

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KENT BOWEN and KATHLEEN
DARNELL on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

PORSCHE CARS, N.A., INC.

Defendant.

Case No. 1:21-CV-471-MHC

**UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

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INTRODUCTION

After two years of litigation, Plaintiffs are pleased to inform the Court that the parties have reached a class settlement and are ready to enter the court-approval process under Rule 23(e). (The settlement agreement is attached as Exhibit A to the Joint Declaration of Plaintiffs' Counsel.) Per Rule 23(e)(1), the first step in that process asks the Court to preliminarily assess whether it will likely be able to (a) approve the settlement and (b) certify the settlement class. Upon making those findings, the reviewing court directs notice of the settlement to the class, so that the class will have an opportunity to participate and share its views, before the parties return with a motion for final settlement approval a few months later.

Plaintiffs respectfully submit that the settlement here warrants approval. As the Court may recall, the underlying litigation stems from problems with the "Porsche Communication Management" or "PCM" system in vehicles across the country. The PCM is the infotainment system that controls satellite radio, navigation, and the like. Beginning in May 2020, many Porsche drivers complained that their PCMs had begun entering constant rebooting cycles. The PCMs were rebooting over and over, while emitting loud static noise, rendering them non-functional until repairs were performed. For some drivers, the repairs

were quick and came at no cost; but in other instances, PCM repairs cost \$4,000 or more.

The parties' proposed settlement makes compensation available to everyone in the proposed settlement class who spent time or money addressing the PCM rebooting. The settlement provides *full* reimbursement of out-of-pocket costs incurred while repairing a PCM, up to \$7,500 per vehicle. Porsche owners who have not yet succeeded in obtaining satisfactory repairs may do so now and be reimbursed for their expenses. And those class members who were able to resolve their PCM rebooting at no cost will be eligible for payment to compensate for the inconvenience of resolving the problem; they will have their choice of \$25 in cash or a \$50 dealership credit. From Plaintiffs' perspective, this relief approaches—and in some ways may exceed—the level of compensation that realistically may have been obtainable after a successful trial.

Plaintiffs accordingly ask that the Court find under Rule 23(e)(1) that it will likely be able to approve the settlement and certify the settlement class, directing notice to the class consistent with the notice program in the parties' settlement agreement.

BACKGROUND AND PROCEDURAL HISTORY

I. Factual background.

This lawsuit arises from allegations that in late May 2020, Porsche owners around the country began experiencing problems with their vehicles' PCM infotainment systems. Dkt. 40. As noted above, the PCM controls information, communication, and entertainment functions—including navigation, satellite radio, telephone, and sound settings. *Id.* ¶¶ 19-20.

Owners complained that, while their PCMs had previously been working fine, around May 2020 the units began entering a near-constant rebooting cycle—turning on and off every few minutes in a continuous loop. *See id.* ¶ 32 (collecting complaints from Porsche drivers posted on various online forums). Drivers reported that their PCMs were inoperative, eliminating access to the entertainment and navigation systems. *Id.* ¶ 28. While rebooting, the PCMs emitted an unpleasant static noise. *Id.* The reboot cycle at times continued even when the vehicles were not in use. Some Porsche owners reported that the car battery had drained overnight because of the rebooting. *See, e.g., id.* ¶¶ 44, 53.

Shortly after the problems began, it was suspected that the cause had been a remote update transmitted to the PCMs—allegedly sent by Porsche directly or with Porsche's help. *Id.* ¶¶ 24-25. Yet, Plaintiffs allege, Porsche chose not to offer

compensation to all affected owners. *Id.* ¶ 33. This meant, for example, that when owners paid to replace the PCM, at an average cost of about \$4,000, Porsche did not reimburse those repair costs—nor did it instruct its dealers to cover the replacements under warranty. *Id.* In addition to repair costs, some drivers were without use of their vehicles for several days, and sometimes a few weeks, which meant drivers may have spent money on rental cars, Uber/Lyft rides, and the like. *Id.* ¶ 84.

Plaintiffs Kent Bowen and Kathleen Darnell were among the Porsche owners affected. Mr. Bowen paid several thousand dollars to replace his vehicle's PCM, while Ms. Darnell paid over a thousand dollars to repair the PCM and replace the battery. *Id.* ¶¶ 40-48; 50-59.

II. Procedural history.

Mr. Bowen brought suit on January 29, 2021, and Ms. Darnell joined later that year. Dkts. 1; 39. In the complaint, Plaintiffs alleged that Porsche either sent or helped send the software update that caused the PCMs to enter the constant reboot cycle. Dkt. 40 ¶¶ 24-25.

Plaintiffs brought four claims, including for trespass to personalty and for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030. *Id.* ¶¶ 71-85. They also requested that the Court certify a class under Rule 23(b)(3). *Id.* ¶¶ 60-70.

Over the past two years, the parties have vigorously litigated Plaintiffs' claims. In February 2021, Porsche moved to dismiss the complaint, Dkt. 14, which Plaintiffs opposed. Dkt. 21. On September 20, 2021, the Court granted Porsche's motion in part, dismissing the counts for negligence and unjust enrichment. Dkt. 36. At the same time, the Court sustained the trespass and CFAA claim, and also agreed with Plaintiffs that Georgia common law governed Plaintiff's claim even though he had purchased his vehicle (and experienced the PCM rebooting) outside of Georgia. *See generally id.* at 15-21.

The parties then engaged in discovery. Plaintiffs served two sets of requests for production of documents, along with a set of interrogatories. Joint Declaration of Plaintiffs' Counsel ¶ 13 (hereinafter "Counsel's Decl.>"). After Porsche responded to those requests, counsel met and conferred repeatedly to negotiate the scope of Porsche's responses and production. *Id.* ¶ 14. One discovery dispute concerning Porsche's response to an interrogatory was brought to the Court for resolution in May 2022. Dkts. 58; 59.

Plaintiffs also served a third-party subpoena on Sirius XM—the other entity suspected to have been involved in transmitting the May 2020 update. Counsel's Decl. ¶ 15. Plaintiffs worked with Sirius to negotiate a document production. *Id.* Plaintiffs then reviewed the thousands of documents produced by Porsche and

Sirius, working alongside their technical expert to prepare for upcoming depositions and class certification. *Id.* ¶ 18.

All the while, Porsche consistently denied liability and vigorously defended itself against the suit. *Id.* ¶ 9. The parties were beginning to prepare for—but did not ultimately reach—the class-certification stage of the litigation, when they agreed to mediate.

On August 9, 2022, the parties mediated with the assistance of Joseph Loveland of JAMS. *Id.* ¶ 21. Following the mediation, and over the course of several weeks with Mr. Loveland’s continued assistance, the parties executed a binding term sheet with the material terms of the class-wide relief. *Id.* The parties did not negotiate attorneys’ fees and litigation costs at the August 2022 mediation, instead deciding to return to conduct another mediation with Mr. Loveland in October 2022. *Id.* ¶¶ 22-23. After reaching agreement regarding fees and costs, the parties spent several weeks negotiating the details of a comprehensive settlement agreement memorializing the terms on which they have agreed to resolve this case.

The details of the parties’ proposed class settlement are reflected in the settlement agreement, attached as Exhibit A to the joint declaration of Plaintiffs’ counsel. (Below, the agreement is shortened as “Settl. Agrm.”)

OVERVIEW OF THE SETTLEMENT

I. The proposed settlement class.

The parties' settlement agreement defines the settlement class as:

[A]ll entities and individuals in the United States who, as of May 20, 2020, owned or leased an Eligible Vehicle.¹

Settl. Agrm. § II(dd). "Eligible Vehicle," in turn, is defined to include any Porsche vehicle equipped with an XM radio antenna and PCM 3.1 (which is the sole PCM model to have been impacted by the rebooting at issue). *Id.* § II(h).

II. The relief for the settlement class.

The proposed settlement provides a range of benefits to the class.

Reimbursement of costs: First, Porsche has agreed to reimburse any class members who spent money in connection with resolving PCM rebooting. Class members are entitled to reimbursement for PCM replacements, PCM repairs, battery replacements, and any other vehicle repair related to the rebooting. *Id.* ¶ 4.

Class members whose vehicles required repairs will also be entitled to reimbursement of their incidental expenses. This includes costs associated with towing the vehicles (given that some owners reported dead batteries), rental cars

¹ Excluded from the Class are Defendant, any Released Persons, Class Counsel, and the Court, as well as the Court's spouse, and any person within the third degree of relationship to either of them

(for those owners who were without the use of their vehicle during the repair period), and related costs like Uber or Lyft rides. *Id.*

The settlement provides a ceiling for these reimbursements of \$7,500 per vehicle. *Id.* But since this cap well exceeds the average cost of a PCM replacement (\$4,000), Plaintiffs anticipate the cap will impact few (if any) class members. Counsel's Decl. ¶ 25. In addition, class members will be reimbursed only to the extent they have not already previously been reimbursed for their out-of-pocket expenses and are able to substantiate their expenses with documentation. Settl. Agrm. § II(r) & § IV(4).

Ongoing relief: The settlement also covers Porsche owners whose vehicles continue to experience problems (or who may begin to experience problems in the future). Under the settlement, reimbursement remains available for PCM repairs for twelve months following the final approval hearing. *Id.* ¶ 6. The proposed notices, attached as Exhibits 2, 3, and 4 to the settlement agreement, will inform class members that if they still need PCM-rebooting-related repairs, they should visit an authorized Porsche dealership, where their costs will be reimbursable. *See* Exs. 2, 3, 4 to Settl. Agrm.

Compensation for time spent: The settlement also accounts for the fact that many class members still had to spend time and effort to rectify the issues caused

by the update but were able to either benefit from a free “hard reset” repair offered by Porsche dealerships or take some other step to resolve the issue that did not require them to incur costs. To ensure all class members have the opportunity to benefit from the settlement, the settlement includes a “floor” to provide a minimum level of compensation to these individuals. *See* Settl. Agrm. ¶ 4. Any class member who spent time addressing the issue but does not claim reimbursement of out-of-pocket costs can nevertheless receive a \$25 cash payment or, if they choose, a \$50 credit usable at any authorized Porsche dealership. *Id.*

Simple claim process: To ensure compensation is made readily available, the parties devised a simple claims process. Claims can be filed electronically, and the claim forms will be prepopulated with information including the class member’s name, contact information, and vehicle model. Ex. 1 to Settl. Agrm. Class members seeking reimbursement of costs need only provide the total unreimbursed dollar amount and a repair receipt or other document showing the costs. *Id.* For those claiming the \$25 payment or \$50 dealer credit, no documentation is required; they need only sign their name and aver that they spent time resolving the PCM rebooting. *Id.*

Direct notice to the class: The parties have retained an experienced notice provider, A.B. Data, to administer the proposed settlement. Settl. Agrm. ¶ 10. The

settlement agreement requires A.B. Data to use best practices in disseminating notice to the class. *Id.* ¶¶ 11-14. Notice will be sent via email or postcard notice. *Id.* ¶ 20. Porsche has either an email address or a mailing address for virtually all class members. *Id.* ¶¶ 11, 18, 22.

A.B. Data will also maintain a settlement website with a long-form settlement notice, where class members can learn more and submit their claims. *Id.* ¶¶ 25-27; *see also* Ex. 3 to Settl. Agrm. Class members who are entitled to payment under the settlement can choose their preferred payment option, including via PayPal, Venmo, ACH direct bank deposit, or by check. Settl. Agrm. ¶ 30(a).

III. Scope of class members' release of claims.

In exchange for the benefits provided under the settlement, class members will release their claims against Porsche arising out of or related in any way to PCM 3.1 rebooting issues. *Id.* ¶ 61. Plaintiffs have agreed to dismiss the action with prejudice upon final approval of the settlement. *Id.* ¶ 71.

IV. Attorneys' fees and litigation costs.

In October 2022, after they had already executed a binding term sheet for the class's relief, the parties engaged in a second mediation with Mr. Loveland to negotiate the issue of attorneys' fees and litigation costs. Counsel's Decl. ¶ 23. While the parties did not reach agreement at the mediation, they eventually agreed

to a double-blind mediator's proposal. *Id.* Per that agreement, Porsche has agreed to pay up to \$1,975,000 in attorneys' fees and \$75,000 in litigation cost reimbursements. Settl. Agrm. ¶¶ 37-38.

ARGUMENT AND CITATION TO AUTHORITY

“The decision to give notice of a proposed settlement to the class is an important event. It should be based on a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object.” Fed. R. Civ. P. 23(e)(1), Advisory Committee's Notes (2018).

To that end, a court should not preliminarily approve a settlement unless it believes it will likely be able to: (1) “approve the proposal under Rule 23(e)(2),” and (2) “certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B). If the court grants preliminary approval, it must direct notice to the class in a manner consistent with Fed. R. Civ. P. 23(c)(2)(B) and due process. *See Kuhr v. Mayo Clinic Jacksonville*, 530 F. Supp. 3d 1102, 1113 (M.D. Fla. 2021).

On the first point, whether the settlement merits approval, courts are guided by the elements in Rule 23(e)(2). Supplementing those Rule 23(e) elements, are the “Bennett factors.” *See generally Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *see also In re Equifax Customer Data Sec. Breach Litig.*, 999 F.3d

1247, 1273-74 (11th Cir. 2021) (affirming district court's application of both Rule 23 and *Bennett* factors).

Below, Plaintiffs explain why the settlement merits approval, under both the Rule 23(e)(2) elements and the *Bennett* factors, before later explaining why the class satisfies the requirements for class certification and the proposed notice plan is sufficient.

I. The proposed settlement is fair, reasonable, and adequate under the Rule 23(e)(2) elements.

To assess whether a proposed settlement is fair, reasonable, and adequate, Rule 23(e)(2) directs courts to consider: (1) the adequacy of representation; (2) whether the proposal was negotiated at arm's length; (3) the adequacy of the relief provided by the settlement; and (4) whether the agreement treats class members equitably. *See* Fed. R. Civ. P. 23(e)(2). Each element is addressed in turn.

A. Both the Plaintiffs and their counsel have adequately represented the class.

The first factor for consideration under Rule 23(e)(2) is the adequacy of representation by the class representatives and attorneys.

Starting with the class representatives, both Kent Bowen and Kathleen Darnell have faithfully and ably performed their roles representing the class. They actively participated in the years-long litigation, providing relevant information at

counsel's request, and they stayed abreast of litigation developments throughout the case. Counsel's Decl. ¶¶ 12-13.

Plaintiffs' counsel, for their part, have also adequately represented the class. Counsel have considerable experience litigating complex automotive-defect and consumer-protection class actions like this one. *Id.* ¶ 3; *see also* Exs. B, C, D to Counsel's Decl. They deployed that experience here, conducting a thorough initial investigation and pleading a detailed initial complaint. *See* Dkt. 1; Counsel's Decl. ¶¶ 7-8. They successfully opposed Porsche's motion to dismiss, leading to two nationwide claims being sustained. *See* Dkt. 36; Counsel's Decl. ¶ 10. They also engaged in significant formal discovery; negotiated the scope of productions from both the Defendant and a third party; and analyzed the thousands of pages of documents that were produced—including a number of highly technical documents. Counsel's Decl. ¶¶ 13-15. They met and conferred regularly with defense counsel and third-party counsel to work through objections, resolving many disputes cooperatively, while successfully litigating one discovery dispute. *Id.* ¶ 14; *see also* Dkt. 58. Counsel also retained a well-qualified expert to assist in discovery, the review of documents, and for class certification. Counsel's Decl. ¶ 18. And finally, counsel spent dozens of hours in hard-fought negotiations that produced a settlement agreement that provides substantial benefits to class

members—indeed, as much relief as reasonably could be expected if this case had been litigated through trial. *Id.* ¶¶ 25-26.

These efforts required counsel to devote over 2,448 hours to this case, while also advancing tens of thousands of dollars in litigation expenses. *Id.* ¶¶ 27, 29. In light of counsel’s “longstanding experience in complex consumer class action litigation,” and their “dedicat[ion of] significant resources to this action,” the settlement class was adequately represented. *See Pinon v. Daimler AG*, 2021 WL 6285941, at *6 (N.D. Ga. Nov. 30, 2021).

B. The proposed settlement was negotiated at arm’s length.

The second Rule 23(e)(2) element asks the Court to confirm that the proposed settlement was negotiated at arm’s length. Fed. R. Civ. P. 23(e)(2)(B). This element is a “procedural” concern, that “look[s] to the conduct of the litigation and of the negotiations leading up to the proposed settlement.” Fed. R. Civ. P. 23(e)(2)(A)-(B), Advisory Committee’s Notes. As this Court has noted, Rule 23(e)(2)(B) is satisfied where “the Settlement Agreement was not the product of fraud or collusion.” *Pinon*, 2021 WL 6285941, at *7.

Here, there are multiple indicia of the arm’s length nature of the negotiations. First, the parties did not begin negotiating until August 2022, after the case had been pending for a year and a half. Counsel’s Decl. ¶ 21. By then, the

parties had already engaged in pretrial motion practice, conducted discovery, and were preparing for class certification briefing. *Id.* ¶ 18.

Second, the parties reached a settlement with the assistance of Mr. Loveland as their mediator. *Id.* ¶ 21. “[T]he involvement of a neutral . . . mediator or facilitator in the [the parties’] negotiations may bear on whether they were conducted in a manner that would protect and further the class interests.” Fed. R. Civ. P. 23(e)(2)(A)-(B), Advisory Committee’s Notes. “The fact that the entire mediation was conducted under the auspices of . . . a highly experienced mediator, lends further support to the absence of collusion.” *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001).

Finally, the nature of the attorney’s fee negotiations also shows the non-collusive nature of the settlement. Upon reaching consensus on the proposed class’s relief at an initial mediation, the parties deferred the issue of attorneys’ fees to a later mediation. Counsel’s Decl. ¶ 22. They agreed that while they would try to negotiate fees, even without a fee agreement, they would still present the proposed settlement to the Court. *Id.* The parties then mediated a second time with Mr. Loveland, later agreeing to a double-blind mediators’ proposal. *Id.* ¶ 23.

The Court can thus be confident that no aspect of the proposed agreement was “the product of fraud or collusion.” *See Pinon*, 2021 WL 6285941, at *7.

C. The quality of relief to the class weighs in favor of approval.

The third Rule 23(e)(2) element asks the Court to assess the adequacy of the settlement's relief for the class. Fed. R. Civ. P. 23(e)(2)(C)-(D), Advisory Committee's Notes. The Court is to consider (1) the costs, risks, and delay of trial and appeal; (2) the effectiveness of the proposed methods of distributing relief and processing claims; (3) the terms of any proposed attorneys' fees awards; and finally, (4) any agreements made in connection with the proposal. *See* Fed. R. Civ. P. 23(e)(2)(C)(i)-(iv).

1. The settlement provides strong relief for the proposed class.

The proposed relief is significant. Most notably, Porsche will be making available full reimbursement of the costs incurred by class members to resolve the PCM rebooting, up to \$7,500 per vehicle. This includes not only reimbursement for the PCM replacements (each of which cost thousands of dollars), but also reimbursement for other repairs (including drained-battery replacements). *Settl. Agrm.* § II(r).

This relief is not merely retrospective. Plaintiffs' counsel has heard from class members whose vehicles continue to suffer ill effects as a result of the PCM rebooting. Counsel's Decl. ¶ 8. Such class members will have over a year from

receiving notice to bring their vehicles to a Porsche dealership for repair, and they too will be entitled to repair reimbursements. Settl. Agrm. ¶ 6.

In addition to repair costs, class members will also be entitled to reimbursement of incidental costs. This includes costs for tow trucks, rental cars, and alternative transportation such as Uber and Lyft. *Id.* § II(r). In short, a wide variety of costs stemming from the PCM rebooting will be fully reimbursed.

This is a strong result that matches what class members may have expected to receive upon winning at trial. *See Wilson v. EverBank*, 2016 WL 457011, at *9 (S.D. Fla. Feb. 3, 2016) (approving claims-made settlement providing “near-complete relief that very likely exceeds what [class members] could have recovered at trial, which is extraordinary for any settlement.”). While the settlement caps per-vehicle recovery at \$7,500, the parties anticipate this cap will rarely come into play, since even the most expensive repairs (PCM replacements) were typically around \$4,000. *See Counsel’s Decl.* ¶ 25.

In addition, the settlement recognizes that while many class members were inconvenienced by the PCM rebooting, a sizable portion of the class did not incur out-of-pocket costs because they were able to solve the problem through a free “hard reset” procedure. *Id.* ¶ 17. To ensure these class members too are provided fair compensation, the settlement allows this portion of the class their choice of

\$25 in a direct electronic payment (*e.g.*, through Venmo or PayPal) or \$50 in the form of a Porsche dealer credit. Settl. Agrm. ¶ 30(a).

The total package of relief being made available, from Plaintiffs' perspective, readily satisfies the Rule 23 standard of fair, reasonable, and adequate. The settlement affords every class member who spent money on PCM rebooting the opportunity to be made whole. It fairly compensates class members who suffered inconvenience, but no economic injury. And it provides prospective relief in the form of repair reimbursements going forward. The strength of the proposed settlement's relief weighs in favor of preliminary approval. *See Wilson*, 2016 WL 457011, at *2 (noting that providing near-complete relief to class members on a claims-made basis" is an "extraordinary" result); *see also Montoya v. PNC Bank, N.A.*, 2016 WL 1529902, at *20 (S.D. Fla. Apr. 13, 2016) (approving claims-made settlement as "substantively fair, offering complete relief (or better) to every interested Claimant.").

2. Continued litigation would entail substantial cost, risk, and delay.

Settlement approval is further warranted because continued litigation would be risky, protracted, and costly. Fed. R. Civ. P. 23(e)(2)(C)(i). The proposed settlement provides essentially complete relief now, avoiding years of continued motion practice, the uncertainty of trial, and subsequent appeals.

Continued litigation would mean re-opening discovery, including expert discovery, briefing a class certification motion, potentially followed by summary judgment, *Daubert* motions, and motions in limine, all before the parties would even reach trial. While a jury could award the class more in damages than they will receive under the proposed agreement, “such an outcome is far from guaranteed,” and would only “occur, if at all, after years of protracted litigation, including appeals.” *See Pinon*, 2021 WL 6285941, at *7. Distributing to class members now relief that is likely equal to (or greater than) what a jury might award years from now weighs heavily in favor of approval.

3. The settlement agreement provides for a streamlined claims process and an effective distribution of proceeds to the class.

Next, the proposed settlement contemplates an efficient and effective claims process, *see* Fed. R. Civ. P. 23(e)(2)(C)(ii), overseen by A.B. Data, a claims administrator “highly experienced in administering large class action settlements.” *See Pinon*, 2021 WL 6285941, at *7.

The claims process for class members has been designed to be as simple and straightforward as possible. To claim reimbursement, class members need only provide (1) the approximate dates they owned their vehicle; (2) total unreimbursed expenses they incurred; and (3) a repair receipt or other documentation showing

what they paid. Ex. 1 to Settl. Agrm. Class members who did not incur costs (or who lack documentation of their costs) need only (1) provide the approximate dates they owned their vehicle, (2) confirm they spent some amount of time addressing the rebooting, (3) choose between a \$25 payment or \$50 dealer credit; and (4) electronically sign the claim form. *Id.* Filing a claim should take just a few short minutes.

Once the settlement is approved, the settlement administrator will provide class members with a choice between Venmo, PayPal, direct deposit, or a paper check to receive payment. Settl. Agrm. ¶ 30(a); *see Pinon*, 2021 WL 6285941, at *7 (approving settlement with check and electronic payment options). The claims and payment process should thus encourage class member participation.

4. The terms of the proposed attorneys' fees support preliminary approval.

Nothing about the negotiated attorneys' fee should detract from the fairness of the settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii).

Plaintiffs will make a detailed fee showing—including by offering expert testimony on the value of the proposed settlement as well as providing their detailed lodestar information—when they file their motion for fees and cost-reimbursements. Counsel's Decl. ¶¶ 28-29. Although that work remains underway, Plaintiffs can foreshadow now that their requested fee and cost payment will be

equal to or less than 33 percent of the proposed settlement’s value—well within the typical range in the Eleventh Circuit. *See, e.g., Pinon*, 2021 WL 6285941, at *17 (approving fee valued between 21%-33% of the settlement, noting that “courts within this Circuit have routinely awarded attorneys’ fees of 33 percent or more of the gross settlement fund.”); *see also Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) (establishing “reasonable percentage of the fund” as the proper method of calculating attorneys’ fees in common fund cases); *Poertner v. Gillette Co.*, 618 F. App’x 624, 628 n.2 (11th Cir. 2015) (noting the *Camden I* rule should apply with equal force to claims-made settlements because they are “functional[ly] equivalent.”).

For now, in the context of assessing the impact (if any) of the proposed attorneys’ fees on preliminary settlement approval, Plaintiffs note that the fees—as with the rest of the settlement—were negotiated at arm’s length. As discussed, the parties (with Mr. Loveland’s assistance) finalized the material terms of the class-wide relief before ever broaching attorneys’ fees, so there is no risk that the fee agreement impacted the nature of the class relief. Counsel’s Decl. ¶ 22; *see Pinon*, 2021 WL 6285941, at *7 (granting final approval to class settlement, including proposed fee award, where “the parties negotiated attorneys’ fees for Class Counsel only after reaching agreement on the terms of the relief to the Class.”).

Moreover, because any fee award will be paid “separate from and in addition to,” relief provided to the class, Settl. Agrm. ¶ 37, “[t]he payment of fees does not impact the amount of relief available to the Class Members.” *See Pinon*, 2021 WL 6285941, at *7.

5. The parties have no other agreements pertaining to the settlement.

The final factor for consideration under Rule 23(e)(2)(C) is the existence of any agreements required to be identified by Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C)(iv). The settlement agreement currently before the Court is the only extant agreement. Counsel’s Decl. ¶ 24.

D. The settlement treats all settlement class members equitably.

The final element under Rule 23(e)(2) concerns whether the proposed settlement “treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). “Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways.” Fed. R. Civ. P. 23(e)(2)(C)-(D), Advisory Committee’s Notes.

Because the available relief is commensurate with the harm suffered by individual Porsche owners, this settlement treats class members equitably. Class

members who spent money on repairs related to PCM rebooting are entitled to reimbursement of the repair cost. Class members who spent money on incidental expenses like towing or alternative transportation are entitled to reimbursement of those costs too. Settl. Agrm. § II(r). Class members whose vehicles still require PCM repairs have the right to obtain reimbursable repairs from Porsche dealers for the year following the Court’s final approval hearing. *Id.* ¶ 6. And class members who dealt with rebooting, but incurred no hard costs, may claim either \$25 or a \$50 dealer credit. *Id.* ¶ 4. Thus, everyone in the class who spent time or money addressing rebooting will be eligible for compensation, with the amount varying based only on the harm incurred.

The fact that relief varies based on the degree of expense incurred is not a detriment—it’s a strength. “While class members who have incurred out-of-pocket losses will be able to recover more relative to class members who have not, this allocation is fair and equitable because these class members would have had the ability to seek greater damages at trial.” *In re Equifax Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *9 (N.D. Ga. Mar. 17, 2020), *aff’d in relevant part, rev’d in part*, 999 F.3d 1247 (applying Rule 23(e)(2)(D)); *see also In re Blue Cross Blue Shield Antitrust Litig.*, 2022 WL 4587618, at *31 (N.D. Ala. Aug. 9, 2022) (“In the Eleventh Circuit, ‘there is no rule that settlements benefit all class

members equally’ so long as any differences are ‘rationally based on legitimate considerations’”) (citation omitted).

Finally, because all class members will provide an identical release of claims, the settlement treats all class members equitably in this regard, further supporting approval of the settlement. Settl. Agrm. § XIV; *see* Fed. R. Civ. P. 23(e)(2)(C)-(D), Advisory Committee’s Notes.

II. The proposed settlement is fair, reasonable, and adequate under the *Bennett* factors.

In *Bennett v. Behring Corp.*, the Eleventh Circuit articulated the following list of additional factors for approving class settlements:

(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; . . .² and (6) the stage of proceedings at which the settlement was achieved.

737 F.2d at 986. While this analysis overlaps with some of the Rule 23(e)(2) elements, the *Bennett* factors further support approval of the proposed settlement.

² The fifth *Bennett* factor, “the substance and amount of opposition to the settlement” is not yet ripe for consideration given that notice and the opportunity to opt-out or object has not been issued. *Bennett*, 737 F.2d at 986. This factor will be briefed when Plaintiffs move for final approval.

A. Plaintiffs’ likelihood of success; the complexity, expense, and duration of continued litigation; and the stage at which settlement was achieved all favor preliminary approval.

The first, fourth, and sixth *Bennett* factors all concern the cost-benefit calculation inherent to settlement and are thus appropriately evaluated together.

Plaintiffs cleared a “substantial hurdle[]” towards success on the merits by defeating Porsche’s motion to dismiss as to their trespass to personalty and Computer Fraud and Abuse Act claims. Dkt. 36; *see Pinon*, 2021 WL 6285941, at *8. While Plaintiffs and Class Counsel are confident in their claims, it remains “entirely possible,” however, “that Plaintiffs would not prevail” on those claims at class certification, summary judgment, or trial. *Pinon*, 2021 WL 6285941, at *8. Since the proposed settlement will provide near-full relief, it is unclear what upside the class would gain for assuming that additional risk.

This case has already proven to be “complex, expensive, and time-consuming,” when considering the technology and parties involved. *See id.* As this Court reasoned in *Pinon*, if the parties continue litigating, they will “have to devote significant time” to expert discovery, class certification briefing, summary judgment motions, and motions to exclude expert testimony, before ever reaching the merits. *See id.* Moreover, even if Plaintiffs were successful at trial months or

even years from now, the case would “likely undergo a protracted appellate process,” during which class members “would be without any remedy.” *See id.*

Finally, this case is mature enough that Plaintiffs have been able to “evaluate the desirability of the settlement as opposed to continuing with the litigation.” *See id.* at *9. This Court recently approved a settlement reached at a similar stage of litigation, noting that “[t]he settlement was not achieved until after a ruling on a motion to dismiss and after both sides engaged in extensive discovery,” as here. *See id.* Given the stage of the litigation and the favorability of the settlement currently before the Court, preliminary approval is warranted under the first, fourth, and sixth *Bennett* factors.

B. The range of possible recovery and the point at which the settlement is fair, reasonable, and adequate, favor preliminary approval.

The second and third *Bennett* factors compare the proposed relief against the range of possible recovery. Here, Plaintiffs believe they have recovered what they may reasonably have hoped to recover at trial. The settlement accounts for the expenses class members incurred, offers to reimburse those expenses in full with a cap that is so generous it is unlikely to affect many (if any) class members, and also compensates those class members who suffered nothing but a loss of time or

inconvenience—a challenging harm to remedy in class cases. *See* Counsel’s Decl. ¶¶ 25-26.

Since “courts regularly find settlements to be fair even where ‘[p]laintiffs have not received the optimal relief,’” the Court should preliminarily approve this proposed settlement, which provides meaningful, comprehensive, and near-optimal relief. *See Pinon*, 2021 WL 6285941, at *9 (citation omitted).

C. The judgment of class counsel favors preliminary approval.

While not an enumerated *Bennett* factor, this Court and others in the Eleventh Circuit afford great weight to the judgment of class counsel in reaching a proposed class settlement. *Id.* at *10 (“[I]n a case where experienced counsel represent the class, the Court ‘absent fraud, collusion, or the like, should hesitate to substitute its own judgment for that of counsel’”); *see also Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (same). Here, Plaintiffs’ counsel are experienced automotive-defect and consumer-protection litigators. Based on their experience and knowledge of this case, they have concluded that the settlement is a strong result for the class. Counsel’s Decl. ¶ 4. The Court may consider counsel’s “judgment that the benefits of this settlement far outweigh the delay and considerable risk of proceeding to trial.” *Pinon*, 2021 WL 6285941, at *10 (citing *Ingram*, 200 F.R.D. at 691).

III. This Court should preliminarily certify the Settlement Class because it meets all requirements of Rule 23(a) and (b).

As was noted above, before granting preliminary settlement approval, the Court must also determine that it will likely be able to certify the proposed settlement class. Fed. R. Civ. P. 23(e)(1)(B)(ii).

This requires a finding that the four prerequisites of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—are met. Plaintiffs must also establish one of the three requirements of Rule 23(b). Relevant here, under Rule 23(b)(3), certification is appropriate where “questions of law or fact common to class members predominate over any questions affecting only individual members, and [where] a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). In addition, the parties “must establish that the proposed class is adequately defined and clearly ascertainable.” *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012) (internal quotations and citations omitted).

As a threshold matter, every member of the proposed settlement class for whom damages are being made available has standing. *See Drazen v. Pinto*, 41 F.4th 1354, 1360 (11th Cir. 2022). By definition, every member of the proposed class owned or leased a vehicle that received the software update that led to the rebooting cycles. Settl. Agrm. §§ II(dd), II(h). As plaintiffs have alleged, that

update constituted a trespass to the vehicle of every settlement class member because it intruded onto their property without consent. Therefore, each class member suffered a harm that is concrete, particularized, and directly analogous to (in fact, *is*) an injury that historically existed at common-law—the unauthorized intrusion upon personal property. *See, e.g., Drazen*, 41 F.4th at 1362-63. In addition, class members will not receive compensation absent a showing that they incurred an injury in the form of having spent money and/or time resolving PCM 3.1 rebooting. All members of the settlement class therefore have standing to obtain the relief that the settlement agreement provides.

A. The Settlement Class meets the requirements of Rule 23(a).

1. The Settlement Class is ascertainable.

Before reaching the enumerated pre-requisites of Rule 23(a), this Court must further determine that the “proposed class is adequately defined and clearly ascertainable.” *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1302 (11th Cir. 2021) (internal quotations omitted). “[A] proposed class is ascertainable if it is adequately defined such that its membership is capable of determination.” *Id.* at 1304. “A class is inadequately defined if it is defined through vague or subjective criteria.” *Id.* at 1302.³

³ In *Cherry*, the Eleventh Circuit joined the Second, Sixth, Seventh, Eighth, and

Here, the parties' settlement defines the settlement class as "all entities and individuals in the United States who, as of May 20, 2020, owned or leased an Eligible Vehicle." Settl. Agrm. § II(dd). "Eligible Vehicle" is defined as "a Porsche vehicle equipped with an XM radio antenna and Porsche Communication (PCM) system 3.1." *Id.* § II(h). These definitions use clear and objective criteria that allow this Court to determine who is a member of the settlement class. Porsche maintains records indicating which vehicles were equipped with a PCM 3.1 and who the owners or lessees were for those vehicles. *See id.* ¶¶ 16, 22. As a result, the settlement class satisfies the *Cherry* ascertainability standard.

2. The settlement class is sufficiently numerous.

Next, the Court must consider each of the enumerated requirements in Rule 23(a). The first of those requirements is that the settlement class is sufficiently numerous "that joinder of all class members is impracticable." Fed. R. Civ. P. 23(a)(1). "[W]hile there is no fixed numerosity rule, classes of more than forty members presumptively satisfy numerosity." *Pizarro v. Home Depot, Inc.*, 2020 WL 6939810, at *7 (N.D. Ga. Sept. 21, 2020) (quoting *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)).

Ninth Circuits in holding that the ascertainability inquiry does not include an administrative feasibility requirement. *Cherry*, 986 F.3d at 1302.

Based on information received in discovery, there are roughly 200,000 PCM 3.1-equipped vehicles. *See* Counsel’s Decl. ¶ 16. Even if not all of those vehicles remained in operation on May 20, 2020, there are more than a sufficient number of Class Members to satisfy numerosity. *See M.H. v. Berry*, 2017 WL 2570262, at *4 (N.D. Ga. June 14, 2017) (courts may rely on a “common sense assumption to support a finding of numerosity”). As a result, the settlement class satisfies the numerosity requirement.

3. There are questions of fact and law common to the settlement class.

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality is a “low hurdle” because it requires only “that there be at least one issue whose resolution will affect all or a significant number of the putative class members.” *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355–56 (11th Cir. 2009). “The commonality element is generally satisfied when a plaintiff alleges that defendants have engaged in a standardized course of conduct that affects all class members.” *In re Checking Acct. Overdraft Litig.*, 307 F.R.D. 656, 668 (S.D. Fla. 2015) (internal quotations and citations omitted). Such is the case here. The settlement class’s claims are all rooted in common factual and legal issues: whether a May 2020 update was sent to class members’ vehicles, whether the update came without the consent of the class, and whether the update

caused PCMs to enter a rebooting cycle. These issues are central to each of the claims in this case and common to the class.

4. The class representatives' claims are typical of the Settlement Class.

The class representatives also meet Rule 23(a)(3)'s requirement that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "A representative plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of the other class members, and his or her claims are based on the same legal theory." *In re Tri-State Crematory Litig.*, 215 F.R.D. 660, 690 (N.D. Ga. 2003) (internal quotations and citation omitted). "Like commonality, the test for typicality is not demanding." *In re Checking Acct. Overdraft Litig.*, 286 F.R.D. 645, 653 (S.D. Fla. 2012) (citation omitted).

Both the class members and the class representatives all complain of the same kind of injury "from the same event or pattern or practice"—*i.e.*, they all had PCM 3.1 systems that were subject to the rebooting problems, stemming from a single incident related to the May 2020 update. *See Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) ("[P]laintiffs clearly present claims typical of the class. The cause of action arises from a single event and there is no variation in legal theory.").

5. The class representatives and class counsel are adequate to protect the interests of the settlement class.

Finally, Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class,” and Rule 23(g) requires this Court to appoint adequate counsel to represent the class. Fed. R. Civ. P. 23(a)(4) & (g). “To adequately represent a class, a named plaintiff must show that she possesses the integrity and personal characteristics necessary to act in a fiduciary role representing the interests of the class, and has no interests antagonistic to the interests of the class.” *Sanchez-Knutson v. Ford Motor Co.*, 310 F.R.D. 529, 540 (S.D. Fla. 2015). With respect to appointment of class counsel, this Court must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.

Id. at 542. As discussed above, class counsel and the class representatives have adequately represented the class, satisfying this requirement. *See supra* Part I.A.

B. The Settlement Class meets the requirements of Rule 23(b).

In addition to meeting the requirements of Rule 23(a), the settlement class also satisfies the criteria in Rule 23(b)(3) and the requirements of 23(b)(2) with respect to the non-monetary aspects of the settlement.

1. The Settlement Class satisfies Rule 23(b)(3) because common issues of law and fact predominate.

The “predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). It “asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453–54 (2016). In the Eleventh Circuit, the predominance inquiry is “customarily applied . . . on a claim-by-claim basis.” *Battle v. Liberty Nat’l Life Ins. Co.*, 770 F. Supp. 1499, 1516 n.48 (N.D. Ala. 1991), *aff’d* 974 F.2d 1279 (11th Cir. 1992).

The operative complaint raises two claims—trespass to personalty, and violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030. As to the CFAA claim, Plaintiffs must show “that [a defendant] has (1) intentionally accessed (2) a protected computer (3) without authorization, and (4) as a result of such conduct, has (5) intentionally, recklessly or otherwise caused (6) damage.”

Dkt. 36, at 7 (quoting *FERCO Enters., Inc. v. Taylor Recycling Facility LLC*, 2007 WL 9701361, at *30 (N.D. Ga. Oct. 16, 2007), *aff'd*, 291 F. App'x 304 (11th Cir. 2008)). Whether Porsche intentionally accessed the PCM through an update, whether Porsche had consent to access the PCMs through that update, and whether the update caused PCMs to enter a rebooting cycle are, in Plaintiffs' view, all common questions, subject to proof that would apply to all class members. Indeed, the only element of the CFAA claim that is arguably subject to individualized consideration is the extent of each class member's damages, which generally is not an impediment to a finding of predominance. *See Curriuolo v. GM Co.*, 823 F.3d 977, 988 (11th Cir. 2016) (“[I]ndividualized damages calculations are insufficient to foreclose the possibility of class certification, especially when, as here, the central liability question is so clearly common to each class member.”).

Likewise, with the trespass to personalty claim, Plaintiffs must prove that Defendant (1) interfered with personal property, (2) that belonged to the plaintiff (3) without the plaintiff's consent. *See* Dkt. 36 at 22–23 (citing *Caldwell v. Church*, 341 Ga. App. 852, 856–57 (2017)). In Plaintiffs' view, the reasoning in the Court's Order on Porsche's motion to dismiss implies that both the question of whether the transmission constituted a trespass and whether drivers implicitly

consented to that transmission, raise questions of law that would be well-suited to answering on a class-wide basis. *See generally* Dkt. 36 at 9-13; 21-26.

With common questions that can be answered on a class-wide basis, the proposed settlement class meets the predominance requirement.

2. Class-wide settlement is the superior method for resolving the claims at issue in this case.

Finally, class treatment here is superior, especially in the context of a settlement. “[T]he superiority requirement of Rule 23(b)(3) turns on whether a class action is better than other available methods of adjudication.” *Cherry*, 986 F.3d at 1304; *see also Lewis v. ARS Nat’l Servs., Inc.*, 2011 WL 3903092, at *4 (M.D. Ala. Sept. 6, 2011) (“Certification under 23(b)(3) is often appropriate for cases in which individual damages are low, thereby providing little incentive for individual suits.” (citing *Amchem*, 521 U.S. at 617)).

Many class members here are likely to have claims worth only a few thousand dollars, with a significant number of class members having suffered essentially nominal damages. Losses of this magnitude are not economically rational to bring as individual claims, as demonstrated by the fact that the parties are aware of no individual actions having been filed in connection with the May 20, 2020, incident. Counsel’s Decl. ¶ 8. As such, resolving the claims of all class

members in a single action is superior to relying on (currently theoretical) individual suits.

Further, manageability concerns are not relevant to settlement. As the Supreme Court has held, in the settlement context, “a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620. In short, any concerns over the manageability of a nationwide class are not relevant to the resolution of this motion, as Plaintiffs are seeking certification of a settlement class, and the Court will not be tasked with managing a trial.

* * *

For the reasons set forth above, the settlement class meets all criteria of Rule 23(a) and Rule 23(b), and the Court should preliminarily find that certification of the settlement class is appropriate.

IV. The Court should approve the form and plan for disseminating notice to the class members.

Following preliminary approval, Rule 23(e)(1) requires that the Court “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). That notice “must contain information reasonably necessary to make a decision to remain a class member and be bound

by the final judgment or opt out of the action.” *In re HealthSouth Corp. Sec. Litig.*, 334 F. App’x 248, 254 (11th Cir. 2009) (internal quotations omitted).

A. The Court should adopt the parties’ proposed notice program.

The parties’ proposed notice plan—which was developed in conjunction with A.B. Data, a legal notification firm with extensive experience designing large-scale legal notification plans—meets the criteria of Rule 23. Settl. Agrm. § VI. The proposed summary notices and long-form notice would be in substantially the same form as Exhibits 2-4 to the Settlement Agreement. The summary notice will inform settlement class members of, among other things: the nature of this case and the Plaintiffs’ claims; the terms of the proposed settlement; how to make a claim for benefits of the settlement, if it is approved; how to object to the settlement or opt out of the class; the existence of class counsel and the provision for payment of attorneys’ fees in the settlement; the hearing this Court will hold for final approval of the settlement; and how class members can obtain a long-form notice with more detailed information about the settlement. *See* Exs. 2, 3, 4 to Settl. Agrm. The proposed notices provide sufficient information to allow class members to determine how to proceed with respect to the settlement and to meet the requirements of due process.

