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20 **UNITED STATES DISTRICT COURT**
 21 **NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

22 IN RE: APPLE INC. DEVICE
 23 PERFORMANCE LITIGATION

Case No. 5:18-md-02827-EJD

24 This Document Relates to:
 25 ALL ACTIONS

**NOTICE OF MOTION AND MOTION
 FOR PRELIMINARY APPROVAL OF
 PROPOSED SETTLEMENT;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF**

Judge: Hon. Edward J. Davila
 Courtroom: 4, 5th Floor
 Date: April 3, 2020
 Time: 1:30 p.m.

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 3, 2020, at 1:30 p.m., in Courtroom 4 of the United States District Court for the Northern District of California, Robert F. Peckham Federal Building & United States Courthouse, 280 South First Street, San Jose, California 95113, the Honorable Edward J. Davila, presiding, Named Plaintiffs¹ will and hereby do move for an Order pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Rule”): (i) preliminarily approving the proposed Settlement; (ii) certifying a class for settlement purposes (“Settlement Class”); (iii) approving the form and manner of notice to the Settlement Class; (iv) approving the selection of the Settlement Administrator; and (iv) scheduling a Final Hearing before the Court.

The proposed Settlement is within the range of what is fair, reasonable, and adequate such that notice of its terms may be disseminated to Settlement Class Members and a Final Hearing to finally approve the proposed Settlement scheduled.

This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below, the accompanying Joint Declaration of Joseph W. Cotchett and Laurence D. King in Support of Plaintiffs’ Motion for Preliminary Approval of Proposed Settlement, dated February 28, 2020 (“Joint Declaration”), and the exhibits attached thereto, the Stipulation of Settlement dated February 28, 2020 (“Stipulation” or “Settlement”), and the exhibits attached thereto, the pleadings and records on file in this Action, and other such matters and argument as the Court may consider at the hearing of this motion.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the proposed Settlement is within the range of fairness, reasonableness, and adequacy as to warrant: (a) the Court’s preliminary approval; (b) certification of a Settlement Class for settlement purposes; (c) the dissemination of Notice of its terms to Settlement Class Members; and (d) setting a hearing date for final approval of the Settlement as well as application of attorneys’ fees, service awards, and reimbursement of expenses;

¹ All capitalized words are defined in the Stipulation unless otherwise noted.

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2. Whether the proposed Notice adequately apprises the Settlement Class Members of the terms of the Settlement and their rights with respect to it;
3. Whether the selection of Angeion Group as Settlement Administrator should be approved;
4. Whether the proposed Plan to Allocate Settlement proceeds should be preliminarily approved; and
5. Whether the Claim Forms are sufficient.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Named Plaintiffs respectfully submit this Memorandum of Points and Authorities in support
3 of their Motion for Preliminary Approval of the Settlement in the above-captioned action (“Action”),
4 and entry of the [Proposed] Order Certifying Settlement Class; Granting Preliminary Approval of
5 Class Action Settlement; and Approving Form and Content of Class Notice (“Preliminary Approval
6 Order”), attached as Exhibit D to the Stipulation. The Preliminary Approval Order will: (i) grant
7 preliminary approval of the proposed class action settlement on the terms set forth in the Stipulation;
8 (ii) certify a provisional Settlement Class; (iii) approve the form and manner of notice of the proposed
9 Settlement to the Settlement Class; and (iv) schedule a hearing date for the final approval of the
10 Settlement (“Final Approval Hearing”) and a schedule for various deadlines in connection with the
11 Settlement.

12 **I. INTRODUCTION**

13 After two years of hard-fought and contentious litigation, the Parties have reached an
14 agreement to resolve the proposed Settlement Class’s claims against Defendant Apple Inc.
15 (“Defendant” or “Apple”) pursuant to the accompanying Stipulation. The Settlement was reached
16 only after extensive, aggressive litigation and prolonged, well-informed, and extensive arm’s-length
17 negotiations—including several in-person mediation sessions and additional negotiations—between
18 experienced and knowledgeable counsel facilitated by mediator Judge Layn R. Phillips (Ret.) of
19 Phillips ADR. The Settlement, based upon a mediator’s proposal, was reached after extensive
20 motion practice and discovery.

21 During the course of the litigation, Named Plaintiffs, through co-lead counsel Cotchett,
22 Pitre & McCarthy, LLP, and Kaplan Fox & Kilsheimer LLP (“Class Counsel”), and/or their agents
23 had, among other things: (i) conducted a wide-ranging investigation into the Settlement Class’s
24 claims; (ii) filed two comprehensive complaints; (iii) successfully opposed Defendant’s motions to
25 dismiss as to certain theories of liability; (iv) engaged in a comprehensive discovery program,
26 including 19 depositions, responding to hundreds of discovery requests, reviewing more than
27 7 million pages of documents, and engaging in extensive motion practice over discovery issues; and
28 (v) consulted with expert consultants. As a result, Named Plaintiffs and Class Counsel had a

1 thorough understanding of the relative strengths and weaknesses of the claims asserted at the time
2 the Settlement was reached.

3 Named Plaintiffs submit that, as demonstrated below, this is an excellent recovery for the
4 Settlement Class considering the substantial risks at class certification and trial. Based on an
5 informed evaluation of the facts and governing legal principles, and their recognition of the
6 substantial risk and expense of continued litigation, the Parties respectfully submit that the proposed
7 Settlement is fair, reasonable, and adequate under Rule 23. Accordingly, Named Plaintiffs move for
8 preliminary approval and submit this Memorandum of Points and Authorities in support thereof.

9 **II. THE PROPOSED SETTLEMENT**

10 The Settlement provides for a non-reversionary Minimum Class Settlement Amount of
11 \$310 million, with a Maximum Class Settlement Amount of \$500 million, in cash, for the benefit of
12 the proposed Settlement Class, comprised of all former or current U.S. iPhone² owners.³

13 For a release of their claims, Settlement Class Members will receive \$25.00 for each iPhone
14 owned, the amount of which may increase or decrease depending on the amount of any Attorneys'
15 Fees and Expenses, Named Plaintiff Service Awards, notice expenses, and the aggregate value of
16 Approved Claims. If payment of \$25.00 for each iPhone device identified as Approved Claims, plus
17 the payment of Attorneys' Fees and Expenses, Named Plaintiff Service Awards, and notice and
18 administration fees would not reach the Minimum Class Settlement Amount, the Residual will be
19 allocated according to the Stipulation, including increasing payments to Settlement Class Members
20 on a pro rata basis up to a maximum of \$500. Conversely, if the number of iPhone devices identified
21 as Approved Claims, multiplied by \$25.00, exceeds the Maximum Class Settlement Amount, then
22 the cash payment for each iPhone will be reduced on a pro rata basis in order to not exceed the
23 Maximum Class Settlement Amount.

24
25 ² "iPhone" means Apple iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and SE devices. Stip. § 1.16.

26 ³ This Settlement will also encompass the California JCCP Action, captioned *In re Apple OS Cases*,
27 JCCP No. 4976 (Cal. Super. Ct., S.F. Cty.). If the Court approves the proposed Settlement, the
28 California JCCP Action will be dismissed. Stip. § 9.1. There will not be a classwide settlement for
non-U.S. Named Plaintiffs, who will be releasing their individual claims only. Because Non-U.S.
iPhone owners' claims will not be released, they may pursue their own claims outside the Settlement.

1 Named Plaintiffs will also seek Service Awards of \$3,500 for those who were deposed in
2 the Action and \$1,500 for all others. Finally, Class Counsel intend to seek up to 30% of the Minimum
3 Class Settlement Amount, or \$93 million, as reasonable attorneys' fees, and no more than
4 \$1.5 million for out-of-pocket expenses. The Settlement is not conditioned upon the Court's
5 approval of the full (or any) amount of Service Awards or Attorneys' Fees and Expenses.

6 **III. BACKGROUND**

7 **A. Summary of the Litigation**

8 On December 20, 2017, Apple released a statement regarding a performance management
9 feature in its iOS 10.2.1 and iOS 11.2 software to avoid unexpected power-offs ("UPOs") from
10 occurring in its devices. Between December 2017 and June 2018, the Federal Actions, consisting of
11 66 underlying class action complaints, were filed against Apple. Beginning on April 4, 2018, the
12 Federal Actions were consolidated by the U.S. Judicial Panel on Multidistrict Litigation in the
13 Northern District of California pursuant to 28 U.S.C. § 1407, into MDL proceedings captioned *In re*
14 *Apple Inc. Device Performance Litigation*, No. 18-md-2827-EJD [Dkt. 1].

15 After their appointment [Dkt. 99], on July 2, 2018, Class Counsel filed a Consolidated
16 Amended Complaint ("CAC") in the Action [Dkt. 145]. On October 1, 2018, the Court granted in
17 part and denied in part Apple's motion to dismiss the CAC [Dkt. 219]. *See In re: Apple Inc. Device*
18 *Perf. Litig.*, 347 F. Supp. 3d 434 (N.D. Cal. 2018).

19 On November 30, 2018, Class Counsel filed the operative Second Consolidated Amended
20 Complaint ("2CAC") [Dkt. 244]. The 2CAC asserted claims for fraud, breach of contractual
21 relations, violation of the consumer protection laws, "trespass to chattels," and violations of the
22 California Computer Data Access and Fraud Act ("CDAFA") and the federal Computer Fraud Abuse
23 Act ("CFAA"). *Id.* On April 22, 2019, the Court granted in part and denied in part Apple's motion
24 to dismiss the 2CAC [Dkt. 331]. *See In re: Apple Inc. Device Perf. Litig.*, 386 F. Supp. 3d 1155
25 (N.D. Cal. 2019).⁴ The Court dismissed, with prejudice, claims that the iPhones were "defective,"
26 claims based on certain iPhone devices, and common law and statutory fraud claims (whether based

27 _____
28 ⁴ Defendant also sought reconsideration of the Court's first motion to dismiss order as to issues
concerning a worldwide class [Dkt. 236], which the Court resolved in this order. *Id.*

1 on a theory of affirmative misrepresentation or omission). *Id.* The Court also dismissed, without
 2 prejudice, claims related to Named Plaintiffs' theory that Apple had breached contractual
 3 obligations. *Id.* The Court upheld the claims for trespass to chattels and claims under the CDAFA
 4 and CFAA. *Id.* Defendant answered the 2CAC on July 31, 2019 [Dkt. 365].

5 The Parties engaged in extensive discovery in the Action. Class Counsel served more than
 6 170 document requests on Apple, in response to which Apple produced more than seven million
 7 pages of documents. Apple served written discovery and document requests to each of the Named
 8 Plaintiffs, who produced more than 6,000 pages of documents. The Parties deposed 19 individuals,
 9 including 10 Apple witnesses and nine Named Plaintiffs. The Parties also litigated several discovery
 10 motions before the Hon. Rebecca Westerfield (Ret.) as Special Discovery Master, as well as before
 11 this Court. *See, e.g., In re Apple Inc. Device Perf. Litig.*, No. 5:18-md-02827-EJD, 2019 WL
 12 1993916 (N.D. Cal. May 6, 2019); *id.*, 2019 WL 3973752 (N.D. Cal. Aug. 22, 2019).

13 **B. Settlement Negotiations and Mediation**

14 The Parties engaged in extensive, arms-length negotiations over the course of many months,
 15 including several all-day, in-person mediation sessions and numerous additional discussions with
 16 Judge Phillips, a former United States District Judge and highly respected mediator. After the third
 17 in-person mediation with Judge Phillips on September 27, 2019, Judge Phillips made a mediator's
 18 proposal to the Parties. The Parties accepted the proposal, with continued involvement by the
 19 mediator throughout the process of negotiating a term sheet and long-form settlement agreement.

20 **IV. SUMMARY OF AND REASONS FOR THE SETTLEMENT**

21 It is respectfully submitted that the Settlement meets the legal standards for preliminary
 22 approval and the Northern District of California's Procedural Guidance for Settlement of Class
 23 Action Settlements (the "Guidance").⁵ Based upon their investigation, Named Plaintiffs and Class
 24 Counsel concluded that the terms and conditions of the Stipulation are fair, reasonable, and adequate
 25 to the Settlement Class and in their best interests. The Parties agreed to settle the Action pursuant to
 26 the terms and provisions of the Stipulation, after considering: (i) the substantial benefits that

27 _____
 28 ⁵ <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/> (last
 visited Feb. 10, 2020).

1 Settlement Class Members will receive from resolution of the Action; (ii) the risks of continued
2 litigation; and (iii) the desirability of permitting the Settlement to be consummated as provided by
3 the terms of the Stipulation. *See* Stip. § 2.

4 The Parties accepted the mediator’s proposal and settled the claims with an understanding
5 of the strengths and weaknesses of their claims and defenses. Because the Settlement easily falls
6 within the range of possible approval and is otherwise fair and reasonable, the Court should grant
7 preliminary approval of the Settlement.

8 **V. ARGUMENT**

9 **A. Legal Standards on Preliminary Approval**

10 In deciding whether to approve a proposed settlement, the Ninth Circuit has a “strong
11 judicial policy that favors settlements, particularly where complex class action litigation is
12 concerned.” *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 556 (9th Cir. 2019); *Officers*
13 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Heritage Bond Litig.*, No.
14 02-ML-1475 DT, 2005 WL 1594403, at *2 (C.D. Cal. June 10, 2005). “[T]here is an overriding
15 public interest in settling and quieting litigation,” and this is “particularly true in class action suits.”
16 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

17 When the parties to a putative class action reach a settlement agreement prior to class
18 certification, “courts must peruse the proposed compromise to ratify both the propriety of the
19 certification and the fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir.
20 2003). First, the Court must assess whether a Rule 23 class exists. *Id.* (citing *Amchem Prods. Inc. v.*
21 *Windsor*, 521 U.S. 591, 620 (1997)).

22 If the Court determines that a Rule 23 class exists, the Court must then determine whether
23 the proposed Settlement “is fundamentally fair, adequate, and reasonable.” *Hanlon v. Chrysler*
24 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). At this stage, the Court “evaluate[s] the terms of the
25 settlement to determine whether they are within a range of possible judicial approval.” *Wright v.*
26 *Linkus Enters., Inc.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009). The Court does not need to “specifically
27 weigh[] the merits of the class’s case against the settlement amount and quantif[y] the expected value
28 of fully litigating the matter.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009).

1 Instead, the Court may only evaluate whether the Settlement is “the product of an arms-length, non-
2 collusive, negotiated resolution[.]” *Id.*

3 The Court may grant preliminary approval of the Settlement and direct notice to the
4 Settlement Class if “the proposed settlement appears to be the product of serious, informed, non-
5 collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment
6 to class representatives or segments of the class, and falls within the range of possible approval.” *In*
7 *re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citing MANUAL FOR
8 COMPLEX LITIGATION, 2d § 30.44 (2d ed. 1985)). The Court will also “schedule[] a fairness hearing
9 where it will make a final determination of the class settlement.” *In re Haier Freezer Consumer*
10 *Litig.*, No. 5:11-CV-02911-EJD, 2013 WL 2237890, at *3 (N.D. Cal. May 21, 2013) (citation
11 omitted).

12 **B. Conditional Class Certification of the Settlement Class is Warranted**

13 The Settlement is conditioned upon the approval, for settlement purposes only, of the
14 following Settlement Class definition:

15 “Settlement Class” means all former or current U.S. owners of iPhone 6, 6 Plus, 6s,
16 6s Plus, 7, 7 Plus, and SE devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus,
17 6s, 6s Plus, and SE devices) or iOS 11.2 or later (for iPhone 7 and 7 Plus devices),
18 and who ran these iOS versions before December 21, 2017. For purposes of this
19 definition, “U.S. owners” shall include individuals who owned, purchased, leased,
20 or otherwise received an eligible device, and individuals who otherwise used an
21 eligible device for personal, work, or any other purposes. An individual qualifies as
22 a “U.S. owner” if his or her device was shipped to the United States, its territories,
23 and/or its possessions. The Settlement Class shall not include iPhone owners who
24 are domiciled outside of the United States, its territories, and/or its possessions.
25 Additionally, excluded from the Settlement Class are (a) directors, officers, and
26 employees of Apple or its subsidiaries and affiliated companies, as well as Apple’s
27 legal representatives, heirs, successors, or assigns, (b) the Court, the Court staff, as
28 well as any appellate court to which this matter is ever assigned and its staff, (c) any
of the individuals identified in paragraph 1.36, as well as their legal representatives,
heirs, successors, or assigns, (d) Defense Counsel, as well as their immediate family
members, legal representatives, heirs, successors, or assigns, and (e) any other
individuals whose claims already have been adjudicated to a final judgment.

25 Stip. § 1.32.

26 Class certification under Rule 23 is a two-step process. First, the plaintiff must demonstrate
27 that numerosity, commonality, typicality, and adequacy are met. Fed. R. Civ P. 23(a). “Class
28 certification is proper only if the trial court has concluded, after a ‘rigorous analysis,’ that Rule 23(a)

1 has been satisfied.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013) (quoting
2 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)). A plaintiff must then establish that one
3 of the bases for certification in Rule 23(b) is met. Here, Named Plaintiffs must demonstrate that
4 “questions of law or fact common to Class Members predominate over any questions affecting only
5 individual members, and . . . [that] a class action is superior to other available methods for fairly and
6 efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

7 **1. Named Plaintiffs Satisfy Rule 23(a) Prerequisites**

8 Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is
9 impracticable.” Here, it is undisputed that millions of iPhones have been purchased and/or sold in
10 the United States. There can be no doubt that numerosity is satisfied in this litigation.

11 Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” For
12 the purposes of Rule 23(a)(2), even a single common question is satisfactory. *Wal-Mart*, 564 U.S.
13 at 359. The common contention, however, “must be of such a nature that it is capable of classwide
14 resolution—which means that determination of its truth or falsity will resolve an issue that is central
15 to the validity of each one of the claims in one stroke.” *Id.* at 350. “What matters to class certification
16 . . . is not the raising of common ‘questions’—even in droves—but, rather the capacity of a classwide
17 proceeding to generate common answers apt to drive the resolution of the litigation.” *Id.* (citation
18 omitted); *see also Noll v. eBay, Inc.*, 309 F.R.D. 593, 603 (N.D. Cal. 2015). Here, the proposed
19 Settlement Class satisfies the commonality requirement because, at a minimum, it is a common issue
20 whether the UPOs and the performance management feature that Apple introduced in iOS 10.2.1 and
21 iOS 11.2 to avoid UPOs affected the iPhones. Commonality is satisfied.

22 Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical
23 of the claims or defenses of the class.” “The purpose of the typicality requirement is to assure that
24 the interest of the named representative aligns with the interests of the class.” *Ebarle v. Lifelock,*
25 *Inc.*, No. 15-cv-00258-HSG, 2016 WL 234364, at *4 (N.D. Cal. Jan. 20, 2016) (quoting *Hanon v.*
26 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). “The test of typicality is whether other
27 members have the same or similar injury, whether the action is based on conduct which is not unique
28 to the named plaintiffs, and whether other class members have been injured by the same course of

1 conduct.” *Hanon*, 976 F.2d at 508 (internal quotation marks omitted). Here, Named Plaintiffs are
2 typical of the Settlement Class they seek to represent. Like other Settlement Class Members, Named
3 Plaintiffs purchased Apple’s iPhones, and were affected by the UPOs and the performance
4 management feature Apple introduced in iOS 10.2.1 and iOS 11.2 to avoid the UPOs. 2CAC ¶¶ 31-
5 270. Named Plaintiffs’ claims arise from Defendant’s iPhones and, as such, Named Plaintiffs are
6 typical of the Settlement Class Members.

7 Finally, under Rule 23(a)(4), Named Plaintiffs must demonstrate that they and their counsel
8 do not have any conflicts of interest with other Settlement Class Members and, further, that Named
9 Plaintiffs and their counsel will prosecute the action vigorously on behalf of the class. *See Ebarle*,
10 2016 WL 234364, at *4 (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000)).
11 Here, Named Plaintiffs have no conflicts of interest with other Settlement Class Members; indeed,
12 Named Plaintiffs are equally interested in demonstrating Apple’s alleged violations. Moreover,
13 Class Counsel, who also do not have any conflicts with Settlement Class Members, have substantial
14 experience prosecuting class actions. *See Joint Decl., Exs. 1 and 2.* Named Plaintiffs and Class
15 Counsel have prosecuted this Action vigorously, and successfully, on behalf of the Settlement Class,
16 and will continue to do so.

17 **2. Plaintiffs Satisfy Rule 23(b) Standards**

18 Named Plaintiffs seek conditional certification under Rule 23(b)(3), which provides that a
19 class action can be maintained where: (1) the questions of law and fact common to members of the
20 class predominate over any questions affecting only individuals; and (2) the class action mechanism
21 is superior to the other available methods for the fair and efficient adjudication of the controversy.
22 *eBay*, 309 F.R.D. at 604. Here, every Settlement Class Member alleged that they were subjected to
23 the performance management feature that slowed down their iPhone and otherwise caused harm to
24 each Settlement Class Member. This common question can be resolved for all members of the
25 proposed Settlement Class in a single adjudication.

26 Named Plaintiffs must also demonstrate that a class action is the “most efficient and
27 effective means of resolving the controversy.” *eBay*, 309 F.R.D. at 604 (quoting *Wolin v. Jaguar*
28 *Land Rover N. Am., LLC*, 617 F.3d 1168, 1175-76 (9th Cir. 2010)). A “class action mechanism is

1 superior to individual actions in consumer cases with thousands of members as ‘Rule 23(b)(3) was
 2 designed for situations such as this . . . in which the potential recovery is too slight to support
 3 individual suits, but injury is substantial in the aggregate.’” *Id.* (quoting *Holloway v. Full Spectrum*
 4 *Lending*, No. 06–cv–5975, 2007 WL 7698843, at *9 (C.D. Cal. June 26, 2007)). Here, the class
 5 action mechanism is superior for resolving this matter given the very large size of the proposed class
 6 weighed against the expense and burden of individual actions. Any Settlement Class Member who
 7 wishes to opt out may do so.⁶

8 Because Named Plaintiffs satisfy the Rule 23 requirements, the Court should grant
 9 conditional certification of the Settlement Class.

10 **C. The Proposed Settlement Should Be Preliminarily Approved**

11 As the Ninth Circuit has articulated, “the very essence of a settlement is compromise, ‘a
 12 yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624
 13 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

14 [I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and
 15 expensive litigation that induce consensual settlements. The proposed settlement is
 16 [thus] not to be judged against a hypothetical or speculative measure of what might
 have been achieved by the negotiators.

17 *Id.* at 625. As demonstrated below, Named Plaintiffs submit that the proposed Settlement is fair and
 18 just. Given the complexity of this litigation, the potential difficulty of proving certain elements of
 19 the Settlement Class’s claims, and the continued risks if the Parties proceeded to class certification,
 20 dispositive motions, and trial, the Settlement provides an immediate and substantial cash benefit to
 21 Settlement Class Members, represents a favorable resolution of this Action, and eliminates the risk
 22 that the Settlement Class might otherwise recover nothing.

23
 24
 25 _____
 26 ⁶ “[I]n the context of settlement, the other requirements of Rule 23(b)(3) such as ‘the desirability or
 27 undesirability of concentrating the litigation of the claims in the particular forum’ and ‘the likely
 28 difficulties in managing a class action[.]’ see Fed. R. Civ. P. 23(b)(3)(C)–(D), ‘are rendered moot
 and are irrelevant.’” *Spann v. JC Penney Corp.*, 314 F.R.D. 312, 323 (C.D. Cal. 2016) (quoting
Barbosa v. Cargill Meat Solutions Corp., 297 F.R.D. 431, 444 (E.D. Cal. 2013); *Amchem Prods.*,
 521 U.S. at 620).

1 **1. The Proposed Settlement is the Product of an Arms-Length, Non-**
 2 **Collusive, Negotiated Resolution**

3 **a. The Proposed Settlement is the Product of a Mediator’s**
 4 **Proposal and is Supported by Experienced Counsel**

5 Courts recognize that the opinion of experienced counsel supporting settlement after
 6 vigorous arm’s-length negotiations is entitled to considerable weight. *See, e.g., Ellis v. Naval Air*
 7 *Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d 939 (9th Cir. 1981) (“the fact
 8 that experienced counsel involved in the case approved the settlement after hard-fought negotiations
 9 is entitled to considerable weight”); *Spann*, 314 F.R.D. at 323-24. Courts also recognize that
 10 agreements based upon a mediator’s proposal demonstrate non-collusive conduct. *See, e.g., Ebarle*,
 11 2016 WL 234364, at *6 (finding that acceptance of a mediator’s proposal following mediation
 12 sessions “strongly suggests the absence of collusion or bad faith”); *Spann*, 314 F.R.D. at 324 (same).

13 Here, the Parties actively and aggressively litigated the Action, and Class Counsel
 14 conducted an extensive investigation into and prosecution of the alleged claims. Class Counsel also
 15 engaged in a rigorous negotiation process with Defense Counsel, and fully considered and evaluated
 16 the fairness of the Settlement to the Settlement Class. The Parties’ settlement negotiations were
 17 protracted and hard-fought and included the determined assistance of an experienced mediator. At
 18 Judge Phillips’ direction, the Parties submitted comprehensive mediation and supplemental
 19 statements. After submitting their statements, counsel for all Parties attended in-person mediations
 20 before Judge Phillips on January 7, 2019, August 28, 2019, and on September 27, 2019. The Parties
 21 gave detailed and thoughtful presentations of their respective cases. And, Judge Phillips gave the
 22 Parties a reasonable assessment of the strengths and weaknesses of their case. It was only after
 23 several months of intense discussions and a mediator’s proposal that the Parties were ultimately able
 24 to reach an agreement, and several more months of further negotiations and the mediator’s
 25 intervention that the Parties were able to agree on the terms of the Settlement.

26 Additionally, throughout the Action and settlement negotiations, Apple has been vigorously
 27 represented by Gibson, Dunn & Crutcher LLP and Covington & Burling LLP, their representation
 28 of Defendant being no less rigorous than Class Counsel’s representation of the Settlement Class.
 Because the Settlement is the product of serious, informed, and non-collusive negotiations among

1 experienced counsel and the product of a mediator’s proposal, it deserves preliminary approval. *See*
2 *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09–00261 SBA (EMC), 2012 WL 5878390, at *6
3 (N.D. Cal. Nov. 21, 2012) (noting that private mediation “tends to support the conclusion that the
4 settlement process was not collusive”).

5 **b. The Stage of the Proceedings and the Discovery Completed**
6 **Support the Settlement**

7 In a class action setting, courts also look for indications that the parties carefully
8 investigated the claims before reaching a resolution, including propounding and reviewing discovery.
9 *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB
10 (JSC), 2016 WL 6248426, at *14 (N.D. Cal. Oct. 25, 2016) (“extensive review of discovery materials
11 indicates [Plaintiffs have] sufficient information to make an informed decision about the Settlement.
12 As such, this factor favors approving the Settlement.”); *see also In re Portal Software Sec. Litig.*,
13 No. C-03-5138 VRW, 2007 WL 4171201, at *4 (N.D. Cal. Nov. 26, 2007).

14 As discussed above, Class Counsel (or their agents) engaged in extensive investigation,
15 research, and analysis of the Settlement Class’s claims, resulting in the Court upholding in part the
16 CAC and 2CAC. Named Plaintiffs thereafter aggressively pursued discovery from Apple through
17 multiple requests for production of documents and interrogatories, intensive meet and confers, and
18 discovery motion practice before Judge Westerfield and this Court. Apple produced over seven
19 million pages of fact-related material for review. Named Plaintiffs also took the depositions of 10
20 Apple witnesses, the presumptive limit under Rule 30(a). The witnesses included software and
21 hardware engineers who had detailed knowledge of the relevant issues. In addition, Named Plaintiffs
22 subpoenaed documents from several non-parties, such as cell phone carriers, engaged in multiple
23 discussions concerning the subpoenas with both the non-parties as well as with Apple, and obtained
24 documents in connection with the subpoenas. This discovery allowed Named Plaintiffs to adequately
25 evaluate the merits of their claims.

26 Moreover, as set forth above, the Parties engaged in no less than three in-person mediations
27 and received a reasonable assessment of the strengths and weaknesses of their case and a mediator’s
28

1 proposal. Considering this, the litigants had sufficient bases to make informed decisions about the
2 relative merits of the case and the fairness of the Settlement.

3 **2. The Procedural Guidance for Class Action Settlements Factors are**
4 **Satisfied**

5 On November 1, 2018, the Northern District of California adopted the Guidance, which is
6 applicable to this Action. We set forth below, in the order of the Guidance for the Court's
7 convenience, a discussion of how the Guidance applies to the proposed Settlement.

8 **a. Guidance 1: Differences, Range, and Plan of Allocation**

9 **i. Guidance 1a.-d.: Differences in the Proposed Settlement**
10 **Class and the Class Proposed in the 2CAC**

11 Section 1 of the Guidance requires a discussion as to any differences between the Settlement
12 Class and that proposed in the operative complaint, as well as any differences between the claims to
13 be released and the claims to be certified for class treatment. Courts have routinely approved such
14 changes between the proposed settlement class definition and that proposed in the complaint, or
15 changes between the claims to be released in the settlement and claims to be certified for class
16 treatment. *See, e.g., In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2012 WL 2598819, at *1
17 (N.D. Cal. July 5, 2012) (different settlement class definition than that in the Consolidated Class
18 Action Complaint, filed Sep. 12, 2011 [Dkt. 61]).⁷

19 Here, the proposed Settlement Class is different from that proposed in the 2CAC.
20 Specifically, while the 2CAC included non-U.S. owners, the proposed Settlement Class is defined
21 as to only include former or current U.S. owners of the relevant Apple devices, and does not include
22 non-U.S. owners. But importantly, the non-U.S. owners will NOT release any class claims in this
23

24 ⁷ *See also, e.g., Schneider v. Chipotle Mexican Grill, Inc.*, No. 16-cv-02200-HSG, 2020 WL 511953,
25 at *5-6 (N.D. Cal. Jan. 31, 2020) (approving modified settlement class definition from classes
26 certified); *Spann*, 314 F.R.D. at 318-25 (same); *In re Chrysler-Dodge-Jeep Ecodiesel Mktng, Sales*
27 *Practices, and Prods. Liab. Litig.*, No. 17-md-02777-EMC, 2019 WL 536661, at *3-7 (N.D. Cal.
28 Feb. 11, 2019) (approving settlement class definition that was different from complaint); *Peel v.*
Brooksamerica Mortg. Corp., No. SACV 11-00079-JLS (RNBx), 2014 WL 12589317, at *3-4 (C.D.
Cal. Nov. 13, 2014) (approving modified settlement class definition from classes certified);
Cohorst v. BRE Properties, Inc., No. 3:10-cv-2666-JM-BGS, 2011 WL 13356361, at *2 (S.D. Cal.
May 6, 2011) (approving settlement class definition that was different from complaint).

1 Settlement.⁸ Stip. § 1.32.

2 The reason for this difference in the scope of the class in the 2CAC and the proposed
3 Settlement Class is the substantial uncertainty as to the propriety of a worldwide class. To Named
4 Plaintiffs' knowledge, a court has not certified a worldwide class in any U.S. litigation. And, as
5 Apple argued, among other things, Named Plaintiffs are not entitled to pursue claims on behalf of
6 non-U.S. claimants, that California law does not apply nationwide (or beyond U.S. borders), and that
7 Named Plaintiffs and the putative class are not entitled to any relief. Indeed, in multiple motions,
8 Defendant argued that the claims brought by Non-U.S. Plaintiffs should be dismissed for lack of
9 jurisdiction, contending that the contracts at issue require that the law of the country of purchase
10 govern, that California and federal law do not apply extraterritorially, and that "fundamental policy
11 interests" and choice-of-law principles require dismissal.⁹

12 Specifically, Defendant has argued that the laws of the various countries should apply
13 because each country has "fundamental policy interests" that are different from California's interests
14 and that the laws of the foreign country should apply. *See* Dkt. 176 at 7-13; Dkt. 236-1 at 13-20;
15 Dkt. 272 at 34-35. Citing to a number of scholars' declarations, Apple contends that there are a
16 number of substantive and procedural differences between the laws of the foreign countries and that
17 of California's, and that the foreign jurisdictions have an interest in applying their laws to the alleged
18 injuries that occurred within their borders. *See id.*

19 The Court took notice of Apple's arguments. In its April 22, 2019 Order Granting Motion
20 for Reconsideration; Granting in Part and Denying in Part Motion to Dismiss (Dkt. 315), the Court
21 denied the motion to dismiss on conflict-of-laws grounds without prejudice, finding that it was
22 "premature to conduct a detailed choice-of-law analysis at this stage of the litigation. Courts have
23 declined to conduct such an analysis at the motion to dismiss stage where further development of the
24 record is necessary to property decide the choice-of-law question." *In re Apple Inc.*, 386 F. Supp.

25 ⁸ With the exception that Non-U.S. Named Plaintiffs will release their claims to receive a Service
26 Award.

27 ⁹ *See* Def. Apple Inc.'s Not. of Mot. and Mot. to Dismiss Pls' 2d Consol. Am. Compl, filed Jan. 24,
28 2019 [Dkt. 272]; Def. Apple Inc.'s Mot. for Reconsideration or, in the Alt., for Cert. of Interlocutory
Appeal, filed Nov. 15, 2018 [Dkt. 236-1]; Def. Apple Inc.'s Not. of Mot. and Mot. to Dismiss Pls'
Consol. Am. Compl., filed Aug. 9, 2018 [Dkt. 176].

1 3d at 1170 (citation omitted). However, the Court pointed out that the declarations submitted by
2 Apple “appear to show a conflict with fundamental policies of a foreign jurisdiction.” *Id.* Indeed,
3 the Court noted the conflicts such as “(1) whether foreign countries would enforce a choice-of-law
4 provision that points to the law of a country with less robust consumer protection laws, (2) whether
5 foreign countries use the preponderance of the evidence standard, and (3) whether foreign countries
6 recognize punitive damages.” *Id.* And although the Court denied the motion to dismiss, the Court
7 determined and “reiterated its earlier conclusion that the practical and constitutional ‘concerns that
8 Apple raises are substantially and potentially well-founded.’” *Id.*

9 As the Court itself foreshadowed, whether Named Plaintiffs would have succeeded in
10 obtaining class certification or surviving a motion for summary judgment as to the Non-U.S.
11 Plaintiffs and for the countries they seek to represent is questionable at best. *Id.* Thus, the proposed
12 Settlement Class agreed to by the Parties does not include non-U.S. residents. While the non-U.S.
13 *Named Plaintiffs* will be releasing their individual claims, no other claims will be released on behalf
14 of non-U.S. residents, and they will be free to pursue their own claims outside the Settlement if they
15 wish to do so.

