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 **NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS, AND TO DIRECT CLASS NOTICE**
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.	Case No.: 2:22-cv-00247- ES-MAH

To: Thomas J. Cotton
Schenck, Price, Smith & King, LLP
220 Park Avenue, P.O. Box 991
Florham Park, New Jersey 07932
Attorneys for Pro Custom Solar LLC, D/B/A Momentum Solar

COUNSEL:

Please take notice that on October 21, 2024, or as soon thereafter as counsel may be heard, Plaintiff, by and through the undersigned counsel will move before the Honorable Michael A. Hammer, U.S.M.J., of the United States District Court for the District of New Jersey, at the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, MLK 2C, Newark, NJ

07101, for the entry of an order granting preliminary approval of a proposed class action settlement, conditional certification of a settlement class, and to direct class notice.

PLEASE TAKE FURTHER NOTICE that in support of this motion, Plaintiff shall rely upon the accompanying Memorandum, Declaration of Matthew R. Mendelsohn, Declaration of Steven Weisbrot, Plaintiffs' Declarations and the attached Proposed Order.

Dated: September 20, 2024

By: */s/ Matthew R. Mendelsohn*

Matthew R. Mendelsohn
MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower Parkway
Roseland, NJ 07068
Telephone: (973) 228-9898
mrm@mazieslater.com

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

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

Attorneys for Plaintiffs and the Settlement Class

UNITED STATES DISTRICT COURT
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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS, AND TO DIRECT CLASS NOTICE

MAZIE SLATER KATZ & FREEMAN, LLC
Matthew R. Mendelsohn
103 Eisenhower Parkway
Roseland, NJ 07068
(973) 228-9898
Attorneys for Plaintiff and Putative Class

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I. INTRODUCTION

Plaintiffs Thomas Niemczyk, Rick Hill, and Barry Wolford, on behalf of themselves and on behalf of each of the Settlement Class Members ("Plaintiffs") respectfully move the Court for an order granting this Unopposed Motion for Preliminary Approval of Class Action Settlement.[1] Attached as Exhibit 1 is the proposed Settlement Agreement and Release of Claims (the "Settlement" or "SA") which sets forth the settlement terms in full.[2] The Settlement resolves the claims of Plaintiffs and putative class members in the actions entitled *Niemczyk v. Pro Custom Solar LLC*, Case No. 2:19-cv-7846-ES-MAH (D.N.J.) ("*Niemcyzk* Action") and *Walters v. Pro Custom Solar LLC*, Case No. 2:22-cv-00247-ES-MAH (D.N.J.) ("*Walters* Action") (collectively, the "Actions" or this "Litigation") in the United States District Court for the District of New Jersey.

The Settlement is the culmination of more than five years of 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; another in-person meeting between the parties in Louisville, Kentucky 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.

As discussed below, 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. *In re*

[1] Plaintiffs are informed and believe that the Defendant does not oppose this motion.

[2] Unless otherwise specified, terms used in this motion are intended to have the same meanings as in the Settlement.

Cendant Corp. Litig., 264 F.3d 201, 240 (3d Cir. 2001) ("sustaining a larger judgment, and possibly even a larger settlement, might prove fatal" to defendant's business forcing Momentum to declare bankruptcy.); *Baldwin Emergency Med. Serv. v. Highmark, Inc.*, No. CIV.A. 03-1007, 2006 WL 1867902, at *4 (W.D. Pa. June 30, 2006) ([T]he purpose of a settlement is not to bankrupt a defendant but to achieve a fair and reasonable recovery for the class."). 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. *In re W.R. Grace & Co.*, 475 B.R. 34, 79 (D. Del. 2012) (Plaintiffs would encounter "difficulties" if Momentum was "no longer a highly solvent company, but rather ha[d] only limited assets available to satisfy all of its outstanding liabilities.").

The Settlement requires Momentum to pay $22 million over fifteen years into a Common Fund to be administered by the Claims Administrator. (SA § III.A.) 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"). On the first, second, third, fourth and fifth anniversaries of the Initial Payment Date, Momentum will have to make additional payments in the amounts of $2.0 million, $1.25 million, $1.75 million, $1.75 million and $2.25 million. (*Id.* § III(A).) 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. (*Id.*)

In addition, 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"). (*Id.* § III(B).) Broadly speaking, Liquidity Events are occasions of major infusions of cash into Momentum or Momentum's owners, meant to provide additional benefits to Settlement Class Members if Momentum's financial condition were to improve over the coming years. Because Plaintiffs agreed to the size of the Common Fund based on Momentum's present ability to pay, they negotiated additional benefits to Settlement Class Members if Momentum's ability to pay improved in the future through, *e.g.*, an infusion of cash by virtue of a sale, change of ownership, or a public offering of stock.

Finally, Plaintiffs also negotiated a "QuickPay Option," whereby Momentum could satisfy all of its financial obligations under the Settlement if it contributed $20 million into the Common Fund within seven (7) years. (*Id.* § III(C)). Given the time value of money, and Class Members' desire to obtain relief as soon as possible, Plaintiffs negotiated this option to incentivize Momentum to pay the full $20 million due as soon as possible, as opposed to making its minimum contributions over the course of 15 years under Section III(A) for a total of $22 million. Indeed, if a qualifying Liquidity Event were to occur within, *e.g.*, one year of the Final Approval Order, Momentum would immediately pay the entirety of the $20 million due under the QuickPay Option to avoid having to pay up to $30 million that may otherwise be due for qualifying Liquidity Events. Thus, Plaintiffs have structured the Settlement to ensure that Settlement Class Members would be paid the entirety of amounts owed under the Settlement promptly if Momentum were suddenly to be infused with cash.

Thus, under the Settlement, Defendant will pay a minimum of $20 million into the Common Fund under the QuickPay Option, $22 million if paid funds are paid over 15 years, and up to $30 million in the event of a Liquidity Event.

After a robust search of the biggest TCPA class settlements of all time, Plaintiffs believe that this is the biggest non-reversionary cash common fund **ever** in a pure telemarketing class action brought under the Telephone Consumer Protection Act ("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 ("ATDS").[3]

The size of the Common Fund here also easily dwarfs the largest 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).

[3] By "telemarketing," Plaintiffs refer to claims brought under 47 U.S.C. § 227(c)(5), which require proof of *two* or more *telemarketing* calls within a 365-day period without prior express written consent. ATDS claims, where plaintiffs could allege the receipt of *one* or more calls using ATDS without prior consent are asserted under 47 U.S.C. § 227(b)(1), have almost universally failed after *Duguid*. *See* Trevor Cook, "Pleas" Don't Hang Up: The Viability of Telephone Consumer Protection Act Claims Based on Calls by Automatic Telephone Dialing Systems After Facebook *v. Duguid*, 58 Gonz. L. Rev. 411, 424 (2023) (noting "the courts granted twenty-one out of twenty-two defendant motions for summary judgment" of the fifty-three "sample cases that have progressed past the pleading stage.)"); Niall T. Martin, Stop Telephonin' Me: The Problematically Narrow Conception of Telemarketing Abuse Under the TCPA, 2022 Wis. L. Rev. 997, 1020 (2022) ("Because the narrow *Duguid* decision made it more difficult for consumers to prevail against a TCPA violator, it is no wonder that in the six months following the decision there were a decrease of roughly thirty-one percent in the number of TCPA-related federal lawsuits filed."). Before *Duguid*, the ATDS claims were the main driver of virtually every TCPA class action settlement. Every TCPA class settlement that Plaintiffs have been able to locate with a higher non reversionary common fund pre-dates *Duguid* and involves at minimum a hybrid 47 U.S.C. § 227(c)(5) and 47 U.S.C. § 227(b)(1) settlement. This Settlement narrowly resolves claims solely for people that received "two or more telemarketing calls," and thus effectively carves out any claims for people that may have independent claims under the TCPA's ATDS provisions. *See* Settlement § AA (definition of Settlement Class Member(s)).

Based on Defendant's records, Plaintiffs estimate that there are approximately four million class members, though the number may increase due to the class period ending on the date of preliminary approval. *See* Declaration of Matthew R. Mendelsohn ("Mendelsohn Decl.") at ¶ 18.). 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, each claimant can submit a claim for up to 50 calls. Settlement § III(I). Settlement Class Members who 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. *Id*. Thus, assuming the Court awards Class Counsel an anticipated fee award of one-third of the total amount paid into the Common Fund and Claims Administration Expenses are roughly $500,000, Class Members would receive the following average payout per claimant:

Common Fund Amount	**5% Claims Rate**	**10% Claims Rate**[4]
$20 Million (Quick Pay)	$64.16	$32.08
$22 Million	$70.83	$35.42
$30 Million	$97.50	$48.75

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); *Walker v. Highmark BCBSD Health Options, Inc.*, No. 2:20-CV-01975-CCW, 2022

[4] *See* FED. TRADE COMM'N, CONSUMERS AND CLASS ACTIONS: A RETROSPECTIVE AND ANALYSIS OF SETTLEMENT CAMPAIGNS 11 (2019) ("Across all cases in our sample requiring a claims process, the median calculated claims rate was 9%, and the weighted mean (*i.e.*, cases weighted by the number of notice recipients) was 4%.").

WL 17592067, at *5 (W.D. Pa. Dec. 13, 2022) (awarding $70.69 for each eligible call). Of course, Class Members for whom records show that they received the maximum 50 calls permitted would receive significantly more than these figures, while Class Members that only claim two calls would receive significantly less.

The Settlement also compares well with per claimant recoveries around the country. *See Friedman v. LAC Basketball Club, Inc*., 2014 WL 10677588 (C.D.Cal.) (final approval of TCPA settlement providing class members with either (i) two free tickets to a 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.*, 2012 WL 8435251 (N.D.Cal.) ($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); *Browning v. Yahoo!, Inc.*, 2007 WL 4105971 (N.D.C.A. 2007) (either "a free Experian credit score ($5.00 retail value) or two months of free credit monitoring service ($9.95/mo retail value)").

Although there are ample reasons for optimism that Plaintiffs can prevail on the merits of their claims, Class Counsel has 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.

Accordingly, Plaintiffs move the Court for an order provisionally certifying the class definition for settlement purposes; granting preliminary approval of the Settlement pursuant to the terms of the Agreement; and setting a fairness hearing to consider objections, if any, to the settlement prior to granting an order approving the Settlement and entering final judgment.

Granting this motion will allow the parties to proceed with the notice plan provided for in the Settlement, which will allow Settlement Class Members to benefit from the Settlement even before the Court's final fairness hearing. For all the reasons set forth below, the parties' Settlement should be preliminarily approved.

II. PROCEDURAL HISTORY

A. History of the Litigation

Plaintiffs allege that Defendant made unsolicited telemarketing calls to their telephone numbers despite them being on the national DNC registry and/or Defendant's internal do not call lists. Plaintiff Niemczyk initiated this action by filing a complaint on March 5, 2019, in the United States District Court for the District of New Jersey. (*Niemczyk* ECF No. 1). 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).

On January 19, 2022, Plaintiffs Walters, Hill, and Wolford filed the *Walters* Action in the United States District Court for the District of New Jersey against Defendant, alleging claims for violations of the TCPA and FTCPA. (*See generally*, Class Action Complaint, *Walters* ECF No. 1). The *Walters* Action was determined to be related to and consolidated with the *Niemczyk* Action, was also assigned to District Judge Esther Salas and Magistrate Judge Michael Hammer, and were effectively litigated as one case from that point forward. 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. (*Niemczyk* ECF No. 94).

Discovery was extremely contentious, involving multiple motions to compel and numerous discovery conferences with the Court. (Mendelsohn Decl. at ¶ 5.) There were around a dozen discovery orders by the Court concerning contested motions to compel or resolution of discovery dispute letters. (*Id*.) 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. (*Id*. ¶ 6.) 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. (*Id*.) The Plaintiffs undertook 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 vendor. (*Id*. ¶ 7.) Plaintiffs hired experts to address liability and damages issues, as well as 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. (*Id*. ¶ 8.)

Defendant took the depositions of Plaintiffs Niemczyk, Hill, and Wolford, and Plaintiffs took the depositions of three witnesses Defendant designated as corporate representatives pursuant to Fed. R. Civ. P. 30(b)(6). (*Id*. ¶ 9.) Plaintiffs produced four expert reports; and the parties completed all fact and expert discovery. (*Id*. ¶ 10.)

B. The Parties' Settlement Negotiations

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. (Mendelsohn Decl. ¶ 11.) As part of the mediation, the Plaintiffs prepared a detailed mediation statement that included prospective damages calculations. (*Id*.) 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' damages and economics expert in New York in October 2023 and another in-person meeting between the parties in Louisville, Kentucky in February 2024. (*Id*.) 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. (*Id*. ¶ 12.) Matters were so contentious that Plaintiffs were days away from filing a contested motion for class certification prior to reaching this Settlement. (*Id*.)

For purposes of mediation, Defendant produced extremely sensitive financial documents, such as balance sheets, years of financial statements, auditor reports, budgets, disclosures about ownership and interested party distributions, solar industry studies and projections, and other financial information. (*Id*. ¶ 13.) These productions were made beginning in June 2023 and continued on a rolling basis until the parties' February 2024 settlement meeting. (*Id*.) Plaintiffs reviewed them with painstaking detail, with the help of their economics expert. (*Id*. ¶ 14.) Plaintiffs also hired a consultant familiar with corporate transactions to advise about the liquidity event

settlement conditions. (*Id*.) Plaintiffs came away convinced that they have effectively forced Momentum Solar to contribute every dollar reasonably possible to the Settlement while preserving Momentum's ability to stay in business. (*Id*.) Further, Plaintiffs believe that there would have been a strong likelihood of a *smaller* recovery than made available through the Settlement if they prevailed at trial and obtained a class judgment due to collectability issues that would accompany an ensuing bankruptcy. (*Id*. ¶ 15.)

All the terms of the Settlement Agreement are the result of arm's-length negotiations between experienced counsel for both sides. (*Id*. ¶ 16.) The named Plaintiffs all approve of the Settlement. (*Id*. ¶ 17.)

III. SUMMARY OF THE SETTLEMENT

A. Class Definition

If approved, the Settlement will provide substantial benefits to the following Settlement Class: all persons in the United States who received two or more telemarketing Calls from Momentum or on behalf of Momentum during the Class Period ("Settlement Class"). Excluded from the class are any judicial officer to whom the Action is assigned and any former customer of Momentum. (*See* SA § I.AA.) The Settlement Class likewise excludes persons who validly request to be excluded. *Id*.

B. Relief Benefiting the Class in the Proposed Settlement

Under the Settlement, Momentum agrees to pay $10 million over five years into a Common Fund. (SA § III.A.) The first payment in the amount of $1,000,000 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. (*Id*.) 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. (*Id*.)

In addition, Momentum will pay into the Common Fund twelve percent (12%) of the Liquidity Event Proceeds from any 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"). (SA § III.B.) The Settlement also has a "Quickpay Option": that is, if Momentum pays $20 million into the Common Fund via any means within seven years of the Court Approval Date, the Settlement amount owed will be deemed fully paid and no further payments will be owed by Momentum. (SA § III.C.)[5]

C. Timing of Payments to Class Members.

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. (SA § III.H.)

Class Members will be permitted to submit claims either by mail or online through the Settlement Website for up to 50 calls received within the Class Period. (SA § III.I.) Class Members will have a maximum of 120 days to submit a claim from the date the first notice is disseminated. (SA § IV.D.) Class Members who file timely and valid claims will 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,

[5] 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. (SA § III.H.)

expenses, or any other claims or administration expenses associated with administering the Settlement, until the entirety of the Common Fund is exhausted. (SA § III.I.)

D. Settlement Administrator

The Parties have agreed to Angieon Group, as the Settlement Administrator. Angieon Group is an experienced, qualified administrator in the business of efficiently processing class action settlements. (*See gen*. Declaration of Steven Weisbrot ("Weisbrot Decl.")) Angieon Group will receive, review, and approve or reject claim forms pursuant to the standards and procedures set forth in the Settlement Agreement. (*Id*. **§** V.A.2.)

E. Class Notice

The Settlement Agreement includes a comprehensive Notice Plan, to be paid for by Momentum and overseen by the experienced Settlement Administrator. (SA **§** V; Weisbrot Decl.) Notice will be sent within 90 days after entry of the Court's Order preliminarily approving the proposed Settlement.[6] Class Counsel has the right to audit claims and participate in the Notice and Administration process to ensure that the Settlement Administrator is acting in accordance with the Settlement Agreement. (SA § IV.E., I.)

Settlement Class Members will receive notice directly by mail or by email where Defendant possesses an email. (SA § V.B.3.) Notice will also include publication and digital notice. (*Id*.) A copy of the proposed Long Form Notice to be sent by email is attached to the Settlement as Exhibit C and the proposed Summary Notice postcard to be sent by mail is attached as Exhibit D. The notice will be provided in English and Spanish on the Settlement Website and

[6] The Parties request that the Court set at least 90 days between the issuance of the Preliminary Approval Order and the Notice Date to allow the Parties to gather and analyze additional class member information required to provide notice to the roughly four million class members. Notably, the Settlement anticipates that the Class Period run until the date of Preliminary Approval, so additional analysis will be required to capture data for any newer class members up to the Preliminary Approval date.

anyone requesting notice in Spanish will receive it. (*Id.*) Any undeliverable emails will receive a Summary Notice sent to the last known address. (SA § V.B.4.) Reminder Notices will be sent at least once but not more than twice, unless ordered by the Court, to all Class Members that have not submitted claims at least 30 days before the conclusion of the notice period. (SA § V.B.5.)