Further, the parties' proposed plan for distributing notice will ensure that as many potential class members as possible will receive notice of the settlement. Email notices (with follow-up reminders) will be sent to those class members for whom Porsche has an email address. *See* Fed. R. Civ. P. 23(c)(2)(B) Advisory Committee's Notes (amending permissible forms of notice in Rule 23(b)(3) class actions to include electronic notice). For the remaining class, postcard notices will be mailed. A.B. Data will also update those addresses using the National Change of Address database and remail returned postcards if a forwarding address is provided or can be traced using national databases like Experian. *Settl. Agrm.* ¶ 22. Because Porsche possesses records for "substantially all" class members, the parties are confident that this notice program will reach the overwhelming majority of class members. *See id.*

The parties respectfully submit that the notice plan described in the settlement agreement and Exhibits 2-4 thereto constitutes the best practicable notice under the circumstances, satisfies due process and all other applicable requirements, and should be approved.

B. The Court should adopt the proposed settlement schedule.

Finally, the parties request that this Court set the following proposed schedule for disseminating notice and holding a final approval hearing:

| Event | Deadline |
|--|---|
| Deadline for disseminating class notice | 30 days after order granting preliminary approval |
| Deadline for Plaintiffs' motion seeking final settlement approval and award of attorneys' fees and cost reimbursements | 51 days before final approval hearing |
| Deadline for class members to object or opt out of settlement | 30 days before final approval hearing |
| Deadline for replies in support of final approval motion | 14 days before final approval hearing |
| Final approval hearing | At least 105 days after order granting preliminary approval |

CONCLUSION

Plaintiffs respectfully request that the Court preliminarily approve the settlement the parties have reached. A proposed order doing so is attached as Exhibit 5 to the Settlement Agreement.

Respectfully submitted this 11th day of January, 2022.

By: /s/ Matthew R. Wilson

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LOCAL RULE 7.1(D) CERTIFICATION

The undersigned counsel certifies that the foregoing document has been prepared with one of the font and point selections approved by the Court in LR 5.1(B).

This 11th day of January, 2023.

/s/ T. Brandon Waddell

T. Brandon Waddell

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Counsel for Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing by electronically mailing a copy of the same to counsel of record, who, by registering with the Court's CM/ECF system, has consented to electronic service.

This 11th day of January, 2023.

/s/ T. Brandon Waddell

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*Counsel for Plaintiffs and the Proposed
Class*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KENT BOWEN and KATHLEEN
DARNELL on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

PORSCHE CARS, N.A., INC.

Defendant.

Case No. 1:21-CV-471-MHC

**JOINT DECLARATION OF PLAINTIFFS' COUNSEL IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

We, Brandon Waddell of Caplan Cobb LLC, David Stein of Gibbs Law Group LLP, and Matthew Wilson of Meyer Wilson Co., LPA, provide the following declaration based upon our personal knowledge and belief, information obtained in the course of our representation in this matter, and review of our firms' files relating to this litigation. If called as witnesses, we could and would competently testify to the below facts:

1. We serve as counsel for the Plaintiffs and proposed class in this action against Porsche Cars North America, Inc., and submit this declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

2. After almost two years of hard-fought litigation, the parties have reached a settlement, the terms of which are described below and memorialized in the Settlement Agreement. A true and correct copy of the Settlement Agreement is attached as **Exhibit A**.

3. Our firms have extensive experience prosecuting class actions involving automotive defects and related consumer protection issues, and we have brought that experience to bear over the course of this litigation and in the context of negotiating and finalizing the proposed settlement. *See Exhibit B* (Resumes of

Michael A. Caplan and T. Brandon Waddell), **Exhibit C** (Gibbs Law Group Firm Resume), and **Exhibit D** (Meyer Wilson Firm Resume).

4. Based on our experience and familiarity with the strengths and weaknesses of Plaintiffs' case, we believe the parties' settlement in this case to be fair, reasonable, adequate, and worthy of approval. Among other things, the settlement is on par with, if not superior to, settlements in comparable consumer class action settlements of which we are aware.

Preliminary Investigation

5. Plaintiffs' counsel were approached by Kent Bowen, and later by Kathleen Darnell, in connection with their potential legal claims against Porsche.

6. Mr. Bowen and Ms. Darnell own Porsche vehicles that began experiencing problems with the Porsche Communications Management system (known as the "PCM"). As many other Porsche owners experienced, Plaintiffs' PCMs began rebooting repeatedly, sometimes regardless of whether the engine was turned on. Their PCMs also emitted a loud, unpleasant static sound. Both Plaintiffs incurred thousands of dollars in PCM repair or replacement costs as a result.

7. Our firms conducted an investigation before initiating litigation. That investigation suggested that a May 2020 remote software update had caused

widespread PCM rebooting in Porsche vehicles across the country. Our investigation included the review of similar complaints by other Porsche owners, which not only confirmed the prevalence of the problem, but also that Porsche owners were often forced to pay any resulting repair and repair-related costs on their own, without offers of reimbursement from Porsche.

8. We proceeded to prepare the initial class action complaint, which we filed on behalf of Plaintiff Kent Bowen on January 29, 2021. Since filing the initial complaint, Plaintiffs' counsel have regularly heard from many absent class members who likewise have Porsche vehicles that are experiencing PCM rebooting. We are unaware, however, of any individual actions having been filed in connection with the May 2020 rebooting incident.

Litigation Activities and Discovery

9. Since the inception of this litigation, Porsche has denied the core allegations of our suit, contested our legal theories, and generally offered a zealous defense. Our firms have pushed the case forward nevertheless, prevailing in motion practice, pursuing productive discovery, and devoting substantial time and resources to working with a technical expert as the case advanced toward class certification.

10. For example, on February 24, 2021, Porsche filed a motion to dismiss all four of Plaintiff's claims. We opposed Porsche's motion, and later filed a sur-reply, which the Court agreed to consider. The Court denied major aspects of Porsche's motion, sustaining Plaintiff's claims for trespass to personalty and violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030. The Court also agreed with Plaintiffs that Georgia law governed Plaintiff's trespass claim.

11. Following the Court's ruling on the motion to dismiss, Plaintiff Kathleen Darnell joined the litigation, and Plaintiffs amended their complaint. Porsche answered Plaintiffs' amended class action complaint.

12. During the course of the litigation, both Plaintiffs were actively involved in the case and remained in close contact with counsel to ensure they were able to stay informed about the progress of the case.

13. We worked with Plaintiffs to provide initial disclosures, documents, and other information in furtherance of the litigation. Plaintiffs also served requests for production and interrogatories on Porsche in November 2021. Porsche responded to the requests for production in December 2021, and to the interrogatories in January 2022. Plaintiffs served a second set of requests for production in March 2022. Porsche responded to the second set of production

requests that same month. Porsche produced thousands of pages of discovery materials.

14. Through regular meet-and-confers, the parties were able to resolve most contested issues. One dispute concerning Porsche's response to an interrogatory, however, was brought to the Court for resolution, which the parties argued in a hearing on May 19, 2022. As a result, Porsche supplemented its response to the interrogatory at issue. The parties were continuing to work through discovery-related matters when the case entered mediation.

15. During discovery, we also prepared and served a subpoena on Sirius XM, the satellite radio provider for the Porsche vehicles at issue, given Plaintiffs' allegations that Sirius may have worked with Porsche to transmit the May 2020 software update that led to the widespread PCM problems. Sirius responded to the subpoena and our attorneys engaged in lengthy negotiations with Sirius to secure an appropriate production of documents from Sirius, which we then reviewed.

16. The discovery produced by Porsche showed that there are approximately 200,000 vehicles that were sold in the United States by Porsche that have an XM satellite antenna and the PCM 3.1 system that is at issue in the case.

17. Based on our review of the materials produced in discovery, we learned that while a large number of Porsche owners had likely incurred repair

expenses due to the PCM rebooting, it was also true that a “hard reset” of the PCM was successful in resolving the rebooting for a majority of affected drivers. The hard reset could be performed relatively quickly and generally did not require Porsche owners to pay for the procedure.

18. As the case progressed toward class certification, Plaintiffs retained and worked with a technical expert to assist in reviewing documents produced in discovery and to prepare an expert report in support of class certification. At the same time, we noticed several depositions and began preparing to brief class certification.

19. Had the case proceeded to trial, we believe that Plaintiffs had a strong case on liability, and that they could have demonstrated Porsche’s conduct violated both federal and state law.

20. Based on our experience and familiarity with the record, although we believe the case had good prospects for success on the merits, we cannot dismiss the existence of the substantial added risk and delay that would have come from continued litigation.

Mediation and Negotiation

21. The parties participated in mediation on August 9, 2022, with the assistance of Joseph Loveland of JAMS. Through a full day of negotiation, the

parties were able to reach agreement as to the material terms of the class-wide relief. Following the mediation, with the continued assistance of Mr. Loveland, the parties executed a binding term sheet memorializing the agreement.

22. The August mediation focused on the relief to be provided to the settlement class. Throughout our discussions, counsel agreed to defer the issue of attorneys' fees and litigation costs to a separate mediation. The parties agreed that if they could not reach an agreement on attorneys' fees, they would proceed to present the settlement to the Court, and Plaintiffs would file a motion for attorneys' fees which Porsche was free to oppose.

23. The parties participated in a second mediation on October 18, 2022, again with Mr. Loveland's assistance, to address the reimbursement of Plaintiffs' reasonable attorneys' fees and litigation costs. While the parties were unable to reach agreement at the mediation, Mr. Loveland subsequently made a double-blind mediator's proposal, which the parties accepted.

24. Over the weeks that followed, the parties worked to commit their agreement to a formal settlement agreement. The Settlement Agreement is the only extant agreement between the parties. Finalizing the settlement agreement required cooperative efforts over the course of the past weeks and months to negotiate the agreement's terms, develop plans for notice, claims submissions, distribution of

funds, and to prepare Plaintiffs' preliminary approval motion and supporting exhibits.

The Settlement

25. In our view, the proposed settlement represents a strong result for class members. Class members who have out-of-pocket costs associated with the PCM update will likely recover 100% of those costs. While class members' recovery is capped at \$7,500 per class member, our view is that few if any class members will have more than \$7,500 in costs. Mr. Bowen and Ms. Darnell each incurred less than \$4,000 in out-of-pocket costs stemming from the PCM update, and the other individuals who have contacted our firms report similar losses. Thus, the overwhelming majority of class members will recover under the settlement everything they would recover if this case were to go to trial and Plaintiffs prevailed.

26. In addition, class members who do not have out-of-pocket losses will receive meaningful relief under the settlement. In our estimation, this relief is comparable to what class members might potentially have recovered if successful at trial.

Litigation Fees and Costs

27. Our firms have devoted substantial time and expertise for the benefit of the class throughout this litigation. We plan to request a total of \$1,975,000 in attorneys' fees and an additional amount, not to exceed \$75,000, to reimburse the litigation expenses we incurred. To date, we have incurred \$67,208 in litigation expenses, and we anticipate incurring some additional costs before this matter has concluded. (We intend to submit updated cost information before the final fairness hearing.) This will be the first instance in which our firms have been compensated for bringing this case.

28. To assess the value of the proposed settlement, we retained the services of Sam Hewitt, CPA, a forensic accountant at B. Riley Financial, Inc., who has experience calculating damages in class action litigation. Mr. Hewitt is working on his analysis, and Plaintiffs' will provide his analysis in conjunction with their motion for final approval and attorneys' fees.

29. Since beginning to work on this matter through December 18, 2022, our three firms have spent 2,448 total hours prosecuting this case, amounting to a combined lodestar of \$1,485,162. (We intend to submit more detailed lodestar information with our formal fee motion.) If the Court were to award the negotiated fee, the resulting lodestar multiplier would be 1.33. These totals do not yet account

for the time we will spend briefing final approval, responding to questions from class members, and otherwise working with Porsche and A.B. Data to administer the proposed settlement. Accordingly, the multiplier will only decrease as we expend more time and resources bringing this litigation to resolution.

We declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct based upon our personal knowledge and belief and the information we have obtained during the course of our representation in this matter. Executed on January 11, 2023.

/s/ T. Brandon Waddell

T. Brandon Waddell
CAPLAN COBB LLP

/s/ David Stein

David Stein
GIBBS LAW GROUP LLP

/s/ Matthew R. Wilson

Matthew R. Wilson
MEYER WILSON CO., LPA

Exhibit A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BOWEN, *et al.*,

Plaintiffs,

v.

PORSCHE CARS, N.A., INC.

Defendant.

Case No. 1:21-CV-471-MHC

CLASS ACTION SETTLEMENT AGREEMENT

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EXHIBITS

Exhibit 1 – Claim Form

Exhibit 2 – Email Notice

Exhibit 3 – Longform Notice

Exhibit 4 – Postcard Notice

Exhibit 5 – Proposed Preliminary Approval Order

This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is made by and between Plaintiffs Kent Bowen and Kathleen Darnell (“Plaintiffs”) and Defendant Porsche Cars North America, Inc. (“PCNA” or “Defendant”). Plaintiffs and Defendant are referred to collectively as the “Parties.” This Agreement effects a full and final settlement and dismissal with prejudice of all of the Released Claims against all Released Persons relating to the above-captioned lawsuit (the “Action”) on the terms and to the full extent set forth below, subject to the approval of the Court.

I. THE PROPOSED SETTLEMENT

On January 29, 2021, Plaintiffs filed a Class Action Complaint (ECF No. 1) against PCNA in the Northern District of Georgia under Case No. 1:21-CV-471-MHC. Plaintiffs’ Complaint alleged claims for trespass to personalty, violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030), negligence, and unjust enrichment. Plaintiffs allege that the Porsche Communication Management (“PCM”) unit in certain Porsche vehicles entered into a continuous reboot loop. Plaintiffs asserted their claims on behalf of a putative nationwide class of entities and individuals who owned or leased a Porsche vehicle equipped with an XM radio antenna and PCM system that received an alleged “update” to their PCM on or about May 21, 2020.

On February 24, 2021, PCNA filed a Motion to Dismiss (ECF No. 14) seeking dismissal of all of Plaintiffs' claims, which Plaintiffs opposed (ECF No. 21). PCNA's Motion was granted in part and denied in part on September 20, 2021 (ECF No. 36), dismissing Plaintiffs' claims for unjust enrichment and negligence and sustaining Plaintiffs' claims for trespass and violation of the Computer Fraud and Abuse Act. On October 20, 2021, Plaintiffs filed their First Amended Complaint, which added Plaintiff Kathleen Darnell (ECF No. 40). PCNA filed its Answer to Plaintiffs' First Amended Complaint on November 3, 2021 (ECF No. 43). The Parties entered the fact discovery period on November 3, 2021, and have engaged in active discovery since that time.

After arm's length settlement negotiations facilitated by mediator L. Joseph Loveland, Jr., mediator and arbitrator with JAMS, the Parties reached a settlement that they ultimately memorialized in this Agreement, which settles the claims of all entities and individuals who, as of May 20, 2020, owned or leased a Porsche vehicle equipped with an XM radio antenna and Porsche Communication Management (PCM) system 3.1 that were or could have been brought in this action, as more fully explained below.

As discussed in greater detail below, this Agreement, if approved by the Court, provides substantial compensation to all Settlement Class Members. The

amount PCNA will pay under this Agreement depends on how many Class Members timely file valid and complete claims.

Plaintiffs and Class Counsel, while believing that the claims asserted in the Action are meritorious, have considered the risks associated with the continued prosecution of this litigation and the relief secured in this Agreement, and believe that, in consideration of all the circumstances, the Proposed Settlement embodied in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. PCNA, while denying wrongdoing of any kind and without admitting liability, nevertheless agrees to effectuate a full and final settlement of the claims asserted in this Action on the terms set forth below.

Accordingly, the Parties, through their respective counsel, agree that the Action be settled and compromised by the Plaintiffs, the Settlement Class, and Defendant on the following terms and conditions, subject to the approval of the Court after hearing.

II. DEFINITIONS

The following terms shall be defined as set forth below:

- a. “Authorized Porsche Dealer” means a car dealer authorized by PCNA to sell and service Porsche vehicles.
- b. “Claim Form” means the Court-approved claim forms, without material alteration from Exhibit 1 except those alterations necessary to convert to electronic format with the functionality described herein, that a Settlement Class Member may submit to be considered for payment under the Agreement.

- c. “Claim Payment” means the payment issued by Defendant and/or the Settlement Administrator to Settlement Class Members who submit valid and timely claims.
- d. “Claims Submission Deadline” means the date sixty (60) days after the last day of the Reimbursement Period by which Claim Forms must be received by the Settlement Administrator to be considered timely.
- e. “Class Counsel” means the attorneys approved and appointed by the Court to represent the Settlement Class Members.
- f. “Court” means the Honorable Mark H. Cohen of the Northern District of Georgia, as well as any other judicial officer who may come to have responsibility for this Action.
- g. “Effective Date” means the later of (1) the date of entry of the “Final Order and Judgment” as defined herein, or (2) the date when any and all appeals from the Final Order and Judgment have been resolved and the deadlines for further appeal or review have expired.
- h. “Eligible Vehicle” means a Porsche vehicle equipped with an XM radio antenna and Porsche Communication (PCM) system 3.1.
- i. “Email Notice” means the Court-approved Email Notice, without material alteration from Exhibit 2, to be emailed to each potential Settlement Class member for whom an email address is available.
- j. “Escrow Account” means the escrow account managed by the Escrow Agent, which shall be the sole escrow account for compensation of Settlement Class Members under the Agreement.
- k. “Escrow Agent” means the agreed-upon entity to address and hold for distribution the funds identified in this Agreement pursuant to the terms of an escrow agreement to be executed by Class Counsel and PCNA’s Counsel. The Parties agree that Huntington Bank shall serve as Escrow Agent, subject to approval by the Court.
- l. “Fairness Hearing” or “Final Approval Hearing” means the hearing conducted by the Court to consider final approval of this Agreement.

- m. “Final Order and Judgment” means the order from the Court granting the motion for final approval of the Settlement Agreement, disposing of all claims asserted in the Action, and settling and releasing all claims consistent with the terms of this Agreement.
- n. “Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed Person or entity responsible for handling the affairs of a Settlement Class Member. For purposes of completing a Claim Form, a surviving spouse of a deceased Settlement Class Member will be considered a Legally Authorized Representative for purposes of this Agreement if no estate has been opened and no other person has legal authority for handling the affairs of the deceased Settlement Class Member.
- o. “Longform Notice” means the long-form notice without material change from Exhibit 3, which the Settlement Administrator will post to the settlement website and, upon request, mail to Settlement Class Members.
- p. “Notice Date” means the date that the mailing of the Email Notice and Postcard Notice to potential Settlement Class Members will be completed.
- q. “Opt-Out List” means the list of valid and timely requests for exclusion from the Settlement Class compiled by the Settlement Administrator.
- r. “Out-of-Pocket Costs” means monies spent (and not reimbursed by PCNA or an Authorized Porsche Dealer) by Settlement Class Members to address PCM 3.1 Rebooting Issues in an Eligible Vehicle, including (but not limited to) PCM repairs, PCM replacements, battery replacements, and towing expenses and alternative transportation costs incurred while receiving the repair or replacement (subject to the limitations outlined in Section IV of this Agreement). Out-of-Pocket Costs for towing expenses and alternative transportation costs must have been incurred due to PCM repairs or replacements to resolve PCM 3.1 Rebooting Issues in an Eligible Vehicle and must have been incurred no later than forty-eight (48) hours after the completion of the repair or replacement.

- s. “PCM 3.1 Rebooting Issues” means repeated rebooting cycles of the Porsche Communication System (PCM) occurring on or after May 20, 2020, in Porsche vehicles equipped with an XM antenna.
- t. “Person” means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.
- u. “Postcard Notice” means the Court-approved short form notice, without material alteration from Exhibit 4, mailed via first-class mail to Settlement Class Members for whom no valid email address is available.
- v. “Proposed Preliminary Approval Order” means the proposed order attached hereto as Exhibit 5.
- w. “Proposed Settlement” means the settlement described in this Agreement, before final approval by the Court.
- x. “Reimbursement Period” means the 12 months after the date of the Final Approval Hearing.
- y. “Release” shall have the meaning given such term in Section XIV of this Agreement.
- z. “Released Claims” has the definition set forth in Section XIV of this Agreement.
- aa. “Released Persons” or “Released Parties” has the definition set forth in Paragraph 60 of this Agreement.
- bb. “Releasing Parties” has the definition set forth in Paragraph 61 of this Agreement.
- cc. “Settlement Administrator” means A.B. Data, Ltd.
- dd. “Settlement Class” is defined as all entities and individuals in the United States who, as of May 20, 2020, owned or leased an Eligible Vehicle. Excluded from the Class are Defendant, any Released Persons, Class Counsel, and the Court, as well as the Court’s spouse, and any person within the third degree of relationship to either of them.

ee. “Settlement Class Member” means any Person encompassed by the definition of the Settlement Class and not excluded from the class as set forth in II.dd., and who does not timely and validly opt out from the Settlement Class.

III. PRELIMINARY APPROVAL BY THE COURT AND CLASS CERTIFICATION

1. Promptly after this Agreement is signed, but by no later than thirty (30) days after the Agreement is signed, Plaintiffs shall file the Agreement with the Court, together with a Motion for Preliminary Approval of the Class Action Settlement Agreement and Approval of Class Notice. In that motion, Plaintiffs shall ask the Court to find, under Federal Rule of Civil Procedure 23(e)(1)(B)(ii), that the Court will likely be able to certify the Settlement Class for purposes of judgment on the Proposed Settlement, under Rules 23(a), 23(b)(3), and 23(e) of the Federal Rules of Civil Procedure. It is expressly agreed that any certification of the Settlement Class shall be for settlement purposes only, and PCNA does not waive any arguments it may have that class certification for any other purpose would be improper.

2. Plaintiffs shall submit this fully executed Agreement to the Court, and request entry of the Proposed Preliminary Approval Order, without material alteration from Exhibit 5, or an Order that includes the substance of the Proposed Preliminary Approval Order, and specifically that:

- a. preliminarily approves this Agreement;
- b. finds that the Court possesses personal jurisdiction over Defendant and all Settlement Class Members and possesses subject matter jurisdiction to preliminarily approve this Agreement;

- c. finds, under Federal Rule of Civil Procedure 23(e)(1)(B)(ii), that the Court will likely be able to certify the Settlement Class for purposes of judgment on the Proposed Settlement;
- d. finds, under Federal Rule of Civil Procedure 23(e)(1)(B)(i), that the Court will likely be able to approve the Proposed Settlement under Rule 23(e)(2) as fair, reasonable, and adequate so as to warrant providing notice to the Settlement Class;
- e. approves the plan for disseminating notice to the Settlement Class consistent with this Agreement;
- f. approves the Claim Form to be distributed to and/or used by Settlement Class Members, and sets a Claims Submission Deadline by which the Claim Forms must be received by the Settlement Administrator in order to be deemed timely consistent with the timing requirement set forth in Paragraph 9;
- g. approves the settlement website as described herein, which may be amended during the course of the settlement as appropriate and agreed to by both Parties, and which shall be maintained for at least sixty (60) days after the Claims Submission Deadline;
- h. appoints A.B. Data, Ltd. as the Settlement Administrator;
- i. determines that the notice provided to potential Settlement Class Members (i) is the best practicable notice under the circumstances; (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their right to object to or exclude themselves from the Proposed Settlement; and (iii) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice;
- j. schedules the Fairness Hearing to finally consider the fairness, reasonableness, and adequacy of the Proposed Settlement and whether it should be finally approved by the Court on a date not sooner than one-hundred and five (105) days after entry of the Preliminary Approval Order;

- k. requires the Settlement Administrator to file proof of completion of notice at least ten (10) days prior to the Fairness Hearing, along with the Opt-Out List, which shall be a list of all Persons who timely and validly requested exclusion from the Settlement Class, and a declaration or affidavit attesting to the accuracy of the Opt-Out List;
- l. requires each potential Settlement Class Member who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked no later than thirty (30) days prior to the Final Approval Hearing;
- m. orders that any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in the Action;
- n. provides that all findings and actions relating to class certification are undertaken on the condition that they shall be automatically vacated if this Agreement is terminated or is disapproved in whole or in part by the Court, the 11th Circuit Court of Appeals, or the United States Supreme Court, or if the agreement to settle is revoked, in which event this Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission by any Party of liability or of the certifiability of any class;
- o. requires each Settlement Class Member who does not submit a timely request for exclusion from the Settlement Class and wishes to object to the fairness, reasonableness, or adequacy of this Agreement or to intervene in the Action, to follow the procedures set forth in Section XII of this Agreement, including those requirements applicable to any attorney representing a Settlement Class Member;
- p. requires any attorney hired by a Settlement Class Member for the purpose of objecting to any term or aspect of this Agreement or the Proposed Settlement or intervening in this Action to provide to the Settlement Administrator (who shall forward to Class Counsel and Counsel for PCNA) and to file with Clerk of Court, a notice of appearance, no later than the deadline for submitting objections.
- q. directs the Settlement Administrator to rent a post office box to which requests for exclusion, objections, notices of intention to appear, and

any other settlement-related communication may be sent, and provides that only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement;

- r. directs the Settlement Administrator to promptly provide copies of all objections, requests for exclusion, motions to intervene, notices of intention to appear, or other communications that come into its possession to Class Counsel and Defendant's counsel;
- s. stays all proceedings in the Action until further order of the Court, except that the Parties may conduct proceedings necessary to implement the Proposed Settlement or effectuate the terms of this Agreement; and
- t. implements or orders any other provisions or directives or procedures not contemplated by the Parties, if necessary to comply with governing law and/or binding precedent and if such provisions do not materially alter the substantive terms of this Agreement.

3. In the event that the Proposed Settlement is not consummated for any reason, (a) the Parties and their attorneys shall proceed as though the Agreement had never been entered and the Parties and their Counsel shall not cite nor reference this Agreement (except as necessary in filings or briefings in this Action only); and (b) nothing in this Agreement may be used as an admission or offered into evidence in any proceeding.

IV. CLAIM SUBMISSIONS

4. Upon submission of a valid claim, Settlement Class Members will be entitled to monetary compensation through one of two options.

Option 1: Reimbursement of all Out-of-Pocket Costs, subject to a \$7,500 maximum reimbursement per Eligible Vehicle and the limitations set forth in Paragraph 6 regarding repairs or replacements performed after the Notice Date. Any towing and alternative transportation costs, to be compensable, must have been incurred due to a repair or replacement to resolve the PCM 3.1 Rebooting Issues in the Eligible Vehicle and must have been incurred no later than 48 hours after the completion of the repair or replacement. To receive payment under Option 1, Settlement Class Members must complete all information requested in the Option 1 section of the Claim Form, including listing the total Out-of-Pocket Costs sought, affirming that such costs have not previously been reimbursed by PCNA or an Authorized Porsche Dealer, and substantiating their claim with documentation, such as invoices or receipts specifying the Out-of-Pocket Costs incurred and the date the Out-of-Pocket Costs were incurred.

Option 2: Settlement Class Members who experienced PCM 3.1 Rebooting Issues and spent time addressing rebooting of their PCM on or after May 20, 2020, but who did not incur Out-of-Pocket Costs and/or do not have documentation to substantiate their Out-of-Pocket Costs may elect to receive either (i) a cash payment of \$25 or (ii) a \$50 credit at an Authorized Porsche

Dealer. To receive payment under Option 2, Settlement Class Members must complete all information requested in the Option 2 section of the Claim Form.

5. A Settlement Class Member may only recover once per Eligible Vehicle. For each Eligible Vehicle, Settlement Class Members may submit a claim under either Option 1 or Option 2, but not both. A Settlement Class Member may submit a claim under Option 1 for one Eligible Vehicle and another claim under Option 2 for a different Eligible Vehicle, but may not submit multiple claims related to a single Eligible Vehicle.

6. Claims under Option 1 and Option 2 will continue to be available to Settlement Class Members whose Eligible Vehicles have experienced or will experience PCM 3.1 Rebooting Issues, through the Reimbursement Period. Out-of-Pocket Costs for repair or replacement related to PCM 3.1 Rebooting Issues incurred after the Notice Date will only be recoverable if the repair or replacement is performed by an Authorized Porsche Dealer.

7. The Claim Form shall be without material alteration from Exhibit 1, except for changes necessary for conversion to electronic format.

8. Each Settlement Class Member will be provided an opportunity to submit a Claim Form via mail or electronically.

9. To be considered for payment, a Claim Form must be received by the Settlement Administrator no later than sixty (60) days after the last day of the

Reimbursement Period. In addition, for the claim to be valid, the claimant must be a Settlement Class Member and the Claims Form must include all required information and documentation. As set forth in Paragraph 33.d., the Settlement Administrator will provide Settlement Class Members with notice and an opportunity to cure defects in the submitted Claim Form.

V. SETTLEMENT ADMINISTRATOR

10. The Parties agree to the appointment of A.B. Data, Ltd. as Settlement Administrator to perform the services described herein. Defendant shall be solely responsible for the payment of the Settlement Administrator's fees and costs, including all costs relating to dissemination of class notice and claims administration. Payments to Settlement Class Members will not be reduced or affected in any way by Defendant's agreement to pay the fees and costs of the Settlement Administrator.

11. The Settlement Administrator shall assist with the various administrative tasks set forth herein and any others necessary to implement the terms of this Agreement and the Proposed Settlement as preliminarily approved, including: (i) sending Email Notice and mailing or arranging for the mailing of the Postcard Notice described herein and submitting to the Parties and Court an affidavit offering proof thereof; (ii) handling email or mail returned as not delivered and making additional mailings as required under the terms of the Agreement; (iii) responding,

as necessary, to inquiries from Settlement Class Members; (iv) providing to Class Counsel and Defendant's Counsel, within three (3) business days of receipt, copies of all objections, motions to intervene, notices of intention to appear, and requests for exclusion from the Settlement Class; (v) preparing a list of all Persons who timely requested exclusion from the Settlement Class and submitting to the Court the Opt-Out List and supporting affidavit no later than ten (10) days before the Fairness Hearing scheduled by the Court; (vi) preparing a list of all Persons who submitted objections to the settlement and submitting an affidavit testifying to the accuracy of that list; (vii) preparing a list of all Persons who make a timely claim; (viii) implementing procedures for processing and handling claims submissions consistent with Section VIII; and (ix) promptly responding to requests for information and documents from Class Counsel, Defendant, and/or Defendant's Counsel.

12. As set forth herein, the Settlement Administrator shall set up, coordinate, maintain and/or implement (a) the post office box described in Paragraph 29; (b) the live call center as described in Paragraph 28; and (c) the website described in Paragraphs 25-27.

13. In no event shall the Parties or their counsel have any liability for the acts or omissions of the Settlement Administrator, or their agents, employees, or contractors.

14. All information submitted or created in connection with claims program (including all information provided in Claim Forms and the emails and addresses furnished to the Settlement Administrator in order to carry out the notice program) is confidential. Such information may be disclosed only to Defendant, Defendant's counsel, Class Counsel, the Settlement Administrator, and the Court. Such information may be used only for purposes of performing the obligations and exercising the rights created by this Settlement Agreement or in Court proceedings relating to approval of the Proposed Settlement.

VI. CLASS NOTICE

15. Defendant will pay all costs of effectuating and implementing the notice to the Settlement Class set forth herein.

16. Within fourteen (14) days of the Preliminary Approval Order, Defendant will provide all last-known physical addresses and email addresses it possesses for the Settlement Class to the Settlement Administrator.

17. Within thirty (30) days of the Preliminary Approval Order, the Settlement Administrator shall substantially complete the process of sending notice to Settlement Class Members.

18. Email Notice shall be sent to each potential Settlement Class Member, for whom Defendant possesses an email address on a date suggested by the

Settlement Administrator and shall include a hyperlink to the Claim Form on the settlement website.

19. No later than sixty (60) days before the Claims Submission Deadline, a final reminder notice shall be emailed to each potential Settlement Class Member who has not yet submitted a Claim Form or request for exclusion. The Settlement Administrator, in consultation with the Parties, will determine the specific wording and layout of this reminder notice, which will be consistent with the Email Notice approved by the Court. The reminder notice described in this paragraph will only be sent via email.

20. Where the email address of a Settlement Class Member cannot be located or the email address of a Settlement Class Member is found to be no longer valid, the Settlement Administrator will undertake to send such Settlement Class Members a Postcard Notice, in the same form as Exhibit 4 through first-class U.S. mail.

21. Prior to mailing Postcard Notice, the Settlement Administrator shall run physical mailing addresses through the National Change of Address Database (“NCOA”) to attempt to obtain the most current name and/or physical mailing address for each potential Settlement Class Member who cannot be reached through Email Notice.

22. If any Postcard Notice mailed to any potential Settlement Class Member is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each Postcard Notice that is returned as undeliverable and provide copies of the log to Defendant and Class Counsel upon request. If the mailing is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the mailing to that address. For the remaining returned mailings, the Settlement Administrator will use reasonable efforts, including potentially an Experian search or skip tracing, to attempt to obtain a new address, and those mailings shall be forwarded to any new address obtained through such a search. If any Postcard Notice is returned as undeliverable a second time, no further mailing shall be required. It is agreed by the Parties that the procedures set forth in the preceding Paragraphs and this Paragraph constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for Settlement Class Members such that no additional efforts to do so shall be required. PCNA represents that it has conducted a reasonably diligent inquiry and has concluded that it possesses email addresses and/or mailing addresses for substantially all potential Settlement Class members.

23. The Parties agree that the Longform Notice and Claim Form, without material alteration from Exhibits 1 and 3, shall be posted to the settlement website

as set forth below, and will be available upon request to all potential Settlement Class Members.

24. The Longform Notice and Claim Form will also be made available to all potential Settlement Class Members by request to the Settlement Administrator, who shall send via first-class U.S. mail any of these documents as requested by any potential Settlement Class Member.

25. The Settlement Administrator shall initiate and continue to maintain the website www.PorschePCMSettlement.com and post the Settlement Agreement, Postcard Notice, Longform Notice, Claim Form, Preliminary Approval Order, and frequently asked questions. The website may be amended from time to time as agreed to by the Parties. The Settlement Administrator shall maintain the website for at least sixty (60) days after expiration of the Claims Submission Deadline.

26. The home page of the website shall reflect the case settlement and shall have a “Make A Claim” button permitting a Settlement Class Member to access the Claim Form, with a method to submit the Claim Form electronically with a signature submitted through an electronic signature service in which the claimant may sign electronically using a computer, tablet, smart phone, or similar device, and a method to request that a copy of a paper Claim Form be mailed or emailed to the Settlement Class Member.

27. The website shall provide that a Settlement Class Member may submit a Claim Form electronically by entering or uploading all required information and documentation under Option 1 or Option 2, and by signing and submitting the Claim Form through submission of a signature submitted through an electronic signature service in which the claimant may sign electronically using a computer, tablet, smart phone, or similar device.

28. The Settlement Administrator shall maintain a live call center 24/7 with a person who will answer the potential Settlement Class Members' questions using an agreed upon script and can further take name, address, and relevant information to send out Longform Notices.

29. The Settlement Administrator shall rent a post office box to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications. Only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement.

VII. CLAIM PAYMENTS

30. To be eligible for a Claim Payment under this Settlement Agreement, a Settlement Class Member or his or her Legally Authorized Representative must timely submit a Claim Form that satisfies the requirements prescribed herein and must not have submitted a request for exclusion.

- a. Settlement Class Members seeking a cash payment will, by default, be paid electronically. During the claims process, Settlement Class Members will be able to select from the following options for receiving their Claim Payment electronically: PayPal, Venmo, or ACH. In lieu of electronic payment, Settlement Class Members seeking a cash payment may request to receive their Claim Payment via check, which the Settlement Administrator will cause to be mailed to the Settlement Class Member. Checks will be valid for ninety (90) days from the issuance date and, if the Settlement Class Member does not cash or deposit the check during this time, such funds will revert to the Escrow Account. The Settlement Administrator shall make Claims Payments as set forth in this subparagraph within thirty (30) days of the later of (i) the Settlement Administrator's receipt of a timely and valid claim, or (ii) the Effective Date. For avoidance of doubt, no payments will be made prior to the Effective Date.
- b. Settlement Class Members who make a claim under Option 2 may elect to receive a dealer credit valid at Authorized Porsche Dealers in lieu of receiving a cash payment. For avoidance of doubt, no credits will be provided prior to the Effective Date.

31. The Settlement Administrator shall establish procedures for receiving and processing Claim Forms consistent with Section VIII.

32. The Claim Payment described herein is the only payment to which Settlement Class Members are entitled under this Agreement. The payments shall be in full and final disposition of the Action, and in consideration for the release of any and all Released Claims as against any and all Released Persons. Any rights to Claim Payments under this Agreement shall inure solely to the benefit of Settlement Class Members and are not transferable or assignable to others.

VIII. CLAIMS ADMINISTRATION

33. Claim Forms that are timely submitted (either electronically or by mailing to the correct address) shall be processed as follows:

- a. To receive a Claim Payment under Option 1, Settlement Class Members must complete all information requested in the Option 1 section of the Claim Form and substantiate their claimed Out-of-Pocket Costs with documentation, *e.g.*, invoices and/or receipts, specifying the Out-of-Pocket Costs incurred and the date those Out-of-Pocket Costs were incurred.
- b. To receive a Claim Payment under Option 2, Settlement Class Members must complete all information requested in the Option 2 section of the Claim Form, including a sworn statement that the Settlement Class Member spent time addressing PCM 3.1 Rebooting Issues on or after May 20, 2020.
- c. If there is uncertainty as to whether a claim is valid, the Settlement Administrator shall consult with Class Counsel and Defendant's Counsel as to the validity of the claim and/or whether additional information or documentation will be required for the Settlement Class Member to receive compensation, and the Parties agree to work in good faith to resolve any

disputes as to the validity of claims or the documentation necessary to substantiate same.

- d. If a Claim Form is unsigned, illegible, incomplete, does not include the required documentation of Out-of-Pocket Costs under Option 1, does not include all of the required information in Claim Form, or indicates that the claimant is not a Settlement Class Member entitled to payment, the Settlement Administrator shall send the claimant a letter and/or email, with a copy to Defendant's Counsel and Class Counsel, informing him or her of the defect and providing the claimant with thirty (30) days in which to cure the defect. If the claimant does not subsequently provide an amended Claim Form and/or documentation curing the defect and postmarked or electronically submitted within thirty (30) days of the date of the Settlement Administrator's letter, that Claim Form shall be deemed defective and not eligible for payment, and the claimant shall not have an additional opportunity to cure the defect. However, regardless of any uncured defect, the Settlement Class Member's Release remains effective as to the Released Parties. PCNA retains the right, but has no obligation, to exercise discretion to authorize the Settlement Administrator to approve a Claim Payment notwithstanding any such defect.
- e. On a rolling basis following the Effective Date, the Settlement Administrator shall initiate electronic payment or mail a check for the full amount of Claim Payments to all Settlement Class Members with valid claims. Defendant shall provide sufficient funding to the Escrow Account to enable the Settlement Administrator to timely make the payments identified in Section VII.
- f. Claim Forms that are not timely received by the Settlement Administrator will not be considered for payment, and the Settlement Class Members whose Claim Forms are deemed untimely will be provided written notice thereof, but the Settlement Class Member's Release will remain effective as to the Released Parties. PCNA retains the right, but has no obligation, to exercise discretion to authorize the Settlement Administrator to approve a Claim Payment notwithstanding any such untimeliness.
- g. All Claim Payments to Settlement Class Members through a paper check will be through checks which indicate on their face that they are void after ninety (90) days from the date issued. Any checks not cashed by that date shall be voided, the funds will remain in the Escrow Account (until such

time as those funds revert to Defendant), and Defendant shall not be liable for payment of those claims.

IX. ESCROW ACCOUNT

34. Within ten (10) business days after the Court enters the Final Approval Order, PCNA shall fund the Escrow Account with the “Funding Amount,” which funds shall be used, as necessary, to compensate Class Members who submit valid claims pursuant to this Agreement. The initial Funding Amount shall be \$300,000. If and when the funding level of the Escrow Account reaches the “Minimum Balance,” which shall initially be set at \$25,000, the Escrow Agent shall alert PCNA, and PCNA shall, within seven (7) business days, deposit such funds in the Escrow Account as are necessary to bring the balance of the Escrow Account back to the Funding Amount.

35. One-hundred-twenty (120) days after the Claims Submission Deadline, any funds in the Escrow Account, including all interest accrued, shall revert to PCNA, and this reversion will occur only after all timely and valid claims have been paid.

36. In the event that the Settlement Agreement is terminated or invalidated for any reason prior to the conclusion of the Reimbursement Period, any funds in the Escrow Account, including all interest accrued, shall revert to PCNA.

X. ATTORNEYS' FEES AND COSTS AWARD

37. PCNA agrees to pay the reasonable attorneys' fees and litigation costs of Class Counsel separate from and in addition to any payments to the Settlement Class Members in an amount not to exceed \$2,050,000 as set forth in Paragraphs 37-41. Plaintiffs, through Class Counsel, shall petition the Court for such attorneys' fees and litigation costs at least twenty-one (21) days before the Court's deadline for objections to the Proposed Settlement.

38. Class Counsel agrees not to seek more than \$1,975,000 in attorneys' fees for work performed by Class Counsel in connection with this Action and no more than \$75,000 in reimbursement of litigation costs actually incurred in this Action. If Class Counsel's fee request does not exceed \$1,975,000 and their request for costs does not exceed \$75,000, PCNA agrees not to oppose, undermine, or solicit others to oppose or undermine Class Counsel's motion for attorneys' fees and reimbursement of litigation costs and, if Class Counsel's request is granted by the Court, PCNA agrees to pay Class Counsel's Court-approved attorneys' fees and Court-approved litigation costs and waives its right to appeal such award of fees and costs, provided that the amount awarded by the Court in attorneys' fees does not exceed \$1,975,000 and the amount awarded by the Court for litigation costs does not exceed \$75,000. By executing this Agreement, Plaintiffs and Class Counsel agree that an award of attorneys' fees and litigation costs up to the amounts listed in this

Paragraph constitutes a reasonable award for the work performed and costs incurred in connection with this Action and that they will not seek any additional award exceeding these amounts in any future proceeding.

39. A decision by the Court to award less than the total amount of fees and costs requested by Class Counsel, or a subsequent decision by an appellate court to reduce the award of fees and costs due to Class Counsel, shall not be grounds for Plaintiffs, Class Counsel, or the Settlement Class Members to withdraw from this Settlement Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.

