

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

THOMAS NIEMCZYK, individually and on behalf
of a class of similarly situated individuals,

Plaintiff,

v.

PRO CUSTOM SOLAR LLC, d/b/a MOMENTUM
SOLAR

Defendant.

Civil Action No. 2:19-cv-7846-ES-MAH

**DECLARATION OF
MATTHEW R. MENDELSON
IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL
OF CLASS ACTION
SETTLEMENT**

HERBERT WALTERS, RICK HILL, and BARRY
WOLFORD, individually and on behalf of a class of
similarly situated individuals,

Plaintiffs,

v.

PRO CUSTOM SOLAR LLC, d/b/a MOMENTUM
SOLAR

Defendant.

Civil Action No. 2:22-cv-00247-ES-MAH

I, Matthew R. Mendelsohn, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a Member at Mazie Slater Katz & Freeman, LLC, counsel of record for Thomas Niemczyk, Rick Hill, and Barry Wolford (“Plaintiffs” or the “Class Representatives”) and Class Counsel in this action. I am an attorney-at-law licensed to practice in the State of New Jersey, and I am a member of the bar of this Court. I have personal knowledge of all matters set forth in this declaration, and, if called as a witness, could and would competently testify under oath thereto.

2. I make this Declaration in support of Plaintiffs’ Motion for Final Approval of Class

Action Settlement, filed contemporaneously herewith.

3. On January 10, 2025, this Court preliminarily approved the class action settlement between Plaintiffs and Pro Custom Solar LLC, d/b/a Momentum Solar (“Momentum” or “Defendant”) (collectively, the “Parties”).

4. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties’ Class Action Settlement Agreement, and the exhibits attached thereto.

5. Plaintiffs allege that Defendant made uninvited calls to their cellular phone numbers using an automatic telephone dialing system (“ATDS”) without the recipient’s prior express consent in violation of the Telephone Consumer Protection Act (“TCPA”) of 1991, 47 U.S.C. § 227 et seq. (*See generally*, Third Amended Complaint, ECF No. 97 (“TAC”)). Specifically, Plaintiffs allege that Defendant is liable to all persons in the United States who received two or more telemarketing calls (“Calls”) from Momentum or on behalf of Momentum within a 365-day period from March 5, 2015 through and including the date of preliminary approval of the Settlement by the Court (the “Class Period”). Plaintiffs contend that the telemarketing calls were a violation of the federal TCPA and related Florida statutes, which together permit remedies of a minimum of \$500 in statutory damages per violation, injunctive relief, attorney fees, and costs.

6. The claims advanced on behalf of the Settlement Class Members involve numerous complex legal and technical issues that Class Counsel investigated thoroughly before filing complaints. Plaintiffs’ counsel have prosecuted many TCPA class actions which took several years to conclude; factoring in appeals, some lasted for over a decade. For example, even before approaching a trial in this case, the parties likely would conduct extensive expert discovery and litigate class certification, a likely Rule 23(f) appeal, *Daubert* challenges, and summary judgment,

requiring expenditure of considerable attorney time and resources as well as hard costs of additional expert witnesses, deposition practice, and e-discovery services. Trial and post-trial activity would last several more years without any assurance of the relief now provided by the Settlement.

7. Thus, continued litigation would be time-consuming and expensive, with no certainty of a favorable outcome. The Settlement Agreement secures substantial benefits for the Class with none of the delay, risk and uncertainty of continued litigation.

Procedural History

8. On March 5, 2019, Plaintiff Niemczyk filed a putative class action in the United States District Court for the District of New Jersey against Defendant on behalf of himself and all others similarly situated, alleging claims for violations of the TCPA for alleged unsolicited telemarketing calls made by or on behalf of Defendant to Plaintiff's cellular telephone trying to sell him solar equipment even though Plaintiff was already on Defendant's internal do-not-call list ("IDNC List").

9. On May 20, 2019, Defendant filed a motion to dismiss the Plaintiff's amended complaint (ECF No. 6) and on July 14, 2019, Defendant filed a motion to dismiss Plaintiff's second amended complaint. (ECF No. 12). The Court denied Defendant's motion to dismiss on April 1, 2020. (ECF No. 26).

10. On January 19, 2022, Plaintiffs Herbert Walters¹, Rick Hill, and Barry Wolford filed a putative class action in the same court against Defendant on behalf of themselves and all others similarly situated, alleging claims for violations of TCPA, the Florida Do Not Call Act, §

¹ Plaintiff Herbert Walters' claims were dismissed without prejudice on March 21, 2024, and, accordingly, Plaintiff Walters is not a party to this Settlement other than by virtue of his putative status as an absent Class Member.

501.059, et seq., and the Florida Telemarketing Act, § 501.616, Fla. Stat., et seq., for alleged unsolicited telemarketing calls made by or on behalf of Defendant. Both the *Niemczyk* Action and the *Walters* Action were assigned to District Judge Esther Salas and Magistrate Judge Michael Hammer and were effectively litigated as one case from that point forward on one schedule and with the same discovery obligations.

11. On March 25, 2022, the Court issued an order denying Defendant's motion for judgment on the pleadings and motion to strike Plaintiff's class definitions. (ECF No. 94).

The Parties Completed All Fact and Expert Discovery

12. Discovery was extremely contentious. There were around a dozen discovery orders by the Court concerning contested motions to compel or resolution of discovery dispute letters and numerous discovery conferences with the Court.

13. Defendant produced millions of call logs and lead files spanning the length of the class period as well as the production of internal do not call lists. Plaintiffs reviewed the production of hundreds of thousands of Defendant's internal email correspondence and electronic records as well as current and former customer lists.

14. The Plaintiffs undertook significant third-party discovery including motions to compel compliance with subpoenas in other jurisdictions and the review of productions from Defendant's third-party vendors.

15. Plaintiffs hired experts to review Defendant's financial records which enabled the parties to evaluate Defendant's ability to withstand a judgment should Plaintiffs have prevailed at trial and the maximum amount of money that Defendant could contribute to a settlement while still having a reasonable probability of staying in business. After scrupulously analyzing Defendant's financial records with the help of an economics expert, Plaintiffs believe that the

Settlement represents the *maximum that Momentum is able to pay while still having a reasonable probability of staying in business*. Plaintiffs believe that the Settlement represents likely more than they could have recovered had they prevailed at trial, as collection issues would have been severe in an ensuing bankruptcy. At the \$500 maximum, Plaintiffs' damages expert calculated statutory damages of \$19.5 billion. That award is so shockingly large, however, that it fails to serve as a helpful guidepost in an analysis of this Settlement. Any damages amount above the recovery provided by the Settlement, whether \$100 million or \$19.5 billion, would likely have resulted in a smaller recovery because it would have immediately resulted in Momentum's bankruptcy. Even if the jury awarded the maximum \$500 per call, the Court and the Third Circuit (and possibly the Supreme Court) would likely have taken a hard look at the constitutionality of an award of that size. Plaintiffs do not take the position that a full statutory damages award would in fact be unconstitutional – they simply point out the possibility of a reduced judgment as a risk in ongoing litigation.

16. Defendant took the depositions of Plaintiffs Niemczyk, Hill, and Wolford. Plaintiffs took the depositions of three witnesses Defendant designated as corporate representatives pursuant to Fed. R. Civ. P. 30(b)(6) – namely, Defendant's IT Manager, Mike Giudice, on April 12, 2023; Defendant's VP of Inside Sales, Jeffrey Ancien on March 28, 2023; and its VP of Marketing Joshua Buma on March 27, 2023. Plaintiffs produced four expert reports.

17. Thus, the Parties have exchanged formal, informal and confirmatory discovery. This discovery together with the Court's Opinion on the motion to dismiss provided guidance on the strengths and weaknesses of the claims and allowed Plaintiffs' counsel to carefully analyze the risk of future litigation in comparison to the relief offered by the Settlement. As a result, Class Counsel had an adequate understanding of the merits of the case before negotiating a settlement

and the discovery and depositions highlighted the variety of risks of getting a class certified in this case.

Mediation and Two In-person Meetings Were Overseen by a Neutral Mediator

18. On March 30, 2023, the Court ordered the Parties to meet and confer to select a mediator. (ECF No. 127). On June 19, 2023, the parties participated in a mediation before retired Judge Wayne R. Andersen. In advance of the mediation, the Plaintiffs prepared a detailed mediation statement that included prospective damages calculations. The Parties exchanged and thoroughly analyzed informal discovery related to issues of class certification and summary judgment, including on issues such as the size and scope of the putative class; call logs and lead files spanning the length of the class period as well as the production of internal do not call lists; and Defendant's financial records. This information was sufficient to allow for the Parties to assess the strengths and weakness of the claims and defenses.

19. While the parties did not reach a settlement at the mediation, settlement discussions continued and included an in-person meeting between the parties and Plaintiffs' expert in New York in October 2023 and another in-person meeting between the parties in Louisville, Kentucky in February 2024.

20. Contentious settlement discussions continued for several months leading up to the signing of a binding Term Sheet memorializing the material terms of this Settlement on June 19, 2024, that were overseen by Judge Andersen within the scope of the continuing mediation. Matters were so contentious that Plaintiffs were days away from filing a contested motion for class certification prior to reaching this Settlement.

21. In connection with the mediation and continued post-mediation negotiations, the Parties focused their discussions on the monetary relief made available to the Class – with the

provision that Plaintiff may apply for up to one-third in attorneys' fees and as reimbursement of expenses. As such, the provisions of the Settlement Agreement concerning attorneys' fees and expenses were negotiated in such a manner as to avoid any potential conflict with the Settlement Class, or any argument that such amounts were "traded off" for lesser class consideration.

22. Following the mediation session, the Parties continued to engage in settlement negotiations and worked extensively to finalize and memorialize the agreement into a formal Class Action Settlement Agreement, including proposed class notice documents. That process included multiple rounds of redlines and phone calls to discuss proposed edits. The Parties ultimately reached an agreement as to all material terms of the revised class action.

23. On January 10, 2025, this Court granted Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. *See* ECF No. 36.

Benefits of the Settlement Agreement

24. All the terms of the Settlement Agreement are the result of arm's-length negotiations between experienced counsel for both sides. The named Plaintiffs all approve of the Settlement.

25. The parties intend to resolve the litigation via the proposed Settlement. Resolution requires Momentum to pay \$10 million over five years into a Common Fund to be administered by the Claims Administrator. The first payment in the amount of \$1 million will be paid into the Common Fund within 90 days ("Initial Payment Date") of the approval of the Settlement by the Court (the "Court Approval Date"). Each subsequent payment into the Common Fund will be due on the first, second, third, fourth and fifth anniversary of the Initial Payment Date in the amounts of \$2.0 million, \$1.25 million, \$1.75 million, \$1.75 million and \$2.25 million.

26. Beginning on the sixth anniversary of the Initial Payment Date, Momentum will

begin annual payments of \$1.2 million per year into the Common Fund, which payment will continue for ten (10) years until an additional \$12 million has been paid for a total of \$22 million.

27. Momentum will also pay into the Common Fund twelve percent (12%) of any Liquidity Event Proceeds from Liquidity Events provided that the total amount paid into the Common Fund under all circumstances and via all means will not exceed \$30 million (the “Settlement Payment Cap”).

28. Thus, under the Settlement, Defendant will pay at least \$20-\$22 million into a Settlement Fund, and up to \$30 million if a qualifying Liquidity Event occurs. The size of the Fund here is larger than other TCPA settlements in this circuit. *See e.g., Vasco v. Power Home Remodeling Grp. LLC*, No. CV 15-4623, 2016 WL 5930876, at *10-12 (E.D. Pa. Oct. 12, 2016) (\$5.2 million settlement fund); *Somogyi v. Freedom Mortg. Corp.*, No. CV1706546RMBMJS, 2023 WL 8113242, at *1 (D.N.J. Nov. 22, 2023) (\$9.5 million fund); *Myers v. Jani-King of Philadelphia, Inc.*, No. CV 09-1738, 2019 WL 4034736, at *2 (E.D. Pa. Aug. 26, 2019) (\$3.7 million settlement fund).

29. The settlement here is the result of extensive, arms'-length negotiations (including a mediation and two in-person meetings overseen by a neutral mediator) between experienced counsel over several years, who believe the settlement is in the best interests of their respective clients.

30. Class Counsel verified the adequacy of the Settlement by discussing the proposed terms with the Plaintiffs, reviewing thousands of pages of documents, deposing multiple witnesses and consulting extensively with multiple experts retained by Plaintiff's Counsel. The settlement is well supported and will eliminate the uncertainties and risks to the Parties from proceeding further in the litigation.

31. Based on Defendant's records, there are approximately 4.16 million class members. In consideration for the release and dismissal with prejudice of all claims in this action, the Settlement provides class members with substantive and substantial benefits: namely, *the average* claimant is anticipated to receive approximately \$1,266 to \$1933. This compares favorably with other per claimant recoveries in this circuit. *See e.g., Vasco*, 2016 WL 5930876, at *12 (awarding approximately \$26.60 per claimant); *Somogyi*, 495 F. Supp. 3d at 345 (D.N.J. 2020) (awarding anticipated award per claimant of \$37.61 but the actual payment was \$75.30); *Brown v. Rita's Water Ice Franchise Co. LLC*, No. CV 15-3509, 2017 WL 4102586, at *4 (E.D. Pa. Sept. 14, 2017) (awarding \$144 payment to TCPA class members); *Walker v. Highmark BCBS Health Options, Inc.*, No. 2:20-CV-01975-CCW, 2022 WL 17592067, at *5 (W.D. Pa. Dec. 13, 2022) (awarding \$70.69 for each eligible call).

32. It also compares well with per claimant recoveries around the country. *See Friedman v. LAC Basketball Club*, No. 13-818 (C.D. Cal. July 8, 2014) (final approval of TCPA settlement providing class members with either (i) two tickets to one Los Angeles Clippers' home game or (ii) one free ticket and a \$20 voucher for use at the Team LA Store in the Staples center); *Kazemi v. Payless Shoesource, Inc.*, No. 09-5142 (N.D. Cal. 2012) (\$25 merchandise certificate per claimant); *Couser v. Comenity Bank*, No. 12-2484, ECF/CM Doc. No. 91 (S.D. Cal. May 27, 2015) (approximately \$13.75 per claimant); *In re Capital One TCPA Litigation*, No. 12-10064, ECF/CM Doc. No. 329 (N.D. Ill. February 12, 2015) (at least \$34.60 per claimant); *Rose v. Bank of America Corp.*, No. 11-2390, 2014 WL 4273358, at *10 (N.D. Cal. Aug. 29, 2014) (average of \$20 to \$40 per claimant); *id.* (referencing *Arthur v. Sallie Mae* TCPA settlement, in which each claimant received approximately \$20 to \$40); *Malta v. Fed. Home Loan Mortgage Corp.*, No. 10-CV-1290 BEN NLS, 2013 WL 444619, at *7 (S.D. Cal. Feb. 5, 2013) (approximately \$2 per

claimant if all eligible claimants filed claims).

33. The range of what could possibly be recovered in this case if it proceeded is exceedingly difficult to calculate, even at the close of fact and expert discovery and with Plaintiffs' service of all their expert reports, including a damages report. 47 U.S.C. § 227(b)(3)(B) provides a private right of action for sections of the TCPA dealing with ATDS and calls utilizing a prerecorded or artificial voice and allows recovery of a minimum of \$500 per unlawful call. However, 47 U.S.C. § 227(c)(5) provides the cause of action for the released telemarketing claims at issue in the Settlement. Under § 227(c)(5)(B), a violation entitles class members "up to" \$500 in damages per call. Accordingly, an established violation could entitle class members to anything from nominal damages of a few cents or a few dollars per call, up to \$500 per call. That makes an analysis of a class damages recovery exceedingly difficult in a § 227(c)(5) case, as a jury finding class violations at trial for, *e.g.*, 10 million calls, can impose an award of anywhere from \$1,000 to \$5 *billion*. The Court would then have the discretion to potentially treble the jury's damages award if it found that a defendant's actions were knowing or willful. 47 U.S.C. § 227(c)(5)(C). Since the Act permits \$500 per violation, at the \$500 maximum, Plaintiffs' damages expert calculated statutory damages of \$19.5 billion. That award is so shockingly large, however, that it fails to serve as a helpful guidepost in an analysis of this Settlement. The recovery per average claimant is anticipated to be approximately \$1,266 to \$1,933.² "We conclude[] this recovery is consistent with other class action settlements under the Act. Although the Act permits \$500 per

² Though the claims deadline is still open, Class Counsel anticipate roughly 10,000 claims based on roughly 7,500 claims being submitted through the end of July, 2025. Accordingly, to get the above per claimant figures, Class Counsel subtracted the following from \$20 million and \$30 million, respectively: 1) an award of fees of 33%, 2) an award of Class Counsel costs and expenses of roughly \$496,186.49, and 3) administration costs of roughly \$500,000. Those figures were then divided by 10,000 to arrive at the estimated per claimant amounts.

violation, the anticipated amount is fair, as ‘a ‘satisfactory settlement’ may only ‘amount to a hundredth or even a thousandth part of a single percent of the potential recovery.’” *Vasco*, 2016 WL 5930876, at *10. That is because “[r]eceiving less than the statutory damages provision allows class members to avoid the uncertainty and delays associated with trial.” *Walker*, 2022 WL 17592067, at *5.

34. Although there are ample reasons for optimism that Plaintiffs can prevail on the merits of their claims, Class Counsel determined that the proposed Settlement provides significant benefits to the Class Members and is in the best interests of the class. Class Counsel also believes that the Settlement is appropriate given the sharply contested issues involved; the risks and costs of further litigation; and the inherent uncertainty of collecting on a judgment against Defendant even if Plaintiffs prevail. Defendant vigorously denies all material allegations of the claims against them and contends that they possess meritorious defenses; nevertheless, they have agreed to settle this action on the terms set forth in the Settlement. The Parties believe that this Settlement is fair, reasonable, and adequate because it provides substantial economic consideration to the Settlement Class in exchange for Settlement Class Members’ release of certain Claims.

35. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determined all the contours of the proposed class, and reached a fair and reasonable compromise after negotiating the terms of the Settlement at arms’ length and with the assistance of a neutral mediator.

36. By settling, Plaintiffs and the Class avoid these risks, as well as the delays and risks of a lengthy trial and appellate process. The Settlement will provide Settlement Class Members with monetary benefits that are immediate, certain, and substantial, and will avoid the obstacles that might have prevented them from obtaining relief.

37. Plaintiffs and Class Counsel therefore believe that the relief provided by the Settlement weighs heavily in favor of a finding that the Settlement is fair, reasonable, and adequate, and well within the range of approval.

Notice Plan

38. In connection with the initial settlement agreement reached in this case, the Parties selected Angeion Group (“Angeion”) to act as the Settlement Administrator. Angeion is a firm with extensive experience handling all aspects of legal administration and has administered settlements in hundreds of class actions.

39. Since the Court granted preliminary approval, Class Counsel has worked with Angeion to carry out the Court-ordered notice plan. Specifically, Class Counsel helped compile and review the contents of the required notice to State Attorney Generals pursuant to 28 U.S.C. § 1715, reviewed the final claim and notice forms, and reviewed and tested the settlement website before it launched live. The notice plan here easily meets these standards, as it provided direct notice via a postcard or email to 92% of the Settlement Class.

40. Angeion represents that 3,832,537 Class Members were sent an E-Mailed Notice or Mailed Notice, representing 92% of total Settlement Class Members with available contact information. Angeion also developed and hosted a dedicated settlement website with downloadable forms and online claim submission, and a 24-hour toll-free Interactive Voice Response (“IVR”) telephone line. As of this writing, and, out of the hundreds of thousands of Class Members, no Class Members have objected to the Settlement, and one (1) Class Member has requested to be excluded from the Class.

41. Since class notice was disseminated, Class Counsel has worked with Angeion on a weekly basis to monitor settlement claims and any other issues that may arise. Class Counsel has

also fielded inquiries from Settlement Class Members and assisted them with filing claims.

The Excellent Result for the Class Is Due to Class Counsel's Extensive Experience

42. As discussed above and throughout Plaintiffs' Motion for Final Approval of Class Action Settlement, the Settlement reached in this case was the product of negotiations conducted at arms' length by experienced counsel representing adversarial parties, and there is absolutely no evidence of fraud or collusion. Class Counsel has vigorously prosecuted this action and will continue to do so throughout its pendency.

43. Attached hereto as **Exhibit 2** is a current resume for my firm, Mazie Slater Katz & Freeman, LLC. Also attached hereto as **Exhibit 3** is a current firm resume for Bursor & Fisher, P.A., and as **Exhibit 4**, a current firm resume for Smith Krivoshey, PC.

44. My firm, Mazie Slater Katz & Freeman, LLC, has significant experience in litigating class actions of similar size, scope, and complexity to the instant action. *See* Ex. 2, Firm Resume of Mazie Slater Katz & Freeman, LLC.

45. Class Counsel has also been recognized by courts across the country, including in this Circuit, for their expertise litigating class action claims to trial. *Id.* at Exs. 2-4.

46. Based on Class Counsel's experience litigating similar consumer class actions, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate. *Id.*

Class Representatives' Are Deserving of Service Awards

47. I believe that Plaintiffs Thomas Niemczyk's, Rick Hill's, and Barry Wolford's active involvement in this case was critical to its ultimate resolution. They took their role as class representative seriously, devoting significant amounts of time and effort to protecting the interests of the class. Without their willingness to assume the risks and responsibilities of serving as class representatives, including sitting for depositions, I do not believe such a strong result could have

been achieved.

48. Each Plaintiff equipped Class Counsel with critical details regarding his experiences with Defendant. Each assisted Class Counsel in investigating his claims, detailing his call history, supplying supporting documentation, aided in drafting the complaints, and each sat for a deposition with opposing counsel. Further, they were each prepared to testify at trial, if necessary, and were actively consulted during the mediation and settlement processes.

49. In sum, each Plaintiff recognizes and accepts their responsibilities as class representatives and has actively participated in the litigation of this case and communicated regularly with their attorneys about the proceedings. The Class Representatives are adequate because their claims are typical of those of other Class Members and seek the same relief as the other Class Members. Each Plaintiff understands the obligations of serving as Class Representative, has adequately represented the interests of the putative class thus far, and has retained experienced legal counsel. They each met with their attorneys for the initial consultation, participated in calls regarding fact-finding efforts by their attorneys, and held in-person and telephonic meetings with counsel. Each Plaintiff made time to undergo a deposition and conferred with counsel beforehand to prepare for those depositions. When Counsel attended a full-day mediation with Defendant and two in-person meetings with Defendant, the Plaintiffs made themselves available on those dates.

50. In short, Plaintiffs Thomas Niemczyk, Rick Hill, and Barry Wolford assisted Class Counsel in pursuing this action on behalf of the class, and their involvement in this case has been nothing short of essential. *See* Declaration of Thomas Niemczyk (ECF No. 166-3); Declaration of Rick Hill (ECF No. 166-4); Declaration of Barry Wolford (ECF No. 166-5) (declarations submitted with the Preliminary Approval Brief).

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

Executed this 14th day of July, 2025, at Roseland, NJ.

/s/ Matthew R. Mendelsohn

Matthew R. Mendelsohn

EXHIBIT 1

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

THOMAS NIEMCZYK, individually and on
behalf of a class of similarly situated individuals,

Plaintiff,

v.

PRO CUSTOM SOLAR LLC, D/B/A
MOMENTUM SOLAR

Defendant.

Case No.: 2:19-cv-7846-ES-MAH

RICK HILL and BARRY WOLFORD,
individually and on behalf of a class of similarly
situated individuals,

Plaintiffs,

v.

PRO CUSTOM SOLAR LLC, D/B/A
MOMENTUM SOLAR

Defendant.

Case No.: 2:22-cv-00247- ES-MAH

SETTLEMENT AGREEMENT

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Subject to the approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Class Action Settlement Agreement and Release, including the attached Exhibits (“Settlement Agreement” or “Settlement”), is entered into between Plaintiffs Thomas Niemczyk, Rick Hill, and Barry Wolford, on behalf of themselves and on behalf of each of the Settlement Class Members (“Plaintiffs”), and Defendant Momentum Solar LLC (“Defendant” or “Momentum”) (collectively, the “Parties”) in the actions entitled *Niemczyk v. Pro Custom Solar LLC*, Case No. 2:19-cv-7846-ES-MAH (D.N.J.) and *Walters v. Pro Custom Solar LLC*, Case No. 2:22-cv-00247-ES-MAH (D.N.J.) (the “Actions” or this “Litigation”) in the United States District Court for the District of New Jersey.