The Settlement Administrator also will maintain a dedicated Settlement Website that will include the Notice, Claim Form, Settlement Agreement, other relevant documents and a section for frequently asked questions. (SA § V.B.6.) The website will also include 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. (*Id.*) Momentum will pay the costs of Notice and Settlement Administration and for notice of the settlement to the appropriate state and federal officials, as required by the Class Action Fairness Act, 28 U.S.C. § 1715. (SA § V.B.2.)

The Settlement Agreement also accounts for any Settlement Class Members who wish to object or exclude themselves from the settlement. Consistent with Rule 23(e)(5)(A), the Settlement Agreement requires that any objection or opt-out request contain sufficient information to reasonably demonstrate that the submission is made by a person who has standing as a Settlement Class Member. (SA § VIII.)

F. Service Awards

The Settlement requests a Service Award payment of up to $7,500 for Plaintiff Thomas Niemczyk and $5,000 each for Plaintiffs Rick Hill and Barry Wolford, as compensation for their efforts in filing the complaints, undergoing depositions, making themselves available at mediations, and achieving settlement for the class. (SA § IX.E.); *see also*, *Barel v. Bank of America*, 255 F.R.D. 393, 402-03 (E.D. Pa. Jan. 16, 2009) (awarding $10,000.00 incentive award);

Brown v. Progressions Behavioral Health Servs., Inc., 2017 WL 2986300, at *7 (E.D. Pa. July 13, 2017) (awarding $10,000 to each named plaintiff); *Whiteley v. Zynerba Pharms., Inc*., No. CV 19-4959, 2021 WL 4206696, at *15 (E.D. Pa. Sept. 16, 2021) (awarding $7,500 to each of the two plaintiffs); *Somogyi*, 2023 WL 8113242, at *1 (approving service awards of $5,000 each to three Plaintiffs); *Rieger v. Volkswagen Grp. of Am., Inc.,* No. 21-CV-10546-ESK-EAP, 2024 WL 2207439, at *9 (D.N.J. May 16, 2024) (approving $5,000 awards to eight named plaintiffs"); *Henderson*, 2013 WL 1192479, at *19 (approving awards of $5,000 and $6,000).

G. Attorneys' Fees, Cost and Expenses.

Plaintiffs intend to seek payment of an award of attorneys' fees, cost and expenses for Smith Krivoshey, PC, Bursor & Fisher, P.A., and Mazie Slater Katz & Freeman, LLC. Class Member Counsel are entitled to seek up to one-third of any amounts paid into the Common Fund as attorneys' fees. (SA § IX.A.) So, if $20 million is eventually paid into the Common Fund, Class Counsel's award would be up to $6,666,666.66, and up to $10 million if $30 million is paid. "In private contingency fee cases, attorneys routinely negotiate agreements for between thirty percent (30%) and forty percent (40%) of the recovery." *Vasco*, 2016 WL 5930876, at *14; *see also*, Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement."); *Galt v. Eagleville Hosp.,* 310 F. Supp. 3d 483, 498 (E.D. Pa. 2018) ("fee awards ranging from 30% to 43% have been awarded in cases with funds ranging from $400,000 to $6.5 million"); *Sorace v. Wells Fargo Bank, N.A.*, No. CV 20-4318, 2024 WL 643229, at *13 (E.D. Pa. Feb. 15, 2024) (granting attorneys' fees award of 40% of the $15 million cash settlement fund); *Robert Nichols, et al. v. SmithKline Beecham Corp.,* Civ.A.No. 00–6222 (E.D. Pa.) (Apr. 22, 2005 Mem. and Order) (awarding a fee of 30% of the common fund); *In re Linerboard Antitrust Litig.,* No. 1261, 2004 WL 1221350, 2004 U.S. Dist. LEXIS 10532 (E.D.Pa. June 2, 2004) (same); *Esslinger v. HSBC*

Bank Nevada, N.A., No. CIV.A. 10-3213, 2012 WL 5866074, at *14 (E.D. Pa. Nov. 20, 2012) (same); *In re Datatec Sys. Sec. Litig.*, 2007 U.S. Dist. LEXIS 87428, at *22, 2007 WL 4225828 (same); *Louisiana Mun. Police Emps. Ret. Sys. v. Sealed Air Corp*., No. CIVA 03-CV-4372 DMC, 2009 WL 4730185, at *9 (D.N.J. Dec. 4, 2009) (granting an "award of 30% of the Settlement Fund which equals $6,000,000").

In addition, Class Counsel will seek all their reasonable costs and expenses to be paid out of any amounts paid into the Common Fund. (SA § IX.A.)

H. Release of Liability

In exchange for the foregoing – and subject to approval by the Court – Plaintiffs and Class Members who do not timely exclude themselves will be bound by a release of all claims arising out of or relating to the claims that were asserted in the Litigation ("the Released Claims"). *See Grimes v. Vitalink Commc'ns Corp.*, 17 F.3d 1553, 1563 (3d Cir. 1994). The Released Claims will extend to Defendant and their related entities and persons. The Released Claims will not, however, apply to any claims for death, personal injury, property damage (other than damage to the Class Vehicle), or subrogation. The Settlement Agreement provides that upon finality, the case will be dismissed with prejudice. (SA § XI.)

IV. ARGUMENT

The Court's review of a class action settlement is a two-step process consisting of preliminary approval and final approval determinations. *Udeen v. Subaru of Am., Inc.*, No. 18 17334(RBK/JS), 2019 WL 4894568, at *2 (D.N.J. Oct. 4, 2019). At this preliminary approval stage, "the Court is required to determine only whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval." *In re Nat'l Football League Players'*

Concussion Injury Litig. ("In re NFL"), 301 F.R.D. 191, 198 (E.D. Pa. 2014) (quoting *Mehling v. New York Life Ins.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007) (citations omitted)). Under Rule 23, a settlement falls within the "'range of possible approval,' if there is a *conceivable basis* for presuming that the standard applied for final approval – fairness, adequacy, and reasonableness – will be satisfied." *In re NFL*, 301 F.R.D. at 198 (emphasis added) (citations omitted).

In addition, "a settlement agreement is entitled to a presumption of fairness when it resulted from arm's length negotiations between experienced counsel." *Hunter v. M-B Cos., Inc.*, No. 19-CV-04838, 2020 WL 4059898, at *3 (E.D. Pa. July 20, 2020); *see also Udeen*, 2019 WL 4894568, at *2 ("A settlement is presumed fair when it results from 'arm's-length negotiations between experienced, capable counsel after meaningful discovery.'") (quoting *Rudel Corp v. Heartland Payment Sys., Inc.*, No. 16-cv-2229, 2017 WL 4422416, at *2 (D.N.J. Oct. 4, 2017)). This presumption applies in furtherance of the public policy favoring settlement, *see Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010), and "settlement of litigation is especially favored by courts in the class action setting." *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 144 (D.N.J. 2013). Moreover, "the participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties." *In re ViroPharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016) (quoting *Hall v. AT&T Mobility LLC*, No. 07-5325, 2010 WL 4053547, at *7 (D.N.J. Oct. 13, 2010)).

Because there are no "obvious deficiencies" in the parties' Settlement Agreement in this case, nor any "grounds to doubt its fairness," the standards for granting preliminary approval are satisfied. This Settlement is fair, adequate, and reasonable; it is more than conceivable that the requirements for final approval will be satisfied, and Class Members will be provided with notice

in a manner that satisfies the requirements of due process and Federal Rule of Civil Procedure 23(e). Therefore, Plaintiffs respectfully ask the Court to enter the proposed order, which will: (i) grant preliminary approval of the proposed settlement; (ii) find that the Settlement Class is likely to be certified pursuant to Federal Rule of Civil Procedure 23(b)(3); (iii) schedule a final approval hearing to consider final approval of the Settlement; and (iv) direct adequate notice to Settlement Class Members of the Settlement and their rights.

A. The Settlement Should Be Preliminarily Approved

At the preliminary approval stage, "[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted." *Shapiro v. All. MMA, Inc.*, No. 17- 2583(RBK/AMD), 2018 WL 3158812, at *3 (D.N.J. June 28, 2018). Unlike final approval, "[p]reliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient." *Zimmerman v. Zwicker & Assocs., P.C.*, No. CIV. 09-3905 RMB JS, 2011 WL 65912, at *2 (D.N.J. Jan. 10, 2011).

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. Class Counsel verified the adequacy of the Settlement by interviewing Class Members, reviewing tens of thousands of documents, deposing Defendant's IT Manager, Mike Giudice, on April 12, 2023; Defendant's VP of Inside Sales, Jeffrey Anclien on March 28, 2023; and its VP of Marketing Joshua Buma on March 27, 2023, and consulting extensively with four technical experts retained by Plaintiff's Counsel. (Mendelsohn Decl. ¶¶ 8-9.) The settlement is well supported and

will eliminate the uncertainties and risks to the Parties from proceeding further in the litigation. Thus, preliminary approval should be granted.

B. The *Girsh* Factors Support Preliminary Approval

Although the foregoing analysis is sufficient for the Court to grant preliminary approval, a factor-by-factor analysis confirms this conclusion. *Udeen*, 2019 WL 4894568, at *3.[7] The following nine factors inform the analysis at the final approval stage:

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

Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975).

The court evaluates a class settlement "against the realistic, rather than theoretical potential for recovery after trial." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 323 (3d Cir. 2011) (en banc). In conducting this analysis, the court also "guard[s] against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re GMC Truck Fuel Tank Prods. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995); *see also In re: Shop-Vac Mktg. & Sales Practices Litig.*, No. 4:12-

[7] Rule 23(e) was amended in December 2018 to specify uniform standards for settlement approval. Courts in this district have continued to apply the same legal standards to preliminary approval after the 2018 amendments. *See, e.g.*, *Udeen*, 2019 WL 4894568; *Smith*, 2019 WL 3281609. Further, "[t]he 2018 Committee Notes to Rule 23 recognize that, prior to this amendment, each circuit had developed its own list of factors to be considered in determining whether a proposed class action was fair[.]" *Huffman v. Prudential Ins. Co. of Am.*, 2:10-cv- 05135, 2019 WL 1499475, at *3 (E.D. Pa. Apr. 5, 2019) (citing Fed. R. Civ. P. 23(e)(2), Advisory Committee Notes). "[T]he goal of the amendment is not to displace any such factors, but rather to focus the parties [on] the 'core concerns' that motivate the fairness determination." *Id.* As such, the traditional *Girsh* factors continue to apply.

MD-2380, 2016 WL 3015219, at *2 (M.D. Pa. May 26, 2016) (noting that "a satisfactory settlement may only amount to a hundredth or even a thousandth part of a single percent of the potential recovery.") (internal citations and quotations omitted). All the *Girsh* factors that the Court can analyze now support preliminary approval.[8]

This Settlement affords relief to those who received unsolicited telemarketing calls from Defendant or its agents. It will result in substantial payments to numerous Class Members.

The complexity, expense, and likely duration also support preliminary approval because, without the Settlement, the parties would be engaged in contested motion practice and adversarial litigation for years. The claims advanced on behalf of the Settlement Class Members involve numerous complex legal and technical issues. Continued litigation would be time consuming and expensive, with no certainty of a favorable outcome through a nationwide class action. The Settlement Agreement secures substantial benefits for the Class with none of the delay, risk and uncertainty of continued litigation.

The third factor, the stage of the proceedings and the amount of discovery completed, also supports preliminary approval. As noted above, the parties have exchanged formal, informal and confirmatory discovery, and deposed three of Defendant's leaders. Defendant's counsel also conducted their own depositions of all three named Plaintiffs. All fact and expert discovery had closed, and Plaintiffs served four expert reports. The Court's Opinion on the motion to dismiss provided guidance on the strengths and weaknesses of the claims, and the discovery taken has allowed Plaintiffs' counsel to carefully analyze the risk of future litigation in comparison to the relief offered by the Settlement. *See Udeen*, 2019 WL 4894568, at *3.

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

The fourth, fifth, and sixth factors consider the risk of continued litigation. If the parties had been unable to resolve this case through the Settlement, the litigation would likely have been even more protracted and costly. Plaintiffs' counsel have prosecuted many class actions which took several years to conclude; factoring in appeals, some lasted for over a decade. Before ever approaching a trial in this case, the parties would 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 witness testimony 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. *See Haas v. Burlington Cnty*., No. 08-1102-NHL-JS, 2019 WL 413530, at *6 (D.N.J. Jan. 31, 2019) (granting approval where plaintiffs estimated the time to judgment, including trial, would take another three years).

The seventh factor supports approval because, as discussed above, through a robust review of Defendant's financials, Defendant likely could not withstand a higher judgment and retain the reasonable likelihood of staying in business.

The eighth and ninth factors also support preliminary approval. First and foremost, the Settlement is within the range of reasonableness because it likely represents the most that Defendant could pay. And, as discussed above, the Settlement is the biggest non-reversionary cash common fund ever in a pure telemarketing class action, and the biggest non-reversionary cash common fund in any TCPA action settled after the Supreme Court's decision in *Duguid*.

Further, 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 of 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 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).

Over the past few years, realistic analyses of damages have become even more challenging in TCPA class actions. In *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109 (9th Cir. 2022), the Ninth Circuit vacated a $925,000,000 statutory damages judgment under 47 U.S.C. § 227(b)(3)(B) on Due Process grounds and instructed the district court to analyze the constitutionality of the nearly billion-dollar award. Other circuits have reached similar results when presented with truly massive TCPA judgments. *See Golan v. FreeEats.com, Inc.* 930 F.3dd 950, 957, 962 (8th Cir. 2019) (affirming district court's reduction of $1.6 billion TCPA damages award to $32 million on Due Process grounds); *cf. United States v. Dish Network LLC*, 256 F. Supp. 3d 810, 952, 982-83 (C.D. Ill. June 5, 2017) (reducing an $8.1 billion TCPA award down to $280 million), *reversed in part in United States v. Dish Network L.L.C.*, 954 F.3d 970, 979-80 (7th Cir. 2020) (vacating district court's damages order because it applied the incorrect test). *See also Maryland v. Universal Elections, Inc.*, 862 F. Supp. 2d 457, 466 (D. Md. 2012) (reducing TCPA award from over a hundred million dollars to $1 million).

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. First, Plaintiffs believe that the Settlement provides the absolute *maximum* that Momentum can pay and reasonably stay in business. (Mendelsohn Decl. ¶ 14.) So, 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. Second, because 47 U.S.C. § 227(c)(5) provides "up to" $500 for unlawful calls, a jury easily could have awarded 1 cent, or $1 dollar, per call, to avoid the specter of a massive judgment roughly equivalent to the GDP of Armenia.[9] And third, 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. As stated by another court overseeing a TCPA settlement, "[a]lthough the Act permits $500 per 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 (approving settlement with an anticipated per claimant award of $26). 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.

The *Girsh* factors, therefore, support granting preliminary approval of the Settlement.

[9] https://www.worldometers.info/gdp/armenia-gdp/

C. Certification of the Proposed Class for Purposes of Settlement Only Is Appropriate

The benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *Udeen*, 2019 WL 4894568, at *4.[10] "For the Court to certify a class for settlement, the "[s]ettlement [c]lass[] must satisfy the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation, as well as the relevant 23(b) requirement." *In re GMC Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 778 (3d Cir. 1995). Plaintiffs seek certification under Rule 23(b)(3), which provides for certification where "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members [predominance], and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy [superiority]." Fed. R. Civ. P. 23(b)(3). As discussed below, these requirements are met for purposes of settlement in this case.

1. Numerosity Under Rule 23(a)(1) Is Met

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[G]enerally, if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the [numerosity requirement] of Rule 23(a) has been met." *Stewart v. Abraham*, 275 F.3d 220, 226-227 (3d Cir. 2001) (citation omitted). Numerosity is readily met here, as there are millions of Settlement Class Members.

2. Commonality Under Rule 23(a)(2) Is Met.

The second prong of Rule 23(a) – commonality – requires "consideration of whether there are 'questions of law or fact common to the class[.]" *Reyes v. Netdeposit, LLC*, 802 F.3d 369, 482 (3d Cir. 2015) (citing Fed. R. Civ. P. 23(a)(2)). "A putative class satisfies Rule 23(a)'s

[10] Defendant has agreed to certification of the class for settlement purposes only.

commonality requirement if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Id*. (quoting *Rodriguez v. Nat'l City Bank*, 726 F.3d 372, 382 (3d Cir. 2013)). This "bar is not a high one." *Reyes*, 802 F.3d at 486 (quoting *Rodriguez*, 726 F.3d at 382). The Third Circuit has "acknowledged commonality to be present even when not all plaintiffs suffered an actual injury, when plaintiffs did not bring identical claims, and, most dramatically, when plaintiffs' claims may not have been legally viable[.]" *Id.*; *see also In re Prudential Ins. Co. Sales Litig*., 148 F.3d 283, 310 (3d Cir. 1998) ("A finding of commonality does not require that all class members share identical claims, and factual differences among the claims . . . do not defeat certification").

In this case, there are numerous common questions of law and fact, "including: a) whether [Momentum]'s conduct in calling the Class Members violated the Act; b) whether [Momentum] had proper consent from the recipients of the calls; c) whether [Momentum's calls were for the purpose of telemarketing]; and d) whether [Momentum]'s violations were knowing or willful." *Vasco*, 2016 WL 5930876, at *3. Thus, commonality is satisfied.