16 **ii. Guidance 1e.: The Proposed Settlement Provides a**
17 **Favorable Recovery and Falls Within a Range of**
18 **Possible Approval**

19 The Guidance also requires an analysis of the anticipated class recovery under the
20 Settlement and the potential class recovery if Named Plaintiffs fully prevailed on their claims, and
21 an explanation as to the differences. Here, the non-reversionary Minimum Class Settlement Amount
22 of \$310 million (and Maximum Class Settlement Amount of \$500 million) is substantial by any
23 measure, and certainly falls within a range of possible approval. Based on a damage analysis by
24 Named Plaintiffs’ consultant, had Named Plaintiffs fully prevailed on every one of their remaining
25 claims, Named Plaintiffs anticipate that damages would have amounted to between \$18 and \$46 per
26 iPhone. As such, a \$25 per iPhone recovery is considerable by any degree, amounting to about a
27 54% recovery per iPhone.

28 However, there is the real and substantial risk that Named Plaintiffs would not be able to
obtain any recovery at all. Because class certification had not been briefed, and no dispositive

1 motions had been made, there is the possibility that the Court may ultimately determine that either
2 class certification is unwarranted or find for Defendant at summary judgment. For example, Apple
3 has argued throughout the litigation that even if a plaintiff downloaded iOS 10.2.1 software on his
4 or her iPhone, it does not automatically follow that that individual experienced any problems
5 whatsoever. That is because, according to Apple, whether a particular iPhone user was damaged
6 depended upon how that person used the iPhone. And given the above arguments concerning, among
7 other things, the viability of a worldwide class, although Named Plaintiffs firmly believe that their
8 liability case is strong and that class certification is warranted, it is uncertain whether the Court would
9 ultimately grant certification of a litigation class, deny Defendant's motion for summary judgment,
10 or make a finding that Named Plaintiffs are entitled to any damages. *See Vizcaino v. U.S. Dist. Ct.*
11 *for W.D. Wash.*, 173 F.3d 713, 721 (9th Cir. 1999). Even if Named Plaintiffs were able to obtain
12 class certification for trial and could successfully oppose any motion for summary judgment, and
13 even if Named Plaintiffs could have successfully proven liability at trial, Named Plaintiffs could still
14 recover nothing because the fact and amount of damages that could be recovered in this case are still
15 uncertain. *Accord Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 986 (9th Cir. 2015).

16 Compared with cases where courts have preliminarily approved settlements with amounts
17 lower than potential damages, the Class Settlement Amounts here constitute a substantial percentage
18 of recoverable damages in this Action. *See, e.g., Linney v. Cellular Alaska P'ship*, 151 F.3d 1234,
19 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the
20 potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate
21 and should be disapproved.") (citation omitted); *Schaffer v. Litton Loan Serv., LP.*, No. CV 05-07673
22 MMM (JCx), 2012 WL 10274679, at *11 (C.D. Cal. Nov. 13, 2012) ("Estimates of a fair settlement
23 figure are tempered by factors such as losing at trial, the expense of litigating the case, and the
24 expected delay in recovery (often measured in years)."); *Roe v. Frito-Lay, Inc.*, No. 14-cv-00751-
25 HSG, 2016 WL 4154850, at *7 (N.D. Cal. Aug. 5, 2016) (noting that "the risks and costs associated
26 with class litigation weigh strongly in favor of settlement" where "Plaintiff would [have been]
27 required to successfully move for class certification under Rule 23, survive summary judgment, and
28 receive a favorable verdict capable of withstanding a potential appeal").

1 Given the anticipated disputes that would inevitably lie ahead, including class certification
 2 and summary judgment and given Defendant's vigorous arguments as to the merits, it is not an
 3 overstatement to say that Named Plaintiffs faced significant risk. And, even if Named Plaintiffs
 4 successfully proved their case at trial, the amount of recovery, if any, could vary widely depending
 5 on other factors, including the Court's discretion. Importantly, even if anything were recovered, it
 6 would take years to secure, as Apple would undoubtedly appeal any adverse judgment. In
 7 comparison, the Settlement provides a guaranteed, fixed, immediate, and substantial cash recovery
 8 of at least \$310 million.

9 **iii. Guidance 1f.-g.: The Plan to Allocate Should Be**
 10 **Preliminarily Approved**

11 Section 1 further requires Named Plaintiffs to detail their proposed allocation plan, an
 12 expectation as to the number of claims to be made, and whether there is any reversion of the Class
 13 Settlement Amounts. Here, only U.S. owners will be provided relief of at least the \$310 million non-
 14 reversionary Minimum Class Settlement Amount.¹⁰ And, claims will be computed using the method
 15 described in the Settlement. Stip. §§ 5.1-5.3; *see also id.*, Ex. A (Claim Form).

16 Settlement Class Members who make a claim will receive cash, the actual amount received
 17 depending on the amount of any Attorneys' Fees and Expenses, Named Plaintiff Service Awards,
 18 notice and administration expenses, and the number of Approved Claims. Each Settlement Class
 19 Member is eligible to obtain \$25 per iPhone. *Id.* § 5.1. The actual amount may increase or decrease,
 20 depending on whether the aggregate value of Approved Claims, minus various deductions, reaches
 21 the Minimum Class Settlement Amount of \$310 million or the Maximum Class Settlement Amount
 22 of \$500 million. If the aggregate cash payment does not reach the non-reversionary Minimum Class
 23 Settlement Amount, the Residual will be allocated according to the provisions of the Settlement,
 24 including giving pro rata increases of up to \$500 per Approved Claim. *Id.* §§ 5.3.1-5.3.2. If the
 25 aggregate cash payment to Settlement Class Members exceeds the \$500 Maximum Class Settlement
 26 Amount, the actual cash payment for each iPhone identified in the Approved Claims will be reduced

27 _____
 28 ¹⁰ Except Non-U.S. Named Plaintiffs, whose claims will be released in the Settlement, other non-
 U.S. owners may seek relief separately.

1 pro rata to ensure that the aggregate cash payment does not exceed \$500 million. *Id.* § 5.2. In the
2 unlikely event that the total amount calculated does not reach the Minimum Class Settlement Amount
3 following any pro rata adjustments up to \$500 per Device, the Parties would confer on the
4 distribution of the remaining amount. *Id.* § 5.3.3. In no event would any of the Residual revert to
5 Apple. The Plan has a reasonable and rational basis for distribution and provides a cash payment to
6 any Settlement Class Member who purchased an iPhone.

7 Courts have approved similar settlement terms and allocation plans in class actions alleging
8 consumer deception. For instance, this Court has approved a settlement with terms similar to those
9 the Parties are entering into here. In *In re Haier*, the plaintiffs there alleged that the defendant's
10 product allegedly had a defect and asserted claims under, among others, the state consumer protection
11 acts. *Id.*, 2013 WL 2237890, at *1. This Court approved the proposed allocation plan whereby the
12 defendant guaranteed a minimum settlement amount but would contribute up to a maximum
13 settlement amount, basing actual payments "on the number and amount of authorized claims
14 submitted." *Id.* at *2. The defendant further agreed to pay for the costs and expenses for notice and
15 for settlement administration, and for reasonable attorneys' fees and expenses. *Id.*

16 Similarly, in *Beck-Ellman v. Kaz USA, Inc.*, No. 3:10-CV-02134-H-DHB, 2013 WL
17 1748729, at *3 (S.D. Cal. Jan. 7, 2013), the court approved a settlement in which the plaintiffs
18 brought claims under California's consumer protection acts for misleading product information. The
19 defendants there, in addition to injunctive relief, guaranteed a minimum settlement amount for class
20 members who submitted valid and timely claims, up to a maximum settlement amount. *Id.* at *2-3.
21 The defendants also agreed to pay the costs of providing notice and for the administration of the
22 settlement, separate and apart from the settlement amount. *Id.* at *3.

23 Other cases where courts have approved similar minimum and maximum settlement amount
24 terms as in this Action include *Lewis v. Green Dot Corporation*, No. CV 16-3557 FMO (AGR_x),
25 2017 WL 4785978 (C.D. Cal. June 12, 2017), *McNeal v. RCM Technologies USA Inc.*, No. 2:16-cv-
26 05170-ODW(SS_x), 2017 WL 1807595 (C.D. Cal. Mar. 16, 2017), *Lemus v. H & R Block Enterprises*
27 *LLC.*, No. C 09-3179 SI, 2012 WL 3638550 (N.D. Cal. Aug. 22, 2012), and *In re TD Ameritrade*
28 *Account Holder Litigation*, No. C 07-2852 SBA, 2011 WL 4079226 (N.D. Cal. Sept. 13, 2011).

1 Concerning claims rates, a recent study by the Federal Trade Commission, based on data
 2 from 124 consumer class actions gathered from claims administrators, calculated the weighted mean
 3 claims rate between 4%-5%.¹¹ Here, Class Counsel expect the claims rate to be at the high end of
 4 the range, or greater, taking into consideration not only Defendant's brand recognition, but also the
 5 fact that the Settlement Administrator will be providing direct notice to Settlement Class Members,
 6 as well as the substantial media coverage of the issues in the case.

7 **b. Guidance 2: The Proposed Settlement Administrator**

8 In connection with preliminary approval, the Parties request that the Court authorize the
 9 retention of Angeion Group ("Angeion") as Settlement Administrator for the Settlement. Stip.
 10 § 1.29. Angeion—which is currently serving as administrator in two of Class Counsel's class action
 11 settlements¹²—is a nationally recognized notice and claims administration firm and has extensive
 12 experience in class actions and on notice issues. Based on information obtained from Defendant,
 13 Angeion was selected over two other administrators that submitted bids.

14 Based on information provided by Apple, it will cost up to \$12.75 million for Angeion to
 15 fully administer the Settlement in this Action. Pursuant to the Settlement, Apple will pay the
 16 reasonable costs and expenses of notice and administration. *Id.* § 6.1. Angeion's costs and expenses
 17 will not affect the amount to be paid to Settlement Class Members in the Settlement unless the
 18 Minimum Class Settlement Amount is not reached, whereupon Angeion's costs and expenses may
 19 come from the Minimum Class Settlement Amount. *Id.* § 5.3.1.

20 **c. Guidance 3: The Proposed Notices to the Settlement Class are Adequate**

21 Under Rule 23(c)(2)(B), settlement notice must be "the best notice that is practicable under
 22 the circumstances, including individual notice to all members who can be identified through
 23 _____"

24 ¹¹ See Federal Trade Commission, CONSUMERS AND CLASS ACTIONS: A RETROSPECTIVE AND
 25 ANALYSIS OF SETTLEMENT CAMPAIGNS (Sept. 2019) at p. 21. Accessible at
 26 [https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-
 analysis-settlement-campaigns/class_action_fairness_report_0.pdf](https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf) (last reviewed Feb. 9, 2020).

27 ¹² Kaplan Fox & Kilsheimer LLP recently retained Angeion as claims administrator in connection
 28 with the settlement that was preliminarily approved by the court in *Schneider*, 2020 WL 511953.
 Cotchett, Pitre & McCarthy, LLP had retained Angeion as claims administrator in connection with
 the settlement approved by the court in *In re: Lenovo Adware Litig.*, No. 15-md-02624-HSG, 2018
 WL 6099948 (N.D. Cal. Nov. 21, 2018).

1 reasonable effort.” *See also* Rule 23(e)(1) (“The court must direct notice in a reasonable manner to
2 all class members who would be bound by the propos[ed settlement].”). Notice “must generally
3 describe[] the terms of the settlement in sufficient detail to alert those with adverse viewpoints to
4 investigate and to come forward and be heard.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir.
5 2012) (citation omitted).

6 The proposed direct notice procedure and the information to be posted on a Settlement
7 Website meet the requirements under Rules 23(c)(2)(B) and 23(e)(1). Specifically, Apple will
8 provide the Settlement Administrator with the email address of record on the Apple ID account of
9 the members of the Settlement Class, as well as names, mailing addresses, and relevant iPhone serial
10 numbers. Stip. § 6.2.2. Emails of the Summary Notice will be sent by the Settlement Administrator
11 to those whose email addresses are valid; otherwise, the Settlement Administrator will mail a copy
12 of the Summary Notice to that Settlement Class Member. *Id.*; *see also id.*, Ex. C. A copy of the
13 Class Notice, together with the Claim Form and various Court orders and other filings, will be posted
14 and available for download on the Settlement Website. *Id.* § 6.2.1. Finally, the Parties may jointly
15 agree to provide additional notice with approval from the Court. *Id.* § 6.2.5.

16 Rule 23(h)(1) requires that “[n]otice of the motion [for attorneys’ fees] must be served on
17 all parties and, for motions by class counsel, directed to class members in a reasonable manner.” The
18 proposed Class Notice satisfies the requirements of Rule 23(h)(1), as it notifies Settlement Class
19 Members that Class Counsel will apply to the Court for attorneys’ fees and costs as a percentage of
20 the Minimum Class Settlement Amount and its impact on Settlement Class Members, if any. *See*
21 Stip., Ex. B. The proposed Class Notice further describes the proposed Settlement and sets forth,
22 among other things: (1) the nature, history, and status of the litigation; (2) the definition of the
23 Settlement Class and who is excluded from the Settlement Class; (3) the reasons the Parties propose
24 the Settlement; (4) the Minimum and Maximum Class Settlement Amounts; (5) the estimated
25 reimbursement per individual; (6) the Settlement Class’s claims and issues; (7) the Parties’
26 disagreement over damages and liability; (8) the amount of Service Awards for Named Plaintiffs;
27 (9) the plan for allocating the Settlement proceeds to the Settlement Class; and (10) the date, time,
28 and place of the Final Hearing. *See id.*

1 The notice program proposed in connection with the Settlement and the form and content
 2 of the Class Notice and Claim Form, therefore, satisfy the requirements of Rule 23. *Accord eBay*,
 3 309 F.R.D. at 604-5. Courts routinely find that comparable notice procedures meet the requirements
 4 of due process and Rule 23. *See id.*; *see Williamson v. McAfee, Inc.*, No. 5:14-cv-00158-EJD, 2016
 5 WL 4524307, at *7-8 (N.D. Cal. Aug. 30, 2016); *Russell v. Kohl's Dept. Stores, Inc.*, No. ED CV
 6 15-1143 RGK (SPx), 2016 WL 6694958, at *5 (C.D. Cal. Apr. 11, 2016). Accordingly, in granting
 7 preliminary approval of the Settlement, Named Plaintiffs similarly request that the Court approve
 8 the proposed form and method of giving notice to the Settlement Class.

9 **d. Guidance 4 and 5: Opt-Outs and Objections**

10 The proposed Class Notice complies with Rule 23(e)(5) in that it discusses the rights
 11 Settlement Class Members have concerning the Settlement. The proposed Class Notice includes
 12 information on a Settlement Class Member's right to: (1) request exclusion and the manner for
 13 submitting such a request; (2) object to the Settlement, or any aspect thereof, and the manner for
 14 filing and serving an objection; and (3) participate in the Settlement and instructions on how to
 15 complete and submit a Claim Form to the Settlement Administrator. *See Stip.*, Ex. B. The Notice
 16 also provides contact information for Class Counsel, as well as the postal address for the Court. *Id.*

17 **e. Guidance 6: The Intended Attorneys' Fees and Expenses**
 18 **Request**

19 As set forth in the proposed Notice, Class Counsel anticipate seeking attorneys' fees up to
 20 30% of the Minimum Class Settlement Amount, or \$93 million, plus out-of-pocket expenses of up
 21 to \$1.5 million.

22 As of January 31, 2020, Class Counsel and committee members have devoted
 23 approximately 56,533 hours to litigating this Action, for a lodestar of \$29,465,005. *See Joint Decl.*

24 ¶ 8.¹³ Class Counsel's request for a fee up to 30% of the Minimum Class Settlement Amount thus

25 _____
 26 ¹³ These hour and lodestar figures include the time spent by all Court-appointed counsel in the MDL
 27 from the date of appointment through November 30, 2019, the latest quarterly reporting period.
 28 These figures do not include time spent since December 1, 2019, certain pre-appointment time
 deemed compensable by the Court's July 3, 2018 Case Management Order No. 3 [Dkt. 148], or time
 spent by counsel in the JCCP Action. Similarly, the expenses do not include those advanced by
 JCCP Counsel. Class Counsel will provide this information in their reply brief.

1 represents a multiplier of 3.16 on their current lodestar. *See Vizcaino v. Microsoft Corp.*, 290 F.3d
 2 1043, 1051 n.6 (9th Cir. 2002) (noting multipliers of between 1.0 and 4.0 are “frequently awarded”);
 3 *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 WL 163293, at *5 (S.D.
 4 Cal. Jan. 14, 2013) (“Under the percentage method, California has recognized that most fee awards
 5 based on either a lodestar or percentage calculation are 33 percent.”) (citing *In re Consumer Privacy*
 6 *Cases*, 175 Cal. App. 4th 545, 556 n. 13 (2009)). The Court has been provided quarterly reports with
 7 precise information about the hours and lodestar for Class Counsel and committee members, which
 8 Class Counsel and others carefully reviewed prior to their submission. And Class Counsel will
 9 continue to submit quarterly reports with such information to the Court. Prior to submission of Class
 10 Counsel’s request for an award for Attorneys’ Fees and Costs, Class Counsel will disclose their
 11 lodestar and the amount of fees they intend to seek to Apple, which Apple reserves the right to object
 12 and oppose. Stip. §§ 8.1-8.2.

13 Class Counsel will also seek reimbursement for expenses that are necessarily incurred in
 14 litigation and routinely charged to clients billed by the hour. These expenses include, among others,
 15 court fees, service of process, consultant fees, mediation costs, online legal and factual research,
 16 travel costs, reproduction costs, database expenses, and messenger, courier, and overnight mail
 17 expenses. These expenses were critical to Class Counsel’s success in achieving this Settlement.

18 **f. Guidance 7: The Proposed Settlement and Proposed Service**
 19 **Awards Do Not Unjustly Favor Any Class Members, Including**
 20 **Named Plaintiffs**

21 Class Counsel intends to seek a Service Award of \$1,500 for each Named Plaintiff who was
 22 not subjected to deposition and \$3,500 for the nine Named Plaintiffs who were deposed in the Action.
 23 Stip. § 8.4. The Service Awards do not unjustly favor any Settlement Class Members.

24 In evaluating whether the Settlement grants preferential treatment to Named Plaintiffs, the
 25 Court may consider whether there is a “significant disparity between the incentive award[] and the
 26 payments to the rest of the class members” such that it creates a conflict of interest. *Radcliffe v.*
 27 *Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013). Important considerations are
 28 “the number of class representatives, the average incentive award amount, and the proportion of the
 total settlement that is spent on incentive awards.” *In re Online DVD-Rental Antitrust Litig.*, 779

1 F.3d 934, 947 (9th Cir. 2015) (quoting *Staton*, 327 F.3d at 977). A court may also consider “the
2 actions the plaintiff has taken to protect the interests of the class, the degree to which the class has
3 benefitted from those actions, [and] the amount of time and effort the plaintiff expended in pursuing
4 the litigation.” *Staton*, 327 F.3d at 977; *In re Magsafe Apple Power Litig.*, No. 5:09-CV-01911-EJD,
5 2015 WL 428105, at *15 (N.D. Cal. Jan. 30, 2015). Finally, the Court must evaluate whether a
6 conflict exists due to the incentive award being conditioned on the class representative’s approval
7 and support of the Settlement. *Radcliffe*, 715 F.3d at 1161.

8 The Service Awards requested here for most of the Named Plaintiffs are below the accepted
9 range. “Incentive awards typically range from \$2,000 to \$10,000.” *Bellinghausen v. Tractor Supply*
10 *Co.*, 306 F.R.D. 245, 267 (N.D. Cal. 2015) (collecting cases). Courts in the Northern District of
11 California have found that a \$5,000 incentive award is presumptively reasonable. *In re LinkedIn*
12 *User Privacy Litig.*, 309 F.R.D. 573, 592 (N.D. Cal. 2015); *Rosado v. Ebay Inc.*, No. 5:12-cv-04005-
13 EJD, 2016 WL 3401987, at *9 (N.D. Cal. June 21, 2016). And, because the Settlement is not
14 conditioned on the Court’s approval of the full (or any) amount of a Service Award, the Settlement
15 does not grant preferential treatment to Named Plaintiffs. *Stip.* § 8.6.

16 While the amount requested per Named Plaintiff represents several times more than the
17 estimated monetary benefit per Settlement Class Member, this does not rise to the level of unduly
18 preferential treatment. Courts have approved similar or greater disparities between incentive awards
19 and individual class member payments. *See LinkedIn*, 309 F.R.D. at 582 (approving a \$5,000
20 incentive award where class members would receive approximately \$14.81); *Cox v. Clarus Mktg.*
21 *Group, LLC*, 291 F.R.D. 473, 483 (S.D. Cal. 2013) (approving a \$5,000 incentive award where class
22 members would receive a maximum payment of \$36); *Fulford v. Logitech, Inc.*, No. 08-cv-02041
23 MMC, 2010 WL 807448, at *3 n.1 (N.D. Cal. Mar. 5, 2010) (collecting cases awarding incentive
24 award payments ranging from \$5,000 to \$40,000).

25 More importantly, Named Plaintiffs seek, at most, only \$216,000 (0.0007%) of the
26 \$310 million Minimum Class Settlement Amount. This amount is reasonable considering how
27 minuscule the award is in relation to the full amount of the Settlement Fund. *See Online DVD-*
28 *Rental*, 779 F.3d at 947-948 (approving incentive awards that were roughly 417 times larger than

1 \$12 individual awards because the awards were reasonable, the number of representatives were
2 relatively small, and the total amount of incentive awards “ma[d]e up a mere 0.17% of the total
3 settlement fund”); *cf. Staton*, 327 F.3d at 976-77 (reversing approval of incentive awards that
4 averaged \$30,000 each for 29 class representatives, totaling \$890,000, or roughly 6% of a potential
5 \$14.8 million settlement). Thus, the Settlement does not improperly grant preferential treatment to
6 Named Plaintiffs or segments of the Settlement Class. *In re Portal Software, Inc. Sec. Litig.*, No. C-
7 03-5138 VRW, 2007 WL 1991529, at *6 (N.D. Cal. June 30, 2007).

8 The amount requested is also appropriate given the time and risk of Named Plaintiffs’
9 participation in this Action. Named Plaintiffs spent more two years prosecuting this Action, and
10 have spent many hours reviewing pleadings, responding to hundreds of discovery requests,
11 reviewing and producing documents, and, for some, preparing for, traveling from out of state to, and
12 sitting for all-day depositions in Palo Alto, California. These factors further support and justify the
13 amount requested. *See, e.g., Eddings v. Health Net, Inc.*, No. CV 10-1744-JST (RZX), 2013 WL
14 3013867, at *7 (C.D. Cal. June 13, 2013) (approving \$6,000 service award from \$600,000 settlement
15 to compensate the named plaintiff for her time, effort and risk in prosecuting the action).

16 Named Plaintiffs’ interests do not conflict with or diverge from the interests of the
17 Settlement Class. *Radcliffe*, 715 F.3d at 1161. Accordingly, the Court should preliminarily approve
18 the request for Service Awards.

19 **g. Guidance 8: Cy Pres Awardees**

20 The Parties will confer on the distribution of any remaining amount in the unlikely event
21 the Minimum Class Settlement Amount is not reached, even at payments of \$500 per device. Stip.
22 § 5.3.3. Based on the manner in which payments will be made, including potentially a pro rata
23 increase of payments for each Approved Claim up to \$500, the Parties do not anticipate any Residual
24 funds remaining in the otherwise non-reversionary Minimum Class Settlement Amount.
25 Nonetheless, if the total amount calculated does not reach the Minimum Class Settlement Amount
26 following the pro rata adjustment, the Parties will confer further, “with resolution subject to Court
27 approval.” *Id.* However, none of any Residual would revert to Apple under any circumstances.
28

1 **h. Guidance 9: Proposed Timeline**

2 In connection with preliminary approval of the Settlement, the Court must also set dates for
3 certain events. The Parties suggest a schedule based on the following intervals:

4 Event	Proposed Time for Compliance
5 Deadline for Apple to provide names, emails, addresses, mailing addresses, and serial numbers to Settlement Administrator.	Not later than thirty (30) days following entry of the Preliminary Approval Order (<i>see</i> Preliminary Approval Order, ¶ 6).
6 Deadline for Settlement Administrator to complete email and/or postcard notice (the "Notice Date").	Not later than seventy-five (75) days of receipt of information from Apple (<i>see</i> Preliminary Approval Order, ¶ 7).
8 Deadline for Class Members to submit Proof of Claim and Release Forms.	Postmarked or submitted no later than forty-five (45) days from the Notice Date (<i>see</i> Preliminary Approval Order, ¶ 10).
9 Deadline for objectors to either deliver written objections by hand or postmarked/sent by First Class Mail.	Postmarked or submitted no later than forty-five (45) days from the Notice Date (<i>see</i> Preliminary Approval Order, ¶ 11).
10 Deadline for Class Members to submit a Request for Exclusion, if desired.	Postmarked or submitted no later than forty-five (45) days from the Notice Date (<i>see</i> Preliminary Approval Order, ¶ 12).
11 Deadline to submit opening briefs and supporting documents in favor of Final Approval of Settlement.	Not later than sixty-five (65) days before the Final Hearing (<i>see</i> Preliminary Approval Order, ¶ 15)
12 Deadline to submit opening briefs and supporting documents for motion for attorneys' fees and incentive awards.	Not later than sixty-five (65) days before the Final Hearing (<i>see</i> Preliminary Approval Order, ¶ 15)
13 Final Hearing	The Court's discretion (<i>see</i> Preliminary Approval Order, ¶ 13).

14 **i. Guidance 10: Class Action Fairness Act**

15 Pursuant to Section 10 of the Guidance, and as required by the Class Action Fairness Act,
16 28 U.S.C. § 1711, *et seq.*, notice will be borne and provided for by Apple upon the filing of this
17 motion. Stip. § 7.3.

18 **j. Guidance 11: Past Distributions**

19 Pursuant to Section 11 of the Guidance, Class Counsel submits that the settlements in *In re:*
20 *Pre-Filled Propane Tank Marketing and Sales Practices Litigation*, No. 4:09-md-02086-GAF (W.D.
21 Mo.), and *In re: Vizio, Inc., Consumer Privacy Litigation*, No. 8:16-ml-02693-JLS-KES (C.D. Cal.),
22 provide useful comparisons to this Settlement.
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	<i>In re: Pre-Filled Propane Tank Mktg and Sales Practices Litig.</i> No. 4:09-md-02086-GAF (W.D. Mo.)	<i>In re: Vizio, Inc., Consumer Privacy Litig.</i> No. 8:16-ml-02693-JLS-KES (C.D. Cal.)
Settlement Fund	\$15 million (min) - \$35 million (max); injunctive relief	\$17 million
Number of Class Members	Unknown	16 million devices
Number of Class Members Notice Was Sent	234,282 (via direct mail notice)	7,828,308 via direct email notice; 5 million via direct notice on Vizio Smart TVs
Methods of Notice	Direct mail notice; summary notice publication; circulation on product; press release; website; toll-free information line	Direct display on TVs; email notice; digital media campaign; nationwide press release; settlement website
Claim Forms Submitted (Number and %)	11,175+ (4+%) (timely submissions were also submitted after final approval)	511,562 (3.2%)
Avg. Recovery	Unknown; \$7.50/product, up to \$150 maximum	\$18/device
Amounts Distributed to Class Members	None	To be determined
Administrative Costs	Unknown (paid by defendants, separate and apart from settlement fund)	\$200,000 estimated total, \$122,823 incurred as of Dec. 2019
Attorneys' Fees and Costs	\$9.45 million (separate and apart from settlement fund)	\$5,610,000 and \$181,808.59

As noted above, given Defendant's name recognition and the manners of notice in which Settlement Class Members will be informed of this Settlement, Class Counsel expects a higher claims rate than those in *In re Pre-Filled Propane* and *In re Vizio*.

VI. CONCLUSION

For the reasons discussed herein, Named Plaintiffs respectfully request the Court certify a Class for settlement purposes, preliminarily approve the proposed Settlement, approve Notice and the selection of the Settlement Administrator, and set a hearing for final approval.

Respectfully submitted,

KAPLAN FOX & KILSHEIMER LLP

DATED: February 28, 2020

s/ Laurence D. King
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COTCHETT, PITRE & MCCARTHY, LLP

DATED: February 28, 2020

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Interim Co-Lead Counsel for Plaintiffs

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Laurence D. King, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of February 2020, at Oakland, California.

/s/ Laurence D. King

Laurence D. King

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE: APPLE INC. DEVICE
PERFORMANCE LITIGATION,

CASE NO. 5:18-md-02827-EJD

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

**[PROPOSED] ORDER CERTIFYING
SETTLEMENT CLASS; GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; AND
APPROVING FORM AND CONTENT OF
CLASS NOTICE**

1 **WHEREAS**, the Named Plaintiffs and Defendant Apple Inc. entered into a Settlement
2 Agreement (Dkt. ____) on _____, 2020, which, together with the exhibits and appendices
3 thereto, sets forth the terms and conditions for a proposed resolution of this litigation and for its
4 dismissal with prejudice;

5 **WHEREAS**, this Court has reviewed the Settlement entered into by the Parties, all exhibits
6 thereto, the record in this case, and the Parties' arguments;

7 **WHEREAS**, this Court preliminarily finds, for the purpose of settlement only, that the
8 Settlement Class meets all the prerequisites of Federal Rule of Civil Procedure 23 for class certification,
9 including numerosity, commonality, typicality, predominance of common issues, superiority, and that
10 the Named Plaintiffs and Class Counsel are adequate representatives of the Settlement Class;

11 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:**

12 1. All terms and definitions used herein have the same meanings as set forth in the
13 Settlement Agreement.

14 **Preliminary Certification of Settlement Class for Purpose of Settlement Only**

15 2. The Settlement is hereby preliminarily approved as fair, reasonable, and adequate such
16 that notice thereof should be given to members of the Settlement Class. Under Federal Rule of Civil
17 Procedure 23(b)(3), the Settlement Class, as set forth in paragraph 1.32 of the Settlement Agreement
18 and defined as follows, is preliminarily certified for the purpose of settlement only:

19 All former or current U.S. owners of iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus, and
20 SE devices running iOS 10.2.1 or later (for iPhone 6, 6 Plus, 6s, 6s Plus, and SE
21 devices) or iOS 11.2 or later (for iPhone 7 and 7 Plus devices), and who ran these
iOS versions before December 21, 2017.

22 For purposes of this definition, "U.S. owners" shall include all individuals who owned, purchased,
23 leased, or otherwise received an eligible device, and individuals who otherwise used an eligible device
24 for personal, work, or any other purposes. An individual qualifies as a "U.S. owner" if his or her device
25 was shipped to the United States, its territories, and/or its possessions. The Settlement Class shall not
26 include iPhone owners who are domiciled outside of the United States, its territories, and/or its
27 possessions. Additionally, excluded from the Settlement Class are (a) directors, officers, and
28 employees of Apple or its subsidiaries and affiliated companies, as well as Apple's legal

1 representatives, heirs, successors, or assigns, (b) the Court, the Court staff, as well as any appellate
2 court to which this matter is ever assigned and its staff, (c) any of the individuals identified in paragraph
3 1.36 of the Settlement Agreement, as well as their legal representatives, heirs, successors, or assigns,
4 (d) Defense Counsel, as well as their immediate family members, legal representatives, heirs,
5 successors, or assigns, and (e) any other individuals whose claims already have been adjudicated to a
6 final judgment.

7 3. If the Settlement Agreement is not finally approved by this Court, or if such final
8 approval is reversed or materially modified on appeal by any court, this Order (including but not limited
9 to the certification of the class) shall be vacated, null and void, and of no force or effect, and Apple and
10 Plaintiffs shall be entitled to make any arguments for or against certification for litigation purposes.

11 4. Class Counsel and the Named Plaintiffs are appointed as adequate representatives of the
12 Settlement Class. Joseph W. Cotchett (of Cotchett, Pitre & McCarthy, LLP, 840 Malcolm Road, Suite
13 200, Burlingame, California 94010) and Laurence D. King (of Kaplan Fox & Kilsheimer LLP, 1999
14 Harrison Street, Suite 1560, Oakland, California 94612) are hereby appointed as Interim Co-Lead Class
15 Counsel to represent the proposed Settlement Class.

16 **Notice to the Settlement Class**

17 5. The Court approves the Claim Form, Class Notice, and Summary Notice, which are
18 attached to the Settlement Agreement as Exhibits A, B, and C, respectively, and finds that their
19 dissemination substantially in the manner and form set forth in the Settlement Agreement meets the
20 requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice
21 practicable under the circumstances, and is reasonably calculated, under the circumstances, to apprise
22 members of the Settlement Class of the pendency of the Actions, the effect of the proposed Settlement
23 (including the releases contained therein), the anticipated Motion for Attorneys' Fees and/or Expenses
24 and for Service Awards, and their rights to participate in, opt out of, or object to any aspect of the
25 proposed Settlement.

26 6. By _____, 2020 [*thirty (30) days from the entry of this Preliminary*
27 *Approval Order*], Apple shall, for the purpose of facilitating the distribution of the Summary Notice,
28

1 provide the Settlement Administrator with the names, email addresses, mailing addresses, and serial
2 numbers for the members of the Settlement Class.

3 7. By _____, 2020 [*seventy-five (75) days from the date specified in*
4 *paragraph 6 above*], the Settlement Administrator shall complete the distribution of the email and/or
5 postcard notices to the members of the Settlement Class, and establish the Settlement Website which
6 shall contain all documents relating to the settlement, including the Settlement Agreement, the Class
7 Notice, the Summary Notice, the Claim Form, and all motion papers and Court orders relating to
8 preliminary and final approval of the Settlement. The Settlement Administrator shall send the
9 Summary Notice via email to each member of the Settlement Class for whom Apple has a valid email
10 address for the account of record on the Apple ID. The Settlement Administrator shall mail a postcard
11 notice, substantially similar to the Summary Notice, to all members of the Settlement Class for whom
12 Apple does not have a valid email address.