RECITALS

WHEREAS, on March 5, 2019, Plaintiff Thomas Niemczyk (“Niemczyk”) filed a putative class action in the United States District Court for the District of New Jersey against Defendant on behalf of himself and all others similarly situated, alleging claims for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”) for alleged unsolicited telemarketing calls made by or on behalf of Defendant;

WHEREAS, on January 19, 2022, Plaintiffs Herbert Walters, Rick Hill, and Barry Wolford filed a putative class action in the United States District Court for the District of New Jersey against Defendant on behalf of themselves and all others similarly situated, alleging claims for violations of the TCPA, the Florida Do Not Call Act, § 501.059, et seq., and the Florida Telemarketing Act, § 501.616, Fla. Stat., et seq., (collectively, the Florida Do Not Call Act and Florida Telemarketing Act will be referred to herein as the “FTCPA”) for alleged unsolicited telemarketing calls made by or on behalf of Defendant;

WHEREAS, both the *Niemczyk* and the *Walters* actions were assigned to District Judge Esther Salas and Magistrate Judge Michael Hammer, and were effectively litigated as one case from that point forward on one schedule and with the same discovery obligations;

WHEREAS, the Plaintiffs in both the *Niemczyk* and *Walters* actions were represented by the same counsel;

WHEREAS, pursuant to stipulation of the parties, Plaintiff Herbert Walters' claims were dismissed without prejudice on March 21, 2024, and, accordingly, Plaintiff Walters is not a party to this Settlement other than by virtue of his putative status as an absent Class Member;

WHEREAS, from the inception of the *Niemczyk* action until a settlement was reached, the parties vigorously litigated the asserted claims and obtained rulings on many contested motions, including, *inter alia*: the Court denied Defendant's motion to dismiss on April 1, 2020 (ECF No. 26); the Court issued an order denying Defendant's motion for judgment on the pleadings and motion to strike on March 25, 2022 (ECF No. 94); and Plaintiffs were days away from filing a contested motion for class certification prior to reaching this Settlement;

WHEREAS, discovery was extremely contentious, involving multiple motions to compel and numerous discovery conferences with the Court; around a dozen discovery orders by the Court concerning contested motions to compel or resolution of discovery dispute letters; Defendant's production of millions of call logs and lead files spanning the length of the class period; the production of internal do not call lists; the search, review, and production of hundreds of thousands of Defendant's internal email correspondence and electronic records; the production of current and former customer lists; significant third-party discovery including a motion to compel compliance with a subpoena in another jurisdiction and the review of productions from Defendant's third party vendors; the production and expert review of Defendant's financial records that enabled the parties

to evaluate Defendant's ability to withstand a judgment should Plaintiffs have prevailed at trial and the maximum amount of money that Defendant could contribute to a settlement while still having a reasonable probability of staying in business; Defendant's taking the depositions of Plaintiffs Niemczyk, Hill, and Wolford; Plaintiffs' taking the depositions of three witnesses Defendant designated as corporate representatives pursuant to Fed. R. Civ. P. 30(b)(6); Plaintiffs' service of four expert reports; and the completion of all fact and expert discovery;

WHEREAS, this Settlement has been reached after hard-fought litigation and is the product of extensive, arm's-length settlement negotiations spanning multiple years, including a June 19, 2023 mediation before Honorable Wayne R. Andersen (Ret.); settlement discussions that included an in-person meeting between the parties and Plaintiffs' expert in New York in October 2023 and another in-person meeting between the parties in Louisville, KY in February 2024; and continuous settlement discussions over the next couple of months leading up to the signing of a binding Term Sheet memorializing the material terms of this Settlement on June 19, 2024, that were overseen by Judge Andersen within the scope of the continuing mediation;

WHEREAS, Defendant denies each and every one of Plaintiffs' allegations of violations of the statutes at issue in the Actions, Defendant has asserted numerous defenses to Plaintiffs' claims, Defendant disclaims any liability whatsoever, and Defendant further denies that this case satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23; and

WHEREAS, the Parties have engaged in significant discovery that has allowed the Parties to adequately apprise themselves of the strengths, merits, risks, potential damages, and complexities of the Actions should they have proceeded in litigation, and to allow them to objectively analyze the fairness, reasonableness, and adequacy of the Settlement; and

WHEREAS, the Parties recognize that the outcome of this Litigation is uncertain, and that a final resolution through the litigation process would require several more years of litigation concerning class certification, summary judgment, a trial, and subsequent appeals, substantial risk and expense, the distraction and diversion of Defendant's personnel and resources, and the expense of any possible future litigation raising similar or duplicative claims; and

WHEREAS, the Parties believe that this Settlement Agreement is fair, reasonable, and adequate because it provides substantial economic consideration to the Settlement Class in exchange for Settlement Class Members' release of certain Claims.

NOW, THEREFORE, without (a) any admission or concession on the part of Plaintiffs about the likelihood of success at trial, on appeal, or in other motion practice, or (b) any admission or concession of the merits of this Litigation or of liability or wrongdoing or the lack of merit of any defense whatsoever by Defendant, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class and Defendant, that this Litigation and all Claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice as to Defendant, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

The recitals stated above are true and accurate and are hereby made a part of this Settlement Agreement.

I. DEFINITIONS

For the purposes of this Settlement Agreement, the following terms shall have the following meanings:

A. **"CAFA Notice"** means notice of this Settlement to the appropriate federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, the form of which is attached hereto as **Exhibit A**.

B. “**Claim Form**” means the proposed Claim Form in substantially the form attached hereto as **Exhibit B** to be used by Settlement Class Members to make a claim for benefits due under the Settlement, which form is to be approved by the Court and to be posted on the Settlement Website in accordance with Section VI of this Settlement Agreement.

C. “**Claims Administration Expenses**” means the Class Notice expenses and other expenses incurred by the Settlement Claims Administrator in administering this Settlement, including, without limitation: preparing and disseminating Class Notice and CAFA Notice; responding to inquiries from Settlement Class Members, including the processing of any requests for opting out of the Settlement or objecting thereto; creating and maintaining a Settlement Website; coordinating information with Defendant and Class Counsel; accepting, validating, maintaining and processing claims submitted by Settlement Class Members; and maintaining all claims and other Settlement Agreement-related data through the conclusion of the settlement administration process.

D. “**Claims Deadline**” means the date by which a Claim Form must be received via electronic submission by 11:59 p.m. Pacific Time to be considered timely. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Class Notice and shall not be more than one hundred and twenty (120) consecutive days from the Class Notice Date.

E. “**Class Counsel**” or “**Class Member Counsel**” or “**Plaintiffs’ Counsel**” means Smith Krivoshey, PC, Bursor & Fisher, P.A., and Mazie Slater Katz & Freeman, LLC.

F. “**Class Notice**” means the form of notice to be disseminated to Settlement Class Members informing them about the terms of the Settlement Agreement, their right to participate in this Settlement, to opt out, or to object to the same, to appear at the Final Approval Hearing and instructing Settlement Class Members on how to submit requests for benefits due under the Settlement. A copy of the proposed Long Form Notice is attached hereto as **Exhibit C** and the proposed Summary Notice is attached hereto as **Exhibit D**.

G. “**Class Notice Date**” means the first date on which Class Notice is sent by the Settlement Claims Administrator to each Settlement Class Member.

H. **“Class Representatives”** or **“Plaintiffs”** means named Plaintiffs Thomas Niemczyk, Rick Hill, and Barry Wolford.

I. **“Class Period”** means the period commencing March 5, 2015, to the date that the Court grants preliminary approval to this Settlement by issuing the Preliminary Approval Order.

J. **“Common Fund”** means the fund described in Section III of this Settlement that will be used to pay any attorney’s fees, costs, and expenses, any Claims Administration Expenses, and all payments due to any Settlement Class Members under this Settlement. All payments due to be paid into the Common Fund will be deposited in an escrow account at a bank chosen by the Settlement Claims Administrator.

K. **“Court”** means the United States District Court for the District of New Jersey, the Honorable Esther Salas and/or Michael Hammer.

L. **“Effective Date”** means the date on which all appellate rights with respect to the Final Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Order and Judgment, and when no further appeals are possible.

M. **“Final Approval Hearing”** means the hearing to be held by the Court to consider and determine whether the proposed Settlement of this Litigation as contained in this Settlement Agreement should be approved as fair, reasonable, and adequate, whether Plaintiffs’ request for an award of attorneys’ fees and expenses should be granted, and whether the Final Order and Judgment approving this Settlement should be entered.

N. **“Final Order and Judgment”** means the order and judgment entered by the Court giving approval to the terms of this Settlement Agreement as fair, reasonable, and adequate, certifying a class for settlement purposes, providing for the orderly performance and enforcement of the terms of this Settlement Agreement, discharging the Released Parties of and from all further liability for the Released Claims of the Releasing Parties, and permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or in any other capacity of any kind whatsoever, any action in any state court, federal court, or any

other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Released Claims.

O. **“Litigation”** or **“Actions”** means the actions entitled *Niemczyk v. Pro Custom Solar LLC*, Case No. 2:19-cv-7846-ES-MAH (D.N.J.) and *Walters v. Pro Custom Solar LLC*, Case No. 2:22-cv-00247-ES-MAH (D.N.J.).

P. **“Liquidity Event”** means any of the following: (i) any sale or disposition of common equity interests in Momentum by the holders of such common equity interests where the proceeds to the holders of the common equity interests are \$1,500,000 or more, whether in one or more transactions in any one year period; (ii) any equity financing, including but not limited to a private placement or initial public offering, pursuant to which Momentum receives primary proceeds, net of transaction fees and expenses, provided such transaction fees and expenses are not paid to existing common equity holders or employees, of \$1,500,000 or more, whether in one or more transactions within any one year period; (iii) any financing in which Momentum issues securities convertible into equity securities of Momentum (for example, a convertible note financing) pursuant to which Momentum receives proceeds, net of transaction fees and expenses, provided such transaction fees and expenses are not paid to existing common equity holders or employees, of \$1,500,000 or more, whether in one or more transactions within any one year period; (iv) any exclusive license, sale or disposition, in a single transaction or a series of related transactions, of more than 33.33% of the assets of Momentum, except in the ordinary course of business (an “Asset Sale”); (v) any merger, consolidation, combination, restructuring, or reorganization involving Momentum and another entity (collectively, a “Merger”) where Momentum is not the surviving entity; (vi) any transaction or series of transactions or combination of related transactions in which the equity holders of Momentum immediately prior to the closing of the transaction own less than 66.67% of the surviving company, as applicable, immediately after the transaction (a “Change of Control”); and (vii) any second sale or disposition of Class C Units in Momentum by a person or entity that is not the holder of the sold or disposed Class C Units as of the Effective Date, where the aggregate proceeds to the subsequent holders of the Class

C Units are \$1,500,000 or more, whether in one or one or more transactions in any one year period. For the avoidance of doubt, the following transactions are not Liquidity Events: the sale of Class C Units by current Class C Unit holders on a secondary basis to new investors where no cash or cash equivalents are paid to Momentum, so long as not more than 33.33% of the total of Class C Units are sold in one or more transactions in any one-year period. If more than 33.33% of the total of Class C Units are sold in one or more transactions in any one-year period, such transaction or transactions will constitute a Liquidity Event.

Q. **“Liquidity Event Proceeds”** means the proceeds received by Momentum or its equity holders attributable to one or more Liquidity Events, whether in the form of (i) cash and cash equivalents and (ii) promissory notes, stock or other securities upon the conversion to cash or cash equivalents, provided that if the Liquidity Event Proceeds are not initially cash or cash equivalents, any amounts owed to the Class in connection with a Liquidity Event are payable in cash within 24 months of the Liquidity Event, and any other proceeds regardless of the form that are paid or set aside for payment to Momentum or its equity holders in connection with a Liquidity Event minus, without duplication, any direct and reasonable third party costs and expenses incurred by Momentum in connection with such Liquidity Events. If the proceeds of a Liquidity Event are payable to the equity holders of Momentum and not directly to Momentum, Momentum will ensure that any amount payable to the Common Fund is paid directly to the Common Fund, and not to the Momentum equity holders, in connection with the closing of the applicable Liquidity Event.

R. **“Long Form Notice”** means the proposed notice in substantially the form attached hereto as **Exhibit C**.

S. **“Notice Plan”** means the plan created by the Parties for the purpose of providing notice of this Settlement to the Settlement Class Members, as described in Section VI.

T. **“Opt-Out and Objection Date”** means the date ordered by the Court, which the Parties shall request be set at twenty-one (21) days prior to the Final Approval Hearing.

U. **“Preliminary Approval Order”** means the proposed order preliminarily approving this Settlement, substantially in the form of **Exhibit E** attached hereto.

V. **“Release”** means the release set forth in Section VII.

W. **“Released Claims”** all claims that have or could have been asserted in the Actions, whether known or unknown, by Plaintiffs and all Settlement Class Members against the Released Parties in the Litigation or in any other court action or before any administrative body, tribunal or arbitration panel arising out of or related to the claims asserted by Plaintiffs and the Settlement Class Members in the Litigation relating to violations of the TCPA or any federal, state, or administrative rules concerning telephonic telemarketing calls. This release shall include all claims based on a substantially similar factual predicate as that underlying the allegations and claims asserted in the Actions. The Released Claims shall not include any claims for personal injury, and no such claims are released as part of this Settlement.

X. **“Released Parties”** or **“Momentum Released Parties”** means each of Momentum’s (i) present and future, direct and indirect parents, subsidiaries, partners, joint ventures, and affiliates; (ii) the past, direct and indirect parents, subsidiaries, partners, joint ventures, and affiliates of any of the foregoing; (iii) past, present and future officers, directors, employees, representatives, agents, members, principals, attorneys and shareholders of any of the foregoing; and (iv) the predecessors, successors and assigns of any of the foregoing.

Y. **“Releasing Parties”** means Class Representatives Thomas Niemczyk, Rick Hill, and Barry Wolford, and all Settlement Class Members who have not validly and timely opted out of the Settlement Class, and all those who claim through them or who assert or could assert claims on their behalf.

Z. **“Settlement Claims Administrator”** or **“Settlement Administrator”** means Angeion Group or such other entity that the Court shall approve with the consent of the Parties to administer the Notice Plan and to oversee the processing and resolution of Claim Forms as set forth in this Settlement Agreement.

AA. **“Settlement Class”** or **“Settlement Class Member(s)”** or **“Class Member(s)”** means all persons in the United States that received two or more telemarketing calls (**“Calls”**) from Momentum or on behalf of Momentum within a 365-day period from March 5, 2015 through and including the date of preliminary approval of the Settlement by the Court (**“Class Period”**). Any current or former customer of Momentum is excluded from the Class. Also, excluded from the Settlement Class are all persons who validly opt out of the Settlement in a timely manner; governmental entities; counsel of record (and their respective law firms) for the Parties; Defendant and any of its affiliates, subsidiaries, and all of its respective employees, officers, and directors; the presiding judges in the Litigation or judicial officers presiding over the matter, and all of their immediate families and judicial staff; and any natural person or entity that entered into a release with the Momentum Released Parties prior to the Effective Date concerning the Released Claims in the Litigation.

BB. **“Settlement Consideration”** means the benefits available to Settlement Class Members as described in detail in Section III.

CC. **“Settlement Website”** means the website established by the Settlement Claims Administrator, on which the Class Notice and other information relevant to this Settlement will be posted for Settlement Class Members’ benefit.

DD. **“Summary Notice”** means the proposed postcard notice in substantially the form attached hereto as **Exhibit D**.

EE. **“Valid Claim”** means a timely Claim Form submitted by a Settlement Class Member that: (a) is submitted in accordance with the directions accompanying the Claim Form and the terms of this Settlement Agreement; (b) is accurately, fully, and truthfully completed and executed by a Settlement Class Member; (c) is signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) is received by the Claims Deadline; and (e) is determined to be valid by the Settlement Claims Administrator.

II. MOTION FOR PRELIMINARY APPROVAL

As soon as reasonably practicable after execution of this Settlement Agreement, Plaintiffs shall file with the Court a Motion for Preliminary Approval of the Settlement, Approval and Direction of Notice Plan, and Appointment of Settlement Claims Administrator that seeks entry of an order that, by its terms, shall:

1. Preliminarily approve this Settlement as fair, reasonable, and adequate;
2. Certify the Settlement Class for settlement purposes only;
3. Appoint Plaintiffs' Counsel as class counsel and Plaintiffs as Class Representatives;
4. Approve the proposed Notice Plan and Class Notice in forms substantially similar to those attached hereto as **Exhibit C** and **Exhibit D**;
5. Establish deadlines for the filing of objections and notice of opting out of the Settlement;
6. Appoint the Settlement Claims Administrator; and
7. Set a date for the Final Approval Hearing at which the Court will consider final approval of the Settlement and Plaintiffs' motion for attorneys' fees and expenses.

III. SETTLEMENT CONSIDERATION

Defendant shall provide the following Settlement Consideration in exchange for the Release detailed in Section VII:

A. Common Fund: Momentum shall pay \$10 million over five (5) years into a Common Fund to be administered by the Claims Administrator. The first payment in the amount of \$1,000,000 shall be paid into the Common Fund within 90 days ("Initial Payment Date") of the Court issuing the Final Order and Judgment. Each subsequent payment into the Common Fund shall be due on the first, second, third, fourth and fifth anniversary of the Initial Payment Date in the amounts of \$2.0 million, \$1.25 million, \$1.75 million, \$1.75 million and \$2.25 million. On the sixth anniversary of the Initial Payment Date, Momentum shall pay \$1.2 million into the Common Fund, and then pay an additional \$1.2 million annually thereafter for 9 more years until an additional \$12 million has been paid for a total of \$22 million.

B. Liquidity Event Proceeds: Momentum shall pay into the Common Fund twelve percent (12%) of the Liquidity Event Proceeds from Liquidity Events provided that the total amount paid into the Common Fund under all circumstances and via all means shall not exceed \$30 million (the “Settlement Payment Cap”).

C. QuickPay Option: If Momentum pays \$20 million into the Common Fund via any means within seven (7) years of the Court issuing the Final Order and Judgment, the Settlement amount owed shall be deemed fully paid and no further payments shall be owed by Momentum.

D. Form of Proceeds Payable to Common Fund: Regardless of the structure of the Liquidity Event Proceeds payable to Momentum or its equity holders, all amounts payable under this Settlement to the Common Fund are payable in cash, and Momentum is responsible for ensuring the Common Fund receives its portion of Liquidity Event Proceeds in cash in connection with the closing of any Liquidity Event. For example, if Momentum consummates a Liquidity Event pursuant to which it or its equity holders receive \$5,000,000 in cash and \$5,000,000 in stock, the Common Fund is entitled to receive \$1,200,000 (\$10 million x 12%) payable in cash to the Common Fund as follows: \$600,000 payable in cash upon the closing of the applicable Liquidity Event, and \$600,000 payable in cash no more than 24 months following the closing of the applicable Liquidity Event.

E. Survival; Non-Contravention: The Common Fund’s right to receive payments under this Settlement, including Liquidity Event Proceeds, will continue in effect until the Common Fund has received a total of at least \$22,000,000 (provided the Common Fund may receive up to \$30,000,000 pursuant to Section III(B) of this Settlement), or \$20,000,000 under the “Quickpay Option” in Section III(C). In the case of a Merger, Asset Sale or other Change of Control, Momentum will cause the surviving company to assume all obligations under this Settlement until the amounts owed to the Common Fund pursuant to this Settlement are paid in full. Momentum and the Momentum equity holders will not enter into any transaction that attempts to circumvent the rights of the Common Fund under this Settlement or otherwise separate the assets and value of Momentum as a going concern from the liabilities stated in this Settlement.

For example, Momentum will not consummate an Asset Sale whereby Momentum sells all of its assets, and the purchaser does not assume Momentum's obligations under this Settlement. The obligations in this section will terminate upon receipt by the Common Fund of all amounts owed under this Settlement.

F. Notice of Liquidity Events: Momentum shall provide Class Counsel with not less than ninety (90) days' notice of any prospective "Liquidity Event" and Momentum shall provide notice of its obligations pursuant to this Settlement to all participating Liquidity Event Parties.

G. Timing of Payments into the Common Fund: All payments shall be paid into the Common Fund when due, even if the Settlement is otherwise on appeal. Should the Settlement be finally reversed on appeal, all Settlement payments made by Defendant into the Common Fund, with the exception of Claims Administration Expenses that have been incurred to date, shall be returned within 30 days thereafter. All Claims Administration Expenses are to be paid by Defendant when incurred even if the Settlement is otherwise terminated, not approved, or overturned on appeal, and are non-refundable.

H. Timing of Payments to Settlement Class Members: Class Member distributions shall only be paid after the Effective Date to the Settlement. Payments to Class Members shall be made as soon as practicable at the discretion of the Claims Administrator after each time at least \$1,000,000 is accumulated in the Common Fund for the benefit of Class Members after the payment of any Claims Administration Expenses and attorneys' fees, costs, and expenses that may be due. To the extent that the entirety of the Common Fund has been paid out, but less than \$1,000,000 remains in the Common Fund owing to the Class Members, the Claims Administrator shall pay out as much as is administratively feasible to Class Members, with any remainder to be distributed to a *cy pres* recipient to be approved by the Court.

I. Settlement Class Member Benefits: Settlement Class Members may submit claims for up to 50 Calls received within the Class Period, subject to verification by the Claims Administrator. To the extent that Settlement Class Members that file a claim submit no records of how many Calls they received within the Class Period, the Claims Administrator shall apply the

number of Calls for each such Settlement Class Member as reflected in Momentum's call log records subject to a cap of 50 Calls per Settlement Class Member filing a valid claim. Settlement Class Members that file timely and valid claims shall be entitled to a *pro rata* share of any amounts paid into the Common Fund on a per-call basis, net of any attorneys' fees, costs, expenses or any other Claims Administration Expenses, until the entirety of the Common Fund is exhausted, subject to any remainder that cannot administratively feasibly be distributed to the Settlement Class being distributed to a *cy pres* recipient to be approved by the Court.

IV. CLASS CERTIFICATION

A. Certification of Settlement Class. For Settlement purposes only, and without any finding or admission of any wrongdoing or fault by Defendant, and solely pursuant to the terms of this Settlement Agreement, the Parties consent to, and agree to, the establishment of a conditional certification of the nationwide Settlement Class, pursuant to Federal Rule of Civil Procedure 23(b)(3).

B. Certification is Conditional. This certification is conditional on the Court's approval of this Settlement Agreement. In the event the Court does not approve all terms of the Settlement Agreement, or if the Settlement Agreement is voluntarily or involuntarily terminated for any reason, then certification of the Settlement Class shall be void and this Settlement Agreement and all orders entered in connection therewith, including, but not limited to, any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Litigation or in any other case or controversy. And, in such an event, this Settlement Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Settlement Agreement, and Defendant shall not be deemed to have waived any opposition or defenses it has to any aspect of the claims asserted herein or to whether those claims are amenable to class-based treatment.

C. Defendant's Reservation of Rights: Defendant contends that this Litigation could not be certified as a class action under Federal Rule of Civil Procedure 23(b), other than for settlement purposes. Nothing in this Settlement Agreement shall be construed as an admission by Defendant that this Litigation or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement shall prevent Defendant from opposing class certification or seeking decertification of the Settlement Class if final approval of this Settlement Agreement is not obtained, or not upheld on appeal, including review by the United States Supreme Court, for any reason. Defendant supports certification of the class for settlement purposes only.

V. **CLASS SETTLEMENT NOTICE**

A. Settlement Claims Administrator

1. In their motion for preliminary approval, Plaintiffs will propose that the Court appoint Angeion Group as the Settlement Claims Administrator.

2. The Settlement Claims Administrator will facilitate the notice process by providing professional guidance and support in the implementation of the Notice Plan and by overseeing the Claim Form submission process and validating claims.

B. Notice Plan

1. The Parties and the Settlement Claims Administrator have developed an appropriate and reasonable Notice Plan to reach Settlement Class Members. The Class Notice is designed to provide clear and concise notice of the terms of this Settlement Agreement in plain, easily understood language. The Parties acknowledge and expressly agree that the Notice Plan constitutes due and sufficient notice under Federal Rule of Civil Procedure 23. The Parties will recommend to the Court the Notice Plan, which will be administered by the Settlement Claims Administrator.

2. Momentum shall pay all Claims Administration Expenses at the time those costs and expenses are incurred. Claims Administration Expenses shall count against the total \$22 million cap to the Common Fund set out in Section III(A), the \$30 million cap to the Common

Fund set out in Section III(B), and the \$20 million cap to the Common Fund set out in Section III(C). However, the payment of Claims Administration Expenses shall not offset the requirements to otherwise make payments into the Common Fund under Sections III(A), (B), and (C) in the amounts specified therein until the caps are fully paid off in their respective amounts as set out in Sections III(A), (B), and (C).

3. Under the Notice Plan, upon Preliminary Approval of this Settlement, the Settlement Claims Administrator shall cause the Long Form Notice to be disseminated to Settlement Class Members via e-mail, and the Summary Notice by U.S. mail for any Settlement Class Members with respect to whom Momentum and the Settlement Claims Administrator are not able to locate an e-mail address as of the Class Notice Date and for whom Momentum has a physical mailing address. The Parties anticipate that this will result in direct notice to virtually every Settlement Class Member. The Settlement Claims Administrator will also develop a publication notice to be agreed upon by the Parties and approved by the Court. The Class Notice shall conform substantially with the notices attached hereto as **Exhibit C** and **Exhibit D**. The Class Notice and Claim Forms shall be provided in Spanish format on the Settlement Website and be provided to any Settlement Class Member in Spanish upon request. Otherwise, all Class Notice shall be in English. The Settlement Administrator may make appropriate modifications to the Class Notice described in this Section and the Exhibits to this Agreement that have been approved by the Parties and the Court and are consistent with Due Process and this Settlement. The Settlement Administrator may request the assistance of the Parties to facilitate Class Notice and to accomplish such other purposes as may be approved by Defendant's counsel and Class Counsel. The Parties shall reasonably cooperate with such requests.

4. For any e-mails to Settlement Class Members that are returned to the Settlement Claims Administrator as undeliverable and for Settlement Class Members for whom Momentum and the Settlement Claims Administrator are not able to locate an e-mail address, a Summary Notice shall be sent to each Settlement Class Member's last known address on a double-sided postcard with a returnable claim form on the back flap.

5. Reminder Notice: The Settlement Claims Administrator shall provide a reminder notice to all Settlement Class Members that have not submitted claims, objected, or opted-out at least 30 days prior to the deadline for the submission of Claim Forms.

6. The Settlement Claims Administrator will also create and maintain a Settlement Website that will be activated prior to the Class Notice Date. The Settlement Claims Administrator will secure an appropriate Settlement Website URL. The Settlement Website will have a Claim Form submission capability, contain the Preliminary Approval Order, the Class Notice, this Settlement Agreement, and other information regarding the Court approval process as agreed to by the Parties or ordered by the Court. The Settlement Website will also contain other important case documents, which will be updated from time to time, including the Complaints in the Actions, any motion for attorney's fees, costs, expenses and service awards (and supporting documentation), and motions for preliminary and final approval. In addition, the Settlement Website will include a section for frequently asked questions and procedural information regarding the status of the Court-approval process, such as an announcement when the final approval hearing is scheduled, deadlines for opting out and objecting, when the Final Order and Judgment has been entered, and when the Effective Date is expected or has been reached. The Settlement Claims Administrator will terminate the Settlement Website forty-five (45) days after either all benefits owed to Settlement Class Members have been distributed, or (2) the date on which the Settlement is terminated or otherwise not approved by a court. The Settlement Claims Administrator will then promptly transfer ownership of the Settlement Website URL to Defendant.

