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

IN RE: MACBOOK KEYBOARD  
LITIGATION

Case No. 5:18-cv-02813-EJD-VKD

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT, AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Judge: Hon. Edward J. Davila

Date: January 19, 2023

Time: 9:00 a.m.

Courtroom: 4 – 5th Floor

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**NOTICE OF MOTION AND MOTION**

**PLEASE TAKE NOTICE** that on January 19, 2023 at 9:00 a.m., before the Honorable Edward J. Davila of the United States District Court for the Northern District of California, Plaintiffs Zixuan Rao, Joseph Baruch, Bo Laurent, Ashley Marin, Kyle Barbaro, Steve Eakin, Michael Hopkins, Adam Lee, Kevin Melkowski, Lorenzo Ferguson, and Benjamin Gulker, will and do hereby move the Court, pursuant to Federal Rules of Civil Procedure 23(a), (b)(3), and (e), for entry of the proposed Preliminary Approval Order, and request that the Court set the following schedule:

| <b>Event</b>                                                                                                                                                               | <b>[Proposed] Deadline</b>                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Class Action Fairness Act notice to state and federal officials, under 28 U.S.C. § 1715                                                                                    | Within 10 days after filing of the motion for preliminary approval |
| Notice Date                                                                                                                                                                | No later than 25 days after entry of preliminary approval order    |
| Notice to be substantially completed                                                                                                                                       | No later than 60 days after entry of preliminary approval order    |
| Plaintiffs to move for final approval of the settlement                                                                                                                    | 60 days after entry of preliminary approval order                  |
| Plaintiffs to move for attorneys' fees, expenses, and service awards                                                                                                       | 60 days after entry of preliminary approval order                  |
| Deadline for the submission of objections and requests for exclusion, and opposition or objections to Plaintiffs' motion for attorneys' fees, expenses, and service awards | 95 days after entry of preliminary approval order                  |
| Reply briefs in support of final approval and motion for attorneys' fees, expenses, and service awards, and responses to any timely objections                             | 120 days after entry of preliminary approval order                 |
| Deadline to file a claim                                                                                                                                                   | 120 days after entry of preliminary approval order                 |
| Final Fairness Hearing                                                                                                                                                     | At least 130 days after entry of preliminary approval order        |

The Motion is based on this Notice of Motion, the incorporated memorandum of points and authorities, the Joint Declaration of Simon S. Grille and Steven A. Schwartz (“Joint Decl.”) filed herewith, the record in this action, the argument of counsel, and any other matters the Court may consider.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

After four years of litigation and intensive settlement negotiations, Plaintiffs seek preliminary approval of a \$50,000,000 non-reversionary cash settlement to resolve this class action litigation and compensate consumers who experienced keyboard failures after purchasing an Apple MacBook computer manufactured from 2015 to 2019 with a “butterfly” keyboard—the allegedly defective component at issue in this case. The settlement meets all the criteria for preliminary approval under Rule 23 of the Federal Rules of Civil Procedure and the Northern District’s Procedural Guidance for Class Action Settlements (“Guidelines”).<sup>1</sup> The settlement was reached after more than two years of arm’s length negotiations, supervised first by Hon. Jay Gandhi (Ret.) and most recently by Hon. Edward Infante (Ret.). The settlement follows three motions to dismiss by Apple, the Court’s class certification and *Daubert* rulings, FED. R. CIV. P. 23(f) briefing in the Ninth Circuit, the review of 1.2 million pages of documents, and 38 depositions, including 12 expert depositions. The well-developed record gave the parties a thorough understanding of the strengths and weaknesses of their positions. But for the settlement, the case was scheduled to proceed to trial in March 2023.

All persons and entities within the United States who purchased, other than for resale, an Apple MacBook from model years 2015-2017, an Apple MacBook Pro from model years 2016-2019 (excluding the 16” MacBook Pro released in November 2019), or an Apple MacBook Air from model years 2018-2019 (the “Class Computers”)<sup>2</sup> and experienced a keyboard issue, are eligible to claim a share of the proposed settlement. Settlement Class Members also will remain eligible for Apple’s Keyboard Service Program (“KSP”), which provides free keyboard repairs for four years from the

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<sup>1</sup> <https://www.cand.uscourts.gov/ClassActionSettlementGuidance>.

<sup>2</sup> Unless otherwise noted, capitalized terms have the meaning ascribed to them in the Settlement Agreement, filed concurrently herewith as Exhibit 1.

1 date of purchase. The plan of allocation for the fund provides for greater compensation to Settlement  
2 Class Members who experienced multiple issues resulting in two or more keyboard replacements.  
3 These Settlement Class Members will be paid based on Apple's records without having to file a  
4 claim. The plan reserves a more modest recovery for Settlement Class Members who received a  
5 keyboard repair with which they were unsatisfied but who did not return to Apple or an Authorized  
6 Service Provider for a second free keyboard replacement. Given typical participation rates in class  
7 action settlements, Class Counsel anticipate \$300 payments to Settlement Class Members who had to  
8 obtain multiple keyboard replacements, payments of up to \$125 to Settlement Class Members who  
9 had to obtain a single keyboard replacement, and payments of up to \$50 to Settlement Class Members  
10 who obtained key cap replacements only.

11 Continued litigation carried considerable risk of a lesser recovery or none at all. Apple  
12 vigorously denies liability and has argued that changes it implemented to the butterfly keyboard  
13 components and varying repair rates across Class Computer models show there is no common defect.  
14 Plaintiff would have to maintain class certification through entry of judgment and overcome  
15 numerous defenses including Apple's arguments that it lacked sufficient presale knowledge to give  
16 rise to a duty to disclose the alleged defect, that it owes no damages because it provided adequate  
17 service through its KSP, and that the vast majority of purchasers did not experience keyboard issues.  
18 Even if Plaintiffs were to maintain a class and prevail at trial, fairly allocating a trial judgment would  
19 require some form of claims procedure to ensure adequate compensation for Settlement Class  
20 Members who experienced one or more keyboard issues (in contrast to those who used their Class  
21 Computer throughout its useful life without incident). The settlement represents 10% of Plaintiffs'  
22 most optimistic damages estimate and close to 30% of a more conservative estimate. The settlement  
23 provides Settlement Class Members with the opportunity to achieve a certain recovery with the  
24 benefit of a claimant-friendly procedure supervised by an experienced claims administrator. It also  
25 ensures they will be compensated now, as opposed to waiting years for an uncertain recovery. The  
26 settlement is a win for Settlement Class Members and meets all criteria for preliminary approval.

27 Therefore, as set forth in further detail below, Plaintiffs respectfully request that the Court  
28 enter the proposed order to authorize notice to the class and schedule further settlement proceedings.

1     **II.     STATEMENT OF ISSUES TO BE DECIDED**

2             Should the Court, pursuant to Fed. R. Civ. P. 23(e)(1)(B), preliminarily approve the parties’  
3 settlement, authorize notice to the proposed class and schedule further settlement proceedings?

4     **III.   FACTUAL AND PROCEDURAL BACKGROUND**

5             Plaintiffs respectfully refer the Court to the Joint Declaration of Simon S. Grille and Steven A.  
6 Schwartz in Support of Plaintiffs’ Motion for Preliminary Approval of Class Settlement (“Joint  
7 Decl.”) for additional description of the factual and procedural history of this case, the claims,  
8 counsel’s investigation and settlement negotiations, the risks and uncertainties presented in this  
9 litigation, the course of motion practice and discovery, including expert witness proceedings, and other  
10 factors bearing on the settlement’s fairness and adequacy. As described therein and below, the parties  
11 vigorously litigated this case for nearly four years before agreeing to a settlement in principle.

12            **A.     Plaintiffs’ Allegations and Early Case Activities.**

13            Beginning in May 2018, four lawsuits against Apple were filed in this District asserting claims  
14 arising out of an alleged defect in Apple’s MacBook computers equipped with “butterfly” keyboards.  
15 On June 26, 2018, the Court consolidated these actions and on September 24, the Court appointed  
16 Girard Sharp LLP (then Girard Gibbs LLP) and Chimicles Schwartz Kriner & Donaldson-Smith LLP  
17 (then Chimicles & Tikellis LLP) as Interim Class Counsel. Dkt. Nos. 27, 62; *see also* Dkt. No. 33.

18            Plaintiffs filed their Consolidated Class Action Complaint on October 11, 2018 asserting  
19 claims against Apple for violations of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et*  
20 *seq.* (“UCL”); violations of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*  
21 (“CLRA”); fraudulent concealment; breach of the covenant of good faith and fair dealing; violations  
22 of the Song-Beverly Consumer Warranty Act for breach of the implied warranty of merchantability,  
23 Cal. Civ. Code §§ 1791.1 & 1792; violations of the Washington Consumer Protection Act, Wash. Rev.  
24 Code §§ 19.86, *et seq.* (“WCPA”); violations of the Florida Deceptive and Unfair Trade Practices Act,  
25 Fla. Stat. § 501.204, *et seq.* (“FDUTPA”); violations of the Illinois Consumer Fraud and Deceptive  
26 Business Practices Act, 815 Ill. Comp. Stat. §§505/1, *et seq.* (“ICFA”); violations of the New Jersey  
27 Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.* (“NJCFA”); violations of New York General  
28 Business Law § 349, N.Y. Gen. Bus. Law § 349 (“GBL section 349”); and violations of the Michigan

1 Consumer Protection Act, Mich. Comp. Laws § 445.901, *et seq.* (“MCPA”). Dkt. No. 66.

2 **B. Apple’s Motions to Dismiss.**

3 Apple moved to dismiss the Consolidated Class Action Complaint on December 3, 2018,  
4 arguing, among other things, that the KSP it implemented after this action commenced mooted  
5 Plaintiffs’ CLRA and Song-Beverly claims. Dkt. No. 72. The Court heard arguments on February 21,  
6 2019 (Dkt. No. 92), and on April 22, 2019, the Court granted in part and denied in part the motion to  
7 dismiss with leave to amend. *In re MacBook Keyboard Litig.*, 2019 WL 1765817, at \*1 (N.D. Cal.  
8 Apr. 22, 2019). The Court dismissed Plaintiffs’ claim for breach of the covenant of good faith and fair  
9 dealing, and concluded that Plaintiffs had not pled “any facts showing that the Keyboard Service  
10 Program does not moot their claims under the CLRA and the Song-Beverly Act” and therefore  
11 dismissed those claims as well as the claim under the UCL’s unlawful prong. *Id.* at \*4 & 8-9. The  
12 Court, however, declined to dismiss the fraud by omission claims, finding that Plaintiffs had  
13 adequately alleged that Apple had a duty to disclose the alleged defect and that the defect would be  
14 material to a reasonable consumer. *Id.* at \*5-7. The Court also found that Plaintiffs had sufficiently  
15 pleaded a claim under the UCL’s unfair prong. *Id.* at \*9.

16 On May 13, 2019, Plaintiffs filed their First Amended Consolidated Class Action Complaint  
17 (“FAC”), electing not to replead the claim for breach of the covenant of good faith and fair dealing,  
18 but otherwise asserting the same claims as in the Consolidated Class Action Complaint. Dkt. No. 117.  
19 Apple then moved to dismiss the FAC on June 4, arguing that Plaintiffs lacked standing to pursue their  
20 claims and that the CLRA and Song-Beverly claims should again be dismissed because the KSP  
21 mooted the claims. Dkt. No. 130. The Court heard arguments on November 21 (Dkt. No. 161), and on  
22 November 22 it denied Apple’s motion to dismiss. Dkt. No. 164.

23 Over Apple’s opposition, on July 2, 2020, the Court granted Plaintiffs leave to file a Second  
24 Amended Consolidated Class Action Complaint (“SAC”) to add several named plaintiffs and to  
25 modify the proposed class definition to specify the models of MacBook laptops included as Class  
26 Computers. Dkt. No. 218. On July 16, Apple moved to dismiss the UCL and equitable relief claims in  
27 the SAC under *Sonner v. Premier Nutrition Corp.*, 962 F.3d 1072 (9th Cir. 2020). Dkt. No. 221. On  
28 October 13, the Court granted Apple’s motion and dismissed with prejudice Plaintiffs’ UCL claims

1 and all other claims seeking an injunction, restitution, or other equitable relief. *In re MacBook*  
 2 *Keyboard Litig.*, 2020 WL 6047253, at \*4 (N.D. Cal. Oct. 13, 2020).

### 3 **C. Fact and Expert Discovery**

4 The parties' settlement negotiations were informed by extensive discovery. Class counsel  
 5 propounded four sets of document requests and three sets of interrogatories to Apple and served ten  
 6 subpoenas *duces tecum* on non-party resellers and repair providers. Joint Decl., ¶¶ 16-17. After  
 7 extensive negotiation, Apple produced about 1.2 million pages of documents, and non-parties  
 8 produced an additional 1,237 pages. *Id.* Class Counsel reviewed, analyzed, and coded all of these  
 9 documents, which informed class certification, expert analysis, and settlement discussions. Class  
 10 counsel also negotiated responses and multiple rounds of supplemental responses to Plaintiffs'  
 11 interrogatories, which provided critical information concerning sales volume and repair rates. Class  
 12 counsel deposed 15 Apple employees, including its Rule 30(b)(6) designees, and defended depositions  
 13 of each of the 11 Class Representatives. *Id.* Each Plaintiff responded to 19 document requests, 8  
 14 interrogatories, a request for inspection of their MacBooks, and produced documents. Expert  
 15 discovery included two rounds of depositions and document productions, with Plaintiffs taking 7  
 16 depositions of Apple's experts and Apple taking 5 depositions of Plaintiffs' experts. The parties also  
 17 engaged in significant discovery motion practice before Judge DeMarchi. Dkt. Nos. 87, 89, 95, 98,  
 18 101, 170, 183, 189, 198.

### 19 **D. Class Certification Proceedings**

20 In August 2020, Plaintiffs moved to certify a seven-state class of Class Computer purchasers  
 21 (as well as seven constituent state subclasses of purchasers of Class Computers in California, New  
 22 York, Florida, Illinois, New Jersey, Washington, and Michigan for case management purposes) as to  
 23 their claims for: (1) breach of implied warranty in violation of the Song-Beverly Act; (2) violations of  
 24 the UCL<sup>3</sup>; (3) violations of the CLRA; (4) violations of the WCPA; (5) violations of the FDUTPA; (6)  
 25 violations of the ICFA; (7) violations of the NJCFA; (8) violations of GBL section 349; and (9)  
 26 violations of the MCPA. Dkt. No. 229. Apple opposed the motion and also moved to strike the  
 27 opinions of Plaintiffs' experts Hal J. Singer, Ph.D. and David Niebuhr, Ph.D. Dkt. Nos. 235, 238, 239.  
 28

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<sup>3</sup> As noted above, the Court later dismissed Plaintiffs' UCL claims.

1 The Court held a hearing on the motions on February 4, 2021. Dkt. No. 287. On March 8, the  
 2 Court granted Plaintiffs' motion and certified the seven-state class and subclasses under Rules 23(a)  
 3 and 23(b)(3). Dkt. No. 298 at 29-30. The Court also granted in part and denied in part Apple's motion  
 4 to exclude the expert opinions of Plaintiffs' damages expert, Dr. Singer, excluding his regression  
 5 analysis but finding that his conjoint analyses was sufficiently reliable and relevant. *Id.* at \*4-6.  
 6 Although the Court found that Dr. Niebuhr was qualified to offer his opinions, the Court excluded  
 7 them as "irrelevant at the class certification stage" but did so "without prejudice" to offering him "as  
 8 an expert witness for other purposes at trial." *Id.* at \*8. Apple filed a petition with the Ninth Circuit for  
 9 permission to appeal the Court's Class Certification Order pursuant to Federal Rule of Civil Procedure  
 10 23(f), which Plaintiffs opposed. The Ninth Circuit denied Apple's petition on October 12, 2021.

#### 11 **E. *Daubert* Motions and Trial Setting**

12 Following class certification, Plaintiffs served merits expert reports on April 13, Apple served  
 13 rebuttal expert reports on May 13, and Plaintiffs served reply expert reports on May 27, 2021. Joint  
 14 Decl., ¶ 13. On July 15, 2021, Apple moved to strike the expert opinions of Plaintiffs' experts Dr.  
 15 Singer, Charles Curley, and Dr. Niebuhr. Dkt. Nos. 333, 334, 336. On January 25, 2022, the Court  
 16 denied all of Apple's motions to strike. Dkt. No. 386. The Court next held a Trial Setting Conference  
 17 on January 27, 2022 and set a trial date for March 21, 2023. Dkt. Nos. 390, 398.

#### 18 **F. The Settlement Negotiations.**

19 After a period of factual development, the parties began discussing settlement in the spring of  
 20 2020. Judge Gandhi conducted full-day mediation sessions with the parties in June and August 2020.  
 21 The parties then continued to engage in settlement discussions under Judge Gandhi's supervision  
 22 leading up to the February 4, 2021 class hearing, but reached an impasse. The parties did not re-  
 23 engage on settlement until June 2021, after the Court decided class certification. The parties  
 24 exchanged multiple proposals and counter-proposals but made limited progress. After the Court denied  
 25 Apple's *Daubert* motions, the parties appeared before Judge Infante for a third mediation, on February  
 26 8, 2022. The parties reached agreement in principle at the mediation and signed a term sheet on  
 27 February 10. The parties then negotiated the settlement agreement and executed it on July 18, 2022.  
 28 *See generally* Joint Decl., ¶¶ 19-20.



1 **IV. SUMMARY OF SETTLEMENT TERMS**

2 **A. The Settlement Class**

3 The proposed Settlement Class consists of all persons and entities in the United States who  
4 purchased, other than for resale, one or more MacBooks manufactured from 2015 to 2019 with a  
5 “butterfly” keyboard.<sup>4</sup> These are the same MacBooks that are subject to Apple’s KSP and covered in  
6 Plaintiffs’ operative complaint. Dkt. No. 219.

7 The Settlement Class excludes Apple; any entity in which Apple has a controlling interest;  
8 Apple’s directors, officers, and employees; Apple’s legal representatives, successors, and assigns; all  
9 judges assigned to this case and any members of their immediate families; the Parties’ counsel in this  
10 litigation; and all persons who validly request exclusion from the Settlement Class. SA at §§ JJ, KK.

11 **B. Settlement Consideration**

12 Under the Settlement, Apple will pay \$50,000,000 to create a non-reversionary settlement  
13 fund for Settlement Class Members. *Id.* at § 2.1. Notice costs, administration expenses, attorneys’ fees  
14 and costs, and service awards awarded by the Court will be deducted from the fund. *Id.* at § 2.3. The  
15 balance (the “Net Settlement Fund”) will be applied to pay claims. Plaintiffs will seek up to 30% of  
16 the fund in attorneys’ fees, up to \$2 million in reimbursement of expenses and a \$5,000 service award  
17 for each of the class representatives. *Id.* at §§ 8.1-8.2; Joint Decl., ¶¶ 53-58. Based on information  
18 provided by the parties to date, the Settlement Administrator has agreed to perform all settlement notice  
19 and administration duties required by the Settlement Agreement at a cost not expected to exceed  
20 \$1,400,000. Joint Decl., ¶ 44.

21 Settlement Class Members will also remain eligible for Apple’s KSP, which provides four years  
22 of protection from the date of purchase for all of the symptoms of the alleged defect such as stuck keys  
23 or nonresponsive keys. SA at § 3.1.1. Depending on the keyboard issues presented, Settlement Class  
24

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25 <sup>4</sup> The MacBook (Retina, 12-inch, Early 2015), MacBook (Retina, 12-inch, Early 2016), MacBook  
26 (Retina, 12-inch, 2017), MacBook Air (Retina, 13-inch, 2018), MacBook Air (Retina, 13-inch, 2019),  
27 MacBook Pro (13-inch, 2016, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2017, Two  
28 Thunderbolt 3 Ports), MacBook Pro (13-inch, 2019, Two Thunderbolt 3 Ports), MacBook Pro (13-  
inch, 2016, Four Thunderbolt 3 Ports), MacBook Pro (13-inch, 2017, Four Thunderbolt 3 Ports),  
MacBook Pro (15-inch, 2016), MacBook Pro (15-inch, 2017), MacBook Pro (13-inch, 2018, Four  
Thunderbolt 3 Ports), MacBook Pro (15-inch, 2018), MacBook Pro (13-inch, 2019, Four Thunderbolt  
3 Ports), and MacBook Pro (15-inch, 2019). Ex. 1 (Settlement Agreement (“SA”)) at §§ H, JJ, KK.



Members may receive a free replacement of their computer topcase, which is the laptop assembly that contains the entire keyboard as well as the battery, trackpad, speakers. Joint Decl., ¶ 24. The KSP thus provides Settlement Class Members with a new keyboard and other major components. *Id.*

### **C. Distribution of Settlement Fund.**

All Settlement Class Members who went to Apple or an Authorized Service Provider and received a “Topcase Replacement” or a “Keycap Replacement” within four years after the date they purchased their Class Computer are eligible for a cash payment. SA at § 3.2. A “Topcase Replacement” refers to the replacement of the full keyboard module (including the battery, trackpad, speakers, top case, and keyboard), performed by Apple or an Apple Authorized Service Provider. *Id.* at § 3.2.1 A “Keycap Replacement” refers to the replacement of one or more keycaps on a keyboard, performed by Apple or an Apple Authorized Service Provider, and does not involve replacement of the full keyboard module. *Id.* Apple has records of the Settlement Class Members who received Topcase and Keycap Replacements and will provide them to the Settlement Administrator. *Id.* at § 3.2.2. Settlement Class Members can receive compensation for each Class Computer they purchased. *Id.* at § 3.1.3.

The allocation plan is apt and well-tailored. To determine payment amounts, the Settlement Administrator will divide Claimants into three groups. Group 1 consists of Settlement Class Members who received two or more Topcase Replacements from Apple or an Authorized Service Provider within four years of purchase based on Apple’s records. Group 1 Claimants do not need to submit a claim to receive compensation. *Id.* at § 3.4.3.1. Settlement Class Members may become eligible for Group 1 payment until two years from preliminary approval. *Id.* at § 3.4.4. Group 1 payments will be initially set at \$300 but may increase up to a cap of \$395. *Id.* at §§ 3.4.3.1; 3.4.4. Group 2 consists of Settlement Class Members who obtained a single Topcase Replacement from Apple or an Authorized Service Provider within four years of purchase, and who attest on the Claim Form that the repair did not resolve their keyboard issues. *Id.* at § 3.4.3.2. Group 3 consists of Settlement Class Members who obtained one or more Keycap Replacements (but not Topcase Replacements) within four years of purchase, and who attest on the Claim Form that the repair did not resolve their keyboard issues. *Id.* at § 3.4.3.3.

Unlike Group 1, Group 2 and Group 3 claimants must submit a Claim Form to receive

1 payment. *Id.* at § 3.3.1. Group 2 Claimants can receive up to \$125 while Group 3 Claimants can  
 2 receive up to \$50. *Id.* at §§ 3.4.3.2; 3.4.3.3. The Claim Form will be pre-populated with Class Member  
 3 contact information to the extent it is reasonably practicable and Settlement Class Members will be  
 4 able to update or confirm their current contact information. *Id.* at §§ 3.3.2-3.3.3. To be eligible for  
 5 payment, Group 2 and 3 Settlement Class Members must confirm under oath that (1) they purchased a  
 6 Class Computer in the United States, (2) they did not purchase the Class Computer for resale, (3) they  
 7 received a Topcase or Keycap Replacement, and (4) the repair did not resolve their keyboard issues.  
 8 *Id.* at § 3.3.4. If a Class Member receives a Claim Form with pre-populated responses to (1) and (3)  
 9 (indicating that Apple has their records), they will not be required to submit supporting  
 10 documentation. *Id.* at § 3.3.5. If a Settlement Class Member's Claim Form is not pre-populated, they  
 11 will need to submit reasonable documentation or information to support their claims and the  
 12 Settlement Administrator will make a determination regarding the sufficiency of the documentation or  
 13 information provided. *Id.* at §§ 3.3.5-3.3.6.

14 After the Claim Period ends, the Settlement Administrator will deduct from the Net Settlement  
 15 Fund the amount sufficient to pay \$300 to each Group 1 Claimant. *Id.* at § 3.4.4. The Settlement  
 16 Administrator will also set aside a reserve amount sufficient to pay \$300 to the number of Settlement  
 17 Class Members projected to become a future Group 1 Claimant within two years after the Court grants  
 18 preliminary approval. The Settlement Administrator will consult with the parties to determine the  
 19 reserve amount using Apple's records and projections. *Id.*

20 The amount remaining in the settlement fund after the above amounts are set aside for Group 1  
 21 claimants will then be divided among eligible Group 2 and 3 claimants on a proportionate basis using  
 22 a set of formulas that account for the number of claims in each group and the maximum value of those  
 23 claims. *Id.* at § 3.4.5. Group 2 Claimants will receive up to \$125 and Group 3 Claimants will receive  
 24 between up to \$50. Joint Decl., ¶ 35. If, however, the payment amount for each Group 3 Claimant  
 25 exceeds the \$50 limit, any excess will be redistributed to Group 2 Claimants up to the \$125 cap. SA at  
 26 § 3.4.5.5. If a Group 2 payment would exceed the \$125 cap, any such excess will be redistributed to  
 27 Group 1 Claimants up to the \$395 cap, including a proportional increase of the amount to be paid to  
 28 Settlement Class Members who become Group 1 Claimants within two years after Preliminary

1 Approval. *Id.* Any Class Member who qualifies as a Group 1 Claimant within two years after  
 2 preliminary approval and who did not receive a Group 1 payment, or was paid as a Group 2 Claimant  
 3 in the first round of payments, will be paid up to the Group 1 amount, subject to a *pro rata* increase or  
 4 reduction discussed above. *Id.* at § 3.5.1.

5 With respect to the mechanics of payment, after awards to Claimants are calculated following  
 6 the conclusion of the Claims Period (120 days after preliminary approval), Class Counsel will submit a  
 7 proposed Order to the Court directing payment be made to eligible Claimants and providing that the  
 8 payments to Settlement Class Members who may become Group 1 Claimants within two years of  
 9 preliminary approval may be reduced if the actual number exceeds Apple's projections. *Id.* at § 3.4.6.  
 10 If, after that Order is entered and carried out, there are still sufficient funds remaining in the settlement  
 11 fund, the Settlement Administrator will pay up to \$395 to Group 1 Claimants. *Id.* at § 3.5.2. Any  
 12 remaining funds may be directed to supplemental payments to Group 2 and 3 Claimants up to the \$125  
 13 or \$50 caps or in a manner the Court approves, including *cy pres*. *Id.*

14 Because all Group 1 Settlement Class Members will receive payment based on Apple's  
 15 records, the effective claims rate for this group will be at or near 100%. Joint Decl., ¶ 38. For Group 2  
 16 and 3 Claimants, Class Counsel expect a claims rate of 15% to 25% for Settlement Class Members  
 17 who appear in Apple's records and do not need to submit documentation or information in support of  
 18 their claim. *Id.* For Settlement Class Members required to submit documentation or information, the  
 19 claims rate will be lower, an estimated 5% or less. *Id.* These claims rate estimates are based on  
 20 discussions with the Settlement Administrator. *Id.*, ¶¶ 39-40.

21 The projected claims rates are consistent with Class Counsel's experience, which includes  
 22 cases with claims rates ranging from less than 1% to 50%, as well as rates in comparable product  
 23 defect cases. *Id.*; *see also Carlotti v. ASUS Computer Int'l*, 2020 WL 3414653, at \*4 (N.D. Cal. 2020)  
 24 (noting that in several defect cases the claims rate was between 4.7 to 10.9% and approving settlement  
 25 with 4% claims rate in case involving allegedly defective laptops); *Norcia v. Samsung*  
 26 *Telecommunications Am., LLC*, 2021 WL 3053018, at \*3 (N.D. Cal. 2021) (approving settlement  
 27 involving smartphones with 2% claims rate); *see also Lockabey v. Am. Honda Motor Co.*, No. 37-100-  
 28 00087755-CBU-BT-CTL (Cal. Super.); *Lynch v. Motorola Mobility LLC d/b/a Motorola, et al.*, No.

1 1:16-cv-04524 (N.D. Ill.); *In re Am. Express Fin. Advisors Litig.*, No. 04 Civ. 1773 (DAB) (S.D.N.Y.);  
 2 Joint Decl., ¶ 41 & Ex. A (N.D. Cal. Guidance Chart). Claim submission rates are highly fact  
 3 dependent and driven by factors such as the nature of the case, the severity of the issue, the cost of the  
 4 underlying product or service, the methods for notice, and the accessibility of the claim form. *See Date*  
 5 *v. Sony Elecs., Inc.*, 2013 WL 3945981, at \*9-10 (E.D. Mich. July 31, 2013) (“[M]any factors affect  
 6 response rates and this ratio should not be given great significance.”) (citation omitted); *Gascho v.*  
 7 *Global Fitness Holdings, LLC*, 2014 WL 1350509, at \*30 (S.D. Ohio Apr. 4, 2014). Class Counsel in  
 8 this case have worked to simplify and streamline the claims process, recognizing the need both to limit  
 9 recovery to eligible claimants to prevent fraud while also optimizing recovery for those who  
 10 experienced repeat issues. Joint Decl., ¶ 40.

#### 11 **D. Class Notice and CAFA Notice.**

12 Based on Apple’s purchase, registration, and other databases, Apple has records of contact  
 13 information (either email address or physical mailing address) for more than 95% of the Settlement  
 14 Class. Joint Decl., ¶ 46. Apple will provide this information to the Settlement Administrator. *Id.* The  
 15 Settlement Administrator will send direct email notice to each Class Member for whom Apple has a  
 16 valid email address. SA at § 7.3.3. Class Counsel has worked with the Claims Administrator to  
 17 format these emails in a manner that maximizes the likelihood they will be received and understood  
 18 by Settlement Class Members. If Apple does not have a valid email address for a Class Member, or  
 19 the Settlement Administrator is able to determine the email notice was returned as undeliverable, the  
 20 Settlement Administrator will mail a postcard version of the Notice. *Id.* at § 7.3.4. If a postcard  
 21 Notice is returned by the U.S. Postal Service with a forwarding address, the Settlement Administrator  
 22 will re-mail the postcard notice to that address. *Id.* Notice will also be posted on the settlement  
 23 website and the Settlement Administrator will establish a toll-free telephone number Settlement Class  
 24 Members can call for assistance in filing a claim. *Id.* at §§ 7.3.1-7.3.2. Apple will direct the  
 25 Settlement Administrator to provide notice to governmental enforcement authorities, consistent with  
 26 28 U.S.C. § 1715. SA at § 4.2.

**E. Release of Claims.**

The proposed release applies to claims arising from the facts underlying the claims and allegations in this action. SA at § 10.1 In accordance with the Guidelines, the release appropriately tracks the claims in the SAC. *See, e.g., K.H. v. Secretary of Dep't of Homeland Sec.*, 2018 WL 6606248, at \*4 (N.D. Cal. Dec. 17, 2018) (“Because the release is appropriately limited to claims related to those litigated in this lawsuit, the Court finds it is sufficiently narrow to support approval.”). The release also extends to *Huey v. Apple Inc.*, Case No. 2018 CA 004200 B, pending in the Superior Court of the District of Columbia—a parallel suit against Apple pending in the Superior Court of the District of Columbia. Plaintiff Huey joins in the settlement agreement.

**F. Attorneys’ Fees and Expenses, and Service Awards for the Class Representatives.**

Class Counsel will apply for an award of attorneys’ fees and reimbursement of litigation costs, together with service awards for the class representatives, at least 35 days before the due date for objections. SA at §§ 8.1-8.7. The fee application will be posted immediately on the settlement website. *Id.* at § 7.3.1. Class Counsel expect to apply for a fee of up to 30% of the common fund. Joint Decl., ¶¶ 53-55. Class Counsel’s total lodestar, through May 2022, is approximately \$13,599,113 using current rates and representing 27,358.8 hours of work on this matter. *Id.* Thus if Class Counsel were to submit their fee application now, the multiplier corresponding to an award of 30% of the fund would be approximately 1.1. *Id.* Class Counsel also will seek reimbursement of case expenses, which include expert witness fees, in an amount not to exceed \$2 million. *Id.* The parties have reached no agreement on the amount of Attorneys’ Fees, and Apple has reserved the right to object or oppose Class Counsel’s requests for Attorneys’ Fees and Expenses or for Service Awards. SA at § 8.2.

Class Counsel also intend to apply for service awards of up to \$5,000 for each of the Class Representatives. SA at § 8.6; *see Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015) (“In this district, a \$5,000 payment is presumptively reasonable.”). Each Plaintiff devoted substantial time to this case, including by assisting counsel in preparing the complaints, communicating with Class Counsel about case developments, responding to written discovery requests, gathering and producing documents, and (except plaintiff Huey) sitting for a deposition.

1           **G.     The Settlement Administrator.**

2           Class Counsel retained JND as the settlement administrator after sending requests for proposal  
 3 to four leading class action administrators and receiving proposals from each of them. Joint Decl., ¶  
 4 42-45. After reviewing all the proposals and consulting with Apple, Class Counsel selected JND  
 5 based on its qualifications and competitive bid. *Id.* The Court previously approved the parties’  
 6 selection of JND to distribute class notice. Dkt. No. 389 at 3. Administrative costs will be paid from  
 7 the settlement fund. Based on information provided by the parties to date, the Settlement Administrator  
 8 has agreed to perform all settlement notice and administration duties required by the Settlement  
 9 Agreement at a cost not expected to exceed \$1,400,000. Joint Decl., ¶ 44. In addition to managing the  
 10 notice program and receiving and processing claims and opt-outs, JND will maintain a dedicated  
 11 settlement website containing links to the notice, claim form, and all other relevant settlement  
 12 documents. *Id.* ¶ 45.

13           **V.     ARGUMENT**

14           **A.     The Settlement Is Fair, Reasonable, and Adequate.**

15           All of the requirements for preliminary approval are met in this case. “[T]here is a strong  
 16 judicial policy that favors settlements, particularly where complex class action litigation is  
 17 concerned.” *In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Practices, & Prods. Liab. Litig.*,  
 18 2019 WL 536661, at \*5 (N.D. Cal. Feb. 11, 2019) (quoting *Allen v. Bedolla*, 787 F.3d 1218, 1223  
 19 (9th Cir. 2015)). Moreover, the heightened scrutiny that applies to settlements entered into prior to  
 20 formal class certification “does not apply to this case because the Court previously certified a class.”  
 21 *Theodore Broomfield v. Craft Brew All., Inc.*, 2020 WL 1972505, at \*6 (N.D. Cal. Feb. 5, 2020).

22           Rule 23(e)(2) directs the Court to consider whether “the class representatives and class  
 23 counsel have adequately represented the class”; “the proposal was negotiated at arm’s length”; “the  
 24 relief provided for the class is adequate”; and “the proposal treats class members equitably relative to  
 25 each other.” These enumerated factors under Rule 23(e)(2) “focus the court and the lawyers on the  
 26 core concerns of procedure and substance that should guide the decision whether to approve the  
 27 proposal.” FED. R. CIV. P. 23(e)(2) advisory committee’s note (2018). Thus, at preliminary approval,  
 28 courts generally ask whether “the proposed settlement (1) appears to be the product of serious,



1 informed, non-collusive negotiations; (2) does not grant improper preferential treatment to class  
 2 representatives or other segments of the class; (3) falls within the range of possible approval; and (4)  
 3 has no obvious deficiencies.” *Chess v. Volkswagen Grp. of Am., Inc.*, 2021 WL 5507177, at \*7 (N.D.  
 4 Cal. Nov. 24, 2021) (citation omitted); *see also* FED. R. CIV. P. 23(e)(1)(B) (question at preliminary  
 5 approval is whether “giving notice is justified by the parties’ showing that the court will likely be able  
 6 to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on  
 7 the proposal.”). Application of these factors demonstrates that the settlement here is fair, reasonable,  
 8 and adequate, in the best interests of the class, and will likely merit final approval.

9 **1. The Proposed Settlement Is the Product of Arm’s Length Negotiations**  
 10 **Among Experienced Counsel.**

11 Under Rule 23(e)(2), the Court considers whether the class representatives and class counsel  
 12 adequately represented the class and whether the settlement proposal was negotiated at arm’s length.  
 13 To negotiate a fair and reasonable settlement, “the parties [must] have sufficient information to make  
 14 an informed decision about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th  
 15 Cir. 1998).

16 This Settlement followed over two years of hard-fought negotiations supervised by two retired  
 17 judges. *See* FED. R. CIV. P. 23(e)(2) advisory committee’s note to 2018 amendment (stating that  
 18 “involvement of a neutral” in negotiations “may bear on whether they were conducted in a manner  
 19 that would protect and further the class interests.”); *Federal Ins. Co. v. Caldera Med., Inc.*, 2016 WL  
 20 5921245, at \*5 (C.D. Cal. 2016). Moreover, as discussed in Section III(C) above, the parties reached  
 21 their settlement after extensive document, deposition and expert discovery that addressed the essential  
 22 factual questions in this case: the scope of the alleged keyboard issues, technical details concerning  
 23 their source, the extent and timing of Apple’s knowledge of the alleged keyboard defect, the means  
 24 by which Apple could have disclosed it to class members, and Apple’s procedures for responding to  
 25 Class Computer customer complaints and warranty claims, including the KSP and its efficacy. *See*,  
 26 *e.g.*, *LaGarde v. Support.com, Inc.*, 2012 WL 13034899, at \*7 (N.D. Cal. Nov. 2, 2012) (existence of  
 27 robust discovery indicates plaintiffs were sufficiently informed during settlement negotiations).  
 28 Before the parties reached their agreement, Plaintiffs’ experts had (1) developed a class-wide

1 damages model through the use of a choice-based conjoint survey, and (2) investigated the alleged  
 2 defect by reviewing failure analysis documents and examining and testing the internal components of  
 3 each of the Class Computers. *See Kacsuta v. Lenovo (U.S.) Inc.*, 2014 WL 12585783, at \*5 (C.D. Cal.  
 4 2014) (that class counsel hired engineering experts to test and analyze the computers at issue weighed  
 5 in favor of the settlement).

6 Class Counsel’s discovery and expert work, further informed by this Court’s opinions on a  
 7 series of motions, enabled Class Counsel to “enter[] the settlement discussions with a substantial  
 8 understanding of the factual and legal issues from which they could advocate for their respective  
 9 positions and which are necessary for a robust negotiation.” *Kulesa v. PC Cleaner, Inc.*, 2014 WL  
 10 12581769, at \*10 (C.D. Cal. 2014); *Van Lith v. iHeartMedia + Entm’t, Inc.*, 2017 WL 1064662, at  
 11 \*16 (E.D. Cal. 2017) (“The adversarial nature of these negotiations and the discovery performed by  
 12 the parties indicate that the settlement process is procedurally adequate.”). Thus, the first factor is  
 13 satisfied.