13 **Settlement Administration**

14 8. The Court appoints Angeion Group to serve as the Settlement Administrator. Angeion
15 Group shall supervise and administer the notice procedures, establish and operate the Settlement
16 Website, administer the claims processes, distribute cash payments according to the processes and
17 criteria set forth in the Settlement Agreement, and perform any other duties that are reasonably
18 necessary and/or provided for in the Settlement Agreement.

19 9. All reasonable costs of notice and costs of administering the Settlement shall be paid by
20 Apple or from the Residual, if any, as contemplated by paragraph 5.3.1 of the Settlement Agreement.

21 10. Settlement Class Members who wish to make a Claim must do so by submitting a Claim
22 Form by _____, 2020 [*forty-five (45) days from the date specified in paragraph 7*
23 *above*], in accordance with the instructions contained therein. The Settlement Administrator shall
24 determine the eligibility of Claims submitted and allocate the Settlement Funds in accordance with the
25 Settlement Agreement.

26 11. Settlement Class Members who wish to object to the Settlement must provide: (a) a
27 detailed statement of the Settlement Class Member's specific objections to any matters before the
28 Court; (b) the grounds for such objections and the reason such Settlement Class Member desires to

1 appear and be heard; and (c) proof of membership in the Settlement Class, as well as all other materials
 2 the Settlement Class Member wants the Court to consider. The objections must be sent to the following
 3 addresses, and received by _____, 2020 [forty-five (45) days from the date specified in
 4 paragraph 7 above]:

Court	Class Counsel	Defense Counsel
Clerk of the Court United States District Court Northern District of California San Jose Division 280 South 1st Street San Jose, CA 95113	Laurence D. King, Esq. Kaplan Fox & Kilsheimer LLP 1999 Harrison Street, Suite 1560 Oakland, CA 94612 lking@kaplanfox.com Mark Molumphy, Esq. Cotchett, Pitre & McCarthy LLP 840 Malcolm Road, Suite 200 Burlingame, CA 94010 mmolumphy@cpmlegal.com	Christopher Chorba, Esq. Gibson, Dunn & Crutcher LLP 333 South Grand Avenue Los Angeles, CA 90071 CChorba@gibsondunn.com

11 12. Any putative member of the Settlement Class who seeks to be excluded from the
 12 Settlement Class must submit a request for exclusion, which must be received by the Claims
 13 Administrator by _____, 2020 [forty-five (45) days from the date specified in paragraph
 14 7 above]:

Claims Administrator
<i>In re Apple Inc. Device Performance Litigation</i> ATTN: Claims Administrator 1650 Arch Street, Suite 2210 Philadelphia, PA 19103

15 Any member of the Settlement Class who does not file a valid and timely request for exclusion shall
 16 be bound by the final judgment dismissing the MDL Action on the merits with prejudice.
 17

18 **Final Approval Hearing**

19 13. The Final Hearing shall be held by the Court on _____, 202__, beginning
 20 at ____:____.m., to determine whether the requirements for certification of the Settlement Class have
 21 been met; whether the proposed settlement of the Actions on the terms set forth in the Settlement should
 22 be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class Members;
 23 whether Class Counsel’s motion or application for Attorneys’ Fees and Expenses and application for
 24 the Named Plaintiff Service Awards should be approved; and whether final judgment approving the
 25 Settlement and dismissing the Actions on the merits with prejudice against the Named Plaintiffs and
 26
 27
 28

1 all other Settlement Class Members should be entered. The Final Hearing may, without further notice
2 to the Settlement Class Members (except those who have filed timely and valid objections and
3 requested to speak at the Final Hearing), be continued or adjourned by order of the Court.

4 14. Objections by any Settlement Class Member to (a) the certification of the Settlement
5 Class; (b) the Settlement; and/or (c) the entry of the Final Approval Order and Final Judgment, shall
6 be considered by the Court at the Final Hearing only if such Settlement Class Member files with the
7 Court a notice of his or her objections, submits documentary proof that he or she is a Settlement Class
8 Member, states the basis for such objections, and serves copies of the foregoing and any other papers
9 in support of such objections on Defense Counsel and Class Counsel, as provided in paragraph 11.

10 15. By _____, 202__ [*not less than sixty-five (65) days from the date*
11 *specified in paragraph 13 above*], Class Counsel shall file all papers in support of the application for
12 the Final Approval Order and Final Judgment, any Motion for Attorneys' Fees and/or Expenses and/or
13 for Named Plaintiff Service Awards, and/or any response to any valid and timely objections with the
14 Court, and shall serve copies of such papers upon Defense Counsel and upon any objectors who have
15 complied with paragraphs 11 and 14 of this Order. All opposition papers shall be filed by
16 _____, 202__ [*not less than thirty-five (35) days from when Class Counsel file their*
17 *Motion for Attorneys' Fees and/or Expenses*], and any reply papers shall be filed by
18 _____, 202__.

19 16. Objections by any Settlement Class Member to Class Counsel's request for Attorneys'
20 Fees and/or Expenses shall be considered by the Court at the Final Hearing only if such Settlement
21 Class Member files with the Court a notice of his or her objections, submits documentary proof that he
22 or she is a Settlement Class Member, states the basis for such objections, and serves copies of the
23 foregoing and any other papers in support of such objections on Defense Counsel and Class Counsel,
24 as provided in paragraph 11, by _____, 202__ [*not less than thirty-five (35) days from*
25 *when Class Counsel file their Motion for Attorneys' Fees and/or Expenses, as specified in paragraph*
26 *15 above*].

27 17. Class Counsel's motion or application for an award of Attorneys' Fees and Expenses,
28 and costs and for the Named Plaintiff Service Awards will be considered separately from the fairness,

1 reasonably, and adequacy of the Settlement. Any appeal from any order relating solely to Class
2 Counsel's Motion for Attorneys' Fees and/or Expenses, and/or for Named Plaintiff Service Awards, or
3 any reversal or modification of any such order, shall not operate to terminate, vacate, or cancel the
4 Settlement.

5 18. Defense Counsel and Class Counsel are hereby authorized to utilize all reasonable
6 procedures in connection with the administration of the Settlement which are not materially
7 inconsistent with either this Order or the Settlement Agreement.

8
9 IT IS SO ORDERED.

10
11 Dated: _____, 2020

12 Hon. Edward J. Davila
13 United States District Court
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Interim Co-Lead Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

IN RE: APPLE INC. DEVICE
 PERFORMANCE LITIGATION

Case No. 5:18-md-02827-EJD

**JOINT DECLARATION OF
 JOSEPH W. COTCHETT AND LAURENCE
 D. KING IN SUPPORT OF MOTION FOR
 PRELIMINARY APPROVAL OF
 PROPOSED SETTLEMENT**

This Document Relates to:

ALL ACTIONS

Judge: Hon. Edward J. Davila
 Courtroom: 4, 5th Floor
 Date: April 3, 2020
 Time: 1:30 p.m.

1 We, Joseph W. Cotchett and Laurence D. King, declare and state as follows:

2 1. I, Joseph W. Cotchett, am a member of the bar of the State of California and a partner
3 at the law firm of Cotchett, Pitre & McCarthy LLP.

4 2. I, Laurence D. King, am a member of the bar of the State of California and a partner
5 at the law firm of Kaplan Fox & Kilsheimer LLP.

6 3. We are interim co-lead counsel for the Named Plaintiffs.¹ We have personal
7 knowledge of the facts stated below and with the proceedings in this case. If called as witnesses,
8 we would and could competently testify thereto to all facts within our personal knowledge.

9 4. We respectfully submit this joint declaration in support of Named Plaintiffs' Motion
10 for Preliminary Approval of the Stipulation of Settlement, dated February 28, 2020, in the above-
11 captioned action, and the entry of the [Proposed] Order Certifying Settlement Class; Granting
12 Preliminarily Approval of Class Action Settlement; and Approving Form and Content of Class
13 Notice, attached as Exhibit D to the Stipulation of Settlement.

14 5. Attached hereto as Exhibit 1 is a true and correct copy of the firm résumé of Kaplan
15 Fox & Kilsheimer LLP.

16 6. Attached hereto as Exhibit 2 is a true and correct copy of the firm résumé of
17 Cotchett, Pitre & McCarthy LLP.

18 7. Class Counsel intends to seek attorneys fees not to exceed 30% of the Minimum
19 Class Settlement Amount, or \$93 million. As of January 31, 2020, the approximate lodestar for co-
20 lead counsel and members of the Executive and Steering Committees is \$29,426,005, having
21 devoted approximately 56,553 hours to litigating this Action. These amounts include all vetted
22 time from the date of appointment through November 30, 2019, the latest quarterly reporting
23 period. These figures do not include time spent since December 1, 2019, certain pre-appointment
24 time deemed compensable by the Court, or time spent by counsel in the JCCP Action.

25 8. Class Counsel will also seek reimbursement for expenses not to exceed \$2 million.
26 Such expenses were necessarily incurred in this Action and are routinely charged to clients billed
27 by the hour. Such expenses include, among other things, court fees, service of process, consultant

28 ¹ All capitalized words are defined in the Stipulation of Settlement unless otherwise noted.

1 fees, mediation costs, online legal and factual research, travel costs, reproduction costs, database
2 costs, and messenger, courier, and overnight mail expenses. These expenses do not include any
3 costs spent by counsel in the JCCP Action.

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

5 Executed on February 28, 2020.

6 In Oakland, California.

In Burlingame, California.

7 s/ Laurence D. King
8 Laurence D. King

s/ Joseph W. Cotchett
Joseph W. Cotchett

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Laurence D. King, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of February 2020, at Oakland, California.

/s/ Laurence D. King

Laurence D. King

Exhibit 1



KAPLAN FOX & KILSHEIMER LLP

FIRM PROFILE

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Fax: 973.401.1114

History of Kaplan Fox & Kilsheimer LLP

Leo Kaplan and James Kilsheimer founded “Kaplan & Kilsheimer” in 1954, making the firm one of the most established litigation practices in the country. James Kilsheimer was a celebrated federal prosecutor in the late 1940s and early 1950s in New York who not only successfully tried some of the highest profile cases in the country, but also handled the U.S. Attorney’s Office’s criminal appeals to the Second Circuit.

Now known as “Kaplan Fox & Kilsheimer LLP,” the early commitment to high-stakes litigation continues to define the firm to the present day. In 2009, Portfolio Media’s *Law360* ranked Kaplan Fox’s securities litigation practice as one of the top 5 in the country (plaintiff side), and again in July 2014, the Legal 500 ranked Kaplan Fox as one of the top eight plaintiff’s firms for securities litigation. In March 2013, the *National Law Journal* included Kaplan Fox on its list of the top 10 “hot” litigation boutiques, a list that includes both plaintiff and defense firms. In 2014, 2015 and 2016, more than half of the firm’s partners – including attorneys on both coasts – were rated “Super Lawyers.”

The firm has three primary litigation practice areas (antitrust, securities, and consumer protection), and the firm is a leader in all three. To date, we have recovered more than **\$5 billion** for our clients and classes. In addition, the firm has expanded its consumer protection practice to include data privacy litigation, and few other firms can match Kaplan Fox’s recent leadership in this rapidly emerging field. The following describes Kaplan Fox’s major practice areas, its most significant recoveries and its attorneys.

Securities Litigation

Over the past 35 years, Kaplan Fox has been a leader in prosecuting corporate and securities fraud—ranging from cases concerning accounting fraud to those involving complicated and complex financial instruments. Since the passage of the Private Securities Litigation Reform Act in 1995, Kaplan Fox has emerged as one of the foremost securities litigation firms representing institutional investors of all sizes, including many of the world’s largest public pension funds.

Kaplan Fox’s selection by Portfolio Media’s Law360 as one of the five top securities litigation firms (plaintiff side) for 2009 was based, in part, on the representation of public pension funds in high profile and complex securities class actions, including **In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation**; **In re Bank of America Corp. Securities, ERISA & Derivative Litigation**; **In re Fannie Mae Securities Litigation**; and **In re Ambac Financial Group, Inc. Securities Litigation**. Some of the firm’s most significant securities recoveries include:

In re Bank of America Corp. Securities, Derivative, and ERISA Litigation, MDL No. 2058 (S.D.N.Y.) (\$2.425 billion recovered)

In re Merrill Lynch & Co., Inc. Securities Litigation, Master File No. 07-CV-9633 (JSR) (S.D.N.Y.) (\$475 million recovered)

In re 3Com Securities Litigation, No. C-97-21083-EAI (N.D. Cal.) (\$259 million recovered)

In re Fannie Mae 2008 Securities Litigation, No. 08-cv-7831 (PAC) (S.D.N.Y.) (\$170 million recovered)

In re MicroStrategy Securities Litigation, No. CV-00-473-A (E.D. Va.) (\$155 million recovered)

AOL Time Warner Cases I & II (Opt-out) Nos. 4322 & 4325 (Cal. Superior Court, LA County) (\$140 million recovered)

In re Informix Securities Litigation, C-97-129-CRB (N.D. Cal.)
(\$136.5 million recovered)

In re Xcel Energy, Inc. Securities Litigation, Master File No. 02-CV-2677-DSD (D. Minn.) (\$80 million recovered)

In re Elan Corporation Securities Litigation, No. 02-CV-0865-RMB (S.D.N.Y.) (\$75 million recovered)

In re Sequenom, Inc. Securities Litigation, No. 09-cv-921 (S.D. Cal.) (\$70 million recovered)

Barry Van Roden, et al. v. Genzyme Corp., et al., No. 03-CV-4014-LLS (S.D.N.Y.) (\$64 million recovered)

Antitrust Litigation

Kaplan Fox has been at the forefront of significant private antitrust actions, and we have been appointed by courts as lead counsel or members of an executive committee for plaintiffs in some of the largest antitrust cases throughout the United States. This commitment to leadership in the antitrust field goes back to at least 1967, when firm co-founder Leo Kaplan was appointed by the Southern District of New York to oversee the distribution of all ASCAP royalties under the 1950 antitrust consent decree in **United States v. American Society of Composers, Authors and Publishers**, No. 41-CV-1395 (S.D.N.Y.), a role he held for 28 years until his death in 1995. To this day, ASCAP awards the “Leo Kaplan Award” to an outstanding young composer in honor of Leo’s 28 years of service to ASCAP.

Members of the firm have also argued before the U.S. Courts of Appeals some of the most significant decisions in the antitrust field in recent years. For example, Robert Kaplan argued the appeal in **In re Flat Glass Antitrust Litigation**, 385 F.3d 350 (3d Cir. 2004), and Greg Arenson argued the appeal in **In re High Fructose Corn Syrup Antitrust Litigation**, 295 F.3d 651 (7th Cir. 2002). In a relatively recent survey of defense counsel, in-house attorneys, and individuals involved in the civil justice reform movement, both were named among the 75 best plaintiffs’ lawyers in the country based on their expertise and influence.

Over the years, Kaplan Fox has recovered over **\$2 billion** for our clients in antitrust cases. Some of the larger antitrust recoveries include:

In re Air Cargo Shipping Services Antitrust Litigation, MDL 1775 (E.D.N.Y.) (settled during trial preparation, for total settlement of more than \$1.25 billion)

In re Neurontin Antitrust Litigation, MDL No. 1479, Master File No. 02-1390 (D.N.J.) (\$190 million recovered)

In re High Fructose Corn Syrup Antitrust Litigation, MDL No. 1087, Master File No. 95-1477 (C.D. Ill.) (\$531 million recovered)

In re Brand Name Prescription Drugs Antitrust Litigation, MDL 997 (N.D. Ill.) (\$720 plus million recovered)

In re Infant Formula Antitrust Litigation, MDL 878 (N.D. Fla.) (\$126 million recovered)

In re Flat Glass Antitrust Litigation, MDL 1200 (W.D. Pa.) (\$122 plus million recovered)

In re Hydrogen Peroxide Antitrust Litigation, MDL 1682 (E.D. Pa.) (\$97 million recovered)

In re Plastics Additives Antitrust Litigation, 03-CV-1898 (E.D. Pa.) (\$46.8 million recovered)

In re Medical X-Ray Film Antitrust Litigation, CV 93-5904 (E.D.N.Y.) (\$39.6 million recovered)

In re NBR Antitrust Litigation, MDL 1684 (E.D. Pa.) (\$34.3 million recovered)

Consumer Protection and Data Privacy Litigation

The consumer protection practice is headquartered in Kaplan Fox's Bay Area office, which opened in 2000, and is led by Laurence King, an experienced trial lawyer and former prosecutor. Mr. King also recently served as a Vice-Chair, and then Co-Chair, of the American Association for Justice's Class Action Litigation Group.

Mr. King and our other effective and experienced consumer protection litigators regularly champion the interests of consumers under a variety of state and federal consumer protection laws. Most frequently, these cases are brought as class actions, though under certain circumstances an individual action may be appropriate.

Kaplan Fox's consumer protection attorneys have represented victims of a broad array of misconduct in the manufacturing, testing, marketing, and sale of a variety of products and services and have regularly been appointed as lead or co-lead counsel or as a member of a committee of plaintiffs' counsel in consumer protection actions by courts throughout the nation. Among our significant achievements are highly recognized cases including **In re Baycol Products Litigation**, MDL 1431-MJD/JGL (D. Minn.) (victims have recovered \$350 million recovered to date); **In re Providian Financial Corp. Credit Card Terms Litigation**, MDL No. 1301-WY (E.D. Pa.) (\$105 million recovered); **In re Thomas and Friends Wooden Railway Toys Litig.**, No. 07-cv-3514 (N.D. Ill.) (\$30 million settlement obtained for purchasers of recalled "Thomas Train" toys painted with lead paint); **In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation**, No. 4:09-md-2086 (W.D. Mo.) (settlements obtained where consumers will receive substantially in excess of actual damages and significant injunctive relief); **Berry v. Mega Brands Inc.**, No. 08-CV-1750 (D.N.J.) (class-wide settlement obtained where consumers

will receive full refunds for defective products), and **David Wolf, et al. v. Red Bull GmbH, et al.**, No. 1:13-cv-08008 (S.D.N.Y.) (\$13 million settlement fund obtained for purchasers of Red Bull energy drink).

Data privacy is a fairly new area of law and broadly encompasses two scenarios. In a data breach case, a defendant has lawful custody of data, but fails to safeguard it or use it in an appropriate manner. In a tracking case, the defendant intercepts or otherwise gathers digital data to which it is not entitled in the first place.

Kaplan Fox is an emerging leader in both types of data privacy litigation. For example, Mr. King filed and successfully prosecuted one of very first online data breach cases, **Syran v. LexisNexis Group**, No. 05-cv-0909 (S.D. Cal.), and was court-appointed liaison counsel in a recently successfully concluded data breach case against LinkedIn. See **In re: LinkedIn User Privacy Litigation**, No. 12-cv-3088-EJD (N.D. Cal.). The firm also settled a data privacy case against Universal Property & Casualty Insurance Company related to the public exposure of sensitive customer data. See **Rodriguez v. Universal Property & Cas. Ins. Co.**, No. 16-cv-60442-JK (S.D. Fla.).

The firm is also an industry leader in the even newer field of email and internet tracking litigation. Kaplan Fox was appointed Co-Lead Class Counsel in a digital privacy class action against Yahoo!, Inc., related to Yahoo's alleged practice of scanning emails for content, which was recently settled. See **In re: Yahoo Mail Litigation**, 5:13-cv-04980-LHK (N.D. Cal.). Current cases include **In re: Facebook Internet Tracking Litigation**, No. 5:12-md-02314-EJD (N.D. Cal.) (Davila, J.) and **In re: Google Inc. Cookie Placement Consumer Privacy Litig.**, 12-MD-2358-SLR (D. Del.) (Kaplan Fox appointed to plaintiffs' steering committee).

ATTORNEY BIOGRAPHIES

PARTNERS

ROBERT N. KAPLAN is widely recognized as a leading antitrust and securities litigator with more than 40 years of experience in securities, antitrust, and other complex litigation. He has led the prosecution of numerous class actions and shareholder derivative actions, recovering billions of dollars for the victims of corporate wrongdoing. Mr. Kaplan was recently listed by defense and corporate counsel as one of the top 75 plaintiffs' attorneys in the United States for all disciplines, and he has also been ranked as one of the top attorneys in the United States for securities litigation by Legal 500 in each of the last three years. He also has earned a reputation as a leading litigator in the antitrust arena. Mr. Kaplan honed his litigation skills as a trial attorney with the U.S. Department of Justice. Mr. Kaplan was recognized as Super Lawyer in the New York Metro Area. He was lead counsel for CalPERS in *AOL Time Warner Cases I & II* (Ca. Sup. Ct., L.A. Cty.), and was a lead in *In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation*, *In re Escala Securities Litigation* and *In re Bank of America Corp. Securities Litigation*, in which a settlement in the amount of \$2.425 billion and corporate governance changes was approved by the Court.

In the antitrust arena, he has been a lead counsel in many significant actions. He was a lead counsel in *In re Air Cargo Antitrust Litigation* (more than \$1.25 billion in settlements) and *DIPF Antitrust Litigation*, *In re Cast Iron Soil Pipe and Fittings Antitrust Litigation*, and has been appointed as a lead counsel in *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation*.

He also represents clients in private antitrust actions, including Affiliated Foods, Inc., Affiliated Foods Midwest Cooperative, Inc., Alex Lee, Inc., Associated Food Stores, Inc., Associated Grocers of New England, Inc., Associated Grocers, Inc., Bashas' Inc., Big Y Foods, Inc., Brookshire Brothers, Inc., Brookshire Grocery Company, Certco, Inc., Dollar Tree Distribution, Inc., Greenbrier International, Inc., Family Dollar Stores, Inc., Family Dollar Services, LLC, Fareway Stores, Inc., Giant Eagle, Inc., The Golub Corporation, Kmart Corporation, K-VA-T Food Stores, Inc., Marc Glassman, Inc., McLane Company, Inc., Meadowbrook Meat Company, Inc., Merchants Distributors, LLC,

Schnuck Markets, Inc., SpartanNash, URM Stores Inc., Western Family Foods, Inc. and Woodman's Food Market, Inc., 99 Cents Only Stores LLC, in individual cases against Tri-Union Seafoods, LLC, d/b/a Chicken of the Sea, King Oscar, Inc., Bumble Bee Foods, LLC f/k/a Bumble Bee Seafoods, LLC, and StarKist Co., in *In re Packaged Seafood Products Antitrust Litigation*, MDL No. 2670 (S.D. Cal.).

Mr. Kaplan previously served as lead counsel or member of the Executive Committee in numerous plaintiff treble damage actions including *In re Neurontin Antitrust Litigation*, MDL No. 1479, Master File No. 02-1390 (D.N.J.) (\$190 million recovered); *In re High Fructose Corn Syrup Antitrust Litigation*, MDL No. 1087, Master File No. 95-1477 (C.D. Ill.) (\$531 million recovered); *In re Brand Name Prescription Drugs Antitrust Litigation*, MDL 997 (N.D. Ill.) (\$720 plus million recovered); *In re Infant Formula Antitrust Litigation*, MDL 878 (N.D. Fla.) (\$126 million recovered); *In re Flat Glass Antitrust Litigation*, MDL 1200 (W.O. Pa.) (\$122 plus million recovered) (Mr. Kaplan successfully argued an appeal before the U.S. Court of Appeals for the Third Circuit, which issued a ground-breaking and often-cited summary judgment opinion. *In re Flat Glass Antitrust Litigation*, 191 F.R.D. 472, 476 n. 7 (W.D. Pa.1999)); *In re Hydrogen Peroxide Antitrust Litigation*, MDL 1682 (E.D. Pa.) (\$97 million recovered); *In re Plastics Additives Antitrust Litigation*, 03-CV-1898 (E.D. Pa.) (\$46.8 million recovered); *In re Medical X-Ray Film Antitrust Litigation*, CV 93-5904 (E.D.N.Y.) (\$39.6 million recovered); and *In re NBR Antitrust Litigation*, MDL 1684 (E.D. Pa.) (\$34.3 million recovered).

Mr. Kaplan is also representing financial institutions across the country in data breach cases against Home Depot and is a member of the Plaintiffs' Steering Committee.

Mr. Kaplan was a trial attorney with the Antitrust Division of the U.S. Department of Justice. There, he litigated civil and criminal actions. He also served as law clerk to the Hon. Sylvester J. Ryan, then chief judge of the U.S. District Court for the Southern District of New York and served as an acting judge of the City Court for the City of Rye, N.Y.

In addition to his litigation practice, he has also been active in bar and legal committees. For more than fifteen years, he has been a member of what is now known as the Eastern District of New York's Courts Committee on Civil Litigation.

Mr. Kaplan's published articles include: "Complaint and Discovery In Securities Cases," *Trial*, April 1987; "Franchise Statutes and Rules," *Westchester Bar Topics*, Winter

1983; “Roots Under Attack: Alexander v. Haley and Courlander v. Haley,” Communications and the Law, July 1979; and “Israeli Antitrust Policy and Practice,” Record of the Association of the Bar, May 1971.

Mr. Kaplan sits on the boards of several organizations, including the Columbia Law School Board of Visitors, Board of Directors of the Carver Center in Port Chester, N.Y., and Member of the Dana Farber Visiting Committee, Thoracic Oncology in Boston, MA.

Education:

- B.A., Williams College (1961)
- J.D., Columbia University Law School (1964)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (1964)
- Bar of the District of Columbia (2013)
- U.S. Supreme Court
- U.S. Courts of Appeals for the Second, Third, Seventh, Ninth, Tenth and Eleventh Circuits
- U.S. District Courts for the Southern, Eastern, Western and Northern Districts of New York, the Central District of Illinois, and the District of Arizona

Professional Affiliations:

- Federal Bar Council
- Committee to Support the Antitrust Laws (past President)
- National Association of Securities and Commercial Law Attorneys (past President)
- Advisory Group of the U.S. District Court for the Eastern District of New York
- American Bar Association
- Association of Trial Lawyers of America (Chairman, Commercial Litigation Section, 1985-86)
- Association of the Bar of the City of New York (served on the Trade Regulation Committee; Committee on Federal Courts)
- Member of Board of Trustees for the Rye Historical Society

Mr. Kaplan can be reached by email at: RKaplan@kaplanfox.com

FREDERIC S. FOX first associated with Kaplan Fox in 1984, and became a partner in the firm in 1991. For over 30 years, he has concentrated his work in the area of class action litigation. Mr. Fox has played important roles in many major class action cases. He was one of the lead trial lawyers in two securities class actions, one of which was the first case tried to verdict under the Private Securities Litigation Reform Act of 1995.

Mr. Fox has played a lead role in many major securities class action cases, including as a senior member of the litigation and trial team in *In re Bank of America Corp. Securities, ERISA, & Derivative Litigation*, No. 09-MDL-2058 (S.D.N.Y.) (“*In re Bank of America*”). The case arose out of Bank of America’s acquisition of Merrill Lynch. *In re Bank of America* which settled for \$2.425 billion plus significant corporate governance reforms, and stands as one of the largest securities class action settlements in history. In *In re Bank of America*, Mr. Fox served as lead counsel on behalf of major public pension funds.

Mr. Fox currently represents many institutional investors including governmental entities in both class actions and individual litigation. Mr. Fox recently led the team of attorneys that prosecuted an individual opt-out action on behalf of a public pension fund arising out of the fraud at Petrobras in Brazil. Other significant cases in which Mr. Fox served as lead counsel include: *In re Merrill Lynch & Co., Inc. Securities, Derivative, & ERISA Litigation*, No. 07-cv-9633 (S.D.N.Y.) (in which he was the primary attorney responsible for negotiating the \$475 million settlement); *In re Fannie Mae 2008 Securities Litigation*, No. 08-cv-7831 (S.D.N.Y.) (“*In re Fannie Mae 2008*”) (\$170 million settlement); *In re SunPower Securities Litigation*, Case No. 09-cv-5473 (N.D. Cal.); *In re Merrill Lynch Research Reports Securities Litigation* (S.D.N.Y.) (arising from analyst reports issued by Henry Blodget); *In re Salomon Analyst Williams Litigation* (S.D.N.Y.) and *In re Salomon Focal Litigation* (S.D.N.Y.) (both actions stemming from analyst reports issued by Jack Grubman). Mr. Fox has also handled derivative cases seeking corporate governance reform and other shareholder litigation on behalf of public pension funds asserting state law and foreign causes of action. Mr. Fox is a frequent speaker and panelist in both the U.S and abroad on a variety of topics including securities litigation and corporate governance.

In the consumer protection area, he served on the Plaintiffs' Steering Committee in the *Baycol Products Litigation* where there have been more than \$350 million in settlements. Additionally, he is serving as one of the Co-lead Counsel in *In re RC2 Corp. Toy Lead Paint Products Liability Litigation* pending in the Northern District of Illinois.

Mr. Fox is listed in the current editions of New York Super Lawyers and was recognized in Benchmark Litigation as a New York "Litigation Star."

Mr. Fox is the author of "Current Issues and Strategies in Discovery in Securities Litigation," ATLA, 1989 Reference Material; "Securities Litigation: Updates and Strategies," ATLA, 1990 Reference Material; and "Contributory Trademark Infringement: The Legal Standard after *Inwood Laboratories, Inc. v. Ives Laboratories*," University of Bridgeport Law Review, Vol. 4, No. 2.

During law school, Mr. Fox was the notes and comments editor of the University of Bridgeport Law Review.

Education:

- B.A., Queens College (1981)
- J.D., Bridgeport School of Law (1984)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (1985)
- Bar of the District of Columbia (2013)
- U.S. Supreme Court
- U.S. Courts of Appeals for the First, Second, Fourth, Sixth and Eleventh Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York, the District of Colorado and the District of Columbia

Professional Affiliations:

- Federal Bar Council
- American Bar Association
- Association of the Bar of the City of New York
- Association of Trial Lawyers of America (Chairman, Commercial Law Section, 1991-92)

Mr. Fox can be reached by email at: FFox@kaplanfox.com

GREGORY K. ARENSON is a seasoned business litigator with experience representing clients in a variety of areas, including antitrust, securities, and employee termination. His economics and econometrics background has provided a foundation for his recognized expertise in handling complex economic issues in antitrust cases, both as to class certification and on the merits. He has worked with economic experts in, among others, *In re Air Cargo Shipping Servs. Antitrust Litig.*, Master File No. 06-MD-1175 (JG)(VVP), 2014 WL 7882100 (E.D.N.Y. Oct. 15, 2014), *adopted in its entirety*, 2015 WL 5093503 (E.D.N.Y. July 10, 2015); *In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litig.*, 256 F.R.D. 82 (D. Conn. 2009); *In re Foundry Resins Antitrust Litig.*, 242 F.R.D. 393 (S.D. Ohio 2007); *In re Carbon Black Antitrust Litig.*, No. Civ. A. 03-10191-DPW, MDL No. 1543, 2005 WL 102966 (D. Mass. Jan. 18, 2005); *In re Microcrystalline Cellulose Antitrust Litig.*, 218 F.R.D. 79 (E.D. Pa. 2003); *Bearings Cases*, Case No. 12-00501, and *Wire Harness Cases*, Case No. 12-00101, part of *In re Automotive Parts Antitrust Litig.*, E.D. Mich., Master File No. 12-md-02311; *Affiliated Foods, Inc., et al. v. Tri-Union Seafoods, LLC d/b/a Chicken of the Sea Int'l, et al.*, part of *In re Packaged Seafood Prods. Antitrust Litig.*, S.D. Cal., Case No. 15-MD-2670 JLS (MDD); *In re Domestic Airline Travel Antitrust Litig.*, D.D.C., MDL Docket No. 2656, Misc. No. 15-1404 (CKK); *In re Dental Supplies Antitrust Litig.*, E.D.N.Y., Case No. 16-cv-696 (BMC)(GRB); *In re Ductile Iron Pipe Fittings ("DIPF") Direct Purchaser Antitrust Litig.*, D.N.J., Civ. No. 12-711 (AET)(LHG); *In re Cast Iron Soil Pipe & Fittings Antitrust Litig.*, E.D. Tenn., No. 1:14-md-2508; and *In re Pool Prods. Distribution Mkt. Antitrust Litig.*, E.D. La., MDL No. 2328. He also argued the appeals in *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651 (7th Cir. 2002), and *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305 (3d Cir. 2009). He has been ranked as a Super Lawyer for several years.

Mr. Arenson has been a partner in the firm since 1993. Prior to joining Kaplan Fox, Mr. Arenson was a partner with Proskauer Rose LLP. Earlier in his career, he was a partner with Schwartz Klink & Schreiber, and an associate with Rudnick & Wolfe (now DLA Piper).

Mr. Arenson has been active in the New York State Bar Association. He was a member of the House of Delegates from 2013 to 2017. He was Chair of the Commercial and Federal Litigation Section from June 2013 through May 2014. He has been Co-Chair

of the New York State Bar Association Task Force on the State of Our Courthouses, whose report was adopted by the House of Delegates on June 20, 2009; a member of the New York State Bar Association Special Committee on Standards for Pleadings in Federal Litigation, whose report was adopted by the House of Delegates on June 19, 2010; and a member of the New York State Bar Association Special Committee on Discovery and Case Management in Federal Litigation, whose report was adopted by the House of Delegates on June 23, 2012. Mr. Arenson has written frequently on discovery issues. His published articles include: "Rule 68 Offers of Judgment and Mootness, Especially for Collective or Class Actions, 20 NY Litigator 25 (2015); "Report on Proposed Amendments to Federal Rule of Civil Procedure 45," 17 NY Litigator 21 (2012); "Rule 8 (a)(2) After Twombly: Has There Been a Plausible Change?" 14 NY Litigator 23 (2009); "Report on Proposed Federal Rule of Evidence 502," 12 NY Litigator 49 (2007); "Report: Treating the Federal Government Like Any Other Person: Toward a Consistent Application of Rule 45," 12 NY Litigator 35 (2007); "Report of the Commercial and Federal Litigation Section on the Lawsuit Abuse Reduction Act of 2005," 11 NY Litigator 26 (2006); "Report Seeking To Require Party Witnesses Located Out-Of-State Outside 100 Miles To Appear At Trial Is Not A Compelling Request," 11 NY Litigator 41 (2006); "Eliminating a Trap for the Unwary: A Proposed Revision of Federal Rule of Civil Procedure 50," 9 NY Litigator 67 (2004); "Committee Report on Rule 30(b)(6)," 9 NY Litigator 72 (2004); "Who Should Bear the Burden of Producing Electronic Information?" 7 Federal Discovery News, No. 5, at 3 (April 2001); "Work Product vs. Expert Disclosure – No One Wins," 6 Federal Discovery News, No. 9, at 3 (August 2000); "Practice Tip: Reviewing Deposition Transcripts," 6 Federal Discovery News, No. 5, at 13 (April 2000); "The Civil Procedure Rules: No More Fishing Expeditions," 5 Federal Discovery News, No. 9, at 3 (August 1999); "The Good, the Bad and the Unnecessary: Comments on the Proposed Changes to the Federal Civil Discovery Rules," 4 NY Litigator 30 (1998); and "The Search for Reliable Expertise: Comments on Proposed Amendments to the Federal Rules of Evidence," 4 NY Litigator 24 (1998). He was co-editor of Federal Rules of Civil Procedure, 1993 Amendments, A Practical Guide, published by the New York State Bar Association; and a co-author of "Report on the Application of Statutes of Limitation in Federal Litigation," 53 Albany Law Review 3 (1988).