40. Within ten (10) business days of the later of the Effective Date of a final order after all appeals have been exhausted approving Class Counsel's request for attorneys' fees, costs and expenses, PCNA shall pay to Class Counsel all Court-approved attorneys' fees and litigation costs ordered by the Court, provided that the amount awarded by the Court in attorneys' fees does not exceed \$1,975,000 and provided that the amount awarded by the Court in litigation costs does not exceed \$75,000. In the event that the award of attorneys' fees and litigation costs is reduced by the Court or on appeal, PCNA shall only pay the reduced amount of such award. Class Counsel shall timely furnish to PCNA any required tax information, account information, or necessary forms before the payment is due.

41. The payment of attorneys' fees and litigation costs pursuant to Paragraphs 37-40 shall be made through a wired deposit by PCNA into the attorney client trust account to be designated by Class Counsel. After the attorneys' fees and litigation costs have been deposited into this account, Class Counsel shall be solely responsible for allocating such attorneys' fees and litigation costs and distributing each participating firm's allocated share of such attorneys' fees and litigation costs to that firm, and PCNA shall have no responsibility for distribution of attorneys' fees and litigation costs among participating firms.

42. PCNA's agreement to pay Class Counsel's reasonable attorneys' fees and litigation costs pursuant to Paragraphs 37-41 is separate from PCNA's commitment to pay the Settlement Administrator's fees and costs pursuant to Paragraph 10.

XI. FINAL APPROVAL OF THE PROPOSED SETTLEMENT

43. Class Counsel will file a motion seeking the Court's final approval of the Proposed Settlement fifty-one (51) days prior to the Fairness Hearing to be held at a time, date, and location as set by the Court and that will be stated in the Email Notice and Postcard Notice as well as on the settlement website. The motion shall request, at minimum, the Court to enter a Final Order and Judgment that:

- a. certifies the Settlement Class for settlement purposes only;

- b. finds the Court has personal jurisdiction over Defendant and all Settlement Class Members and subject matter jurisdiction to approve this Agreement and all Exhibits thereto;
- c. gives final approval to the Proposed Settlement and directs the Parties and counsel to comply with and consummate the terms of the Agreement;
- d. finds that Class Counsel and the Plaintiff adequately represented the Settlement Class;
- e. finds that the terms of this Agreement are fair, reasonable, and adequate to the Settlement Class Members, consistent and in compliance with all requirements of due process and applicable law;
- f. finds that the class notice set forth in this Agreement (i) constituted the best practicable notice under the circumstances; (ii) was reasonably calculated to apprise potential Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the Proposed Settlement, and to appear at the Fairness Hearing; (iii) constituted due, adequate, and sufficient process and notice to all Persons entitled to receive notice; and (iv) satisfied all requirements of due process and applicable law;
- g. determines that the Agreement and the settlement provided for herein, and any proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or of the certifiability of a litigation class; provided, however, that reference may be made to this Agreement and the settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement, as further set forth in this Agreement;
- h. approves the Opt-Out List and finds that the Opt-Out List is a complete list of all persons and entities who have timely requested exclusion from the Settlement Class and, accordingly, neither share in nor are bound by the Final Order and Judgment;
- i. provides that the Plaintiffs, all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out

List, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone else claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have submitted a Claim Form, and regardless of whether they have received actual notice of the Proposed Settlement, have conclusively compromised, settled, discharged, and released all Released Claims against Defendant and the Released Persons, and are bound by the provisions of this Agreement;

- j. dismisses all claims in the Action on the merits and with prejudice, and without fees or costs except as provided herein, and entering final judgment thereon; and
- k. determines the amount of the attorneys' fees and costs award to Class Counsel.

44. Defendant will not oppose final approval of the Settlement Agreement as set forth herein, except that Defendant reserves the right to object to and appeal any order awarding attorneys' fees exceeding \$1,975,000 and/or any order awarding litigation costs exceeding \$75,000.

XII. REQUESTS FOR EXCLUSION AND OBJECTIONS

45. The Parties and their respective counsel agree not to solicit or encourage any Person in requesting exclusion from the Settlement Class.

46. Potential Settlement Class Members who wish to exclude themselves from the Settlement Class must submit timely and written requests for exclusion. To be effective, such a request must include (i) the potential Settlement Class Member's name, address, and Vehicle Identification Number (VIN) and dates of ownership or lease of the potential Settlement Class Member's Eligible Vehicle(s); (ii) an

unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class; and (iii) the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member. The request must be mailed to the Settlement Administrator at the address provided in the Longform Notice postmarked no later than thirty (30) days prior to the Final Approval Hearing. Requests for exclusion must be exercised individually by the Settlement Class Member and are only effective as to the individual Settlement Class Member requesting exclusion.

47. Plaintiffs shall not elect or seek to opt out or exclude themselves from the Settlement Class.

48. The Settlement Administrator shall provide to Class Counsel and Defendant's Counsel, within three (3) business days of receipt, copies of all requests for exclusion from the Settlement Class. The Settlement Administrator shall also promptly log and prepare a list of all Persons who validly and timely requested exclusion from the Settlement Class (the "Opt-Out List") and shall submit an affidavit to the Court which includes and attests to the accuracy of the Opt-Out List no later than ten (10) days prior to the Final Fairness Hearing set by the Court.

49. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and their

claims shall be dismissed with prejudice and released to the extent provided for herein pursuant to the terms of a Final Order and Judgment.

50. Settlement Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. Settlement Class Members who choose to object to the Proposed Settlement must submit timely and written notices of their objections. Any Settlement Class Member who timely submits an objection in compliance with this paragraph may appear at the Fairness Hearing, in person or by counsel, and be heard to the extent and only if permitted by the Court. The Parties may serve discovery under Federal Rules of Civil Procedure 30, 33, and 34 on any objecting Settlement Class Member, including to obtain evidence substantiating that the objector is a member of the Settlement Class.

51. To be timely, a Settlement Class Member's objection or motion to intervene must be submitted to the Court and served on the Settlement Administrator no later than thirty (30) days prior to the Final Approval Hearing.

52. The right to object to the Proposed Settlement or to intervene in the Action must be exercised individually (*i.e.*, not aggregated with objections of other Settlement Class Members) by a Settlement Class Member or his or her attorney or Legally Authorized Representative.

53. An objection to the Proposed Settlement must:

- a. Include the name of the case and case number;

- b. Provide the name, address, telephone number, VIN and dates of ownership or lease of the Settlement Class Member's Eligible Vehicle(s), and signature of the Settlement Class Member filing the objection;
- c. Provide a statement that the objector has reviewed the Settlement Class definition and understands that he or she is a Settlement Class Member, and has not opted out and does not plan to opt out of the Settlement Class;
- d. Indicate the specific reasons why the Settlement Class Member objects to the Proposed Settlement;
- e. Contain the name, address, bar number, and telephone number of the objecting Settlement Class Member's counsel, if any, and any such attorney must comply with all applicable rules of the Court; and
- f. State whether the objecting Settlement Class Member intends to appear at the Fairness Hearing, either in person or through counsel.

54. In addition, an objection must contain the following information if the Settlement Class Member or his or her attorney requests permission to speak at the Fairness Hearing:

- a. A detailed statement of the legal and factual basis for each objection;
- b. A list of any and all witnesses the Settlement Class Member may seek to call at the Fairness Hearing (subject to applicable rules of procedure and evidence and at the discretion of the Court), with the address of each witness and a summary of his or her proposed testimony; and
- c. A list of any legal authority the Settlement Class Member will present at the Fairness Hearing.

55. Any Settlement Class Member who does not submit a timely objection may, in the discretion of the Court, waive the right to object or to be heard at the

Fairness Hearing and be barred from making any objection to the Proposed Settlement. Settlement Class Members who object to the Proposed Settlement shall remain Settlement Class Members and waive their right to pursue an independent remedy against Defendant to the extent their claims are released consistent with this Agreement. To the extent any Settlement Class Member objects to the Proposed Settlement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Order and Judgment of the Court. Settlement Class Members can avoid being bound by any judgment of the Court by complying with the exclusion provisions set forth herein. If a potential Settlement Class Member excludes themselves from the Settlement Class, they waive any right to object to the Final Approval of the Proposed Settlement.

56. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel a copy of each objection, motion to intervene, or notice of intention to appear received by the Settlement Administrator within three (3) business days of receipt.

XIII. DENIAL OF LIABILITY

57. Defendant maintains it acted in accordance with all applicable laws and regulations. Defendant nonetheless has concluded that it is in its best interests that the Action be settled on the terms and conditions set forth in this Agreement. Defendant reached this conclusion after considering the factual and legal issues in

the Action, the substantial benefits of a final resolution of the Action, and the expense that would be necessary to defend the Action through judgment, appeal, and any subsequent proceedings that may occur. Defendant believes that it stands a reasonable chance of success in the Action and in any appeal as to the merits of this case and as to the certification of a litigation class. Defendant maintains that its defenses on the merits and on class certification are meritorious. Because of the costs, resources, and time that would be incurred, Defendant asserts that it would not have settled this Action except on the terms set forth in this Agreement.

58. As a result of the foregoing, Defendant enters into this Agreement without admitting, conceding, or acknowledging any fault, liability, or wrongdoing of any kind. This Agreement shall not be construed as an admission or concession of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind. The terms of this Agreement, including the nature of the Agreement, are material to Defendant's decision to settle this Action notwithstanding its belief that its defenses are meritorious and its chances of success in this Action and in any appeal are significant. Moreover, Defendant denies any fault, wrongdoing or liability to Plaintiffs or the Settlement Class Members for monetary damages or other relief, but believes that the proposed settlement herein is desirable in order to avoid the further significant burden, expense, risk, and

inconvenience of protracted litigation, and the distraction and diversion of its personnel and resources.

XIV. DISMISSAL OF ACTION AND RELEASE OF CLAIMS

59. Upon the Effective Date, the Plaintiffs, all Settlement Class Members, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone else claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have submitted a Claim Form, will be bound by the Final Order and Judgment and conclusively deemed to have fully released, acquitted, and forever discharged all Released Persons from all Released Claims as outlined and defined below (the “Release”).

60. “Released Persons” or “Released Parties” means (1) Porsche Cars North America, Inc., Porsche Automobil Holding SE, Porsche Holding Stuttgart GmbH, Dr. Ing. h.c. F. Porsche AG, Porsche Financial Services, Inc., Porsche Leasing Ltd., and any former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors, and successors of any of the foregoing (the “Porsche Released Entities”); (2) any and all contractors, subcontractors, and suppliers of the Porsche Released Entities; (3) any and all persons and entities indemnified by any Porsche Released Entity with respect to PCM 3.1 Rebooting Issues; (4) any and all other

persons and entities involved in the design, research, development, manufacture, assembly, testing, sale, leasing, repair, warranting, marketing, advertising, public relations, promotion, or distribution of any Eligible Vehicle, even if such persons are not specifically named in this paragraph, including without limitation all Porsche Authorized Dealers, as well as non-authorized dealers and sellers; (5) the Settlement Administrator; (6) lenders, creditors, financial institutions, or any other parties that financed any purchase or lease of an Eligible Vehicle; and (7) for each of the foregoing, their respective former, present, and future affiliates, parent companies, subsidiaries, predecessors, successors, shareholders, indemnitors, subrogees, spouses, joint ventures, general or limited partners, attorneys, assigns, principals, officers, directors, employees, members, agents, representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors, administrators, receivers, conservators, personal representatives, divisions, dealers, and suppliers.

61. In consideration for the Settlement Agreement, Plaintiffs and Settlement Class Members, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, attorneys, representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through, or under them (the “Releasing Parties”), fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit any and all claims, demands, actions, or causes of action, whether known or unknown, that they

may have, purport to have, or may have hereafter against any Released Party, as defined above, arising out of or in any way related to PCM 3.1 Rebooting Issues. This Release applies to any and all claims, demands, actions, or causes of action of any kind or nature whatsoever, whether in law or in equity, known or unknown, direct, indirect or consequential, liquidated or unliquidated, past, present or future, foreseen or unforeseen, developed or undeveloped, contingent or non-contingent, suspected or unsuspected, whether or not concealed or hidden, arising from or in any way related to PCM 3.1 Rebooting Issues, including without limitation (1) any claims that were or could have been asserted in the Action; and (2) any claims for fines, penalties, criminal assessments, economic damages, punitive damages, exemplary damages, liens, injunctive relief, attorneys', expert, consultant, or other litigation fees or costs other than fees and costs awarded by the Court in connection with this Settlement Agreement, or any other liabilities, that were or could have been asserted in any civil, criminal, administrative, or other proceeding, including arbitration (the "Released Claims"). This Release applies without limitation to any and all such claims, demands, actions, or causes of action regardless of the legal or equitable theory or nature under which they are based or advanced including without limitation legal and/or equitable theories under any federal, state, provincial, local, tribal, administrative, or international law, or statute, ordinance, code, regulation, contract, common law, equity, or any other source, and whether based in strict

liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty, misrepresentation, breach of contract, fraud, or any other legal or equitable theory, whether, existing now or arising in the future, that arise from or in any way relate to PCM 3.1 Rebooting Issues. Notwithstanding the foregoing, this Agreement does not release any claims for wrongful death or personal injury.

62. For the avoidance of doubt, Plaintiffs expressly understand and acknowledge, and Settlement Class Members will be deemed to understand and acknowledge, that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true, related to PCM 3.1 Rebooting Issues, the Action and/or the Release herein. Nevertheless, it is the intention of Class Counsel and the Plaintiffs in executing this Agreement to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to PCM 3.1 Rebooting Issues.

63. Plaintiffs expressly understand and acknowledge, and Settlement Class Members will be deemed to understand and acknowledge, Section 1542 of the California Civil Code, which provides: **“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor**

at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” Each Plaintiff expressly acknowledges that he or she has been advised by Class Counsel of the contents and effect of Section 1542 and that he or she has considered the possibility that the number or magnitude of all claims may not currently be known. To ensure that this Release is interpreted fully in accordance with its terms, Plaintiffs and Settlement Class Members expressly waive and relinquish any and all rights and benefits that they may have under Section 1542 to the extent that such Section may be applicable to the Release. Plaintiffs and Settlement Class Members likewise expressly waive and relinquish any rights or benefits of any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, which is similar, comparable, analogous, or equivalent to Section 1542 of the California Code to the extent that such laws or principles may be applicable to the Release.

64. Settlement Class Members who do not opt out expressly agree that this Release, and the Final Order and Judgment, is, will be, and may be raised as a complete defense to, and will preclude, any action or proceeding specified in, or involving claims encompassed by, this Release. Settlement Class Members who do not opt out shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing or prosecution of any suit, action,

and/or other proceeding, against the Released Parties with respect to the claims, causes of action and/or any other matters subject to this Release. To the extent that they have initiated, or caused to be initiated, any suit, action, or proceeding not already encompassed by the Action, Settlement Class Members who do not opt out shall cause such suit, action, or proceeding to be dismissed with prejudice. If a Settlement Class Member who does not opt out commences, files, initiates, or institutes any new legal action or other proceeding for any Released Claim against any Released Party in any federal or state court, arbitral tribunal, or administrative or other forum, (1) the Released Party shall inform the Settlement Class Member about this Settlement Agreement and the Settlement Class Member's Release, and request that the action be voluntarily dismissed; (2) if such action is not voluntarily dismissed within seven (7) days of such notice, then the Released Party shall move for such legal action or other proceeding to be dismissed with prejudice and at that Settlement Class Member's cost; and (3) the respective Released Party shall be entitled to recover any and all reasonable related costs and expenses from that Settlement Class Member arising as a result of that Settlement Class Member's breach of his, her, their or its obligations under this Release.

65. Plaintiffs represent and warrant that they are the sole and exclusive owners of any and all claims that they personally are releasing under this Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any

manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to PCM 3.1 Rebooting Issues, including without limitation, any claim for benefits, proceeds or value under the Action, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in any benefits, proceeds or values to which Plaintiffs may be entitled as a result of the PCM 3.1 Rebooting Issues. Settlement Class Members, by submitting a Claim Form, represent and warrant that they are the sole and exclusive owner of all claims that they personally are releasing under the Agreement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Settlement Class Members are not aware of anyone other than themselves claiming any interest, in whole or in part, in any benefits, proceeds or values to which those Settlement Class Members may be entitled as a result of the PCM 3.1 Rebooting Issues.

66. Plaintiffs expressly understand and acknowledge, and Settlement Class Members will be deemed to understand and acknowledge, that any benefits pursuant to the Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties, that the benefits of the Agreement are sufficient

and adequate consideration for each and every term of this Release, and that this Release shall be irrevocably binding upon Plaintiffs and Settlement Class Members who do not opt out of the Class.

67. The Release shall be effective with respect to all Releasing Parties, including all Settlement Class Members who do not opt out, regardless of whether those Settlement Class Members ultimately file a claim or receive compensation under this Agreement.

68. Class Counsel acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Agreement and that they execute this Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Agreement. Plaintiffs acknowledge, agree, and specifically represent and warrant that they have discussed with Class Counsel the terms of this Agreement and have received legal advice with respect to the advisability of entering into this Agreement and the Release, and the legal effect of this Agreement and the Release. The representations and warranties made throughout the Agreement shall survive the execution of the Agreement and shall be binding upon the respective heirs, representatives, successors and assigns of the Parties.

69. Plaintiffs and Class Counsel hereby agree and acknowledge that this Section XIV was separately bargained for and constitutes a key, material term of the Agreement that shall be reflected in the Final Approval Order.

70. The Court shall retain exclusive and continuing jurisdiction over all Parties, the Action, and this Agreement to resolve any dispute that may arise regarding this Agreement or in relation to this Action, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Agreement and no Party shall oppose the reopening and reinstatement of the Action on the Court's active docket for the purposes of effecting this Section.

71. Upon entry of the Final Order and Judgment, the Action will be dismissed with prejudice as to Defendant, and the Plaintiffs and all Settlement Class Members will release all Released Persons from all Released Claims. Plaintiffs and all Settlement Class Members specifically release any right they may now or hereafter have to reform, rescind, modify, or set aside this Release or this Agreement through mutual or unilateral mistake or otherwise; and they assume the risk of such uncertainty and mistake in consideration of the consideration herein mentioned and in consideration of this being a final settlement.

XV. RETENTION OF RECORDS

72. The Settlement Administrator shall retain copies or images of all returned Notices, Claim Forms (and/or data resulting therefrom) and correspondence relating thereto, for a period of up to two (2) years after the Effective Date. After this time, upon Defendant's request, Class Counsel shall destroy non-public documents containing personally identifiable information of the Settlement Class received as part of the administration of this Agreement, including but not limited to completed Claim Forms and accompanying documentation or other reports prepared by the Settlement Administrator, but Class Counsel shall not be required to destroy any work product. Nothing herein shall alter or obviate the Parties' obligation to destroy or return any materials produced in this litigation under the terms of the Stipulated Protective Order agreed to by the Parties and entered by the Court (ECF No. 50).

XVI. MISCELLANEOUS PROVISIONS

73. Each Party to this Agreement warrants that he, she, they, or it is fully authorized to enter into this Agreement, and is acting upon his, her, their, or its independent judgment and upon the advice of his, her, their, 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 Agreement.

74. The Parties and undersigned counsel agree to undertake best efforts to effectuate this Agreement and the terms of the Proposed Settlement, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and efforts which may become necessary by order of the Court or otherwise.

75. The headings and captions contained in this Agreement are for reference purposes only and in no way define, extend, limit, describe, or affect the scope, intent, meaning, or interpretation of this Agreement.

76. Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.

77. Except as otherwise provided in a written amendment executed by the Parties or their counsel, this Agreement contains the entire agreement of the Parties hereto and supersedes any prior agreements or understandings between them. All terms of this Agreement shall be construed as if drafted by all parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties and their agents, attorneys, employees, successors, and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the parties hereto, including any Settlement Class Member.

78. This Agreement may be amended or modified only by a written instrument signed by all Parties.

79. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Georgia, without regard to principles of conflicts of law.

80. The exhibits to this Agreement are integral parts of the settlement and are hereby incorporated and made part of this Agreement.

81. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of this Agreement.

82. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties and/or counsel.

83. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, related notes, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state or territory.

84. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the United States District Court for the Northern District of Georgia.

85. The Settlement Class, Plaintiffs, Class Counsel, PCNA, and/or PCNA's Counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Agreement was drafted by counsel for the Parties during extensive arm's-length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

86. This Agreement may be signed with an electronic or facsimile signature and in counterparts, each of which shall constitute a duplicate original.

87. Whenever this Agreement requires or contemplates that one of the Parties or the Settlement Administrator shall or may give notice to a Party, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

If to PCNA, then to:

Cari K. Dawson
Kara F. Kennedy
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
Email: cari.dawson@alston.com
Email: kara.kennedy@alston.com

If to Plaintiffs or the Settlement Class, then to:

Matthew R. Wilson
Michael J. Boyle, Jr.
MEYER WILSON CO., LPA
305 West Nationwide Boulevard
Columbus, Ohio 43215
Email: mwilson@meyerwilson.com
Email: mboyle@meyerwilson.com

88. The Parties' Stipulated Protective Order in this Action (ECF No. 50) remains binding on the disclosure of Confidential and Highly Confidential information under this Agreement. The confidentiality of all Confidential Information and Highly Confidential Information shall be protected from disclosure by Class Counsel and the Plaintiffs to any Person other than the Settlement Administrator or a Person authorized by Court Order.

89. The Parties agree that Class Counsel or anyone associated with Class Counsel's firms shall not utilize the Confidential Information and Highly Confidential Information, as defined in the Parties' Stipulated Protective Order (ECF No. 50), in any other litigation whether pending or future unless independently obtained through discovery or other procedures in that litigation.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves and their counsel:

For Plaintiffs:

Dated: 12/26/2022



Plaintiff Kenton Bowen

Dated: _____

Plaintiff Kathleen Darnell

For Class Counsel:

Dated: _____

Matthew R. Wilson
Michael J. Boyle, Jr.
MEYER WILSON CO., LPA
305 West Nationwide Boulevard
Columbus, Ohio 43215
Telephone: (614) 224-6000
Facsimile: (614) 224-6066
mwilson@meyerwilson.com
mboyle@meyerwilson.com

Dated: _____

David Stein
Kyla J. Gibboney
GIBBS LAW GROUP LLP
1111 Broadway, Suite 2100
Oakland, CA 94607
Telephone: (510) 350-9700
Facsimile: (510) 350-9701
ds@classlawgroup.com
kjpg@classlawgroup.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves and their counsel:

For Plaintiffs:

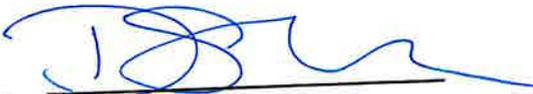
Dated: _____ Plaintiff Kenton Bowen

Dated: 12-23-22 
Plaintiff Kathleen Darnell

For Class Counsel:

Dated: _____

Matthew R. Wilson
Michael J. Boyle, Jr.
MEYER WILSON CO., LPA
305 West Nationwide Boulevard
Columbus, Ohio 43215
Telephone: (614) 224-6000
Facsimile: (614) 224-6066
mwilson@meyerwilson.com
mboyle@meyerwilson.com

Dated: 1-3-23 

David Stein
Kyla J. Gibboney
GIBBS LAW GROUP LLP
1111 Broadway, Suite 2100
Oakland, CA 94607
Telephone: (510) 350-9700
Facsimile: (510) 350-9701
ds@classlawgroup.com
kjg@classlawgroup.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves and their counsel:

For Plaintiffs:

Dated: _____
Plaintiff Kenton Bowen

Dated: _____
Plaintiff Kathleen Darnell

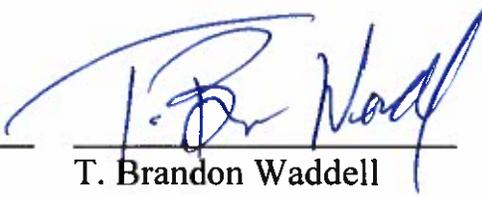
For Class Counsel:

Dated: 1/3/23 _____

Matthew R. Wilson
Michael J. Boyle, Jr.
MEYER WILSON CO., LPA
305 West Nationwide Boulevard
Columbus, Ohio 43215
Telephone: (614) 224-6000
Facsimile: (614) 224-6066
mwilson@meyerwilson.com
mboyle@meyerwilson.com

Dated: _____
David Stein
Kyla J. Gibboney
GIBBS LAW GROUP LLP
1111 Broadway, Suite 2100
Oakland, CA 94607
Telephone: (510) 350-9700
Facsimile: (510) 350-9701
ds@classlawgroup.com
kjpg@classlawgroup.com

Dated: 1/4/23



T. Brandon Waddell

Michael A. Caplan

CAPLAN COBB LLP

75 Fourteenth Street, NE, Suite 2750

Atlanta, Georgia 30309

Telephone: (404) 596-5600

Facsimile: (404) 596-5604

mcaplan@caplancobb.com

bwaddell@caplancobb.com

For Defendant Porsche Cars North America, Inc.:

Dated: Jan 5, 2023 By: *George Feygin*

Name: George Feygin

Title: General Counsel

Counsel for Defendant Porsche Cars North America, Inc.:

Dated: _____

Cari K. Dawson
Kara F. Kennedy
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, Georgia 30309- 3424
Telephone: 404-881-7000
Facsimile: 404-881-7777
cari.dawson@alston.com
kara.kennedy@alston.com

For Defendant Porsche Cars North America, Inc.:

Dated: _____ By: _____

Name: _____

Title: _____

Counsel for Defendant Porsche Cars North America, Inc.:

Dated: 1/6/23 _____



Cari K. Dawson

Kara F. Kennedy

ALSTON & BIRD LLP

1201 West Peachtree Street

Atlanta, Georgia 30309- 3424

Telephone: 404-881-7000

Facsimile: 404-881-7777

cari.dawson@alston.com

kara.kennedy@alston.com

Exhibit 1

CLAIM FORM

Bowen v. Porsche N.A., Inc., Case No. 21-cv-00471-MHC (N.D. Ga.)

Step 1: Verify the below information is correct. If it is incorrect or missing, update it below:

[Auto Fill Name]
 [Auto Fill Address 1]
 [Auto Fill Address 2]
 [Auto Fill City], [Auto Fill State] [Auto Fill Zip Code]

[Auto Fill Email]

[Auto Fill VIN]

Vehicle Identification Number (VIN): The VIN is a 17-character number that can be found on the driver's side dashboard or driver's side door post. The VIN also appears on your registration card and insurance card.

Step 2: Verify that you were in possession of your Porsche vehicle on May 20, 2020.

I owned or leased a [Auto Fill Porsche vehicle model year and model] equipped with a satellite radio receiver from approximately _____ until approximately _____.

Note: Exact dates are not required; approximations that show possession on May 20, 2020, are sufficient (e.g., "February 2019" or "Spring 2019" to "July 2020" or "present"). "May 2020," however, would require greater specificity because that does not show whether you were in possession on May 20, 2020.

Step 3: Check the box for EITHER Option 1 OR Option 2 and fill in the required information.

Option 1: I would like to be reimbursed for my out-of-pocket expenses and have supporting documents.

1. Provide the total **out-of-pocket expenses** you incurred on or after May 20, 2020, related to your vehicle's infotainment system (or "PCM") rebooting issues:

\$ 0,000.00

- **Out-of-pocket expenses** eligible for reimbursement include: PCM replacements or repairs, battery replacements due to PCM rebooting, and towing and alternative transportation costs incurred while receiving the repair/replacement. To be eligible for reimbursement, the towing and alternative transportation costs must have been incurred no later than 48 hours after completion of the repair or replacement.

2. Provide the **required documentation**:

UPLOAD FILES*

- **For a repair or replacement:** Provide documents (e.g., your repair invoice) that shows (i) the repair type, (ii) date, and (iii) amount paid.
- **For towing and alternative transportation:** Provide documents that show (i) what you purchased (e.g., a rental car, rideshare/taxi, or towing), (ii) date, (iii) amount paid (e.g., receipt, credit card, or bank statement), and (iv) date and nature of the associated repair.

I certify that I have not previously been reimbursed by Porsche or a Porsche dealer for the out-of-pocket expenses identified above.

Option 2: I did not incur out-of-pocket expenses or do not have supporting documents.

1. To the best of my knowledge, I expended approximately ___ hours addressing the rebooting of my PCM on or after May 20, 2020.

Note: Any number of hours over 0 will suffice.

2. I have not previously been reimbursed by Porsche or a Porsche dealer for out-of-pocket expenses incurred to address rebooting of my PCM.

3. I would like to receive

A payment of \$25

OR

A \$50 credit usable at any authorized Porsche dealer

4. I swear under penalty of perjury that to the best of my knowledge, the foregoing is true and correct.

Signature: _____ Date: _____

SUBMIT

After your claim is received, it will be reviewed by the Court-appointed settlement administrator, who will notify you if your claim is deficient (for example, if it is missing required information or documentation). Once your claim has been verified, the settlement administrator will notify you of the compensation you are entitled to receive and provide instructions for selecting between different payment options. Please look for an email from the domain @abdataclassactionmail.com.

*If you prefer to submit your claim by mail, print the completed claim form and any supporting documents and mail them to: **[Settlement Administrator Address]**

Exhibit 2

[Email Notice]

If your Porsche experienced rebooting of the Porsche Communication Management System (“PCM” or infotainment system) on or after May 20, 2020, you may be entitled to a cash payment.

A federal court authorized this notice.

You are receiving this notice because you may be a class member in a proposed class action settlement related to allegations that some Porsche infotainment systems (the PCM 3.1 system with satellite antennae) went into a reboot cycle on or after May 20, 2020. Porsche denies these claims and any wrongdoing. The court has not decided who is right, but the parties reached a settlement to avoid a trial and provide class members with compensation now.

Am I included? You are a member of the settlement class if, as of May 20, 2020, you owned or leased a Porsche vehicle that was equipped with an XM satellite radio antenna and a PCM 3.1 infotainment system. You are receiving this notice because records show that you may be a member of the class.

What can I get? Class members may claim: (1) reimbursement of their out-of-pocket costs related to PCM rebooting (subject to certain limitations), including PCM replacements or repairs, battery replacements, towing, and alternative transportation costs; or (2) if you spent time dealing with the rebooting issue but have no out-of-pocket costs or don't have documentation of your out-of-pocket costs, your choice between a \$25 payment or a \$50 Porsche dealer credit.

What if my vehicle is currently experiencing PCM rebooting issues or does in the future? You can make a claim for expenses incurred up to one year after the Court's Fairness Hearing. However, to get reimbursed for eligible out-of-pocket expenses that you incur after receiving this notice, you must take your vehicle to an authorized Porsche dealer for repairs.

How do I make a claim? You can make a claim at www.PorschePCMSettlement.com. The deadline to make a claim is **Month, 00, 0000**. This date could change, so please visit the website for updated information on the deadline to submit a claim.

To opt-out: If you wish to forego these benefits and not participate in the settlement, you may exclude yourself. Opt-out requests must be postmarked by **Month 00, 0000**. Please visit www.PorschePCMSettlement.com for more information.

To object: If you wish to object to the proposed settlement, you may do so by filing a written objection with the Court by **Month 00, 0000**. Please visit www.PorschePCMSettlement.com for more information.

For more information, call the Settlement Administrator's toll free number (**-**-****) or visit www.PorschePCMSettlement.com.

Exhibit 3

Long Form Notice

United States District Court for the Northern District of Georgia

If your Porsche Communication Management System (“PCM” or infotainment system) experienced rebooting on or after May 20, 2020, you could get a payment from a class action settlement.

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

- A class action settlement has followed from allegations that some Porsche infotainment systems (the PCM 3.1 system with XM satellite antenna) went into a reboot cycle on or after May 20, 2020. Porsche denies any wrongdoing. The parties have reached a settlement to avoid a trial and provide class members with compensation now.
- The settlement will provide (1) reimbursement of out-of-pocket costs incurred to address PCM rebooting (subject to certain limitations), including PCM replacements or repairs, battery replacements, towing, and alternative transportation costs, up to \$7,500; or (2) if you spent time dealing with the rebooting issue but have no out-of-pocket costs to claim or don’t have documentation of your out-of-pocket costs, your choice between (a) a \$25 payment or (b) a \$50 dealer credit.
- To qualify, you must have owned or leased a Porsche vehicle as of May 20, 2020, that was equipped with an XM satellite radio antenna and a PCM 3.1 system.

Your legal rights are affected whether you act or don’t act. Read this Notice carefully.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT: | |
|--|--|
| SUBMIT A CLAIM FORM | The <u>only</u> way to get a payment is to submit a valid claim. All claims must be received by Month 00, 0000 . |
| EXCLUDE YOURSELF | This is the only option that allows you to ever be part of any other lawsuit against Porsche about the legal claims in this case. Requests for exclusion must be electronically submitted or postmarked by Month 00, 0000 . |
| OBJECT | Write to the Court about why you don’t like the settlement by Month 00, 0000 . |
| GO TO A HEARING | Ask to speak in Court about the fairness of the settlement. |

QUESTIONS? CALL **1-800-000-0000** TOLL FREE, OR VISIT WWW.PORSCHEPCMSETTLEMENT.COM
NOTICE IN SPANISH IS AVAILABLE UPON REQUEST.

DO NOTHING

Get no payment. Give up rights.

- These rights and options —**and the deadlines to exercise them** —are explained in this notice.
- The Court in charge of this case still must decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION**1. Why did I get this notice?**

Porsche's records indicate that you may have owned or leased a Porsche vehicle equipped with an XM satellite radio antenna and Porsche Communications Management (PCM) infotainment system 3.1 as of May 20, 2020.

The Court sent you this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the settlement. If the Court approves it and after objections and appeals are resolved, an administrator appointed by the Court will make the payments provided by the settlement. You will be informed of the progress of the settlement through updates to the settlement website: www.PorschePCMSettlement.com.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Northern District of Georgia, and the case is known as *Bowen v. Porsche Cars N.A., Inc.*, Case No. 1:21-cv-00471. The people who sued are called the Plaintiffs, and the company they are suing, Porsche Cars North America, Inc., is called the Defendant.

2. What is this lawsuit about?

The lawsuit claims that Porsche is responsible for PCM rebooting issues in certain Porsche vehicles that occurred on or about May 20, 2020. Plaintiffs claim that some vehicle owners had to pay out-of-pocket to repair or replace their PCM system, while other vehicle owners were inconvenienced by the time they spent addressing the rebooting issues. Porsche denies these claims or that it did anything wrong. The Court has not decided who is right.

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case, Kent Bowen and Kathleen Darnell) sue on behalf of people who have similar claims. All of these people are a Class or Class Members. In a class action, one court resolves the issues for all Class Members, except for those who exclude themselves from the Class. U.S. District Judge Mark Cohen is in charge of this class action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both parties agreed to a settlement. The settlement allows Plaintiffs and Defendant to avoid the cost of a trial, and the Class Members affected by PCM rebooting will be eligible for compensation. The Class Representatives and their attorneys think the settlement is best for all settlement Class Members.

WHO IS IN THE SETTLEMENT

To receive compensation under this settlement, you must be a Class Member.

5. How do I know if I am part of the settlement?

If the settlement is approved, Judge Cohen will decide that everyone who fits this description is a Class Member: *All entities and individuals in the United States who, as of May 20, 2020, owned or leased a Porsche vehicle equipped with an XM radio antenna and Porsche Communication Management (PCM) system 3.1.*

Excluded from the class are Defendant, any Released Persons, Class Counsel, and the Court, as well as the Court's spouse, and any person within the third degree of relationship to either of them.

6. Which Porsche vehicles are included?

Porsche has identified the following models as being equipped with a PCM 3.1 infotainment system:

- Panamera, model years 2010-2016
- Cayenne, model years 2011-2016
- 911 Carrera, model years 2012-2016
- Boxster, model years 2012-2016
- Cayman, model years 2012-2016
- Macan, model years 2015-2016

In addition, the vehicle must be equipped with an XM satellite radio antenna.

To determine if your vehicle is included in the settlement, you can look up your Vehicle Identification Number (VIN) on the settlement website (www.PorschePCMSettlement.com). The VIN is a 17-character number that can be found on the driver's side dashboard or driver's side door post. The VIN also appears on your registration card and insurance card.

7. If I have an eligible Porsche vehicle but have not experienced rebooting issues, am I included?

Yes. If you have an eligible Porsche vehicle, you are included in the settlement (unless you exclude yourself) even if you have not experienced rebooting issues. If you are currently experiencing PCM rebooting issues, if you previously experienced rebooting issues on or after May 20, 2020, or if you experience them in the future at any time before **Month, 00, 0000**, you can make a claim under this settlement until **Month, 00, 0000**. This date could change, so please visit

www.PorschePCMSettlement.com for the most updated information on the deadline to submit a claim.

However, to make a claim for reimbursement of out-of-pocket expenses that you incurred after receiving this notice, **you must take your vehicle to an authorized Porsche dealer for repairs.** Please visit www.PorschePCMSettlement.com for more information.

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

If you are still not sure whether you are included, you can ask for free help by calling 1-800-000-0000 or visiting www.PorschePCMSettlement.com. Or you can fill out the [claim form](#) to see if you qualify.

THE SETTLEMENT BENEFITS—WHAT YOU GET

9. What does the settlement provide?

The settlement provides two options for compensation.

Under Option 1, Porsche has agreed to reimburse out-of-pocket costs spent by Class Members to address PCM 3.1 rebooting issues experienced on or after May 20, 2020 and before **Month, 00, 0000**, including PCM replacements or repairs, battery replacements, towing, and alternative transportation costs while receiving the repair/replacement. To be reimbursed, towing and alternative transportation costs must have been incurred due to repairs or replacements to resolve the PCM rebooting issues and must have been incurred no later than 48 hours after the completion of the repair or replacement. Additionally, for repairs or replacement performed after **[Month X, 2023]**, the repair or replacement must be performed by an authorized Porsche dealer to be reimbursed. All claims under Option 1 must be substantiated with documentation, are limited to out-of-pocket costs that have not already been reimbursed by Porsche or a Porsche dealer, and are subject to a limitation of \$7,500 per claim.

Under Option 2, Porsche has agreed to provide Class Members that spent time dealing with the rebooting issue but have no out-of-pocket costs to claim or don't have documentation of such costs a choice between either (1) a \$25 payment or (2) a \$50 Porsche dealer credit.

Class Members may only recover once per eligible vehicle. A Class Member may submit a claim under Option 1 for one eligible vehicle and another claim under Option 2 for a different eligible vehicle, but may not submit multiple claims related to a single eligible vehicle.

To receive any money, you must submit a valid and timely [claim form](#).

10. How do I get reimbursed for my out-of-pocket costs?

If you have incurred out-of-pocket costs stemming from reboots of your PCM, you may make a claim for reimbursement. These expenses include PCM replacements or repairs, battery replacements, towing, and alternative transportation costs (for example, rideshares, taxis, or rental cars) while receiving the repair/replacement. In order to be reimbursed for any towing and alternative transportation costs, you must have incurred the costs before or no later than 48 hours after receiving a

repair or replacement to resolve the rebooting issue. The maximum amount of reimbursement you can receive is **\$7,500**.

In order to receive your reimbursement, you must complete Option 1 on the claim form and submit **your completed claim form, along with documentation (e.g., receipts) of your out-of-pocket expenses by Month 00, 0000**.* You may submit your claim online at www.PorschePCMSettlement.com, or by mail. To make a claim by mail, send your claim form and documentation to the address below:

[ADDRESS]

*This date could change, so please visit www.PorschePCMSettlement.com for the most updated information on the deadline to submit a claim.

After you have submitted your claim, the court-appointed settlement administrator will review it and notify you if your claim is deficient (e.g., if it is missing required information). Once your claim has been verified, the settlement administrator will notify you of the compensation you are entitled to receive and provide instructions for selecting between various payment options.

11. If I do not have any out-of-pocket costs from the rebooting of my PCM or do not have documentation of my out-of-pocket costs, can I make a claim?

Yes. If you spent time addressing the rebooting of your PCM and you either did not incur any out-of-pocket costs or you do not have documentation of such costs, you may still make a claim. To make a claim without any documentation, you must complete Option 2 of the claim form, stating: (1) the model year, model, and VIN of your Porsche vehicle; (2) the approximate dates during which you owned or leased the Porsche vehicle; and (3) your estimate of how much time you spent addressing the reboot of your PCM on or after May 20, 2020.

Upon providing such information as part of your claim, you will choose whether to receive either (1) a \$25 payment or (2) a \$50 Porsche dealership credit.

In order to receive your settlement award, **your completed claim form containing the required information must be received by Month 00, 0000**.* You may submit your claim online at www.PorschePCMSettlement.com, or by mail. To make a claim by mail, send your claim form and documentation to the address below:

[ADDRESS]

*This date could change, so please visit www.PorschePCMSettlement.com for the most updated information on the deadline to submit a claim.

After you have submitted your claim, the court-appointed settlement administrator will review it and notify you if your claim is deficient (e.g., if it is missing required information). If your claim is determined to be valid and you elected to receive the \$25 payment, the settlement administrator will notify you and provide instructions for selecting between various payment options. If your claim is determined to be valid and you elected to receive the \$50 dealer credit, Porsche will send you a dealer voucher.

12. If my PCM experiences rebooting issues in the future, may I make a claim?

Yes. If your PCM experiences rebooting at any time on or before **Month 00, 0000**, you may make a claim. All claims must be received by the settlement administrator by **Month 00, 0000**. These dates

QUESTIONS? CALL **1-800-000-0000** TOLL FREE, OR VISIT WWW.PORSCHEPCMSETTLEMENT.COM
NOTICE IN SPANISH IS AVAILABLE UPON REQUEST.

could change, so please visit www.PorschePCMSettlement.com for the most updated information on the deadline to submit a claim. You may only make one claim per vehicle under the settlement.

In order to make a claim for reimbursement of out-of-pocket expenses that you incur after **Month 00, 0000**, you must take your vehicle to an authorized Porsche dealer for repairs.

HOW YOU GET A PAYMENT—SUBMITTING A CLAIM FORM

13. How can I get a payment?

To qualify for any payment, you must submit a valid and timely **claim form**. Read the instructions carefully, fill out the form, provide all the documents the form asks for, and either submit it online or mail it so that it is received no later than **Month 00, 0000**.

The court-appointed settlement administrator will review your claim, notify you if your claim is deficient (e.g., if it is missing required information). Once your claim has been verified, the settlement administrator will notify you of the compensation you are entitled to receive and provide instructions for selecting between various payment options.

14. When would I get my payment?

The Court will hold a Fairness Hearing on **Month 00, 0000**, to decide whether to approve the settlement. If Judge Cohen approves the settlement, there may be appeals after approval. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a claim form will be informed of the progress of the settlement through updates to the settlement website. Please be patient. Settlement payments will be issued once the settlement is approved and all appeals resolved.

15. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Porsche about the legal issues in *this* case. It also means that all of the Court's orders will apply to you and legally bind you. The copy of the settlement agreement posted on www.PorschePCMSettlement.com describes in detail the legal claims that you will give up if you do not exclude yourself.