## 14 **2. The Settlement Treats All Settlement Class Members Equitably.**

15 “Approval of a plan of allocation of settlement proceeds in a class action . . . is governed by  
 16 the same standards of review applicable to approval of the settlement as a whole: the plan must be  
 17 fair, reasonable and adequate.” *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 6778406, at  
 18 \*3 (N.D. Cal., 2016) (quoting *In re Oracle Sec. Litig.*, 1994 WL 502054, at \*1-2 (N.D. Cal. 1994)).  
 19 The Plan of Allocation, which was negotiated between the parties with the assistance of Judge Infante  
 20 (Joint Decl., ¶ 20), readily meets this standard because it treats all class members fairly in relation to  
 21 the strength of their claims. *See Khoja v. Orexigen Therapeutics, Inc.*, 2021 WL 5632673, at \*7 (S.D.  
 22 Cal. 2021) (“A plan of allocation that reimburses class members based on the extent of their injuries  
 23 is generally reasonable.”); *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at \*12 (N.D. Cal. 2018).

24 For purposes of setting recovery amounts, the plan of allocation establishes a uniform,  
 25 objective method for distributing awards that accounts for structural differences among claims, based  
 26 on their value and evidentiary support, including by making common-sense distinctions between: (1)  
 27 Settlement Class Members who received two or more Topcase Replacements from Apple or an  
 28 Authorized Service Provider; and (2) Settlement Class Members who received only one Topcase or



Keycap Replacements from Apple or an Authorized Service Provider and who attest that the repair did not resolve their keyboard issues. SA § 3.4.3; Joint Decl. ¶¶ 25-38. The plan protects the interests of all parties by directing relief to the most significantly affected Settlement Class Members—awarding more to those whose keyboards required multiple repairs—while also paying Settlement Class Members who received at least one repair and submit a claim attesting that the repair did not resolve their keyboard issues (but who did not bring their Class Computer in for another repair). *See In re Nexus 6P Prod. Liab. Litig.*, 2019 WL 6622842, at \*9 (N.D. Cal. 2019) (“Here, the Plan of Allocation was proposed by experienced counsel and has a reasonable and rational basis. The plan divides claimants into different groups based on the relative size of their potential claims and distributes funds based on these groups.”); *see also* Order Granting Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, *In re MyFord Touch Consumer Litig.*, No. 13-cv-03072-EMC (N.D. Cal. 2019), Dkt. No. 526 at 4-5 (approving settlement paying lower dollar amount based on the strength of their claims).<sup>5</sup> The plan of allocation will deter fraudulent claims and reasonably accounts for the differing experiences across the class. Thus, because the plan ensures the Settlement Class Members will be treated equitably relative to each other, it should be approved as fair, reasonable, and adequate. *See Banh v. Am. Honda Motor Co., Inc.*, 2021 WL 3468113, at \*7 (C.D. Cal. 2021) (approving settlement that gave some class members extended coverage if they made more than one service visit that did not resolve their problems with vehicle “infotainment” system).

### 3. The Relief Under the Proposed Settlement Is Adequate.

In determining whether the class-wide relief is adequate under Rule 23(e)(2), the Court considers “the costs, risks, and delay of trial and appeal”; “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims”; “the

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<sup>5</sup> *See also Free Range Content, Inc. v. Google, LLC*, 2019 U.S. Dist. LEXIS 47380, at \*7-8 (N.D. Cal. 2019) (approving settlement which paid as low as \$10 per class member); Order Granting Motion for Final Approval of Class Action Settlement, *In re: Sony VAIO Computer Notebook Trackpad Litigation*, No. 3:09-cv-02109 (S.D. Cal. Aug. 7, 2017), Dkt. No. 378 at 4 (approving settlement paying \$5 to class members whose laptops did not manifest the defect); *see also* Order Granting Preliminary Approval of Class Action Settlement, *Fitzhenry-Russell v. Keurig Dr. Pepper, Inc.*, No. 5:17-cv-00564 (N.D. Cal. Jan. 10, 2019), Dkt. No. 335 at 3 (approving settlement which paid class members \$2 to \$5.20 without proof of purchase or \$40 with proof of purchase).

1 terms of any proposed award of attorney’s fees, including timing of payment”; and “any agreement  
 2 required to be identified under Rule 23(e)(3).”<sup>6</sup> “Approval of a class settlement is appropriate when  
 3 ‘there are significant barriers plaintiffs must overcome in making their case.’” *Mendoza v. Hyundai*  
 4 *Motor Co., Ltd*, 2017 WL 342059, at \*6 (N.D. Cal. 2017) (citation omitted). Further, “a proposed  
 5 settlement may be acceptable even though it amounts to only a fraction of the potential recovery that  
 6 might be available to the class members at trial.” *In re: Cathode Ray Tube (CRT) Antitrust Litig.*,  
 7 2016 WL 3648478, at \*6 (N.D. Cal. 2016) (cleaned up).

8 The settlement here ensures that Settlement Class Members will be afforded relief from  
 9 keyboard issues for the four-year useful life of a laptop by providing monetary compensation in  
 10 addition to the protection offered by the KSP. *See Carlotti v. ASUS Computer Int’l*, 2019 WL  
 11 6134910, at \*6 (N.D. Cal. 2019) (“[C]lass members who were affected by the defects can receive a  
 12 full equitable remedy in the form of repairs while still recovering a significant monetary benefit.”).  
 13 Settlement Class Members who experience multiple repairs will also remain eligible for payment for  
 14 two years after Preliminary Approval, compensating those who may experience issues in the future.

15 Plaintiffs believe that if they prevailed at trial and in a post-trial appeal, the class could obtain  
 16 a judgment in the range of \$178 to \$569 million. Dkt. No. 395-1 (Merits Expert Report of Hal J.  
 17 Singer) at ¶ 51 & App’x 4, Table A1. The \$50 million settlement fund represents between  
 18 approximately 9% to 28% of the total estimated damages from a trial verdict and falls within the  
 19 typical range of recovery in class action settlements. *See Fleming v. Impax Lab’ys Inc.*, 2021 WL  
 20 5447008, at \*10 (N.D. Cal. 2021) (settlement recovery representing 12.5% of total recoverable  
 21 damages is “in a range consistent with the median settlement recovery in class actions”); *In re*  
 22 *MyFord Touch Consumer Litig.*, 2019 WL 1411510, at \*10 (N.D. Cal. 2019) (approving settlement  
 23 providing for 5.7% of total possible recovery); *Deaver v. Compass Bank*, 2015 WL 8526982, at \*7  
 24 (N.D. Cal. 2015) (10.7% of total damages); *In re Lithium Ion Batteries Antitrust Litig.*, 2017 WL  
 25 1086331, at \*4 (N.D. Cal. 2017) (overruling objections to settlement amount representing between  
 26 2.2% and 11.2% of total possible damages). If the Court were to require any form of individualized  
 27 prove-up following a favorable liability verdict, the total recovery would be greatly reduced.

28 \_\_\_\_\_  
<sup>6</sup> There are no side agreements to disclose under Rule 23(e)(3).

1 Particularly given Apple’s liability and damages defenses and the fact that most Class Computers are  
 2 now more than four years old—some are seven years old—plus the fact that trial would not occur  
 3 until March 2023, the settlement delivers a substantial recovery for the class. *See Churchill Vill.,*  
 4 *L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004) (rejecting challenge to the settlement amount  
 5 where “the recalled dishwashers had depreciated in value through years of use”); *Linney*, 151 F.3d at  
 6 1242 (settlement amounting to a fraction of the potential total recovery was reasonable given the  
 7 significant risks of going to trial); *Hendricks v. StarKist Co.*, 2015 WL 4498083, at \*7 (N.D. Cal.  
 8 2015) (settlement representing “only a single-digit percentage of the maximum potential exposure”  
 9 was reasonable given the risks). Other product defect cases have resulted in far lower payments to  
 10 customers than those contemplated here. *Horvath v. LG Electronics MobileComm U.S.A., Inc.*, No.  
 11 3:11-cv-01576-H-RBB, Dkt. No. 101 (S.D. Cal. Jan. 14, 2014) (approving settlement of \$19 per  
 12 claimant in class action alleging smartphones had a defect).

13 These estimates also do not include the value of the benefits provided by the KSP, which  
 14 Apple introduced after Plaintiffs filed suit. *See Churchill*, 361 F.3d at 576 (in considering the amount  
 15 of the settlement, the district court properly considered the fact that “the class members had already  
 16 received a rebate from GE as part of the recall program”); *In re Chrysler-Dodge-Jeep*, 2019 WL  
 17 536661, at \*3 (noting that settlement provided additional relief in the form of cash payments on top of  
 18 relief provided under consent decrees with federal and state authorities); *Kearney v. Hyundai Motor*  
 19 *Am.*, 2012 WL 13049699, at \*11 (C.D. Cal. Dec. 17, 2012) (granting preliminary approval to  
 20 settlement that provided additional relief beyond what was provided by the manufacturer’s recall); *In*  
 21 *re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at \*9 (S.D.N.Y. May 30, 2013)  
 22 (settlement was reasonable where it offered additional relief beyond the voluntary extended  
 23 warranty).

24 Moreover, “[e]stimates of what constitutes a fair settlement figure are tempered by factors  
 25 such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery  
 26 (often measured in years).” *Schaffer v. Litton Loan Servicing, LP*, 2012 WL 10274679, at \*11 (C.D.  
 27 Cal. 2012). While Plaintiffs are confident in the strength of their case, Apple has vigorously denied  
 28 liability from the outset. *See, e.g., Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 326 (C.D. Cal. 2016)

1 (“The settlement the parties have reached is even more compelling given the substantial litigation  
 2 risks in this case.”). As discussed, Plaintiffs faced major risks associated with a motion to decertify  
 3 the class, trial, and a likely appeal, especially given Apple’s vast resources and technical expertise.  
 4 *See Aarons v. BMW of N. Am., LLC*, 2014 WL 4090564, at \*10 (C.D. Cal. 2014) (“In the absence of a  
 5 settlement, it is very likely that this case could ultimately be decided at trial by a ‘battle of the  
 6 experts’ over the existence of a [defect] . . . taking those issues to trial might be more challenging for  
 7 Plaintiffs than for BMW, given complex technical nature of the CVT system.”).

8 Apple has argued that there are at least 20 different butterfly MacBook models and that the  
 9 changes it made to the butterfly keyboard components prevent Plaintiffs from establishing a common  
 10 defect. For instance, Apple argued in opposition to class certification that newer Class Computer  
 11 models have lower failure rates and most class members have not experienced a keyboard failure.  
 12 *See, e.g.*, Dkt. No. 235 at 15, 19-22. Although Plaintiffs believe there is sufficient evidence that the  
 13 butterfly keyboard shares the same underlying design, Apple presented evidence of varied failure  
 14 rates for the newer models. *See Kacsuta v. Lenovo (U.S.) Inc.*, 2014 WL 12585783, at \*5 (C.D. Cal.  
 15 2014) (noting that plaintiffs had good idea of the relative strengths of their case after engaging in  
 16 “confirmatory discovery” regarding “an alleged hardware fix implemented by [defendant]”). Apple  
 17 also argued that its knowledge of the alleged defect evolved over time as the butterfly design changed  
 18 (Dkt. No. 235 at 2-3), an argument that posed a risk of significantly curtailing the damages period.  
 19 *See, e.g., In re Seagate Tech. LLC*, 326 F.R.D. 223, 245 (N.D. Cal. 2018) (evidence of defendant’s  
 20 knowledge from later in class period did not show requisite knowledge for class members who  
 21 purchased earlier in the class period). The difficulties with establishing Apple’s liability weigh in  
 22 favor of settlement approval. *See In re Magsafe Apple Power Adapter Litig.*, 2015 WL 428105, at \*6  
 23 (N.D. Cal. 2015) (Davila, J.) (noting that absent a settlement, Apple would have argued that the  
 24 “adapters were highly reliable, had low failure rates, and performed without issue for the majority of  
 25 users, and it would have argued that it made no misrepresentations.”).

26 Apple has further argued that the KSP moots Plaintiffs’ claims because it offers an effective  
 27 remedy to the keyboard issues. *See, e.g.*, Dkt. No. 235 at 26 (arguing that class members have no  
 28 warranty claim because they received relief under the KSP). Although Plaintiffs successfully argued

1 at the pleadings stage that the KSP did not moot their claims because it did not provide *all* of the  
 2 relief they sought, including monetary relief, Apple would have contended at trial that any damages  
 3 must account for the value conferred by the KSP, which provides coverage for keyboard issues for  
 4 four years from purchase and provides for the replacement of not only the keyboard, but also other  
 5 Topcase components. *See Looper v. FCA US LLC*, 2017 WL 11650429, at \*6 (C.D. Cal. 2017)  
 6 (noting that the manufacturer’s recalls made the plaintiffs’ recovery uncertain which supported the  
 7 settlement). In addition, Apple has disputed the severity of the alleged defect and contested Plaintiffs’  
 8 complex theory of damages, which Plaintiffs would have had to explain to a lay jury. Thus, the risk  
 9 and uncertainty arising from the KSP and the value it provides to Settlement Class Members further  
 10 weighs in favor of the settlement. *See In re Samsung Top-load Washing Mach. Mktg., Sales Pracs. &*  
 11 *Prod. Liab. Litig.*, 2020 WL 2616711, at \*14 (W.D. Okla. 2020) (“Plaintiffs would also have to  
 12 wrestle against the reality that a voluntary recall meant to address the very injuries complained of  
 13 here was already in place before many of the claims were brought.”).

14 There is also no guarantee that a jury would have returned a favorable verdict. *See, e.g., In re:*  
 15 *Whirlpool Corp. Front-loading Washer Prod. Liab. Litig.*, 2016 WL 5338012, at \*11 (N.D. Ohio  
 16 Sept. 23, 2016) (noting in heavily litigated case involving allegedly defective washing machines that  
 17 “a jury found for Whirlpool after just two hours of deliberation”). And while the Court granted class  
 18 certification, Apple’s arguments regarding a common defect presented not only a trial risk but also a  
 19 risk of decertification even if Plaintiffs were to have prevailed. *See Mazzei v. Money Store*, 829 F.3d  
 20 260, 265-67 (2d Cir. 2016) (court can decertify class even after a jury verdict in favor of a certified  
 21 class at trial); *In re Lenovo Adware Litig.*, 2018 WL 6099948, at \*8 (N.D. Cal. 2018) (risk of  
 22 decertification favored preliminary approval). Apple would have pressed its arguments about alleged  
 23 different models and failure rates in any post-trial appeal, just like it did in its petition for appellate  
 24 review of the Court’s class certification order. *See Walker v. Life Ins. Co. of the Sw.*, 2021 WL  
 25 1220692, at \*8 (C.D. Cal. 2021) (noting that the parties’ demonstrated willingness to appeal weighed  
 26 in favor of settlement approval, “because in its absence there will be inevitable costs, high risks and  
 27 delay.”).

1 In contrast to the significant risks and further delays after four years of hard-fought litigation  
 2 (which would have continued at least another year), the settlement “relief is directly targeted to the  
 3 harm suffered by the class and adequately redresses their injuries.” *Shin v. Plantronics, Inc.*, 2020  
 4 WL 1934893, at \*3 (N.D. Cal., 2020) (approving settlement allowing class members to receive cash  
 5 payments or replacement of headphones “with a functional equivalent should defects emerge”). The  
 6 parties’ settlement provides certain relief to the Settlement Class Members, including “a significant,  
 7 easy-to-obtain benefit to class members” in the form of a cash payment to any Class Computer  
 8 purchaser with a valid claim. *In re Haier Freezer Consumer Litig.*, No. 5:11-CV-02911-EJD, 2013  
 9 WL 2237890, at \*4 (N.D. Cal. 2013); *see In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th  
 10 Cir. 2000) (“difficulties in proving the case” favored settlement approval).

11 Thus, the settlement falls well within the range of reasonableness for preliminary approval.

12 **B. The Court Will Be Able to Certify the Class for Purposes of Settlement.**

13 The Court already certified a multistate class and will likely be able to certify the proposed  
 14 nationwide settlement class at final approval. *See* FED. R. CIV. P. 23(e)(1)(B). Plaintiffs’ operative  
 15 complaint has at all times alleged a nationwide class. And where, as here, the Court has already  
 16 certified a class, “the only information ordinarily necessary is whether the proposed settlement calls  
 17 for any change in the class certified, or of the claims, defenses, or issues regarding which certification  
 18 was granted.” *Foster v. Adams & Assocs., Inc.*, 2021 WL 4924849, at \*3 (N.D. Cal. 2021) (citing  
 19 FED. R. CIV. P. 23 advisory committee’s note to 2018 amendment); *Youth Just. Coalitions v. City of*  
 20 *Los Angeles*, 2020 WL 9312377, at \*2 (C.D. Cal. 2020) (same). The only difference from the  
 21 certified class is that the Settlement Class includes all purchasers in the United States, consistent with  
 22 the pleadings. “In settlement cases . . . the district court need not consider trial manageability issues”  
 23 that typically arise in nationwide classes. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 563  
 24 (9th Cir. 2019). As there are no other facts that would change the Court’s reasoning under Rule 23, it  
 25 likely will be able to certify the Settlement Class for the same reasons. *See Dickey v. Advanced Micro*  
 26 *Devices, Inc.*, 2019 WL 4918366, at \*3 (N.D. Cal. 2019) (incorporating “prior analysis . . . as set  
 27 forth in the order certifying the class”).  
 28



1                   **1. The Settlement Class Members Are Too Numerous to Be Joined.**

2           The Class includes purchasers of approximately 15 million Class Computers. Numerosity  
3 under Rule 23(a)(1) is therefore satisfied because joinder would be “impracticable.”

4                   **2. There Are Common Questions of Law and Fact.**

5           Commonality under Rule 23(a)(2) “is construed ‘permissively’ and is satisfied when class  
6 members share ‘some . . . legal issues or a common core of facts.’” *J.L. v. Cissna*, 2019 WL 415579,  
7 at \*9 (N.D. Cal. 2019) (quoting *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010)). The  
8 common questions include whether the butterfly keyboard within the Class Computers is defective,  
9 whether Apple had knowledge of the alleged defect (and if so, when), and whether Apple had a duty  
10 to disclose the alleged defect. These questions are capable of class-wide resolution and would  
11 “resolve an issue that is central to the validity of each one of the claims in one stroke.” *In re Chrysler-*  
12 *Dodge-Jeep*, 2019 WL 536661, at \*5 (citation omitted). Hence, commonality is satisfied.

13                   **3. Plaintiffs’ Claims Are Typical of the Class.**

14           “Under the rule’s permissive standards, representative claims are ‘typical’ if they are  
15 reasonably co-extensive with those of absent class members; they need not be substantially identical.”  
16 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). “The test of typicality” under Rule  
17 23(a)(3) is “whether other members have the same or similar injury, whether the action is based on  
18 conduct which is not unique to the named plaintiffs, and whether other class members have been  
19 injured by the same course of conduct.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (citation  
20 omitted). In this case, Plaintiffs and Settlement Class Members have the same types of claims  
21 stemming from the same alleged violations concerning the same products, satisfying typicality. *See*  
22 *Gold v. Lumber Liquidators, Inc.*, 323 F.R.D. 280, 288 (N.D. Cal. 2017).

23                   **4. Plaintiffs and Class Counsel Will Fairly and Adequately Protect the**  
24 **Interests of the Class.**

25           Two questions are relevant to adequacy of representation under Rule 23(a)(4): “(1) Do the  
26 representative plaintiffs and their counsel have any conflicts of interest with other class members, and  
27 (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the  
28



1 class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Plaintiffs and their counsel do not  
 2 have any conflicts with Settlement Class Members and have vigorously prosecuted this case.

3 Plaintiffs agreed to serve in a representative capacity, communicated with their attorneys,  
 4 fulfilled their discovery obligations and have acted in the best interests of the other Settlement Class  
 5 Members. *See Mergens v. Sloan Valve Co.*, 2017 WL 9486153, at \*6 (C.D. Cal. Sept. 18, 2017)  
 6 (adequacy requirement met where plaintiff had no interests antagonistic to the class). Class Counsel  
 7 collectively have decades of experience successfully representing plaintiffs and classes in complex  
 8 class action litigation, including in consumer product defect cases. *See In re MacBook Keyboard*  
 9 *Litig.*, 2021 WL 1250378, at \*15 (appointing Class Counsel); Dkt. No. 62 (appointing interim class  
 10 counsel); Dkt. No. 30 (firm resumes); *see also In re Lidoderm Antitrust Litig.*, No. 3:14-md-02521  
 11 (N.D. Cal. Feb. 21, 2017), Dkt. No. 670 at 29 n.24 (“These firms have ably and vigorously litigated  
 12 this case, and nothing has occurred to undermine my initial determination of their experience and  
 13 adequacy.”).

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

##### 15 **a. Common Issues of Law and Fact Predominate for Settlement** 16 **Purposes.**

17 The predominance inquiry tests the cohesion of the class, “ask[ing] whether the common,  
 18 aggregation-enabling, issues in the case are more prevalent or important than the non-common,  
 19 aggregation-defeating, individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045  
 20 (2016) (citation omitted). Predominance is ordinarily satisfied, for settlement purposes, when the  
 21 claims arise out of the defendant’s common conduct. *Gold*, 323 F.R.D. at 288 (predominance  
 22 satisfied where claims were based on “the same deceptive conduct”); *Kacsuta*, 2014 WL 12585783,  
 23 at \*3 (common issues “significantly outweigh any individual questions” where the claims arise out of  
 24 the “same alleged course of conduct” by the defendant).

25 This settlement class is cohesive: All Settlement Class Members purchased Class Computers  
 26 that allegedly contain a common design defect that Apple is alleged to have fraudulently concealed;  
 27 the common questions noted above present a significant aspect of the litigation and predominate. *See*,  
 28

1 *e.g.*, *Kacsuta*, 2014 WL 12585783, at \*3 (predominant common issue was “the knowing sale of  
2 defective Class Computers”). Thus, common questions predominate for settlement purposes.

3 **b. A Class Action Is a Superior Means of Resolving This Controversy.**

4 The superiority inquiry “requires the court to determine whether maintenance of this litigation  
5 as a class action is efficient and whether it is fair.” *One Unnamed Deputy Dist. Attorney v. Cty. of Los*  
6 *Angeles*, 2011 WL 13128375, at \*4 (C.D. Cal. 2011); *see Wolin v. Jaguar Land Rover North Am.,*  
7 *LLC*, 617 F.3d 1168, 1175-76 (9th Cir. 2010). Here, given the relatively low amount of the individual  
8 claims, Settlement Class Members are unlikely to bring individual lawsuits against Apple. And,  
9 because the Settlement Class Members number in the millions, class-wide resolution of their claims  
10 in a single action is efficient. *See Mullins v. Premier Nutrition Corp.*, 2016 WL 1535057, at \*8 (N.D.  
11 Cal. 2016) (“Cases, such as this, ‘where litigation costs dwarf potential recovery’ are paradigmatic  
12 examples of those well-suited for classwide prosecution.”) (citing *Hanlon*, 150 F.3d at 1023).

13 Therefore, consistent with Rule 23(e)(1)(B), the Court will likely be able to certify the  
14 settlement class in this case.

15 **C. The Proposed Class Notice and Plan for Dissemination Are Reasonable and**  
16 **Should Be Approved.**

17 Rule 23(e)(1)(B) requires the Court to “direct notice in a reasonable manner to all class  
18 members who would be bound by the proposal.” Under Rule 23(b)(3), the Court must “direct to class  
19 members the best notice that is practicable under the circumstances, including individual notice to all  
20 members who can be identified through reasonable effort.” FED. R. CIV. P. 23(c)(2)(B).

21 The notices here comport with Rule 23 and the due process mandates. Using plain language,  
22 these proposed notices provide all information required under Rule 23(c)(2)(B). SA, Exs. 1-3. In  
23 crafting these notices Plaintiffs followed the notice language suggested in the Guidelines as well as  
24 the Federal Judicial Center models. The proposed notice program provides for direct email notice as  
25 well as follow-up mechanisms for directly notifying Settlement Class Members of the settlement. The  
26 settlement website will also be a useful resource for Settlement Class Members—consistent with the  
27 Guidelines, it will post the Claim Form, the long-form notice, and key documents in the case,  
28 including Class Counsel’s attorneys’ fee application once it is filed. The Settlement Administrator

will also establish a toll-free number for class members to call with questions. This plan provides the best notice practicable under the circumstances and can begin upon the Court's approval. *See, e.g., Wahl v. Yahoo! INC.*, 2018 WL 6002323, at \*3 (N.D. Cal. 2018) (concluding that a notice plan calling for direct email notice, followed by mailed notice to individuals to whom emails "bounced," constituted "the best notice practicable under the circumstances"); *Walsh v. CorePower Yoga LLC*, 2017 WL 589199, at \*12 (N.D. Cal. 2017) (approved notice plan provided for a combination of mail and email using the most recent contact information available).

## **VI. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) grant preliminary approval of the proposed settlement, (2) direct notice to the Settlement Class, and (3) set a schedule for settlement proceedings, including the final fairness hearing.

Dated: July 18, 2022

Respectfully submitted,

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# EXHIBIT 1

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement” or “Agreement”) is made as of July 15, 2022, by and between Zixuan Rao, Joseph Baruch, Bo Laurent, Ashley Marin, Kyle Barbaro, Steve Eakin, Michael Hopkins, Adam Lee, Kevin Melkowsky, Lorenzo Ferguson, Benjamin Gulker, and Ashton Huey (collectively, “Plaintiffs” or “Class Representatives”), individually and as representatives of the Settlement Class as defined below, and Apple Inc. (“Apple”, and together with Plaintiffs, the “Parties”).

### **DEFINITIONS**

As used herein, the following terms have the meanings set forth below:

- A. “Action” means the litigation entitled *In re MacBook Keyboard Litigation*, Case No. 5:18-cv-02813-EJD-VKD, filed in the United States District Court for the Northern District of California (the “Court”).
- B. “Apple Counsel” means Apple’s counsel of record in this Action.
- C. “Authorized Service Provider” means a company authorized by Apple to provide in-warranty and out-of-warranty repair services for Apple products.
- D. “Attorneys’ Fee and Expense Payment” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded to Class Counsel by the Court from the Settlement Fund.
- E. “Claimant” means a Settlement Class Member who has made a claim to a share of, or who will receive an automatic payment from, the Net Settlement Fund.
- F. “Claim Form” means the form for Settlement Class Members to make a claim to a share of the Net Settlement Fund, substantially in the form of Exhibit 4.
- G. “Claim Period” means the period of time ending 120 days after entry of the preliminary approval order.
- H. “Class Computer” means any of the following Apple computer models:
  - MacBook (Retina, 12-inch, Early 2015)
  - MacBook (Retina, 12-inch, Early 2016)
  - MacBook (Retina, 12-inch, 2017)
  - MacBook Air (Retina, 13-inch, 2018)
  - MacBook Air (Retina, 13-inch, 2019)
  - MacBook Pro (13-inch, 2016, Two Thunderbolt 3 Ports)
  - MacBook Pro (13-inch, 2017, Two Thunderbolt 3 Ports)
  - MacBook Pro (13-inch, 2019, Two Thunderbolt 3 Ports)
  - MacBook Pro (13-inch, 2016, Four Thunderbolt 3 Ports)
  - MacBook Pro (13-inch, 2017, Four Thunderbolt 3 Ports)
  - MacBook Pro (15-inch, 2016)
  - MacBook Pro (15-inch, 2017)
  - MacBook Pro (13-inch, 2018, Four Thunderbolt 3 Ports)
  - MacBook Pro (15-inch, 2018)
  - MacBook Pro (13-inch, 2019, Four Thunderbolt 3 Ports)
  - MacBook Pro (15-inch, 2019)



- I. “Class Counsel” means the law firms of Girard Sharp LLP and Chimicles Schwartz Kriner & Donaldson-Smith LLP.
- J. “Class Payment” means the amount to be paid to a Settlement Class Member who is eligible to receive a share of the Net Settlement Fund under this Settlement Agreement.
- K. “Effective Date” means the first day after which all of the following events and conditions of this Settlement Agreement have occurred or have been met: (i) the Court has entered the Final Approval Order and Judgment, and (ii) the Court has entered a judgment that has become final (“Final”) in that the time for appeal or writ of certiorari has expired or, if an appeal or writ of certiorari is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the judgment shall not become Final. In the event of an appeal or other effort to obtain review, the Parties may agree jointly in writing to deem the Effective Date to have occurred; however, there is no obligation to agree to advance the Effective Date. Any order or proceeding relating to the application for an Attorneys’ Fee and Expense Payment and Service Awards, the pendency of any such application, or any appeal from any such order, shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the judgment approving the settlement.
- L. “Escrow Account” means the interest-bearing account—a qualified settlement fund as defined in Treasury Regulation § 1.468B-1 *et seq.*—to be opened by the Settlement Administrator and maintained by the Escrow Agent, subject to the continuing jurisdiction of the Court, holding the Settlement Fund.
- M. “Escrow Agent” means Huntington National Bank.
- N. “Final Approval Hearing” means the hearing, to be set by the Court, where the Plaintiffs will request that the Final Approval Order and Judgment be entered approving this agreement, and where Class Counsel will request that the Court approve the Fee, Cost, and Expense Award and the Service Awards. The Final Approval Hearing must occur at least 35 days after the Objection and Exclusion Deadline, on such date as set by the Court.
- O. “Final Approval Order and Judgment” means the judgment and order to be entered by the Court which approves the Settlement, substantially in the form of Exhibits 6 and 7 hereto.
- P. “Huey Action” means *Huey v. Apple Inc.*, Case No. 2018 CA 004200 B, pending in the Superior Court of the District of Columbia.
- Q. “Keyboard Service Program” means the program Apple announced on June 22, 2018, and later expanded to include additional MacBook computer models, providing keyboard repair service for eligible MacBook, MacBook Air, and MacBook Pro computers for four years from the date of purchase.
- R. “Net Settlement Fund” means the Settlement Fund, reduced by the sum of (1) the costs of notice and of administering the settlement, and (2) the sum of any Attorneys’ Fee and Expense Payment to Class Counsel, and any payments of Service Awards to the Class Representatives, that may be approved by the Court.
- S. “Notices” refer collectively to the following forms of notice to be provided to the Settlement Class in accordance with this Agreement:

- “Summary Notice” as follows:
    - “Group 1 Email Notice” means the Summary Notice of Class Action Settlement to be emailed to the Settlement Class in Group 1 in connection with the Settlement, in the form attached hereto as Exhibit 1a, and as set forth in Section 3.4.3 below.
    - “Groups 2 and 3 Email Notice” means the Summary Notice of Class Action Settlement to be emailed to the Settlement Class in Groups 2 and 3 in connection with the Settlement, in the form attached hereto as Exhibit 1b, and as set forth in Section 3.4.3 below.
    - “Group 4 Email Notice” means the Summary Notice of Class Action Settlement to be emailed to the Settlement Class for whom Apple’s records do not reflect a Qualifying Keyboard Repair (as defined in Section 3.2.1 below) in connection with the Settlement, in the form attached hereto as Exhibit 1c, and as set forth in Section 3.4.3 below.
    - “Group 1 Postcard Notice” means the Summary Notice of Class Action Settlement to be mailed to the Settlement Class in Group 1 in connection with the Settlement, in the form of the postcard attached hereto as Exhibit 2a, and as set forth in Section 3.4.3 below.
    - “Groups 2 and 3 Postcard Notice” means the Summary Notice of Class Action Settlement to be mailed to the Settlement Class in Groups 2 and 3 in connection with the Settlement, in the form of the postcard attached hereto as Exhibit 2b, and as set forth in Section 3.4.3 below.
    - “Group 4 Postcard Notice” means the Summary Notice of Class Action Settlement to be mailed to the Settlement Class for whom Apple’s records do not reflect a Qualifying Keyboard Repair (as defined in Section 3.2 below) in connection with the Settlement, in the form of the postcard attached hereto as Exhibit 2c, and as set forth in Section 3.4.3 below.
  - “Long-Form Notice” means the Notice of Class Action Settlement attached hereto as Exhibit 3, which will be available to the Settlement Class on the Settlement Website or from the Settlement Administrator.
- T. “Notice Date” means the date set forth in the Preliminary Approval Order by which the Settlement Administrator will begin transmission of the Summary Notice (the Settlement Administrator shall thereafter carry out and complete the Notice Plan as soon as practicable). Remailing of any Notices shall not change the Notice Date.
- U. “Notice Plan” means the plan for disseminating notice of the Settlement to the Settlement Class, described in Section 7.3 of this Agreement.
- V. “Objection” means the written notice that a Settlement Class Member may submit to the Court in order to object to the Settlement.
- W. “Objection and Exclusion Deadline” means the date by which Settlement Class members must submit an Objection to this Agreement to the Court or an Opt-Out Form to the Settlement Administrator.

- X. “Objector” means a person or entity who submits an Objection.
- Y. “Plan of Allocation” means the plan for allocating the Net Settlement Fund as described in Section 3 of this Agreement.
- Z. “Preliminary Approval” means the date of entry of the Preliminary Approval Order.
- AA. “Preliminary Approval Order” means the Court’s order preliminarily approving the settlement and providing for notice to the Settlement Class, substantially in the form of Exhibit 5 hereto.
- BB. “Request for Exclusion” means a written request submitted by a member of the Settlement Class to the Settlement Administrator to be excluded from the Settlement Class and containing their name, address, email address and, if available, the serial number of their Class Computer.
- CC. “Released Claims” means all claims, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, arising out of the facts underlying the Action and the *Huey* Action, against Apple, its past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers and assigns of each of the foregoing).
- DD. “Released Persons” means Apple, its past or present parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers and assigns of each of the foregoing).
- EE. “Releasing Persons” means Plaintiffs and all Settlement Class Members, including any and all of their respective heirs, executors, administrators, representatives, agents, partners, successors, or assigns.
- FF. “Reserve Period” means the period ending two years after Preliminary Approval.
- GG. “Service Award” means the award sought by each Class Representative—and subsequently approved by the Court—in consideration for their service during the course of the Action.
- HH. “Settlement” or “Settlement Agreement” means this agreement and the settlement and release described herein.
- II. “Settlement Administrator” means JND Legal Administration, an independent settlement administrator.
- JJ. “Settlement Class” means all persons and entities in the United States who purchased, other than for resale, one or more Class Computers, excluding Defendant Apple Inc. (“Apple”), its parents, subsidiaries, affiliates, officers, directors, and employees; any entity in which Apple has a controlling interest; and all judges assigned to hear any aspect of this litigation, as well as their staff and immediate family members
- KK. “Settlement Class Members” means all members of the Settlement Class, other than those persons or entities who validly request exclusion from the Settlement Class as set forth in this Agreement.
- LL. “Settlement Fund” means a non-reversionary cash fund of fifty million dollars

(\$50,000,000.00) described in Section 2 of this Agreement to be distributed in accordance with the terms of this Settlement Agreement.

- MM. “Settlement Website” means a publicly accessible website created and maintained by the Settlement Administrator for the purpose of providing the Settlement Class with notice of and information about the proposed Settlement as well as submission of Applications for Inclusion in the Class and address verification.

### **RECITALS**

This Agreement is made for the following purposes and with reference to the following facts:

WHEREAS, in May and June 2018, various plaintiffs filed lawsuits against Apple in the U.S. District Court for the Northern District of California, individually and on behalf of a proposed nationwide class of purchasers, asserting claims relating to an alleged defect in Apple’s MacBook computers equipped with butterfly keyboards; and the Court subsequently consolidated these actions and appointed Class Counsel as Interim Class Counsel.

WHEREAS, on July 2, 2020, as permitted by the Court, Plaintiffs filed a Second Amended Consolidated Class Action Complaint, which Apple answered on June 2, 2021.

WHEREAS, on March 8, 2021, the Court granted Plaintiffs’ Motion for Class Certification; certified a plaintiff class consisting of end-purchasers of Class Computers in California, New York, Florida, Illinois, New Jersey, Washington, and Michigan; appointed Plaintiffs to represent the class and its constituent state subclasses; and appointed Girard Sharp LLP and Chimicles Schwartz Kriner & Donaldson-Smith LLP as Class Counsel.

WHEREAS, the Parties have investigated the facts and analyzed the relevant legal issues regarding the claims and defenses asserted in this Action, including through significant motion practice and extensive fact and expert discovery. The Parties also conducted two mediations with the Hon. Jay C. Gandhi (Ret.) in June and August 2020 and a mediation with the Hon. Edward A. Infante (Ret.) in February 2022.

WHEREAS, Class Counsel and the Class Representatives believe that the claims asserted in the Action have merit and have examined and considered the benefits to be obtained under this Settlement, the risks associated with the continued prosecution of this complex and time-consuming litigation, and the likelihood of ultimate success on the merits, and have concluded that the Settlement is fair, adequate, reasonable and in the best interests of the Settlement Class Members.

WHEREAS, Apple denies all of the allegations made in the lawsuit, denies that any MacBooks are defective, and denies that Apple did anything improper or unlawful. Apple asserts numerous defenses to the claims in this case. The proposed settlement to resolve this case is not an admission of guilt or wrongdoing of any kind by Apple.

WHEREAS, the Parties desire to settle the Action in its entirety as to the Plaintiffs, the Settlement Class Members, and Apple with respect to all claims arising out of the facts underlying the Action. The Parties intend this Agreement to bind Plaintiffs (both as the Class Representatives and individually), Apple, Class Counsel, and Settlement Class Members.

NOW THEREFORE, in light of the foregoing, for good and valuable consideration, the Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject to approval by the Court, as follows:

**1. CONFIDENTIALITY**

- 1.1 The Parties, Class Counsel, and Apple Counsel agree that until publication of this Settlement Agreement by submission to the Court, the terms of this Settlement Agreement and all associated documents and communications, including the negotiations leading to the execution of the Settlement Agreement and all submissions and arguments related to the mediation proceedings, shall not be disclosed by the Parties, Class Counsel, and Apple Counsel other than as necessary to finalize the Settlement and Notice Plan. Upon publication of the Settlement Agreement by submission to the Court, the nondisclosure obligations set forth in this paragraph will no longer apply to the as-filed Settlement Agreement or the terms thereof, but such obligations will continue to apply to all other materials and information covered by this paragraph, including but not limited to any negotiations leading to the execution of this Settlement Agreement.
- 1.2 Other than to a court in any case filing, the Parties, Class Counsel, and Apple Counsel agree not to initiate publicity regarding the settlement or submit information about the settlement to Jury Verdicts. Notwithstanding the foregoing, Class Counsel may list the Action on their law firm websites and publicity materials as a representative case along with a neutral and factual description of the subject matter of the Action, including the amount of the settlement. Any comments made by Class Counsel concerning the settlement or the Action, including in response to inquiries from the press, shall be in neutral terms to communicate that the Action has been resolved between the Parties and shall not contain inflammatory language about the Parties or their perceived conduct in the Action.
- 1.3 The Parties will continue to comply with the Stipulated Protective Order in this Action, ECF No. 84, including with respect to the requirements of Paragraph 15 thereof, which govern the return or destruction of any material produced, submitted, or filed under seal under the Protective Order.
- 1.4 If, through the actions of any of the Parties or their counsel, this Settlement Agreement and the proposed Settlement become public before the Motion for Preliminary Approval is filed with the Court, the responsible Party or counsel shall pay liquidated damages of Twenty-Five Thousand U.S. Dollars (\$25,000.00) to the non-responsible Party.

