federal grant fraud, upcoding and other billing issues by healthcare providers, drug pricing issues and fraud in connection with for-profit colleges and student loan programs.

Tyler E. Wren – Of Counsel
Mr. Wren is a trial lawyer with over 35 years of experience in both the public and private sectors.

Mr. Wren has represented both plaintiffs and defendants in a broad spectrum of litigation matters, including class actions, environmental, civil rights, commercial disputes, personal injury, insurance coverage, election law, zoning and historical preservation matters and other government affairs. Mr. Wren routinely appears in both state and federal courts, as well as before local administrative agencies.

Following his graduation from law school, Mr. Wren served as staff attorney to the Committee of Seventy, a local civic watchdog group. Mr. Wren then spent a decade in the Philadelphia City Solicitor's Office in various positions in which his litigation and counseling skills were developed: Chief Assistant City Solicitor for Special Litigation and Appeals, Divisional Deputy City Solicitor for the Environment, Counsel to the Philadelphia Board of Ethics and Counsel to the Philadelphia Planning Commission. After leaving government employ and before joining the Firm in 2010, Mr. Wren was in private practice, including nine years with the Sprague and Sprague firm, headed by nationally recognized litigator Richard Sprague.