3. Typicality Under Rule 23(a)(3) Is Met.

Rule 23(a)(3)'s typicality requirement is also met because Plaintiffs' claims are typical of the claims of the whole Class because they arise from the same factual basis—i.e., two or more telemarketing calls within a 365-day period sent to Class Members without written prior express consent in violation of the TCPA. *See Vasco*, at *3 (Plaintiff "demonstrates typicality because he shows Power Home engaged in the same conduct toward him and the Class Members, which caused the same injury to both him and the Class Members."); *Baby Neal v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994); *In re Ins. Brokerage Antitrust Litig*., 297 F.R.D. at 149 (stating "low threshold"—"if the claims of the named plaintiffs and class members involve the same conduct by the defendant, typicality is established.'") (citation omitted).

4. Adequacy of Representation Under Rule 23(a)(4) Is Met.

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *see Gotthelf v. Toyota Motor Sales, U.S.A., Inc.*, 525 F. App'x 94, 100-01 (3d Cir. 2013). In assessing the adequacy of a proposed class representative, courts consider whether he or she "has the ability and incentive to represent the claims of the class vigorously, that he or she has obtained adequate counsel, and that there is no conflict between the individual's claims and those asserted on behalf of the class." *Ritti v. U-Haul Int'l., Inc.*, 05-4182, 2006 WL 1117878, at *5 (E.D. Pa. Apr. 26, 2006) (quoting *Hassine v. Jeffres*, 846 F.2d 169, 179 (3d Cir. 1988)).

Here, all 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. (*See* TAC ¶¶ 12-43; Niemczyk Decl. ¶¶ 2-4, Hill Decl. ¶¶ 2-4, and Wolford Decl. ¶¶ 2-4.) Each Plaintiff recognizes and accepts their responsibilities as a class representative and has actively participated in the litigation of this case and communicated regularly with their attorneys about the proceedings. 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. (Niemczyk Decl. ¶¶ 12-13, Hill Decl. ¶¶ 12-13, and Wolford Decl. ¶¶ 12-13.) 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. (Niemczyk Decl. ¶¶ 5-7, Hill Decl. ¶¶ 5-7, and Wolford Decl. ¶¶ 5-7.) Each Plaintiff made time to undergo a deposition and conferred with counsel beforehand to prepare for those depositions. (Niemczyk Decl. ¶ 9, Hill Decl. ¶ 9, and Wolford Decl. ¶ 9.) When Counsel attended a full-day mediation with Defendant and two in-person meetings with Defendant, the Plaintiffs made themselves available on those dates. (Niemczyk Decl. ¶ 10, Hill Decl. ¶ 10, and Wolford Decl. ¶ 10.)

Likewise, Class Counsel is also adequate as the attorneys drew upon their experience with similar complex lawsuits (*see* firm resumes, Mendelsohn Decl., Exs. 2-4) to negotiate an excellent resolution for the Settlement Class. Indeed, the Court had previously appointed Class Counsel as interim class counsel under Fed. R. Civ. P. 23(g)(3) after reviewing their firm resumes, their experience and qualifications, and examining their work done in the case up to that point. *See Walters* docket, ECF No. 28.[11] Based upon the substantial benefits offered through the settlement, Plaintiffs respectfully submit that the adequacy requirement is satisfied.

Accordingly, Rule 23(a)(4) is therefore satisfied.

5. The Requirements of Rule 23(b)(3) Are Met

Plaintiffs seek to certify the Settlement Class under Rule 23(b)(3), which has two components: predominance and superiority. In making these assessments, the court may consider that the class will be certified for settlement purposes only, and there is no consideration of manageability for trial. *See Amchem*, 521 U.S. at 618 (citing Fed. R. Civ. P. 23(b)(3)(D)).

The focus of the predominance "inquiry is on whether the defendant's conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant's conduct." *Sullivan*, 667 F.3d at 298. Courts are "more inclined to find the predominance test met in the settlement context." *Vasco*, 2016 WL 5930876, at *4. Here, there are several common questions of fact and law that predominate over any questions that may affect individual Settlement Class Members. If the case were to proceed, the ultimate issues would center

[11] The Court appointed Yeremey Krivoshey, then of Bursor & Fisher, P.A., and Matthew Mendelsohn of Mazie Slater Katz & Freeman, LLC. At the time of the appointment on January 3, 2024, Mr. Krivoshey was a partner at Bursor & Fisher, P.A. In late February 2024, Mr. Krivoshey left Bursor & Fisher, P.A. and founded his own firm, Smith Krivoshey, PC. Since that time, the attorneys at Smith Krivoshey (through Mr. Krivoshey), Mazie Slater (through Mr. Mendelsohn), and Bursor & Fisher (through Mr. Joseph I. Marchese) have collectively litigated this action on behalf on the Class Members with the consent of all Plaintiffs.

on Defendant's common course of conduct – namely, whether Momentum "engaged in a common course of conduct by making unsolicited telemarketing calls to the Class Members." *Id*. at *4. Accordingly, predominance is satisfied.

The second prong of Rule 23(b)(3) – that a class action be superior to other available methods for the fair and efficient adjudication of the controversy – is also readily satisfied. *See* Fed. R. Civ. P. 23(b)(3). Superiority requires the Court to consider whether "a class action is superior to other available methods of fairly and efficiently adjudicating the controversy." *Sullivan*, 667 F.3d at 296 (citations omitted); *see McCoy v. Health Net, Inc*., 569 F. Supp. 2d 448, 457 (D.N.J. 2008). Given that an individual action under the TCPA "may not be financially feasible" given the "costs of prosecuting an action, which includes the initial filing fee, [which] could easily swallow a large portion of an individual claimant's recovery," this and other considerations could "easily render an individual lawsuit cost ineffective.' *Vasco*, 2016 WL 5930876, at *7.

Moreover, the parties' settlement will relieve the "needless duplication of effort," burdens, and other inefficiencies that would result from repeated adjudication of the same issues. *Henderson*, 2013 WL 1192479, *6 (citing *In re Corrugated Container Antitrust Litig.*, 80 F.R.D. 244, 252-53 (S.D. Tex. 1978)). The Settlement Agreement provides Class Members with prompt, certain, and adequate relief, and establishes clearly defined administrative procedures to ensure due process and preservation of rights.

Thus, a class action for settlement purposes is a superior means of resolving this controversy. Accordingly, Plaintiffs request that the Court certify the Settlement Class. *See* Fed. R. Civ. P. 23(e)(1)(B).

D. The Court Should Approve the Notice Plan

Under Federal Rule of Civil Procedure 23(e), class members who would be bound by a settlement are entitled to reasonable notice before the settlement is approved. *See* Fed. Jud. Ctr., *Manual for Complex Litig.* Fourth, § 30.212 (2004). Under Rule 23(b)(3), "the Court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable efforts." *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-md-01998, 2009 WL 5184352, at *12 (W.D. Ky. Dec. 22, 2009) (citing Fed. R. Civ. P. 23(c)(2)(B)). To satisfy these standards and "comport with the requirements of due process, notice must be 'reasonably calculated to reach interested parties.'" *Id*. (quoting *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008)).

The proposed Notice – Exhibit C to the Settlement Agreement – includes all legal requirements and explains the Settlement concisely using clear, simple terms. *See* Fed. R. Civ. P. 23(c)(2)(B). The Notice Plan described above and set forth in Section V of the Settlement provides the best notice practicable under the circumstances. *See Henderson*, 2013 WL 1192479, at *12-13. An experienced vendor will oversee the process of compiling the addresses and will then use this information to prepare the Notice that will be sent via first-class mail to Settlement Class Members. In addition, email notice will be provided to all Class Members whose emails are in Defendant's database. Further, the Claims Administrator will provide notice through digital marketing and publication. Notice of the settlement will also be available on a dedicated website created by the Claims Administrator.

Therefore, the Notice and Notice Plan should be approved.

E. A Final Approval Hearing Should Be Scheduled

Finally, the Court should schedule a final approval hearing to decide whether to grant final approval to the settlement, consider Class Counsel's request for attorneys' fees, expenses, and

service awards for the Class Representatives, consider any objections and exclusions, and determine whether to dismiss this action with prejudice. *See* Fed. Jud. Ctr., *Manual for Complex Litig.* Fourth, § 30.44 (2004); *In re Nat'l Football League Players Concussion Injury Litig*., 775 F.3d 570, 581-83 (3d Cir. 2014). The hearing may be conducted via video conference, telephonically or in-person, at the Court's discretion. If the Final Approval Hearing is held telephonically or via Zoom, instructions on how Settlement Class Members can participate will be posted on the Settlement website. Plaintiffs respectfully request that the final approval hearing be scheduled for at least 180 days from the date the preliminary approval order is entered.

V. CONCLUSION

Plaintiffs respectfully request that this Court enter an Order: (1) finding that this case is likely to be certified as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) for the purpose of effectuating a class action settlement; (2) preliminarily approving the settlement; (3) directing notice to Settlement Class Members consistent with the notice plan; (4) appointing Thomas Niemczyk, Rick Hill, and Barry Wolford as Class Representatives; (5) appointing Matthew Mendelsohn of Mazie Slater Katz & Freeman, LLC, Yeremey Krivoshey of Smith Krivoshey, PC, and Joseph I. Marchese of Bursor & Fisher, PC as Class Counsel; and (6) scheduling a final approval hearing. A proposed order granting this relief is submitted with this memorandum.

Dated: September 20, 2024

By: */s/ Matthew R. Mendelsohn*

Matthew R. Mendelsohn
MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower Parkway
Roseland, NJ 07068
Telephone: (973) 228-9898
mrm@mazieslater.com

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

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

Attorneys for Plaintiffs and the Settlement Class

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 COLAR LLC d/b/a/ MOMENTUM SOLAR, *Defendant.*	Case No. 2:19-cv-7846-ES-MAH **DECLARATION OF MATTHEW R. MENDELSOHN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS, AND TO DIRECT CLASS NOTICE**
RICK HILL and BARRY WOLFORD, individually and on behalf of a class of similarly situated individuals, *Plaintiffs,* v. PRO CUSTOM COLAR LLC d/b/a/ MOMENTUM SOLAR, *Defendant.*	Case No. 2:22-cv-00247-ES-MAH

Pursuant to 28 U.S.C. § 1746, I hereby declare, and state as follows:

1. I am a citizen of the State of New Jersey, and I am over the age of 18 years old. I am a Partner with the law firm of Mazie Slater Katz & Freeman, LLC, which has been retained to represent Plaintiff Thomas Niemczyk, Plaintiff Rick Hill, and Plaintiff Barry Wolford ("Plaintiffs") in these matters.

2. I make this Declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. I have personal knowledge of the facts set forth in this

declaration and, if called as a witness, I could and would competently testify under oath to the matters set forth in this Declaration.

3. Plaintiff Niemczyk initiated this action by filing a complaint on March 5, 2019, in the United States District Court for the District of New Jersey. (Niemczyk ECF No. 1). 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).

4. On January 19, 2022, Plaintiffs Walters, Hill, and Wolford filed the Walters Action in the United States District Court for the District of New Jersey against Defendant, alleging claims for violations of the TCPA and FTCPA. (See generally, Class Action Complaint, Walters ECF No. 1). The Walters Action was determined to be related to and consolidated with the Niemczyk Action, was also assigned to District Judge Esther Salas and Magistrate Judge Michael Hammer, and were effectively litigated as one case from that point forward. 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. (Niemczyk ECF No. 94).

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

6. 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.

7. The Plaintiffs undertook 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 vendor.

8. Plaintiffs hired experts to address liability and damages issues, as well as 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.

9. Defendant took the depositions of Plaintiffs Niemczyk, Hill, and Wolford, and Plaintiffs took the depositions of Defendant's IT Manager, Mike Giudice, on April 12, 2023, Defendant's VP of Inside Sales, Jeffrey Anclien on March 28, 2023, and its VP of Marketing Joshua Buma on March 27, 2023, all of whom were designated as corporate representatives pursuant to Fed. R. Civ. P. 30(b)(6).

10. Plaintiffs produced four expert reports; and the parties completed all fact and expert discovery.

11. 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. As part of the mediation, the Plaintiffs prepared a detailed mediation statement that included prospective damages calculations. 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' damages and economics expert in New York in October 2023 and another in-person meeting between the parties in Louisville, Kentucky in February 2024.

12. 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.

13. For purposes of mediation, Defendant produced extremely sensitive financial documents, such as balance sheets, years of financial statements, auditor reports, budgets, disclosures about ownership and interested party distributions, solar industry studies and projections, and other financial information. These productions were made beginning in June 2023 and continued on a rolling basis until the parties' February 2024 settlement meeting.

14. Plaintiffs reviewed them with painstaking detail, with the help of their economics expert. Plaintiffs also hired a consultant familiar with corporate transactions to advise about the liquidity event settlement conditions. Plaintiffs came away convinced that they have effectively forced Momentum Solar to contribute every dollar reasonably possible to the Settlement while preserving Momentum's ability to stay in business.

15. Further, Plaintiffs believe that there would have been a strong likelihood of a smaller recovery than made available through the Settlement if they prevailed at trial and obtained a class judgment due to collectability issues that would accompany an ensuing bankruptcy.

16. All the terms of the Settlement Agreement are the result of arm's-length negotiations between experienced counsel for both sides.

17. The named Plaintiffs all approve of the Settlement.

18. Based on Defendant's records, Plaintiffs estimate that there are approximately four million class members, though the number may increase due to the class period ending on the date of preliminary approval.

19. Attached as **Exhibit 1** is a true and correct copy of the Settlement Agreement

("Settlement") that the parties reached in this case, and which is the subject of the Motion.

a. Attached to the Settlement Agreement as **Exhibit A** is a true and correct copy of the proposed CAFA Notice.

b. Attached to the Settlement Agreement as **Exhibit B** is a true and correct copy of the proposed Claim Form.

c. Attached to the Settlement Agreement as **Exhibit C** is a true and correct copy of the proposed Long Form Notice.

d. Attached to the Settlement Agreement as **Exhibit D** is a true and correct copy of the proposed Summary Notice.

e. Attached to the Settlement Agreement as **Exhibit E** is a true and correct copy of the proposed Preliminary Approval Order.

20. Attached as **Exhibit 2** is a true and correct copy of Mazie Slater Katz & Freeman, LLC's firm resume.

21. Attached as **Exhibit 3** is a true and correct copy of Smith Krivoshey, PC's firm resume.

22. Attached as **Exhibit 4** is a true and correct copy of Bursor & Fisher, PA's firm resume.

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

/s/Matthew R. Mendelsohn
MATTHEW R. MENDELSOHN

Dated: September 20, 2024

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;

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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

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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

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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**.

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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 administrating 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.

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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

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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

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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.

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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.

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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.

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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.

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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.

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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

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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.

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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

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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.

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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

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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.

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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).

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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."

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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

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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

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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

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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;

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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

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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.

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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

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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.

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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.

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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

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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

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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 _____

Doc ID: d219f745d023a622bded522eeffc85d6b93e898f

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 _____

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	

Doc ID: d219f745d023a622bded522eeffc85d6b93e898f

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

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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

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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 or mailed to Momentum Solar Settlement, c/o Angeion Group, [Address].

I. YOUR INFORMATION

First Name _____ Last Name _____

Address 1 _____

Address 2 _____

City _____ State _____ Zip Code _____

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: _____

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

- 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**

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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]

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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.

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.

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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 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:

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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, 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 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.

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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 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.

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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.

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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.

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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 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.

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

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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.

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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.xxxxxxxxxxx.com
or Call 1-XXX-XXX-XXXX

Para ver este aviso en español, visite www.xxxxxxxxxxx.com.

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

1161

«ScanString»
Postal Service: Please do not mark barcode

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

NOTICE ID: [NOTICE ID] «FIRST NAME» «LAST NAME» «ADDRESS»	**MOMENTUM SOLAR TCPA CLAIM FORM**	«Barcode»

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 a 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 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. To submit a claim, you have two options: (1) complete and submit the online Claim Form at Website, or (2) request and complete a paper Claim Form and send it by first-class mail to: [X]. If 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, submit such documentation on the Website. Providing documentation is **optional**.

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]. If you have more than four (4) number(s), visit Website to submit your Claim Form online.

	Telephone Number	Date Range That You were the Regular User or Subscriber for the Telephone Number Provided	
1.		Start (MM/YYYY):	End (MM/YYYY):
2.		Start (MM/YYYY):	End (MM/YYYY):
3.		Start (MM/YYYY):	End (MM/YYYY):
4.		Start (MM/YYYY):	End (MM/YYYY):

Select from one of the following payment methods:

☐ Venmo ☐ Zelle ☐ Virtual Prepaid Card ☐ Check

Please provide the email address or mobile number associated with your Venmo or Zelle account, or email address for the Virtual Prepaid card: _____

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: _____ **Printed Name:** _____ **Date:** _____

Case 2:19-cv-07845-ES-MAH Document 166-2 Filed 09/20/24 Page 66 of 136 PageID: 1163

A proposed settlement has been reached in consolidated class action lawsuits called *Niemczyk v. Pro Custom Solar LLC*, Case No. 2:19-cv-7845-ES-MAH and *Walters v. Pro Custom Solar LLC*, Case No. 2:22-cv-00247-ES-MA (the "Settlement"). Records indicate that you may be a Settlement Class Member. This notice summarizes your rights and options. More details are available at www.xxxxxxxxxxxxxxxxxx.com.