**2. SETTLEMENT FUND**

- 2.1 Apple's total financial commitment under this Agreement is \$50,000,000.00 and in no event shall Apple's total monetary obligation with respect to this Agreement exceed or be less than that amount. Apple will make no further payments in connection with this Agreement.
- 2.2 Within 30 days after Preliminary Approval, Apple shall pay the Settlement Fund into the Escrow Account according to instructions to be furnished by the Escrow Agent. If Final Approval is not granted for any reason, the balance of the Escrow Account (after payment of costs associated with notice and administration related to the preliminary and final approval process), plus any interest earned on the Escrow Account, will be returned to Apple within 10 days.
- 2.3 The Settlement Fund will be applied to Class Payments, notice and administration expenses, attorneys' fees and expenses of Class Counsel, and Service Awards for the Class Representatives. The Settlement Administrator will open the Escrow Account and will thereafter manage distribution of the Settlement Fund.
- 2.4 Any taxes owed by the Settlement Fund will be paid by the Settlement Administrator out of

the Settlement Fund, and interest earned on the balance of the account will accrue to the Settlement Fund.

- 2.5 **Disposition of the Settlement Fund.** The Settlement Fund shall be applied as follows, in accordance with the terms and conditions set forth elsewhere in this Agreement:

- 2.61 To pay the costs of notice and the costs of administering the Settlement;
- 2.62 To pay any Attorneys' Fee and Expense Payment to Class Counsel, and any Service Awards to the Class Representatives, that may be approved by the Court; and
- 2.63 To distribute the Net Settlement Fund to Settlement Class Members in accordance with the Plan of Allocation.

- 2.6 **No reversion.** Subject to 2.2 above, no portion of the Settlement Fund or Net Settlement Fund will revert to Apple.

### 3. **ALLOCATION OF THE NET SETTLEMENT FUND**

- 3.1 **General provisions.** The Net Settlement Fund will be distributed according to the following plan, subject to approval by the Court.

- 3.1.1 Apple's Keyboard Service Program provides four years of protection and remains available for any Class Member whose Class Computer keyboard may experience future issues within four years of purchase.
- 3.1.2 This Plan of Allocation is subject to modification without further notice to Class Members provided any such modification is approved by the Court.
- 3.1.3 Settlement Class Members can receive compensation only once per Class Computer; but any Class Member may make additional claims in the event they purchased multiple Class Computers that qualify for payment.
- 3.1.4 Class Payments will be made in two stages—the first payment to occur within a reasonable time after the Effective Date, and the second within a reasonable time after the Reserve Period has elapsed.
- 3.1.5 With respect to claims administration, the Settlement Administrator's responsibilities will include, without limitation, receiving and processing requests for Claim Forms; setting up and maintaining the Settlement Website where Settlement Class Members can download and submit Claim Forms; establishing, in consultation with Apple and Class Counsel, appropriate claim auditing and verification protocols and procedures, including reasonable fraud control measures; fielding inquiries about claim procedures; receiving and processing Settlement Class Member claims; determining the eligibility of claims for payment, subject to Class Counsel and Apple's right to contest such determinations; distributing Class Payments; and any other tasks reasonably necessary to administer the claim process.

- 3.2 **Qualifying Keyboard Repair.** members of the Settlement Class who went to Apple or an Authorized Service Provider for a Qualifying Keyboard Repair within four years after the date they purchased their Class Computer are eligible for a Class Payment from the Net Settlement Fund.



- 3.2.1 A Qualifying Keyboard Repair is a Topcase Replacement or a Keycap Replacement. “Topcase Replacement” refers to the replacement of the full keyboard module (including the battery, track pad, speakers, top case, and keyboard), performed by Apple or an Apple Authorized Service Provider. “Keycap Replacement” refers to the replacement of one or more keycaps on a keyboard, performed by Apple or an Apple Authorized Service Provider, and does not involve replacement of the full keyboard module.
- 3.2.2 Apple has records of members of the Settlement Class who received a Topcase Replacement or Keycap Replacement and will provide those records to the Settlement Administrator.
- 3.2.3 Settlement Class Members who received at least two Topcase Replacements, within four years after purchase and prior to two years after Preliminary Approval, will be paid a share of the Net Settlement Fund without the need to submit a claim.
- 3.2.4 Settlement Class Members who obtained one or more Qualifying Keyboard Repairs, within four years after purchase, are eligible to submit a claim during the Claim Period to be paid a share of the Net Settlement Fund.

3.3 **The Claim Form.**

- 3.3.1 For Settlement Class Members who did not receive two or more Topcase Replacements, there will be one Claim Form, and each Class Computer purchased may be the subject of only one claim.
- 3.3.2 Where reasonably practicable, Claim Forms for Settlement Class Members in Groups 2 or 3 for whom Apple has records of repair will be pre-populated with Settlement Class Member contact and repair information.
- 3.3.3 The Claim Form will call for each Claimant to confirm or update their current contact information.
- 3.3.4 The Claim Form will require that the Claimant confirm the following under oath:
  - 3.3.4.1 The Claimant purchased a Class Computer in the United States;
  - 3.3.4.2 The Claimant did not purchase the Class Computer for resale;
  - 3.3.4.3 The Claimant obtained a Qualifying Keyboard Repair; and
  - 3.3.4.4 The Qualifying Keyboard Repair did not resolve the Claimant’s keyboard issues.
- 3.3.5 Settlement Class Members who receive a link to a Claim Form with pre-populated answers to questions 3.3.4.1 or 3.3.4.3 need not submit documentation in support of any pre-populated answer but must also affirm under oath that any pre-populated information in the Claim Form is true and correct. All other Claimants must submit information to support their affirmations in 3.3.4.1 and 3.3.4.3. The Claim Form shall reflect the information and/or documentation necessary to validate claims for those Claimants whose purchases and/or repairs are not documented in Apple’s records.
- 3.3.6 For each claim accompanied by documentation, the Settlement Administrator will



determine whether the attestation and documentation submitted conforms with the requirements agreed to pursuant to 3.3.5.

#### 3.4 **Determination and processing of Class Payments.**

3.4.1 The Settlement Administrator will review all claims to determine their validity, eligibility, and appropriate classification under this Section. The Settlement Administrator will reject any claim that does not materially comply with the instructions on the Claim Form; is not submitted by a Settlement Class Member; or is duplicative or fraudulent. To the extent any Claim Form contains curable deficiencies, the Settlement Administrator shall inform the claimant of the deficiency via email, or if no email address is available by USPS mail, and provide 30 days to cure.

3.4.2 Upon completion of the Claim Period, the Settlement Administrator will provide Apple Counsel and Class Counsel a spreadsheet detailing the Claims that were submitted, the Settlement Administrator's determination of validity, eligibility, and classification for each Claim, and the reasoning for any rejected Claims. Personally identifiable information will not be included in this spreadsheet. Apple Counsel and Class Counsel shall have 21 days after receiving this information to contest the Settlement Administrator's determination with respect to any of the submitted Claims. Apple Counsel and Class Counsel shall meet and confer in good faith within ten (10) days of any contestation to reach resolution of any such disputed Claim(s). If Class Counsel and Apple Counsel cannot agree on a resolution of any such disputed Claim(s), the disputed Claim(s) shall be presented to the Court for summary and non-appealable resolution.

3.4.3 Eligible Settlement Class Members will be sorted into one of three claim groups:

3.4.3.1 **Group 1:** Settlement Class Members who, within four years after purchase, obtained two or more Topcase Replacements from Apple or an Authorized Service Provider based on Apple's records. Group 1 Claimants will be paid using Apple's records without the need to submit a claim. The total payment to a Group 1 Claimant will not exceed \$395 per Class Computer.

3.4.3.2 **Group 2:** Settlement Class Members who, within four years after purchase, obtained one Topcase Replacement from Apple or an Authorized Service Provider, and who attest on the Claim Form that the repair did not resolve their keyboard issues. The total payment to a Group 2 Claimant will not exceed \$125 per Class Computer. Class Members in Group 2 who do not receive a pre-populated Claim Form must submit additional information and/or documentation consistent with 3.3.5 above.

3.4.3.3 **Group 3:** Settlement Class Members who, within four years after purchase, obtained one or more Keycap Replacements (but not any Topcase Replacements) from Apple or an Authorized Service Provider, and who attest on the Claim Form that the repair did not resolve their keyboard issues. The total payment to a Group 3 Claimant will not exceed \$50 per Class Computer. Class Members in Group 3 who do not receive a pre-populated Claim Form must submit additional information and/or documentation consistent with 3.3.5 above.

3.4.4 Upon completion of the Claim Period, the Settlement Administrator will calculate and

deduct from the Net Settlement Fund an amount sufficient to make Class Payments of \$300 to each Settlement Class Member identified in Apple's records as a Group 1 Claimant. Additionally, a reserve amount sufficient to make Class Payments of \$300 to each of Settlement Class Members projected to become a Group 1 Claimant within the Reserve Period will be calculated and deducted from the Net Settlement Fund. The amount of this reserve will be determined by the Parties in consultation with the Settlement Administrator based on Apple's records and projections to be provided by Apple under oath. At the completion of the Claim Period, Apple will provide updated projections of future Group 1 Claimants anticipated under the Settlement.

3.4.5 After completion of the deductions set forth in 3.4.3, the amount remaining in the Net Settlement Fund (the "Group 2-3 NSF") will be divided among eligible Group 2 and Group 3 Claimants to determine the Class Payment to each such Claimant using the following formulae:

3.4.5.1 The Settlement Administrator will calculate a Group 2 Payment Ratio using the following formula:  $(\text{Total Group 2 Claims} \times \$125) \div [(\text{Total Group 2 Claims} \times \$125) + (\text{Total Group 3 Claims} \times \$50)]$ .

3.4.5.2 The Settlement Administrator will calculate a Group 3 Payment Ratio using the following formula:  $(\text{Total Group 3 Claims} \times \$50) \div [(\text{Total Group 2 Claims} \times \$125) + (\text{Total Group 3 Claims} \times \$50)]$ .

3.4.5.3 The Settlement Administrator will calculate payments to Group 2 Claimants using the following formula:  $(\text{Group 2-3 NSF} \times \text{Group 2 Payment Ratio}) \div \text{Total Group 2 Claims}$ .

3.4.5.4 The Settlement Administrator will calculate payments to Group 3 Claimants using the following formula:  $(\text{Group 2-3 NSF} \times \text{Group 3 Payment Ratio}) \div \text{Total Group 3 Claims}$ .

3.4.5.5 If a Group 3 payment would exceed the \$50 cap, any excess will be redistributed to Group 2 Claimants up to the \$125 cap. If a Group 2 payment would exceed the \$125 cap, any such excess will be redistributed to Group 1 Claimants up to the \$395 cap, including through proportional increase of the amount to be paid to Settlement Class Members who become Group 1 Claimants within the Reserve Period (and resulting increase of the reserve fund described in 3.4.4).

3.4.5.6 To the extent the total Group 1 payments at \$300 together with valid Group 2 and 3 Claims would exceed the Net Settlement Fund, the payments to all eligible Settlement Class Members shall be reduced *pro rata*.

3.4.6 The Settlement Administrator shall provide its calculations performed under 3.4.3 and 3.4.4 above to Class Counsel and Apple for review. Class Counsel and Apple Counsel shall meet and confer within ten days to resolve any issues regarding the calculations. Then, Class Counsel will submit to the Court a proposed Order directing payment to eligible Claimants, as well as providing that payments to Settlement Class Members who become Group 1 Claimants within the Reserve Period may be reduced if the actual number of such Claimants exceeds Apple's projections (the "Class Payment Order").

3.4.7 After entry of the Class Payment Order, and upon the Effective Date, the Settlement

Administrator will set aside the amount reserved for future Group 1 Claimants and make Class Payments to all other eligible Claimants in Group 1, Group 2 and Group 3 according to the above. Class Payments shall be made by check. The Settlement Administrator will distribute the Class Payments in accordance with the Plan of Allocation. The Settlement Administrator will advise Claimants that the Class Payment check must be cashed or redeemed within 90 days or become void, and will also send at least one check-cashing reminder.

### 3.5 **Claims arising after the Claim Period and Distribution of Residual Funds.**

- 3.5.1 Settlement Class Members who, within two years after Preliminary Approval, qualify as being within Group 1 based on Apple's records showing that they had two or more Topcase Replacements from Apple or an Authorized Service Provider within four years after purchase, and who, in the first round of Settlement payments, were either (a) not paid or (b) paid as a Group 2 Claimant, will be paid up to the Group 1 amount in the second round, subject to a *pro rata* increase under 3.5.3 below or a *pro rata* reduction if the total payments to such Claimants would exhaust the reserve fund.
- 3.5.2 If checks attributable to Settlement Class Members remain uncashed for 90 days after the Class Payment is distributed, those funds shall remain in the Net Settlement Fund.
- 3.5.3 If sufficient funds remain in the Net Settlement Fund, the Settlement Administrator will make a payment of up to \$395 to Group 1 Claimants who received a second Topcase Replacement after the expiration of the Claim Period, and a supplemental payment to Group 1 Claimants who received two or more Topcase Replacements before the expiration of the Claims Period, such that all Group 1 Claimants receive up to \$395 in total distributions from the Net Settlement Fund. If, after any such payments, there are remaining funds in the Net Settlement Fund, supplemental payments shall be made to Group 2 Claimants up to \$125 and Group 3 Claimants up to \$50. If making a supplemental distribution to Settlement Class Members is not practicable, or if, after all such supplemental payments are made, there are remaining funds in the Net Settlement Fund, Class Counsel and Apple shall meet and confer to discuss a proposal to present to the Court regarding distribution of remaining funds, including a *cy pres* distribution.
- 3.5.4 Within sixty (60) days of the deadline to submit claims, Class Counsel and Apple shall meet and confer regarding the status of any late claims.

## 4. **OBTAINING COURT APPROVAL OF THE AGREEMENT**

- 4.1 **Preliminary Approval.** Class Counsel will draft the motion requesting issuance of the Preliminary Approval Order and will provide that draft to Apple Counsel of record in the Action. The motion shall be written in a neutral manner that does not contain inflammatory language about the Parties or their perceived conduct in the Action. The motion will request that the Court modify its class certification order to certify the Settlement Class. Apple will not oppose the motion. Apple may, however, provide feedback concerning the motion, and Class Counsel will meet and confer with Apple in good faith regarding Apple's feedback.
- 4.2 Upon filing of the motion requesting issuance of the Preliminary Approval Order, Apple will provide timely notice of such motion as required by the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*
- 4.3 **Final Approval and Judgment.** In accordance with the schedule set in the Preliminary

Approval Order, Class Counsel will draft the motion requesting final approval of the Settlement and entry of the Final Approval Order and Judgment, and will provide those drafts to Apple Counsel at least seven (7) days prior to the filing of the motion. The motion shall be written in a neutral manner that does not contain inflammatory language about the Parties or their perceived conduct in the Action. Apple may provide feedback concerning the motion, and Class Counsel will meet and confer with Apple in good faith regarding Apple's feedback. The Final Approval Order and Judgment will contain a provision stating that the Settlement Administrator and the Parties and their counsel will have no liability to any person in connection with the Action or Settlement, or determinations and distributions made substantially in accordance with the terms of the Settlement, including payments made to Class Members who become Group 1 Claimants during the Reserve Period.

- 4.4 **Huey Action.** Plaintiff Ashton Huey's separate action—entitled *Huey v. Apple Inc.*, Case No. 2018 CA 004200 B, pending in the Superior Court of the District of Columbia—will be dismissed with prejudice via a stipulation of Plaintiff Huey and Apple to be filed in that court no later than seven days after the Effective Date. Prior to that, and within three days after the filing of Plaintiffs' Motion for Preliminary Approval, Plaintiff Huey and Apple will jointly advise that court of the Settlement and request a stay of the proceedings in that action.
- 4.5 In the event that the Settlement Agreement is not approved or that its approval is conditioned on any material modifications that are not acceptable to Apple, then (a) this Settlement Agreement shall be null and void and of no force and effect; (b) the Net Settlement Fund and any and all interest earned thereon, less monies expended toward settlement administration, will be returned to Apple within 10 days after the date the Settlement Agreement becomes null and void; and (c) any release shall be of no force or effect. In such event, unless the Parties can negotiate a modified settlement agreement, the Action will revert to the status that existed before the Settlement Agreement's execution date; the Parties will each be returned to their respective procedural postures in the litigation, and neither the Settlement Agreement nor any facts concerning its negotiation, discussion or terms will be admissible in evidence for any purpose in the Action (or in any other litigation).

## 5. OBJECTIONS

- 5.1 Any Settlement Class Member who has not submitted a timely written Request for Exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, or to the requested Attorneys' Fee and Expense Award or Service Awards, must comply with the following requirements.
- 5.2 **Procedural requirements.** Any Objections from Settlement Class Members regarding the proposed Settlement Agreement must be submitted in writing to the Court. If a Settlement Class Member does not submit a timely written Objection, the Settlement Class Member will not be able to participate in the Final Approval Hearing.
- 5.3 **Deadline.** Objections must be submitted by the Objection and Exclusion Deadline—which is 95 days after entry of the preliminary approval order.
- 5.3.1 If submitted through ECF, Objections must be submitted on the Objection and Exclusion Deadline by 11:59 p.m. Pacific Time.
- 5.3.2 If submitted by U.S. mail or another delivery service, Objections must be postmarked by the Objection and Exclusion Deadline. The date of the postmark on the envelope containing the written statement objecting to the Settlement will be the exclusive means used to determine whether an Objection and/or intention to appear has been

timely submitted. In the event a postmark is illegible or unavailable, the date of mailing will be deemed to be three days prior to the date that the Court posts the Objection on the electronic case docket.

5.4 **Responses to objections.** The Parties may file responses to any timely written objections no later than 120 days after entry of the preliminary approval order.

5.5 **Mandatory content.** All Objections must be in writing and must:

5.4.1 Include the full name, address, telephone number, and email address of the Objector and any counsel representing the Objector;

5.4.2 Clearly identify the case name and number: *In re MacBook Keyboard Litigation*, 5:18-cv-02813-EJD;

5.4.3 Include information sufficient to verify that the Objector is a Class Member;

5.4.4 Include a detailed statement of the grounds and evidence upon which the Objection is based;

5.4.5 State whether the Objection applies only to the Objector, to a specific subset of the class, or to the entire class; and

5.4.6 Include a list of all cases in which the Objector or his or her counsel has filed an objection within the past five years.

5.5 Settlement Class Members who fail to submit timely written Objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Agreement and the proposed Settlement by appearing at the Final Approval Hearing, or through appeal, collateral attack, or otherwise.

5.6 Any Objector who timely submits an Objection has the option to appear and request to be heard at the Final Approval Hearing, either in person or through the Objector's counsel. Any Objector wishing to appear and be heard at the Final Approval Hearing must include a Notice of Intention to Appear in the body of the Objector's Objection. If an Objector makes an Objection through an attorney, the Objector shall be solely responsible for the Objector's attorneys' fees and costs. Counsel for any Objector seeking to appear at the Final Approval Hearing must enter a Notice of Appearance no later than 14 days before that hearing.

## 6. EXCLUSIONS

6.1 **Requests for Exclusion.** The Notice will advise all members of the Settlement Class of their right to exclude themselves from the Settlement. This Settlement Agreement will not bind Class Members who exclude themselves from the Settlement.

6.2 **Requesting process.** To request to be excluded from the Settlement, members of the Settlement Class must timely submit a written Request for Exclusion. The Request for Exclusion may be sent either through a portal on the Settlement Website or by U.S. mail to the Settlement Administrator, which will be responsible for receiving and processing Requests for Exclusion.

6.3 **Deadline.** To be excluded from the Settlement, the completed Exclusion Form must be postmarked or submitted through the portal by the Objection and Exclusion Deadline, which

is 95 days after entry of the preliminary approval order.

- 6.4 **Effect of exclusion.** Any person or entity who is a member of the Settlement Class and who validly and timely requests exclusion from the Settlement shall not be a Settlement Class Member; shall not be bound by the Settlement Agreement; shall not be eligible to apply for or receive any benefit under the terms of the Settlement Agreement; and shall not be entitled to submit an Objection to the Settlement.
- 6.5 **Exclusion list.** No later than 14 days after the Objection and Exclusion Deadline, the Settlement Administrator will provide Class Counsel and Apple Counsel with the number of persons and entities who have timely and validly excluded themselves from the Settlement. If the number of Class Members who elect to exclude themselves from the Settlement Class exceeds the threshold agreed to by the Parties and confidentially submitted to the Court with the Preliminary Approval Motion, Apple, in its sole discretion, may elect to reject this Settlement, in which case the entire Settlement Agreement shall be null and void. Alternatively, Apple may elect to waive this condition and proceed with the Settlement. Any such waiver by Apple must be unambiguous and in writing.

## 7. NOTICE AND SETTLEMENT ADMINISTRATION

- 7.1 Apple will provide to the Settlement Administrator (but not to Class Counsel) the names, addresses, and email addresses for all members of the Settlement Class for whom it has records. Apple will also provide to the Settlement Administrator its records of members of the Settlement Class who received a Qualifying Keyboard Repair.
- 7.2 The Settlement Administrator will administer the notice described herein and in accordance with the Preliminary Approval Order. The Settlement Administrator will keep identities and contact information of members of the Settlement Class confidential, using them only for purposes of administering this Settlement.
- 7.3 **Notice Plan.** The Parties agree upon and will seek Court approval of the following forms and methods of notice to the members of the Settlement Class:
- 7.3.1 **Settlement Website.** The Settlement Administrator will establish and maintain a Settlement Website with a mutually acceptable domain name. The Settlement Website will be optimized for viewing on both mobile devices and personal computers. The Settlement Website will include, without limitation, the Notice, this Agreement, the operative Second Amended Consolidated Complaint and Apple's Answer thereto, the Preliminary Approval Order as entered, Plaintiffs' Motion for Attorneys' Fees and Costs, Plaintiffs' Motion for Final Approval of Class Action Settlement, a set of frequently asked questions, and information on how to object or request exclusion, as well as contact information for Class Counsel and the Settlement Administrator. The Settlement Website will include a readily accessible means for members of the Settlement Class to electronically submit a Claim Form.
- 7.3.2 **Toll-Free Number.** The Settlement Administrator will establish a toll-free telephone number (the "Toll-Free Number") where members of the Settlement Class can obtain assistance in filing a Claim and receive instructions for accessing settlement information, the Claim Form, and case documents.
- 7.3.3 **Notice via email.** The Settlement Administrator will email each member of the Settlement Class for whom Apple has an email address a copy of the Group 1 Email Notice, Group 2 and 3 Email Notice, or Group 4 Email Notice, as applicable.



7.3.4 **Additional postcard notice.** For members of the Settlement Class (a) who do not have valid email addresses in Apple's records, and (b) as to whom the emailed Notice is returned as undeliverable, the Settlement Administrator will mail to each such Class Member, for whom a mailing address can be located, either the Group 1 Postcard Notice, Group 2 and 3 Postcard Notice, or Group 4 Postcard Notice as applicable. All postcard Notices returned by the U.S. Postal Service with a forwarding address will be re-mailed to that address.

7.4 Based on information provided by the parties to date, The Settlement Administrator has agreed to perform all settlement notice and administration duties required by the Settlement Agreement at a cost not expected to exceed \$1,400,000. The Settlement Administrator will withdraw from the Settlement Fund funds sufficient to cover all costs and expenses related to the settlement notice and administration functions to be performed by the Settlement Administrator, including the claims administration process. Under no circumstances will Apple be responsible for any costs of settlement administration in excess of its contribution to the Settlement Fund.

## **8. CLASS COUNSEL FEES AND EXPENSES, AND SERVICE AWARDS**

8.1 Any award of Attorneys' Fees and Expenses shall be decided by the Court and payable from the Settlement Consideration. Class Counsel will seek, on behalf of all Plaintiffs' Counsel, Attorneys' Fees and Expenses for the benefit of all Named Plaintiffs and all other Settlement Class Members. It is the Parties' understanding that no other counsel will be entitled to an independent award of attorneys' fees or expenses.

8.2 The Parties have reached no agreement on the amount of Attorneys' Fees and Expenses that Class Counsel will seek. While recognizing that the Settlement entitles Class Counsel to apply for reasonable fees and expenses, Apple reserves the right to object to or oppose Class Counsel's requests for Attorneys' Fees and Expenses or for Service Awards. Settlement Class Members shall also have at least thirty-five (35) days to object to and oppose Class Counsel's request for Attorneys' Fees and Expenses by filing with the Court and serving on Class Counsel and Apple Counsel any objections relating to Class Counsel's Motion for Attorneys' Fees and Expenses.

8.3 The Settlement Administrator will pay Class Counsel 50% of any Court-approved Attorneys' Fees and Expenses award within 14 days after the Court's entry of the Final Approval Order and Judgment, notwithstanding any Objections, appeals, or other challenge to the Settlement, the Fee, Cost, and Expense Award, or the Service Awards, provided that Class Counsel execute an undertaking reasonably satisfactory to Apple. The balance of any approved Fee, Cost, and Expense Award, and any approved Service Awards, will be paid from the Escrow Account no later than seven days after the Effective Date, using payment instructions to be furnished to the Escrow Agent by Class Counsel.

8.4 Procedures connected with the application by Class Counsel for a Fee and Expense Award form no part of this Settlement Agreement, and the application will be considered separately from the Court's consideration of the fairness, reasonableness, and adequacy of this Settlement Agreement. Any order or proceeding relating to the application for a Fee and Expense Award, the pendency of the application, or any appeal from any such order, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality effected by entry of the Final Approval Order and Judgment.



- 8.5 Class Counsel will allocate the Fee and Expense Award among Plaintiffs' counsel in a manner which reflects their respective contributions to the prosecution and resolution of the Action. In no event shall Apple have any liability to any Plaintiffs' counsel regarding the allocation of the Fee and Expense Award.
- 8.6 Class Counsel may apply for a Service Award of no more than \$5,000 per Class Representative. The Service Award is not a measure of damages, but instead solely an award for the Class Representatives' services, time and effort on behalf of the Settlement Class Members. For tax purposes, the Service Award will be treated as 100% non-wage claim payment. Class Counsel will provide a Form W-9 for each Plaintiff receiving a Service Award, and the Settlement Administrator will issue an IRS Form Misc.-1099 for the Service Award payment to the Plaintiff.
- 8.7 Any order or proceeding relating to the application for a Service Award, the pendency of the application, or any appeal from any such order, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality effected by entry of the Final Approval Order and Judgment. The Class Representatives' approval of this Settlement Agreement is not contingent on Class Counsel making an application for a Service Award, or the Court approving any application for a Service Award.

## **9. DENIAL OF LIABILITY; PROHIBITION OF USE**

- 9.1 Apple has indicated its intent to vigorously contest each and every claim in the Action and continues to vigorously deny all of the material allegations in the Action. Apple enters into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Apple further denies the truth of any of the claims asserted in the Action, including any allegations that Plaintiffs or any member of the Class has been harmed by any conduct by Apple, whether as alleged in the Action or otherwise. Apple nonetheless has concluded that it is in its best interests that the Action and the *Huey* Action be settled on the terms and conditions set forth herein in light of the expense that would be necessary to defend this litigation and the benefits of disposing of protracted and complex litigation.
- 9.2 To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability or admission by Apple, or to establish the truth of any of the claims or allegations alleged in the Action.
- 9.3 Neither the Agreement nor anything that the Parties said or did during the negotiation of the Agreement shall be construed or used in any manner as an admission of liability or evidence of any Party's fault, liability, or wrongdoing of any kind; nor as an admission of any lack of merit of the causes of action asserted in the Action or the *Huey* Action.
- 9.4 To the extent permitted by law, the Agreement may be pleaded or invoked as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted for the Released Claims.

## **10. RELEASES AND WARRANTIES**

- 10.1 As of the Effective Date, all Settlement Class Members and each of their successors, assigns, heirs, and personal representatives, in consideration of the obligations set forth in this Agreement, shall finally and irrevocably release and forever discharge with prejudice, and covenant not to sue, and are permanently enjoined from suing, Apple, its past or present

parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers and assigns of each of the foregoing) from all claims, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, arising out of the facts underlying the Action and the *Huey* Action (the “Released Claims”).

- 10.2 Each Settlement Class Member expressly agrees that, upon the Effective Date, he, she, or it waives and forever releases any and all provisions, rights and benefits with respect to the Released Claims conferred by Section 1542 of the California Civil Code and any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Section 1542 of the California Civil Code reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

- 10.3 The amount of the Class Payment pursuant to this Agreement will be deemed final and conclusive against all Settlement Class Members, who will be bound by all of the terms of this Agreement and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein.
- 10.4 All proceedings with respect to Settlement administration and Class Payments to Settlement Class Members and determination of any controversies relating thereto, including disputed questions regarding the amount of such Class Payment, will not in any event delay or affect the finality of the judgment entered with the Final Approval Order and Judgment.
- 10.5 No person will have any claim of any kind against the Parties or their counsel or the Settlement Administrator with respect to the Settlement and the matters set forth herein, or based on determinations or distributions made substantially in accordance with this Agreement, the Final Approval Order and Judgment, or further order(s) of the Court.

## 11. MISCELLANEOUS

- 11.1 **Extensions of time.** All time periods and dates described in this Settlement Agreement are subject to the Court’s Approval. Unless otherwise ordered by the Court, the Parties through their counsel may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement. The time periods and dates provided for herein or in the Preliminary Approval Order may be altered by the Court or through written consent of the Parties’ counsel, without notice to the Class Members; provided, however, that any such changes in the schedule of Settlement proceedings will be posted on the Settlement Website.
- 11.2 **Integration.** This Agreement, including all exhibits, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.
- 11.3 **Governing law.** This Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without regard to the principles thereof regarding choice of law.

- 11.4 **Gender and plurals.** As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
- 11.5 **Representative capacity.** Each person executing this Agreement in a representative capacity represents and warrants that he or she is empowered to do so.
- 11.6 **Headings and counterparts.** The headings or captions in this agreement will not be deemed to have any effect and are provided for convenience only. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.
- 11.7 **Cooperation of Parties.** The Parties to this Agreement and their counsel agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the Settlement.
- 11.8 **Voluntary execution.** This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction or interpretation to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the Parties or their counsel. The Settlement Agreement has been, and must be construed to have been, drafted by all Parties and their counsel, so that any rule that construes ambiguities against the drafter will have no force or effect.
- 11.9 **Notices.**
- 11.9.1 All Notices to Class Counsel provided for herein shall be sent by email to Class Counsel, identified in Definition I above, whose contact information is provided in the Notice.
- 11.9.2 All Notices to Apple provided for herein shall be sent by email to Claudia Vetesi, Morrison & Foerster LLP, cvetesi@mofo.com.
- 11.9.3 The notice recipients and addresses designated above may be changed by written notice pursuant to this Section.
- 11.10 **Modification or amendment.** Exception as otherwise provided herein, this Agreement may be amended or modified only by a written instrument signed by the Parties' counsel.
- 11.11 **Continuing jurisdiction.** Any and all disputes arising from or related to the Settlement or this Agreement must be brought by Parties, Class Counsel, Apple Counsel and/or each member of the Settlement Class, exclusively in this Court. The Parties, Class Counsel, Apple Counsel and each member of the Settlement Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to the Settlement or this Agreement.

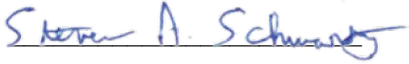
*[Signatures on next page]*

**GIRARD SHARP LLP**

By:  \_\_\_\_\_

Simon S. Grille  
601 California Street  
Suite 1400  
San Francisco, CA 94108

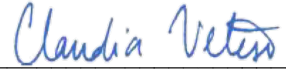
**CHIMICLES SCHWARTZ KRINER &  
DONALDSON-SMITH LLP**

By:  \_\_\_\_\_

Steven A. Schwartz  
361 West Lancaster Ave  
One Haverford Centre  
Haverford, PA 19041

*Co-Lead Counsel for Plaintiffs and the Class*

**MORRISON FOERSTER**

By:  \_\_\_\_\_

Claudia Vetesi  
425 Market Street  
San Francisco, CA 94105

*Counsel for Defendant Apple Inc.*

**APPLE INC.**

By:  \_\_\_\_\_

Katherine Adams  
Senior Vice President and General Counsel

EXHIBIT 1a

**CONFIDENTIAL ATTORNEY WORK PRODUCT**

**To:** [Class Member Email Address]  
**From:** [info@xxxx.com](mailto:info@xxxx.com)  
**Subject:** MacBook Butterfly Keyboard Class Action Settlement

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**Apple's records indicate that you are eligible for payment from a class action settlement without the need to make a claim**

A Settlement has been reached with Apple Inc. ("Apple") in a class action lawsuit alleging that the "butterfly" keyboard mechanism in certain MacBook laptops is defective, and can result in characters repeating unexpectedly; letters or characters not appearing; and/or the keys feeling "sticky" or not responding in a consistent manner.

Apple denies all of the allegations made in the lawsuit, denies that any MacBooks are defective, and denies that Apple did anything improper or unlawful. The proposed Settlement is not an admission of guilt or wrongdoing of any kind by Apple. The United States District Court for the Northern District of California approved this notice.

○ **Why am I receiving this notice?**

Apple's records indicate that you are a member of the Settlement Class and entitled to receive a payment because you: (1) purchased in the United States, other than for resale, an Apple MacBook, MacBook Pro or MacBook Air laptop model equipped with a "Butterfly" keyboard between 2015 and 2019; and (2) obtained at least two Topcase Replacements from Apple or an Authorized Service Provider. Under the terms of the Settlement, you will receive a payment if the Court approves the Settlement and it becomes final.

Your payment will be made via check and will be delivered to [XXXXXXXXXXXXX]. To confirm your address or if you would like to have your payment sent to another address, please click [here](#) or visit [www. .com](http://www. .com) and use your Claim Number XXXX or your MacBook Serial number. **You do not need to file a claim form to receive payment under the Settlement.**

**For more information and to review the full notice, please visit [www. .com](http://www. .com).**

○ **What does the Settlement provide?**

Apple has agreed to pay \$50 million into a Settlement Fund. After deducting Court-approved attorneys' fees (up to 30% of the Settlement Fund) and expenses, service awards (up to \$5,000 to each of the 12 individual class representatives), and the costs of notice and settlement administration, the net Settlement Fund will be distributed to Settlement Class Members based on the type and number of keyboard repairs they obtained, and other factors. For more information about how distributions will be made to Settlement Class Members, please visit [insert website].

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○ **What types of repairs are covered by the Settlement?**

The Settlement covers **Topcase Replacements**, which refers to the replacement of the full keyboard module (including the battery, track pad, speakers, top case, and keyboard), and **Keycap Replacements**, which refers to the replacement of one or more keycaps on a keyboard and does not involve replacement of the full keyboard module. Either repair must have been performed by Apple or an Apple Authorized Service Provider. **Group 1** Settlement Class Members received at least two Topcase Replacements. **Group 2** Settlement Class Members received a single Topcase Replacement that did not resolve their keyboard issues. **Group 3** Settlement Class Members received one of more Keycap Replacements that did not resolve their keyboard issues. According to Apple's records, **you are a Group 1 Settlement Class Member.**

○ **What are the expected payments?**

The amount of the payments for each Group will vary depending on the number of valid claims received. As a Group 1 Settlement Class Member, you will receive a payment estimated to be between \$300 and \$395. Eligible Group 2 Settlement Class Members are estimated to receive up to \$125 and eligible Group 3 Settlement Class Members are estimated to receive up to \$50. We will not know the final amounts that each Group will receive until all claims are evaluated. Please be patient.

○ **Do I have to submit a claim?**

No. As a Group 1 Settlement Class Member, you are eligible to receive a payment without the need to submit a claim.

○ **What are my other options?**

You can do nothing, exclude yourself or object. If you do nothing, you will get a check if the Settlement becomes final, but you will give up the right to sue or continue to sue Apple for any claim regarding the subject matter of the claims in this case.

If you don't want to receive an automatic payment or be legally bound by the Settlement, you must exclude yourself from it by **[date]**. Unless you exclude yourself, you won't be able to sue or continue to sue Apple for any claim regarding the subject matter of the claims in this case. If you stay in the Settlement (i.e., don't exclude yourself), you may object to it or ask for permission for you or your own lawyer to appear and speak at the Final Approval Hearing—at your own cost—but you don't have to. Objections and requests to appear are due by **[date]**. The Final Approval Hearing will be held on \_\_\_\_\_, 2022, at \_\_\_\_\_.m., in Courtroom 4, of the San Jose federal courthouse, located at 280 South 1<sup>st</sup> Street, San Jose, CA 95113, or via Zoom Webinar.

More information about your options is in the detailed notice available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or you may contact Class Counsel with any questions:



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- **Simon S. Grille.** Telephone: (415) 981-4800; email: [mackeyboard@girardsharp.com](mailto:mackeyboard@girardsharp.com)
- **Steve Schwartz.** Telephone: (610) 642-8500; email: [mackeyboard@chimicles.com](mailto:mackeyboard@chimicles.com)

You may also access the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California at any of the Court's locations between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CALL THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

**BY ORDER OF THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

To unsubscribe from this list, please click on the following link: [Unsubscribe](#)

EXHIBIT 1b

**CONFIDENTIAL ATTORNEY WORK PRODUCT**

**To:** [Class Member Email Address]

**From:** [info@xxxx.com](mailto:info@xxxx.com)

**Subject: MacBook Butterfly Keyboard Class Action Settlement**

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**If you bought a MacBook laptop sold between 2015 and 2019 equipped with a “Butterfly” keyboard, you may be eligible for payment from a class action settlement**

A Settlement has been reached with Apple Inc. (“Apple”) in a class action lawsuit alleging that the “butterfly” keyboard mechanism in certain MacBook laptops is defective, and can result in characters repeating unexpectedly; letters or characters not appearing; and/or the keys feeling “sticky” or not responding in a consistent manner.

Apple denies all of the allegations made in the lawsuit, denies that any MacBooks are defective, and denies that Apple did anything improper or unlawful. The proposed Settlement is not an admission of guilt or wrongdoing of any kind by Apple. The United States District Court for the Northern District of California approved this notice.

○ **Why am I receiving this notice?**

Apple’s records indicate that you may be a member of the Settlement Class and entitled to receive a payment. You are a member of the Settlement Class if you purchased in the United States, other than for resale, an Apple MacBook, MacBook Pro, or MacBook Air laptop model equipped with a “Butterfly” keyboard between 2015 and 2019 (the “Class Computers”) (a list of qualifying Class Computer models is available here). Apple’s records reflect that you received a qualifying keyboard repair. If the repair did not resolve your keyboard issues, you can **submit a claim to be paid from the Settlement**. A link to your claim form is available [insert hyperlink]

**For more information and to review the full notice, please visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com).**

○ **What does the Settlement provide?**

Apple has agreed to pay \$50 million into a Settlement Fund. After deducting Court-approved attorneys’ fees (up to 30% of the Settlement Fund) and expenses, service awards (up to \$5,000 to each of the 12 individual class representatives), and the costs of notice and settlement administration, the net Settlement Fund will be distributed to Settlement Class Members based on the type and number of keyboard repairs they obtained, and other factors. For more information about how distributions will be made to Settlement Class Members, please visit [insert website].