Nothing in this settlement will prevent you from pursuing claims against Porsche that are unrelated to the PCM rebooting issues that occurred on or after May 20, 2020.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want compensation from this settlement, but you want to keep the right to sue or continue to sue Porsche on your own about the legal issues in *this* case, then you must take steps to exclude yourself from the settlement. This is sometimes referred to as opting out from the settlement Class.

16. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from *Bowen v. Porsche Cars N.A., Inc.* Be sure to include:

- Your full name and address;
- The VIN and dates of ownership or lease of your Porsche vehicle;
- A statement that clearly indicates your desire to be excluded from the settlement Class; and
- Your signature.

Mail your request for exclusion postmarked no later than **Month 00, 0000**, to:

Porsche PCM Settlement Administrator

You can't exclude yourself by phone or by email.

If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens or has happened in the lawsuit. You may be able to sue (or continue to sue) Porsche in the future.

17. If I don't exclude myself, can I sue Porsche for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Porsche for the claims that the settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You may need exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is **Month 00, 0000**.

18. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself from the settlement, you will not receive any money from the settlement. But you may sue, continue to sue, or be part of a separate lawsuit against Porsche related to the claims alleged in this case.

THE LAWYERS REPRESENTING YOU

19. Do I have a lawyer in this case?

Yes. The Court appointed the law firms of Gibbs Law Group, LLP; Meyer Wilson Co., LPA; and Caplan Cobb, LLC to represent you and other Class Members. Together, the lawyers are called Class Counsel. You do not have to pay Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

20. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses up to \$2,050,000. The Court may award a different amount. Porsche will separately pay the fees and expenses that the Court awards up to \$2,050,000. These amounts will not come out of the funds for payments to Class Members. Porsche has agreed not to oppose fees and expenses up to \$2,050,000. Porsche will also separately pay the costs to administer the settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court you don't agree with the settlement or some part of it.

21. How do I tell the Court that I don't think the Settlement is fair?

If you are a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views.

To object, you must send a letter saying that you object to the proposed settlement. **Be sure to include:**

- The case name and case number: *Bowen v. Porsche Cars N.A., Inc.*, Case No. 1:21-cv-00471;
- Your full name, address, and current telephone number;
- The VIN and dates of ownership or lease of your Porsche vehicle;
- A statement that you have reviewed the settlement class definition and understand that you are a settlement class member, and that you have not opted out and do not plan to opt out of the settlement class;
- The specific reasons you object to the settlement;
- The name, address, bar number, and phone number of the lawyer, if any, who will represent you with respect to any objection;
- If you intend to appear at the Fairness Hearing (either in person or through a lawyer); and
- Your signature.

If you or your lawyer intend to speak at the Fairness Hearing, your objection letter **must also include:**

- A detailed statement of the legal and factual basis for your objection(s);
- A list of any witness you may seek to call at the Fairness Hearing, along with each witness's address and a summary of their proposed testimony;
- A list of legal authorities you plan to present at the Fairness Hearing.

You must mail the objection to both of the following, postmarked no later than **Month 00, 0000**:

THE COURT

Clerk of Court
U.S. District Court, Northern District of Georgia
Richard B. Russell Federal Building
2211 United States Courthouse
75 Ted Turner Drive, SW
Atlanta, GA 30303

SETTLEMENT ADMINISTRATOR

INSERT

22. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you cannot object because the settlement no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a Fairness Hearing to decide whether to approve the settlement. You may attend, and you may ask to speak, but you don't have to.

23. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at **00:00am on Month 00, 0000**, at the U.S. District Court for the Northern District of Georgia, Richard B. Russell Federal Building, 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303, in Courtroom 1905. The hearing may be held virtually by video conference or moved to a different date or time without additional notice, so it is a good idea to check the settlement website for updates.

At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Cohen will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

24. Do I have to come to the hearing?

No. Class Counsel will answer questions Judge Cohen may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

25. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Bowen v. Porsche Cars N.A., Inc.*" Be sure to include your full name, address, telephone number, and signature. You cannot speak at the hearing if you do not file a notice on time or if you excluded yourself from the settlement Class.

You must mail your Notice of Intention to Appear to both of the following, postmarked no later than **Month 00, 0000**:

THE COURT

SETTLEMENT ADMINISTRATOR

Clerk of Court
U.S. District Court, Northern District of Georgia
Richard B. Russell Federal Building
2211 United States Courthouse
75 Ted Turner Drive, SW
Atlanta, GA 30303

INSERT

IF YOU DO NOTHING

26. What happens if I do nothing at all?

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Porsche about the legal issues in *this* case, ever again.

GETTING MORE INFORMATION

27. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are provided in the Settlement Agreement, which is available on the settlement website: www.PorschePCMSettlement.com. You can also get a copy of the Settlement Agreement by writing to Matthew Wilson, Meyer Wilson Co., LPA, 305 W. Nationwide Blvd., Columbus, OH 43215.

28. How do I get more information?

You can call 1-800-000-0000 toll free; write to Porsche Settlement, P.O. Box 000 [Address]; or visit the website at www.PorschePCMSettlement.com, where you will find answers to common questions about the settlement, a claim form plus other information to help you determine whether you are a Class Member and whether you are eligible for payment.

DATE: Month 00, 0000.

Exhibit 4

[Postcard Notice]

A federal court authorized this notice.

Records show that you may be entitled to money from a class action settlement.

Si desea recibir esta notificación en español, visite nuestra página web o llámenos.

A class action settlement has been reached about some Porsche vehicles experiencing rebooting of the infotainment system or “PCM.”

Porsche PCM
Settlement Administrator
Toll Free Number: x-xxx-xxx-xxxx
PO Box []
www.PorschePCMSettlement.com

PRESORT
FIRST CLASS
U.S. POSTAGE
PAID
PERMIT NO. XX



Postal Service: Please do not mark barcode

UNIQUE ID: [00001234]

<<Name1>>
<<Name2>>
<<Address1>>
<<Address2>>
<<City>><<State>><<Zip>>

Am I included? You are a member of the settlement class if, as of May 20, 2020, you owned or leased a Porsche vehicle equipped with an XM satellite radio antenna and a Porsche Communication Management system (“PCM”), version 3.1 infotainment system. You are receiving this notice because records show that you may be a member of the class.

What can I get? Class members may claim: (1) reimbursement of their out-of-pocket costs related to PCM rebooting, subject to certain limitations, including PCM replacements or repairs, battery replacements, towing, and alternative transportation costs; or (2) if you spent time dealing with rebooting but have no out-of-pocket costs or don’t have documentation of your out-of-pocket costs, your choice between a \$25 payment or a \$50 Porsche dealer credit.

What if my vehicle is currently experiencing PCM rebooting issues or does in the future? You can make a claim for expenses incurred up to one year after the Court’s Fairness Hearing. However, to make a claim for reimbursement of out-of-pocket expenses incurred after receiving this notice, you must take your vehicle to an authorized Porsche dealer for repairs.

How do I make a claim? You can make a claim online at www.PorschePCMSettlement.com. The deadline to make a claim is **Month 00, 0000**. This date could change, so please visit the website for updated information on the deadline to submit a claim.

To opt-out: If you wish to forego these benefits and not participate in the settlement, you may exclude yourself. Opt-out requests must be postmarked by **Month, 00, 0000**. Please visit www.PorschePCMSettlement.com for more information.

To object: If you wish to object to the proposed settlement, you may do so by filing a written objection with the Court by **Month, 00, 0000**. Please visit www.PorschePCMSettlement.com for more information.

For more information, call the Settlement Administrator’s toll free number (***_**_****) or visit www.PorschePCMSettlement.com .

Exhibit 5

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KENT BOWEN and KATHLEEN
DARNELL on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

PORSCHE CARS, N.A., INC.

Defendant.

CIVIL ACTION NO:
1:21-CV-471-MHC

**ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This matter is before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion") of the above-captioned case between Plaintiffs Kent Bowen and Kathleen Darnell (together, the "Class Plaintiffs") and Defendant Porsche Cars, N.A., Inc. ("Porsche" or "Defendant") (the "Action") as set forth in the Parties' Settlement Agreement (the "Agreement," which memorializes the "Settlement").

Having duly considered the filings made in connection with the Motion,
THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court finds that it has jurisdiction over the Action and each of the Parties for purposes of settlement and asserts jurisdiction over the Class Plaintiffs,

all Settlement Class Members, and Defendant for purposes of considering and effectuating this Settlement. The Court also preliminarily finds that each member of the proposed Settlement Class has standing to seek relief. Under the Settlement Class definition provided in the Agreement, each Settlement Class member owned or leased a vehicle that received the allegedly trespassory software update. As the Court previously held, Plaintiffs have adequately alleged that the update constituted a trespass to personalty, as well as a violation of the Computer Fraud and Abuse Act., 18 U.S.C. § 1030, sufficient to withstand dismissal on the pleadings under Fed. R. Civ. P. 12(b)(6). *See* dkt. 36 at 6–26. Each Settlement Class member has therefore sufficiently alleged that he or she has suffered an injury that is concrete, particularized, and directly analogous to an injury that historically existed at common law. In addition, under the Settlement, Settlement Class Members will not receive compensation absent a showing that they incurred an injury in the form of having spent money and/or time resolving PCM 3.1 rebooting. *See Drazen v. Pinto*, 41 F.4th 1354, 1360 (11th Cir. 2022) (quoting *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204-05, 2208 (2021) (“Every class member must have Article III standing in order to recover individual damages.”)).

2. Unless otherwise defined herein, all defined terms in this Order shall have the meanings ascribed to them in the Agreement.

3. Defendant does not oppose the Court's entry of the proposed Preliminary Approval Order.

4. This Court has considered all of the presentations and submissions related to the Motion and, having presided over and managed this Action, is familiar with the facts, contentions, claims, and defenses as they have developed in these proceedings, and is otherwise fully advised of all relevant facts in connection therewith.

I. Preliminary Certification of the Settlement Class, Class Representatives, and Class Counsel

5. Pursuant to Rule 23(e)(1)(B)(ii), and for purposes of settlement only, the Court finds that it will likely be able to certify the Settlement Class, defined as: "All entities and individuals in the United States who, as of May 20, 2020, owned or leased an Eligible Vehicle." As defined in the Settlement Agreement, an "Eligible Vehicle" is any Porsche vehicle equipped with an XM radio antenna and PCM 3.1. Excluded from the Settlement Class are the following persons: Defendant, any Released Persons, Class Counsel, and the Court, as well as the Court's spouse, and any person within the third degree of relationship to either of them.

6. The Court finds that, for purposes of settlement only, the prerequisites for a class action under Rules 23(a), and (b)(3) of the Federal Rules of Civil

Procedure have likely been satisfied in that: (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Plaintiffs are typical of the claims of the Settlement Class; (d) the Class Plaintiffs and their counsel have fairly and adequately represented and protected the interests of Settlement Class Members; (e) the questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Court notes that the fact that it is being asked to certify a settlement class, rather than a litigation class, eliminates any manageability concerns that might otherwise arise in connection with a trial of Plaintiffs' claims. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems").

7. This Court finds that the following counsel are experienced and adequate for purposes of these settlement approval proceedings and appoints them as Class Counsel: Michael A. Caplan and T. Brandon Waddell of Caplan Cobb,

LLC; Matthew R. Wilson, Michael J. Boyle, Jr., and Jared W. Connors of Meyer Wilson Co., LPA; and David Stein of Gibbs Law Group LLP.

II. Preliminary Approval of the Class Settlement

8. The Court has evaluated the Settlement as set forth in the Agreement for fairness, adequacy, and reasonableness. As part of that evaluation, the Court notes that the parties reached the Settlement with the assistance of Joseph Loveland of JAMS, who oversaw the parties' negotiations, including at mediations in August 2022 (as to the class-wide relief) and in October 2022 (as to attorneys' fees and costs). Based on the Court's evaluation, the Court finds under Rule 23(e)(1)(B)(i) that it is likely to approve the Settlement in light of the fact that: (A) the class representatives and class counsel have adequately represented the class; (B) the Settlement was negotiated at arm's length; (C) the relief provided for the Settlement Class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the class, including the method of processing Settlement Class Members' claims; (iii) the terms of the proposed award of attorney's fees, including timing of payment; and (iv) the lack of additional agreements identified under Rule 23(e)(3); and (D) the Settlement treats Settlement Class Members equitably relative to each other. Moreover, the Court has evaluated the Settlement under the additional

factors for consideration enumerated in *Bennett v. Behring Corp.*, and finds that it is likely to approve the Settlement under the *Bennett* factors as well. *See generally* 737 F.2d 982, 986 (11th Cir. 1984).

9. Based on the above findings, the Court finds that it will likely be able to approve the Settlement as fair, reasonable, and adequate, so as to warrant providing notice of the Settlement to the Settlement Class consistent with the notice plan set forth in the Agreement.

10. A Fairness Hearing shall be held before this Court on **[DATE]**, at the United States District Court for the Northern District of Georgia, Richard B. Russell Federal Building, 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303, to make a final determination of whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement is fair, reasonable, and adequate to the Settlement Class and should be finally approved by the Court; to determine whether the Settlement Class should be certified; to determine whether a Final Approval Order approving the Settlement should be entered; to determine whether the plan for distribution of claims should be approved; to determine any amount of attorneys' fees and cost-reimbursements that should be awarded to Class Counsel; to hear any objections by Settlement Class Members to the Settlement, claims process, and any award of attorneys' fees

and cost reimbursements to Class Counsel; and to consider such other matters as the Court may deem appropriate. The Fairness Hearing may be continued by order of the Court without further notice to the Settlement Class except that the Parties shall update the settlement website to reflect the date of the hearing. After the Fairness Hearing, the Court may enter a Final Approval Order in accordance with the Agreement that will adjudicate the rights of the Settlement Class Members (as defined in the Settlement) with respect to the claims being settled.

11. Pursuant to Rule 23(c) of the Federal Rules of Civil Procedure, the Court appoints for settlement purposes only A.B. Data, Ltd. (“Settlement Administrator”) to supervise and administer the notice procedure as well as the processing of claims as more fully set forth in the Agreement.

III. Notice to Class Members

12. Under Rule 23(c)(2), the Court finds that the content, format, and method of disseminating notice under the Settlement Class Notice Program, as set forth in the Motion and the Settlement Agreement, is (i) the best notice practicable under the circumstances; (ii) reasonably calculated to apprise the Settlement Class of their right to object or exclude themselves from the Settlement; and (iii) constitutes due, adequate, and sufficient notice to all persons entitled to receive notice. The Court approves such notice, and hereby directs that such notice be

disseminated no later than 30 days following the entry of this Order, in the manner set forth in the proposed Agreement to Settlement Class Members under Rule 23(e)(1).

13. The Court approves the form of the Notices and Claim Form attached as Exhibits 1 through 4 to the Settlement Agreement. The Court expressly authorizes and instructs the Settlement Administrator to send the Reminder Notice, as provided in Paragraph 19 of the Agreement. The Court also directs that the Settlement Administrator shall permit claims to be completed and submitted online through an electronic claim form.

14. The Settlement Administrator shall send the CAFA Notice required by 28 U.S.C. § 1715 to the appropriate federal and state officials as identified in 28 U.S.C. § 1715(a) within 10 days after the Motion for Preliminary Approval is filed with the Court.

15. The Settlement Administrator will provide to Class Counsel no later than 10 days prior to the Fairness Hearing, a declaration reflecting that the Settlement Class Notice Program has been executed in accordance with the Settlement Agreement and Preliminary Approval Order, which will be filed with the Court.

16. Settlement Class Members who wish to either object to the Settlement or request to be excluded from it must submit a written request to do so, postmarked no later than the Objection Date and Opt-Out Date of **[DATE]**, which is 30 days before the Final Fairness Hearing. Settlement Class Members may not both object and opt out. If a Settlement Class Member submits both an Opt-Out Request and an Objection, the Opt-Out Request will be controlling.

17. To submit an Opt-Out Request, a Settlement Class Member must follow the directions in the Notice and send a compliant request to the Settlement Administrator at the address designated in the Class Notice by the Opt-Out Date. In the Opt-Out Request, the Settlement Class Member must provide (i) the potential Settlement Class Member's name, address, and Vehicle Identification Number (VIN) and dates of ownership or lease of the potential Settlement Class Member's Eligible Vehicle(s); (ii) an unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class; and (iii) the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member. Requests for exclusion must be exercised individually by the Settlement Class Member and are only effective as to the individual Settlement Class Member requesting exclusion

18. If a timely and valid Opt-Out Request is made by a member of the Settlement Class, then that person will not be a Settlement Class Member, and the Agreement and any determinations and judgments concerning it will not bind the excluded person.

19. All Settlement Class Members who do not opt out in accordance with the terms set forth in the Agreement will be bound by all proceedings, orders, and judgments in the Action, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release.

20. To object to the Settlement, Settlement Class Members must follow the directions in the Notice and file a written objection with the Court by the Objection Date. In the written objection, the Settlement Class Member must state (i) the name of the case and case number; (ii) the name, address, telephone number, VIN and dates of ownership or lease of the Settlement Class Member's Eligible Vehicle(s); (iii) a statement that the objector has reviewed the Settlement Class definition and understands that he or she is a Settlement Class Member, and has not opted out and does not plan to opt out of the Settlement Class; (iv) the specific reasons why the Settlement Class Member objects to the Proposed Settlement; (v) the name, address, bar number, and telephone number of the objecting Settlement

Class Member's counsel, if any, and any such attorney must comply with all applicable rules of the Court; and (vi) whether the objecting Settlement Class Member intends to appear at the Fairness Hearing, either in person or through counsel.

21. In addition, an objection must contain the following information if the Settlement Class Member or his or her attorney requests permission to speak at the Fairness Hearing: (i) a detailed statement of the legal and factual basis for each objection; (ii) a list of any and all witnesses the Settlement Class Member may seek to call at the Fairness Hearing (subject to applicable rules of procedure and evidence and at the discretion of the Court), with the address of each witness and a summary of his or her proposed testimony; and (iii) a list of any legal authority the Settlement Class Member will present at the Fairness Hearing. Any attorney hired by a Settlement Class Member for purposes of objecting to the Settlement or intervening in this Action must file a notice of appearance with Clerk of Court, and provide the Settlement Administrator with a copy thereof, no later than **[DATE]**, the deadline for submitting objections.

22. Any Settlement Class Member who does not submit a timely objection may, in the discretion of the Court, waive the right to object or to be

heard at the Fairness Hearing and be barred from making any objection to the Proposed Settlement.

23. The Settlement Administrator shall establish a post office box and email address in the name of the Settlement Administrator to be used for receiving Opt-Out Requests, Claim Forms, and any other communications from Settlement Class Members. Only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box and email account, except as otherwise provided in the Settlement Agreement. The Settlement Administrator shall promptly provide copies of all Objections, Opt-Out Requests, motions to intervene, notices of intention to appear, and other communications to Class Counsel and Defendant's counsel.

24. The Settlement Administrator shall also create and maintain the Settlement Website consistent with the terms of Paragraphs 25-27 of the Agreement, including that Class Members shall be permitted to submit Claim Forms to the Settlement Administrator via the Settlement Website. The Settlement Administrator shall make that Website publicly available until 60 days after the end of the Claims Period. The Website may be amended during the course of administering the Settlement as appropriate and as agreed to by both Parties.

25. Class Counsel shall file their Motion for an Award of Attorneys' Fees, Expenses, and Costs at least 21 days prior to the Objection Date.

26. The Settlement Administrator shall provide the final Opt-Out List to Class Counsel and Defendant's Counsel no later than 10 days before the Final Fairness Hearing, along with an affidavit or declaration attesting to its accuracy. Plaintiffs shall file this report with the Court prior to the Final Fairness Hearing.

27. All Settlement Class Members are preliminarily enjoined from: (i) filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitral, or other proceeding in any jurisdiction based on the Released Claims; (ii) filing, commencing, participating in, or prosecuting a lawsuit or administrative, regulatory, arbitral, or other proceeding as a class action on behalf of any member of the Settlement Class who has not timely excluded himself or herself (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on the Released Claims; or (iii) attempting to effect Opt-Outs of a class of individuals in any lawsuit or administrative, regulatory, arbitral, or other proceeding based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims. Notwithstanding the foregoing, this

provision, and any other provision of the Settlement Agreement, does not prevent members of the Settlement Class from participating in any action or investigation initiated by a state or federal agency.

28. Pending the final determination of whether the Settlement should be approved, all pre-trial proceedings and briefing schedules in the Action are stayed. If the Settlement is terminated or final approval does not for any reason occur, the stay will be immediately terminated.

29. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings in connection with the Settlement will be without prejudice to the right of Defendant or the Class Plaintiffs to assert any right or position that could have been asserted if the Agreement had never been reached or proposed to the Court. In such an event, the Parties will return to the status quo ante in the Action, and the certification of the Settlement Class will be deemed vacated. The certification of the Settlement Class for settlement purposes, or any briefing or materials submitted seeking certification of the Settlement Class, will not be considered in connection with any subsequent class certification decision.

30. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission

or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of any liability or wrongdoing, by Defendant, or the truth of any of the claims, and evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, this Order, and the Final Approval Order.

31. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement. The Court reserves the right to approve the Agreement with such modifications, if any, as may be agreed to by the Parties without further notice to the members of the Class.

32. Accordingly, the following are the deadlines by which certain events must occur:

| Event | Deadline |
|--|--|
| Class notice mailed or emailed (as required by the Settlement Agreement) to individuals on the Class Notice List | [DATE] (30 days after entry of this Order.) |
| Last day for Class Counsel to file motion seeking final settlement approval and award of attorneys' fees and cost reimbursements | [DATE] (21 days prior to Opt-Out Date/Objection Date) |

| | |
|---|---|
| Last day for Settlement Class Members to object or opt out of the Settlement | [DATE] (30 days prior to the Fairness Hearing) |
| Last day for replies in support of motion for final approval and award of attorneys' fees and cost reimbursements | [DATE] (14 days prior to the Fairness Hearing) |
| Fairness Hearing | [DATE] . (At least 105 days after entry of Preliminary Approval Order) |

33. The Court shall maintain continuing jurisdiction over these proceedings for the benefit of the Settlement Class defined in this Order.

IT IS SO ORDERED this XXth day of [MONTH], 2023.

Hon. Mark Cohen
United States District Court Judge

Exhibit B

CAPLAN | COBB

MICHAEL A. CAPLAN



Mike Caplan, a founding partner of Caplan Cobb, serves as trial and appellate counsel in class actions, complex business disputes, and constitutional cases.

Mike's work has been the subject of news coverage in the New York Times, the Atlanta Journal-Constitution, and the Fulton County Daily Report. Mike has been selected as a *Best Lawyer in America* for Commercial Litigation, a Georgia *Super Lawyer*, among the Legal Elite in Business Law by *Georgia Trend*. Martindale-Hubbell has also honored Mike with its highest

rating of AV Preeminent for his legal ability and professional ethics.

Prior to founding Caplan Cobb, Mike served as a law clerk to the Honorable Richard W. Story in the U.S. District Court for the Northern District of Georgia and practiced at Bondurant, Mixson & Elmore.

PRACTICE AREAS

Class Actions. Mike prosecutes and defends class actions involving consumer rights, antitrust, employment benefits, telecommunications, and securities fraud. In 2022, Mike served as lead class counsel in securing an over \$150 million settlement on behalf of a nationwide class of telephone accountholders. In finally approving the settlement, the district court noted that Mike and his team demonstrated “great legal skill, persistence, flexibility, and creativity” in achieving “significant and meaningful relief to class members.” Among other notable class recoveries, Mike also recovered \$112.25 million on behalf of a nationwide class of insulation contractors alleging price-fixing in the sale of residential insulation. Mike also defends publicly-traded companies against class allegations of breach of contract, business torts, and violations of ERISA.

Business Litigation. Mike serves as lead counsel to Fortune 100 companies, closely-held businesses, directors, corporate officers, entrepreneurs, and investors. Mike's experience spans a broad array of complex business litigation. He has recovered over \$300 million on behalf of business plaintiffs in antitrust, contract, fiduciary-duty, trade secret, and RICO actions. Mike has also successfully defended companies in SEC, FTC, and CFPB investigations, business tort cases, and class actions involving substantial exposure. A skilled advocate with a strong background in business, Mike has an M.B.A. and R.I.A. designation in addition to his law degree.

Mike also represents state and local governments in connection with certain business litigation matters. Mike currently acts as a Special Assistant Attorney General to the State of Georgia.

Michael A. Caplan

Appellate Practice. Mike has developed a reputation as a skilled appellate practitioner. Working side-by-side with trial counsel, Mike’s appellate work has been described as “exceptional,” “of the highest quality,” and “meticulous and incredibly thorough.”

Constitutional and Public Interest Litigation. Mike has also been recognized for his work vindicating the public interest. In 2015, Mike and his co-counsel successfully obtained the release of Justin Chapman, who was wrongfully convicted of murder and incarcerated for over 8 years. The case was the subject of the *AJC*’s seven-part podcast series, *Breakdown*. In 2012, Mike was honored with the Southern Center for Human Rights’ inaugural Gideon’s Promise Award for achieving significant reforms to Georgia’s indigent defense system.

SPEECHES & PUBLICATIONS

Panelist for *Building New Trust in Government?: The City of Atlanta Takes a Fresh Step Towards Transparency That May Become a National Model*, 28th Annual Georgia Bar Media & Judiciary Conference (2019)

Panelist for *Appellate Briefs: What Works and What Doesn’t*, presented at the Appellate Practice Seminar, Institute of Continuing Legal Education in Georgia (2014)

Panelist for *Impact Litigation*, presented to the Individual Rights Section of the Georgia State Bar (2013)

Panelist for *The Right to Counsel in Civil Cases*, presented by the Institute of Continuing Legal Education in Georgia (2012)

Panelist for *Public Interest Work in the Private Sector*, presented to the University of Georgia School of Law (2011)

Panelist for *Fee Applications in Civil Rights Litigation*, presented by the Institute of Continuing Legal Education in Georgia (2011)

Panelist on *Appellate Preparation and Oral Argument*, presented to the Georgia State University School of Law (2011)

“Putting GPDSC in Executive Branch Created a Legal Quandary,” *Fulton County Daily Report* (2011)

“The Status of Appellate Challenges to the 2005 Tort Reform Provisions,” *The Litigator* (2005)

HONORS & RECOGNITIONS

AV Preeminent Rating, Martindale-Hubbell

Best Lawyers in America ©, Commercial Litigation (2021-23)

Super Lawyer, *Super Lawyers Magazine* (2021-23)

Michael A. Caplan

Rising Star in Business Litigation, *Super Lawyers Magazine* (2010, 2013-2020)

On the Rise (40 under 40), *Fulton County Daily Report*

Legal Elite in Business Law, *Georgia Trend Magazine*

Gideon's Promise Award, Southern Center for Human Rights

Avvo.com 10.0 Rating (Superb) in Litigation

REPRESENTATIVE CASES

Class Action Litigation

Class Actions – Plaintiff

- *Githieya, et al. v. Global Tel Link Corp.*, Civil Action No. 1:15-cv-00986-AT (NDGA). Won certification and recovered over **\$150 million** in settlement benefits, comprising of \$67 million in monetary benefits and over \$83 million in non-monetary benefits, in a consumer class action on behalf of nationwide class of accountholders.
- *In re Equifax Fair Credit Reporting Act Litigation*, Civil Action No. 1:22-cv-3072-LMM (NDGA). Along with other members of Caplan Cobb, appointed as liaison counsel in putative nationwide credit reporting class action.
- *Columbus Drywall & Insulation, Inc., et al. v. Masco Corporation, et al.*, Civil Action No. 1:04-cv-3066-JEC (NDGA). Won certification and recovered **\$112.25 million** in an antitrust class action on behalf of nationwide class of insulation contractors.
- *In re Acuity Brands, Inc. Securities Litigation*, Civil Action No. 1:18-cv-02140 (NDGA). Appointed as Liaison Counsel; recovered **\$15.75 million** on behalf of class of stockholders.
- *Monopoli, et al. v. Mercedes-Benz USA, LLC, et al.*, Civil Action No. 1:21-cv-01353 (NDGA). Currently serving as co-lead counsel in a putative auto defect class action.
- *In re Aaron's, Inc. Securities Litigation*, Civil Action No. 1:17-cv-2270-SCJ (NDGA). Appointed as Liaison Counsel.
- *Kenny A., et al. v. Perdue, et al.*, Civil Action No. 1:02-cv-1686-MHS (NDGA). Won certification and obtained comprehensive systemic reform for a class of foster children in Georgia.
- *Flournoy, et al. v. State of Georgia, et al.*, No. 2009cv178947 (Fulton County Sup. Ct.). Won class certification and comprehensive, statewide reform of the Georgia indigent defense system, along with a fully compensatory award of fees and costs.

Michael A. Caplan

Class Actions – Defense

- *Owens, et al. v. Metropolitan Life Insurance Co.*, Civil Action No. 2:14-cv-00074-RWS (NDGA). Successfully defended a publicly-traded insurance company in ERISA class action involving the provision of life insurance benefits.
- *Tracy, et al. v. Elekta, Inc.*, Civil Action No. 1:21-cv-02851-SDG (NDGA). Defending a putative class action arising out of alleged data breach.
- *City of Marietta v. Mallinckrodt ARD LLC*, Case No. 1:20-cv-00552-SDG (NDGA). Defending a pharmaceutical company in putative nationwide class action alleging unjust enrichment.
- *Mitchell, et al. v. Piedmont West Ambulatory Surgery Center, LLC, et al.*, No. 2014cv254154 (Fulton County Sup. Ct.). Secured a favorable pre-discovery resolution on behalf of a publicly-traded consulting firm in a class action alleging fraud and economic damages arising out of the provision of medical services.

Business Litigation

Antitrust

- Successfully defended the Albany-Dougherty County Hospital Authority against FTC antitrust challenge of merger of Phoebe Putney and Palmyra hospitals. The case was the subject of a ground-breaking decision on state action immunity in the United States Supreme Court. *See FTC v. Phoebe Putney Health System, Inc.*, 133 S. Ct. 1003 (2013).
- Recovered **\$112.25 million** in price-fixing conspiracy case brought in federal court in Atlanta, one of the highest antitrust settlements to date in the State of Georgia.
- Representing the City of Atlanta in a case brought under the Georgia Taxpayer Protection False Claims Act alleging a price-fixing and bid-rigging conspiracy in the sale of water treatment chemicals.
- Representing Georgia Board of Dentistry as appointed Special Assistant Attorney General in action brought under the Sherman Act.

Business Torts

- Secured a multi-million-dollar settlement on behalf of a private equity firm in a business torts and UFTA case.
- Obtained a seven-figure settlement on behalf of a telecommunications company in breach-of-contract case.
- Negotiated a creative resolution in a dispute between joint venture partners in the financial services sector. At the conclusion of the matter, the client praised Mike Caplan as among **“the most skilled, artful, and effective lawyers I’ve seen.”**

Michael A. Caplan

Executive Compensation / Restrictive Covenants

- Negotiated favorable exit packages on behalf of numerous CEOs and other company officers, including CEO of publicly-traded real estate company, CEO of privately-held oil and gas company, CEO of privately-held software company, and CEO of medical device company.
- Won a dispute involving a non-compete agreement on behalf of a medical provider.

Governmental Investigations

- Along with Venable LLP, obtained **complete defense victory** on behalf of publicly traded payments processing company in action brought by Consumer Financial Protection Bureau.
- Successfully defended various officers, directors, and others in civil investigations brought by various federal government entities, including the Securities & Exchange Commission, Department of Justice, and Consumer Financial Protection Bureau.

Media/First Amendment

- Obtained a **complete dismissal** of a defamation action on behalf of a journalist and local television station.
- Represent a local newspaper in connection with enforcement of rights under the Open Records Act.

Public Contracts

- Advised international defense manufacturer in a successful bid-protest action relating to a multi-million-dollar procurement.
- Advised concessionaire in connection with potential bid protest relating to Atlanta Airport procurement.

Real Estate Litigation

- Won **favorable jury verdict** in a high-stakes commercial lease dispute filed against a national telecommunications company.
- Negotiated favorable, six-figure lease buyout on behalf of commercial landlord.
- Obtained favorable resolution for hotel developer in dispute with licensor.

Trade Secrets

- Won **multi-million-dollar settlement** on behalf of American manufacturer in case brought under the Hague Convention against Chinese manufacturer for misappropriation of confidential trade information.
- Defending multi-national energy company in federal case alleging misappropriation of trade secrets and breach of confidentiality agreement.
- Defending chemical distribution company in Cobb Superior Court case alleging breach of fiduciary duty and violations of Georgia Computer Systems Protection Act.

Michael A. Caplan

Securities Law

- Representing a former CEO of a Fortune 1000 company, achieved a favorable confidential settlement in a dispute arising out of stock-option grants.

Constitutional & Tort Litigation

Constitutional Litigation

- Representing a class of indigent defendants, Mike Caplan and attorneys from the Southern Center of Human Rights achieved a comprehensive systemic reform of Georgia's system for providing appellate indigent defense.
- Along with Children's Rights, Inc. and Bondurant Mixson & Elmore, represented a class of foster children in monitoring and enforcing the terms of a class action resulting in comprehensive reform to Georgia's child welfare system.

Tort Litigation

- Recovered **\$3.25 million** in Clayton County State Court action involving injury at Atlanta Airport.
- Recovered maximum insurance limits in personal injury action involving bus accident.
- Mike has served as issues and appellate counsel in a number of high-stakes personal injury and wrongful death cases.

Whistleblower Litigation

- Representing City of Atlanta in referred Georgia Taxpayer Protection False Claims Act involving allegations of price fixing and bid rigging.
- Representing a relator in an under-seal FCA case involving alleged kickbacks.
- Representing a public employee, secured a six-figure settlement in a Georgia Whistleblower Act case.

Special Matters

- Along with Bobby Lee Cook, Mike successfully defended a state court judge in an election fraud case involving a constitutional challenge to state election laws.
- On appeal of a federal conviction, Mike persuaded the Eleventh Circuit that the district court erred in admitting prior acts evidence. *United States v. Walter Sanders, Jr.*, 668 F.3d 1298 (11th Cir. 2012).

PROFESSIONAL & COMMUNITY ACTIVITIES

Board of Directors, Southern Center for Human Rights

Michael A. Caplan

Board of Directors, Central Outreach and Advocacy Center for the Homeless

American Bar Association

Planning Committee, Annual Georgia Bar Media & Judiciary Conference

Federal Bar Association

Atlanta Bar Association

Member, Center for Professional Responsibility

Barrister, Lumpkin Inn of Court, University of Georgia School of Law

Indigent Defense Committee, Georgia State Bar

BAR ADMISSIONS

United States Supreme Court

U.S. Court of Appeals for the Eleventh Circuit

Georgia (all state trial and appellate courts)

U.S. District Court for the Northern District of Georgia

U.S. District Court for the Middle District of Georgia

U.S. District Court for the Southern District of Georgia

U.S. District Court for the Eastern District of Michigan

Michael A. Caplan

PRIOR FIRM EXPERIENCE

Bondurant, Mixson & Elmore LLP

JUDICIAL CLERKSHIP

The Honorable Richard W. Story, U.S. District
Court for the Northern District of Georgia

EDUCATION

J.D., *magna cum laude*, The University of
Georgia

Editor, Georgia Law Review

Order of the Coif

Order of the Barristers

Winner, National First Amendment Moot
Court Competition

Hughes Spalding Scholar

M.B.A., The University of Georgia

B.S., The University of Georgia

CAPLAN | COBB

T. BRANDON WADDELL



Brandon is a partner with Caplan Cobb whose practice spans a broad range of subject matters, including class actions, business litigation, securities cases, intellectual property disputes, and appellate matters. Brandon has handled matters involving contract and property claims, copyrights and trademarks, alleged violations of the federal False Claims Act and Federal Communications Act, and constitutional claims, among others.

In addition to his work for clients in a variety of fields, Brandon also maintains an active public-interest practice, including representing nonprofits and civil rights groups in voting-rights actions, advising public transparency nonprofits in holding government actors accountable, and successfully advocating before the Eleventh Circuit Court of Appeals in an action on behalf of an indigent federal prisoner.

Before joining Caplan Cobb, Brandon served as a law clerk to two federal judges—first to the Honorable C. Lynwood Smith, Jr., in the U.S. District Court for the Northern District of Alabama, and then to the Honorable Phyllis Kravitch on the U.S. Court of Appeals for the Eleventh Circuit in Atlanta.

PRACTICE AREAS

Business Litigation. Brandon has successfully litigated on behalf of both plaintiffs and defendants in a broad range of business disputes, including partnership breakups, employment-related disputes, breach-of-contract actions, securities fraud claims, asset sales, alleged business torts, and violations of various state and federal statutes addressing alleged business misconduct.

Complex Litigation. Brandon has represented and provided strategic advice to plaintiffs and defendants in class actions, representative actions, and antitrust actions. Cases in which Brandon has served as counsel to plaintiffs in complex actions have resulted in the recovery of millions of dollars.

Appellate Practice. In his two and a half years clerking for the United States Court of Appeals, Brandon developed a deep understanding of federal appellate practice. Since then, Brandon has represented parties and provided guidance in numerous appellate proceedings in state and federal courts in Georgia and elsewhere.

Federal Litigation. As a former federal district and appellate law clerk, Brandon has an intimate understanding of federal practice and procedure. In his regular practice in federal court, Brandon represents clients in cases raising both individual and class-based constitutional claims, as well as claims arising from federal statutes including the Sherman Act, Lanham Act, the Securities and

T. Brandon Waddell

Exchange Act, employment-discrimination statutes, RICO, the False Claims Act, copyright law, the Federal Tort Claims Act, the Telephone Consumer Protection Act, 42 U.S.C. § 1983, the Federal Communications Act, and others.

REPRESENTATIVE CASES

Class Action Litigation

- *Githieya, et al. v. Global Tel Link Corp.*, Civil Action No. 1:15-cv-00986-AT (NDGA). Won certification and recovered over \$150 million in settlement benefits, comprised of \$67 million in monetary benefits and over \$83 million in non-monetary benefits, in a consumer class action on behalf of nationwide class of account holders.
- *In re Equifax Fair Credit Reporting Act Litigation*, Civil Action No. 1:22-cv-3072-LMM (NDGA). Along with other members of Caplan Cobb, appointed as liaison counsel in putative nationwide credit reporting class action.
- *Monopoli, et al. v. Mercedes-Benz USA, LLC, et al.*, Civil Action No. 1:21-cv-01353 (NDGA). Currently serving as co-lead counsel in a putative auto defect class action.
- *Parker v. Perdue Foods, LLC*, Civil Action No. 5:22-cv-00268-TES (MDGA). Currently serving as lead co-lead counsel in a putative nationwide employment misclassification class and collective action.

SPEECHES & PUBLICATIONS

Mission Creep: The Evolving Impact of the Supreme Court's Heightened Materiality Standard for False Claims Act Cases on Common-Law Fraud Claims, Business Torts and Unfair Competition Spring Journal (American Bar Association, 2021)

The Defend Trade Secrets Act after Two Years: A Practical Perspective on its Development, Business Torts and Unfair Competition Update (American Bar Association, Spring 2018)

A Partially Successful Lawsuit May Still Trigger the "Objective Baselessness" Exception to Noerr: IPtronics Inc. v. Avago Technologies U.S., Inc., E&I Update (American Bar Association, Fall 2016)

Noerr Protects a Competitor's Use of the Citizen Petition Process Unless There is Evidence That the Petition Was Objectively Baseless: Apotex Inc. v. Acorda Therapeutics, Inc., (2d Cir. May 16, 2016), E&I Update (American Bar Association, Summer 2016)

Recent Developments in the Law of Arbitration, presented at ICLE's 2014 Seminar on Contract Litigation (with James Cobb)

State Action, Implied Immunity, and Local Government Antitrust Act: Wooster Industrial Park, LLC v. City of Wooster, E&I Update (American Bar Association, Winter 2015)

T. Brandon Waddell

T. Brandon Waddell, Note, *Bringing It All Back Home: Establishing a Coherent Constitutional Framework for the Re-Regulation of Homeschooling*, 63 Vand. L. Rev. 541 (2010).

JUDICIAL CLERKSHIPS

The Honorable Phyllis Kravitch, U.S. Court of Appeals for the Eleventh Circuit

The Honorable C. Lynwood Smith, Jr., U.S. District Court for the Northern District of Alabama

EDUCATION

J.D., *magna cum laude*, Vanderbilt University Law School

Managing Editor, *Vanderbilt Law Review*
Order of the Coif

Honors Scholar

Scholastic Excellence Awards in
Regulatory State, Health Law & Policy,
and Law of Work

Best Brief Award

B.A., *magna cum laude*, Washington & Lee University

Finalist, Rhodes Scholarship

Full Academic Scholarship

Robert C. Byrd Honors Scholarship

M. J. Reis Scholarship

Maxwell P. Wilkinson Scholarship in
English

Research Scholarship

Dabney Stuart Prize (critical writing)

Sidney M. B. Couling Award (critical
writing)

BAR ADMISSIONS

U.S. Court of Appeals for the Eleventh Circuit

Georgia (all state trial and appellate courts)

U.S. District Court for the Northern District of Georgia

U.S. District Court for the Middle District of Georgia

U.S. District Court for the Eastern District of Michigan

PROFESSIONAL & COMMUNITY ACTIVITIES

Board of Directors, Atlanta Birth Center

American Bar Association

Lamar Inn of Court

Exhibit C

GibbsLawGroup^{LLP}

Firm Resume

Gibbs Law Group is a national litigation firm providing the highest caliber of representation to plaintiffs in class and collective actions in state and federal courts, and in arbitration matters worldwide. The firm serves clients in consumer protection, securities and financial fraud, antitrust, whistleblower, personal injury, and employment cases.

The firm regularly prosecutes multi-state class actions and has one of the best track records in the country for successfully certifying classes, developing practical damages methodologies, obtaining prompt relief for class members victimized by unlawful practices, and working cooperatively with other firms.

Our attorneys take pride in their ability to simplify complex issues; willingness to pursue narrow and innovative legal theories; ability to work cooperatively with other plaintiffs' firms; and desire to outwork and outlast well-funded defense teams.