7. The Settlement Claims Administrator will also establish a toll-free telephone number for Settlement Class Members to call and receive pre-recorded answers to questions regarding this Settlement and will also set up an email address to handle Settlement Class Members' inquiries.

8. The Settlement Claims Administrator shall send to each appropriate State and Federal official the materials specified in 28 U.S.C. § 1715 within ten (10) days of Plaintiffs and Class Counsel filing the Motion for Preliminary Approval, and otherwise complying with its

terms. Within fifteen (15) days after the Notice Date, the Settlement Administrator shall provide declarations to the Court attesting to the measures undertaken to provide Class Notice as directed by 28 U.S.C. § 1715.

9. The Settlement Claims Administrator shall provide a declaration to the Court attesting to the Class Notice and all measures undertaken to provide notice of the Settlement to the Settlement Class upon request by the Parties.

VI. CLAIMS SUBMISSION PROCESS AND ADMINISTRATION

A. Defendant shall provide the Settlement Claims Administrator and Class Counsel with up-to-date call logs and contact information for Settlement Class Members covering the span of the entire Settlement Class Period sufficient to verify their identity as Settlement Class Members, and to allow the Settlement Claims Administrator to validate claims. Defendant shall also provide a list of former and current customers covering the span of the entire Settlement Class Period to ensure that the Parties and the Settlement Administrator can exclude such persons from the Settlement Class. Defendant shall complete all such productions within fourteen (14) days of the Court's Order granting Preliminary Approval.

B. The Settlement Claims Administrator shall cause the Claim Form to be available on the Settlement Website and provide a physical copy of the Claim Form to any Settlement Class Member upon request. The Claim Form shall conform with the form attached hereto as **Exhibit B**. The Settlement Claims Administrator shall ensure that Settlement Class Members are permitted to submit files and documents on the Settlement Website to the extent necessary to prove their status as *bona fide* Settlement Class Members and the number of Calls that fall within the Class Period.

C. All Claim Forms must be electronically submitted and received by the Claims Deadline. Class Members may, at their option, contact the Settlement Claims Administrator for a copy of a paper Claim Form, which will be accepted upon receipt as valid by the Settlement Claims Administrator if the claims are otherwise valid.

D. Class Members shall have up to one hundred twenty (120) days to submit a Claim Form from the date that the initial class notice is disseminated, unless otherwise ordered by the Court.

E. The Settlement Claims Administrator shall use adequate and customary procedures and standards to prevent the payment of fraudulent claims, including, but not limited to: (i) validating claims against the Parties' records, (ii) determining the number of Calls that fall within the Class Definition based on the Parties' records, and (iii) screening for multiple or fraudulent claims which are not consistent with the facts. The Settlement Claims Administrator and Class Counsel shall have the right to audit claims and the Settlement Claims Administrator, and when necessary, may request additional information from Settlement Class Members submitting Claim Forms and from the Parties.

F. The Settlement Claims Administrator shall approve or deny all Claim Forms and will only pay Valid Claims. If any fraud is detected or reasonably suspected, the Settlement Claims Administrator may request further information from the Settlement Class Member and from the Parties or deny claims, subject to the ultimate oversight of the Court.

G. Settlement Class Members shall be able to elect on their Claim Form their preferred method of payment, which shall include payment via (a) check mailed by first class U.S. Mail to the address provided by the Settlement Class member to the Settlement Administrator; (b) Venmo; (c) PayPal; (d) ACH; or (e) Zelle.

H. All payments to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within one hundred eighty (180) days after the date of issuance. To the extent that any checks to Class Members expire and become null and void, the Settlement Administrator shall apply any such residual funds back into the Common Fund for the benefit of Settlement Class Members. Such residual funds shall then be distributed to Settlement Class Members on a *pro rata* basis whenever a subsequent round of distribution is due under the Settlement or provided to a *cy pres* recipient in accordance with Section III(H).

I. The Settlement Claims Administrator shall maintain records of all Claim Forms until ninety (90) days after the Settlement Claims Administrator has issued payment to those Settlement Class Members who submitted Valid Claims, and such records will be made available upon request to Defendant's counsel and Class Counsel at the end of the ninety (90) day period. The Settlement Claims Administrator also shall provide such reports, declarations, and such other information to the Court as the Court may require or as Class Counsel or Defendant requests.

J. No decisions by the Settlement Claims Administrator shall be deemed to constitute a finding, admission, or waiver by Defendant as to any matter of fact, law, or evidence having any collateral effect on any claim hereunder or in any other proceeding or before any other forum or authority. Further, such decisions shall not be submitted to or admissible in any other proceeding or before any other forum or authority.

VII. RELEASE

A. Settlement Class Member Release: Upon the Effective Date and by operation of the Final Order and Judgment, the Releasing Parties shall have, fully, finally, and forever released, relinquished, and discharged against the Released Parties all Released Claims, as well as any claims arising out of, relating to, or in connection with, the defense, settlement or resolution of this Litigation or the Released Claims.

B. Class Representatives' Individual Releases: The Class Representatives each expressly waive and relinquish all rights and benefits against Momentum afforded under Section 1542 of the California Civil Code or under any similar statute or legal theory, and do so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542. Section 1542 of the California Civil Code states as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all claims, Class Representatives acknowledge that the Release is intended to include, without limitation, all claims that Class Representatives do not know or suspect exist in their favor at the time of execution hereof, and that this Release contemplates the extinguishment of any and all such claims.

VIII. OBJECTIONS, NOTICES TO APPEAR, AND OPT-OUTS (REQUESTS FOR EXCLUSION)

A. Any Settlement Class Member who wishes to object to this Settlement must serve the Settlement Claims Administrator his or her objection no later than the Opt-Out and Objection Date, which shall be set by the Court in its Preliminary Approval Order. The Parties shall request an Opt-Out and Objection Deadline of twenty-one (21) days prior to the Final Approval Hearing.

B. The Parties shall request that the Court require any objection to be in writing and include the following information: (a) the objector's name, address, telephone number and, if represented by counsel, the name, address, and telephone number of his or her counsel; (b) a description of the date(s) and contents of any purported Calls within the Settlement Class Period, including a description of what occurred on each of the Calls (c) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (d) all grounds for his or her objection, accompanied by any legal and factual support for the objection known to the objector or his or her counsel; (e) copies of any papers, briefs, or other documents upon which the objection is based or upon which the objector or his or her counsel intends to rely; (f) the objector's handwritten signature, and (g) the identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector's attorney (if applicable) has objected to a proposed class action settlement.

C. Any Settlement Class Member who wishes to be excluded from the settlement (*i.e.*, to Opt Out of the Settlement Class) must mail or deliver a written request for exclusion to the Settlement Claims Administrator, received by the Opt-Out and Objection Date, which shall be no

later than twenty-one (21) days before the Final Approval Hearing. The written request must provide the Settlement Class Member's name, address and telephone number, state that the Settlement Class Member requests exclusion from the Settlement Class, and the Settlement Class Member's handwritten signature. Any Settlement Class Member who does not submit a timely request for exclusion shall be bound by all subsequent proceedings, orders, and the Final Order and Judgment in this Litigation relating to this Settlement, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against the Released Parties relating to the Released Claims.

D. The Settlement Claims Administrator shall receive and maintain the exclusion requests and objections and provide copies of the exclusion requests and objections to the Parties' counsel. At least fourteen (14) court days before the Final Approval Hearing, the Settlement Claims Administrator shall provide the Parties' counsel with a list of all Settlement Class Members who submitted exclusion requests, including details of whether such requests were valid and timely, as well as all objections.

E. A Settlement Class Member who appears at the Final Approval Hearing, either personally or through counsel, may be permitted to argue only those matters that were set forth in the timely and validly submitted written objection filed by such Settlement Class Member. No Settlement Class Member shall be permitted to raise matters at the Final Approval Hearing that the Settlement Class Member could have, but failed to, raise in his/her written objection, and all objections to the Settlement Agreement that are not set forth in a timely and validly submitted written objection will be deemed waived.

F. If a Settlement Class Member wishes to present witnesses or evidence at the Final Approval Hearing in support of a timely and validly submitted objection, all witnesses must be identified in the objection, and true and correct copies of all supporting evidence must be appended to, or filed and served with, the objection. Failure to identify witnesses or provide copies of supporting evidence in this manner waives any right to introduce such testimony or evidence at

the Final Approval Hearing. Representative Plaintiffs or Defendant or both may take discovery regarding any objector, their attorney (if applicable), and the basis of any objection.

IX. ATTORNEYS' FEES, COSTS, OTHER EXPENSES AND CLASS REPRESENTATIVES' SERVICE AWARDS

A. Within the time period established by the Court, Class Counsel will file a motion for approval of Attorneys' Fees and Expenses, and Service Awards to be paid from the Common Fund, which shall be included on the Settlement Website. Class Counsel may apply for an award of attorneys' fees not to exceed one-third (1/3) of any amounts paid into the Common Fund. In addition, Class Counsel shall be entitled to seek all of their reasonable costs and expenses to be paid out of any amounts paid into the Common Fund. Any percentage of attorneys' fees, and all costs and expenses, awarded by the Court to Class Counsel shall be payable within thirty (30) days after payments are made into the Common Fund, subject to Class Counsel providing an undertaking providing for repayment of any such fees, expenses, and costs should the Court's order be reversed on appeal and/or should the Settlement be terminated according to its terms. All reasonable costs and expenses awarded by the Court shall be paid out first in full before the distribution of any attorneys' fees or any other payments due to Class Members under this Settlement. Defendant shall have the right to object to the amount of fees, costs, and expenses sought by Class Counsel, but not their entitlement to fees, costs, and expenses under the Settlement.

B. Class Counsel shall file, and the Settlement Claims Administrator shall post to the Settlement Website, their papers supporting the petition for attorneys' fees, expenses, and costs at least fourteen (14) days before the Opt-Out and Objection Date.

C. This agreement with respect to attorneys' fees, costs, and expenses was not negotiated until after the substantive terms of the Settlement, including the consideration to the Settlement Class, had been negotiated and agreed upon.

D. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, expenses, and costs in the amounts requested, the remaining provisions of this

Settlement Agreement shall remain in full force and effect. The amounts awarded by the Court in attorneys' fees, expenses, and costs shall be the sole aggregate compensation paid by Defendant to Class Counsel in connection with this Litigation.

E. Class Counsel may make an application for service awards, in amounts not to exceed \$7,500 for Plaintiff Thomas Niemczyk and \$5,000 each for Plaintiffs Rick Hill and Barry Wolford, to compensate them for their efforts and commitment on behalf of the Settlement Class. Defendant shall have the right to object to the amount of service awards. The service awards shall not count against the caps of the Common Fund, and, to the extent awarded, shall be paid by Defendant within thirty (30) calendar days of the Effective Date, provided that Defendant has received a completed W-9 form and any necessary wiring or mailing instructions for each Class Representative.

F. In the event the Court declines to approve, in whole or in part, the payment of service awards in the amounts requested, the remaining provisions of this Settlement Agreement shall remain in full force and effect.

G. Class Counsel shall have the sole authority and discretion to allocate any Court-awarded attorneys' fees, costs, and expenses amongst Class Counsel.

X. ENTRY OF FINAL ORDER AND JUDGMENT

This Settlement is subject to and conditioned upon the issuance by the Court of a Final Order and Judgment that grants approval of this Settlement and orders the consideration specified herein, which consideration shall be subject to the terms and conditions of this Settlement Agreement and the Parties' performance of their continuing rights and obligations hereunder. Such Final Order and Judgment shall:

1. Grant final approval of this Settlement and direct its implementation pursuant to the terms and conditions of the Settlement Agreement;

2. Confirm that the Notice Plan complies in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class;
3. Determine that this Settlement is fair, reasonable, and adequate;
4. Effect the Release as provided in Section VII;
5. Permanently bar and enjoin all Settlement Class Members from initiating, maintaining, prosecuting or pursuing, either directly or indirectly, any claim or action asserting Released Claims;
6. Direct that this Litigation be dismissed with prejudice;
7. State pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and direct that the Final Order and Judgment is a final, appealable order; and
8. Retain the Court's continuing and exclusive jurisdiction over the Parties, including all Settlement Class Members, to construe and enforce this Settlement Agreement in accordance with its terms for the mutual benefit of the Parties.

XI. DISMISSAL

Upon final approval of this Settlement by the Court, this Litigation will be dismissed with prejudice, including the Plaintiffs' individual claims, as provided for in the Final Order and Judgment.

XII. TERMINATION

The Parties have the right to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement, if any of the following conditions subsequent occurs:

1. The Parties fail to obtain and maintain preliminary approval of the proposed Settlement;
2. The Court fails to enter a Final Order and Judgment consistent with the provisions in Section X; or

3. This Settlement is not upheld on appeal, including review by the United States Supreme Court.

The decision of any court not to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses or Plaintiffs' service awards, however, shall not be grounds for Plaintiffs, the Settlement Class, or Class Counsel to cancel or terminate this Settlement Agreement.

4. If this Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, this Settlement Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party 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 all Parties shall stand in the same procedural position as if this Settlement Agreement had not been negotiated, made, or filed with the Court.

XIII. DENIAL OF WRONGDOING AND LIABILITY

1. The Parties acknowledge and agree that this Settlement represents a compromise resolution of disputed claims, is entered into to avoid the time, legal expense, and inconvenience of litigation, and is not to be construed as an admission of (a) a violation of any statute, law, regulation, order, or other applicable law, (b) a breach of contract, or (c) a tort. No Party admits liability to any other Party with respect to such disputed claims, such liability being expressly denied. Nothing in the Settlement shall constitute or be construed as an admission of liability on behalf of the Parties, and the Parties expressly deny all such liability.

XIV. ADDITIONAL PROVISIONS

A. Best Efforts to Obtain Court Approval

The Parties and the Parties' counsel agree to use their best efforts to obtain Court approval of this Settlement, subject to the Parties' rights to terminate this Settlement Agreement as stated in Section XII.

B. No Admission

This Settlement Agreement, whether or not it shall become final, and any and all negotiations, communications, and discussions associated with it, shall not be:

1. Offered or received by or against any Party as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party, of the truth of any fact alleged by Plaintiffs or defense asserted by Defendant of the validity of any claim that has been or could have been asserted in this Litigation, or the deficiency of any defense that has been or could have been asserted in this Litigation, or of any liability, negligence, fault, or wrongdoing on the part of Plaintiffs or Defendant;

2. Offered or received by or against Plaintiffs or Defendant as a presumption, concession, admission, or evidence of any violation of any state or federal statute, law, rule, or regulation or of any liability or wrongdoing by Defendant, or of the truth of any of the claims made in this Litigation, and evidence thereof shall not be directly or indirectly admissible in any way (whether in this Litigation or in any other action or proceeding), except for purposes of enforcing this Settlement Agreement and the Final Order and Judgment including, without limitation, asserting as a defense the Release and waivers provided herein; or

3. Offered or received by or against Plaintiffs or Defendant as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class, or for purposes of proving any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendant, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, the Plaintiffs or Defendant may refer to it to enforce their rights hereunder.

C. Confidentiality

1. Neither Plaintiffs nor the Momentum Released Parties, nor their respective counsel, shall advertise the fact of the settlement, other than under the limited circumstances set

forth herein. Class Counsel shall be permitted to list the name of the case and settlement result on their respective firm websites, shall be permitted to correspond with Class Members and the Court about the Settlement without restrictions, and shall be permitted to disclose the Settlement in the regular course of their civil litigation practice, *i.e.*, in unrelated litigation matters (briefs, firm resumes, memoranda, *etc.*) to the extent relevant to the issues therein. Otherwise, and unless other language is agreed upon by the parties, Plaintiffs, the Momentum Release Parties, and their respective counsel shall respond to any inquiries about the lawsuit with words to the effect that “the matter was resolved.”

D. Entire Agreement

1. This Settlement Agreement, including all Exhibits hereto, shall constitute the entire agreement among the Parties with regard to the Settlement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of this Settlement Agreement. This Settlement Agreement may not be changed, modified, or amended except in a writing signed by all Parties and, if required, approved by the Court.

E. Choice of Law and Venue

This Settlement Agreement shall be construed under and governed by the laws of the State of New Jersey, applied without regard to laws applicable to choice of law. Federal law shall govern approval of the Settlement, preliminary and final certification and of the Settlement Class, and all related issues, such as Plaintiffs’ fee and expense petition. Any dispute by the Parties or their counsel resulting in a legal proceeding arising out of, relating to, or to enforce any term of this Settlement shall be brought only in federal court in the District of New Jersey, which court shall have exclusive jurisdiction over any such dispute. All Parties and their counsel consent to personal jurisdiction in the District of New Jersey for any legal proceeding arising out of, relating to, or to enforce any term of this Settlement.

F. Execution by Counterparts

This Settlement Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by e-mail shall be treated as original signatures and shall be binding.

G. No Assignment

Plaintiffs and Class Counsel represent and warrant that none of Plaintiffs' Claims referred to in this Litigation or this Settlement Agreement have been assigned, encumbered, or in any manner transferred in whole or in part.

H. Binding Effect

This Settlement Agreement shall be binding upon, and inure to the benefit of, the heirs, successors, assigns, executors and legal representatives of the Parties and all Released Parties.

I. Reasonable Extensions

The Parties may agree to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement. Consent to a request for extension of time shall not be unreasonably withheld.

J. No Primary Drafter of Settlement Agreement

The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel.

None of the Parties shall be considered to be the primary drafter of this Settlement Agreement. None of the Parties shall have the right to have any provision of the Settlement construed against the other as the drafter of the Settlement.

K. Effect of Waiver of Provisions

The waiver by any Party of any provision of this Settlement Agreement shall not constitute a waiver of any other provision of this Settlement Agreement.

L. Variance in Terms

In the event of any variance between the terms of this Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall control and supersede the Exhibit(s).

M. Authorization to Enter Settlement Agreement

The individuals signing this Settlement Agreement on behalf of Defendant represent that they are fully authorized by Defendant to enter into, and to execute, this Settlement Agreement on behalf of Defendant. Class Counsel represent that they are fully authorized to conduct settlement negotiations with Defendant's counsel on behalf of the Class Representatives, and to enter into, and to execute, this Settlement Agreement on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e). The Class Representatives enter into and execute this Settlement Agreement on behalf of themselves, and as representatives of and on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

N. Tax Consequences

No opinion concerning the tax consequences of this Settlement Agreement to any Settlement Class Member is given or will be given by Defendant, Defendant's counsel, or Class Counsel, nor is any Party or his/her/its counsel providing any representation or guarantee respecting the tax consequences of the Settlement as to any Settlement Class Member. The Class Notice will direct Settlement Class Members to consult their own tax advisors regarding the tax consequences of the Settlement and any tax reporting obligations with respect thereto. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Settlement, if any.

O. Information Rights

In the event that notice has not been provided in accordance with Section III(F), then within ten (10) days of the sale of any equity interests of Momentum, Momentum shall provide written notice to Class Counsel identifying the type of equity interests sold, the date of the closing and the

purchase price. Within five (5) business days of receipt of such notice, Class Counsel may request further information as reasonably required to confirm compliance with this Settlement and Momentum shall have five (5) business days to respond to that request. For the avoidance of doubt, the information rights allowed pursuant to this section shall not be triggered by a transfer of equity interests without provision of consideration in return.

P. Notices

All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by mail and e-mail to the following addresses:

If to the Class Representatives or Class Counsel:

SMITH KRIVOSHEY, PC

Yeremey Krivoshey
166 Geary Str STE 1500-1507
San Francisco, CA 94108
415-839-7000
yeremey@skclassactions.com

BURSOR & FISHER, PA

Joseph Marchese
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
646-837-7410
jmarchese@bursor.com

MAZIE SLATER KATZ & FREEMAN, LLC

Matthew Mendelsohn
103 Eisenhower Parkway, Suite 207
Roseland, NJ 07068
973-228-9898
mrm@mazieslater.com

If to Momentum or Momentum's counsel:

SCHENCK PRICE SMITH & KING, LLP

Thomas J. Cotton
220 Park Avenue
Florham Park, NJ 07932
937-539-1000
tjc@spsk.com

Dated: 09 / 20 / 2024




Thomas Niemczyk

Dated: 09 / 19 / 2024



Rick Hill

Dated: 09 / 19 / 2024



Barry Wolford

Dated:


MOMENTUM SOLAR LLC

By _____

Its _____

Dated: 09 / 20 / 2024


SMITH KRIVOSHEY PC

By 

Yeremey Krivoshey
Attorney for Plaintiffs and the Settlement Class

Dated: 09 / 20 / 2024

BURSOR & FISHER, PA

By 

Joseph I. Marchese
Attorney for Plaintiffs and the Settlement Class

Dated: 09 / 20 / 2024

MAZIE SLATER KATZ & FREEMAN, LLC

By 

If to Momentum or Momentum's counsel:

SCHENCK PRICE SMITH & KING, LLP

Thomas J. Cotton
220 Park Avenue
Florham Park, NJ 07932
937-539-1000
tjc@spsk.com

Dated:

Thomas Niemczyk

Dated:

Rick Hill

Dated:

Barry Wolford

Dated: 9-19-2024

MOMENTUM SOLAR LLC

By Arthur G. Smith

Its CEO

Dated:

SMITH KRIVOSHEY PC

By _____

Yeremey Krivoshey
Attorney for Plaintiffs and the Settlement Class

Dated:

BURSOR & FISHER, PA

By _____

Joseph I. Marchese
Attorney for Plaintiffs and the Settlement Class

Dated:

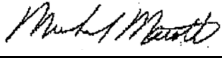
MAZIE SLATER KATZ & FREEMAN, LLC

By _____

Matthew R. Mendelsohn
Attorney for Plaintiffs and the Settlement Class

Dated: 9/20/24

SCHENCK, PRICE, SMITH & KING, LLP

By _____

Michael J. Marotte
Attorney for Defendant Momentum Solar LLC

Table of Exhibits

to the Class Action Settlement Agreement and Release

Exhibit	Description	Pages
A	CAFA Notice (without exhibits)	
B	Claim Form	
C	Long Form Notice	
D	Summary Notice	
E	Proposed Preliminary Approval Order	

EXHIBIT A

[DATE]

VIA USPS PRORITY MAIL

United States Attorney General &
Appropriate Officials

Re: Notice of Class Action Settlement

Niemczyk v. Pro Custom Solar LLC, Case No. 2:19-cv-7846-ES-MAH;

Hill et al. v. Pro Custom Solar LLC, Case No. 2:22-cv-00247-ES-MAH

Dear Counsel or Official:

As directed by counsel for the parties in the above-captioned action, Angeion Group, an independent claims administrator, hereby provides your office with this notice under the provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, to advise you of the following proposed class action settlement.

Case Names & Index Nos:	Niemczyk v. Pro Custom Solar LLC, Case No. 2:19-cv-7846-ES-MAH; Hill et al. v. Pro Custom Solar LLC, Case No. 2:22-cv-00247-ES-MAH
Jurisdiction:	United States District Court for the District of New Jersey
Date Settlement Filed:	[DATE]
Judicial Hearing Scheduled:	[DATE]

The lawsuit alleges that that Pro Custom Solar, LLC d/b/a Momentum Solar ("Momentum") and its agents made unsolicited telemarketing calls concerning solar services or products in violation of the Telephone Consumer Protection Act ("TCPA") and related telemarketing state laws.

The Defendant, Momentum, despite its denial of any liability or culpability and its belief that it has meritorious defenses to the claims alleged, has nevertheless decided to enter into the enclosed Settlement Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation without admission of liability.

The Class Representatives and the lawyers representing them believe that the Settlement is in the best interests of all Class Members.

In accordance with the requirements of 28 U.S.C. § 1715, please find copies of the following documents on the enclosed CD-ROM:

- 1. 28 U.S.C. § 1715(b)(2)-Notice of Any Scheduled Judicial Hearings:** Currently, no judicial hearings have been scheduled and thus there are no documents enclosed that relate to this statutory subpart.
- 2. 28 U.S.C. § 1715(b)(3)-Notification to Class Members:** Copies of the proposed Notice of Class Action Settlement and the proposed Claim Form, both of which were filed with the Court on [DATE].
- 3. 28 U.S.C. § 1715(b)(4)-Class Action Settlement Agreement:** A copy of the Settlement Agreement, filed with the Court on [DATE].
- 4. 28 U.S.C. § 1715(b)(5)-Any Settlement or Other Agreements:** Other than the Settlement Agreement, no other settlements or other agreements have been contemporaneously made between the parties.

5. **28 U.S.C. § 1715(b)(6)-Final Judgment:** Currently, no final judgment or notice of dismissal has been entered in this case and thus there are no documents enclosed that relate to this statutory subpart.
6. **28 U.S.C. § 1715(b)(7)(B)-Estimate of Class Members:** A chart reflecting the estimated number of Class Members residing in each state and the estimated proportional share of the settlement benefits available to Class Members residing in each state. The most recent information available indicates that the Settlement likely encompasses Class Members residing in 50 US states.
7. **28 U.S.C. §1715(b)(8): Judicial Opinions Related to the Settlement:** Copies of (i) the Proposed Order Granting Preliminary Approval of Class Settlement, Directing Notice to the Class, and Setting a Hearing on Final Approval, filed with the Court on [DATE] and (ii) the Proposed Final Judgment and Order Granting Approval of Class Settlement, filed with the Court on [DATE].