○ **What types of repairs are covered by the Settlement?**

The Settlement covers **Topcase Replacements**, which refers to the replacement of the full keyboard module (including the battery, track pad, speakers, top case, and keyboard), and **Keycap**

**CONFIDENTIAL ATTORNEY WORK PRODUCT**

**Replacements**, which refers to the replacement of one or more keycaps on a keyboard and does not involve replacement of the full keyboard module. Either repair must have been performed by Apple or an Apple Authorized Service Provider. **Group 1** Settlement Class Members received at least two Topcase Replacements. **Group 2** Settlement Class Members received a single Topcase Replacement that did not resolve their keyboard issues. **Group 3** Settlement Class Members received one or more Keycap Replacements that did not resolve their keyboard issues. According to Apple's records, **you are a Group 2 or 3 Settlement Class Member.**

- **What are the expected payments?**

The amount of the payments for each Group will vary depending on the number of valid claims received. Group 1 Settlement Class Members are estimated to receive a payment between \$300 and \$395. Eligible Group 2 Settlement Class Members are estimated to receive up to \$125 and eligible Group 3 Settlement Class Members are estimated to receive up to \$50. We will not know the final amounts that each Group will receive until all claims are evaluated. Please be patient.

- **How do I file a claim ?**

To file a claim, click here: [HYPERLINK]. Use **your Claim Number XXXX**, which will pre-populate information in Apple's records, including whether Apple's records reflect you received a Topcase or Keycap Replacement. You will be required to declare that the information in the Claim Form is accurate and that the keyboard repair did not resolve your keyboard issue. Your claim must be submitted electronically or postmarked no later than \_\_\_\_\_, **2022** in order to be considered for payment. See the Claim Form and Instructions for detailed information about what is required to submit a claim [hyperlink].

- **What are my other options?**

You can do nothing, exclude yourself, or object. If you do nothing, your rights will be affected and you won't get a payment. If you don't want to be legally bound by the Settlement, you must exclude yourself from it by **[date]**. Unless you exclude yourself, you will give up the right to sue or continue to sue Apple for any claim regarding the subject matter of the claims in this case. If you stay in the Settlement (i.e., don't exclude yourself), you may object to it or ask for permission for you or your own lawyer to appear and speak at the Final Approval Hearing—at your own cost—but you don't have to. Objections and requests to appear are due by **[date]**. The Final Approval Hearing will be held on \_\_\_\_\_, 2022, at \_\_\_\_\_.m., in Courtroom 4, of the San Jose federal courthouse, located at 280 South 1<sup>st</sup> Street, San Jose, CA 95113, or via Zoom Webinar.

More information about these options is in the detailed notice available at [www.\\_\\_\\_\\_.com](http://www.____.com), or you may contact Class Counsel with any questions:

- **Simon S. Grille.** Telephone: (415) 981-4800; email: [mackeyboard@girardsharp.com](mailto:mackeyboard@girardsharp.com)

**CONFIDENTIAL ATTORNEY WORK PRODUCT**

- **Steve Schwartz.** Telephone: (610) 642-8500; email: [mackeyboard@chimicles.com](mailto:mackeyboard@chimicles.com)

You may also access the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California at any of the Court's locations between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CALL THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

**BY ORDER OF THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

To unsubscribe from this list, please click on the following link: [Unsubscribe](#)

EXHIBIT 1c

**CONFIDENTIAL ATTORNEY WORK PRODUCT**

To: [Class Member Email Address]  
From: [info@xxxx.com](mailto:info@xxxx.com)  
Subject: MacBook Butterfly Keyboard Class Action Settlement

---

**If you bought a MacBook laptop sold between 2015 and 2019 equipped with a “Butterfly” keyboard, you may be eligible for payment from a class action settlement**

A Settlement has been reached with Apple Inc. (“Apple”) in a class action lawsuit alleging that the “butterfly” keyboard mechanism in certain MacBook laptops is defective, and can result in characters repeating unexpectedly; letters or characters not appearing; and/or the keys feeling “sticky” or not responding in a consistent manner.

Apple denies all of the allegations made in the lawsuit, denies that any MacBooks are defective, and denies that Apple did anything improper or unlawful. The proposed Settlement is not an admission of guilt or wrongdoing of any kind by Apple. The United States District Court for the Northern District of California approved this notice.

○ **Why am I receiving this notice?**

Apple’s records indicate that you may be a member of the Settlement Class and may be eligible to receive a payment. You are a member of the Settlement Class if you purchased in the United States, other than for resale, an Apple MacBook, MacBook Pro, or MacBook Air laptop model equipped with a “Butterfly” keyboard between 2015 and 2019 (the “Class Computers”) (a list of qualifying Class Computer models is available here). You are eligible to submit a claim for payment if you: (1) purchased a Class Computer; (2) obtained a qualifying keyboard repair from Apple or an Apple Authorized Service provider; and (3) the repair did not resolve your keyboard issues.

○ **What does the Settlement provide?**

Apple has agreed to pay \$50 million into a Settlement Fund. After deducting Court-approved attorneys’ fees (up to 30% of the Settlement Fund) and expenses, service awards (up to \$5,000 to each of the 12 individual class representatives), and the costs of notice and settlement administration, the net Settlement Fund will be distributed to Settlement Class Members based on the type and number of keyboard repairs they obtained, and other factors. For more information about how distributions will be made to Settlement Class Members, please visit [insert website].

○ **What types of repairs are covered by the Settlement?**

The Settlement covers **Topcase Replacements**, which refers to the replacement of the full keyboard module (including the battery, track pad, speakers, top case, and keyboard), and **Keycap Replacements**, which refers to the replacement of one or more keycaps on a keyboard and does



**CONFIDENTIAL ATTORNEY WORK PRODUCT**

not involve replacement of the full keyboard module. Either repair must have been performed by Apple or an Apple Authorized Service Provider. **Group 1** Settlement Class Members received at least two Topcase Replacements. **Group 2** Settlement Class Members received a single Topcase Replacement that did not resolve their keyboard issues. **Group 3** Settlement Class Members received one or more Keycap Replacements that did not resolve their keyboard issues. You may be a Group 2 or 3 Settlement Class Member.

○ **What are the expected payments?**

The amount of the payments for each Group will vary depending on the number of valid claims received. Group 1 Settlement Class Members are estimated to receive a payment between \$300 and \$395. Eligible Group 2 Settlement Class Members are estimated to receive up to \$125 and eligible Group 3 Settlement Class Members are estimated to receive up to \$50. We will not know the final amounts that each Group will receive until all claims are evaluated. Please be patient.

○ **How do I file a claim?**

To file a claim, click here: [HYPERLINK]. You will be required to provide reasonable documentation that you obtained a qualifying keyboard repair. You must also declare that the information in the Claim Form is accurate and that the keyboard repair did not resolve your keyboard issue. Your claim must be submitted electronically or postmarked no later than \_\_\_\_\_, **2022** in order to be considered for payment. See the Claim Form and Instructions for detailed information about what is required to submit a claim and what qualifies as reasonable documentation [hyperlink].

**What are my other options?**

You can do nothing, exclude yourself, or object. If you do nothing, your rights will be affected and you won't get a payment. If you don't want to be legally bound by the Settlement, you must exclude yourself from it by **[date]**. Unless you exclude yourself, you will give up the right to sue or continue to sue Apple for any claim regarding the subject matter of the claims in this case. If you stay in the Settlement (i.e., don't exclude yourself), you may object to it or ask for permission for you or your own lawyer to appear and speak at the Final Approval Hearing—at your own cost—but you don't have to. Objections and requests to appear are due by **[date]**. The Final Approval Hearing will be held on \_\_\_\_\_, 2022, at \_\_\_\_\_.m., in Courtroom 4, of the San Jose federal courthouse, located at 280 South 1<sup>st</sup> Street, San Jose, CA 95113, or via Zoom Webinar.

More information about these options is in the detailed notice available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or you may contact Class Counsel with any questions:

- **Simon S. Grille.** Telephone: (415) 981-4800; email: [mackeyboard@girardsharp.com](mailto:mackeyboard@girardsharp.com)
- **Steve Schwartz.** Telephone: (610) 642-8500; email: [mackeyboard@chimicles.com](mailto:mackeyboard@chimicles.com)

**CONFIDENTIAL ATTORNEY WORK PRODUCT**

You may also access the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California at any of the Court's locations between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CALL THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

**BY ORDER OF THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

To unsubscribe from this list, please click on the following link: [Unsubscribe](#)

EXHIBIT 2a

[Address]  
[Address]  
[Address]  
[Address]

**If you purchased an  
Apple MacBook,  
MacBook Pro or  
MacBook Air laptop  
model equipped with  
a “Butterfly”  
keyboard sold  
between 2015 and  
2019, you may get a  
payment from a class  
action settlement**

**Important Notice About a Class Action Lawsuit**

**<<Barcode>>**

**Claim#: A2E-<<ClaimID>>-**

**<<MailRec>>**

**«First1» «Last1»**

**«CO»**

**«Addr1» «Addr2»**

**«City», «St» «Zip»**

**«Country»**

A Settlement has been reached with Apple Inc. (“Apple”) in a class action lawsuit alleging that the “butterfly” keyboard mechanism in certain MacBook laptops is defective, and can result in characters repeating unexpectedly; letters or characters not appearing; and/or the keys feeling “sticky” or not responding in a consistent manner. Apple denies all allegations of wrongdoing.

**Who’s included?** The Settlement Class includes all purchasers in the United States, other than for resale, of an Apple MacBook, MacBook Pro, or MacBook Air laptop model equipped with a “Butterfly” keyboard sold between 2015 and 2019.

**What does the Settlement provide?** Apple has agreed to pay \$50 million into a Settlement Fund. After deducting Court-approved attorneys’ fees (up to 30% of the Settlement Fund) and expenses, service awards (up to \$5,000 to each of the 12 individual class representatives), and the costs of notice and settlement administration, the net Settlement Fund will be distributed to Settlement Class Members based on the type and number of keyboard repairs they obtained, and other factors.

The Settlement covers Topcase Replacements and Keycap Replacements. Group 1 Settlement Class Members received at least two Topcase Replacements. According to Apple’s records, **you are a Group 1 Settlement Class Member**. Under the terms of the Settlement, you will automatically receive a check estimated to be between \$300 and \$395 if the Court approves the Settlement and it becomes final. Please go to [www.WEBSITE] to confirm or update your mailing address. We will not know the final amounts until all claims are evaluated.

**What are your other options?** You can exclude yourself or object. If you do nothing, you will stay in the Settlement Class and automatically receive a check, but you will give up your right to sue or continue to sue Apple for any claim regarding the subject matter of the claims in this case. If you don’t want to receive an automatic payment or be legally bound by the Settlement, you must exclude yourself from it by **[date]**. You may also remain in the Settlement Class but object to the Settlement, and you may (but do not have to) attend the Court’s Final Approval Hearing to speak about your objection. Your objection must be filed or postmarked by **[date]**.

**For more information about the Settlement, your payment, how to exclude yourself or object, and attending the hearing, please visit the website or call the toll-free number below.**

**www. .com • 1-XXX-XXX-XXXX**

You may also access the docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California at any of the Court’s locations between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

EXHIBIT 2b

[Address]  
[Address]  
[Address]  
[Address]

**If you purchased an Apple MacBook, MacBook Pro or MacBook Air laptop model equipped with a “Butterfly” keyboard sold between 2015 and 2019, you may be eligible for payment from a class action settlement.**

**Important Notice About a Class Action Lawsuit**

**<<Barcode>>**

**Claim#: A2E-<<ClaimID>>-**

**<<MailRec>>**

**«First1» «Last1»**

**«CO»**

**«Addr1» «Addr2»**

**«City», «St» «Zip»**

**«Country»**



A Settlement has been reached with Apple Inc. (“Apple”) in a class action lawsuit alleging that the “butterfly” keyboard mechanism in certain MacBook laptops is defective, and can result in characters repeating unexpectedly; letters or characters not appearing; and/or the keys feeling “sticky” or not responding in a consistent manner. Apple denies all allegations of wrongdoing.

**Who’s included?** The Settlement Class includes all purchasers in the United States, other than for resale, of an Apple MacBook, MacBook Pro, or MacBook Air laptop model equipped with a “Butterfly” keyboard sold between 2015 and 2019.

**What does the Settlement provide?** Apple has agreed to pay \$50 million into a Settlement Fund. After deducting Court-approved attorneys’ fees (up to 30% of the Settlement Fund) and expenses, service awards (up to \$5,000 to each of the 12 individual class representatives), and the costs of notice and settlement administration, the net Settlement Fund will be distributed to Settlement Class Members based on the type and number of keyboard repairs they obtained, and other factors.

The Settlement covers Topcase Replacements and Keycap Replacements. Group 2 Settlement Class Members received a single Topcase Replacement that did not resolve their keyboard issues. Group 3 Settlement Class Members received one or more Keycap Replacements that did not resolve their keyboard issues. According to Apple’s records, **you are a Group 2 or 3 Settlement Class Member**. Under the terms of the Settlement, eligible Group 2 Class Members are estimated to receive up to \$125 and eligible Group 3 Class Members are estimated to receive up to \$50. We will not know the final amounts until all claims are evaluated.

**How do you get a payment? You must complete and submit a valid Claim Form by [date].** Go to [www.\\_\\_\\_\\_.com](http://www.____.com) or call xxx-xxx-xxxxx for the Claim Form and Instructions. Claims may be submitted online at [www.\\_\\_\\_\\_.com](http://www.____.com) or mailed to the address on the form.

**What are your other options?** You can do nothing, exclude yourself, or object. If you do nothing, your rights will be affected and you won’t receive a payment. You will give up the right to sue or continue to sue Apple for any claim regarding the subject matter of the claims in this case. If you don’t want to be legally bound by the Settlement, you must exclude yourself from it by **[date]**. You may also remain in the Settlement Class but object to the Settlement, and you may (but do not have to) attend the Court’s Final Approval Hearing to speak about your objection. Your objection must be filed or postmarked by **[date]**.

**For more information about the Settlement, your payment, how to make a claim, exclude yourself or object, and attending the hearing, please visit the website or call the toll-free number below.**

[www.\\_\\_\\_\\_.com](http://www.____.com) • 1-XXX-XXX-XXXX

You may also access the docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California at any of the Court’s locations between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

EXHIBIT 2c

[Address]  
[Address]  
[Address]  
[Address]

**If you purchased an Apple MacBook, MacBook Pro or MacBook Air laptop model equipped with a “Butterfly” keyboard sold between 2015 and 2019, you may be eligible for payment from a class action settlement.**

**Important Notice About a Class Action Lawsuit**

**<<Barcode>>**

**Claim#: A2E-<<ClaimID>>-**

**<<MailRec>>**

**«First1» «Last1»**

**«CO»**

**«Addr1» «Addr2»**

**«City», «St» «Zip»**

**«Country»**

A Settlement has been reached with Apple Inc. (“Apple”) in a class action lawsuit alleging that the “butterfly” keyboard mechanism in certain MacBook laptops is defective, and can result in characters repeating unexpectedly; letters or characters not appearing; and/or the keys feeling “sticky” or not responding in a consistent manner. Apple denies all allegations of wrongdoing.

**Who’s included?** The Settlement Class includes all purchasers in the United States, other than for resale, of an Apple MacBook, MacBook Pro, or MacBook Air laptop model equipped with a “Butterfly” keyboard sold between 2015 and 2019.

**What does the Settlement provide?** Apple has agreed to pay \$50 million into a Settlement Fund. After deducting Court-approved attorneys’ fees (up to 30% of the Settlement Fund) and expenses, service awards (up to \$5,000 to each of the 12 individual class representatives), and the costs of notice and settlement administration, the net Settlement Fund will be distributed to Settlement Class Members based on the type and number of keyboard repairs they obtained, and other factors.

The Settlement covers Topcase Replacements and Keycap Replacements. Group 2 Settlement Class Members received a single Topcase Replacement that did not resolve their keyboard issues. Group 3 Settlement Class Members received one or more Keycap Replacements that did not resolve their keyboard issues. You may be a Group 2 or 3 Settlement Class Member. Under the terms of the Settlement, eligible Group 2 Class Members are estimated to receive up to \$125 and eligible Group 3 Class Members are estimated to receive up to \$50. We will not know the final amounts until all claims are evaluated.

**How do you get a payment? You must complete and submit a valid Claim Form by [date].** You will be required to provide reasonable documentation that you obtained a qualifying keyboard repair. Go to [www.\\_\\_\\_\\_.com](http://www.____.com) or call xxx-xxx-xxxx for the Claim Form and Instructions. Claims may be submitted online at [www.\\_\\_\\_\\_.com](http://www.____.com) or mailed to the address on the form.

**What are your other options?** You can do nothing, exclude yourself, or object. If you do nothing, your rights will be affected and you won’t receive a payment. You will give up the right to sue or continue to sue Apple for any claim regarding the subject matter of the claims in this case. If you don’t want to be legally bound by the Settlement, you must exclude yourself from it by **[date]**. You may also remain in the Settlement Class but object to the Settlement, and you may (but do not have to) attend the Court’s Final Approval Hearing to speak about your objection. Your objection must be filed or postmarked by **[date]**.

**For more information about the Settlement, your payment, how to make a claim, exclude yourself or object, and attending the hearing, please visit the website or call the toll-free number below.**

[www.\\_\\_\\_\\_.com](http://www.____.com) • 1-XXX-XXX-XXXX

You may also access the docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California at any of the Court’s locations between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

EXHIBIT 3

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

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**If you bought a MacBook laptop sold between 2015 and 2019 equipped  
with a “Butterfly” keyboard,  
you may be eligible for payment from a class action settlement**

- A settlement has been reached with Apple Inc. (“Apple”) in a class action law lawsuit alleging that certain MacBook laptops sold between 2015-2019 were equipped with defective butterfly keyboards that can result in characters repeating unexpectedly; letters or characters not appearing; and/or the keys feeling “sticky” or not responding in a consistent manner. Apple denies all allegations of wrongdoing. The Settlement provides for a \$50 million fund for payments to Settlement Class Members who had the “Butterfly” keyboard on their MacBook laptop repaired, as described in this Notice.
- The two repair procedures covered by the Settlement are: (1) a Topcase Replacement, which involves replacing the entire keyboard module; and (2) a Keycap Replacement, which involves replacement of one or more keycaps.
- If Apple’s records reflect you received two Topcase Replacements, you are a **Group 1** Settlement Class Member and are eligible to receive payment without the need to submit a claim.
- If you received a single Topcase Replacement or one or more Keycap Replacements, and you declare that the repair did not resolve your keyboard issues, you are a **Group 2** or **Group 3** Settlement Class Member and must submit a claim to get a payment from the Settlement.
- The amount of the settlement payment varies depending on whether you are a Group 1, Group 2, or Group 3 Settlement Class Member. Please see the information in this Notice concerning payments.
- Visit [www.XXXXXX.com](http://www.XXXXXX.com) to make a claim. **Use your Claim ID number when making a claim.** You can find your claim ID on the email or postcard you received notifying you about the Settlement.
- You can also opt out of or object to the Settlement.
- Your rights are affected whether you act or don’t act. Please read this Notice carefully.

QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

| SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                      | DEADLINE |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| <p><b><u>GROUP 1 SETTLEMENT CLASS MEMBERS:</u></b></p> <p><b>OBTAINED AT LEAST TWO TOPCASE REPLACEMENTS FROM APPLE OR AN AUTHORIZED SERVICE PROVIDER WITHIN FOUR YEARS OF PURCHASE</b></p>                                                      | <p>Settlement Class Members in Group 1 will receive an email or postcard notifying them that they are eligible for and will receive an automatic payment.</p> <p>Group 1 Settlement Class Members should confirm or update the mailing address for their check by visiting <a href="http://www._____.com">www._____.com</a>.</p> <p>By receiving a payment, Group 1 Settlement Class Members will give up rights and be bound by the Settlement.</p> | [ ]      |
| <p><b><u>GROUP 2 SETTLEMENT CLASS MEMBERS:</u></b></p> <p><b>OBTAINED A SINGLE TOPCASE REPLACEMENT FROM APPLE OR AN AUTHORIZED SERVICE PROVIDER WITHIN FOUR YEARS OF PURCHASE, AND THE REPAIR DID NOT RESOLVE THE KEYBOARD ISSUES</b></p>       | <p>Submit a claim form declaring that the single Topcase repair did not resolve the issues with the keyboard. If Apple does not have a record of your purchase or repair, additional proof may be required.</p> <p>This is the only way to get a payment.</p> <p>By receiving a payment, Group 2 Settlement Class Members will give up rights and be bound by the Settlement.</p>                                                                    | [ ]      |
| <p><b><u>GROUP 3 SETTLEMENT CLASS MEMBERS:</u></b></p> <p><b>OBTAINED ONE OR MORE KEYCAP REPLACEMENTS FROM APPLE OR AN AUTHORIZED SERVICE PROVIDER WITHIN FOUR YEARS OF PURCHASE, AND THE REPAIR(S) DID NOT RESOLVE THE KEYBOARD ISSUES</b></p> | <p>Submit a claim form, declaring that the keycap repair(s) did not resolve the issues with the keyboard. If Apple does not have a record of your purchase or repair, additional proof may be required.</p> <p>This is the only way to get a payment.</p> <p>By receiving a payment, Group 2 Settlement Class Members will give up rights and be bound by the Settlement.</p>                                                                        | [ ]      |

QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

|                                                                       |                                                                                                                                                                                                                                                                                                        |             |
|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <b>EXCLUDE YOURSELF</b>                                               | <p>Get no payment.</p> <p>This is the only option that allows you to keep your right to bring any other claim against Apple related to the subject matter of the claims in this case.</p>                                                                                                              | [ ]         |
| <b>COMMENT ON OR OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING</b> | <p>You can write to the Court about why you like or do not like the Settlement.</p> <p>You cannot ask the Court to order a larger settlement.</p> <p>You can also ask to speak to the Court at the hearing on _____, 2022 about the fairness of the Settlement, with or without your own attorney.</p> | [ ]         |
| <b>DO NOTHING</b>                                                     | <p>Get no payment (unless you are a Group 1 Class Member).</p> <p>Give up rights and be bound by the Settlement.</p>                                                                                                                                                                                   | No Deadline |

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

QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)



**WHAT THIS NOTICE CONTAINS**

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**QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

## BASIC INFORMATION

### 1. Why did I get this Notice?

A court authorized this Notice because individuals or entities who bought Apple MacBook, MacBook Air, and MacBook Pro MacBook laptops between 2015 and 2019 that were equipped with a butterfly keyboard mechanism have the right to know about a legal settlement. If you qualify as a Settlement Class Member and you received a qualifying repair, you can get a payment.

**To find out if you qualify, see Questions 5-6 below.**

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

Judge Edward J. Davila of the United States District Court for the Northern District of California is in charge of this case. The case is *In re MacBook Keyboard Litigation*, No. 5:18-cv-02813-EJD (N.D. Cal.). The proposed Settlement also resolves a related case called *Huey v. Apple*, No. 2018-CA-004200-B, pending in the Superior Court of the District of Columbia.

### 2. What is this lawsuit about?

Plaintiffs claim that Defendant sold MacBook laptops with butterfly keyboards that are defective. Plaintiffs allege that purchasers have experienced the following keyboard issues as a result of this alleged defect:

- Letters or characters repeat unexpectedly;
- Letters or characters do not appear; and
- Key(s) feel “sticky” or do not respond in a consistent manner.

Apple denies all of the allegations made in the lawsuit, denies that any MacBooks are defective, and denies that Apple did anything improper or unlawful. Apple asserts numerous defenses to the claims in this case. The proposed settlement to resolve this case is not an admission of guilt or wrongdoing of any kind by Apple.

### 3. What is a class action?

In a class action, one or more individuals and/or entities called “class representatives” sue on behalf of themselves and other individuals and/or entities who have similar claims. This group of individuals and/or entities is called the “class,” and the individuals and/or entities in the class are called “class members.” One court resolves the issues for all class members, except for people who exclude themselves from the class.

### 4. Why is there a Settlement?

The Court did not decide in favor of the Plaintiffs or the Defendant. Instead, both sides agreed to a Settlement. That way, they avoid the costs and risks of a trial, and the allegedly affected Settlement Class Members can get benefits or compensation. The class representatives and their attorneys think the Settlement is best for the Class.

**QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

**WHO IS IN THE SETTLEMENT****5. Who is in the Settlement?**

You are a member of the Settlement Class, and are included in the Settlement, if you purchased, other than for resale, one or more of the following Apple MacBook models in the United States:

- MacBook (Retina, 12-inch, Early 2015)
- MacBook (Retina, 12-inch, Early 2016)
- MacBook (Retina, 12-inch, 2017)
- MacBook Air (Retina, 13-inch, 2018)
- MacBook Air (Retina, 13-inch, 2019)
- MacBook Pro (13-inch, 2016, Two Thunderbolt 3 Ports)
- MacBook Pro (13-inch, 2017, Two Thunderbolt 3 Ports)
- MacBook Pro (13-inch, 2019, Two Thunderbolt 3 Ports)
- MacBook Pro (13-inch, 2016, Four Thunderbolt 3 Ports)
- MacBook Pro (13-inch, 2017, Four Thunderbolt 3 Ports)
- MacBook Pro (15-inch, 2016)
- MacBook Pro (15-inch, 2017)
- MacBook Pro (13-inch, 2018, Four Thunderbolt 3 Ports)
- MacBook Pro (15-inch, 2018)
- MacBook Pro (13-inch, 2019, Four Thunderbolt 3 Ports)
- MacBook Pro (15-inch, 2019)

Together, these models are referred to as the “Class Computers” in this Notice.

The Settlement Class includes all purchasers, including individuals, corporations, and other entities. It does not include any entity in which Apple has a controlling interest; Apple’s directors, officers and employees; Apple’s legal representatives, successors, and assigns; members of the Court; and all persons who submit valid requests to be excluded from the Settlement.

**6. What should I do if I am still not sure whether I am included?**

If you are not sure whether you are included in the Settlement Class, you can ask for free help by calling the Claims Administrator at 1-8----- for more information. You can also visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

You can also quickly determine the make/model of your MacBook by selecting “About This Mac” under the Apple menu in the top left portion of the screen, or by entering the serial number from the bottom of the MacBook into this page on Apple's website: <https://checkcoverage.apple.com/>.

**QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

## THE SETTLEMENT BENEFITS

### 7. What does the Settlement provide?

Apple will pay \$50 million into a Settlement Fund. After deduction of the costs of notice and settlement administration, any award of attorneys' fees (up to 30% of the Settlement Fund), litigation costs, and any service awards for the Class Representatives (up to \$5,000 to each of the twelve individual Class Representatives), the Settlement Fund will be distributed to Settlement Class Members in accordance with a plan of allocation that accounts for the number of eligible Settlement Class Members in each of the three Settlement categories. The plan of allocation is described in detail in the Settlement Agreement available at [www.apple.com/settlement](http://www.apple.com/settlement).

The amount of the payments for each Group will vary depending on the number of valid claims received. Group 1 Settlement Class Members are estimated to receive a payment between \$300 and \$395. Eligible Group 2 Settlement Class Members are estimated to receive up to \$125 and eligible Group 3 Settlement Class Members are estimated to receive up to \$50. In addition, Apple's Keyboard Service Program (<https://support.apple.com/keyboardservice-program-for-mac-notebooks>) provides four years of protection and remains available for any Settlement Class Member who may experience future issues within four years of purchase.

We will not know the final amounts that each group will receive until all claims are evaluated. Please be patient.

### 8. Who can get money from the Settlement, and how much?

The amount Settlement Class Members will receive (and what they must do to get a payment) depends on which of the three categories they fall into and how many eligible Settlement Class Members are ultimately determined to fall into each category.

**Group 1: Multiple Topcase Replacements.** Settlement Class Members who, within four years of purchasing a Class Computer, obtained two or more Topcase Replacements, will receive a payment without the need to submit a claim form. Settlement Class Members in this group will receive an email or postcard Notice confirming eligibility for payment and requesting confirmation of contact information. It is estimated that Settlement Class Members in this group will receive an initial payment of \$300, but the actual payment could be more or less, depending on the number of eligible Settlement Class Members in each category. The maximum payment for Group 1 Settlement Class Members is \$395. A Settlement Class Member can meet the eligibility requirements for this group and receive payment if they obtain two or more Topcase Replacements anytime until [2 years from preliminary approval].

**Group 2: Single Topcase Replacement.** Settlement Class Members who, within four years of purchasing a Class Computer, obtained a single Topcase Replacement, must submit a claim to receive payment. Settlement Class Members in this Group must declare on the claim form that the repair did not resolve their keyboard issues. Settlement Class Members who obtained a single Topcase Replacement must submit a claim form by [DATE]. Settlement Class Members whose purchase or repair is not reflected in Apple's records will also need to provide proof of purchase and/or repair, as explained in the Claim Form. You can fill out and upload the claim form at [www.apple.com/settlement](http://www.apple.com/settlement). The maximum payment for Group 2 Settlement Class Members is \$125, but it may be less. The amount of the payments for Group 2 Settlement Class Members will depend on the number of eligible Settlement Class Members and valid claims for all categories.

**QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.apple.com/settlement](http://www.apple.com/settlement)**

**Group 3: Keycap Replacements.** Settlement Class Members who, within four years of purchasing a Class Computer, obtained one or more Keycap Replacements, must submit a claim to receive payment. Settlement Class Members in this Group must declare on the claim form that the repair did not resolve their keyboard issues. Settlement Class Members who obtained Keycap Replacements must submit a claim form by [DATE]. Settlement Class Members whose purchase or repair is not reflected in Apple's records will also need to provide proof of purchase and/or repair, as explained in the Claim Form. You can fill out and upload the claim form at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). The maximum payment for Group 3 Settlement Class Members is \$50, but it may be less. The amount of the payments for Group 3 Settlement Class Members will depend on the number of eligible Settlement Class Members and valid claims for all categories.

For more information on the plan of allocation, go to [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

If you own a Class Computer and did not obtain a Keycap Replacement or Topcase Replacement within the first four years of ownership, you are not eligible for payment. Apple's Keyboard Service Program (<https://support.apple.com/keyboard-service-program-for-mac-notebooks>) provides four years of protection and remains available for any Class Member who may experience future issues within four years of purchase.

For information on how to make a claim, see Question 12 and [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

9. How do I know if I received a Topcase Replacement or Keycap Replacement when I had my MacBook serviced by Apple or an authorized service provider?

If you received a record of the repair from Apple or an Apple Authorized Service Provider, it will specify whether you received a Topcase Replacement or a Keycap Replacement.

A Topcase Replacement refers to the replacement of the full keyboard module (including the battery, track pad, speakers, top case, and keyboard), performed by Apple or an Apple Authorized Service Provider.

A Keycap Replacement refers to the replacement of one or more keycaps on a keyboard, performed by Apple or an Apple Authorized Service Provider, and does not involve replacement of the full keyboard module.

If you are still unsure whether you received a Topcase Replacement or Keycap Replacement, you can call the Claims Administrator at 1-800------ for more information.

10. Am I eligible to recover payments made to unauthorized third party repair providers or other out-of-pocket expenses?

No. Settlement payments are only available to Settlement Class Members who received repairs performed by Apple or an Apple Authorized Service Provider. The Settlement does not provide reimbursement for any other out of pocket expenses.

11. What am I giving up if I stay in the Class?

Unless you exclude yourself with an opt-out request (*see* Question 19), you cannot sue, continue to sue, or be part of any other lawsuit against Apple about the issues in this case. The "Releases" section in the Settlement Agreement describes the legal claims that you give up if you remain a Settlement Class Member. The Settlement Agreement can be viewed at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

**QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

**HOW TO GET A PAYMENT—MAKING A CLAIM****12. How can I get a payment?**

Settlement Class Members in Group 1 (multiple Topcase Replacements) will receive a payment without the need to submit claim if the Settlement is approved by the Court and becomes effective.

If you are a Settlement Class Member in Group 2 or 3 (single Topcase Replacement and Keycap Replacements, respectively) you can make a claim at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). You can also contact the Claims Administrator to request a paper claim form by telephone at 1-8\_\_\_\_ or by U.S. mail at \_\_\_\_\_, and submit the claim form to the same U.S. mail address or email it to \_\_\_\_\_. Each MacBook may be the subject of only one claim. Settlement Class Members who purchased multiple Class Computers may submit a separate claim for each MacBook they purchased.

If you appear in Apple's records as having received multiple Topcase Replacements, you will receive a summary notice via email or postcard stating that you are a Group 1 Settlement Class Member. If you appear in Apple's records as having received a single Topcase Replacement or Keycap Replacement, you will receive an email or postcard with a unique Claim ID number that you can use to pre-populate an online claim form. If you do not appear in Apple's records as having received a Topcase Replacement or Keycap Replacement, you will need to provide additional information, including supporting your claim with reasonable documentation and/or information that you received a Topcase Replacement or Keycap Replacement. If you do not appear in Apple's records as having purchased a Class Computer, you will also need to provide a serial number for your device, or provide additional documentation or information showing that you purchased a Class Computer. The Claim Form and instructions will explain the information that is required and the acceptable forms of documentation or information for proof of repair and/or purchase.

**13. What is the deadline for submitting a claim form?**

For Settlement Class Members not in Group 1 who obtained a single Topcase Replacement or one or more Keycap Replacements, claim forms must be submitted electronically or postmarked no later than \_\_\_\_\_, **2022**.

**14. When will I get my payment?**

The Court will hold a hearing on \_\_\_\_\_, **2022 at 9:00 a.m.**, to decide whether to approve the Settlement. The Court may move the Final Approval Hearing to a different date or time without providing further Notice to the Class. The date and time of the Final Approval Hearing can be confirmed at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). If the Settlement is approved, there may be appeals. The appeal process can take time. If there is no appeal, your settlement benefit will be processed promptly. Please be patient.

Updates regarding the Settlement and when payments will be made will be posted at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

**15. How can I verify or update my mailing address?**

All Settlement Class Members can update their mailing address or other contact information by visiting [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or emailing \_\_\_\_\_@\_\_\_\_\_.com.

**QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

## THE LAWYERS REPRESENTING THE CLASS

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

Yes. The Court appointed the law firms of Girard Sharp LLP and Chimicles Schwartz Kriner & Donaldson-Smith LLP to represent you and the other Class Members. These firms are called Class Counsel. You will not be charged for their services.

### 17. Should I get my own lawyer?

You do not need to hire your own lawyer, as Class Counsel is working on your behalf. If you want your own lawyer, you may hire one, but you will be responsible for any payment for that lawyer's services. For example, you can ask your own lawyer to appear in court if you want someone other than Class Counsel to speak for you. You may also appear for yourself without a lawyer.

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

Class Counsel will ask the Court for an award of attorneys' fees of up to 30% of the Settlement Fund, litigation expenses, and service awards to the Class Representatives of up to \$5,000 each. The Court will determine these amounts. All of these amounts, as well as the costs associated with notice and administering the settlement, will be paid from the Settlement Fund.

A copy of Class Counsel's Motion for Attorneys' Fees and Expenses and for Named Plaintiff Service Awards will be available at [www.\\_\\_\\_\\_\\_](http://www._____.com) by \_\_\_\_\_.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from the Settlement and you want to keep your right, if any, to sue Apple on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself from—or “opting out” of—the Settlement Class.

### 19. How do I get out of the Settlement?

You may opt out online by \_\_\_\_\_ **2022** at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). Click on the “Opt Out” tab and provide the requested information. You may also opt out by mailing the Opt-Out form available at \_\_\_\_\_ or by calling 1-800-\_\_\_\_ to the Claims Administrator at

\_\_\_\_\_  
Claims Administrator  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_

Opt-out requests must be submitted electronically or postmarked no later than \_\_\_\_\_, **2022**.

### 20. If I don't opt out, can I sue Apple for the same thing later?

No. Unless you opt out, you give up the right to bring any other claim against Apple related to the subject matter of the claims in this case. You must exclude yourself from the Class if you want to try to pursue your own lawsuit.

**QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**



## 21. What happens if I opt out?

If you opt out of the Settlement, you will not have any rights as a member of the Settlement Class under the Settlement; you will not receive any payment as part of the Settlement; you will not be bound by any further orders or judgments in this case; and you will keep the right, if any, to sue on any claims against Apple related to the subject matter of the claims in this case at your own expense.

## OBJECTING TO THE SETTLEMENT

## 22. How do I tell the Court if I don't like the Settlement?

If you are a Settlement Class Member and do not opt out of the Settlement, you can ask the Court to deny approval of the Settlement by filing an objection. You can also object to the requested award of attorneys' fees and expenses to Class Counsel or service awards to the Class Representatives. The Court will consider your views. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may (but are not required to) appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

To object, you must file a document with the Court saying that you object to the proposed Settlement in *In re MacBook Keyboard Litigation*, No. 5:18-cv-02813-EJD (N.D. Cal.). Be sure to include:

- Your full name, mailing address, telephone number, email address, and signature. If you are represented by counsel, you must include your counsel's name, mailing address, email address, and telephone number;
- Proof of membership in the Settlement Class;
- A detailed statement of your objection, including all the grounds for the objection together with any evidence you think supports it;
- A statement whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class;
- A statement whether you or your counsel intends to speak at the Final Approval Hearing; and
- A list of all cases in which you or your counsel (if you have counsel) has filed an objection to a class action settlement within the past five years.



You can file the objection electronically at <https://www.cand.uscourts.gov/cm-ecf> or mail the objection by First Class U.S. Mail, so that it is submitted electronically or postmarked no later than \_\_\_\_\_, 2022, to the following address:

Clerk of the Court  
U.S. District Court for the  
Northern District of California  
280 South 1st Street  
San Jose, CA 95113  
Case No. 5:18-cv-02813-EJD

If you do not mail or electronically file the objection, you must have it delivered in person to the above boxed address, no later than \_\_\_\_\_, 2022.

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

Objecting is telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is opting out and telling the Court that you don't want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because it no longer affects you. You cannot both opt out and object to the Settlement.

**THE COURT'S FINAL APPROVAL HEARING**

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

The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2022 at \_\_\_\_m., in Courtroom 4 of the San Jose federal courthouse, located at 280 South 1st Street, San Jose, CA 95113.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to Settlement Class Members who have asked to speak at the hearing.

The Court may also decide how much Class Counsel should receive in fees and expense reimbursements. After the hearing, the Court will decide whether to approve the Settlement.

The Court may reschedule the Final Approval Hearing, or hold the hearing via Zoom Webinar, or change any of the deadlines described in this Notice. The date of the Final Approval Hearing may change without further notice to Class Members. Be sure to check the website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com), for news of any such changes. You can also access the case docket via the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

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

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you send an objection, you do not have to come to the hearing to talk

**QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but that is not necessary.

#### 26. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include a statement in your written objection (see Question 22) that you intend to appear at the hearing. Be sure to include your name, address, and signature as well.

You cannot speak at the hearing if you exclude yourself from the Class.

### IF I DO NOTHING

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

If you are a Settlement Class Member in Group 1 (multiple Topcase Replacements) and you do not exclude yourself from the Settlement, you will be mailed a payment. Please go to [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or call the Claims Administrator at 1-8XX-XXX-XXXX to verify or update your contact information.

If you are a Settlement Class Member in Groups 2 or 3 (Single Topcase Replacement and Keycap Replacements, respectively), you must submit a valid claim form to get a payment. If you do nothing, you'll be a Settlement Class Member and you'll get no money from this Settlement.

If you are a Settlement Class Member in any group and you do not exclude yourself as explained in Question 19, you will give up your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Apple related to the subject matter of this lawsuit or for any claims released by the Settlement Agreement.