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.xxxxxxxxxxxxxxxxxxxx.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.xxxxxxxxxxxxxxxxxxxx.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.xxxxxxxxxxxxxxxxxxxx.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.xxxxxxxxxxxxxxxxxxxx.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.xxxxxxxxxxxxxxxxxxxx.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.xxxxxxxxxxxxxxxxxxxx.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.

_____

_____

_____

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.

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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

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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

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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.

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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

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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:

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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.

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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

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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

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EXHIBIT 2

Mazie Slater Katz Freeman
TRIAL ATTORNEYS

FIRM RESUME 2024

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 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. Canden 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. 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 (Gynercare & 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 $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, Mr. Mendelsohn was 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 many 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); Haghayeghi 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 20 years and has extensive experience in complex civil litigation. Ms. Baldinger numerous settlements and verdicts in excess of $1 million, including the infamous Adam Katz case against the New Jersey Sports and Exposition Authority for Mr. Katz's wrongful death and a $10 million verdict for negligent security. 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 Brittish 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.

EXHIBIT 3

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. Mr. Smith also secured a preliminary injunction for Enterprise-Rent-A-Car in a breach of contract action against Orbitz. 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. Most recently, on July 25, 2024, Judge Kenneth Freeman noted that "the experience of [Smith Krivoshey] in representing consumers in class actions is extensive," and appointed Smith Krivoshey as class counsel in a case against the University of Southern California.

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.

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 California and Massachusetts, 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:

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:

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.

Jewell v. Magnolia Bank, Inc., Case No. 3:23-cv-78-RGJ (W.D. Ky Jan. 18, 2024), denying bank's motion to dismiss and motion to strike class allegations brought under the Telephone Consumer Protection Act.

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.

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.

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.

EXHIBIT 4

BURSOR & FISHER P.A.

www.bursor.com

701 BRICKELL AVENUE
MIAMI, FL 33131

1330 AVENUE OF THE AMERICAS
NEW YORK, NY 10019

1990 NORTH CALIFORNIA BLVD.
WALNUT CREEK, CA 94596

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. BURSOR

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent 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 for violations of the Telephone Consumer Protection Act (TCPA).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Bursor 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. Bursor. 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. Bursor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Bursor'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. Bursor 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. Bursor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Bursor 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. Bursor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Bursor 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. Bursor'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.

JOSHUA D. ARISOHN

Joshua D. Arisohn is a Partner with Bursor & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh's practice continues to focus on terrorism-related matters as well as class actions.

Josh 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 District Court for the District of Columbia, and the United States Courts of Appeals for the Second and Ninth Circuits.

Josh previously practiced at Dewey & LeBoeuf LLP and DLA Piper LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002. Josh has been honored as a 2015, 2016 and 2017 Super Lawyer Rising Star.

Selected Published Decisions:

Fields v. Syrian Arab Republic, Civil Case No. 18-1437 (RJL), entering a judgment of approximately $850 million in favor of the family members of victims of terrorist attacks carried out by ISIS with the material support of Syria.

Farwell v. Google LLC, 2022 WL 1568361 (C.D. Ill. Mar. 31, 2022), denying social media defendant's motion to dismiss BIPA claims brought on behalf of Illinois school students using Google's Workspace for Education platform on laptop computers.

Weiman v. Miami University, Case No. 2020-00614JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Smith v. The Ohio State University, Case No. 2020-00321JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Waitt v. Kent State University, Case No. 2020-00392JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Duke v. Ohio University, Case No. 2021-00036JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Keba v. Bowling Green State University, Case No. 2020-00639JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Kirkbride v. The Kroger Co., Case No. 2:21-cv-00022-ALM-EPD, denying motion to dismiss claims based on the allegation that defendant overstated its usual and customary prices and thereby overcharged customers for generic drugs.

Selected Class Settlements:

Morris v. SolarCity Corp., Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for $15 million class settlement to resolve claims under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

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 in photos on the Google Photos platform.

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:

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.

Bergeron v. Rochester Institute of Technology, 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020), denying university's motion to dismiss for failure to refund tuition and fees for the Spring 2020 semester in light of the COVID-19 pandemic.

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:

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.

Taylor v. Trusted Media Brands, Inc., Case No. 16-cv-01812-KMK (S.D.N.Y. 2018) – final approval granted for $8.225 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. American Media, Inc., Case No. 16-cv-11367-JEL (E.D. Mich. 2017) – final approval granted for $7.6 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Rocchio v. Rutgers, The State University of New Jersey, Case No. MID-L-003039-20 (Sup. Ct. Middlesex Cnty. 2022) – final approval granted for $5 million class settlement to resolve claims for failure to refund mandatory fees for the Spring 2020 semester in light of the COVID-19 pandemic.

Heigl v. Waste Management of New York, LLC, Case No. 19-cv-05487-WFK-ST (E.D.N.Y. 2021) – final approval granted for $2.7 million class settlement to resolve claims for charging allegedly unlawful fees pertaining to paper billing.

Frederick v. Examsoft Worldwide, Inc., Case No. 2021L001116 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for $2.25 million class settlement to resolve claims for alleged BIPA violations.

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.

BRITTANY SCOTT

Brittany Scott is an Associate with Bursor & Fisher, P.A. Brittany focuses her practice on data privacy, complex civil litigation, and consumer class actions. Brittany was an intern with Bursor & Fisher prior to joining the firm.

Brittany has substantial experience litigating consumer class actions, including those involving data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, the Fair Credit Reporting Act, and the Michigan Preservation of Personal Privacy Act. In addition to data privacy claims, Brittany has significant experience in litigating class action claims involving false and misleading advertising.

Brittany is admitted the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the Eastern District of Wisconsin, the Northern District of Illinois, the Ninth Circuit Court of Appeals, the Seventh Circuit Court of Appeals, and Second Circuit Court of Appeals.

Brittany received her Juris Doctor from the University of California, Hastings College of the Law in 2019, graduating cum laude. During law school, Brittany 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. In 2016, Brittany graduated from the University of California Berkeley with a B.A. in Political Science.

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.

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.

In 2023, Max was 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:

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.

Gladstone v. Amazon Web Services, Inc., --- F. Supp. 3d ---, 2024 WL 3276490 (W.D. Wash. July 2, 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., --- F. Supp. 3d ---, 2024 WL 126186 (D. Mass. Jan. 11, 2024), denying motion to dismiss alleged violations of federal Video Privacy Protection Act.

Yockey v. Salesforce, Inc., 688 F. Supp. 3d 962 (N.D. Cal. 2023), denying in part motion dismiss alleged violations of California and Pennsylvania wiretapping statutes.

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."

Carroll v. Myriad Genetics, Inc., 2022 WL 16860013 (N.D. Cal. Nov. 9, 2022), denying in part motion to dismiss in case involving non-invasive prenatal testing product.

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
- 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.

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 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.

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.

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

THOMAS NIEMCZYK, individually and on behalf of a class of similarly situated individuals, *Plaintiff*, v. PRO CUSTOM COLAR LLC d/b/a/ MOMENTUM SOLAR, *Defendant*.	Case 2:19-cv-7846-ES-MAH

DECLARATION OF THOMAS NIEMCZYK IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Thomas Niemczyk, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an adult over the age of 18 and a resident of the State of New York. I am a Class Representative in the lawsuit entitled *Niemczyk v. Pro Custom Solar LLC*, Case No. 2:19-cv-7846-ES-MAH (D.N.J.), currently pending in the United States District Court for the District of New Jersey. I make this Declaration in support of the Motion for Preliminary Approval of Settlement. The statements made in this Declaration are based on my personal knowledge and, if called as a witness, I could and would testify thereto.

2. At all relevant times I was the user, subscriber, owner and possessor of the cellular telephone number (516) 443-XXXX.

3. Over the years I received many robocalls by or on behalf of Momentum to my cellular phone number related to their selling and installing solar panels. I believe these were robocalls because after I answered the phone, there was a longer than normal delay before the caller would respond and I would sometimes hear a call connect to my line by a sudden increase in background noise.

4. I never authorized Momentum to make these calls, and I never solicited Momentum directly or indirectly about its products or services. After receiving many such calls, I spoke with a Momentum employee and asked Momentum to cease and for my name to be placed on their internal do not call list ("IDNC"). I was told by a Momentum representative that I was placed on Momentum's IDNC on November 28, 2017, but I continued to receive numerous robocalls between 2018-2019.

5. I assisted with the litigation of this case starting in 2019 by detailing my experiences and call history with Momentum. Specifically, I described to my lawyers my interactions with Momentum and the dates of those interactions and the details of my conversations. I also informed my counsel that I did not agree in writing or otherwise to allow Defendant to call me and in fact asked them numerous times to stop.

6. I also worked with my attorneys to prepare the Class Action

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Complaint. I carefully reviewed the Complaint for accuracy and approved it before it was filed.

7. Throughout this litigation, I kept in regular contact with my lawyers. Specifically, I conferred with them regularly by phone and e-mail to discuss the status of the case. We also discussed case strategy, preparation for document and deposition discovery, mediation, and the prospects of settlement. Furthermore, when appropriate, I informed my attorneys of additional facts for their research and consideration.

8. I also coordinated with my lawyers to search for documents, such as call logs. I was also prepared to testify at trial, if necessary.

9. On November 10, 2022, I sat for a deposition at the offices of my lawyers Mazie Slater Katz & Freeman, LLC, located at 103 Eisenhower Parkway, Roseland, New Jersey. I prepared for that deposition with my lawyers before that for several hours.

10. On June 19, 2023, the parties participated in a mediation before retired Judge Wayne R. Andersen. I stayed available on that day in case I was needed by my lawyers. In October 2023, my lawyers had an in-person meeting with Momentum in New York. Again, I stayed available. In February 2024, my lawyers had an in-person meeting between the parties in Louisville, Kentucky, and I stayed available.

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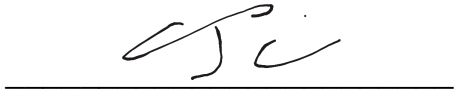
11. My lawyers have kept me well informed about the efforts to resolve this matter over five years. I discussed the Class Action Settlement Agreement with them and gave my approval prior to signing it.

12. Based on the interactions and my relationship with my attorneys, I believe they have fairly and adequately represented me and the Settlement Class and will continue to do so.

13. Throughout this litigation, I understood that, as a Class Representative, I have an obligation to protect the interests of other Settlement Class Members and not act just for my own personal benefit. I do not have any conflicts with other Settlement Class Members. I have done my best to protect the interests of other Settlement Class Members and will continue to fairly and adequately represent the Settlement Class to the best of my ability.

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

Executed 09 / 20 / 2024 at Melville, New York.



Thomas Niemczyk

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

RICK HILL and BARRY WOLFORD, individually and on behalf of a class of similarly situated individuals, *Plaintiffs*, v. PRO CUSTOM COLAR LLC d/b/a/ MOMENTUM SOLAR, *Defendant*.	Case No. 2:22-cv-00247-ES-MAH

DECLARATION OF RICK HILL IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Rick Hill, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an adult over the age of 18 and a resident of the State of New Florida. I am a Class Representative in the lawsuit entitled *Walters v. Pro Custom Solar LLC*, Case No. 2:22-cv-00247-ES-MAH (D.N.J.), currently pending in the United States District Court for the District of New Jersey. I make this Declaration in support of the Motion for Preliminary Approval of Settlement. The statements made in this Declaration are based on my personal knowledge and, if called as a witness, I could and would testify thereto.

2. At all relevant times I was the user, subscriber, owner and possessor of the cellular telephone number (321) 301-XXXX.

3. Over the years I received many robocalls by or on behalf of Momentum to my cellular phone number related to their selling and installing solar panels. I believe these were robocalls because whenever I pick up the call, the call drops. The calls always show up as Momentum Solar on my cellphone's Caller ID.

4. I never authorized Momentum to make these calls, and I never solicited Momentum directly or indirectly about its products or services. I registered my cell number on the National Do Not Call registry in or about April of 2017 specifically because I did not want to receive unsolicited telemarketing calls on my cellphone. Despite this, I received dozens, and possibly hundreds of calls from Momentum throughout 2021 and into 2022. The calls from Momentum have been an extreme nuisance and an invasion of my privacy.

5. I assisted with the litigation of this case by detailing my experiences and call history with Momentum. Specifically, I described to my lawyers the dates of those interactions. I also informed my counsel that I did not agree in writing or otherwise to allow Defendant to call me.

6. I also worked with my attorneys to prepare the Class Action Complaint. I carefully reviewed the Complaint for accuracy and approved it before it was filed.

7. Throughout this litigation, I kept in regular contact with my lawyers. Specifically, I conferred with them regularly by phone and e-mail to discuss the

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status of the case. We also discussed case strategy, preparation for document and deposition discovery, mediation, and the prospects of settlement. Furthermore, when appropriate, I informed my attorneys of additional facts for their research and consideration.

8. I also coordinated with my lawyers to search for documents, such as call logs. I was also prepared to testify at trial, if necessary.

9. On November 4, 2022, I sat for a deposition at Veritext Legal Solutions, 633 E Colonial Drive, Orlando, Florida. I prepared for that deposition with my lawyers before that for several hours.

10. On June 19, 2023, the parties participated in a mediation before retired Judge Wayne R. Andersen. I stayed available on that day in case I was needed by my lawyers. In October 2023, my lawyers had an in-person meeting with Momentum in New York. Again, I was available. In February 2024, my lawyers had an in-person meeting between the parties in Louisville, Kentucky, and I made sure to be available.

11. My lawyers have kept me well informed about the efforts to resolve this matter. I discussed the Class Action Settlement Agreement with them and gave my approval prior to signing it.

12. Based on the interactions and my relationship with my attorneys, I believe they have fairly and adequately represented me and the Settlement Class

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and will continue to do so.

13. Throughout this litigation, I understood that, as a Class Representative, I have an obligation to protect the interests of other Settlement Class Members and not act just for my own personal benefit. I do not have any conflicts with other Settlement Class Members. I have done my best to protect the interests of other Settlement Class Members and will continue to fairly and adequately represent the Settlement Class to the best of my ability.

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

Executed on 09 / 19 / 2024 at Titusville, Florida.

Rick Hill

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

RICK HILL and BARRY WOLFORD, individually and on behalf of a class of similarly situated individuals, *Plaintiffs*, v. PRO CUSTOM COLAR LLC d/b/a/ MOMENTUM SOLAR, *Defendant*.	Case No. 2:22-cv-00247-ES-MAH

DECLARATION OF BARRY WOLFORD IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Barry Wolford, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an adult over the age of 18 and a resident of the State of New Florida. I am a Class Representative in the lawsuit entitled *Walters v. Pro Custom Solar LLC*, Case No. 2:22-cv-00247-ES-MAH (D.N.J.), currently pending in the United States District Court for the District of New Jersey. I make this Declaration in support of the Motion for Preliminary Approval of Settlement. The statements made in this Declaration are based on my personal knowledge and, if called as a witness, I could and would testify thereto.

2. At all relevant times I was the user, subscriber, owner and possessor of the cellular telephone number (407) 844-XXXX.

3. Over the years I received many robocalls by or on behalf of Momentum to my cellular phone number related to their selling and installing solar panels. I believe these were robocalls because whenever I pick up the call, the call drops. The calls always show up as Momentum Solar or "Energy Services" on my cellphone's Caller ID.

4. I never authorized Momentum to make these calls, and I never solicited Momentum directly or indirectly about its products or services since I live in an apartment building and not a home. I registered my cell number on the National Do Not Call registry on or about October 18, 2018, specifically because I did not want to receive unsolicited telemarketing calls on my cellphone. Despite this, I received dozens, and possibly hundreds of calls from Momentum throughout 2021 and into 2022. As one example, on January 14, 2022, I received a call from Momentum, and I informed the sales representative that I am on the do not call list and asked to not be called again in the future. The calls from Momentum have been an extreme nuisance and an invasion of my privacy.

5. I assisted with the litigation of this case by detailing my experiences and call history with Momentum. Specifically, I described to my lawyers my interactions with Momentum and the dates of those interactions. I also informed my counsel that I did not agree in writing or otherwise to allow Defendant to call me, and asked them to stop calling me.

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6. I also worked with my attorneys to prepare the Class Action Complaint. I carefully reviewed the Complaint for accuracy and approved it before it was filed.

7. During the course of this litigation, I kept in regular contact with my lawyers. Specifically, I conferred with them regularly by phone and e-mail to discuss the status of the case. We also discussed case strategy, preparation for document and deposition discovery, mediation, and the prospects of settlement. Furthermore, when appropriate, I informed my attorneys of additional facts for their research and consideration.

8. I also coordinated with my lawyers to search for documents, such as call logs. I was also prepared to testify at trial, if necessary.

9. On November 3, 2022, I sat for a deposition at Veritext Legal Solutions, 633 E Colonial Drive, Orlando, Florida. I prepared for that deposition with my lawyers before that for several hours.

10. On June 19, 2023, the parties participated in a mediation before retired Judge Wayne R. Andersen. I stayed available on that day in case I was needed by my lawyers. In October 2023, my lawyers had an in-person meeting with Momentum in New York. Again, I was available. In February 2024, my lawyers had an in-person meeting between the parties in Louisville, Kentucky, and I made sure to be available.

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11. My lawyers have kept me well informed about the efforts to resolve this matter. I discussed the Class Action Settlement Agreement with them and gave my approval prior to signing it.

12. Based on the interactions and my relationship with my attorneys, I believe they have fairly and adequately represented me and the Settlement Class and will continue to do so.