In less than a decade since its 2014 founding, the firm has recovered over \$2.5 billion for its clients. As a result, our firm and attorneys are frequently recognized by the courts, our peers, and the legal media for the quality of their work:

- Top Plaintiff Lawyers in California, *Daily Journal*, 2021 (Andre Mura, Amy Zeman)
- Top Women Lawyers in California, *Daily Journal*, 2021 (Amy Zeman)
- Product Liability MVP, *Law360*, 2021 (Amy Zeman)
- Lawyer of the Year- Mass Torts/ Class Action, *Best Lawyers*, 2022 (Eric Gibbs)
- Top Law Firm, California Litigation: Mainly Plaintiffs – *Chambers USA*, 2022
- Winning Litigators Finalist, *National Law Journal*, 2021 (Amy Zeman)
- Class Action Practice Group of the Year, *Law360*, 2019
- Top Boutique Law Firms in California, *Daily Journal*, 2019
- Titans of the Plaintiffs Bar, *Law360*, 2019 (Eric Gibbs)
- Two 2019 California Lawyer Attorney of the Year (CLAY) Awards (Eric Gibbs, Steven Tindall)
- Top Plaintiff Lawyers in California, *Daily Journal*, 2020, 2019, 2016 (Eric Gibbs)
- Cybersecurity and Privacy MVP, *Law360*, 2018 (Eric Gibbs)
- Top Cybersecurity/ Privacy Attorneys Under 40, *Law360 Rising Stars*, 2017 (Andre Mura)
- Top Class Action Attorneys Under 40, *Law360 Rising Stars*, 2017 (Dave Stein)
- Top 40 Lawyers Under 40, *Daily Journal*, 2017 (Dave Stein)
- AV-Preeminent, *Martindale-Hubbell* (Eric Gibbs)

ATTORNEYS

Partners

| | |
|----------------------------|-------|
| <i>Eric Gibbs</i> | p. 3 |
| <i>David Berger</i> | p. 5 |
| <i>Dylan Hughes</i> | p. 7 |
| <i>Amanda Karl</i> | p. 8 |
| <i>Linda Lam</i> | p. 10 |
| <i>Steve Lopez</i> | p. 11 |
| <i>Karen Barth Menzies</i> | p. 12 |
| <i>Geoffrey Munroe</i> | p. 14 |
| <i>Andre Mura</i> | p. 15 |
| <i>Rosemary Rivas</i> | p. 17 |
| <i>Michael Schrag</i> | p. 19 |
| <i>Dave Stein</i> | p. 21 |
| <i>Steven Tindall</i> | p. 23 |
| <i>Amy Zeman</i> | p. 25 |

Of Counsel & Counsel

| | |
|---------------------------|-------|
| <i>Josh Bloomfield</i> | p. 27 |
| <i>Parker Hutchinson</i> | p. 28 |
| <i>Shawn Judge</i> | p. 29 |
| <i>Micha Star Liberty</i> | p. 30 |
| <i>Rosanne Mah</i> | p. 31 |
| <i>George Sampson</i> | p. 32 |
| <i>Mark Troutman</i> | p. 33 |

Associates

| | |
|-------------------------|-------|
| <i>Brian Bailey</i> | p. 34 |
| <i>Erin Barlow</i> | p. 35 |
| <i>Emily Beale</i> | p. 36 |
| <i>Aaron Blumenthal</i> | p. 37 |
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| <i>Taylor Walters</i> | p. 46 |

SIGNIFICANT RECOVERIES

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| <i>Mass Tort</i> | p. 54 |
| <i>Sexual Assault Litigation</i> | p. 55 |
| <i>Government Reform</i> | p. 55 |

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510 350 9701

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Diversity, Equity & Inclusiveness

Gibbs Law Group is committed to diversity, inclusion, and racial justice in everything we do. Our commitment to equity and opportunity starts within our firm and extends to our community and to our work. We seek to create a culture where our employees feel comfortable bringing their full selves to work, and where we have the knowledge and skills necessary to effectively advocate for our diverse clients.

To support our goal of advancing equity both inside and outside our firm, we created an Equity, Diversity and Inclusion Task Force comprised of partners, associates, and staff. The Task Force is working to promote diversity among our employees, the clients we represent, and the causes we support. Some of the Task Force's work to date includes:

- Implementing modifications to the firm's hiring practices to diversify our applicant pool and to prioritize diversity in hiring and retention.
- Participated in the California State Bar's annual summit on diversity and equity in the legal profession.
- Outreach to diversity-focused law school organizations to expand awareness of complex litigation opportunities and ensure a diverse pool of applicants.
- Identifying and supporting diversity-focused legal organizations and non-profits.
- Maximizing the firm's capacity for social change in the community.
- Commitment to implementing annual anti-bias and microaggressions trainings.

Voting Rights Task Force

Gibbs Law Group is proud to have launched our Voting Rights Task Force, through which we have been participating in efforts to protect and expand civic participation across the country. The Task Force seeks to identify specific opportunities for both our attorneys and staff to promote voter engagement and maximize voter participation. We implemented new programs to promote firmwide involvement in protecting and expanding the right to vote, including:

- Making Election Day a firm holiday.
- Allowing support staff to bill a set number of hours per week to Voting Rights Task Force efforts, including with nonprofit organizations.
- Encouraging attorney participation in voter protection volunteer opportunities during elections, including staffing voter protection hotlines, poll watching, and helping triage issues that arise.



Eric H. Gibbs | Partner

Eric Gibbs prosecutes antitrust, consumer protection, whistleblower, financial fraud and mass tort matters. He has been appointed to leadership positions in dozens of contested, high profile class actions and coordinated proceedings. Eric has recovered billions of dollars for the clients and classes he represents and has negotiated groundbreaking settlements that resulted in meaningful reforms to business practices and have favorably impacted plaintiffs' legal rights.

Reputation and Recognition by the Courts

In over 20 years of practice, Eric has developed a distinguished reputation with his peers and the judiciary for his ability to work efficiently and cooperatively with co-counsel, and professionally with opposing counsel in class action litigation.

"[Mr. Gibbs] efficiently managed the requests from well over 20 different law firms and effectively represented the interests of Non-Settling Plaintiffs throughout this litigation."

- Hon. G. Wu, *In re Hyundai & Kia Fuel Economy Litig.* (C.D. Cal)

"The attorneys who handled the case were particularly skilled by virtue of their ability and experience."

- Hon. D. Debevoise, *In re: Mercedes-Benz Teleaid Contract Litig.* (D. N.J.)

"They are experienced and knowledgeable counsel and have significant breadth of experience in terms of consumer class actions."

- Hon. R. Sabraw, *Mitchell v. Am. Fair Credit Assoc'n* (Alameda Cty. Superior Ct.)

"Representation was professional and competent; in the Court's opinion, counsel obtained an excellent result for the class."

- Hon. J. Fogel, *Sugarman v. Ducati N. Am.* (N.D. Cal)

Achievements and Leadership

Eric has been recognized as a leading lawyer in class and mass actions. In 2019, *Law360* recognized Eric among its "Titans of the Plaintiffs Bar," one of only 10 attorneys nationwide to receive the prestigious award. He also received the 2019 *California Lawyer Attorney of the Year (CLAY) Award* for his work in the Anthem Data Breach Litigation. *Daily Journal* named him to its coveted list of "Top Plaintiff Lawyers in California" for 2020, 2019 and 2016. *Law360* recognized Eric as a "2016 Consumer Protection MVP," (the only plaintiff-side lawyer in the country selected in that category) and as a "2018 Cybersecurity & Privacy MVP." Consumer Attorneys of California selected Eric and co-counsel as finalists for *Consumer Attorney of the Year* for achieving a \$100 million settlement in the Chase "Check Loan" Litigation. His cases have been chronicled in major legal and news publications including *NBC News*, *CNN*, the *National Law Journal*, *The New York Times*, *Market Watch*, and *Bloomberg News*. Eric holds a variety of leadership positions in professional associations for consumer advocacy, and he frequently presents on developing trends in the law at conferences throughout the country.

Litigation Highlights

In re Anthem, Inc. Data Breach Privacy Litigation – Served as a court-appointed member of the Plaintiffs' Steering Committee representing the interests of plaintiffs and putative class members following a massive data breach of approximately 80 million personal records. The lawsuit settled in August 2018 for \$115 million, the largest data breach settlement in history at the time.

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ehg@classlawgroup.com

Practice Emphasis

Antitrust & Unfair Competition
Banking and Financial Fraud
Class Actions
Consumer Protection
Mass Personal Injury
Whistleblower

Education

Seattle University School of
Law, J.D., 1995

San Francisco State
University, B.A., 1991

Awards & Honors

"Lawyer of the Year," Best
Lawyers in America for Class
Actions/ Mass Tort Litigation
(2022)

*Nationwide Products Liability:
Plaintiffs – Band 4*,
Chambers USA, 2022

Titans of the Plaintiffs Bar,
Law 360, 2019

*California Lawyer Attorney of
the Year Award*, 2019

*Top Plaintiff Lawyers in
California for 2020, 2019,*
2016, Daily Journal

*Lawdragon 500 Leading
Plaintiff Consumer Lawyer*,
2019-2022

*Cybersecurity & Privacy
MVP*, Law 360, 2018

Consumer Protection MVP,
Law 360, 2016

*AV Preeminent® Peer
Review Rated by Martindale-
Hubbell*

*Top 100 Super Lawyers in
Northern California*

Admissions

California

In re Chase Bank U.S.A., N.A. “Check Loan” Contract Litigation – multidistrict litigation that alleged Chase Bank wronged consumers by offering long-term fixed-rate loans, only to later more-than-double the required loan payments. Eric led negotiations in the case, which resulted in a \$100 million settlement with Chase eight weeks prior to trial.

In re Adobe Systems Inc. Privacy Litigation – As court-appointed lead counsel, Eric and his team reversed a long line of decisions adverse to consumers whose personal information was stolen in data breaches. Judge Koh issued a 41 page decision in plaintiffs’ favor and Eric negotiated a comprehensive reform of Adobe’s data security practices. The court’s landmark decision on Article III standing in this case marked a sea change and has been cited favorably in over twenty cases in the year since it was issued.

In re Hyundai & Kia Fuel Econ. Litigation – As court-appointed liaison counsel, Eric reconciled the plaintiffs’ interests and coordinated discovery and settlement negotiations. He helped finalize a settlement with an estimated value of up to \$210 million.

Skold v. Intel Corp. – After more than a decade of litigation, Eric as lead counsel achieved a nationwide class action settlement on behalf of approximately 5 million consumers of Intel Pentium 4 processors. The lawsuit changed Intel’s benchmarking practices and Intel agreed to a cash settlement for the class, along with \$4 million in charitable donations.

Parkinson v. Hyundai Motor America – Eric served as class counsel in this lawsuit alleging that the flywheel and clutch system in certain Hyundai vehicles was defective. After achieving nationwide class certification, Hyundai agreed to a settlement that provided for 50-100% reimbursements to class members for their repairs and full reimbursement for rental vehicle expenses.

De La Cruz v. Masco Retail Cabinet Group – Eric served as lead attorney litigating the collective claims of dozens of misclassified account representatives for overtime pay under the Fair Labor Standards Act (FLSA). Successfully certified a class of current and former Masco account representatives and personally arbitrated the case to judgment obtaining full recovery for the class.

In re Providian Credit Card Cases – Eric played a prominent role in this nationwide class action suit brought on behalf of Providian credit card holders alleging that Providian engaged in unlawful and fraudulent business practices in connection with the marketing and fee assessments for its credit cards. The Honorable Stuart Pollack approved a \$105 million settlement, plus injunctive relief—one of the largest class action recoveries in the United States arising out of consumer credit card litigation.

Professional Affiliations

American Association for Justice
American Bar Foundation- Fellow
Consumer Attorneys of California
National Association of Consumer Advocates
Public Justice Foundation- Class Action Preservation Project Committee



David M. Berger | Partner

David Berger represents plaintiffs in class actions with a special emphasis on data breach, privacy, and financial services litigation. He currently serves as court-appointed Class Counsel in *In re US Fertility LLC Data Security Litigation*, and has represented data breach victims in some of the largest and most influential privacy cases, including litigation against Equifax, Anthem, Vizio, Adobe, Banner Health, and Excellus BlueCross BlueShield. David has repeatedly obtained record-breaking settlements on behalf of his clients, including in the Equifax and Anthem data breach cases, which set successive records for the largest data breach settlement in history.

David is widely regarded as a leader in emerging litigation involving data breach and privacy, which is underscored by his broad technical expertise—from hacking techniques and cybersecurity controls to industry standard IT practices, information security frameworks, and auditing processes. He has deposed Chief Information Security Officers and information security professionals at Fortune 500 corporations, worked with expert witnesses on cutting-edge cybersecurity and damages theories, and supervised large-scale document review teams poring over millions of technical documents in a compressed timeframe. In addition, David holds the Certified Information Privacy Technologist (CIPT) certification through the International Association of Privacy Professionals, a program primarily designed for career IT professionals; this allows him to communicate directly with company witnesses, without the need for expert translation.

Outside of his litigation experience, David is an active member of the class action legal community, frequently speaking at conferences on data breach cases and security issues and other class action topics. David serves as the Chair of the American Association for Justice’s Consumer Privacy and Data Breach Litigation Group and is an active member of the Sedona Conference’s Working Group on Data Security and Privacy Liability.

Prior to joining Gibbs Law Group, he served as a law clerk to the Honorable Laurel Beeler, Northern District of California (2011-2014). Before law school, David worked as a magazine editor and television presenter in Taiwan and managed an outdoor center on an island off the West Coast of Scotland.

Litigation Highlights

In re Equifax, Inc. Customer Data Security Breach Litigation – In securing what was described by the court as “the largest and most comprehensive recovery in a data breach case in U.S. history by several orders of magnitude,” David played an integral role by negotiating key business practice changes including overhauling Equifax’s handling of consumers’ personal information and data security and requiring that the company spend at least \$1 billion for data security and related technology over five years in addition to comprehensive technical and governance reforms.

In re Anthem, Inc. Data Breach Privacy Litigation – Key member of the litigation team representing interests of plaintiffs and putative class members following massive data breach of approximately 80 million personal records, including names, dates of birth, Social Security numbers, health care ID numbers, email and physical addresses, employment information, and income data. The lawsuit settled in August 2018 for \$115 million, the largest data breach settlement in history.

Fero v. Excellus Health Plan Inc. – Key member of the litigation team representing the interests of 7 million Excellus health plan subscribers and 3.5 million Lifetime subscribers whose personal and medical information was compromised.

1111 Broadway
Suite 2100
Oakland, CA 94607
T 510.350.9700
dmb@classlawgroup.com

Practice Emphasis

Class Actions
Consumer Protection
Privacy

Education

Northwestern University
School of Law, J.D., 2008

University of Wisconsin,
Madison, B.A., 1998

Admissions

California

In re Adobe Systems Inc. Privacy Litigation – Key member of the litigation team that succeeded in reversing a long line of decisions adverse to consumers whose personal information was stolen in data breaches. Judge Koh issued a 41-page decision in plaintiffs’ favor and the settlement resulted in a comprehensive reform of Adobe’s data security practices. The court’s landmark decision on Article III standing marked a sea change and has been cited favorably in over twenty cases in the year since it was issued.

In re Equifax, Inc. Fair Credit Reporting Act Litigation – Court-appointed Interim Co-lead counsel in ongoing litigation against Equifax related to the company reporting inaccurate credit information on approximately 2.5 million Americans who applied for mortgages, loans, and credit cards between March 17 and April 6, 2022.

Awards & Honors

Certified Information Privacy Technologist, International Association of Privacy Professionals (IAPP)
Northern California Super Lawyers (2021-2022)
Rising Star, Northern California Super Lawyers (2016-2018)

Professional Affiliations

Chair, American Association for Justice- Consumer Privacy and Data Breach Litigation Group
Consumer Attorneys of California
National Civil Justice Institute
Sedona Conference, Working Group on Data Security and Privacy Liability

Presentations and Publications

Presenter, "Internet Data Accumulation and Protection," Pound Civil Justice Institute, The Internet and the Law: Legal Challenges in the New Digital Age, November 2021.

Presenter, "Facial Recognition Technology Bans," The Sedona Conference, Annual Meeting of Working Group 11 on Data Security and Privacy Liability, April 2021.

Presenter, "Privacy and Data Breach Class Actions," Western Alliance Bank Class Action Law Forum 2020, March 2020.

Presenter, "Communicating with the Class," Class Action Mastery Forum, January 2019.

Presenter, "Hot Topics in Consumer Class Actions Against Insurers: Filed Rate Doctrine, Standing, and Reverse Preemption of RICO Claims," Sacramento California Insurance Regulation and Litigation Seminar, Clyde & Co., March 2018.

Presenter, "Winning strategies in privacy and data security class actions: the plaintiffs' perspective," Berkeley Center for Law & Technology, Berkeley Law School, January 2017.

Presenter, "Don't be Spokeo'd: What You Need to Know in Litigating Data Breach Cases (from breach to remedies)," ABA Business Law Section Annual Meeting, September 8, 2016.

Presenter, "Developments in 'E-Commerce' Class Actions and Privacy Law," Perrin Class Action Litigation Conference, May 16, 2016.

Presenter, "Data Breach Class Action Litigation," Mass Torts Made Perfect Conference, April 22, 2016.



Dylan Hughes | Partner

Dylan Hughes concentrates his practice on investigating and prosecuting fraud matters on behalf of whistleblowers, consumers and employees who have been harmed by corporate misconduct. He coordinates initial case evaluations and analyses in a variety of practice areas and has substantial experience in matters involving health care fraud, particularly in the Medicare and pharmaceutical contexts. Dylan represents consumers in cases ranging from false advertising to defective products, and employees in misclassification and wage and hour cases under state and federal laws.

Mr. Hughes has extensive experience prosecuting complex personal injury cases. He helped to obtain millions of dollars for women who suffered blood clots and other serious injuries after taking birth control pills. He has also represented clients injured by defective medical devices, including defibrillators, blood filters, as well as back pain implants. Mr. Hughes was part of the team that recently settled a case alleging medical malpractice for a spinal surgery that resulted in partial paralysis.

Mr. Hughes began his career as a law clerk for the Honorable Paul A. Mapes, Administrative Law Judge of the Office of Administrative Law Judges, United States Department of Labor. He is a member of the American Bar Association, Consumer Attorneys of California, American Association for Justice Class Action Litigation Group and the Consumer Rights Section of the Barristers Club.

Litigation Highlights

Skold v. Intel Corp. – Key member of the legal team in this decade-long litigation that achieved a nationwide class action settlement on behalf of approximately 5 million consumers of Intel Pentium 4 processors. The lawsuit changed Intel’s benchmarking practices and Intel agreed to a cash settlement for the class, along with \$4 million in charitable donations.

In re Adobe Systems Inc. Privacy Litigation – Key member of the litigation team that succeeded in reversing a long line of decisions adverse to consumers whose personal information was stolen in data breaches. Judge Koh issued a 41-page decision in plaintiffs’ favor and the settlement resulted in a comprehensive reform of Adobe’s data security practices. The court’s landmark decision on Article III standing in this case marked a sea change and has been cited favorably in over twenty cases in the year since it was issued.

Velasco v. Chrysler Group LLP (n/k/a FCA US LLC) – represented consumers who alleged they were sold and leased vehicles with defective power control modules that caused vehicle stalling. In addition to negotiating a recall of all 2012-13 Jeep Grand Cherokee and Dodge Durango vehicles, the lawsuit also resulted in Chrysler reimbursing owners for all repair and rental car expenses, and extending its warranty.

Parkinson v. Hyundai Motor America – certified a nationwide class alleging Hyundai sold vehicles with defective flywheel systems, resulting in a favorable settlement for the class.

Awards & Honors

Northern California Super Lawyer (2012-2022)

Professional Affiliations

Consumer Attorneys of California
American Association for Justice- Class Action Litigation Group

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Practice Emphasis

Class Actions
Consumer Protection
Employment Law
Whistleblower

Education

University of California,
Hastings College of Law, J.D.,
2000

University of California at
Berkeley, B.A., 1995

Admissions

California



Amanda Karl | Partner

Amanda Karl represents consumers, employees and others who have been harmed by corporations. She has prosecuted a wide range of complex cases, including product defect, failure-to-warn, wage and hour, data breach, sexual assault, and securities cases, within a variety of industries. In addition, Amanda is committed to fighting voter suppression—she spearheads Gibbs Law Group’s Voting Rights Task Force.

Amanda is a 2014 graduate (Order of the Coif) of the University of California at Berkeley School of Law, where she served as the Managing Editor of the California Law Review and Director of the Workers’ Rights Disability Law Clinic. During law school, she worked as a Clinical Law Student at the East Bay Community Law Center, assisting with litigation targeting criminal record reporting violations, and as a law clerk at Equal Rights Advocates, working on women’s employment issues. Following graduation from law school, she served as a law clerk to the Honorable Richard A. Paez, United States Court of Appeals for the Ninth Circuit and to the Honorable Claudia Wilken, Northern District of California. Amanda received her undergraduate degree, *magna cum laude*, in Sociology and Human Rights from Columbia University in 2009.

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Education

University of California at Berkeley, J.D., *Order of the Coif*, 2014

Columbia University, B.A.,
magna cum laude, 2009

Admissions

California

Outside of work, Amanda serves on the Board of Directors of the East Bay Community Law Center, a legal nonprofit organization that is both the largest provider of free legal services in the East Bay Area and Berkeley Law’s largest clinical offering. She also enjoys reading, strength training, and exploring new places and foods with her husband and son.

Litigation Highlights

Hamilton v. American Income Life – Represented a class of insurance agents and trainees in employment litigation alleging that they were misclassified as independent contractors, not paid properly while training, and not reimbursed for expenses. The case culminated in a \$5.75 million settlement for class members.

A.B. v. Regents of the University of California – Represents former patients of ex-UCLA OB-GYN Dr. James Heaps in a class action lawsuit alleging Title IX violations and sexual harassment against both Heaps and UCLA. Amanda is a key member of the team that achieved a \$73 million dollar settlement, which will compensate over 5,500 women who received treatment from Dr. Heaps. Amanda was involved in nearly all aspects of the litigation, and, among other things, was the primary drafter of the final settlement approval brief; final settlement approval was granted on July 12, 2021.

Pote v. Handy Technologies – In prosecuting a case for alleged Labor Code violations, Amanda spearheaded briefing and argued before the California Court of Appeal that an order denying a motion to compel arbitration should be affirmed. The court ruled unanimously in Plaintiff’s favor, affirming the trial court’s ruling.

Reyes v. Chilton – Represents Latino voters and community organizations challenging alleged discrimination and wrongful rejection of mail-in ballots in Washington’s Benton, Yakima and Chelan counties.

Deora v. NantHealth – Represented a certified class of investors in litigation alleging multiple violations of federal securities laws related to the healthcare technology company’s initial public offering in 2016. Amanda was a member of the team that achieved a \$16.5 million dollar settlement in favor of NantHealth investors.

Awards & Honors

Rising Star, *Northern California Super Lawyers*, (2018-2022)

Professional Affiliations

East Bay Community Law Center, Board Member
Consumer Attorneys of California, Board Member
American Association for Justice

Presentations and Articles

Presenter, “The Impact & Implications of Viking River Cruises, Inc. v. Moriana,” CAOC Annual Convention, November 2022

Presenter, “PAGA After the Viking River Decision,” Bridgeport Continuing Education, July 2022

Moderator, “Rapid Response: Recent SCOTUS Ruling—Viking River Cruises, Inc. v. Moriana,” American Association for Justice, June 2022

Presenter, “Rule 12 and Related Motions,” Pincus Federal Boot Camp, May 2022

Presenter, “Looking Forward Post-COVID,” CAOC Sonoma Travel Seminar, March 2022

Author, “Work Unseen: Successfully Effectuating a Damages Class Settlement,” Daily Journal, November 2021

Presenter, “Unpacking Public Interest Law,” People’s Parity Project, April 2021

Presenter, “Wage and Hour Litigation & Enforcement Webinar,” HB Litigation, February 2020

Author, “Epic Systems and the Erosion of Federal Class Actions,” Law260 Expert Analysis, July 2018

Presenter, “From Clerkship to Career in Public Interest,” Berkeley Consumer Advocacy and Protection Society, October 2017

Author, “California Omissions Claims: Safety Required?” Law360 Expert Analysis, February 2017



Linda Lam | Partner

Linda Lam focuses her practice on representing individuals who have been harmed by corporate misconduct. She has prosecuted fraud, employment, breach of contract, breach of fiduciary duty, and medical malpractice claims brought under federal and state laws.

Linda has been an advocate for borrowers who lost their homes to foreclosure during the financial crisis, individuals who were fraudulently induced to purchase investment products, as well as veterans who received negligent care at VA facilities. Linda's dedication to her clients has led her to being recognized as a "Rising Star" by the *Northern California Super Lawyers* for the past three years.

Linda graduated *magna cum laude* from the University of California, Hastings College of the Law in 2014. Before joining Gibbs Law Group, Linda was an associate attorney at a national employment law firm, where she represented employees and retirees in wage and hour and employee benefits cases.

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Practice Emphasis

Class Actions
Consumer Protection

Education

University of California,
Hastings College of Law, J.D.,
magna cum laude, 2014

University of California Los
Angeles, B.A., 2011

Admissions

California

Litigation Highlights

Hernandez v. Wells Fargo Bank, N.A. – represents a certified class of more than 1,200 home mortgage borrowers who lost their homes to foreclosure after Wells Fargo erroneously denied them trial mortgage modifications. The case settled in two phases for a total of \$40.3 million, resulting in significant compensation payments to each class member.

RCHFU, LLC v. Marriott Vacations Worldwide Corp. – represents plaintiffs alleging that Marriott Vacations Worldwide and other defendants breached various fiduciary duties by engaging in acts that decimated the value of the plaintiffs' property interests in the Ritz-Carlton Club located in Aspen, Colorado.

Cooper v. United States of America – represented a veteran of the United States Army who alleged that he received negligent medical care at a VA facility, resulting in a delayed diagnosis of aggressive prostate cancer. The plaintiff alleged that by the time the cancer was discovered and diagnosed, it had become incurable. Linda was part of the trial team that won a \$2.5 million judgment for the plaintiff.

Ulti-Mate Connectors, Inc. v. American General Life Insurance Agency – represented plaintiffs who alleged that American General, among other defendants, fraudulently organized, administered, and sold rights to participate in voluntary employee beneficiary association plans that were not compliant with IRS regulations. The litigation resulted in a favorable settlement for the plaintiffs.

Awards & Honors

Northern California Super Lawyers, *Rising Star* (2017-2022)

Professional Affiliations

American Association for Justice
Consumer Attorneys of California

Publications & Presentations

The Real ID Act: Proposed Amendments for Credibility Determinations, *11 Hastings Race & Poverty L.J.* 321, 2014.



Steve Lopez | Partner

Steve Lopez represents consumers, employees and whistleblowers who have been harmed by corporate misconduct. He has prosecuted a variety of consumer protection cases ranging from false advertising to defective products, as well as complex employment cases involving also involved in the investigation and development of new cases.

He serves on the Board of Directors of Consumer Attorneys of California and was selected from a statewide pool of applicants for the 2015 Diversity Leadership Academy, a prestigious training program aimed to educate the next generation of progressive leaders.

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Practice Emphasis

Class Actions
Consumer Protection

Education

University of California at
Berkeley (Berkeley Law),
J.D., 2014

University of Virginia, B.A.,
2008

Admissions

California

Steve is a 2014 graduate of the University of California, Berkeley School of Law, where he was a Publishing Editor for the California Law Review and an Editor for the Berkeley Journal of Employment and Labor Law. He was also a member of the La Raza Law Students Association and the Legal Aid Society–Employment Law Center’s Berkeley Workers’ Rights Clinic.

Prior to law school, Mr. Lopez performed research for a consulting firm dedicated to improving justice programs. He received his B.A. in economics and international relations from the University of Virginia in 2008.

Litigation Highlights

Velasco v. Chrysler Group LLC (n/k/a FCA US LLC) – Member of the litigation team that represented consumers who alleged they were sold and leased vehicles with defective power control modules that caused vehicle stalling. The lawsuit resulted in a recall of all 2012-13 Jeep Grand Cherokee and Dodge Durango vehicles, as well as reimbursements for all repair and rental car expenses, and extended vehicle warranties.

In re Hyundai Sonata Engine Litigation– Representing plaintiffs who allege that their 2011-2014 Hyundai Sonatas suffered premature and catastrophic engine failures due to defective rotating assemblies. The Court granted preliminary approval to a comprehensive settlement in June 2016.

Southern California Gas Leak Cases – Member of the litigation team representing residents of communities in or near the Los Angeles suburbs of Porter Ranch who were affected by the Aliso Canyon well rupture and ensuing gas leak, the largest methane leak in U.S. history. The lawsuits seek relief for those who were displaced from their homes, suffered illnesses and injuries, sustained property value losses, or lost business due to the leak.

Smith v. Family Video Movie Club, Inc. – Member of the litigation team representing the interests of hourly retail employees who alleged they were not properly compensated for all wages and overtime earned. The Court recently certified a class.

Awards & Honors

Northern California Super Lawyers, *Rising Star* (2017 - 2022)

Professional Affiliations

American Association for Justice
Board of Directors, Consumer Attorneys of California



Karen Barth Menzies | Partner

Karen is a nationally recognized mass tort attorney with more than twenty years of experience in federal and state litigation. Courts throughout the country have appointed Karen to serve in leadership positions including Lead Counsel, Liaison Counsel and Plaintiff Steering Committee in some of the largest pharmaceutical and device mass tort cases. Karen currently serves in leadership positions in the Taxotere Litigation (federal court), Zolof Birth Defect Litigation (federal and California state courts), Transvaginal Mesh Litigation (federal and California state courts), Fosamax Femur Fracture Litigation (California state court), Lexapro/Celexa Birth Defect Litigation (Missouri state court).

Karen is particularly focused on women's health issues and sexual abuse claims, including a current Boy Scouts of America sexual abuse lawsuit investigation involving claims of abuse by scoutmasters, troop leaders and other adults affiliated with the Boy Scouts of America. She also represents women suffering permanent baldness following breast cancer chemotherapy treatments with Taxotere, and children who experienced severe side effects after taking the widely prescribed medication Risperdal. Karen believes in advocating for the victims who've been taken advantage of, and helping to ensure drug safety in the face of profit-driven corporations that hide the risks of their products. She has testified twice before FDA advisory boards as well as the California State Legislature on the safety concerns regarding the SSRI antidepressants and the manufacturers' misconduct. She has also advised victim advocacy groups in their efforts to inform governmental agencies and legislative bodies of harms caused by corporations.

Karen frequently publishes and presents on issues involving drug safety, mass tort litigation, FDA reform and federal preemption for both legal organizations (plaintiff and defense) and medical groups.

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Practice Emphasis

Class Actions
Mass Personal Injury

Education

University of California, Davis
King Hall School of Law, J.D.,
1995

Colorado State University,
B.A., 1989

Admissions

California

Awards & Honors

AV Preeminent® Peer Review Rated by Martindale-Hubbell
Best Lawyers in America, Personal Injury Litigation (2013, 2018, 2021-2023)
Individual Recognition Chambers USA: Product Liability Plaintiffs (2020)
Southern California Super Lawyer (2004-2023)
Lawyer of the Year by *Lawyer's Weekly USA* (2004)
California Lawyer of the Year by *California Lawyer* magazine (2005)
Consumer Attorney of the Year Finalist by CAOC (2006)

Professional Affiliations

American Association for Justice, Co-Chair, Taxotere Litigation Group
Consumer Attorneys of California
Consumer Attorneys of Los Angeles
American Bar Association (appointed member of the Plaintiffs' Task Force)
Women En Mass
The Sedona Conference (WG1, Electronic Document Retention and Production)
The National Trial Lawyers
National Women Trial Lawyers Association
LA County Bar Association
Women Lawyers Association of Los Angeles
Public Justice

Select Publications & Presentations

Author, "Prepping for the Prescriber Deposition," Trial Magazine, American Association for Justice, January 2020.

Presenter, “Deposing the Treating/ Prescribing Physician, Learned Intermediary, the One Potentially Fatal Fact Witness,” American Association for Justice Convention: Discovery and Litigation Strategies for Drug and Device Cases, February 2019.

Presenter, “A Funny Thing Did Happen on the Way to the Forum: Navigating the New Landscape of Personal Jurisdiction Challenges,” ABA Section of Litigation 2019 Environmental & Energy, Mass Torts, and Products Liability Litigation Committees’ Joint CLE Seminar, March 2018.

Presenter, “Federal and State Court Coordination of Mass Tort Litigation: Navigating State Court vs. Multidistrict Litigation, Mass Torts Made Perfect Conference, October 2018.

Presenter, “Taxotere Litigation: Federal MDL 2740, New Orleans and State Court Jurisdictions, Mass Torts Made Perfect Conference, October 2018.

Presenter, “505(b)(2) Defendants – The Non-Generic Alternative; Social Media and Support Groups; Settlement Committees,” AAJ Section on Torts, Environmental and Product Liability (STEP): On the Cutting Edge of Torts Litigation, July 2018.

Presenter, “Location, Location, Location Part II: State Court Consolidations,” AAJ Mass Torts Best Practices Seminar, July 2017.

Presenter, “Personal Jurisdiction in Mass Torts and Class Actions: Bristol-Myers Squibb Co. v. Superior Court (Cal. 2016),” Mass Torts Judicial Forum with Judge Corodemus and JAMS, April 2017.

Author, “Bringing the Remote Office Closer,” Trial Magazine, American Association for Justice, March 2017.



Geoffrey Munroe | Partner

Geoffrey Munroe represents plaintiffs in high-profile class action and mass tort cases in both federal and state courts throughout the United States. He was selected as a Rising Star by Northern California Super Lawyers (2010-2014), recognizing him as one of the best young attorneys practicing in Northern California, and as a Northern California Super Lawyer every year from 2015-2020. He is the co-author of "*Consumer Class Actions in the Wake of Daugherty v. American Honda Motor Company*," CAOC's Forum Magazine, January/February 2009, and a frequent contributor to the Class Action Litigation Group Newsletter of the American Association for Justice.

Mr. Munroe is a 2003 graduate of the University of California at Berkeley School of Law (Berkeley Law), where he was the recipient of the American Jurisprudence Award in Torts, Business Law & Policy and Computer Law. He received his undergraduate degree in chemistry from the University of California at Berkeley in 2000. Mr. Munroe is a member of the Public Justice Class Action Preservation Project Committee, the Class Action Litigation Group of the American Association for Justice and the Consumer Attorneys of California. He is a member of the California Bar and is admitted to practice before the United States Court of Appeals for the Ninth Circuit, as well as the United States District Courts for the Northern, Central and Southern Districts of California.

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Practice Emphasis

Class Actions
Consumer Protection
Mass Personal Injury
Whistleblower

Education

University of California,
Berkeley School of Law, J.D.,
2003

University of California at
Berkeley, B.A., 2000

Admissions

California

Litigation Highlights

Skold v. Intel Corp. – Key member of the briefing team in this decade-long litigation that achieved a nationwide class action settlement on behalf of approximately 5 million consumers of Intel Pentium 4 processors. The lawsuit changed Intel's benchmarking practices and Intel agreed to a cash settlement for the class, along with \$4 million in charitable donations.

In re Chase Bank U.S.A., N.A. "Check Loan" Contract Litigation – Key member of the litigation team in this multidistrict case alleging that Chase Bank wronged consumers by offering long-term fixed-rate loans, only to later more-than-double the required loan payments. The litigation resulted in a \$100 million settlement with Chase eight weeks prior to trial.

In re Mercedes-Benz Tele Aid Contract Litigation – Key member of the litigation team in this multi-district litigation alleging that Mercedes-Benz failed to disclose to its customers that the "Tele Aid" equipment installed in their vehicles would soon be obsolete and require an expensive replacement to keep working. Resulted in a class settlement providing for cash reimbursements of \$650, or new vehicle credits for up to \$1,300.

Parkinson v. Hyundai Motor America – key member of the briefing team that achieved certification of a nationwide class alleging Hyundai sold vehicles with defective flywheel systems, before ultimately reaching a favorable settlement for the class.

Awards & Honors

Northern California Super Lawyers (2015-2022)
Northern California Super Lawyers, *Rising Star* (2010-2014)

Professional Affiliations

Consumer Attorneys of California
American Association for Justice- Class Action Litigation Group
Public Justice- Class Action Preservation Project



Andre M. Mura | Partner

Andre M. Mura represents plaintiffs in class actions and mass torts including in the areas of consumer protection, privacy, and products liability. Before joining Gibbs Law Group, Andre was senior litigation counsel at the Center for Constitutional Litigation PC, where he represented plaintiffs in high-stakes appeals in state supreme courts and federal appellate courts.

Andre was named among the Top Plaintiff Lawyers in California for 2021 by Daily Journal, and he received a 2019 California Lawyer Attorney of the Year Award for his work in the California Supreme Court in *De La Torre v. CashCall*. He is on the Board of the Civil Justice Research Initiative of Berkeley Law, a Fellow of the American Bar Foundation, a member of the Lawyers Committee of the National Center for State Courts, a Trustee of the National Civil Justice Institute, past Chair of the American Association for Justice's LGBT Caucus, past Trustee of the National College of Advocacy, and a member of Williams College's Latino/a and BiGLATA Alumni Network.

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Practice Emphasis

Class Actions
Consumer Protection
Privacy
Mass Personal Injury

Education

The George Washington
University Law School, J.D.,
2004

Williams College, B.A., 2000

Admissions

California
District of Columbia

Litigation Highlights

In re: 3M Combat Arms Earplug Products Liability Litigation Andre was court-appointed to the plaintiffs' law-and-briefing committee in this multi-district litigation on behalf of military servicemembers and veterans who suffered injuries due to defective 3M earplugs, which were standard-issue for U.S. military members for more than a decade. Andre also served on several bellwether trial teams, securing multiple favorable jury verdicts.

In re: Taxotere (Docetaxel) Products Liability Litigation Andre was a member of the trial team in a two-week federal jury trial and is member of Plaintiffs' Steering Committee and co-chair of Law and Briefing in this multi-district litigation on behalf of breast cancer survivors who suffered permanent hair loss after using the Taxotere chemotherapy drug. He recently obtained a unanimous decision granting a bellwether plaintiff a new trial. *See* 26 F.4th 256 (5th Cir. 2022)

In re: Vizio, Inc. Consumer Privacy Litigation Andre is co-lead counsel for the settlement class in this multi-district lawsuit alleging that Vizio collected and sold data about consumers' television viewing habits and their digital identities to advertisers without consumers' knowledge or consent. He negotiated a settlement providing for class-wide injunctive relief transforming the company's data collection practices, as well as a \$17 million fund to compensate consumers who were affected.

De La Torre v. CashCall Andre played a key role in briefing before the California Supreme Court, resulting in a unanimous decision in the plaintiffs' favor. The decision changed decades-old assumptions that lenders in California had a virtual "safe harbor" from unconscionability challenges to loan interest rate terms.

In re: Lenovo Adware Litigation Andre briefed and argued a motion to dismiss and motion to certify a nationwide litigation class for monetary damages. The court approved a \$7.3 million class action settlement to resolve allegations that Lenovo preinstalled software on laptops that caused performance, privacy and security issues for consumers.

Beaver et. al. v. Tarsadia Hotels, Inc. Andre contributed to briefing before the Ninth Circuit Court of Appeals resulting in a unanimous decision affirming the lower court's ruling that the UCL's four-year statute of limitations (and its accrual rule) applied in claims alleging violations of the Interstate Land Sales Full Disclosure Act (ILSA) even though ILSA has a shorter statute of limitations.

Watts v. Lester E. Cox Medical Centers, 376 S.W.3d 633 (Mo. 2012) Andre successfully argued that a state law limiting compensatory damages in medical malpractice cases violated his client's right to trial by jury. In ruling for Andre's client, the Missouri high court agreed to overturn a 20-year-old precedent.

U.S. Supreme Court Advocacy

Trump v. Mazars USA, LLP, 140 S. Ct. 2019 (2020) Andre represented a bipartisan group of former members of the U.S. Senate and House of Representatives appearing as amici in support of Congress's broad investigatory power.

Merck Sharp & Dohme Corp. v. Albrecht, 139 S. Ct. 1668 (2019) Before the U.S. Supreme Court, in a case concerning the scope of federal immunity for brand-name drug manufacturers, Andre represented medical doctors appearing as amici curiae. His amicus brief was discussed at oral argument, with Supreme Court counsel for Albrecht telling the Justices, "It's a beautifully done amicus brief to explain what the scientists knew and when they knew it...."

Mutual Pharmaceutical Co., Inc. v. Bartlett, 133 S. Ct. 2466 (2013) Andre was the lead author of an amicus curiae brief for the American Association for Justice and Public Justice in a case examining whether federal drug safety law preempts state-law liability for defectively designed generic drugs.

J. McIntyre Machinery, Ltd. v. Nicastro, 131 S. Ct. 2780 (2011) Andre was a lead author of merits briefing addressing personal jurisdiction over a foreign manufacturer.

Awards & Honors

Top Plaintiff Lawyers in California, *Daily Journal* (2021)

California Lawyer Attorney of the Year (CLAY) Award, *Daily Journal* (2019)

Top Cybersecurity & Privacy Attorneys Under 40, *Law360* Rising Stars (2017)

Northern California Super Lawyers (2019-2022); *Rising Star* (2016-2018)

Professional Affiliations

American Association for Justice- Class Action Litigation Group, Legal Affairs Group, LGBT Caucus

American Bar Foundation, Fellow

Consumer Attorneys of California, Member

Civil Justice Research Initiative of Berkeley Law, Board Member

National Center for State Courts, Lawyers Committee

National Civil Justice Institute, Trustee

Select Publications & Presentations

Presenter, "Consumer Advocates Speak," Practising Law Institute, 24th Annual Consumer Financial Services Institute.

Author, "Staying on Track After Bristol-Myers," Trial Magazine, American Association for Justice, April 2019.

Presenter, "Personal Jurisdiction, Choice of Law & Hyundai," Class Action Mastery Forum, January 2019.

Panelist, "State Court Protection of Individual Constitutional Rights," Pound Civil Justice Institute 2018 Forum for State Appellate Court Judges, July 2018.

Author, *Buckman Stops Here! Limits on Preemption of State Tort Claims Involving Allegations of Fraud on the PTO or the FDA*, 41 Rutgers L.J. 309, 2010.



Rosemary Rivas | Partner

Rosemary has dedicated her legal career to representing consumers in complex class action litigation involving a wide variety of claims, from false advertising and defective products to privacy violations. She is committed to obtaining justice for consumers and has recovered billions of dollars for her clients and the classes they represent.

Rosemary serves in leadership positions in a number of large-scale complex class action cases and multi-district litigation. In a highly competitive appointment process, the Honorable Charles R. Breyer appointed Rosemary to the Plaintiffs' Steering Committee in the Volkswagen Clean Diesel Litigation, which resulted in a record-breaking settlement totaling more than \$14 billion. The Recorder, a San Francisco legal newspaper, named the lawyers selected by Judge Breyer as a class action "dream team." For her work in the Volkswagen case, Rosemary received the 2018 California Lawyer Attorney of the Year (CLAY) Award, which is given to outstanding California lawyers "whose extraordinary work and cases had a major impact on the law."

In 2022, Rosemary was appointed to serve as Plaintiffs' Interim Co-Lead Counsel in the *In re: Gerber Heavy Metals Baby Food Litigation*, which involves allegations that Gerber marketed and sold baby foods containing dangerous levels of heavy metals such as lead and inorganic arsenic. In his order appointing Rosemary as Interim Co-Lead Counsel, Judge Michael S. Nachmanoff wrote that Rosemary has "significant experience and knowledge litigating class action cases involving food mislabeling consumer fraud."