### GETTING MORE INFORMATION

#### 28. Are more details about the Settlement available?

Yes. This Notice summarizes the proposed Settlement—more details are in the Settlement Agreement and other case documents. You can get a copy of these and other documents at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), by contacting Class Counsel at [mackeyboard@girardsharp.com](mailto:mackeyboard@girardsharp.com) or [mackeyboard@chimicles.com](mailto:mackeyboard@chimicles.com), by accessing the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California at any of the Court's locations between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays:

- Robert F. Peckham Federal Building and United States Courthouse, 280 South 1st Street, San Jose, CA 95113
- Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102
- Ronald V. Dellums Federal Building & United States Courthouse, 1301 Clay Street, Oakland, CA 94612
- United States Courthouse, 3140 Boeing Avenue, McKinleyville, CA 95519

QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

PLEASE DO NOT CALL THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

29. How do I get more information?

The website, [www.\\_\\_\\_\\_\\_](http://www._____.com), has the claim form, answers to questions about the Settlement, and other information to help you determine whether you are eligible for a payment.

You can also call or write to the Claims Administrator at:

\_\_\_\_\_  
Claims Administrator  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_

Class Counsel can be reached using the following contact information:

- **Simon S. Grille.** Telephone: (415) 981-4800; email: [mackeyboard@girardsharp.com](mailto:mackeyboard@girardsharp.com)
- **Steve Schwartz.** Telephone: (610) 642-8500; email: [mackeyboard@chimicles.com](mailto:mackeyboard@chimicles.com)

QUESTIONS? CALL 1-877-\_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

**EXHIBIT 4**

*In re MacBook Keyboard Litigation*  
c/o Settlement Administrator  
[Street]  
[City State Zip]  
[email address]  
[www.\_\_\_\_\_.com]

## CLAIM FORM

### CLAIM FORM INSTRUCTIONS

**— IMPORTANT —**

**PLEASE READ THE NOTICE AND INSTRUCTIONS BELOW BEFORE COMPLETING THIS CLAIM FORM**

**The Easiest Way to File is Online at [www.\[insert website URL\].com](http://www.[insert website URL].com).**

**You may also file a claim by downloading a Claim Form or calling 1-8xx-xxx-xxxx to request one, and mailing the completed Claim Form to [address]**

**ALL CLAIMS MUST BE SUBMITTED BY [DATE].**

**If you fail to return your Claim Form by the required date, your claim will be rejected, and you will be deemed to have waived all rights to receive a cash payment under this settlement. Remember: To be valid, your Claim Form must be completely and accurately filled out, signed and dated, and must include all requested information. If your Claim Form is incomplete, untimely, illegible, not signed, or contains false information, it may be rejected by the Settlement Administrator.**

**IF YOU HAVE ANY QUESTIONS ABOUT THE CLAIM FORM, THE PAYMENT OPTIONS, OR THE SETTLEMENT, PLEASE READ THE FULL NOTICE AND FAQ AVAILABLE AT [WWW.\[INSERT WEBSITE URL\].COM](http://WWW.[INSERT WEBSITE URL].COM) OR CALL THE SETTLEMENT ADMINISTRATOR AT 1-8XX-XXX-XXXX.**

### SECTION A: CLAIM ID NUMBER AND MACBOOK ID NUMBER

Please provide below the Claim Number contained in the email or on the postcard notice that you received.

**Listing your UNIQUE Claim Number will pre-populate the claim form with information contained in Apple's records. You must declare that any pre-populated information is true and correct.**

*In re MacBook Keyboard Litigation*  
 c/o Settlement Administrator  
 [Street]  
 [City State Zip]  
 [email address]  
 [www.\_\_\_\_\_.com]

**CLAIM NUMBER** - You can find your claim number on the email or postcard you received notifying you about the settlement

**IF YOU DO NOT HAVE A UNIQUE CLAIM NUMBER, BUT BELIEVE THAT YOU MAY BE ELIGIBLE TO MAKE A CLAIM, PLEASE CLICK [HERE](#) TO PROCEED.** You will need to provide the serial number or other proof of purchase, as set forth below.

**[Only one bullet will pre-populate]**

- You are in Group 1. Apple's records indicate that the serial number for your eligible MacBook device is [insert.] You do not need to submit a claim to be eligible for a payment. Please go to Section B below to confirm or update your contact information **[Skip to end after Section B]**
- You are in Group 2. Apple's records indicate that the serial number for your eligible MacBook device is [insert.] Apple's records reflect that you had a single Topcase Replacement. To be eligible for payment, you must declare that the repair did not resolve your keyboard issues, and sign and submit your completed claim form. **[Skip to Section E after Section B]**
- You are in Group 3. Apple's records indicate that the serial number for your eligible MacBook device is [insert.] Apple's records reflect that you had one or more Keycap Replacements. To be eligible for payment, you must declare that the repair(s) did not resolve your keyboard issues, and sign and submit your completed claim form. **[Skip to Section E after Section B]**
- Apple's records do not reflect that you had either a Topcase or Keycap Replacement. If you did obtain a Topcase or Keycap Replacement, you must complete this claim form and: (1) provide reasonable documentation containing information, as detailed below, showing that you obtained a Topcase or Keycap Replacement; (2) declare that the repair did not resolve your keyboard issues; and (3) sign and submit your completed claim form. **[Skip to Section D after Section B]**
- Apple's records do not reflect that you purchased an eligible Macbook or that you had either a Topcase or Keycap Replacement. To submit a claim, you must complete this claim form and (1) provide proof of purchase of an eligible Macbook; (2) provide reasonable documentation containing information, as detailed below, showing that you obtained a Topcase or Keycap Replacement; (3) declare that the repair did not resolve your keyboard issues; and (4) sign and submit a completed claim form. **[Go directly to Section C after Section B]**

In re MacBook Keyboard Litigation  
 c/o Settlement Administrator  
 [Street]  
 [City State Zip]  
 [email address]  
 [www.\_\_\_\_\_.com]

## SECTION B: NAME AND CONTACT INFORMATION

Please verify or provide your name and contact information below. If your name or contact information changes after you submit this Claim Form, please notify the Settlement Administrator of the new information.

| FIRST NAME            | LAST NAME |              |
|-----------------------|-----------|--------------|
|                       |           |              |
| <b>STREET ADDRESS</b> |           |              |
|                       |           |              |
| CITY                  | STATE     | ZIP CODE     |
|                       |           |              |
| EMAIL ADDRESS         |           | PHONE NUMBER |
|                       |           |              |

## SECTION C: Proof of Purchase

Because Apple does not have a record of you purchasing an eligible MacBook, please provide your device serial number below.

**MACBOOK SERIAL NUMBER** click [here](#) for instructions on how to find your MacBook ID

If you do not have a serial number for your device, you may upload reasonable documentation showing:

- the model purchased;
- purchase date (month/year);
- seller;
- the amount of the purchase;

Reasonable documentation includes, for example, an email from an Apple Store or retailer, receipt, or credit card statement. If your documentation does not include all of the information above, you may fill it in below.

Upload documents by clicking [here](#).

*In re MacBook Keyboard Litigation*  
c/o Settlement Administrator  
[Street]  
[City State Zip]  
[email address]  
[www.\_\_\_\_\_.com]

If you do not have a serial number or reasonable documentation of purchase containing the information above, you may still submit a claim by providing the information below:

Purchase model: \_\_\_\_\_ (for a list of eligible models, please click [here](#))

Purchase date (month/year): \_\_\_\_\_

Seller name: \_\_\_\_\_

Seller location: \_\_\_\_\_

Purchase Price: \_\_\_\_\_

**SUBMIT**

#### SECTION D: Proof of Repair

Because Apple's records do not reflect that you had either a Topcase or Keycap Replacement, you must provide reasonable documentation showing:

- You had either a Topcase or Keycap Replacement (click [\[here\]](#) for definitions of these repairs);
- The date (month/year) of your Topcase or Keycap Replacement;
- The name and location of the Apple retail store or Apple Authorized Service Provider that provided the Topcase or Keycap Replacement;
- The amount paid for the repair, if applicable.

Reasonable documentation includes, for example, receipts, emails from Apple or an Apple Authorized Service Provider, repair records, insurance or extended warranty claims, or customer service chat logs. If your documentation is missing some of the information above, you may fill it in below. But you must provide some form of documentation demonstrating that you obtained either a Topcase or Keycap Replacement.

If your documentation is missing any portion of the information listed above, you may still submit a claim by providing the information below:

Repair type: \_\_\_\_\_

Repair date (month/year): \_\_\_\_\_

Repair provider: \_\_\_\_\_

Repair provider location: \_\_\_\_\_



*In re MacBook Keyboard Litigation*  
 c/o Settlement Administrator  
 [Street]  
 [City State Zip]  
 [email address]  
 [www.\_\_\_\_\_.com]

**Amount of repair (or \$0, if you were not charged): \_\_\_\_\_**

**SUBMIT**

#### SECTION E:

☐

**I hereby declare under penalty of perjury that the keyboard repair did not resolve the keyboard issues I had with my Class Computer.** To be eligible for a payment for any claim, you must declare that the repair did not resolve your keyboard issues by checking this box.

#### SECTION F: VERIFICATION AND DECLARATION UNDER PENALTY OF PERJURY

By signing below and submitting this Claim Form, I hereby declare under penalty of perjury that I am the person identified above, and that all of the information I have provided on this Claim Form, or that was pre-populated in this Claim Form, is true and accurate.

**SIGNATURE**

**DATE**

**PRINTED NAME**

#### CLAIM FORM REMINDER CHECKLIST

1. Complete all sections of the Claim Form.
2. Sign the Claim Form.
3. Keep a copy of the completed Claim Form for your records.
4. If your name or contact information changes after you submit this Claim Form, please notify the Settlement Administrator of the new information.
5. If you have any questions or concerns about your claim, please contact the Settlement Administrator at the address below, or by emailing [insert email address].

THIS CLAIM FORM MUST BE ELECTRONICALLY SUBMITTED ON THE SETTLEMENT WEBSITE, [www.\\_\\_\\_\\_\\_.com](http://www._____.com), NO LATER THAN \_\_\_\_\_, **2022**, OR MAILED TO THE SETTLEMENT ADMINISTRATOR BY FIRST-CLASS MAIL POSTMARKED NO LATER THAN \_\_\_\_\_, **2022** to:

*In re MacBook Keyboard Litigation*  
c/o Settlement Administrator  
[Street]  
[City State Zip]  
[email address]  
[www.\_\_\_\_\_.com]

*In re MacBook Keyboard Litigation*  
c/o Settlement Administrator  
[Street]  
[City State Zip]

**EXHIBIT 5**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE MACBOOK KEYBOARD  
LITIGATION

Case No. 5:18-cv-02813-EJD-VKD

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

1 This matter comes before the Court on Plaintiffs’ Motion for Preliminary Approval of Class  
2 Action Settlement (“Motion”).

3 WHEREAS, Class Plaintiffs Zixuan Rao, Joseph Baruch, Bo Laurent, Ashley Marin, Kyle  
4 Barbaro, Steve Eakin, Michael Hopkins, Adam Lee, Kevin Melkowski, Lorenzo Ferguson, and  
5 Benjamin Gulker (collectively, “Plaintiffs”), on behalf of themselves and the Settlement Class, Plaintiff  
6 Ashton Huey, and Defendant Apple Inc. (“Apple” or “Defendant”) entered into a Settlement Agreement  
7 on July 18, 2022, which, together with the Exhibits annexed thereto (“Settlement Agreement”), sets  
8 forth the terms and conditions for a proposed global settlement of this Litigation and the Huey Litigation,  
9 and for their dismissal with prejudice upon the terms and conditions set forth therein, subject to Court  
10 approval;

11 WHEREAS, Plaintiffs, the Settlement Class, Plaintiff Huey, and Apple are collectively referred  
12 to herein as the “Parties”;

13 WHEREAS, Plaintiffs have moved the Court for an order (i) preliminarily approving the  
14 Settlement under Federal Rule of Civil Procedure 23, (ii) finding that the Court will likely be able to  
15 certify the Settlement Class for settlement purposes only, and (iii) directing notice as set forth herein;

16 WHEREAS, the Settlement before the Court is the product of extensive negotiations, including  
17 in mediations before Hon. Edward A. Infante (Ret.) and Hon. Jay C. Gandhi (Ret.);

18 WHEREAS, Defendant does not oppose the Motion;

19 WHEREAS, the Court is familiar with and has reviewed the record, the Settlement Agreement,  
20 Plaintiffs’ Notice of Motion and Motion for Preliminary Approval of Class Action Settlement, and  
21 Memorandum of Points and Authorities in Support Thereof, and the supporting Declaration, and has  
22 found good cause for entering the following Order;

23 WHEREAS, unless otherwise specified, all capitalized terms used herein that are defined in the  
24 Settlement Agreement have the same meanings as set forth in that agreement.

25 NOW THEREFORE, it is hereby ORDERED and ADJUDGED as follows:  
26  
27  
28

**Certification of Settlement Class**

1. The Court finds, upon preliminary evaluation and for purposes of the Settlement only, that the Court will likely be able to certify the following proposed pursuant to Federal Rule of Civil Procedure 23:

All persons and entities in the United States who purchased, other than for resale, one or more of the following Class Computers: MacBook (Retina, 12-inch, Early 2015), MacBook (Retina, 12-inch, Early 2016), MacBook (Retina, 12-inch, 2017), MacBook Air (Retina, 13-inch, 2018), MacBook Air (Retina, 13-inch, 2019), MacBook Pro (13-inch, 2016, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2017, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2019, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2016, Four Thunderbolt 3 Ports), MacBook Pro (13-inch, 2017, Four Thunderbolt 3 Ports), MacBook Pro (15-inch, 2016), MacBook Pro (15-inch, 2017), MacBook Pro (13-inch, 2018, Four Thunderbolt 3 Ports), MacBook Pro (15-inch, 2018), MacBook Pro (13-inch, 2019, Four Thunderbolt 3 Ports), and MacBook Pro (15-inch, 2019).

Excluded from the Settlement Class are Defendant Apple Inc., its parents, subsidiaries, affiliates, officers, directors, and employees; any entity in which Apple has a controlling interest; and all judges assigned to hear any aspect of this litigation, as well as their staff and immediate family members.

2. The Court previously certified a seven-state litigation Class and seven constituent state subclasses of purchasers of Class Computers in California, New York, Florida, Illinois, New Jersey, Washington, and Michigan under Rules 23(a) and 23(b)(3). Dkt. No. 298. The Settlement Class includes all Class Computer purchasers in the United States. *See* Fed. R. Civ. P. 23 Advisory Committee's Note to 2018 Amendment (advising that "[if] the court has already certified a class, the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted."). For purposes of settlement only, the Court concludes that, for the reasons set forth in Dkt. No. 298, the nationwide Settlement Class meets all the prerequisites of Federal Rule of Civil Procedure 23 for class certification, including numerosity, commonality, typicality, predominance of common issues, superiority, and that the Named Plaintiffs and Class Counsel are adequate representatives of the Settlement Class.

1           3.       This provisional certification of the Settlement Class shall be solely for settlement  
2 purposes, without prejudice to the parties in the event the Settlement Agreement is not finally approved  
3 by this Court or otherwise does not take effect. In the event that the Settlement Agreement is not finally  
4 approved, this provisional certification shall be vacated and shall have no effect.

5                               **Preliminary Approval of the Settlement**

6           4.       The Court finds that the Settlement is the product of non-collusive arm's-length  
7 negotiations between experienced counsel who were thoroughly informed of the strengths and  
8 weaknesses of the Action, including through discovery and motion practice, and whose negotiations  
9 were supervised by experienced mediators. The terms of the Settlement do not improperly grant  
10 preferential treatment to any segment or member of the Settlement Class and fall within the range of  
11 possible approval as fair, reasonable, and adequate.

12          5.       The Court hereby preliminarily approves the Settlement, including as memorialized in the  
13 Settlement Agreement, subject to further consideration at the Final Fairness Hearing to be conducted as  
14 described below.

15                               **Manner and Form of Notice**

16          7.       The Court approves, as to their form and content, the Notices and Claim Form  
17 substantially in the form of Exhibits 1a-c, 2a-c, 3, and 4 to the Settlement Agreement. The proposed  
18 notice plan, which includes direct notice via email and postcard, and website notice, will provide the  
19 best notice practicable under the circumstances. The Notices and their manner of transmission are  
20 reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the  
21 Action, the proposed Settlement and its effects (including the Released Claims), the anticipated motion  
22 for attorneys' fees, costs, and expenses and for service awards, and their rights, including to participate  
23 in, opt out of, or object to any aspect of the proposed Settlement; constitute due, adequate and sufficient  
24 notice to the Settlement Class; and satisfy the requirements of Rule 23 of the Federal Rules of Civil  
25 Procedure, due process, and all other applicable law and rules. The date and time of the Final Fairness  
26 Hearing shall be included in the Notice before dissemination.

27          8.       The Court hereby appoints JND Legal Administration to serve as the Settlement  
28 Administrator to supervise and administer the notice procedures, establish and operate a settlement

website (the “Website”), administer the claims processes, distribute cash payments according to the processes and criteria set forth in the Settlement Agreement and the incorporated plan of allocation, and perform any other duties of the Settlement Administrator that are reasonably necessary or provided for in the Settlement Agreement.

9. All reasonable expenses incurred in identifying and notifying members of the Settlement Class, as well as in administering the Settlement Fund, shall be paid from the Settlement Fund as set forth in the Settlement Agreement. In the event the Settlement is not approved by the Court or otherwise fails to become effective, Class Counsel shall not be obligated to repay amounts paid to, or that are billed by, the Settlement Administrator for Settlement Administration or Notice.

11. Under the Settlement, Settlement Class Members who obtained at least two Topcase Replacements within four years of purchase and before two years from preliminary approval, will be paid automatically and will not be required to submit a Claim Form. All other Settlement Class Members who wish to participate in the Settlement shall complete and submit a Claim Form in accordance with the instructions contained therein. All Claim Forms must be postmarked or submitted electronically within 120 days after entry of this Order as set forth in the Settlement Agreement. Within sixty (60) days of the deadline to submit claims, Class Counsel and Apple shall meet and confer regarding the status of any late claims.

12. No later than 25 days after entry of this Order, the Settlement Administrator shall begin sending the Notice, substantially in the form of Exhibits 1a-c, 2a-c, and 3 to the Settlement Agreement, via email to all members of the Settlement Class who have been and can be identified with reasonable effort, and shall issue Supplemental Postcard Notice as set forth in the Settlement Agreement. The Settlement Administrator shall also publish the Website and post the Notice and Claim Form thereon on the first date that the Notice is sent to members of the Settlement Class. Notice shall be substantially complete no later than 60 days after entry of this Order.

14. The dates provided for herein may be extended by Order of the Court, for good cause shown, without further notice to the Settlement Class.

#### **The Final Fairness Hearing**

17. The Court will hold a Final Fairness Hearing on \_\_\_\_\_, at the United States



District Court for the Northern District of California, 280 South First Street, San Jose, CA 95113, Courtroom 4 – 5th Floor for the following purposes: (i) to finally determine whether the Settlement Class satisfies the applicable requirements for certification under Federal Rules of Civil Procedure 23(a) and 23(b)(3); (ii) to determine whether the Settlement should be approved as fair, reasonable, and adequate and in the best interests of the Settlement Class; (iii) to consider Class Counsel’s application for an award of attorneys’ fees, costs, and expenses and for service awards to the representative Plaintiffs; and (iv) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

18. Class Counsel’s application for an award of attorneys’ fees, expenses, and costs and for service awards will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. Any appeal from any order relating solely to Class Counsel’s application for an award of attorneys’ fees, costs, and expenses, and/or to Class Counsel’s application for service awards, or any reversal or modification of any such order, shall not operate to terminate or cancel the Settlement or to affect or delay the finality of a judgment approving the Settlement.

19. Papers in support of final approval of the Settlement and Class Counsel’s application for attorneys’ fees, expenses and costs and for service awards shall be filed no later than 60 days after entry of this Order. Any Reply in support of final approval of the Settlement or Class Counsel’s application for attorneys’ fees, expenses and costs and for service awards shall be filed no later than 120 days after entry of this Order.

**Objections and Appearances at the Final Fairness Hearing**

20. Any Settlement Class Member may appear at the Final Fairness Hearing and show cause why the proposed Settlement should or should not be approved as fair, reasonable, and adequate; why judgment should or should not be entered; or to comment on or oppose Class Counsel’s application for attorneys’ fees, costs, and expenses or Class Counsel’s application for service awards. No person or entity shall be heard or entitled to contest the approval of the Settlement, or if approved, the judgment to be entered approving the Settlement, or Class Counsel’s application for an award of attorneys’ fees, costs, and expenses and for service awards, unless that person’s objection is received by the Clerk of the United States District Court for the Northern District of California within 95 days after entry of this

Order (the “Objection Deadline”). Objections must include (a) the Settlement Class Member’s full name, mailing address, telephone number, email address, and signature; (b) if represented by counsel, the Settlement Class Member’s counsel’s name, mailing address, email address, and telephone number; (c) proof of membership in the Class; (d) a detailed statement of the objection, including all the grounds for the objection together with any evidence the Settlement Class Member thinks supports it; (e) a statement whether the objection applies only to the Settlement Class Member, to a specific subset of the Class, or to the entire Class; (f) a statement whether the Settlement Class Member or their counsel intends to speak at the Final Approval Hearing; and (g) a list of all cases in which the Settlement Class Member or their counsel has filed an objection to a class action settlement within the past five years.

21. Any Settlement Class Member who does not make his, her, or its objection in the time and manner provided for herein shall be deemed to have waived such objection and shall forever be barred from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, and to Class Counsel’s application for an award of attorneys’ fees, costs, and expenses and for service awards. By objecting, or otherwise requesting to be heard at the Final Fairness Hearing, a person shall be deemed to have submitted to the jurisdiction of the Court with respect to the objection or request to be heard and the subject matter of the Settlement, including but not limited to enforcement of the terms of the Settlement.

22. Attendance at the Final Fairness Hearing is not necessary, but persons wishing to be heard orally in connection with approval of the Settlement, including the plan of allocation, and/or the application for an award of attorneys’ fees, costs, and expenses and for service awards must indicate in their written objection their intention to appear at the hearing. If an objector hires an attorney for the purposes of making an objection, the attorney must file a notice of appearance with the Court by the Objection Deadline.

#### **Exclusion from the Settlement Class**

23. Any requests for exclusion are due no later than 95 days after entry of this Order (“Exclusion Deadline”). Any person or entity who would otherwise be a member of the Settlement Class who wishes to be excluded from the Settlement Class must notify the Settlement Administrator in writing of that intent by submitting an Opt-Out form, available on the Settlement Website, either (i) by

1 U.S. mail postmarked no later than the Exclusion Deadline; or (ii) by submission on the Settlement  
2 Website no later than the Exclusion Deadline. Any person or entity who is a member of the Settlement  
3 Class and who validly and timely requests exclusion from the Settlement shall not be a Settlement Class  
4 Member; shall not be bound by the Settlement Agreement; shall not be eligible to apply for or receive  
5 any benefit under the terms of the Settlement Agreement; and shall not be entitled to submit an Objection  
6 to the Settlement.

7 24. Any member of the Settlement Class who does not notify the Settlement Administrator of  
8 his, her, or its intent to be excluded from the Settlement Class in the manner stated herein shall be  
9 deemed to have waived his or her right to be excluded from the Settlement Class. If the Court approves  
10 the Settlement, any such person or entity shall forever be barred from requesting exclusion from the  
11 Settlement Class in this or any other proceeding, and shall be bound by the Settlement and the judgment,  
12 including the release of the Released Claims against the Releasees provided for in the Settlement  
13 Agreement, and the Final Order and Judgment.

#### 14 **Termination of the Settlement**

15 25. If the Settlement fails to become effective in accordance with its terms, or if the Final  
16 Order and Judgment is not entered or is reversed or vacated on appeal, this Order shall be null and void,  
17 the Settlement Agreement shall be deemed terminated, and the Parties shall return to their positions  
18 without any prejudice, as provided for in the Settlement Agreement.

#### 19 **Limited Use of This Order**

20 26. The fact and terms of this Order or the Settlement, all negotiations, discussions, drafts and  
21 proceedings in connection with this Order or the Settlement, and any act performed or document signed  
22 in connection with this Order or the Settlement, shall not, in this or any other Court, administrative  
23 agency, arbitration forum, or other tribunal, constitute an admission, or evidence, or be deemed to create  
24 any inference (i) of any acts of wrongdoing or lack of wrongdoing, (ii) of any liability on the part of  
25 Defendant to Plaintiffs, the Settlement Class, or anyone else, (iii) of any deficiency of any claim or  
26 defense that has been or could have been asserted in this Action, (iv) of any damages or absence of  
27 damages suffered by Plaintiffs, the Settlement Class, or anyone else, or (v) that any benefits obtained by  
28 the Settlement Class under the Settlement represent the amount that could or would have been recovered

from Defendant in this Action if it were not settled at this time. The fact and terms of this Order or the Settlement, and all negotiations, discussions, drafts, and proceedings associated with this Order or the Settlement, including the judgment and the release of the Released Claims provided for in the Settlement Agreement, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum, or other tribunal, except as necessary to enforce the terms of this Order, the Final Order and Judgment, and/or the Settlement.

### **Reservation of Jurisdiction**

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

28. All discovery and pretrial and trial proceedings and deadlines are vacated until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

### **Schedule and Deadlines**

29. The Court sets the following schedule for further Settlement-related proceedings:

| Event                                                                                                                                                                      | [Proposed] Deadline                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| Class Action Fairness Act notice to state and federal officials, under 28 U.S.C. § 1715                                                                                    | Within 10 days after filing of the motion for preliminary approval |
| Notice Date                                                                                                                                                                | No later than 25 days after entry of preliminary approval order    |
| Notice to be substantially completed                                                                                                                                       | No later than 60 days after entry of preliminary approval order    |
| Plaintiffs to move for final approval of the settlement                                                                                                                    | 60 days after entry of preliminary approval order                  |
| Plaintiffs to move for attorneys' fees, expenses, and service awards                                                                                                       | 60 days after entry of preliminary approval order                  |
| Deadline for the submission of objections and requests for exclusion, and opposition or objections to Plaintiffs' motion for attorneys' fees, expenses, and service awards | 95 days after entry of preliminary approval order                  |

| Event                                                                                                                                          | [Proposed] Deadline                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Reply briefs in support of final approval and motion for attorneys' fees, expenses, and service awards, and responses to any timely objections | 120 days after entry of preliminary approval order          |
| Deadline to file a claim                                                                                                                       | 120 days after entry of preliminary approval order          |
| Final Fairness Hearing                                                                                                                         | At least 130 days after entry of preliminary approval order |

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
 THE HONORABLE EDWARD J. DAVILA  
 UNITED STATES DISTRICT JUDGE

EXHIBIT 6

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE MACBOOK KEYBOARD  
LITIGATION

Case No. 5:18-cv-02813-EJD-VKD  
**[PROPOSED] FINAL APPROVAL ORDER**

**[PROPOSED] FINAL APPROVAL ORDER  
CASE NO. 5:18-CV-02813-EJD-VKD**

1 This matter came before the Court for hearing pursuant to the Order Granting Plaintiffs' Motion  
 2 for Preliminary Approval of Class Action Settlement, dated \_\_\_\_ ("Preliminary Approval Order"), on  
 3 the motion of Plaintiffs Zixuan Rao, Joseph Baruch, Bo Laurent, Ashley Marin, Kyle Barbaro, Steve  
 4 Eakin, Michael Hopkins, Adam Lee, Kevin Melkowski, Lorenzo Ferguson, and Benjamin Gulker  
 5 (collectively, "Plaintiffs") for approval of proposed class action settlement with Defendant Apple Inc.  
 6 ("Apple" or "Defendant"). Due and adequate notice having been given of the Settlement as required by  
 7 the Preliminary Approval Order, the Court having considered all papers filed and proceedings conducted  
 8 herein, and good cause appearing therefor, it is hereby **ORDERED, ADJUDGED** and **DECREED** as  
 9 follows:

10 1. This Final Approval Order incorporates by reference the definitions in the Settlement  
 11 Agreement with Defendant dated July 18, 2022 (the "Agreement"), and all defined terms used herein  
 12 that are defined in the Settlement Agreement have the same meanings ascribed to them in the Agreement.

13 2. This Court has jurisdiction over the subject matter of the Action and over all Parties  
 14 thereto, and venue is proper in this Court.

15 3. The Court reaffirms and makes final its provisional findings, rendered in the Preliminary  
 16 Approval Order, that, for purposes of the Settlement only, all prerequisites for maintenance of a class  
 17 action set forth in Federal Rules of Civil Procedure 23(a) and (b)(3) are satisfied. The Court accordingly  
 18 certifies the following Settlement Class:

19 All persons and entities in the United States who purchased, other than for  
 20 resale, one or more of the following Class Computers: MacBook (Retina, 12-inch, Early 2015), MacBook (Retina, 12-inch, Early 2016), MacBook  
 21 (Retina, 12-inch, 2017), MacBook Air (Retina, 13-inch, 2018), MacBook  
 22 Air (Retina, 13-inch, 2019), MacBook Pro (13-inch, 2016, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2017, Two Thunderbolt 3  
 23 Ports), MacBook Pro (13-inch, 2019, Two Thunderbolt 3 Ports), MacBook  
 24 Pro (13-inch, 2016, Four Thunderbolt 3 Ports), MacBook Pro (13-inch,  
 25 2017, Four Thunderbolt 3 Ports), MacBook Pro (15-inch, 2016), MacBook  
 26 Pro (15-inch, 2017), MacBook Pro (13-inch, 2018, Four Thunderbolt 3  
 27 Ports), MacBook Pro (15-inch, 2018), MacBook Pro (13-inch, 2019, Four  
 28 Thunderbolt 3 Ports), and MacBook Pro (15-inch, 2019).



1           4. Excluded from the Settlement Class are Defendant Apple Inc. (“Apple”), its parents,  
2 subsidiaries, affiliates, officers, directors, and employees; any entity in which Apple has a controlling  
3 interest; and all judges assigned to hear any aspect of this litigation, as well as their staff and immediate  
4 family members.

5           5. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby grants final approval  
6 of the Settlement and finds that it is, in all respects, fair, reasonable, and adequate and in the best interests  
7 of the Settlement Class.

8           6. The Court finds that notice of this Settlement was given to Settlement Class Members in  
9 accordance with the Preliminary Approval Order and constituted the best notice practicable of the  
10 proceedings and matters set forth therein, including the Settlement, to all Persons entitled to such notice,  
11 and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.  
12 The Court further finds that the notification requirements of the Class Action Fairness Act, 28 U.S.C.  
13 § 1715, have been met.

14           7. The Court directs the Parties and the Settlement Administrator to implement the  
15 Settlement according to its terms and conditions and the Final Approval Order.

16           8. Upon the Effective Date, Releasing Persons shall be deemed to have, and by operation of  
17 this Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released  
18 Persons from all Released Claims.

19           9. The persons and entities identified in Exhibit 1 hereto requested exclusion from the  
20 Settlement Class as of the Exclusion Deadline. These persons and entities shall not share in the benefits  
21 of the Settlement, and this Final Order and Judgment does not affect their legal rights to pursue any  
22 claims they may have against Apple. All other members of the Settlement Class are hereinafter barred  
23 and permanently enjoined from prosecuting any Released Claims against Apple in any court,  
24 administrative agency, arbitral forum, or other tribunal.

25           10. Neither Class Counsel’s application for attorneys’ fees, reimbursement of litigation  
26 expenses, and service awards for Plaintiffs, nor any order entered by this Court thereon, shall in any way  
27 disturb or affect this Judgment, and all such matters shall be treated as separate from this Order or the  
28 Judgment entered herein.

11. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement, is or may be deemed to be or may be used as an admission of, or evidence of, (a) the validity of any Released Claim, (b) any wrongdoing or liability of Apple, or (c) any fault or omission of Apple in any proceeding in any court, administrative agency, arbitral forum, or other tribunal. To the extent permitted by law, neither the Settlement Agreement, the Settlement, this Order, the Judgment, any of their terms or provisions, nor any of the negotiations or proceedings connected with them, shall be offered as evidence or received in evidence or used in any way in any pending or future civil, criminal, or administrative action or any other proceeding to establish any liability or wrongdoing of, or admission by Apple. Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit the use of this Order or the Judgment in a proceeding to consummate or enforce the Settlement Agreement or Judgment, or to defend against the assertion of Released Claims in any other proceeding. All other relief not expressly granted to the Settlement Class Members is denied.

12. No Settlement Class Member or any other person will have any claim against Apple, Plaintiffs, Class Counsel, or the Settlement Administrator arising from or relating to the Settlement or actions, determinations or distributions made substantially in accordance with the Settlement or Orders of the Court.

13. Without affecting the finality of this Order or the Judgment entered herein, this Court reserves exclusive jurisdiction over all matters related to administration, consummation, enforcement, and interpretation of the Settlement, and this Final Order and the Judgment entered herein, including (a) distribution or disposition of the Settlement Fund; (b) further proceedings, if necessary, on the application for attorneys' fees, reimbursement of litigation expenses, and service awards for Plaintiffs; and (c) the Parties for the purpose of construing, enforcing, and administering the Settlement. If any Party fail(s) to fulfill its or their obligations under the Settlement, the Court retains authority to vacate the provisions of this Judgment releasing, relinquishing, discharging, barring and enjoining the prosecution of, the Released Claims against the Releasees, and to reinstate the Released Claims against the Releasees.

14. If the Settlement does not become effective, then this Order and any Judgment entered herein shall be rendered null and void to the extent provided by and in accordance with the Agreement

1 and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith  
2 shall be null and void to the extent provided by and in accordance with the Agreement.

3 15. The Court finds, pursuant to Rules 54(a) and (b) of the Federal Rules of Civil Procedure,  
4 that Final Judgment of Dismissal with prejudice as to the Defendants (“Judgment”) should be entered  
5 forthwith and further finds that there is no just reason for delay in the entry of the Judgment, as Final  
6 Judgment, in accordance with the Settlement Agreement.

7  
8 **IT IS SO ORDERED.**

9  
10 DATED: \_\_\_\_\_  
11 THE HONORABLE EDWARD J. DAVILA  
12 UNITED STATES DISTRICT JUDGE  
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**EXHIBIT 7**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE MACBOOK KEYBOARD  
LITIGATION

Case No. 5:18-cv-02813-EJD-VKD

**[PROPOSED] FINAL JUDGMENT**

**[PROPOSED] FINAL JUDGMENT  
CASE NO. 5:18-CV-02813-EJD-VKD**

**[PROPOSED] FINAL JUDGMENT**

For the reasons set forth in this Court's Final Approval Order, in the above-captioned matter as to the following class of persons:

All persons and entities in the United States who purchased, other than for resale, one or more of the following Class Computers: MacBook (Retina, 12-inch, Early 2015), MacBook (Retina, 12-inch, Early 2016), MacBook (Retina, 12-inch, 2017), MacBook Air (Retina, 13-inch, 2018), MacBook Air (Retina, 13-inch, 2019), MacBook Pro (13-inch, 2016, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2017, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2019, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2016, Four Thunderbolt 3 Ports), MacBook Pro (13-inch, 2017, Four Thunderbolt 3 Ports), MacBook Pro (15-inch, 2016), MacBook Pro (15-inch, 2017), MacBook Pro (13-inch, 2018, Four Thunderbolt 3 Ports), MacBook Pro (15-inch, 2018), MacBook Pro (13-inch, 2019, Four Thunderbolt 3 Ports), and MacBook Pro (15-inch, 2019).

Excluded from the Settlement Class are Defendant Apple Inc. ("Apple"), its parents, subsidiaries, affiliates, officers, directors, and employees; any entity in which Apple has a controlling interest; and all judges assigned to hear any aspect of this litigation, as well as their staff and immediate family members.

**JUDGMENT IS HEREBY ENTERED**, pursuant to Federal Rule of Civil Procedure 58, as to the above-specified class of persons and entities, Plaintiffs Zixuan Rao, Joseph Baruch, Bo Laurent, Ashley Marin, Kyle Barbaro, Steve Eakin, Michael Hopkins, Adam Lee, Kevin Melkowski, Lorenzo Ferguson, Benjamin Gulker, and Ashton Huey (collectively "Plaintiffs" or "Class Representatives") and Defendant Apple Inc. ("Apple") on the terms and conditions of the Settlement Agreement and Release (the "Settlement Agreement") approved by the Court's Final Approval Order, dated \_\_\_\_\_.

1. The Court, for purposes of this Final Judgment, adopts the terms and definitions set forth in the Settlement Agreement incorporated into the Final Approval Order.

2. All Released Claims of the Releasing Persons are hereby released as against Apple and the Released Persons, as defined in the Settlement Agreement.

3. The claims of Plaintiffs and the Settlement Class Members are dismissed with prejudice in accordance with the Court's Final Approval Order.

6           6.       The Court finds, pursuant to Rule 54(a) of the Federal Rules of Civil Procedure, that this  
7 Final Judgment should be entered and that there is no just reason for delay in the entry of this Final  
8 Judgment as to Plaintiffs, the Settlement Class Members, and Apple. Accordingly, the Clerk is hereby  
9 directed to enter Judgment forthwith.

12  
13 **JUDGMENT ENTERED** this \_\_\_\_\_.

|    |  |
|----|--|
| 18 |  |
| 19 |  |

1 Daniel C. Girard (SBN 114826)

2 Jordan Elias (SBN 228731)

3 Adam E. Polk (SBN 273000)

4 Simon S. Grille (SBN 294914)

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9 Steven A. Schwartz (*pro hac vice*)

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*Class Counsel*

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

IN RE: MACBOOK KEYBOARD  
LITIGATION

Case No. 5:18-cv-02813-EJD-VKD

**JOINT DECLARATION OF SIMON S.  
GRILLE AND STEVEN A. SCHWARTZ  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Judge: Hon. Edward J. Davila

Date: January 19, 2023

Time: 9:00 a.m.

Courtroom: 4 – 5th Floor



1 We, Simon S. Grille of Girard Sharp LLP, and Steven A. Schwartz of Chimicles Schwartz  
2 Kriner & Donaldson-Smith LLP, declare as follows:

3 1. Simon S. Grille is a partner of Girard Sharp LLP (“Girard Sharp”), and one of the  
4 attorneys of record for Plaintiffs. Mr. Grille submits this declaration in support of Plaintiffs’ Motion  
5 for Preliminary Approval of Class Action Settlement. He submits this declaration based on personal  
6 knowledge, and if called to do so, could testify to the matters contained herein.

7 2. Steven A. Schwartz is a partner of Chimicles Schwartz Kriner & Donaldson-Smith LLP  
8 (“CSKDS”), and one of the attorneys of record for Plaintiffs. Mr. Schwartz submits this declaration in  
9 support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. He submits this  
10 declaration based on personal knowledge, and if called to do so, could testify to the matters contained  
11 herein.

### 12 THE LITIGATION

13 3. On May 11, 2018, Girard Sharp and CSKDS filed a class action complaint against Apple  
14 Inc. on behalf of Plaintiffs Kyle Barbaro and Zixuan Rao. The complaint alleged that MacBook  
15 laptops equipped with a “butterfly keyboard” contain a defect that causes the keys to become  
16 unresponsive or stop correctly registering keystrokes when small particles of dust or debris accumulate  
17 beneath them.

