

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

SEAN SHEFFLER, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

ACTIVATE HEALTHCARE, LLC and  
EVERSIDE HEALTH, LLC,

Defendants.

Case No. 1:23-cv-01206-SEB-TAB

**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Sean Sheffler (“Representative Plaintiff” or “Plaintiff”) submits this Memorandum in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement.<sup>1</sup>

**I. INTRODUCTION**

This case arises from a data breach that Plaintiff alleges affected Defendants’ IT network, compromising and potentially compromising the Sensitive Personal Information (“SPI”)<sup>2</sup> Plaintiff and Settlement Class Members.

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<sup>1</sup> While Defendants do not oppose the relief sought in this motion, Defendants dispute Plaintiff’s characterization of the facts and conclusions in this Motion.

<sup>2</sup> Defined as ““patient names, dates of birth, address, Social Security number, driver’s license number, and clinical information, such as provider name, date of service, and/or diagnosis” in Plaintiff’s Third Amended Complaint (“Compl.”), ECF No. 38, ¶ 3.

## II. CASE SUMMARY

### A. The Data Incident

Defendants Activate Healthcare, LLC and Everside Health, LLC (“Defendants”) are healthcare companies that serve a variety of healthcare-related functions for both employers and unions, including drug screenings. *See* Compl. ¶¶ 1, 19, 20. Plaintiff and members of the proposed class are employees, prospective employees, and union members who used Defendants’ services, often at the direction of their employers or unions. *Id.* at ¶ 73. In its ordinary course of business, Defendants collect customers’ SPI. *Id.* at ¶ 23. Plaintiff alleges that Defendants failed to adequately protect his SPI and the SPI of the Class. *Id.* at 9 ¶¶ 28-36.

In April 2023, Defendants discovered that an unauthorized person had gained access to its database(s) and exfiltrated the SPI of approximately 113,872 individuals. *Id.* at ¶¶ 2, 24. Plaintiff believes, due to repeated calls from scammers and other individuals attempting to solicit money from him that this information was transmitted to others via the dark web. *Id.* at ¶ 70.

### B. Procedural Posture

Plaintiff filed his initial complaint on July 8, 2023. *See* ECF No. 1. As of December 7, 2023, the Parties had fully briefed Defendant Activate Healthcare, LLC’s motion to dismiss. *See* ECF Nos. 28, 29, 31, and 34. On April 11, 2024, the Parties<sup>3</sup> conducted a mediation before Bruce Friedman, Esq. of JAMS.

Plaintiff alleges five claims for relief: (i) negligence; (ii) breach of implied contract; (iii) breach of third-party beneficiary of contract; (iv) bailment; and (v) unjust enrichment. These

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<sup>3</sup> Parties refers to Plaintiff and Defendants collectively.

claims are asserted on behalf of a nationwide class. *Id.* at ¶ 22. The Complaint<sup>4</sup> also sought certification of a single national class as well as state subclasses. *Id.* at ¶¶ 83-147.

Plaintiff also sought equitable relief enjoining Defendants from engaging in the wrongful conduct complained of and compelling Defendants to utilize appropriate methods to protect the interests of the Class. *Id.* at Prayer for Relief. Finally, Plaintiff sought an award of actual, compensatory, and statutory damages as well as attorneys' fees and costs, and any such further relief as may be deemed just and proper. *Id.*

**C. History of Negotiations**

After meeting and conferring regarding the potential for early settlement, the Parties agreed to mediate the case before Bruce Friedman, Esq. Mr. Friedman experienced and respected JAMS mediator with extensive experience in class action mediation generally and data breach mediations in particular. The mediation proceeded via ZOOM Video Conference on April 11, 2024. After a full day of arms-length negotiations, and significant exchange of information through Mr. Anderson, the Parties were able to reach an agreement.

On April 23, 2024, the Parties filed a Joint Motion to Stay with the Court notifying the Court of a settlement in principle. ECF No. 36. Over the next several weeks, the Parties diligently negotiated, drafted, and finalized the settlement agreement and notice forms, and came to an agreement on a claims process and administrator. The Settlement Agreement was finalized and signed by the Parties in July 2024.

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<sup>4</sup> Complaint refers to Plaintiff's third amended complaint filed on June 3, 2024. *See* ECF No. 38.

### **III. SUMMARY OF SETTLEMENT**

#### **A. Settlement Benefits**

The settlement negotiated on behalf of the Class provides for the creation of a \$550,000 non-reversionary Settlement Fund. The Settlement provides exceptional relief for the Settlement Class: it will make available \$550,000 available for monetary claims, attorneys' fees and costs, costs of settlement administration and Plaintiff's service award. *See* Settlement Agreement ("SA"), Ex. 1 at 10.

The Settlement Class is defined as follows:

#### **The Settlement Class:**

"[A]ll individuals notified that their SPI was potentially impacted in the Data Incident at issue in the CAC. Defendants' officers and directors are excluded from the Settlement Class, as well as (i) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (ii) the judges assigned to the Litigation and to evaluate the fairness, reasonableness, and adequacy of this Settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under criminal law of perpetrating, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge." SA at 8.

#### **1. Monetary Relief**

The monetary relief provided for by the Settlement Agreement is intentionally kept as simple as possible so as to minimize claims administration costs. All members of the Settlement Class may file for reimbursement of documented out-of-pocket expenses up to \$250, including credit monitoring or identity theft insurance purchased after June 23, 2023. SA at 16. Additionally, whatever portion of the Settlement Fund remains following payment of attorneys' fees, costs, claims administration and Plaintiff's service award shall be divided equally on a *pro rata* basis between all Settlement Class Members who file timely claims for a cash payment benefit, whether or not they have sought reimbursement for out-of-pocket expenses. *Id.* At this stage the Parties

estimate that payment at approximately \$50.00, though Plaintiff will update that number at the filing of his Motion for Final Approval.

## **2. Release**

In exchange for the relief provided, Settlement Class Members will release their claims against Defendants. The release in this case is tailored to the claims that have been plead or could have been plead in this case related to the Data Incident. *Id.* at 33. Settlement Class Members who do not exclude themselves from the Settlement Agreement will release claims against Defendants and their affiliates related to the Data Incident and/or the recordkeeping or data security practices in place at the time of the Data Incident. *Id.*

### **B. The Notice and Claims Process**

#### **1. Notice**

The Parties agreed to use Analytics as the Claims Administrator in this case.

The proposed Notice Plan requires the Summary Notice to be sent directly to each individual Settlement Class Member via US Mail. *Id.* at 20. Within thirty (30) days of Preliminary Approval, the Claims Administrator shall cause the Summary Notice to be mailed by first class mail all Settlement Class Members. *Id.*

The Claims Administrator will also establish a dedicated settlement website and will maintain and update the website throughout the Claims Period, with the forms of Summary Notice, Long Notice, and Claim Form approved by the Court, as well as the Settlement Agreement, copies of the motion for final approval of the Class Settlement Agreement, and the motion for Attorneys' Fees and Expenses Award and Service Award. *Id.* at 21-22. While not required under the Settlement Agreement, the Claims Administrator will also make a toll-free help line available with

an interactive voice response, FAQs, and an option to speak to a live operator to provide Settlement Class Members with additional information about the Settlement.

## **2. Claims**

The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object. *Id.* at 16-18. The Claim Form is written in plain language to facilitate Settlement Class Members' ease in completing it. Class Members will have until ninety (90) days after Notice is issued to complete and submit their Claim Form to the Claims Administrator, either by mail or online. *Id.* at 4. Further, Settlement Class Members will have sixty (60) days after Notice is issued to opt-out or object. *Id.* at 16-17.

The Claims Administrator will be responsible for reviewing the Claim Forms and determining if they are complete and valid, and for completing the Settlement Claims calculations. *Id.* at 17. Included in its responsibilities is determining whether a claimant is a Settlement Class Member and whether the Settlement Class Member has submitted all required information. *Id.* at 17. Where a Claim Form is incomplete, the Claims Administrator will request additional information and give the claimant twenty-one (21) days to cure any defect(s) before rejecting a Settlement Claim. *Id.* at 17-18.

The Claims Administrator was chosen as part of a competitive bidding process which sought four different bids. Analytics LLC was the lowest bidder. Following selection, Analytics LLC agreed to cap its fees at no more than \$91,242.00.

## **3. Payment**

The Claims Administrator will mail Award checks or send funds electronically (in an electronic payment format recommended by the Claims Administrator, such as PayPal, and

agreed-upon by the parties) for Approved Claims within the later of fourteen (14) days after the Effective Date or as soon as possible after disputed claims have been resolved. *Id.* at 18. Award checks shall be valid for a period of one hundred eighty (180) days from issuance, and shall state, in words or substance that the check must be cashed within ninety (90) days, after which time it will become void. *Id.*

If there is any balance remaining in the Settlement Fund ninety (90) days after the Claims Administrator completes the process for stopping payment on any Award checks that remain uncashed, the Claims Administrator will either, on the agreement of the Parties, issue a secondary distribution or (depending on the size of the residual fund) remit the residue to a *cy pres* recipient agreed upon by the Parties and to be approved by the Court.

#### **4. Requests for Exclusion and Objections**

Settlement Class Members will have up to and including sixty (60) days following the date Notice is issued to object to or to submit a request for exclusion from the Settlement. *Id.* at 16-17. Similar to the timing of the claims process, the timing with regard to objections and requests for exclusion is structured to give Settlement Class Members sufficient time to access and review the Settlement documents—including Plaintiff’s Motion for Attorneys’ Fees, Costs, and Service Awards, which will be filed fourteen (14) days prior to the deadline for Settlement Class Members to object or exclude themselves from the Settlement. *Id.* at 26.

A Settlement Class Member who wishes to exclude him/herself from the Settlement must individually sign and timely mail a written Request for Exclusion to the address designated by the Claims Administrator. *Id.* at 22-25. All persons who Opt-Out from the Settlement Class shall not receive any benefits of or be bound by the terms of this Class Settlement Agreement. *Id.* at 23. All persons falling within the definition of the Settlement Class who do not Opt-Out shall be bound

by the terms this Class Settlement Agreement and the Final Approval Order entered thereon. *Id.* at 8-9.

Any Settlement Class Member who wishes to object shall file notice of his/her intention to do so including: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, (iii) a statement of the legal and factual basis for the objection, (iv) the identity of any counsel representing the objector; (v) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel; (vi) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objections and any documents to be presented or considered; (vii) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the last three (3) years; and (b) a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative and (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (if any). *Id.* at 24.

**C. Fees, Costs, and Service Awards**

The Settlement Agreement calls for a reasonable service award to the Representative Plaintiff in the amount of \$5,000. *Id.* at 26. The Service Award is meant to compensate Plaintiff for his efforts on behalf of the Settlement Class, including maintaining contact with counsel, assisting in the investigation of the case, reviewing the Complaint, remaining available for consultation throughout the mediation and settlement negotiations, reviewing the Settlement Agreement, and answering counsel's many questions.



After agreeing to the terms of the settlement on behalf of the Class, counsel for Plaintiff negotiated his fees and costs separate from the benefit to Settlement Class Members. Counsel for Plaintiff may seek attorneys' fees in an amount not to exceed one-third of the Settlement Fund **after administration costs**. *Id.* at 26. Counsel for Plaintiff may also seek reimbursement of reasonable expenses incurred in prosecuting the litigation. *Id.*

Class Counsel will submit a separate motion seeking attorneys' fees, costs, and Plaintiff's Service Awards prior to filing the Motion for Final Approval of Class Action Settlement, and prior to Settlement Class Members' deadline to exclude themselves from or object to the Settlement Agreement. *Id.*

#### IV. ARGUMENT

In determining whether to preliminarily approve a class action settlement, courts undertake two essential inquiries. First, they conduct an independent class certification analysis, giving heightened attention to the requirements of Rule 23 given the parties' non-adversarial nature. *Lechuga v. Elite Engineering*, 559 F. Supp. 3d 736, 741 (N.D. Ill. 2021) (quoting *In re National Collegiate Athletic Ass'n Student Athlete Concussion Inj. Litig.*, 314 F.R.D. 590, 588 (N.D. Ill. 2016)) (internal quotations omitted). Then, Courts examine the settlement agreement to determine if it is within the "range of possible approval."

##### A. The Settlement Class Should Be Certified for Settlement Purposes

Plaintiff here seeks certification of a Settlement Class consisting of "All natural persons residing in the United States whose SPI was compromised in the Data Breach announced by Defendants on or about June 23, 2023." Compl. ¶ 73.

The *Manual for Complex Litigation (Fourth)* advises that in cases presented for both preliminary approval and class certification, the "judge should make a preliminary determination that the proposed class satisfies the criteria[.]" § 21.632.

Rule 23(a) sets out four specific prerequisites to class certification: (1) the class must be so numerous that joinder of all members is impracticable; (2) there must be questions of law and fact common to the class; (3) the claims or defenses of the class representatives must be typical of the claims or defenses of the class; and (4) the representative parties must fairly and adequately protect the interests of the class. Further, under Rule 23(b)(3), the Court must find that common questions of law or fact predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court's evaluation is somewhat different than in a case that has not yet settled. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In some ways, the court's review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *See id.* Other certification issues however, such as “those designed to protect absentees by blocking unwarranted or overbroad class definitions” require heightened scrutiny in the settlement-only class context “for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.” *Id.*

Class actions are regularly certified for settlement. In fact, similar data breach cases have been certified—on a national basis—including the record-breaking settlement in *In re Equifax*. *See In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT (N.D. Ga. July 25, 2019); *see also, e.g., In re Target*, 309 F.R.D. 482 (D. Minn. 2015); *In re Heartland Payment Sys.*,

*Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040 (S.D. Tex. 2012). This case should be similarly certified.

**1. The Proposed Class Is Sufficiently Numerous**

Rule 23(a) requires that a class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “A class of forty generally satisfies the numerosity requirement.” *See Savanna Group, Inc. v. Trynex, Inc.*, 2013 WL 66181, \*4 (N.D. Ill. Jan. 4, 2013). Here, Defendants estimate that approximately 113,872 individuals were impacted or potentially impacted by the Data Incident. Joinder, therefore, is impracticable, and the class thus easily satisfies Rule 23’s numerosity requirement. *See, e.g., Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at \*6 (N.D. Ill. June 25, 2018) (class of 40 or more is sufficient); *McCabe v. Crawford & Co.*, 210 F.R.D. 631, 643 (N.D. Ill. 2002).

**2. Questions of Law and Fact Are Common to The Members of The Settlement Class**

Commonality is satisfied where common questions are capable of generating “common answers apt to drive the resolutions of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). The common questions “need not address every aspect of the plaintiffs’ claims,” but they “must drive the resolution of the litigation.” *Phillips v. Sheriff of Cook County*, 828 F.3d 541, 553 (7th Cir. 2016) (internal quotations omitted). “[F]or purposes of Rule 23(a)(2) even a single common question will do.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. at 2556.

Here, commonality is satisfied because the “circumstances of each particular class member . . . retain a common core of factual or legal issues with the rest of the class.” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) (citations and quotations omitted). Plaintiff’s claims center on whether Defendants failed to adequately safeguard the records of Plaintiff and other Settlement Class Members. Defendants’ data security safeguards were common

across the Class, and those applied to the data of one Settlement Class Member did not differ from those safeguards applied to another.

Other specific common issues include (but are not limited to):

- whether Defendants had a legal duty to adequately protect Plaintiff's and the Class Members' information;
- whether Defendants breached their legal duty by failing to adequately protect Plaintiff's and Class Members' information;
- whether Defendants implemented and maintained reasonable security procedures and practices appropriate to the nature of storing Plaintiff's and Class Members' payment information.

These common questions, and others alleged by Plaintiff in his operative Complaint, are central to the causes of action brought here and can be addressed on a class-wide basis. Thus, Plaintiff has met the commonality requirement of Rule 23.

### **3. Plaintiff's Claims and Defenses Are Typical of the Class**

“Rule 23(a) further requires that ‘the claims or defenses of the representative parties are typical of the claims or defenses of the class.’” *Spates v. Roadrunner Transportation Sys., Inc.*, 2016 WL 7426134, at \*2 (N.D. Ill. Dec. 23, 2016). “A claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and...[the] claims are based on the same legal theory.” *Chicago Teachers Union, Local 1 v. Board of Educ. of the City of Chicago*, 307 F.R.D. 475, 481 (N.D. Ill. 2015) (quoting *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 514 (7th Cir. 2006)). Put another way, where the defendant engages “in a standardized course of conduct vis-a-vis the class members, and plaintiffs’ alleged injury arises out of that conduct,” typicality is “generally met.” *Hinman v. M and M Rental Center*, 545 F. Supp. 2d 802, 806-07 (N.D. Ill. 2008) (citing, e.g., *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998)).

Here, the claims of Plaintiff and all class members arise out of the same course of conduct—that Defendants collected and maintained what Plaintiff considers to be Sensitive Personal Information, which was subsequently potentially exposed in the Data Incident—and assert the same theories of liability. As a result, the typicality requirement is satisfied.

#### **4. The Adequacy Requirement Is Satisfied**

Rule 23(a) requires that the representative parties fairly and adequately represent the class. Fed. R. Civ. P. 23(a)(4). “A class is not fairly and adequately represented if class members have antagonistic or conflicting claims.” *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992).

Plaintiff and proposed class counsel here have adequately represented the class. There is no conflict between Plaintiff and the settlement class members. Plaintiff was allegedly harmed in the same way as all class members when Defendants collected and allegedly failed to protect their private and payment information. In light of this common injury, the named Plaintiff has every incentive to vigorously pursue the class claims. Plaintiff agreed to undertake the responsibilities of serving as a class representative, and has sworn that he will continue to act in the class members’ best interests. Further, counsel for Plaintiff has more than fifteen years of experience as a class action litigator and is well suited to advocate on behalf of the class. *See* Ex. B., Firm Resume of Wolf Haldenstein Adler Freeman & Herz LLP. Thus, the requirements of Rule 23(a) are satisfied.

#### **5. Because Common Issues Predominate over Individualized Ones, Class Treatment Is Superior**

The predominance analysis under Rule 23(b)(3) “focuses on the relationship between the common and individual issues in the case, and tests whether the proposed class is sufficiently cohesive . . . .” *Ehret v. Uber Techs., Inc.*, 148 F. Supp. 3d 884, 894-95 (N.D. Cal. 2015) (quoting *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 964 (9th Cir. 2013)). “When a proposed class challenges a uniform policy, the validity of that policy tends to be the predominant issue in the

litigation.” *Nicholson v. UTI Worldwide, Inc.*, No. 3:09-cv-722-JPG-DGW, 2011 WL 1775726, at \*7 (S.D. Ill. May 10, 2011) (citation omitted). Further, when a settlement class is proposed, the manageability criteria of Rule 23(b)(3) do not apply. *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997). Here common issues such as those discussed above predominate over individualized ones.

A class action is superior under Rule 23(b)(3) because it represents the only realistic means through which Class members may obtain relief in this case for Defendants’ alleged failure to protect their sensitive personal information. *See, e.g., Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (explaining that a class action may be superior where “classwide litigation of common issues will reduce litigation costs and promote greater efficiency”). Even assuming class members could recover all possible damages, they nonetheless would lack an incentive to bring their own cases given the high expert costs involved in litigating a case such as this concerning complex technology. *Mullins v. Premier Nutrition Corp.*, No. 13-CV-01271-RS, 2016 WL 1535057, at \*8 (N.D. Cal. Apr. 15, 2016) (“Cases, such as this, ‘where litigation costs dwarf potential recovery’ are paradigmatic examples of those well-suited for classwide prosecution.”) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1023 (9th Cir. 1998)).

**B. The Terms of The Settlement Are Fair And Reasonable and Warrant Preliminary Approval**

As the Seventh Circuit has recognized, federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain:

It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses

of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.

*Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee*, 616 F.2d 305, 312-13 (7th Cir. 1980) (citations and quotations omitted), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998); *see also Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) (“Federal courts naturally favor the settlement of class action litigation.”); 4 *Newberg on Class Actions* § 11.41 (4th ed. 2002) (citing cases).

Under Rule 23(e) of the Federal Rules of Civil Procedure, a class-action settlement may be approved if the settlement is “fair, reasonable, and adequate.” *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 345 (N.D. Ill. 2010). “Approval of a class action settlement is a two-step process.” *In re Northfield Labs., Inc. Sec. Litig.*, No. 06 C 1493, 2012 WL 366852, at \*5 (N.D. Ill. Jan. 31, 2012) (citing *In re AT & T Mobility Wireless Data Services Sales Litig.*, 270 F.R.D. at 346) (quoting *Armstrong*, 616 F.3d at 314). “First, the court holds a preliminary, pre-notification hearing to consider whether the proposed settlement falls within a range that could be approved.” *Id.* “If the court preliminarily approves the settlement, the class members are notified.” *Id.*

Rule 23—and particularly the portions thereof dealing with settlement—was amended in December 2018. The first step in the amended process is a preliminary fairness determination. Specifically, counsel submit the proposed terms of settlement to the district court, along with “information sufficient to enable [the court] to determine whether to give notice of the proposal to the class.” Fed. R. Civ. P. 23(e)(1)(A) (2018). This is so the Court may make “a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms[.]” *Manual for Complex Litigation* § 21.632 (4th ed. 2004); *see also* 4 *Alba Conte & Herbert B. Newberg, Newberg on Class Actions*, § 11.25 (4th ed. 2002).

The new Rule calls for front-loaded scrutiny of a proposed settlement so that any issues are identified *before* notice goes out to the class. The new Fed. R. Civ. P. 23(e) states that grounds exist for class notice where the parties show that “the court will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B). To that end, where, as here, the proposed settlement would bind class members, it may only be approved after a final hearing and a finding that it is fair, reasonable, and adequate, based on the following factors:

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

Fed. R. Civ. P. 23(e)(2).

Even since the amendments to Rule 23 courts in the Seventh Circuit have continued to examine settlement agreements in light of five specific factors: (1) the strength of plaintiffs’ case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement among [a]ffected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Lechuga v. Elite Engineering*, 559 F. Supp. 3d 736, 744 (N.D. Ill., 2021), quoting *In re AT & T Mobility Wireless*, 270 F.R.D. 330, 346 (7th Cir. 1998), citing *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).



If the court preliminarily finds that the settlement is fair, adequate, and reasonable, it then “direct[s] the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.” *Id.*; Fed. R. Civ. P. 23(e)(1)(B) (2018).

Plaintiff will examine the Settlement under both the Rule 23 and the traditional Seventh Circuit factors. Should the Court grant preliminary approval, the second step in the class action approval process is a final fairness hearing. Fed. R. Civ. P. (e)(2) (2018); *also* Manual for Complex Litigation, § 21.633-34; *In re Northfield Labs., Inc. Sec. Litig.*, No. 06 C 1493, 2012 WL 366852, at \*5 (“Second, the court holds a fairness hearing and considers, among other things, any objections filed by class members.”). As explained below, consideration of these factors supports preliminarily approving the Settlement and issuing notice.

**1. The Settlement Meets The Requirements of The Rule 23 Factors**

***a. The Class Representative and Class Counsel Have Adequately Represented The Class***

By their very nature, because of the many uncertainties of outcome, difficulties of proof, and lengthy duration, class actions readily lend themselves to compromise. Indeed, there is an “overriding public interest in favor of settlement,” particularly in class actions that have the well-deserved reputation as being most complex. *In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at \*6 (N.D. Ill. Feb. 29, 2016); *Armstrong*, 616 F.2d at 313 (“In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.”). This matter is no exception.

Here, as discussed above, the favorable terms of the Settlement itself speak to the adequacy of Plaintiff and the proposed Class Counsel. The Parties entered into the settlement only after both sides were fully apprised of the facts, risks, and obstacles involved with protracted litigation.

The culmination of that process led to an agreement by the Parties to mediate the case with respected mediator Bruce Friedman, Esq. of JAMS. Prior to filing and during the initial stages of the case, Class counsel conducted substantial investigation into the strengths and weaknesses of Plaintiff's claims. During mediation, the Parties exchanged additional information through Mr. Friedman, allowing the Parties to fully assess and evaluate the claims and defenses at issue. As such, the parties had sufficient information to place value on their respective positions in this case.

In addition, the adequacy of representation requirement is satisfied because Plaintiff's interests are coextensive with, and not antagonistic to, the interests of the Settlement Class. *See G.M. Sign, Inc. v. Finish Thompson, Inc.*, No. 07 C 5953, 2009 U.S. Dist. LEXIS 73869, at \*15-\*16 (N.D. Ill. Aug. 20, 2009). Here, the Plaintiff's claims are aligned with the claims of the other class members. In particular, Plaintiff, like all class members, is an individual whose sensitive personal information compromised and exfiltrated in the Data Incident. He thus has every incentive to vigorously pursue the claims of the class, as he has done to date by remaining actively involved in this matter since its inception, participating in the pre-suit litigation process, and involving himself in the settlement process. Further, Plaintiff retained qualified and competent counsel with extensive experience in litigating consumer class actions, and privacy actions in particular.

In a case where experienced counsel represent the class, the Court "is entitled to rely upon the judgment of the parties' experienced counsel." *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d at 792; *Armstrong*, 616 F.2d at 315 ("Judges should not substitute their own

judgment as to optimal settlement terms for the judgment of the litigants and their counsel.”). Here, Plaintiff’s counsel believe that the parties’ settlement is fair, reasonable, and adequate, and in the best interests of the members of the class. Plaintiff’s counsel also believes that the benefits of the parties’ settlement far outweigh the delay and considerable risk of proceeding to trial.