She has received numerous awards and honors for the quality of her legal work, including the Bay Area Legal Aid Guardian of Justice Award for her achievements in the law and her role in helping direct *cy pres* (remaining settlement) funds to promote equal access to the legal system. She was also recognized as a *Northern California Super Lawyer* and previously was named a *Rising Star* by Super Lawyers Magazine.

Rosemary is a fluent Spanish-speaker and previously served on the Board and as Diversity Director of the Barristers Club of the San Francisco Bar Association. She frequently presents at legal conferences on developments in consumer protection and class action litigation.

Litigation Highlights

Porsche Gasoline Litigation – As part of the Plaintiffs' Steering Committee and as Class Counsel, Rosemary represented consumers alleging that Porsche engaged in practices that skewed emissions and fuel economy test results for certain Porsche vehicles. The Honorable Charles R. Breyer recently granted preliminary approval of a proposed nationwide class action settlement providing a non-reversionary common fund of \$80 million.

Lash Boost Cases – As Class Counsel, Rosemary Rivas represented consumers who alleged that Rodan + Fields failed to disclose material information relating to its Lash Boost product, namely, the potential side effects and risks of adverse reactions presented by the ingredient Isopropyl Cloprostenate. The Honorable Ethan Schulman recently granted preliminary approval of a proposed nationwide class action settlement providing a non-reversion common fund of \$30 million in cash and \$8 million in credits.

In re: Apple Inc. Device Performance Litigation – The Honorable Edward J. Davila appointed Rosemary to the Plaintiffs' Executive Committee in this nationwide class action alleging that Apple intentionally slowed down consumers' iPhones. The case settled for \$310 million.

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Practice Emphasis

Class Actions
Consumer Protection

Education

University of California,
Hastings College of Law, J.D.,
2000

San Francisco State
University, B.A., 1997

Admissions

California

In re: Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation –

Rosemary represented consumers alleging that Hill's sold dog food with excessive Vitamin D that was harmful to pets. Chief Judge Julie A. Robinson granted final approval of a nationwide class action settlement providing for a common fund of \$12.5 million.

Awards & Honors

California Lawyer Attorney of the Year (CLAY) Award (2018)
Northern California Super Lawyers (2019-2022)
Northern California Super Lawyers, *Rising Star* (2009-2011)
Guardian of Justice Award, Bay Area Legal Aid (2015)

Professional Affiliations

Consumer Attorneys of California
American Association for Justice- Class Action Litigation Group
Pound Civil Justice Institute- Fellow
Public Justice- Class Action Preservation Project

Publications and Presentations

Presenter, "Consumer Class Actions," Western Alliance Bank Class Action Law Forum, 2021 and 2022.

Presenter, "Nationwide Settlement Classes: The Impact of the Hyundai/ Kia Litigation," National Consumer Law Center's Consumer Rights Litigation Conference and Class Action Symposium, 2018.

Presenter, "One Class or 50? Choice of Law Considerations as Potential Impediment to Nationwide Class Action Settlements," 5th Annual Western CLE Program on Class Actions and Mass Torts, 2018.

Presenter, "The Right Approach to Effective Claims," Beard Group- Class Action Money & Ethics, 2018.

Presenter, "False Advertising Class Actions: A Practitioner's Guide to Class Certification, Damages and Trial," The Bar Association of San Francisco, 2017.



Michael Schrag | Partner

Michael Schrag has 25 years of experience representing individual and small business plaintiffs in a broad range of complex class actions against large corporations in the banking, credit card, telecommunications, and real estate sectors. He has recovered hundreds of millions of dollars on behalf of his clients and his class action practice covers a broad range of legal areas including, breach of contract, consumer protection, antitrust, and civil RICO cases. Michael also represents individuals and large groups of plaintiffs in breach of fiduciary duty product liability, personal injury and medical malpractice cases.

He currently serves as court-appointed Co-Lead class counsel in *Hernandez v. Wells Fargo Bank*, representing a certified class of over one thousand borrowers who lost their homes after Wells Fargo wrongfully denied them mortgage modifications. Michael, helped craft an innovative damages theory to help borrowers recover losses, and achieved a \$40 million settlement, which was praised for bringing “significant” relief to the class. Michael was also appointed Co-Lead class counsel in a related case that settled for \$12 million.

Michael is also on the Expert Committee and trial team in the *In re: Disposable Contact Lens Antitrust Litigation*, a nationwide class action lawsuit alleging that manufacturers and distributors conspired to fix prices of contact lenses being sold to consumers. The court certified a nationwide class, and plaintiffs have obtained partial settlements from three defendants totaling \$45 million. Michael was also appointed by a federal judge to serve on the Plaintiffs’ Executive Committee in the *In Re Cattle Antitrust Litigation* and is prosecuting an antitrust class action against Jiffy Lube, which accuses the company of suppressing employees’ wages by prohibiting them from transferring from one Jiffy Lube franchise to another. He is also representing victims of a real estate Ponzi scheme in *Camenisch v. Umpqua Bank*, an action against a bank for allegedly aiding and abetting a fraudulent investment scheme that caused California investors to lose hundreds of millions of dollars.

A Bay Area native, Michael began his career prosecuting securities class actions and serving as a law clerk to the Honorable Judith N. Keep, U.S. District Judge, Southern District of California. Before joining Gibbs Law Group, Michael was a partner and co-founder of Meade & Schrag, LLP, where he prosecuted class actions and also litigated personal injury, medical malpractice, breach of contract, and business litigation matters.

Litigation Highlights

Hernandez v. Wells Fargo Bank, N.A. - Michael serves as court-appointed co-lead counsel representing a certified class of more than 1,200 home mortgage borrowers who lost their homes to foreclosure after Wells Fargo Bank erroneously denied their home loan modification requests. The case settled in two phases for a total of \$40.3 million. Class members have received significant compensation payments.

Ryder v. Wells Fargo - Michael was appointed co-lead class counsel in a lawsuit related to *Hernandez* on behalf of Wells Fargo borrowers who were erroneously denied trial modifications but didn’t lose their homes. In August 2021, the Court granted preliminary approval of a \$12 million settlement and set the final approval hearing for January 2022.

In re: Wells Fargo Collateral Protection Insurance Litigation- Michael served on the court-appointed, three-firm Plaintiffs’ Steering Committee in this multi-district litigation on behalf of consumers who took out car loans from Wells Fargo and were charged for auto insurance they did not need. The parties agreed to a settlement of \$393.5 million for affected consumers and the Court granted final approval in November 2019.

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Practice Emphasis

Antitrust
Class Actions
Consumer Protection
Mass Personal Injury
Securities and Financial Fraud
Whistleblower

Education

University of California,
Berkeley School of Law, J.D.,
1996

Columbia College at Columbia
University, B.A., 1989

Admissions

California

Awards & Honors

*Northern California Super
Lawyers*, 2019-2020

Best Lawyers in America, 2020-
2023 Edition

In re: Disposable Contact Lens Antitrust Litigation-(MDL No. 2626) Michael is currently a member of the expert committee in this antitrust class action challenging the minimum resale pricing policies of the dominant disposable contact lens manufacturers. After a two-day hearing the Court certified the class and trial is set for later this year.

Beaver v. Tarsadia Hotels- Michael served as co-lead counsel on behalf of consumers in this unfair competition class action against real estate developers selling hotel-condominium units. Lawsuit alleged that sellers concealed certain Congressionally-mandated protections in the sales contracts, including a statutory rescission right. After six years of litigation including a win in the Ninth Circuit that established favorable law for consumers, the lawsuit settled for \$51.15 million. In granting final approval, Judge Curiel concluded that the settlement was "an excellent result," and noted "Class Counsel overcame several hurdles that reflect their skill and experience." *Beaver v. Tarsadia Hotels*, 816 F. 3d1170 (9th Cir. 2016)

In re Currency Conversion Fee Antitrust Litigation (MDL No. 1409)- This action alleged that Visa, MasterCard and their then member banks, including Bank of America and Chase, fixed the price of foreign currency conversion fees on international credit and debit card transactions. Michael was part of the team that prevailed at trial in a related state court action, and then obtained a \$336 million global settlement for the class in this multidistrict antitrust litigation against the country's largest credit card issuers and networks.

Asokan et. al. v. American General Ins. Co.- Member of the trial team in this insurance and investment fraud case against American General Insurance Co, an AIG subsidiary. Michael and his team represented six plaintiffs who were marketed an investment involving a specialized whole life policy that would supposedly provide tax benefits. American General knew but concealed from plaintiffs that the plans no longer complied with the law. Plaintiffs suffered losses as a result of this fraud by concealment. Among other tasks, Michael had primary responsibility for working with plaintiffs' damages expert and conducted the direct and re-direct examination of this expert at trial. The case settled for a confidential sum 8 days into the jury trial.

Smith et. al. v. American General Ins. Co. - Michael was a key member of the litigation team that represented nine high net worth plaintiffs in this RICO action alleging that American General and the other members of the enterprise falsely marketed and sold our clients a whole life policy that would *supposedly* provide a multitude of tax benefits, but concealed the fact that the IRS had changed its regulations, rendering these plans no longer compliant with the law. Among other tasks, Michael had primary responsibility for working with plaintiffs' damages expert and deposing the defendants' damages expert. The case settled for a confidential sum.

Ammari v. Pacific Bell Directory – Represented consumers who overpaid an AT&T subsidiary for advertising in Yellow Pages directories. Plaintiffs prevailed at trial and on two appeals to obtain a \$27 million judgment for class members, a result the *National Law Journal* deemed as one of the top 100 verdicts in 2009.

In Re Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation – recovered over \$10 million on behalf of his clients in this multidistrict litigation that awarded a total of \$1 billion to patients who received defective hip implants.

Awards & Honors

Best Lawyers in America, 2020-2021 Edition
Northern California Super Lawyers, 2019-2022



Dave Stein | Partner

Dave Stein represents clients in federal and state cases nationwide, ranging from securities and financial fraud class actions, to product liability, privacy, and data breach suits. Courts have appointed Dave as lead counsel in a number of these cases and he has been praised by *Law360* as a tenacious litigator with a “reputation as one of the best consumer advocates around.”

The *Daily Journal* recognized Dave as one of the Top 40 attorneys in the state of California under the age of 40, and he was also honored in *Law360*'s nationwide list of “Top Class Action Attorneys Under 40.” For the last seven years, he has been rated by his colleagues as a Northern California Super Lawyers Rising Star.

Dave is frequently called upon to discuss emerging issues in complex litigation. He currently serves on *Law360*'s Product Liability Editorial Advisory Board, advising on emerging trends impacting product liability cases.

Before entering private practice, Dave served as judicial law clerk to U.S. District Court Judge Keith Starrett and U.S. Magistrate Judge Karen L. Hayes.

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Practice Emphasis

Class Actions
Consumer Protection
Financial Fraud
Securities Litigation

Education

Emory University School of Law, J.D., 2007

University of California at Santa Barbara, B.A., 2003

Admissions

California

Reputation and Recognition by the Courts

Dave has built a reputation for the quality of his representation and tenacious advocacy on behalf of the clients and classes he represents:

“[T]his is an extraordinarily complex case and an extraordinarily creative solution... I [want to] thank you and compliment you gentlemen. It's been a real pleasure to work with you.” - *Hon. D. Carter, Glenn v. Hyundai Motor America (C.D. Cal.)*

“You made it very easy to deal with this case and clearly your years of expertise have carried the day here. Nice work. Thank you.” - *Hon. M. Watson, In re Am. Honda Motor CR-V Vibration Litig. (S.D. Ohio)*

“Exceedingly well argued on both sides. Sometimes people really know their stuff on both sides which is what happened today so thank you.” - *Hon. J. Tigar, In re General Motors CP4 Fuel Pump Litig. (N.D. Cal.)*

Litigation Highlights

In re: Peregrine PFG Best Customer Accounts Litigation - Represented investors in a lawsuit against U.S. Bank and JPMorgan Chase arising from the collapse of Peregrine Financial Group, Inc. The former Peregrine customers were seeking to recover the millions of dollars that was stolen from them out of segregated funds accounts. Plaintiffs' efforts led to settlements with JPMorgan Chase and U.S. Bank worth over \$75 million.

Deora v. NantHealth - Lead Counsel for certified classes of investors in litigation alleging violations of federal securities laws related to the healthcare technology company's initial public offering in 2016. In September 2020, the Court granted final approval to a \$16.5 million class action settlement.

LLE One v. Facebook - Represented small businesses who alleged that Facebook overstated, for over a year, how long users were watching video ads on Facebook's platform. After years of litigation, the federal court approved a \$40 million settlement for the class.

Paeste v. Government of Guam - Secured a judgment against the Government of Guam and several of its highest-ranking officials in a suit involving the government's unlawful administration of income tax refunds. Mr. Stein defended the judgment in an oral argument before the U.S. Court of Appeals for the Ninth Circuit, leading to a complete victory for the taxpayers in the published decision, *Paeste v. Government of Guam*, 798 F.3d 1228 (9th Cir. 2015)

Edwards v. Ford Motor Co. – In a class action alleging that Ford sold vehicles despite a known safety defect, Mr. Stein twice argued plaintiff's position before the U.S. Court of Appeals for the Ninth Circuit. In the first appeal, Mr. Stein succeeded in obtaining a reversal of the trial court's denial of class certification. In the second, plaintiff again prevailed, with the Ninth Circuit affirming the conclusion that the lawsuit had driven Ford to offer free repairs, reimbursements, and extended warranties to the class.

In re: Hyundai Sonata Engine Litigation – Mr. Stein served as court-appointed co-lead counsel in this nationwide suit involving engine seizures at high speeds. The litigation led to a settlement that included nationwide vehicle recalls, extended warranties, and payments that averaged over three thousand dollars per class member.

Browne v. American Honda Motor Co., Inc. – Represented consumers who alleged that 750,000 Honda Accord and Acura TSX vehicles were sold with brake pads that wore out prematurely. A settlement ensued worth approximately \$25 million, with hundreds of thousands of class members electing to participate.

Awards & Honors

“2017 Top 40 Under 40,” *Daily Journal*
Top Class Action Attorneys Under 40, *Law360* Rising Stars (2017)
Northern California Super Lawyers *Rising Star* (2013-2021)

Professional Affiliations

American Association for Justice
Consumer Attorneys of California
Federal Bar Association
Public Justice Foundation

Publications & Presentations

Moderator, “A View from the Bench II: Judicial Insights on Managing Complex Litigation and the Pandemic's Lasting Impact,” *ABA Tort Trial & Insurance Practice Section, 2022 Motor Vehicle Product Liability Litigation Conference*, April 2022.

Presenter, “Class Damages,” *AAJ Class Action Litigation Group*, June 2020.

Co-Author, “Recent Decision Highlights the Importance of Early Discovery in Arbitration,” *Daily Journal*, May 2019.

Presenter, “Article III Standing in Data Breach Litigation,” *AAJ Class Action Seminar*, December 2018.

Presenter, “Determining Damages in Class Actions,” *Class Action Mastery Conference*, HB Litigation, May 2018.

Presenter, “Mass Torts and Class Actions: The Latest and Greatest, Update on Class Action Standing” *56th Annual Consumer Attorneys of California Convention*, November 2017.

Author, Third Circuit Crystallizes Post-Spokeo Standard, *Impact Fund Practitioner Blog*, July 2017.

Presenter, “Class Certification,” “Class Remedies,” *HB Litigation Conferences, Mass Tort Med School + Class Actions*, March 2017.

Co-Author, “Beware Intended Consequences of Class Action Reform, Too,” *Law360 Expert Analysis*, March 14, 2017.

Author, *Wrong Problem, Wrong Solution: How Congress Failed the American Consumer*, 23 *Emory Bankr. Dev. J.* 619 (2007).



Steven Tindall | Partner

Steven Tindall represents employees seeking fair pay and just treatment in individual and class action lawsuits against employers. His cases involve allegations of misclassification, sexual harassment, discrimination, wrongful termination, retaliation, WARN Act, and ERISA violations. He has more than 20 years of experience representing employees in a variety of industries, including tech, gig economy, financial services, construction, transportation, and private education. Steven also represents consumers in individual and mass tort personal injury lawsuits and class action litigation. In 2019, he won a *California Lawyer Attorney of the Year Award*, which honors outstanding California lawyers “whose extraordinary work and cases had a major impact on the law.”

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Practice Emphasis

Class Actions
Employment Litigation

Education

University of California,
Berkeley School of Law, J.D.,
magna cum laude, 1996.

Yale University, B.A., *summa cum laude*, *Phi Beta Kappa*.

Admissions

California

Steven clerked for Hon. Judith N. Keep of the United States District Court for the Southern District of California and for Hon. Claudia Wilken of the U.S. District Court for the Northern District of California. Prior to joining Gibbs Law Group, he was a partner at Rukin Hyland Doria & Tindall, and at Lief Cabraser Heimann & Bernstein. At Rukin Hyland and Lief Cabraser, he focused on plaintiffs’ class action litigation in the fields of wage and hour law, antitrust, and consumer protection. Steven also litigated a number of mass tort personal injury and toxic tort cases.

He received his B.A. degree in English Literature from Yale University, graduating *summa cum laude*, Phi Beta Kappa, and with distinction in his major. He earned his J.D. degree from the University of California at Berkeley School of Law in 1996. While at Berkeley Law, Steven co-directed the East Bay Workers’ Rights Clinic.

Litigation Highlights

Breach of Contract – As co-lead counsel, Steven helped recover over \$29 million on behalf of hundreds of employees in a class action lawsuit involving breach of contract claims against a global consulting company.

Retirement Benefits – Represented retirees whose retirement benefits were slashed after a corporate spinoff. The litigation resulted in a \$9 million recovery paid out to class members.

Gig Economy – Represents thousands of individual clients in multiple gig economy cases alleging that they were misclassified as independent contractors and should be entitled to minimum wage, overtime pay, and expense reimbursement under California and other state labor laws.

Consumer Loans – Represents over 100,000 borrowers in a certified class action lawsuit against online lender, CashCall, alleging that they preyed on low-income borrowers through high interest rate loans. Steven was a key member of the litigation team that achieved a unanimous ruling from the CA Supreme Court regarding unconscionability of contracts.

Awards & Honors

California Lawyer Attorney of the Year (CLAY) Award (2019)
Northern California Super Lawyers (2009-2022)

Publications & Presentations

Co-Author, “DoorDash: Quick Food, Slow Justice,” Daily Journal, March 24, 2020.

Presenter, “Damages & Penalties in Exemption and Misclassification Cases,” Bridgeport Independent Contractor, Joint Employment Misclassification Litigation Conference, July 26, 2019.

Contributor, "Can Interest Rates be Unconscionable?" Daily Journal Appellate Report Podcast, July 6, 2018.

Co-Author, "Epic Systems and the Erosion of Federal Class Actions," Law360 Expert Analysis, July 5, 2018.

Co-Author, "Senate Should Reject Choice Act and Its Payday Free Pass," Law360 Expert Analysis, July 12, 2017.

Presenter, "Understanding and Litigating PAGA Claims," Bridgeport Continuing Legal Education, March 3, 2017.

Contributing Author, California Class Actions Practice and Procedure, Matthew Bender & Co., Inc., 2006

Author, *Do as She Does, Not as She Says: The Shortcomings of Justice O'Connor's Direct Evidence Requirement in Price Waterhouse v. Hopkins*, Berkeley Journal of Employment and Labor Law, 17, No. 2, 1996



Amy Zeman | Partner

Amy has built a reputation in the plaintiffs' bar for delivering results and justice to consumers and sexual assault survivors in class action and mass tort litigation. She secured a \$73 million settlement in 2021 from UCLA on behalf of sexual assault survivors who brought claims against gynecologist Dr. James Heaps and achieved an historic \$14.975 million dollar jury verdict as co-lead trial counsel on behalf of Pacific Fertility Center patients whose genetic material was destroyed in a catastrophic cryo-preservation tank failure. Media throughout the country have hailed the verdict as groundbreaking, and the Washington Post noted it as "a historic verdict that could have far-reaching consequences for the loosely regulated U.S. fertility industry."

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Practice Emphasis

Class Actions
Consumer Protection
Mass Personal Injury
Whistleblower/ Qui Tam

Education

University of California,
Hastings College of Law,
J.D., *magna cum laude*,
2010.

University of Missouri, B.A.,
summa cum laude, 1998.

Admissions

California
Florida

The Daily Journal recognized Amy among the Top Women Lawyers in California for 2021 and the Top Plaintiff Lawyers in California for 2021, and Northern California Super Lawyers named her a 2021 Super Lawyer. *Law360* honored Amy as an MVP in Product Liability for 2021, and the National Law Journal named her a 2021 Winning Litigators finalist. In 2020, Amy was elected co-chair of the American Association for Justice's Class Action Litigation Group.

Amy currently represents clients in a variety of mass injury matters, including additional families in the Pacific Fertility Center matter, individuals harmed by the chemotherapy drug Taxotere (docetaxel), and individuals affected by the Porter Ranch/Aliso Canyon gas leak. She serves in a court-appointed leadership role in a mass action coordinating claims on behalf of 18,000 boys who suffered irreversible male breast growth after being prescribed the antipsychotic medication Risperdal. Amy has previously represented clients injured by transvaginal mesh, the birth control medications Yaz and Yasmin, and the diabetes drug Actos.

Prior to attending law school, Amy pursued a career in the financial sector, acting as the Accounting and Compliance Manager for the Marin County Federal Credit Union for almost seven years. Amy was a spring 2010 extern for the Honorable Marilyn Hall Patel of the United States District Court, Northern District of California.

Litigation Highlights

Mass Tort Litigation

Pacific Fertility Center Litigation – Amy served as co-lead trial counsel in a three-week trial on behalf of several patients who tragically lost eggs and embryos in a catastrophic cryo-preservation tank failure at San Francisco's Pacific Fertility Center in 2018. The jury found the cryogenic tank manufacturer, Chart Inc., liable on all claims, and awarded \$14.975 million in aggregate damages to the five plaintiffs. Amy leads the Gibbs Law Group team, which first filed the lawsuit in March 2018 with co-counsel, and represents dozens of PFC patients whose frozen eggs and embryos were harmed or destroyed as a result of the tank failure. This was the first trial in the consolidated litigation, and five additional trials against Chart are scheduled for 2022 and 2023.

In re Risperdal and Invega Product Liability Cases – appointed by a California judge to serve as liaison counsel, responsible for coordinating and overseeing the lawsuits filed on behalf of thousands of male children who took the popular antipsychotic drug Risperdal and suffered irreversible gynecomastia, or male breast growth.

Taxotere (Docetaxel) Products Liability Litigation – selected to serve on the discovery committee in this multi-district litigation on behalf of breast cancer survivors who suffered permanent, disfiguring hair loss after using the Taxotere chemotherapy drug.

Yaz & Yasmin Birth Control Litigation – represented women throughout the country who suffered serious side effects after taking Yaz, Yasmin and Ocella birth control. The federal litigation resulted in settlements worth approximately \$1.6 billion.

Defective Product and Consumer Protection Litigation

Sanborn, et al. v. Nissan North America, Inc. – appointed as class counsel with Eric Gibbs and others. Obtained a settlement 11 days before trial was set to begin on claims that the dashboards in certain Nissan vehicles were melting into a shiny, sticky surface that produced a dangerous glare. The settlement allowed class members to obtain a \$1500-\$2000 dashboard replacement for just \$250, or equivalent reimbursement for prior replacements.

Chase Bank U.S.A., N.A. “Check Loan” Contract Litigation – key member of the litigation team in this multidistrict case alleging that Chase Bank wronged consumers by offering long-term fixed-rate loans, only to later more-than-double the required loan payments. The litigation resulted in a \$100 million settlement eight weeks prior to trial.

Sugarman v. Ducati North America, Inc., - represented Ducati motorcycle owners whose fuel tanks on their motorcycles degraded and deformed due to incompatibility with the motorcycles’ fuel. In January 2012, the Court approved a settlement that provided an extended warranty and repairs, writing, “The Court recognizes that class counsel assumed substantial risks and burdens in this litigation. Representation was professional and competent; in the Court’s opinion, counsel obtained an excellent result for the class.”

Awards & Honors

Winning Litigators Finalist, National Law Journal (2021)
Product Liability MVP, Law360 (2021)
Top Plaintiff Lawyers in California, Daily Journal (2021)
Top Women Lawyers in California, Daily Journal (2021)
Northern California Super Lawyer (2021-2022); Rising Star (2013-2020)

Professional Affiliations

American Association for Justice - Co-Vice Chair of the Class Action Litigation Group; Past Co-Chair of the Qui Tam Litigation Group; Member of the Women Trial Lawyers Caucus
Consumer Attorneys of California

Publications & Presentations

Co-author, “Tips on Client Contact and Case Management in Mass Torts Part I: Client Intake and Gathering Relevant Information,” American Association for Justice, Women Trial Lawyers Caucus Connections Count Newsletter, 2013.

Co-author, “Tips on Client Contact and Case Management in Mass Torts Part II: Organizing and Working with Client Information,” American Association for Justice, Women Trial Lawyers Caucus Connections Count Newsletter, 2013.

Presenter, “Fees in Class Action Cases,” and “Qui Tam Case Strategies,” Mass Tort Med School and Class Action Conference, March 2017.

Presenter, “Claims-processing in Large and Mass-Tort MDLs,” Emerging Issues in Mass-Tort MDLs Conference, Duke University, October 2016.

Presenter, “Best Practices in Law Firm Management,” American Association for Justice 2016 Winter Convention, Women’s Trial Lawyers Caucus Leadership Summit, February 2016.

Presenter, “Lumber Liquidators Litigation,” American Association for Justice 2015 Annual Convention, July 2015.



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Practice Emphasis

Antitrust
Class Actions
Consumer Protection

Education

UCLA School of Law, J.D.,
2000
University of Pennsylvania,
B.A., *with honors*, 1996

Admissions

California

Josh Bloomfield | Counsel

Josh Bloomfield represents plaintiffs in class and other complex litigation, with particular experience in antitrust, consumer protection and data breach matters. He is a member of the California Bar and is admitted to practice before the United States District Courts for the Northern, Central and Southern Districts of California.

At Gibbs Law Group, Josh has been an advocate for borrowers who lost their homes to foreclosure during the financial crisis, individuals harmed by corporate misconduct related to the COVID-19 pandemic, and consumers and employees who have suffered the consequences of antitrust conspiracies.

During more than 20 years of practice, Josh has represented clients in a variety of civil, criminal and administrative matters - from a distinguished professor of aeronautics and astronautics in a National Science Foundation research misconduct investigation, to several Major League Baseball teams in player arbitrations. Josh also served as vice president and general counsel to an innovative business venture in the second-home alternative marketplace, offering investors direct participation in ownership of a portfolio of luxury vacation properties.

Litigation Highlights

Hernandez v. Wells Fargo Bank, N.A.

Represents a certified class of more than 1,200 home mortgage borrowers who lost their homes to foreclosure after Wells Fargo erroneously denied them trial mortgage modifications. The case settled in two phases for a total of \$40.3 million, resulting in significant compensation payments to each class member.

Disposable Contact Lens Antitrust Litigation

Represents a class of consumers in the Disposable Contact Lens Antitrust Litigation, which challenges a series of “minimum pricing” policies imposed by contact lens manufacturers. The suit alleges that consumers paid supracompetitive prices as a result of a conspiracy among optometrists, manufacturers and a distributor of disposable contact lenses.

In re Anthem, Inc. Data Breach Privacy Litigation

Represented interests of plaintiffs and putative class members following massive data breach of approximately 80 million personal records, including names, dates of birth, Social Security numbers, health care ID numbers, email and physical addresses, employment information, and income data.

Jiffy Lube Antitrust Litigation

Represents Jiffy Lube workers who were harmed by a “no-poach” policy whereby Jiffy Lube required its franchisees to agree not to solicit or hire current or former employees of other franchisees. The suit alleges that workers’ wages were suppressed by this restraint on the market for their labor.

Airbnb Host Class Action Lawsuit

Represents Airbnb hosts – in federal court and in individual arbitrations - who allege that Airbnb took advantage of the COVID-19 pandemic and seized funds that belonged to hosts while claiming that the money would be refunded to guests.



Parker Hutchinson | Counsel

Parker Hutchinson represents plaintiffs in class actions and other complex litigation, with extensive practice in the field of prescription drug product liability. Parker currently represents clients in multi district litigation including servicemembers who suffered hearing loss or tinnitus from defective 3M ear plugs and cancer survivors who suffered permanent disfiguring hair loss from the chemotherapy drug Taxotere. Prior to joining Gibbs Law Group, Parker wrote extensive briefing *In re Taxotere* as a member of the Plaintiffs' Law & Briefing Committee. In his appellate advocacy work, Parker has also achieved an expansion of the definition of "adverse employment action" under Title VII in an issue of first impression.

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Education

Columbia Law School, J.D.,
2009

Tulane University, B.A., *cum
laude*, 2004

Admissions

New York

Louisiana

Parker is a 2009 graduate of Columbia Law School, where he was a leader at the Columbia Journal of European Law. During law school, Parker was a judicial extern with the Honorable Stanwood Duval, Jr. of the Eastern District of Louisiana. Before law school, Parker worked as a congressional staffer, a musician, and a writer. He involved himself closely in New Orleans's recovery following Hurricane Katrina, including the resurrection of progressive community radio station WTUL. He received his undergraduate degree, *cum laude*, from Tulane University in 2004.



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Practice Emphasis

Class Actions
 Consumer Protection

Education

The Ohio State University
 Moritz College of Law, J.D.,
 1998

Wright State University, M.A.,
 1995

The College of Wooster, B.A.,
with honors, 1993

Admissions

Ohio

Shawn Judge | Counsel

Shawn Judge focuses on class actions, mass torts, and other complex litigation matters. Shawn has been appointed Chair by a federal court to two pipeline compensation commissions, and he currently serves as Special Counsel for the Ohio Attorney General litigating claims against five of the country's largest pharmaceutical companies alleging misrepresentations and deceptive marketing that caused the nation's current devastating opioid crisis. He routinely serves as an invited speaker on civil litigation and mediation and is a former Ohio Bar Examiner.

Shawn is also an experienced mediator offering private mediation services for civil disputes. For over a decade, Shawn mediated cases for the U.S. District Court for the Southern District of Ohio as a judicial clerk. He received mediation training at the Harvard Negotiation Institute at Harvard Law School and the Straus Institute for Dispute Resolution at the Pepperdine University School of Law.

Previously, Shawn has served as a judicial clerk for the U.S. District Court for the Southern District of Ohio, the Supreme Court of Ohio, and Ohio's Ninth District Court of Appeals. He has previously served as adjunct professor at The Ohio State University Moritz College of Law, Ohio Northern University Pettit College of Law, and Capital University Law School. Shawn received his B.A. with honors from The College of Wooster, holds an M.A. in English from Wright State University, and received his J.D. with honors from The Ohio State University Moritz College of Law.

Awards & Honors

Ohio Super Lawyer (2021)

Professional Affiliations

Co-Chair, Class Actions/Consumer Law, Central Ohio Association for Justice
 Ohio Mediation Association
 Ohio Association for Justice
 National Civil Justice Institute
 American Association for Justice
 Columbus Bar Association
 Ohio State Bar Association
 Federal Bar Association
 American Bar Association

Litigation Highlights

State of Ohio ex rel. Dave Yost, Ohio Attorney General v. Purdue Pharma L.P.:

Represents the State of Ohio in litigation alleging that the six major manufacturers of prescription opioids created a public nuisance, which caused billions of dollars in damages to the state and its citizens. The litigation is ongoing.

Eaton v. Ascent Resources – Utica, LLC: Represents a class and sub-classes of oil and gas lessors with leases with Ascent Resources – Utica, LLC. Plaintiffs claim that Ascent takes improper post-production deductions from their royalty payments that are either not allowed under their contracts or are unreasonable in amount. On August 4, 2021, the Court granted class certification in the case, which marks one of the first cases of a court certifying an Ohio class action regarding the underpayment of oil and gas royalties. The lawsuit is ongoing.



Micha Star Liberty | Of Counsel

Micha Star Liberty is a nationally recognized trial attorney dedicated to representing individuals who have been injured or abused, including survivors of sexual abuse. With more than twenty years of experience, Micha has been widely recognized for her achievements, receiving numerous awards including Top 100 Women Lawyers in California, Top 100 High Stakes Litigators, and Top Plaintiff Lawyers in California. In 2018, Micha was honored with the Woman Advocate of the Year award for her work on legislation and prosecuting numerous cases in support of the #MeToo movement. In 2015, the Consumer Attorneys of California recognized Micha as Street Fighter of the Year for holding the Contra Costa County School District accountable in a child sexual abuse case.

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Practice Emphasis

Sexual Assault

Education

University of Hastings,
College of the Law, J.D.,
2001

University of California at Los
Angeles, B.A., 1995

Admissions

California

Micha also contributes to the legal profession in leadership and has served as past president of Consumer Attorneys of California, Western Trial Lawyers, and Alameda-Contra Costa Trial Lawyers, as well as past vice president of the State Bar of California. Micha is a frequent lecturer and published author on legal topics, focusing much of her public speaking on trial practice, discovery techniques, the importance of mentoring, and best practices for opening a law office and law office management. Micha is also a certified mediator with over 40 hours of training, and she has performed private mediations as well as mediations for the Contra Costa Superior Court with a trauma-informed perspective.

Micha has worked at the White House (Clinton Administration) and for two Members of Congress: for U.S. Representative Mel Watt, from North Carolina, and for U.S. Representative Anna Eshoo. While in law school, Micha served as a judicial extern to Senior United States District Court Judge Thelton E. Henderson.

Professional Affiliations

Alameda-Contra Costa Trial Lawyers Association, Past President

American Association for Justice, Board of Governors, Co-Chair Sexual Assault Litigation Group

Consumer Attorneys of California, Past President, Past Diversity Committee Co-Chair, Past Chair New Lawyers Caucus

Continuing Education of the Bar

Western Trial Lawyers Association, Past President



Rosanne Mah | Counsel

Rosanne Mah represents consumers in complex class action litigation involving deceptive or misleading practices, false advertising, and data/privacy issues. She is a member of the California Bar and is admitted to practice before the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California.

Rosanne is integrally involved in the discovery and client outreach process for the Boy Scouts of America Lawsuits, where she represents sexual abuse survivors who were abused by leaders and other affiliates within the organization. She is also involved in communicating with potential class representatives and clients for both the Toxic Baby Food lawsuit, alleging that certain baby food manufacturers were selling products containing poisonous heavy metals, and the Midwestern Pet Food lawsuit alleging that over 70 dogs have died after eating food contaminated with dangerous levels of aflatoxin, a mold toxin.

Rosanne has 15 years of experience in providing the highest level of legal representation to individuals and businesses in a wide variety of cases. Throughout her career she has specialized in consumer protection, defective products, cybersecurity, data privacy, and employment law at several law firms, all while running her own practice. Rosanne attended the University of San Francisco, School of Law, during which she was a judicial extern with the Honorable Anne Bouliane of the San Francisco Superior Court.

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Practice Emphasis

Class Actions
Consumer Protection

Education

University of San Francisco
School of Law, J.D., 2005
University of California at
Santa Cruz, B.A., 1995

Admissions

California



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Practice Emphasis

Antitrust Litigation
Class Actions

Education

New York University School
of Law, J.D.
Cornell University, B.A.

Admissions

Washington

George Sampson | Of Counsel

George Sampson brings 35 years of experience prosecuting complex antitrust cases on behalf of consumers and small businesses. George began his career in antitrust enforcement in 1984, when he joined the New York Attorney General's Antitrust Bureau. He served as an Assistant Attorney General for 10 years – the last two years (1992-1994) as Chief of the Antitrust Bureau. George was the lead trial attorney in a civil bid-rigging action in which he won the state's first ever bid-rigging jury trial, recovering \$7.8 million for the state.

George's principal experience has been to assist expert witnesses in antitrust cases. He has either taken or defended the deposition of nearly every leading antitrust economist, whether at the class certification stage or the liability and damages phases of complex antitrust class actions. He is conversant with complex economic analyses, econometric damages models, and equally important, translating expert economic analysis into language judges and juries can readily grasp.

Currently George serves as Trial Counsel in the Disposable Contact Lens Antitrust Litigation, a class action lawsuit filed 14 years after the original Contact Lens case was tried in 2001. Along with Michael Schrag, he has been principally responsible for all of the expert economics work on the case, including presenting evidence at the two-day class certification hearing. The court's 178 page order granting class certification has been appealed by defendants.

George Sampson is Of Counsel to Gibbs Law Group and the founding partner of Sampson Dunlap LLP.

Litigation Highlights

In re Disposable Contact Lens Antitrust Litigation

George served as co-lead counsel where he was principally responsible for all expert economic testimony. He successfully settled the case after five weeks of trial for a total recovery in excess of \$90 million.

In re Visa Check/MasterMoney Antitrust Litigation

George was appointed co-lead counsel to the litigation team. His team achieved settlement on the eve of trial for \$3 billion, at the time the largest antitrust class settlement ever achieved.

McDonough v. Toys R Us

George took on a "hub-and-spoke" case against Toys R Us for forcing baby product manufacturers to raise prices at competing retailers. Again, George was principally responsible for all expert economic testimony. After extensive discovery and a two-day class certification hearing, the case settled for \$35 million.

Professional Affiliations

American Antitrust Institute, Advisory Board Member
American Bar Association, Antitrust Law Section
Washington State Bar Association, Antitrust and Consumer Protection Committee



Mark Troutman | Counsel

Mark Troutman is dedicated to protecting consumers against corporate misdeeds and has led class action efforts across the country. Mark has been appointed to leadership roles in many of his complex litigation cases, and he currently serves as Special Counsel for the Ohio Attorney General in bringing claims against five of the country's largest pharmaceutical companies alleging misrepresentations and deceptive marketing that have caused the nation's current devastating opioid crisis.

As lead counsel in a consumer class action against Porsche, Mark achieved a \$45 million settlement for the class. Previously, Mark has been lead counsel in a consumer class action against a fitness chain, and co-lead counsel in a class action claiming improper deductions from royalty payments to lessors of a major oil and gas operator.

Before joining Gibbs Law Group, Mark co-led the class action practice group of a leading Ohio firm. Mark has been honored as a top plaintiff-side Class Action Litigator by the Best Lawyers in America and as a Rising Star by Ohio Super Lawyers. He has co-authored the leading guide on Ohio Consumer Law for more than 10 years and he continues to help advance the Ohio plaintiffs' bar as a member of the Ohio Association for Justice.

Litigation Highlights

State of Ohio ex rel. Dave Yost, Ohio Attorney General v. Purdue Pharma L.P.:

Represents the State of Ohio in litigation alleging that the six major manufacturers of prescription opioids created a public nuisance, which caused billions of dollars in damages to the state and its citizens. The litigation is ongoing.

In re Porsche Cars North America, Inc. Coolant Tubes Product Liability Litigation:

Represented a class of nearly 50,000 Porsche Cayenne vehicle owners alleging that Porsche defectively designed its 2003-2010 model year vehicles with plastic coolant tubes, which due to their positioning, would prematurely wear them down from the vehicle's heat and require costly repairs. The settlement compensated class members for a significant portion of the repair costs, with an estimated settlement value of more than \$40 million.

Gascho v. Global Fitness Holdings: Represented a class and sub-classes of current and former gym members alleging that the Urban Active gym chain took excessive and/or unauthorized fees from gym members, which were not included in class members' contracts or in violation of state law. The settlement reimbursed class members for the improper charges to their accounts.

Eaton v. Ascent Resources – Utica, LLC: Represents a class and sub-classes of oil and gas lessors with leases with Ascent Resources – Utica, LLC. Plaintiffs claim that Ascent takes improper post-production deductions from their royalty payments that are either not allowed under their contracts or are unreasonable in amount. On August 4, 2021, the Court granted class certification in the case, which marks one of the first cases of a court certifying an Ohio class action regarding the underpayment of oil and gas royalties.. The lawsuit is ongoing.

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Practice Emphasis

Class Actions

Consumer Protection

Education

The Ohio State University
Moritz College of Law, J.D.,
2003

The Ohio State University,
B.A, *summa cum laude*,
2000

Admissions

Ohio



T 510.956.5256

bwb@classlawgroup.com

Education

Texas A&M University
School of Law, J.D., 2016

Colorado Technical
University, B.S., *with honors*

Admissions

Texas

Brian Bailey | Associate

Brian represents clients who have been harmed by corporate misconduct in complex litigation including employment discrimination, personal injury, data breach and consumer protection cases. He represents people who were injured and lost homes or businesses in our PG&E wildfire cases.

Prior to Gibbs Law Group, Brian worked at the Federal Labor Relations Authority in Dallas, Texas where he conducted investigations on federal unfair labor practices and coordinated federal union elections. Previously, Brian represented a high volume of disabled individuals in administrative hearings.

Brian is a 2016 graduate of Texas A&M University School of Law, where he served as the president of the TAMU Black Law Student Association. During law school, he interned for the Honorable Justice Ken Molberg when he was District Judge at the 95th Texas Civil District Court and served as a research assistant for Professors Michael Z. Green and Sahar Aziz. Prior to law school, Brian worked as an international flight attendant at United Airlines and volunteered as an Occupational Injury Representative at the Association of Flight Attendants, Local Council 11 in Washington D.C. Brian holds a B.S. with honors in business administration from Colorado Technical University.

Professional Affiliations

L. Clifford Davis Legal Association
The International Legal Honor Society of Phi Delta Phi
The American Constitution Society for Law & Policy
Texas Young Lawyers Association
State Bar of Texas, member of the following Sections:

- African-American Lawyers (AALS)
- Consumer and Commercial Law
- Labor and Employment Law
- LGBT Law



Erin Barlow | Associate

Erin is a zealous advocate for survivors of sexual assault as well as consumers who have been harmed by corporate wrongdoing. She also has experience advocating for California wildfire victims, as well as fighting for individuals who suffered injuries from using defective drug and medical devices.

Erin is a 2021 graduate, *cum laude*, of the University of California Hastings College of the Law. In law school, she served as Senior Acquisitions Editor for Hastings Environmental Law Journal. She also was a Certified Law Student in the Individual Representation Clinic where she successfully appealed an adverse Social Security determination and got an individual's prior criminal convictions expunged. Erin received CALI awards for receiving the highest grade in Legal Research and Writing and in Environmental Justice and the Law. She received her undergraduate degrees in Politics and Marine Biology from the University of California Santa Cruz in 2014.

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Presentations and Articles

Author, “Unprecedented Marine Biodiversity Shifts Necessitate Innovation: The Case for Dynamic Ocean Management in the UN High-Seas Conservation Agreement the Presenter, “Unpacking Public Interest Law,” Hastings Environmental Law Journal, 27 Hastings Env'tl L.J. 121, 2021

Education

University of California,
Hastings College of Law, J.D.,
cum laude, 2021

University of California at Santa
Cruz, B.A. and B.S., 2014

Admissions

California



Emily Beale | Associate

Emily Beale is an advocate for consumers and employees, fighting unfair business practices by corporations.