With the exception of the estimate of class members, all of the documents provided on the enclosed CD-ROM also were filed with the Court. Those filings, and other materials in the case, are electronically available on the PACER system for the United States District Court for the District of New Jersey (ecf.njd.uscourts.gov). The *Niemczyk* Complaint is available at Dkt. No. 1. The *Niemczyk* First Amended Complaint is available at Dkt. No. 4. The *Niemczyk* Second Amended Complaint is available at Dkt. No. 11. The *Niemczyk* Third Amended Complaint is available at Dkt. No. 97. The *Walters* Complaint is available at Dkt. No. 1.

Counsel for parties are available to discuss the details of the case and settlement. Counsel's contact information is:

Class Counsel:

SMITH KRIVOSHEY, PC
Yeremey Krivoshey
166 Geary Str STE 1500-1507
San Francisco, CA 94108
415-839-7000
yeremey@skclassactions.com

BURSOR & FISHER, PA
Joseph Marchese
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
646-837-7410
jmarchese@bursor.com

MAZIE SLATER KATZ & FREEMAN, LLC
Matthew Mendelsohn
103 Eisenhower Parkway, Suite 207
Roseland, NJ 07068
973-228-0391
mrm@mazieslater.com

Defense Counsel:

SCHENCK PRICE SMITH & KING, LLP
Thomas J. Cotton
220 Park Avenue
Florham Park, NJ 07932
937-539-1000
tjc@spsk.com

If you have questions about this notice or if you did not receive any of the above-listed materials, please contact this office.

Sincerely,

[Admin Name]

Angeion Group

Enclosures

EXHIBIT B

Your claim must
be postmarked on or
before [DATE]

Niemczyk v. Pro Custom Solar LLC,
Case No. 2:19-cv-7846-ES-MAH;
Hill et al. v. Pro Custom Solar LLC,
Case No. 2:22-cv-00247-ES-MAH

XXX

SETTLEMENT CLAIM FORM

If you received two or more telemarketing calls from or on behalf of Momentum Solar within a 365-day period from March 5, 2015 through [Date of Preliminary Approval], you must complete this Claim Form to be eligible for compensation under the Settlement. Your Claim Form must be submitted (and if mailed, postmarked) on or before [DATE]. You are entitled to submit a claim for up to 50 Calls made from March 5, 2015 through [Date of Preliminary Approval].

All telephone numbers for which you were the regular user or subscriber from March 5, 2015 through [DATE] submitted in Section II below will be cross-checked by the Claims Administrator against Momentum's records to verify the number of Calls (up to 50) that you are eligible to receive compensation for. To the extent that qualifying calls are identified by the Claims Administrator, you will receive compensation for each call identified by the Claims Administrator, up to 50 calls.

This Claim Form may be submitted either electronically through [www.\[websitename\].com](http://www.[websitename].com) or mailed to Momentum Solar Settlement, c/o Angeion Group, [Address].

I. YOUR INFORMATION

<input type="text"/>		<input type="text"/>	
First Name		Last Name	
<input type="text"/>			
Address 1			
<input type="text"/>			
Address 2			
<input type="text"/>	<input type="text"/>	<input type="text"/>	
City	State	Zip Code	
<input type="text"/>	<input type="text"/>		
Contact Telephone Number	Email		

II. YOUR TELEPHONE NUMBER(S)

Provide all telephone number(s) for which you were the regular user or subscriber from March 5, 2015 through [Date of Preliminary Approval].

- Telephone 1:
- Date range that you were the regular user or subscriber for telephone 1:
- Telephone 2:

- Date range that you were the regular user or subscriber for telephone 2:

1526

- Telephone 3:

- Date range that you were the regular user or subscriber for telephone 3:

- Telephone 4:

- Date range that you were the regular user or subscriber for telephone 4:

III. ADDITIONAL (OPTIONAL) DOCUMENTATION

To the extent you wish to submit additional evidence of Calls that you believe may not be available to the Claims Administrator, or out of an abundance of caution to ensure that all eligible Calls are counted, you may do so by attaching all such documents (*i.e.*, call logs, screen shots, phone bills, etc.) to this Claim Form [\[here \(link to upload docs\)\]](#). For any such evidence submitted, please highlight or clearly mark all telemarketing Calls that you believe were made by or on behalf of Momentum Solar within a 365-day period from March 5, 2015 through [Date of Preliminary Approval]. Please also submit a written statement that specifies the date and time of each telemarketing call that you received from or on behalf of Momentum Solar within a 365-day period from March 5, 2015 through [Date of Preliminary Approval], and, for each such call, describe in detail why you believe the call was made by or on behalf of Momentum. All documentation, evidence, and written statements submitted by you are subject to the Affirmation below testifying to their truth and accuracy under penalty of perjury.

IV. PREFERRED PAYMENT METHOD

How would you prefer to receive your cash award?

CHECK ONE ONLY AND PROVIDE REQUESTED INFORMATION NECESSARY FOR PAYMENT

- ☐ Paper Check: Checks will be sent to the same address you provide in Section I
- ☐ PayPal: Email for your PayPal account: _____
- ☐ Zelle Pay: Email or Phone for your Zelle account: _____

V. AFFIRMATION UNDER PENALTY OF PERJURY

I hereby affirm, under penalty of perjury under the laws of the United States, the following: I agree that, by submitting this Claim Form, the information in this Claim Form and any documents attached to the Claim Form are true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review.

Signature: _____

Date: _____

EXHIBIT C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

*Niemczyk v. Pro Custom Solar LLC, Case No. 2:19-cv-7846-ES-MAH;
Hill et al. v. Pro Custom Solar LLC, Case No. 2:22-cv-00247-ES-MAH*

If you received two or more telemarketing calls concerning Momentum Solar from March 5, 2015 and [DATE OF PRELIMINARY APPROVAL], you may be entitled to benefits from a class action settlement.

*A federal court authorized this Notice. This is not a solicitation from a lawyer.
You are not being sued.*

- A Settlement has been reached in two related class action lawsuits. In the lawsuits, Plaintiffs allege that Defendant Pro Custom Solar LLC, D/B/A Momentum Solar (“Defendant” or “Momentum”) made unsolicited telemarketing calls concerning solar services or products in violation of the Telephone Consumer Protection Act (“TCPA”) and related telemarketing state laws. By entering into the Settlement, Momentum does not concede the truth of any of the claims against it and explicitly denies that it violated the law in any respect or that it did anything wrong. The Court has not decided who is right. Instead, the parties agreed to a compromise.
- The Settlement only impacts you if you are a Settlement Class Member. A Settlement Class Member is any person in the United States that received two or more telemarketing calls from or on behalf of Momentum within a 365-day period from March 5, 2015 through [Date of Preliminary Approval]. Any current or former customer of Momentum is excluded from the Class.
- The Settlement requires Momentum to establish a Common Fund between \$20 to \$30 million dollars, depending on the amount of time it takes Momentum to fund the Settlement and other considerations. Settlement Class Members may submit claims for up to 50 Calls received from March 5, 2015 through [Date of Preliminary Approval]. Settlement Class Members that file timely and valid claims shall be entitled to a *pro rata* share of any amounts paid into the Common Fund on a per-call basis, net of any attorneys’ fees, costs, expenses or any other Claims Administration Expenses, until the entirety of the Common Fund is exhausted, subject to any remainder that cannot administratively feasibly be distributed to the Settlement Class being distributed to a *cy pres* recipient to be approved by the Court.
- To obtain any Settlement Consideration, you must submit a valid Claim Form.
- Whether you act or not, your legal rights as a Settlement Class Member are affected by the Settlement. Your rights and options—and the deadlines to exercise them—are explained in this Class Notice. Please read this Class Notice carefully in its entirety. Defined terms have the meanings in the Settlement Agreement.

SETTLEMENT CLASS MEMBERS’ LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:		
YOUR RIGHTS AND OPTIONS	WHAT THEY MEAN	DEADLINES

QUESTIONS? CALL 1-800-XXX-XXXX TOLL-FREE OR VISIT
WWW.[WEBSITENAME].COM

DO NOTHING	If you are a Settlement Class Member and do not take any action, you will not receive anything under the Settlement. However, if the Settlement is finally approved, you will be bound by the Court's Final Judgment and the release of claims explained in the Settlement Agreement.	None
SUBMIT A CLAIM FORM	You must submit a Valid Claim to receive any money out of the Common Fund. To find out how to submit a Claim Form, please read Question 9.	Received on or before [DATE]
EXCLUDE YOURSELF (OPT OUT)	Get no benefits from the Settlement. Requesting exclusion from the Settlement (also called "opting out") would allow you to file or continue your own lawsuit against Momentum about the legal claims involved in the Settlement, individually. To find out how to opt out, please read Question 11.	Received on or before [DATE]
OBJECT OR COMMENT	Write to the Court about why you do or do not like the Settlement. To find out how to object or comment, please read Question 13.	Filed and served on or before [DATE]
GO TO FINAL APPROVAL HEARING	Unless you exclude yourself (opt out) of the Settlement, you may also ask to speak in Court about the Settlement. To find out how to do so, please read Questions 16, 17, and 18.	[DATE]

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT
WWW.[WEBSITENAME].COM

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QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT
WWW.[WEBSITENAME].COM

BASIC INFORMATION

1. Why did you receive this notice?

This notice (“Class Notice”) has been sent because the Court has given its preliminary approval to the Settlement of the Litigation.

If you received an e-mail or a postcard concerning the Settlement, that means that Momentum’s records indicate you may be a Settlement Class Member who is affected by the Settlement.

2. What is this case about?

Plaintiffs filed lawsuits in which they allege that Momentum and its agents made unsolicited telemarketing calls concerning solar services or products in violation of the Telephone Consumer Protection Act (“TCPA”) and related telemarketing state laws. Momentum denies that it did anything wrong. Accordingly, Momentum has vigorously defended Plaintiffs’ allegations. The Parties, however, have agreed to settle the Litigation to avoid the cost, delay, and uncertainty of continuing the Litigation.

3. Why is this a class action?

In a class action, one or more “Class Representatives” or “Named Plaintiffs” sue on behalf of all those with the same types of claims arising from the same events. Here, the Class Representatives filed the Litigation as proposed class actions and asked to represent a class of persons in the United States that received two or more telemarketing calls from Momentum or its agents within a 365-day period from March 5, 2015 through [Date of Preliminary Approval]. They sue on behalf of people who have similar claims – called the “Settlement Class” or “Settlement Class Members” – which in this case may include you.

When this case settled, the Court had not yet decided whether the case could be a class action. Momentum disputes that a class is appropriate for trial purposes, but the Parties have agreed to the certification of the Settlement Class, as defined below, for purposes of the Settlement, and the Court has certified a class action for settlement purposes only. More information about why this is a class action can be found in the Court’s Class Certification Order, which is available at [www.\[websitename\].com](http://www.[websitename].com).

4. Why is there a settlement?

The Court has not decided which side is right or wrong in the Litigation. Instead, both sides agreed to a settlement to avoid the costs and risks of a lengthy trial and appeals process.

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT
[WWW.\[WEBSITENAME\].COM](http://WWW.[WEBSITENAME].COM)

After extensive, arm's-length negotiations overseen by a JAMS mediator, a former federal judge, the lawyers representing the Parties agreed to settle the Litigation to avoid the cost, delay, and risk of continuing the Litigation. The Class Representatives and their lawyers think the Settlement is fair, reasonable, adequate, and in the best interests of all Settlement Class Members.

WHO DOES THE SETTLEMENT APPLY TO?

5. Who is in the Settlement Class?

The Settlement Class under the Settlement includes: all persons in the United States that received two or more telemarketing calls from Momentum or on behalf of Momentum within a 365-day period from March 5, 2015 through [Preliminary Approval Date] ("Class Period").

6. Are there exceptions to being included in the Settlement Class?

Any current or former customer of Momentum is excluded from the Class. Also, excluded from the Settlement Class are all persons who validly opt out of the Settlement in a timely manner; governmental entities; counsel of record (and their respective law firms) for the Parties; Defendant and any of its affiliates, subsidiaries, and all of its respective employees, officers, and directors; the presiding judges in the Litigation or judicial officers presiding over the matter, and all of their immediate families and judicial staff; and any natural person or entity that entered into a release with the Momentum Released Parties prior to the Effective Date concerning the Released Claims in the Litigation.

7. I'm still not sure if I am included.

If you are still not sure whether you are included in the Settlement Class, you can call toll-free [INSERT PHONE NUMBER] or visit [www.\[websitename\].com](http://www.[websitename].com) for more information.

THE SETTLEMENT BENEFITS AND OPTIONS

If the Settlement is approved and becomes final, it will provide the benefits described below to Settlement Class Members.

8. What benefits does the Settlement provide to Settlement Class Members?

The primary benefit of the Settlement is it requires Momentum to pay money into a Common Fund that will be used to pay all timely and valid claims for Settlement Class Members, as well as any Claims Administration Expenses and attorneys' fees, costs, and expenses. The size of the Common Fund shall be between \$20 - \$30 million dollars in total, based on the following considerations:

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT
[WWW.\[WEBSITENAME\].COM](http://WWW.[WEBSITENAME].COM)

Common Fund: Momentum shall pay \$10 million over five (5) years into a Common Fund to be administered by the Claims Administrator. The first payment in the amount of \$1,000,000 shall be paid into the Common Fund within 90 days (“Initial Payment Date”) of the Court issuing the Final Order and Judgment. Each subsequent payment into the Common Fund shall be due on the first, second, third, fourth and fifth anniversary of the Initial Payment Date in the amounts of \$2.0 million, \$1.25 million, \$1.75 million, \$1.75 million and \$2.25 million. On the sixth anniversary of the Initial Payment Date, Momentum shall pay \$1.2 million into the Common Fund, and then pay an additional \$1.2 million annually thereafter for 9 more years until an additional \$12 million has been paid for a total of \$22 million.

Liquidity Event Proceeds: Momentum shall pay into the Common Fund twelve percent (12%) of the Liquidity Event Proceeds from Liquidity Events provided that the total amount paid into the Common Fund under all circumstances and via all means shall not exceed \$30 million (the “Settlement Payment Cap”).

QuickPay Option: If Momentum pays \$20 million into the Common Fund via any means within seven (7) years of the Court issuing the Final Order and Judgment, the Settlement amount owed shall be deemed fully paid and no further payments shall be owed by Momentum.

Settlement Class Members may submit claims for up to 50 Calls received within the Class Period. Settlement Class Members that file timely and valid claims shall be entitled to a *pro rata* share of any amounts paid into the Common Fund on a per-call basis, net of any attorneys’ fees, costs, expenses or any other Claims Administration Expenses, until the entirety of the Common Fund is exhausted, subject to any remainder that cannot administratively feasibly be distributed to the Settlement Class being distributed to a *cy pres* recipient to be approved by the Court.

To receive either the benefits due under the Settlement, you must submit a Claim Form by following the directions set forth at [www.\[websitename\].com](http://www.[websitename].com), as set forth in the next section of this Class Notice.

9. What do I need to do to participate in the Settlement?

To receive any benefits due under the Settlement, you must submit a Claim Form by following the directions set forth at [www.\[websitename\].com](http://www.[websitename].com) by the [Claims Deadline]. You may, in the alternative, ask the Claims Administrator for a paper version of the Claim Form and postmark it by the [Claims Deadline]. You may contact the Claims Administrator at [INSERT ADDRESS] or by emailing [INSERT EMAIL].

Settlement Class Members who fail to submit a Valid Claim by [Claims Deadline] will not receive any compensation from the Settlement.

10. When will the Settlement go into effect?

The Court will hold a Final Approval Hearing on [DATE] to decide whether to approve the Settlement. Even if the Court approves the Settlement, there could be appeals. The time for an appeal varies and could take more than a year.

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT
[WWW.\[WEBSITENAME\].COM](http://WWW.[WEBSITENAME].COM)

The Effective Date is the date when all appeals are completed, and the Settlement becomes final. You can visit the Settlement Website at [www.\[websitename\].com](http://www.[websitename].com) to check the progress of the Court-approval process and the Effective Date. Please be patient.

Settlement Consideration for all Valid Claims will be paid after the Effective Date to the Settlement. Payments to Class Members will be made as soon as practicable at the discretion of the Claims Administrator after each time at least \$1,000,000 is accumulated in the Common Fund for the benefit of Class Members after the payment of any Claims Administration Expenses and attorneys' fees, costs, and expenses that may be due. To the extent that the entirety of the Common Fund has been paid off, but less than \$1,000,000 remains in the Common Fund owing to the Class Members, the Claims Administrator will pay out as much as is administratively feasible to Class Members, with any remainder to be distributed to a *cy pres* recipient to be approved by the Court.

The Court will have the power to enforce the terms of the Settlement Agreement.

EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

If you do not want to participate in the Settlement and instead you want to keep all of your rights to sue Momentum or the Released Parties individually about the Claims being resolved in the Settlement, then you must take steps to get out of the Settlement Class. This is called asking to be excluded from, or "opting out" of, the Settlement Class.

11. If I do not want to participate in the Settlement, what must I do?

To exclude yourself from the Settlement, you must send a signed statement to Angeion Group, the Settlement Claims Administrator, that includes your name, address, and telephone number(s) stating that you wish to exclude yourself from the case and including your handwritten signature. Your written request should be mailed to:

[INSERT ADDRESS]

Your written request must be **received** by [DATE]. If your request is not received by that date, your right to opt out will be waived and you will be bound by all orders and judgments entered in connection with the Settlement.

12. If I exclude myself, can I get anything from the Settlement?

If you choose to exclude yourself from the Settlement Class: (1) you will not be entitled to receive the benefits of the Settlement; (2) you will not be legally bound by the Settlement Agreement; and (3) you will keep any rights you may have to sue Momentum and the Released Parties individually for the Claims included in the Settlement Agreement, as long as suit is filed before the relevant statute of limitations expires.

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT
[WWW.\[WEBSITENAME\].COM](http://WWW.[WEBSITENAME].COM)

13. How do I tell the Court if I do not like the Settlement or the attorneys' fees request?

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it. You can also object to Class Counsel's request for attorneys' fees, expenses, and costs, and the service awards for the Class Representatives. You can give reasons why you think the Court should not approve the Settlement or award the requested fees, costs, or expenses or service awards. The Court will consider your views.

Anyone who objects to the Settlement, the Settlement Agreement, the application for attorneys' fees, costs, or expenses, or service awards for the Class Representatives, or the other matters to be considered at the Final Approval Hearing may appear and present such objections. To be permitted to do so, however, you must, on or before [DATE], serve on the Settlement Claims Administrator your written objection and must include the following information:

- Your name, address, telephone number and, if represented by counsel, the name, address, and telephone number of your counsel;
- A description of the date(s) and contents of any purported Calls within the Settlement Class Period, including a description of what occurred on each of the Calls;
- A statement whether you intend to appear at the Final Approval Hearing, either in person or through counsel;
- All grounds for your objection, accompanied by any legal and factual support for the objection known by you or your counsel, and the name of any witness that may appear at the Final Approval Hearing;
- Copies of any papers, briefs, or other documents upon which the objection is based or upon which you or your counsel intend to rely;
- Your handwritten signature; and
- the identification of the case name(s), case number(s), and court(s) for any prior class action lawsuit in which you and your attorney (if applicable) has objected to a proposed class action settlement.

You must sign your own objection. Attorneys' signatures on objections will not be accepted.

If you do not comply with the foregoing procedures and deadlines for submitting written objections, you may lose substantial legal rights to contest the orders or judgments of the Court entered in connection with the Settlement.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

The Court has appointed the law firms of Smith Krivoshey, PC, Bursor & Fisher, P.A., and Mazie Slater Katz & Freeman, LLC as Class Counsel to represent the Settlement Class Members. The only fees, costs, and expenses these lawyers will seek are those described in Question 15 below. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

15. How will the lawyers be paid?

For more than five years, Class Counsel have worked without compensation on this case. In connection with the Final Approval Hearing on the Settlement, Class Counsel will apply to the Court for an award of attorneys' fees, with the total amount not to exceed one-third (1/3) of any amounts paid into the Common Fund. In addition, Class Counsel may seek all of their reasonable costs and expenses to be paid out of any amounts paid into the Common Fund. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs, and expenses in the amount requested by Class Counsel, the amount not awarded will be available to be claimed by Settlement Class Members.

Class Counsel may make an application for service awards, in amounts not to exceed \$7,500 for Plaintiff Thomas Niemczyk and \$5,000 each for Plaintiffs Rick Hill and Barry Wolford, to compensate them for their efforts and commitment on behalf of the Settlement Class. The service awards shall not count against the caps of the Common Fund.

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement and whether to grant Class Counsel's motion for attorneys' fees, costs, and expenses. You may attend and you may ask to speak, but you do not have to do either one.

The Final Approval Hearing will be held before the Honorable Michael A. Hammer on **[DATE]** at **[TIME]** **Eastern Time**, at **[ADDRESS]**.

Do not write or call the judge or the clerk concerning this Class Notice or the Litigation.

The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be finally approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class, and to consider awarding attorneys' fees, costs, and expenses to Class Counsel, as well as service awards to the Class Representatives. At the hearing, the Court will hear any objections and arguments concerning the fairness of the Settlement or the fees that have properly been submitted, as set forth above.

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT
WWW.[WEBSITENAME].COM

The date of the Final Approval Hearing may change without further notice to the Settlement Class. Settlement Class Members are advised to check the Settlement Website at [www.\[websitename\].com](http://www.[websitename].com) to check on the date of the Final Approval Hearing, the Court-approval process, and the Effective Date.

17. Do I have to come to the Final Approval Hearing?

No, you are not required to come to the Final Approval Hearing. Class Counsel will answer any questions the Court may have.

If you send an objection, you do not have to come to the Court to talk about it. As long as you served your written objection on time and complied with the other requirements for a proper objection, the Court will consider it.

18. May I speak at the Final Approval Hearing?

You or your lawyer may ask the Court for permission to speak at the Final Approval Hearing.

You may not be able to speak at the hearing if you do not comply with the procedures set out in this notice.

IF YOU DO NOTHING

19. What happens if I do nothing?

If you are a Settlement Class Member, you must file a Claim Form by the Claims Deadline, [INSERT DATE], as described in response to Question 9, to receive any Settlement benefits.

IF YOU DO NOTHING AND THE SETTLEMENT IS FINALLY APPROVED, YOU WILL BE BOUND BY THE COURT'S FINAL JUDGMENT AND RELEASE OF CLAIMS EXPLAINED IN THE SETTLEMENT AGREEMENT.

GETTING MORE INFORMATION

20. How do I get more information?

This Class Notice is only a summary of the terms of the Settlement. More details about the Settlement, the Effective Date, the deadlines, and your options are available in a longer document called the Settlement Agreement. This Settlement Agreement can be reviewed by clicking here: [www.\[websitename\].com](http://www.[websitename].com).

The Settlement Website also contains answers to common questions about the Settlement, plus other information to help you determine whether you are a Settlement Class Member. In addition, some of the

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT
[WWW.\[WEBSITENAME\].COM](http://WWW.[WEBSITENAME].COM)

key documents in the case will be posted on the Settlement Website. If you would like this Class Notice, the Claim Form, or the Settlement Agreement mailed to you, please call [PHONE NUMBER] or write to Angeion Group, the Settlement Claims Administrator, at:

[INSERT ADDRESS]

Alternatively, all of the court documents in this case are on file and available for review during regular office hours at the Clerk of the Court, United States District Court for the District of New Jersey, [ADDRESS].

Please do not call the Court or the Court Clerk's Office to inquire about this Settlement or the Claims Process.

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT
WWW.[WEBSITENAME].COM

EXHIBIT D

Legal Notice

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

**If you received two or more
telemarketing calls
concerning Momentum
Solar from March 5, 2015
and [DATE], you may be
entitled to monetary
benefits.**

Questions?

Visit www.aaaaaaaaaaaa.com
or Call 1-XXX-XXX-XXXX

*Para ver este aviso en español,
visite www.aaaaaaaaaaaa.com.*

Momentum Solar TCFRA Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

«ScanString»

Postal Service: Please do not mark barcode

Notice ID: «Notice ID»

Confirmation Code: «Confirmation Code»

«FirstName» «LastName»

«Address1»

«Address2»

«City», «StateCd» «Zip»

«CountryCd»

Doc ID: d219f745d023a622bde522eeffc85d6b93e898f

What is this about? Plaintiffs filed lawsuits in which they allege that Momentum and its agents made unsolicited telemarketing calls concerning solar services or products in violation of the Telephone Consumer Protection Act ("TCPA") and related telemarketing state laws. Momentum denies that it did anything wrong. Accordingly, Momentum has vigorously defended Plaintiffs' allegations. The Parties, however, have agreed to settle the Litigation to avoid the cost, delay, and uncertainty of continuing the Litigation.

Who is affected? The Settlement Class under the Settlement includes: all persons in the United States who received two or more telemarketing calls from Momentum or on behalf of Momentum within a 365-day period from March 5, 2015 through **[Preliminary Approval Date]** ("Class Period"). There are several exclusions to the Settlement Class. For more details about who is affected, visit www.xxxxxxxxxxxxxxxxxx.com.

What does the Settlement provide? The Settlement requires Momentum to pay money into a Common Fund that will be used to pay all timely and valid claims for Settlement Class Members, as well as any Claims Administration Expenses and attorneys' fees, costs, and expenses. The size of the Common Fund shall be between \$20 - \$30 million dollars in total, based on various contingencies. For more details about the Settlement Benefits, visit www.xxxxxxxxxxxxxxxxxx.com.

How do I get the settlement benefits? To receive any benefits due under the Settlement, **you must submit a Claim Form** by following the directions set forth at www.xxxxxxxxxxxxxxxxxx.com by the **[Claims Deadline]**. You may, alternatively, ask the Claims Administrator for a paper version of the Claim Form so that it is received by the **[Claims Deadline]**. You may contact the Claims Administrator at **[INSERT ADDRESS]** or by emailing **[INSERT EMAIL]**. Settlement Class Members who fail to submit a Valid Claim by **[Claims Deadline]** will not receive any compensation from the Settlement. Go to www.xxxxxxxxxxxxxxxxxx.com 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, 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 Momentum for the claims in this case. **Exclude yourself.** You will not receive any cash reimbursements. However, this is the only option that allows you to keep your right to sue Momentum 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], 2024**. For more details about your rights and options and how to exclude yourself or object, go to www.xxxxxxxxxxxxxxxxxx.com.