***b. The Settlement Was Negotiated at Arm’s-Length By Vigorous Advocates, and There Has Been No Fraud Or Collusion.***

“A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.” 2 *McLaughlin on Class Actions*, § 6:7 (8th ed. 2011); *see also Steele v. GE Money Bank*, No. 1:08-CIV-1880, 2011 WL 13266350, at \*4 (N.D. Ill. May 17, 2011), report and recommendation adopted, No. 1:08-CIV-1880, 2011 WL 13266498 (N.D. Ill. June 1, 2011) (“the involvement of an experienced mediator is a further protection for the class, preventing potential collusion”); *Wright v. Nationstar Mortgage LLC*, No. 14 C 10457, 2016 WL 4505169, at \*11 (N.D. Ill. Aug. 29, 2016) (similar).<sup>5</sup>

Here, the Agreement resulted from good faith, arms’-length settlement negotiations, including an in-person mediation session with respected mediator Bruce Friedman, Esq. At all times, the settlement negotiations were highly adversarial, non-collusive, and at arm’s length. Accordingly, it is clear that the parties negotiated their settlement at arm’s-length and absent any fraud or collusion. *See, e.g., Aranda v. Caribbean Cruise Line, Inc.*, No. 12 C 4069, 2017 WL 818854, at \*1 (N.D. Ill. Mar. 2, 2017) (granting preliminary approval to privacy settlement

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<sup>5</sup> *See also D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (“[A] mediator[ ] helps to ensure that the proceedings were free of collusion and undue pressure.”); *Johnson v. Brennan*, No. 10-4712, 2011 WL 1872405, at \*1 (S.D.N.Y. May 17, 2011) (The participation of an experienced mediator “reinforces that the Settlement Agreement is non-collusive.”); *Sandoval v. Tharaldson Emp. Mgmt., Inc.*, No. 08-482, 2010 WL 2486346, at \*6 (C.D. Cal. June 15, 2010) (“The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.”); *Milliron v. T-Mobile USA, Inc.*, No. 08-4149, 2009 WL 3345762, at \*5 (D.N.J. Sept. 14, 2009) (“[T]he participation of an independent mediator in settlement negotiation virtually insures that the negotiations were conducted at arm’s length and without collusion between the parties.”).

resolved with the assistance of a mediator); *Steele*, 2011 WL 13266350, at \*4 (finding no evidence of fraud or collusion where the settlement was negotiated at arms' length, and where the mediation was overseen by an experienced mediator); *Wright*, 2016 WL 4505169, at \* 11 (finding no evidence of fraud or collusion where the parties participated in mediation).

***c. The Settlement Provides Substantial Relief for The Class.***

The relief provided by the Settlement Agreement—in the form of both significant monetary compensation and equitable relief—is substantial taking into account the costs, risks, and delay of trial and appeal; the effectiveness of the proposed method of distribution; and the terms of proposed attorneys' fees (which will be further detailed in Plaintiff's petition for fees which will be filed separately).

The Settlement provides for a non-reversionary Settlement Fund of 550,000 for Plaintiff and Settlement Class Members to receive compensation for both out-of-pocket losses as well as an additional cash component currently estimated at \$50.

***i. Diverse And Substantial Legal and Factual Risks Weigh in Favor of Settlement.***

“The most important factor relevant to the fairness of a class action settlement is the first one listed: the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement.” *Synfuel Techs, Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (internal quotes and citations omitted). Nevertheless, “[b]ecause the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to plaintiffs.” *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. at 347.

While Plaintiff strongly believes in his claims, Plaintiff understands that Defendants assert a number of potentially case-dispositive defenses. Continued litigation is likely to be complex, lengthy, and expensive. Although Plaintiff is confident in the merits of his claims, the risks

discussed above cannot be disregarded. Aside from the potential that either side will lose at trial, the Plaintiff anticipates incurring substantial additional costs in pursuing this litigation further. Should litigation continue, Plaintiff would potentially need to engage in costly and complex discovery, respond to a motion for summary judgement, and both gain and maintain certification of the class. The level of additional costs would significantly increase as Plaintiff began his preparations for the certification argument and if successful, a near inevitable interlocutory appeal attempt. As at least one court has found, because the “legal issues involved in [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Sec. Breach Litig.*, 2015 WL 7253765, at \*2 (D. Minn. Nov. 17, 2015). While Plaintiff disputes such defenses, it is obvious that their likelihood of success at trial is far from certain. “In light of the potential difficulties at class certification and on the merits . . . , the time and extent of protracted litigation, and the potential of recovering nothing, the relief provided to class members in the relief provided to class members in the Settlement Agreement represents a reasonable compromise.” *Wright v. Nationstar Mortg. LLC*, 2016 U.S. Dist. LEXIS 115729 at \*39 (N.D. Ill., Aug. 29, 2016).

ii. **The Method of Providing Relief Is Effective and Treats All Members of The Class Fairly.**

“[T]he effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims,” is also a relevant factor in determining the adequacy of relief. Fed. R. Civ. P. 23(e)(2)(C)(ii). The Committee Note to the 2018 amendments to Rule 23(e)(2) says that this factor is intended to encourage courts to evaluate a proposed claims process “to ensure that it facilitates filing legitimate claims. A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding.”

This settlement proposes the gold-standard in class member relief: cash payments. Cash Awards will be distributed based on the claims submitted by Settlement Class Members. To make a claim, Class Members need only fill out and submit their Claim Form to the Settlement Administrator. Upon final approval, the Claims Administrator will mail Award checks or send funds electronically (in an electronic payment format recommended by the Claims Administrator, such as PayPal, and agreed-upon by the parties) for Approved Claims within the later of fourteen (14) days after the Effective Date or as soon as possible (for disputed claims) after those disputed claims have been resolved. Accordingly, all Settlement Class Members will receive the same cash award and almost all at the same time. For these reasons, the settlement relief is both effective and treats all members of the Class fairly.

iii. **The Proposed Award of Attorneys' Fees Is Fair and Reasonable.**

“[T]he terms of any proposed award of attorney’s fees, including timing of payment,” are also factors in considering whether the relief provided to the Class in a proposed Settlement is adequate. Fed. R. Civ. P. 23(c)(2)(C)(iii). Plaintiff’s counsel will seek an award of one-third of the settlement fund after the costs of administration. This amount is below other approved class settlements, including privacy class settlements. *E.g., Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) (awarding 36% of net settlement fund in class settlement); *Martin v. JTH Tax, Inc.*, No. 13-cv-6923, Dkt. 85 (N.D. Ill. Sept. 16, 2015) (awarding 38 % of net settlement fund in class settlement); *Kusinski v. Macneil Auto. Prod. Ltd.*, No. 17-CV-3618, 2018 WL 3814303, at \*1 (N.D. Ill. Aug. 9, 2018) (“The Court authorizes 1/3 of the Gross Settlement Fund”). Plaintiff’s counsel achieved an excellent result for the Class after undertaking substantial risk in bringing novel privacy claims to prosecute this action on a pure contingency basis, and they should be fairly compensated.

Prior to final approval, Plaintiff's counsel will file a separate motion for award of attorneys' fees and costs, addressing in detail the facts and law supporting their fee request, and the anticipated fee request will likewise be stated in the Class Notice.

Accordingly, this factor weighs in favor of preliminary approval.

iv. **There Are No Additional Agreements Required to Be Identified Under Rule 23(E)(3).**

Because there are no additional agreements that require disclosure under Rule 23(e)(3), this factor also weighs in favor of approval.

d. ***The Proposed Settlement Treats Settlement Class Members Equitably to Each Other.***

Here, the proposed Settlement does not improperly discriminate between any segments of the class, as all Settlement Class Members are entitled to the same relief respectively. All Settlement Class Members have the opportunity to submit a claim. Importantly, direct Notice will be sent to Settlement Class Members, and all Settlement Class Members will also have the opportunity to object to or exclude themselves from the Settlement. And, while Plaintiff will be seeking a \$5,000 award for his services on behalf of the class, this award is less than one percent of the total Settlement Fund.

Accordingly, this factor also weighs in favor of preliminary approval.

2. **Other Factors Considered by Seventh Circuit Courts Weigh in Favor of Preliminary Approval**

The factors considered by Seventh Circuit Courts prior to the amendment of Rule 23, and still considered by those Courts today, also weigh in favor of final approval.

*First*, the terms of the settlement compare favorably to the strength of Plaintiff's case. Here, although Plaintiff is confident in the strength of his claims, continued litigation with Defendants presents significant risks and costs—the most obvious risks including facing a motion to dismiss

and obtaining and maintaining certification. Furthermore, “[e]ven if Plaintiff were to succeed on the merits at some future date, a future victory is not as valuable as a present victory. Continued litigation carries with it a decrease in the time value of money, for ‘[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now.’ ” *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010), quoting *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 284 (7th Cir. 2002); *see also Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (“Settlement allows the class to avoid the inherent risk, complexity, time and cost associated with continued litigation”) (internal citations omitted). “If the Court approves the [Settlement], the present lawsuit will come to an end and [Settlement Class Members] will realize both immediate and future benefits as a result.” *Id.* Approval would allow Plaintiff and the Settlement Class Members to receive meaningful and significant payments now, instead of years from now or never. *See id.* at 582. Thus, this factor weighs in favor of preliminary approval.

Second, continued litigation is likely to be complex, lengthy, and expensive. Although Plaintiff is confident in the merits of his claims, the risks discussed above cannot be disregarded. Aside from the potential that either side will lose at trial, the Plaintiff anticipates incurring substantial additional costs in pursuing this litigation further. Should litigation continue, Plaintiff would likely need to defeat a motion to dismiss, counter a later motion for summary judgment, and both gain and maintain certification of the class. The level of additional costs would significantly increase as Plaintiff began his preparations for the certification argument and if successful, a near inevitable interlocutory appeal attempt. Because the “legal issues involved in [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Sec.*



*Breach Litig.*, 2015 WL 7253765, at \*2 (D. Minn. Nov. 17, 2015). Accordingly, this factor also weighs in favor of preliminary approval.

*Third*, while no opposition to the Settlement is currently known, this factor is better examined after notice has been issued to the Class, and thus does not weigh either for or against preliminary approval of the Settlement.

*Fourth*, competent counsel with extensive experience in data breach litigation support the Settlement. The opinion of counsel weighs heavily in favor of the fairness, reasonableness, and adequacy of the Proposed Settlement Agreement. Courts are “entitled to rely heavily on the opinion of competent counsel,” *Gautreaux v. Pierce*, 690 F.2d 616, 634 (7th Cir. 1982). Thus this factor also weighs in favor of preliminary approval.

*And fifth*, as discussed above, the Parties entered into the settlement only after both sides were fully apprised of the facts, risks, and obstacles involved with protracted litigation and had completed an extensive investigation of the relevant claims and defenses. Accordingly, this factor also weighs in favor of preliminary approval,

**C. The Proposed Class Notice Should Be Approved**

Rule 23(e)(1) requires the Court to “direct reasonable notice to all class members who would be bound by” a proposed Settlement. For classes, like this one, certified under Rule 23(b)(3), parties must provide “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). The best practicable notice is that which “is reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). As explained by the United States Supreme Court, due process requires that the notice be the “best practicable, ‘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” as well as “describe the action and the plaintiffs’ rights in it.” *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 36 (citing *Phillips Petroleum Co. v. Shuts*, 472 U.S. 797, 812 (1985)).

The Notice provided for by the Settlement Agreement is designed to meet all the criteria set forth by Rule 23 and the Manual for Complex Litigation. *See* Exs. 1-A–1-B. As set forth in detail above, the Settlement Agreement contemplates a notice plan that provides individual direct mail notice, which is designed to reach as many potential individuals in the Settlement Class as possible. The direct notice process should be very effective at reaching the Settlement Class Members given the relationship between Defendants and the Settlement Class Members (patients or former patients) where Defendants generally do not have email contact information for Settlement Class Members. *See Burnett v. Conseco Life Insurance Company*, No. 1:18-cv-00200, 2020 WL 4207787 (S.D. Ind. July 22, 2020) (approving notice plan with mail and email components). The proposed Notices and Claim Form are attached to the Settlement Agreement (Exhibit 1) as Exhibits 1-A-1-C and should be approved by the Court.

## V. CONCLUSION

For the reasons described above, Plaintiff respectfully requests that the Court enter a Preliminary Approval Order, which (1) schedules a fairness hearing on the question of whether the proposed class action settlement should be approved as fair, reasonable, and adequate; (2) approves the form and content of the proposed Notice to the Settlement Class; (3) approves the form and content of the proposed Claim Form; (4) approves the proposed method of requesting exclusion from the Settlement; (5) directs Notice to be carried out as described in the Settlement Agreement; (6) preliminarily approves the Settlement; and (7) preliminarily certifies the Settlement Class for purposes of settlement only.

Date: July 5, 2024

Respectfully Submitted,

/s/ Carl V. Malmstrom

Carl V. Malmstrom

**WOLF HALDENSTEIN ADLER**

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*Counsel for Plaintiff and the Proposed Class*

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

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SEAN SHEFFLER, individually, and on behalf of  
all others similarly situated,

Plaintiff,

v.

ACTIVATE HEALTHCARE, LLC, and  
EVERSIDE HEALTH, LLC,

Defendants.

Civil Action No.:  
1:23-cv-01206-SEB-TAB

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**SETTLEMENT AGREEMENT**

This Settlement Agreement and Release (“Agreement” or “Settlement Agreement”), dated as of July 3 2024, is made and entered into by and between Plaintiff Sean Sheffler (“Plaintiff” or “Class Representative”), both individually and on behalf of the Settlement Class, and Defendants Activate Healthcare, LLC (“Activate”) and Everside Health, LLC (“Everside”) collectively (“Defendants”), in the case of *Sheffler v. Activate Healthcare, LLC et al.*, No. 1:23-cv-01206-SEB-TAB, currently pending in the United States District Court for the Southern District of Indiana (the “Litigation”). Defendants and Plaintiff are each referred to as a “Party” and are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all of Plaintiff’s Released Claims, as defined below, upon and subject to the terms and conditions herein, and subject to the Court’s approval.

## **I. RECITALS**

1. Activate is a limited liability company and is organized and existing under the laws of Indiana with its principal place of business in Denver, Colorado.
2. Everside is a limited liability company and is organized and existing under the laws of Delaware with its principal place of business in Denver, Colorado.
3. This Litigation arises out of a data security incident, defined below as a “Data Incident,” and alleges that an unauthorized third party accessed Defendants’ IT network in April 2023, resulting in the unauthorized third party’s potential access to personal information belonging to Plaintiff and members of the Settlement Class, including their name, date of birth, address, Social Security number, driver’s license number, and clinical information, such as provider name, date of service, and/or diagnosis (collectively, “Sensitive Personal Information” or “SPI”).

4. As a result of the Data Incident, Defendants notified approximately 113,872 individuals that their information may have been accessed by an unauthorized party during the Data Incident.

5. Defendants deny all claims asserted against them in the Litigation, deny all allegations of wrongdoing and liability, and deny all material allegations of the Litigation and Third Amended Class Action Complaint filed on June 3, 2024 (“CAC”) against Defendants regarding the Data Incident.

6. Plaintiff and Class Counsel (identified below) believe that the legal claims asserted in the Litigation have merit. Class Counsel has investigated the facts relating to the claims and defenses alleged and the underlying events in the Litigation, have made a thorough study of the legal principles applicable to the claims and defenses asserted in the Litigation, and have conducted a thorough assessment of the strengths and weaknesses of the Parties’ respective positions.

7. The Parties desire to settle the Litigation and all claims arising out of or related to the allegations or subject matter of the CAC and Litigation on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Litigation.

8. Counsel for the Parties have engaged in extensive arm’s-length negotiations concerning a possible settlement of the claims asserted in the Litigation, including participating in mediation before JAMS mediator, Bruce Friedman, on April 11, 2024.

9. Plaintiff and Class Counsel, on behalf of the Settlement Class, have concluded, based upon their investigation, and taking into account the contested issues involved, the expense and time necessary to prosecute the Litigation through the various phases of litigation (including potentially trial), the risks and costs associated with further prosecution of the Litigation, the

uncertainties of complex litigation, the desired outcome from continued litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendants on the terms set forth herein is fair and reasonable and in the best interest of Plaintiff and the Settlement Class. Plaintiff and Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class.

10. The Parties agree and understand that neither this Settlement Agreement, nor the Settlement it represents, shall be construed as an admission by Defendants of any wrongdoing whatsoever, including an admission of a violation of any statute or law or of liability on the claims or allegations, including class certification, in this Litigation or any other similar claims in other proceedings.

11. The Parties, by and through their respective duly authorized counsel of record, and intending to be legally bound hereby, agree that all claims against Defendants arising out of or related to the allegations or subject matter of the CAC and Litigation, shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the following terms and conditions.

## **II. DEFINITIONS**

As used herein and in the related documents attached hereto as exhibits, the following terms have the meaning specified below:

1. “Agreement,” “Settlement Agreement,” and/or “Settlement” means this Settlement Agreement and Release, including the terms and conditions set forth in this document together with any and all exhibits and attachments hereto, which are incorporated herein by reference and expressly conditional upon Court approval.



2. “Claims Deadline” means the deadline for filing claims under the Settlement Agreement set at a date certain that is exactly ninety (90) days from the date notice of the Settlement is mailed or otherwise provided to the Settlement Class Members. The Claims Deadline shall be clearly set forth in the Postcard Notice, Long-Form Notice, and Claim Form.

3. “Claim Form(s)” means the form members of the Settlement Class must complete and submit on or before the Claims Deadline to be eligible for the benefits described herein, and substantially in the form of Exhibit A to this Settlement Agreement. The Claim Form shall require a sworn affirmation under penalty of perjury but shall not require a notarization or any other form of verification.

4. “Claims Period” means the period for filing claims up until a date certain no more than ninety (90) Days from the date notice is mailed or otherwise provided to the Settlement Class Members.

5. “Claimant(s)” means a Settlement Class Member who submits a Claim Form as further explained in Section VI.

6. “Class Counsel” shall mean attorney Carl Malmstrom of Wolf Haldenstein Adler Freeman & Herz LLC.

7. “Class Representative” means and includes Plaintiff Sean Sheffler.

8. “Court” means the United States District Court for the Southern District of Indiana.

9. “Day(s)” means calendar days, but does not include the day of the act, event, or default from which the designated period of time begins to run. Further and notwithstanding the above, when computing any period of time prescribed or allowed by this Settlement Agreement, “Days” includes the last day of the period unless it is a Saturday, a Sunday, or a federal or Indiana

state legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal or Indiana state legal holiday.

10. “Data Incident” means the security incident that Defendants detected on April 27, 2023 and as defined above in the Recitals.

11. “Defendants” means Defendants Activate Healthcare, LLC and Everside Health, LLC and includes their employees, directors, officer, shareholders, attorneys, consultants, contractors, affiliates, insurers, agents, parent companies, predecessors, successors, subsidiaries, and assigns of Activate Healthcare, LLC and Everside Health, LLC, whether specifically named in the Action or not.

12. “Defense Counsel” or “Defendants’ Counsel” means Christopher A. Wiech and other attorneys at Baker & Hostetler LLP, located at 1170 Peachtree Street, Suite 2400 Atlanta, GA 30309-7676.

13. “Effective Date” means the date defined in Section XVI of this Settlement Agreement.

14. “Fee Award, Costs, and Expenses” means the amount of attorneys’ fees, expenses, and reimbursement of Litigation Costs awarded by the Court to Class Counsel.

15. “Final” with respect to a judgment or order means that all of the following have occurred: (i) the time expires for noticing any appeal; (ii) if there is an appeal or appeals, completion, in a manner that finally affirms and leaves in place the judgment or order without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, rehearing en banc, or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings

arising out of any subsequent appeal or appeals following decisions on remand); or (iii) final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

16. “Final Approval Hearing” means the hearing to determine whether the Settlement should be given final approval and whether the application of Class Counsel for attorneys’ fees, costs, and expenses, and a Service Award, if it is requested, should be approved.

17. “Final Approval Order” means the order of the Court finally approving this Settlement.

18. “Final Judgment” means the dismissal with prejudice of the claims against Defendants in the Litigation, entered in connection with the Settlement and Final Approval Order.

19. “Litigation” means the lawsuit entitled *Sheffler v. Activate Healthcare, LLC, et al.*, No. 1:23-cv-01206-SEB-TAB, currently pending in the United States District Court for the Southern District of Indiana.

20. “Litigation Costs” means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, settling the Litigation, and obtaining an order of final judgment.

21. “Long-Form Notice” means the written notice substantially in the form of Exhibit B to this Settlement Agreement.

22. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement, (ii) any taxes owed by the Settlement Fund, (iii) any Service Award approved by the Court, and (iv) any Fee Award, Costs, and Expenses approved by the Court.

23. “Notice and Claims Administration Costs” means all costs incurred or charged by the Settlement Administrator in connection with providing notice to the Settlement Class Members and administering the Settlement. This does not include any separate costs incurred directly by Defendants or any of Defendants’ agents or representatives in this Litigation.

24. “Notice Program” means the program for providing notice to Settlement Class Members as described in Section VII of this Settlement Agreement.

25. “Non-Profit Residual Recipient” means a 26 U.S.C. 501(c)(3) non-profit organization agreed to by the Parties and approved by the Court.

26. “Objection Deadline” means the deadline for filing objections to the as set forth in Section IX of this Settlement Agreement or as otherwise ordered by the Court.

27. “Opt-Out Deadline” means the date certain that is exactly sixty (60) days from the date the Postcard Notice is mailed or as otherwise ordered by the Court.

28. “Opt-Out Members” shall have the meaning set forth in Section VIII of this Settlement Agreement.

29. “Parties” means Plaintiff and Defendants, collectively, and a “Party” means one of Plaintiff or Defendants.

30. “Plaintiffs’ Released Claims” means all claims and other matters released in and by Section XV of this Settlement Agreement.

31. “Postcard Notice” or “Short-Form Notice” means the written notice to be sent to Settlement Class Members pursuant to the Preliminary Approval Order substantially in the form of Exhibit C to this Settlement Agreement.

32. “Preliminary Approval Date” means the date the Preliminary Approval Order has been executed and entered by the Court.

33. “Preliminary Approval Order” means the order certifying the proposed Settlement Class for settlement purposes, preliminarily approving this Settlement Agreement, approving the Notice Program, and setting a date for the Final Approval Hearing.

34. “Released Class Claims” means all claims and other matters released in and by Section XV of this Settlement Agreement.

35. “Released Persons” means Defendants and its present and former parents, subsidiaries, divisions, departments, affiliates, employees, servants, members, providers, partners, principals, directors, shareholders, owners, predecessors, successors, assigns, and insurers, and each of the foregoing’s former or present directors, trustees, officers, employees, representatives, agents, providers, consultants, advisors, attorneys, accountants, partners, vendors, customers, insurers, reinsurers, and subrogees.

36. “Service Award” means the amount of remuneration to be paid to the Class Representative in recognition of his efforts in the Litigation and commitment on behalf of the Settlement Class, in an amount to be order by the Court, as set forth in Section X of this Settlement Agreement.

37. “Settlement Administrator” means the class action settlement administrator agreed upon by the Parties, and identified in the Motion for Preliminary Approval, that has been retained to carry out the Notice Program and administer the claims and settlement fund distribution process. The Settlement Administrator shall execute Defendants’ Business Associate Agreement prior to receiving any court-ordered materials necessary for the notice and administration of the Settlement.

38. “Settlement Class” means all individuals notified that their SPI was potentially impacted in the Data Incident at issue in the CAC. Defendants’ officers and directors are excluded

from the Settlement Class, as well as (i) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (ii) the judges assigned to the Litigation and to evaluate the fairness, reasonableness, and adequacy of this Settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under criminal law of perpetrating, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

39. “Settlement Class Member(s)” means all persons who are members of the Settlement Class.

40. “Settlement Fund” means the non-reversionary sum of Five Hundred Fifty Thousand Dollars and No Cents (\$550,000), to be paid by Defendants as specified in this Agreement, including any interest accrued thereon after payment.

41. “Settlement Website” means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Postcard Notice, the Long-Form Notice, and the Claim Form, among other things.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS**

1. For settlement purposes only, Plaintiff will request that the Court certify the Settlement Class.

2. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, Defendants agree to stipulate to the certification of the Settlement Class and will not oppose Plaintiff’s request for certification. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then Defendants’ stipulation

will be withdrawn and deemed to be of no force or effect for any purpose in this or any other proceeding.

#### **IV. THE SETTLEMENT FUND**

1. The Settlement Fund. Defendants agree to make a payment of Five Hundred Fifty Thousand Dollars and No Cents (\$550,000) and deposit that payment into the Settlement Fund as follows: (i) Defendants shall pay One Hundred and Fifty Thousand Dollars and No Cents (\$150,000) into the Settlement Fund within thirty (30) Days after the Court enters the Preliminary Approval Order, which shall be available to cover Notice and Claims Administration Costs incurred prior to entry of the Final Approval Order and Final Judgment, (ii) Defendants shall pay the balance of the Settlement Fund, Four Hundred Thousand Dollars and No Cents (\$400,000), within seven (7) Days after the Effective Date. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendants' liability shall not exceed Five Hundred Fifty Thousand Dollars and No Cents (\$550,000) absent an express written agreement between the Parties to the contrary. The timing set forth in this provision is contingent upon the receipt of a W-9 from the Settlement Administrator for the Settlement Fund by the date that the Preliminary Approval Order is issued. If Defendants do not receive this information by the date that the Preliminary Approval Order is issued, the payments specified by this paragraph shall be made within thirty (30) Days after Defendants receive this information.