Prior to joining Gibbs Law Group, Emily worked for two years as a law clerk to the Honorable Benjamin H. Settle in the Western District of Washington.

Emily is a 2020 graduate, *summa cum laude*, of Seattle University School of Law, where she graduated first in her class. During law school, Emily advocated for incarcerated and accused individuals at the Fred T. Korematsu Center for Law and Equity in its Civil Rights Clinic. Emily aided in the Korematsu Center's amicus brief to the Washington State Supreme Court on the unconscious bias associated with the use of restraints on incarcerated criminal defendants, which resulted in a unanimous decision prohibiting such practices in Washington state. See *State v. Jackson*, 195 Wash.2d 841 (2020).

While in law school, Emily served as Managing Editor for the Seattle University Law Review and on the Moot Court Board. She represented Seattle University at a regional National Moot Court Competition and received eight CALI awards for highest grade. Emily received her undergraduate degree in Law, Societies, and Justice with a minor in French from the University of Washington in 2015.

Presentations and Articles

Author, "Unfair-but-not-Deceptive: Confronting the Ambiguity in Washington State's Consumer Protection Act," 43 Seattle U. L. R. 1011 (2020)

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Education

Seattle University School of Law, J.D., *summa cum laude*, 2020

University of Washington, B.A., 2015

Admissions

Washington



Aaron Blumenthal | Associate

Aaron Blumenthal represents employees, whistleblowers, and consumers in complex and class action litigation. He is a member of our California whistleblower attorney practice group.

Aaron attended law school at the University of California at Berkeley, where he graduated *Order of the Coif*, the highest level of distinction. While in law school, Aaron wrote an article about class action waivers that was published by the California Law Review, one of the top law reviews in the country. He also served as a research assistant to Professor Franklin Zimring, who described Aaron in the acknowledgements section of one of his books as a “statistical jack-of-all-trades.”

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Education

University of California,
Berkeley Law, J.D., *Order of
the Coif*, 2015

University of California at
Berkeley, B.A., *Phi Beta
Kappa*, 2008

Admissions

California

Litigation Highlights

In Re Anthem, Inc. Data Breach Litigation - represented consumers whose personal information was impacted by the Anthem data breach, which was announced in 2015 as affecting nearly 80 million insurance customers. The case resulted in a \$115 million settlement, which offered extended credit monitoring to affected consumers.

LLE One v. Facebook – key member of the litigation team representing video advertisers in a putative class action against Facebook alleging that the company inflated its metrics for the average time users spent watching video ads, causing the plaintiffs to spend more for video advertising on Facebook than they otherwise would have.

JPMorgan Chase Litigation - represented a class of mortgage borrowers against JPMorgan Chase, alleging that the bank charged them invalid "post-payment interest" when they paid off their loans. The case resulted in an \$11 million settlement.

Awards & Honors

Rising Star, Northern California Super Lawyers, 2018-2022

Presentations and Articles

Presenter, “Impact of the Viking River Cruises Ruling on PAGA and Mass Arbitrations,” Simpluris Podcast, October 2022

Author, “Why Justices’ PAGA Ruling May Not Be Real Win For Cos.,” Law360 Employment Authority, July 2022

Co-author, “DoorDash: Quick Food, Slow Justice,” Daily Journal, March 2020

Co-author, “In the Breach,” Trial Magazine, American Association for Justice, September 2017

Author, “Winning Strategies in Privacy and Data Security Class Actions: The Plaintiffs’ Perspective,” Berkeley Center for Law & Technology, January 2017

Author, “Circumventing Concepcion: Conceptualizing Innovative Strategies to Ensure the Enforcement of Consumer Protection Laws in the Age of the Inviolable Class Action Waiver,” 103 Calif. L. Review 699, 2015

Author, “Religiosity and Same-Sex Marriage in the United States and Europe,” 32 Berkeley J. Int’l. L 195, 2014.



Delaney Brooks | Associate

Delaney Brooks represents plaintiffs in class action lawsuits, primarily in cases alleging hidden fees and product defects.

Delaney graduated from the University of California, Berkeley School of Law in 2022. While there, Delaney was a member of Berkeley Law's Moot Court team, where she and her teammates were regional champions at the 2021 National Appellate Advocacy Competition. As a teaching assistant to Professor Patricia Hurley, Delaney helped first-year law students hone their legal writing and advocacy skills. Delaney pursued pro bono work throughout law school, assisting juvenile boys incarcerated in Contra Costa County through the Youth Advocacy Project, and later by researching litigation strategies to curb gun violence with the Gun Violence Prevention Project. Delaney earned awards for receiving the highest grade in Appellate Advocacy, Consumer Protection Law, and a Consumer Litigation seminar. Delaney also served on the board of Berkeley Law's Consumer Advocacy and Protection Society and worked as a judicial extern for the Honorable William H. Alsup, Northern District of California.

Delaney received her undergraduate degree from Northwestern University in 2016, with a major in Psychology and a minor in Legal Studies. Prior to law school, Delaney worked in marketing at a major financial services company, giving her insider knowledge of the challenges consumers face in accessing credit.

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Education

University of California,
Berkeley School of Law, J.D.,
2022

Northwestern University, B.A.,
2016

Admissions

California



Kyla Gibboney | Associate

Kyla represents consumers, employees, investors, and others who have been harmed by corporate misconduct. She prosecutes a wide range of complex class action cases, including antitrust, securities, consumer protection, financial fraud, and product defect across a variety of industries.

Kyla is a vital member of the team prosecuting the firm's financial fraud lawsuits against GreenSky, a financial technology company that facilitates consumer loans for construction projects and medical procedures. As part of her work on that case, she helped defeat GreenSky's motions to dismiss borrowers' complaints that GreenSky charges unlawful fees and attempts to force borrowers to pursue their claims in arbitration instead of in court. Kyla also has extensive experience litigating antitrust class actions. She currently represents cattle ranchers in *In re Cattle Antitrust Litigation*, a lawsuit challenging the country's largest beef purchasers' method for setting prices for fed cattle, and has worked on several pharmaceutical lawsuits that challenged reverse payment patent settlements, a practice in which brand pharmaceutical companies pay generic would-be competitors to stay out of the market, resulting in higher drug prices.

Kyla is a 2014 graduate of the University of California Hastings School of Law, where she was an extern with the United States Department of Justice's Antitrust Division and for Magistrate Judge Kandis A. Westmore and California Court of Appeal Justice Sandra Margulies. During law school, Kyla was also a law clerk for the Anti-Predatory Lending group of Community Legal Services in East Palo Alto, where she fought for economic justice for low-income borrowers and homeowners in East Palo Alto, and volunteered with the General Assistance Advocacy Project in San Francisco.

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Education

University of California,
Hastings College of Law, J.D.,
cum laude, 2014

University of California at
Berkeley, B.A., 2009

Admissions

California

Litigation Highlights

Bowen v. Porsche Cars North America, Inc. – Represents a proposed class of Porsche owners who allege a faulty software update has caused permanent damage to their cars' radio and infotainment system, including a "near-continuous reboot cycle," constant static noise, and drainage to the car battery. A Georgia federal judge allowed the case's innovative digital trespass claims to proceed after partially denying Porsche's motion to dismiss.

GreenSky Litigation – Key member of the team representing consumers who took out loans for home maintenance repairs and were charged hidden fees by GreenSky, Inc.

Deora v. NantHealth – Represented investors who alleged that NantHealth's founder violated federal securities law and artificially inflated stock prices by structuring a purportedly philanthropic donation to the University of Utah to require the University to pay NantHealth \$10 million for research services. Kyla gathered the evidence necessary to come to a settlement in the case, which included interrogating several key fact witnesses.

LLE One v. Facebook – Part of the team representing advertisers who accused Facebook of inflating its viewership metrics by as much as 900% when selling its ad services. The lawsuit resulted in a \$40 million settlement for the class, and Kyla helped to oversee settlement distribution to over 1 million individuals and entities.

Awards & Honors

Rising Star, *Northern California Super Lawyers*, (2018-2022)

Professional Affiliations

American Association for Justice
National Civil Justice Institute



Julia Gonzalez | Associate

Julia works with employees who have faced discrimination, misclassification, wage and hour violations, and other workplace injustices, advocating for their rights in individual and class cases. She is also a member of the litigation team in our Washington State Voter Discrimination lawsuit, working to combat voter suppression and to ensure equal access to the democratic process.

Julia is a 2021 graduate of the University of California, Berkeley, School of Law. In law school, she was an Articles Editor and Executive Editor for the Berkeley Journal of Employment and Labor Law, the leading law review for employment and labor law scholarship. She twice competed in the Traynor Moot Court competition, where her team received the award for Best Brief in 2020. Julia was a member of the Consumer Advocacy and Protection Society and received the American Jurisprudence Award in Consumer Protection Law. She also provided direct legal services through the Workers' Rights Clinic and the Tenants' Rights Workshop. Julia received her undergraduate degree, *cum laude*, in Sociology from Yale University in 2013, and spent the year between college and law school as a full-time volunteer at the St. Francis Center, a multi-service non-profit in the North Fair Oaks neighborhood of Redwood City.

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Education

University of California at
Berkeley, J.D., 2021

Yale University, B.A., *cum
laude*, 2013

Admissions

California

Litigation Highlights

Postmates Driver Misclassification – Represents hundreds of gig economy workers in legal actions alleging that they were misclassified as independent contractors and should be entitled to minimum wage, overtime pay, and expense reimbursement under California and other state labor laws.

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Education

University of California at
Berkeley (Berkeley Law), J.D.,
2020

Whitman College, *magna cum
laude*, B.A., 2014

Admissions

California

Hanne Jensen | Associate

Hanne Jensen represents plaintiffs in class action and complex litigation involving consumer protection, workers' rights, products liability, privacy law, and constitutional law.

Hanne graduated from the University of California, Berkeley, School of Law in 2020. While in law school, Hanne served as the Senior Notes editor for the California Law Review, an executive editor for the Berkeley Journal of Employment and Labor Law, and a co-Editor-in-Chief of the Berkeley Journal of Gender, Law, and Justice. As a member of the Consumer Advocacy and Protection Society, Hanne contributed public comments to the Federal Trade Commission and Federal Deposit Investment Corporation concerning rules that affect consumers' financial rights, and helped draft an amicus brief for the Berkeley Center of Consumer and Economic Justice supporting mortgage applicants who had been wrongfully denied loans by an error in an AI underwriting servicer. Hanne also served as a research assistant for Professor Catherine Fisk's work on teachers' strikes and Professor Andrew Bradt's work on personal jurisdiction in complex litigation, as well as an oral advocacy teaching assistant for Professor Cheryl Berg. Prior to joining Gibbs Law Group, Hanne clerked for the Honorable Chief Judge Miranda M. Du in the District of Nevada in her beautiful hometown of Reno, Nevada.

Hanne received her undergraduate degree with majors in English and Philosophy from Whitman College, *magna cum laude*. At Whitman, Hanne was a member of Phi Beta Kappa and served as the co-Editor-in-Chief of the literary magazine *blue moon*. Prior to law school, Hanne was a Fulbright English Teaching Assistant in Germany.



Jeff Kosbie | Associate

Jeff Kosbie represents plaintiffs in class actions and other complex lawsuits involving consumer protection, securities fraud and employment law. He previously worked as a staff attorney in the United States Court of Appeals for the Ninth Circuit (2017-2018) and served as a Multidistrict Litigation Law Clerk to the Judges Lucy Koh, Beth Freeman, and Edward Davila of the Northern District of California (2018-2019).

Jeff serves as Co-chair of Bay Area Lawyers for Individual Freedom (“BALIF”), the nation’s oldest and largest association of lesbian, gay, bisexual and transgender (LGBTQI) persons in the field of law, and he is on the board of the BALIF Foundation. He was also selected to serve on the California Lawyers Association Litigation Section Executive Committee. He has published multiple articles in law reviews related to the history of LGBTQ rights. Jeff is a 2015 graduate, *magna cum laude*, of Northwestern University School of Law and Northwestern University Graduate School where he received a J.D. and a Ph.D. in Sociology. While in law school, Jeff served as an Articles Editor of the Northwestern Journal of Law and Social Policy. He received his undergraduate degree, *summa cum laude*, *Phi Beta Kappa*, in Sociology from Brandeis University in 2006.

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Education

Northwestern University School of Law, J.D., *magna cum laude*, 2015

Northwestern University Graduate School, Ph.D., 2015

Brandeis University, B.A., *summa cum laude*, *Phi Beta Kappa*, 2006

Admissions

California

Awards & Honors

Best Lawyers in America: Ones to Watch, 2023
Rising Star, Northern California Super Lawyers, 2021-2022
Best LGBTQ+ Lawyers Under 40, LGBT Bar Association, 2021
Unity Award, Minority Bar Coalition, 2019

Professional Affiliations

American Association for Justice
Bay Area Lawyers for Individual Freedom, Co-chair
BALIF Foundation, Board
California Lawyers Association, Litigation Section Executive Committee
Consumer Attorneys of California

Presentations and Articles

- Presenter, “An Important Discussion re Civil Rights: Racism, Diversity, Equity, and Inclusion while Surviving COVID-19,” California Lawyers Association Litigation and Appellate Summit, May 2021
- Presenter, “LGBTQ+ Employment Discrimination Claims in Practice,” BALIF CLE Series, February 2021
- Author, “Overdue Protection for LGTBQ Workers,” Trial Magazine, American Association for Justice, September 2020
- Author, “How the Right to be Sexual Shaped the Emergence of LGBT Rights,” 22 U. Pa. J. Const. L. 1389, August 2020
- Presenter, “LGBTQ+ Employment Rights Webinar,” American Association for Justice, June 2020
- Presenter, “Free Speech & LGBTQ+ Advocacy,” Annual Symposium, William & Mary Journal of Race, Gender, and Social Justice, February 2020
- Presenter, “Wage and Hour Litigation & Enforcement Webinar,” HB Litigation, February 2020
- Author, “Donor Preferences and the Crisis in Public Interest Law,” 57 Santa Clara L. Rev. 43, 2017
- Author, “(No) State Interests in Regulating Gender: How Suppression of Gender Nonconformity Violates Freedom of Speech,” 19 Wm. & Mary J. Women & L. 187, 2013



Ashleigh Musser | Associate

Ashleigh represents consumers and employees in class actions and mass arbitration involving consumer protection and employment law. She litigates complex cases involving misclassification, discrimination, and wage and hour claims brought under state law, including under the Private Attorneys General Act (PAGA). She currently represents thousands of gig economy workers in legal actions alleging that they were misclassified as independent contractors and should be entitled to minimum wage, overtime pay, and expense reimbursement under California and other state labor laws. Ashleigh is a proficient Spanish speaker and has experience representing and working with Spanish-speaking clients.

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Education

Seattle University School of Law, J.D., 2014

Bates College, B.A., 2010

Admissions

California

Ashleigh previously worked at a litigation firm in San Francisco, representing clients in criminal and civil proceedings, with an emphasis in personal injury, real estate, and wrongful death claims. More recently, she counseled and represented plaintiffs in individual and representative labor and employment matters at a boutique law firm in San Francisco. She has extensive experience protecting the rights of employees in cases involving California Labor Code violations, California Family Rights Act violations, and violations of the California Fair Employment and Housing Act, which includes representing plaintiffs with sexual harassment, disability and pregnancy discrimination, and retaliation claims.

Ashleigh is a 2014 graduate of Seattle University School of Law, where she served as the treasurer of the Moot Court Board, and as a chair of the International Law Society. During her time in law school, Ashleigh externed at the AIDS Legal Referral Panel of San Francisco, and subsequently volunteered as a licensed lawyer, where she represented clients facing eviction, and researched issues including the impact lump sum payments have on Section 8, the Housing Choice Voucher Program. As a law student, Ashleigh studied abroad at the University of Witwatersrand in Johannesburg, South Africa, focusing on how businesses adversely impact human rights, primarily in African countries. Ashleigh further diversified her legal experience by becoming a licensed to practice intern in Washington State, allowing her to practice law as a law student for the City Prosecutor's Office. In this role, she had to balance defending the City with the rights of the individuals that came before her in court.

Awards & Honors

Rising Star, Northern California Super Lawyers, 2021-2022

Professional Affiliations

California Employment Lawyers Association
San Francisco Trial Lawyers Association

Presentations and Articles

Author, "The Estrada decision on review: What to do with "unmanageable" PAGA claims?"
Daily Journal, July 2022



Wynne Tidwell | Associate

Wynne Tidwell works with consumers harmed by corporate wrongdoing and survivors of sexual assault.

Wynne graduated from the University of California, Berkeley School of Law in 2022. In law school, she served as an Editor for the California Law Review and received a Public Interest and Social Justice Certificate. Wynne also directly advocated for veterans affected by military sexual assault or experiencing homelessness through the Veterans Law Practicum. Additionally, she externed for the District Court for the District of Columbia and for the Consumer Protection Section of the Office of the California Attorney General.

Wynne received her undergraduate degree in Government from the College of William & Mary in 2017 with highest honors. Before law school, Wynne worked in public policy and communications in Washington, D.C.

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Education

University of California,
Berkeley School of Law, J.D.,
2022

College of William & Mary, B.A.,
summa cum laude, 2017

Admissions

California



Zeke Wald | Associate

Zeke is dedicated to representing plaintiffs in class action and complex litigation concerning consumers' and workers' rights, products liability, privacy law, and constitutional law.

Zeke graduated from the University of California, Berkeley School of Law in 2021, where he was an Articles editor for the California Law Review, a research assistant for Professor Sean Farhang's work on complex litigation, and an advocate with the East Bay Community Law Center's Community Economic Justice clinic. Zeke also co-founded the Law and Political Economy society, which focuses on bringing students deeper into critical legal theory, and served as a leader of Berkeley's Gun Violence Prevention Project, an organization that supported the Giffords Law Center and the Brady Center's national, state, and local litigation efforts and policy advocacy on behalf of survivors of gun violence.

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Education

University of California at
Berkeley, Berkeley Law, J.D.,
2021

University of California at Santa
Barbara, B.A., highest honors,
2016

Admissions

California

Zeke received his undergraduate dual degrees in Economics and Psychology from the University of California, Santa Barbara with highest honors. Prior to law school, Zeke worked for a tech startup dedicated to providing consumers with access to objective, unbiased information about products and services, and as a legal secretary at a family law firm focusing on complex parentage and custody cases and assisted reproduction law.

Litigation Highlights

In re: 3M Combat Arms Earplug Products Liability Litigation – This multi-district litigation concerns allegations that 3M's dual-ended Combat Arms earplugs were defective and caused servicemembers and civilians to develop hearing loss or tinnitus. Zeke is a member of the team supporting the Law, Briefing, and Legal Drafting Committee.

Presentations and Articles

- Author, "Election Law's Efficiency-Convergence Dilemma," October 2020
- Author, "Driving in the Rearview: Looking Forward by Looking Back," The Law and Political Economy Society at Berkeley Law Blog, March 2020
- Author, "The Efficient Administration of Elections: How Competing Economic Principles Have Overtaken the Law of Democracy," The Law and Political Economy Society at Berkeley Law Blog, November 2019



Tayler Walters | Associate

Tayler Walters works with consumers in class actions to combat unfair business practices by corporations, including investors who have been victimized in financial fraud schemes and people whose personal information has been compromised in large-scale data/privacy breaches. She previously worked in a plaintiff's law firm advocating for consumers in a range of areas, including personal injury, product liability, premises liability, employment law, and elder abuse.

Tayler is a 2020 graduate, *magna cum laude*, of the University of San Francisco School of Law. In law school, she served as a Development Director on the Moot Court Board where she coached her fellow students and competed in the National Appellate Advocacy Competition. Tayler received a Merit Scholarship, earned CALI awards for receiving the highest grade in Professional Responsibility and in Contracts Law, and externed for California Supreme Court Chief Justice Tani Cantil-Sakauye. Tayler received her undergraduate degree in Political Science and Government from the University of Colorado Boulder in 2017.

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Education

University of San Francisco
School of Law, J.D., *magna cum laude*, 2020

University of Colorado
Boulder, B.A., 2017

Admissions

California

SIGNIFICANT RECOVERIES

Some examples of the cases in which our lawyers played a significant role are described below:

Deceptive Marketing

Hyundai and Kia Fuel Economy Litigation, No. 2:13-md-2424 (C.D. Cal.). In a lawsuit alleging false advertising of vehicle fuel efficiency, the court appointed Eric Gibbs as liaison counsel. Mr. Gibbs regularly reported to the Court, coordinated a wide-ranging discovery process, and advanced the view of plaintiffs seeking relief under the laws of over twenty states. Ultimately Mr. Gibbs helped negotiate a revised nationwide class action settlement with an estimated value of up to \$210 million. The Honorable George H. Wu wrote that Mr. Gibbs had “efficiently managed the requests from well over 20 different law firms and effectively represented the interests of Non-Settling Plaintiffs throughout this litigation. This included actively participating in revisions to the proposed settlement in a manner that addressed many weaknesses in the original proposed settlement.”

In Re Mercedes-Benz Tele Aid Contract Litigation, MDL No. 1914, No. 07-cv-02720 (D.N.J.). Gibbs Law Group attorneys and co-counsel served as co-lead class counsel on behalf of consumers who were not told their vehicles’ navigation systems were on the verge of becoming obsolete. Counsel successfully certified a nationwide litigation class, before negotiating a settlement valued between approximately \$25 million and \$50 million. In approving the settlement, the court acknowledged that the case “involved years of difficult and hard-fought litigation by able counsel on both sides” and that “the attorneys who handled the case were particularly skilled by virtue of their ability and experience.”

In re Providian Credit Card Cases, JCCP No. 4085 (Cal. Super. Ct. San Francisco Cty). Mr. Gibbs played a prominent role in this nationwide class action suit brought on behalf of Providian credit card holders. The lawsuit alleged that Providian engaged in unlawful, unfair and fraudulent business practices in connection with the marketing and fee assessments for its credit cards. The Honorable Stuart Pollack approved a \$105 million settlement, plus injunctive relief—one of the largest class action recoveries in the United States arising out of consumer credit card litigation.

In re Hyundai and Kia Horsepower Litigation, No. 02CC00287 (Cal. Super. Ct. Orange Cty). In a class action on behalf of U.S. Hyundai and Kia owners and lessees, contending that Hyundai advertised false horsepower ratings in the United States, attorneys from Gibbs Law Group negotiated a class action settlement valued at between \$75 million and \$125 million which provided owners nationwide with cash payments and dealer credits.

Skold v. Intel Corp., No. 1-05-cv-039231 (Cal. Super. Ct. Santa Clara Cty.). Gibbs Law Group attorneys represented Intel consumers through a decade of hard-fought litigation, ultimately certifying a nationwide class under an innovative “price inflation” theory and negotiating a settlement that provided refunds and \$4 million in cy pres donations. In approving the settlement, Judge Peter Kirwan wrote: “It is abundantly clear that Class Counsel invested an incredible amount of time and costs in a case which lasted approximately 10 years with no guarantee that they would prevail. . . . Simply put, Class Counsel earned their fees in this case.”

Steff v. United Online, Inc., No. BC265953 (Cal. Super. Ct. Los Angeles Cty.). Mr. Gibbs served as lead counsel in this nationwide class action suit brought against NetZero, Inc. and its parent, United Online, Inc., by former NetZero customers. Plaintiffs alleged that defendants falsely advertised their internet service as unlimited and guaranteed for a specific period of time. The Honorable Victoria G. Chaney of the Los Angeles Superior Court granted final approval of a settlement that provided full refunds to customers whose services were cancelled and which placed restrictions on Defendants' advertising.

Khaliki v. Helzberg's Diamond Shops, Inc., No. 11-cv-00010 (W.D. Mo.). Gibbs Law Group attorneys and co-counsel represented consumers who alleged deceptive marketing in connection with the sale of princess-cut diamonds. The firms achieved a positive settlement, which the court approved, recognizing "that Class Counsel provided excellent representation" and achieved "a favorable result relatively early in the case, which benefits the Class while preserving judicial resources." The court went on to recognize that "Class Counsel faced considerable risk in pursuing this litigation on a contingent basis, and obtained a favorable result for the class given the legal and factual complexities and challenges presented."

Defective Products

In re Pacific Fertility Center Litigation, Case No. 3:18-cv-01586 (N.D. Cal). Gibbs Law Group attorneys served as co-lead trial counsel in a three-week trial on behalf of several patients who tragically lost eggs and embryos in a catastrophic cryo-preservation tank failure at San Francisco's Pacific Fertility Center in 2018. The jury found cryogenic tank manufacturer, Chart Inc., liable on all claims, determining that the tank contained manufacturing and design defects, and that Chart had negligently failed to recall or retrofit the tank's controller, despite having known for years that the controller model was prone to malfunction. For each claim, the jury found that the deficiency was a substantial factor in causing harm to the plaintiffs, and awarded \$14.975 million in aggregate damages. This was the first trial in the consolidated litigation, and five additional trials against Chart are scheduled for 2022 and 2023.

In re: American Honda Motor Co., Inc., CR-V Vibration Marketing and Sales Practices Litigation, No. 2:15-md-02661 (S.D. Ohio) Gibbs Law Group attorneys served as co-lead counsel in this multidistrict litigation on behalf of Honda CR-V owners who complained that their vehicles were vibrating excessively. After several lawsuits had been filed, Honda began issuing repair bulletins, setting forth repairs to address the vibration. Honda did not publicize the repairs well and as a result, Plaintiffs' alleged many CR-V owners and lessees—including those who had previously been told that repairs were unavailable—continued to experience the vibration. In early 2018, the parties negotiated a comprehensive settlement to resolve the multidistrict litigation on a class-wide basis. The settlement ensured that all affected vehicle owners were made aware of the free warranty repairs, including requiring Honda to proactively reach out to CR-V owners and dealers in several ways to publicize the repair options available.

In re General Motors Cases, No. JCCP 4396 (Cal. Super. Ct. L.A. Cty) - certified California state court class action against General Motors alleging violations of California's "Secret Warranty" law, California Civil Code § 1794.90 et seq.

Glenn v. Hyundai Motor America, Case No. 8:15-cv-02052 (C.D. Cal). Gibbs Law Group attorneys represented drivers from six states who alleged their vehicles came with defective sunroofs that could shatter without warning. The case persisted through several years of fiercely contested litigation before resolving for a package of class-wide benefits conservatively valued at over \$30 million. In approving the settlement, U.S. District Court Judge David O. Carter praised the resolution: "[T]his is an extraordinarily complex case and an extraordinarily creative solution.

Amborn et al. v. Behr Process Corp., No. 17-cv-4464 (N.D. Ill.) Gibbs Law Group served as co-lead counsel in this coordinated lawsuit against Behr and Home Depot alleging that Behr's DeckOver deck resurfacing product is prone to peeling, chipping, bubbling, and degrading soon after application. The team negotiated a class-wide settlement, which provided class members who submitted claims with 1) a refund for their purchase; and 2) substantial compensation for money spent removing DeckOver or repairing their deck. The settlement was granted final approval on December 19, 2018.

In re Hyundai Sonata Engine Litigation, Case No. 5:15-cv-01685 (N.D. Cal.). Gibbs Law Group attorneys served as court-appointed co-lead class counsel on behalf of plaintiffs who alleged their 2011-2014 Hyundai Sonatas suffered premature and catastrophic engine failures due to defective rotating assemblies. We negotiated a comprehensive settlement providing for nationwide recalls, warranty extensions, repair reimbursements, and compensation for class members who had already traded-in or sold their vehicles at a loss. The average payment to class members exceeded \$3,000.

Sugarman v. Ducati North America, Inc., No. 10-cv-05246 (N.D. Cal.). Gibbs Law Group attorneys served as class counsel on behalf of Ducati motorcycle owners whose fuel tanks on their motorcycles degraded and deformed due to incompatibility with the motorcycles' fuel. In January 2012, the Court approved a settlement that provided an extended warranty and repairs, writing, "The Court recognizes that class counsel assumed substantial risks and burdens in this litigation. Representation was professional and competent; in the Court's opinion, counsel obtained an excellent result for the class."

Parkinson v. Hyundai Motor America, No. 06-cv-00345 (C.D. Cal.). Gibbs Law Group attorneys served as class counsel in this class action featuring allegations that the flywheel and clutch system in certain Hyundai vehicles was defective. After achieving nationwide class certification, our lawyers negotiated a settlement that provided for reimbursements to class members for their repairs, depending on their vehicle's mileage at time of repair, from 50% to 100% reimbursement. The settlement also provided full reimbursement for rental vehicle expenses for class members who rented a vehicle while flywheel or clutch repairs were being performed. After the settlement was approved, the court wrote, "Perhaps the best barometer of ... the benefit obtained for the class ... is the perception of class members themselves. Counsel submitted dozens of letters from class members sharing their joy, appreciation, and relief that someone finally did something to help them."

Browne v. Am. Honda Motor Co., Inc., No. 09-cv-06750 (C.D. Cal.). Gibbs Law Group attorneys and co-counsel represented plaintiffs who alleged that about 750,000 Honda Accord and Acura TSX vehicles were sold with brake pads that wore out prematurely. We negotiated a settlement in which improved brake pads were made available and class members who had them installed could be reimbursed. The settlement received final court approval in July 2010 and provided an estimated value of \$25 million.

In Re General Motors Dex-Cool Cases., No. HG03093843 (Cal. Super Ct. Alameda Cty). Gibbs Law Group attorneys served as co-lead counsel in these class action lawsuits filed throughout the country, where plaintiffs alleged that General Motors' Dex-Cool engine coolant damaged certain vehicles' engines, and that in other vehicles, Dex-Cool formed a rusty sludge that caused vehicles to overheat. After consumer classes were certified in both Missouri and California, General Motors agreed to cash payments to class members nationwide. On October 27, 2008, the California court granted final approval to the settlement.

In re iPod Cases, JCCP No. 4355 (Cal. Super. Ct. San Mateo Cty). Mr. Gibbs, as court appointed co-lead counsel, negotiated a settlement that provided warranty extensions, battery replacements, cash payments, and store credits for class members who experienced battery failure. In approving the settlement, the Hon. Beth L. Freeman said that the class was represented by "extremely well qualified" counsel who negotiated a "significant and substantial benefit" for the class members.

Roy v. Hyundai Motor America, No. 05-cv-00483 (C.D. Cal.). Gibbs Law Group attorneys served as co-lead counsel in this nationwide class action suit brought on behalf of Hyundai Elantra owners and lessees, alleging that an air bag system in vehicles was defective. Our attorneys helped negotiate a settlement whereby Hyundai agreed to repair the air bag systems, provide reimbursement for transportation expenses, and administer an alternative dispute resolution program for trade-ins and buy-backs. In approving the settlement, the Honorable Alicemarie H. Stotler presiding, described the settlement as “pragmatic” and a “win-win” for all involved.

Velasco v. Chrysler Group LLC (n/k/a FCA US LLC), No. 2:13-cv-08080 (C.D. Cal.). In this class action, consumers alleged they were sold and leased vehicles with defective power control modules that caused vehicle stalling. Gibbs Law Group attorneys and their co-counsel defeated the majority of Chrysler’s motion to dismiss and engaged in extensive deposition and document discovery. In 2015, the parties reached a settlement contingent on Chrysler initiating a recall of hundreds of thousands of vehicles, reimbursing owners for past repairs, and extending its warranty for the repairs conducted through the recall. When he granted final settlement approval, the Honorable Dean D. Pregerson acknowledged that the case had been “hard fought” and “well-litigated by both sides.”

Edwards v. Ford Motor Co., No. 11-cv-1058 (S.D. Cal.). This lawsuit alleged that Ford sold vehicles despite a known safety defect that caused them to surge into intersections, through crosswalks, and up on to curbs. The litigation twice went to the U.S. Court of Appeals for the Ninth Circuit, with plaintiff prevailing in both instances. In the first instance, the appellate court reversed the trial court’s denial of class certification. In the second, the Ninth Circuit affirmed the ruling below that plaintiff’s efforts had generated free repairs, reimbursements, and extended warranties for the class.

Sanborn, et al. v. Nissan North America, Inc., No. 00:14-cv-62567 (S.D. Fla.). Gibbs Law Group litigated this action against a vigorous defense for two years, seeking relief for Nissan Altima owners whose dashboards were melting into a sticky, shiny, gooey surface that they alleged caused a substantial and dangerous glare. After largely prevailing on a motion to dismiss, Gibbs Law Group attorneys and their co-counsel prepared the case to the brink of trial, reaching a settlement just ten days before the scheduled trial start. The settlement allowed class members to obtain steeply discounted dashboard replacements and reimbursement toward prior replacement costs.

Bacca v. BMW of N. Am., No. 2:06-cv-6753 (C.D. Cal.) In a class action alleging that BMW vehicles suffered from defective sub-frames, we negotiated a settlement with BMW in which class members nationwide received full reimbursement for prior sub-frame repair costs as well as free nationwide inspections and program.

Antitrust and Unfair Business Practices

In re: Wells Fargo Collateral Protection Insurance Litigation, MDL Case No.: 8:17-ML-2797 (C.D. Cal.). Eric Gibbs and Michael Schrag were appointed to the three-firm Plaintiffs’ Steering Committee in this multi-district litigation on behalf of consumers who took out car loans from Wells Fargo and were charged for auto insurance they did not need. The parties announced a proposed settlement of at least \$393.5 million for affected consumers and the Court granted final approval in November 2019.

In re Currency Conversion Fee Antitrust Litigation, MDL No. 1409 (S.D.N.Y.); ***Schwartz v. Visa, et. al.***, No. 822404-4 (Cal. Super. Ct., Alameda Cty). Mr. Schrag helped initiate and prosecute several class actions against Visa, MasterCard, and other major U.S. banks, such as Chase and Bank of America, for failing to disclose their price fixing of currency conversion fees charged to cardholders. After prevailing at trial in *Schwartz v. Visa, et. al.*, plaintiffs were successful in obtaining a \$336 million global settlement for the class.

In re TFT-LCD (Flat Panel) Antitrust Litigation, MDL 1827 (N.D. Cal.). Gibbs Law Group attorneys were among the team serving as liaison counsel in this multi-district antitrust litigation against numerous TFT-LCD (Flat Panel) manufacturers alleging a conspiracy to fix prices, which has achieved settlements of more than \$400 million to date.

In re Natural Gas Antitrust Cases I, II, III and IV, JCCP No. 4221 (Cal. Super. Ct. San Diego Cty). Gibbs Law Group attorneys served in a leadership capacity in this coordinated antitrust litigation against numerous natural gas companies for manipulating the California natural gas market, which has achieved settlements of nearly \$160 million.

Beaver v. Tarsadia Hotels, No. 11-cv-1842 (S.D. Cal.); Gibbs Law Group attorneys served as co-lead counsel representing buyers of San Diego Hard Rock Hotel condominium units in this class action lawsuit against real estate developers concerning unfair competition claims. The lawsuit settled for \$51.15 million.

LLE One, LLC et al. v. Facebook, Inc., No. 4:16-cv-6232 (N.D. Cal.); Gibbs Law Group attorneys represent small businesses and other advertisers in a class action lawsuit alleging that Facebook overstated its metrics for the average time spent watching video ads on its platform. The Court granted final approval to a \$40 million class action settlement on June 26, 2020.

Hernandez v. Wells Fargo Bank, N.A., No. 3:18-cv-07354 (N.D. Cal.); Gibbs Law Group attorneys serve as court-appointed co-lead counsel representing a certified class of more than 1,200 home mortgage borrowers who lost their homes to foreclosure after Wells Fargo erroneously denied them trial mortgage modifications. The case settled in two phases for a total of \$40.3 million. Class members have received significant compensation payments of up to \$120,000.

Ammari Electronics, et al. v. Pacific Bell Directory, No. RG05198014 (Cal. Super. Ct. Alameda Cty). Mr. Schrag obtained a \$27 million judgment against an AT&T subsidiary after a jury trial and two successful appeals in this breach of contract class action on behalf of thousands of California businesses that advertised in Pacific Bell yellow pages directories. The National Law Journal featured this win in its “Top 100 Verdicts of 2009.”

In re LookSmart Litigation, No. 02-407778 (Cal. Super. Ct. San Francisco Cty). This nationwide class action suit was brought against LookSmart, Ltd. on behalf of LookSmart’s customers who paid an advertised “one time payment” to have their web sites listed in LookSmart’s directory, only to be later charged additional payments to continue service. Plaintiffs’ claims included breach of contract and violation of California’s consumer protection laws. On October 31, 2003, the Honorable Ronald M. Quidachay granted final approval of a nationwide class action settlement providing cash and benefits valued at approximately \$20 million.

Lehman v. Blue Shield of California, No. CGC-03-419349 (Cal. Super. Ct. S.F. Cty.). In this class action lawsuit alleging that Blue Shield engaged in unlawful, unfair and fraudulent business practices when it modified the risk tier structure of its individual and family health care plans, Gibbs Law Group attorneys helped negotiate a \$6.5 million settlement on behalf of former and current Blue Shield subscribers residing in California. The Honorable James L. Warren granted final approval of the settlement in March 2006.

Wixon v. Wyndham Resort Development Corp., No. 07-cv-02361 (N.D. Cal.). Gibbs Law Group attorneys served as class and derivative counsel in this litigation brought against a timeshare developer and the directors of a timeshare corporation for violations of California state law. Plaintiffs alleged that the defendants violated their fiduciary duties as directors by taking actions for the financial benefit of the timeshare developer to the detriment of the owners of timeshare interests. On September 14, 2010, Judge White granted approval of a settlement of the plaintiffs' derivative claims.

Berrien, et al. v. New Raintree Resorts, LLC, et al., No. 10-cv-03125 (N.D. Cal.). Gibbs Law Group attorneys filed this class action on behalf of timeshare owners, challenging the imposition of unauthorized special assessment fees. On November 15, 2011, the parties reached a proposed settlement of the claims asserted by the plaintiffs on behalf of all class members who were charged the special assessment. On March 13, 2012, the Court issued its Final Class Action Settlement Approval Order and Judgment, approving the proposed settlement.

Benedict, et al. v. Diamond Resorts Corporation, et al., No. 12-cv-00183 (D. Hawaii). In this class action on behalf of timeshare owners, Gibbs Law Group attorneys represented plaintiffs challenging the imposition of an unauthorized special assessment fee. On November 6, 2012, the parties reached a proposed settlement of the claims asserted by the plaintiffs on behalf of all class members who were charged the special assessment. On June 6, 2013, the Court approved the settlement.

Allen Lund Co., Inc. v. AT&T Corp., No. 98-cv-1500 (C.D. Cal.). This class action lawsuit was brought on behalf of small businesses whose long-distance service was switched to Business Discount Plan, Inc. Gibbs Law Group attorneys served as class counsel and helped negotiate a settlement that provided full cash refunds and free long-distance telephone service.

Mackouse v. The Good Guys - California, Inc., No. 2002-049656 (Cal. Super Ct. Alameda Cty). This nationwide class action lawsuit was brought against The Good Guys and its affiliates alleging violations of the Song-Beverly Warranty Act and other California consumer statutes. The Plaintiff alleged that The Good Guys failed to honor its service contracts, which were offered for sale to customers and designed to protect a customer's purchase after the manufacturer's warranty expired. In May 9, 2003, the Honorable Ronald M. Sabraw granted final approval of a settlement that provides cash refunds or services at the customer's election.

Mitchell v. Acosta Sales, LLC, No. 11-cv-01796 (C.D. Cal. 2011). Gibbs Law Group attorneys and co-counsel served as class counsel representing Acosta employees who alleged that they were required to work off-the-clock and were not reimbursed for required employment expenses. We helped negotiate a \$9.9 million settlement for merchandiser employees who were not paid for all the hours they worked. The Court granted final approval of the settlement in September 2013.

Rubaker v. Spansion, LLC, No. 09-cv-00842 (N.D. Cal. 2009). Gibbs Law Group attorneys and co-counsel filed a class action lawsuit on behalf of former Spansion employees that alleged that the company had failed to provide terminated employees from California and Texas with advance notice of the layoff, as required by the Workers Adjustment and Retraining Notification Act (WARN Act). The bankruptcy court approved the class action settlement we and co-counsel negotiated in 2010. The settlement was valued at \$8.6 million and resulted in cash payments to the former employees.

Securities and Financial Fraud

Deora v. NantHealth, No. 2:17-cv-1825 (C.D. Cal.) – Gibbs Law Group serves as Co-lead Counsel for certified classes of investors in litigation alleging violations of federal securities laws related to the healthcare technology company's statements in connections with its initial public offering in 2016 and afterward. In September 2020, the Court granted final approval to a \$16.5 million class action settlement.

Roth v. Aon Corp., No. 04-cv-06835 (N.D. Ill.). This securities fraud class action alleged that Aon Corporation and its key executives made misstatements and failed to disclose important information to investors about Aon's role in and reliance on contingent commission kickbacks and steering arrangements with insurers. Mr. Schrag helped prosecute this securities fraud class action against Aon Corporation which resulted in a \$30 million settlement for the plaintiff class.

In re Peregrine Financial Group Customer Litigation, No. 12-cv-5546 (N.D. Ill.). Mr. Stein was among the attorneys serving as co-lead counsel for futures and commodities investors who lost millions of dollars in the collapse of Peregrine Financial Group, Inc. Through several years of litigation, counsel helped deliver settlements worth more than \$75 million from U.S. Bank, N.A., and JPMorgan Chase Bank, N.A.

In re Chase Bank USA, N.A. "Check Loan" Contract Litigation, No. 09-2032 (N.D. Cal.). Gibbs Law Group attorneys and counsel from several firms led this nationwide class action lawsuit alleging deceptive marketing and loan practices by Chase Bank USA, N.A. After a nationwide class was certified, U.S. District Court Judge Maxine M. Chesney granted final approval of a \$100 million settlement on behalf of Chase cardholders.

Mitchell v. American Fair Credit Association, No. 785811-2 (Cal. Super. Ct. Alameda Cty); ***Mitchell v. Bankfirst, N.A.***, No. 97-cv-01421 (N.D. Cal.). This class action lawsuit was brought on behalf of California members of the American Fair Credit Association (AFCA). Plaintiffs alleged that AFCA operated an illegal credit repair scheme. The Honorable James Richman certified the class and appointed the firm as class counsel. In February 2003, Judge Ronald Sabraw of the Alameda County Superior Court and Judge Maxine Chesney of the U.S. District Court for the Northern District of California granted final approval of settlements valued at over \$40 million.

Data Breach and Privacy

In re Equifax, Inc. Customer Data Security Breach Litig., MDL No. 2800, No. 1:17-md-2800 (N.D. Ga.) Gibbs Law Group attorneys serve on the Plaintiffs' Executive Committee in this nationwide class action stemming from a 2017 data breach that exposed social security numbers, birth dates, addresses, and in some cases, credit card numbers of more than 147 million consumers. On January 13, 2020, the Court granted final approval to a settlement valued at \$1.5 billion. Gibbs Law Group attorneys played an integral role in negotiating key business practice changes, including overhauling Equifax's handling of consumers' personal information and data security.