Mr. Arenson serves as a mediator in the U.S. District Court for the Southern District of New York. In addition, he is an active alumnus of the Massachusetts Institute of Technology, having served as a member of the Corporation, a member of the Corporation Development Committee, vice president of the Association of Alumni/ae, member of the Alumni Association Selection Committee, and member of the Annual Fund Board (of which he was a past chair).

Education:

- S.B., Massachusetts Institute of Technology (1971)
- J.D., University of Chicago (1975)

Bar Affiliations and Court Admissions:

- Bar of the State of Illinois (1975)
- Bar of the State of New York (1978)
- U.S. Supreme Court
- U.S. Courts of Appeals for the Second, Third and Seventh Circuits
- U.S. District Courts for the Northern and Central Districts of Illinois, Southern and Eastern Districts of New York, and Eastern District of Michigan
- U.S. Tax Court

Mr. Arenson can be reached by email at: GArenson@kaplanfox.com

LAURENCE KING first joined Kaplan Fox as an associate in 1994. He became a partner of the firm in 1998. While Mr. King initially joined the firm in New York, in 2000 he relocated to San Francisco to open the firm's first West Coast office. He is now partner-in-charge of the firm's Oakland and Los Angeles offices. In that capacity, he has regularly served as a lead member of the litigation team for Kaplan Fox's California-based institutional investor clients, and is always available at a moment's notice.

Mr. King practices primarily in the areas of securities litigation, with an emphasis on institutional investor representation and consumer protection litigation. He has also practiced in the area of employment litigation. Mr. King has played a substantial role in cases that have resulted in some of the largest recoveries ever obtained by Kaplan Fox, including *In re Bank of America Securities Litigation* (S.D.N.Y.), *In re 3Com Securities Litigation* (N.D. Ca.), *In re Informix Securities Litigation* (N.D. Ca.), *AOL Time Warner*

Cases I & II (Ca. Sup. Ct., L.A. Cty.) and *Providian Credit Card Cases* (Ca. Sup. Ct., S.F. Cty.).

An experienced trial lawyer, prior to joining Kaplan Fox Mr. King served as an assistant district attorney under the legendary Robert Morgenthau in the Manhattan (New York County) District Attorney's Office, where he tried numerous felony prosecutions to jury verdict. At Kaplan Fox, he was a member of the trial team for two securities class actions tried to verdict, *In re Biogen Securities Litigation* (D. Mass.) and *In re Health Management Securities Litigation* (E.D.N.Y.). Mr. King also prepared for numerous cases for trial in which favorable settlements were ultimately achieved.

Mr. King has been selected for inclusion in the Northern California *SuperLawyers* each year since 2012, and has previously served as Vice-Chair, and then as Co-Chair, of the American Association for Justice's Class Action Litigation Group of the American Association for Justice.

Education:

- B.S., Wharton School of the University of Pennsylvania (1985)
- J.D., Fordham University School of Law (1988)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (1989)
- Bar of the State of California (2000)
- U.S. Court of Appeals for the Second, Third, Fifth, Ninth and Tenth Circuits
- U.S. District Courts for the District of New Jersey, Eastern District of Pennsylvania, Southern and Eastern Districts of New York, and Northern, Central and Southern Districts of California

Professional Affiliations:

- Bar Association of San Francisco
- American Bar Association
- American Association for Justice
- San Francisco Trial Lawyers' Association
- American Business Trial Lawyers

Mr. King can be reached by email at: LKing@kaplanfox.com

JOEL B. STRAUSS first associated with Kaplan Fox in 1992, and became a partner of the firm in 1999. He practices in the area of securities and consumer fraud class action litigation, with a special emphasis on accounting and auditing issues. He has been repeatedly selected for inclusion to the New York Super Lawyers list (Securities Litigation) (2007-2010, 2014-2017).

Prior to joining Kaplan Fox, Mr. Strauss served as a senior auditor with Coopers & Lybrand (n/k/a PwC). Combining his accounting background and legal skills, he has played a critical role in successfully prosecuting numerous securities class actions across the country on behalf of public pension fund clients. Mr. Strauss was one of the lead trial lawyers for the plaintiffs in the first case to go to trial and verdict under the Private Securities Litigation Reform Act of 1995.

More recently Mr. Strauss has been involved in representing the firm's institutional clients in the following securities class actions, among others: *In re Bank of America Corp. Securities, ERISA & Derivative Litig.* (S.D.N.Y.) (\$2.425 billion settlement); *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litig.* (S.D.N.Y.) (\$475 million settlement); *In re Prestige Brands Holdings Inc. Securities Litig.* (S.D.N.Y.) (\$11 million settlement); *In re Gentiva Securities Litig.* (E.D.N.Y.) (\$6.5 million settlement); and *In Re SunPower Securities Litig.* (N.D. Cal.) (\$19.7 million settlement). He has also served as lead counsel for lead plaintiffs in *In re OCA, Inc. Securities Litig.* (E.D. La.) (\$6.5 million settlement) and *In re Proquest Company Securities Litig.* (E.D. Mich.) (\$20 million settlement). Mr. Strauss also played an active role for plaintiff investors in *In Re Countrywide Financial Corporation Securities Litig.* (C.D. Cal.), which settled for more than \$600 million.

In the consumer protection area, Mr. Strauss served as Chair of the Plaintiffs' Non-Party Discovery Committee in *In re Baycol Products Litigation*, MDL No. 1431-MJD/JG (D. Minn.), where there were more than \$350 million in settlements.

Mr. Strauss is also active in the firm's growing data privacy practice. In July 2017, he moderated a panel on U.S. Data Privacy Laws at a conference in Tel Aviv.

Although currently practicing exclusively as a lawyer, Mr. Strauss is a licensed Certified Public Accountant in the State of New York.

Mr. Strauss has also been a guest lecturer on the topics of securities litigation, auditors' liability and class actions for seminars sponsored by the Practicing Law Institute and the Association of the Bar of the City of New York and is an adjunct instructor in the Political Science department at Yeshiva University.

Since June 2014 Mr. Strauss has served as a member of the New York State Bar Association's Committee on Legal Education and Admission to the Bar. And, in July 2018 Mr. Strauss was invited to serve as a member of the Rutgers Cybersecurity Advisory Board.

Among his various communal activities, Mr. Strauss currently serves on the Board of Directors of Yavneh Academy in Paramus, NJ (and is a former Vice President and Finance Committee Chair of the school), is a member of Yeshiva University's General Counsel's Council, a member of the Alumni Advisory Group at the Benjamin N. Cardozo School of Law, serves as Chair of the Career Guidance and Placement Committee of Yeshiva University's Undergraduate Alumni Council and is a member of The Board of Directors of Friends of Jerusalem College of Technology.

In March 2001 the New Jersey State Assembly issued a resolution recognizing and commending Mr. Strauss for his extensive community service and leadership. In 2012 Mr. Strauss received The Alumni Partner of the Year Award from Yeshiva University's Career Development Office.

Education:

- B.A., Yeshiva University (1986)
- J.D., Benjamin N. Cardozo School of Law (1992)
- HBX|Harvard Business School, Certificate in Entrepreneurship Essentials (2017)
- AICPA - Cybersecurity Fundamentals for Finance and Accounting Professionals Certificate (2018)

Bar Affiliations and Court Admissions:

- Bar of the State of New Jersey (1992)
- Bar of the State of New York (1993)
- U.S. Court of Appeals for the First, Second and Third Circuits

- U.S. District Courts for the Southern and Eastern Districts of New York and the District of New Jersey

Professional Affiliations:

- American Bar Association (member, Litigation Section, Rule 23 subcommittee)
- Association of the Bar of the City of New York
- New York State Bar Association
- American Institute of Certified Public Accountants

Mr. Strauss can be reached by email at: JStrauss@kaplanfox.com

HAE SUNG NAM joined Kaplan Fox in 1999 and became a partner of the firm in 2005. She practices in the areas of securities and antitrust litigation, mainly focusing in the firm's securities practice.

Since joining the firm, Ms. Nam has been involved in all aspects of the securities practice, including case analysis for the firm's institutional investor clients. She has been a key member of the litigation team representing a number of institutional clients in securities litigation, including cases against Bank of America Corporation, Fannie Mae and Ambac Financial Group, Inc.. She also has a focus in prosecuting opt-out actions on behalf of the firm's clients and has played a significant role in *AOL Time Warner Cases I & II* (Ca. Sup. Ct., L.A. Cty.) and *State Treasurer of the State of Michigan v. Tyco International, Ltd., et al*, and an opt-out case against Petrobras representing Ohio Public Employees Retirement System.

Ms. Nam has also been involved in the firm's antitrust practice, representing purchasers of flat glass products in a class action alleging a price-fixing conspiracy. She is currently prosecuting an antitrust case against Keurig. Prior to joining the firm, Ms. Nam was an associate with Kronish Lieb Weiner & Hellman LLP, where she trained as a transactional attorney in general corporate securities law and mergers and acquisitions.

Ms. Nam graduated magna cum laude, with a dual degree in political science and public relations from Syracuse University's Maxwell School and S.I. Newhouse School of Public Communications. Ms. Nam obtained her law degree, with honors, from George Washington University Law School. During law school, Ms. Nam was a member of the George Washington University Law Review. She is the author of a case note, "Radio—

Inconsistent Application Rule,” 64 Geo. Wash. L. Rev. (1996). In addition, she also served as an intern for the U.S. Department of Justice, Antitrust Division.

Education:

- B.A., magna cum laude, Syracuse University (1994)
- J.D., with honors, George Washington University Law School (1997)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (1998)
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Courts for the Southern and Eastern Districts of New York, and Eastern District of Wisconsin

Ms. Nam can be reached by email at: HNam@kaplanfox.com

DONALD R. HALL has been associated with Kaplan Fox since 1998, and became a partner of the firm in 2005. He practices in the areas of securities, antitrust and consumer protection litigation. Mr. Hall is actively involved in maintaining and establishing the firm’s relationship with institutional investors and oversees the Portfolio Monitoring and Case Evaluation Program for the firm’s numerous institutional investors.

Mr. Hall was a member of the trial team prosecuting *In re Bank of America*, which settled for \$2.425 billion, the single largest securities class action recovery for violations of Section 14(a) of the Exchange Act and one of the top securities litigation settlements obtained in history. He has represented many of the firm’s institutional investor clients in securities class actions, including in *In re Eletrobras Secs. Litig.*, Case No. 15-cv-5754 as co-lead counsel in a class action against a Brazilian company and in *Kasper v. AAC Holdings, Inc.*, No. 15-cv-00923, also as co-lead counsel. Mr. Hall successfully represented institutional clients in *In re Merrill Lynch*, which settled for \$475 million; *In re Fannie Mae 2008*, which settled for \$170 million; *In re Ambac Financial Group, Inc. Securities Litigation*, No. 08-cv-411 (S.D.N.Y.) (“*In re Ambac*”); *In re Majesco Securities Litigation*, No. 05-cv-3557 (D.N.J.); and *In re Escala Group, Inc. Secs. Litig.*, No. 05-cv-3518 (S.D.N.Y.) (“*In re Escala*”). Additionally, he was a member of the litigation team in *AOL Time Warner Cases I & II*, an opt-out action brought by institutional investors that

settled just weeks before trial, resulting in a recovery of multiples of what would have been obtained had those investors remained members of the class action.

Mr. Hall has played a key role in many of the firm's securities and antitrust class actions resulting in substantial recoveries for the firm's clients, including *In re Merrill Lynch Research Reports Securities Litigation* (arising from analyst reports issued by Henry Blodget); *In re Salomon Analyst Williams Litigation* and *In re Salomon Focal Litigation* (both actions stemming from analyst reports issued by Jack Grubman); *In re Flat Glass Antitrust Litigation*; and *In re Compact Disc Antitrust Litigation*.

Mr. Hall graduated from the College of William and Mary in 1995 with a B.A. in Philosophy and obtained his law degree from Fordham University School of Law in 1998. During law school, Mr. Hall was a member of the Fordham Urban Law Journal and a member of the Fordham Moot Court Board. He also participated in the Criminal Defense Clinic, representing criminal defendants in federal and New York State courts on a pro-bono basis.

Education:

- B.A., College of William and Mary (1995)
- J.D., Fordham University School of Law (1998)

Bar Affiliations and Court Admissions:

- Bar of the State of Connecticut
- Bar of the State of New York
- U.S. Supreme Court
- U.S. Courts of Appeals for the First, Second and Eleventh Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- American Bar Association
- Association of Trial Lawyers of America
- New York State Bar Association

Mr. Hall can be reached by email at: DHall@kaplanfox.com

JEFFREY P. CAMPISI first associated with Kaplan Fox in 2004 and became a partner of the firm in 2012. He practices in the areas of securities and antitrust litigation.

Mr. Campisi has been involved in all aspects of securities practice, including case analysis for the firm's numerous public pension fund and institutional investor clients. Mr. Campisi recently represented institutional investors in the following securities class actions: *Kasper v. AAC Holdings, Inc. et al.*, 15-cv-923 (M.D. Tenn.) (\$25 million settlement); *In re 2008 Fannie Mae Securities Litigation*, 08cv7831 (S.D.N.Y.) (\$170 million settlement); *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA Litigation*, 07cv9633 (S.D.N.Y.) (\$475 million settlement); and *In re Sequenom, Inc. Securities Litigation*, 09cv921 (S.D. Cal.) (more than \$60 million in cash and stock recovered).

Mr. Campisi served as law clerk for Herbert J. Hutton, United States District Court Judge for the Eastern District of Pennsylvania.

Education:

- B.A., cum laude, Georgetown University (1996)
- J.D., summa cum laude, Villanova University School of Law (2000)
Member of Law Review and Order of the Coif

Bar affiliations and court admissions:

- Bar of the State of New York
- U.S. Courts of Appeals for the Ninth and Tenth Circuits
- U.S. District Courts for the Southern, Eastern, Northern and Western Districts of New York, and Western District of Tennessee

Professional affiliations:

- Federal Bar Council
- American Association for Justice

Mr. Campisi can be reached by email at: icampisi@kaplanfox.com

MELINDA CAMPBELL has been associated with Kaplan Fox since September 2004 and became a partner of the firm in 2012. She represents investors and institutions in securities fraud class action litigation.

Mrs. Campbell's noteworthy cases include: *In re Bank of America Corp. Securities Litigation*, MDL No. 2058 (S.D.N.Y.); *In re Ambac Financial Group, Inc. Securities Litigation*, No. 08-cv-411(NRB) (S.D.N.Y.); *In re Fannie Mae 2008 Securities Litigation*,

No. 08-cv-7831(PAC) (S.D.N.Y.), and *In re Eletrobras Securities Litigation*, 15-cv-5754 (S.D.N.Y.) (\$14.75 million settlement).

Mrs. Campbell obtained her J.D. from the University of Pennsylvania Law School. While attending law school, she successfully represented clients of the Civil Practice Clinic of the University of Pennsylvania Law School, and provided pro bono legal services through organizations including the Southern Poverty Law Center.

Mrs. Campbell obtained her undergraduate degree from the University of Missouri (*cum laude*).

Mrs. Campbell is a member of the Federal Courts Committee of the New York County Lawyers Association and served as a panelist in a continuing legal education course offered by the Committee concerning waiver of attorney-client privilege under Federal Rule of Evidence 501. Additionally, Mrs. Campbell is a member of the New York State Bar Association, the National Association of Women Lawyers, and the New York Women's Bar Association.

Education:

- B.A., University of Missouri (2000)
- J.D., University of Pennsylvania Law School (2004)

Bar affiliations and court admissions:

- Bar of the State of New York (2005)
- U.S. Courts of Appeals for the First, Second and Eleventh Circuits
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional affiliations:

- American Bar Association
- New York State Bar Association
- New York County Lawyers Association
- New York Women's Bar Association
- National Association of Women Lawyers

Mrs. Campbell can be reached by email at: MCampbell@kaplanfox.com

ELANA KATCHER has extensive complex antitrust litigation experience drawn from her work on both the plaintiff and defense sides. Ms. Katcher began her career in

antitrust litigation as an associate at Sullivan & Cromwell LLP where she was a member of the trial team defending Microsoft Corporation against a series of private class actions brought in courts around the country, as well as representing other major defendants in bet-the-company litigation.

Since 2007, Ms. Katcher has been instrumental in some of Kaplan Fox's largest cases, including *In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775 (E.D.N.Y.), and a successful bellwether trial in *Neurontin Marketing, Sales Practices & Products Liability Litig.*, MDL No. 1629 (D. Mass.). In addition, Ms. Katcher co-drafted a successful opposition to the first Rule 12(b)(6) motion to dismiss in the sprawling Generic Pharmaceutical antitrust actions, *In re Propranolol Antitrust Litig.*, 249 F. Supp. 3d 712 (S.D.N.Y. 2017) (Rakoff, J.), and continues to work on behalf of the Direct Purchaser Plaintiffs in the *Generic Pharmaceutical* antitrust actions now pending before District Judge Cynthia M. Rufe in the Eastern District of Pennsylvania, including as part of the briefing team that recently prevailed against the first tranche of motions to dismiss brought in that litigation. See *In re Generic Pharm. Pricing Antitrust Litig.*, No. 16-CB-27243, 2018 WL 5003450 (E.D. Pa. Oct. 16, 2018).

In addition, Ms. Katcher represents significant corporate clients, including clients listed on Nasdaq, in individual antitrust actions in Packaged Seafood in which she has recently co-argued a key motion to dismiss before District Judge Janis L. Sammartino, obtaining a significant victory where the court upheld jurisdiction over two foreign defendants. See *In re Packaged Seafood Prod. Antitrust Litig.*, No. 15-MD-2670 JLS (MDD), 2018 WL 4222506 (S.D. Cal. Sept. 5, 2018). Ms. Katcher has also taken major depositions of key witnesses in the U.S., Hong Kong, and Frankfurt, in Air Cargo, Packaged Seafood, and other cases.

Prior to Kaplan Fox, she was an associate at Sullivan & Cromwell LLP and King & Spalding LLP, where she participated in the defense of major companies, including at trial and in arbitration.

Education:

- B.A. Oberlin College
- J.D., New York University

Bar Affiliations and Court Admissions:

- Bar of the State of New York
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- New York State Bar Association
- New York City Bar Association

Ms. Katcher can be reached by email at: ekatcher@kaplanfox.com

MATTHEW P. McCahill was associated with Kaplan Fox from 2003 to 2005, re-joined the firm in May 2013 and became a partner in 2016. He practices in the areas of antitrust and securities litigation, as well as commercial litigation. From 2006 to early 2013, Mr. McCahill was an associate at Berger & Montague, P.C. in Philadelphia. While focusing on insurance and antitrust class action cases, including *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.) and *Ormond et al. v. Anthem, Inc. et al.*, Case No. 1:05-cv-01908-TWP-TAB (N.D. Ind.) (related to the demutualization of Anthem Insurance, which settled for \$90 million in 2012), he also represented corporations and bankruptcy trustees in commercial litigation involving claims for breach of contract, breach of fiduciary duty and fraudulent conveyance.

Mr. McCahill's practice includes representation of plaintiffs opting out of class actions. He currently represents large retailers who opted out of the *Payment Card* class to pursue their own antitrust actions against Visa and MasterCard challenging the networks' merchant rules and their interchange (or "swipe") fees. Among the merchants he and the firm represent in that case are E-Z Mart Stores, Inc., Sunoco, LP (formerly known as Susser Holdings Corp., operator of the Stripes® convenience store chain), Jacksons Food Stores, Sheetz, Inc., Kum & Go, L.C., Einstein Noah Restaurant Group, Furniture Row, Inc. and NPC International, Inc. (the world's largest franchisee of Pizza Hut restaurants).

Mr. McCahill is part of the Kaplan Fox team representing large grocery chains and food distributors (including Giant Eagle, Inc., Associated Food Stores, Inc., Affiliated Foods, Inc., Western Family Foods, Inc. and the McLane Company, Inc., among others) in individual actions in *In re Packaged Seafood Products Antitrust Litigation*, MDL No.

2670 (S.D. Cal.), alleging price-fixing and other antitrust violations against Tri-Union Seafoods, LLC (d/b/a Chicken of the Sea), Bumble Bee Foods, LLC, and others. He and other Kaplan Fox lawyers are also representing the Ohio Public Employees Retirement System in an individual securities fraud action against Brazilian energy conglomerate Petrobras in *In re Petrobras Securities Litigation*, Civ. Action No. 14-cv-9662 (JSR) (S.D.N.Y.). Mr. McCahill's current and past involvement in class action litigation at Kaplan Fox includes: *In re Cast Iron Soil Pipe Antitrust Litigation*, MDL No. 2508 (E.D. Tenn.), where he currently represents a proposed class of direct purchasers of cast iron soil pipes and fittings in an antitrust case against the Cast Iron Soil Pipe Institute, Charlotte Pipe & Foundry Co. and McWane, Inc. and its subsidiaries; *In re SandRidge Energy, Inc. Shareholder Derivative Litigation*, No. CIV-13-102-W (W.D. Okla.) (partial settlement of \$38 million); *In re Neurontin Antitrust Litigation*, MDL No. 1479 (D.N.J.) (delayed-generic entry action brought by direct purchasers of Pfizer's drug Neurontin, which settled for \$190 million following nearly 12 years of litigation).

In 2014, 2015 and 2016, Mr. McCahill was named a "New York Metro Super Lawyer – Rising Star" in antitrust litigation, and was selected as a "Pennsylvania Super Lawyer – Rising Star" (also in antitrust litigation) in 2012 and 2013. He is a member of the American, Pennsylvania State, New York State and New York City bar associations. Mr. McCahill's *pro bono* efforts focus primarily on representing Marine Corps veterans in benefits proceedings before the Veterans Administration.

Education:

- B.A., History, *summa cum laude*, Rutgers College (2000)
- J.D., Fordham Law School (2003)

Bar Affiliations and Court Admissions:

- Bars of the State of New York and the Commonwealth of Pennsylvania
- U.S. Court of Appeals for the Second Circuit
- U.S. District Courts for the Southern and Eastern Districts of New York and the Eastern District of Pennsylvania

Professional Affiliations:

- American Bar Association
- New York State Bar Association

- Pennsylvania Bar Association
- Association of the Bar of the City of New York

Mr. McCahill can be reached by email at: mmccahill@kaplanfox.com

DAVID A. STRAITE joined the New York office of Kaplan Fox in 2013 and became a partner in 2017. He focuses on digital privacy litigation, helping to protect consumer privacy in class actions against Facebook, Google, Yahoo and others. In 2012, M.I.T. Technology Review magazine called Mr. Straite “something of a pioneer” in digital privacy litigation. Mr. Straite also protects investors in securities, corporate governance, and hedge fund litigation. Prior to joining the firm, Mr. Straite helped launch the US offices of London-based Stewarts Law LLP, where he was the global head of investor protection litigation, the partner in residence in New York, and a member of the US executive committee. Prior to Stewarts Law he worked in the Delaware office of Grant & Eisenhofer and the New York office of Skadden Arps.

Mr. Straite speaks frequently on topics related to both privacy and investor protection. Most recently he was a featured panelist on the "Data Privacy and Article III Standing" panel at the Federal Bar Council's 2017 Winter Meeting along with Dean Erwin Chemerinsky and the Hon. Lorna Schofield. Prior events included being a featured speaker at the St. John's University “Cyber Law” CLE weekend in February 2016, and a featured panellist the hedge fund panel at the February 6, 2013 meeting of the National Association of Public Pension Attorneys in Washington, D.C. (“Structuring Investments – Do I Get to Go to the Cayman Islands?”). David also debated the general counsel of Meetup, Inc. during 2013 Social Media Week (“David vs. Goliath: the Global Fight for Digital Privacy”) and gave a guest lecture on the Legal Talk Network’s “Digital Detectives” podcast. He has also given interviews to Channel 10 (Tel Aviv), BBC World News (London), SkyNews (London), CBS Ch. 2 (New York) and CBS news radio (Philadelphia). Mr. Straite is also an adjunct professor at Yeshiva University's Sy Syms School of Business, teaching Business Law and Ethics for the Fall semester (2015 and 2016).

Mr. Straite has co-authored *Google and the Digital Privacy Perfect Storm* in E-Commerce Law Reports (UK) (2013), authored *Netherlands: Amsterdam Court of Appeal*

Approves Groundbreaking Global Settlements Under the Dutch Act on the Collective Settlement of Mass Claims, in The International Lawyer's annual "International Legal Developments in Review" (2009), and was a contributing author for Maher M. Dabbah & K.P.E. Lasok, QC, *Merger Control Worldwide* (2005).

Mr. Straite's recent litigation includes co-leading a class of investors in *In re: CSO Hedge Fund Litigation* New York federal court (settlement approved January 2016); pursuing digital privacy claims as co-class counsel in *In re: Facebook Internet Tracking Litigation* and *In re Yahoo Mail Litigation* in California (settlement approved August 2016) and *In re: Google Inc. Cookie Placement Consumer Privacy Litigation* in Delaware; pursuing corporate governance claims in Delaware Chancery Court in a number of matters; and helping to develop the first multi-claimant test of the UK's new prospectus liability statute in a case against the Royal Bank of Scotland in the English courts.

Education:

- B.A., Tulane University, Murphy Institute of Political Economy (1993)
- J.D., *magna cum laude*, Villanova University School of Law (1996), Managing Editor, Law Review and Order of the Coif

Bar affiliations and court admissions:

- Bar of the State of New York (2000)
- Bar of the State of Delaware (2009)
- Bar of the State of Pennsylvania (1996)
- Bar of the State of New Jersey (1996)
- Bar of the District of Columbia (2008)
- U.S. District Courts for the Southern and Eastern Districts of New York; Eastern District of Pennsylvania; and the District of Delaware
- U.S. Courts of Appeals for the Second, Third and Ninth Circuits

Professional affiliations:

- American Bar Association
 - Section of Litigation (Privacy and Data Security Committee)
 - Section of Business Law
- Delaware Bar Association
- New York American Inn of Court (Master of the Bench)

- Internet Society

Mr. Straite can be reached by email at: dstraite@kaplanfox.com

OF COUNSEL

GARY L. SPECKS practices primarily in the area of complex antitrust litigation. He has represented plaintiffs and class representatives at all levels of litigation, including appeals to the U.S. Courts of Appeals and the U.S. Supreme Court. In addition, Mr. Specks has represented clients in complex federal securities litigation, fraud litigation, civil RICO litigation, and a variety of commercial litigation matters. Mr. Specks is resident in the firm's Chicago office.

During 1983, Mr. Specks served as special assistant attorney general on antitrust matters to Hon. Neil F. Hartigan, then Attorney General of the State of Illinois.

Education:

- B.A., Northwestern University (1972)
- J.D., DePaul University College of Law (1975)

Bar Affiliations and Court Admissions:

- Bar of the State of Illinois (1975)
- U.S. Courts of Appeals for the Third, Fifth, Seventh, Ninth and Tenth Circuits
- U.S. District Court for the Northern District of Illinois, including Trial Bar

Professional Affiliations:

- American Bar Association
- Illinois Bar Association
- Chicago Bar Association

Mr. Specks can be reached by email at: GSpecks@kaplanfox.com

W. MARK MCNAIR practices in the area of securities litigation with a special emphasis on institutional investor involvement. He associated with the firm in 2003, and is resident in Washington, D.C. Prior to entering private practice, he was an attorney at the Securities and Exchange Commission and the Municipal Securities Rulemaking Board.

Education:

- B.A. with honors, University of Texas at Austin (1972)
- J.D. University of Texas at Austin (1975)
- L.L.M. (Securities) Georgetown University (1989)

Bar Affiliations and Court Admissions:

- Bar of the State of Texas (1975)
- Bar of the State of Maryland (1995)
- Bar of the State of Pennsylvania (1995)
- Bar of the District of Columbia (2008)
- U.S. Courts of Appeals for the Third, Fifth, Seventh, Ninth and Tenth Circuits
- U.S. District Court for the Northern District of Illinois, including Trial Bar

Mr. McNair can be reached at MMcnair@kaplanfox.com

MAIA C. KATS practices in the area of consumer litigation, with a special emphasis on deceptive labeling in the food and dietary supplements context. Prior to joining Kaplan Fox, Maia was the Litigation Director for the Center for Science in the Public Interest, where she led the department to unprecedented success. She is widely regarded as a leading expert in food litigation and is a frequent speaker on the topic nationwide. Maia is the consumer representative on FDLI's 2019 Food Advertising, Labeling, and Litigation Conference Planning Committee. She is based in Washington, DC.

Maia has served as lead or co-lead counsel in many landmark, deceptive marketing class actions that favorably resolved including, most recently, Coca-Cola (Vitaminwater), PepsiCo (Naked Juice), General Mills (Cheerios Protein), and Campbell's (Plum Organics). She is currently class counsel in numerous deceptive "health halo" cases, including against CVS (Algal-DHA memory supplements), Jamba Juice (Smoothies), and Coca-Cola and the American Beverage Association (misleading marketing of sugar drinks as not linked scientifically to obesity and diabetes). Coverage of her cases routinely appears in the press, including on Good Morning America, ABC News, The Wall Street Journal, The Washington Post, NPR, and more.

Education:

- B.A. University of Michigan (1984)

- J.D. University of Michigan Law School (1988)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (1989)
- Bar of the State of District of Columbia (1990)
- U.S. Courts of Appeals for the Second Circuit
- U.S. District Court for the Northern District of California and District of Columbia

Ms. Kats can be reached at MKats@kaplanfox.com

WILLIAM J. PINILIS practices in the areas of commercial, consumer and securities class action litigation.

He has been associated with Kaplan Fox since 1999, and is resident in the firm's New Jersey office.

In addition to his work at the firm, Mr. Pinilis has served as an adjunct professor at Seton Hall School of Law since 1995, and is a lecturer for the New Jersey Institute for Continuing Legal Education. He has lectured on consumer fraud litigation and regularly teaches the mandatory continuing legal education course Civil Trial Preparation.

Mr. Pinilis is the author of "Work-Product Privilege Doctrine Clarified," *New Jersey Lawyer*, Aug. 2, 1999; "Consumer Fraud Act Permits Private Enforcement," *New Jersey Law Journal*, Aug. 23, 1993; "Lawyer-Politicians Should Be Sanctioned for Jeering Judges," *New Jersey Law Journal*, July 1, 1996; "No Complaint, No Memo – No Whistle-Blower Suit," *New Jersey Law Journal*, Sept. 16, 1996; and "The *Lampf* Decision: An appropriate Period of Limitations?" *New Jersey Trial Lawyer*, May 1992.

Education:

- B.A., Hobart College (1989)
- J.D., Benjamin Cardozo School of Law (1992)

Bar Affiliations and Court Admissions:

- Bar of the State of New Jersey (1992)
- Bar of the State of New York (1993)
- U.S. District Courts for the District of New Jersey, and the Southern and Eastern Districts of New York

Professional Affiliations:

- Morris County Bar Association
- New Jersey Bar Association
- Graduate, Brennan Inn of Court

Mr. Pinilis can be reached by email at: WPinilis@kaplanfox.com

JUSTIN B. FARAR joined Kaplan Fox in March 2008. He practices in the area of securities and antitrust litigation with a special emphasis on institutional investor involvement. He is located in the Los Angeles office. Prior to joining the firm, Mr. Farar was a litigation associate at O'Melveny & Myers, LLP and clerked for the Honorable Kim McLane Wardlaw on the Ninth Circuit Court of Appeals. Mr. Farar also currently serves as a Commissioner to the Los Angeles Convention and Exhibition Authority.

Education:

- J.D., order of the coif, University of Southern California Law School (2000)
- B.A., with honors, University of California, San Diego

Bar Affiliations and Court Admissions:

- Bar of the State of California (2000)
- U.S. Court of Appeals for the Ninth Circuit (2000)
- U.S. District Court for the Central of California (2000)

Awards:

- The American Society of Composers, Authors and Publishers' Nathan Burkan Award Winner, 2000 for article titled "Is the Fair Use Defense Outdated?"

Mr. Farar can be reached by email at: JFarar@kaplanfox.com

MATTHEW GEORGE is a complex litigation attorney at Kaplan Fox & Kilsheimer LLP with a practice focused on data privacy, consumer protection, and employment/labor cases. He has significant experience and expertise handling multidistrict litigation and other coordinated proceedings in state and federal courts involving multiple parties and complex discovery issues.

Matthew has been a strong advocate for consumer and patient privacy. He has served on court-appointed lead counsel teams in notable cutting-edge data breach and

information privacy cases against Target, Adobe, Yahoo!, and Horizon Healthcare. In these and other cases he has worked with cybersecurity experts to gain technical knowledge in data collection, management and protection. He was recently appointed to the Plaintiffs' Steering Committee in *In re 21st Century Oncology Data Breach Litigation*, MDL No. 2737, pending in the Middle District of Florida.

Matthew has also recovered unpaid overtime wages for thousands of workers across the United States under state and federal law in over a dozen cases. His notable recoveries include generating a \$9.9 million settlement on behalf of retail employees and winning a two-week arbitration representing misclassified account representatives against a Fortune 500 company. Matthew has also recovered over \$10 million for employees in cases alleging violations of the WARN Act when the employees were not provided required notice before their terminations.

He has also represented customers challenging deceptive business practices and has worked to obtain significant recoveries in consumer fraud cases against companies including Chase, Mercedes-Benz and The Ritz-Carlton. He currently represents consumers in cases against HBO, Logitech, and Chipotle, among others. In addition to representing plaintiffs in class action cases, Matthew has also represented institutional clients including labor unions and conducted a risk management analysis for a multi-national health and wellness consumer product corporation.