What happens next? The Court will hold a Fairness Hearing on **[MONTH, DAY] 2025 at [TIME]** to consider whether to approve the Settlement; Class Counsel's attorneys' fees up to one-third; expenses; and service awards of \$7,500 for Thomas Niemczyk and \$5,000 each for Rick Hill and Barry Wolford. The Court has appointed the law firms of Smith Krivoshey, PC, Bursor & Fisher, P.A., and Mazie Slater Katz & Freeman, LLC 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? Visit www.xxxxxxxxxxxxxxxxxx.com, call toll-free 1-XXX-XXX-XXXX, or contact the **Settlement Administrator** via mail or email at the contact information above.

Please do not contact the Court regarding this Notice.

1543

Momentum Solar TCPA Settlement Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

EXHIBIT E

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

THOMAS NIEMCZYK, individually and on
behalf of a class of similarly situated individuals,

Plaintiff,

v.

PRO CUSTOM SOLAR LLC, D/B/A
MOMENTUM SOLAR

Defendant.

Case No.: 2:19-cv-7846-ES-MAH

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

RICK HILL and BARRY WOLFORD,
individually and on behalf of a class of similarly
situated individuals,

Plaintiffs,

v.

PRO CUSTOM SOLAR LLC, D/B/A
MOMENTUM SOLAR

Defendant.

Case No.: 2:22-cv-00247- ES-MAH

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 (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, Defendant Pro Custom Solar, LLC d/b/a Momentum Solar (“Momentum” 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 extensive 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 Approval 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:

All persons in the United States that received two or more telemarketing calls (“Calls”) from Momentum or on behalf of Momentum within a 365-day period from March 5, 2015 through and including the date of preliminary approval of the Settlement by the Court (“Class Period”).

Excluded from the Settlement Class are (a) all current or former customers of Momentum are excluded from the Class; (b) all persons who validly opt out of the Settlement in a timely

manner; (c) governmental entities; (d) counsel of record (and their respective law firms) for the Parties; (e) Defendant and any of its affiliates, subsidiaries, and all of its respective employees, officers, and directors; (f) the presiding judges in the Litigation or judicial officers presiding over the matter, and all of their immediate families and judicial staff; and (g) any natural person or entity that entered into a release with the Momentum Released Parties prior to the Effective Date concerning the Released Claims in the Litigation.

6. 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.

7. The Court appoints Yeremey Krivoshey of Smith Krivoshey, PC, Matthew R. Mendelsohn of Mazie Slater Katz & Freeman, LLC, and Joseph Marchese of Bursor & Fisher, PA as Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are satisfied by this appointment.

8. The Court hereby appoints Thomas Niemczyk, Rick Hill and Barry Wolford to serve as Class Representatives for settlement purposes only on behalf of the Settlement Class.

9. The Court approves the form and content of the Class Notice. The Court finds that the sending 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 Claims Administrator shall cause the Long Form Notice to be disseminated to Settlement Class Members via e-mail, and the Summary Notice by U.S. mail for any Settlement Class Members with respect to whom Momentum and the Settlement Claims Administrator are not able to locate an e-mail address as of the Class Notice Date and for whom Momentum has a physical mailing address. 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. The Settlement Claims Administrator shall provide a reminder notice to all Settlement Class Members that have not submitted claims, objected, or opted-out at least 30 days prior to the deadline for the submission of Claim Forms.

c. The Settlement Administrator shall provide a toll-free number to field questions from Settlement Class Members; set up a dedicated website that will include the notice, claim form, Settlement Agreement and other relevant materials.

d. No later than ten (10) days before the Fairness Hearing, the Settlement Administrator shall file with the Court an affidavit setting forth the details of the notice provided pursuant to this Order and the Settlement Agreement.

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

11. The Court hereby appoints Angeion Group 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.

12. If Settlement Class Members do not wish to participate in the Settlement Class, Settlement Class Members may exclude themselves by mailing or delivering a written request for exclusion to the Settlement Claims Administrator. All requests by Settlement Class Members to be excluded from the Settlement Class must be in writing and served on the Settlement Administrator twenty-one (21) days prior to the Final Approval Hearing. The Settlement Administrator shall report the names and addresses of all such persons and entities requesting exclusion to the Court and Class Counsel no later than fourteen (14) days prior to the Final Approval 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.

13. 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 the Settlement Class Member's name, address and telephone number, state that the Settlement Class Member requests exclusion from the Settlement Class, and the Settlement Class Member's handwritten signature. 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 Defendant.

14. Any Settlement Class Member who has not previously submitted a Request for Exclusion in accordance with the terms of this Agreement may appear at the Final Approval Hearing to argue that the proposed Settlement should not be approved. However, in order to be heard at the Final Approval Hearing concerning an objection, the Settlement Class Member must make an objection in writing and file it, along with a notice of intention to appear at the Fairness Hearing (“Notice of Intention to Appear”), with the Court twenty-one (21) days prior to the Final Approval Hearing.

1. To state a valid objection to the Settlement, an objecting Settlement Class Member must write: ((a) the objector’s name, address, telephone number and, if represented by counsel, the name, address, and telephone number of his or her counsel; (b) a description of the date(s) and contents of any purported Calls within the Settlement Class Period, including a description of what occurred on each of the Calls (c) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (d) all grounds for his or her objection, accompanied by any legal and factual support for the objection known to the objector or his or her counsel, and the name of any witness that may appear at the Final Approval Hearing; (e) copies of any papers, briefs, or other documents upon which the objection is based or upon which the objector or his or her counsel intends to rely; (f) the objector’s handwritten signature, and (g) the identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector’s attorney (if applicable) has objected to a proposed class action settlement. Objections shall be served on the Settlement Administrator by [date], and also serve by first-class mail copies of the objection upon:

Matthew R. Mendelsohn
Mazie Slater Katz & Freeman, LLC
103 Eisenhower Parkway
Roseland, NJ 07068

Thomas J. Cotton
Schenck Price Smith & King, LLP
220 Park Avenue
Florham Park, NJ 07932.

15. 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.

16. The Court hereby schedules the Final Approval Hearing for _____, at _____ a.m./p.m. in Courtroom 2C of the United States District Court for the District of New Jersey, Newark Division, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, 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 Approval Hearing without further notice to Settlement Class Members.

17. 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.

18. 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 fourteen 14 days prior to the objection and exclusion deadline.

19. Settlement Class Members shall have until one hundred and twenty (120) consecutive days from the Class Notice Date to submit claim forms. Claim forms must be received by that date to be considered timely.

20. 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.

21. 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.

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

23. 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 _____, 2024.

HONORABLE MICHAEL A. HAMMER
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 2



FIRM RESUME 2025

THE FIRM

Mazie Slater is one of the most highly regarded trial law firms in New Jersey, based on the results achieved and the diverse scope of cases that we handle. Unlike most trial firms, our practice is not limited to a particular niche or subset of civil litigation, and this versatility sharply increases our capabilities. Our practice spans the fields of class action and mass tort litigation, commercial litigation, insurance coverage litigation, professional malpractice, product liability, and personal injury. Perhaps most important, we have earned a reputation as trial lawyers who will take complex, expensive cases to trial and achieve large verdicts. The following are some of the settlements and verdicts we achieved:

In re Benicar (Olmesarten) Products Liability Litigation: \$380 million settlement for individuals who sustained alleged gastrointestinal injuries caused by the blood pressure drug Benicar, manufactured by Daiichi Sankyo, Inc. and Forest Laboratories, Inc.

Escobar v. DYFS: \$166 million verdict for negligence against New Jersey child protection agency. This is the largest personal injury jury verdict in New Jersey history. The Appellate Division subsequently reversed the verdict.

Verni v. Aramark: \$135 million liquor liability verdict against Aramark, which is the second largest personal injury verdict in New Jersey history. The Appellate Division subsequently reversed the verdict and the case was thereafter settled for \$26 million.

Meister v. Verizon: \$125 million settlement for a woman who was crushed by a Verizon utility pole. This is the largest single personal injury recovery in New Jersey history. In fact, no single personal injury settlement has ever come close to this amount.

Dewey v. Volkswagen of America, Inc.: \$69 million class action settlement relating to water ingress caused by defects in over 3 million Volkswagen and Audi vehicles.

McGinnis v. C.R. Bard: \$68 million jury verdict. This was a first bellwether case to proceed to verdict against Bard in the New Jersey MCL.

Alin v. American Honda Motor Co., Inc.: \$40 million recovery on behalf of Honda and Acura vehicle owners regarding air conditioning system defects.

Sutter v. Horizon Blue Cross Blue Shield of New Jersey: \$36 million to \$55 million class action settlement on behalf of more than 20,000 New Jersey Physicians relating to improper claims handling practices by Horizon.

Confidential: \$33.9 million product liability settlement on behalf of worker injured by a defective product in the workplace. This is the largest product liability settlement in New Jersey history.

Henderson v. Elizabethtown Gas: \$19.2 million settlement resulting from a natural gas explosion in a home that caused severe burn injuries to several of our clients, three of whom died from their burn injuries.

Morgan v. Newark Beth Israel Hospital: \$18.5 million verdict for birth injuries.

Confidential: \$15.75 million audit malpractice settlement. This case involved allegations that malpractice by an accounting firm resulted in erroneous financial statements, which allegedly allowed an insolvent company to continue in business. The case settled for \$15.75 million, which brought the total recovery by our law firm in litigation relating to the insolvent company to \$25 million.

New Jersey Eye Center Coverage Litigation: \$15.3 million verdict against insurance company. This was a case in which an insurance carrier declined to pay multiple settlements against a single eye surgeon. Following a two week trial, the trial judge ruled that the insurance carrier, Princeton Insurance Company, had to pay the settlements.

Hrymoc v. Ethicon, Inc.: \$15 million jury verdict. The verdict, for \$5 million in compensatory damages to and \$10 million in punitives, was awarded after a three-week trial. The jury found that the pelvic mesh products sued were defectively designed and failed to contain adequate warnings.

Cohen v. Benzel-Busch Motor Car Corp.: \$14.7 million settlement in a case where the plaintiff suffered Complex Regional Pain Syndrome (sometimes referred to as RSD).

Confidential: \$13 million settlement where our client suffered a birth injury which caused cerebral palsy.

Gillespie v. NJ Transit: \$12.75 million settlement a man in his 40's who was hit by a New Jersey Transit bus while crossing the street.

Hammons v. Ethicon, Inc.: \$12.5 million jury verdict. This case is one of more than 40,000 pending against Johnson & Johnson and Ethicon around the country, for injuries suffered by victims of the Prolift and the other similar pelvic mesh devices sold by Johnson & Johnson and Ethicon. After a three week trial the jury awarded \$12.5 million, consisting of \$5.5 million in compensatory and \$7 million in punitive damages.

Confidential: \$12.5 million settlement for a young child was hospitalized after complications from a tonsillectomy.

Keller v. Flugrad: \$12 million jury verdict for dental malpractice and wrongful death. This case involved medical malpractice committed by an oral surgeon whose negligence

resulted in the death of a 21-year old man within 12 hours after having his wisdom teeth removed. It is believed that this is the largest oral surgery malpractice verdict in New Jersey and one of the largest in the U.S. history.

Confidential: \$11.24 million settlement for a client that suffered quadriplegia in an accident involving the product.

Gross v. Ethicon, Inc.: \$11.1 million jury verdict against Johnson & Johnson in the first pelvic mesh trial in the United States. On February 25, 2013, a New Jersey jury awarded our client, a 47-year old nurse, \$3.35 million in damages against Johnson & Johnson in the first of 1800 mesh lawsuits to go to trial in New Jersey. On February 27, 2013, the jury awarded an additional \$7.75 million in punitive damages, bringing the total verdict to \$11.1 million.

Blake v. City of New York: \$10 million jury verdict for failure to provide police protection. Action brought on behalf of a young child who was severely burned by a Molotov Cocktail explosive device that was thrown into the bedroom of his family's apartment by an unapprehended perpetrator. The jury awarded \$10 million in compensatory and punitive damages, which award was reduced by the trial judge to \$2.4 million and affirmed on appeal.

Zhong v. NJ Transit: \$10 million settlement for a passenger on a New Jersey Transit bus, was injured while retrieving her luggage from the bus. As our client was in the luggage compartment, the bus drove away causing severe injuries which required partial amputation of our client's leg.

Ingram v. Camden County Police Dept.: \$10 million settlement for Xavier Ingram who was left a paralyzed, quadriplegic after he was beaten by Camden County Police. This is the largest police brutality settlement in New Jersey history, and one of the largest police brutality settlements in the nation's history.

In 2023 and 2021 The National Law Journal named Mazie Slater an **"Elite Trial Lawyers"** in the medical malpractice category and the Medical Malpractice Law Firm of the Year in 2023. Likewise, in 2018 The National Law Journal named Mazie Slater as **"Elite Trial Lawyers"** in the categories of medical malpractice and product liability. In 2018 Mazie Slater was also named **"Product Liability Litigation Department of the Year"** by the New Jersey Law Journal. In 2014 Mazie Slater Katz & Freeman, LLC was one of twelve firms in the nation named to the **"Plaintiffs' Hot List"** by The National Law Journal, one of fifty firms recognized as **"America's**

Elite Trial Lawyers” by The National Law Journal, and in 2013 Mazie Slater was named **“Litigation Department of the Year”** by the New Jersey Law Journal. Our lawyers have also been listed in “Best Lawyers in America,” “New Jersey Superlawyers,” and “Lawdragon 500.”

In addition, Mazie Slater and/or its attorneys has been appointed Class Counsel, Lead Counsel and Liaison Counsel in various matters, including, but not limited to: In re Allergan Biocell Textured Breast Implant Products Liability Litigation, (Sup. Ct. N.J. MCL No. 634)(appointed Liaison Counsel in ongoing “mass tort” involving injuries to women that have had certain Allergan breast implants implanted); In re Valsartan Products Liability Litigation, (D.N.J. 1:19-md-02875)(appointed Co-Lead Counsel, Co-Liaison Counsel, and Executive Committee member in ongoing MDL involving drugs contaminated with cancer-causing agents); In re Benicar (Olmesarten) Products Liability Litigation, (D.N.J. 15-cv-2606-RBK-JS)(appointed Co-Lead Counsel in ongoing MDL involving gastrointestinal injuries due to hypertension medication, resulting in \$380+ million settlement); In re Pelvic Mesh Litigation (Gynecare & Bard) (Sup. Ct. N.J. MCL No. 291) (appointed Co-Liaison Counsel in ongoing “mass tort” involving injuries to women that have had pelvic mesh medical devices surgically implanted); Dewey v. Volkswagen, (D.N.J. 2:07-CV-2249-FSH-PS); (Co-Class Counsel in \$69 million nationwide class action settlement involving 3 million vehicles owned or leased by approximately 5.5 million Class Members over the course of 12 years, providing a unique set of monetary and non-monetary benefits); Alin v. American Honda Motor Co., Inc., (D.N.J. 2:08-cv-04825)(Co-Class Counsel in \$40 million nationwide class action settlement on behalf of hundreds of thousands of Honda vehicle owners alleging defects in their vehicles air-conditioning systems); In re Nissan Radiator/Transmission Cooler Litigation, (S.D.N.Y. 10-cv-7493-VLB) (Co-Class Counsel in \$20+ million nationwide class action settlement on behalf of more than 800,000 class members relating to defects in the radiator which caused catastrophic transmission failure); Aarons v. BMW of North America, LLC, (C.D. Cal. 2:11-cv-7667-PSG-CW)(Co-Class Counsel

in nationwide class action settlement involving transmission failure in certain Mini Cooper vehicles); Keegan v. American Honda Motor Co., (C.D. Cal. 2:10-cv-09508-MMM-AJW)(Co-Class Counsel in nationwide class action settlement involving suspension defect in certain Honda Vehicles); Zakskorn v. American Honda Motor Co., Inc., (E.D. Cal. 2:11-cv-2610-KJM-KJN)(appointed Co-Lead class counsel in nationwide class action settlement on behalf of 1.68 million class members involving alleged brake defects in certain Honda Civic vehicles); Kirsch, D.D.S. v. Horizon, (Docket No. ESX-L-4216-05) (16,000 dental provider class); Jungels v. Delta Dental of New Jersey (District of New Jersey Civil Action No. 07-186) (160,000 dental provider national class); Sutter, M.D. v. Oxford Health Plans (American Arbitration Association Case No. 18 193 20593 02) (20,000 physician class).

MSKF ATTORNEYS

PARTNERS

David A. Mazie graduated from Rutgers University in 1983, and George Washington University School of Law in 1986. He was admitted to the bars of State of New Jersey and District of New Jersey in 1986. Mr. Mazie focuses his practice on complex civil litigation, including personal injury, medical malpractice, product liability, commercial litigation, and class actions. He has been a certified civil trial attorney since 1996, and has obtained approximately 40 jury verdicts and settlements exceeding \$1 million, including the landmark \$166 million verdict against the NJDYFS, which is the largest personal injury verdict in New Jersey history. The Appellate Division reversed this verdict. Mr. Mazie also obtained a \$135 million liquor liability verdict against Aramark, the second largest personal injury verdict in New Jersey history. The Appellate Division subsequently reversed the jury's verdict and the case was thereafter settled for \$26 million. In 2020 Mr. Mazie secured a \$125 million settlement for a woman crushed by utility pole which is the largest personal injury settlement in New Jersey history. In recent years, Mr. Mazie has obtained an \$33.9 million product liability settlement, a \$18.5 million wrongful birth jury verdict, a \$15.75 million audit malpractice settlement, a \$12 million wrongful death jury verdict, a \$11.1 million "mass tort" verdict, a \$7.25 million actuarial malpractice settlement, and a multi-million dollar Lasik malpractice settlement which is believed to be the largest Lasik malpractice recovery in New Jersey history. He also tried -- and successfully settled -- the case of Ravin Sarasohn v. Lowenstein Sandler involving unfair competition between competing law firms. In addition to the representation of private clients, over the past twenty-four years he has represented the New Jersey Commissioner of Banking and Insurance as liquidator of several failed insurance companies, handling numerous multi-million dollar commercial litigations on the Commissioner's

behalf. He also has numerous reported decisions, many of which have changed the law: Ravin, Sarasohn v. Lowenstein Sandler, 365 N.J. Super. 241 (App. Div. 2003); Taglieri v. Moss, 367 N.J. Super. 184 (App. Div. 2004); Reynolds v. Guard Dogs Unlimited, Inc. 325 N.J. Super. 298 (App. Div. 1999); Nubenco Enterprises, Inc. v. Inversiones Barberena, S.A., 963 F.Supp. 353 (D.N.J. 1997); Integrity Insurance Co. v. Teitelbaum, 245 N.J. Super. 133 (Law Div. 1990); In re Integrity Insurance Company, 193 N.J. 86 (2007); Resolution Trust Corp. v. Edie, 1994 WL 744672 (D.N.J. Oct. 4, 1994); Ladner v. Mercedes-Benz of North America, Inc. 266 N.J. Super. 481 (App. Div. 1993); Home State Insurance Co. v. Continental Insurance Co., 313 N.J. Super. 584 (App. Div. 1998); Home State Insurance Co. v. Continental Insurance Co., 158 N.J. 104 (1999); In re Phenylpropanolamine (PPA), 2003 WL 22417238 (N.J. Super., July. 21, 2003); Fillebrown v. Steelcase, Inc., 63 Fed Appx. 54, 2003 WL 1191162 (3d Cir. 2003); Verni v. Harry M. Stevens, et al, 387 N.J. Super. 160 (App. Div. 2006); Liss v. Federal Insurance Co., 2006 WL 2844468 (App. Div. 2006); Clark v. University Hospital/UMDNJ 390 N.J. Super 108 (App. Div. 2006); New Jersey Eye Center v. Princeton Ins. Co., 394 N.J. Super. 557 (App. Div. 2007); Verni v. Lanzaro, 404 N.J. Super. 16 (App. Div. 2008); Liss v. Federal Ins. Co., 2009 WL 231992 (App. Div. 2009); Beye v. Horizon Blue Cross Blue Shield, 2008 WL 3064757 (D.N.J. 2008); Beye v. Horizon Blue Cross Blue Shield, 558 F. Supp. 2d 556 (D.N.J. 2008); Alin v. American Honda Motor Co., Inc., 2010 WL 1372308 (D.N.J. March 31, 2010). Mr. Mazie has been named to the Best Lawyers in America numerous times, and one of the top 500 lawyers in America by Law Dragon. Mr. Mazie has personally received the most votes of any New Jersey trial attorney in the 2005, 2006 and 2007 Super Lawyers rankings, and has been ranked in the top ten every year since 2009. In 2005, the New Jersey Law Journal named Mr. Mazie “Lawyer of the Year,” and in 2014 he was inducted into the “Personal Injury Hall of Fame.”

Adam M. Slater is a partner and senior trial lawyer at Mazie Slater. Mr. Slater's practice is focused on complex civil litigation, product liability, medical malpractice, personal injury, consumer litigation, and class action law. Mr. Slater is a 1989 graduate of Tulane University and a 1993 graduate of Boston University School of Law. Mr. Slater was admitted to the bars of the State of New Jersey and District of New Jersey in 1994. He is also admitted in the State of New York, the District of Columbia, the State of Colorado, and the Third Circuit Court of Appeals. Mr. Slater was certified as a civil trial attorney by the New Jersey Supreme Court in 2000, only six years after admission to the bar, and has been recertified. Mr. Slater lectures frequently on trial practice for New Jersey ICLE including seminars titled: Trying Cases: Proven Tactics & New Strategies for Success, Trying the Breast Cancer Case, Winning the Big Verdict, Trying Your Case the Right Way, and Not Just Another Discovery Seminar. He has been named to the Best Lawyers in America and as a Top 100 "Super Lawyer" in the State of New Jersey. He also has numerous published opinions, including but not limited to Liguori v. Elmann, 191 N.J. 527 (2007); New Jersey Eye Center, P.A. v. Princeton Ins. Co., 394 N.J. Super. 557 (App. Div. 2007); Baldassano v. High Point Insurance Company, 396 N.J. Super. 448 (App. Div. 2007); La v. Hayducka, 269 F.Supp. 2d 566 (D.N.J. 2003); In re Glatstian, 215 B.R. 495 (Bankr. D.N.J. 1997); Meth v. Gorfine, 34 A.D. 3d 267 (N.Y.A.D. 1st Dept. 2006), Dewey v. Volkswagen, AG., 558 F.Supp. 2d 505 (D.N.J. 2008); Dewey v. Volkswagen, AG., --- F.Supp. 2d --- (D.N.J. 2010). Over his career, Mr. Slater has obtained numerous verdicts and settlements in excess of one million dollars, with many in the multi-millions, including a \$69 Million class action settlement in Dewey v. Volkswagen. In addition, Mr. Slater has also appointed as Liaison Counsel in In re Allergan Biocell Textured Breast Implant Products Liability Litigation, (Sup. Ct. N.J. MCL No. 634); Co-Liaison Counsel in In re Pelvic Mesh Litigation – J&J/Bard; Co-Lead Counsel in In re: Benicar (Olmesartan) Products

Liability Litigation; and Co-Lead Counsel in In re Valsartan Products Liability Litigation, (D.N.J. 1:19-md-02875).

Eric D. Katz is a partner at Mazie Slater. Mr. Katz is a 1988 graduate of Polytechnic University of New York (now Polytechnic Institute of NYU) and a 1991 graduate of Pace Law School, where he was an editor on the law review, and was admitted to the bar of the State of New Jersey and the District of New Jersey in 1991. Mr. Katz is a certified civil trial attorney, and concentrates his practice in managed care, class action, product liability, ERISA, and medical provider law. In 2013, Mr. Katz successfully argued on behalf of the Respondent, John Ivan Sutter, M.D. in the Supreme Court of the United States in the matter of Oxford Health Plans v. Sutter, 133 S. Ct. 2064 (2013), in which the Supreme Court in an unanimous decision affirmed the Third Circuit upholding an arbitrator's award that 20,000 New Jersey physicians may arbitrate their claims payment disputes on a class-wide basis against Oxford Health Plans. Mr. Katz has been appointed class counsel in several class actions, and has been selected a New Jersey Super Lawyer annually since 2007 in the area of class action law, as well as selected to The Best Lawyers in America annually since 2012. In addition to his complex litigation and class action experience, Mr. Katz is a recognized published authority in this state on the subjects of product liability and toxic tort law, having co-written with Hon. William A. Dreier, P.J.A.D. (Ret.) and Hon. John E. Keefe, P.J.A.D. (Ret.), the most-widely cited treatise on these areas of the law entitled New Jersey Products Liability and Toxic Tort Law (published annually by Gann Law Books). Since its initial printing, the treatise was adopted by the Administrative Office of the Courts as a bench book on product liability and, for a number of years, was distributed to the entire state judiciary on an annual basis. To date, the treatise has been cited on twenty (20) or more occasions in published opinions. In addition to his Supreme Court decision, Mr. Katz has several other reported decisions, for example Sutter v. Oxford Health Plans, 675 F.3d 215 (3d Cir. 2013, aff'd 133 S. Ct. 2064

(2013); Kaufman v. Allstate Ins. Co., 561 F.3d 144 (3d Cir. 2009); Sutter v. Horizon Blue Cross Blue Shield, 406 N.J. Super. 86 (App. Div. 2009); and Kirsch v. Delta Dental of New Jersey, 2008 WL 441860 (D.N.J. 2008). Mr. Katz has multiple seven-figure settlements, including the landmark \$39 million Sutter v. Horizon class action settlement.