13. Throughout this litigation, I understood that, as a Class Representative, I have an obligation to protect the interests of other Settlement Class Members and not act just for my own personal benefit. I do not have any conflicts with other Settlement Class Members. I have done my best to protect the interests of other Settlement Class Members and will continue to fairly and adequately represent the Settlement Class to the best of my ability.

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

Executed on 09 / 19 / 2024 at Orlando, Florida.

Barry Wolford

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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

DECLARATION OF STEVEN WEISBROT OF ANGEION GROUP, LLC
REGARDING PROPOSED NOTICE PLAN

I, Steven Weisbrot, declare and state as follows:

1. I am the President and Chief Executive Officer at the class action notice and claims administration firm Angeion Group, LLC ("Angeion"). Angeion specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans.

2. I have personal knowledge of the matters stated herein. In forming my opinions regarding notice in this action, I have drawn from my extensive class action experience, as described below.

3. I have been responsible in whole or in part for the design and implementation of hundreds of court-approved notice and administration programs, including some of the largest and most complex notice plans in recent history. I have taught numerous accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital

Media in Due Process Notice Programs, as well as Claims Administration, generally. I am the author of multiple articles on Class Action Notice, Claims Administration, and Notice Design in publications such as Bloomberg, BNA Class Action Litigation Report, Law360, the ABA Class Action and Derivative Section Newsletter, and I am a frequent speaker on notice issues at conferences throughout the United States and internationally.

4. I was certified as a professional in digital media sales by the Interactive Advertising Bureau ("IAB") and I am co-author of the Digital Media section of Duke Law's *Guidelines and Best Practices—Implementing 2018 Amendments to Rule 23* and the soon to be published George Washington Law School *Best Practices Guide to Class Action Litigation*.

5. I have given public comment and written guidance to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, broadcast media, digital media, and print publication, in effecting Due Process notice, and I have met with representatives of the Federal Judicial Center to discuss the 2018 amendments to Rule 23 and offered an educational curriculum for the judiciary concerning notice procedures.

6. Prior to joining Angeion's executive team, I was employed as Director of Class Action Services at Kurtzman Carson Consultants, an experienced notice and settlement administrator. Prior to my notice and claims administration experience, I was employed in private law practice.

7. My notice work comprises a wide range of class actions that include product defects, false advertising, data breach, mass disasters, employment discrimination, antitrust, tobacco, banking, firearm, insurance, and bankruptcy cases.

8. I have been at the forefront of infusing digital media, as well as big data and advanced targeting, into class action notice programs. Courts have repeatedly recognized my work in the design of class action notice programs. A comprehensive summary of judicial recognition Angeion has received is attached hereto as **Exhibit A**.

9. By way of background, Angeion is an experienced class action notice and claims administration company formed by a team of executives that have had extensive tenures at five other nationally recognized claims administration companies. Collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over $15 billion

to class members. The executive profiles as well as the company overview are available at www.angeiongroup.com.

10. As a class action administrator, Angeion has regularly been approved by both federal and state courts throughout the United States and abroad to provide notice of class actions and claims processing services.

11. Angeion has extensive experience administering landmark settlements involving some of the world's most prominent companies, including:

In re: Facebook, Inc Consumer Privacy User Profile Litigation
Case No. 3:18-md-02843-VC (N.D. Cal.)
Meta agreed to pay $725 million to settle allegations that the social media company allowed third parties, including Cambridge Analytica, to access personal information. Angeion undertook an integrated in-app notification and media campaign to a class in the hundreds of millions of individuals and processed 28.6 million claims, the most claims filed in the history of class actions. In fact, during the September 7, 2023 Final Approval Hearing, U.S. District Judge Chhabria acknowledged the record number of claims filed, stating, "I was kind of blown away by how many people made claims."

In re Apple Inc. Device Performance Litigation
Case No. 5:18-cv-02827-EJD (N.D. Cal.)
Apple agreed to pay $310 million to settle allegations of diminished performance in iPhone 6's and 7's. Angeion's direct notification efforts were recognized as reaching 99%+ of the current and former owners of 129 million class devices. Millions of claims were processed.

City of Long Beach, et al. v. Monsanto, et al.
Case No. 2:16-cv-03493-FMO-AS (C.D. Cal.)
Bayer agreed to pay $650 million to settle allegations of waterbodies impaired by PCBs. Angeion's notice administration was extraordinarily successful with direct notice delivered to 99.7% of the class. The claims administration includes multiple complex claims filing workflows for different funding allocations, including separate fund for "special needs" claimants.

Beckett v. Aetna Inc.
Case No. 2:17-cv-03864-JS (E.D. Pa.)
A consolidated data breach class action that arose from the alleged improper disclosure of Protected Health Information by a health insurer and previous claims administrator, including confidential HIV-related information. Angeion provided specialized training to our support team concerning the sensitive nature of the case and underlying health information. Angeion implemented robust privacy protocols to communicate with and verify the claims of the affected class members, including

anonymized notice packets and allowing claimants to lodge objections under pseudonyms.

12. Angeion has extensive experience administering TCPA settlements, notably:

Case Citation	Case No.	Court
Jenkins v. National Grid USA Service Company Inc.	2:15-cv-01219	E.D.N.Y.
Bauman v Saxe Management LLC	2:14-cv-01125	D. Nev.
Busch v Bluestem Brands, Inc.	0:16-cv-00644	D. Minn.
Fulton v. Enclarity Inc. et al.	2:16-cv-13777	E.D. Mich.
Jefferson Radiation Oncology LLC v Advanced Care Scripts	2:15-cv-01399	E.D. La.
Thornton et al. v. NCO Financial Systems Inc.	16 CH 5780	Ill. Cir. Ct.
Grogan v. Aaron's Inc.	1:18-cv-02821	N.D. Ga.

DATA SECURITY & INSURANCE

13. Angeion recognizes the critical need to secure our physical and network environments and protect data in our custody. It is our commitment to these matters that has made us the go-to administrator for many of the most prominent data security matters of this decade. We are ever improving upon our robust policies, procedures, and infrastructure by periodically updating data security policies as well as our approach to managing data security in response to changes to physical environment, new threats and risks, business circumstances, legal and policy implications, and evolving technical environments.

14. Angeion's privacy practices are compliant with the California Consumer Privacy Act, as currently drafted. Consumer data obtained for the delivery of each project is used only for the purposes intended and agreed in advance by all contracted parties, including compliance with orders issued by State or Federal courts as appropriate. Angeion imposes additional data security measures for the protection of Personally Identifiable Information (PII) and Personal Health Information (PHI), including redaction, restricted network and physical access on a need-to-know basis, and network access tracking. Angeion requires background checks of all employees, requires background checks and ongoing compliance audits of its contractors, and enforces standard protocols for the rapid removal of physical and network access in the event of an employee or contractor termination.

15. Data is transmitted using Transport Layer Security (TLS) 1.3 protocols. Network data is encrypted at rest with the government and financial institution standard of AES 256-bit encryption. We maintain an offline, air-gapped backup copy of all data, ensuring that projects can be administered without interruption.

16. Further, our team conscientiously monitors the latest compliance requirements, such as GDPR, HIPAA, PCI DSS, and others, to ensure that our organization is meeting all necessary regulatory obligations as well as aligning to industry best practices and standards set forth by frameworks like CIS and NIST. Angeion is cognizant of the ever-evolving digital landscape and continually improves its security infrastructure and processes, including partnering with best-in-class security service providers. Angeion's robust policies and processes cover all aspects of information security to form part of an industry leading security and compliance program, which is regularly assessed by independent third parties. Angeion is also committed to a culture of security mindfulness. All employees routinely undergo cybersecurity training to ensure that safeguarding information and cybersecurity vigilance is a core practice in all aspects of the work our teams complete.

17. Angeion currently maintains a comprehensive insurance program, including sufficient Errors & Omissions coverage.

SUMMARY OF THE NOTICE PLAN

18. This declaration will describe the notice plan that we will implement in this matter, including the considerations that informed the development of the plan and why it will provide due process to the Settlement Class. In my professional opinion, the proposed Notice Plan ("Notice Plan") described herein is the best practicable notice under the circumstances and fulfills all due process requirements, fully complying with Fed. R. Civ. P. 23.

19. The Notice Plan provides for individual direct notice to all reasonably identifiable Settlement Class Members via email or mail combined with a state-of-the-art media campaign and the implementation of a dedicated website and toll-free telephone line where Settlement Class Members can learn more about their rights and options pursuant to the terms of the Settlement. The Notice Plan also provides for a reminder notice to be sent via email.

DIRECT NOTICE

Settlement Class Member Data

20. Angeion will receive, review, and analyze the Settlement Class Member data provided to it. Angeion performs a thorough analysis to identify duplicative records, as well as missing/incomplete data fields. Angeion will then assign identification numbers to each unique record, which will comprise the Class Member list ("Class List").

21. For records without a valid email address and for Settlement Class Members whose email notice cannot be delivered, Angeion will cause a reverse look-up ("append") to be performed to locate updated email addresses. Angeion will then send email notice to the updated email addresses identified via the append process. Angeion utilizes a network of data partners[1] to aggregate a combination of first- and third-party data to source, update and verify email addresses. Specifically, the append matches email addresses to the data points provided (*i.e.*, names, mailing addresses, email addresses, phone numbers) as a validity check. The email addresses obtained via the append search will be used to effectuate a second attempt to provide notice to Settlement Class Members via email.

22. Angeion will cause a second append to be performed to locate mailing addresses for Settlement Class Members who did not have a corresponding mailing address on the Class List.

Email Notice

23. As part of the Notice Plan, Angeion will send direct email notice to Settlement Class Members who have valid email addresses included on the Class List provided to Angeion or obtained via the append search.

24. Angeion follows best practices to both validate emails and increase deliverability. Specifically, prior to distributing the email notice, Angeion subjects the email addresses on the Class List to a cleansing and validation process. The email cleansing process removes extra spaces, fixes common typographical errors in domain names, and corrects insufficient domain suffixes (*e.g.*, gmal.com to gmail.com, gmail.co to gmail.com, yaho.com to yahoo.com, etc.). The email addresses are then subjected to an email validation process whereby each email address will be

[1] Our data partners typically include Experian, Dun & Bradstreet, LexisNexis, IDI, and Facebook.

compared to known bad email addresses.[2] Email addresses that are not designated as a known bad address will then be further verified by contacting the Internet Service Provider ("ISP") to determine if the email address exists.

25. Further, Angeion designs the email notice to avoid many common "red flags" that might otherwise cause an email recipient's spam filter to block or identify the email notice as spam. For example, Angeion does not include attachments like the Long Form Notice to the email notice, because attachments are often interpreted by various Internet Service Providers ("ISP") as spam.

26. Angeion also accounts for the real-world reality that some emails will inevitably fail to be delivered during the initial delivery attempt. Therefore, after the initial noticing campaign is complete, Angeion, after an approximate 24- to 72-hour rest period (which allows any temporary block at the ISP level to expire) causes a second round of email noticing to continue to any email addresses that were previously identified as soft bounces and not delivered. In our experience, this minimizes emails that may have erroneously failed to deliver due to sensitive servers and optimizes delivery.

27. At the completion of the email campaign, Angeion will report to the Court concerning the rate of delivered emails accounting for any emails that are blocked at the ISP level. In short, the Court will possess a detailed, verified account of the success rate of the entire direct email notice campaign.

Mailed Notice

28. As part of the Notice Plan, Angeion will send notice of the Settlement via first class U.S. Mail, postage pre-paid, to all Settlement Class Members with a mailing address on the Class List (or obtained via the append search) and for whom an email address could not be located.

29. Angeion will employ the following best practices to increase the deliverability rate of the mailed notices: (i) Angeion will cause the mailing address information for Settlement Class Members to be updated utilizing the United States Postal Service's ("USPS") National Change of Address database, which provides updated address information for individuals or entities who have moved during the previous four years and filed a change of address with the USPS; (ii) Notices

[2] Angeion maintains a database of email addresses that were returned as permanently undeliverable, commonly referred to as a hard bounce, from prior campaigns. Where an address has been returned as a hard bounce within the last year, that email is designated as a known bad email address.

returned to Angeion by the USPS with a forwarding address will be re-mailed to the new address provided by the USPS; (iii) Notices returned to Angeion by the USPS without forwarding addresses will be subjected to an address verification search (commonly referred to as "skip tracing") utilizing a wide variety of data sources, including public records, real estate records, electronic directory assistance listings, etc., to locate updated addresses; and (iv) Notices will be re-mailed to Settlement Class Members for whom updated addresses were identified via the skip tracing process.

Reminder Email Notice

30. A reminder email notice will be disseminated to all Settlement Class Members with valid email addresses that have not submitted claims, objected, or opted-out at least 30 days prior to the deadline for the submission of Claim Forms.

MEDIA NOTICE

31. The robust media campaign consists of state-of-the-art internet notice ("Programmatic Display Advertising"), social media notice via Facebook and Instagram, and a paid search campaign via Google. The multifaceted media campaign is designed to deliver over 4.6 million impressions.

Programmatic Display Advertising

32. Angeion will utilize a form of internet advertising known as Programmatic Display Advertising, which is the leading method of buying digital advertisements in the United States.[3] In laymen's terms, programmatic advertising is a method of advertising where an algorithm identifies and examines demographic profiles and uses advanced technology to place advertisements on the websites where members of the Target Audience are most likely to visit (these websites are accessible on computers, mobile phones, and tablets). The media notice outlined below is strategically designed to provide notice of the Settlement to these individuals by driving them to the dedicated Settlement Website where they can learn more about the Settlement, including their rights and options. The approach described below is particularly effective given that members of the Target Audience spend an average of 29.3 hours per week on the internet.

[3] Programmatic Display Advertising is a trusted method specifically utilized to reach defined target audiences. It is estimated that the U.S. programmatic digital display ad spend will total $157.35 billion in 2024. *See* https://www.emarketer.com/insights/programmatic-digital-display-ad-spending/ (Last visited July 31, 2024).

33. To develop the media notice campaign and to verify its effectiveness, our media team analyzed data from 2024 comScore Multi-Platform/MRI Simmons USA Fusion[4] to profile the potential Settlement Class members and arrive at an appropriate Target Audience based on criteria pertinent to this Action. Specifically, the following syndicated research definition was used to profile potential Settlement Class Members: **Home Improvements: Solar panels Household Bought in last 12 months**.

34. It is important to note that the Target Audience is distinct from the Class definition, as is commonplace in class action notice plans. Using proxy audiences is also commonplace in both class action litigation and advertising generally.[5]

35. Additionally, the Target Audience is based on objective syndicated data, which is routinely used by advertising agencies and experts to understand the demographics, shopping habits, and attitudes of the consumers that they are seeking to reach.[6] Objective syndicated data tools guarantee that advertising placements can be measured against an objective basis and are ubiquitous tools in a media planner's arsenal. Here, the Target Audience has been reported to have the following characteristics:

- 48.80% are ages 25-54, with a median age of 46.1 years old;
- 52.91% are female;
- 58.24% are married;
- 40.39% have children;
- 41.97% have received a bachelor's or post-graduate degree;
- 46.67% are currently employed full time;
- The median household income is $119,120; and
- 83.81% have used social media in the last 30 days.

[4] GfK MediaMark Research and Intelligence LLC ("GfK MRI") provides demographic, brand preference and media-use habits, and captures in-depth information on consumer media choices, attitudes, and consumption of products and services in nearly 600 categories. comSCORE, Inc. ("comSCORE") is a leading cross-platform measurement and analytics company. comSCORE's proprietary digital audience measurement methodology allows marketers to calculate audience reach in a manner not affected by variables such as cookie deletion and cookie blocking/rejection, allowing these audiences to be reach more effectively. comSCORE operates in more than 75 countries, including the United States, serving over 3,200 clients worldwide.

[5] If the total population base (or number of class members) is unknown, it is accepted advertising and communication practice to use a proxy-media definition, which is based on accepted media research tools and methods that will allow the notice expert to establish that number. Duke Law School, GUIDELINES AND BEST PRACTICES IMPLEMENTING 2018 AMENDMENTS TO RULE 23 CLASS ACTION SETTLEMENT PROVISIONS, at 56.

[6] The notice plan should include an analysis of the makeup of the class. The target audience should be defined and quantified. This can be established through using a known group of customers, or it can be based on a proxy-media definition. Both methods have been accepted by the courts and, more generally, by the advertising industry, to determine a population base. *Id.* at 56.

36. Multiple targeting layers will be implemented into the programmatic campaign to help ensure delivery to the most appropriate users.

- Look-a-like modeling: This technique uses data methods to build a look-a-like audience against known Settlement Class Members.
- Predictive Targeting (prospecting): This technique allows technology to "predict" which users will be served an advertisement about the Settlement.
- Context Targeting: This technique leverages on-site data to identify sites with relevant topics and articles for ad placements.
- Geotargeting: The campaign will be targeted nationwide with weighted delivery based on how the audience is geographically spread throughout the country.
- Retargeting: This technique is a targeting method used to reach potential Settlement Class Members who have already visited the dedicated Settlement Website while they browse other pages. This allows for sufficient exposure to advertisements about the Settlement.

Social Media Advertising

37. Notice of the Settlement will further be disseminated utilizing Facebook and Instagram, two of the leading social media platforms in the United States.[7] The social media advertisements are designed to provide notice to Settlement Class Members by driving them to the dedicated Settlement Website by engaging with potential Settlement Class Members with simplified messaging on Facebook and Instagram via their desktop sites, mobile sites, and mobile apps.