Matthew has been selected by his peers as a "Rising Star" by Northern California Super Lawyers each year from 2011-2014 and was chosen as a "Super Lawyer" in 2016, the first year he was eligible for the distinction. He has been a regular speaker at industry conventions and seminars on topics ranging from arbitration, expert discovery, settlement strategies, and the rapidly changing field of privacy law.

Education:

- B.A., Political Science and Criminal Justice, *magna cum laude*, Chapman University (2002)
- J.D., The University of Michigan Law School (2005)

Publications and Speaking Engagements:

- Expert Depositions: Promoting Expertise and Limiting Exposure –Bridgeport Continuing Legal Education “Mastering the Deposition” Seminar (January 2017)
- “How Viable Is the Prospect of Private Enforcement of Privacy Rights In The Age of Big Data? An Overview of Trends and developments In Privacy Class Actions” – Competition, The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California, Volume 24, No. 1 (Spring 2015)
- Panel Discussion of Sony Pictures Data Breach Cases – CNBC’s “Squawk On the Street” (December 2014)
- New and Developing Practice Areas – CAOC 53rd Annual Convention (November 2014)
- Privacy Law Symposium – University of California, Hastings College of the La (April 2014)
- Update On the Target Data Breach Litigation – HarrisMartin Target Data Breach MDL Conference (March 2014)
- Consumer Privacy Law – 8th Annual CAOC Class Action Seminar (February 2014)
- Privacy Litigation and Management: Strategies For Protection and Litigation – Bridgeport Continuing Legal Education Seminar (December 2012)
- Class Action Settlement Strategies and Mechanics – 12th Annual Bridgeport Class Action Litigation & Management Conference (April 2012)
- Developments In the Arbitration of Wage and Hour Disputes – Bridgeport 2010 Wage and Hour Conference (October 2010)

Bar Affiliations and Court Admissions:

- Bar of the State of California
- U.S. District Courts for the Northern, Central, Southern and Eastern Districts of California, and the District of Colorado
- Ninth Circuit Court of Appeals

Professional Affiliations:

- Bay Area Lawyers for Individual Freedom
- Consumer Attorneys of California (Diversity Committee)

- American Bar Association (Labor and Employment Section)

Mr. George can be reached by email at: mgeorge@kaplanfox.com

ASSOCIATES

MARIO M. CHOI is a resident in the Oakland office and practices in the areas of securities, antitrust, and consumer protection litigation. Mr. Choi's recent litigations include *Schueneman v. Arena Pharmaceuticals, Inc., et al.* (S.D. Cal.), *In re Rocket Fuel, Inc. Securities Litigation* (N.D. Cal.), *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation* (S.D.N.Y.), *In re Packaged Seafood Products Antitrust Litigation* (S.D. Cal.), *Schneider v. Chipotle Mexican Grill, Inc.* (N.D. Cal.), and *In re Apple Inc. Device Performance Litigation* (N.D. Cal.).

During law school, Mr. Choi interned for the Honorable Bruce M. Selya, U.S. Circuit Judge for the U.S. Court of Appeals for the First Circuit. After law school, Mr. Choi clerked for the Honorable Richard B. Lowe, III, a justice of the New York Supreme Court. Prior to joining the firm, Mr. Choi was a litigation associate at Pryor Cashman LLP.

Mr. Choi is actively involved in the community, including serving as a Judge Pro Tem for the San Francisco Superior Court and on the boards of various non-profit organizations in the Bay Area. For his work, Mr. Choi was elected as a Fellow of the American Bar Foundation.

Education:

- B.A., Boston University
- M.A., Columbia University
- J.D., Northeastern University

Bar Affiliations and Court Admissions:

- Bar of the State of New York
- Bar of the State of California
- U.S. Courts of Appeals for the Eighth and Ninth Circuits
- U.S. District Courts for the Northern, Southern and Central Districts of California and the Southern District of New York

Professional Affiliations:

- American Bar Association

- Asian American Bar Association – Bay Area
- Bar Association of San Francisco
- Federal Bar Association

Mr. Choi can be reached by email at: mchoi@kaplanfox.com

PAMELA MAYER has been associated with Kaplan Fox since 2009. She practices in the area of securities litigation.

Prior to joining Kaplan Fox, Ms. Mayer was a securities investigation and litigation attorney for a multinational investment bank. Utilizing her combined legal and business background, including her M.B.A., Ms. Mayer focuses on the research and analysis of securities claims on behalf of our firm's individual and institutional clients and is dedicated full-time to the firm's Portfolio Monitoring and Case Evaluation Program. Ms. Mayer also has substantial litigation experience in the area of intellectual property.

Education:

- B.S., The University of Rochester
- J.D., The George Washington University
- M.B.A., Finance, The University of Michigan

Bar Affiliations and Court Admissions:

- Bar of the State of New York
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- New York State Bar Association

Ms. Mayer can be reached by email at: pmayer@kaplanfox.com

AARON L. SCHWARTZ has been associated with Kaplan Fox since July 2017. He practices securities, antitrust and consumer protection litigation.

Prior to joining the firm, Mr. Schwartz was a Deputy Attorney General in the Pennsylvania Office of Attorney General, Antitrust Section. As a Deputy Attorney General, Mr. Schwartz conducted investigations, brought suit to enjoin anticompetitive corporate mergers, and prosecuted pharmaceutical product-hopping schemes, market allocation schemes, and unfair trade practices.

Education:

- B.A., University of Wisconsin—Madison (2009)
- J.D., The Pennsylvania State University—The Dickinson School of Law (2014)

Bar Affiliations and Court Admissions:

- Bar of the Commonwealth of Pennsylvania
- Bar of the State of New York
- U.S. Court of Appeals for the Third Circuit
- U.S. District Courts for the Eastern, Middle, and Western Districts of Pennsylvania

Professional Affiliations:

- Pennsylvania Bar Association
- American Bar Association

Mr. Schwartz can be reached by email at: aschwartz@kaplanfox.com

JASON A. URIS has been associated with Kaplan Fox since May 2013. He practices in the areas of securities, antitrust, and consumer litigation.

Mr. Uris is currently involved in several litigations, including *Milbeck v. TrueCar, Inc., et al.*, *Lewis v. YRC Worldwide Inc., et al.*, and *In re: Keurig Green Mountain Single-Serve Coffee Antitrust Litigation*.

Mr. Uris was also a member of the teams that litigated the following cases: *Kasper v. AAC Holdings, Inc., et al.* (M.D. Tenn.) (\$25 million settlement); *In re SandRidge Energy, Inc. Shareholder Derivative Litigation*, No. CIV-13-102-W (W.D. Okla.) (partial settlement of \$38 million); *In re Cast Iron Soil Pipe Antitrust Litigation*, MDL No. 2508 (E.D. Tenn.) (\$30 million settlement); *In re: CSO Hedge Fund Litigation* (\$13.5 million settlement).

Education:

- B.A., *cum laude*, Boston University (2011)
- J.D., Fordham University School of Law (2014)

Bar Affiliations and Court Admissions:

- Bar of the State of New York (2015)
- U.S. District Courts for the Southern and Eastern Districts of New York

Professional Affiliations:

- New York State Bar Association

Mr. Uris can be reached by email at: juris@kaplanfox.com

Exhibit 2

COTCHETT, PITRE & McCARTHY, LLP

ATTORNEYS AT LAW

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WWW.CPMLEGAL.COM

FIRM RESUME

WHO WE ARE

Cotchett, Pitre & McCarthy, LLP, based on the San Francisco Peninsula for over 45 years, engages exclusively in litigation and trials. The firm's dedication to prosecuting or defending socially just actions has earned it a national reputation. With offices in Burlingame, Los Angeles and New York, the core of the firm is its people and their dedication to principles of law, work ethic and commitment to justice.

Most clients are referred by other lawyers who know of the firm's abilities and reputation in the legal community. We are trial lawyers dedicated to achieving justice.

WHAT WE DO

SECURITIES AND DERIVATIVE CASES

In re Facebook Derivative Litigation

USDC, Northern District of California

CPM is Lead Counsel for the Derivative Plaintiffs in this action against Facebook's current and former officers and directors based on Facebook's use of private information of its customers and disclosures to third parties, including Cambridge Analytica.

In re LendingClub Securities Litigation

San Mateo Superior Court/USDC, Northern District of California

CPM is Co-Lead Counsel for a certified class of shareholders alleging that LendingClub and certain officers failed to disclose material information at the time of its initial public offering. The California state court action and the related federal court action settled for \$125 million. (Settled, 2018).

In re ProNAi Therapeutics, Inc. Securities Litigation

San Mateo Superior Court

CPM is Lead Counsel seeking to represent a class of shareholders alleging that ProNAi failed to disclose material information at the time of its initial public offering relating to its developmental drug.

In re Oportun Securities Litigation

San Mateo Superior Court

CPM is Lead Counsel for a certified class of Oportun's common shareholders alleging that their ownership interests were unfairly diluted by a series of insider financing rounds led by Oportun's largest preferred shareholders, including venture capital funds that had representatives on Oportun's Board of Directors. (Settled, 2018).

In re Medical Capital Securities Litigation

USDC, Central District of California

CPM was Co-Lead Counsel for noteholders who invested in Medical Capital, a receivable company that turned out to be a Ponzi scheme. After Plaintiffs prevailed on several motions to dismiss, Bank of New York Mellon agreed to pay \$114 million to resolve the actions. Shortly thereafter, and on the eve of trial, Wells Fargo agreed to pay \$105 million dollars to resolve the actions. The combined \$219 million recovery represents one of the largest recoveries against indenture trustees in United States history and the largest Ponzi recovery in California history. (Settled, 2013).

In re Intuitive Derivative Litigation

San Mateo Superior Court

CPM was Co-Lead Counsel in a shareholder derivative action against certain current and former officers and directors of Intuitive, which sold a robotic surgical system, alleging that Intuitive failed to disclose ongoing issues with regulatory bodies and patient injuries from the system at the same time executives were reaping insider trading profits from personal trades. (Settled, 2017).

Lehman Brothers Litigation

USDC, Southern District of New York

CPM was Liaison Counsel and represented San Mateo County, Monterey County, the cities of Auburn, San Buenaventura, Burbank, and Zenith Insurance Company in a securities action relating to their investment losses in Lehman Brothers. CPM, on behalf of its clients, was the only firm to obtain monetary recoveries from the individual defendants themselves and one of the first to pursue claims against Ernst & Young, LLP. (Settled, 2014).

In re Homestore.com, Inc. Securities Litigation

USDC, Central District of California

CPM was Lead Counsel in a securities fraud class action representing CALSTRS against Homestore.com, Inc., its senior officers and directors, its auditors, and other companies who engaged in fraudulent “roundtripping” transactions, increasing revenues by false accounting methods. In 2004 the court approved a settlement in which Homestore agreed to reform its corporate policies and pay approximately \$93 million in stock and cash. In 2011, CPM obtained a jury verdict against a Homestore executive for securities fraud. (Jury Verdict, 2011).

HL Leasing Ponzi Scheme

Fresno County Superior Court

CPM obtained a jury verdict for \$46.5 million against the top two senior officers of HL Leasing, Inc. for their involvement in a Ponzi scheme. The jury verdict came three days after the court had entered a directed verdict for \$114 million against HL Leasing, Inc., Heritage Pacific Leasing and Air Fred, LLC for a Ponzi scheme in which over 1200 victims lost approximately \$137 million. (Jury Verdict, 2011).

Monterey County/ San Buenaventura / WaMu

USDC, Western District of Washington

CPM represented Monterey County and the City of San Buenaventura relating to their investment losses in Washington Mutual. Defendants allegedly deceived investors relating to their underwriting and exposure to subprime losses, and engaged in misleading accounting practices. (Settled, 2011).

Pay By Touch Litigation

San Francisco County Superior Court

CPM represented investors, including the Getty family trusts, in a securities action against UBS Securities and former executives of Pay By Touch alleging fraud and negligent misrepresentation. (Settled, 2011).

California State Teachers' Retirement System v. Qwest Communications
San Francisco County Superior Court

CPM represented CalSTRS in a securities action against Qwest Communications International, Inc., its securities underwriters, its senior officers and directors, and its auditor, Arthur Andersen arising out of the fraud executed by Qwest's senior officers. The litigation strategy resulted in a \$46.5 million settlement for CalSTRS alone, compared to the entire \$400 million class settlement. CalSTRS' individual settlement is approximately 11.6% of the total class settlement. CalSTRS also recovered over 50% of its actual damages, compared to a 6% class recovery. This is an exceptional settlement in a securities litigation and became the subject of securities panel discussions. (Settled, 2007).

California State Teachers' Retirement System v. AOL Time Warner
Los Angeles County Superior Court

CPM represented CalSTRS in a securities action against AOL Time Warner, its securities underwriters, its senior officers and directors and its auditor, Ernst & Young ("E&Y") alleging violations of state and federal securities law. CalSTRS was able to recover \$107.4 million in settlement, representing 80% of its losses and over 7 times what it would have recovered if it had remained a member of the Class. Our firm's participation in the CalSTRS/AOL Time Warner litigation was also at the cutting edge of California securities law development. We obtained a ruling from the Los Angeles Superior Court holding that the Supreme Court ruling in *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005) did not apply to actions brought under the California securities laws. We also were one of the first firms to litigate the issue of reliance as it relates to index investing, an issue of significant importance to all pension funds. This litigation demonstrates our firm's commitment to fighting to ensure that federal and state securities laws are able to protect injured investors and preserve the integrity of America's securities markets. (Settled, 2007).

Worldcom

The Regents of the University of California v. Salomon Smith Barney, Inc., et al.
USDC, Southern District of New York

CPM represented the Regents of the University of California in an individual securities action WorldCom, Inc., its underwriters and its officers and directors, including Bernard Ebbers, relating to a massive multibillion accounting fraud which resulted in the bankruptcy of one of the largest telecommunications companies in the United States. Regents had invested in WorldCom securities prior to the Class Period and would have recovered nothing from the settlement. This was one of the first cases to successfully bring a holder's claim under California's blue sky laws, as recognized by the California Supreme Court in *Small v. Fritz* (2003) 30 Cal.4th 167. (Settled, 2006).

In re Oracle Derivative Litigation

USDC, Northern District of California

CPM was Co-Lead Counsel for investors in a shareholder derivative complaint on behalf of Oracle Corporation against certain members of its Board of Directors and certain senior officers for breach of fiduciary duty and abuse of control relating to the over-billing of the US government for software products.

In re Novellus Systems, Inc. Litigation

Santa Clara County Superior Court

CPM was Co-Lead Counsel in a class action representing the Louisiana Municipal Police Employees' Retirement System against Novellus' Board of Directors for alleged breaches of their fiduciary duties arising from a merger with Lam Research Corporation. CPM alleged that the merger was for inadequate consideration and was arrived at through an unfair process that did not adequately safeguard the interest of Novellus shareholders. (Settled, 2012).

In re Mutual Funds Investment Litigation

USDC, District of Maryland

CPM was Lead Counsel in a securities fraud class action filed against Janus mutual funds for allowing select investors to make substantial profits at the expense of other investors. The suits were filed in September 2003 and accuse the funds of allowing "market timing" and "late trading" by its largest customers resulting in millions of dollars of losses to other shareholders. (Settled, 2010).

In re Genentech/Roche Shareholder Litigation

San Mateo County Superior Court

CPM was Co-Lead Counsel in a class action alleging several defendants breached their fiduciary duty relating to a proposed buy-out offer of Genentech by its largest and controlling shareholder, Roche Holdings. (Settled, 2009).

Merrill Lynch Class Action

USDC, Southern District of New York

CPM represented former First Republic Bank shareholders in a securities class action against Merrill Lynch & Co., which is accused of hiding billions of dollars of losses related to subprime mortgages while the companies' merger was pending. Defendants allegedly misled First Republic shareholders about its finances as they considered Merrill's \$1.8 billion takeover of the company. (Settled, 2009).

In re Apple Computer Inc. Derivative Litigation

USDC, Northern District of California

CPM was Lead Counsel in a derivative action on behalf of Apple relating to backdating of stock options granted to various executives. The action alleged violations of federal and California state securities statutes, and resulted in Settlement of cash and novel corporate governance reform. (Settled, 2008).

Madoff Litigation

New York State Supreme Court

CPM represents investors in a securities action naming individuals and entities who are alleged to be liable in the \$65 billion Ponzi Scheme perpetrated by Bernard Madoff. Plaintiffs allege that Defendants, JP Morgan and the Bank of New York as well as accounting firm KPMG LLP and their international counterparts, KPMG UK and KPMG International were primary players responsible for the fraud. Partners Joseph Cotchett and Nancy Fineman were the first and only attorneys to interview Bernard Madoff in prison.

American Continental Corp./Lincoln Sav. & Loan

794 F. Supp. 1424, UDSC, District Court of Arizona

CPM represented shareholder and bondholder victims of Charles Keating in a securities class action, and related insurance coverage litigation, including lengthy jury trial. (Largest jury verdict against an individual defendant in American history – \$3.5 billion against Keating and others.) (Jury Verdict).

Technical Equities Litigation

Abelson v. National Union

Santa Clara County Superior Court

CPM represented hundreds of individual plaintiffs in a fraud litigation, and subsequent insurance coverage and insurance bad faith litigation, and included three lengthy jury trials and three court trials. (Largest verdict in California for 1991).

Bily v. Arthur Young & Co.

3 Cal. 4th 370 (1992)

CPM represented shareholders in a professional negligence action against Arthur Young & Co. for materially misleading financial statements. Seminal case in California discussing auditor liability to shareholders.

In re Federal Home Loan Mortgage Corp. (Freddie Mac) Securities Litigation

USDC, Southern District of New York

CPM was Lead Counsel in securities class action against Freddie Mac executives alleging that they misrepresented material facts regarding Freddie Mac's business prior to government conservatorship. The losses suffered by the Class of preferred shareholders exceed \$6 billion. (Settled).

Diversified Lending Group

Los Angeles County Superior Court

CPM represents investors in a securities action involving a multi-hundred million dollar fraudulent investment scheme perpetrated by Diversified Lending Group, Inc., Applied Equities, Inc. Bruce Friedman, and Diane Cano. (Settled).

In re Informix Derivative Litigation

Smurthwaite v. White

San Mateo County Superior Court

CPM was Lead Counsel in consolidated shareholder derivative actions against corporate officers, directors and accountants relating to accounting fraud. (Settled, 2000).

In re Sybase Derivative Litigation

Alameda County Superior Court

Krim v. Kertzman

Alameda County Superior Court

CPM was Lead Counsel in consolidated shareholder derivative actions against corporate officers and directors. (Settled, 2000).

CBT Group Litigation

Durrett v. McCabe

San Mateo County Superior Court

CPM represented holders of American Depository Shares in a derivative litigation against officers and directors of CBT Group PLC for accounting fraud and insider trading. (Settled, 2000).

Orange County Securities Litigation

Smith v. Merrill Lynch

Orange County Superior Court

CPM represented debt securities holders of Orange County and its investment pool participants in a securities class action. (Settled, 1997).

Acclaim Securities Litigation

Campbell v. Petermeier, et al.

Alameda County Superior Court

Campbell v. Acclaim Entertainment, Inc., et al.

USDC, Eastern District of New York

CPM represented investors in a securities class action arising from a stock swap merger. (Settled, 1997).

In re Pilgrim Securities Litigation

USDC, Central District of California

CPM represented investors in a mutual fund fraud class action. (Settled, 1997).

West Valley Litigation

Knight v. Rayden

Santa Clara County Superior Court

CPM represented real estate limited partnership investors in a securities class action. (Settled, 1996).

In re Oak Technologies Securities Litigation

Santa Clara County Superior Court

CPM served as Co-Lead Counsel for investors in a securities class action for insider trading and abuse of control. (Settled).

In re HomeFed Securities Litigation

USDC, Southern District of California

CPM represented bankrupt S&L as plaintiff in action against former S&L officers, directors and accountants for mismanagement and breach of fiduciary duty. (Settled).

Giorgetti v. BankAmerica Corp.

San Francisco County Superior Court

CPM represented shareholders in a class action for failure to pay control premium in connection with merger between Bank of America and NationsBank Corp. (Settled).

Harmsen v. Smith

693 F. 2d 932 (9th Cir. 1982)

586 F. 2d 156 (9th Cir. 1978)

542 F. 2d 496 (9th Cir. 1976)

CPM represented shareholders of United States National Bank, San Diego in a securities class action against C. Arnholt Smith and other officers, directors, and insiders. Multi-million dollar jury verdicts upheld on appeal. The first securities class action tried on both liability and damages to a jury.

J. David Dominelli Litigation

Rogers & Wells v. Superior Court

175 Cal. App. 3d 545 (1986)

CPM represented hundreds of clients in investor fraud litigation in San Diego County Superior Court including a lengthy jury trial.

CONSUMER FRAUD CASES

In re: Lenovo Adware Litigation

USDC, Northern District of California

CPM is Co-Lead Counsel in the Lenovo Adware Litigation related to surreptitiously installed malware on Lenovo computers. The complaint alleges that the adware violates privacy laws by intercepting users' behavioral data, including browsing history and electronic communications.

In re: Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation

USDC, Eastern District of Virginia

CPM is Co-Lead Counsel in the Lumber Liquidators case filed in the Eastern District of Virginia. The class action was filed against Lumber Liquidators alleging that their Chinese-manufactured laminate wood flooring products emit unsafe and dangerous levels of formaldehyde.

Credit Counseling Industry Suit names Chase, Money Management International and Others

USDC, Central District of California

CPM filed a consumer fraud case against JP Morgan Chase & Co., Chase Manhattan Bank USA, Money Management International (also known as Consumer Credit Counseling Service) and Money Management By Mail, Inc. for fraudulent "debt counseling" and debt collections in the subprime credit industry.

Anastasiya Komarova v. MBNA America Bank, N.A.; National Credit Acceptance, Inc.

San Francisco Superior Court

In a rare jury trial against a credit card collection agency, a San Francisco jury ruled in favor of a young woman who was the victim of an abusive campaign to force her to repay a debt she never incurred. Anne Marie Murphy and Justin T. Berger, two Associates at CPM represented Anastasiya Komarova, who was awarded \$600,000 from National Credit Acceptance, Inc. in 2008. Komarova had been subjected to nearly a year of hostile telephone calls to her work place and a spurious arbitration proceeding, all over a bogus credit card debt and despite the fact that she repeatedly told the agency she never had an account with the credit card company in question. In

issuing its verdict, the San Francisco Superior Court jury described National Credit Acceptance's conduct as "outrageous." The verdict is believed to be one of the largest verdicts in the country by a sole plaintiff alleging credit abuse.

Hidden Wireless Telephone Fees

San Mateo County Superior Court

CPM filed a class action lawsuit against AT&T Wireless, Sprint and Cingular Wireless for illegally charging subscribers for services, including "local number portability" fees, even though the services are not available. The case went to the Court of Appeal and is now back in the Superior Court.

In re: Hewlett-Packard Inkjet Printer Litigation

USDC, Northern District of California

CPM represented consumers who have been deceived by inaccurate low-on-ink warnings on Hewlett-Packard Inkjet Printers. The low-on-ink warnings appear even when there is a substantial amount of ink remaining in the ink cartridges, thereby misleading consumers into unnecessarily buying expensive ink cartridges.

Rich v. Hewlett-Packard

USDC, Northern District of California

CPM represented consumers in a class action lawsuit against Hewlett-Packard, which has designed its printers to use color ink even when printing in black and white. Hewlett-Packard does not disclose this design to consumers, who are forced to buy expensive color ink cartridges even when they only print simple black and white documents.

Citigroup

San Francisco County Superior Court

CPM filed a consolidated class action on behalf of mortgage "packing" and "flipping" victims. Nationwide class certification for settlement purposes, and final approval of settlement, 2003.

Ameriquest

San Mateo County Superior Court

CPM filed a "Bait and Switch" class action on behalf of mortgage borrowers. Class certified for all purpose in 2003. Settlement finally approved in 2005.

Northern Trust Bank of California

Los Angeles County Superior Court

CPM filed a class action on behalf of beneficiaries of fixed-fee trusts charged excess trustee fees over a 21 year period. Class certification for settlement purposes and final approval of settlement, 2005.

Old Republic

Wisper v. Old Republic Title Co.

Verges v. Old Republic Title Co.

San Francisco County Superior Court

CPM was Lead and liaison counsel in consolidated consumer class action against title company for unfair business practices regarding fee overcharges and “cost avoidance” relationships with banks. Class certified for all purposes. Verdict of \$14 million in 2001.

Household Lending

USDC, Northern District of California

CPM filed a nationwide class action on behalf of predatory lending victims. Class certification for all purposes, 2003. Final approval of settlement, 2004.

Fairbanks Capital Corp.

USDC, District of Massachusetts

CPM filed a nationwide class action against mortgage loan servicing company for charging various improper fees, costs and charges. Class certification for settlement purposes and final approval of settlement, 2004.

Massachusetts General Life Ins. Co.

Santa Clara County Superior Court

CPM filed a “vanishing premium” class action on behalf of life insurance policyholders. Class certified for all purposes, 1999.

Commonwealth Life Ins. Co.

Alameda County Superior Court

CPM filed a consumer fraud class action against provider of reverse mortgages to elderly consumers. Class certified on Business and Professional Code Violation for all purposes.

Transamerica HomeFirst, Inc.

San Mateo County Superior Court

69 Cal. App. 4th 577 (1999)

CPM filed a consumer fraud class action against provider of reverse mortgages to elderly consumers. Class certified on Business and Professional Code Violations for all purposes.

Stewart Title Co. of California

San Mateo County Superior Court

CPM represented 115 individual plaintiffs in 81 consolidated cases arising from pyramid scheme fraud relating to fractionalized deeds of trust.

In re Louisiana-Pacific Corp. Inner-Seal OSB Trade Practices

Agius v. Louisiana-Pacific Corp.

USDC, Northern District of California

CPM filed a nationwide product defect/Lanham Act class action on behalf of owners and operators of building and homes with defective and improperly certified oriented strand board wood sheathing. (Class certified and settlement finally approved, 1998).

Executive Life

Los Angeles County Superior Court

CPM filed an action by Insurance Commissioner on behalf of failed insurance company (Filed April 1991); also filed as a class action. (Settled, 1994/95).

Goodyear Tire & Rubber Co.

USDC Southern District of California

CPM filed a class action on behalf of franchisees for unfair business practices. (Settled, 1996).

First Capital Holdings

San Diego County Superior Court

CPM filed a class action on behalf of policy holders of failed insurance company. (Settled, 1992/93).

Fidelity Federal Bank

USDC, Central District of California (1993)

824 F. Supp. 909

9th Circuit Court of Appeals (1996)

91 F. 3d 75

CPM filed a class action on behalf of adjustable rate mortgage borrowers.

In re: Diet Drugs (Phentermine, Fenfluramine, Dexfunfluramine) Products Liability

Los Angeles County Superior Court

USDC, Eastern District of Pennsylvania

CPM filed a consumer fraud and product liability individual actions on behalf of approximately 100 individuals.

Prop. 103

Calfarm Ins. Co. v. Deukmejian

48 Cal. 3d 805 (1989)

CPM filed a lawsuit on behalf of Ralph Nader and his organization regarding Proposition 103 (rate controls on insurance carriers).

PUBLIC ENTITY CASES

People of the State of California v. Atlantic Richfield, et al. (“Lead Paint Litigation”)

Santa Clara County Superior Court

CPM represented the People of the State of California alongside ten California Cities and Counties in a public nuisance action in the Complex Department of Santa Clara County Superior Court. The six defendants included the largest historical manufacturers of lead-based paint and lead pigments in the country. The case was initially filed in March of 2000, and was finally brought to trial in the summer of 2013. The Lead Paint Litigation is considered one of the largest representative public nuisance actions in the country ultimately resulting in a judgment for the People in the amount of \$1.15 Billion.

LIBOR-Based Financial Instruments Antitrust Litigation

USDC, Southern District of New York

CPM represents the Counties of San Mateo and San Diego, the Cities of Richmond and Riverside, East Bay Municipal Utility District, and other public entities who invested in financial instruments that were tied to the London Interbank Offered Rate, or LIBOR. LIBOR is the world's benchmark rate used for setting interest rates on a wide range of financial instruments, from car and home loans to municipal derivatives. LIBOR is set daily based on the borrowing costs reported by members of the British Bankers' Association. The complaints allege that the member banks conspired to suppress LIBOR, both to reduce the amounts they were required to pay on LIBOR-linked transactions, and to increase their perceived strength in the market. Plaintiffs invested significant sums in financial instruments, such as interest rate swaps and corporate securities, the rates of return of which were tied to LIBOR, and earned less on those investments as a result of the alleged suppression of LIBOR.

Municipal Derivative Investment Antitrust Litigation

USDC, Southern District of New York

Along with co-counsel, CPM represents Los Angeles and numerous public entities who purchased Guaranteed Investment Contracts ("GICs") and other derivative investments. GICs and derivative investments are purchased from financial institutions, insurance companies, and others through a competitive bidding process overseen by brokers. They are purchased when public entities issue tax-exempt municipal bonds to raise funds to finance public works projects and have funds that are not immediately needed for the project. CPM's investigation has uncovered, and the complaints allege, that the competitive bidding process is a sham as securities sellers and brokers in the derivative investment market have engaged in a conspiracy to allocate the market and rig the bidding process in violation of antitrust law and common law.

Municipal Bond Insurance Antitrust Litigation

San Francisco County Superior Court

CPM represents Los Angeles and numerous public entities who issued tax-exempt municipal bonds to raise funds to finance public works projects and were compelled to purchase insurance for those bond issuances. When a public entity issues bonds, its credit rating determines the interest it will pay to bond holders. To reduce the interest rate, public entities have had to purchase bond insurance to improve their credit worthiness (despite an historical default rate of less than 0.1 percent). CPM's investigation has uncovered and the complaints allege that the bond insurance companies violated antitrust law and common law by conspiring to maintain a dual credit rating system that discriminates against public entities (versus private corporations), causing public entities to pay unusually high premiums to purchase unnecessary bond insurance, and failure of the bond insurance companies to disclose they made risky investments in the subprime market that has led to the downgrading of the bond insurers' own credit ratings.

San Francisco Unified School District

Sacramento County Superior Court

CPM filed a consumer fraud and negligence case against a Fortune 250 energy company in a scheme to defraud the district in connection with an energy contract to upgrade schools and help the district save in energy costs. (Settled in June of 2004 for \$43.1 million)

National Gas Anti-Trust Cases I, II, III, & IV

San Diego Superior Court

CPM represented eleven public entities and others for the reporting of false information by non-core natural gas retailers to published price indices to manipulate the natural gas market during the California energy crisis. CPM successfully prosecuted this case, concluding in approximately \$124 Million in settlements.

***In re Commercial Tissue Products Public Entity Indirect Purchaser Antitrust Litigation
County of San Mateo v. Kimberly-Clark Corp.***

San Francisco County Superior Court

CPM served as the Public Entity Co-Liaison Counsel, and filed an antitrust class action on behalf of public entity consumers of commercial sanitary paper products for an alleged price-fixing conspiracy among producers. This case settled for approximately \$2,250,000.

Judicial Counsel of California

USDC, Northern District of California

CPM successfully defended the Chief Justice of the State of California and the Judicial Counsel of California in an action brought by the National Association of Securities Dealers (NASD) to invalidate California's Ethics Standards for Neutral Arbitrators by demonstrating that the 11th Amendment bars federal actions against these state actors.

Federal Energy Regulatory Commission (FERC)

United States Court of Appeals, 9th Circuit

CPM represented the California State Senate, the California State Assembly, and the City of Oakland in an action against FERC. Petitioned the Court to issue a writ of mandamus to compel FERC to take action to ensure just and reasonable rates for energy in California and the Western states.

Central Sprinkler County of Santa Clara v. Central Sprinkler Corp. Santa Clara County Superior Court Hart v. Central Sprinkler Corp.

Los Angeles County Superior Court

CPM filed a consumer class action against manufacturer of automatic fire suppression sprinklers for product defects and consumer fraud. (Class certified and settlement finally approved, 1999). 193 Cal. App. 3d 802 (1987). Class action for antitrust and unfair business practices.

ANTITRUST CASES

Auto Parts Antitrust Litigation

USDC, Eastern District of Michigan

CPM is co-lead counsel on behalf of consumers against manufacturers of auto parts, including bearings, fuel senders, heater control panels, safety systems, instrument control clusters and wire harnesses, for a world-wide conspiracy to fix prices for those parts for use in cars and trucks.

Webkinz Litigation, Nuts for Candy v. Ganz Inc., et al.

USDC, Northern District of California

CPM was lead counsel representing a proposed class of persons or entities in the United States who ordered Webkinz from Ganz Inc. on the condition that they also order products from Ganz's "core line" of products. The complaint alleged that Ganz conditioned the purchase of its popular Webkinz plush line toy with a minimum \$1,000 purchase of non-Webkinz "core" line products in violation of federal antitrust laws. On September 17, 2012, Hon. Richard Seeborg of the Northern District of California approved a class action settlement on behalf of a class of small business retailers against Ganz Inc. for alleged antitrust violations where customers were required to purchase unwanted products as a condition to purchasing Ganz's popular Webkinz Toy. (Settled, 2012).

In re Transpacific Passenger Air Transportation Antitrust Litigation

USDC, Northern District of California

CPM is the court-appointed Co-Lead counsel for a proposed class of purchasers who paid fuel surcharges illegally charged by defendants on long-haul passenger flights for transpacific routes. Plaintiffs have settled with Japan Airlines for \$10 million.

In re: Plasma Derivative Protein Therapies Antitrust Litigation

USDC, Northern District of California

CPM is lead counsel for indirect purchasers in this antitrust class action alleging price-fixing in the market for the life-saving blood products albumin and immunoglobulin.

Freight Forwarders Antitrust Litigation

USDC, Eastern District of New York

CPM is Co-Lead Counsel for Direct Purchasers of Freight Forwarding services in the United States and filed a complaint alleging that the major providers of Freight Forwarding conspired to fix the prices of such services in violation of U.S. federal antitrust law (15 U.S.C. § 1). The action has already led to multiple settlements for the benefit of the class.

In re Cathode Ray Tube (CRT) Antitrust Litigation

USDC, Northern District of California

CPM is an Executive Committee Member and represents a class of direct purchaser plaintiffs against manufacturers of cathode ray terminals ("CRT") whose prices were artificially raised, maintained or stabilized at a supra-competitive level by defendants and their co-conspirators. Settlements amounting to \$79.5 million have been reached with four of the defendants.