David M. Freeman is a partner at Mazie Slater and a 1985 graduate of Lehigh University and a 1988 graduate of University of Pennsylvania Law School. Mr. Freeman was admitted to the bar of the State of New Jersey and the District of New Jersey in 1988. Mr. Freeman concentrates his practice in the area of complex litigation, including commercial litigation, product liability, professional malpractice, insurance insolvency, and personal injury. Mr. Freeman has several reported and unreported decisions, for example Liss v. Federal Ins. Co., 2009 WL 231992 (App. Div. 2009); In re Integrity Insurance Company, 193 N.J. 86 (2007); Liss v. Federal Insurance Co., 2006 WL 2844468 (App. Div. 2006); Klein v. Autek, 147 Fed.Appx. 270 (3d. Cir 2005); Ravin Sarasohn v. Lowenstein Sandler, 365 N.J. Super. 241, (App. Div. 2003); Lascurain v. City of Newark, 349 N.J. Super. 251, 793 A.2d 731, (App. Div. 2002); RFE Industries v. SPM Corp., 103 F.3d 923 (4th Cir. 1997); National Property Investors VIII v. Shell Oil Co., 950 F.Supp 710 (E.D.N.C. 1996); National Property Investors VIII v. Shell Oil Co., 917 F.Supp 324 (D.N.J. 1995); and S&R Associates v. Shell Oil Co., 725 A.2d 431 (Del. Supr. 1998); Matter of Integrity Ins. Co., 1991 WL 213899 (D.N.J. 1991).

Matthew R. Mendelsohn is a partner with Mazie Slater and concentrates his practice in complex civil litigation, specializing in class action and personal injury litigation. Mr. Mendelsohn is a 2002 graduate of Rutgers University and a 2005 graduate of Seton Hall School of Law. He has been admitted to practice in New Jersey, New York, U.S. District Court, District of New Jersey, Southern District of New York, and the Third and Ninth Circuit Court of Appeals. Mr. Mendelsohn has been Certified by the Supreme Court of New Jersey as a Civil Trial Attorney,

a distinction held by less than 3% of practicing attorneys in NJ. Mr. Mendelsohn has litigated numerous cases resulting in multi-million dollar verdicts and settlements including, but not limited to, the \$69 Million class action settlement in Dewey v. Volkswagen, a \$40 million class action settlement in Alin v. Honda, a \$30+ million class action settlement in In re Subaru Battery Drain Litigation; a \$20+ million class action settlement in In re Nissan Radiator/Oil Cooler Litigation; a \$19.2 million settlement for injuries sustained as a result of a gas explosion; a \$7 million settlement on behalf of an injured construction worker; a \$6 million settlement in a bus accident case, \$5 million settlement in a truck accident case, \$4.7 million settlement in product liability case, and a \$4.5 million settlement in a medical malpractice action. In recognition of his accomplishments, in both 2023 and 2024 Mr. Mendelsohn was listed as one of the “500 Leading Consumer Plaintiff Lawyers” by Lawdragon, selected as a “New Leader of the Bar” (formerly known as “40 under 40”) by the New Jersey Law Journal in 2012, selected as a member of “The Top 40 under 40” by The National Trial Lawyers in 2012, selected as a “Top 100 Trial Lawyer” by The National Trial Lawyers and selected as a New Jersey “Super Lawyer” every year since 2015. Mr. Mendelsohn has also personally been appointed Class Counsel in 18 nationwide consumer class actions. Mr. Mendelsohn has several reported decisions to his credit, including; Cummings v. FCA US LLC, 401 F.Supp.3d 288 (S.D.N.Y. 2019); Haghyeghi v. Guess?, Inc., 168 F. Supp. 3d 1277 (S.D. Cal. 2016); Neale v. Volvo Cars Of North America, LLC; 794 F.3d 353 (3d Cir. 2015); Gray v. BMW of North America, LLC, 22 F.Supp.3d 373, (D.N.J. 2014); Dewey v. Volkswagen Aktiengesellschaft, 558 Fed.Appx. 191 (3d Cir. 2014); Dewey v. Volkswagen of America, 909 F.Supp.2d 373 (D.N.J. 2012); Keegan v. American Honda, 284 F.R.D. 504 (C.D. Cal 2012); Keegan v. American Honda, 838 F.Supp.2d 929 (C.D. Cal. 2012); Sutter v. Horizon Blue Cross Blue Shield, 406 N.J. Super. 86 (App. Div. 2009); and Dewey v. Volkswagen, AG, 558 F.Supp. 2d 505 (D.N.J. 2008).

Beth G. Baldinger is an experienced trial attorney for over 25 years and has extensive experience in complex civil litigation. Nationally recognized in the field of crime victims' rights, Ms. Baldinger has championed the rights of children injured in state foster care and daycare settings; survivors of sexual assaults and domestic violence; estates of those lost to homicides; citizen's whose civil rights were violated by police misconduct; and those injured due to inadequate security. In both state and federal courts Ms. Baldinger has pressed forward with cutting-edge claims and novel issues in individual cases, class actions, mass tort matters and multi district litigation. She has a proven track record in cases of child abuse, medical, legal and professional malpractice, products liability, health care and health insurance rights, traumatic brain injuries, sports injuries and wrongful death claims against government entities, multi-national corporations, individuals, as well as non-profit entities.

In 2022, Ms. Baldinger won a \$10 million settlement in the Xavier Ingram police brutality case. This the largest police brutality settlement in New Jersey history, and one of the largest in the nation's history. In 2023, Ms. Baldinger was named the New Jersey Law Journal's Attorney of the Year for her many successes. Ms. Baldinger was also awarded the American Association for Justice Leonard Weinglass award for Defense of Civil Liberties. In 2024, Ms. Baldinger was named to the Forbes America's Top 200 Lawyers List. She has also been selected in New Jersey multiple times to Super Lawyers list, listed in the Best Lawyers in America, and selected to the 500 leading plaintiff consumer lawyers in the country as listed by Lawdragon. Her cases have been publicized in the national and local media.

Ms. Baldinger lectures nationally on victims' rights and has volunteered for national and local organizations. Ms. Baldinger has the following reported opinions to her credit: Beye v. Horizon, 568 F.Supp. 566 (D.N.J. 2008); Brennan v. Orban, 145 N.J. 282 (1996); Aldrich v.

Schwartz, 258 N.J. Super. 300 (App. Div. 1992); Blake v. City of New York, 157 A.D.2d 482 (1st Dep't 1990).

David M. Estes is a partner at Mazie Slater. Mr. Estes graduated Nyack College in 2000, and Rutgers University School of Law in 2011. While in law school Mr. Estes served as the Lead Editor of the Rutgers Journal of Law and Religion, and was a Finalist of the Willem C. Vis International Commercial Arbitration Moot. Mr. Estes concentrates his practice in class action, product liability, and personal injury litigation. Prior to joining the firm, Mr. Estes served as law clerk to the Honorable Victor Ashrafi of the New Jersey Superior Court, Appellate Division. He also served as summer clerk to the Honorable Jerome Simandle of the U.S. District Court of New Jersey, and judicial intern to the Honorable Theodore McKee of the U.S. Court of Appeals for the Third Circuit. Mr. Estes is admitted to practice law in New Jersey.

Adam M. Epstein is a partner at Mazie Slater. Mr. Epstein graduated from Pennsylvania State University in 2006 and Brooklyn Law School in 2010. Mr. Epstein concentrates his practice in personal injury, medical malpractice and class action litigation. He is known for his aggressive yet tactical pursuit of justice on behalf of his clients who have been harmed as a result of the negligence of others. He has helped recover millions of dollars for his clients in numerous complex and high-profile matters. Some examples of the cases he has worked on include: \$125 Million Settlement for Woman Crushed by Utility Pole, \$12.75 Million Settlement For A Man Hit By A Bus Which Caused A Brain Injury, \$4.5 Million Settlement For Failure To Diagnose Malaria and \$4 Million Settlement For Medical Malpractice Death. Because of his many successes, Mr. Epstein has been named a Super Lawyers Rising Star every year since 2018 (2018 – 2022). His clients have written extensive positive reviews regarding his work ethic, guidance, empathy and results. Prior to joining the firm, Mr. Epstein worked at a prominent defense litigation firm,

defending the very type of cases that he now pursues. Mr. Epstein is admitted to law in both New and New York.

ASSOCIATES

Karen G. Kelsen is an associate at Mazie Slater. Ms. Kelsen graduated from Queens College in 2005 and Hofstra University School of Law in 2008. Ms. Kelsen concentrates her practice in complex civil litigation, including class action, products liability, personal injury, and medical malpractice. She has been admitted to practice in the State of New Jersey and the U.S. District Court, District of New Jersey since 2008. Ms. Kelsen is also admitted in the State of New York. Ms. Kelsen was heavily involved in the discovery phase in Dewey v. Volkswagen, and currently is a member of the team handling In re Gynecare/Ethicon Pelvic Mesh Litigation.

Cory J. Rothbort is an associate at Mazie Slater. Mr. Rothbort is admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey. He is an active member of the Essex County and New Jersey State Bar Associations and Brennan-Vanderbilt American Inn of Court. Mr. Rothbort presently serves as Secretary of the Executive Committee of the NJ State Bar Young Lawyers Division. In 2019, Mr. Rothbort was recognized as the Outstanding Young Lawyer of the Year by the Essex County Bar Association. Mr. Rothbort is an active speaker, participating on various panels discussing issues related to his practice such as Practical Evidence, Ethical Considerations for the Young Lawyer & Small Practitioner and Using Depositions & Discovery for Killer Cross-Examinations. Prior to entering private practice, Mr. Rothbort completed a judicial clerkship with The Honorable Heidi Willis Currier, J.S.C. in Middlesex Vicinage in New Brunswick, NJ. Before his clerkship, Mr. Rothbort attended the Boston University School of Law, graduating with a Concentration in Litigation and Dispute Resolution. Prior to attending Law School, Mr. Rothbort graduated cum laude from

Rutgers University. He was also a four-year member of the Rutgers University Mock Trial Association.

Michael R. Griffith is an associate at Mazie Slater. Mr. Griffith graduated from The College of New Jersey in 2013 and Rutgers University School of Law in 2016. Mr. Griffith concentrates his practice in mass torts, products liability, personal injury and commercial litigation. Prior to joining the firm, Mr. Griffith was a Law Clerk to the Honorable Robert P. Contillo, P.J.Ch. and the Honorable Menelaos W. Toskos, J.S.C. Mr. Griffith is admitted to practice in New Jersey.

Christopher J. Geddis is an associate at Mazie Slater. He graduated from William & Mary Law School and received a Bachelor of Arts in philosophy from Dartmouth College. Prior to joining the firm, he served a clerkship for the Honorable Richard S. Hoffman of the Superior Court of New Jersey, Appellate Division. During law school, he worked for the College of William & Mary's Office of University Counsel and served as a Senior Articles Editor of the William & Mary Bill of Rights Journal. He also interned for the Honorable Marie E. Lihotz of the Superior Court of New Jersey, Appellate Division, and the Honorable Lynn N. Hughes of the United States District Court. He is admitted to practice law in New Jersey and Pennsylvania.

Samuel D. Wildman is an associate at Mazie Slater. He is admitted to practice in New Jersey. Before joining the firm, he served as a law clerk to the Honorable Robert J. Gilson, J.A.D. of the Appellate Division of the Superior Court of New Jersey. Mr. Wildman attended Cornell Law School, where he graduated with honors and a concentration in general practice. Mr. Wildman was an acquisitions editor on Journal of Law and Public Policy and a member of the Cornell Law School Securities Law Clinic. Mr. Wildman also completed an externship and internship with the U.S. Department of Justice, where he gained valuable experience in administrative and constitutional law and multibillion-dollar affirmative False Claims Act

litigation. During his 1L summer, he also worked as a judicial intern for the Honorable John M. Leventhal of the Appellate Division, Second Department of New York. Mr. Wildman graduated magna cum laude from Boston University with a B.A. in philosophy and psychology and minors in both history and political science. Mr. Wildman concentrated his studies on applied and medical ethics, statistics, and experimental design. Mr. Wildman continues to pursue these interests as a volunteer with the Center for Mind and Culture. During his junior year, he served as an intern for Ian Lucas, M.P., the British Labour Party's shadow secretary for Africa and the Middle East.

Julia S. Slater is an associate at Mazie Slater. Prior to joining Mazie Slater Katz & Freeman, Ms. Slater was an associate at a personal injury law firm in Manhattan, where she focused on representing and advocating for her clients who had been injured due to another's fault. Ms. Slater received her Juris Doctor from Benjamin N. Cardozo School of Law in 2019. Prior to that, she graduated from Syracuse University in 2016 with a Bachelor of Arts in Political Science. While in law school, Ms. Slater participated in the Trial Advocacy Program, served as a mediator in the Divorce Mediation Clinic, helping people to resolve difficult familial issues, and she was also a member of the Cardozo Arts & Entertainment Law Journal.

Trevor Dickson is an associate at Mazie Slater. Before joining the firm, he served as a law clerk to the Honorable Stephanie A. Mitterhoff of the Appellate Division of the Superior Court of New Jersey. Mr. Dickson is admitted to practice in the State of New Jersey, the United States District Court for the District of New Jersey, and the United States Court of Appeals for the Third Circuit. Prior to his clerkship, Mr. Dickson attended Rutgers Law School – Newark, where he graduated magna cum laude and was elected to the Order of the Coif. During an internship with the Honorable Joseph A. Dickson, U.S.M.J., he gained valuable experience involving federal trial practice. Before law school, Mr. Dickson graduated from the University of Miami with both a Bachelor of Arts in Political Science and History, and a Master's degree in public administration.

Carissa Thompson is an associate at Mazie Slater. Ms. Thompson graduated from Regent University School of Law in 2024 where she was a member of the Regent Law Trial Advocacy Executive Board. While in law school Ms. Thompson participated in several trial advocacy competitions and was recognized for her oral advocacy skills. Before law school Ms. Thompson graduated from Pennsylvania State University where she earned a Bachelor of Science in Nursing and was a Division I student athlete. Ms. Thompson is also a registered nurse (RN) in New Jersey and Pennsylvania.

EXHIBIT 3

BURSOR & FISHER P.A.

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FIRM RESUME

With offices in Florida, New York, and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million-dollar verdicts or recoveries in six of six class action jury trials since 2008. Our most recent class action trial victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector found to have violated the Telephone Consumer Protection Act. During the pendency of the defendant's appeal, the case settled for \$75.6 million, the largest settlement in the history of the Telephone Consumer Protection Act.

In August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel, we won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Honda, Verizon Wireless, AT&T Wireless, Sprint, Haier America, and Michaels Stores as well as purchasers of Avacor™, Hydroxycut, and Sensa™ products. Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,

4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,
5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,
6. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
7. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
8. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
9. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
10. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
11. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
12. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
13. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
14. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
15. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
16. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
17. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
18. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
19. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
20. *Moeller v. American Media, Inc.,* (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
21. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellers,

22. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,
23. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,
24. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
25. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
26. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
27. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,
28. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
29. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
30. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
31. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
32. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
33. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
34. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
35. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
36. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
37. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
38. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,

39. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,
40. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines due to the novel coronavirus, COVID-19, and whose tickets were not refunded,
41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,

53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,
54. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
55. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
56. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 201), to represent a certified nationwide class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
57. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
58. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
59. *Frederick v. Examsoft Worldwide, Inc.*, (Cir. Ct. DuPage Cnty. Jan. 6, 2022) to represent a certified class of exam takers who used virtual exam proctoring software, in alleged violation of the Illinois Biometric Information Privacy Act,
60. *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, (Cir. Ct. Will Cnty. Jan. 18, 2022) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
61. *Goldstein et al. v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard-brand antiperspirants that were allegedly contaminated with benzene,
62. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of who laundry card purchasers who were allegedly subjected to deceptive practices by being denied cash refunds,
63. *Lewis v. Trident Manufacturing, Inc.*, (Cir. Ct. Kane Cnty. Mar. 16, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
64. *Croft v. Spinx Games Limited, et al.*, (W.D. Wash. Mar. 31, 2022) to represent a certified class of Washington residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Washington law,
65. *Fischer v. Instant Checkmate LLC*, (N.D. Ill. Mar. 31, 2022) to represent a certified class of Illinois residents whose identities were allegedly used without their consent in alleged violation of the Illinois Right of Publicity Act,
66. *Rivera v. Google LLC*, (Cir. Ct. Cook Cnty. Apr. 25, 2022) to represent a certified class of Illinois residents who appeared in a photograph in Google Photos, in alleged violation of the Illinois Biometric Information Privacy Act,

67. *Loftus v. Outside Integrated Media, LLC*, (E.D. Mich. May 5, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,
69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,
70. *Armstead v. VGW Malta Ltd. et al.* (Cir. Ct. Henderson Cnty. Oct. 3, 2022) to present a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
71. *Cruz v. The Connor Group, A Real Estate Investment Firm, LLC*, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,
73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
76. *Ambrose v. Boston Globe Media Partners, LLC* (D. Mass. May 25, 2023) to represent a nationwide class of newspaper subscribers who were also Facebook users under the Video Privacy Protection Act,
77. *In re: Apple Data Privacy Litigation*, (N.D. Cal. July 5, 2023) to represent a putative nationwide class of all persons who turned off permissions for data tracking and whose mobile app activity was still tracked on iPhone mobile devices,
78. *Young v. Military Advantage, Inc. d/b/a Military.com* (Cir. Ct. DuPage Cnty. July 26, 2023) to represent a nationwide class of website subscribers who were also Facebook users under the Video Privacy Protection Act,
79. *Whiting v. Yellow Social Interactive Ltd.* (Cir. Ct. Henderson Cnty. Aug. 15, 2023) to represent a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
80. *Kotila v. Charter Financial Publishing Network, Inc.* (W.D. Mich. Feb. 21, 2024) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

81. *Schreiber v. Mayo Foundation for Medical Education and Research* (W.D. Mich. Feb. 21, 2024) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
82. *Norcross v. Tishman Speyer Properties, et al.* (S.D.N.Y. May 17, 2024) to represent a class of online ticket purchasers under New York Arts & Cultural Affairs Law § 25.07(4).

SCOTT A. BORSOR

Mr. Borsor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Borsor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Borsor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Borsor served as lead trial counsel, the jury returned a verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Borsor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Borsor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Borsor's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Borsor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Borsor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Borsor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

Representative Cases

Mr. Borsor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Borsor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Borsor's practice:

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial, Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

L. TIMOTHY FISHER

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind. In 2019, Mr. Fisher served as trial counsel with Mr. Bursor in *Perez. v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

Representative Cases

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

In re Cellphone Termination Fee Cases - Handset Locking Actions (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

In re Cellphone Termination Fee Cases - Early Termination Fee Cases (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

Selected Published Decisions

Melgar v. Zicam LLC, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff's expert witnesses).

Salazar v. Honest Tea, Inc., 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

Dei Rossi v. Whirlpool Corp., 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

Bayol v. Zipcar, Inc., 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

Forcellati v. Hyland's, Inc., 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

Bayol v. Zipcar, Inc., 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).

Forcellati v. Hyland's Inc., 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

Hendricks v. StarKist Co., 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

Dei Rossi v. Whirlpool Corp., 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

Forcellati v. Hyland's Inc., 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

Clerkin v. MyLife.com, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants' motion to dismiss in case alleging false and misleading advertising by a social networking company).

In re Cellphone Termination Fee Cases, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

Gatton v. T-Mobile USA, Inc., 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

Selected Class Settlements

Melgar v. Zicam (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

Gastelum v. Frontier California Inc. (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late fees.

West v. California Service Bureau, Inc. (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

Gregorio v. Premier Nutrition Corp. (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

Morris v. SolarCity Corp. (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

Retta v. Millennium Products, Inc. (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

Forcellati v. Hyland's (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

Dei Rossi v. Whirlpool (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

In Re NVIDIA GTX 970 Graphics Chip Litigation (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and

misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co. (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

In re Zakskorn v. American Honda Motor Co. Honda (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

Correa v. Sensa Products, LLC (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

In re Pacific Bell Late Fee Litigation (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

In re Haier Freezer Consumer Litigation (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

Guyette v. Viacom, Inc. (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

JOSEPH I. MARCHESE

Joseph I. Marchese is a Partner with Bursor & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, unlawful and junk fees, data breach claims, and violations of the Telephone Consumer Protection Act and Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York,

and the Eastern District of Michigan, as well as the United States Courts of Appeals for the First, Second and Sixth Circuits.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

Selected Published Decisions:

Farwell v. Google, LLC, 595 F. Supp. 3d 702 (C.D. Ill. Mar. 31, 2022), denying defendant's motion to dismiss BIPA claims brought on behalf of Illinois students using Google's Workspace for Education platform.

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Boelter v. Hearst Communications, Inc., 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

In re Michaels Stores Pin Pad Litigation, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer's motion to dismiss its customers' state law consumer protection and privacy claims in data breach putative class action.

Selected Class Settlements:

Schreiber v. Mayo Foundation, Case No. 22-cv-0188-HYJ-RSK (W.D. Mich. 2024) – final approval granted for \$52.5 million class settlement to resolve claims of periodical subscribers for alleged statutory privacy violations.

Edwards v. Mid-Hudson Valley Federal Credit Union, Case No. 22-cv-00562-TJM-CFH (N.D.N.Y. 2023) – final approval granted for \$2.2 million class settlement to resolve claims alleging unlawfully charged overdraft fees on accounts with sufficient funds.

Benbow v. SmileDirectClub, LLC, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

Marquez v. Google LLC, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing on the Google Photos platform.

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

In re Scotts EZ Seed Litigation, Case No. 12-cv-4727-VB (S.D.N.Y. 2018) – final approval granted for \$47 million class settlement to resolve false advertising claims of purchasers of combination grass seed product.

In Re: Blue Buffalo Marketing And Sales Practices Litigation, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

Rodriguez v. Citimortgage, Inc., Case No. 11-cv-4718-PGG (S.D.N.Y. 2015) – final approval granted for \$38 million class settlement to resolve claims of military servicemembers for alleged foreclosure violations of the Servicemembers Civil Relief Act, where each class member was entitled to \$116,785 plus lost equity in the foreclosed property and interest thereon.

O'Brien v. LG Electronics USA, Inc., et al., Case No. 10-cv-3733-DMC (D.N.J. 2011) – final approval granted for \$23 million class settlement to resolve claims of Energy Star refrigerator purchasers for alleged false advertising of the appliances' Energy Star qualification.

SARAH N. WESTCOT

Sarah N. Westcot is the Managing Partner of Bursor & Fisher's Miami office. She focuses her practice on consumer class actions, complex business litigation, and mass torts.

She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience. Sarah served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Sarah also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida). She also serves on the Plaintiffs' Executive Committee in *In re Apple Inc. App Store Simulated Casino-Style Games Litigation*, MDL No. 2985 (N.D. Cal.) and *In Re: Google Play Store Simulated Casino-Style Games Litigation*, MDL No. 3001 (N.D. Cal.).

Sarah is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the United States District Courts for the Southern and Middle Districts of Florida, and the bars of the United States Courts of Appeals for the Second, Eighth, and Ninth Circuits.

Sarah received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, she was a law clerk with the Cook County State's Attorney's Office in Chicago and the Santa Clara County District Attorney's Office in San Jose, CA, gaining early trial experience in both roles. She graduated with honors from the University of Florida in 2005.

Sarah is a member of The National Trial Lawyers Top 100 Civil Plaintiff Lawyers, and was selected to The National Trial Lawyers Top 40 Under 40 Civil Plaintiff Lawyers for 2022.

NEAL J. DECKANT

Neal J. Deckant is a Partner with Bursor & Fisher, P.A., where he serves as the firm's Head of Information & e-Discovery. Neal focuses his practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Neal counseled low-income homeowners facing foreclosure in East Boston.

Neal is admitted to the State Bars of California and New York, and is a member of the bars of the United States District Court for the Northern District of California, the United States District Court for the Eastern District of California, the United States District Court for the Central District of California, the United States District Court for the Southern District of California, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

Neal received his Juris Doctor from Boston University School of Law in 2011, graduating cum laude with two Dean's Awards. During law school, Neal served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two published articles about securitization reforms, both of which were cited by the New York Court of Appeals, the highest court in the state. Neal was also awarded Best Oral Argument in his moot court section, and he served as a Research Assistant for his Securities Regulation professor. Neal has also been honored as a 2014, 2015, 2016, and 2017 Super Lawyers Rising Star. In 2007, Neal graduated with Honors from Brown University with a dual major in East Asian Studies and Philosophy.

Selected Published Decisions:

Martinelli v. Johnson & Johnson, 2019 WL 1429653 (N.D. Cal. Mar. 29, 2019), granting class certification of false advertising and other claims brought by purchasers of Benecol spreads labeled with the representation "No Trans Fats."

Dzielak v. Whirlpool Corp., 2017 WL 6513347 (D.N.J. Dec. 20, 2017), granting class certification of consumer protection claims brought by purchasers of Maytag Centennial washing machines marked with the "Energy Star" logo.

Duran v. Obesity Research Institute, LLC, 204 Cal. Rptr. 3d 896 (Cal. Ct. App. 2016), reversing and remanding final approval of a class action settlement on appeal, regarding allegedly mislabeled dietary supplements, in connection with a meritorious objection.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

Selected Class Settlements:

In Re NVIDIA GTX 970 Graphics Chip Litigation, Case No. 15-cv-00760-PJH (N.D. Cal. Dec. 7, 2016) – final approval granted for \$4.5 million class action settlement to resolve claims that a computer graphics card was allegedly sold with false and misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co., 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016) – final approval granted for \$12 million class action settlement to resolve claims that 5-ounce cans of tuna were allegedly underfilled.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – class action claims resolved for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy, following claims that its olive oil was allegedly sold with false and misleading representations.

Selected Publications:

Neal Deckant, *X. Reforms of Collateralized Debt Obligations: Enforcement, Accounting and Regulatory Proposals*, 29 Rev. Banking & Fin. L. 79 (2009) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)).