38. The social media campaign capitalizes on the Target Audience's propensity to engage in social media (83.81% of the Target Audience have used social media in the last 30 days) and will run simultaneously with the programmatic internet advertising portion of the media campaign.

39. The social media campaign will utilize specific tactics to further qualify and deliver impressions to the Target Audience via the social media platforms' desktop sites, mobile sites, and mobile apps. For example, the Facebook Marketing platform and its technology will be used to serve advertisements on both Facebook and Instagram against the Target Audience.

40. Additionally, the direct, targeted social media notice will be implemented by uploading known Settlement Class Member email addresses directly to Facebook and Instagram. If any of the email addresses are used as the primary log-on email address for these platforms, Angeion will be able to contact

[7] Facebook is estimated to have over 250 million U.S. users, and Instagram over 169 million U.S. users. *See* https://www.statista.com/statistics/408971/number-of-us-facebook-users (Last visited July 30, 2024) https://www.statista.com/statistics/578364/countries-with-most-instagram-users/ (Last visited July 30, 2024)

those specific Settlement Class Members on a one-to-one basis via internet ads displayed on these platforms.

Paid Search Campaign

41. The Notice Plan also includes a paid search campaign via Google to help drive Settlement Class Members who are actively searching for information about the Settlement to the dedicated Settlement Website. Paid search ads will complement the digital advertisements, as search engines are frequently used to locate a specific website, rather than a person typing in the URL. Search terms would relate to not only the Settlement itself but also the subject matter of the litigation. In other words, the paid search ads are driven by the individual user's search activity, such that if that individual searches for (or has recently searched for) the Settlement, litigation or other terms related to the Settlement, that individual could be served with an advertisement directing them to the Settlement Website.

SETTLEMENT WEBSITE & TELEPHONE SUPPORT

42. The Notice Plan will also implement the creation of a case-specific Settlement Website, where Settlement Class Members can easily view general information about this Settlement, and review relevant Court documents, including 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 be designed to be user-friendly to make it easy for Settlement Class Members to find answers to frequently asked questions, view dates and deadlines, and will have a "Contact Us" page allowing Settlement Class Members to submit additional questions regarding the Settlement. The Settlement Website will also feature functionality to allow Settlement Class Members to securely submit a Claim Form and upload supporting documentation online via the Settlement Website.

43. 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.

44. The Settlement Website will be designed to be ADA-compliant and optimized for mobile visitors so that information loads quickly on mobile devices. Additionally, the Settlement Website will be designed to maximize search engine optimization through Google and other search

engines. Keywords and natural language search terms will be included in the Settlement Website's metadata to maximize search engine rankings.

45. A toll-free hotline devoted to this case will be created and provided on the Settlement Website to further apprise Class Members of the rights and options in the Settlement. The toll-free hotline will utilize an interactive voice response ("IVR") system to provide Class Members with responses to frequently asked questions and other essential information regarding the Settlement. The hotline will be accessible 24 hours a day, 7 days a week. Settlement Class Members will have the ability to request a copy of the Class Notice and/or Claim Form via the toll-free hotline.

NOTICE PURSUANT TO THE CLASS ACTION FAIRNESS ACT OF 2005

46. Within ten (10) days of the filing of the Settlement Agreement with this Court, Angeion will cause notice to be disseminated to the appropriate state and federal officials pursuant to the requirements of the Class Action Fairness Act, 28 U.S.C. §1715.

FRAUD DETECTION

47. Angeion has developed and deployed its real-time fraud detection system, AngeionAffirm, which is the first and only comprehensive solution to identify fraud in real time based on both state-of-the-art technology and analysis of over a decade of historical claims data.[8] AngeionAffirm was developed to combat the rising tide of fraudulent claims in class action settlements and the increasingly sophisticated technologies and techniques used by fraudulent actors in their attempt to perpetuate fraud. AngeionAffirm will be implemented to detect any fraudulent payment selection submissions in this Settlement.

48. The success of AngeionAffirm has been recognized by Courts. In the Court's July 26, 2024, Report and Recommendation, United States Magistrate Judge Stewart D. Aaron stated, "The Court finds that the claims process administered by Angeion has integrity and has been carried out in a diligent and thorough manner…Based upon the Court's review of the record, the Court finds that Angeion has taken prudent and necessary steps to address the fraudulent claims

[8] *See* https://www.angeiongroup.com/angeion-group-announces-angeionaffirm-2-0/ for information about the launch of AngeionAffirm 2.0.

submitted in this case… Angeion's fraud detection system is robust and appropriately designed to weed out fraudulent claims." (*See In re: Novartis and Par Antitrust Litigation*, No. 1:18-cv-04361-AKH-SDA, S.D.N.Y, Report and Recommendation, ECF No. 667).

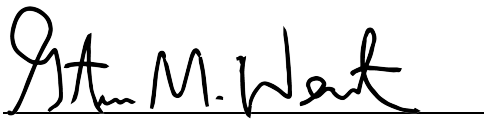
CONCLUSION

49. The Notice Plan outlined above includes direct notice via email or mail to all reasonably identifiable Settlement Class members, including a reminder email notice, and features a comprehensive state-of-the-art media campaign. The Notice Plan also includes the implementation of a dedicated Settlement Website and toll-free hotline to further inform Settlement Class members of their rights and options in the Settlement.

50. It is my professional opinion that the Notice Plan will provide full and proper notice to Settlement Class Members before any applicable settlement deadlines, and that the proposed Notice Plan is the best notice that is practicable under the circumstances, will fully comport with due process requirements and is fully compliant with Fed. R. Civ. P. 23. Angeion will report on the successful implementation of the Notice Plan after it has concluded.

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

Dated: September 19, 2024



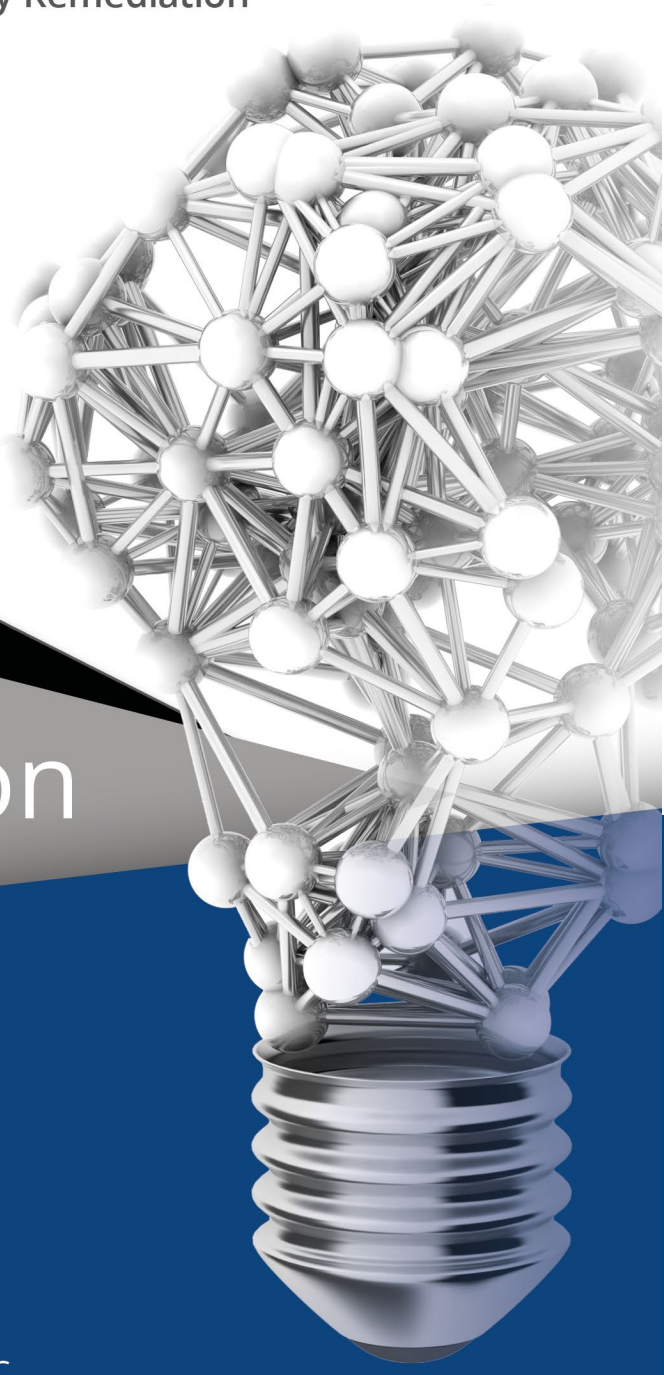
STEVEN WEISBROT

Exhibit A

ANGEION GROUP
Writing the Rules

INNOVATION
IT'S PART OF OUR DNA

Class Action Administration | Mass Arbitration Administration
Mass Tort Services | Regulatory Remediation



Judicial Recognition

© Angeion Group, LLC

IN RE: NOVARTIS AND PAR ANTITRUST LITIGATION

Case No. 1:18-cv-04361-AKH-SDA (S.D.N.Y.)

The Honorable Stewart D. Aaron, United States Magistrate Judge, Southern District of New York (July 26, 2024): The Court finds that **the claims process administered by Angeion has integrity** and has been carried out in a **diligent and thorough manner**...Based upon the Court's review of the record, **the Court finds that Angeion has taken prudent and necessary steps to address the fraudulent claims submitted** in this case... **Angeion's fraud detection system is robust and appropriately designed to weed out fraudulent claims**.

IN RE: FACEBOOK, INC. CONSUMER PRIVACY USER PROFILE LITIGATION

Case No. 3:18-md-02843 (N.D. Cal.)

The Honorable Vincent Chhabria (March 29, 2023): The Court approves the Settlement Administration Protocol & Notice Plan, amended Summary Notice (Dkt. No. 1114-8), second amended Class Notice (Dkt. No. 1114-6), In-App Notice, amended Claim Form (Dkt. No. 1114-2), Opt-Out Form (Dkt. No. 1122-1), and Objection Form (Dkt. No. 1122-2) and finds that their dissemination substantially in the manner and form set forth in the Settlement Agreement and the subsequent filings referenced above meets the requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice practicable under the circumstances, and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, the effect of the proposed Settlement (including the releases contained therein), the anticipated motion for Attorneys' Fees and Expenses Award and for Service Awards, and their rights to participate in, opt out of, or object to any aspect of the proposed Settlement.

IN RE: KIA HYUNDAI VEHICLE THEFT MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

Case No. 8:22-ml-03052 (C.D. Cal.)

The Honorable James V. Selna (October 31, 2023): The Court has considered the form and content of the Class notice program and finds that the Class notice program and methodology as described in the Settlement Agreement (a) meet the requirements of due process and Federal Rules of Civil Procedure 23(c) and (e); (b) constitute the best notice practicable under the circumstances to all persons entitled to notice; and (c) satisfies the constitutional requirements regarding notice.

IN RE: PHILLIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LITIGATION

Case No. 2:21-mc-01230 (MDL No. 3014) (W.D. Pa.)

The Honorable Joy Flowers Conti (October 10, 2023): The Court finds that the method of giving notice to the Settlement Class ("Notice Plan")...(a) constitute the best notice practicable under the circumstances, (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms and benefits of the proposed Settlement...(c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and any other persons entitled to receive notice, (d) meet all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Rule 23(c), the Due Process Clause(s) of the United States Constitution, and any other applicable laws...

IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION

Case No. 2:18-mn-02873 (D.S.C.)

The Honorable Richard Mark Gergel (August 29, 2023): The Court also approves the proposed Notice Plan set forth in Exhibit C to the Settlement Agreement. The Court finds that the proposal for (i) direct mailing of the Notice, as well as emailing of the Summary Notice, to each known Class Member, (ii) personalized outreach to national and local water organizations, (iii) national publication of the Summary Notice and a media campaign targeting all Active Public Water Systems that may potentially meet the qualifications to become Class Members, and (iv) a website that potential Class Members will be directed to displaying a long-form Notice that sets forth the details of the proposed Settlement and provides a toll-free hotline, meets the requirements of Rule 23 and due process and shall constitute due and sufficient notice to all Persons potentially entitled to participate in the proposed Settlement. The proposed Notice Plan is the best practicable notice under the circumstances of this case; is reasonably calculated under the circumstances to apprise potential Class Members of the Settlement Agreement and of their right to object to or exclude themselves from the proposed Settlement Class; is reasonable and constitutes due, adequate, and sufficient notice to all Persons entitled to receive it; and meets all applicable requirements of Federal Rule of Civil Procedure 23, the United States Constitution, and other applicable laws and rules.

KUKORINIS v. WALMART, INC.

Case No. 8:22-cv-02402 (M.D. Fla.)

The Honorable Virginia M. Hernandez Covington (January 19, 2024): The Notice Plan, including the form of the notices and methods for notifying the Settlement Class of the Settlement and its terms and conditions…a. meet the requirements of the Federal Rules of Civil Procedure (including Rule 23 (c)-(e)), the United States Constitution (including the Due Process Clause), and the Rules of this Court; b. constitute the best notice to Settlement Class Members practicable under the circumstances…

LE ET AL. v. ZUFFA, LLC

Case No. 2:15-cv-01045 (D. Nev.)

The Honorable Richard F. Boulware, II (November 17, 2023): The proposed Notice Plan, including the proposed forms and manner of notice, constitutes the best notice practicable under the circumstances and satisfies the requirements of due process and Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure.

AMANS v. TESLA, INC.

Case No. 3:21-cv-03577 (N.D. Cal.)

The Honorable Vince Chhabria (October 20, 2023): The Court further finds that the Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due, and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated, under all circumstances, to apprise members of the Settlement Class of the pendency of this case, the terms of the Settlement Agreement, the right to object to the Settlement, and the right to exclude themselves from the Settlement Class.

LUNDY v. META PLATFORMS, INC.

Case No. 3:18-cv-06793 (N.D. Cal.)

The Honorable James Donato (April 26, 2023): For purposes of Rule 23(e), the Notice Plan submitted with the Motion for Preliminary Approval and the forms of notice attached thereto are approved…The form, content, and method of giving notice to the Settlement Class as described in the Notice Plan submitted with the Motion for Preliminary Approval are accepted at this time as practicable and reasonable in light of the rather unique circumstances of this case.

IN RE: APPLE INC. DEVICE PERFORMANCE LITIGATION

Case No. 5:18-md-02827 (N.D. Cal.)

The Honorable Edward J. Davila (March 17, 2021): Angeion undertook a comprehensive notice campaign…The notice program was well executed, far-reaching, and exceeded both Federal Rule of Civil Procedure 23(c)(2)(B)'s requirement to provide the "best notice that is practicable under the circumstances" and Rule 23(e)(1)(B)'s requirement to provide "direct notice in a reasonable manner."

IN RE: TIKTOK, INC., CONSUMER PRIVACY LITIGATION

Case No. 1:20-cv-04699 (N.D. Ill.)

The Honorable John Z. Lee (August 22, 2022): The Class Notice was disseminated in accordance with the procedures required by the Court's Order Granting Preliminary Approval…in accordance with applicable law, satisfied the requirements of Rule 23(e) and due process, and constituted the best notice practicable…

IN RE: GOOGLE PLUS PROFILE LITIGATION

Case No. 5:18-cv-06164 (N.D. Cal.)

The Honorable Edward J. Davila (January 25, 2021): The Court further finds that the program for disseminating notice to Settlement Class Members provided for in the Settlement, and previously approved and directed by the Court (hereinafter, the "Notice Program"), has been implemented by the Settlement Administrator and the Parties, and such Notice Program, including the approved forms of notice, is reasonable and appropriate and satisfies all applicable due process and other requirements, and constitutes best notice reasonably calculated under the circumstances to apprise Settlement Class Members…

MEHTA v. ROBINHOOD FINANCIAL LLC

Case No. 5:21-cv-01013 (N.D. Cal.)

The Honorable Susan van Keulen (August 29, 2022): The proposed notice plan, which includes direct notice via email, will provide the best notice practicable under the circumstances. This plan and the Notice are reasonably calculated, under the circumstances, to apprise Class Members of the nature and pendency of the Litigation, the scope of the Settlement Class, a summary of the class claims, that a Class Member may enter an appearance through an attorney, that the Court will grant timely exclusion requests, the time and manner for requesting exclusion, the binding effect of final approval of the proposed Settlement, and the anticipated motion for attorneys' fees, costs, and expenses and for service awards. The plan and the Notice constitute due, adequate, and sufficient notice to Class Members and satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable laws and rules.

ADTRADER, INC. v. GOOGLE LLC

Case No. 5:17-cv-07082 (N.D. Cal.)

The Honorable Beth L. Freeman (May 13, 2022): The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the Notice Forms attached to the Weisbrot Declaration, subject to the Court's one requested change as further described in Paragraph 8 of this Order, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the AdWords Class of the pendency of this Action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the AdWords Class. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice Plan fully complies with the Northern District of California's Procedural Guidance for Class Action Settlements.

IN RE: FACEBOOK INTERNET TRACKING LITIGATION

Case No. 5:12-md-02314 (N.D. Cal.)

The Honorable Edward J. Davila (November 10, 2022): The Court finds that Plaintiffs' notice meets all applicable requirements of due process and is particularly impressed with Plaintiffs' methodology and use of technology to reach as many Class Members as possible. Based upon the foregoing, the Court finds that the Settlement Class has been provided adequate notice.