In re Static Random Access Memory (SRAM) Antitrust Litigation

USDC, Northern District of California

The Court appointed CPM as sole Lead Counsel for direct purchaser plaintiffs of Static Random Access Memory ("SRAM") chips. CPM successfully secured a \$77 million settlement on behalf of plaintiffs. Important legal rulings were reached on cutting edge issues such as the extent to which the United States antitrust laws apply to foreign conduct, standing of class representatives and the proper showing for class certification. (Settled, 2011).

In re Dynamic Random Access Memory (DRAM) Antitrust Litigation

USDC, Northern District of California

CPM served as chair of the Discovery Committee in a multidistrict litigation arising from the price-fixing of DRAM, a form of computer memory. Shortly before the scheduled trial, class counsel reached settlements with the last remaining defendants, bringing the total value of the class settlements to over \$325 million.

In re Lithium Batteries Antitrust Litigation

USDC, Northern District of California

The Court appointed CPM as Co-Lead Counsel on behalf of direct purchasers of lithium-ion rechargeable batteries that defendants allegedly conspired to fix the price on.

Municipal Derivative Investment Antitrust Litigation

USDC, Southern District of New York

Along with co-counsel, CPM represents Los Angeles and numerous public entities who purchased Guaranteed Investment Contracts (“GICs”) and other derivative investments. GICs and derivative investments are purchased from financial institutions, insurance companies, and others through a competitive bidding process overseen by brokers. They are purchased when public entities issue tax-exempt municipal bonds to raise funds to finance public works projects and have funds that are not immediately needed for the project. CPM’s investigation has uncovered, and the complaints allege, that the competitive bidding process is a sham as securities sellers and brokers in the derivative investment market have engaged in a conspiracy to allocate the market and rig the bidding process in violation of antitrust law and common law.

In re Digital Music Antitrust Litigation

USDC, Southern District of New York

CPM was appointed to the Steering Committee in this class action brought on behalf of all persons who paid inflated prices for music sold as digital files.

E&J Gallo Winery v. EnCana Energy Services, et al.

USDC, Eastern District of California

CPM successfully represented E. & J. Gallo Winery in an antitrust action against natural gas companies for manipulating energy prices, which led to the 2000-2001 California energy crisis, in which energy companies not only gouged the State of California and its residents of billions of dollars but led to rolling blackouts throughout California. E. & J. Gallo Winery is one of the largest natural gas users in the State of California and it suffered millions of dollars in losses. CPM’s aggressive prosecution of this case resulted in the case settling on the eve of trial for a substantial sum. CPM’s efforts led to the landmark Ninth Circuit opinion on the filed rate doctrine at E. & J. Gallo Winery v. EnCana Corporation, 503 F.3d 1027 (9th Cir. 2007).

Kopies, Inc, et al. v. Eastman Kodak Co.

USDC, Northern District of California

CPM was appointed Co-Lead counsel, and successfully prosecuted an antitrust class action on behalf of copier service firms against parts manufacturer for illegal tying of products and services. CPM successfully reached a \$45 million settlement with Kodak on behalf of plaintiffs.

Municipal Bond Insurance Antitrust Litigation

San Francisco County Superior Court

CPM represents Los Angeles and numerous public entities who issued tax-exempt municipal bonds to raise funds to finance public works projects and were compelled to purchase insurance for those bond issuances. When a public entity issues bonds, its credit rating determines the interest it will pay to bond holders. To reduce the interest rate, public entities have had to purchase bond insurance to improve their credit worthiness (despite an historical default rate of less than 0.1 percent). CPM's investigation has uncovered and the complaints allege that the bond insurance companies violated antitrust law and common law by conspiring to maintain a dual credit rating system that discriminates against public entities (versus private corporations), causing public entities to pay unusually high premiums to purchase unnecessary bond insurance, and failure of the bond insurance companies to disclose they made risky investments in the subprime market that has led to the downgrading of the bond insurers' own credit ratings.

In re International Air Transportation Surcharge Antitrust Litigation

USDC, Northern District of California

CPM served as Co-Lead Counsel or a class of purchasers who paid fuel surcharges illegally charged by defendants on long-haul passenger flights for transatlantic routes. Plaintiffs secured settlements on behalf of the class with Defendants Virgin Atlantic Airways, LTD and British Airways Plc worth approximately \$204 million. (Settled, 2009).

In re Optical Disk Drive (ODD) Antitrust Litigation

USDC, Northern District of California

CPM is a member of the executive committee in this multidistrict litigation alleging a conspiracy that manufacturers of optical disk drives ("ODD") fixed prices of ODD's sold directly to plaintiffs in the United States. Plaintiffs have reached a \$26 million settlement with the HLDS defendants.

Air Cargo Shipping Services Antitrust Litigation

USDC, Eastern District of New York

CPM, along with co-counsel, is the court-appointed lead counsel for a proposed class of U.S. indirect purchasers of international air freight services. The case alleges that the providers of international air freight services conspired to fix the prices of such services, including fuel surcharges. The case names almost forty international air freight carriers as defendants. The claims of the United States indirect purchasers is brought under the antitrust laws and consumer protection laws of various U.S. states. The Court granted approval to a settlement with defendants Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines, Ltd. (Settled, 2009).

Toyota Motor Sales USA, Inc.

Livingston v. Toyota Motor Sales USA, Inc.

USDC, Northern District of California

CPM filed an antitrust class action under Sherman Act by purchasers of Toyota vehicles for secret rebates. (Settled, 1997).

Hip And Knee Implant Marketing Litigation

USDC, Northern District of California

CPM, with co-counsel, has filed two complaints on behalf of proposed classes of persons who underwent hip or knee implant surgery. The complaints allege that the major manufacturers of hip and knee implants have engaged in a pervasive kickback scheme, using phony consulting agreements with orthopedic surgeons, to improperly funnel money to doctors and hospitals in return for choosing the manufacturer's device during surgeries. This scheme artificially raised the costs of hip or knee implants paid for by members of the proposed class in violation of state antitrust and consumer protection laws.

In re Commercial Tissue Products Public Entity Indirect Purchaser Antitrust Litigation

County of San Mateo v. Kimberly-Clark Corp.

San Francisco County Superior Court

CPM filed an antitrust class action on behalf of class of public entity consumers of commercial sanitary paper products against alleged price-fixing conspiracy among producers. (Appointed co-lead counsel for public entity class, 1998).

Dry Creek Corporation v. El Paso Corporation

San Diego County Superior Court

CPM filed an antitrust action against El Paso for withholding natural gas from California in order to drive up prices, which was successfully resolved on behalf of the Plaintiff.

In re Hydrogen Peroxide Antitrust Litigation

USDC, Eastern District of Pennsylvania

CPM filed an antitrust class action for conspiracy to fix prices of hydrogen peroxide manufactured and sold by defendants who were engaged in an alleged price-fixing conspiracy.

In re Intel Corporation Microprocessor Antitrust Litigation

USDC, District Court of Delaware

CPM represents entities against Intel Corporation for antitrust violations relating to monopolization. CPM has been active in assisting lead counsel with discovery.

National Gas Anti-Trust Cases I, II, III, & IV

San Diego Superior Court

CPM represented eleven public entities and others for the reporting of false information by non-core natural gas retailers to published price indices to manipulate the natural gas market during the California energy crisis. CPM successfully prosecuted this case, concluding in approximately \$124 Million in settlements.

Bathroom Fittings Cases

USDC, Northern District of California

CPM was a member of the Executive Committee in an antitrust class action for a conspiracy to fix prices of Bathroom Fitting manufactured by defendants participating in an alleged price-fixing conspiracy.

Magazine Paper

San Francisco County Superior Court

CPM filed an antitrust class action for price-fixing conspiracy against magazine paper products International Paper Co., MeadWestvaco Corporation, Norse Skog, Stora Enso, Sappi Limited, S.D. Warren Company and others.

Foundry Resins

USDC, Southern District of Ohio

CPM filed an antitrust class action for conspiracy to fix prices of resins manufactured by Ashland Inc., Ashland Specialty Chemical Company, Borden Chemical Inc., Delta HA, Inc., HA International LLC.

In re Automotive Refinishing Paint Cases

Alameda County Superior Court

CPM was appointed Co-Liaison Counsel in an antitrust class action for conspiracy to fix the price of auto paint by manufacturers engaged in an alleged price-fixing conspiracy. The class was certified in 2004.

In re Methionine Antitrust Litigation

USDC, Northern District of California

CPM was appointed Co-Lead Counsel in this antitrust class action against several methionine manufacturers involved in a conspiracy to fix the prices of and allocate the markets for methionine. This case settled for \$107 million.

In re Citric Acid Antitrust Litigation

USDC, Northern District of California

CPM served as Co-Lead Counsel in an antitrust class action against the five largest sellers of citric acid in the United States, who conspired to raise and fix the price of citric acid at artificially high levels. Co -Lead counsel successfully certified the class in October 1996. Co-Lead Counsel also reached approximately \$86.5 million in combined settlements with defendants Archer Daniels Midland Co., Hoffmann-La Roche Inc., Jungbunzlauer, Inc., Haarmann & Reimer Corp., and Cerestar Bioproducts B.V.

In re Beer Antitrust Litigation

USDC, Northern District of California

CPM was appointed Co-Lead counsel in an antitrust class action on behalf of specialty beer brewers against Anheuser-Busch, Inc. for attempt to monopolize U.S. beer industry by denying access to distribution channels.

In re Sodium Gluconate Antitrust Litigation

USDC, Northern District of California

CPM served as Lead Counsel in an antitrust class action against defendants who allegedly price fixed sodium gluconate, and industrial cleaning agent. CPM successfully certified the class, and reached a settlement on behalf class plaintiffs in the amount of \$4,801,600.

PRODUCT LIABILITY CASES

In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation

USDC, Central District of California

CPM was Co-Lead counsel in a class action against Toyota Motor Corporation and its U.S. sales and marketing arms, Toyota Motor Sales, U.S.A., Inc. and Toyota Motor North America, Inc. United States District Judge James V. Selna appointed Frank M. Pitre as Co-Lead Counsel for the Economic Loss Committee in the Toyota sudden unintended acceleration litigation. The MDL involves more than 200 lawsuits divided into two groups: those seeking losses on behalf of consumers and others who have lost value on their Toyotas, and those seeking damages for people who have been injured or killed in a Toyota. (Settled, 2012 - \$1.3 billion).

Bextra and Celebrex Marketing Sales Practices and Product Liability Litigation

USDC, Northern District of California

CPM was co-lead trial counsel in the In Re: Bextra and Celebrex Mktg., Sales Practices & Product Liability Litigation, which culminated in Pfizer agreeing to pay \$894 million to settle consolidated injury and class action cases related to its pain killers Bextra & Celebrex.

Vioxx Product Liability Litigation

USDC, Northern District of New York

CPM represents a number of individuals who suffered medical injuries such as heart attacks and strokes after taking the prescription drug Vioxx. The drug was withdrawn from the market by its manufacturer and distributor, Merck & Co., Inc., after evidence emerged linking the drug to heart attacks, strokes, sudden cardiac death and other serious cardiovascular risks.

Sharper Image Corporation v. Consumers Union of United States

USDC, Northern District of California

CPM was successful in defending under California's Anti-SLAPP statute of product disparagement claim brought by Sharper Image relating to reviews of Sharper Image's Ionic Breeze air cleaner published in Consumer Reports.

Isuzu Motors Ltd. v. Consumers Union of the United States, Inc.

USDC, Central District of California

CPM represented defendant publisher of Consumer Reports in defamation/product disparagement litigation brought by auto manufacturer against non-profit consumer testing organization. Jury verdict for Consumers Union after a two-month jury trial.

Suzuki Motor Corp. Japan v. Consumers Union of the United States, Inc.

USDC, Central District of California

CPM represented defendant publisher of Consumer Reports in defamation/product disparagement litigation brought by auto manufacturer against nonprofit consumer testing organization. Summary judgment in favor of defendants was granted in May 2000.

Diet Drug Litigation

**Los Angeles County Superior Court
USDC, Eastern District of Pennsylvania**

CPM represented approximately 100 individuals in consumer fraud and product liability individual actions.

Rhonda Albom, et al. v. Ford Motor Company/Firestone Tires

Los Angeles Superior Court

CPM represented a young child and her mother who were injured when their Ford Explorer veered out of control and rolled over in Half Moon Bay, California. The case was one of several against Ford Motor Company and Firestone Tires consolidated before the Superior Court of Los Angeles.

Swine Flu Immunization Products Litigation

Adleson v. United States

USDC, Northern District of California (1981)

523 F. Supp. 459

USDC, District of Columbia (1980)

89 F.R.D. 695

MDL actions for product liability.

Bausch & Lomb Contact Lens Solution Product Liability Litigation

USDC, District of South Carolina

CPM represents individuals who sustained serious eye injuries as a result of the use of the contact lens solution ReNu with MoistureLoc. The product was withdrawn from the market by its manufacturer and distributor, Bausch & Lomb, after it was associated with fungal keratitis (a rare type of eye infection).

Dephlia Davis, et al. v. Actavis Group, et al.

USDC, Northern District of California

CPM represented individuals who were injured or killed after injecting the drug Digitek, which was formulated and distributed by the manufacturers and suppliers at a level more than double the FDA prescribed maximum.

Trawick v. Parker-Hammifin, et al.

Monterey County Superior Court

CPM successfully prosecuted a product liability claim against the manufacturer and supplier of a defective rubber hose coupling installed on a forklift which failed and killed a construction foreman at the Monterey Plaza Hotel.

Austin Hills, et al. v. S & G Ragsdale Equipment Co., LLC, et al.

Napa County Superior Court

CPM represented the Hills family in a product liability/negligence claim against the parties responsible for the defective operation of a truck/trailer hitch system which caused a 5 ton trailer with drilling equipment to disengage, then swerve into the opposing lane of traffic killing Erika Hills, a resident of Napa.

Munoz, et al. v. Bayer Corporation, et al.

San Joaquin County Superior Court

CPM successfully represented multiple individuals who were killed or injured after ingesting the drug Baycol, which was promoted by Bayer Pharmaceutical without alerting users of a severe muscle adverse reaction known as rhabdomyolysis.

***In re Cable News Network and Time Magazine “Operation Tailwind” Litigation,
Sheppard v. Cable News Network, Inc.***

USDC, Northern District of California

CPM represented Vietnam veterans in an action against Time and CNN who falsely reported to have committed war crimes in Laos.

QUITAM CASES

Medical Laboratories Medi-Cal Fraud Case

Sacramento County Superior Court

CPM represented a whistleblower, Chris Riedel, who owns a lab company, Hunter Laboratories of Campbell, California. The California Attorney General’s office joined the case in late 2008. The lawsuit alleged that, despite state law requiring that California’s Medi-Cal program receive the lowest price for lab services, Quest Diagnostics, the largest lab in California, and LabCorp, the second largest, routinely billed California prices far above what it was charging others. The case settled in 2011, recovering \$301 million in taxpayer money from the lab defendants, including \$241 million from Quest Diagnostics, Inc. The \$241 million settlement is the largest False Claims Act recovery in California history, and the largest single-state False Claims Act settlement ever in United States history.

California ex rel. Richardson v. Ischemia Research & Education Foundation

San Francisco Superior Court

CPM filed a Qui Tam California False Claims Act case against research foundation for failure to pay direct and overhead costs in clinical drug studies to its host university. (Settled, 1997)

United States v. Columbia HCA

USDC, Northern District of California

CPM filed a Qui Tam False Claims Act litigation against healthcare provider for false billing.

United States v. Tenet Healthcare Corporation

USDC, Central District of California

CPM filed a Qui tam False Claims Act litigation against healthcare provider for false claims for payment.

BUSINESS CASES

Humboldt Creamery Litigation

Humboldt County Superior Court

CPM is representing the Liquidating Trustee of Humboldt Creamery, LLC in a lawsuit filed against the company's former Chief Executive Officer, Richard Ghilarducci, its Chief Financial Officer, Ralph A. (Tony) Titus and its independent auditor, Frank X. Gloeggler alleging financial fraud. Defendants are alleged to have had manipulated financial data by creating different sets of financial statements for different purposes and inflating revenue.

Siller v. Siller Brothers, Inc.

Sutter County Superior Court

CPM successfully represented a minority shareholder in a dissolution proceeding and trial establishing a value for his corporate interest at more than double that of the court appointed appraisers.

Olympus v. Taisei Construction

Santa Clara County Superior Court

CPM represented the owner of the prestigious Calistoga Ranch Resort in an action for fraudulent overbilling against Taisei Construction.

ENVIRONMENTAL AND TOXIC CASES

Lawsuit Against Caltrans to Protect Ancient Redwoods

USDC, Northern District of California

San Francisco County Superior Court

CPM filed an environmental action against Caltrans challenging Caltrans' approval of a controversial highway widening and realignment project alleging that they violated the California Environmental Quality Act in approving the project.

Cosco Busan Oil Spill

Tarantino, et al. v. Hanjin Shipping Co., Ltd., et al.

San Francisco County Superior Court

Loretz, et al. v. Regal Stone, Ltd., et al.

USDC, Northern District of California

CPM is co-lead counsel for settlement and litigation classes of San Francisco Bay fishermen economically injured by the November 7, 2007 Cosco Busan oil spill. (Partially Settled, 2010).

Californians for Native Salmon Litigation

221 Cal. App. 3d 1419 (1990)

Representative action regarding approval of timber harvest plans.

Avila Beach Environmental Litigation

Poist v. Unocal Corporation

San Luis Obispo County Superior Court

CPM represents owners of interest in timeshares in cost-side towns in an environmental toxic class action arising out of petroleum contamination and remediation efforts.

Cambria Community Services District/Chevron Litigation

San Luis Obispo County Superior Court

CPM represented Cambria Community Services District against Chevron for a leak which contaminated the town's drinking water supplies with MTBE. The firm was successful in securing a settlement for Cambria which permitted it to insure that alternate water sources were available for the community.

Santa Maria Valley Litigation

Story, et al. v. Unocal Corporation, et al.

Santa Barbara County Superior Court

Span, et al. v. Unocal Corporation, et al.

Santa Barbara County Superior Court

Adelhelm, et al. v. Unocal Corporation, et al.

Santa Barbara County Superior Court

Chabot, et al. v. Unocal Corporation, et al.

Santa Barbara County Superior Court

CPM represented homeowners and families living in Santa Maria, California, an old oil field which was the setting of the film *There Will be Blood*. When production in the oil field tapered off, residential communities were constructed atop the old oil fields – and on top of the waste which the oil companies left behind. The firm has been successful in providing remedies to these families, who have been able to leave behind their polluted homes and communities and restart their lives.

Burbank Litigation

USDC, Central District of California

CPM represented homeowners for nuisance arising from environmental remediation efforts at site of massive toxic contamination.

Voisinet Litigation

Voisinet, et al. v. Unocal, et al.

San Luis Obispo County Superior Court

CPM represented home developers for nuisance and fraud arising out of petroleum contamination.

Bridgestone/Firestone Litigation

Dower, et al. v. Bridgestone/Firestone North American Tire, LLC, et al.

USDC, Northern District of California

CPM represented homeowners for toxic groundwater contamination released from the Crazy Horse Sanitary Landfill in Salinas, California.

AVIATION CASES

Asiana Flight 214 Crash

USDC, Northern District of California

CPM is currently representing several passengers who were aboard Asiana Airlines Flight 214 that crashed and caught fire while landing at San Francisco International Airport on July 6, 2013.

Tesla Plane Crash Litigation

San Mateo County Superior Court

CPM is representing victims of the February 17, 2010 crash of the Cessna 310R aircraft that took off from the Palo Alto Municipal Airport and collided with power lines, then crashed into multiple homes, narrowly missing a day care center. All three people killed in the plane crash were Tesla engineers.

Alaska Airlines Litigation

USDC, Northern District of California

CPM represented the survivors of one of the victims of crash of Alaska Airlines Flight 261 on January 31, 2000 off the coast of California.

Singapore Airlines Litigation

Thomas v. Singapore Airlines

USDC, Central District of California

CPM represented victims of the October 31, 2000 crash of a Singapore Airlines passenger jet in Taiwan in which 83 people were killed and dozens injured.

Montoya v. Bell Helicopter

USDC, Northern District of Texas

CPM represented the wife and children of the executive and against the helicopter manufacturer and the French company, which supplied the component parts. This case involved pursuit of a claim for product liability in the design of the engine shroud incorporated into a Bell helicopter, which crashed in the jungle of New Guinea killing a Chevron executive.

PSA Flight 1771 Litigation

Los Angeles County Superior Court

CPM represented victims of the December 7, 1989 air crash of a PSA jetliner near San Luis Obispo. The case was unique due to the focus on breaches of security by the airline and airport security, which permitted a disgruntled former airline employee to by-pass security with a gun later used to kill the pilot and crew during flight.

CONSTRUCTION CASES

Delgado vs. City of Millbrae, et al.

Santa Clara County Superior Court

CPM served as co-lead counsel in a successful 5-year battle against various engineers and contractors responsible for a hillside failure during the winter storms of 2001–2002.

ELDER ABUSE CASES

San Mateo County Public Guardian (Muhek) v. Miller

San Mateo County Superior Court

CPM filed an action on behalf of senior citizen against care giver who took life savings.

Santa Clara Public Guardian (McCulla) v. Walia

Santa Clara County Superior Court

CPM filed an action against the companies, real estate brokers and others as a result of \$1.4 million in fraudulent loans to a senior citizen.

Alameda Public Guardian (Bowie) v. First Alliance Mortgage

Alameda County Superior Court

CPM filed an action against lenders for allowing loans to be placed on senior citizen's home by a third party.

Melder v. Pacific Grove Convalescent Hospital

Monterey County Superior Court

CPM filed an action against nursing home for alleged inappropriate sexual behavior by employee.

Rodriguez v. Res-Care, Inc. et al.

San Mateo County Superior Court

CPM filed an elder abuse case against ResCare on behalf of a victim who suffered second and third degree burns when she was put in a shower for 20 minutes with scalding, 130 to 135-degree temperature water. The suit also seeks punitive damages and funding for future care. The case settled in 2008.

Gogol v. Mills-Peninsula Health Services d/b/a Mills-Peninsula Skilled Nursing

San Mateo Superior Court

In July 2012, CPM won a \$1,844,400 jury verdict after a two week trial on behalf of an 86 year old resident of San Mateo County who was injured in a nursing home. The jury also made a finding of clear and convincing evidence of recklessness, oppression, fraud or malice for an additional award of attorneys' fees and punitive damages. Ms. Gogol was recovering from a hip replacement at defendant's nursing home when she was dropped, breaking her recently replaced hip. She was placed back in bed without the injury being reported. Due to her cognitive impairment she had no memory of how her injury occurred. She received treatment only after a family member discovered her injuries. The case settled before the punitive damage phase of the trial.

Pauline B. Reade v. Fetuu Tupofutuna, et al.

San Mateo County Superior Court

CPM and The Legal Aid Society of San Mateo County provided *pro bono* representation to a 89 year old elderly widow, Pauline Reade, who was bilked out of nearly \$600,000. Ms. Reade faced foreclosure on her Pacifica home after a scam contractor tricked her into signing loan documents with various banks and mortgage entities. The action was filed to stop the sale against various individuals and entities involved in the loan transaction, including, RBS Financial Products, Inc., Deutsche Bank National Trust Co., GMAC Mortgage, LLC, Mortgage Electronic Registration Systems, Inc. Executive Trustee Services, Paul Financial, Fetuu Tupoufutuna and Mohammed Ali George.

Snyder v. Menon et al.

Marin County Superior Court

Action against lender, title company and individuals for fraud and elder abuse based upon the fraudulent inflation of the purchase price of a property the Plaintiffs sought to purchase.

Shekhter v. Greengables Villa Care Home et al

Alameda County Superior Court

Action for elder abuse against adult care facility for neglect and physical abuse in connection with the care of 94 year old woman.

Platon v. A&C Health Care Services

Santa Clara County Superior Court

Action for elder abuse and negligence against adult care facility for neglect and physical abuse of 91 year old resident.

Foroudian v. Wilson et al.

San Mateo County Superior Court

Action for fraud and elder abuse against title company, hard money lenders, plaintiffs' son and his ex-girlfriend for fraud and elder abuse resulting in Foroudians incurring \$2M in debt for the benefit of defendants. The Plaintiffs recovered their funds.

Shook v. LaFarre

San Mateo Superior Court

CPM represented a family in a dispute about the estate of long time San Francisco resident Rudolph R. Cook. CPM alleged that the defendant Cyrus LaFarre, a neighbor of Mr. Cook's, had duped Mr. Cook into amending his estate plan and giving his money to Mr. LaFarre. After Mr. Cook passed away, the family learned that Mr. LaFarre claimed that he had been left the majority of Mr. Cook's estate and had been named as the trustee of Mr. Cook's trust. The amendment to Mr. Cook's long time estate plan purported to give most of Mr. Cook's \$2M estate to the defendant. The jury unanimously determined that Mr. LaFarre had committed financial elder abuse and breach of fiduciary duty.

Richter et al. v. CC-Palo Alto, Inc.

USDC, Northern District of California

CPM is pursuing a class action and creditor derivative case on behalf of the 500 residents of the Vi-Palo Alto, a Continuing Care Retirement Community (CCRC). Among CPM's clients (the proposed class representatives) are a retired Nobel Prize winner, doctor, World War II journalist and a unique collection of accomplished South Bay senior citizens. The facility is located on Stanford land. The lawsuit is believed to be the first of its kind in the Bay Area challenging a CCRC's financial practices. The complaint alleges that \$190 million dollars was "up-streamed" from the Palo Alto facility to its corporate parent in Chicago, thus leaving the senior citizen residents financially vulnerable. Those funds were to be returned to the senior citizens when they moved out, or returned to their families when they passed away. The complaint alleges that the Chicago company has refused to return the money to Palo Alto.

Kofman v. Alexy Pitt et al.

San Mateo Superior Court

On February 14, 2017 CPM obtained a \$1,295,579 dollar judgment on behalf of an elderly Bay Area resident who was the victim of financial elder abuse.

EMPLOYMENT CASES

Shephard v. Lowe's HIW, Inc.

USDC Northern District of California

Cotchett, Pitre & McCarthy, along with Block & Leviton filed a lawsuit against Lowe's HIW, Inc. ("Lowe's") on June 15, 2012 alleging that Lowe's misclassified all California installers as independent contractors in violation of California law. The Honorable Jeffrey S. White granted Plaintiff's Motion for Class Certification in August 2013, certifying the class of California installers and appointing Block & Leviton and Cotchett, Pitre & McCarthy as class counsel. The Firms successfully achieved a \$6.5 million settlement on behalf of the class of California installers, which was preliminarily approved on June 25, 2014 and is awaiting final approval.

Avery v. Integrated Healthcare Holdings, Inc.

Orange County Superior Court

CPM served as co-lead counsel in a class action lawsuit filed against the IHHI chain of hospitals in Southern California. CPM represented registered nurses and respiratory therapists who were not paid overtime wages in accordance with state law. The case settled for \$14.5M in 2013, and the court granted final approval of the settlement in August 2014.

Los Angeles Times / Zell

USDC, Northern District of Illinois

CPM represents current and former journalists of the Los Angeles Times in a lawsuit filed against Sam Zell, the Tribune Company and others for a breach of their fiduciary duties, violating ERISA, improper valuation and misuse of employee pension fund assets and conflicts of interest. Other allegations include that Tribune Company employees, who technically own the company through the Tribune ESOP, have been and continue to be damaged by the go-private transaction and by the subsequent mismanagement and self-dealings of Tribune executives, including Sam Zell, the result of which has been to diminish the value and the products of the employee-owned company.

Cynthia Sotelo, et al. v. MediaNews Group, Inc., et al.

Alameda County Superior Court

CPM represented a class of Hispanic newspaper carriers whose labor is exploited by the ANG Newspaper Group, a conglomerate news-media company. The class seeks damages for violations of the California Labor Code and Unfair Competition Laws.

In re: Wachovia Securities, LLC, Wage and Hour Litigation

USDC Central District of California

CPM was designated co-lead plaintiffs' counsel by a federal judge in a collection of lawsuits filed against Wachovia Securities, LLC, on behalf of more than 10,000 current and former stock brokers who were not paid in accordance with state and federal law.

In re: AXA Wage and Hour Litigation
USDC Northern District of California

CPM was appointed co-lead plaintiffs' counsel by a federal judge in a collection of lawsuits filed against the AXA family of insurance companies on behalf of more than 7,000 current and former financial sales representatives who were not paid in accordance with state and federal law.

Shrager v. Advanced Equities Inc. ("AEI") et al.
San Francisco County Superior Court

CPM represented an employee of a broker dealer in state court litigation over harassment and compensation claims.

Sullivan v. Advanced Equities Inc. ("AEI")
FINRA Arbitration

CPM successfully represented an employee in FINRA arbitration. The FINRA panel found that the employer had falsely accused the employee of violations of company policy and had fraudulently induced the employee to join the company, and awarded both compensatory and punitive damages. This is one of many examples of cases CPM has handled before FINRA.

PUBLIC INTEREST / HUMAN RIGHTS CASES

Lawsuit Filed Regarding Confiscated Armenian Lands
USDC, Central District of Los Angeles

CPM filed a class action on behalf of Armenians seeking compensation for confiscated properties and belongings as a result of the Genocide of 1915-1923. The lawsuit targets the Central Bank of Turkey and the Ziraat Bank as financial instruments of the Turkish Government. Defendants are alleged to selling and deriving income from real estate and personal property that was owned by hundreds of thousands of Armenians who were killed during the Genocide.

WWII Filipino Veterans Compensation

De Fernandez et al. v. US Dep't of Veterans Affairs, et al.

USDC, Northern District of California

CPM filed a class action on behalf of United States WWII Filipino Veterans, and their service organizations, challenging decisions by the VA to deny benefits to such veterans according to criteria that are arbitrary, capricious and impossible to satisfy.

State Buildings Litigation

Epstein et al. v. Schwarzenegger et al.

San Francisco Superior Court

CPM represented taxpayers against the Schwarzenegger Administration to stop the sale of California's public buildings, which would have cost California's taxpayers billions of dollars. CPM was successful in obtaining an emergency temporary stay of the sale from the Court of Appeal. While the stay was in place Governor Brown took office and cancel the sale.

Surfrider Foundation v. Martins Beach 1 LLC et al.

San Mateo Superior Court

CPM successfully represented Surfrider Foundation to restore public access to Martin's Beach. The Complaint alleged that the owners of Martin's Beach, who purchased the property in 2008, unlawfully erected a barrier preventing access to Martin's Beach road, without a permit required by the California Coastal Act.

FIRST AMENDMENT CASES

Sharper Image Corporation v. Consumers Union of United States

USDC, Northern District of California

CPM successfully defended under California's Anti-SLAPP statute of product disparagement claim brought by Sharper Image relating to reviews of Sharper Image's Ionic Breeze air cleaner published in Consumer Reports.

Kendall-Jackson Winery v. E.J. Gallo Winery

USDC Northern District of California

9th Circuit Court of Appeals (1998)

150 F. 3d 1042

CPM represented defendant in trade dress and unfair business practice litigation. (Judgment and verdict for defendant after jury trial).

Isuzu Motors Ltd. v. Consumers Union of the United States, Inc.

USDC, Central District of California

CPM represented defendant publisher of Consumer Reports in defamation/product disparagement litigation brought by auto manufacturer against non-profit consumer testing organization. Jury verdict for Consumers Union after a two-month jury trial.

Suzuki Motor Corp. Japan v. Consumers Union of the United States, Inc.

USDC, Central District of California

CPM represented defendant publisher of Consumer Reports in defamation/product disparagement litigation brought by auto manufacturer against nonprofit consumer testing organization. Summary judgment in favor of defendants was granted in May, 2000.

In re Cable News Network and Time Magazine "Operation Tailwind" Litigation

Sheppard v. Cable News Network, Inc.

USDC, Northern District of California

CPM represented Vietnam veterans against Time and CNN who falsely reported to have committed war crimes in Laos.

PERSONAL INJURY CASES

San Bruno Pipeline Explosion

San Mateo County Superior Court

CPM filed multiple actions on behalf of victims of the PG&E pipeline explosion which occurred in San Bruno. The natural gas-fed fire killed eight people and injured dozens more, and destroyed or damaged several dozen homes.

Murillo, et al. v. National Railroad Passenger Corporation, et al.

Contra Costa County Superior Court

CPM successfully represented the family of an elderly couple who were killed by an Amtrak train while their car was trapped at a dangerously designed grade railroad crossing in Crockett, California in an action against the National Railroad Passenger Corporation (“Amtrak”), Union Pacific Railroad Company and the State of California Department of Transportation.

Manlapaz, et al. v. Bills Trucking, et al.

Santa Clara County Superior Court

CPM represented the family of a woman who was killed after being crushed by a semi-truck with two dirt hauling trailers while she was crossing the street near a construction site in Mountain View, California.

Gonzalez v. Oil Can Henry’s International

Monterey County Superior Court

CPM successfully represented a four-year-old child who suffered brain damage after being struck and run over by a driver at an oil change service shop which failed to properly control vehicle and pedestrian safety in conjunction with its promotion of quick service.

Balcony Collapse

San Francisco County Superior Court

CPM represented 13 victims of personal injuries and wrongful death arising out of Franklin Street balcony collapse in 1996.

In re MGM Grand Hotel Fire Litigation

570 F. Supp. 913 USDC, District of Nevada

MDL consolidated litigation by personal injury wrongful death claims in the mammoth fire that destroyed the MGM Grand in Las Vegas, Nevada.

Carnaham v. State of California

Fresno County Superior Court

CPM filed an action against the State of California and more than 100 separate defendants on behalf of scores of individuals killed or injured in a severe dust storm on I-5 over the Thanksgiving weekend in 1991.

Hyman v. Nahi

Orange Count Superior Court

CPM represented victims of balcony collapse against landlord and termite company in a case involving slum landlord conditions.

Walton v. Samuels

Los Angeles County Superior Court

CPM filed an action for lung injury victims arising out of a four-alarm apartment fire in a major disaster in Los Angeles.

Malhotra v. Nathan

San Francisco County Superior Court

CPM represented 13 victims of personal injuries and wrongful death arising out of Franklin Street balcony collapse in 1996 in San Francisco.

In re Diet Drug Litigation

Los Angeles County Superior Court

In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation
USDC, Eastern Division of Pennsylvania

CPM filed consumer fraud and product liability individual actions on behalf of approximately 100 individuals.