2. Custody of the Settlement Fund: The Settlement Fund shall be deposited in an appropriate trust established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Agreement or returned to whom paid the Settlement Fund in the event this Agreement is voided, terminated, or cancelled.

3. In the event this Agreement is lawfully voided, terminated, or cancelled due to lack of approval from the Court or any other reason other than breach of the Agreement by Defendants: (i) the Class Representative and Class Counsel shall have no obligation to repay any of the Notice and Claims Administration Costs that have been paid or incurred in accordance with the terms and conditions of this Agreement; (ii) any amounts remaining in the Settlement Fund after payment of Notice and Claims Administration Costs paid or incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement Fund net of any taxes, shall be returned to Defendants; and (iii) no other person or entity shall have any further claim whatsoever to such amounts.

4. Non-Reversionary. This Settlement is not a reversionary settlement. As of the Effective Date, all rights of Defendants in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is lawfully voided, cancelled, or terminated, as described in Section XIV of this Agreement. In the event the Effective Date occurs, no portion of the Settlement Fund shall ever be returned to Defendants.

5. Use of the Settlement Fund. As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (i) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement as approved by the Parties and approved by the Court, (ii) any taxes owed by the Settlement Fund, (iii) any Service Award approved by the Court, (iv) any Fee Award, Costs, and Expenses as approved by the Court, and (v) any benefits to settlement class members, pursuant to the terms and conditions of this Agreement.

6. Financial Account. The Settlement Fund shall be an account established and administered by the Settlement Administrator, at a financial institution recommended by the



Settlement Administrator and approved by Class Counsel and Defendants, and shall be maintained as a qualified settlement fund pursuant to Treasury Regulation § 1.468 B-1, *et seq.*

7. Payment/Withdrawal Authorization. No amounts from the Settlement Fund may be withdrawn unless (i) expressly authorized by the Settlement Agreement, and, as may be required, (ii) approved by the Court. The Parties, by agreement, may authorize the periodic payment of actual reasonable Notice and Claims Administration Costs from the Settlement Fund as such expenses are invoiced without further order of the Court. The Settlement Administrator shall provide Class Counsel and Defendants with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least seven (7) Days prior to making such withdrawal or payment.

8. Payments to Class Members. The Settlement Administrator, subject to such supervision and direction of the Court and Class Counsel as may be necessary or as circumstances may require, shall administer and oversee distribution of the Settlement Fund to Claimants pursuant to this Agreement.

9. Treasury Regulations and Fund Investment. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed by the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the

Federal Deposit Insurance Corporation (“FDIC”) at a financial institution determined by the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

10. Taxes. All taxes owed by the Settlement Fund shall be paid out of the Settlement Fund, shall be considered a Notice and Claims Administration Cost, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by the Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. The Class Representative and each Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

11. Limitation of Liability.

a. Defendants and their counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the

determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. Defendants also shall have no obligation to communicate with Class Members and others regarding amounts paid under the Settlement.

b. The Class Representative and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

c. The Settlement Administrator shall indemnify and hold Class Counsel, the Settlement Class, Class Representatives, and Defendants harmless for (i) any negligent act or omission by the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund as so directed by Class Counsel, Defendants, and/or the Court; (iii) the formulation, design or terms of the disbursement of the Settlement Fund as so directed by Class Counsel, Defendants, and/or the Court; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement

Fund as so directed by Class Counsel, Defendant, and/or the Court; or (v) the payment or withholding of any required Taxes, expenses and/or costs incurred in connection with the required taxation of the Settlement Fund or the filing of any returns.

## **V. BENEFITS TO SETTLEMENT CLASS MEMBERS**

1. **Qualifying for Settlement Benefits.** Settlement Class Members must timely submit a valid Claim Form in order to receive a settlement benefit. Claims will be subject to review for completeness and plausibility by the Settlement Administrator. For claims deemed invalid, the Settlement Administrator will provide Claimants an opportunity to cure in the manner set forth Section VI of this Agreement. Settlement benefits to Settlement Class Members shall be paid out of the Net Settlement Fund.

2. **Settlement Benefits.** Settlement Class Members may elect to file a claim for out-of-pocket losses up to Two Hundred Fifty Dollars and No Cents (\$250), as well as a *pro rata* cash payment estimated to be Fifty Dollars (\$50), as explained below:

a. **Reimbursement for Out-of-Pocket Losses.** Settlement Class Members may submit a claim for up to Two Hundred Fifty Dollars and No Cents (\$250) for reimbursement of out-of-pocket losses (“Reimbursement for Out-of-Pocket Losses”). To receive Reimbursement for Out-of-Pocket Losses, a participating Settlement Class Member must submit a valid and timely Claim Form electing to receive this benefit and providing reasonable supporting documentation for the losses demonstrably incurred, more likely than not, as a result of the Data Incident.

Out-of-Pocket Losses are unreimbursed losses and consequential expenses incurred as a direct result of the Data Incident, including, but not limited to, documented bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, gasoline for local travel, bank fees, and fees

for credit reports, credit monitoring, or other identity theft insurance products purchased between June 23, 2023 and the date of the close of the Claims Period (“Out-of-Pocket Losses”).

Out-of-Pocket Losses must not have been previously reimbursed or subject to reimbursement by insurance or a third party and must be reasonably described, supported by reasonable documentation, and supported by an attestation under penalty of perjury, which will be a part of the Claim Form.

b. Pro Rata Cash Compensation. In addition to Reimbursement for Out-of-Pocket Losses, Settlement Class Members may submit a claim for a cash payment that is estimated to be approximately Fifty Dollars and No Cents (\$50), subject to pro rata increase or decrease (“Pro Rata Cash Compensation”) depending on the number of approved claims.

## **VI. SETTLEMENT ADMINISTRATION**

1. All Notice and Settlement Administration Costs will be paid from the Settlement Fund.

2. The Parties agree to solicit competitive bids for settlement administration, including Notice and Claims Administration Costs, to rely upon Postcard Notice, and to utilize other appropriate forms of notice where practicable, all in order to contain the administration costs while still providing effective notice to the Settlement Class Members. Based on this competitive bidding process, the Parties agree to select an experienced class action settlement administrator to serve as the Settlement Administrator.

3. The Settlement Administrator will provide written notice by United States First Class mail of the settlement terms to all Settlement Class Members for whom they are provided a valid mailing address. The Settlement Administrator shall perform skip-tracing for any returned mail and shall re-mail notice to any Settlement Class Members whose addresses are uncovered by

skip-tracing. Settlement Class Members shall have sixty (60) Days from the date the notice is mailed to opt out of the Settlement Class or object to the Settlement.

4. The Settlement Administrator will cause the Notice Program to be effectuated in accordance with the terms of the Settlement and any orders of the Court. The Settlement Administrator may request the assistance of the Parties to facilitate providing notice and to accomplish such other purposes as may be approved by both Class Counsel and Defense Counsel. The Parties shall reasonably cooperate with such requests.

5. The Settlement Administrator will administer the claims process in accordance with the terms of the Agreement and any additional processes agreed to by both Class Counsel and Defense Counsel, subject to the Court's supervision and direction as circumstances may require.

6. To make a claim, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. A Claim Form shall be submitted online at the Settlement Website or by U.S. mail and must be postmarked no later than the Claim Deadline.

7. The Settlement Administrator will review and evaluate each Claim Form, including any required documentation submitted, for validity, timeliness, and completeness.

8. If, in the determination of the Settlement Administrator, the Settlement Class Member submits a timely but incomplete or inadequately supported Claim Form, the Settlement Administrator shall give the Settlement Class Member notice of the deficiencies, and the Settlement Class Member shall have twenty-one (21) Days from the date of the written notice to cure the deficiencies. The Settlement Administrator will provide notice of deficiencies concurrently to Defense Counsel and Class Counsel. If the defect is not cured within the 21-Day period, then the Claim will be deemed invalid. All Settlement Class Members who submit a valid

and timely Claim Form, including a Claim Form deemed defective but cured within the 21-Day period, shall be considered “Claimants.”

9. The Settlement Administrator will maintain records of all Claim Forms submitted until three hundred sixty (360) Days after entry of the Final Judgment. Claim Forms and supporting documentation may be provided to the Court upon request and to Defendants, Class Counsel, and Defense Counsel to the extent necessary to resolve claims determination issues pursuant to this Settlement Agreement and Settlement. Defendants or the Settlement Administrator will provide other reports or information that the Court may request or that the Court or Class Counsel may reasonably require. Class Counsel or the Settlement Administrator will provide other reports or information as Defendants may reasonably require.

10. Subject to the terms and conditions of this Settlement Agreement, either fourteen (14) Days after the Effective Date or as soon as possible after all deficiencies in the Claim Forms are resolved by the Settlement Administrator, the Settlement Administrator shall mail or otherwise provide a payment via check (“Claim Check”) or digital payment selected in consultation with the Settlement Administrator (collectively, “Claim Payment”) to each Claimant in the amount for which each Claimant has submitted a Claim Form approved by the Settlement Administrator or by the Court, for good cause shown, in accordance with the following distribution procedures:

a. The Settlement Administrator must first use the Net Settlement Fund to pay all valid claims for Reimbursement for Out-of-Pocket Losses.

b. The Settlement Administrator must then distribute the remaining balance of the Net Settlement Fund (i.e., “Post-Loss Net Settlement Fund”) to pay valid claims for Pro Rata Cash Compensation. The amount of each Pro Rata Cash Compensation payment shall be

calculated by dividing the Post-Loss Net Settlement Fund by the number of valid claims for Pro Rata Cash Compensation.

11. Each Claim Check shall be mailed to the address provided by the Claimant on his or her Claim Form. All Claim Checks issued under this section shall be void if not negotiated within ninety (90) calendar days of their date of issue and shall contain a legend to that effect. Claim Checks issued pursuant to this section that are not negotiated within ninety (90) calendar days of their date of issue shall not be reissued.

12. To the extent any monies remain in the Net Settlement Fund more than one hundred twenty (120) calendar days after the distribution of Claim Payments to the Claimants, a subsequent payment will be evenly made to all Claimants who cashed or deposited their initial Claim Payments they received, provided that the average payment amount is equal to or greater than Three Dollars and No Cents (\$3.00). The distribution of this remaining Net Settlement Fund shall continue until the average payment amount in a distribution is less than Three Dollars and No Cents (\$3.00), whereupon the amount remaining in the Net Settlement Fund, if any, shall be distributed to the Non-Profit Residual Recipient. Should any amount remain in the Net Settlement Fund following the redistributions, the parties will petition and obtain approval from the Court as to the Non-Profit Residual Recipient and to distribute the remaining funds to it.

13. For any Claim Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to find a valid address and resend the Claim Check within thirty (30) Days after the check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to resend a Claim Check.



14. No portion of the Settlement Fund shall revert or be repaid to Defendants after the Effective Date. Any residual funds remaining in the Net Settlement Fund, after all payments and distributions are made pursuant to the terms and conditions of this Agreement shall be distributed to the Non-Profit Residual Recipient, as approved by the Court.

15. Medicare/Medicaid Reporting. To enable reporting to the Centers for Medicare & Medicaid Services, any Settlement Class Member that is a Medicare beneficiary who sought services from a health care professional for emotional distress arising out of the Data Incident and may receive payment of over Seven Hundred Fifty Dollars and No Cents (\$750) under this Settlement will be required to provide additional information, including their full name, gender, date of birth, and Social Security Number (last five digits at a minimum) or full Medicare Beneficiary Number to be eligible for payment.

## **VII. NOTICE TO SETTLEMENT CLASS MEMBERS**

1. The Parties agree the following Notice Program provides reasonable notice to the Settlement Class.

2. Direct Notice shall be provided to other Settlement Class Members by First Class U.S. Mail for Settlement Class Members for whom the Settlement Administrator has a valid address.

3. Within fourteen (14) Days of the entry of the Preliminary Approval Order, Defendants shall provide the Settlement Administrator with the names and last-known addresses known to Defendants for the Settlement Class Members (the “Class List”). The Settlement Administrator shall, by using the National Change of Address database maintained by the United States Postal Service (“Postal Service”), obtain updates, if any, to the mailing addresses.

4. Within thirty (30) Days following entry of the Preliminary Approval Order (“Notice Date”), the Settlement Administrator shall mail the Postcard Notice and Claim Form to all Settlement Class Members by first class United States mail. It has been mutually agreed by the Parties that the Settlement Administrator may rely upon Postcard Notice.

5. If any Short-Form Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Postcard Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. Other than as set forth above, neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail Notices.

6. The mailed notice will consist of the Postcard Notice substantially in the form of Exhibit C and the Claim Form in the form of Exhibit A. The Settlement Administrator shall have discretion to format this Postcard Notice in a reasonable manner to minimize mailing and administrative costs. Before the mailing of the Postcard Notice is commenced, Class Counsel and Defense Counsel shall first be provided with a proof copy (including what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and the Court’s orders.

7. No later than thirty (30) Days following entry of the Preliminary Approval Order, and prior to the mailing of the Postcard Notice and Claim Form to all Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the CAC, Postcard Notice, Long-Form Notice, Claim Form, this Settlement Agreement, and other relevant settlement and court documents to be available on the Settlement Website. Any other content proposed to be included or displayed on the Settlement Website shall be approved in advance by counsel for the Parties, which approval shall not be

unreasonably withheld. The website address and the fact that a more detailed Long-Form Notice and a Claim Form are available through the website shall be included in the Postcard Notice.

8. Claimants shall be able to submit their claims via the Settlement Website.

9. The Settlement Website shall be maintained from the Notice Date until sixty (60) Days after the Claims Deadline has passed.

10. Claim Forms shall be returned or submitted to the Settlement Administrator online or via U.S. mail, postmarked by the Claims Deadline set by the Court, or be forever barred unless such claim is otherwise approved by the Court at the Final Approval Hearing, for good cause shown as demonstrated by the applicable Settlement Class Member.

11. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel to file with the Court, an appropriate affidavit or declaration from the Settlement Administrator respecting compliance with the Court-approved Notice Program.

### **VIII. OPT-OUT PROCEDURE**

1. Each member of the Settlement Class shall have the right to request exclusion from the Settlement Class and not participate in the Settlement Agreement, as provided for in the Preliminary Approval Order.

2. The Short-Form Notices shall inform each Settlement Class Member of his or her right to request exclusion from the Settlement Class and not to be bound by this Settlement Agreement, if, before the Opt-Out Deadline, the Settlement Class Member personally completes and mails a request for exclusion (“Opt-Out Request”) to the Settlement Administrator at the address set forth in the Short-Form Notices.

3. For a Settlement Class Member’s Opt-Out Request to be valid, it must (a) state his or her full name, address, and telephone number; (b) contain the Settlement Class Member’s

personal and original signature (or the original signature of a person authorized by law, such as a trustee, guardian, or person acting under a power of attorney to act on behalf of the Settlement Class Member with respect to a claim or right such as those in the Litigation); and (c) state unequivocally the Settlement Class Member's intent to be excluded from the Settlement Class and from the Settlement. The Settlement Administrator shall promptly inform Class Counsel and Defense Counsel of all valid and timely Opt-Out Requests, with all such Settlement Class Members being referred to herein as "Opt-Out Member(s)."

4. Opt-Out Members shall receive no benefit or compensation under this Settlement Agreement and shall have no right to object to the proposed Settlement Agreement or address the Court at the Final Approval Hearing.

5. A request for exclusion that does not comply with all of the foregoing, that is not postmarked by the Opt-Out Deadline, or that is sent to an address other than that set forth in the Short-Form Notices shall be invalid, and that Settlement Class Member shall remain in and be treated as being in the Settlement Class and as being bound by this Settlement Agreement and the release contained herein.

6. Prior to the Final Approval Hearing, the Settlement Administrator shall create a comprehensive list of all Opt-Out Members for submission to the Court and to be provided to Class Counsel and Defense Counsel.

7. Opt-Out Members shall not (a) be bound by any orders or judgments entered in the Litigation or relating to the Settlement; (b) be entitled to relief under, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement.

## **IX. OBJECTIONS TO THE SETTLEMENT**

1. Any Settlement Class Member who wishes to object to the proposed Settlement must file with the Court and serve a written objection(s) to the Settlement (“Objection(s)”) to Class Counsel and Defense Counsel, at the addresses set forth in the Long-Form Notice via First Class U.S Mail.

2. To be valid, each Objection must (i) set forth the Settlement Class Member’s full name, current address, and telephone number; (ii) contain the Settlement Class Member’s personal and original signature (or the original signature of a person authorized by law, such as a trustee, guardian, or person acting under a power of attorney to act on behalf of the Settlement Class Member with respect to a claim or right such as those in the Litigation); (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth a statement of the legal and factual basis for the Objection; (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; and (vi) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection. In addition to the foregoing, Objections should also provide the following information: (a) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the last three (3) years; and (b) a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

3. Objections must be filed with the Court and served on Class Counsel and Defense Counsel no later than sixty (60) Days after the Notice Date (the “Objection Deadline”). The Objection Deadline shall be included in the Short-Form and Long-Form Notices.

4. Class Counsel and Defense Counsel may, but need not, respond to the Objections, if any, by means of a memorandum of law served prior to the Final Approval Hearing.

5. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and Defense Counsel) by the Objection Deadline.

6. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers.

7. Any Settlement Class Member who fails to timely file and serve an Objection and notice, if applicable, of his or her intent to appear at the Final Approval Hearing in person or through counsel pursuant to this Settlement Agreement, as detailed in the Long-Form Notice, and otherwise as ordered by the Court, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

8. Any Settlement Class Member who does not submit a timely Objection in complete accordance with this Settlement Agreement, the Long-Form Notice, and otherwise as ordered by the Court, shall not be treated as having filed a valid Objection to the Settlement and shall forever be barred from raising any objection to the Settlement.

**X. ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARD**

1. Class Counsel shall request the Court to approve an award of reasonable attorneys' fees incurred in prosecuting the Litigation not to exceed 1/3 of the Settlement Fund excluding any administration costs. Class Counsel shall also request that the Court approve reimbursement of all reasonable costs and expenses incurred in prosecuting the Litigation. Class Counsel's attorneys' fees, costs, and expenses awarded by the Court (i.e., the "Fee Award, Costs, and Expenses") shall be paid no later than ten (10) Days after the Effective Date. For the avoidance of doubt, the Court-approved amount shall be paid from the Settlement Fund. The Parties did not discuss payment of attorneys' fees, costs, and expenses until after they agreed on all materials terms of relief to the Settlement Class.

2. Class Counsel may request the Court to approve a Service Award of \$5,000 for Plaintiff, which award is intended to recognize Plaintiff for his efforts in the Litigation and commitment on behalf of the Settlement Class ("Service Award"). If approved by the Court, the Service Award will be paid no later than ten (10) Days after the Effective Date. For the avoidance of doubt, the Court approved amount shall be paid from the Settlement Fund. The Parties did not discuss or agree upon payment of a Service Award until after they agreed on all materials terms of relief to the Settlement Class.

3. Class Counsel will file applications with the Court for the requested Service Award, attorneys' fees, costs, and expenses, and a motion in support of the final approval, at least fourteen (14) Days prior to the Objection Deadline.

4. The Parties agree that the Court's approval or denial of any request for a Service Award or attorneys' fees, costs, and expenses, are not conditions to this Settlement Agreement and are to be considered by the Court separately from final approval, reasonableness, and adequacy of

the Settlement. Any reduction to the Service Award or award of attorneys' fees, costs, and expenses shall not operate to terminate or cancel this Settlement Agreement.

## **XI. NOTICES**

1. All notices to the Parties required by the Settlement Agreement shall be made in writing and communicated by First Class U.S. mail to the following addresses:

All notices to Class Counsel or Plaintiff shall be sent to:

Carl V. Malmstrom  
Wolf Haldenstein Adler Freeman & Herz LLC  
111 W. Jackson Blvd., Suite 1700  
Chicago, IL 60604  
Tel: (312) 984-0000

All notices to Defense Counsel or Defendants shall be sent to:

Christopher A. Wiech  
Baker & Hostetler LLP  
1170 Peachtree Street Northeast, Suite 2400  
Atlanta, GA 30309-7676  
Tel.: 404-459-0050

2. Other than attorney-client communications or communications otherwise protected from disclosure pursuant to law or rule, the Parties shall promptly provide to each other copies of comments, Objections, Opt-Out Requests, or other documents or filings received from a Settlement Class Member as a result of the Notice Program.

## **XII. SETTLEMENT APPROVAL PROCESS**

1. After execution of this Settlement Agreement, the Parties shall promptly move the Court to enter the Preliminary Approval Order, which:

- a. Preliminarily approves this Settlement Agreement;
- b. Certifies the Settlement Class;



c. Finds the proposed Settlement is sufficiently fair, reasonable, adequate, and in the best interests of the Settlement Class;

d. Finds the Notice Program constitutes valid, due, and sufficient notice to the Settlement Class Members, and constitutes the best notice practicable under the circumstances, complying fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable law and that no further notice to the Class is required beyond that provided through the Notice Program;

e. Appoints the Settlement Administrator in accordance with the provisions of Section VI of this Agreement;

f. Directs the Settlement Administrator to provide notice to Settlement Class Members in accordance with the Notice Program provided for in this Settlement Agreement;

g. Approves the Claim Form and directs the Settlement Administrator to administer the Settlement in accordance with the provisions of this Settlement Agreement;

h. Approves the Opt-Out and Objection procedures as outlined in this Settlement Agreement;

i. Schedules a Final Approval Hearing to consider the final approval, reasonableness, and adequacy of the proposed Settlement and whether it should be finally approved by the Court; and,

j. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement and the Settlement.

### **XIII. FINAL APPROVAL HEARING**

1. The Parties will recommend that the Final Approval Hearing shall be scheduled no earlier than one hundred (100) Days after the entry of the Preliminary Approval Order.

2. The Parties may file a response to any objections in further support of Final Approval no later than fourteen (14) Days after the Objection Deadline or after receipt of any timely submitted objection, whichever is the later. In their discretion, the Parties may respond to late-filed objections, as they deem appropriate.

3. Any Settlement Class Member who wishes to appear at the Final Approval Hearing, whether pro se or through counsel, must, by the Objection Deadline, either mail or hand-deliver to the Court or file a notice of appearance in the Litigation, take all other actions or make any additional submissions as may be required in the Long-Form Notice or as otherwise ordered by the Court, and mail that notice and any other such pleadings to Class Counsel and Defense Counsel as provided in the Long-Form Notice.

4. The Parties shall ask the Court to enter a Final Approval Order and Judgment which includes the following provisions:

a. A finding that the Notice Program fully and accurately informs all Settlement Class Members entitled to notice of the material elements of the Settlement, constitutes the best notice practicable under the circumstances, constitutes valid, due, and sufficient notice, and complies fully with Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law;

b. A finding that after proper notice to the Class, and after sufficient opportunity to object, no timely objections to this Settlement Agreement have been made, or a finding that all timely objections have been considered and denied;

c. Approval of the Settlement, as set forth in the Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Class, in all respects, finding that the

settlement is in good faith, and ordering the Parties to perform the Settlement in accordance with the terms of this Settlement Agreement;

d. A finding that neither the Final Judgment, the Settlement, nor the Settlement Agreement shall constitute an admission of liability by the Parties, or any liability or wrongdoing whatsoever by any Party;

e. Subject to the reservation of jurisdiction for matters discussed in subparagraph (g) below, a dismissal with prejudice of claims pending against Defendants in the Litigation;

f. A finding that Plaintiff shall as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Plaintiff's Released Claims.

g. A finding that all Settlement Class Members not opting out or who have not properly opted out of the Settlement Class shall, as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Released Class Claims; and

h. A reservation of exclusive and continuing jurisdiction over the Litigation and the Parties for the purposes of, among other things, (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Preliminary Approval Order, and the Final Judgment; and (ii) supervising the administration and distribution of the relief to the Settlement Class and resolving any disputes that may arise with regard to the foregoing.

5. If and when the Settlement becomes Final, the claims against Defendants in the Litigation shall be dismissed with prejudice, with the Parties to bear their own costs and attorneys' fees, costs, and expenses not otherwise awarded in accordance with this Settlement Agreement.

#### **XIV. TERMINATION OF THIS SETTLEMENT AGREEMENT**

1. Each Party shall have the right to terminate this Settlement Agreement if:

a. The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that materially differs in substance to Exhibit D hereto);

b. The Court denies final approval of this Settlement Agreement (or grants final approval through an order that materially differs in substance from this Settlement Agreement);

c. The Final Approval Order and Final Judgment do not become final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving the Settlement on the terms set forth herein; or

d. The Effective Date cannot occur.

2. Defendants shall have the right to terminate this Settlement Agreement if more than 200 Settlement Class Members Opt-Out of the Settlement within ten (10) days of the Opt-Out Deadline.

3. Class Counsel agrees to work in good faith to effectuate this Settlement Agreement and will not solicit or encourage, in any manner, Settlement Class Members to submit Opt-Out Requests.

4. If a Party elects to terminate this Settlement Agreement under this Section XIV, that Party must provide written notice to the other Party's counsel, by hand delivery, mail, or e-mail within ten (10) Days of the occurrence of the condition permitting termination.

5. Nothing shall prevent Plaintiff or Defendants from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of final approval of the Settlement.

6. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order (if applicable), and all of their provisions shall be rendered null and void; (ii) the Litigation and all Parties shall be deemed to have reverted to their respective status in the Litigation as of the date and time immediately preceding the execution of this Settlement Agreement; (iii) except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed; and (iv) no term or draft of this Settlement Agreement nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Approval Order and Final Judgment), will have any effect or be admissible into evidence for any purpose in the Litigation or any other proceeding.