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at *1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

YITZCHAK KOPEL

Yitzchak Kopel is a Partner with Bursor & Fisher, P.A. Yitz focuses his practice on consumer class actions and complex business litigation. He has represented corporate and individual clients before federal and state courts, as well as in arbitration proceedings.

Yitz has substantial experience in successfully litigating and resolving consumer class actions involving claims of consumer fraud, data breaches, and violations of the telephone consumer protection act. Since 2014, Yitz has obtained class certification on behalf of his clients five times, three of which were certified as nationwide class actions. Bursor & Fisher was appointed as class counsel to represent the certified classes in each of the cases.

Yitz is admitted to the State Bars of New York and New Jersey, the bar of the United States Court of Appeals for the Second, Eleventh, and Ninth Circuits, and the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, Eastern District of Missouri, Eastern District of Wisconsin, Northern District of Illinois, and District of New Jersey.

Yitz received his Juris Doctorate from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Yitz served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Yitz graduated *cum laude* from Queens College with a B.A. in Accounting.

Selected Published Decisions:

Bassaw v. United Industries Corp., 482 F.Supp.3d 80, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

Poppiti v. United Industries Corp., 2020 WL 1433642 (E.D. Mo. Mar. 24, 2020), denying motion to dismiss claims in putative class action concerning citronella candles.

Bakov v. Consolidated World Travel, Inc., 2019 WL 6699188 (N.D. Ill. Dec. 9, 2019), granting summary judgment on behalf of certified class in robocall class action.

Krumm v. Kittrich Corp., 2019 WL 6876059 (E.D. Mo. Dec. 17, 2019), denying motion to dismiss claims in putative class action concerning mosquito repellent.

Crespo v. S.C. Johnson & Son, Inc., 394 F. Supp. 3d 260 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding Raid insect fogger.

Bakov v. Consolidated World Travel, Inc., 2019 WL 1294659 (N.D. Ill. Mar. 21, 2019), certifying a class of persons who received robocalls in the state of Illinois.

Bourbia v. S.C. Johnson & Son, Inc., 375 F. Supp. 3d 454 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding mosquito repellent.

Hart v. BHH, LLC, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellers.

Hart v. BHH, LLC, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellers.

Penrose v. Buffalo Trace Distillery, Inc., 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

West v. California Service Bureau, Inc., 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of "wrong-number" robocall recipients.

Hart v. BHH, LLC, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellers.

Browning v. Unilever United States, Inc., 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

Brenner v. Procter & Gamble Co., 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

Hewlett v. Consolidated World Travel, Inc., 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer's motion to dismiss TCPA claims in putative class action.

Bailey v. KIND, LLC, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

Hart v. BHH, LLC, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellers.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients' motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Brady v. Basic Research, L.L.C., 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers' motion to dismiss its purchasers' allegations for breach of express warranty in putative class action.

Ward v. TheLadders.com, Inc., 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board's motion to dismiss its subscribers' allegations of consumer protection law violations in putative class action.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

Selected Class Settlements:

Hart v. BHH, LLC, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellers.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014), resolving class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

West v. California Service Bureau, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

PHILIP L. FRAIETTA

Philip L. Fraietta is a Partner with Bursor & Fisher, P.A. Phil focuses his practice on data privacy, complex business litigation, consumer class actions, and employment law disputes. Phil has been named a "Rising Star" in the New York Metro Area by Super Lawyers® every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act, the Illinois Biometric Information Privacy Act, and Right of Publicity statutes. Since 2016, Phil has recovered over \$100 million for class members in privacy class action settlements. In addition to privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York, New Jersey, Illinois, Michigan, and California, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the Northern District of Illinois, the Central District of Illinois, and the United States Court of Appeals for the Second, Third, and Ninth Circuits. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

Selected Published Decisions:

Garner v. Me-TV National Limited Partnership, 132 F.4th 1022 (7th Cir. Mar. 28, 2025), reversing grant of motion to dismiss under federal Video Privacy Protection Act and specifying standard for being a “consumer” under the Act.

Jancik v. WebMD LLC, 2025 WL 560705 (N.D. Ga. Feb 20, 2025), certifying the first ever contested class under the federal Video Privacy Protection Act.

Fischer v. Instant Checkmate LLC, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022), certifying class of Illinois residents for alleged violations of Illinois’ Right of Publicity Act by background reporting website.

Kolebuck-Utz v. Whitepages, Inc., 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant’s motion to dismiss for alleged violations of Ohio’s Right to Publicity Law.

Porter v. NBTY, Inc., 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer’s motion for summary judgment on consumers’ allegations of false advertising relating to whey protein content.

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff’s motion for partial summary judgment on state privacy law violations in putative class action.

Selected Class Settlements:

Ramos v. ZoomInfo Technologies, LLC, Case No. 21-cv-02032-CPK (N.D. Ill. 2024) – final approval granted for \$29.5 million class settlement to resolve claims for alleged statutory right of publicity violations.

Awad v. AMC Entertainment Holdings, Inc., Index No. 607322/2024 (Sup. Ct. Nassau Cnty. 2024) – final approval granted for \$12.3 million class settlement to resolve claims for alleged New York ticket fee claims.

Schreiber v. Mayo Foundation for Medical Education and Research, Case No. 22-cv-00188-HYJ (W.D. Mich. 2024) – final approval granted for \$52.5 million class settlement to resolve claims of newsletter subscribers for alleged statutory privacy violations.

Fischer v. Instant Checkmate LLC, Case No. 19-cv-04892-MSS (N.D. Ill. 2024) – final approval granted for \$10.1 million class settlement to resolve claims for alleged statutory right of publicity violations.

Young v. Military Advantage, Inc., Case No. 2023LA000535 (Cir. Ct. DuPage Cnty. 2023) – final approval granted for \$7.35 million class settlement to resolve claims of newsletter subscribers for alleged federal Video Privacy Protection Act claims.

Rivera v. Google LLC, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing in photos on the Google Photos platform.

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Ruppel v. Consumers Union of United States, Inc., Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Benbow v. SmileDirectClub, LLC, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2021) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

ALEC M. LESLIE

Alec Leslie is a Partner with Bursor & Fisher, P.A. He focuses his practice on consumer class actions, employment law disputes, and complex business litigation.

Alec is admitted to the State Bar of New York and is a member of the bar of the United States District Courts for the Southern and Eastern Districts of New York. Alec was a Summer Associate with Bursor & Fisher prior to joining the firm.

Alec received his Juris Doctor from Brooklyn Law School in 2016, graduating *cum laude*. During law school, Alec served as an Articles Editor for Brooklyn Law Review. In addition, Alec served as an intern to the Honorable James C. Francis for the Southern District of New York and the Honorable Vincent Del Giudice, Supreme Court, Kings County. Alec graduated from the University of Colorado with a B.A. in Philosophy in 2012.

Selected Class Settlements:

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for class settlement to resolve claims of protein shake purchasers for alleged

false advertising.

Wright v. Southern New Hampshire Univ., Case No. 1:20-cv-00609-LM (D.N.H. 2021) – final approval granted for class settlement to resolve claims over COVID-19 tuition and fee refunds to students.

Mendoza et al. v. United Industries Corp., Case No. 21PH-CV00670 (Phelps Cnty. Mo. 2021) – final approval granted for class settlement to resolve false advertising claims on insect repellent products.

Kaupelis v. Harbor Freight Tools USA, Inc., Case No. 8:19-cv-01203-JVS-DFM (C.D. Cal. 2021) – final approval granted for class settlement involving allegedly defective and dangerous chainsaws.

Rocchio v. Rutgers Univ., Case No. MID-L-003039-20 (Middlesex Cnty. N.J. 2021) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

Malone v. Western Digital Corporation, Case No. 5:20-cv-03584-NC (N.D. Cal.) – final approval granted for class settlement to resolve false advertising claims on hard drive products.

Frederick et al. v. ExamSoft Worldwide, Inc., Case No. 2021L001116 (DuPage Cnty. Ill. 2021) – final approval granted for class settlement to resolve claims over alleged BIPA violations with respect to exam proctoring software.

D'Amario et al. v. Univ. of Tampa, Case No. 7:20-cv-07344 (S.D.N.Y. 2022) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

Olin et al. v. Meta Platforms, Inc., Case No. 3:18-cv-01881-RS (N.D. Cal. 2022) – final approval granted for class settlement involving invasion of privacy claims.

Croft v. SpinX Games et al., Case No. 2:20-cv-01310-RSM (W.D. Wash. 2022) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Armstead v. VGW Malta Ltd. et al., Case No. 22-CI-00553 (Henderson Cnty. Ky. 2023) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Barbieri v. Tailored Brands, Inc., Index No. 616696/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Metzner et al. v. Quinnipiac Univ., Case No. 3:20-cv-00784 (D. Conn.) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

In re GE/Canon Data Breach, Case No. 1:20-cv-02903 (S.D.N.Y.) – final approval granted for class settlement to resolve data breach claims.

Davis v. Urban Outfitters, Inc., Index No. 612162/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Armstead v. VGW Malta LTD et al., Civil Action No. 22-CI-00553 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Casler et al. v. Mclane Company, Inc. et al., Index No. 616432/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Wyland v. Woopla, Inc., Civil Action No. 2023-CI-00356 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

Graziano et al. v. Lego Systems, Inc., Index No. 611615/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

Lipsky et al. v. American Behavioral Research Institute, LLC, Case No. 50-2023-CA-011526-XXXX-MB (Palm Beach Cnty. Fl.) – final approval granted to resolve allegedly deceptive automatic renewal and product efficacy claims.

Whiting v. Yellow Social Interactive Ltd., Civil Action No. 2023-CI-00358 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

STEPHEN BECK

Stephen is an Associate with Bursor & Fisher, P.A. Stephen focuses his practice on complex civil litigation and class actions.

Stephen is admitted to the State Bar of Florida and is a member of the bars of the United States District Courts for the Southern and Middle Districts of Florida, the Eastern District of Missouri, and the Northern District of Illinois.

Stephen received his Juris Doctor from the University of Miami School of Law in 2018. During law school, Stephen received an Honors distinction in the Litigation Skills Program and was awarded the Honorable Theodore Klein Memorial Scholarship for excellence in written and oral advocacy. Stephen also received the CALI Award in Legislation for earning the highest grade on the final examination. Stephen graduated from the University of North Florida with a B.A. in Philosophy in 2015.

STEFAN BOGDANOVICH

Stefan Bogdanovich is an Associate with Bursor & Fisher, P.A. Stefan litigates complex civil and class actions typically involving privacy, intellectual property, entertainment, and false advertising law.

Prior to working at Bursor & Fisher, Stefan practiced at two national law firms in Los Angeles. He helped represent various companies in false advertising and IP infringement cases, media companies in defamation cases, and motion picture producers in royalty disputes. He also advised corporations and public figures on complying with various privacy and advertising laws and regulations.

Stefan is admitted to the State Bar of California and all of the California Federal District Courts. He is also a Certified Information Privacy Professional.

Stefan received his Juris Doctor from the University of Southern California Gould School of Law in 2018, where he was a member of the Hale Moot Court Honors Program and the Trial Team. He received the highest grade in his class in three subjects, including First Amendment Law.

MAX S. ROBERTS

Max Roberts is an Associate in Bursor & Fisher's New York office. Max focuses his practice on class actions concerning data privacy and consumer protection. Max was a Summer Associate with Bursor & Fisher prior to joining the firm and is now Co-Chair of the firm's Appellate Practice Group.

Since 2023, Max has been named "Rising Star" in the New York Metro Area by Super Lawyers®.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham's Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled [*Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis*](#). In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

Selected Published Decisions:

Huertas v. Bayer US LLC, 120 F.4th 1169 (3d Cir. 2024), reversing district court and holding plaintiffs had alleged an injury-in-fact sufficient for Article III standing. Max personally argued the appeal before the Third Circuit, which can be listened to [here](#).

Jackson v. Amazon.com, Inc., 65 F.4th 1093 (9th Cir. 2023), affirming district court's denial of motion to compel arbitration. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Javier v. Assurance IQ, LLC, 2022 WL 1744107 (9th Cir. May 31, 2022), reversing district court and holding that Section 631 of the California Invasion of Privacy Act requires prior consent to

wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Mora v. J&M Plating, Inc., 213 N.E.3d 942 (Ill. App. Ct. 2d Dist. 2022), reversing circuit court and holding that Section 15(a) of Illinois' Biometric Information Privacy Act requires an entity to establish a retention and deletion schedule for biometric data at the first moment of possession. Max personally argued the appeal before the Second District, which can be listened to [here](#).

Newman v. Bayer Corp., --- F.R.D. ---, 2025 WL 856225 (S.D.N.Y. Mar. 19, 2025), certifying class of New York purchases of "One A Day" gummy multivitamins.

Shah v. Fandom, Inc., 754 F. Supp. 3d 924 (N.D. Cal. 2024), denying motion to dismiss alleged violations of California pen register statute.

Yockey v. Salesforce, Inc., 745 F. Supp. 3d 945 (N.D. Cal. 2024), denying motion dismiss alleged violations of California and Pennsylvania wiretapping statutes.

Gladstone v. Amazon Web Services, Inc., 739 F. Supp. 3d 846 (W.D. Wash. 2024), denying motion to dismiss alleged violations of California wiretapping statute.

Rancourt v. Meredith Corp., 2024 WL 381344 (D. Mass. Jan. 11, 2024), denying motion to dismiss alleged violations of federal Video Privacy Protection Act, and finding personal jurisdiction over operator of mobile application.

Saunders v. Hearst Television, Inc., 711 F. Supp. 3d 24 (D. Mass. 2024), denying motion to dismiss alleged violations of federal Video Privacy Protection Act.

Cristostomo v. New Balance Athletics, Inc., 647 F. Supp. 3d 1 (D. Mass. 2022), denying motion to dismiss and motion to strike class allegations in case involving sneakers marketed as "Made in the USA."

Selected Class Settlements:

Sholopa v. Turk Hava Yollari A.O. (d/b/a Turkish Airlines), Case No. 1:20-cv-3294-ALC (S.D.N.Y. 2023) – final approval granted for \$14.1 million class settlement to resolve claims of passengers whose flights with Turkish Airlines were cancelled due to COVID-19 and who did not receive refunds.

Payero v. Mattress Firm, Inc., Case No. 7:21-cv-3061-VB (S.D.N.Y. 2023) – final approval granted for \$4.9 million class settlement to resolve claims of consumers who purchased allegedly defective bed frames.

Miranda v. Golden Entertainment (NV), Inc., Case No. 2:20-cv-534-AT (D. Nev. 2021) – final approval granted for class settlement valued at over \$4.5 million to resolve claims of customers and employees of casino company stemming from data breach.

Malone v. Western Digital Corp., Case No. 5:20-cv-3584-NC (N.D. Cal. 2021) – final approval granted for class settlement valued at \$5.7 million to resolve claims of hard drive purchasers for alleged false advertised.

Frederick v. ExamSoft Worldwide, Inc., Case No. 2021-L-001116 (18th Judicial Circuit Court DuPage County, Illinois 2021) – final approval granted for \$2.25 million class settlement to resolve claims of Illinois students for alleged violations of the Illinois Biometric Information Privacy Act.

Bar Admissions

- New York State
- Southern District of New York
- Eastern District of New York
- Northern District of New York
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- District of Colorado
- First Circuit Court of Appeals
- Second Circuit Court of Appeals
- Third Circuit Court of Appeals
- Seventh Circuit Court of Appeals
- Ninth Circuit Court of Appeals

JULIA K. VENDITTI

Julia K. Venditti is an Associate with Bursor & Fisher, P.A. Julia focuses her practice on complex civil litigation and class actions. Julia was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julia is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

JULIAN DIAMOND

Julian Diamond is an Associate with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

MATTHEW GIRARDI

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving privacy violations, illegal gambling, financial misconduct, and false advertising. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt is admitted to the State Bar of New York, and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Eastern District of Michigan, the Western District of Michigan, the First Circuit Court of Appeals, and the Ninth Circuit Court of Appeals.

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division prior to law school.

Selected Class Settlements:

Armstead v. VGW Malta Ltd. et al., Case No. 22-CI-00553 (Henderson Cnty. Ky. 2023) – final approval granted for \$11.75 million class settlement involving allegedly deceptive and/or illegal gambling practices.

Edwards v. Mid-Hudson Valley Federal Credit Union, Case No. 22-cv-00562-TJM-CFH (N.D.N.Y. 2023) – final approval granted for \$2.2 million class settlement to resolve claims that an upstate New York credit union was unlawfully charging overdraft fees on accounts with sufficient funds.

Fischer, et al. v. Instant Checkmate LLC, et al., No. 19-cv-04892 (N.D. Ill. 2024) – final approval granted for state-by-state non-reversionary cash settlements involving alleged violations of right of publicity statutes totaling in excess of \$10.1 million.

Wyland v. Woopla, Inc., Civil Action No. 2023-CI-00356 (Henderson Cir. Ct. Ky. 2023) – final approval granted for \$835,000 class settlement involving allegedly deceptive and/or illegal gambling practices.

Whiting v. Yellow Social Interactive Ltd., Civil Action No. 2023-CI-00358 (Henderson Cir. Ct. Ky. 2023) – final approval granted for \$1.32 million class settlement involving allegedly deceptive and/or illegal gambling practices.

JENNA GAVENMAN

Jenna Gavenman is an Associate with Bursor & Fisher, P.A. Jenna focuses her practice on complex civil litigation and consumer class actions. Jenna was a Summer Associate and a part-time intern with Bursor & Fisher prior to joining the firm as a full-time Associate in September 2022.

Jenna is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Jenna received her Juris Doctor in 2022 from the University of California, Hastings College of the Law (now named UC Law SF). During law school, she was awarded an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. Jenna also participated in both the Medical Legal Partnership for Seniors (MLPS) and the Lawyering for Children Practicum at Legal Services for Children—two of UC Hastings’s nationally renowned clinical programs. Jenna was awarded the Clinic Award for Outstanding Performance in MLPS for her contributions to the clinic. In addition, Jenna volunteered with her law school’s Legal Advice and Referral Clinic and as a LevelBar Mentor.

In 2018, Jenna graduated *cum laude* from Villanova University with a B.A. in Sociology and Spanish (double major). Jenna was a Division I athlete, competing on the Villanova Women’s Water Polo varsity team for four consecutive years.

EMILY HORNE

Emily Horne is an Associate with Bursor & Fisher, P.A. Emily focuses her practice on complex civil litigation and consumer class actions. Emily was a Summer Associate with Bursor & Fisher prior to joining the firm.

Emily is admitted to the State Bar of California.

Emily received her Juris Doctor from the University of California, Hastings College of the Law in 2022 (now UC, Law SF). During law school, Emily served as Editor-in-Chief for the UC Hastings Communications and Entertainment Law Journal, and she competed on the Moot Court team. Emily also served as a judicial extern in the Northern District of California and as a Teaching Assistant for Legal Writing & Research. In 2015, Emily graduated from Scripps College with a B.A. in Sociology.

IRA ROSENBERG

Ira Rosenberg is an Associate with Bursor & Fisher, P.A. Ira focuses his practice on complex civil litigation and class actions.

Ira received his Juris Doctor in 2022 from Columbia Law School. During law school, Ira served as a Student Honors Legal Intern with Division of Enforcement at the U.S. Securities and Exchange Commission. Ira also interned during law school in the Criminal Division at the United States Attorney's Office for the Southern District of New York and with the Investor Protection Bureau at the Office of the New York State Attorney General. Ira graduated in 2018 from Beth Medrash Govoha with a B.A. in Talmudic Studies.

LUKE SIRONSKI-WHITE

Luke Sironski-White is an Associate with Bursor & Fisher, P.A., focusing on complex civil litigation and consumer class actions. Luke joined the firm as a full-time Associate in August 2022.

Luke is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Luke received his Juris Doctor in 2022 from the University of California, Berkeley School of Law. During law school, Luke was on the board of the Consumer Advocacy and Protection Society (CAPS), edited for the Berkeley Journal of Employment and Labor Law, and volunteered with the Prisoner Advocacy Network.

In 2017, Luke graduated from the University of Chicago with a B.A. in Anthropology. Before entering the field of law Luke was a professional photographer and filmmaker.

INES DIAZ

Ines Diaz is an Associate with Bursor & Fisher, P.A. Ines focuses her practice on complex civil litigation and class actions.

Ines is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Ines received her Juris Doctor in 2023 from the University of California, Berkeley School of Law. During law school, Ines served as an Executive Editor of the California Law Review. She also served as an intern with the East Bay Community Law Center's Immigration Clinic and as a Fellow of the Berkeley Law Academic Skills Program. Additionally, Ines served as an instructor with the University of California, Berkeley Extension, Legal Studies Global Access Program where she taught legal writing to international law students. In 2021, Ines was selected for a summer externship at the California Supreme Court where she served as a judicial extern for the Honorable Mariano-Florentino Cuéllar.

CAROLINE C. DONOVAN

Caroline C. Donovan is an Associate with Bursor & Fisher, P.A. Caroline focuses her practice on complex civil litigation, data protection, mass arbitration, and class actions. Caroline interned with Bursor & Fisher during her third year of law school before joining full time in Fall 2023.

Caroline is admitted to the State Bar of New York.

Caroline received her Juris Doctor in 2023 from Brooklyn Law School. During law school, Caroline was a member of the Moot Court Honor Society Trial Division, where she was chosen to serve as a National Team Member. Caroline competed and coached in numerous competitions across the country, and placed second at regionals in AAJ's national competition in both her second and third year of law school. Caroline was also the President of the Art Law Association, and the Treasurer of the Labor and Employment Law Association.

During law school, Caroline was a judicial intern for Judge Kenneth W. Chu of the National Labor Relations Board. She also interned at the United States Attorney's Office in the Eastern District of New York, as well as a securities class action firm.

JOSHUA B. GLATT

Joshua Glatt is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation and consumer class actions. Joshua was a Summer Associate with Bursor & Fisher prior to joining the firm as an Associate.

Joshua is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Joshua earned his Juris Doctor from the University of California College of the Law, San Francisco (formerly U.C. Hastings). While there, he received a CALI Award for earning the highest grade in Constitutional Law II and served on the executive boards of the Jewish Law Students Association and the American Constitution Society. Prior to law school, Joshua graduated *summa cum laude* from the Walter Cronkite School of Journalism and Mass Communication at Arizona State University in 2016 and earned a master's degree from the University of Southern California in 2018.

JOSHUA R. WILNER

Joshua Wilner is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation, data privacy, consumer protection, and class actions. Joshua was a Summer Associate at Bursor & Fisher prior to joining the firm full time in Fall 2023.

Joshua is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Joshua received his Juris Doctor in 2023 from Berkeley Law. During law school, he received the American Jurisprudence Award for Constitutional Law.

During law school, Joshua served on the board of the Berkeley Journal of Employment and Labor Law. Joshua also interned at Disability Rights California, Legal Aid at Work, and a private firm that worked closely with the ACLU of Northern California to enforce the California Racial Justice Act. In 2022 and 2023, Joshua worked as a research assistant for Professor Abbye Atkinson.

VICTORIA ZHOU

Victoria Zhou is an Associate in Bursor & Fisher's New York office. Victoria focuses her practice on class actions concerning data privacy and consumer protection.

Victoria is admitted to the State Bar of New York.

Victoria received her Juris Doctor from Fordham Law School in 2023. During law school, Victoria served as an Associate Editor of the Moot Court Board and competed in multiple mock trial competitions as a member of the Brendan Moore Trial Advocates. In addition, Victoria served as a judicial extern to Chief Judge Mark A. Barnett of the United States Court of International Trade. In 2019, Victoria graduated *magna cum laude* from Fei Tian College with a B.F.A. in Classical Dance.

KYLE D. GORDON

Kyle Gordon is an Associate with Bursor & Fisher, P.A. Kyle focuses his practice on class actions concerning data privacy and consumer protection. Kyle was a Summer Associate with Bursor & Fisher prior to joining the firm.

Kyle is admitted to the State Bar of New York.

Kyle received his Juris Doctor from Columbia Law School in 2023, where he was a Harlan Fiske Stone Scholar. During law school, Kyle was a Staff Editor for the Columbia Science and Technology Law Review. In 2020, Kyle graduated *summa cum laude* from New York University with a B.A. in Politics and became a member of Phi Beta Kappa. Prior to law school, Kyle interned in the Clerk's Office of the United States District Court for the District of Columbia.

ELEANOR R. GRASSO

Eleanor Grasso is an Associate with Bursor & Fisher, P.A. Eleanor focuses her practice on complex civil litigation, including data privacy and consumer protection class actions.

Eleanor is admitted to the State Bars of New York and Florida, and is a member of the bars of the United States District Courts for the Southern District of New York and Eastern District of New York.

Eleanor earned her Juris Doctor from Fordham University School of Law. During law school, Eleanor was a member of the Fordham Journal of Intellectual Property, Media & Entertainment Law, serving as Symposium Editor for Volume XXXIV. Eleanor was also a member of the Brendan Moore Trial Advocacy Team, served as a Research Assistant, and was a member of the Board of Student Advisors.

Throughout her time in law school, Eleanor interned for the Office of the Public Defender for the Sixth Judicial Circuit of Florida in the Misdemeanor Unit, the Office of the Federal Public Defender for the Middle District of Tennessee in the Capital Habeas Unit, the ACLU of Florida, and for the Honorable Kiyoo A. Matsumoto in the United States District Court for the Eastern District of New York. Eleanor was a Summer Associate with Bursor & Fisher and also interned part-time during her third year of law school.

Eleanor earned her Bachelors from the University of Florida, with a double-major in Criminology & Law and Political Science and a minor in French & Francophone studies.

RYAN B. MARTIN

Ryan Martin is an Associate with Bursor & Fisher, P.A. Ryan focuses his practice on complex civil litigation and consumer class actions. He was a Summer Associate and part-time law clerk with Bursor & Fisher prior to joining the firm as a full time Associate in August 2024.