Adleson v. United States

USDC, Northern District of California

523 F. Supp. 459 (1981)

MDL actions for product liability of the Swine Flu Immunization Program out of Washington, D.C.

INSURANCE CASES

Dupell v. Massachusetts General Life Ins. Co.

Santa Clara County Superior

CPM filed “vanishing premium” class action on behalf of life insurance policyholders. Class certified for all purposes, 1999.

Prop. 103 Litigation

Calfarm Ins. Co. v. Deukmejian

48 Cal. 3d 805 (1989)

Litigation regarding Proposition 103 (rate controls on insurance carriers) on behalf of Public Citizen.

INTELLECTUAL PROPERTY CASES

Kendall-Jackson Winery v. E&J Gallo Winery

USDC, Northern District of California

150 F. 3d 1042 (9th Cir. 1998)

CPM represented defendant in trade dress and unfair business practice litigation. (Judgment and verdict for defendant after jury trial.)

MP3.Com Copyright Cases

USDC, Southern District of New York

CPM filed multiple cases alleging that MP3.Com committed copyright infringement. Issues of infringement and damages.

Dolores Huerta et al v. Corbis Corporation

USDC, Northern District of California

CPM represented defendant Huerta, muralists Susan Kelk Cervantes and Juana Alicia, and the United Farm Workers Union of America against Internet retailer Corbis for the illegal sale of copyrighted and trademarked images.

WAGE AND HOUR CASES

Cynthia Sotelo, et al. v. MediaNews Group, Inc., et al.

Alameda County Superior Court

CPM represented a class of Hispanic newspaper carriers whose labor is exploited by the ANG Newspaper Group, a conglomerate news-media company. The class seeks damages for violations of the California Labor Code and Unfair Competition Laws.

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CPM has been designated co-lead plaintiffs' counsel by a federal judge in a collection of lawsuits against Wachovia Securities, LLC, on behalf of over 10,000 current and former stock brokers who were not paid in accordance with state and federal law.

In re: AXA Wage and Hour Litigation

USDC, Northern District of California

CPM has been appointed co-Lead Plaintiffs' Counsel by a federal judge in a collection of lawsuits against the AXA family of insurance companies, on behalf of over 7,000 current and former financial sales representatives who were not paid in accordance with state and federal law.

LaParne, et al. v. Monex, et al.

USDC, Central District of California

CPM represents current and former sales representatives in a federal lawsuit against Monex, a commodities trading company based in Southern California, for failure to pay overtime, failure to provide meal and rest breaks, and other violations of state and federal law.

WRONGFUL DEATH CASES

Murillo, et al. v. National Railroad Passenger Corporation, et al.

Contra Costa County Superior Court

CPM successfully represented the family of an elderly couple who were killed by an Amtrak train while their car was trapped at a dangerously designed grade railroad crossing in Crockett, California in an action against the National Railroad Passenger Corporation ("Amtrak"), Union Pacific Railroad Company and the State of California Department of Transportation.

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CPM represented victims of balcony collapse against landlord and termite company in a case involving slum landlord conditions.

Malhotra v. Nathan

San Francisco County Superior Court

CPM represented 13 victims of personal injuries and wrongful death arising out of Franklin Street balcony collapse in 1996 in San Francisco.

OUR ATTORNEYS

PARTNERS

JOSEPH W. COTCHETT

As stated by the National Law Journal, Joseph W. Cotchett is considered by plaintiffs and defense attorneys alike to be one of the foremost trial lawyers in the country. He has been named one of the 100 most influential lawyers in the nation for the past 15 years.

As reported in the San Francisco / Los Angeles Daily Journal, he is “considered one of the best trial strategists in the state” who built a career out of representing the underdog against powerful interests. He is a fearless litigator and once tried two cases at the same time (one in the morning and one in the afternoon) and won them both in San Diego Superior Court in 1984. His clients range from corporate giants to groups like Consumers Union – but the issue must be correct for Cotchett. In 2003, the San Francisco Chronicle rated him as one of the best in the Bay Area, saying, ***“The Burlingame attorney has had a star career that’s not only talked about in legal circles but has made headlines around the country. Known mostly as a plaintiffs’ lawyer, many of his cases are filed on behalf of fraud victims, and have a widows-and-orphan flavor to them.”*** Cotchett consistently has been named one of the most influential lawyers in California, and has been named by the legal press as one of the top 10 trial attorneys in the state and has been listed in every edition of Best Lawyers in America since its inception.

During his 45-plus year legal career, he has tried more than 100 cases to verdict, and settled hundreds more, winning numerous jury verdicts, ranging from multi-million dollar malicious prosecution jury verdicts to several defense verdicts in complex civil cases. He successfully negotiated a multi-million dollar settlement in a qui tam suit on behalf of the University of California and hundreds of millions of dollars in antitrust, securities and major fraud cases. In the 1980s, Cotchett won mammoth judgments and settlements for investors in white-collar fraud cases, with jury verdicts of more than \$200 million arising out of the collapse of the Technical Equities Corp. in San Jose. He is known nationally as the lead trial lawyer for 23,000 plaintiffs in the Lincoln Savings & Loan Association/American Continental Corp. downfall in 1990 involving Charles Keating and others. He won one of the then largest jury verdicts, \$3.3 billion. He obtained nearly \$300 million in settlements from lawyers, accountants and other professionals caught up in the scandal in a jury trial in Tucson, Arizona.

He has represented both the National Football League and teams since the early 1980s in various legal actions. As counsel for E. & J. Gallo Winery, he won a defense jury verdict in a celebrated trade dress infringement case involving a wine produced by Gallo and the firm regularly represents Gallo in numerous matters.

In recent years, Cotchett has taken on major corporate entities and Wall Street. He and the firm are involved in litigation resulting from nearly every major corporate scandal including Enron, Worldcom, Global Crossing, Homestore.com, Qwest, Montana Power Company, Lehman, Bank of America, Goldman Sachs and numerous others on behalf of private investors and public pensions. The firm has represented the California Public Employees’ Retirement System,

California State Teachers' Retirement System, and the University of California Board of Regents, along with numerous political subdivisions of the state, such as counties, cities and districts.

In 2000, he served as trial counsel for Consumers Union, successfully defending the watchdog consumer group in a product disparagement and defamation suit. Isuzu Motors of Japan had sued Consumers Union for disparagement to the 1995-96 Trooper, claiming millions in damages. Following an eight-week trial, a jury ruled in favor of Consumers Union. Trial Lawyers for Public Justice honored Cotchett as "Trial Lawyer of the Year Finalist" in 2000 in honor of his "outstanding contribution to the public interest" through his work for Consumers Union. Also in 2000, Consumer Attorneys of California gave Cotchett its "Presidential Award of Merit." In 2004, he was the lead trial counsel for Consumers Union in a product defamation suit. The suit was dismissed in what was considered a major victory for a free press and the First Amendment. Cotchett is involved in extensive pro bono work. In one such case, he brought a lawsuit against the United States Navy on behalf of 8,600 Amerasian children in the Philippines who were left in villages after the closing of the Subic Bay Naval Base. The case ended in a settlement giving direct U.S. aid to the children fathered by U.S. servicemen and a television documentary on the subject. He regularly takes on pro bono causes including environmental and public policy matters and the firm represents and advises several Native American groups.

In 2002, Cotchett successfully represented the Chief Justice of the California Supreme Court and the individual judges and members of the Judicial Council, in litigation brought against them by the New York Stock Exchange and the National Association of Securities Dealers. The two Wall Street forces had filed suit against the Judicial Council challenging the State of California on establishing guidelines for arbitrators who hear complaints from investors in the state.

Cotchett received his B.S. in Engineering from California State Polytechnic University, San Luis Obispo in June 1960, being named an Outstanding Graduate, and his J.D. from Hastings College of Law at the University of California in June 1964. In June 2002, Cotchett received an Honorary Doctor of Laws from Cal Poly and The California State University Board of Trustees. In May 2006, Cotchett received an Honorary Doctor of Letters from Notre Dame de Namur University. In May 2011, Cotchett received an Honorary Doctor of Letters from the University of San Francisco. In each case, he was the graduation speaker honored by the Universities.

Following California Polytech, he served in the U.S. Army Intelligence Corps, followed by years as a Special Forces paratrooper and JAG Corps officer, in the active reserves, and retired in 1991 with the rank of Colonel. He is a member of many veteran and airborne associations having served on active duty 1960-1961. From 2001 to 2005, he served on the board of the Army War College Foundation in Carlisle, Pennsylvania. The Foundation supports the prestigious Army War College at Carlisle Barracks, the graduate school for the senior commanders of all branches of the service, including officers from foreign allies.

He has been an active member of national, state and local bar associations, including the California, New York and District of Columbia bars. He is a Fellow of the prestigious American College of Trial Lawyers and The International Society of Barristers and an Advocate in the American Board of Trial Advocates. He also is a Fellow and former board member of The International Academy

of Trial Lawyers. A former Master of the American Inns of Court, he serves on various advisory boards for professional organizations.

He also has served on the Advisory Board of the Witkin Institute, the mission of which is to further B.E. Witkin's commitment to advancing the understanding of California law and improving the administration of justice.

He is the author of numerous articles and a contributing author to numerous magazines. His books include California Products Liability Actions, Matthew Bender; California Courtroom Evidence, LexisNexis; Federal Courtroom Evidence, LexisNexis; Persuasive Opening Statements and Closing Arguments, California Continuing Education of the Bar (1988); The Ethics Gap, Parker & Son Publications (1991); California Courtroom Evidence Foundations, Parker Publications (1993); and numerous law review articles. He is a prolific author of op-ed pieces and articles on public policy, environmental issues and public integrity. In 2002, he co-authored and published the book *The Coast Time Forgot*, a historic guide to the San Mateo County coast.

Cotchett serves on the Federal Judicial Advisory Committee that submits and reviews federal judicial nominations in California to President Obama. The committee was authorized by the Obama Administration and California's two Democratic senators, Dianne Feinstein and Barbara Boxer. Cotchett is Chair of the Boxer Committee for the Central District of California (Los Angeles) and advises statewide. Cotchett also serves on a Judicial Advisory Committee to Governor Jerry Brown on state judicial appointments.

Cotchett has lectured at numerous law schools including Harvard Law School, the University of Southern California, Georgetown Law Center, Stanford, Boalt, and his alma mater U.C. Hastings. His subjects include complex cases, evidence, trial practice and professional ethics. He also is a keynote public speaker and lecturer on contemporary subjects of law.

He has been honored by the State Bar of California by serving on the Board of Governors from 1972 to 1975. Cotchett served on the California Judicial Council from 1976 to 1980; the Board of Directors, Hastings College of Law, University of California for twelve years; California Commission on the Future of the Courts; the California Select Committee on Judicial Retirement, the California Blue Ribbon Commission on Children in Foster, the latter three appointed by the Chief Justice of California.

His civic work includes past memberships on the board of directors of the San Mateo County Heart Association; San Mateo Boys & Girls Club (Past President); Peninsula Association of Retarded Children and Adults; Bay Meadows Foundation; Disability Rights Advocates; and numerous Bay Area organizations. He formerly served as a member of the board of Public Citizen in Washington, D.C. and served on the board of Earth Justice.

In 1996, he was awarded the Anti-Defamation League's Distinguished Jurisprudence Award. The award was established to recognize individuals in the legal community who have exhibited humanitarian concerns, and whose everyday actions exemplify the principals on which the Anti-Defamation League was founded.

In 1999, Cotchett was inducted by the State Bar of California to the Litigation Trial Lawyers Hall of Fame. This award is given to professionals who have excelled as trial lawyers and whose careers exemplify the highest values and professional attainment.

In 2000, the University of California, Hastings College of Law opened the Cotchett Center for Advocacy recognizing Cotchett as one of its outstanding graduates. Chief Justice Ronald M. George of the California Supreme Court and Associate Justice Anthony Kennedy of the U.S. Supreme Court honored Cotchett as speakers at the Founder's Day dedication of the center. In November of 2006, Notre Dame de Namur University in Belmont, California dedicated the Joseph W. Cotchett Business Lab for students.

In March of 2000, Cotchett was named to the California State Parks Commission by Governor Gray Davis. The commission establishes general policies for the guidance of the Parks Department in the administration, protection and development of the 260 state parks in the system. He served as Chairperson in 2002-2003.

In 2003, Cotchett was honored by Disability Rights Advocates for his nearly 40 years of civil rights work. At a San Francisco dinner in October attended by lawyers, judges and community leaders, this was how Cotchett was described:

Joe Cotchett has been a champion for justice since his college days. As an engineering student in North Carolina, Joe challenged segregation by drinking from segregated water fountains and riding in the back of buses. Later, as a student at Cal Poly, in 1958 Joe successfully established the first integrated fraternity, which prompted the other fraternities on campus to follow suit. Joe's legal career has involved representing the underdog and doing extensive pro bono work. His civil rights commitment has been leveraged over and over by his financial support of legal fellowships. He has given a 'kick-start' to the public interest careers of the new law graduates at Trial Lawyers for Public Justice, Public Citizen, Southern Poverty Law Center and Disability Rights Advocates. Through these fellowships, Joe has helped to ensure social change through law. Joe guided DRA as a board and litigation committee member from its infancy years into the defender of disability rights it has become today.

In 2004, continuing a distinguished history of community and civic involvement, Cotchett endowed a \$7 million fund to support science and mathematics teacher education at California State Polytechnic University to serve inner city and rural minority children. To honor Cotchett, the university renamed its landmark Clock Tower building the "Cotchett Education Building." The gift supports science and mathematics teacher education initiatives at Cal Poly through the University Center of Teacher Education and the College of Science and Mathematics.

In 2011, Cotchett was inducted into the prestigious American Trial Lawyer Hall of Fame for his work nationwide in civil rights, and litigation on behalf of the under-privileged in our society. In 2011, he received the Distinguished Service Award from the Judicial Council of California and named the Antitrust Lawyer of the Year by the State Bar. In April of 2011, he was honored by the California League of Conservation Voters with the Environmental Leadership Award and honored by the Consumer Watchdog with the Lifetime Achievement Award.

Cotchett and his family members are active in numerous Bay Area charitable organizations involving animals, children, women and minorities. They established the Cotchett Family Foundation that aids individuals and groups in need of assistance.

FRANK M. PITRE

Frank M. Pitre, a San Francisco native, earned his B.S., Cum Laude, in Business Administration and his J.D. from the University of San Francisco. While at USF, Pitre served a legal externship with the California Supreme Court.

Considered to be one of the outstanding trial lawyers in areas of personal injury/wrongful death, consumer fraud and commercial torts, Pitre has won millions of dollars for victims of injustice. His skill as a trial lawyer has earned him recognition among his peers who have elected him as a member of the prestigious American College of Trial Lawyers, American Board of Trial Advocates, International Academy of Trial Lawyers, International Society of Barristers, and the National Board of Trial Advocacy.

Recently, Pitre recovered the largest individual wrongful death verdict in San Diego County history, when a jury awarded \$17.4 million to the wife and three children of a high ranking U.S. Naval Officer, who was killed while riding his bike in a collision with an American Medical Response transport van. *Mazurek, et al. v. American Medical Response, et al.*, San Diego Superior Court Action No. 10-83975 May 20, 2011. As a result, he was named a finalist for the 2011 Trial Lawyer of the Year by the Consumer Attorneys of California.

Currently, Pitre serves as Co-Lead Counsel for the Economic Loss Class Plaintiffs in the nationwide Toyota Sudden Acceleration Cases, having been appointed by Federal District Court Judge James Selna. In Re: Toyota Unintended Acceleration Marketing Sales Practices and Product Liability Litigation, MDL 2151 JVS. In addition, he was appointed Plaintiffs Liaison Counsel by San Mateo Superior Court Judge Steven L. Dylina, to spearhead the coordination and prosecution of over 200 claims against PG&E arising out of the San Bruno Fire which occurred on September 9, 2010, when a natural gas pipeline exploded. In Re: San Bruno Fire Cases, JCCP Action No. 4648.

In 2009, Pitre was recognized by the National Law Journal's "Plaintiff's Hot List" for his work as co-lead trial counsel in the In Re: Bextra and Celebrex Mktg., Sales Practices & Product Liability Litigation (MDL 1699), which culminated in Pfizer agreeing to pay \$894 million to settle consolidated injury and class action cases related to its pain killers Bextra & Celebrex.

In 2006, Pitre obtained one of the largest verdicts in Sutter County history where he obtained over \$45 million on behalf on an elderly minority shareholder who had been frozen out of participation in a lucrative family timber harvesting business. *Siller v. Siller*, Sutter County Superior Court Action No. CVCS01-1083.

He is a past president of Consumer Attorneys of California (CAOC), the 3,000-member group of lawyers dedicated to protecting and seeking justice for consumers.

Pitre served as liaison counsel and a member of the Plaintiffs Steering Committee in the Alaska Air Flight 261 air crash. In addition, he was a member of the Plaintiffs Executive Committee arising out of the Singapore Airlines Flight 006 air crash in Taiwan. Immediately prior to his committee appointments in Alaska Air and Singapore Airlines, he served as a member of the Plaintiffs Management Committee in the California Diet Drug Litigation where thousands of individuals were victimized by the diet pill combination Fen-Phen, which was condemned by the FDA for causing adverse health effects.

Pitre's numerous jury trials include a multi-million dollar wrongful death verdict in Orange County Superior Court in Santa Ana, California, against the State Department of Transportation, a highway contractor and a trucking company. The verdict, one of the largest of its kind for Orange County at the time, was affirmed on appeal, and as a result Pitre was a finalist for CAOC's Trial Lawyer of the Year award (2004).

Pitre served as co-lead trial counsel for Consumers Union, obtaining a defense verdict in favor of Consumers Union in a product disparagement case where the plaintiff, Isuzu Motors of Japan, sought damages of multi-million dollars. His work in defense of Consumers Union earned him recognition as a finalist for Trial Lawyer of the Year Award 2000.

Pitre won a multi-million dollar verdict for the victims of a high profile San Francisco balcony collapse. He also secured a significant verdict for compensatory and punitive damages before a San Francisco jury which found the defendant to have wrongfully deprived the plaintiff of her partnership interest in a successful business. In addition, he served as co-lead trial counsel with Joseph W. Cotchett for E. & J. Gallo, winning a landmark trade dress infringement case for the winery.

His notable federal class action cases include *Livingston v. Toyota Motor Sales USA, Inc.*, involving a nationwide antitrust class action under the Sherman Act by purchasers of more than three million Toyota vehicles.

His experience in mass tort cases began in 1987 with the PSA Air Crash Cases, representing numerous plaintiffs in wrongful death actions following the crash of PSA Flight 1771, where he served as a member of the Plaintiffs Steering Committee, and later as plaintiffs co-lead trial counsel for the six-week jury trial which established the defendants' liability. The success of the PSA Air Crash Cases led to his appointment as a member of the Plaintiffs Steering Committee in *Carnahan et al. v. State of California*, which successfully resolved hundreds of claims for personal injuries and damages against more than 100 defendants.

Pitre is the author of numerous articles, including "Abuse of Process," California Tort Damages, California Continuing Education of the Bar, 1988; and "Tort Trends," The Docket, San Mateo County Bar Association, 1989-1994. He is co-author of "Jury Instructions: A Practical Approach to their Use," Civil Litigation Reporter, March, 1984; "Arguing Punitive Damages," Civil Litigation Reporter, California Continuing Education of the Bar, 1991; "Effective Opening Statements," California Litigation, Journal of The Litigation Section, California State Bar, 1991; "Jury Trial Tips: Witnesses," California Litigation, Journal of The Litigation Section, California State Bar, 1991; and "Winning Through a More Effective Direct Examination," California

Litigation, Journal of the Litigation Section, California State Bar, 1991. Since 1998 he has served as the author of the Annual Supplement to “California Personal Injury Proof,” published by the California Continuing Education of the Bar.

Pitre has served on the faculty of the Hastings College of Advocacy and the University of San Francisco Trial Advocacy Program. He also has served as the Co-Chair and presenter at several Masters In Trial programs sponsored by the ABOTA Foundation.

NIALL P. McCARTHY

Niall P. McCarthy, a partner at Cotchett, Pitre & McCarthy, LLP, is a graduate of the University of California at Davis and Santa Clara University School of Law. He has practiced with the firm since 1992.

McCarthy has repeatedly been selected as one of the top plaintiff attorneys in California and the United States by multiple publications, including the Daily Journal, the National Law Journal, Lawdragon Magazine and Super Lawyers Magazine. He has received a California Lawyer Magazine Attorney of the Year (CLAY) Award. From 2004 to 2014 he was selected as a Northern California “Super Lawyer” by San Francisco Magazine. McCarthy has been named a Top 100 attorney by the Daily Journal and Super Lawyers Magazine. He has the highest possible rating, AV, from Martindale-Hubbell. In 2013, McCarthy was awarded the Trial Lawyer of the Year Award by the San Mateo County Trial Lawyers Association. He has also been elected to the American Board of Trial Advocates (ABOTA).

McCarthy has represented qui tam Relators in False Claims Act cases in state and federal courts. McCarthy handled the Hunter Laboratories Litigation in which he negotiated the then largest False Claims recovery in California history, \$301 million. In the mid 1990s, he was the lead attorney in a groundbreaking case brought under the California False Claims Act on behalf of the University of California San Francisco with respect to direct and overhead costs to the university. McCarthy has extensive experience pursuing false claims cases arising out of health care fraud and other industries against the government. He coauthored the articles “Qui Tam Litigation, A Primer for the General Litigator,” “Answering the Call: Attacking Healthcare Fraud with the False Claims Act,” “Recent Developments in False Claims and Healthcare Litigation,” and “False Claims Act Fundamentals.” He has worked with the Department of Justice and Attorneys General offices throughout the United States on False Claims cases.

McCarthy has handled many consumer fraud class actions. He has acted as Co-Lead National Class Counsel in actions against some of the largest banks and credit card companies in the country, which returned hundreds of millions of dollars to consumers. He is the author of “Home Equity Loss in California Through Predatory Lending,” “Combating Predatory Lending in California,” and has spoken in many forums on consumer fraud.

McCarthy also has practiced extensively in the area of elder abuse, including obtaining multi-million dollar recoveries on behalf of senior citizens in actions involving reverse mortgages. He has been retained by San Mateo County, Santa Clara County, Alameda County and Santa Cruz County to prosecute financial elder abuse cases. In addition, he has handled many notable cases against nursing homes, including well-publicized actions for the families of three victims who died

at a San Mateo County nursing home during a heat wave, and an action on behalf of a developmentally disabled person who was severely burned while left unattended in a nursing home shower.

He authored “The Elder Abuse Statute: California’s Underutilized Law,” “Elder Abuse: Recent Legal and Legislative Developments,” “Financial Elder Abuse in Real Estate Transactions Under the 2000 Revisions to the Elder Abuse Act” and “Elder Abuse Claims Not Subject to MICRA.” He is a frequent speaker on elder abuse and has been featured in California Lawyer with respect to his work for seniors.

McCarthy has received many legal service awards including the Marvin Lewis Award for the Consumer Attorneys of California for guidance, loyalty and dedication, the William Nagle, Jr. Memorial Award from the San Mateo County Bar Association for innovations in the law and for professionalism, the Community Service Award from Santa Clara University School of Law for his work on behalf of consumers, the Bar Association of San Francisco’s Award of Merit, the Access to Justice Award from the Lawyer’s Club of San Francisco, the California Supreme Court Chief Justice’s Award for Exemplary Service and Leadership, the Stanley Mosk Defender of Justice Award and the State Bar of California Presidential Award for Access to Justice.

McCarthy’s other notable cases include compelling an insurance company to pay for a lifesaving bone marrow transplant for a cancer patient, and obtaining a punitive damage jury verdict in a case which unveiled a multi-state health insurance fraud. McCarthy obtained a defense award on a multi-million dollar fraud claim against his clients, and obtained a million-dollar recovery for the same clients on a cross-complaint in a year-long arbitration arising out of a failed healthcare industry merger. As co-lead counsel, he tried an action on behalf of the victims of a balcony collapse in San Francisco which resulted in a \$12 million verdict. He served as lead class counsel obtaining a \$15 million dollar verdict against Old Republic Title Co. after a trial in San Francisco Superior Court. He also obtained a substantial verdict against the government in a high profile FTCA case after a trial in federal court. He obtained a punitive damage jury verdict after trying an elder abuse case against a nursing home. In 2014, he won a unanimous jury verdict in a hotly contested financial elder abuse trial involving the misappropriation of a senior citizen’s life savings. McCarthy has tried a variety of cases in state and federal court, including class actions. He has also won multiple FINRA arbitrations.

McCarthy is a past president of the Consumer Attorneys of California and the San Mateo County Trial Lawyers. He was chairman of the Business Litigation Section of the San Mateo County Bar Association. He is currently a co-chair of the Open Courts Coalition, a diverse group of attorneys from all practice areas in California whose goal is to restore court funding. McCarthy has been an MCLE panelist on many topics including courtroom conduct, complex litigation, financial fraud, financial and physical elder abuse, the fundamentals of business litigation, Business and Professions Code 17200, predatory lending, qui tam actions, discovery for trial, trial of class actions, the Consumer Legal Remedies Act and taking effective depositions. He also is active in various Peninsula community activities, including having served as chairman of the Board of Directors of Community Gatepath, a nonprofit organization which benefits children and adults with disabilities. McCarthy received ABC 7/KGO TV’s “Profiles of Excellence” Award for his work on behalf of Community Gatepath.

MARK C. MOLUMPHY

Mark C. Molumphy, a partner at Cotchett, Pitre & McCarthy, is native of the Bay Area, born in San Mateo, California.

Molumphy joined Cotchett, Pitre & McCarthy in 1993, practicing civil litigation with an emphasis on complex business disputes, securities, antitrust, insurance bad faith, and products liability. In 1996, Molumphy was presented the Community Service Award by the Jack Berman Advocacy Center of the American Jewish Congress for his work on the landmark 101 California Shooting Litigation.

Molumphy has extensive experience in consumer and investor fraud class actions and derivative actions, including *Smith v. Merrill Lynch (Orange County Bond Litigation)*, *Estate of Jim Garrison v. Warner Bros. Inc.*, *Campbell v. Acclaim Entertainment, Inc.*, *In re Pilgrim Securities Litigation* and the *Central Bank Litigation*. Molumphy served as lead counsel in the groundbreaking Apple stock option backdating litigation, the Informix securities litigation which involved the restatement of revenues in excess of \$300 million, and on the Sybase, CBT, Rational Software, and HP derivative cases, resulting in millions of dollars recovered for the companies and their shareholders. Molumphy also negotiated multi-million dollar settlements on behalf of former shareholders of Bay Meadows Race Track and mutual fund shareholders of Janus.

He served as lead counsel for a nationwide class of investors of Medical Capital, and secured the largest Ponzi-scheme recovery in California history. Molumphy also represented numerous cities and counties in California related to their investment losses in Lehman Brothers, Washington Mutual and AIG, amongst others.

Molumphy currently serves as lead counsel in some of the most significant class and derivative actions in the United States, the Wells Fargo derivative action relating to the bank's creation of fictitious customer accounts, the Yahoo derivative action relating to two of the largest user data breaches in United States history, and the Intel derivative action relating to the delayed revelation of chip defects after the Company's CEO dumped a large number of his shares. Molumphy also serves as co-lead counsel in several investor class actions filed on behalf of IPO and pre-IPO investors in companies such as Oportun, ProNAi, and Alibaba.

Molumphy is very active in community affairs, and served for years on the Board of Directors and as a volunteer for the Legal Aid Society of San Mateo County, which provides free legal services to low-income children, families and seniors. He also has been appointed counsel by the Federal Court as part of the court's pro bono program.

In September 2007, the Parca Auxiliary honored Molumphy and Cotchett, Pitre & McCarthy with "Parca's Angel Award." Molumphy and Neil Swartzberg accepted the award in recognition of the law firm's donations to Parca Organization, a private nonprofit association that serves people with developmental disabilities and their families in the Bay Area. Molumphy expressed hope that other law firms and companies will be encouraged to give back to the community with this example.

Molumphy is a frequent speaker on complex litigation and co-authored “Punitive Damages: How Much Is Enough?” Civil Litigation Reporter, CEB, 1998. He also has appeared as a panelist on programs, including “Strategic Tips For Successfully Propounding and Opposing Written Discover,” “Punitive Damages: Maximizing your Client’s Success or Minimizing Your Client’s Exposure,” “Developments in Class Action Litigation,” and “FDA 2009 - Key Issues Facing Life Sciences Companies.”

PAUL N. “PETE” McCLOSKEY

Paul N. “Pete” McCloskey, Jr., a principal at Cotchett, Pitre & McCarthy, is considered to be one of the country’s great trial lawyers, as well as a great public servant and war hero.

A renowned attorney who has tried over 100 jury trials, McCloskey began his law career as Deputy District Attorney for Alameda County, and then as the founding partner in the law firm of McCloskey, Wilson & Mosher, which evolved into the firm of Wilson, Sonsini, Goodrich & Rosati.

During his law career, McCloskey served as President of the Palo Alto Bar Association, President of the Conference of Barristers of the State Bar of California and as a Trustee of the Santa Clara Bar Association.

McCloskey received his B.A. from Stanford University and his J.D. from Stanford Law School. He has written four books and has taught legal ethics and political science at Stanford and Santa Clara Universities. His books include: Guide to Professional Conduct for New Practitioners, California State Bar (1961); The U.S. Constitution, BRL (1961); Truth and Untruth: Political Deceit in America, Simon & Shuster (1971); and The Taking of Hill 610, Eaglet Books (1992), describing his service in Korea.

Following Stanford University, he joined the Marine Corps as an officer and served in the Korean War. While in the Marine Corps section, McCloskey commanded a reserve rifle company at San Bruno, California from 1953 to 1960. A recipient of the Navy Cross for extraordinary heroism, the Silver Star for bravery in combat and two Purple Hearts, McCloskey was a platoon leader and company commander. He retired from the Reserve with a rank of Colonel.

McCloskey served from 1967 to 1983 in the U.S. House of Representatives and was re-elected seven times representing the San Francisco Peninsula and Silicon Valley. He served six years as Congressional Delegate to the International Whaling Conference, and as Congressional Advisor to the Law of the Sea Treaty Delegation. An ardent environmentalist, he was co-chair of the first Earth Day in 1970 with Senator Gaylord Nelson. In 1972, he ran for President on an anti-Vietnam War platform against Richard Nixon. One of McCloskey’s enduring legacies is his co-authorship of the 1973 Endangered Species Act. After serving in Congress for 15 years, McCloskey returned to private practice, taking on tough complex cases.

He has served as a Trustee for the Monterey Institute of International Studies, the Population Action Institute, and the U.S. Marine Corps Academy in Harlingen, Texas. Appointed by President

George H. W. Bush and elected its first chairman, McCloskey served on the U.S. Commission on National and Community Service from 1990 to 1992.

McCloskey served on the Advisory Council to the American Land Conservancy. He has been at the forefront in helping Afghanistan and Iraq war veterans receive college educations upon their return from duty. He serves on the Board of Advisors of The Fund for Veterans' Education.

A film was done on the life and times of Pete McCloskey entitled, American Maverick. The film is narrated by the late Paul Newman who said, "Pete McCloskey has spent his life fighting for peace" and "without doubt he will always be leading from the front."

ROBERT B. HUTCHINSON

Robert Hutchinson heads up the Cotchett, Pitre & McCarthy Los Angeles office. Mr. Hutchinson is a veteran trial lawyer having tried over 30 jury trials in Federal and State courts and numerous complex arbitrations and court trials. In 2000 he won a \$ 4.9 million verdict for a client who lost his right leg above the knee, believed to be the largest verdict to that time for that type of injury in the State of California.

Mr. Hutchinson successfully argued the case of Vanhorn v. Torti (2008) 45 Cal 4th 322 before the California Supreme Court and secured a multi-million dollar settlement for client.

Mr. Hutchinson specializes in Personal Injury trial practice, emphasis in product liability, Consumer Protection, Securities Fraud and Consumer Class Actions.

NANCI E. NISHIMURA

Nanci E. Nishimura is a partner at Cotchett, Pitre & McCarthy, LLP where she practices civil litigation focusing on antitrust, business litigation and consumer class actions. Ms. Nishimura received a B.A. in Psychology and M.A. in International Relations from the University of Southern California. Following a career in the United States and Japan as a business development and marketing consultant, she received her J.D. from the Columbus School of Law at the Catholic University in Washington, D.C. She worked at the Overseas Private Investment Corporation, the International Trade Commission and served as a Legislative Analyst to Senator Daniel Inouye.

Ms. Nishimura's experience in civil and criminal appellate litigation includes First and Fourth Amendment and civil rights. She wrote the brief on the merits and appeared before the United States Supreme Court in Hanlon v. Berger, 526 U.S. 808 (1999). She co-authored, "An Invasion of Privacy: The Media's Involvement in Law Enforcement Activities," 19 Loy. L.A. Ent. L.J. 313 (1999). Published cases, among others, include Berger v. CNN Inc., 188 F.3d 1155 (9th Cir. 1999); Ayeni v. Mottola, 35 F.3d 680 (2d Cir. 1994), cert. denied, 514 US 1062 (1995), aff'g Ayeni v. CBS Inc., 848 F. Supp. 362 (E.D.N.Y. 1994); Brunette v. Humane Society of Ventura County, 294 F.3d 1205 (9th Cir. 2002); Aquila, Inc. v. Superior Court, 148 Cal. App. 4th 556 (2007); Regents of University of California v. Superior Court, 165 Cal. App. 4th 672 (2008).

She was appointed by Governor Jerry Brown to the 11 member Commission on Judicial Performance (2011-2015); formerly served on the State Bar Judicial Nominees Evaluation

Commission (JNE) for the 2005-2008 term; on the Board of Governors and first Vice President for the California Women Lawyers (District 3). She is also a member of the San Mateo and Los Angeles County Bar Associations, Consumer Attorneys of California, Association of Trial Lawyers of America, and the American Bar Foundation. She is a frequent lecturer for California Women Lawyers, and past member of the LACBA Litigation Section Trial Practice Inn of Court.

Ms. Nishimura is on the Board of Trustees of the California Science Center Foundation, a joint state-private facility created to promote science education throughout California, and past president of the Board of Directors of The MUSES of the California Science Center Foundation. She is a frequent speaker to promote science and math education in California. In addition, she is on the Board of Trustees of the Asian Art Museum in San Francisco; the Rotary Club of San Mateo; and the creator of Storytime for Children with Abby Rabbit, an interactive reading and development program for children.