7. If the Court does not approve the Settlement or the Effective Date cannot occur for any reason, Defendants shall retain all their rights and defenses in this Litigation. For example, Defendants shall have the right to object to the maintenance of the Litigation as a class action, to

move for summary judgment, and to assert defenses at trial, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Litigation may properly be maintained as a class action, or for any other purpose.

## **XV. RELEASE**

1. The Final Approval Order and Final Judgment shall provide that claims against Defendants in the Litigation are dismissed with prejudice as to Plaintiff and all Settlement Class Members who are not Opt-Out Members.

2. On the Effective Date, Plaintiff and each and every Settlement Class Member who is not an Opt-Out Member (i.e., has not been excluded from the Settlement Class by the Court), shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim or proceeding, regardless of forum, may be pursued against Released Persons with respect to the Plaintiff's Released Claims or the Released Class Claims.

3. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, Plaintiff will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees, costs, and expenses, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that arise out of, are connected to, or relate in any way to the Data Incident, including such claims that were or could have been asserted in the Litigation (the

“Plaintiff’s Release”). The Plaintiff’s Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion (the “Plaintiff’s Released Claims”). The Plaintiff’s Released Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Plaintiff’s Released Claims.

4. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, each Settlement Class Member who is not an Opt-Out Member will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys’ fees, costs, and expenses, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that arise out of, are connected to, or relate in any way to the Data Incident, including such claims that were or could have been asserted in the Litigation (the “Settlement Class Release”). The Settlement Class Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion (the “Released Class Claims”). The Released Class Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Released Class Claims.

5. Subject to Court approval, as of the Effective Date, Plaintiff and all Settlement Class Members who are not Opt-Out Members shall be bound by this Settlement Agreement and the Settlement Class Release and all of Plaintiff’s Released Claims and the Released Class Claims

shall be dismissed with prejudice and released, irrespective of whether the Settlement Class Members received actual notice of the Litigation or this Settlement.

6. Plaintiff's Released Claims and Released Class Claims include the release of Unknown Claims. "Unknown Claims" means claims that could have been raised in the Litigation and that either of Plaintiff or any Settlement Class Member (other than Opt-Out Members), and each of their respective heirs, executors, administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns do not know to exist or suspects to exist, which, if known by him, her or it, might affect his, her, or its agreement to release Defendants and all other Released Persons, or might affect his, her, or its decision to agree to, or object or not to object to the Settlement. Plaintiff's Released Claims and Released Class Claims include a waiver of the provisions, right, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by the law of any state, province, or territory of the United States, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

7. On entry of the Final Approval Order and Final Judgment, Plaintiff and Settlement Class Members (other than Opt-Out Members) shall be enjoined from prosecuting, respectively, Plaintiff's Released Claims and/or the Released Class Claims, in any proceeding in any forum against any of the Released Persons or based on any actions taken by any Released Persons authorized or required by this Settlement Agreement or the Court or an appellate court as part of this Settlement.



8. Without in any way limiting the scope of Plaintiff's Release or the Settlement Class Release (the "Releases"), the Releases cover, without limitation, any and all claims for attorneys' fees, costs, expenses, or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, or any of them, in connection with or related in any manner to the claims against Defendants in the Litigation, the Settlement, the administration of such Settlement and/or Plaintiff's Released Claims or Released Class Claims, as well as any and all claims for the Service Award to Plaintiff.

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

#### **XVI. EFFECTIVE DATE**

1. The "Effective Date" of this Settlement Agreement shall be the first Day after the date when all of the following conditions have occurred:

a. This Settlement Agreement has been fully executed by all Parties and their counsel;

b. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement Agreement and approving the Notice Program and Claim Form, all as provided above;

c. The Court-approved Postcard Notice has been mailed and other notice required by the Notice Program has been effectuated and the Settlement Website has been duly created and maintained as ordered by the Court;

d. The Court has entered a Final Approval Order finally approving this Settlement Agreement, as provided above; and

e. The Final Approval Order and Final Judgment have become Final.

## **XVII. MISCELLANEOUS PROVISIONS**

1. The recitals and exhibits to this Settlement Agreement are integral parts of the Settlement and are expressly incorporated and made a part of this Settlement Agreement. The Parties acknowledge that it is their intent to consummate this Settlement Agreement and agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms of this Settlement Agreement.

2. This Settlement Agreement is for settlement purposes only. Neither the fact of nor any provision contained in this Settlement Agreement nor any action taken hereunder shall constitute or be construed as an admission of the validity of any claim or any fact alleged in the CAC or Litigation or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendants or any admission by Defendants of any claim in this Litigation or allegation made in any other proceeding, including regulatory matters, directly or indirectly involving the Data Incident or allegations asserted in the CAC and Litigation. This Settlement Agreement shall not be offered or be admissible in evidence against the Parties or cited or referred to in any action or proceeding between the Parties, except in an action or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed or admissible as an admission by Defendants that Plaintiff's claims or any similar claims are suitable for class treatment.

3. In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not dealt with by the terms of this Settlement Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing agreement, as shall be ordered by the Court. The Parties shall execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Settlement

Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Settlement Agreement to give this Settlement Agreement full force and effect.

4. In the event the aggregate amount of all payments for Reimbursement of Out-of-Pocket Losses exceeds the total amount of the Net Settlement Fund, then the value of those payments shall be reduced on a pro rata basis, such that the aggregate value of Reimbursement for Out-of-Pocket Losses does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds would be distributed to Claimants seeking Pro Rata Cash Compensation. All such determinations shall be performed by the Settlement Administrator.

5. No person shall have any claim against Plaintiff, Class Counsel, Defendants, Defense Counsel, the Settlement Administrator, or the Released Persons or any of the foregoing's agents or representatives based on the administration of the Settlement substantially in accordance with the terms of the Settlement Agreement or any order of the Court or appellate court.

6. This Settlement Agreement constitutes the entire Settlement Agreement between and among the Parties with respect to the Settlement of the Litigation. This Settlement Agreement supersedes all prior negotiations and settlement agreements and may not be modified or amended except by a writing signed by the Parties and their respective counsel. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or understanding concerning any part of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

7. There shall be no waiver of any term or condition in this Settlement Agreement absent an express writing to that effect by the non-waiving Party. No waiver of any term or condition in this Settlement Agreement shall be construed as a waiver of a subsequent breach or

failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

8. In the event a third party, such as a bankruptcy trustee, former spouse, or other third party has or claims to have a claim against any payment made to a Settlement Class Member, it is the responsibility of the Settlement Class Member to transmit the funds to such third party. Unless otherwise ordered by the Court, the Parties will have no, and do not agree to, any responsibility for such transmittal.

9. This Settlement Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

10. This Settlement Agreement shall be construed under and governed by the laws of the State of Indiana without regard to its choice of law provisions.

11. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

12. All dollar amounts are in the United States dollars (USD).

13. In the event that one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of the Settlement

Agreement, which shall remain in full force and effect as though the invalid, illegal, or unenforceable provision(s) had never been a part of this Settlement Agreement as long as the benefits of this Settlement Agreement to Defendants or the Settlement Class Members are not materially altered, positively or negatively, as a result of the invalid, illegal, or unenforceable provision(s).

14. This Settlement Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, Released Persons, and Settlement Class Members. The Parties waive the right to appeal or collaterally attack the Final Judgment entered under this Settlement Agreement.

15. The headings used in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement. In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

16. The Parties stipulate to stay all proceedings in the Litigation until the approval of this Settlement Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve judicial approval of this Settlement Agreement.

17. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement.

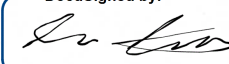
18. Each Party to this Settlement Agreement and the signatories thereto warrant that he, she, or it is acting upon his, her or its independent judgment and the advice of his, her or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature

or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

19. Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

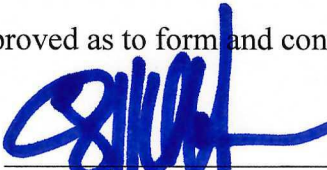
20. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have hereby accepted and agreed to the Settlement Agreement.

DocuSigned by:  
  
By: \_\_\_\_\_  
FC37CE80808D4A6  
Plaintiff Sean Sheffler

Dated: 7/3/2024

Approved as to form and content by counsel for Plaintiff and the Settlement Class:

  
By: \_\_\_\_\_  
Carl V. Malmstrom  
Wolf Haldenstein Adler Freeman & Herz LLC  
111 W. Jackson Blvd., Suite 1700  
Chicago, IL 60604  
Tel: (312) 984-0000  
malmstrom@whafh.com

Dated: 3/6/24

Approved as to form and content by counsel for Defendants:

By: \_\_\_\_\_  
Christopher A. Wiech  
Baker & Hostetler LLP  
1170 Peachtree Street Northeast  
Suite 2400

Atlanta, GA 30309-7676  
Tel: (404) 459-0050  
cwiech@bakerlaw.com

Dated: \_\_\_\_\_

or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

19. Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

20. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have hereby accepted and agreed to the Settlement Agreement.

By: \_\_\_\_\_  
Plaintiff Sean Sheffler


Dated: \_\_\_\_\_

Approved as to form and content by counsel for Plaintiff and the Settlement Class:

By: \_\_\_\_\_  
Carl V. Malmstrom  
Wolf Haldenstein Adler Freeman & Herz LLC  
111 W. Jackson Blvd., Suite 1700  
Chicago, IL 60604  
Tel: (312) 984-0000  
malmstrom@whafh.com

Dated: \_\_\_\_\_

Approved as to form and content by counsel for Defendants:

By:  \_\_\_\_\_  
Christopher A. Wiech  
Baker & Hostetler LLP  
1170 Peachtree Street Northeast  
Suite 2400



Atlanta, GA 30309-7676  
Tel: (404) 459-0050  
cwiech@bakerlaw.com

Dated: July 5, 2024

# **EXHIBIT 1-A**

**NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

**If Activate Healthcare, LLC (“Activate”) or Everside Health, LLC (“Everside”) Notified You Of A Data Incident, You May Be Eligible For Benefits From A Class Action Settlement.**

*This is not a solicitation from a lawyer, junk mail, or an advertisement. A Court authorized this Notice.*

- A proposed Settlement has been reached in a class action lawsuit known as *Sheffler v. Activate Healthcare, LLC et al.*, No. 1:23-cv-01206-SEB-TAB (“Litigation”), filed in the United States District Court for the Southern District of Indiana.
- This Litigation arises out of a data security incident. Plaintiff alleges that an unauthorized third party accessed Activate and Everside’s (collectively, “Defendants”) IT network in April 2023, resulting in the unauthorized third party’s potential access to personal information belonging to Plaintiff and members of the Settlement Class (the “Data Incident”), including their name, date of birth, address, Social Security number, driver’s license number, and clinical information, such as provider name, date of service, and/or diagnosis (collectively, “Sensitive Personal Information” or “SPI”). Defendants disagree with Plaintiff’s claims, disputes liability, and denies any wrongdoing.
- All Settlement Class Members can receive the following benefits from the Settlement: All Settlement Class Members are eligible to recover reimbursement for documented out-of-pocket losses up to \$250, as well as a pro rata cash payment estimated to be \$50.
  - Reimbursement for Out-of-Pocket Losses: Settlement Class Members may claim up to \$250 by submitting a valid and timely Claim Form and reasonable supporting documentation for ordinary losses demonstrably incurred, more likely than not, as a result of the Data Incident. Ordinary losses can arise from the following categories: (i) Out of pocket expenses incurred as a direct result of the Data Incident; or (ii) fees for credit reports, credit monitoring, or other identity theft insurance product purchased between June 23, 2023, and the date of the close of the Claims Period.
  - Pro Rata Cash Compensation: Settlement Class Members may make a claim for a cash payment that is estimated to be approximately \$50, subject to *pro rata* (increase or decrease) of the Post-Loss Net Settlement Fund.
- Included in this Settlement, a Settlement Class Member includes:
  - All individuals notified that their SPI was potentially impacted in the Data Incident.
  - Excluded from the Settlement Class are Defendants’ officers and directors, as well as (i) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (ii) the judges assigned to the Litigation and to evaluate the fairness, reasonableness, and adequacy of this Settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of perpetrating, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge.
- Your legal rights are affected regardless of whether you do or do not act. Read this Notice carefully.

<b>YOUR LEGAL RIGHTS &amp; OPTIONS IN THIS SETTLEMENT</b>	
<b>Submit a Claim Form</b>	<p><b>You must submit a valid Claim Form to get cash compensation or reimbursement from this Settlement.</b></p> <p>Claim Forms must be submitted online or mailed, postmarked no later than June 10, 2024.</p>
<b>Do Nothing</b>	<p>If you do nothing, you remain in the Settlement.</p> <p>You give up your rights to sue and you will not get any cash compensation or reimbursement as a Settlement Class Member.</p>
<b>Exclude Yourself</b>	<p><b>Get out of the Settlement. Get no money. Keep your rights.</b></p> <p>This is the only option that allows you to keep your right to sue about the claims in this Litigation. You will not get any money from the Settlement.</p> <p>Your Opt-Out Request must be postmarked no later than [MONTH XX], 2024.</p>
<b>File an Objection</b>	<p>Stay in the Settlement but tell the Court why you think the Settlement should not be approved.</p> <p>Objections must be postmarked no later than [MONTH XX], 2024.</p>
<b>Go to a Hearing</b>	<p>You can ask to speak in Court about the fairness of the Settlement, at your own expense. See Question 18 for more details.</p> <p>The Final Approval Hearing is scheduled for [MONTH XX], 2024 at [TIME].</p>

**WHAT THIS LONG-FORM NOTICE CONTAINS**

**Basic Information .....Page 4**

1. How do I know if I am affected by the Litigation and Settlement?
2. What is this case about?
3. Why is there a Settlement?
4. Why is this a class action?
5. How do I know if I am included in the Settlement?

**The Settlement Benefits.....Pages 5-6**

6. What does this Settlement provide?
7. How to submit a Claim Form.
8. What am I giving up as part of the Settlement?
9. Will the Class Representative receive compensation?

**Exclude Yourself.....Page 6**

10. How do I exclude myself from the Settlement?
11. If I do not exclude myself, can I sue later?
12. What happens if I do nothing at all?

**The Lawyers Representing You .....Pages 6-7**

13. Do I have a lawyer in the case?
14. How will the lawyers be paid?

**Objecting to the Settlement .....Pages 7-8**

15. How do I tell the Court that I do not like the Settlement?
16. What is the difference between objecting and asking to be excluded?

**The Final Approval Hearing .....Page 8**

17. When and where will the Court decide whether to approve the Settlement?
18. Do I have to come to the hearing?
19. May I speak at the hearing?

**Get More Information.....Page 8**

20. How do I get more information about the Settlement?

## BASIC INFORMATION

### 1. How do I know if I am affected by the Litigation and Settlement?

You are a Settlement Class Member if you were notified by Activate or Everside that your Sensitive Personal Information was potentially impacted in the Data Incident.

The Settlement Class specifically excludes Defendants' officers and directors, as well as (i) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (ii) the judges assigned to the Litigation and to evaluate the fairness, reasonableness, and adequacy of this Settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under criminal law of perpetrating, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

This Long-Form Notice explains the nature of the Litigation and claims being settled, your legal rights, and the benefits to the Settlement Class.

### 2. What is this case about?

This case is known as *Sheffler v. Activate Healthcare, LLC et al.*, No. 1:23-cv-01206-SEB-TAB, filed in the United States District Court for the Southern District of Indiana ("Litigation"). The person who sued is called the "Plaintiff" and the companies they sued, Activate Healthcare, LLC ("Activate") and Everside Health, LLC ("Everside"), are known as the "Defendants" in this case.

Plaintiff filed a lawsuit against Defendants, individually, and on behalf of anyone whose Sensitive Personal Information was potentially impacted as a result of the Data Incident.

This Litigation arises out of a Data Incident. Specifically, Plaintiff, alleges that an unauthorized third party accessed Defendants' IT network in April 2023, resulting in the unauthorized third party's potential access to personal information belonging to Plaintiff and Settlement Class Members, including but not limited to their name, date of birth, address, Social Security number, driver's license number, and clinical information, such as provider name, date of service, and/or diagnosis.

Defendants deny all claims asserted against it in the Litigation and deny all allegations of wrongdoing and liability.

Plaintiff and Defendants are collectively referred to herein as the "Parties."

### 3. Why is there a Settlement?

By agreeing to settle, the Parties' desire to settle the Litigation and all claims arising out of or related to the allegations or subject matter of the Third Amended Class Action Complaint and Litigation on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Litigation. The Class Representative, Defendants, and their attorneys believe the proposed Settlement is fair, reasonable, and adequate and, thus, in the best interests for Settlement Class Members. The Court did not decide in favor of the Plaintiff or Defendants. Full details about the proposed Settlement are found in the Settlement Agreement available at [www.XXXX.com](http://www.XXXX.com).

### 4. Why is this a class action?

In a class action, one or more people called a "Class Representative" sue on behalf of all people who have similar claims. All of these people together are the "Settlement Class" or "Settlement Class Members."

### 5. How do I know if I am included in the Settlement?

You are included in the Settlement Class if you are an individual who was notified by Activate or Everside that your Sensitive Personal Information was potentially impacted in the Data Incident. If you are not sure whether you are included

as a Settlement Class Member, or have any other questions about the Settlement, visit [www.XXXXX.com](http://www.XXXXX.com), call toll free (XXX) XXX-XXXX, or write to [insert address].

## THE SETTLEMENT BENEFITS

### 6. What does this Settlement provide?

The proposed Settlement will provide the following benefits to Settlement Class Members:

- 1. Reimbursement for Out-of-Pocket Losses:** Settlement Class Members may submit a claim for up to \$250 reimbursement of out-of-pocket losses. To receive Reimbursement for Out-of-Pocket Losses, a participating Settlement Class Member must submit a valid and timely Claim Form electing to receive this benefit and providing reasonable supporting documentation for the losses demonstrably incurred, more likely than not, as a result of the Data Incident.

Out-of-Pocket Losses are unreimbursed losses and consequential expenses incurred as a direct result of the Data Incident, including, but not limited to, documented bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, gasoline for local travel, bank fees, and fees for credit reports, credit monitoring, or other identity theft insurance products purchased between June 23, 2023 and the date of the close of the Claims Period.

Out-of-Pocket Losses must not have been previously reimbursed or subject to reimbursement by insurance or a third party and must be reasonably described, supported by reasonable documentation, and supported by an attestation under penalty of perjury, which will be a part of the Claim Form.

- 2. Pro Rata Cash Compensation:** In addition to Reimbursement for Out-of-Pocket Losses, Settlement Class Members may submit a claim for a cash payment that is estimated to be approximately \$50, subject to pro rata increase or decrease depending on the number of approved claims.

Claims will be subject to review for completeness and plausibility by the Settlement Administrator.

### 7. How to submit a Claim Form

All Claim Forms will be reviewed by the Settlement Administrator for completeness and plausibility. You must file a Claim Form to get reimbursement and/or cash compensation from the Net Settlement Fund under the proposed Settlement. Claim Forms must be submitted online or postmarked no later than [DATE]. For more information, please visit [www.XXXX.com](http://www.XXXX.com) or you can call the Settlement Administrator at (XXX) XXX-XXXX for a Claim Form.

### 8. What am I giving up as part of the Settlement?

If you stay in the Settlement Class, you will be eligible to receive benefits, but you will not be able to sue Defendants, and each of their present and former parents, subsidiaries, divisions, departments, affiliates, employees, servants, members, providers, partners, principals, directors, shareholders, owners, predecessors, successors, assigns, and insurers, and each of the foregoing's former or present directors, trustees, officers, employees, representatives, agents, providers, consultants, advisors, attorneys, accountants, partners, vendors, insurers, reinsurers, and subrogees (collectively, the "Released Persons") regarding the claims in this case.

The Settlement Agreement, which includes all provisions about Released Class Claims, releases, and Released Persons, is available at [www.XXXX.com](http://www.XXXX.com).

The only way to keep the right to sue is to exclude yourself (*see* Question 10), otherwise you will be included in the Settlement Class, and, if the Settlement is approved, you give up the right to sue for the claims in this case.

### 9. Will the Class Representative receive compensation?

Yes. If approved by the Court, the Class Representative will receive a Service Award of up to \$5,000, to recognize him for his efforts in the Litigation and on behalf of the Settlement Class. The Court will make the final decision as to the amount, if any, to be paid to the Class Representative.

## EXCLUDE YOURSELF

### 10. How do I exclude myself from the Settlement?

If you do not want to be included in the Settlement, you must “Opt-Out” by sending a timely written Opt-Out Request, stating your full name, address, and telephone number. Your Opt-Out Request must (a) state your full name, address, and telephone number; (b) contain your personal and original signature (or the original signature of a person authorized by law, such as a trustee, guardian, or person acting under a power of attorney to act on your behalf with respect to a claim or right such as those in the Litigation); and (c) state unequivocally your intent to be excluded from the Settlement Class and from the Settlement.

Your written Opt-Out Request must be postmarked no later than **[date]** to:

XXXX  
c/o XXX Settlement Administration  
PO Box XXX  
XXX, XX XXXXX

Instructions on how to submit an Opt-Out Request are available at [www.XXXX.com](http://www.XXXX.com) or from the Settlement Administrator by calling **(XXX) XXX-XXXX**.

If you exclude yourself you will not be able to receive any reimbursement or cash benefit from the Settlement, and you cannot object to the Settlement at the Final Approval Hearing. You will not be legally bound by anything that happens in the Litigation, and you will keep your right to sue Defendants on your own for the claims that this Settlement resolves.

### 11. If I do not exclude myself, can I sue later?

No. If you do not exclude yourself from the Settlement, and the Settlement is approved by the Court, you forever give up the right to sue the Released Persons (listed in Question 8) for the claims this Settlement resolves.

### 12. What happens if I do nothing at all?

If you do nothing, you will be bound by the Settlement if the Court approves it, you will not get any reimbursement or cash payment from the Settlement, you will not be able to start or proceed with a lawsuit, or be part of any other lawsuit against the Released Persons (listed in Question 8) about the settled claims in this case at any time.

## THE LAWYERS REPRESENTING YOU

### 13. Do I have a lawyer in the case?

Yes. The Court has appointed Carl Malmstrom of Wolf Haldenstein Adler Freeman & Herz LLC (called “Class Counsel”) to represent the interests of all Settlement Class Members in this case. You will not be charged for this lawyer’s services. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 14. How will the lawyers be paid?

Class Counsel will apply to the Court for reasonable attorneys’ fees not to exceed one-third of the net Settlement Fund excluding any administration costs. Class Counsel will also apply to the Court for reimbursement of all reasonable costs and expenses incurred in prosecuting the Litigation. A copy of Class Counsel’s Motion for Fee Awards, Costs and Expenses and Service Award for Class Representative will be posted on this Settlement Website, [www.XXXX.com](http://www.XXXX.com), before the Final Approval Hearing. The Court will make the final decisions as to the amounts to be paid to Class Counsel and may award less than the amount requested by Class Counsel.



**OBJECTING TO THE SETTLEMENT**

**15. How do I tell the Court that I do not like the Settlement?**

If you want to tell the Court that you do not agree with the proposed Settlement or some part of it, you must file an Objection with the Court and serve on Class Counsel and Defense Counsel by **[DATE]**, (the “Objection Deadline”) stating why you do not think the Settlement should be approved.

To be valid, each Objection must:

- (i) state the Settlement Class Member’s full name, current address, and telephone number;
- (ii) contain the Settlement Class Member’s original signature;
- (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part;
- (iv) make a statement of the legal and factual basis for the Objection;
- (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position;
- (vi) provide a list of all persons who will be called to testify at the Final Approval Hearing in support of the Objection.

Objections should also provide the following information:

- (a) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the last three (3) years; and
- (b) a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative. A Settlement Class Member may only object on their own behalf or on behalf of a person they are authorized by law to object for, such as a trustee, guardian, or person acting under a power of attorney with respect to a claim or right.

Your Objection must be filed with the Court, the United States District Court for the Southern District of Indiana, through the Court’s ECF system and include the case name and docket number, *Sheffler v. Activate Healthcare, LLC et al.*, No. 1:23-cv-01206-SEB-TAB, no than **[DATE]**.

In addition, you must concurrently mail or hand deliver a copy of your objection to Class Counsel and Defense Counsel, postmarked no later than **[DATE]**:

<b>CLASS COUNSEL</b>	<b>DEFENDANTS’ COUNSEL</b>
Carl V. Malmstrom Wolf Haldenstein Adler Freeman & Herz LLC 111 W. Jackson Blvd., Suite 1700 Chicago, IL 60604	Christopher A. Wiech Baker & Hostetler LLP 1170 Peachtree Street Northeast, Suite 2400 Atlanta, GA 30309-7676

If you do not submit your Objection with all requirements, or if your Objection is not received by **[DATE]**, you will be considered to have waived all objections and will not be entitled to speak at the Final Approval Hearing.

**16. What is the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you don’t like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don’t want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

**THE FINAL APPROVAL HEARING**

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

The Court will hold the Final Approval Hearing on **[DATE]**, at **[TIME]**. ET in Courtroom 216 of the United States District Court for the Southern District of Indiana, located at Birch Bayh Federal Building & U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204. The hearing may be moved to a different date, time, or location without additional notice, so it is recommended that you periodically check this website for updated information.

At the hearing, the Court will consider whether the proposed Settlement is fair, reasonable, adequate, and is in the best interests of Settlement Class Members, and if it should be Finally approved. If there are valid Objections, the Court will consider them and will listen to people who have asked to speak at the hearing if the request was made properly. The Court will also consider Class Counsel's request for attorneys' fees, costs, and expenses, and the request for a Service Award to the Class Representative.