18 4. After filing the initial complaint, Girard Sharp and CSKDS continued to investigate and  
19 develop the case. We interviewed numerous consumers whose MacBooks’ keys stopped working  
20 appropriately. With the assistance of an engineering expert, we researched the technical source of the  
21 alleged defect and its impact on Plaintiffs and class members.

22 5. Girard Sharp and CSKDS served Apple with document requests in August 2018. We  
23 drafted, negotiated with Apple, and filed a stipulated protective order and an order governing the  
24 handling of electronically-stored information. We also submitted a time-reporting protocol for all  
25 Plaintiffs’ counsel. On September 24, 2018, following an Initial Case Management Conference, the  
26 Court appointed Girard Sharp and CSKDS as interim co-lead counsel under Rule 23(g).

27 6. On October 11, 2018, we filed a Consolidated Complaint, which included newly  
28 developed facts and evidence.

1           7. Apple moved to dismiss the Consolidated Complaint on December 3, 2018. We opposed  
2 the motion on January 14, 2019. The Court held a hearing on February 21 and then issued an Order  
3 Granting in Part and Denying in Part the Motion to Dismiss on April 22, 2019.

4           8. On May 13, 2019, as permitted under the Court's Order, we filed the First Amended  
5 Consolidated Complaint. Apple moved to dismiss the FAC on June 4, and we again opposed the  
6 motion. The Court held a hearing on November 21, and the next day, the Court issued an Order  
7 denying Apple's second motion to dismiss.

8           9. On July 2, 2020, after the Court granted Plaintiffs' contested motion to amend the  
9 complaint, we filed the operative Second Amended Complaint.

10          10. On July 16, 2020, Apple filed a third motion to dismiss, challenging Plaintiffs' claims  
11 for equitable relief. Plaintiffs opposed the motion on July 30. The Court granted the motion on  
12 October 13, 2020, dismissing with prejudice Plaintiffs' UCL claim and Plaintiffs' remaining claims to  
13 the extent they sought an injunction, restitution, or other equitable relief.

14          11. On August 14, 2020, Plaintiffs moved for class certification. On September 29, Apple  
15 opposed the motion and filed motions to strike the expert opinions of Plaintiffs' experts, Dr. Hal  
16 Singer and Dr. David Niebuhr. On February 4, 2021 the Court held a hearing on Plaintiffs' Motion for  
17 Class Certification and Apple's Motions to Strike. The Court granted Plaintiffs' Motion for Class  
18 Certification on March 8. The Court simultaneously granted Apple's Motion to Strike the expert  
19 opinion of Dr. David Niebuhr and granted in part and denied in part Apple's Motion to Strike the  
20 expert opinions of Dr. Hal Singer.

21          12. On March 22, 2021 Apple filed a Petition for Permission to Appeal Order Granting  
22 Class Certification Under Rule 23(f) with the Ninth Circuit. Plaintiffs opposed Apple's petition on  
23 April 1. On October 12, the Ninth Circuit denied Apple's petition.

24          13. Plaintiffs served merits expert reports on April 13, Apple served rebuttal expert reports  
25 on May 13, and Plaintiffs served reply expert reports on May 27, 2021.

26          14. Apple filed its Answer to the SAC on June 2, 2021.

27          15. On July 15, Apple filed motions to exclude the opinions of Plaintiffs' experts Dr. Hal  
28 Singer, Dr. David Niebuhr, and Mr. Charles Curley. Plaintiffs filed oppositions to each of these

1 motions on August 12, and Apple replied in support of its motions on August 26. The Court denied all  
2 of Apple's motions to exclude Plaintiffs' experts on January 25, 2022.

3 16. Over the course of this litigation, we also briefed and appeared before Judge DeMarchi  
4 concerning several discovery disputes.

5 17. Girard Sharp and CSKDS have conducted extensive discovery during the case thus far.  
6 Working collaboratively, we:

- 7 a. Reviewed, analyzed, and coded approximately 1.2 million pages of documents  
8 produced by Apple, and 1,237 pages produced by non-parties;
- 9 b. served four sets of document requests and three sets of interrogatories on Apple;
- 10 c. served ten subpoenas *duces tecum* on non-party resellers and repair providers;
- 11 d. negotiated document production with Apple's counsel, including with regard to  
12 search terms and custodians for the production of electronically stored information;
- 13 e. negotiated multiple rounds of supplemental responses to Plaintiffs'  
14 interrogatories, which responses included information about sales volume and repair rates;
- 15 f. deposed 15 Apple witnesses, including its Rule 30(b)(6) designees, between  
16 October 30, 2019 and April 30, 2021;
- 17 g. prepared responses to Apple's discovery requests on behalf of each Plaintiff,  
18 including responses to 19 document requests, 8 interrogatories, and a request for inspection;
- 19 h. gathered, reviewed, and produced Plaintiffs' documents;
- 20 i. retained and worked with technical and damages experts;
- 21 j. defended each Plaintiff's deposition (11 total);
- 22 k. defended 5 depositions of Plaintiffs' experts;
- 23 l. took 7 depositions of Apple's experts; and
- 24 m. communicated with many absent class members throughout the litigation.

25 18. The Court held a Trial Setting Conference on January 27, 2022 and then set a trial date  
26 of March 21, 2023.

## SETTLEMENT NEGOTIATIONS

19. The parties began discussing settlement in the spring of 2020. Judge Gandhi (ret.) of JAMS conducted full-day mediation sessions with the parties in June and August 2020. The parties then continued to engage in settlement discussions under Judge Gandhi's supervision leading up to the February 4, 2021 class hearing, but reached an impasse.

20. The parties did not re-engage on settlement until June 2021, after the Court issued its class certification decision. The parties exchanged multiple proposals and counter-proposals but made limited progress. After the Court denied Apple's *Daubert* motions, the parties appeared before Judge Infante (ret.) of JAMS for a third mediation, on February 8, 2022. With Judge Infante's assistance, the parties reached agreement in principle at the mediation (including the \$50 million amount and the plan of allocation) and signed a term sheet on February 10. The parties then negotiated the settlement agreement and executed it on July 18, 2022KS.

## SETTLEMENT TERMS

21. The proposed Settlement Class consists of all persons and entities in the United States who purchased, other than for resale, one or more of the following Class Computers: MacBook (Retina, 12-inch, Early 2015), MacBook (Retina, 12-inch, Early 2016), MacBook (Retina, 12-inch, 2017), MacBook Air (Retina, 13-inch, 2018), MacBook Air (Retina, 13-inch, 2019), MacBook Pro (13-inch, 2016, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2017, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2019, Two Thunderbolt 3 Ports), MacBook Pro (13-inch, 2016, Four Thunderbolt 3 Ports), MacBook Pro (13-inch, 2017, Four Thunderbolt 3 Ports), MacBook Pro (15-inch, 2016), MacBook Pro (15-inch, 2017), MacBook Pro (13-inch, 2018, Four Thunderbolt 3 Ports), MacBook Pro (15-inch, 2018), MacBook Pro (13-inch, 2019, Four Thunderbolt 3 Ports), and MacBook Pro (15-inch, 2019). These are the same MacBooks that are subject to Apple's Keyboard Service Program ("KSP") and at issue in Plaintiffs' operative complaint.

22. The Settlement Class excludes Apple; any entity in which Apple has a controlling interest; Apple's directors, officers, and employees; Apple's legal representatives, successors, and assigns; all judges assigned to this case and any members of their immediate families; the Parties' counsel in this litigation; and all persons who validly request exclusion from the Settlement Class.

23. Under the Settlement, Apple will pay \$50,000,000 to create a non-reversionary settlement fund for Settlement Class Members. Notice costs, administration expenses, attorneys' fees and costs, and service awards awarded by the Court will be deducted from the fund. The balance (the "Net Settlement Fund") will be applied to pay Settlement Class Member claims.

24. Settlement Class Members will remain eligible for Apple's KSP, which provides four years of protection from the date of purchase for all of the symptoms of the alleged defect, such as stuck keys or keys not responding to inputs. Depending on the severity and specific problem with their keyboard, Settlement Class Members may receive a free replacement of their computer Topcase, which is the laptop assembly that contains the entire keyboard as well as the battery, trackpad, and speakers. The KSP thus not only provides a new keyboard but also replaces other major computer components of the laptop, such as its battery, trackpad, and speakers.

#### **DISTRIBUTION OF THE SETTLEMENT FUND**

25. The Net Settlement Fund will be allocated to Settlement Class Members who experienced keyboard problems and received at least one unsuccessful repair. All Settlement Class Members who went to Apple or an Authorized Service Provider and received a "Topcase Replacement" or a "Keycap Replacement" within four years after the date they purchased their Class Computer are eligible for a cash payment. Settlement Class Members can receive compensation only once for each Class Computer but can make additional claims if they purchased more than one Class Computer. As set forth below, for purposes of setting recovery amounts, the plan of allocation establishes a uniform, objective method for distributing awards that accounts for structural differences among claims based on their value and evidentiary support, including by making common-sense distinctions between: (1) Settlement Class Members who received two or more Topcase Replacements from Apple or an Authorized Service Provider; and (2) Settlement Class Members who received only one Topcase or one or more Keycap Replacement(s) from Apple or an Authorized Service Provider and who attest that the repair did not resolve their keyboard issues.

26. In determining how Settlement Class Members will be paid, the Settlement Administrator will divide Claimants into three groups. Group 1 will consist of Settlement Class Members who received two or more Topcase Replacements from Apple or an Authorized Service

1 Provider within four years of purchase based on Apple's records. Group 1 Claimants do not need to  
2 submit a claim to receive compensation. Settlement Class Members may become eligible for Group 1  
3 payment until two years from preliminary approval. Group 1 payments will be initially set at \$300 but  
4 may increase up to the cap of \$395.

5 27. Group 2 will comprise Settlement Class Members who obtained a single Topcase  
6 Replacement from Apple or an Authorized Service Provider within four years of purchase, and who  
7 attest on the Claim Form that the repair did not resolve their keyboard issues.

8 28. Group 3 will comprise Settlement Class Members who obtained one or more Keycap  
9 Replacements (but not Topcase Replacements) within four years of purchase, and who attest on the  
10 Claim Form that the repair did not resolve their keyboard issues.

11 29. Groups 2 and 3 claimants must submit a Claim Form to receive payment. Group 2  
12 Claimants can receive up to \$125, while Group 3 Claimants can receive up to \$50.

13 30. The Claim Form will be pre-populated with contact information for members of the  
14 Settlement Class to the extent reasonably practicable, and members of the Settlement Class will be  
15 able to update or confirm their current contact information.

16 31. To be eligible for payment, Group 2 and 3 Settlement Class Members must confirm  
17 under oath that (1) they purchased a Class Computer in the United States, (2) they did not purchase the  
18 Class Computer for resale, (3) they received a Topcase or Keycap Replacement, and (4) the repair did  
19 not resolve their keyboard issues.

20 32. If a member of the Settlement Class receives a Claim Form with pre-populated  
21 responses to (1) and (3) (indicating that Apple has their records), they will not be required to submit  
22 supporting documentation. If the Claim Form is not pre-populated, the Claimant will need to submit  
23 reasonable documentation or information to support their claims.

24 33. After the Claim Period ends, the Settlement Administrator will deduct from the Net  
25 Settlement Fund the amount sufficient to pay \$300 to each Group 1 Claimant. The Settlement  
26 Administrator will also set aside a reserve amount sufficient to pay \$300 to the number of Settlement  
27 Class Members projected to become a future Group 1 Claimant within two years after the Court grants  
28

1 preliminary approval. The Settlement Administrator will consult with the parties to determine the  
2 reserve amount using Apple's records and projections.

3 34. The amount remaining in the settlement fund after the above amounts are set aside for  
4 Group 1 Claimants will then be divided among eligible Group 2 and 3 Claimants on a proportionate  
5 basis using a set of formulas that account for the number of claims in each group and the maximum  
6 value of those claims.

7 35. If the payment amount for each Group 3 Claimant exceeds the \$50 limit, any excess will  
8 be redistributed to Group 2 Claimants, up to the \$125 cap for that group. If a Group 2 payment would  
9 exceed the \$125 cap, any such excess will be redistributed to Group 1 Claimants up to the \$395 cap for  
10 that group, including a proportional increase of the amount to be paid to Settlement Class Members  
11 who become Group 1 Claimants within two years after Preliminary Approval.

12 36. After the payments for Claimants are calculated, Class Counsel will submit a proposed  
13 Order to the Court directing payment be made to eligible Claimants and providing that the payments to  
14 Settlement Class Members who may become Group 1 Claimants within two years of preliminary  
15 approval may be reduced if the actual number exceeds Apple's projections. Class Payments will be  
16 made in two stages—the first payment to occur within a reasonable time after the Effective Date, and  
17 the second within a reasonable time after the Reserve Period has elapsed.

18 37. If, after the Reserve Period, sufficient funds remain in the Net Settlement Fund, the  
19 Settlement Administrator will make a payment of up to \$395 to Group 1 Claimants who received a  
20 second Topcase Replacement after the expiration of the Claim Period, and a supplemental payment to  
21 Group 1 Claimants who received two or more Topcase Replacements before the expiration of the  
22 Claims Period, such that all Group 1 Claimants receive up to \$395 in total distributions from the Net  
23 Settlement Fund. If, after any such payments, there are remaining funds in the Net Settlement Fund,  
24 supplemental payments shall be made to Group 2 Claimants up to \$125 and Group 3 Claimants up to  
25 \$50. If making a supplemental distribution to Settlement Class Members is not practicable, or if, after  
26 all such supplemental payments are made, there are remaining funds in the Net Settlement Fund, Class  
27 Counsel and Apple shall meet and confer to discuss a proposal to present to the Court regarding  
28 distribution of remaining funds, including a *cy pres* distribution.



38. Because all Group 1 Settlement Class Members will receive payment based on Apple's records, the effective claims rate for this group will be at or near 100%. For Group 2 and 3 Claimants, we expect a claims rate of 15% to 25% for Settlement Class Members who appear in Apple's records and do not need to submit documentation or information in support of their Claim. For Settlement Class Members submitting documentation or information, the claims rate will be lower, an estimated 5% or less.

39. These claims rate estimates are based on discussions with the Settlement Administrator. The estimates are also consistent with our experience, which includes cases with claims rates ranging from less than 1% to 50%.

40. Claim submission rates are fact dependent and driven by factors such as the nature of the case, the severity of the problem, the cost of the underlying product or service, the methods for notice, and the accessibility of the claim form. We have worked to simplify and streamline the claims process for this settlement, recognizing the need to limit recovery to eligible claimants to prevent fraud while also optimizing recovery for those who had to get multiple repairs.

41. Attached as **Exhibit A** to this Declaration are charts submitted in compliance with the Northern District of California's Procedural Guidance for Class Action Settlements that contain true and accurate information regarding analogous settlements we have negotiated on behalf of other classes and our past work with the Settlement Administrator.

#### **THE SETTLEMENT ADMINISTRATOR**

42. We retained JND as the settlement administrator after sending requests for proposal to four leading class action administrators and receiving proposals from each of them.

43. After reviewing all the proposals, we selected JND based on its qualifications and competitive bid. The Court previously approved the parties' selection of JND to distribute class notice.

44. Administrative costs will be paid from the settlement fund. Based on information provided by the parties to date, the Settlement Administrator has agreed to perform all settlement notice and administration duties required by the Settlement Agreement at a cost not expected to exceed \$1,400,000.



1           45. In addition to managing the notice program and receiving and processing claims and  
2 opt-outs, JND will maintain a dedicated settlement website containing links to the notice, claim form,  
3 and all other relevant settlement documents.

#### 4                                   **CLASS NOTICE**

5           46. Based on Apple's purchase, registration, and other databases, Apple has records of  
6 contact information (either email address or physical mailing address) for more than 95% of the  
7 Settlement Class. Apple will provide this information to the Settlement Administrator.

8           47. The Settlement Administrator will provide direct email notice for each member of the  
9 Settlement Class for whom Apple has a valid email address. We have worked with the Claims  
10 Administrator to format these emails in a manner that maximizes the likelihood they will be received  
11 and understood by members of the Settlement Class.

12           48. If Apple does not have a valid email address for a member of the Settlement Class or the  
13 Settlement Administrator is able to determine the email notice was returned as undeliverable, the  
14 Settlement Administrator will mail a postcard version of the Notice. If a postcard Notice is returned by  
15 the U.S. Postal Service with a forwarding address, the Settlement Administrator will re-mail the  
16 postcard notice to that address.

17           49. Notice will also be posted on the settlement website, and the Settlement Administrator  
18 will establish a toll-free telephone number that Class Members can use to receive assistance for filing a  
19 claim.

20           50. Apple will direct the Settlement Administrator to provide notice to governmental  
21 enforcement authorities, consistent with 28 U.S.C. § 1715.

#### 22                                   **SETTLEMENT RELEASE**

23           51. The proposed release applies to claims arising from the facts underlying the claims and  
24 allegations in this action. In accordance with the Procedural Guidance, the release appropriately tracks  
25 the claims in the SAC, which alleges a nationwide class of Class Computer purchasers.  
26  
27  
28

52. The release also extends to the *Huey* action<sup>1</sup> —a parallel suit against Apple pending in the Superior Court of the District of Columbia; plaintiff Huey joins in the agreement. If approved, the parties agree that both this case and *Huey* will be dismissed with prejudice

#### ATTORNEYS' FEE AWARD AND SERVICE AWARDS

53. Class Counsel will apply for an award of attorneys' fees and reimbursement of litigation costs, together with service awards for the class representatives, at least 35 days before the due date for objections. The fee application will be posted immediately on the settlement website.

54. Plaintiffs will seek up to 30% of the fund in attorneys' fees. Class Counsel's total lodestar, through May 2022, is approximately \$13,599,113 using current rates and representing 27,358.8 hours of work on this matter. Thus if Class Counsel were to submit their fee application now, the multiplier corresponding to an award of 30% of the fund would be approximately 1.1.

55. We also will seek reimbursement of case expenses, which include expert witness fees, in an amount not to exceed \$2 million.

56. In addition, we intend to apply for service awards of up to \$5,000 for each of the Class Representatives. Each Plaintiff devoted considerable time to this case, including by assisting counsel in preparing the complaints, communicating with Class Counsel about case developments, responding to written discovery requests, gathering and producing documents, and sitting for deposition.

57. Each Plaintiff except Plaintiff Lee also preserved his or her Class Computer for the duration of this litigation (nearly four years). Plaintiff Lee returned his laptop to Apple at Apple's request as part of a repair. He preserved his laptop for two years prior to returning it.

58. Class Counsel will also seek a service award of the same amount for the plaintiff in the related *Huey* action. While the Plaintiff in *Huey* did not sit for a deposition, he assisted and communicated with his counsel and participated in written discovery.

59. The parties have not reached agreement on the amount of Attorneys' Fees, and Apple has reserved the right to object or oppose on Class Counsel's requests for Attorneys' Fees and Expenses or for Service Awards.

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<sup>1</sup> *Huey v. Apple Inc.*, Case No. 2018 CA 004200 B, pending in the Superior Court of the District of Columbia.

## RECOMMENDATION OF COUNSEL

60. Girard Sharp and CSKDS each have considerable experience in class action litigation, including the prosecution and resolution of consumer class actions. Our respective law firm resumes are attached as **Exhibits B and C**. In negotiating this settlement, we have considered the relative risks and benefits of settlement in relation to the risks of litigation. We believe that, considering the relative benefits of settlement at this time on the terms offered, in comparison to the risk of a less favorable outcome, taking into account the prospects of prevailing at trial and on appeal, the proposed settlement meets the standard for preliminary approval in that the Court “will likely be able to” approve the settlement as fair, reasonable, and adequate under Rule 23(e)(2). The settlement also complies in all respects with this District’s Procedural Guidance for Class Action Settlements. We therefore respectfully request that the Court grant preliminary approval so that notice can be given and Settlement Class members have the opportunity to exercise their rights under Rule 23 and the terms of the settlement.

\* \* \*

We declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on July 18, 2022.

/s/ Simon S. Grille

Simon S. Grille

/s/ Steven A. Schwartz

Steven A. Schwartz

## ATTESTATION

I, Simon S. Grille, am the ECF user whose identification and password are being used to file this Joint Declaration in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. I hereby attest under penalty of perjury that concurrence in this filing has been obtained from counsel.

DATED: July 18, 2022

/s/ Simon S. Grille

**CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2022, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system.

/s/ Simon S. Grille

# EXHIBIT A

**INFORMATION CONCERNING ANALOGOUS SETTLEMENTS AND PAST WORK WITH  
SETTLEMENT ADMINISTRATOR**

**I. INFORMATION CONCERNING ANALOGOUS SETTLEMENTS**

|                                                                    | <i><b>In re Lenovo<br/>Adware<br/>Litigation,<br/>No. 4:15-<br/>md-02624<br/>(N.D. Cal.)</b></i> | <i><b>In re American<br/>Express<br/>Financial<br/>Advisors<br/>Securities<br/>Litigation, No.<br/>04 Cv. 1773<br/>(DAB)<br/>(S.D.N.Y.)</b></i> | <i><b>Bentley v. LG<br/>Electronics<br/>U.S.A., Inc., No.<br/>2:19-cv-13554-<br/>MCA-MAH (D.<br/>N.J.)</b></i> | <i><b>In re Nexus<br/>6P Prod. Liab.<br/>Litig., No. 17-<br/>CV-02185-<br/>BLF, 2019<br/>WL 6622842<br/>(N.D. Cal.<br/>Nov. 12, 2019)</b></i> | <i><b>Weeks v.<br/>Google LLC,<br/>No. 5:18-CV-<br/>00801-NC,<br/>2019 WL<br/>8135563 (N.D.<br/>Cal. Dec. 13,<br/>2019)</b></i> |
|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <b>Total Settlement<br/>Fund</b>                                   | \$8.3 Million                                                                                    | \$100 Million                                                                                                                                   | N.A. (Claims-<br>Made<br>Settlement)                                                                           | \$9.75 Million                                                                                                                                | \$7.25 Million                                                                                                                  |
| <b>Number of<br/>Class Members</b>                                 | 797,000<br>Computers                                                                             | Approximately<br>2.8 Million                                                                                                                    | Approximately<br>1,550,000                                                                                     | Approximately<br>500,000                                                                                                                      | Approximately<br>800,000                                                                                                        |
| <b>Potential Class<br/>Members to<br/>Whom Notice<br/>Was Sent</b> | 500,000                                                                                          | Approximately<br>2.8 Million                                                                                                                    | Approximately<br>1.2M                                                                                          | 383,808                                                                                                                                       | 596,361                                                                                                                         |
| <b>Method(s) of<br/>Notice</b>                                     | Email, Mail,<br>Online                                                                           | Mail,<br>Publication                                                                                                                            | Email, Mail,<br>Online                                                                                         | Email, Mail,<br>Online                                                                                                                        | Email, Mail,<br>Online                                                                                                          |

|                                                          |                                                           |                                                             |                                                                                                                                                             |                                                            |                                                            |
|----------------------------------------------------------|-----------------------------------------------------------|-------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|------------------------------------------------------------|
| <b>Number and Percentage of Claim Forms Submitted</b>    | 101,600 / 12%                                             | 1 Million / 35%                                             | 112,205 / 7.2%                                                                                                                                              | 92,474 / 18.49%                                            | 41,971 / 5.25%                                             |
| <b>Average Recovery Per Class Member</b>                 | \$45 Minimum Per Computer                                 | \$8, \$20, \$65, or \$75 Per Claim Depending on Claim Group | Approximately \$375 per approved claim                                                                                                                      | \$76.53                                                    | \$142.76                                                   |
| <b>Amounts Distributed to Cy Pres Recipients, If Any</b> | N.A.                                                      | N.A.                                                        | N.A.                                                                                                                                                        | N.A.                                                       | N.A.                                                       |
| <b>Administrative Costs</b>                              | Estimated \$300,000                                       | Approximately \$15 Million (Paid by Defendant)              | Paid by Defendant                                                                                                                                           | \$250,000 (paid from fund)                                 | \$310,000 (paid from fund)                                 |
| <b>Attorneys' Fees and Costs</b>                         | <b>Fees:</b> \$2.49 Million<br><b>Costs:</b> \$340,798.70 | <b>Fees:</b> \$27 Million<br><b>Costs:</b> \$597,000        | <b>Fees:</b> \$5.5M<br>Base fee + one-third of the amount claimed by Settlement Class Members, excluding the first 16,500 claims<br><b>Costs:</b> \$375,000 | <b>Fees:</b> \$2.925 Million<br><b>Costs:</b> \$152,023.13 | <b>Fees:</b> \$2.175 Million<br><b>Costs:</b> \$364,855.97 |

|                                                   |                                                                |                                                                                                                               |                                                                                               |                                                                |                                                                |
|---------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------------|
| <b>Injunctive and Non-Monetary Relief, If Any</b> | <b>Injunctive:</b><br>N.A.<br><br><b>Non-Monetary:</b><br>N.A. | <b>Injunctive:</b><br>Improvements to Financial Advice Trainings, Policies, and Protocols<br><br><b>Non-Monetary:</b><br>N.A. | <b>Injunctive:</b><br>Warranty Extension and enhancements<br><br><b>Non-Monetary:</b><br>N.A. | <b>Injunctive:</b><br>N.A.<br><br><b>Non-Monetary:</b><br>N.A. | <b>Injunctive:</b><br>N.A.<br><br><b>Non-Monetary:</b><br>N.A. |
|---------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------------|

## II. WORK WITH JND LEGAL ADMINISTRATION OVER LAST TWO YEARS

| <b>Girard Sharp LLP</b>                                                               | <b>Chimicles Schwartz Kriner &amp; Donaldson-Smith LLP</b>                         |
|---------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| <i>In re USC Student Health Center Litigation</i> , No. 2:18-cv-04258-SVW (C.D. Cal.) | <i>Udeen v. Suburu of America, Inc.</i> , No. 1:18-cv-17334-RBK-JS (D.N.J.)        |
|                                                                                       | <i>In re My Ford Touch Consumer Litigation</i> , No. 3:13-cv-03072-EMC (N.D. Cal.) |
|                                                                                       | <i>Granados v. County of Los Angeles</i> , No. BC361470 (Cal. Super. Ct.)          |
|                                                                                       | <i>McWilliams v. City of Long Beach</i> , No. BC361469 (Cal. Super. Ct.)           |



# EXHIBIT B

# GIRARD SHARP

## Firm Resume

Girard Sharp is a national litigation firm representing plaintiffs in class and collective actions in federal and state courts. The firm serves individuals, institutions and business clients in cases involving antitrust, securities, consumer protection, privacy, and whistleblower laws.

Our clients range from individual consumers and small businesses to Fortune 100 corporations and public pension funds. We have recovered over a billion dollars on behalf of our clients in class actions and non-class cases. In addition to litigation, our firm also provides consulting and strategic counseling services to institutional clients and professionals in securities litigation and corporate governance. We are committed to achieving favorable results for all of our clients in the most expeditious and economical manner possible.

Girard Sharp is distinguished as a Tier 1 law firm for class action and mass tort litigation in 2022 by *U.S. News & World Report*, and has been included on its list of “Best Law Firms” since 2013. *The National Law Journal (NLJ)* has also named Girard Sharp to its elite “Plaintiffs’ Hot List,” a selection of top U.S. plaintiffs’ firms recognized for wins in high-profile cases. The *Daily Journal* in 2020 honored Girard Sharp as one of the “Top Boutiques in California,” and in 2021 recognized the firm with a “Top Plaintiff Verdicts: Impact” award. In 2022, *Law360* named Girard Sharp a Practice Group of the Year in Product Liability Litigation, and in 2019 the firm was honored as the 2019 Elite Trial Lawyers winner for Insurance Litigation.

Nine of the firm’s attorneys have been recognized as Northern California Super Lawyers and Rising Stars. Name partners Daniel Girard and Dena Sharp have been selected by their peers as among the *Best Lawyers in America*. Daniel Girard has been recognized as among the “Top 100 Super Lawyers” in Northern California, and Dena Sharp as one of the Top 50 Women Attorneys in Northern California. *Best Lawyers* also designated Mr. Girard as the 2013 “Lawyer of the Year” in San Francisco for class action litigation. Mr. Girard earns an *AV-Preeminent* rating from Martindale-Hubbell, placing him in the highest class of attorneys for professional ethics and legal skills.

## ATTORNEYS

### Partners

|                                        |      |
|----------------------------------------|------|
| <a href="#"><u>Daniel Girard</u></a>   | p. 2 |
| <a href="#"><u>Dena Sharp</u></a>      | p. 4 |
| <a href="#"><u>Adam Polk</u></a>       | p. 5 |
| <a href="#"><u>Jordan Elias</u></a>    | p. 6 |
| <a href="#"><u>Scott Grzenczyk</u></a> | p. 7 |
| <a href="#"><u>Simon Grille</u></a>    | p. 8 |

### Associates

|                                         |       |
|-----------------------------------------|-------|
| <a href="#"><u>Makenna Cox</u></a>      | p. 8  |
| <a href="#"><u>Mani Goehring</u></a>    | p. 9  |
| <a href="#"><u>Trevor Tan</u></a>       | p. 9  |
| <a href="#"><u>Peter Touschner</u></a>  | p. 9  |
| <a href="#"><u>Tom Watts</u></a>        | p. 10 |
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## ATTORNEYS

## Partners

**Daniel Girard** serves as the firm's managing partner and coordinates the prosecution of the various consumer protection, securities, and antitrust legal matters handled by the firm. Under Daniel Girard's leadership, Girard Sharp has become one of the most respected and experienced class action law firms in the United States. Dan believes that, too often, our legal system favors companies and financial institutions over ordinary people. He founded the firm to provide individuals who work hard and play by the rules the same focused, dedicated representation enjoyed by corporations, banks, and insurance companies.



Dan is frequently appointed by courts to lead major complex cases. He served as a lead lawyer for securities investors following the collapse of investment bank Lehman Brothers and oil and gas producer Provident Royalties. He served as lead counsel for commodities investors following the failure of the Peregrine Financial Group. Dan has successfully prosecuted numerous cases for violations of consumer fraud, predatory lending, and unfair competition laws.

Dan's current cases include serving as lead counsel in the *United States Office of Personnel Management Data Breach* class action, the *Woodbridge Investments Litigation*, and the *PFA Insurance Marketing Litigation*. Dan's past and present clients include the California Teachers Retirement System, the Kansas Public Employees Retirement System, the American Federation of Government Employees, Fireman's Fund Insurance Company, and Allianz Life Insurance Company.

Dan has served on several United States Judicial Conference committees. He was appointed by Chief Justice William H. Rehnquist to the United States Judicial Conference Advisory Committee on Civil Rules and served from 2004 through 2010. Chief Justice John G. Roberts appointed Dan to the Standing Committee on Practice and Procedure in 2015 and reappointed him to a second term in 2018.

Dan is a member of the Council of the American Law Institute and currently serves on the ALI's Audit Committee (Chair) and Membership Committee. In addition, he has served as a member of the faculty for several Federal Judicial Programs for federal judges. Dan also served on the Advisory Board for the Duke Law School Center for Judicial Studies and the Institute for the Advancement of the American Legal System. He is a member of the Business Law Section of the American Bar Association. He is past Chair of the Business Law Section's Subcommittee on Class Actions, Co-Chair of the Business and Corporate Litigation Committee's Task Force on Litigation Reform and Rule Revision, and Vice-Chair of the Business and Corporate Litigation Committee.

Dan's article, *Limiting Evasive Discovery: A Proposal for Three Cost-Saving Amendments to the Federal Rules*, 87 Denver Univ. L. Rev. 473 (2010), proposed several rule amendments that were ultimately adopted in Federal Rule of Civil Procedure 34(b)(2). Other published articles include: *Managez efficacement vos litiges d'affaires*, Extrait du magazine, Décideurs N°121, November 2010, *Stop Judicial*

*Bailouts*, The National Law Journal, December 1, 2008, and *Billions to Answer For*, Legal Times, September 15, 2008. His speaking engagements include the following: Panelist for COVID and the Courts Conference, Center on Civil Justice at NYU Law School, January 11, 2021; Panelist for First Annual Class Action Annual Case Law and Practices Review Bench-Bar Conference, James F. Humphreys Complex Litigation Center at the George Washington University Law School, November 12-13, 2020; Guest lecturer, Vanderbilt Law School, November 13, 2017; Co-chair for Judicial Training Symposium, Federal Judicial Center and Electronic Discovery Institute, October 2017; Panelist for “The Judicial Perspective and Rule 23 Committee Update,” Perrin Conferences’ Class Action Litigation Conference, May 31, 2017; Panelist for Multi-district Litigation Roundtable, The George Washington University, April 27-28, 2017; Panelists for “Precision Advocacy: Reinventing Motion Practice to Win,” Federal Bar Association, San Francisco Chapter, March 2017; Panelist for Class Action Settlements and Discovery presentations, HB Litigation Conferences, May 3, 2016; Panelist for Data Breach & Privacy presentation, HB Litigation Conferences, February 11, 2016; Panelist for “Hello ‘Proportionality,’ Goodbye ‘Reasonably Calculated,’” Joint Conference of ABA Section of Litigation and Duke Law Center for Judicial Studies, January 28, 2016; Invited Participant in Special MDL Conference, Duke Law Center for Judicial Studies, October 8, 2015; Co-panelist with Judge James P. O’Hara on Discovery Amendments to Federal Rules of Civil Procedure; Kansas City Metropolitan Bar Association, D. Kan., and W. D. of Mo., September 17, 2015; Panelist in Private Breakfast Seminar on Class Action Risk Mitigation Strategies, Lazareff LeBars, September 22, 2015; Invited Participant on Judicial Conference Advisory Committee on Civil Rules, Rule 23 Mini-Conference, September 11, 2015; Attorney Faculty in Managing Complex Litigation Workshop for US District Judges, Federal Judicial Center, August 25, 2015; Moderator and Panelist on panels addressing proposed Rule 23 amendments, Class Action Settlement Conference, Duke Law Center for Judicial Studies, July 2015; Panelist on Role of Consumer Class Actions in the Herbal Supplements Industry, HarrisMartin’s MDL Conference: Herbal Supplements Litigation, May 27, 2015; Panelist on Transferee Judge Case Management; Multidistrict Litigation Institute, Duke Law Center for Judicial Studies, April 9-10 2015; Roundtable Participant on Settlement Class Actions, George Washington University Law School, April 8, 2015; Lessons from Recent Data Breach Litigation, Western Trial Lawyers, February 26, 2015; Speaker in Privacy & Cybersecurity Webinar, State Bar of California, February 24, 2015; Panelist on Preservation Issues, Proportionality Discovery Conference, Duke Law Center for Judicial Studies, November 13-14, 2014; Roundtable Participant on Public and Private Enforcement after Halliburton, ATP and Boilermakers, Duke Law Center for Judicial Studies, September 26, 2014; Co-panelist on Consolidation and Coordination in Generic Drug Cases, HarrisMartin’s Antitrust Pay for Delay Conference, September 22, 2014; Guest Lecturer on Civil Litigation Seminar, UC Berkeley, Hastings School of Law, September 18, 2014; Panel Moderator on Selection and Appointment of Plaintiffs’ Steering Committee, MDL Best Practices, Duke Law Center for Judicial Studies, September 11-12, 2014; Panel on Shareholder Class Action Lawsuits under the New Companies Act, Joint Conference of the Society of Indian Law Firms and the American Bar Association, Delhi, India, February 14-15, 2015; Panelist on Symposium on Class Actions, University of Michigan Law School Journal of Law Reform, March 2013; Co-taught Seminar on Class Actions and Complex Litigation, Duke University Law School, January 2013; Recent Developments in U.S. Arbitration Law, Conference on Business Law in Africa, Abidjan, Côte d’Ivoire, October 2012; Bringing and Trying a Securities Class Action Case, American Association for Justice 2012 Annual Convention, July 2012; Panel on Class Actions, U.S. Judicial Conference Standing Committee on Rules of Practice and Procedure, Phoenix, January 2012; Panel on Paths to (Mass) Justice, Conference on Globalization of Class Actions and Mass Litigation, The Hague, December 2011; Contentieux et Arbitrage International: les bons réflexes à acquérir (Litigation and International Arbitration: acquiring the right reflexes), Paris, France, March 2011; Panel on Proposals for Rule



Amendments and Preservation Obligations, U.S. Judicial Conference Advisory Committee on Rules of Practice and Procedure, January 2011.

Dan has served as a guest lecturer on class actions and complex litigation at the UC Davis School of Law, UC Berkeley School of Law, UC Hastings College of the Law, Vanderbilt Law School and Stanford Law School. Dan has been consistently honored as a Northern California Super Lawyer (2007-2018). He was educated in France as well as the United States and is fluent in French.

**Dena Sharp** is a problem-solver who gets results for her clients in even the most complex litigation. She currently serves as co-lead counsel in the *In re Juul Labs Inc.* multidistrict litigation, *In re Xyrem Antitrust Litigation*, and *In re California Gasoline Spot Market Antitrust Litigation*. She is co-lead counsel for a certified class of end-payers in the *In re Restasis Antitrust Litigation*, and a member of the End-Payer Steering Committee in *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, a massive case alleging that the world's largest makers of generic drugs conspired to raise prices and prevent price competition for years. Dena is also privileged to represent clients of a fertility center whose eggs and embryos were compromised by a freezer tank malfunction. In June 2021, Dena and her team tried the first *In re Pacific Fertility Center Litigation* case in federal court in San Francisco, and won a groundbreaking \$15 million jury verdict for the loss of four families' eggs and embryos.



As co-lead counsel in *In re Lidoderm Antitrust Litigation*, a “pay-for delay” antitrust case that settled for \$104.75 million on the eve of trial, Dena worked with her team to win class certification, defeat summary judgment, and obtain the largest recovery for a class of end-payers in similar federal litigation in more than a decade. She has also played a key role in a variety of other high-profile cases, including work on behalf of the direct purchasers in the *In re Capacitors Antitrust Litigation*, and representing investors in litigation arising from Lehman Brothers’ bankruptcy and in matters involving Ponzi schemes and accounting fraud.

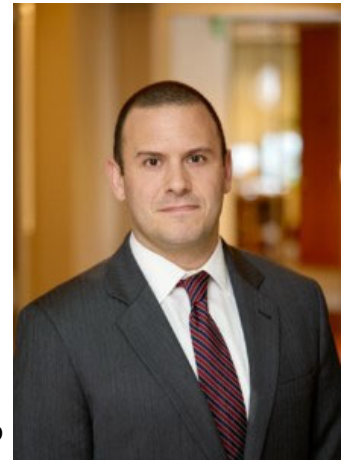
Outside the courtroom, Dena is the current co-chair of the Lawyer Representatives to the Ninth Circuit Judicial Conference for the Northern District of California, and was elected to the American Law Institute in 2018. She sits on the board of directors of the Impact Fund, a public interest nonprofit, and has served as co-chair and faculty member of the annual Judicial Training Symposium for Federal Judges, hosted by the Federal Judicial Center and the Electronic Discovery Institute. She also sits on the board of advisors for the Center of Litigation and the Courts at UC Hastings. Dena co-authored a chapter in the ABA’s “Class Action Strategy and Practice Guide,” and the widely-cited *Sedona Principles: Best Practices and Principles for Electronic Document Production* (Third Edition).