JUSTIN T. BERGER

Justin T. Berger is a partner at Cotchett, Pitre & McCarthy, where he focuses on false claims act litigation, consumer protection, financial elder abuse, employment law, and other complex civil litigation.

Berger has been recognized as one of the top young litigators in California. In 2012, Justin was included in The Recorder's "Lawyers on the Fast Track," as one of the top 50 attorneys in California with less than 10 years of practice. Also in 2012, Berger received a California Lawyer Magazine Attorney of the Year (CLAY) Award, along with Niall McCarthy. From 2009 to 2012, Justin has been selected as a Northern California "Rising Star" by Northern California Super Lawyers and San Francisco Magazine. In 2008, Berger was selected as a finalist for the 2008 Consumer Attorney of the Year Award by the Consumer Attorneys of California, for his work on *Komarova v. National Credit Acceptance*. In 2011, Berger was again selected as a finalist for Consumer Attorney of the Year along with Niall McCarthy, for their work in recovering a record \$300 million on behalf of the State of California in a case brought under the California False Claims Act.

Berger received his Bachelor of Arts from Yale University, graduating Cum Laude, with Honors in the Major. He received his J.D. from the University of California, Berkeley School of Law (Boalt Hall). At Boalt, Justin was a member of the California Law Review and the LAS-ELC Workers' Rights Clinic. In addition, through Boalt's International Human Rights Law Clinic, Justin served on the trial team that successfully prosecuted the case *Yean and Bosico v. Dominican Republic* before the Inter-American Court of Human Rights.

Following law school, Justin clerked for U.S. District Court Judge Susan Illston of the Northern District of California.

Prior to law school, Berger served for two years as a United States Peace Corps Volunteer in Ecuador. Berger also served for a year as an AmeriCorps VISTA volunteer at Casa Cornelia Law Center, a non-profit immigration law firm in San Diego. Berger is fluent in Spanish.

Berger is the President of the San Mateo County Barristers, and is active in the Northern California Peace Corps Association. Berger is a member of the San Mateo County Bar Association, Consumer Attorneys of California, American Business Trial Lawyers, and the San Mateo County Trial Lawyers Association.

ANNE MARIE MURPHY

Anne Marie Murphy is a partner at Cotchett, Pitre & McCarthy LLP, where she practices civil litigation focusing on complex commercial litigation, class actions, consumers' rights and elder abuse (including both financial abuse and nursing home abuse).

Ms. Murphy received her Bachelor of Arts in Science & Technology from Vassar College. She received her J.D. from the Georgetown University Law Center. While attending Georgetown, she worked as a Legislative Assistant in the U.S. Senate.

After graduating from law school, she practiced law in San Francisco, handling a caseload ranging from complex commercial litigation to regulatory approvals of mergers and acquisitions of regulated utilities. She also worked on a pro bono basis for the AIDS Legal Referral Panel.

In *Komarova v. National Credit Acceptance, Inc.* Ms. Murphy, along with Justin T. Berger of Cotchett, Pitre & McCarthy LLP, obtained a jury verdict against a credit card collection agency following a two week trial in January 2008. The jury found for the plaintiff both on her intentional infliction of emotional distress and California Fair Debt Collection Practices Act claims, resulting in both a compensatory and punitive damages award. On appeal, several important issues of first impression were decided in the Plaintiff's favor, as reflected in the published decision: *Komarova v. National Credit Acceptance, Inc.*, 175 Cal. App. 4th 324 (Cal. App. 1st Dist. 2009).

Ms. Murphy has practiced extensively in the area of elder abuse, handling many notable cases against nursing homes. Ms. Murphy has also acted as co-lead counsel in a number of consumer class actions which have returned millions of dollars to consumers across the country. Ms. Murphy has tried a number of cases to verdict.

Ms. Murphy is a member of Consumer Attorneys of California, the American Association for Justice, the San Mateo County Bar Association, the San Mateo Trial Lawyers Association, and is a lifetime member of California Women Lawyers.

Ms. Murphy serves on the Board of Directors of Consumer Attorneys of California (CAOC) and has been Co-Chair of the Donald L. Galine Tahoe Seminar since 2010. She also Co-Chaired CAOC's Class Action Seminar for several years. Ms. Murphy was elected to the CAOC Board of Governors in 2009 and again in 2010. In 2010, Ms. Murphy was appointed to serve on the Board of Directors of CAOC, she was then elected to the Board of Directors in 2011 and every year following. Ms. Murphy is the former Chair of the CAOC Women's Caucus.

In 2010, Ms. Murphy was appointed as a Commissioner on the California Commission on Access to Justice. The Commission plays a vital role in bringing together the three branches of government, judges, lawyers and civic and business leaders to find long-term solutions to the

chronic lack of legal assistance available to low-income and vulnerable Californians. Ms. Murphy continues to serve on the Commission.

Ms. Murphy previously served on the Board of Directors of the State Bar of California, California Young Lawyers Association (CYLA) (2009 -2011); as well as the Board of Directors of the San Mateo County Barristers (2008-2009).

Ms. Murphy has provided frequent commentary on consumer rights issues, including binding mandatory consumer arbitration, and has appeared on local as well as national news broadcasts including ABC 7 On Your Side (Cable 7), View From The Bay, and Good Morning America (ABC). Ms. Murphy's articles include: "Same Road, Different Stops" (Elder Abuse Litigation), The Docket, San Mateo County Bar Association, Volume 49, No. 1, Jan/Feb 2013. Ms. Murphy's speaking engagements include: Panelist: "Elder Abuse Litigation," San Mateo County Bar Association, 2011; "Elder Abuse Litigation," State Bar of California Annual Convention, 2010; "Handling Cases Involving Physical and Financial Elder Abuse," CYLA, State Bar of California Webinar, 2010; "Winning Cases in Securities Arbitration," State Bar of California Annual Convention, 2010; "Securities Arbitration," CYLA, State Bar of California Webinar 2010; "Winning Trials through Motions in limine," 2010; Moderator, "Preparing for Trial," Consumer Attorneys of California, 2011; Moderator, "CSI Effect" CAOC Tahoe 2012; Panelist, "Financial Elder Abuse Litigation: Assessing, Preparing and Presenting Claims", Legal Assistance for Seniors ("LAS") 2012 Annual Conference; "Credit Counseling Class Actions and the CROA", CAOC Beaver Creek Conference 2012; Elder Abuse Litigation: Getting To Verdict Or Settlement In Tough Economic Times And Checklists For Settlement," CAOC 51st Annual Convention 2012; "Ethical Issues in Lawyer Communications," San Mateo County Bar Association 2013; "Elder Abuse Litigation: Sharpening Skills in Physical and Financial Abuse Cases" LAS 2013 Annual Conference; "PAPANTONIO: THE CONSERVATIVE WAR ON CONSUMER PROTECTIONS (VIDEO)," broadcast, Ring of Fire, August 4, 2013; "Is Major League Baseball the ONLY Business to Have an Antitrust Exemption?" Santa Clara University, September 27, 2013; "Ethical Issues Emerging From The Patient-Client Relationship" CAOC Annual Convention, San Francisco, November 16, 2013; Co-Chair/Moderator CAOC 2014 Class Action Seminar; Co-Chair/Moderator CAOC Political Training, May 5, 2014; "Cy Pres in Class Action Settlements: How to Do It Right and Benefit Legal Service", Impact Fund Webinar, July 28, 2014; Moderator, "Dos and Don'ts in the Courtroom" CAOC 53rd Annual Convention, San Francisco November 14, 2014; "CCRC Litigation" California Advocates for Nursing Home Reform (CANHR) Annual Convention, Monterey, November 21, 2014; "Elder Law and Continuing Care Retirement Communities (CCRCs)" CAOC Hawaii Seminar, December 1, 2014; Co-Chair CAOC/SFTLA/BASF 2015 Class Action Seminar, February 10, 2015. "Continuing Care Retirement Communities: Current Developments," California Advocates for Nursing Home Reform (CANHR) Annual Convention, November 2015; "Amendments to the Federal Rules of Civil Procedure," CAOC 2015 Hawaii Seminar, November 30, 2015; CAOC Class Action and Mass Torts 2016 Seminar, San Francisco, Co-Chair and Moderator; "Why aren't more female lawyers making it to trial?." SFTLA, January 7, 2016; "Trial Skills: The Ins And Outs Of Handling Witnesses (Roundtable Discussion)," CAOC 2016 Sonoma Seminar, Moderator; Co-Chair of the CAOC 2016 Sonoma Seminar; "Continuing Care Retirement Communities: Continuing Care Contracts/Frequently Asked Questions" CANHR Webinar, April 20, 2016; Presentation to CANHR CCRC Panel, April 30, 2016; Litigating in Probate Versus Civil Court: Factors to

Consider, Legal Assistance for Seniors Conference, May 17, 2016; Transparency in Supply Chains Litigation: Plaintiff, Defense and Human rights perspectives, July 28, 2016, Sponsored by the California State Bar Antitrust, UCL and Privacy Law Section; Elder Abuse a Growing Epidemic, CAOC Annual Convention, San Francisco, November 12, 2016; Continuing Care Retirement Communities (CCRC) Litigation, Plenary Session, CANHR Annual Conference, Monterey, November 19, 2016; “Litigating Human Rights Cases Under the UCL,” CAOC Hawaii Seminar, Maui, November 28, 2016; “Litigating Human Rights Class Actions,” CAOC/SFTLA Class Action Seminar, San Francisco, February 7, 2017; Preparing for the First Day of Trial, SFTLA Seminar, February 21, 2017; Elder Abuse Roundtable, SFTLA, May 9, 2017.

Ms. Murphy is involved in a number of community organizations in the Bay Area. Among other community activities, Ms. Murphy served on the Board of Directors of Seven Tepees Youth Program for a number of years, including as board Secretary. Seven Tepees is a non-profit serving promising urban youth in San Francisco, which provides comprehensive services to youth from 5th to 12th grade, including mentoring, academic support and college and career counseling. Ms. Murphy now serves on the Advisory Board.

In 2015 Ms. Murphy joined the Board of Directors of California Advocates for Nursing Home Reform (“CANHR”). CANHR is one of the largest and most respected non-profits in the country devoted to the protection of senior citizens. For the past 30 years, CANHR has educated and supported consumers and advocates regarding the rights of California seniors, through direct advocacy, community education, legislation and litigation.

In 2008, Ms. Murphy was selected as a finalist for the 2008 Consumer Attorney of the Year Award by CAOC. In 2009, 2010, 2011 and 2012 Ms. Murphy was selected as a Northern California “Rising Star” by Northern California Super Lawyers and San Francisco Magazine. In 2013 and every year since Ms. Murphy has been selected as a Northern California “Super Lawyers” by Northern California Super Lawyers and San Francisco Magazine. In 2016 she was named to Super Lawyers’ Top 100 Northern California Attorneys.

In May 2015, the Daily Journal named Ms. Murphy in its Top Women Lawyers edition as one of the “100 leading women lawyers in California.” Also in 2015 Ms. Murphy was named as one of the 25 top Plaintiff attorneys by the Daily Journal in its inaugural list of 25 top Plaintiff attorneys.

ADAM J. ZAPALA

Adam J. Zapala is a partner at Cotchett, Pitre & McCarthy, LLP, where he focuses on antitrust, false claims act litigation, consumer protection and class actions generally.

Mr. Zapala received a B.A. from Stanford University and his J.D. from University of California, Hastings College of the Law. While at Hastings, Mr. Zapala received awards for best moot court brief, the Pro Bono Publico award, most outstanding student in Group Advocacy and Systemic Reform, and Excellence for the Future Award in Pre-trial Practice.

Previously, Mr. Zapala worked at Davis, Cowell & Bowe, LLP. in San Francisco, where he represented labor unions, Taft-Hartley Pension and Health & Welfare funds, employees and

consumers in complex litigation, arbitration and NLRB proceedings. While at DCB, Mr. Zapala served as trial counsel in countless arbitrations on behalf of labor unions and employee benefit funds. He has argued cases before the California First, Third, and Sixth District Court of Appeal.

Mr. Zapala also previously served as a staff attorney with Bay Area Legal Aid, where he focused on representing indigent clients in a wide variety of civil litigation matters. While there, Mr. Zapala developed expertise in Medi-Cal, Medicare and other publicly-financed healthcare systems. While in law school, Mr. Zapala also worked for the public interest law firms of Public Advocates, Inc. and Public Justice, focusing on civil rights class action litigation.

Mr. Zapala also has legislative and policy experience, working on Capitol Hill as a policy aide for Senator Ron Wyden (D-Oregon) in Washington D.C.

Mr. Zapala has deep ties to the Bay Area. He grew up in San Jose, California and attended Bellarmine College Preparatory. While at Stanford University, Mr. Zapala became a four-time Academic All-American, a four-time All-American, and Captain of the Stanford Men's Soccer Team. In 2001, he was drafted in the Major League Soccer ("MLS") Super Draft by the Dallas Burn (now FC Dallas).

BRIAN DANITZ

Brian Danitz is a Partner at Cotchett, Pitre & McCarthy, LLP. Mr. Danitz has substantial experience representing clients in state and federal litigation, arbitration, internal investigations, and government investigations, involving commercial disputes, corporate and securities fraud, shareholder litigation, consumer class actions, antitrust and employee whistleblower complaints. His practice includes all aspects of civil litigation in state and federal courts, in matters involving complex issues including allegations of securities law violations, shareholder disputes including involving breach of fiduciary duty and corporate governance, trade secret violations, and commercial disputes.

Prior to joining Cotchett, Pitre & McCarthy, LLP, Mr. Danitz worked at a large law firm in Silicon Valley, representing clients in commercial litigation, securities litigation, and government enforcement matters.

Prior to becoming a lawyer, Mr. Danitz was a documentary filmmaker and producer of new media. Mr. Danitz was the cinematographer for the Oscar-winning documentary *Bowling for Columbine*, Oscar-nominated film *Sound and Fury*, and Emmy Award winner *TV Nation*, and directed *Ecological Design: Inventing the Future, Objects and Memory*, and *N is for Nuclear*, among other films.

Mr. Danitz received his J.D. from Fordham University School of Law, *cum laude*, where he was the Symposium Editor of the Fordham Intellectual Property, Media and Entertainment Law Journal. Mr. Danitz received B.F.A. and M.P.S. degrees from New York University.

ALISON CORDOVA

Alison E. Cordova is a Partner at Cotchett, Pitre & McCarthy, LLP, practicing in a wide range of civil litigation areas including class actions, personal injury, wrongful death, and consumer fraud.

Ms. Cordova received her J.D. from the University of California, Hastings College of the Law where she graduated cum laude. While at Hastings, Ms. Cordova won the Witkin Award and the Cali Award for being the top student in Negotiation and Settlement and was published in the Hastings' Constitutional Law Quarterly. Upon graduation, she received highest honors for outstanding achievement in pro bono from Hastings and the California State Bar.

Prior to law school, Ms. Cordova received her Bachelor of Arts Degree in Political Science and Pre-Law from Columbia University. While at Columbia, Ms. Cordova competed as a member of the varsity softball team and was elected by her teammates to represent their interests to the Undergraduate Athletic Council.

Ms. Cordova is a member of the Executive Committee of the San Francisco Bar Association's Barristers Business, Commercial, and Bankruptcy Law Section, and has presented to the San Francisco Bar Association, the San Francisco Lawyers' Network, and the Rossmoor Elder Advocates Club.

ALEXANDER BARNETT

Alex Barnett is a Partner at Cotchett, Pitre & McCarthy where he specializes in class actions involving: antitrust and securities law violations; consumer fraud; negligent product design and manufacture; wage and overtime disputes; civil rights violations; and violation of environmental laws. He also handles mass tort litigation.

Representative class action cases include: Turner v. General Electric Company, No. 2:05-CV-186-FtM-33DNF (M.D. Fla.) (claims by purchasers of allegedly defective General Electric refrigerators); Staton v. IMI South, LLC, No. 03-CI-588 (Ky. Cir. Ct.) (claims by purchasers of defective concrete for repair of home foundations and flatwork); In re Bridgestone/Firestone Inc., ATX, ATX II and Wilderness Tires, MDL No. 1373 (S.D. Ind.) (claims by purchasers of allegedly defective tires), Gori v. Merck & Co., Inc., No.: 04L1254 (claims by purchasers of Vioxx for refund of purchase price); and Harman v. Lipari (claims for medical monitoring for residents of neighborhood bordering a Superfund site in New Jersey). Mr. Barnett also has represented individuals injured by pharmaceutical products such as Redux and Pondimin, Baycol, Serzone, and Vioxx. In addition, Mr. Barnett served as counsel for the cities of Boston, Los Angeles, Philadelphia and San Francisco against the handgun industry and as counsel for the City of Milwaukee in a case against the lead pigment industry.

Mr. Barnett has served as a lecturer on class actions, serving as a Panel speaker at the First Annual National Class Actions Symposium (Osgoode Hall Law School, Toronto, Canada) and the Third Annual Class Actions for Non-Class-Action Lawyers - Growing Your Business by Understanding the Basics and Recognizing Opportunities.

Prior to entering private practice, Mr. Barnett served as the Executive Director of the International Association of Jewish Lawyers and Jurists (“IAJLJ”), American Section, an organization dedicated to promoting human rights and the rule of law.

Before his tenure at the IAJLJ, Mr. Barnett served as the Democratic Party nominee for the New York State Assembly in New York’s 17th Assembly District.

ERIC BUESCHER

Eric Buescher is a Partner at Cotchett, Pitre & McCarthy, where he focuses on consumer fraud, elder abuse, false claims litigation and employment litigation. Mr. Buescher received his Bachelor of Arts in Political Science, with a focus on International Relations from Duke University. After graduating, Mr. Buescher worked as a researcher in Washington, DC assisting law firms with complex research projects for active litigation matters.

Subsequently, Mr. Buescher received his J.D. from Georgetown University Law Center. While at Georgetown, Mr. Buescher was a member of the Georgetown Journal on Law and Public Policy and published an article regarding Fifth Amendment takings as they relate to affordable housing and the Department of Housing and Urban Development titled “Home Robbery: Congress and HUD’s Taking of Private Property in Affordable Housing.” 7 Geo. J.L. & Pub. Pol’y 571 (2009).

Mr. Buescher is a member of San Mateo Trial Lawyers Association and Consumer Attorneys of California.

ELIZABETH CASTILLO

Elizabeth Castillo is a Partner at Cotchett, Pitre & McCarthy, LLP. She focuses her practice on antitrust law and complex litigation.

Ms. Castillo received her B.A. in Economics and Political Science, with a concentration in Public Policy, from Boston University. At BU, she interned and studied abroad in London and Sydney during her third year.

Ms. Castillo received her J.D. from the University of California, Hastings College of the Law. At UC Hastings, she was a super regional semifinalist in the Jessup International Law Moot Court Competition. She also received honorable mentions for both best brief and best oral advocacy in Moot Court. Ms. Castillo served as a judicial extern for the Honorable A. James Robertson II in San Francisco Superior Court and as a teaching assistant for both Legal Writing & Research and Moot Court. She studied international business law at Bocconi University in Milan for a semester.

In law school, Ms. Castillo mentored underserved high school students on preparing for college. While awaiting bar results, she served as a graduate fellow at Bay Area Legal Aid, where she advocated for the rights of disadvantaged people to health and disability benefits.

Ms. Castillo has national and state legislative experience. She interned for U.S. Representative Neil Abercrombie (D-Hawaii; now Governor of Hawaii) in Washington, D.C. and State Representative Scott Nishimoto (D-Hawaii) in Honolulu.

Ms. Castillo grew up in Honolulu and graduated from 'Iolani School, but she has been actively laying roots in the Bay Area. She enjoys the food scene in San Francisco, the hiking trails in Marin, and volunteering for the family law section of the Bar Association of San Francisco.

JULIE L. FIEBER

Julie L. Fieber is a Partner at Cotchett, Pitre & McCarthy, LLP, practicing in a wide range of civil litigation areas including environmental claims, trade secrets, consumer fraud and employment. Before joining Cotchett, Pitre & McCarthy, Ms. Fieber practiced law in San Francisco, handling complex commercial disputes on topics that included securities, wage and hour claims, government contracts, and construction defects.

Ms. Fieber graduated summa cum laude from the University of San Francisco School of Law. At USF, Ms. Fieber served on Law Review, was a Dean's Scholar, and won Cali Awards for being the top student in torts, civil procedure, contracts, legal research and writing, criminal law, complex civil procedure, and wills and trusts. Ms. Fieber also was an extern law clerk to Associate Justice Ming W. Chin of the California Supreme Court (Fall 1998).

Prior to law school, Ms. Fieber earned a B.S. degree in Chemical Engineering from U.C. Santa Barbara, where she was a Regent's Scholar and a member of the women's crew team. After graduating from UCSB, Ms. Fieber spent several years working as a consulting engineer for a mix of government and industry clients. Her primary focus was evaluating the environmental impacts of new vehicle technologies and fuels. Highlights included managing the emissions modeling for the Auto-Oil Air Quality Improvement Research Program, an industry-lead effort to evaluate the regional environmental impacts of new vehicle fuels and technologies. Ms. Fieber also conducted community and stakeholder outreach related to a variety of clean air programs, and developed and conducted courses on emissions modeling and regulations. Ms. Fieber is also a Registered California Professional Engineer in Chemical Engineering.

SENIOR ASSOCIATES

ELLE D. LEWIS

Ell D. Lewis is a Senior Associate at Cotchett, Pitre & McCarthy, LLP, her focus has been on civil litigation in a wide range of areas, including catastrophic injury, antitrust, construction defect, commercial liability defense, multi-party litigation, and securities actions. She has vast experience in discovery and has been instrumental in obtaining three unanimous jury trial verdicts and multiple settlements.

Ms. Lewis received her Juris Doctor degree from the University of San Francisco, School of Law. While in law school, she served as a law clerk for the Honorable Maria-Elena James of the

United States District Court in the Northern District of California. Ms. Lewis was an intern in the Elder Abuse Unit of the Office of the San Francisco District Attorney.

She prides herself on being an extreme Bay Area Sports Fan.

DUFFY J. MIGILLIGAN

Duffy J. Magilligan is a Senior Associate at Cotchett, Pitre & McCarthy LLP practicing in a wide range of civil litigation areas including class actions, personal injury, wrongful death, and mass torts.

Prior to joining CPM, Mr. Magilligan was a deputy district attorney in Santa Clara County (2012–18) and Contra Costa County (2008–12). Mr. Magilligan sat first-chair in forty-seven jury trials for crimes including homicide, arson, bank robbery, domestic violence, and cocaine trafficking. Mr. Magilligan lectured at various police academies teaching recruits the laws of evidence and search and seizure.

Mr. Magilligan received his J.D. from the University of San Francisco. While at U.S.F., Mr. Magilligan was a member of the Law Review and he received the CALI award for being the top student in Torts. Mr. Magilligan sat on the faculty-student steering committee at the Leo T. McCarthy Center for Public Service and the Common Good. Mr. Magilligan also clerked for the Honorable Maura Corrigan of the Michigan Supreme Court.

Prior to law school, Mr. Magilligan received a Bachelor of Science degree in Economics from Loyola Marymount University in Los Angeles. Prior to law school, Mr. Magilligan was an associate at Huron Consulting Group in Chicago.

Mr. Magilligan is a member of the Consumer Attorneys of California and the San Mateo County Bar Association.

SARVENAZ (NAZY) FAHIMI

Sarvenaz (Nazy) Fahimi is a Senior Associate at Cotchett, Pitre & McCarthy, where she practices in several areas, including in representing whistleblowers in *qui tam* actions under the False Claims Acts.

Nazy began her career practicing in commercial litigation in her hometown of Minneapolis, Minnesota. She later moved to the Bay Area and continued working in litigation as well as in other areas of the law. She has worked on antitrust and trade regulation cases, aviation cases, breach of contract and commercial disputes, employment disputes, personal injury cases, insurance coverage and bad faith cases, as well as discrimination and civil rights cases. Most recently, prior to joining Cotchett, Pitre & McCarthy, she worked at a 501 (c)(3) non-profit, Pars Equality Center, which serves immigrant communities by providing legal and social services. There she focused on advocacy and community service, while also handling in house legal and compliance matters. In her role at PEC, over the span of nearly six years, Nazy also collaborated with various civic and community organizations as well as government entities,

conducted and presented panels and seminars on relevant topics, published updates on complex legal matters, and advised individuals regarding various areas of the law, including in the area of U.S. trade embargoes and sanctions, through the Department of Treasury's Office of Foreign Assets Control.

Nazy graduated cum laude from Marquette University Law School. During law school she served as a Member and subsequently an Editor of the Marquette Law Review, earned CALI Awards as the highest scoring student in Constitutional Law and Conflicts of Law, and became a member of Alpha Sigma Nu, the National Jesuit Honor Society. Nazy also attended Marquette University as an undergraduate where she received her BA.

KELLY W. WEIL

Kelly W. Weil is a Senior Associate at Cotchett, Pitre & McCarthy LLP's Santa Monica office where she litigates exclusively on behalf of consumers and injured individuals. Throughout her career, Kelly has helped litigate and successfully resolve a wide range of cases through settlement and trial. Kelly's background includes complex pharmaceutical and medical device litigation, environmental and toxic tort litigation, medical malpractice, catastrophic injury, and wrongful death actions.

A Santa Monica native, Kelly received her Bachelor of Science from the University of California, Los Angeles where she majored in Political Theory and interned for the office of Los Angeles Mayor Antonio Villaraigosa. She received her J.D. from Loyola Law School, Los Angeles where she served as a judicial extern to the Hon. Philip S. Gutierrez, United States District Court for the Central District of California, and as a clinical extern with the Loyola Project for the Innocent (a student clinic which has successfully aided in exonerating wrongfully convicted individuals). Kelly worked full time throughout law school as a law clerk for a prestigious Los Angeles civil litigation firm advocating on behalf of plaintiffs, where she continued her work as a practicing attorney for another six years.

Since 2015, Kelly has been involved with the Los Angeles Center for Law and Justice where she serves as a volunteer attorney and sits on the Leadership Council. As a volunteer attorney, Kelly has been successful in obtaining numerous Domestic Violence Restraining Orders on behalf of victims of domestic abuse (both physical and financial).

Kelly is a member of the Consumer Attorneys of Los Angeles, Consumer Attorneys of California, Los Angeles County Bar Association, American Bar Association, and American Association for Justice.

ASSOCIATES

MALLORY A. BARR

Mallory A. Barr is an Associate at Cotchett, Pitre & McCarthy, where she practices in a variety of fields, including false claims act litigation, consumer protection, financial elder abuse, employment law, and other complex civil litigation.

Ms. Barr received her J.D. from Santa Clara University School of Law with a certificate in Public Interest and Social Justice Law. While attending Santa Clara, Ms. Barr participated in various extracurricular activities, including Honors Moot Court and the *Santa Clara Journal of International Law*. Ms. Barr also had the honor of being a Policy Research Fellow at the Panetta Institute for Public Policy in Monterey, where she focused on immigration policy. She also worked in the Workers' Rights Clinic at the Alexander Community Law Center and received the Herman and Edith Wildman Social Justice Law Writing Award. During law school, Ms. Barr continued to work full-time as a Litigation Paralegal and Law Clerk at Cotchett, Pitre & McCarthy, LLP.

Before law school, Ms. Barr graduated from the University of London with her M.A. in Latin America Area Studies, where her studies focused on development and security policies in the region. Ms. Barr also graduated *Summa Cum Laude* with her B.A. in Political Science and History from Notre Dame de Namur University (NDNU), where she had the honor of receiving the Belmont Student Community Service and Leadership Award from the City of Belmont and the Board of Trustees Award of Excellence at graduation. While attending NDNU, Ms. Barr served as the President of the Associated Students of NDNU and held a variety of other Student Life and Leadership positions.

JOEL M. GORDON

Joel Gordon is an Associate at Cotchett, Pitre & McCarthy, LLP, practicing in a wide range of civil litigation areas, including mass tort, personal injury, fraudulent billing, and environmental litigation.

Mr. Gordon received his J.D. from the University of Southern California, Gould School of Law. While at USC, Mr. Gordon externed for the Honorable Gregory Alarcon of the Los Angeles Superior Court, and assisted in the prosecution of consumer fraud cases at the Los Angeles branch of the Federal Trade Commission. He also was a quarter-finalist in USC's Hale Moot Court competition.

Prior to law school, Mr. Gordon received his B.A. in History at Washington University in St. Louis. He also earned his M.A. and PhD in English Literature at the University of Southern California.

Mr. Gordon is a member of the Los Angeles and Beverly Hills Bar Associations, along with the Consumer Attorneys of California, the Consumer Attorneys of Los Angeles, and the Association of Business Trial Lawyers.

NEDA L. LOTFI

Neda L. Lotfi is an Associate at Cotchett, Pitre & McCarthy, LLP, practicing in a wide range of civil litigation areas including class actions, complex commercial litigation, consumer fraud, personal injury, and financial and environmental law.

Ms. Lotfi received her J.D. from the Western Michigan University, Thomas M. Cooley Law School. While at Cooley, Ms. Lotfi won the American Jurisprudence award for being the top student in Evidence and Advanced Legal Writing. Ms. Lotfi also interned at the Washtenaw County Public Defender's Office during her third year of law school.

Prior to law school, Ms. Lotfi received her Bachelor of Science Degree from Michigan State University. While at Michigan State, Ms. Lotfi was a Writing Center consultant, where she provided assistance to students and faculty in improving the quality and range of literacy.

Ms. Lotfi is a member of the Los Angeles and Beverly Hills Bar Associations, along with the Consumer Attorneys of California, the Consumer Attorneys of Los Angeles, and the American Bar Association.

Ms. Lotfi speaks fluent Persian, and enjoys playing tennis and spending time with her husband and two dogs.

TAMARAH PREVOST

Tamarah Prevost is an Associate at Cotchett, Pitre & McCarthy, LLP, practicing in a wide range of civil litigation areas including employment law, securities litigation, consumer protection, false claims act litigation, and other complex civil matters.

Ms. Prevost received her J.D. from Santa Clara University School of Law. While at Santa Clara, Ms. Prevost was named the Best Oral Advocate in the Semi Final Round of Santa Clara Law's Honors Moot Court Competition, and her article was published in the Santa Clara Journal of International Law. She received the CALI Award for her "Leadership for Lawyers" class and maintained a heavy involvement in the Women and Law Association, which included her planning a fundraiser to benefit victims of domestic violence.

During law school, Ms. Prevost was a legal extern for the Honorable Justice Nathan Mihara of the Sixth District Court of Appeal and a Research Assistant to Lisa Kloppenberg, Dean of Santa Clara University School of Law.

Ms. Prevost is active in her community, and currently serves on the Board of Directors for the Digital Moose Lounge, a non-profit organization that serves as the first point of contact for Canadians new to the Bay Area. Prior to law school, Ms. Prevost lived in Vancouver, British Columbia and obtained her Bachelor of Arts degree with First Class Honors from Simon Fraser University and was actively involved in the Rotary Club of New Westminster. She also lived in Puerto Viejo, Costa Rica and volunteered at a non-profit organization committed to alleviating poverty for the indigenous population.

JOHN P. THYKEN

John P. Thyken is an Associate at Cotchett, Pitre & McCarthy, LLP. His practice includes a wide range of areas, including class actions, consumer fraud, personal injury, and wrongful death.

Prior to joining the firm, he worked for Clapp Moroney Vucinich Beeman & Scheley, in their general liability group. While there, he worked on personal injury and First Amendment issues.

Mr. Thyken received his J.D. from Santa Clara University School of the Law where he was a member of the Dean's List and an Emery Merit Scholar. While at Santa Clara, he received the Witkin Award for Academic Excellence in Business Organizations and Cali Award for being the top student in Remedies. During law school, Mr. Thyken also advised indigent clients in areas of consumer protection and workers' rights at the Katharine and George Alexander Community Law Center.

Mr. Thyken received his Bachelor of Science in Political Science from Santa Clara University, where he graduated with honors. He competed as a member of the Division I Cross Country and Track teams, earning All-Conference honors. After obtaining his undergraduate degree and before attending law school, he spent two years in Yokohama, Japan teaching English and traveling throughout East Asia.

EMANUEL TOWNSEND

Emanuel B. Townsend is an Associate at Cotchett, Pitre & McCarthy, LLP where he focuses on false claims act litigation, consumer protection, financial elder abuse, employment law, and other complex civil litigation.

Emanuel received his Bachelor of Arts in American Studies from the University of California, Santa Cruz, graduating Cum Laude, with Honors in the Major. Emanuel received his J.D. from the University of California, Hastings College of the Law.

While at UC Hastings, Emanuel had the honor of externing for United States District Court Judge Susan Illston of the Northern District of California. Additionally, while at UC Hastings, Emanuel won the Witkin Award and the Cali Award for being the top student in Legal Writing and Research. Emanuel also worked throughout law school as a law clerk here at Cotchett, Pitre & McCarthy, LLP.

TYSON C. REDENBARGER

Tyson Redenbarger is an associate at Cotchett, Pitre & McCarthy LLP practicing in a wide range of civil litigation areas including class actions and complex civil litigation. Prior to joining Cotchett, Pitre & McCarthy LLP Tyson Redenbarger worked for a tenant rights law firm in San Francisco, representing tenants who were wrongfully evicted and tenants living in uninhabitable conditions.

Mr. Redenbarger received his Juris Doctor degree from Santa Clara University School of Law. While in law school, he participated in the Honors Moot Court program, served as an editor of the International Law Journal, and volunteered at the Katharine and George Alexander Community Law Center, where Mr. Redenbarger assisted low income clients with consumer and debt collection disputes.

ANYA N. THEPOT

Anya Thepot is an Associate Attorney at Cotchett, Pitre & McCarthy LLP, practicing civil litigation, including class actions and complex civil litigation. Prior to joining Cotchett, Pitre & McCarthy, Anya practiced business litigation in Los Gatos.

Anya earned her Juris Doctor from Santa Clara University School of Law. While in law school, Anya completed a fellowship with the Academic Success Program, competed in Honors Moot Court, and served on the Honors Moot Court Internal Board. Anya also worked as a student attorney for the International Human Rights Clinic, a volunteer at the Katharine and George Alexander Community Law Center, and a research assistant for a legal ethics textbook. In addition, Anya facilitated community outreach by mediating civil harassment disputes and by working with community non-profits to provide legal education to underrepresented populations and at-risk youth in the Bay Area.

Anya graduated *cum laude* from the University of California, Santa Cruz, with a Bachelor of Arts in Language Studies with a History minor.