### **18. Do I have to come to the hearing?**

No. You are not required to come to the Final Approval Hearing. However, you are welcome to attend the hearing at your own expense.

If you submit an Objection, you do not have to come to the hearing to talk about it. If your Objection was submitted properly and on time, the Court will consider it. You also may pay your own lawyer to attend the Final Approval Hearing, but that is not necessary. However, you must follow the requirements for making Objections in Question 15, including the requirements for making appearances at the hearing.

### **19. May I speak at the hearing?**

Yes. You can speak at the Final Approval Hearing, but you must ask the Court for permission. To request permission to speak, you must file an Objection according to the instructions in Question 15, including all the information required for you to make an appearance at the hearing. You cannot speak at the hearing if you exclude yourself from the Settlement.

## **GET MORE INFORMATION**

### **20. How do I get more information about the Settlement?**

This is only a summary of the proposed Settlement. If you want additional information about this Litigation, including a copy of the Settlement Agreement, the Third Amended Class Action Complaint, the Court's Preliminary Approval Order, Class Counsel's Motion for Attorneys' Fee Awards, Costs and Expenses when available, and Service Award for Class Representative, and more, please visit this website or call **(XXX) XXX-XXXX**. You may also contact the Settlement Administrator at **[P/O Box Address]**.

**PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT  
OR LITIGATION TO THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS, OR  
DEFENDANTS' COUNSEL.**

# **EXHIBIT 1-B**

**A proposed Settlement has been reached in a class action lawsuit  
known as *Sheffler v. Activate Healthcare, LLC et al.*,  
Case No. 1:23-cv-01206-SEB-TAB,  
filed in the United States District Court for the Southern District of Indiana**

A settlement has been reached in a class action lawsuit against Activate Healthcare, LLC (“Activate”) and Everside Health, LLC (“Everside,” together with Activate, “Defendants”) arising out of a 2023 data security incident involving Defendants (the “Data Incident”). Plaintiff alleges that the Data Incident potentially resulted in the unauthorized third party’s potential access to personal information belonging to Plaintiff and members of the Settlement Class, including their name, date of birth, address, Social Security number, driver’s license number, and clinical information, such as provider name, date of service, and/or diagnosis (“Sensitive Private Information” or “SPI”). Defendants disagree with Plaintiff’s claims and denies any wrongdoing.

**You are receiving this notice because you may be a Settlement Class Member.** You are a Settlement Class Member if you were notified that your SPI was potentially impacted in the Data Incident.

Under the terms of the Settlement, you may submit a Claim for the following benefits:

- **Documented Out-of-Pocket Loss Expense Reimbursement:** Reimbursement for up to \$250 for documented out-of-pocket expenses, and
- **Cash Payment:** \$50 cash payment, adjusted up or down depending upon the number of claims approved.

The easiest way to submit a claim is online at [www.XXXXXX.com](http://www.XXXXXX.com) using your Unique ID found on the front of this postcard. To be eligible, you must complete and submit a Valid Claim Form, postmarked or submitted online on or before [INSERT DATE].

You can exclude yourself or object to the settlement, including Class Counsel’s request for attorneys’ fees, costs, and expenses, and request for a service award for the Class Representative on or before [INSERT DATE]. If you do not exclude yourself from the Settlement, you will remain in the class and give up the right to sue Activate, Everside, or the Released Persons for the Released Claims in the Settlement. **A summary of your rights under the Settlement and instructions regarding how to submit a Claim, exclude yourself, or object to the Settlement are available at [www.XXXXXXX.com](http://www.XXXXXXX.com).**

The Court will hold the Final Fairness Hearing at [INSERT] to consider whether the proposed Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel’s request for an award of attorneys’ fees of up to 1/3 of the net Settlement Fund after administration costs plus case expenses, and Class Counsel’s request for a \$5,000 service award for the Class Representative. The Court will also determine whether the Settlement should be approved. You may attend the hearing, at your own expense, but you don’t have to.

This is only a summary. For additional information, including a copy of the Settlement Agreement, Long Form Notice, Claim Form, Class Counsel’s Motion for Attorneys’ Fees, Costs, and Expenses, and for the Service Award, and other documents, visit [INSERT WEBSITE] or call [INSERT PHONE #].

# **EXHIBIT 1-C**

Your Claim must be submitted online or postmarked by: **MONTH DD, 2024**

**ACTIVATE & EVERSIDE SETTLEMENT CLAIM FORM**

*Sheffler v. Activate Healthcare, LLC, et al., Case No. 1:23-cv-01206-SEB-TAB*

United States District Court for the Southern District of Indiana

**ACTIVATE-A**

**USE THIS FORM ONLY IF YOU ARE A SETTLEMENT CLASS MEMBER**

**GENERAL INSTRUCTIONS**

If you received notice of this settlement, the Settlement Administrator has identified you as a Settlement Class Member whose personal data was potentially impacted as a result of the Data Incident experienced by Activate and Everside in 2023 (“Data Incident”).

The easiest way to submit a Claim Form is online at [www.XXXX.com](http://www.XXXX.com), or you can complete and mail this Claim Form to the mailing address below.

*Settlement Administrator*  
**Admin mailing address**

**To receive any of these benefits, you must submit the Claim Form below by <<DATE>>.**

**You may submit a Claim for the following benefits:**

- 1) **Reimbursement for Out-of-Pocket Losses:** You may submit a Claim for reimbursement for certain documented out-of-pocket expenses, not to exceed \$250, that were incurred as a result of the Data Incident. You must attest that the documented out-of-pocket losses were demonstrably incurred, more likely than not, as a result of the Data Incident and not incurred due to some other event or reason.
- 2) **Pro-Rata Cash Payment:** You may submit a Claim for a cash payment of \$50. The Settlement Administrator will make *pro rata* settlement payments, which may increase or decrease the \$50 cash payment, subject to the total amount of the Net Settlement Fund. Settlement Class Members who select this cash payment may combine this benefit with a valid Claim for Reimbursement for Out-of-Pocket Losses.

Please read this Claim Form carefully and answer all questions. Failure to provide the required information could result in a denial of your Claim.

Please note: the Settlement Administrator may contact you to request additional documentation to process your Claim. For more information and complete instructions, please visit [**Settlement website**].

**Settlement benefits will be distributed only after the settlement is approved by the Court.**

**I. CLASS MEMBER NAME AND CONTACT INFORMATION**

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this form.

Questions? Go to **URL** or call 1-**XXX-XXX-XXXX**.

**ACTIVATE & EVERSIDE SETTLEMENT CLAIM FORM**

Your Claim must be submitted online or postmarked by: **MONTH DD, 2024**

*Sheffler v. Activate Healthcare, LLC, et al., Case No. 1:23-cv-01206-SEB-TAB*

**ACTIVATE-A**

United States District Court for the Southern District of Indiana

**First Name**

**Last Name**

**Street Address**

**City**

**State**

**Zip Code**

**Email Address (optional)**

**Telephone Number**

**II. PROOF OF CLASS MEMBERSHIP**

Check this box to certify that you were notified of the Data Incident and/or settlement.

Enter the Class Member ID provided on your Postcard Notice. Your Class Member ID is located on the front of the postcard notice that was sent to Settlement Class Members via first-class mail. If you lost or do not know your Class Member ID, you may contact the Settlement Administrator at 1-XXX-XXX-XXXX.

**Class Member ID**

**III. REIMBURSEMENT FOR OUT-OF-POCKET LOSSES**

All Settlement Class Members may submit a Claim for reimbursement of the following documented out-of-pocket expenses, not to exceed \$250 per Settlement Class Member, that were incurred result of the Data Incident:

Cost Type (Fill all that apply)	Approximate Date of Loss	Amount of Loss
<input type="radio"/> Out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel.	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

Questions? Go to **URL** or call 1-XXX-XXX-XXXX.

**ACTIVATE & EVERSIDE SETTLEMENT CLAIM FORM**

Your Claim must be submitted online or postmarked by: **MONTH DD, 2024**

*Sheffler v. Activate Healthcare, LLC, et al., Case No. 1:23-cv-01206-SEB-TAB*

**ACTIVATE-A**

United States District Court for the Southern District of Indiana

Cost Type (Fill all that apply)	Approximate Date of Loss	Amount of Loss
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**Examples of Supporting Third Party Documentation:** Telephone bills, cell phone bills, gas receipts, postage receipts, bank account statements reflecting out-of-pocket expenses. Please note that these examples of reimbursable documented out-of-pocket losses are not meant to be exhaustive, but exemplary. You may make Claims for any documented out-of-pocket losses that you believe are reasonably related and fairly traceable to the Data Incident and not incurred due to some other event or reason.

Fees for credit reports, credit monitoring, or other identity theft insurance products purchased after June 23, 2023 that you attest under penalty of perjury were caused or otherwise incurred as a result of the Data Incident.

		/			/		
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(mm/dd/yy)

\$						.		
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**Examples of Supporting Documentation:** Receipts or account statements reflecting purchases made for credit monitoring or identity theft insurance services.

Reimbursement for proven monetary loss, professional fees including attorneys' fees, accountants' fees, and fees for credit repair services incurred as a result of the Data Incident.

		/			/		
--	--	---	--	--	---	--	--

(mm/dd/yy)

\$						.		
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**Examples of Supporting Documentation:** Invoices or statements reflecting payments made for professional fees/services.

**YOU MUST SUBMIT DOCUMENTATION OF YOUR OUT-OF-POCKET EXPENSES**

I attest and affirm to the best of my knowledge and belief that any Claimed expenses were incurred as a result of the Data Incident and not incurred due to some other event or reason.

**IV. PRO RATA CASH PAYMENT**

Check this box if you elect to receive a cash payment of \$50.

This amount may increase or decrease on a *pro rata* basis, depending upon the number of Claims filed and approved.



Your Claim must  
be submitted online  
or postmarked by:  
**MONTH DD, 2024**

**ACTIVATE & EVERSIDE SETTLEMENT CLAIM FORM**

*Sheffler v. Activate Healthcare, LLC, et al., Case No. 1:23-cv-01206-  
SEB-TAB*

United States District Court for the Southern District of Indiana

**ACTIVATE-A**

**V. PAYMENT SELECTION**

If you would like to elect to receive your settlement payment through electronic transfer, please visit the Settlement Website and file your Claim online. The Settlement Website includes a step-by-step guide for you to complete the electronic payment option.

**VI. MEDICARE BENEFICIARY**

Were you a Medicare beneficiary during the time period of April 27, 2023 to the present? (check one)

Yes       No

If you are a Medicare beneficiary receiving more than \$750 under this settlement, the Settlement Administrator may need to contact you for additional information related to Medicare reporting requirements.

**VII. ATTESTATION & SIGNATURE**

I swear and affirm under the laws of my state that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

# **EXHIBIT 2**



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FIRM RESUME

Founded in 1888, Wolf Haldenstein Adler Freeman & Herz LLP is a full service law firm specializing in complex litigation in federal and state courts nationwide. The firm's practice includes litigation, both hourly and contingent, in securities, antitrust, wage & hour, consumer fraud, false marketing, ERISA, and general and commercial matters, whistleblower, false claim, trust & estate, corporate investigation, and white collar matters, and FINRA arbitration. The Firm has a particular specialty in complex class action and other representative litigation – including investor, shareholder, antitrust, ERISA, consumer, employee, and biotechnology matters – under both federal and state law.

Wolf Haldenstein's total practice approach distinguishes it from other firms. Our longstanding tradition of a close attorney/client relationship ensures that each one of our clients receives prompt, individual attention and does not become lost in an institutional bureaucracy. Our team approach is at the very heart of Wolf Haldenstein's practice. All of our lawyers are readily available to all of our clients and to each other. The result of this approach is that we provide our clients with an efficient legal team having the broad perspective, expertise and experience required for any matter at hand. We are thus able to provide our clients with cost effective and thorough counsel focused on our clients' overall goals.

270 MADISON AVENUE  
NEW YORK, NY 10016  
TELEPHONE: 212-545-4600  
TELECOPIER: 212-686-0114  
WWW.WHAFH.COM

SYMPHONY TOWERS  
750 B STREET, SUITE 1820  
SAN DIEGO, CA 92101  
TELEPHONE: 619-239-4599  
TELECOPIER: 619-234-4599

111 WEST JACKSON  
SUITE 1700  
CHICAGO, IL 60604  
TELEPHONE: 312-984-0000  
TELECOPIER: 312-214-3110



## THE FIRM

Wolf Haldenstein has been recognized by state and federal courts throughout the country as being highly experienced in complex litigation, particularly with respect to securities, consumer, ERISA, FLSA and state overtime and expense deductions, and antitrust class actions and shareholder rights litigation.

Among its colleagues in the plaintiffs' bar, as well as among its adversaries in the defense bar, Wolf Haldenstein is known for the high ability of its attorneys, and the exceptionally high quality of its written and oral advocacy.

The nature of the Firm's activities in both individual and representative litigation is extremely broad. In addition to a large case load of securities fraud and other investor class actions, Wolf Haldenstein has represented classes of corn and rice farmers in connection with the devaluation of their crops; canned tuna consumers for tuna companies' violations of antitrust laws; merchants compelled to accept certain types of debit cards; insurance policyholders for insurance companies' deceptive sales practices; victims of unlawful strip searches under the civil rights laws; and various cases involving violations of Internet users' on-line privacy rights.

The Firm's experience in class action securities litigation, in particular public shareholder rights under state law and securities fraud claims arising under the federal securities laws and regulations is particularly extensive. The Firm was one of the lead or other primary counsel in securities class action cases that have recouped billions of dollars on behalf of investor classes, in stockholder rights class actions that have resulted in billions of dollars in increased merger consideration to shareholder classes, and in derivative litigation that has recovered billions of dollars for corporations.

Its pioneering efforts in difficult or unusual areas of securities or investor protection laws include: groundbreaking claims that have been successfully brought under the Investment Company Act of 1940 regarding fiduciary responsibilities of investment companies and their advisors toward their shareholders; claims under ERISA involving fiduciary duties of ERISA trustees who are also insiders in possession of adverse information regarding their fund's primary stockholdings; the fiduciary duties of the directors of Delaware corporations in connection with change of control transactions; the early application of the fraud-on-the-market theory to claims against public accounting firms in connection with their audits of publicly traded corporations; and the application of federal securities class certification standards to state law claims often thought to be beyond the reach of class action treatment.



JUDICIAL COMMENDATIONS

Wolf Haldenstein has repeatedly received favorable judicial recognition. The following representative judicial comments over the past decade indicate the high regard in which the Firm is held:

- *In re Empire State Realty Trust, Inc. Investor Litig.*, No. 650607/2012 (Sup. Ct. N.Y. Co.) – On May 2, 2013, Justice O. Peter Sherwood praised the Firm in its role as chair of the committee of co-lead counsel as follows: "It is apparent to me, having presided over this case, that class counsel has performed in an excellent manner, and you have represented your clients quite well. You should be complimented for that." In awarding attorneys' fees, the Court stated that the fee was "intended to reward class counsel handsomely for the very good result achieved for the Class, assumption of the high risk of Plaintiffs prevailing and the efficiency of effort that resulted in the settlement of the case at an early stage without protracted motion practice." May 17, 2013 slip. op. at 5 (citations omitted).
- *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) – On April 9, 2013, Justice Richard B. Lowe III praised the Firm's efforts as follows: "[W]hen you have challenging cases, the one thing you like to ask for is that the legal representation on both sides rise to that level. Because when you have lawyers who are professionals, who are confident, who are experienced, each of you know that each side has a job to do [. . .] I want to tell you that I am very satisfied with your performance and with your, quite frankly, tenacity on both sides. And it took six years, but look at the history of the litigation. There were two appeals all of the way to the Court of Appeals [. . .] And then look at the results. I mean, there are dissents in the Court of Appeals, so that shows you the complexity of the issues that were presented in this litigation [. . .] [I]t shows you effort that went into this and the professionalism that was exhibited [. . .] So let me just again express my appreciation to both sides."
- *K.J. Egleston L.P. v. Heartland Industrial Partners, et al.*, 2:06-13555 (E.D. Mich.) – where the Firm was Lead Counsel, Judge Rosen, at the June 7, 2010 final approval hearing, praised the Firm for doing "an outstanding job of representing [its] clients," and further commented that "the conduct of all counsel in this case and the result they have achieved for all of the parties confirms that they deserve the national recognition they enjoy."



- *Klein, et al. v. Ryan Beck Holdings, Inc., et al.*, 06-cv-3460 (DAB) (S.D.N.Y. 2010) – where the Firm was Lead Counsel, Judge Deborah A. Batts described the Firm’s successful establishment of a settlement fund as follows: “[a] miracle that there is a settlement fund at all.” Judge Batts continued: “As I said earlier, there is no question that the litigation is complex and of a large and, if you will, *pioneering magnitude* . . .” (Emphasis added).
- *Parker Friedland v. Iridium World Communications, Ltd.*, 99-1002 (D.D.C.) – where the Firm was co-lead counsel, Judge Laughrey said (on October 16, 2008), “[a]ll of the attorneys in this case have done an outstanding job, and I really appreciate the quality of work that we had in our chambers as a result of this case.”
- *In re Dynamic Random Access Memory Antitrust Litigation*, MDL-02-1486 (N.D. Cal.) – where the Firm was co-lead counsel, Judge Hamilton said (on August 15, 2007), “I think I can conclude on the basis with my five years with you all, watching this litigation progress and seeing it wind to a conclusion, that the results are exceptional. The percentages, as you have outlined them, do put this [case] in one of the upper categories of results of this kind of [antitrust] class action. I am aware of the complexity . . . I thought that you all did an exceptionally good job of bringing to me only those matters that really required the Court’s attention. You did an exceptionally good job at organizing and managing the case, assisting me in management of the case. There was excellent coordination between all the various different plaintiffs’ counsel with your group and the other groups that are part of this litigation. . . . So my conclusion is the case was well litigated by both sides, well managed as well by both sides.”
- *In re Comdisco Sec. Litigation*, 01 C 2110 (N.D. Ill. July 14, 2005) – Judge Milton Shadur observed: “It has to be said . . . that the efforts that have been extended [by Wolf Haldenstein] on behalf of the plaintiff class in the face of these obstacles have been exemplary. And in my view [Wolf Haldenstein] reflected the kind of professionalism that the critics of class actions . . . are never willing to recognize. . . . I really cannot speak too highly of the services rendered by class counsel in an extraordinary difficult situation.”
- *Good Morning to You Productions Corp. v. Warner/Chappell Music, Inc.*, No. CV 13-04460-GHK (MRWx) (C.D. Cal., Aug. 16, 2016) – Judge George H. King



stated: "Not all, or perhaps even most, plaintiffs' class counsel could have litigated this case as successfully as did class counsel against such a fierce and exceptionally accomplished opponent."

- *Bokelman et al. v. FCH Enterprises, Inc.*, (Case No. 1:18-cv-209, D. Haw., May 3, 2019): Judge Robert J. Bryan said, "I've been impressed by the quality of the work you've done throughout here, and that is reflected, I think, in the fact that no one has objected to the settlement."

#### RECENT NOTEWORTHY RESULTS

Wolf Haldenstein's performance in representative litigation has repeatedly resulted in favorable results for its clients. The Firm has helped recover ***billions of dollars*** on behalf of its clients in the cases listed below. Recent examples include the following:

- On May 13, 2019, in *Apple Inc. v. Pepper*, No. 17-204, the Supreme Court affirmed a decision by the Ninth Circuit Court of Appeals holding that iPhone purchasers have standing to sue Apple for monopolizing the market for iPhone apps in this longstanding antitrust class action. Wolf Haldenstein has been Lead Counsel for the plaintiffs since 2007. The case was commenced in federal district court in Oakland. The Supreme Court's decision clears the way for the plaintiffs to proceed on the merits of their claim.
- On June 11, 2018, the United States Supreme Court issued a highly anticipated decision in *China Agritech, Inc. v. Michael H. Resh, et al.* Wolf Haldenstein represented the plaintiffs/respondents, having commenced the action on behalf of aggrieved shareholders of *China Agritech* after two prior cases had failed at the class certification stage.
- *In re Genetically Modified Rice Litigation*, MDL 1811 (E.D. Mo.) - Wolf Haldenstein represented U.S. rice farmers in this landmark action against Bayer A.G. and its global affiliates, achieving a global recovery of \$750 million. The case arose from the contamination of the nation's long grain rice crop by Bayer's experimental and unapproved genetically modified Liberty Link rice.
- *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) - a class action brought on behalf of over 27,500 current and former tenants of New York City's iconic Stuyvesant Town and Peter Cooper Village housing complexes. On April 9, 2013, Justice Richard B. Lowe III of the New York Supreme Court finally





approved settlement of the action, which totals over \$173 million, sets aside \$68.75 million in damages, re-regulates the apartments at issue, and sets preferential rents for the units that will save tenants significant monies in the future. The settlement also enables the tenants to retain an estimated \$105 million in rent savings they enjoyed between 2009 and 2012. **The settlement is by many magnitudes the largest tenant settlement in United States history.**

- *In re Empire State Realty Trust, Inc. Investor Litig.*, Index No. 650607/2012 – The firm served as Chair of the Executive Committee of Co-Lead Counsel for the Plaintiffs in a class action settlement finally approved on May 2, 2013 that provides for the establishment of a \$55 million settlement fund for investors, in addition to substantial tax deferral benefits estimated to be in excess of \$100 million.
- *American International Group Consolidated Derivative Litigation*, Civil Action No. 769-VCS (Del. Ch.) The Firm acted as co-lead counsel and the settlement addressed claims alleging that the D&O Defendants breached their fiduciary duties to the Company and otherwise committed wrongdoing to the detriment of AIG in connection with various allegedly fraudulent schemes during the 1999-2005 time period.
- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, Master File No. 09 MD 2058 (S.D.N.Y.) (firm was co-lead counsel in parallel derivative action pending in Delaware (*In Re Bank of America Stockholder Derivative Litigation*, C.A. No. 4307-CS (Del. Ch.)) (increase of settlement cash recovery from \$20 million to \$62.5 million).
- *The Investment Committee of the Manhattan and Bronx Service Transit Operating Authority Pension Plan v. JPMorgan Chase Bank, N.A.*, 1:09-cv-04408-SAS (S.D.N.Y.) (class recovered \$150 million).
- *In re Tremont Sec. Law, State Law and Insurance Litig.*, No. 08-civ-11117 (TPG) (SDNY) (class recovered \$100 million). The firm was court-appointed co-lead counsel in the Insurance Action, 08 Civ. 557, and represented a class of persons who purchased or otherwise acquired Variable Universal Life (“VUL”) insurance policies or Deferred Variable Annuity (“DVA”) policies issued by Tremont International Insurance Limited or Argus International Life Bermuda Limited from May 10, 1994 - December 11, 2008 to the extent the investment



accounts of those policies were exposed to the massive Ponzi scheme orchestrated by Bernard L. Madoff through one or more Rye funds.

- *In re Initial Public Offering Securities Litigation*, 21 MC 92 (SAS) (S.D.N.Y.) (class recovered \$586 million). Wolf Haldenstein served as Co-Lead Counsel of one of the largest securities fraud cases in history. Despite the United States Court of Appeals for the Second Circuit's decision to vacate the district court's class certification decision, on remand, counsel for plaintiffs were able to press on to a settlement on April 1, 2009, ultimately recovering in excess of a half-billion dollars.



## FIRM PRACTICE AREAS

### CLASS ACTION LITIGATION

Wolf Haldenstein is a leader in class and derivative action litigation and is currently or has been the court-appointed lead counsel, co-lead counsel, or executive committee member in some of the largest and most significant class action and derivative action lawsuits in the United States. For example, the class action *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) was recently described by a sitting member of the U.S. House of Representatives as the greatest legal victory for tenants in her lifetime. In *Roberts*, the Firm obtained a victory in the New York Court of Appeals requiring the reregulation of thousands of apartment units in the Stuyvesant Town complex in Manhattan, New York. Many of the firm's other successful results are summarized within.

### PRIVATE ACTIONS FOR INSTITUTIONAL INVESTORS

In addition to its vast class action practice, the Firm also regularly represents institutional clients such as public funds, investment funds, limited partnerships, and qualified institutional buyers in private actions. The Firm has represented institutional clients in non-class federal and state actions concerning a variety of matters, including private placements, disputes with investment advisors, and disputes with corporate management.

The Firm has also acted as special counsel to investors' committees in efforts to assert and advance the investors' interests without resorting to litigation. For example, the Firm served as Counsel to the Courtyard by Marriott Limited Partners Committee for several years in its dealings with Host Marriott Corporation, and as Special Counsel to the Windsor Park Properties 7 and 8 limited partners to insure the fairness of their liquidation transactions.

### ANTITRUST LITIGATION

Wolf Haldenstein is a leader in antitrust and competition litigation. The Firm actively seeks to enforce the federal and state antitrust laws to protect and strengthen the rights and claims of businesses, organizations, Taft-Hartley funds, and consumers throughout the United States. To that end, Wolf Haldenstein commences large, often complex, antitrust and trade regulation class actions and other cases that target some of the most powerful and well-funded corporate interests in the world. Many of these interests exert strong influence over enforcement policy that is in the hands of elected officials, so that private enforcement provides the only true assurance that unfair and



anticompetitive conduct will be duly scrutinized for compliance with the law. These cases frequently bring to light concealed, unlawful behavior such as price fixing, monopolization, market allocation, monopoly leveraging, essential facilities, tying arrangements, vertical restraints, exclusive dealing, and refusals to deal. Wolf Haldenstein's Antitrust Practice Group has successfully prosecuted numerous antitrust cases and aggressively advocates remedies and restitution for businesses and investors wronged by violations of the antitrust laws. For example, in *In re DRAM Antitrust Litigation*, No. 02-cv-1486 (PJH) (N.D. Cal.) the firm successfully prosecuted an antitrust case resulting in a \$315 million recovery. Many of the firm's successful results are summarized within.