The *National Law Journal* has recognized Dena as an “Elite Woman of the Plaintiffs’ Bar” for two consecutive years, honoring her as one of only a handful of lawyers nationwide who has “consistently excelled in high-stakes matters on behalf of plaintiffs” over the course of her career. Dena was named one of the “Best Lawyers in America” for both 2021 and 2022, one of the “Top 50 Women Attorneys in Northern California” by *San Francisco* magazine in 2021, and one of the *Daily Journal*’s “Top Women Lawyers” in 2021. The *Daily Journal* also named Dena one of the Top Antitrust Lawyers in California for 2021, a distinction awarded to only 27 attorneys in the state. In 2022, the *Daily Journal* recognized

Dena and her colleagues for their work on *In re Pacific Fertility Center Litigation* with the award for “Top Plaintiffs Verdicts” in the “Impact” category. Dena has been recognized as a Northern California Super Lawyer or Rising Star every year since 2009.

Dena is a graduate, *cum laude*, of the University of California, Hastings College of Law, where she was a member of the Thurston Society and received the Best Oral Advocate and Witkin awards. She graduated magna cum laude from Brown University. During law school, Dena externed for the Honorable Phyllis J. Hamilton of the Northern District of California, and the Honorable John E. Munter of the San Francisco Superior Court. A first-generation American, Dena is fluent in Spanish and German.

**Adam Polk** is a partner at Girard Sharp who takes a client-focused approach to each matter he handles. A devoted advocate, Adam rolls up his sleeves and does whatever it takes to give each of his clients the high-quality representation they deserve. Concentrating his practice on complex consumer, securities, and antitrust class actions, Adam’s experience covers all aspects of civil litigation, from initial case investigation and complaint preparation through discovery and trial.



Adam currently serves as co-lead counsel in *In re Subaru Battery Drain Litigation* (an ongoing consumer protection action concerning defective batteries in Subaru vehicles); and *In re Maxar Technologies Inc. Shareholder Litigation* (an action alleging violations of the Securities Act of 1933). He also serves as part of the co-lead counsel teams in *In re California Gasoline Spot Market Antitrust Litigation* (an antitrust class action alleging manipulation of the spot market for gasoline in California); *In re Pacific Fertility Center Litigation* (a product defect related to the alleged failure of an IVF tank holding human eggs and embryos); and *In re PFA Insurance Marketing Litigation* (a consumer protection class action alleging the unfair and deceptive sale of life insurance). Adam also serves as a court-appointed executive committee member in *In re Allergan Biocell Textured Breast Implant Products Liability Litigation* (a multidistrict litigation centering on allegedly defective breast implants and pending in the District of New Jersey).

Recently, Adam served as part of the trial team in the first *In re Pacific Fertility Center Litigation* trial. In a landmark result, the jury awarded approximately \$15 million for the loss of four families’ eggs and embryos. Adam also served on the lead counsel teams in several recent cases that resolved favorably for his clients, including *Bentley v. LG Electronics U.S.A., Inc.* and *Sosenko v. LG Electronics U.S.A., Inc.* (class actions alleging that LG’s refrigerators are defective and prone to premature failure); and *In re Nexus 6P Products Liability Litigation* and *Weeks v. Google LLC* (two consumer class actions against Google relating to defective mobile phones, which resolved for a combined \$17 million). Adam was also instrumental in achieving substantial settlements for his clients in *In re Sears Holdings Corporation Stockholder and Derivative Litigation* (\$40 million settlement) and *Daccache v. Raymond James Financial, Inc.* (\$150 million partial settlement).

Before joining the firm, Adam externed for the Honorable Sandra Brown Armstrong and the Honorable Claudia Wilken, of the U.S. District Court for the Northern District of California.

Adam is chair of the American Bar Association's Class Action and Derivative Suits committee, for which he is a frequent contributor of content regarding emerging issues in class action litigation. As of 2021 he is a member of the Fellows of the American Bar Foundation. His articles include: *Ninth Circuit: Central District of California's 90-Day Deadline to Move for Class Certification Incompatible with Rule 23*, ABA Practice Points, October 2018, *Fourth Circuit, No Presumption of Timeliness Where One Class Action Plaintiff Moves to Intervene in Another Class Action Prior to the Opt-Out Deadline*, ABA Practice Points, July 2018, *California Supreme Court: Unnamed Class Members Must Intervene or Move to Vacate to Gain Right to Appeal Class Settlements*, ABA Practice Points, May 2018, *Tilting at Windmills: Nationwide Class Settlements After In re Hyundai and Kia Fuel Economy Litigation*, ABA Section of Litigation, Class Actions & Derivative Suits, February 2018 (co-author), *"Ninth Circuit." Survey of Federal Class Action Law*, ABA 2018 (co-author), *Ninth Circuit: No Formal Motion for Reconsideration Needed to Toll 23(f) Deadline*, ABA Practice Points, September 2017, *Eighth Circuit Clarifies CAFA's Local-Controversy Exception Applies to Local Citizens, Not Mere Residents*, ABA Practice Points, May 2017, *Shrink-Wrap Arbitration Clauses Must Be Conspicuously Displayed: Ninth Circuit*, ABA Practice Points, April 2017, *Predispute Arbitration Clauses Targeting Public Injunctive Relief Are Unenforceable: CA Supreme Court*, ABA Practice Points, April 2017, *Ninth Circuit: Cy Pres Awards Must be Tailored to Plaintiffs' Claims to Justify a Class Action Release*, ABA Practice Points, February 2017, *Rule 23 Does Not Include an 'Administrative Feasibility Requirement: Ninth Circuit*, ABA Practice Points, January 2017.

Adam was elected in 2021 as a Fellow of the American Bar Foundation. He has been selected by his peers as a Northern California Super Lawyer, Rising Star every year since 2013. Adam has been named to the National Trial Lawyers' "Top 40 Under 40" for three consecutive years. In 2021, he was named to *Best Lawyers'* "Ones to Watch" list.

**Jordan Elias**, a partner in the firm, represents consumers and small businesses injured by corporate violations. He has pursued civil claims against monopolists, price-fixing cartels, oil and tobacco companies, and the nation's largest banks. Over the past decade, Jordan has also taken on pharmaceutical companies for collusion leading to inflated prescription drug prices.

Jordan argued the first substantive motion in the digital advertising monopoly litigation against Google. He previously served as head writer for the plaintiffs in the wrongful death cases arising from sudden unintended acceleration of Toyota vehicles. He was the primary author of the plaintiffs' briefs in the California Supreme Court in the landmark Cipro "pay-for-delay" antitrust case, and gained a reversal for the plaintiff in *Pavoni v. Chrysler Group, LLC*, 789 F.3d 1095 (9th Cir. 2015). Jordan also led the appeal in *In re U.S. Office of Personnel Management Data Security Breach Litigation*, 928 F.3d 42 (D.C. Cir. 2019), where the court reversed the dismissal of a case brought on behalf of 21.5 million federal government employees whose sensitive private information was hacked. More recently, Jordan represented the League of Women Voters in an amicus brief urging the Ninth Circuit to preserve an extension of the State of Arizona's voter registration deadline in light of the Covid-19 pandemic and the remote location of many Native American voters. He also argued the successful appeal in *Velasquez-Reyes v. Samsung Electronics America, Inc.*, No. 17-56556 (9th Cir. Sept. 17, 2019), where the Ninth Circuit held that Samsung could not compel individual arbitration of false advertising claims even though its smartphone packaging had an arbitration clause. Federal judges have described his advocacy as "very thorough" and "clearly in the public interest."





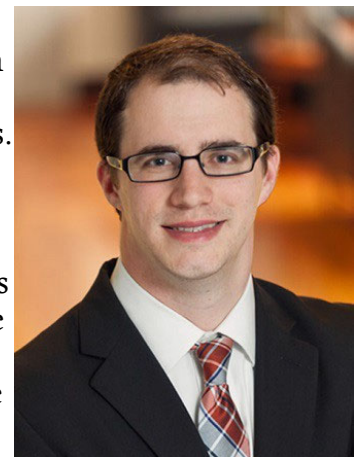
Jordan received a California Lawyer Attorney of the Year (CLAY) award in 2016. He has been recognized as a Northern California Super Lawyer, Appellate, since 2014. A former chief arbitrator for the San Francisco Bar Association's attorney-client fee disputes program, Jordan now serves as the program's vice-chair.

In 2017, Jordan was elected to the American Law Institute. He is also a Fellow of the American Bar Foundation. He authored the Supreme Court chapter, and co-authored the Ninth Circuit chapter, in the American Bar Association's *Survey of Federal Class Action Law*. He also co-authored the chapter on antitrust standing, causation and remedies in *California State Antitrust and Unfair Competition Law* (Matthew Bender 2019), the chapter on CAFA exceptions in *The Class Action Fairness Act: Law and Strategy* (ABA 2d ed. 2021), and the chapter on jurisdiction and preemption in *California Class Actions and Coordinated Proceedings* (Matthew Bender 2015). Jordan wrote the law review articles "More Than Tangential": When Does the Public Have a Right to Access Judicial Records?, 29 J. Law & Pol'y 367 (2021); Course Correction—Data Breach as Invasion of Privacy, 69 Baylor L. Rev. 574 (2018), Cooperative Federalism in Class Actions, 86 Tenn. L. Rev. 1 (2019), and The Ascertainability Landscape and the Modern Affidavit, 84 Tenn. L. Rev. 1 (2017). His bar journal articles include "Putting Cipro Meat on Actavis Bones," 24 No. 2 Competition 1, *State Bar of California* (2015), "Does Bristol-Myers Squibb Co. v. Superior Court Apply to Class Actions?" *ABA Section of Litigation, Class Actions & Derivative Suits* (Feb. 25, 2020) (co-author), and "Tilting at Windmills: Nationwide Class Settlements After *In re Hyundai and Kia Fuel Economy Litigation*," *ABA Section of Litigation, Class Actions & Derivative Suits* (Feb. 28, 2018) (co-author).

Jordan was awarded the Field Prize in the humanities at Yale College, where he was an all-Ivy League sprinter. While attending Stanford Law School, he served on the law review and externed for the Honorable Charles R. Breyer of the Northern District of California. After law school, Jordan clerked for the late Judge Cynthia Holcomb Hall of the Ninth Circuit Court of Appeals. He then defended technology companies in securities and intellectual property cases at Wilson Sonsini Goodrich & Rosati, which honored him with the John Wilson Award for winning asylum for refugees from Haiti and Indonesia. Before joining Girard Sharp in 2015, Jordan practiced for seven years at Lieff Cabraser Heimann & Bernstein.

**Scott Grzenczyk** dedicates his practice to representing plaintiffs in antitrust and consumer protection matters. He has wide-ranging experience in all aspects of complex litigation and has served as a member of leadership teams that have recovered hundreds of millions of dollars for the firm's clients. Scott brings a tireless work ethic and a practical, results-oriented approach to his cases.

For several years, Scott has represented union health and welfare funds in cases alleging that large, multinational drug companies illegally inflated the price of prescription drugs. Scott has helped achieve precedent-setting recoveries, including a \$104.75 million settlement shortly before trial in a case concerning the prescription drug Lidoderm. He also plays a key role in the firm's work in the *In re Restasis Antitrust Litigation* and *In re Generic Pharmaceuticals Antitrust Litigation* matters.



Scott led the firm's litigation efforts in a class action filed by native inhabitants of Guam bringing due process and equal protection claims against the government of Guam. He also has a track record of



successfully representing consumers, including car and cell phone purchasers, in cases involving fraud and unfair business practices. During law school, Scott successfully argued a precedent-setting immigration case before the U.S. Court of Appeals for the Ninth Circuit. He has been honored as a Rising Star by Northern California Super Lawyers every year since 2013. In 2020, Scott was honored as a recipient of the American Antitrust Institute's "Outstanding Antitrust Litigation Achievement by a Young Lawyer" award. Scott was named to *Best Lawyers*' "Ones to Watch" list in 2022.

**Simon Grille**, a partner in the firm, is committed to seeking justice for individuals harmed by corporate wrongdoing. He represents plaintiffs in class and complex litigation concerning consumers' rights and financial fraud. He has taken a lead role in consumer class actions against some of the largest technology companies in the world. Simon has been named a Rising Star by Super Lawyers since 2017, and was named to *Best Lawyers*' "Ones to Watch" list in 2021 and 2022.



Simon approaches each case with an unwavering commitment to obtaining the best possible outcome for his clients. A creative problem-solver, Simon welcomes the challenges of complex civil litigation. He has substantial experience in all aspects of civil litigation.

Before joining Girard Sharp, Simon worked at a prominent Bay Area law firm, where he represented victims of toxic exposure in complex civil litigation. He also has experience working in-house at a multinational company and as an extern for the Honorable Arthur S. Weissbrodt of the United States Bankruptcy Court for the Northern District of California.

## Associates

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**Makenna Cox** handles all aspects of complex class action litigation, including consumer protection cases against some of the nation's largest corporations.

Before joining Girard Sharp, Makenna advocated for musicians' rights and co-authored comments filed with the Federal Communications Commission. She worked during law school at an appellate firm in Los Angeles.

Makenna served as Senior Production Editor on the *Loyola of Los Angeles Entertainment Law Review*. She received her B.A. with honors from the University of San Francisco.



**Mani Goehring** strives to provide clients with prompt attention, reliable guidance, and excellent outcomes. She represents consumers in class action and other complex litigation seeking to hold companies and institutions accountable for misconduct. From intake to resolution, Mani knows that responsiveness and tenacity are key to obtaining favorable results.

Mani previously worked on criminal matters at the Antitrust Division of the U.S. Department of Justice. She also interned for the U.S. Attorney's Office, the San Francisco District Attorney's Office, and the American Civil Liberties Union of Northern California.



**Trevor Tan** focuses on consumer protection class actions and other complex civil litigation, specializing in legal research and writing. He was honored as a Rising Star by Super Lawyers beginning in 2019 and was named to *Best Lawyers*' "Ones to Watch" list in 2022.

Trevor has considerable experience working in judicial chambers. Before joining Girard Sharp, he clerked for the Honorable Fernando M. Olguin of the U.S. District Court for the Central District of California. Trevor also clerked for Judges of the Los Angeles County Superior Court and the court's Appellate Division.

Trevor received his J.D. from the University of Chicago Law School in 2011. During law school, he was an extern for the Honorable George H. Wu in the Central District of California and a law clerk with the Illinois Attorney General. In addition, he served as a child advocate with the school's immigrant child advocacy clinic and worked on behalf of immigrant children from China. After law school, Trevor represented unaccompanied minors in removal proceedings as a fellow at the Young Center for Immigrant Children's Rights.



Trevor received his undergraduate degree with honors in political science from the University of California, Irvine in 2006.

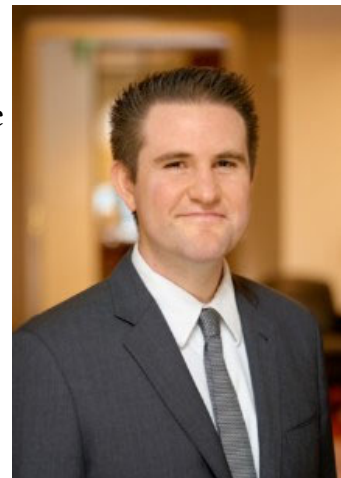
**Peter Touschner** handles complex class action e-discovery matters for the firm. Before joining Girard Sharp, Peter represented class members harmed by Volkswagen's emissions-related fraud, as well as insureds who were charged inflated premiums due to the anticompetitive practices of a hospital conglomerate.

Peter previously worked as a Research Attorney at the Center for Democracy and Technology, where he investigated deceptive online advertising practices and evaluated proposed cybersecurity legislation. During law school, Peter externed for U.S. District Judge Charles R. Breyer and served as Senior Articles Editor for the Hastings Science and Technology Law Journal.



**Tom Watts** focuses his practice on complex antitrust litigation against monopolists and other wrongdoers. Before joining the firm, Tom clerked for the Honorable Jane Roth on the Third Circuit and the Honorable Robert McDonald of the Maryland Court of Appeals, assisting in a wide variety of appellate and state supreme court matters.

Tom earned a J.D. and master's in public policy *magna cum laude* from Harvard Law School and Harvard Kennedy School. During law school, he gained experience in litigation, appeals, and policy advocacy by interning with the U.S. Department of Justice's Civil Appellate Section, Santa Clara County's Impact Litigation and Social Justice Section, and Public Advocates.



Tom received his B.A. from the University of California, Berkeley, with High Distinction in General Scholarship. He double majored in Classical Languages, in which he received High Honors, and Astrophysics, for which he was the undergraduate commencement speaker.

**Erika Garcia** handles complex e-discovery matters for the firm. She is admitted to practice in California and New York.

Before joining Girard Sharp, Erika worked at a large international law firm with a focus on class action and commercial litigation as well as regulatory investigations. She has negotiated and drafted numerous confidentiality agreements in the mergers and acquisitions setting.

Erika is fluent in Spanish and previously served as a volunteer advocate in Ecuador for refugees from other Latin American countries.



**Nina Gliozzo** works to seek justice for plaintiffs in complex litigation nationwide. Before joining Girard Sharp, Nina clerked for the Honorable Marsha S. Berzon of the U.S. Court of Appeals for the Ninth Circuit.

Nina earned her J.D., *magna cum laude*, from the University of California, Hastings College of Law. During law school she externed for the Honorable Charles R. Breyer, U.S. District Judge for the Northern District of California. She also served as Executive Symposium Editor for the *Hastings Law Journal*, organizing a symposium featuring a conversation with former Supreme Court Justice Anthony M. Kennedy.





**Mikaela Bock** advocates for injured consumers and other purchasers in complex civil litigation.

During law school, Mikaela externed in the Northern District of California and was the national champion of the Evan A. Evans Constitutional Law Moot Court Competition. She previously worked for Teach for America, teaching 7th graders in East Palo Alto, California.



**Sean Greene** advocates for injured consumers and policyholders. He brings a unique perspective to his work, as he defended insurance companies before joining Girard Sharp.

During law school, Sean earned Moot Court Honorable Mention in Oral Advocacy and was an Officer of the Hastings Health Law Organization. Before law school, he gained extensive knowledge of insurance from working on public health initiatives to provide health care to underprivileged schoolchildren in Northeast Pennsylvania.



**Kyle Quackenbush** prosecutes class actions and other complex civil litigation, with a focus on antitrust. He has participated in all stages of litigation, including drafting pleadings, coordinating document discovery, taking depositions, preparing dispositive motions, and trial. Among other work, Kyle has contributed his skills to several antitrust cases involving the pharmaceutical industry, focusing on the interplay between antitrust and intellectual property law as well as market concentration within payor and provider networks. He was named a Northern California Super Lawyers “Rising Star” in 2020 and 2021.



Kyle also volunteers with the Federal Pro Bono Project of the Bar Association of San Francisco. In one case, he represented a plaintiff who alleged employees at Salinas Valley State Prison were deliberately indifferent to the plaintiff’s serious medical needs, in violation of the Eighth Amendment. In another case, he represented a homeowner plaintiff in settlement negotiations with Wells Fargo.

During law school, Kyle was a Summer Honors Legal Intern at the Federal Trade Commission's San Francisco office, and a Legal Extern at the Washington State Attorney General's Office. While at the FTC, he co-authored *The Efficiencies Defenestration, Are Regulators Throwing Valid Healthcare Efficiencies Out The Window?*, published in the winter 2017 issue of the Journal of the Antitrust and Unfair Competition Law Section of the California Lawyers Association.

In addition to his membership in the American Bar Association and the Bar Association of San Francisco, Kyle participates in the Barristers Association of San Francisco, working to provide information and resources to lawyers in their first ten years of practice.

## Law Clerks

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**Jessica Cook** focuses on a variety of class actions and other complex litigation matters. Jessica is a graduate of Golden Gate University School of Law. She attended the law school evening program while working full-time at Girard Sharp.

During law school Jessica competed on multiple moot court teams and in her last year she was co-chair of the Moot Court Board. She also served as an elected representative on the Student Bar Association.



**Jordan Isern** advocates for plaintiffs in class actions and other complex litigation, with a focus on antitrust. Jordan is a graduate of Harvard Law School. There, she served as Executive Technical Editor of the Civil Rights–Civil Liberties Law Review and published several articles for the Covid-19 and the Law Series Blog.

Before joining Girard Sharp, Jordan worked for the Department of Justice, Antitrust Division, and externed for the Honorable Michael Baylson of the Eastern District of Pennsylvania. She also interned at several nonprofit legal organizations, including the Asian American Legal Defense and Education Fund and the Pennsylvania Innocence Project.

Outside of the courtroom, Jordan is an avid outdoor enthusiast. She enjoys rock climbing and has backpacked parts of the Appalachian, Continental Divide, and Pacific Crest trails.



**Kimberly Macey** advocates for clients in consumer, antitrust, and other complex civil cases.

Kimberly graduated from the University of California, Hastings in 2021. During law school, she competed on and coached multiple Moot Court teams, and during her third year, she served as Co-Chair for the UC Hastings Moot Court team.

Before law school, Kimberly worked as a legal assistant at a full-service law firm. She received her B.S. in Criminal Justice from Northern Arizona University in 2016.



## Of Counsel

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**Michael S. Danko** is a renowned trial lawyer with more than 25 years of legal experience. Mike represents individuals who have suffered catastrophic personal injuries, as well as families of wrongful death victims in cases involving product defects, defective medications and medical devices, airplane and helicopter accidents, and dangerous structures. He has tried cases in state and federal courts throughout the country and has won numerous eight-figure verdicts on behalf of his clients.

Mike represents dozens of victims of a Pacific Gas & Electric gas line explosion and serves on the Plaintiffs' Steering Committee in a California state coordinated proceeding *San Bruno Fire Cases*, JCCP No. 4648. He also serves on the Science Committee for Plaintiffs in *In re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2100.



In 2009, Mike won a \$15 million jury verdict for a client injured by a defective aircraft part, which earned him a nomination for 2009 California Trial Lawyer of the Year by the Consumer Attorneys of California.

Mike's trial advocacy has helped bring about significant reforms and changes to corporate policies. As lead counsel in *In re Deep Vein Thrombosis Litigation*, MDL No. 1606 (N.D. Cal.), he represented more than one hundred air travelers who suffered strokes, pulmonary emboli, or heart attacks as a result of airline-induced blood clots. He developed theories of liability and proof regarding the cause of his clients' injuries that led to virtually every major air carrier advising air travelers of the risks of deep vein thrombosis and measures to mitigate those risks. Mike also represented parents of children who were injured or killed by a popular candy made by a foreign manufacturer. His work in proving that the candy's unusual ingredients and consistency made it a choking hazard resulted in the candy being removed from Costco and Albertson's stores nationwide, and helped persuade the FDA to ban the candy from further import into the United States.



Mike has been named a Northern California Super Lawyer each year since the award's inception in 2004. He is a *Lawdragon 500* finalist. In 2010, Mike was named one of the Best Lawyers in America. He is a member of the American Association for Justice, the Lawyer Pilots Bar Association and the Consumer Attorneys of California, where he serves on the board of governors. Mike received his A.B. degree from Dartmouth College, *magna cum laude*, in 1980, and earned his J.D. from the University of Virginia School of Law in 1983.

**Kristine Keala Meredith** is a trial attorney specializing in product liability litigation. Kristine served as co-lead counsel with Michael Danko representing more than one hundred air travelers who suffered strokes, pulmonary emboli, or heart attacks as a result of airline-induced blood clots in *In re Deep Vein Thrombosis Litigation*, MDL No. 1606.



Kristine served on the Law and Motion committee in *In re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2100, where she assisted in the successful opposition to 15 *Daubert* motions in fewer than three weeks. Before she began representing plaintiffs, Kristine worked on the national defense counsel teams for medical device manufacturers in multi-district litigation including *In re Silicone Gel Breast Implants Product Liability Litigation*, MDL No. 926, and *In re Orthopedic Bone Screw Product Liability Litigation*, MDL No. 1014. She also represented doctors and hospitals in defense of medical malpractice actions, where she worked with some of the world's leading medical experts.

In 2010, Kristine was named a Northern California Super Lawyer. She is currently an officer of the American Association for Justice and the San Mateo County Trial Lawyers Association. She is also a member of the San Francisco Trial Lawyers Association and the Consumer Attorneys of California. She is a former chair of the Minority Issues Committee of the San Francisco Bar Association Barrister Club.

Kristine obtained her B.S. with honors from the University of California at Davis and was awarded a scholarship to attend Brigham Young University's J. Reuben Clark Law School. While in law school, she was awarded the Distinguished Student Service Award and spent a semester at Howard University Law School in Washington, D.C., as a member of the faculty/student diversity exchange.

## Favorable Outcomes and Significant Recoveries

### Defective Products

***Michael Bentley et al., v. LG Electronics U.S.A., Inc.***, No. 2:19-cv-13554-MCA-MAH (D.N.J.). Girard Sharp served as co-lead counsel representing consumers who bought LG refrigerators prone to stop cooling, resulting in spoiled food and medicine, due to a defective linear compressor part. On December 18, 2020, the court approved a settlement that made each class member eligible for several thousand dollars in recovery; those without documentation could recover up to \$450. The class

members also received a five-year extended warranty covering the full cost of repairs for cooling failures. The settlement is available to over a million and a half American consumers. At the final fairness hearing, U.S. District Judge Madeline Cox Arleo stated: “I appreciate lawyers who are professionals and can fight hard for their clients but remain professional and committed to . . . the rules of professionalism, and elevate our profession to not just lawyers fighting but lawyers doing justice for both sides. So thank you for that.”

***Weeks v. Google LLC***, No. 18-cv-00801-NC (N.D. Cal.). Girard Sharp served as co-lead counsel representing owners of Google Pixel and Pixel XL smartphones. The lawsuit alleged that a defect in the Google phones caused the microphones to fail; as a result, users were unable to make calls, dictate texts, record audio, search the web with voice command, or use the advertised Google Assistant feature. On December 6, 2019, the court approved a \$7.25 million settlement for the class that it deemed “excellent.”

***In re Nexus 6P Products Liability Litigation***, No. 5:17-cv-02185-BLF (N.D. Cal.). Girard Sharp was appointed as co-lead counsel in a class action alleging that Nexus 6P smartphones suffer from a defect that renders the phones inoperable through an endless boot-loop cycle and an accelerated battery drain that causes the phones to shut off prematurely. On November 11, 2019, the Honorable Beth L. Freeman approved a \$9.75 million class settlement, stating in part that “Class counsel has extensive experience representing plaintiffs and classes in complex litigation and consumer class actions.... [T]he quality of their work is reflected in the results achieved for the class.” 2019 WL 6622842, at \*10, \*12 (N.D. Cal. Nov. 12, 2019).

***In re iPod Cases***, JCCP No. 4355 (Cal. Super. Ct. San Mateo Cty.). Girard Sharp, as court-appointed co-lead counsel, negotiated a settlement that provided warranty extensions, battery replacements, cash payments, and store credits for class members who experienced battery failure. In approving the settlement, the Honorable Beth L. Freeman wrote that Girard Sharp attorneys are “extremely well qualified” and negotiated a “significant and substantial benefit” for the class.

***Sugarman v. Ducati North America, Inc.***, No. 5:10-cv-05246-JF (N.D. Cal.). The firm served as class counsel on behalf of owners of Ducati motorcycles whose fuel tanks degraded and deformed due to incompatibility with the motorcycles’ fuel. In January 2012, the Honorable Jeremy D. Fogel approved a settlement that provided an extended warranty and repairs, commenting: “The Court recognizes that class counsel assumed substantial risks and burdens in this litigation. Representation was professional and competent; in the Court’s opinion, counsel obtained an excellent result for the class.” 2012 WL 113361, at \*6 (N.D. Cal. Jan. 12, 2012).

***Parkinson v. Hyundai Motor America***, No. CV 8:06-0345 (C.D. Cal.). Girard Sharp served as class counsel in this class action involving allegations that the flywheel and clutch system in certain Hyundai vehicles was defective. After achieving nationwide class certification, Girard Sharp negotiated a settlement that provided from 50% to 100% in reimbursement to class members for their repairs, depending on their vehicle’s mileage at the time of repair. The settlement also provided full reimbursement for rental car expenses for class members who rented a vehicle while flywheel or clutch repairs were being performed. After approving the settlement, the court wrote, “Perhaps the best barometer of . . . the benefit obtained for the class . . . is the perception of class members themselves. Counsel submitted dozens of letters from class members sharing their joy, appreciation, and relief that someone finally did something to help them.” 796 F. Supp. 2d 1160, 1175 (C.D. Cal. 2010).



*In re Medtronic, Inc. Implantable Defibrillators Products Liability Litigation*, MDL No. 1726 (D. Minn.). Girard Sharp served on the discovery and law committees and performed briefing, discovery, and investigative work in this lawsuit that followed a February 2005 recall of certain models of Medtronic implantable cardioverter defibrillator devices. The controversy was resolved for \$75 million.

*Browne v. American Honda Motor Co., Inc.*, No. CV 09-06750 (C.D. Cal.). Girard Sharp served as co-lead counsel representing plaintiffs who alleged that about 750,000 Honda Accord and Acura TSX vehicles had brake pads that wore out prematurely. Girard Sharp negotiated, and the court approved, a settlement valued at \$25 million that provided reimbursements to class members and made improved brake pads available.

*In re General Motors Dex-Cool Cases*, No. HG03093843 (Cal. Super Ct. Alameda Cty.). These class actions alleged that General Motors' Dex-Cool engine coolant damaged certain vehicles' engines and formed a rusty sludge that caused vehicles to overheat. After consumer classes were certified in both Missouri and California, General Motors agreed to pay cash to class members nationwide. On October 27, 2008, the California court granted final approval of the settlement.

*Roy v. Hyundai Motor America*, No. SACV 05-483-AHS (C.D. Cal.). Girard Sharp served as court-appointed co-lead counsel in this nationwide class action alleging a defect in the air-bag system in Hyundai Elantra vehicles. Girard Sharp helped negotiate a settlement under which Hyundai agreed to repair the air-bag systems in the vehicles it sold and leased to class members. Hyundai also agreed to reimburse class members for transportation expenses and administer an alternative dispute resolution program for trade-ins and buy-backs. In approving the settlement, the Honorable Alicemarie H. Stotler described the settlement as "pragmatic" and a "win-win" for all concerned.

## **Sexual Abuse & Women's Advocacy**

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*In re Pacific Fertility Center Litigation*, No. 3:18-cv-01586-JSC (N.D. Cal.). Girard Sharp represented IVF patients of Pacific Fertility Center whose eggs and embryos were damaged or destroyed in a cryopreservation tank failure. On June 11, 2021, after a three-week trial, a jury found the tank manufacturer, Chart Industries Inc., liable for a defect in the tank and for its negligent failure to recall a part that malfunctioned, a "controller" meant to monitor liquid nitrogen levels. The jury awarded more than \$14 million in damages to three women who lost eggs and a married couple who lost embryos in the catastrophic March 2018 tank failure. The three women were each awarded between \$2 million and \$3 million, and the couple was awarded \$7.2 million. Girard Sharp represents over 80 families who lost reproductive material in the tank failure.

*In re USC Student Health Center Litigation*, No. 2:18-cv-06115 (C. D. Cal.). Girard Sharp served as co-lead counsel in a class action against the University of Southern California and campus gynecologist Dr. George Tyndall on behalf of women who were sexually abused by Tyndall during his long tenure at USC. A federal judge approved a class action settlement with

USC that establishes a \$215 million fund and gives every survivor a choice in how to participate. The claims process received universal praise from class members for the compassionate and generous approach to making victims whole. The settlement also requires USC to adopt and implement procedures for identification, prevention and reporting of sexual and racial misconduct, as well as to recognize the harm done to all of Tyndall's patients.

*A.B. et al. v. The Regents of the University of California et al.*, No. 2:20-cv-09555-RGK-E (C.D. Cal.). Girard Sharp lawyers filed a class action lawsuit against UCLA on behalf of women treated by UCLA gynecologist Dr. James Heaps. Heaps was charged with sexual battery and exploitation of patients while working as a staff gynecologist at UCLA—a position he held for almost thirty years. The UC Regents agreed to resolve the claims for \$73,000,000, plus injunctive relief measures, and the District Court granted final approval of the settlement.

## Antitrust

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*In re Lidoderm Antitrust Litigation*, No. 14-md-02521 (N.D. Cal.). Girard Sharp lawyers were appointed co-lead counsel in a class action on behalf of end-purchasers of the prescription drug Lidoderm who alleged that two drug companies, Endo Pharmaceuticals and Teikoku Pharma, unlawfully paid a third, Watson Pharmaceuticals, to delay the launch of more affordable generic Lidocaine patches. The firm secured a \$104.75 million settlement on the eve of trial.

*In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827 (N.D. Cal.). The firm served as liaison counsel for the direct purchaser plaintiffs and certified direct purchaser class in this multidistrict antitrust litigation against makers of LCD screens alleging a far-reaching conspiracy to raise, fix and maintain prices. The direct purchasers achieved settlements of more than \$400 million.

*In re Aggrenox Antitrust Litigation*, No. 14-md-2516 (D. Conn.). Girard Sharp served on the Plaintiffs' Executive Committee in this "pay-for-delay" litigation accusing Teva Pharmaceuticals USA, Inc. and Boehringer Ingelheim Pharmaceuticals, Inc. of illegally agreeing to keep generic Aggrenox off the market. The case settled for \$54 million.

*In re Solodyn Antitrust Litigation*, No. 14-md-2503 (D. Mass.). The firm served on the Plaintiffs' Executive Committee in this action alleging that Medicis Pharmaceuticals and several generic drug manufacturers conspired to monopolize the market for the acne drug Solodyn. The case settled for over \$40 million in cash.

*In re Natural Gas Antitrust Cases I, II, III and IV*, J.C.C.P. No. 4221 (Cal. Super. Ct. San Diego Cty.). Girard Sharp served on the leadership team in coordinated antitrust litigation against numerous natural gas companies for manipulating the California natural gas market. The firm helped achieve settlements of nearly \$160 million.

## Securities & Financial Fraud

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*Daccache v. Raymond James Financial, Inc.*, No. 1:16-cb-21575-FAM (S.D. Fla.). Girard Sharp served as a member of the leadership team representing investors in various Jay Peak EB-5 Immigrant Investor Program project offerings. The investors' funds were diverted and misappropriated instead of being applied to the intended project to develop the area surrounding the Jay Peak Ski Resort. In June 2017, the court approved a settlement of \$150 million for the investors.

*In re Oppenheimer Rochester Funds Group Securities Litigation*, No. 09-md-02063-JLK (D. Colo). Girard Sharp represented investors who were misled by the Oppenheimer California Municipal Bond Fund about the investment risks associated with the fund's holdings. On November 6, 2017, the Honorable John L. Kane approved a \$50.75 million settlement for the investors.

*In re Sears Holdings Corporation Stockholder and Derivative Litigation*, Consolidated C.A. No. 11081-VCL (Del. Ch.). Girard Sharp served as co-lead counsel on behalf of the company in this derivative suit charging CEO and majority owner Edward S. Lampert and other directors with depriving stockholders of the full value of 266 of Sears Holdings' most valuable properties. Girard Sharp obtained a \$40 million settlement for Sears Holdings Corporation in the Court of Chancery.

*In re Digex, Inc. Shareholder Litigation*, Consol. No. 18336 (Del. Ch.). Girard Sharp represented the Kansas Public Employees Retirement System, one of two institutional lead plaintiffs in this lawsuit; minority stockholders of Digex, Inc. sued to enjoin MCI WorldCom's planned acquisition of a controlling interest in Digex via a merger with Intermedia Communications, Inc. A settlement approved by the Delaware Chancery Court secured \$165 million in MCI WorldCom stock and \$15 million in cash for Digex shareholders, as well as non-cash benefits valued at \$450 million.

*Billitteri v. Securities America, Inc.*, No. 3:09-cv-01568-F (N.D. Tex.). Girard Sharp served as lead counsel in an action against broker-dealer Securities America, Inc. and its corporate parent, Ameriprise, Inc. in connection with sales of investments in the Provident Royalties and Medical Capital investment schemes. Daniel Girard coordinated negotiations resulting in a \$150 million settlement, with \$80 million allocated to class plaintiffs represented by Girard Sharp and \$70 million allocated to individual investors who had initiated arbitration proceedings. The settlements returned over 40% of investment losses.

*In re Lehman Brothers Equity/Debt Securities Litigation*, No. 08-Civ-5523 (S.D.N.Y.). Girard Sharp was appointed class counsel for a certified class of retail investors in structured products sold by UBS Financial Services, Inc., following the collapse of Lehman Brothers Holdings, Inc. in the largest bankruptcy in American history. The plaintiffs alleged that UBS misrepresented Lehman's financial condition and failed to disclose that the "principal protection" feature of many of the notes depended upon Lehman's solvency. Girard Sharp negotiated a settlement that established a \$120 million fund to resolve these claims.

***In re Prison Realty Securities Litigation***, No. 3:99-0452 (M.D. Tenn.). Girard Sharp served as co-lead counsel in this securities class action brought against a real estate investment trust and its officers and directors relating to a merger between Corrections Corporation of America and CCA Prison Realty Trust. The court approved a settlement for over \$120 million in cash and stock.

***In re American Express Financial Advisors Securities Litigation***, No. 04-cv-01773-DAB (S.D.N.Y.). Girard Sharp served as co-lead counsel in this class action on behalf of individuals who bought financial plans and invested in mutual funds from American Express Financial Advisors. The case alleged that American Express steered its clients into underperforming “shelf space funds” to reap kickbacks and other financial benefits. The court granted final approval of a settlement providing \$100 million in cash and other relief.

***Scheiner v. i2 Technologies, Inc.***, No. 3:01-CV-418-H (N.D. Tex.). Girard Sharp represented the lead plaintiff—the Kansas Public Employees Retirement System—and served as co-lead counsel on behalf of investors in i2 Technologies. The Honorable Barefoot Sanders approved cash settlements for \$88 million from the company, its officers, and its former auditor Arthur Andersen. As part of the settlement, i2 agreed to significant corporate governance reforms.

***In re Peregrine Financial Group Customer Litigation***, No. 1:12-cv-5546 (N.D. Ill.). As one of two co-lead counsel, Girard Sharp prosecuted this litigation under the Commodities Exchange Act and state law on behalf of investors who lost millions in the collapse of a commodities futures merchant. The litigation generated recoveries of more than \$75 million. The court wrote that counsel “conferred an impressive monetary benefit on the Settlement Class: the funds recovered from U.S. Bank are substantial—both in absolute terms and when assessed in light of the risks of establishing liability and damages” [ECF No. 441].

***CalSTRS v. Qwest Communications***, No. 415546 (Cal. Super. Ct. S.F. Cty.). Girard Sharp represented the California State Teachers Retirement System in this opt-out securities fraud case against Qwest Communications, Inc. and certain of its officers and directors, as well as its outside auditor Arthur Andersen. The case resulted in a precedent-setting \$45 million settlement for California schoolteachers.

***In re SLM Corp. Securities Litigation***, No. 08-Civ-1029-WHP (S.D.N.Y.). Girard Sharp served as lead counsel representing investors of SLM Corporation who alleged Sallie Mae, the leading provider of student loans in the United States, misled the public about its financial performance in order to inflate the company’s stock price. After achieving nationwide class certification, Girard Sharp negotiated a settlement that established a \$35 million fund to resolve the investors’ claims.