CITY OF LONG BEACH v. MONSANTO COMPANY

Case No. 2:16-cv-03493 (C.D. Cal.)

The Honorable Fernando M. Olguin (March 14, 2022): The court approves the form, substance, and requirements of the class Notice, (Dkt.278-2, Settlement Agreement, Exh. I). The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

STEWART v. LEXISNEXIS RISK DATA RETRIEVAL SERVICES, LLC

Case No. 3:20-cv-00903 (E.D. Va.)

The Honorable John A. Gibney Jr. (February 25, 2022): The proposed forms and methods for notifying the proposed Settlement Class Members of the Settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to notice…Based on the foregoing, the Court hereby approves the notice plans developed by the Parties and the Settlement Administrator and directs that they be implemented according to the Agreement and the notice plans attached as exhibits.

WILLIAMS v. APPLE INC.

Case No. 3:19-cv-04700 (N.D. Cal.)

The Honorable Laurel Beeler (February 24, 2022): The Court finds the Email Notice and Website Notice (attached to the Agreement as Exhibits 1 and 4, respectively), and their manner of transmission, implemented pursuant to the Agreement (a) are the best practicable notice, (b) are reasonably calculated, under the circumstances, to apprise the Subscriber Class of the pendency of

the Action and of their right to object to or to exclude themselves from the proposed settlement, (c) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meet all requirements of applicable law.

CLEVELAND V. WHIRLPOOL CORPORATION

Case No. 0:20-cv-01906 (D. Minn.)

The Honorable Wilhelmina M. Wright (December 16, 2021): It appears to the Court that the proposed Notice Plan described herein, and detailed in the Settlement Agreement, comports with due process, Rule 23, and all other applicable law. Class Notice consists of email notice and postcard notice when email addresses are unavailable, which is the best practicable notice under the circumstances…The proposed Notice Plan complies with the requirements of Rule 23, Fed. R. Civ. P., and due process, and Class Notice is to be sent to the Settlement Class Members as set forth in the Settlement Agreement and pursuant to the deadlines above.

RASMUSSEN V. TESLA, INC. D/B/A TESLA MOTORS, INC.

Case No. 5:19-cv-04596 (N.D. Cal.)

The Honorable Beth Labson Freeman (December 10, 2021): The Court has carefully considered the forms and methods of notice to the Settlement Class set forth in the Settlement Agreement ("Notice Plan"). The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and the requirements of any other applicable law, such that the terms of the Settlement Agreement, the releases provided for therein, and this Court's final judgment will be binding on all Settlement Class Members.

CAMERON V. APPLE INC.

Case No. 4:19-cv-03074 (N.D. Cal.)

The Honorable Yvonne Gonzalez Rogers (November 16, 2021): The parties' proposed notice plan appears to be constitutionally sound in that plaintiffs have made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law.

RISTO V. SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS ET AL.

Case No. 2:18-cv-07241 (C.D. Cal.)

The Honorable Christina A. Snyder (November 12, 2021): The Court approves the publication notice plan presented to this Court as it will provide notice to potential class members through a combination of traditional and digital media that will consist of publication of notice via press release, programmatic display digital advertising, and targeted social media, all of which will direct Class Members to the Settlement website…The notice plan satisfies any due process concerns as this Court certified the class under Federal Rule of Civil Procedure 23(b)(1)…

JENKINS v. NATIONAL GRID USA SERVICE COMPANY, INC.

Case No. 2:15-cv-01219 (E.D.N.Y.)

The Honorable Joanna Seybert (November 8, 2021): Pursuant to Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B), the Court approves the proposed Notice Plan and procedures set forth at Section 8 of the Settlement, including the form and content of the proposed forms of notice to the Settlement Class attached as Exhibits C-G to the Settlement and the proposed procedures for Settlement Class Members to exclude themselves from the Settlement Class or object. The Court finds that the proposed Notice Plan meets the requirements of due process under the United States Constitution and Rule 23, and that such Notice Plan—which includes direct notice to Settlement Class Members sent via first class U.S. Mail and email; the establishment of a Settlement Website (at the URL, www.nationalgridtcpasettlement.com) where Settlement Class Members can view the full settlement agreement, the detailed long-form notice (in English and Spanish), and other key case documents; publication notice in forms attached as Exhibits E and F to the Settlement sent via social media (Facebook and Instagram) and streaming radio (e.g., Pandora and iHeart Radio). The Notice Plan shall also include a paid search campaign on search engine(s) chosen by Angeion (e.g., Google) in the form attached as Exhibits G and the establishment of a toll-free telephone number where Settlement Class Members can get additional information—is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

NELLIS v. VIVID SEATS, LLC

Case No. 1:20-cv-02486 (N.D. Ill.)

The Honorable Robert M. Dow, Jr. (November 1, 2021): The Notice Program, together with all included and ancillary documents thereto, (a) constituted reasonable notice; (b) constituted notice that was reasonably calculated under the circumstances to apprise members of the Settlement Class of the pendency of the Litigation…(c) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and (d) met all applicable requirements of due process and any other applicable law. The Court finds that Settlement Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of law as well as all requirements of due process.

PELLETIER v. ENDO INTERNATIONAL PLC

Case No. 2:17-cv-05114 (E.D. Pa.)

The Honorable Michael M. Baylson (October 25, 2021): The Court approves, as to form and content, the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the "Proof of Claim"), and the Summary Notice, annexed hereto as Exhibits A-1, A-2, and A-3, respectively, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice, substantially in the manner and form set forth in ¶¶7-10 of this Order, meet the requirements of Rule 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

BIEGEL v. BLUE DIAMOND GROWERS

Case No. 7:20-cv-03032 (S.D.N.Y.)

The Honorable Cathy Seibel (October 25, 2021): The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the

Action…and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

QUINTERO v. SAN DIEGO ASSOCIATION OF GOVERNMENTS

Case No. 37-2019-00017834-CU-NP-CTL (Cal. Super. Ct.)

The Honorable Eddie C. Sturgeon (September 27, 2021): The Court has reviewed the class notices for the Settlement Class and the methods for providing notice and has determined that the parties will employ forms and methods of notice that constitute the best notice practicable under the circumstances; are reasonably calculated to apprise class members of the terms of the Settlement and of their right to participate in it, object, or opt-out; are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and meet all constitutional and statutory requirements, including all due process requirements and the California Rules of Court.

HOLVE v. MCCORMICK & COMPANY, INC.

Case No. 6:16-cv-06702 (W.D.N.Y.)

The Honorable Mark W. Pedersen (September 23, 2021): The Court finds that the form, content and method of giving notice to the Class as described in the Settlement Agreement and the Declaration of the Settlement Administrator: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action…(c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution.

CULBERTSON ET AL. v. DELOITTE CONSULTING LLP

Case No. 1:20-cv-03962 (S.D.N.Y.)

The Honorable Lewis J. Liman (August 27, 2021): The notice procedures described in the Notice Plan are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law.

PULMONARY ASSOCIATES OF CHARLESTON PLLC v. GREENWAY HEALTH, LLC

Case No. 3:19-cv-00167 (N.D. Ga.)

The Honorable Timothy C. Batten, Sr. (August 24, 2021): Under Rule 23(c)(2), the Court finds that the content, format, and method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot filed on July 2, 2021, and the Settlement Agreement and Release, including notice by First Class U.S. Mail and email to all known Class Members, is the best notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and due process.

IN RE: BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO II)

Case No. 6:20-md-02977 (E.D. Okla.)

The Honorable Robert J. Shelby (August 23, 2021): The Court approves the method of notice to be provided to the Settlement Class as set forth in Plaintiffs' Motion and Memorandum of Law in

Support of Motion for Approval of the Form and Manner of Class Notice and Appointment of Settlement Administrator and Request for Expedited Treatment and the Declaration of Steven Weisbrot on Angeion Group Qualifications and Proposed Notice Plan...The Court finds and concludes that such notice: (a) is the best notice that is practicable under the circumstances, and is reasonably calculated to reach the members of the Settlement Class and to apprise them of the Action, the terms and conditions of the Settlement, their right to opt out and be excluded from the Settlement Class, and to object to the Settlement; and (b) meets the requirements of Federal Rule of Civil Procedure 23 and due process.

ROBERTS ET AL. V. AT&T MOBILITY, LLC

Case No. 3:15-cv-03418 (N.D. Cal.)

The Honorable Edward M. Chen (August 20, 2021): The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort, as well as supplemental notice via a social media notice campaign and reminder email and SMS notices; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of this Action ...(d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, Due Process under the U.S. Constitution, and any other applicable law.

PYGIN V. BOMBAS, LLC

Case No. 4:20-cv-04412 (N.D. Cal.)

The Honorable Jeffrey S. White (July 12, 2021): The Court also concludes that the Class Notice and Notice Program set forth in the Settlement Agreement satisfy the requirements of due process and Rule 23 and provide the best notice practicable under the circumstances. The Class Notice and Notice Program are reasonably calculated to apprise Settlement Class Members of the nature of this Litigation, the Scope of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. Accordingly, the Court approves the Class Notice and Notice Program and the Claim Form.

WILLIAMS ET AL. V. RECKITT BENCKISER LLC ET AL.

Case No. 1:20-cv-23564 (S.D. Fla.)

The Honorable Jonathan Goodman (April 23, 2021): The Court approves, as to form and content, the Class Notice and Internet Notice submitted by the parties (Exhibits B and D to the Settlement Agreement or Notices substantially similar thereto) and finds that the procedures described therein meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and provide the best notice practicable under the circumstances. The proposed Class Notice Plan -- consisting of (i) internet and social media notice; and (ii) notice via an established a Settlement Website -- is reasonably calculated to reach no less than 80% of the Settlement Class Members.

NELSON ET AL. V. IDAHO CENTRAL CREDIT UNION

Case No. CV03-20-00831, CV03-20-03221 (Idaho Jud. Dist.)

The Honorable Robert C. Naftz (January 19, 2021): The Court finds that the Proposed Notice here is tailored to this Class and designed to ensure broad and effective reach to it...The Parties represent

that the operative notice plan is the best notice practicable and is reasonably designed to reach the settlement class members. The Court agrees.

IN RE: HANNA ANDERSSON AND SALESFORCE.COM DATA BREACH LITIGATION

Case No. 3:20-cv-00812 (N.D. Cal.)

The Honorable Edward M. Chen (December 29, 2020): The Court finds that the Class Notice and Notice Program satisfy the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure and provide the best notice practicable under the circumstances.

IN RE: PEANUT FARMERS ANTITRUST LITIGATION

Case No. 2:19-cv-00463 (E.D. Va.)

The Honorable Raymond A. Jackson (December 23, 2020): The Court finds that the Notice Program…constitutes the best notice that is practicable under the circumstances and is valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of Rule 23(c)(2) and the due process requirements of the Constitution of the United States.

BENTLEY ET AL. V. LG ELECTRONICS U.S.A., INC.

Case No. 2:19-cv-13554 (D.N.J.)

The Honorable Madeline Cox Arleo (December 18, 2020): The Court finds that notice of this Settlement was given to Settlement Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Litigation, the Settlement, and the Settlement Class Members' rights to object to the Settlement or opt out of the Settlement Class, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

IN RE: ALLURA FIBER CEMENT SIDING PRODUCTS LIABILITY LITIGATION

Case No. 2:19-mn-02886 (D.S.C.)

The Honorable David C. Norton (December 18, 2020): The proposed Notice provides the best notice practicable under the circumstances. It allows Settlement Class Members a full and fair opportunity to consider the proposed settlement. The proposed plan for distributing the Notice likewise is a reasonable method calculated to reach all members of the Settlement Class who would be bound by the settlement. There is no additional method of distribution that would be reasonably likely to notify Settlement Class Members who may not receive notice pursuant to the proposed distribution plan.

ADKINS ET AL. V. FACEBOOK, INC.

Case No. 3:18-cv-05982 (N.D. Cal.)

The Honorable William Alsup (November 15, 2020): Notice to the class is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Tr. Co., 399 U.S. 306, 314 (1650).*

IN RE: 21ST CENTURY ONCOLOGY CUSTOMER DATA SECURITY BREACH LITIGATION

Case No. 8:16-md-02737 (M.D. Fla.)

The Honorable Mary S. Scriven (November 2, 2020): The Court finds and determines that mailing the Summary Notice and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, all pursuant to this Order, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members.

MARINO ET AL. V. COACH INC.

Case No. 1:16-cv-01122 (S.D.N.Y.)

The Honorable Valerie Caproni (August 24, 2020): The Court finds that the form, content, and method of giving notice to the Settlement Class as described in paragraph 8 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in plain language, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

BROWN V. DIRECTV, LLC

Case No. 2:13-cv-01170 (C.D. Cal.)

The Honorable Dolly M. Gee (July 23, 2020): Given the nature and size of the class, the fact that the class has no geographical limitations, and the sheer number of calls at issue, the Court determines that these methods constitute the best and most reasonable form of notice under the circumstances.

IN RE: SSA BONDS ANTITRUST LITIGATION

Case No. 1:16-cv-03711 (S.D.N.Y.)

The Honorable Edgardo Ramos (July 15, 2020): The Court finds that the mailing and distribution of the Notice and the publication of the Summary Notice substantially in the manner set forth below meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled to notice.

KJESSLER ET AL. V. ZAAPPAAZ, INC. ET AL.

Case No. 4:18-cv-00430 (S.D. Tex.)

The Honorable Nancy F. Atlas (July 14, 2020): The Court also preliminarily approves the proposed manner of communicating the Notice and Summary Notice to the putative Settlement Class, as set

out below, and finds it is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23.

HESTER ET AL. V. WALMART, INC.

Case No. 5:18-cv-05225 (W.D. Ark.)

The Honorable Timothy L. Brooks (July 9, 2020): The Court finds that the Notice and Notice Plan substantially in the manner and form set forth in this Order and the Agreement meet the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

CLAY ET AL. V. CYTOSPORT INC.

Case No. 3:15-cv-00165 (S.D. Cal.)

The Honorable M. James Lorenz (June 17, 2020): The Court approves the proposed Notice Plan for giving notice to the Settlement Class through publication, both print and digital, and through the establishment of a Settlement Website, as more fully described in the Agreement and the Claims Administrator's affidavits (docs. no. 222-9, 224, 224-1, and 232-3 through 232-6). The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

GROGAN V. AARON'S INC.

Case No. 1:18-cv-02821 (N.D. Ga.)

The Honorable J.P. Boulee (May 1, 2020): The Court finds that the Notice Plan as set forth in the Settlement Agreement meets the requirements of Fed. R. Civ. P. 23 and constitutes the best notice practicable under the circumstances, including direct individual notice by mail and email to Settlement Class Members where feasible and a nationwide publication website-based notice program, as well as establishing a Settlement Website at the web address of www.AaronsTCPASettlement.com, and satisfies fully the requirements the Federal Rules of Civil Procedure, the U.S. Constitution, and any other applicable law, such that the Settlement Agreement and Final Order and Judgment will be binding on all Settlement Class Members.

CUMMINGS V. BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO ET AL.

Case No. D-202-CV-2001-00579 (N.M. Jud. Dist.)

The Honorable Carl Butkus (March 30, 2020): The Court has reviewed the Class Notice, the Plan of Allocation and Distribution and Claim Form, each of which it approves in form and substance. The Court finds that the form and methods of notice set forth in the Agreement: (i) are reasonable and the best practicable notice under the circumstances; (ii) are reasonably calculated to apprise Settlement Class Members of the pendency of the Lawsuit, of their rights to object to or opt-out of the Settlement, and of the Final Approval Hearing; (iii) constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet the requirements of the New Mexico Rules of Civil Procedure, the requirements of due process under the New Mexico and United States Constitutions, and the requirements of any other applicable rules or laws.

SCHNEIDER ET AL. V. CHIPOTLE MEXICAN GRILL, INC.

Case No. 4:16-cv-02200 (N.D. Cal.)

The Honorable Haywood S. Gilliam, Jr. (January 31, 2020): Given that direct notice appears to be infeasible, the third-party settlement administrator will implement a digital media campaign and provide for publication notice in People magazine, a nationwide publication, and the East Bay Times. SA § IV.A, C; Dkt. No. 205-12 at ¶¶ 13–23. The publication notices will run for four consecutive weeks. Dkt. No. 205 at ¶ 23. The digital media campaign includes an internet banner notice implemented using a 60-day desktop and mobile campaign. Dkt. No. 205-12 at ¶ 18. It will rely on "Programmatic Display Advertising" to reach the "Target Audience," Dkt. No. 216-1 at ¶ 6, which is estimated to include 30,100,000 people and identified using the target definition of "Fast Food & Drive-In Restaurants Total Restaurants Last 6 Months [Chipotle Mexican Grill]," Dkt. No. 205-12 at ¶ 13. Programmatic display advertising utilizes "search targeting," "category contextual targeting," "keyword contextual targeting," and "site targeting," to place ads. Dkt. No. 216-1 at ¶¶ 9–12. And through "learning" technology, it continues placing ads on websites where the ad is performing well. Id. ¶ 7. Put simply, prospective Class Members will see a banner ad notifying them of the settlement when they search for terms or websites that are similar to or related to Chipotle, when they browse websites that are categorically relevant to Chipotle (for example, a website related to fast casual dining or Mexican food), and when they browse websites that include a relevant keyword (for example, a fitness website with ads comparing fast casual choices). Id. ¶¶ 9–12. By using this technology, the banner notice is "designed to result in serving approximately 59,598,000 impressions." Dkt. No. 205-12 at ¶ 18.