Wolf Haldenstein attorneys currently serve as lead counsel, co-lead counsel, or as executive committee members in some of the largest and most significant antitrust class action lawsuits. The firm was most recently appointed lead counsel in the Salmon Antitrust Indirect Litigation pending in the U.S. District Court for the Southern District of Florida.

#### OVERTIME AND COMPENSATION CLASS ACTIONS

Wolf Haldenstein is a leader class action litigation on behalf of employees who have not been paid overtime or other compensation they are entitled to receive, or have had improper deductions taken from their compensation. These claims under the federal Fair Labor Standards Act and state labor laws allege improper failure to pay overtime and other wages, and improper deductions from compensation for various company expenses. Wolf Haldenstein has served as lead or co-lead counsel, or other similar lead role, in some of the most significant overtime class actions pending in the United States, and has recovered hundreds of millions of dollars in recovered wages for its clients. For example, in *LaVoice v. Citigroup Global Markets, Inc.*, Case No. C 07-801 (CW) (N.D. Cal.) a \$108 million settlement was secured for the class. Many of the firm's other successful wage and hour results are summarized within.

#### SUBSTANTIAL RECOVERIES IN CLASS ACTION AND DERIVATIVE CASES IN WHICH WOLF HALDENSTEIN WAS LEAD COUNSEL OR HAD ANOTHER SIGNIFICANT ROLE

- *In re Beacon Associates Litigation*, Master File No. 09 Civ. 0777 (LBS) (S.D.N.Y.) (**\$219 million** settlement in this and related action).
- *Roberts v. Tishman Speyer*, No. 100956/2007 (Sup. Ct. N.Y. Cty.) (**\$173 Million** settlement).



- *In re Mutual Fund Investment Litigation*, MDL No. 1586 (D. Md.) (derivative counsel in consolidated cases against numerous mutual fund companies involved in market timing resulting in class/derivative settlements totaling more than **\$300 million**).
- *Inland Western Securities Litigation*, Case No. 07 C 6174 (N.D. Ill.) (settlement value of shares valued between **\$61.5 million** and **\$90 million**).
- *In re Direxion Shares ETF Trust*, No. 09-Civ-8011 (KBF) (S.D.N.Y.) (class recovered **\$8 million**).
- *In re BankAmerica Corp. Securities Litigation*, MDL Docket No. 1264 (JFN) (E.D. Mo.) (class recovered **\$490 million**).
- *In re Dynamic Random Access Memory Antitrust Litigation*, (MD-02 1486 (N.D. Cal.) (class recovered **\$325 million**).
- *In re MicroStrategy, Inc. Securities Litigation*, Civ. No. 00-473-A (E.D. Va.) (class recovered **\$160 million** in cash and securities).
- *Kurzweil v. Philip Morris Cos.*, 94 Civ. 2373, 94 Civ. 2546 (S.D.N.Y.) (securities fraud) (class recovered **\$116.5 million** in cash).
- *In re Starlink Corn Products Liability Litigation*, (N.D. Ill.) (class recovered **\$110 million**).
- *In Computer Associates 2002 Class Action Sec. Litigation*, 2:02-CV-1226 (E.D.N.Y.) (**\$130 million** settlement in this and two related actions).
- *In re Sepracor Inc. Securities Litigation*, Civ. No. 02-12338 (MEL) (D. Mass.) (classes recovered **\$52.5 million**).
- *In re Transkaryotic Therapies, Inc., Securities Litigation*, C.A. No. 03-10165-RWZ (D. Mass) (class recovered **\$50 million**).
- *In re Iridium Securities Litigation*, C.A. No. 99-1002 (D.D.C.) (class recovered **\$43 million**).



- *In re J.P. Morgan Chase Securities Litigation*, MDL No. 1783 (N.D. Ill.) (settlement providing for adoption of corporate governance principles relating to potential corporate transactions requiring shareholder approval).
- *LaVoice v. Citigroup Global Markets, Inc.*, Case No. C 07-801 (CW) (N.D. Cal.) (**\$108 million** settlement).
- *Steinberg v. Morgan Stanley & Co., Inc.*, Case No. 06-cv-2628 (BEN) (S.D. Cal.) (**\$50 million** settlement).
- *Poole v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, Case No. CV-06-1657 (D. Or.) (**\$43.5 million** settlement).
- *In re Wachovia Securities, LLC Wage and Hour Litigation*, MDL No. 07-1807 DOC (C.D. Cal.) (**\$39 million** settlement).
- *In re Wachovia Securities, LLC Wage and Hour Litigation (Prudential)*, MDL No. 07-1807 DOC (C.D. Cal.) (**\$11 million** settlement).
- *Basile v. A.G. Edwards, Inc.*, 08-CV-00338-JAH-RBB (S.D. Cal.) (**\$12 million** settlement).
- *Miguel Garcia, et al. v. Lowe's Home Center, Inc. et al.* – Case No. GIC 841120 (Barton) (Cal. Sup. Ct, San Diego) (co-lead, **\$1.65 million** settlement w/ average class member recovery of \$5,500, attorney fees and cost awarded separately).
- *Neil Weinstein, et al. v. MetLife, Inc., et al.* – Case No. 3:06-cv-04444-SI (N.D. Cal) (co-lead, **\$7.4 million** settlement).
- *Creighton v. Oppenheimer*, Index No. 1:06 - cv - 04607 - BSJ - DCF (S.D.N.Y.) (**\$2.3 million** settlement).
- *Klein v. Ryan Beck*, 06-CV-3460 (DAB)(S.D.N.Y.) (**\$1.3 million** settlement).
- *In re American Pharmaceutical Partners, Inc. Shareholder Litigation*, Consolidated C.A. No. 1823-N (Del. Ch. Ct.) (**\$14.3 million** settlement).
- *Egleston v. Collins and Aikman Corp.*, 06-cv-13555 (E.D. Mich.) (class recovered **\$12 million**).



- *In re Merrill Lynch & Co., Inc. Global Technology Fund Securities Litigation*, 02 CV 7854 (JFK) (SDNY); and *In re Merrill Lynch & Co., Inc. Focus Twenty Fund Securities Litigation*, 02 CV 10221 (JFK) (SDNY) (class recovered **\$39 million** in combined cases).
- *In re CNL Hotels & Resorts, Inc. Securities Litigation*, No. 6:04-cv-1231 (Orl-31) (class recovered **\$35 million**, and lawsuit also instrumental in **\$225 million** benefit to corporation).
- *In re Cablevision Systems Corp. Shareholder Derivative Litigation*, Master File No. 06-CV-4130-DGT-AKT (**\$34.4 million** recovery).
- *In re Monster Worldwide, Inc. Stock Option Derivative Litigation*, Master File No. 06cv4622 (S.D.N.Y.) (**\$32 million** recovery and corporate governance reforms).
- *Berger v. Compaq Computer Corp.*, Docket No. 98-1148 (S.D. Tex.) (class recovered **\$29 million**).
- *In re Arakis Energy Corporation Securities Litigation*, 95 CV 3431 (E.D.N.Y.) (class recovered **\$24 million**).
- *In re E.W. Blanche Holdings, Inc. Securities Litigation*, Civ. No. 01-258 (D. Minn.) (class recovered **\$20 million**).
- *In re Globalstar Securities Litigation*, Case No. 01-CV-1748 (SHS) (S.D.N.Y.) (class recovered **\$20 million**).
- *In re Luxottica Group S.p.A. Securities Litigation*, No. CV 01-3285 (E.D.N.Y.) (class recovered **\$18.25 million**).
- *In re Musicmaker.com Securities Litigation*, CV-00-2018 (C.D. Cal.) (class recovered **\$13.75 million**).
- *In re Comdisco Securities Litigation*, No. 01 C 2110 (MIS) (N.D. Ill.) (class recovered **\$13.75 million**).
- *In re Acclaim Entertainment, Inc., Securities Litigation*, C.A. No. 03-CV-1270 (E.D.N.Y.) (class recovered **\$13.65 million**).



- *In re Concord EFS, Inc. Securities Litigation*, No. 02-2097 (MA) (W.D. Tenn) (class recovered **\$13.25 million**).
- *In re Bausch & Lomb, Inc. Securities Litigation*, 01 Civ. 6190 (CJS) (W.D.N.Y.) (class recovered **\$12.5 million**).
- *In re Allaire Corp. Securities Litigation*, 00-11972 (D. Mass.) (class recovered **\$12 million**).
- *Bamboo Partners LLC v. Robert Mondavi Corp.*, No. 26-27170 (Cal. Sup. Ct.) (class recovered **\$10.8 million**).
- *Curative Health Services Securities Litigation*, 99-2074 (E.D.N.Y.) (class recovered **\$10.5 million**).
- *City Partnership Co. v. Jones Intercable*, 99 WM-1051 (D. Colo.) (class recovered **\$10.5 million**).
- *In re Aquila, Inc.*, (ERISA Litigation), 04-865 (W.D. Mo.) (**\$10.5 million** recovery for the class).
- *In re Tenfold Corporation Securities Litigation*, 2:00-CV-652 (D. Utah) (class recovered **\$5.9 million**).
- *In re Industrial Gas Antitrust Litigation*, 80 C 3479 and related cases (N.D. Ill.) (class recovered **\$50 million**).
- *In re Chor-Alkalai and Caustic Soda Antitrust Litigation*, 86-5428 and related cases (E.D. Pa.) (class recovered **\$55 million**).
- *In re Infant Formula Antitrust Litigation*, MDL No. 878 (N.D. Fla.) (class recovered **\$126 million**).
- *In re Brand Name Prescription Drugs Antitrust Litigation*, No. 1:94-cv-00897, M.D.L. 997 (N.D. Ill.) (class recovered **\$715 million**).
- *Landon v. Freel*, M.D.L. No. 592 (S.D. Tex.) (class recovered **\$12 million**).
- *Holloway v. Peat, Marwick, Mitchell & Co.*, No. 84 C 814 EU (N.D. Okla.) (class recovered **\$38 million**).





- *In re The Chubb Corp. Drought Insurance Litigation*, C-1-88-644 (S.D. Ohio) (class recovered **\$100 million**).
- *Wong v. Megafoods*, Civ-94-1702 (D. Ariz.) (securities fraud) (class recovered **\$12.25 million**).
- *In re Del Val Financial Corp. Securities Litigation*, 92 Civ 4854 (S.D.N.Y.) (class recovered **\$11.5 million**).
- *In re Home Shopping Network Shareholders Litigation*, Consolidated Civil Action No. 12868, (Del. Ch. 1995) (class recovered **\$13 million**).
- *In re Paine Webber Limited Partnerships Litigation*, 94 Civ 8547 (S.D.N.Y.) (class recovered **\$200 million**).
- *In re Bristol-Meyers Squibb Co. Securities Litigation*, 92 Civ 4007 (S.D.N.Y.) (class recovered **\$19 million**).
- *In re Spectrum Information Technologies Securities Litigation*, CV 93-2245 (E.D.N.Y.) (class recovered **\$13 million**).
- *In re Chase Manhattan Securities Litigation*, 90 Civ. 6092 (LJF) (S.D.N.Y.) (class recovered **\$17.5 million**).
- *Prostic v. Xerox Corp.*, No. B-90-113 (EBB) (D. Conn.) (class recovered **\$9 million**).
- *Steiner v. Hercules*, Civil Action No. 90-442-RRM (D. Del.) (class recovered **\$18 million**).
- *In re Ambase Securities Litigation*, 90 Civ 2011 (S.D.N.Y.) (class recovered **\$14.6 million**).
- *In re Southmark Securities Litigation*, CA No. 3-89-1402-D (N.D. Tex.) (class recovered **\$70 million**).
- *Steiner v. Ideal Basic Industries, Inc.*, No. 86-M 456 (D. Colo. 1989) (securities fraud) (class recovered **\$18 million**).
- *Tucson Electric Power Derivative Litigation*, 2:89 Civ. 01274 TUC. ACM (corporation recovered **\$30 million**).



- *Alleco Stockholders Litigation*, (Md. Cir. Ct. Pr. Georges County) (class recovered **\$16 million**).
- *In re Revlon Group, Inc. Shareholders Litigation*, No. 8362 (Del. Ch.) (class recovered **\$30 million**).
- *In re Taft Broadcasting Company Shareholders Litigation*, No. 8897 (Del. Ch.) (class recovered **\$20 million**).
- *In re Southland Corp. Securities Litigation*, No. 87-8834-K (N.D.Tex.) (class recovered **\$20 million**).
- *In re Crocker Bank Securities Litigation*, CA No. 7405 (Del. Ch.) (class recovered **\$30 million**).
- *In re Warner Communications Securities Litigation*, No. 82 Civ. 8288 (JFK) (S.D.N.Y.) (class recovered **\$17.5 million**).
- *Joseph v. Shell Oil*, CA No. 7450 (Del. Ch.) (securities fraud) (class recovered **\$200 million**).
- *In re Flight Transportation Corp. Securities Litigation*, Master Docket No. 4-82-874, MDL No. 517 (D. Minn.) (recovery of over **\$50 million**).
- *In re Whittaker Corporation Securities Litigation*, CA000817 (Cal. Super. Ct., Los Angeles County) (class recovered **\$18 million**).
- *Naevus International, Inc. v. AT&T Corp.*, C.A. No. 602191/99 (N.Y. Sup. Ct.) (consumer fraud) (class recovered **\$40 million**).
- *Sewell v. Sprint PCS Limited Partnership*, C.A. No. 97-188027/CC 3879 (Cir. Ct. for Baltimore City) (consumer fraud) (class recovered **\$45.2 million**).
- *In re Vytorin/Zetia Marketing, Sales Practices and Products Liability Litigation*, 2:08-cv-285 (D.N.J.) (class recovered **\$41.5 million**).
- *Egleston v. Verizon*, No. 104784/2011 (N.Y. Sup. Ct.) – Wolf Haldenstein represented a class of New York Verizon Centrex customers in an action against Verizon stemming from overbilling of certain charges. The Firm secured a settlement with a total value to the Class of over **\$5 million**, which



provided, among other things, each class member with full refunds of certain disputed charges, plus interest.

- *Zelouf Int'l Corp. v. Nahal Zelouf*, Index No. 653652/2014 (Sup. Ct. N.Y. Co. 2015). In an important trial decision following an appraisal proceeding triggered by the freeze-out merger of a closely-held corporation, which also included shareholder derivative claims, Justice Kornreich of the New York Supreme Court refused to apply a discount for lack of marketability to the minority interest in the former corporation and found that the insiders stole more than \$14 million dollars; the minority shareholder recovered over **\$9 million**.
- *Zelouf Int'l Corp. v. Zelouf*, 45 Misc.3d 1205(A) (Sup. Ct. N.Y. Co., 2014). The Court rejected application of a discount for lack of marketability and awarded a **\$10,031,438.28** judgment following an eleven day bench trial in the Commercial Division of the Supreme Court of the State of New York (New York County) on the value of a minority interest in a closely held corporation.
- *Thompson et al. v. Bethpage Federal Credit Union et al.*, No. 2:17-cv-00921-GRB (E.D.N.Y.) (**\$3.6 million** settlement)



REPRESENTATIVE REPORTED OPINIONS SINCE 1990 IN WHICH WOLF  
HALDENSTEIN WAS LEAD COUNSEL OR HAD ANOTHER SIGNIFICANT ROLE

FEDERAL APPELLATE AND DISTRICT COURT OPINIONS

- *Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019)
- *Hymes v. Bank of America*, 408 F. Supp. 3d 171 (E.D.N.Y. 2019)
- *In re Packaged Seafood Prods. Antitrust Litig.*, 332 F.R.D. 308 (S.D. Cal. 2019)
- *China Agritech, Inc. v. Resh*, 138 S. Ct. 1800 (2018)
- *In re Packaged Seafood Prods. Antitrust Litig.*, 242 F. Supp. 3d 1033 (S.D. Cal. 2017)
- *DeFrees v. Kirkland*, 2012 U.S. Dist. LEXIS 52780 (C.D. Cal. Apr. 11, 2012).
- *In re Beacon Associates Litig.*, 282 F.R.D. 315 (S.D.N.Y. 2012).
- *Messner v. Northshore University HealthSystem*, 669 F.3d 802, No. 10-2514 (7th Cir. Jan. 13, 2012).
- *In re Text Message Antitrust Litigation*, 630 F.3d, 622 (7th Cir. 2010).
- *In re Apple & ATTM Antitrust Litig.*, 2010 U.S. Dist. LEXIS 98270 (N.D. Cal. July 8, 2010).
- *In re Beacon Associates Litig.*, 745 F. Supp. 2d 386 (S.D.N.Y. 2010)
- *Freeland v. Iridium World Communications Ltd.*, 545 F. Supp. 2d 59 (D.D.C. 2008).
- *In re Apple & AT&TM Antitrust Litig.*, 596 F. Supp. 2d 1288 (N.D. Cal. 2008).
- *Harzewski v. Guidant Corp.*, 489 F.3d 799 (7th Cir. 2007).
- *In re JP Morgan Chase & Co. Securities Litigation*, No. 06 C 4674, 2007 U.S. Dist. LEXIS 93877 (N.D. Ill. Dec. 18, 2007).
- *Schoenbaum v. E.I. Dupont De Nemours and Co.*, 2007 WL 2768383 (E.D. Mo. Sept. 20, 2007).



- *Jeffries v. Pension Trust Fund*, 99 Civ. 4174 (LMM), 2007 U.S. Dist. LEXIS 61454 (S.D.N.Y. Aug. 20, 2007).
- *Klein v. Ryan Beck*, 06-Civ. 3460 (WCC), 2007 U.S. Dist. LEXIS 51465 (S.D.N.Y. July 13, 2007).
- *Cannon v. MBNA Corp.* No. 05-429 GMS, 2007 U.S. Dist. LEXIS 48901 (D. Del. 2007).
- *In re Aquila ERISA Litig.*, 237 F.R.D. 202 (W.D. Mo. 2006).
- *Smith v. Aon Corp.*, 238 F.R.D. 609 (N.D. Ill. 2006).
- *In re Sepracor Inc. Securities Litigation*, 233 F.R.D. 52 (D. Mass. 2005).
- *In re Transkaryotic Therapies, Inc. Securities Litigation*, No. 03-10165, 2005 U.S. Dist. LEXIS 29656 (D. Mass. Nov. 28, 2005).
- *In re Luxottica Group, S.p.A. Securities Litigation*, 2005 U.S. Dist. LEXIS 9071 (E.D.N.Y. May 12, 2005).
- *In re CNL Hotels & Resorts, Inc. Securities Litigation*, 2005 U.S. Dist. LEXIS 38876, No. 6:04-cv-1231-Orl-31KRS (M.D. Fla. May 9, 2005).
- *Johnson v. Aegon USA, Inc.*, 355 F. Supp. 2d 1337 (N.D. Ga. 2004).
- *Freeland v. Iridium World Communications, Ltd.*, 99-1002, 2004 U.S. Dist. LEXIS 33018 (D.D.C. Aug. 31, 2004).
- *In re Acclaim Entertainment, Inc. Securities Litigation*, 03-CV-1270 (E.D.N.Y. June 22, 2004).
- *In re Sepracor Inc. Securities Litigation*, 308 F. Supp. 2d 20 (D. Mass. 2004).
- *In re Concord EFS, Inc. Securities Litigation*, No. 02-2697 (W.D. Tenn. Jan. 7, 2004).
- *In re Pharmatrak, Inc. Privacy Litig.*, 2003 U.S. App. LEXIS 8758 (1st Cir. May 9, 2003).
- *In re PerkinElmer, Inc. Securities Litigation*, 286 F. Supp. 2d 46 (D. Mass. 2003).



- *In re Initial Public Offering Securities Litigation*, 241 F. Supp. 2d 281 (S.D.N.Y. 2003).
- *In re Comdisco Securities Litigation*, No. 01 C 2110, 2003 U.S. Dist. LEXIS 5047 (N.D. Ill. Mar. 31, 2003).
- *Berger v. Compaq Computer Corp.*, 257 F.3d 475 (2001), clarified, 279 F.3d 313 (5th Cir. 2002).
- *City Partnership Co. v. Cable TV Fund 14-B*, 213 F.R.D. 576 (D. Colo. 2002).
- *In re Allaire Corporation Securities Litigation*, Docket No. 00-11972 - WGY, 2002 U.S. Dist. LEXIS 18143 (D. Mass., Sept. 27, 2002).
- *In re StarLink Corn Products Liability Litigation*, 212 F.Supp.2d 828 (N.D. Ill. 2002).
- *In re Bankamerica Corp. Securities Litigation*, 263 F.3d 795 (8th Cir. 2001).
- *In re Comdisco Securities Litigation*, 166 F.Supp.2d 1260 (N.D. Ill. 2001).
- *In re Crossroads Systems, Inc. Securities Litigation*, Master File No. A-00-CA-457 JN, 2001 U.S. Dist. LEXIS 14780 (W.D. Tx. Aug. 15, 2001).
- *In re MicroStrategy, Inc. Securities Litigation*, 150 F. Supp. 2d 896 (E.D. Va. 2001).
- *Lindelov v. Hill*, No. 00 C 3727, 2001 U.S. Dist. LEXIS 10301 (N.D. Ill. July 19, 2001).
- *In re MicroStrategy, Inc. Securities Litigation*, 148 F. Supp. 2d 654 (E.D. Va. 2001).
- *Jeffries v. Pension Trust Fund of the Pension, Hospitalization & Benefit Plan of the Electrical Industry*, 172 F. Supp. 2d 389 (S.D.N.Y. 2001).
- *Carney v. Cambridge Technology Partners, Inc.*, 135 F. Supp. 2d 235 (D. Mass. 2001).
- *Weltz v. Lee*, 199 F.R.D. 129 (S.D.N.Y. 2001).
- *Schoers v. Pfizer, Inc.*, 00 Civ. 6121, 2001 U.S. Dist. LEXIS 511 (S.D.N.Y. Jan. 23, 2001).



- *Kurzweil v. Philip Morris Cos.*, 94 Civ. 2373 (MBM), 2001 U.S. Dist. LEXIS 83 (S.D.N.Y. Jan. 9, 2001).
- *Goldberger v. Bear, Stearns & Co.*, 98 Civ. 8677 (JSM), 2000 U.S. Dist. LEXIS 18714 (S.D.N.Y. Dec. 28, 2000).
- *In re Newell Rubbermaid, Inc., Securities Litigation*, Case No. 99 C 6853, 2000 U.S. Dist. LEXIS 15190 (N.D. Ill. Oct. 2, 2000).
- *Stanley v. Safeskin Corp.*, Case No. 99 CV 454 BTM (LSP), 2000 U.S. Dist. LEXIS 14100, Fed. Sec. L. Rep. (CCH) P91, 221 (S.D. Cal. Sept. 18, 2000).
- *In re MicroStrategy, Inc. Securities Litigation*, 115 F. Supp. 2d 620 (E.D. Va. 2000).
- *In re USA Talks.com, Inc. Securities Litigation*, 2000 U.S. Dist. LEXIS 14823, Fed. Sec. L. Rep. (CCH) P91, 231 (S.D. Cal. Sept. 14, 2000).
- *In re Sotheby's Holdings, Inc. Securities Litigation*, 00 CIV. 1041 (DLC), 2000 U.S. Dist. LEXIS 12504, Fed. Sec. L. Rep. (CCH) P91, 059 (S.D.N.Y. Aug. 31, 2000).
- *Dumont v. Charles Schwab & Co., Inc.*, Civil Action No. 99-2840 2000 U.S. Dist. LEXIS 10906 (E.D. La. July 21, 2000).
- *Berger v. Compaq Computer Corp.*, Civil Action No. H-98-1148, 2000 U.S. Dist. LEXIS 21424 (S.D. Tex. July 17, 2000).
- *In re BankAmerica Corp. Securities Litigation*, 95 F. Supp. 2d 1044 (E.D. Mo. 2000).
- *In re Carnegie International Corp. Securities Litigation*, 107 F. Supp. 2d 676 (D. Md. 2000).
- *Berger v. Compaq Computer Corp.*, Civil Action No. H-98-1148, 2000 U.S. Dist. LEXIS 21423 (S.D. Tex. Mar. 13, 2000).
- *In re Imperial Credit Industries Securities Litigation*, CV 98-8842 SVW, 2000 U.S. Dist. LEXIS 2340 (C.D. Cal. Feb. 23, 2000).
- *Sturm v. Marriott Marquis Corp.*, 85 F. Supp. 2d 1356 (N.D. Ga. 2000).
- *In re Health Management Systems Securities Litigation*, 82 F. Supp. 2d 227 (S.D.N.Y. 2000).