Ryan is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

He earned his Juris Doctor from the University of California College of the Law, San Francisco (formerly U.C. Hastings), graduating *Cum Laude* with a Concentration in Environmental Law and as a member of the Honors Society. While there, he was a Senior Production Editor of the *U.C. Law Journal*, was President of the Hastings Environmental Law Association, and was a Torts Teaching Fellow.

Prior to law school, Ryan graduated from the W.A. Franke College of Business at Northern Arizona University with a Bachelors of Science in Hotel and Restaurant Management and a minor in Business. Ryan also studied Sustainable Business and Hotel Management at the Internationale Hochschule of Applied Sciences in Bad Honnef Germany and is a certified yoga instructor.

LOGAN HAGERTY

Logan Hagerty is an Associate with Bursor & Fisher, P.A. Logan is admitted to the State Bar of New York.

Logan received his Juris Doctor from Boston College Law School in 2024, where he received a certificate in Land & Environmental Law.

During law school, Logan was President of the Environmental Law Society. In addition, Logan worked for a class action firm, a general practice firm, and interned at a Massachusetts state agency.

Logan earned his Bachelors from St. Lawrence University, where he graduated magna cum laude with a double major in History and Environmental Studies and a minor in African Studies. He is also a member of Phi Beta Kappa.

KAREN VALENZUELA

Karen Valenzuela is an Associate with Bursor & Fisher, P.A. Karen focuses her practice on complex civil litigation and class actions. Karen was a Summer Associate and a part-time intern with Bursor & Fisher prior to joining the firm as a full-time Associate.

Karen is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Karen received her Juris Doctor in 2024 from the University of California, Berkeley School of Law. During law school, Karen was part of the Consumer Protection Public Policy Order, and interned for the Los Angeles County Public Defender's Office. Karen also participated in the International Human Rights Law Clinic, La Alianza Workers' and Tenants' Rights Clinic, and the Death Penalty Clinic.

Prior to law school, Karen graduated from the University of California, Berkeley with a B.A. in Gender and Women's Studies and a minor in Global Poverty and Practice.

EXHIBIT 4



SMITH KRIVOSHEY, PC

166 GEARY STREET
SAN FRANCISCO, CA 94108

867 BOYLSTON STREET
BOSTON, MA 02116

FIRM RESUME

The attorneys of Smith Krivoshey, PC have decades of experience litigating complex, record-breaking cases to trial and have secured hundreds of millions in class recoveries in the process. They have secured well publicized trial victories, verdicts, and settlements on behalf of both plaintiffs and defendants. With offices in San Francisco and Boston, they run a busy class action practice spanning the country, in both state and federal courts.

The founders of Smith Krivoshey have never lost a trial, having won every case tried to verdict. In 2019, Mr. Krivoshey secured a \$267 million class action verdict in *Perez v. Rash Curtis & Associates* after a jury trial in the Northern District of California, which was the 12th largest verdict in the United States in all practice areas that year, and the 3rd highest class action verdict. In 2021, the case settled for \$75.6 million while on appeal, still the largest consumer class action settlement in the history of the Telephone Consumer Protection Act. Mr. Smith has trial experience on both sides of the aisle. In a highly publicized trial against a Sacramento subsidiary of Entercom Communications Corp., Mr. Smith was part of a trial team that secured a successful outcome for his client (a radio station manager) despite his client's employer being hit with a \$16.5 million jury award. With a proven trial track record, the founders of Smith Krivoshey have also secured numerous favorable settlements on the eve of trial.

Judges throughout the country have commended Smith Krivoshey and its attorneys on their experience and qualifications. For instance, in appointing Smith Krivoshey as Class Counsel in July 2024 in a case against the University of Southern California, Judge Kenneth Freeman noted that "the experience of [Smith Krivoshey] in representing consumers in class actions is extensive."

Prior to forming Smith Krivoshey, Mr. Krivoshey and Mr. Smith were partners at Bursor & Fisher, P.A., a prestigious class action law firm, for over a decade. The attorneys at Smith Krivoshey have also represented some of the largest Fortune 500 companies, public entities, and privately held companies in the world working at firms including Folger Levin & Kahn, Crowell & Morning, Dentons, and Littler Mendelson.

Mr. Smith and Mr. Krivoshey have served as lead or co-lead class counsel in dozens of class actions throughout the country. In the process, they have obtained hundreds of millions in recoveries for class members, including settlements of \$83.6 million in a class case against *Six Flags*, \$75.6 million in *Perez* (paid out by the Indian Harbor Insurance Company, a defendant in a spin-off bad faith insurance case), \$74 million in a class case against BMW, \$40 million in a class case against Harbor Freight Tools, \$35 million in a class case against Western Dental, \$20.4 million in a class case against Alterra Mountain Company, and many more millions in class settlements against Turkish Airlines, Lufthansa, Kimberly-Clark, Millennium Products, National Credit Adjusters, The Regents of the University of California, Jaguar Land Rover North America, Mattress Firm, Health-Ade, and others.

Most recently, in January 2025, Smith Krivoshey obtained preliminary approval of a \$30 million settlement in a TCPA class action brought against Momentum Solar. The settlement is

the biggest non-reversionary cash common fund *ever* in a pure telemarketing class action brought under the TCPA, and the biggest non-reversionary cash common fund in *any* TCPA action settled after the Supreme Court's decision in *Facebook, Inc. v. Duguid*, 592 U.S. 395 (2021), which effectively gutted the TCPA's restrictions on the use of automatic telephone dialing systems.

Smith Krivoshey is well funded and staffed to take cases the distance. The firm is efficient, and does not overbill. Its attorneys have repeatedly proven that they excel at the highest levels of civil litigation, and have the determination, skill, experience, and knowledge necessary to maximize recoveries for class members. They are passionate about what they do, and they do it well.

JOEL D. SMITH

Joel D. Smith is a founding member of Smith Krivoshey. Joel is a trial and appellate attorney who has practiced in lower court and appeals courts across the country, as well as the U.S. Supreme Court.

A no-nonsense, hardworking, and well-organized litigator, Joel has been appointed lead or co-lead counsel in numerous class actions across the country, including in cases against Facebook, major automotive manufacturers, and public entities. He is skilled at managing complex, multi-party litigation and works well with co-counsel and opposing counsel alike. For example, Joel represented four major U.S. retailers in a highly publicized case arising from an arson fire and ensuing state of emergency in Roseville, California, which settled on the eve of a trial that was expected to last several months and involve more than forty witnesses. He managed the litigation in *In re Welspun*, a case against five corporate giants arising from what one journalist described as the "biggest counterfeit story in retail history." He has obtained hundreds of millions of dollars for class members in class settlements.

Joel co-founded Smith Krivoshey after nearly twenty years of experience on both sides of the aisle at Folger Levin & Kahn, Crowell & Moring, and Bursor & Fisher. He has both represented, and litigated against, some of the largest Fortune 500 companies, public entities, and privately held companies in the United States.

A graduate of U.C. Berkeley's School of Law, Joel is admitted in Massachusetts, New Jersey, and California, as well as numerous district and circuit courts across the country. He is a member of the Massachusetts Chapter of the Federal Bar Association, where he volunteers in the FBA's Lift Up Leaders Mentorship Program and serves on the Professional Development Committee. He also is a member of the American Association for Justice, and the Public Justice Foundation.

Selected Published Decisions:

Krikbridge et al. v. The Kroger Co., Case No. 2:21-cv-00022 (S.D. Oh. Mar. 28, 2025), granting class certification in class action concerning Kroger's alleged overcharging for prescription medication.

Stoffel v. Regents of the University of California, 2024 WL 3155551 (Cal. App. June 25, 2024), reversing dismissal in class action concerning the U.C. system's transition to remote learning during the COVID-19 pandemic.

Javier v. Assurance IQ, LLC, --- Fed App'x --- 2022 WL 1744107 (9th Cir. May 31, 2022), reversing dismissal in a class action alleging surreptitious monitoring of internet communications.

Revitch v. DIRECTV, LLC, 977 F.3d 713 (9th Cir. 2020), affirming denial of motion to compel arbitration in putative class action alleging unlawful calls under the Telephone Consumer Protection Act.

Foot Locker Retail, Inc. v. Madison Bay Fair LLC, 2018 WL 6191353 (Cal. App. Nov. 28, 2018), reversing a bench trial judgement and award of costs and fees against Mr. Smith's client.

Sarkissian Mason, Inc. v. Enterprise Holdings, Inc., 572 Fed. Appx. 19 (2nd Cir. 2014), affirming summary judgment in favor of Mr. Smith's client in breach of contract and trade secrets case.

Ecological Rights Foundation v. Pacific Gas & Elec. Co., 713 F.3d 502 (9th Cir. 2013), affirming dismissal in favor of Mr. Smith's client in Clean Water Act case.

Chaisson, et al. v. University of Southern California (Cal. Sup. Ct. July 25, 2024), granting class certification of class of students that were charged late fees and appointing Smith Krivoshey as class counsel.

In re Nissan N. America, Inc. Litig., 2023 WL 2749161 (M.D. Tenn. Mar. 31, 2023), granting certification of ten state damages classes in automotive defect case.

Kaupelis v. Harbor Freight Tools USA, Inc., 2020 WL 5901116 (C.D. Cal. Sept. 23, 2020), granting class certification of consumer protection claims brought by purchasers of defective chainsaws.

Revich v. New Moosejaw, LLC, 2019 WL 5485330 (N.D. Cal. Oct. 23, 2019), highly-cited order denying in part a motion to dismiss in matter alleging internet wiretapping

Selected Class Settlements:

In re Beyond Meat, Inc. Protein Content Marketing & Sales Practices Litigation, Case No. 1:23-cv-00669 (N.D. Ill.) – final approval granted for settlement resolving claims that Beyond Meat misled customers about the protein content of its products.

George et al. v. Jaguar Land Rover N. America, LLC, Case No. 2:20-cv-17561-JSA (D.N.J.) – final approval granted for settlement providing relief for Jaguar and Land Rover owners to resolve allegations that the vehicle's infotainment systems were defective.

Recinos et al. v. The Regents of the University of California, Superior Court for the State of California, County of Alameda, Case No. RG19038659 – final approval granted for a settlement providing debt relief and refunds to University of California students who were charged late fees.

Crandell et al. v. Volkswagen Group of America, Case No. 2:18-cv-13377-JSA (D.N.J.) – final approval granted for a settlement providing relief for Volkswagen Touareg owners to resolve allegations that defects in Touareg vehicles caused the engines to ingest water when driving in the rain.

Isley et al. v. BMW of N. America, LLC, Case No. 2:19-cv-12680-ESK (D.N.J.) – final approval granted for settlement providing BMW owners with reimbursements and credit vouchers to resolve allegations that defects in the BMW N63TU engine caused excessive oil consumption.

Kaupelis v. Harbor Freight Tools USA, Inc., 8:19-cv-01203-JVS-DFM (C.D. Cal.) – final approval granted for a settlement valued up to \$40 million to resolve allegations that Harbor Freight sold chainsaws with a defective power switch that could prevent the chainsaws from turning off.

Payero et al. v. Mattress Firm, Case No. 7:21-cv-03061-VLB (S.D.N.Y.) final approval granted for \$4.9 million settlement resolving allegations that Mattress Firm sold dangerously defective bed frames.

YEREMEY KRIVOSHEY

Yeremey Krivoshey is a founding partner at Smith Krivoshey. He is one of the leading class action litigation attorneys in the country and has achieved extraordinarily rare results in the field. Mr. Krivoshey has extensive expertise litigating class cases concerning unlawful fees and liquidated damages in consumer contracts, statutory damages class actions, TCPA cases, product recall cases, privacy cases, and fraud and false advertising class actions. He has represented clients in a wide array of civil litigation in state and federal courts throughout the country, including appeals before the Ninth Circuit.

In 2021, Mr. Krivoshey secured the largest-ever consumer class action settlement in a case brought under the Telephone Consumer Protection Act. The settlement followed a class action trial win in the Northern District of California, where the federal court awarded a \$267 million judgment after a jury trial. While many class action attorneys *claim* to be trial attorneys, very few have actually litigated a certified class action through trial, and won.

Mr. Krivoshey has routinely drawn praise from judges for his work as class counsel. For instance, in January 2024, Judge Michael A. Hammer (D.N.J.) appointed Mr. Krivoshey as lead interim class counsel in a putative class action against one of the top private solar companies in the country, finding that he had the “requisite experience in handling class actions” and “clearly has established a knowledge of the applicable law.” The Court was also “satisfied from its oversight of this matter that proposed interim class counsel have committed, and will continue to commit, the necessary resources to represent the class.” When awarding a \$28 million attorneys’ fees award in 2021 at the conclusion of the *Perez* case, which Mr. Krivoshey spearheaded from its inception, Judge Yvonne Gonzalez Rogers (N.D. Cal.) remarked: “This Court does not often offer praise, expecting high performance from all counsel. Here though, experienced counsel has

done an excellent job on behalf of plaintiff and the class and vigorously pursued the claim despite numerous hurdles.” Similarly, in January 2023, Judge Raymond P. Moore (D. Co.) commended Mr. Krivoshey’s “high level of skill and expertise” in navigating a class action through “uncharted legal territory” as appointed class counsel against one of the top two ski resort companies in the country.

Mr. Krivoshey brings a diverse and unique perspective to class action litigation. He emigrated from Belarus as a refugee at 8 years old, and spent the first years in America living in a tiny basement apartment with a large family, pets included. Though the accent is long gone, the connection to underrepresented and distressed communities continues to fuel his passion for consumer advocacy. Consumer class actions provide a tremendous tool to fight the feeling of being taken advantage of when facing corporate power as an individual. This work is personal, and uplifting.

Mr. Krivoshey sought to experience as much of America's immensely rich and diverse culture as possible from an early age. He grew up in Louisville, Kentucky, received undergraduate degrees in Political Science and Psychology from Vanderbilt University in Nashville, Tennessee, and graduated from New York University School of Law. In that span, he worked for the Department of Justice on bankruptcy and employment cases, at the ACLU focused on first and fourth amendment issues, and at an environmental NGO in Honolulu, Hawaii.

After law school, Mr. Krivoshey spent over a decade litigating consumer class actions at Bursor & Fisher, P.A. San Francisco Bay Area office. Mr. Krivoshey made partner in 2018, and gained a national reputation through victories and class settlements in federal and state courts throughout the country. Mr. Krivoshey then co-founded Smith Krivoshey to pursue his vision of a modern, diverse, and responsible class action litigation firm.

Selected Published Decisions:

Bayol v. Zipcar, Inc., 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014), denying enforcement of forum selection clause based on public policy grounds.

Bayol v. Zipcar, Inc., 78 F. Supp. 3d 1252 (N.D. Cal. Jan. 29, 2015), denying car-rental company’s motion to dismiss its subscriber’s allegations of unlawful late fees.

Brown v. Comcast Corp., 2016 WL 9109112 (C.D. Cal. Aug. 12, 2016), denying internet service provider’s motion to compel arbitration of claims alleged under the Telephone Consumer Protection Act.

Chaisson, et al. v. University of Southern California (Cal. Sup. Ct. Mar. 25, 2021), denying university’s demurrer as to its students’ allegations of unfair and unlawful late fees.

Chaisson, et al. v. University of Southern California (Cal. Sup. Ct. July 25, 2024), granting class certification of class of students that were charged late fees and appointing Smith Krivoshey as class counsel.

Choi v. Kimberly-Clark Worldwide, Inc., 2019 WL 4894120 (C.D. Cal. Aug. 28, 2019), denying tampon manufacturer's motion to dismiss its customer's design defect claims.

Goodrich, et al. v. Alterra Mountain Co., et al., 2021 WL 2633326 (D. Col. June 25, 2021), denying ski pass company's motion to dismiss its customers' allegations concerning refunds owed due to cancellation of ski season due to COVID-19.

Horanzy v. Vemma Nutrition Co., Case No. 15-cv-298-PHX-JJT (D. Ariz. Apr. 16, 2016), denying multi-level marketer's and its chief scientific officer's motion to dismiss their customer's fraud claims.

McMillion, et al. v. Rash Curtis & Associates, 2017 WL 3895764 (N.D. Cal. Sept. 6, 2017), granting nationwide class certification of Telephone Consumer Protection Act claims by persons receiving autodialed and prerecorded calls without consent.

McMillion, et al. v. Rash Curtis & Associates, 2018 WL 692105 (N.D. Cal. Feb. 2, 2018), granting plaintiffs' motion for partial summary judgment on Telephone Consumer Protection Act violations in certified class action.

Perez v. Indian Harbor Ins. Co., 2020 WL 2322996 (N.D. Cal. May 11, 2020), denying insurance company's motion to dismiss or stay assigned claims of bad faith and fair dealing arising out of \$267 million trial judgment.

Perez v. Rash Curtis & Associates, 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020), upholding constitutionality of \$267 million class trial judgment award.

Salazar v. Honest Tea, Inc., 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015), denying manufacturer's motion for summary judgment as to customer's false advertising claims.

Sholopa v. Turk Hava Yollari A.O., Inc. (d/b/a Turkish Airlines), 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying airline's motion to dismiss its customers claims for failure to refund flights cancelled due to COVID-19.

Selected Class Settlements:

Perez v. Rash Curtis & Associates, Case No. 16-cv-03396-YGR (N.D. Cal. Oct. 1, 2021) granting final approval to a \$75.6 million non-reversionary cash common fund settlement, the largest ever consumer class action settlement stemming from a violation of the Telephone Consumer Protection Act.

Strassburger v. Six Flags Theme Parks Inc., et al. (Ill. Cir. Ct. 2022) granting final approval to \$83.6 million settlement to resolve claims of theme park members for alleged wrongful charging of fees during the COVID-19 pandemic.

Juarez-Segura, et al. v. Western Dental Services, Inc. (Cal. Sup. Ct. Aug. 9, 2021) granting final approval to \$35 million settlement to resolve claims of dental customers for alleged unlawful late fees.

Niemczyk v. Pro Custom Solar LLC (D.N.J. Sep. 20, 2024) \$22-30 million non-reversionary cash common fund settlement to resolve claims of class members receiving unsolicited telemarketing calls.

Goodrich v. Alterra Mountain Company (D. Colo. Jan. 27, 2023) granting final approval to \$20.4 million settlement to resolve claims of ski pass customers for alleged wrongful withholding of refunds due to shortened 2019-2020 ski season.

Sholopa v. Turkish Airlines (S.D.N.Y. Aug. 25, 2023) granting final approval to \$14.1 million settlement to resolve claims of airline passengers for alleged late or missing refunds for flights cancelled due to COVID-19.

Moore v. Kimberly-Clark Worldwide, Inc. (Ill. Cir. Ct. July 22, 2020) granting final approval to \$11.2 million settlement to resolve claims of tampon purchasers for alleged defective products.

Retta v. Millennium Prods., Inc., 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) granting final approval to \$8.25 million settlement to resolve claims of kombucha purchasers for alleged false advertising.

Cortes v. National Credit Adjusters, L.L.C. (E.D. Cal. Dec. 7, 2020) granting final approval to \$6.8 million settlement to resolve claims of persons who received alleged autodialed calls without prior consent in violation of the TCPA.

Bayol et al. v. Health-Ade LLC, et al. (N.D. Cal. Oct. 11, 2019) – granting final approval to \$3,997,500 settlement to resolve claims of kombucha purchasers for alleged false advertising.

BRITTANY SCOTT

Brittany is a partner at Smith Krivoshey. Brittany is admitted to the State Bar of California and is a member of the bars of the United States District Court for the Northern, Central, Eastern, and Southern Districts of California, the Eastern District of Wisconsin, the Northern District of Illinois, the Western District of Michigan, the Second Circuit Court of Appeals, the Seventh Circuit Court of Appeals, and the Ninth Circuit Court of Appeals.

She is skilled at efficiently managing complex litigation and moving cases forward expediently for the benefit of her clients and class members. Brittany's practice has spanned the breadth of consumer protection litigation from false and misleading advertising to data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, California Invasion of Privacy Act, and the Fair Credit Reporting Act. Brittany has been lead and co-lead counsel in class actions across the country, including *In Re: Apple Data Privacy Litigation*, Case No. 5:22-cv-07069 (N.D. Cal.). She has recovered millions of dollars for consumers in state and federal courts throughout the United States.

Prior to joining Smith Krivoshey, Brittany worked for Bursor & Fisher, P.A. During that time, she litigated hundreds of consumer class cases with a focus on false and misleading advertising and data privacy.

Brittany received her Juris Doctor from the University of California Law, San Francisco, graduating *cum laude*. During law school, she was a member of the Constitutional Law Quarterly, for which she was the Executive Notes Editor. Brittany published a note in the Constitutional Law Quarterly entitled “Waiving Goodbye to First Amendment Protections: First Amendment Waiver by Contract.” Brittany also served as a judicial extern to the Honorable Andrew Y.S. Cheng for the San Francisco Superior Court. Brittany graduated from the University of California with a B.A. in Political Science.

Selected Published Decisions:

Gibson v. Albertsons Companies, Inc., 2024 WL 4514041 (N.D. Ill. Oct. 17, 2024), denying cough suppressant retailer’s motion to dismiss purchaser’s false advertising claims.

Ramirez v. Trusper, Inc., 2024 WL 4479862 (N.D. Cal. Oct. 11, 2024), denying health care provider’s motion to compel arbitration in putative class action alleging wiretapping under California’s Invasion of Privacy Act.

St. Aubin v. Carbon Health Techs., Inc., 2024 WL 4369675 (N.D. Cal. Oct. 1, 2024), denying health care provider’s motion to dismiss its patient’s allegations of wiretapping.

Mitchell v. Sonesta Int’l Hotels Corp., 2024 WL 4471772 (C.D. Cal. Oct. 4, 2024), adopted as modified, 2024 WL 4474491 (C.D. Cal. Oct. 4, 2024), denying hotel’s motion to dismiss its guest’s allegation of wiretapping.

Lawrence v. Finicity Corp., 716 F. Supp. 3d 851, 870 (E.D. Cal. 2024), denying motion to dismiss and motion to compel arbitration of claims under California’s Anti-Phishing Act.

Natale v. 9199-4467 Quebec Inc., 2023 WL 4850531 (E.D.N.Y. July 28, 2023), denying pet supply company’s motion to dismiss purchaser’s false advertising claims.

Locklin v. StriVectin Operating Co., Inc., 2022 WL 867248 (N.D. Cal. Mar. 23, 2022), denying sunscreen manufacturer’s motion to dismiss purchaser’s false advertising claims.

Selected Class Settlements:

Morrissey v. Tula Life, Inc., Case No. 2021L0000646 (Cir. Ct. DuPage Cnty. 2021) – final approval granted for \$4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.

Clarke et al. v. Lemonade Inc., Case No. 2022LA000308 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$4 million class settlement to resolve claims for alleged BIPA violations.

Whitlock v. Jabil Inc., Case No. 2021CH00626 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$995,000 class settlement to resolve claims for alleged BIPA violations.

Darnall et al. v. Dude Products Inc., Case No. 2023LA000761 (Cir. Ct. Cook Cnty. 2023) – final approval granted for \$9 million class settlement to resolve claims of wipe purchasers for alleged false advertising.

Natale et al. v. 9199-4467 Quebec Inc. d/b/a Earth Rated, Case No. 2:21-cv-6775 (S.D.N.Y. 2023) – final approval granted for \$825,000 class settlement to resolve claims of dog waste bag purchasers for false advertising.

ALEKSANDR LITVINOV

Aleksandr Litvinov works for Smith Krivoshey as Counsel. He is an ardent trial lawyer, advisor, and problem solver. Prior to Smith Krivoshey, Mr. Litvinov spent nearly a decade advising and defending corporations with a primary focus on employment litigation and compliance. He has worked at some of the world's largest corporate law firms and employment boutiques, including Dentons, Hogan Lovells, Fisher Phillips, and Littler Mendelson. Mr. Litvinov has helped guide industry giants such as Amazon, FedEx, Uber, Kroger, and Humana through a variety of legal claims in jurisdictions across the country. This experience has developed Mr. Litvinov's understanding of litigation strategies and how corporations and insurance adjusters investigate, value, and defend claims.

Mr. Litvinov has successfully litigated harassment, discrimination, and retaliation claims, wage and hour claims, employment-related torts, and contract claims. He has secured dismissal and summary judgment on behalf of public employers as well as private employers in the retail, supply chain, distribution, manufacturing, tech, healthcare, energy, and hospitality industries. For example, in *Lainhart, et al. v. Louisville-Jefferson County Metro Government*, Mr. Litvinov assisted a trial team who saved the city of Louisville over \$150 million in alleged back pay in a high-profile, multi-plaintiff wage and hour dispute involving uncompensated "on call" time. Mr. Litvinov has likewise successfully handled administrative actions before the EEOC, state civil rights agencies, and state labor departments, and enjoys working on administrative and judicial appeals and issues of first impression. In *Kentucky Restaurant Association, et al. v. Louisville-Jefferson County Metro Government*, Mr. Litvinov saved all Kentucky employers from perpetual increased payroll costs by challenging and defeating an unprecedented local minimum wage ordinance at the Kentucky Supreme Court on behalf of retail and restaurant trade associations. And in *Collins v. Tyson Foods, Inc.*, Mr. Litvinov set a new precedent throughout Kentucky when he successfully argued that Tyson Foods was shielded from employment discrimination claims relating to its COVID vaccine mandate.

At Smith Krivoshey, in addition to a busy employment practice, Mr. Litvinov has devoted himself to the firm's consumer class action practice. Mr. Litvinov has handled dozens of class actions for false advertising, product defect and recalls, gambling, and the TCPA. He is involved in every facet of the firm's litigation practice, working on cases from inception through class resolution.

A graduate of The George Washington University Law School, Mr. Litvinov is admitted in Kentucky and Indiana, and has been permitted to practice in numerous district and circuit courts around the United States. He is a member of the National Employment Lawyers Association, and the Employment Law sections of the Kentucky and Indiana Bar Associations. Mr. Litvinov dedicates time each year to pro bono efforts benefiting workers with workplace issues who are unable to afford counsel.