In re Anthem, Inc. Data Breach Litig., MDL No. 2617, No. 15-md-02617 (N.D. Cal.). Gibbs Law Group attorneys serve as part of the four-firm leadership team in this nationwide class action stemming from the largest healthcare data breach in history affecting approximately 80 million people. On August 15, 2018, the Court granted final approval to a \$115 million cash settlement.

In re: Vizio, Inc. Consumer Privacy Litigation, MDL No. 8:16-ml-02963 (C.D. Cal.). Gibbs Law Group attorneys are co-lead counsel in this multi-district lawsuit alleging that Vizio collected and sold data about consumers' television viewing habits and their digital identities to advertisers without consumers' knowledge or consent. Counsel achieved an important ruling on the application of the Video Privacy Protection Act (VPPA), a 1988 federal privacy law, which had never been extended to television manufacturers. The firm negotiated a settlement providing for class-wide injunctive relief transforming the company's data collection practices, as well as a \$17 million fund to compensate consumers who were affected. In granting preliminary approval, Judge Josephine Staton stated, "I'm glad I appointed all of you as lead counsel, because -- it probably is the best set of papers I've had on preliminary approval." She also noted "[E]very class member will benefit from the injunctive relief." On July 31, 2019, the Court granted final approval of the settlement.

In re Adobe Systems Inc. Privacy Litig., No. 13-cv-05226 (N.D. Cal.). In this nationwide class action stemming from a 2013 data breach, attorneys from Gibbs Law Group served as lead counsel on behalf of the millions of potentially affected consumers. Counsel achieved a landmark ruling on Article III standing (which has since been relied upon by the Seventh Circuit Court of Appeals and other courts) and then went on to negotiate a settlement requiring Adobe to provide enhanced security relief—including the implementation and maintenance of enhanced intrusion detection, network segmentation, and encryption.

Whitaker v. Health Net of Cal., Inc., et al., No. 11-cv-00910 (E.D. Cal.); ***Shurtleff v. Health Net of Cal., Inc.***, No. 34-2012-00121600 (Cal. Super Ct. Sacramento Cty). Gibbs Law Group attorneys served as co-lead counsel in this patient privacy case. On June 24, 2014, the court granted final approval of a settlement that provided class members with credit monitoring, established a \$2 million fund to reimburse consumers for related identity theft incidents, and instituted material upgrades to and monitoring of Health Net's information security protocols.

Smith v. Regents of the University of California, San Francisco, No. RG-08-410004 (Cal. Super Ct. Alameda Cty). Gibbs Law Group attorneys represented a patient who alleged that UCSF's disclosure of its patients' medical data to outside vendors violated California medical privacy law. The firm succeeded in negotiating improvements to UCSF's privacy procedures on behalf of a certified class of patients of the UCSF medical center. In approving the stipulated permanent injunction, Judge Stephen Brick found that "plaintiff Smith has achieved a substantial benefit to the entire class and the public at large."

Mass Tort

In re Actos Pioglitazone-Products Liability Litigation, No. 6:11-md-2299 (W.D. La.). Gibbs Law Group partners represented individuals who were diagnosed with bladder cancer after taking the oral diabetic drug Actos. The federal litigation resulted in a \$2.37 billion settlement.

In re Yasmin and Yaz (Drospirenone) Marketing, Sales, Practices and Products Liability Litigation, MDL No. 2385, No. 3:09-md-02100 (S.D. Ill.). Gibbs Law Group attorneys represented women throughout the country who suffered serious side effects after taking Yaz, Yasmin and Ocella birth control. The federal litigation resulted in settlements worth approximately \$1.6 billion.

In re Pradaxa (Dabigatran Etexilate) Products Liability Litigation, MDL No. 2385, No. 3:12-md-02385 (S.D. Ill.), Gibbs Law Group attorneys represented patients who suffered irreversible internal bleeding after taking Pradaxa blood thinners. Lawsuit resolved for settlements of approximately \$650 million.

In re: Sulzer Hip Prosthesis And Knew Prosthesis Liability Litigation, MDL No. 1401 (N.D. Ohio); Cal. JCCP No. 4165 (Cal. Super. Court, Alameda Cty). Mr. Schrag helped recover over \$10 million on behalf of his clients in this multidistrict litigation.

Sexual Assault Litigation

A.B. v. Regents of the University of California No. 2:20-cv-9555 (C.D. Cal.) – Gibbs Law Group represents former patients of UCLA OB-GYN Dr. James Heaps in a class action lawsuit alleging assault, abuse and harassment violations, and accusing UCLA of failing to protect patients after first becoming aware of the doctor’s misconduct. In November 2020, the parties announced a settlement, which will provide \$73 million in compensation to former patients of Dr. Heaps, as well as requiring a series of business practice reforms by UCLA for better handling of sexual assault investigations and practices going forward. Settlement approval is pending.

Government Reform

Paeste v. Government of Guam, No. 11-cv-0008 (D. Guam); Gibbs Law Group attorneys and co-counsel served as Class Counsel in litigation alleging the Government of Guam had a longstanding practice of delaying tax refunds for years on end, with the Government owing over \$200 million in past due refunds. After certifying a litigation class, Plaintiffs prevailed on both of their claims at the summary judgment stage, obtaining a permanent injunction that reformed the government’s administration of tax refunds. The judgment and injunction were upheld on appeal in a published decision by the Ninth Circuit. *Paeste v. Gov’t of Guam*, 798 F.3d 1228 (9th Cir. 2015).

Exhibit D

MeyerWilson

The Martindale-Hubbell AV-rated law firm of Meyer Wilson Co., LPA, is devoted to prosecuting consumer and securities class actions, representing patients harmed by dangerous drugs and medical devices, and representing investors with claims against the securities industry. The firm prosecutes individual cases and class actions nationwide on behalf of individuals in arbitration and in court. Since its inception, Meyer Wilson has achieved jury verdicts, arbitration awards, and settlements with a combined value of hundreds of millions of dollars on behalf of its clients.

Meyer Wilson has prosecuted numerous nationwide class actions as court-appointed Lead and Co-Lead Class Counsel in federal and state courts throughout the country, including one class action that resulted in what is believed to be the largest jury verdict in Ohio's history at that time and was also reported to be the country's largest securities class action jury verdict in history. In that case, the firm's founding principal David Meyer was appointed Co-Lead Class Counsel action against Prudential Securities. The firm represented more than 250 investors from Marion, Ohio. The jury trial lasted several weeks and the jury returned a Plaintiffs' verdict in excess of \$261 million. The case was *Burns, et al. v. Prudential Securities, Inc.*, Case No. 99CV0438, in the Court of Common Pleas of Marion County, Ohio. The case was pending for more than seven years. Following an appeal, Class Members received in excess of 100% recovery of their actual losses, even after payment of attorneys' fees and expenses.

As part of its service to consumers, Meyer Wilson has been a leader in protecting the privacy interests of consumers and patients by holding corporations accountable for illegal and invasive mass calling campaigns, as well as data breaches and other similar violations.

Meyer Wilson has been appointed class counsel in numerous class actions that have resulted in significant recoveries. Successes in class actions matters in which Meyer Wilson served as Lead or Co-Lead counsel include:

- *Grogan v. Aaron's, Inc.*, No. 1:18-cv-2821-JPB (N.D. Ga.) (Class counsel in a nationwide class action alleging TCPA violations to non-customers. Final approval of the \$1.75 million settlement was approved in October 2020).
- *Brown & Szaller Co., LPA v. Waste Mgmt. of Ohio*, No. CV-16-859588 (Ohio C.P. Cuyahoga Cnty.) (Class counsel on behalf of business customers of Waste Management in Ohio, alleging overcharges. Class settlement of \$30.5 million was approved August 2020).
- *John Doe v. CVS Health Corp. et al.*, No. 2:18-cv-00488 (S.D. Ohio) (Class counsel in a class action alleging illegal disclosure of HIV status of patients as part of a mass mailing. Final approval, argued by Meyer Wilson principal

Matthew R. Wilson, of the \$4.4 million cash settlement was approved in February, 2020).

- *DeCapua v. MetLife Inc.*, No. 1:18-cv-00590-WES-LDA (D.R.I.) (Class Counsel in nationwide class action alleging TCPA violations from autodialer text messages to cell phones. Court granted final approval to \$850,000 settlement on Sept. 3, 2021).
- *Woodrow v. Sagent Auto, LLC*, No. 2:18-cv-01054-JPS (E.D. Wisc.) (Class Counsel in nationwide class action alleging TCPA violations from autodialer calls to cell phones. Final approval of the \$1.75 million settlement was approved in November 2019).
- *Rice-Redding et al. v. Nationwide Mut. Auto. Ins. Co.*, No. 1:16-cv-03634-TCB (N.D. Ga.) (Class Counsel in nationwide class action alleging TCPA violations from autodialer calls to cell phones. Final approval of the \$5 million settlement was approved in August 2019).
- *Luster v. Wells Fargo Dealer Servs.*, No. 1:15-cv-1058 (N.D. Ga.) (Class Counsel in case alleging TCPA violations from autodialer debt collection calls to customers and non-customers in connection with auto loans. Final approval of the \$14.8 million cash settlement was granted December 2017).
- *Prather v. Wells Fargo Bank, N.A.*, No. 1:15-cv-4231 (N.D. Ga.) (Class Counsel in case alleging TCPA violations from autodialer debt collection calls to customers and non-customers in connection with student loans. Final approval of the \$2 million cash settlement was granted August 2017).
- *Cross v. Wells Fargo Bank, N.A.*, No. 1:15-cv-1270 (N.D. Ga.) (Class Counsel in nationwide class settlement of TCPA violations from autodialer calls to customers and non-customers in connection with deposit accounts. Final approval of \$30.6 million cash settlement was approved February 2017).
- *Markos v. Wells Fargo Bank, N.A.*, No. 1:15-cv-1156 (N.D. Ga.) (Class Counsel in nationwide class settlement of TCPA violations from autodialer debt collection calls to customers and non-customers in connection with mortgage accounts. Final approval of \$16.4 million cash settlement was approved in January 2017).
- *Smith v. State Farm, et al.*, No. 1:13-cv-02018 (N.D. Ill.) (Class Counsel in nationwide class settlement alleging TCPA violations from autodialer telemarketing calls by or on behalf of several large insurance companies to millions of cell phones. Final approval of approximately \$7 million cash settlement (with no claims process) was approved December, 2016).

- *Ossola, et al. v. American Express Co., et al.*, No. 1:13-CV-4836 (N.D. Ill.) (Class Counsel in nationwide class settlement alleging TCPA violations from autodialer calls to cell phones. Final approval of \$8.7 million cash settlement was approved December 2016).
- *Franklin v. Wells Fargo Bank, N.A.*, No. 14-cv-2349-MMA (S.D. Cal.) (Class Counsel in a nationwide class settlement of TCPA violations from autodialer calls to cell phones. Final approval, argued by Meyer Wilson principal Matthew R. Wilson, of the \$13.89 million cash settlement was approved in January 2016).
- *Bayat v. Bank of the West*, No. 3:13-cv-02376-EMC (N.D. Cal.) (Class Counsel in putative nationwide class alleging TCPA violations from autodialer calls to cell phones. Settlement of \$3.35 million cash settlement approved in April 2015).
- *Connor v. JPMorgan Chase Bank*, No. 10 CV 1284 DMS BGS (S.D. Cal. Mar. 12, 2012) (Class Counsel in nationwide class alleging TCPA violations from autodialer calls to cell phones. Settlement of \$11.67 million was granted final approval granted in early 2015).
- *In re Capital One Telephone Consumer Litig.*, No. 1:12-cv-10064 (N.D. Ill.) (Class Counsel in MDL proceeding involving autodialed and prerecorded message calls to cell phone by Capital One and several of its vendors in violation of the Telephone Consumer Protection Act. The case settled on a nationwide basis for over \$75.5 million, the largest TCPA settlement in the nearly 30-year history of that statute. Final approval, which was argued by Meyer Wilson principal Matthew R. Wilson, was granted in February 2015.).
- *Mills v. HSBC Bank Nevada, N.A., et al.*, No. 3:12-cv-04010 (N.D. Cal.) (Class Counsel in nationwide class action alleging TCPA violations from autodialer calls to cell phones. Final approval, which was argued by Meyer Wilson principal Matthew R. Wilson, of the \$39.975 million cash settlement was approved in February 2015.).
- *Wannemacher v. Carrington Morg. Servs., LLC*, No. 8:12-cv-2016-FMO-AN (C.D. Cal.) (Co-Lead Class Counsel in nationwide class action alleging TCPA violations from autodialer calls to cell phones. On December 23, 2014, the Court approved the \$1.03 million class settlement.).
- *Lazebnik v. Apple, Inc.*, No. 5:13-cv-04145-EJD (N.D. Cal.) (Co-Lead Class Counsel in nationwide class action alleging fraudulent marketing of a “season pass” of the television show *Breaking Bad* on Apple’s iTunes service. In response to the lawsuit, Apple provided a full credit to the entire proposed class. On October 21, 2014, the parties settled all remaining issues.).

- *Yarger, et al. v. ING Bank FSB*, No. 1:11-cv-00154-LPS (D. Del.) (Co-Lead Class Counsel in nationwide class action alleging misrepresentations related to marketing of mortgage note modifications. A 10-state class was certified in 2012. On October 7, 2014, final approval, which was argued by Meyer Wilson principal Matthew R. Wilson, was granted to the \$20.3 million class settlement.).
- *Steinfeld v. Discover Fin. Servs.*, No. 3:12-cv-01118-JSW (N.D. Cal.) (Counsel for the class in action alleging TCPA violations from autodialer calls to the cell phones. On March 31, 2014, the court approved an \$8.7 million class settlement.).
- *Rose v. Bank of America Corp., et al.*, No.5:11-cv-2390 (N.D. Cal.) (Class Counsel in putative nationwide class action alleging TCPA violations from autodialer calls to cell phones. The \$32 million cash settlement, the largest TCPA class settlement ever at the time, was approved in 2014.).
- *Arthur v. Sallie Mae, Inc.*, No. C10-0198 (W.D. Wash) (Co-Lead Class Counsel in putative nationwide class action alleging TCPA violations from autodialer calls to the cell phones of borrowers who took out student loans with the national lender. The \$24.15 million nationwide settlement was granted final approval on September 17, 2012. It was, at the time, the largest TCPA settlement since that statute was enacted.).
- *Smith v. Regents of the Univ. of Cal.*, No. RG08-410004 (Cal. Sup. Ct., Alameda Cnty.) (Co-Lead Counsel in California statewide action alleging breaches of medical data privacy. In what was one of the first successful class action cases under California's Confidentiality of Medical Information statute, the class was certified on July 9, 2009, and the case was settled in late 2011).
- *Mack v. hh gregg, Inc., et al.*, No. 1:08-cv-664 (S.D. Ind.) (Co-Lead Counsel in putative class action involving alleged incorrect installation of dryers. Nationwide class settlement was granted final court approval on March 18, 2011.).
- *Kaiser-Flores v. Lowe's Home Centers, Inc.*, No. 5:08-CV-00045 (W.D.N.C.) (Co-Lead Counsel in putative class action involving alleged incorrect installation of dryers. Nationwide class settlement, including cash relief for class members, was granted final court approval on December 15, 2010.).
- *Frankle v. Best Buy Stores, L.P.*, No. 08-5501 (D. Minn.) (Co-Lead Counsel in putative class action involving alleged incorrect installation of dryers. Nationwide class settlement was granted final court approval on November 9, 2010.).

- *Sanbrook v. Office Depot, Inc.*, No. 07CV096374 (N.D. Cal.) (Co-Lead Class Counsel in California statewide certified class action involving misleading service plan terms and other related issues. The case settled for cash relief for class members, and was granted final approval by the Court on November 23, 2010.).
- *Stout v. Jeld Wen, Inc.*, No. 1:08-CV-652 (N.D. Ohio) (Lead Class Counsel in nationwide class action alleging defective windows. Final approval, argued by Meyer Wilson principal Matthew R. Wilson, was granted to the nationwide settlement on August 8, 2010.).
- *Fulford v. Logitech, Inc.*, No. 08-cv-02041 (N.D. Cal.) (Co-Lead Class Counsel in class action alleging deceptive advertising of a consumer product. The nationwide class action settlement was granted final court approval on March 5, 2010.).
- *Schweinfurth, et al. v. Motorola, Inc.*, No. 1:05-CV-0024 (N.D. Ohio) (Co-Lead Class Counsel in nationwide class action alleging defective cellular phones, resulting in nationwide settlement with cash relief for class members, approved by the Court on January 25, 2010.).
- *Steele v. Pergo, Inc.*, No. CV07-1493 (D. Oregon) (Lead Class Counsel in class action alleging defective laminate flooring. The nationwide settlement was granted final court approval, which was argued by Meyer Wilson principal Matthew R. Wilson, on July 7, 2009.).
- *Jenkins v. Hyundai Motor Fin. Co.*, Case No. 2:04-cv-00720 (S.D. Ohio) (Appointed Co-Lead Class Counsel in a certified class action alleging defective notices in connection with the repossession and subsequent disposition of vehicles. The case settled after certification, and was approved by the Court on July 7, 2009.).
- *Guisseppone v. Wendy's Int'l, Inc., et al.*, No. 08-CVC-4-6219 (Ohio Ct. C.P. Franklin Cnty.) (Liaison Counsel in the derivative and class action suit involving the sale of Wendy's to the parent company of Arby's. The nationwide class action settlement was approved by the Court on July 1, 2009.).
- *In Re Apple iPod Nano Prod. Liab. Litig.*, No. M: 06-cv-01754-RMW (N.D. Cal.) (Co-Lead Counsel in the Multi-District Litigation proceeding in which nationwide class actions allege that screens on Ipod Nanos were susceptible to excessive scratching under normal use and were therefore defective. A nationwide settlement of the related case in state court, including cash relief for consumers, was granted final approval by the Court on April 28, 2009.).

- *Health Science Prods. LLC. v. Sage Software SB, Inc.*, No. 1:05-CV-03329-RWS (N.D. Ga.) (Co-Lead Class Counsel in nationwide class action settlement involving allegedly defective software. Settlement included cash relief for Class Members. It was approved by the Court on April 24, 2008.).
- *Wiatrowski, et al. v. Sears, Roebuck & Co., et al.*, No. 1:06-CV-00637 (N.D. Ohio) (Co-Lead Counsel in a nationwide class action settlement that provided cash reimbursement of Class Members for out of pocket losses. The court granted final approval on December 20, 2007.).
- *Bowen, et al. v. Whirlpool Corp., et al.*, No. CV05-8067 (C.D. Cal.) (Co-Class Counsel in nationwide class action alleging defective water heaters. Final approval was granted in the nationwide class settlement on October 11, 2007.).
- *Opperman, et al. v. Celco P'ship, et al.*, No. BC326764 (Cal. Sup. Ct. Los Angeles Cnty.) (Nationwide settlement approved in 2006. Provided, *inter alia*, for the option to return improperly marketed cellular telephone for a full refund of the purchase price and cancellation of a Class Member's contract without early termination penalties.).
- *Heitbrink, et al. v. eMachines*, No. G-4801-CI-200501229 (Ohio Ct. C.P. Lucas Cnty.) (Nationwide settlement provided cash relief for qualified Class Members for purchasers of defective notebook computers. The Court granted final approval on December 21, 2006.).
- *Martino, et al. v. Motorola, Inc.*, No. 03-CIV-1562 (Ohio Ct. C.P. Medina Cnty.) (Nationwide class action settlement provided relief valued in the millions of dollars and included cash reimbursement of Class Members for out of pocket losses. The Court granted final approval on March 2, 2005.).

Meyer Wilson currently serves as Class Counsel in numerous pending class actions throughout the country, including the following sample:

- *Beckman v. Robinhood Fin., LLC et al.*, No. 3:20-cv-01626 (N.D. Cal.) (Class Counsel in nationwide class action alleging online trading platform violated its duties to customers in allowing system to be shut down.).
- *Brown v. DIRECTV, LLC*, No. 2:12-cv-08382 (C.D. Cal.) (Class Counsel in nationwide class action alleging TCPA violations from autodialer calls to cell phones. The class was certified in this long-running case by the Court in March 2019).
- *Myers v. Marietta Memorial Hosp.*, No. 2:15-cv-2956 (S.D. Ohio) (Class counsel in a case alleging FLSA violations stemming from automatic lunch deduction programs. The class was certified by the Court in September, 2017).

- *Head v. Citibank, N.A.*, No. 3:18-cv-08189 (D. Ariz.) (Class Counsel in nationwide class action alleging TCPA violations from prerecorded calls to cell phones.).

DAVID P. MEYER is the founding principal of Meyer Wilson.

Mr. Meyer has been recognized as one of the top litigation attorneys in Ohio. Thomson Reuters named him one of the Top 100 lawyers in Ohio and one of the Top 50 in Columbus in 2012. He is also listed in Best Lawyers in America® in multiple categories and the American Trial Lawyers Association selected him as one of the Top 100 Trial Attorneys in Ohio.

Mr. Meyer has the honor of winning the largest jury verdict in Ohio history; a \$261 million class action verdict against Prudential Securities on behalf of 200 individuals.

Mr. Meyer has earned a national reputation for successfully representing investors who are victims of investment fraud. He has represented over eight hundred individual investors from all across the country in FINRA/NASD securities arbitration and litigation cases against all major brokerage firms and won verdicts, judgments and settlements of hundreds of millions of dollars in losses on their behalf.

He has also been appointed lead or co-lead counsel by state and federal courts throughout the country in numerous consumer class actions.

Mr. Meyer is a recognized authority on securities arbitration procedure and often serves as a guest lecturer on securities fraud and stockbroker malpractice. Numerous bar associations have invited him to speak to attorneys at educational seminars. Mr. Meyer also provides education to investor groups, accountants and other financial professionals concerning investor protection.

Mr. Meyer holds a business administration degree from Ohio University and a law degree and master's degree in tax law from Ohio's Capital University Law School. He is licensed to practice in the states of Ohio and Michigan.

MATTHEW R. WILSON is a principal attorney with the firm.

Mr. Wilson prosecutes the firm's class action cases. During the past 15 years, Mr. Wilson has served as court-appointed class counsel to more than thirty-five certified classes, in settlement or in litigation.

Mr. Wilson has been court-appointed class counsel in numerous cases across the country, including cases in which the defendants were alleged to have made unauthorized calls and sent text messages to cellular telephones through the use of an automated telephone dialing system and/or an artificial or prerecorded voice, in violation of federal law. These class settlements - over the last few years alone - in which Mr. Wilson has been class counsel have provided over \$300 million in cash for consumers.

Several of Mr. Wilson's cases have resulted in nationwide settlements for consumers that are among the largest since the federal statute involving telephone privacy was enacted in 1991, including *In re: Capital One Telephone Consumer Protection Act Litigation*, 1:12-cv-10064 (N.D. Ill.) (\$75.5 million all-cash class settlement); *Wilkins v. HSBC Bank Nevada, N.A. et al.*, 1:14-cv-00190 (N.D. Ill.) (\$39.9 million all-cash class settlement); *Rose v. Bank of America Corp.*, 5:11-cv-02390-EJD (N.D. Cal.) (\$32 million all-cash class settlement); and *Arthur, et al. v. Sallie Mae, Inc.*, No. 10-cv-198-JLR (W.D. Wash.) (\$24.15 million all-cash class settlement).

In another matter, Mr. Wilson was co-lead counsel in *Yarger v. ING Bank, fsb*, 1:11-cv-00154-LPS (D. Del.), representing consumers who alleged that ING breached its promise to allow them to refinance their home mortgages for a fixed flat fee of \$500 or \$750, and instead charged a higher fee. In 2012, the court certified a class of consumers in ten states who purchased or retained an ING adjustable rate mortgage. In October 2014, the court approved a \$20.35 million all-cash class settlement.

In addition to Mr. Wilson's complex civil litigation practice, his pro bono services have included the representation of indigent criminal defendants in Sixth Circuit appeals in Criminal Justice Act cases, including one case in which the Sixth Circuit vacated the criminal sentence of Mr. Wilson's indigent client on appeal. See *United States v. Boards*, 202 Fed. Appx. 869 (6th Cir. 2006). He has been a frequent Interfaith Legal Services volunteer, where he has assisted low-income clients with all manner of legal difficulties, trying one such case to a state court jury. He is also a member of the National Association of Consumer Advocates, and has participated as a mentor in the Ohio Supreme Court Lawyer-to-Lawyer Mentoring Program.

Mr. Wilson graduated *magna cum laude*, Phi Beta Kappa, in Philosophy from Denison University in Granville, Ohio. He received his law degree from the University of Virginia Law School in Charlottesville, Virginia. He is admitted to practice in Ohio and California.

MICHAEL J. BOYLE, JR. is an attorney with the firm.

Mike Boyle prosecutes the firm's class action cases on behalf of consumers and patients.

Mr. Boyle was named a "Super Lawyer" in 2019 and 2020 by *Ohio Super Lawyers Magazine*. In 2014, 2016 and 2017, Mr. Boyle was named a "Rising Star."

Prior to joining the firm, Mr. Boyle clerked for the Honorable R. Guy Cole, Jr., a judge on the United States Court of Appeals for the Sixth Circuit during the 2011-2012 term. Mr. Boyle began his career with the international law firm Covington & Burling, LLP, in San Francisco. He also worked for the San Francisco firm Carroll Burdick & McDonough, LLP and the Columbus firm Carpenter Lipps & Leland, LLP. With these firms, Mr. Boyle handled a wide spectrum of legal cases, from nine-figure bankruptcies and insurance coverage actions to individual real estate disputes.

Mr. Boyle has also maintained a significant pro bono practice. In the aftermath of Hurricane Katrina, he volunteered with a free legal clinic run by Loyola University of New Orleans, in which he provided a wide range of services to displaced residents of Louisiana. Mr. Boyle also served with the San Francisco Bar Association's Legal Assistance project, providing free legal assistance to low income residents of the Bay Area.

Mr. Boyle attended the University of Pennsylvania School of Law, where he graduated with honors in 2008. He also served as a Senior Editor of the University of Pennsylvania Law Review, and was a finalist in the Keedy Cup Moot Court competition. Prior to law school, Mr. Boyle graduated with honors from Dominican University in River Forest, Illinois, with a focus on political theory. Mr. Boyle is a member of the California and Ohio bars.

COURTNEY WERNING is an attorney with the firm.

As an associate attorney with Meyer Wilson, Courtney Werning devotes her practice to the representation of investors who have claims against their investment advisors and brokerage firms. She also assists in prosecution of the firm's class action cases.

Ms. Werning joined Meyer Wilson as a law clerk in 2010. She graduated *magna cum laude* from Capital University Law School in 2012. While at Capital Law, she participated in Moot Court and coordinated the law school's pro bono legal volunteering program. She is a member of the Order of the Curia, as well as the Order of the Barristers for excellence in scholastic brief writing and oral advocacy.

Prior to joining Meyer Wilson, Ms. Werning interned at the Franklin County Municipal Court under the Honorable Anne Taylor, the Federal Public Defender's Office for the Southern District of Ohio, the Ohio State University Office of Legal Affairs, and the Parliament of Canada.

Ms. Werning has also regularly volunteered at the Interfaith Legal Clinic, a pro bono clinic that operates through the Legal Aid Society. Interfaith is a monthly clinic where low-income individuals with legal problems can meet with an attorney for free legal advice.

Ms. Werning is admitted to practice law in the state of Ohio. She is currently a member of the Public Investors Arbitration Bar Association (PIABA), the Central Ohio Association for Justice (COAJ), the Ohio Association for Justice (OAJ), and the Ohio State Bar Association (OSBA). Ms. Werning is an active participant in the Ohio Supreme Court Lawyer to Lawyer Mentoring Program.

JARED CONNORS is an attorney with the firm.

Mr. Connors has experience working on the firm's class action and securities arbitration cases. He joined Meyer Wilson as a law clerk in 2020 and started as an associate attorney in 2021 after being admitted to practice law in the State of Ohio.

Mr. Connors received his B.A., *magna cum laude*, in history from Northern Illinois University and graduated from The Ohio State University Moritz College of Law in 2021. During law school, he was an articles editor for the *Ohio State Law Journal* and won Best Brief at the 2019 Herman Moot Court Competition.

In addition, Mr. Connors is a member of the Ohio Association for Justice and the Ohio State Bar Association.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KENT BOWEN and KATHLEEN
DARNELL on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

PORSCHE CARS, N.A., INC.

Defendant.

CIVIL ACTION NO:
1:21-CV-471-MHC

**ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This matter is before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion") of the above-captioned case between Plaintiffs Kent Bowen and Kathleen Darnell (together, the "Class Plaintiffs") and Defendant Porsche Cars, N.A., Inc. ("Porsche" or "Defendant") (the "Action") as set forth in the Parties' Settlement Agreement (the "Agreement," which memorializes the "Settlement").

Having duly considered the filings made in connection with the Motion,
THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court finds that it has jurisdiction over the Action and each of the Parties for purposes of settlement and asserts jurisdiction over the Class Plaintiffs,

all Settlement Class Members, and Defendant for purposes of considering and effectuating this Settlement. The Court also preliminarily finds that each member of the proposed Settlement Class has standing to seek relief. Under the Settlement Class definition provided in the Agreement, each Settlement Class member owned or leased a vehicle that received the allegedly trespassory software update. As the Court previously held, Plaintiffs have adequately alleged that the update constituted a trespass to personalty, as well as a violation of the Computer Fraud and Abuse Act., 18 U.S.C. § 1030, sufficient to withstand dismissal on the pleadings under Fed. R. Civ. P. 12(b)(6). *See* dkt. 36 at 6–26. Each Settlement Class member has therefore sufficiently alleged that he or she has suffered an injury that is concrete, particularized, and directly analogous to an injury that historically existed at common law. In addition, under the Settlement, Settlement Class Members will not receive compensation absent a showing that they incurred an injury in the form of having spent money and/or time resolving PCM 3.1 rebooting. *See Drazen v. Pinto*, 41 F.4th 1354, 1360 (11th Cir. 2022) (quoting *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204-05, 2208 (2021) (“Every class member must have Article III standing in order to recover individual damages.”)).

2. Unless otherwise defined herein, all defined terms in this Order shall have the meanings ascribed to them in the Agreement.

3. Defendant does not oppose the Court's entry of the proposed Preliminary Approval Order.

4. This Court has considered all of the presentations and submissions related to the Motion and, having presided over and managed this Action, is familiar with the facts, contentions, claims, and defenses as they have developed in these proceedings, and is otherwise fully advised of all relevant facts in connection therewith.

I. Preliminary Certification of the Settlement Class, Class Representatives, and Class Counsel

5. Pursuant to Rule 23(e)(1)(B)(ii), and for purposes of settlement only, the Court finds that it will likely be able to certify the Settlement Class, defined as: "All entities and individuals in the United States who, as of May 20, 2020, owned or leased an Eligible Vehicle." As defined in the Settlement Agreement, an "Eligible Vehicle" is any Porsche vehicle equipped with an XM radio antenna and PCM 3.1. Excluded from the Settlement Class are the following persons: Defendant, any Released Persons, Class Counsel, and the Court, as well as the Court's spouse, and any person within the third degree of relationship to either of them.

6. The Court finds that, for purposes of settlement only, the prerequisites for a class action under Rules 23(a), and (b)(3) of the Federal Rules of Civil

Procedure have likely been satisfied in that: (a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Plaintiffs are typical of the claims of the Settlement Class; (d) the Class Plaintiffs and their counsel have fairly and adequately represented and protected the interests of Settlement Class Members; (e) the questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Court notes that the fact that it is being asked to certify a settlement class, rather than a litigation class, eliminates any manageability concerns that might otherwise arise in connection with a trial of Plaintiffs' claims. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems").

7. This Court finds that the following counsel are experienced and adequate for purposes of these settlement approval proceedings and appoints them as Class Counsel: Michael A. Caplan and T. Brandon Waddell of Caplan Cobb,

LLC; Matthew R. Wilson, Michael J. Boyle, Jr., and Jared W. Connors of Meyer Wilson Co., LPA; and David Stein of Gibbs Law Group LLP.

II. Preliminary Approval of the Class Settlement

8. The Court has evaluated the Settlement as set forth in the Agreement for fairness, adequacy, and reasonableness. As part of that evaluation, the Court notes that the parties reached the Settlement with the assistance of Joseph Loveland of JAMS, who oversaw the parties' negotiations, including at mediations in August 2022 (as to the class-wide relief) and in October 2022 (as to attorneys' fees and costs). Based on the Court's evaluation, the Court finds under Rule 23(e)(1)(B)(i) that it is likely to approve the Settlement in light of the fact that: (A) the class representatives and class counsel have adequately represented the class; (B) the Settlement was negotiated at arm's length; (C) the relief provided for the Settlement Class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the class, including the method of processing Settlement Class Members' claims; (iii) the terms of the proposed award of attorney's fees, including timing of payment; and (iv) the lack of additional agreements identified under Rule 23(e)(3); and (D) the Settlement treats Settlement Class Members equitably relative to each other. Moreover, the Court has evaluated the Settlement under the additional

factors for consideration enumerated in *Bennett v. Behring Corp.*, and finds that it is likely to approve the Settlement under the *Bennett* factors as well. *See generally* 737 F.2d 982, 986 (11th Cir. 1984).

9. Based on the above findings, the Court finds that it will likely be able to approve the Settlement as fair, reasonable, and adequate, so as to warrant providing notice of the Settlement to the Settlement Class consistent with the notice plan set forth in the Agreement.

10. A Fairness Hearing shall be held before this Court on **[DATE]**, at the United States District Court for the Northern District of Georgia, Richard B. Russell Federal Building, 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303, to make a final determination of whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement is fair, reasonable, and adequate to the Settlement Class and should be finally approved by the Court; to determine whether the Settlement Class should be certified; to determine whether a Final Approval Order approving the Settlement should be entered; to determine whether the plan for distribution of claims should be approved; to determine any amount of attorneys' fees and cost-reimbursements that should be awarded to Class Counsel; to hear any objections by Settlement Class Members to the Settlement, claims process, and any award of attorneys' fees

and cost reimbursements to Class Counsel; and to consider such other matters as the Court may deem appropriate. The Fairness Hearing may be continued by order of the Court without further notice to the Settlement Class except that the Parties shall update the settlement website to reflect the date of the hearing. After the Fairness Hearing, the Court may enter a Final Approval Order in accordance with the Agreement that will adjudicate the rights of the Settlement Class Members (as defined in the Settlement) with respect to the claims being settled.

11. Pursuant to Rule 23(c) of the Federal Rules of Civil Procedure, the Court appoints for settlement purposes only A.B. Data, Ltd. (“Settlement Administrator”) to supervise and administer the notice procedure as well as the processing of claims as more fully set forth in the Agreement.

III. Notice to Class Members

12. Under Rule 23(c)(2), the Court finds that the content, format, and method of disseminating notice under the Settlement Class Notice Program, as set forth in the Motion and the Settlement Agreement, is (i) the best notice practicable under the circumstances; (ii) reasonably calculated to apprise the Settlement Class of their right to object or exclude themselves from the Settlement; and (iii) constitutes due, adequate, and sufficient notice to all persons entitled to receive notice. The Court approves such notice, and hereby directs that such notice be

disseminated no later than 30 days following the entry of this Order, in the manner set forth in the proposed Agreement to Settlement Class Members under Rule 23(e)(1).

13. The Court approves the form of the Notices and Claim Form attached as Exhibits 1 through 4 to the Settlement Agreement. The Court expressly authorizes and instructs the Settlement Administrator to send the Reminder Notice, as provided in Paragraph 19 of the Agreement. The Court also directs that the Settlement Administrator shall permit claims to be completed and submitted online through an electronic claim form.

14. The Settlement Administrator shall send the CAFA Notice required by 28 U.S.C. § 1715 to the appropriate federal and state officials as identified in 28 U.S.C. § 1715(a) within 10 days after the Motion for Preliminary Approval is filed with the Court.

15. The Settlement Administrator will provide to Class Counsel no later than 10 days prior to the Fairness Hearing, a declaration reflecting that the Settlement Class Notice Program has been executed in accordance with the Settlement Agreement and Preliminary Approval Order, which will be filed with the Court.

16. Settlement Class Members who wish to either object to the Settlement or request to be excluded from it must submit a written request to do so, postmarked no later than the Objection Date and Opt-Out Date of **[DATE]**, which is 30 days before the Final Fairness Hearing. Settlement Class Members may not both object and opt out. If a Settlement Class Member submits both an Opt-Out Request and an Objection, the Opt-Out Request will be controlling.

17. To submit an Opt-Out Request, a Settlement Class Member must follow the directions in the Notice and send a compliant request to the Settlement Administrator at the address designated in the Class Notice by the Opt-Out Date. In the Opt-Out Request, the Settlement Class Member must provide (i) the potential Settlement Class Member's name, address, and Vehicle Identification Number (VIN) and dates of ownership or lease of the potential Settlement Class Member's Eligible Vehicle(s); (ii) an unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class; and (iii) the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member. Requests for exclusion must be exercised individually by the Settlement Class Member and are only effective as to the individual Settlement Class Member requesting exclusion

18. If a timely and valid Opt-Out Request is made by a member of the Settlement Class, then that person will not be a Settlement Class Member, and the Agreement and any determinations and judgments concerning it will not bind the excluded person.

19. All Settlement Class Members who do not opt out in accordance with the terms set forth in the Agreement will be bound by all proceedings, orders, and judgments in the Action, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release.

20. To object to the Settlement, Settlement Class Members must follow the directions in the Notice and file a written objection with the Court by the Objection Date. In the written objection, the Settlement Class Member must state (i) the name of the case and case number; (ii) the name, address, telephone number, VIN and dates of ownership or lease of the Settlement Class Member's Eligible Vehicle(s); (iii) a statement that the objector has reviewed the Settlement Class definition and understands that he or she is a Settlement Class Member, and has not opted out and does not plan to opt out of the Settlement Class; (iv) the specific reasons why the Settlement Class Member objects to the Proposed Settlement; (v) the name, address, bar number, and telephone number of the objecting Settlement

Class Member's counsel, if any, and any such attorney must comply with all applicable rules of the Court; and (vi) whether the objecting Settlement Class Member intends to appear at the Fairness Hearing, either in person or through counsel.

21. In addition, an objection must contain the following information if the Settlement Class Member or his or her attorney requests permission to speak at the Fairness Hearing: (i) a detailed statement of the legal and factual basis for each objection; (ii) a list of any and all witnesses the Settlement Class Member may seek to call at the Fairness Hearing (subject to applicable rules of procedure and evidence and at the discretion of the Court), with the address of each witness and a summary of his or her proposed testimony; and (iii) a list of any legal authority the Settlement Class Member will present at the Fairness Hearing. Any attorney hired by a Settlement Class Member for purposes of objecting to the Settlement or intervening in this Action must file a notice of appearance with Clerk of Court, and provide the Settlement Administrator with a copy thereof, no later than **[DATE]**, the deadline for submitting objections.

22. Any Settlement Class Member who does not submit a timely objection may, in the discretion of the Court, waive the right to object or to be

heard at the Fairness Hearing and be barred from making any objection to the Proposed Settlement.

23. The Settlement Administrator shall establish a post office box and email address in the name of the Settlement Administrator to be used for receiving Opt-Out Requests, Claim Forms, and any other communications from Settlement Class Members. Only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box and email account, except as otherwise provided in the Settlement Agreement. The Settlement Administrator shall promptly provide copies of all Objections, Opt-Out Requests, motions to intervene, notices of intention to appear, and other communications to Class Counsel and Defendant's counsel.

24. The Settlement Administrator shall also create and maintain the Settlement Website consistent with the terms of Paragraphs 25-27 of the Agreement, including that Class Members shall be permitted to submit Claim Forms to the Settlement Administrator via the Settlement Website. The Settlement Administrator shall make that Website publicly available until 60 days after the end of the Claims Period. The Website may be amended during the course of administering the Settlement as appropriate and as agreed to by both Parties.

25. Class Counsel shall file their Motion for an Award of Attorneys' Fees, Expenses, and Costs at least 21 days prior to the Objection Date.

26. The Settlement Administrator shall provide the final Opt-Out List to Class Counsel and Defendant's Counsel no later than 10 days before the Final Fairness Hearing, along with an affidavit or declaration attesting to its accuracy. Plaintiffs shall file this report with the Court prior to the Final Fairness Hearing.

27. All Settlement Class Members are preliminarily enjoined from: (i) filing, commencing, prosecuting, intervening in, or participating as plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitral, or other proceeding in any jurisdiction based on the Released Claims; (ii) filing, commencing, participating in, or prosecuting a lawsuit or administrative, regulatory, arbitral, or other proceeding as a class action on behalf of any member of the Settlement Class who has not timely excluded himself or herself (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on the Released Claims; or (iii) attempting to effect Opt-Outs of a class of individuals in any lawsuit or administrative, regulatory, arbitral, or other proceeding based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims. Notwithstanding the foregoing, this

provision, and any other provision of the Settlement Agreement, does not prevent members of the Settlement Class from participating in any action or investigation initiated by a state or federal agency.

28. Pending the final determination of whether the Settlement should be approved, all pre-trial proceedings and briefing schedules in the Action are stayed. If the Settlement is terminated or final approval does not for any reason occur, the stay will be immediately terminated.

29. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings in connection with the Settlement will be without prejudice to the right of Defendant or the Class Plaintiffs to assert any right or position that could have been asserted if the Agreement had never been reached or proposed to the Court. In such an event, the Parties will return to the status quo ante in the Action, and the certification of the Settlement Class will be deemed vacated. The certification of the Settlement Class for settlement purposes, or any briefing or materials submitted seeking certification of the Settlement Class, will not be considered in connection with any subsequent class certification decision.

30. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission

or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of any liability or wrongdoing, by Defendant, or the truth of any of the claims, and evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, this Order, and the Final Approval Order.

31. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement. The Court reserves the right to approve the Agreement with such modifications, if any, as may be agreed to by the Parties without further notice to the members of the Class.

32. Accordingly, the following are the deadlines by which certain events must occur:

| Event | Deadline |
|--|--|
| Class notice mailed or emailed (as required by the Settlement Agreement) to individuals on the Class Notice List | [DATE] (30 days after entry of this Order.) |
| Last day for Class Counsel to file motion seeking final settlement approval and award of attorneys' fees and cost reimbursements | [DATE] (21 days prior to Opt-Out Date/Objection Date) |

| | |
|---|---|
| Last day for Settlement Class Members to object or opt out of the Settlement | [DATE] (30 days prior to the Fairness Hearing) |
| Last day for replies in support of motion for final approval and award of attorneys' fees and cost reimbursements | [DATE] (14 days prior to the Fairness Hearing) |
| Fairness Hearing | [DATE] . (At least 105 days after entry of Preliminary Approval Order) |

33. The Court shall maintain continuing jurisdiction over these proceedings for the benefit of the Settlement Class defined in this Order.

IT IS SO ORDERED this XXth day of [MONTH], 2023.

Hon. Mark Cohen
United States District Court Judge