- *Dumont v. Charles Schwab & Co., Inc.*, Civil Action No. 99-2840, 2000 U.S. Dist. LEXIS 619 (E.D. La. Jan. 19, 2000).
- *In re MicroStrategy, Inc. Securities Litigation*, 110 F. Supp. 2d 427 (E.D. Va. 2000).
- *In re BankAmerica Corp. Securities Litigation*, 78 F. Supp. 2d 976 (E.D. Mo. 1999).
- *Kurzweil v. Philip Morris Cos.*, 94 Civ. 2373 (MBM), 1999 U.S. Dist. LEXIS 18378 (S.D.N.Y. Nov. 24, 1999).
- *In re Nanophase Technologies Corp. Litigation*, 98 C 3450, 1999 U.S. Dist. LEXIS 16171 (N.D. Ill. Sept. 27, 1999).
- *In re Clearly Canadian Securities Litigation*, File No. C-93-1037-VRW, 1999 U.S. Dist. LEXIS 14273 Cal. Sept. 7, 1999).
- *Yuan v. Bayard Drilling Technologies, Inc.*, 96 F. Supp. 2d 1259 (W.D. Okla. 1999).
- *In re Spyglass, Inc. Securities Litigation*, No. 99 C 512, 1999 U.S. Dist. LEXIS 11382 (N.D. Ill. July 20, 1999).
- *Carley Capital Group v. Deloitte & Touche, L.L.P.*, 1:97-CV-3183-TWT, 1999 U.S. Dist. LEXIS 11595 (N.D. Ga. June 30, 1999).
- *Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris, Inc.*, 98 CV 3287, 1999 U.S. Dist. LEXIS 11363 (E.D.N.Y. June 1, 1999).
- *Carley Capital Group v. Deloitte & Touche, L.L.P.*, 1:97-CV-3183-TWT, 1999 U.S. Dist. LEXIS 1368, Fed. Sec. L. Rep. (CCH) P90, 429 (N.D. Ga. Jan. 19, 1999).
- *Longman v. Food Lion, Inc.*, 186 F.R.D. 331 (M.D.N.C. 1999).
- *Wright v. Ernst & Young LLP*, 152 F.3d 169 (2d Cir. 1998).
- *Romine v. Compuserve Corp.*, 160 F.3d 337 (6th Cir. 1998).
- *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).
- *Walsingham v. Biocontrol Technology, Inc.*, 66 F. Supp. 2d 669 (W.D. Pa. 1998).
- *Sturm v. Marriott Marquis Corp.*, 26 F. Supp. 2d 1358 (N.D. Ga. 1998).





- *Carley Capital Group v. Deloitte & Touche, L.L.P.*, 27 F. Supp. 2d 1324 (N.D. Ga. 1998).
- *In re MobileMedia Securities Litigation*, 28 F.Supp.2d 901 (D.N.J. 1998).
- *Weikel v. Tower Semiconductor, Ltd.*, 183 F.R.D. 377 (D.N.J. 1998).
- *In re Health Management Systems Securities Litigation*, 97 Civ. 1865 (HB), 1998 U.S. Dist. LEXIS 8061 (S.D.N.Y. May 27, 1998).
- *In re Painewebber Ltd. Partnership Litigation*, 999 F. Supp. 719 (S.D.N.Y. 1998).
- *Carley Capital Group v. Deloitte & Touche, L.L.P.*, 1:97-cv-3183-TWT, 1998 U.S. Dist. LEXIS 23222 (N.D. Ga. Feb. 10, 1998).
- *Brown v. Radica Games (In re Radica Games Securities Litigation)*, No. 96-17274, 1997 U.S. App. LEXIS 32775 (9th Cir. Nov. 14, 1997).
- *Robbins v. Koger Properties*, 116 F.3d 1441 (11th Cir. 1997).
- *In re TCW/DW North American Government Income Trust Securities Litigation*, 95 Civ. 0167 (PKL), 1997 U.S. Dist. LEXIS 18485 (S.D.N.Y. Nov. 20, 1997).
- *Wright v. Ernst & Young, LLP*, 97 Civ. 2189 (SAS), 1997 U.S. Dist. LEXIS 13630 (S.D.N.Y. Sept. 9, 1997).
- *Felzen v. Andreas*, No. 95-2279, 1997 U.S. Dist. LEXIS 23646 (C.D. Ill. July 7, 1997).
- *Felzen v. Andreas*, No. 95-2279, 1997 U.S. Dist. LEXIS 23647 (C.D. Ill. July 7, 1997).
- *A. Ronald Sirna, Jr., P.C. Profit Sharing Plan v. Prudential Securities, Inc.*, 964 F. Supp. 147 (S.D.N.Y. 1997).
- *Kurzweil v. Philip Morris Companies*, 94 Civ. 2373 (MBM), 1997 U.S. Dist. LEXIS 4451 (S.D.N.Y. April 8, 1997).
- *Bobrow v. Mobilmedia, Inc.*, Civil Action No. 96-4715, 1997 U.S. Dist. LEXIS 23806 (D.N.J. March 31, 1997).



- *Kalodner v. Michaels Stores, Inc.*, 172 F.R.D. 200 (N.D.Tex. 1997).
- *In re Painewebber Ltd. Partnerships Litigation*, 171 F.R.D. 104 (S.D.N.Y. 1997).
- *A. Ronald Sirna, Jr., P.C. Profit Sharing Plan v. Prudential Securities, Inc.*, 95 Civ. 8422 (LAK), 1997 U.S. Dist. LEXIS 1226 (S.D.N.Y. Feb. 7, 1997).
- *In re Painewebber Inc. Limited Partnerships Litigation*, 94 F.3d 49 (2d Cir. 1996).
- *Glassman v. Computervision Corp.*, 90 F.3d 617 (1st Cir. 1996).
- *Alpern v. Utilicorp United, Inc.*, 84 F.3d 1525 (8th Cir. 1996).
- *Shaw v. Digital Equipment Corp.*, 82 F.3d 1194 (1st Cir. 1996).
- *Dresner Co. Profit Sharing Plan v. First Fidelity Bank, N.A.*, 95 Civ. 1924 (MBM), 1996 U.S. Dist. LEXIS 17913 (S.D.N.Y. Dec. 3, 1996).
- *Simon v. American Power Conversion Corp.*, 945 F. Supp. 416 (D.R.I. 1996).
- *TII Industries, Inc.*, 96 Civ. 4412 (SAS), 1996 U.S. Dist. LEXIS 14466 (S.D.N.Y. Oct. 1, 1996).
- *In re TCW/DW North American Government Income Trust Securities Litigation*, 941 F. Supp. 326 (S.D.N.Y. Oct. 1, 1996).
- *In re Painewebber Ltd. Partnership Litigation*, 94 Civ. 8547 (SHS), 1996 U.S. Dist. LEXIS 9195 (S.D.N.Y. June 28, 1996).
- *In re Tricord Systems, Inc., Securities Litigation*, Civil No. 3-94-746, 1996 U.S. Dist. LEXIS 20943 (D. Minn. April 5, 1996).
- *In re Painewebber Limited Partnership Litigation*, 94 Civ. 8547 (SHS), 1996 U.S. Dist. LEXIS 1265 (S.D.N.Y. Feb. 6, 1996).
- *Riley v. Simmons*, 45 F.3d 764 (3d Cir. 1995).
- *Stepak v. Addison*, 20 F.3d 398 (11th Cir. 1994).
- *Zitin v. Turley*, [1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 96,123 (D. Ariz. June 20, 1994).



- *In re Southeast Hotel Properties Limited Partnership Investor Litigation*, 151 F.R.D. 597 (W.D.N.C. 1993).
- *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295 (2d Cir. 1990).

#### NOTABLE STATE COURT OPINIONS

- *William Hughes, Jr. v. Xiaoming Hu, et al. [In re Kandi Technologies Group]*, C.A. No. 2019-0112-JTL (Del. Ch. April 27, 2020).
- *Eshaghian v. Roshanzamir*, 179 A.D.3d 596 (N.Y. App. Div. 1st Dep't 2020).
- *Cohen v. Saks, Inc.*, 169 A.D.3d 515 (N.Y. App. Div. 1st Dep't 2019).
- *Bartis v. Harbor Tech, LLC*, 147 A.D.3d 52 (N.Y. App. Div. 2d Dep't 2016).
- *Zelouf Int'l Corp. v. Zelouf*, 47 Misc. 3d 346 (N.Y. Sup. Ct. 2014).
- *McWilliams v. City of Long Beach*, 56 Cal. 4th 613 (2013).
- *Roberts v. Tishman Speyer*, 89 A.D.3d 444 (N.Y. App. Div. 1st Dep't 2011).
- *Ardon v. City of Los Angeles*, 52 Cal. 4th 241 (2011).
- *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009).
- *In re Tyson Foods, Inc., Consolidated Shareholder Litigation*, 919 A.2d 563 (Del. Ch. 2007).
- *Naevus Int'l v. AT&T Corp.*, 283 A.D.2d 171, 724 N.Y.S.2d 721 (2001).
- *In re Western National Corp. Shareholders Litigation*, Consolidated C.A. No. 15927, 2000 Del. Ch. LEXIS 82 (May 22, 2000).
- *In re Cencom Cable Income Partners, L.P. Litigation*, C.A. No. 14634, 2000 Del. Ch. LEXIS 90 (May 5, 2000).
- *In re Cencom Cable Income Partners, L.P. Litigation*, Consolidated C.A. No. 14634, 2000 Del. Ch. LEXIS 10 (Jan. 27, 2000).



- *In re Marriott Hotels Properties II Limited Partnership Unitholders Litigation*, Consolidated C.A. No. 14961, 2000 Del. Ch. LEXIS 17 (Jan. 24, 2000).
- *Romig v. Jefferson-Pilot Life Insurance Company*, 132 N.C. App. 682, 513 S.E.2d 598 (Ct. App. 1999), *aff'd*, 351 N.C. 349, 524 S.E.2d 804 (N.C. 2000).
- *Wallace v. Wood*, 752 A.2d 1175 (Del. Ch. 1999).
- *Greenwald v. Batterson*, C.A. No. 16475, 1999 Del. Ch. LEXIS 158 (July 26, 1999).
- *Brown v. Perrette*, Civil Action No. 13531, 1999 Del. Ch. LEXIS 92 (May 18, 1999).
- *Seinfeld v. Robinson*, 246 A.D.2d 291, 676 N.Y.S.2d 579 (N.Y. 1998).
- *Werner v. Alexander*, 130 N.C. App. 435, 502 S.E.2d 897 (N.C. Ct. App. 1998).#
- *In re Cencom Cable Income Partners, L.P. Litigation*, C.A. No. 14634, 1997 Del. Ch. LEXIS 146 (Oct. 15, 1997).
- *In re Marriott Hotel Properties II Limited Partnership Unitholders Litigation*, Consolidated C.A. No. 14961, 1997 Del. Ch. LEXIS 128 (Sept. 17, 1997).
- *In re Cheyenne Software Shareholders Litigation*, Consolidated C.A. No. 14941, 1996 Del. Ch. LEXIS 142 (Nov. 7, 1996).
- *Paramount Communications, Inc. v. QVC Network, Inc.*, 637 A.2d 34 (Del. Super. Ct. 1994).



## ATTORNEY BIOGRAPHIES

The qualifications of the attorneys in the Wolf Haldenstein Litigation Group are set forth below and are followed by descriptions of some of the Firm's attorneys who normally practice outside the Litigation Group who contribute significantly to the class action practice from time to time.

## PARTNERS

**MARK C. RIFKIN:** *admitted:* New York; Pennsylvania; New Jersey; U.S. Supreme Court; U.S. Courts of Appeals for the Second, Third, Fifth, and D.C. Circuits; U.S. District Courts for the Southern and Eastern Districts of New York, the Eastern and Western Districts of Pennsylvania, the District of New Jersey, the Eastern District of Wisconsin and the Western District of Michigan. *Education:* Princeton University (A.B. 1982); Villanova University School of Law (J.D. 1985). Contributor, Packel & Poulin, *Pennsylvania Evidence* (1987).

A highly experienced securities class action and shareholder rights litigator, Mr. Rifkin has recovered hundreds of millions of dollars for victims of corporate fraud and abuse in federal and state litigation across the country. Since 1990, Mr. Rifkin has served as lead counsel, co-lead counsel, or trial counsel in many class and derivative actions in securities, intellectual property, antitrust, insurance, consumer and mass tort litigation throughout the country.

Unique among his peers in the class action practice, Mr. Rifkin has extensive trial experience. Over the past thirty years, Mr. Rifkin has tried many complex commercial actions in federal and state courts across the country in class and derivative actions, including *In re National Media Corp. Derivative Litig.*, C.A. 90-7574 (E.D. Pa.), *Upp v. Mellon Bank, N.A.*, C.A. No. 91-5229 (E.D. Pa.), where the verdict awarded more than \$60 million in damages to the Class (later reversed on appeal, 997 F.2d 1039 (3d Cir. 1993)), and *In re AST Research Securities Litigation*, No. 94-1370 SVW (C.D. Cal.), as well as a number of commercial matters for individual clients, including *Zelouf Int'l Corp. v. Zelouf*, Index No. 653652/2013 (N.Y. Sup. Ct. 2015), in which he obtained a \$10 million judgment for his client.

Mr. Rifkin also has extensive appellate experience. Over thirty years, Mr. Rifkin has argued dozens of appeals on behalf of appellants and appellees in several federal appellate courts, and in the highest appellate courts in New York, Pennsylvania, New Jersey, and Delaware.



Mr. Rifkin has earned the AV®-Preeminent rating by Martindale-Hubbell® for more than 20 years, and has been selected for inclusion in the New York Metro SuperLawyers® listing since 2010. In 2014, Mr. Rifkin was named a “Titan of the Plaintiff’s Bar” by Law360®.

In 2015, Mr. Rifkin received worldwide acclaim for his role as lead counsel for the class in *Good Morning To You Productions Corp. v. Warner/Chappell Music, Inc.*, No. CV 13-04460-GHK (MRWx), in federal court in Los Angeles, successfully challenging the copyright to “Happy Birthday to You,” the world’s most famous song. In recognition of his historic victory, Mr. Rifkin was named a Trailblazer in Intellectual Property by the National Law Journal in 2016. In 2018, Mr. Rifkin led a team of lawyers from Wolf Haldenstein who represented the plaintiffs in *We Shall Overcome Foundation, et al. v. The Richmond Organization, Inc., et al.*, No. 16-cv-02725-DLC (S.D.N.Y.), which successfully challenged the copyright to “We Shall Overcome,” called the “most powerful song of the 20th century” by the Librarian of Congress.

Mr. Rifkin lectures frequently to business and professional organizations on a variety of securities, shareholder, intellectual property, and corporate governance matters. Mr. Rifkin is a guest lecturer to graduate and undergraduate economics and finance students on corporate governance and financial disclosure topics. He also serves as a moot court judge for the A.B.A. and New York University Law School. Mr. Rifkin appears frequently in print and broadcast media on diverse law-related topics in corporate, securities, intellectual property, antitrust, regulatory, and enforcement matters.

**BETSY C. MANIFOLD:** *admitted:* Wisconsin; New York; California; U.S. District Courts for the Western District of Wisconsin, Eastern and Southern Districts of New York, and Northern, Central and Southern Districts of California. *Education:* Elmira College; Middlebury College (B.A., *cum laude*, 1980); Marquette University (J.D., 1986); New York University. Thomas More Scholar. Recipient, American Jurisprudence Award in Agency. Member: The Association of the Bar of the City of New York. Languages: French.

Ms. Manifold served as co-lead counsel in the following cases to recovery on behalf of employees: *Miguel Garcia, et al. v. Lowe’s Home Center, Inc. et al.* – Case No. GIC 841120 (Barton) (Cal. Sup. Ct, San Diego) (\$1.65 million settlement w/ average class member recovery of \$5,500, attorney fees and cost awarded separately) and *Neil Weinstein, et al.*



*v. MetLife, Inc., et al.* – Case No. 3:06-cv-04444-SI (N.D. Cal) (\$7.4 million settlement). Ms. Manifold also served as co-lead counsel in the following derivative actions: *In re Atmel Corporation Derivative Litigation*, Master File No. CV 06-4592-JF (N.D. Cal.) (\$9.65 million payment to Atmel) and *In re Silicon Storage Technology Inc. Derivative Litig.*, Case No. C 06-04310 JF (N.D. Cal.) (cash payment and re-pricing of options with a total value of \$5.45 million). Ms. Manifold also worked as lead counsel on the following class action: *Lewis v. American Spectrum Realty*, Case No. 01 CC 00394, Cal. Sup. Ct (Orange County) (\$6.5 million settlement).

**BENJAMIN Y. KAUFMAN:** *admitted:* New York, United States Supreme Court, United States Court of Appeals for the Fourth Circuit, Southern, Northern and Eastern Districts of New York, District of New Jersey; and District of Colorado. *Education:* Yeshiva University, B.A.; Benjamin N. Cardozo School of Law, Yeshiva University, J.D; New York University, Stern School of Business, M.B.A. Mr. Kaufman focuses on class actions on behalf of defrauded shareholders, investors, and consumers. Mr. Kaufman has extensive experience in complex class actions representing clients including institutional investors such as public and labor pension funds, labor health and welfare benefit funds, as well as private individuals and funds who suffered losses due to corporate fraud. Mr. Kaufman also has extensive experience litigating complex commercial cases in state and federal court.

Mr. Kaufman's successful securities litigations include *In re Deutsche Telekom AG Securities Litigation*, No. 00-9475 (S.D.N.Y.), a complex international securities litigation requiring evidentiary discovery in both the United States and Europe, which settled for \$120 million. Mr. Kaufman was also part of the team that recovered \$46 million for investors in *In re Asia Pulp & Paper Securities Litigation*, No. 01-7351 (S.D.N.Y.); and \$43.1 million in *Freeland v. Iridium World Communications, Ltd.*, No. 99-1002 (D.D.C.).

Mr. Kaufman's outstanding representative results in derivative and transactional litigations include: *In re Trump Hotels Shareholder Derivative Litigation*, No. 96-cv-7820 (S.D.N.Y.) (in settlement Trump personally contributed some of his holdings and the company adopted corporate reforms); *Southwest Airlines Derivative Litigation (Carbon County Employee Retirement System v. Kelly)* (Dist. Ct. Dallas Cnty., Tex.) (derivative matter that resulted in significant reforms to the air carrier's corporate governance and safety and maintenance practices and procedures for the benefit of the company and its shareholders); *Lynn v. Tennessee Commerce Bancorp, Inc., et al.*, No. 3:12-cv-01137 (M.D. Tenn.) (\$2.6 million settlement); *In re ClubCorp Holdings Shareholder Litigation*, No. A-17-758912-B (D. Nev.) (\$5 million settlement and corporate therapeutics). Mr. Kaufman



also argued the appeal in *In re Converse Technology, Inc. Derivative Litig.*, 56 A.D.3d 49 (1st Dep't 2008) which led to the seminal New York Appellate Division opinion clarifying the standards of demand futility in New York and *In re Topps Company, Inc. Shareholders Litigation* which resulted in a 2007 decision vindicating the rights of shareholders to pursue claims in the most relevant forum notwithstanding the state of incorporation. Mr. Kaufman has also lectured and taught in the subjects of corporate governance as well as transactional and derivative litigation.

In addition, Mr. Kaufman has represented many corporate clients in complex commercial matters, including complex copyright royalty class actions against music companies. *Puckett v. Sony Music Entertainment*, No. 108802/98 (Sup. Ct. N.Y. Cnty. ); *Shropshire v. Sony Music Entertainment*, No. 06-3252 (S.D.N.Y.), and *The Youngbloods v. BMG Music*, No. 07-2394 (S.D.N.Y.). In *Mich II Holdings LLC v. Schron*, No. 600736/10 (Sup. Ct. N.Y. Cnty.), Mr. Kaufman represented certain prominent real estate investors and successfully moved to dismiss all claims against those defendants. Mr. Kaufman has also represented clients in arbitrations and litigations involving oppressed minority shareholders in closely held corporations.

Currently, Mr. Kaufman represents clients in a wide array of matters, including shareholders of a large cooperative complex alleging breach of fiduciary duty by the board of directors and property manager; purchasers of New York City taxi medallions in a class action pending in New York Supreme Court, Queens County; a New York art gallery in an action against several European insurers over insurance coverage for paintings seized while on exhibit; and shareholders of Saks, Inc. alleging that the board of directors and its investment advisor sold the company for inadequate consideration. *Cohen v. Saks*, 169 A.D.3d 51 (1st Dep't 2019).

Prior to joining Wolf Haldenstein, and prior to joining Milberg LLP in 1998, Mr. Kaufman was a Court Attorney for the New York State Supreme Court, New York County (1988-1990) and Principal Law Clerk to Justice Herman Cahn of the Commercial Division of the New York State Supreme Court, New York County (1990-1998).

Mr. Kaufman is an active member of the Commercial and Federal Litigation Section of the New York State Bar Association, the International Association of Jewish Lawyers and Jurists and the Jewish Lawyers Guild in which he serves as a Vice President. Mr. Kaufman was the Dinner Chair at the Jewish Lawyers Guild Annual Dinner in 2017, 2018, and 2019. Mr. Kaufman is a member of the Board of Trustees of Congregation





Beth Sholom in Lawrence, NY and was a member of the Board of Trustees of the Hebrew Academy of the Five Towns and Rockaways from 2015-2019.

Mr. Kaufman has been recognized by SuperLawyers® each year since 2012.

**THOMAS H. BURT:** *admitted:* New York; U.S. District Courts for the Southern and Eastern Districts of New York, Eastern District of Michigan. *Education:* American University (B.A. 1993); New York University (J.D. 1997). Articles Editor with New York University Review of Law and Social Change. Mr. Burt is a litigator with a practice concentrated in securities class actions and complex commercial litigation. After practicing criminal defense with noted defense lawyer Jack T. Litman for three years, he joined Wolf Haldenstein, where he has worked on such notable cases as *In re Initial Public Offering Securities Litigation*, No. 21 MC 92 (SAS) (S.D.N.Y.) (a novel and sweeping amalgamation of over 300 class actions which resulted in a recovery of \$586 million); *In re MicroStrategy Securities Litigation*, No. 00-473-A (E.D. Va.) (recovery of \$192 million); *In re DRAM Antitrust Litigation*, No. 02-cv-1486 (PJH) (N.D. Cal.) (antitrust case resulting in \$315 million recovery); *In re Computer Associates 2002 Class Action Securities Litigation*, No. 02-cv-1226 (TCP) (E.D.N.Y.) (settled, together with a related fraud case, for over \$133 million); *K.J. Egleston L.P. v. Heartland Industrial Partners, et al.*, 2:06-13555 (E.D. Mich.) (recovery included personal assets from former Reagan Administration budget director David A. Stockman); and *Parker Friedland v. Iridium World Communications, Ltd.*, 99-1002 (D.D.C.) (recovery of \$43.1 million). Mr. Burt has spoken on several occasions to investor and activist groups regarding the intersection of litigation and corporate social responsibility. Mr. Burt writes and speaks on both securities and antitrust litigation topics. He has served as a board member and officer of the St. Andrew's Society of the State of New York, New York's oldest charity.

**RACHELE R. BYRD:** *admitted:* California; U.S. District Courts for the Southern, Northern, Central and Eastern Districts of California, the Northern District of Illinois, and the Eastern District of Michigan; U.S. Court of Appeals for the Ninth Circuit; U.S. Supreme Court. *Education:* Point Loma Nazarene College (B.A., 1994); University of California, Hastings College of the Law (J.D. 1997). Member: State Bar of California. Ms. Byrd is located in the firm's San Diego office and practices corporate derivative and class action litigation including securities, consumer, privacy and security, antitrust, employment and general corporate and business litigation. Ms. Byrd has played a significant role in litigating numerous class and derivative actions, including *Engquist v. City of Los Angeles*, No. BC591331 (Los Angeles Super. Ct.) (gas tax refund action that recently settled for \$32.5 million and injunctive relief, valued at a minimum of \$24.5



million over 3 years and \$81.8 million over 10 years, following certification of the class and on the eve of a hearing on the parties' cross-motions for summary judgment); *Ardon v. City of Los Angeles*, 52 Cal.4th 241 (2011) (telephone tax refund action against the City of Los Angeles that settled for \$92.5 million after a successful appeal and a groundbreaking opinion from the California Supreme Court); *McWilliams v. City of Long Beach*, Cal. Supreme Ct. No. S202037, 2013 Cal. LEXIS 3510 (April 25, 2013) (telephone tax refund action that settled for \$16.6 million after a successful appeal and another groundbreaking opinion from the California Supreme Court); *Granados v. County of Los Angeles*, BC361470 (Los Angeles Super. Ct.) (telephone tax refund action that settled for \$16.9 million following class certification and a successful appeal); *In re: Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-0291 (N.D. Cal.) (member of Plaintiffs' Steering Committee; settled for \$85 million); *In re Robinhood Outage Litigation*, No. 20-cv-01626-JD (N.D. Cal.) (member of Plaintiffs' Executive Committee); *In re Apple iPhone Antitrust Litigation*, No. 4:11-cv-06714-YGR (N.D. Cal.) (ongoing antitrust class action on behalf of consumers against Apple over its monopolization of the iOS applications aftermarket that secured a favorable opinion in the U.S. Supreme Court: *Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019)); *Defrees v. Kirkland, et al.*, 11-04272 (JLS) (C.D. Cal.) (\$12.2 million settlement reached in derivative action on the eve of trial); *Bokelman et al. v. FCH Enterprises, Inc.*, No. 18-00209-RJB-RLP (D. Haw.) (settled data breach class action; final approval granted May 3, 2019); *Carrera Aguallo, et al. v. Kemper Corp., et al.*, No. 1:21-cv-01883 (N.D. Ill.) (settled data breach class action where Ms. Byrd was Interim Co-Lead Counsel; final approval granted March 18, 2022); *In re: Scripps Health Data Incident Litigation*, San Diego Super. Ct. No. 37-2021-00024103-CU-BT-CTL (ongoing data breach class action where Wolf Haldenstein is co-lead counsel); *Hinds v. Community Medical Centers, Inc.*, No. STK-CV-UNPI-2021-10404 (San Joaquin Super. Ct.) (ongoing data breach class action where Wolf Haldenstein is co-lead counsel); *Christofferson v. Creation Entertainment, Inc.*, No. 19STCV11000 (Los Angeles Super. Ct.) (settled data breach class action; final approval granted on June 29, 2021); *In re: Hanna Andersson and salesforce.com Data Breach Litig.*, No. 3:20-cv-00812-EMC (N.D. Cal.) (settled data breach class action; final approval granted on June 25, 2021); *Gaston v. FabFitFun, Inc.*, No. 2:20-cv-09534-RGK-E (C.D. Cal.) (settled data breach class action; final approval granted on December 6, 2021); *Rossi v. Claire's Stores*, No. 1:20-cv-05090 (N.D. Ill.) (settled data breach class action; preliminary approval granted March 28, 2022); *Riggs v. Kroto, Inc., D/B/A/ iCanvas*, No. 1:20-cv-5822 (N.D. Ill.) (settled data breach class action; final approval granted on October 29, 2021); *Thomas v. San Diego Family Care*, San Diego Super. Ct. No. 37-2021-00026758-CU-BT-CTL (settled data breach class action; preliminary approval granted April 13, 2022); *Miller v. CSI Financial, LLC*, No. 37-



2021-00030263-CU-BT-CT (San Diego Super. Ct.) (recently settled data breach class action); *Fields v. The Regents of the University of California*, Alameda Superior Court No. RG21107152 (ongoing data breach class action); *In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.) (ongoing); *In re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.) (settled data breach class action; preliminary approval granted March 3, 2022).