The Court finds that the proposed notice process is "'reasonably calculated, under all the circumstances,' to apprise all class members of the proposed settlement." Roes, 944 F.3d at 1045 (citation omitted).

HANLEY V. TAMPA BAY SPORTS AND ENTERTAINMENT LLC

Case No. 8:19-cv-00550 (M.D. Fla.)

The Honorable Charlene Edwards Honeywell (January 7, 2020): The Court approves the form and content of the Class notices and claim forms substantially in the forms attached as Exhibits A-D to the Settlement. The Court further finds that the Class Notice program described in the Settlement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel's attorney's fees application and the request for a service award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class notices and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class notices and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

CORCORAN ET AL. V. CVS HEALTH ET AL.

Case No. 4:15-cv-03504 (N.D. Cal.)

The Honorable Yvonne Gonzalez Rogers (November 22, 2019): Having reviewed the parties' briefings, plaintiffs' declarations regarding the selection process for a notice provider in this matter and regarding Angeion Group LLC's experience and qualifications, and in light of defendants' non-

opposition, the Court APPROVES Angeion Group LLC as the notice provider. Thus, the Court GRANTS the motion for approval of class notice provider and class notice program on this basis.

Having considered the parties' revised proposed notice program, the Court agrees that the parties' proposed notice program is the "best notice that is practicable under the circumstances." The Court is satisfied with the representations made regarding Angeion Group LLC's methods for ascertaining email addresses from existing information in the possession of defendants. Rule 23 further contemplates and permits electronic notice to class members in certain situations. See Fed. R. Civ. P. 23(c)(2)(B). The Court finds, in light of the representations made by the parties, that this is a situation that permits electronic notification via email, in addition to notice via United States Postal Service. Thus, the Court APPROVES the parties' revised proposed class notice program, and GRANTS the motion for approval of class notice provider and class notice program as to notification via email and United States Postal Service mail.

PATORA v. TARTE, INC.

Case No. 7:18-cv-11760 (S.D.N.Y.)

The Honorable Kenneth M. Karas (October 2, 2019): The Court finds that the form, content, and method of giving notice to the Class as described in Paragraph 9 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the Proposed Settlement, and their rights under the Proposed Settlement, including but not limited to their rights to object to or exclude themselves from the Proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clauses of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

CARTER ET AL. v. GENERAL NUTRITION CENTERS, INC., AND GNC HOLDINGS, INC.

Case No. 2:16-cv-00633 (W.D. Pa.)

The Honorable Mark R. Hornak (September 9, 2019): The Court finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above and Section VII of the Agreement constitutes the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise proposed Settlement Class Members of the pendency of this action, the terms of the Agreement, and their right to object to or exclude themselves from the proposed Settlement Class. The Court finds that the notice is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process, Rule 23 of the Federal Rules of Ci vii Procedure, and any other applicable laws.

CORZINE v. MAYTAG CORPORATION ET AL.

Case No. 5:15-cv-05764 (N.D. Cal.)

The Honorable Beth L. Freeman (August 21, 2019): The Court, having reviewed the proposed Summary Notice, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that

the proposed plan will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

MEDNICK V. PRECOR, INC.

Case No. 1:14-cv-03624 (N.D. Ill.)

The Honorable Harry D. Leinenweber (June 12, 2019): Notice provided to Class Members pursuant to the Preliminary Class Settlement Approval Order constitutes the best notice practicable under the circumstances, including individual email and mail notice to all Class Members who could be identified through reasonable effort, including information provided by authorized third-party retailers of Precor. Said notice provided full and adequate notice of these proceedings and of the matter set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of F.R.C.P. Rule 23 (e) and (h) and the requirements of due process under the United States and California Constitutions.

GONZALEZ V. TCR SPORTS BROADCASTING HOLDING LLP ET AL.

Case No. 1:18-cv-20048 (S.D. Fla.)

The Honorable Darrin P. Gayles (May 24, 2019): The Court finds that notice to the class was reasonable and the best notice practicable under the circumstances, consistent with Rule 23(e)(1) and Rule 23(c)(2)(B).

ANDREWS ET AL. V. THE GAP, INC. ET AL.

Case No. CGC-18-567237 (Cal. Super. Ct.)

The Honorable Richard B. Ulmer Jr. (May 10, 2019): The Court finds that (a) the Full Notice, Email Notice, and Publication constitute the best notice practicable under the circumstances, (b) they constitute valid, due, and sufficient notice to all members of the Class, and (c) they comply fully with the requirements of California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

COLE ET AL. V. NIBCO, INC.

Case No. 3:13-cv-07871 (D.N.J.)

The Honorable Freda L. Wolfson (April 11, 2019): The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order. The Court finds that the Notice Plan constitutes: (i) the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this..., (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

DIFRANCESCO ET AL. V. UTZ QUALITY FOODS, INC.

Case No. 1:14-cv-14744 (D. Mass.)

The Honorable Douglas P. Woodlock (March 15, 2019): The Court finds that the Notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits 2 and 6 thereto, as amended (the "Notice Program"), is reasonably calculated to, under all circumstances, apprise

the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

IN RE: CHRYSLER-DODGE-JEEP ECODIESEL MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

Case No. 3:17-md-02777 (N.D. Cal.)

The Honorable Edward M. Chen (February 11, 2019): Also, the parties went through a sufficiently rigorous selection process to select a settlement administrator. See Proc. Guidance for Class Action Sett. ¶ 2; see also Cabraser Decl. ¶¶ 9-10. While the settlement administration costs are significant – an estimated $1.5 million – they are adequately justified given the size of the class and the relief being provided.

In addition, the Court finds that the language of the class notices (short and long-form) is appropriate and that the means of notice – which includes mail notice, electronic notice, publication notice, and social media "marketing" – is the "best notice…practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); see also Proc. Guidance for Class Action Sett. ¶¶ 3-5, 9 (addressing class notice, opt-outs, and objections). The Court notes that the means of notice has changed somewhat, as explained in the Supplemental Weisbrot Declaration filed on February 8, 2019, so that notice will be more targeted and effective. See generally Docket No. 525 (Supp. Weisbrot Decl.) (addressing, inter alia, press release to be distributed via national newswire service, digital and social media marketing designed to enhance notice, and "reminder" first-class mail notice when AEM becomes available).

Finally, the parties have noted that the proposed settlement bears similarity to the settlement in the Volkswagen MDL. See Proc. Guidance for Class Action Sett. ¶ 11.

RYSEWYK ET AL. V. SEARS HOLDINGS CORPORATION ET AL.

Case No. 1:15-cv-04519 (N.D. Ill.)

The Honorable Manish S. Shah (January 29, 2019): The Court holds that the Notice and notice plan as carried out satisfy the requirements of Rule 23(e) and due process. This Court has previously held the Notice and notice plan to be reasonable and the best practicable under the circumstances in its Preliminary Approval Order dated August 6, 2018. (Dkt. 191) Based on the declaration of Steven Weisbrot, Esq. of Angeion Group (Dkt. No. 209-2), which sets forth compliance with the Notice Plan and related matters, the Court finds that the multi-pronged notice strategy as implemented has successfully reached the putative Settlement Class, thus constituting the best practicable notice and satisfying due process.

MAYHEW ET AL. V. KAS DIRECT, LLC, AND S.C. JOHNSON & SON, INC.

Case No. 7:16-cv-06981 (S.D.N.Y.)

The Honorable Vincent J. Briccetti (June 26, 2018): In connection with their motion, plaintiffs provide the declaration of Steven Weisbrot, Esq., a principal at the firm Angeion Group, LLC, which will serve as the notice and settlement administrator in this case. (Doc. #101, Ex. F: Weisbrot Decl.) According to Mr. Weisbrot, he has been responsible for the design and implementation of hundreds of class

action administration plans, has taught courses on class action claims administration, and has given testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, and digital media in due process notice. Mr. Weisbrot states that the internet banner advertisement campaign will be responsive to search terms relevant to "baby wipes, baby products, baby care products, detergents, sanitizers, baby lotion, [and] diapers," and will target users who are currently browsing or recently browsed categories "such as parenting, toddlers, baby care, [and] organic products." (Weisbrot Decl. ¶ 18). According to Mr. Weisbrot, the internet banner advertising campaign will reach seventy percent of the proposed class members at least three times each. (Id. ¶ 9). Accordingly, the Court approves of the manner of notice proposed by the parties as it is reasonable and the best practicable option for confirming the class members receive notice.

IN RE: OUTER BANKS POWER OUTAGE LITIGATION

Case No. 4:17-cv-00141 (E.D.N.C.)

The Honorable James C. Dever III (May 2, 2018): The court has reviewed the proposed notice plan and finds that the notice plan provides the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities affected by or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. Thus, the court approves the proposed notice plan.

GOLDEMBERG ET AL. V. JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

Case No. 7:13-cv-03073 (S.D.N.Y.)

The Honorable Nelson S. Roman (November 1, 2017): Notice of the pendency of the Action as a class action and of the proposed Settlement, as set forth in the Settlement Notices, was given to all Class Members who could be identified with reasonable effort, consistent with the terms of the Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law in the United States. Such notice constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

HALVORSON V. TALENTBIN, INC.

Case No. 3:15-cv-05166 (N.D. Cal.)

The Honorable Joseph C. Spero (July 25, 2017): The Court finds that the Notice provided for in the Order of Preliminary Approval of Settlement has been provided to the Settlement Class, and the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances, and was in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, and any other applicable law. The Notice apprised the members of the Settlement Class of the pendency of the litigation; of all material elements of the proposed settlement, including but not limited to the relief afforded the Settlement Class under the Settlement Agreement; of the res judicata effect on members of the Settlement Class and of their opportunity to object to, comment on, or opt-out of, the Settlement; of the identity of Settlement Class Counsel and of information necessary to contact Settlement Class Counsel; and of the right to appear at the Fairness Hearing. Full opportunity has been afforded to members of the Settlement Class to participate in the Fairness Hearing. Accordingly, the Court

determines that all Final Settlement Class Members are bound by this Final Judgment in accordance with the terms provided herein.

IN RE: ASHLEY MADISON CUSTOMER DATA SECURITY BREACH LITIGATION

MDL No. 2669/Case No. 4:15-md-02669 (E.D. Mo.)

The Honorable John A. Ross (July 21, 2017): The Court further finds that the method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program, dated July 13, 2017, and the Parties' Stipulation—including an extensive and targeted publication campaign composed of both consumer magazine publications in People and Sports Illustrated, as well as serving 11,484,000 highly targeted digital banner ads to reach the prospective class members that will deliver approximately 75.3% reach with an average frequency of 3.04 —is the best method of notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and all Constitutional requirements including those of due process.

The Court further finds that the Notice fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process; provided, that the Parties, by agreement, may revise the Notice, the Claim Form, and other exhibits to the Stipulation, in ways that are not material or ways that are appropriate to update those documents for purposes of accuracy.

TRAXLER ET AL. V. PPG INDUSTRIES INC. ET AL.

Case No. 1:15-cv-00912 (N.D. Ohio)

The Honorable Dan Aaron Polster (April 27, 2017): The Court hereby approves the form and procedure for disseminating notice of the proposed settlement to the Settlement Class as set forth in the Agreement. The Court finds that the proposed Notice Plan contemplated constitutes the best notice practicable under the circumstances and is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e). In addition, Class Notice clearly and concisely states in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Settlement Class; (iii) the claims and issues of the Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

IN RE: THE HOME DEPOT, INC., CUSTOMER DATA SECURITY BREACH LITIGATION

Case No. 1:14-md-02583 (N.D. Ga.)

The Honorable Thomas W. Thrash Jr. (March 10, 2017): The Court finds that the form, content, and method of giving notice to the settlement class as described in the settlement agreement and exhibits: (a) constitute the best practicable notice to the settlement class; (b) are reasonably calculated, under the circumstances, to apprise settlement class members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further

finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by settlement class members.

ROY v. TITEFLEX CORPORATION T/A GASTITE AND WARD MANUFACTURING, LLC

Case No. 384003V (Md. Cir. Ct.)

The Honorable Ronald B. Rubin (February 24, 2017): What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm their citizens with knowledge and then the citizens can make decision. To me that is a key piece of this deal. ***I think the notice provisions are exquisite*** [emphasis added].

IN RE: LG FRONT LOADING WASHING MACHINE CLASS ACTION LITIGATION

Case No. 2:08-cv-00051 (D.N.J.)

The Honorable Madeline Cox Arleo (June 17, 2016): This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement and the joint motion for preliminary approval. The Court has reviewed the notices attached as exhibits to the Settlement, the plan for distributing the Summary Notices to the Settlement Class, and the plan for the Publication Notice's publication in print periodicals and on the internet, and finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances. The Court specifically approves the Parties' proposal to use reasonable diligence to identify potential class members and an associated mailing and/or email address in the Company's records, and their proposal to direct the ICA to use this information to send absent class members notice both via first class mail and email. The Court further approves the plan for the Publication Notice's publication in two national print magazines and on the internet. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy.

FENLEY v. APPLIED CONSULTANTS, INC.

Case No. 2:15-cv-00259 (W.D. Pa.)

The Honorable Mark R. Hornak (June 16, 2016): The Court would note that it approved notice provisions of the settlement agreement in the proceedings today. That was all handled by the settlement and administrator Angeion. The notices were sent. The class list utilized the Postal Service's national change of address database along with using certain proprietary and other public resources to verify addresses. the requirements of Fed.R.Civ.P. 23(c)(2), Fed.R.Civ.P. 23(e) (l), and Due Process....

The Court finds and concludes that the mechanisms and methods of notice to the class as identified were reasonably calculated to provide all notice required by the due process clause, the applicable rules and statutory provisions, and that the results of ***the efforts of Angeion were highly successful and fulfilled all of those requirements*** [emphasis added].

FUENTES ET AL. V. UNIRUSH, LLC D/B/A UNIRUSH FINANCIAL SERVICES ET AL.

Case No. 1:15-cv-08372 (S.D.N.Y.)

The Honorable J. Paul Oetken (May 16, 2016): The Court approves, as to form, content, and distribution, the Claim Form attached to the Settlement Agreement as Exhibit A, the Notice Plan, and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B-D, thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of the Actions, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. The Parties, by agreement, may revise the Notices and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

IN RE: WHIRLPOOL CORP. FRONTLOADING WASHER PRODUCTS LIABILITY LITIGATION

MDL No. 2001/Case No. 1:08-wp-65000 (N.D. Ohio)

The Honorable Christopher A. Boyko (May 12, 2016): The Court, having reviewed the proposed Summary Notices, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

SATERIALE ET AL. V. R.J. REYNOLDS TOBACCO CO.

Case No. 2:09-cv-08394 (C.D. Cal.)

The Honorable Christina A. Snyder (May 3, 2016): The Court finds that the Notice provided to the Settlement Class pursuant to the Settlement Agreement and the Preliminary Approval Order has been successful, was the best notice practicable under the circumstances and (1) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, Due Process, and the rules of the Court.

FERRERA ET AL. V. SNYDER'S-LANCE, INC.

Case No. 0:13-cv-62496 (S.D. Fla.)

The Honorable Joan A. Lenard (February 12, 2016): The Court approves, as to form and content, the Long-Form Notice and Short- Form Publication Notice attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits 1 and 2 to the Stipulation of Settlement. The Court also approves the procedure for disseminating notice of the proposed settlement to the Settlement Class and the Claim Form, as set forth in the Notice and Media Plan attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits G. The Court finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the

Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution.

SOTO ET AL. V. THE GALLUP ORGANIZATION, INC.

Case No. 0:13-cv-61747 (S.D. Fla.)

The Honorable Marcia G. Cooke (June 16, 2015): The Court approves the form and substance of the notice of class action settlement described in ¶ 8 of the Agreement and attached to the Agreement as Exhibits A, C and D. The proposed form and method for notifying the Settlement Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Settlement Class Members of their rights.

OTT V. MORTGAGE INVESTORS CORPORATION OF OHIO, INC.

Case No. 3:14-cv-00645 (D. Or.)

The Honorable Janice M. Stewart (July 20, 2015): The Notice Plan, in form, method, and content, fully complies with the requirements of Rule 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled thereto. The Court finds that the Notice Plan is reasonably calculated to, under all circumstances, reasonably apprise the persons in the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class.

IN RE: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION

MDL No. 2328/Case No. 2:12-md-02328 (E.D. La.)

The Honorable Sarah S. Vance (December 31, 2014): To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web- based forms of communication in the plan. The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process. The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement. Moreover, the plan to combine notice for the Zodiac and Hayward settlements should streamline the process and avoid confusion that might otherwise be caused by a proliferation of notices for different settlements. Therefore, the Court approves the proposed notice forms and the plan of notice.

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 **CERTIFICATE OF SERVICE**
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.	Case No.: 2:22-cv-00247- ES-MAH

I, Matthew R. Mendelsohn, certify that on the below date, copies of the foregoing Notice of Motion, Memorandum, Declaration of Matthew R. Mendelsohn, Declaration of Steven Weisbrot, Proposed Order and this Certificate of Service were filed with the United States District Court for the District of New Jersey and served on all counsel of record through the electronic filing service system.

Dated: September 20, 2024

By: */s/ Matthew R. Mendelsohn*

Matthew R. Mendelsohn
MAZIE SLATER KATZ & FREEMAN, LLC
103 Eisenhower Parkway
Roseland, NJ 07068
Telephone: (973) 228-9898
mrm@mazieslater.com