**MATTHEW M. GUINEY:** *admitted:* New York State; United States Supreme Court; United States Courts of Appeals for the Second, Third and Ninth Circuits; U.S. District Courts for the Southern and Eastern District of New York and numerous others. *Education:* The College of William & Mary (B.A. in Government and Economics 1998); Georgetown University Law Center (J.D. 2002). Mr. Guiney's primary areas of practice are securities class actions under the Securities Act of 1933 and the Exchange Act of 1934, complex commercial litigation, Employee Retirement Income Security Act (ERISA) actions on behalf of plan participants, Fair Labor Standards Act of 1938 actions concerning overtime payment, and fiduciary duty actions under various state laws. Mr. Guiney has helped recover hundreds of millions of dollars for victims of corporate fraud and abuse in federal and state litigation across the country. Mr. Guiney was on the merits briefs at the United States Supreme Court on behalf of the plaintiffs/respondents in *Apple Inc. v. Pepper*, No. 17-204, 587 U.S. \_\_\_ (2019) where the Court affirmed plaintiffs' antitrust standing under *Illinois Brick*. Mr. Guiney also represented plaintiffs/respondents at the United States Supreme Court in *China Agritech v. Resh*, 584 U.S. \_\_ (2018), where the Court addressed tolling in the class action context. Mr. Guiney also initially served as counsel of record and briefed opposition to petition for writ of certiorari, and argued and achieved a precedential reversal of motion to dismiss in a published opinion at the United States Court of Appeals for the Ninth Circuit in *Resh v. China Agritech*, No. 15-5543, 2017 U.S. App. LEXIS 9029 (9th Cir. May 24, 2017).

Some of Mr. Guiney's notable results on behalf of investors include: *Mallozzi v. Industrial Enterprises of America, Inc., et al.*, 1:07-cv-10321-DLC (S.D.N.Y.) (\$3.4 million settlement on behalf of shareholders); *In re Luxottica Group S.p.A. Securities Litigation*, No. CV 01-3285 (JBW) (MDG) (E.D.N.Y.) (\$18.5 million settlement on behalf of shareholders); *In re MBNA Corp. ERISA Litigation*, Master Docket No. 05-429 (GMS), (D. Del) (\$4.5 million settlement on behalf of plan participants).

**MALCOLM T. BROWN:** *admitted:* United States District Courts for the Eastern, Northern, and Southern Districts of New York; District of New Jersey; and Eastern



District of Pennsylvania; United States Court of Appeals for the Second Circuit. **Education:** University of Pennsylvania (B.A., Political Science 1988) and Rutgers University School of Law (J.D. 1994). Mr. Brown's primary areas of practice are securities, derivative, M&A litigation and consumer class actions. Recent notable decisions include: *Siegmund v. Bian*, 2019 U.S. Dist. LEXIS 19349 (S.D. Fla. Feb. 6, 2019); *Siegmund v. Bian*, 2018 U.S. Dist. LEXIS 55724, 2018 U.S. Dist. LEXIS 55725 (April 2, 2018); *Johnson v. Ford Motor Co.*, 309 F.R.D. 226 (S.D. W. Va. 2015); *Thomas v. Ford Motor Co.*, 2014 U.S. Dist. LEXIS 43268 (D.S.C. Mar. 31, 2014); *In re Merkin Sec. Litig.*, 2015 U.S. Dist. LEXIS 178084 (S.D.N.Y. Aug. 24, 2015). Prior to joining Wolf Haldenstein, Mr. Brown was a business litigation attorney who represented financial institutions, corporations and partnerships and advised clients on business disputes, reorganizations, dissolutions and insurance coverage matters.

Mr. Brown is a member of the National Association of Pension Plan Attorneys and the National Black Lawyers, and a Fellow of the American Bar Foundation.

#### SPECIAL COUNSEL

**JUSTICE HERMAN CAHN:** *admitted:* New York. **Education:** Harvard Law School and a B.A. from City College of the City University of New York. Justice Herman Cahn was first elected as Judge of the Civil Court of the City of New York in 1976. He subsequently served as an Acting Justice of the Supreme Court from 1980 until 1992, when he was elected to the Supreme Court. Throughout his decades on the bench, he principally handled civil cases, with the exception of 1981 until 1987, when he presided over criminal matters. Justice Cahn was instrumental in the creation of, and a founding Justice in, the Commercial Division within the New York State Supreme Court. He served as a Justice of the Commercial Division from its inception in 1993.

Among his most notable recent cases are the consolidated cases stemming from the Bear Stearns merger with JP Morgan (*In re Bear Stearns Litigation*); litigation regarding the America's Cup Yacht Race (*Golden Gate Yacht Club v. Société Nautique de Genève*); litigation stemming from the attempt to enjoin the construction of the new Yankee Stadium (*Save Our Parks v. City of New York*); and the consolidated state cases regarding the rebuilding of the World Trade Center site (*World Trade Center Properties v. Alliance Insurance; Port Authority v. Alliance Insurance*).

Justice Cahn is a member of the Council on Judicial Administration of the Association of the Bar of the City of New York. He has also recently been appointed to the



Character and Fitness Committee of the Appellate Division, First Department. He is on the Register of Mediators for the United States Bankruptcy Court, Southern and Eastern Districts of New York.

Before ascending the bench, Justice Cahn practiced law in Manhattan. He was first admitted to the New York bar in 1956. He is admitted to practice in numerous courts, including the New York State courts, the Southern District of New York and the United States Supreme Court.

#### OF COUNSEL

**DANIEL W. KRASNER:** *admitted:* New York; Supreme Court of the United States; U.S. Courts of Appeals for the Second, Third, Fourth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits; U.S. District Courts for the Southern and Eastern Districts of New York, Central District of Illinois, and Northern District of Michigan. *Education:* Yale Law School (LL.B., 1965); Yeshiva College (B.A., 1962). Mr. Krasner is of counsel at Wolf Haldenstein. He began practicing law with Abraham L. Pomerantz, generally credited as the "Dean of the Class Action Bar." He founded the Class Litigation Group at Wolf Haldenstein in 1976.

Mr. Krasner received judicial praise for his class action acumen as early as 1978. *See, e.g., Shapiro v. Consolidated Edison Co.*, [1978 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 96,364 at 93,252 (S.D.N.Y. 1978) ("in the Court's opinion the reputation, skill and expertise of . . . [Mr.] Krasner, considerably enhanced the probability of obtaining as large a cash settlement as was obtained"); *Steiner v. BOC Financial Corp.*, [1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 97,656, at 98,491.4, (S.D.N.Y. 1980) ("This Court has previously recognized the high quality of work of plaintiffs' lead counsel, Mr. Krasner"). The New York Law Journal referred to Mr. Krasner as one of the "top rank plaintiffs' counsel" in the securities and class action fields. In connection with a failed 1989 management buyout of United Airlines, Mr. Krasner testified before Congress.

More recently, Mr. Krasner has been one of the lead attorneys for plaintiffs in some of the leading Federal multidistrict cases in the United States, including the IPO Litigation in the Southern District of New York, the Mutual Fund Market Timing Litigation in the District of Maryland, and several Madoff-related litigations pending in the Southern District of New York. Mr. Krasner has also been lead attorney in several precedent-setting shareholder actions in Delaware Chancery Court and the New York Court of Appeals, including *American International Group, Inc. v. Greenberg*, 965 A.2d 763 (Del. Ch. 2009) and the companion certified appeal, *Kirschner v. KPMG LLP*, Nos. 151, 152, 2010



N.Y. LEXIS 2959 (N.Y. Oct. 21, 2010); *Teachers' Retirement System of Louisiana and City of New Orleans Employees' Retirement System, derivatively on behalf of nominal defendant American International Group, Inc., v. PricewaterhouseCoopers LLP*, No. 152 (New York, October 21, 2010); *In re CNX Gas Corp. S'holders Litig.*, C.A. No. 5377-VCL, 2010 Del. Ch. LEXIS 119 (Del. Ch., May 25, 2010); *In re CNX Gas Corp. S'holders Litig.*, C.A. No. 5377-VCL, 2010 Del. Ch. LEXIS 139, (Del. Ch. July 5, 2010), appeal refused, 2010 Del. LEXIS 324, 2010 WL 2690402 (Del. 2010).

Mr. Krasner has lectured at the Practicing Law Institute; Rutgers Graduate School of Business; Federal Bar Council; Association of the Bar of the City of New York; Rockland County, New York State, and American Bar Associations; Federal Bar Council, and before numerous other bar, industry, and investor groups.

**PETER C. HARRAR:** *admitted;* New York; United States Court of Appeals for the Fourth Circuit and the United States District Courts for the Southern and Eastern Districts of New York. *Education:* Columbia Law School (J.D. 1984); Princeton University, Phi Beta Kappa, *magna cum laude*. Mr. Harrar is of counsel at the firm and has extensive experience in complex securities and commercial litigation on behalf of individual and institutional clients.

He has represented investment funds, hedge funds, insurance companies and other institutional investors in a variety of individual actions, class actions and disputes involving mortgage-backed securities and derivative instruments. Examples include *In re EMAC Securities Litigation*, a fraud case concerning private placements of securitized loan pools, and *Steed Finance LDC v. LASER Advisors, Inc.*, a hybrid individual and class action concerning the mispricing of swaptions.

Over the years, Mr. Harrar has also served as lead or co-lead counsel in numerous securities class and derivative actions throughout the country, recovering hundreds of millions of dollars on behalf of aggrieved investors and corporations. Recent examples are some of the largest recoveries achieved in resolution of derivative actions, including *American International Group Consolidated Derivative Litigation* (\$90 million), and *Bank of America/Merrill Derivative Litigation* (\$62.5 million).

**JEFFREY G. SMITH:** *admitted:* New York; California; Supreme Court of the United States; U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits; U.S. Tax Court; U.S. District Courts for the Southern and Eastern Districts of New York, Southern, Central and Northern Districts of California and the Districts of Colorado and Nebraska. *Education:* Woodrow Wilson School of



Public and International Affairs, Princeton University (M.P.A., 1977); Yale Law School (J.D., 1978); Vassar College (A.B., *cum laude generalis*, 1974). At Yale Law School, Mr. Smith was a teaching assistant for the Trial Practice course and a student supervisor in the Legal Services Organization, a clinical program. Member: The Association of the Bar of the City of New York; New York State and American (Section on Litigation) Bar Associations; State Bar of California (Member: Litigation Section); American Association for Justice. Mr. Smith has frequently lectured on corporate governance issues to professional groups of Fund trustees and investment advisors as well as to graduate and undergraduate business student groups, and has regularly served as a moot court judge for the A.B.A. and at New York University Law School. Mr. Smith has substantial experience in complex civil litigation, including class and derivative actions, tender offer, merger, and takeover litigation. Mr. Smith is rated "AV" by Martindale Hubble and, since its inception in 2006, has been selected as among the top 5% of attorneys in the New York City metropolitan area chosen to be included in the Super Lawyers Magazine.

**ROBERT ALTCHILER:** *Education:* State University of New York at Albany (B.S., Finance/Marketing, 1985); The George Washington University (JD, 1988).

Robert's practice focuses primarily in the areas of White Collar criminal investigations, corporate investigations, entertainment, litigation, and general corporate counseling. Robert's diverse practice had developed as a result of his extensive international business contacts and relationships in the entertainment world, in the United States and the United Kingdom. Robert had successfully defended cases and resolved matters spanning the most complex entertainment controversies, to virtually any imaginable complex criminal or corporate matter.

Robert has successfully defended individuals and corporations in a wide array of multifaceted investigations in areas such as mortgage fraud, securities fraud, tax fraud, prevailing wage, money laundering, Bank Secrecy Act, embezzlement, bank and wire fraud, theft of trade secrets, criminal copyright infringement, criminal anti-counterfeiting, Foreign Corrupt Practices Act (FCPA), International Traffic In Arms Regulations (ITAR), racketeering, continuing criminal enterprises, and circumvention of trade restrictions, among many others. Robert also specializes in non-criminal investigations relating to various topics, including finding money allegedly being hidden by individuals, ascertaining the identities of individuals actually involved in corporate matters (when a client believes those identities are being concealed), and



running undercover “sting” operations as part of civil and commercial litigation support.

Because of Robert's significant business contacts in the United Kingdom, and the United States, he is frequently called upon to assist clients in various forms of complex business matters, both domestic and international. Robert's clients look to him as a trusted, experienced, creative, fearless hand who has demonstrated an ability to navigate even the most difficult and desperate situations. Robert prides himself on his ability to develop aggressive creative winning strategies for his clients even when the clients believe their circumstances are hopeless.

In 1988, Robert started his legal career as a prosecutor in New York City, where he prosecuted a wide array of cases and headed up a variety of different investigations. As a prosecutor, he presented hundreds of cases to grand juries, and ran numerous investigations. In addition to trying several dozen serious cases, ranging from murder to fraud to narcotics violations, he also ran wiretap and grand jury investigations involving money laundering and other financial crimes, as well as a wiretap and investigation concerning a plot to assassinate a prominent NYC judge. Upon leaving the government, Robert began focusing on defending individuals and entities under government investigation and/or indictment. Early in private practice he defended numerous law enforcement officers under administrative and criminal scrutiny, in courts and administrative proceedings. His particular area of practice permitted Robert to further develop and strengthen his already close ties to law enforcement.

In addition to his practice, Robert has been an adjunct law professor at Pace University Law School since 1998, where he teaches trial advocacy, a course designed to teach law students how to be trial lawyers via a curriculum including the mock trial of a murder case. Robert is also a faculty member of the EATS Program run by Stetson Law School, an acclaimed program designed to teach law school trial advocacy professors creative and innovative pedagogical methods. Robert has also been a featured participant and lecturer at Cardozo Law School's acclaimed Intensive Trial Advocacy Program in New York City, and has also taught at Yale Law School. Robert's trial advocacy teaching requires him to constantly integrate new developments in communication theory and trial techniques into his teaching methods. Given the changing way students (and prospective jurors) communicate and digest information (via Twitter, Instagram and Snapchat, for example) Robert is a recognized leader at integrating neuroscientific principles into his teaching. By actively participating in the weekly trials his students





conduct in class, and by frequently demonstrating methods, he is able to continually adapt his own communication skills and integrate cutting-edge developments into his own practice.

Robert is Special Advisor to the Dean of the Mt. Sinai School of Nursing, an adjunct professor at the school, a member of the Board of Trustees and the Chair of the Board of Trustees Nominations Committee. In his role as Special Advisor, Robert is tasked with counselling the Dean on innovative pedagogical methods designed to facilitate teaching Narrative Care and other topics. Robert instructs faculty on various topics, and will be teaching courses at the school in the immediate future.

Robert graduated from the George Washington University Law School (formerly, The National Law Center), where he began his career as an advocate by conducting administrative hearings and trials during his second and third year. Prior to GW, Robert graduated with honors from the Business School at the State University of New York at Albany in 1985. He is also a 1996 graduate of the National Criminal Defense College and a 1997 graduate of the National Institute for Trial Advocacy's Harvard Teacher Training Program. Robert has also made dozens of television appearances on Fox, Court TV, and Tru TV, providing legal commentary on televised trials, and participating in discussions related to pertinent issues.

**JENNY YOUNG DU PONT:** *admitted:* New York; Massachusetts; District of Columbia; U.S. Supreme Court. *Education:* Princeton University (A.B. *cum laude*); Georgetown University Law Center/School of Foreign Service (J.D./M.S.F.S. *magna cum laude*); Order of the Coif; *Georgetown Law Journal*, Notes and Comments Editor.

Ms. du Pont has extensive experience representing domestic and international companies ranging in size from small privately-held firms to large public companies in a variety of corporate, investment, banking, insurance, finance, and employment matters. Ms. du Pont began her legal career at two AmLaw 100 firms in Washington, D.C. and London, U.K. and a decade later moved into in-house counsel roles, first with Plymouth Rock Assurance Corporation in Boston, MA, and later with Millennium Management, LLC in New York. Ms. du Pont also advises and presents on issues related to family businesses, family offices, and managing wealth transfer across generations.

In addition to her legal experience, Ms. du Pont has significant experience in the non-profit sector. Ms. du Pont was President and CEO of The Garden Conservancy in Cold



Spring, New York and Executive Director of Miracle House of New York, Inc., and has acted a legal and strategic advisor to a variety of for profit and non-profit entities in New York. For more than 20 years, Ms. du Pont also has been a director, trustee, and officer for a broad range of educational, cultural, scientific, and service non-profit entities. Ms. du Pont served for a number of years as a Trustee of Phillips Exeter Academy, in Exeter, NH, and as a member and Vice Chair of the Warrant Committee for the Town of Dover in Massachusetts. She is currently a Director of the American Friends of the British Museum and of the American Patrons of the National Galleries and Library of Scotland, serves as an Advisory Council member for the Untermyer Gardens Conservancy in Yonkers, NY and the Sing Sing Prison Museum Master Narrative Project, in Ossining, NY, and is chair of the Advisory Council for the Conservation Law Foundation in Boston, MA.

**KATE MCGUIRE:** *admitted:* New York; U.S. District Courts for the Southern and Eastern Districts of New York. *Education:* University of California at Santa Cruz (B.A. 1995), Georgetown University Law Center (J.D., 1998); Member: *Georgetown Immigration Law Journal*.

Ms. McGuire has extensive experience prosecuting complex litigation. Her work encompasses consumer and data protection class actions, securities class and derivative shareholder cases and nationwide antitrust suits.

She is a member of the Firm's Consumer Protection practice group and, in that context, has worked intensively to protect classes of consumers under a range of state and federal laws. Recently, she served as a member of the co-lead counsel team in *Simerlein et al. v. Toyota Motor Corporation et al.*, 3:17-CV-01021-VAB (D. Conn.), representing more than a million owners of Sienna minivans in litigation that settled for class-wide benefits valued at between \$30 and \$40 million. Presently, she serves on a team representing plaintiffs in multi-district litigation against Fisher-Price and Mattel, relating to Rock 'n Play infant sleepers which are alleged to be dangerous and misleadingly marketed. She has also served as a member of the firm's lead or co-counsel teams in other consumer protection cases, including litigation based upon allegations of misrepresentations and omissions concerning the purported safety of electronic cigarettes.

Ms. McGuire has also represented plaintiffs with respect to the protection of their civil rights. For example, she represented a blind plaintiff in a suit under the Americans with Disability Act against a major trading online trading company, and represented a



group of minority business owners in federal civil rights litigation concerning disparate treatment which settled for significant governance therapeutics.

**CARL MALMSTROM:** *admitted:* Illinois; Minnesota; United States Court of Appeals for the Seventh Circuit; Northern and Southern Districts of Illinois; Northern District of Indiana; District of Minnesota; Eastern District of Missouri; Western District of New York. *Education:* University of Chicago (A.B., Biological Sciences, 1999; A.M., Social Sciences, 2001); The University of Hawai'i at Manoa (M.A., Anthropology, 2004); Loyola University Chicago School of Law (J.D., 2007). Prior to joining the firm, Mr. Malmstrom worked for the City of Chicago Department of Law in the Municipal Prosecutions Division; he is a member of the Chicago Bar Association. Mr. Malmstrom has substantial experience litigating complex class actions in several practice areas, including antitrust, consumer fraud, and data security. Representative cases in which he has represented plaintiffs include *Bokelman et al. v. FCH Enterprises, Inc.*, Case No. 1:18-cv-209 (D. Haw.), involving customers of Zippy's Restaurants in Hawaii whose personal data was stolen by hackers, *In re: Experian Data Breach Litigation*, Case No. 8:15-cv-1592 (C.D. Cal.); *Freeman-Hargis v. Taxi Affiliation Services, LLC*, Case No. 2016-CH-02519 (Cir. Ct. Cook Cty.), involving customers of several taxi services in Chicago who were unlawfully charged fees for using credit cards in taxis.

#### ASSOCIATES

**PATRICK DONOVAN:** *admitted:* New York; U.S. District Courts for the Southern and Eastern Districts of New York; United States Court of Appeals for the Second and Fourth Circuits. *Education:* Iona College (B.A., Business Management, 2007); St. John's University School of Law (J.D. 2011). Mr. Donovan's primary areas of focus are securities, derivative and M&A litigation.

**LILLIAN GRINNELL:** *admitted:* New York; United States District Courts for the Southern and Eastern Districts of New York; United States Court of Appeals for the Federal Circuit. *Education:* Bryn Mawr College (A.B., Philosophy and Political Science, 2016); New York University Law School (J.D. 2019). Prior to joining Wolf Haldenstein, Ms. Grinnell served as an Excelsior Service Fellow with the Consumer Protection and Financial Enforcement Division of the NYS Department of Financial Services.

**ROURKE DONAHUE:** *admitted:* New York. *Education:* University of North Carolina at Chapel Hill (B.A., Philosophy, 2017), Honors Program; Georgetown University Law Center (J.D. 2020). Prior to joining the firm, Mr. Donahue clerked for the Hon. Timothy P. Lydon, Presiding Judge of Equity, at the New Jersey Superior Court in Trenton, New



Jersey. In law school, Mr. Donahue interned at the Department of Justice's Civil Division, Christie's Auction House, and Manhattan Legal Services and served as the Administrative Editor of the *Georgetown Environmental Law Review*.

**ALEX J. TRAMONTANO:** *admitted:* California; U.S. District Courts for the Southern, Central and Eastern Districts of California; United States Court of Appeals for the Ninth Circuit. *Education:* University of Massachusetts, Amherst (B.A., Political Science and Legal Studies, *cum laude*, 2008); California Western School of Law (J.D., 2011). Mr. Tramontano's primary areas of focus are securities, anti-trust, unfair and deceptive practices, civil rights and data breach related class actions. Prior to joining Wolf Haldenstein, Mr. Tramontano worked as an associate at an AmLaw 100 firm, as well as other regional law firms in southern California. Mr. Tramontano has over a decade of litigation experience defending and prosecuting complex actions on behalf of individuals and businesses in both Federal and State courts. Mr. Tramontano began his legal career as a Police Cadet at the University of Massachusetts Amherst. He went on to law school and joined the San Diego District Attorney's Office as a Certified Legal Intern before transitioning to private practice.

**FERDEZA ZEKIRI:** *admitted:* California; U.S. District Court for the Central District of California. *Education:* Gonzaga University (B.A., Criminal Justice and Psychology, 2017); University of California, Los Angeles School of Law (J.D. 2020). In law school, Ms. Zekiri served as a Managing Editor of the UCLA School of *Law's Journal of Environmental Law & Policy*, and worked as a research assistant for the UCLA Law Library. Prior to joining Wolf Haldenstein, Ms. Zekiri was an associate attorney at Talkov Law where she primarily focused on real estate litigation.

## PARAPROFESSIONALS

**GREGORY STONE:** *Education:* University of Pennsylvania (B.S., Economics, 1979); University of California, Los Angeles (MBA, 1983). Mr. Stone is the Firm's Director of Case and Financial Analysis. He assists partners and associates in identifying and researching potential federal class action securities, derivative litigation and merger & acquisition (M&A) litigation. Mr. Stone has worked with leading securities class action firms in an analytical and investigative role for over 18 year throughout the United States, and has an extensive professional background in the accounting and investment professions. He plays a key role in new case development, including performing investigations into potential securities fraud class actions, derivative and other



corporate governance related actions. By using a broad spectrum of financial news and legal industry research tools, Mr. Stone analyzes information that helps identify and support the theories behind the firm's litigation efforts.

#### NON-DISCRIMINATION POLICIES

Wolf Haldenstein does not discriminate or tolerate harassment against any employee or applicant because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or alienage or citizenship status and designs its hiring practices to ensure that minority group members and women are afforded equal employment opportunities without discrimination. The Firm is in compliance with all applicable Federal, State, County, and City equal employment opportunity laws.

Wolf Haldenstein is proud of its long history of support for the rights of, and employment opportunities for, women, the disadvantaged, and minority group persons, including the participation in civil rights and voter registration activities in the South in the early 1960s by partners of the Firm; the part-time employment of disadvantaged youth through various public school programs; the varied *pro bono* activities performed by many of the Firm's lawyers; the employment of many women and minority group persons in various capacities at the Firm, including at the partner level; the hiring of ex-offenders in supported job training programs; and the use of minority and women-owned businesses to provide services and supplies to the Firm.

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