***In re Winstar Communications Securities Litigation***, No. 01 Civ. 11522 (S.D.N.Y.). Girard Sharp represented Allianz of America, Inc., Fireman’s Fund and other large private institutional investors against Grant Thornton and other defendants on claims arising out of plaintiffs’ investments in Winstar Communications, Inc. The firm achieved a settlement on the eve of trial that provided a recovery rate over 30 times higher than what class members received in a related class action. After deduction of attorneys’ fees, the fund returned 78.5% of potentially recoverable losses.

*In re Oxford Tax Exempt Fund Securities Litigation*, No. WMN-95-3643 (D. Md.). Girard Sharp served as co-lead counsel in class and derivative litigation brought on behalf of a real estate limited partnership with assets of over \$200 million. The parties reached a settlement providing for exempt issuance of securities under section 3(a)(10) of the Securities Act of 1933, public listing of units, and additional benefits valued at over \$10 million.

*Calliott v. HFS, Inc.*, No. 3:97-CV-0924-L (N.D. Tex.). Girard Sharp intervened on behalf of an institutional client in this securities class action arising out of the bankruptcy of Amre, Inc., a seller of home remodeling and repair services. After being designated lead counsel under the Private Securities Litigation Reform Act, Girard Sharp negotiated and obtained court approval of settlements totaling \$7.3 million.

*In re Towers Financial Corporation Noteholders Litigation*, MDL No. 994 (S.D.N.Y.). This class action was brought against promoters and professionals linked to a failed investment scheme that the SEC described at the time as being the “largest Ponzi scheme in U.S. history.” The case resulted in \$6 million in partial settlements and a \$250 million judgment entered against four senior Towers executives. Girard Sharp served as liaison counsel and as a Plaintiffs’ Executive Committee member. The court stated that “class counsel—particularly plaintiffs’ liaison counsel, Daniel Girard—has represented the plaintiffs diligently and ably in the several years that this litigation has been before me.” 177 F.R.D. 167, 171 (S.D.N.Y. 1997).

## Deceptive Trade Practices

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*In re Hyundai and Kia Horsepower Litigation*, No. 02CC00287 (Cal. Super. Ct. Orange Cty.). Girard Sharp served as lead counsel in this coordinated nationwide class action against Hyundai for falsely advertising the horsepower ratings of more than 1 million vehicles over a ten-year period. The case was aggressively litigated on both sides over several years. In all, over 850,000 Hyundai vehicle owners received notice of the settlement, which was valued at \$125 million and which provided cash and other benefits to class members.

*In re Chase Bank USA, N.A. “Check Loan” Contract Litigation*, No. 09-2032 (N.D. Cal.). Girard Sharp and several other firms led this nationwide class action alleging deceptive marketing and loan practices by Chase Bank USA, N.A. After certifying a nationwide class, the Honorable Maxine M. Chesney granted final approval of a \$100 million settlement benefiting Chase cardholders.

*In re Hyundai and Kia Fuel Economy Litigation*, No. 2:13-ml-2424 (C.D. Cal.). In a lawsuit alleging false advertising in connection with the fuel efficiency of various Hyundai and Kia models, the firm served as liaison counsel and in that capacity regularly reported to the court and coordinated a wide-ranging discovery process. The case resulted in a nationwide class action settlement with an estimated value of up to \$120 million.

*In re Providian Credit Card Cases*, J.C.C.P. No. 4085 (Cal. Super. Ct. San Francisco Cty.). Girard Sharp served as court-appointed co-lead counsel in this nationwide class action brought on behalf of Providian credit-card holders. The suit alleged that Providian engaged in unlawful, unfair



and fraudulent business practices in connection with marketing and assessing fees for its credit cards. The Honorable Stuart Pollack approved a \$105 million settlement, plus injunctive relief—one of the largest class action recoveries in consumer credit-card litigation.

*In re MCI Non-Subscriber Telephone Rates Litigation*, MDL No. 1275 (S.D. Ill.). Girard Sharp served as co-lead counsel and recovered an \$88 million settlement for MCI telephone subscribers who were charged rates and surcharges applicable to non-subscribers instead of the lower advertised rates. In approving the settlement, the Honorable David Herndon highlighted “the complexity of the issues involved; the vigorous opposition Plaintiffs’ counsel faced from sophisticated and well-funded Defendants represented by skilled counsel; the achievement of a very large cash settlement fund under these conditions”; and the “design and implementation of a computerized claims process, which appears to have been highly successful.” Daniel Girard argued the key motions in the case and designed the claim procedure.

*Skold v. Intel Corp.*, No. 1-05-CV-039231 (Cal. Super. Ct., Santa Clara Cty.). Girard Sharp represented Intel consumers through a decade of hard-fought litigation, ultimately certifying a nationwide class under an innovative “price inflation” theory and negotiating a settlement that provided refunds and \$4 million in cy pres donations. In approving the settlement, Judge Peter Kirwan wrote: “It is abundantly clear that Class Counsel invested an incredible amount of time and costs in a case which lasted approximately 10 years with no guarantee that they would prevail. . . . Simply put, Class Counsel earned their fees in this case.”

*Steff v. United Online, Inc.*, No. BC265953, (Los Angeles Super. Ct.). This nationwide class action was brought against NetZero, Inc. and its parent, United Online, Inc. by former NetZero customers. Plaintiffs alleged that defendants falsely advertised their internet service as unlimited and guaranteed for a specific period of time. The Honorable Victoria G. Chaney of Los Angeles Superior Court granted final approval of a settlement that provided full refunds to customers whose services were cancelled, and which also placed restrictions on Defendants’ advertising.

*Stoddard v. Advanta Corp.*, No. 97C-08-206-VAB (Del. Super. Ct.). This nationwide class action was brought on behalf of cardholders who were promised a fixed APR for life in connection with balance transfers, but whose APR was then raised pursuant to a notice of change in terms. The Honorable Vincent A. Bifferato appointed the firm as co-lead counsel and approved a \$7.25 million settlement.

*Khaliki v. Helzberg’s Diamond Shops, Inc.*, No. 11-0010-CV-W-NKL (W.D. Mo.). Girard Sharp and co-counsel represented consumers who alleged deceptive marketing in connection with the sale of princess-cut diamonds. The court approved a favorable settlement, recognizing “that Class Counsel provided excellent representation” and obtained “a favorable result relatively early in the case, which benefits the Class while preserving judicial resources.” The court further recognized that “Class Counsel faced considerable risk in pursuing this litigation on a contingent basis, and obtained a favorable result for the class given the legal and factual complexities and challenges presented.”

*In re Tyson Foods Inc., Chicken Raised Without Antibiotics Consumer Litigation*, No. RDB- 08-1982 (D. Md.). Girard Sharp served as Class Counsel on behalf of consumers who purchased chicken products misleadingly labeled as having been “raised without antibiotics.” After discovery,

counsel negotiated a cash settlement that required Tyson Foods to pay class members and make substantial cy pres contributions to food banks.

## Privacy Violations

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*In re Yahoo Mail Litigation*, No. 5:13-cv-04980-LHK (N.D. Cal.). Girard Sharp represented non-Yahoo email subscribers whose emails with Yahoo email subscribers were illegally intercepted and scanned by Yahoo. The court certified a nationwide class for injunctive-relief purposes, issuing an opinion that has been widely cited. 308 F.R.D. 577 (N.D. Cal. 2015). With cross-motions for summary judgment fully briefed, the parties settled. Yahoo agreed to restructure its email delivery architecture to ensure that incoming and outgoing email would no longer be intercepted while in transit—bringing its email scanning practices into compliance with applicable law—and to disclose its email scanning practices on its website. The court, in approving the settlement, noted that “Class Counsel achieved these benefits only after several years of litigation,” which the court found was conducted “in an effective and cost-efficient manner.” 2016 WL 4474612, at \*10 (N.D. Cal. Aug. 25, 2016).

*In re Lenovo Adware Litigation*, MDL No. 2624 (N.D. Cal.). Girard Sharp is co-lead counsel for a class of computer purchasers whose online activities were surreptitiously monitored by pre-installed software. The undisclosed spyware degraded the computers’ performance, operating continuously in the background as it analyzed browsing activity and injected ads into visited webpages. The Honorable Ronald M. Whyte certified a nationwide indirect purchaser class for trial. 2016 WL 6277245 (N.D. Cal. Oct. 27, 2016). After the defendants agreed to a non-reversionary cash settlement, Girard Sharp helped design a claims process that allowed each participating class member to choose between (1) completing a short online claim form to receive an estimated \$40 cash payment for every purchased computer, or (2) submitting receipts or other documentation to recover sums actually expended as a result of the spyware being on the computer, up to \$750. The Honorable Haywood S. Gilliam granted final approval of the settlement, *see* 2019 WL 1791420 (N.D. Cal. Apr. 24, 2019), and Girard Sharp continues to supervise distribution of the fund.

*Corona v. Sony Pictures Entertainment*, No. 2:14-cv-09600-RGK-SH (C.D. Cal.). Girard Sharp served as co-lead counsel in a class action brought on behalf of 15,000 current and former employees of Sony Pictures Entertainment following a cyberattack attributed to North Korean intelligence as retaliation for release of the film *The Interview*. In April 2016, the court approved a class settlement that reimbursed actual losses in full and provided extended credit monitoring—a structure adopted in subsequent data breach settlements.

*In re The Home Depot, Inc. Customer Data Security Breach Litigation*, MDL No. 2583 (N.D. Ga.). The Honorable Thomas W. Thrash, Jr. appointed Girard Sharp to the Plaintiffs’ Executive Committee in this MDL arising from a breach of Home Depot customers’ credit and debit card information. Under the court-approved settlement, class members with documented claims could receive up to \$10,000, and the defendant paid an additional \$6.5 million to provide 18 months of identity monitoring services for the benefit of class members. 2016 WL 6902351, at \*4 (N.D. Ga. Aug. 23, 2016). Judge Thrash described the settlement as “an outstanding result for the Class in a

case with a high level of risk,” *id.* at \*5, and further noted that “Class Counsel obtained an exceptional result . . .” 2017 WL 9605208, at \*1 (N.D. Ga. Aug. 1, 2017).

***In re Target Corp. Customer Data Security Breach Litigation***, MDL No. 2522 (D. Minn.). Girard Sharp served on the Plaintiffs’ Steering Committee representing consumers whose personal and financial information was compromised in a breach of Target’s point-of-sale systems. After plaintiffs defeated Target’s motion to dismiss, *see* 66 F. Supp. 3d 1154 (D. Minn. 2014), the parties agreed to a class settlement that was approved by the MDL court and upheld on appeal, *see* 892 F.3d 968 (8th Cir. 2018). The settlement requires changes to Target’s information security practices and delivered cash recoveries to class members under a simplified claim procedure.

***In re Experian Data Breach Litigation***, No. 15-01592 (C.D. Cal.). Girard Sharp serves on the Plaintiffs’ Steering Committee in this litigation arising out of a breach of Experian’s electronic systems that compromised names, addresses, and social security numbers of T-Mobile subscribers. The Honorable Andrew J. Guilford in 2019 granted final approval of a settlement that established a \$22 million fund and provided identity theft protection services for the benefit of class members.

***In re Adobe Systems, Inc. Privacy Litigation***, No. 5:13-cv-05226-LHK (N.D. Cal.). Girard Sharp was appointed as lead counsel in this consolidated litigation on behalf of consumers asserting privacy and consumer fraud claims arising from a 2013 data breach. Girard Sharp obtained a pivotal ruling when the court denied Adobe’s motion to dismiss for lack of standing, ruling that the Supreme Court’s decision in *Clapper v. Amnesty International USA*, 133 S. Ct. 1138 (2013), did not change existing standing jurisprudence. 66 F. Supp. 3d 1197 (N.D. Cal. 2014). Before this ruling, many data breach defendants had obtained dismissals for lack of standing based on *Clapper*. The *Adobe* ruling has been followed by a number of courts, including the Seventh Circuit Court of Appeals in *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688, 693–94 (7th Cir. 2015).

***Prather v. Wells Fargo Bank, N.A.***, No. 17-cv-00481 (N.D. Ill.). Girard Sharp served as co-lead counsel in an action alleging that Wells Fargo used an automatic telephone dialing system to repeatedly call the cellular phone numbers of persons with no prior affiliation with Wells Fargo. On December 10, 2019, the Honorable Manish S. Shah of the Northern District of Illinois granted final approval of a settlement that established a fund of \$17,850,000 for class members.

***Whitaker v. Health Net of California, Inc.***, No. 2:11-cv-00910-KJM-DAD (E.D. Cal.); ***Shurtleff v. Health Net of California, Inc.***, No. 34-2012-00121600-CU-CL (Cal. Super Ct. Sacramento Cty.). Girard Sharp served as co-lead counsel in this patient privacy action. On June 24, 2014, the court granted final approval of a settlement that provided class members with credit monitoring, established a \$2 million fund to reimburse consumers for related identity theft incidents, and required material upgrades to and monitoring of Health Net’s information security protocols.

***In re Sony BMG CD Technologies Litigation***, No. 1:05-cv-09575-NRB (S.D.N.Y.). Girard Sharp served as co-lead counsel for a class of consumers who alleged that Sony BMG incorporated “Digital Rights Management” software into its music CDs, violating the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, and rendering the consumers’ computers vulnerable to viruses and spyware. The firm negotiated a settlement that required Sony BMG to promptly recall all affected CDs and provide “clean” CDs and cash to class members.



*In re Countrywide Financial Corp. Customer Data Security Breach Litigation*, MDL No. 1988 (W.D. Ky.). Girard Sharp served on the Plaintiffs' Executive Committee representing a class of millions of actual and potential customers of Countrywide whose personal information was stolen by a former Countrywide employee and then sold to other mortgage lenders. The class settlement approved by the court provided for free credit monitoring, reimbursement of out-of-pocket expenses incurred as a result of the theft, and reimbursement of up to \$50,000 per class member for identity theft losses.

*Smith v. Regents of the University of California, San Francisco*, No. RG-08-410004 (Cal. Super Ct. Alameda Cty.). Girard Sharp represented a patient who alleged that UCSF's disclosure of its patients' medical data to outside vendors violated California's medical privacy law. The firm succeeded in negotiating improvements to UCSF's privacy procedures on behalf of a certified class of patients of UCSF Medical Center. In approving the stipulated permanent injunction, the Honorable Stephen Brick found that "Smith has achieved a substantial benefit to the entire class and the public at large."

## Other Consumer Protection Matters

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*Larson v. John Hancock Life Insurance Company (U.S.A.)*, No. RG16813803 (Cal. Super. Ct. Alameda Cty.). Girard Sharp served as liaison counsel in this certified class action on behalf of universal life insurance policyholders alleging John Hancock overcharged more than 100,000 of its insureds, depriving them of the full value of the premiums they paid over time. On May 8, 2018, the Honorable Brad Seligman granted final approval of a \$59 million settlement.

*In re America Online Spin-Off Accounts Litigation*, MDL No. 1581 (C.D. Cal.). Girard Sharp served as court-appointed co-lead counsel in this nationwide class action on behalf of America Online subscribers who were billed for a second account without their knowledge or consent. The litigation settled for \$25 million and changes in AOL's billing and account practices.

*Mitchell v. American Fair Credit Association*, No. 785811-2 (Cal. Super. Ct. Alameda Cty.); *Mitchell v. Bankfirst, N.A.*, No. C-97-1421-MMC (N.D. Cal.). This class action was brought on behalf of California members of the American Fair Credit Association (AFCA). Plaintiffs alleged that AFCA operated an illegal credit repair scheme. The Honorable James Richman certified the class and appointed the firm as class counsel. In February 2003, the Honorable Ronald Sabraw of Alameda County Superior Court and the Honorable Maxine Chesney of the Northern District of California granted final approval of settlements valued at over \$40 million.

*In re Mercedes-Benz Tele Aid Contract Litigation*, MDL No. 1914, CV No. 07-2720-DRD (D.N.J.). Girard Sharp served as co-lead class counsel on behalf of consumers whose vehicles' navigation systems were on the verge of becoming obsolete. Counsel obtained nationwide class certification before negotiating a settlement valued at up to \$50 million. In approving the settlement, the court acknowledged that the case "involved years of difficult and hard-fought litigation by able counsel on both sides" and that "the attorneys who handled the case were particularly skilled by virtue of their ability and experience." 2011 WL 4020862, at \*4, \*8 (D.N.J. Sept. 9, 2011).

***In re LookSmart Litigation***, No. 02-407778 (Cal. Super. Ct. San Francisco Cty.). This nationwide class action was brought against LookSmart, Ltd. on behalf of consumers who paid an advertised “one time payment” to have their websites listed in LookSmart’s directory, only to be charged additional fees to continue service. The court granted final approval of a class settlement valued at approximately \$20 million that provided cash and other benefits.

***In re America Online, Inc. Version 5.0 Software Litigation***, MDL No. 1341 (S.D. Fla.). Girard Sharp served as co-lead counsel in this MDL involving 45 centralized actions. The case alleged violations of state consumer protection statutes, the Computer Fraud and Abuse Act, and federal antitrust laws arising from AOL’s distribution of its Version 5.0 software upgrade. The Honorable Alan S. Gold granted final approval of a \$15.5 million settlement.

***In re PayPal Litigation***, No. C-02-1227-JF (PVT) (N.D. Cal.). Girard Sharp served as co-lead counsel in this nationwide class action alleging violations of California consumer protection statutes and the Electronic Funds Transfer Act (EFTA). Plaintiffs alleged that PayPal unlawfully restricted access to consumers’ PayPal accounts. On September 24, 2004, Judge Fogel granted final approval of a settlement valued at \$14.35 million in cash and returned funds, plus injunctive relief to ensure compliance with the EFTA.

***Powers Law Offices, P.C. v. Cable & Wireless USA, Inc.***, No. 99-CV-12007-EFH (D. Mass). Girard Sharp prosecuted this class action on behalf of cable and wireless subscribers who were overcharged for recurring fees. The court granted final approval of an \$8 million settlement, and the bankruptcy court approved a 30% distribution from the unsecured creditors’ fund of bankruptcy liquidation proceeds.

***Lehman v. Blue Shield of California***, No. CGC-03-419349 (Cal. Super. Ct. San Francisco Cty.). In this class action charging Blue Shield with having illegally modified the risk-tier structure of its individual and family health care plans, Girard Sharp negotiated a \$6.5 million settlement on behalf of current and former Blue Shield subscribers in California. The Honorable James L. Warren granted final approval of the settlement in March 2006.

***Telestar v. MCI, Inc.***, No. C-05-Civ-10672-JGK (S.D.N.Y.). This class action was brought on behalf of MCI commercial subscribers who were charged both interstate and intrastate fees for the same frame relay on prorate line service during the same billing period. On April 17, 2008, the Honorable John G. Koeltl approved a favorable cash settlement.

***Wixon v. Wyndham Resort Development Corp.***, No. C-07-02361 JSW (BZ) (N.D. Cal.). Girard Sharp served as class and derivative counsel in this litigation against a timeshare developer and the directors of a timeshare corporation for violations of California law. Plaintiffs alleged that the defendants violated their fiduciary duties by taking actions for the financial benefit of the timeshare developer to the detriment of the owners of timeshare interests. On September 14, 2010, the district court approved a settlement of the derivative claims.

***Berrien v. New Raintree Resorts, LLC***, No. CV-10-03125 CW (N.D. Cal.); ***Benedict v. Diamond Resorts Corporation***, No. CV 12-00183-DAE (D. Hawaii). Girard Sharp pursued these actions on behalf of timeshare owners, challenging the imposition of unauthorized “special

assessment” fees. The court in each case approved a favorable settlement of the claims asserted on behalf of class members who were charged the fee.

*Allen Lund Co., Inc. v. AT&T Corporation*, No. C 98-1500-DDP (C.D. Cal.). This class action was brought on behalf of small businesses whose long-distance service was switched to Business Discount Plan, Inc. The Honorable Dean D. Pregerson appointed Girard Sharp as class counsel, and thereafter approved a settlement providing full cash refunds and free long-distance telephone service.

*Mackouse v. The Good Guys – California, Inc.*, No. 2002-049656 (Cal. Super Ct. Alameda Cty.). This nationwide class action against The Good Guys and its affiliates alleged violations of the Song-Beverly Consumer Warranty Act and other California consumer protection laws. Plaintiff alleged that The Good Guys failed to honor contracts that it offered for sale to customers in exchange for protection of a purchase after the manufacturer’s warranty expired. On May 9, 2003, the Honorable Ronald M. Sabraw granted final approval of a settlement providing cash refunds or services at a class member’s election.

*In re H&R Block Express IRA Litigation*, MDL No. 1786 (W.D. Mo.). Girard Sharp served as co-lead counsel in this MDL involving H&R Block’s marketing and sale of its “Express IRA” investment products. The firms negotiated a settlement in coordination with the New York Attorney General that delivered more than \$19 million in cash to class members—resulting in a full recovery for consumers—as well as non-cash benefits entitling Express IRA holders to convert their investments to alternative IRAs with lower fees.

## Mass Tort

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*In re USC Student Health Center Litigation*, No. 2:18-cv-04258-SVW-GJS (C.D. Cal.). Girard Sharp served as co-lead counsel for a class of women who alleged they were sexually assaulted or molested by a USC gynecologist. The court in February 2020 approved a settlement for \$215 million that also secured comprehensive injunctive relief at the university.

*In re Actos (Pioglitazone) Products Liability Litigation*, MDL No. 2299 (W.D. La.). Girard Sharp lawyers were appointed to the Plaintiffs’ Steering Committee and served on the *Daubert* and Legal Briefing Committees in this MDL. A \$2.37 billion global settlement was achieved.

*In re Yasmin and Yaz (Drospirenone) Marketing, Sales, Practices and Products Liability Litigation*, MDL No. 2385 (S.D. Ill.). Girard Sharp lawyers were appointed to the Plaintiffs’ Steering Committee and served as Co-Chair of the Plaintiffs’ Law and Briefing Committee in this MDL that produced settlements worth approximately \$1.6 billion.

*In re Pradaxa (Dabigatran Etexilate) Products Liability Litigation*, MDL No. 2385 (S.D. Ill.). Girard Sharp lawyers were appointed to the Plaintiffs’ Steering Committee in mass tort litigation that culminated in settlements worth approximately \$650 million.

## Government Reform

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*Paeste v. Government of Guam*, No. 11-cv-0008 (D. Guam) (Marshall, J.). Girard Sharp and co-counsel served as class counsel in litigation against the Government of Guam on behalf of Guam taxpayers for chronic late payment of income tax refunds. After obtaining certification of a litigation class, the plaintiffs prevailed at summary judgment and obtained a permanent injunction reforming Guam's administration of tax refunds. The Ninth Circuit affirmed the injunction. 798 F.3d 1228 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 2508 (2016).

*Ho v. San Francisco Unified School District*, No. C-94-2418-WHO (N.D. Cal.). This civil rights action was brought on behalf of a certified class of San Francisco public school students of Chinese descent to terminate racial and ethnic quotas imposed under a 1983 desegregation consent decree. *See Ho v. San Francisco Unified Sch. Dist.*, 965 F. Supp. 1316 (N.D. Cal. 1997), *aff'd*, 147 F.3d 854 (9th Cir. 1998); *see also* 143 Cong. Rec. S6097, 6099 (1997) (statement of Senator Hatch noting testimony of a class representative before the Senate Judiciary Committee).

# EXHIBIT C



**CHIMICLES**  
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OUR ATTORNEYS

*Partners*

- 3 Nicholas E. Chimicles
- 6 Robert J. Kriner, Jr.
- 7 Steven A. Schwartz
- 11 Kimberly Donaldson Smith
- 12 Timothy N. Mathews
- 15 Benjamin F. Johns
- 18 Scott M. Tucker

*Of Counsel & Senior Counsel*

- 19 Anthony Allen Geyelin
- 20 Tiffany J. Cramer
- 22 Beena M. McDonald
- 25 Alison G. Gushue

*Associates*

- 26 Stephanie E. Saunders
- 27 Zachary P. Beatty
- 29 Alex M. Kashurba
- 31 Samantha E. Holbrook
- 33 Emily L. Skaug
- 34 PRACTICE AREAS
- 38 REPRESENTATIVE CASES



# Our Attorneys-Partners

## Practice Areas:

- Antitrust
- Automobile Defects and False Advertising
- Corporate Mismanagement & Shareholder Derivative Action
- Defective Products and Consumer Protection
- Mergers & Acquisitions
- Non-Listed REITs
- Other Complex Litigation
- Securities Fraud

## Education:

- University of Virginia School of Law, J.D., 1973
- University of Virginia Law Review; co-author of a course and study guide entitled "Student's Course Outline on Securities Regulation," published by the University of Virginia School of Law
- University of Pennsylvania, B.A., 1970

## Memberships & Associations:

- Supreme Court of Pennsylvania Disciplinary Board Hearing Committee Member, 2008-2014.
- Past President of the National Association of Securities and Commercial Law Attorneys based in Washington, D.C., 1999-2001
- Chairman of the Public Affairs Committee of the American Hellenic Institute, Washington, D.C.
- Member of the Boards of Directors of Opera Philadelphia, Pennsylvanians for Modern Courts, and the Public Interest Law Center of Philadelphia.

## Admissions:

- Supreme Court of Pennsylvania
- United States Supreme Court
- Second Circuit Court of Appeals
- Third Circuit Court of Appeals

## NICHOLAS E. CHIMICLES



Mr. Chimicles has been lead counsel and lead trial counsel in major complex litigation, antitrust, securities fraud and breach of fiduciary duty suits for over 40 years. Representative Cases include:

- In three related cases involving the collection of improperly imposed telephone utility users taxes, Mr. Chimicles was co-lead counsel representing taxpayers in the Superior Court in Los Angeles, resulting in the creation of settlement funds totaling more than \$120 million. *Ardon v. City of Los Angeles* (\$92.5 million)(2016); *McWilliams v. City of Long Beach* (\$16.6 million)(2018); and *Granados v. County of Los Angeles* (\$16.9 million)(2018). The suits were settled after the Supreme Court of California unanimously upheld the rights of taxpayers to file class action refund claims under the California Government Code.
- *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation*, Civ. No. 2:13-cv-2777, involved various violations of contractual, fiduciary and corporate statutory duties by defendants who engaged in various related-party transactions, wrongfully withheld dividends and financial information, and failed to timely hold an annual preferred stockholder meeting. This litigation resulted in a swift settlement valued at over \$76 million after ten months of hard-fought litigation.
- *Lockabey v. American Honda Motor Co.*, Case No. 37-2010-87755 (Superior Ct., San Diego). A settlement valued at over \$170 million resolved a consumer action involving false advertising claims relating to the sale of Honda Civic Hybrid vehicles as well as claims relating to a software update to the integrated motor assist battery system of the HCH vehicles. As a lead counsel, Mr. Chimicles led a case that, in the court's view, was "difficult and risky" and provided "significant public value."
- *City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc.*, Case No. 07 C 6174 (N.D. Ill.). A \$90 million settlement was reached in 2010 in this class action challenging the accuracy of a proxy statement that sought (and received) stockholder approval of the merger of an external advisor and property managers by a multi-billion dollar real estate investment trust, Inland Western Retail Real Estate Trust, Inc. The settlement provided that the owners of the advisor/property

- Fourth Circuit Court of Appeals
- Sixth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Tenth Circuit Court of Appeals
- Eleventh Circuit Court of Appeals
- Court of Appeals for the D.C. Circuit
- Eastern District of Pennsylvania
- Eastern District of Michigan
- Northern District of Illinois
- District of Colorado
- Eastern District of Wisconsin
- Court of Federal Claims
- Southern District of New York

#### Honors:

- Recipient of the American Hellenic Institute's Heritage Achievement & National Public Service Award (2019)
- Fellow of the American Bar Foundation (2017) - an honorary organization of lawyers, judges and scholars whose careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.
- Prestigious 2016 Thaddeus Stevens Award of the Public Interest Law Center (Philadelphia) in recognition of his leadership and service to this organization.
- Ellis Island Medal of Honor in May 2004, in recognition of his professional achievements and history of charitable contributions to educational, cultural and religious organizations.
- Pennsylvania and Philadelphia SuperLawyers, 2006-present.
- AV<sup>®</sup> rated by Martindale-Hubbell
- *In re Real Estate Associates Limited Partnerships Litigation*, No. CV 98-7035 DDP, was tried in the federal district court in Los Angeles before the Honorable Dean D. Pregerson. Mr. Chimicles was lead trial counsel for the Class of investors in this six-week jury trial of a securities fraud/breach of fiduciary duty case that resulted in a \$185 million verdict in late 2002 in favor of the Class (comprising investors in the eight REAL Partnerships) and against the REALs' managing general partner, National Partnership Investments Company ("NAPICO") and the four individual officers and directors of NAPICO. The verdict included an award of \$92.5 million in punitive damages against NAPICO. This total verdict of \$185 million was among the "Top 10 Verdicts of 2002," as reported by the National Law Journal (verdictsearch.com). On post-trial motions, the Court upheld in all respects the jury's verdict on liability, upheld in full the jury's award of \$92.5 million in compensatory damages, upheld the Class's entitlement to punitive damages (but reduced those damages to \$2.6 million based on the application of California law to NAPICO's financial condition), and awarded an additional \$25 million in pre-judgment interest. Based on the Court's decisions on the post-trial motions, the judgment entered in favor of the Class on April 28, 2003 totaled over \$120 million.
- *CNL Hotels & Resorts, Inc. Securities Litigation*, Case No. 6:04-cv-1231 (M.D. Fla., Orl. Div. 2006). The case settled Sections 11 and 12 claims for \$35 million in cash and Section 14 proxy claims by significantly reducing the merger consideration by nearly \$225 million (from \$300 million to \$73 million) that CNL paid for internalizing its advisor/manager.
- *Prudential Limited Partnerships Litigation*, MDL 1005 (S.D.N.Y.). Mr. Chimicles was a member of the Executive Committee in this case where the Class recovered from Prudential and other defendants \$130 million in settlements, that were approved in 1995. The Class comprised limited partners in dozens of public limited partnerships that were marketed by Prudential.
- *PaineWebber Limited Partnerships Litigation*, 94 Civ. 8547 (S.D.N.Y.). Mr. Chimicles was Chairman of the Plaintiffs' Executive Committee representing limited partners who had invested in more than 65 limited partnerships that PaineWebber organized and/or marketed. The litigation was settled for a total of \$200 million, comprising \$125 million in cash and \$75 million in additional benefits resulting from restructurings and fee concessions and waivers.
- *In Re Phoenix Leasing Incorporated Limited Partnership Litigation*, Superior Court of the State of California, County of Marin, Case No. 173739. In February 2002, the Superior Court of Marin County, California, approved the settlement of this case which involved five public partnerships sponsored by Phoenix Leasing Incorporated and

- *Continental Illinois Corporation Securities Litigation*, Civil Action No. 82 C 4712 (N.D. Ill.) involving a twenty-week jury trial in which Mr. Chimicles was lead trial counsel for the Class that concluded in July, 1987 (the Class ultimately recovered nearly \$40 million).

**Practice Areas:**

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

**Education:**

- Delaware Law School of Widener University, J.D., 1988
- University of Delaware, B.S. Chemistry, 1983

**Memberships:**

- Delaware State Bar Association

**Admissions:**

- Supreme Court of Delaware

## ROBERT J. KRINER, JR.



Robert K. Kriner, Jr. is a Partner in the Firm's Wilmington, Delaware office. From 1988 to 1989, Mr. Kriner served as law clerk to the Honorable James L. Latchum, Senior Judge of the United States District Court for the District of Delaware. Following his clerkship and until joining the Firm, Mr. Kriner was an associate with a major Wilmington, Delaware law firm, practicing in the areas of corporate and general litigation.

Mr. Kriner has prosecuted actions, including class and derivative actions, on behalf of stockholders, limited partners and other investors with claims relating to mergers and acquisitions, hostile acquisition proposals, the enforcement of fiduciary duties, the election of directors, and the enforcement of statutory rights of investors such as the right to inspect books and records. Among his recent achievements are *Sample v. Morgan*, C.A. No. 1214-VCS (obtaining full recovery for shareholders diluted by an issuance of stock to management), *In re Genentech, Inc. Shareholders Litigation*, Consolidated C.A. No. 3911-VCS (leading to a nearly \$4 billion increase in the price paid to the Genentech stockholders) and *In re Kinder Morgan, Inc. Shareholders Litigation*, Consolidated Case No. 06-C-801 (action challenging the management led buyout of Kinder Morgan, settled for \$200 million).

Recently, Mr. Kriner led the prosecution of a derivative action in the Delaware Court of Chancery by stockholders of Bank of America Corporation relating to the January 2009 acquisition of Merrill Lynch & Co. *In re Bank of America Corporation Stockholder Derivative Litigation*, C.A. No. 4307-CS. The derivative action concluded in a settlement which included a \$62.5 million payment to Bank of America.

**Practice Areas:**

- Antitrust
- Corporate Mismanagement & Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud

**Education:**

- Duke University School of Law, J.D., 1987
- ◊ Law & Contemporary Problems Journal, Senior Editor
- University of Pennsylvania, B.A., 1984 - *cum laude*

**Memberships & Associations:**

- National Association of Shareholder and Consumer Attorneys (NASCAT) Executive Committee Member
- American Bar Association
- Pennsylvania Bar Association

**Admissions:**

- United States Supreme Court
- Pennsylvania Supreme Court
- Third Circuit Court of Appeals
- Sixth Circuit Court of Appeals
- Eighth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- Eastern District of Pennsylvania
- Western District of Pennsylvania
- Eastern District of Michigan
- District of Colorado

**Honors:**

- National Trial Lawyers Top 100
- AV Rating from Martindale Hubbell
- Pennsylvania Super Lawyer, 2006-Present
- America's Top 100 High Stakes Litigator

# Steven A. Schwartz



STEVEN A. SCHWARTZ has prosecuted complex class actions in a wide variety of contexts. Notably, Mr. Schwartz has been successful in obtaining several settlements and judgments where class members received a full recovery on their damages. Representative cases include:

- *In re Philips Recalled CPAP, Bi-Level PAP, And Mechanical Ventilator Products Litigation*, MDL No. 3014 (W.D. Pa.). The Court appointed Mr. Schwartz as Plaintiffs' Co-Lead Counsel in

this multi district litigation alleging claims for economic losses, medical monitoring and personal injury in connection with Philips' recall of millions of CPAPs, BiPAPs and ventilators that contained polyester-based polyurethane foam that degrades into particles and emits volatile toxic compounds. This case is ongoing.

- *Edward Asner v. SAG-AFTRA Health Fund*, No. 20-10914 & *Frances Fisher v. SAG-AFTRA*, No. 21-5215 (C.D. Cal.). Mr. Schwartz serves as Co-Lead Class Counsel in these cases. The *Health Fund* case challenges the SAG-AFTRA Health Plan Trustees' decision to merge the SAG and AFTRA health plans, their related failures to impellent the merger and properly manage Plan deteriorating finale condition, their imprudent negotiation of the 2019 and 2020 Commercials, Netflix and TV/Theatrical contracts, and the subsequent decision to eliminate health benefits for senior actors. The *Fisher* case asserts related claims for breaches of fiduciary duty and the duty of fair representation against the trustees of the SAG AFTRA Union. See <https://youtu.be/4LgRxJnxl8o> featuring prominent actors supporting the lawsuits. These cases are ongoing.
- *Snitzer v. Board of Trustees of the American Federation of Musicians Pension Plan*, No. 1:17-cv-5361 (S.D.N.Y.). Mr. Schwartz served as Plaintiffs' Lead Counsel in this case which alleged that the Trustees of the AFM Pension Plan made a series of imprudent, overly-aggressive bets by investing an excessive percentage of plan assets in risky asset classes such ss emerging markets equities and private equity far beyond the percentage of such investment by other Taft-Hartley pension plans. The cases settled shortly before trial for \$26.85 million plus substantial governance reforms including appointment of a Neutral Independent Fiduciary. The Trustee independent neutral trustee. The \$26.85 million cash recovery represented the vast majority of provable damages that likely could have been won at trial and between about 65% to 75% of the Trustees' available insurance policy limits to pay any final judgment achieved through continued litigation.
- *In re Cigna-American Specialty Health Administrative Fee Litigation*, No. 2:16-cv-03967-NIQA (E. D. Pa.). Mr. Schwartz served as co-lead counsel in this national class action alleging that defendant Cigna and its subcontractor, ASH, violated the written terms of ERISA medical benefit by treating ASH's administrative fees as medical expenses to artificially inflate the amount of "benefits" owed by plans and the cost-sharing obligations of plan participants and

beneficiaries. The Court approved the \$8.25 million settlement in which class members were automatically mailed checks representing a full or near-full recovery of the actual amount they paid for the administrative fees. ECF 101 at 4, 23-24.

- ***Rodman v. Safeway Inc.***, No. 11-3003-JST (N.D. Cal.). Mr. Schwartz served as Plaintiffs' Lead Trial Counsel and presented all of the district court and appellate arguments in this national class action regarding grocery delivery overcharges. He was successful in obtaining a national class certification and a series of summary judgment decisions as to liability and damages resulting in a \$42 million judgment, which represents a full recovery of class members' damages plus interest. The \$42 million judgment was entered shortly after a scheduled trial was postponed due to Safeway's discovery misconduct, which resulted in the district court imposing a \$688,000 sanction against Safeway. The Ninth Circuit affirmed the \$42 million judgment. 2017 U.S. App. LEXIS 14397 (9th Aug. 4, 2017).
- ***In re Apple iPhone/iPod Warranty Litig.***, 3:10-1610-RS (N.D. Cal.). Mr. Schwartz served as co-lead counsel in this national class action in which Apple agreed to a \$53 million non-reversionary, cash settlement to resolve claims that it had improperly denied warranty coverage for malfunctioning iPhones due to alleged liquid damage. Class members were automatically mailed settlement checks for more than 117% of the average replacement costs of their iPhones, net of attorneys' fees, which represented an average payment of about \$241.
- ***In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.***, No. 06 C 7023, (N.D. Ill.) & Case 1:09-wp-65003-CAB (N. D. Ohio) (MDL No. 2001). Schwartz served as co-lead class counsel in this case which related to defective central control units ("CCUs") in front load washers manufactured by Whirlpool and sold by Sears. After extensive litigation, including two trips to the Seventh Circuit and a trip to the United States Supreme Court challenging the certification of the plaintiff class, he negotiated a settlement shortly before trial that the district court held, after a contested proceeding approval proceeding, provided a "full-value, dollar-for-dollar recovery" that was "as good, if not a better, [a] recovery for Class Members than could have been achieved at trial." 2016 U.S. Dist. LEXIS 25290 at \*35 (N.D. Ill. Feb. 29, 2016).
- ***Chambers v. Whirlpool Corp., et al.***, Case No. 11-1773 FMO (C.D. Cal.). Mr. Schwartz served as co-lead counsel in this national class action involving alleged defects resulting in fires in Whirlpool, Kenmore, and KitchenAid dishwashers. The district court approved a settlement which he negotiated that provides wide-ranging relief to owners of approximately 24 million implicated dishwashers, including a full recovery of out-of-pocket damages for costs to repair or replace dishwashers that suffered Overheating Events. In approving the settlement, Judge Olguin of the Central District of California described Mr. Schwartz as "among the most capable and experienced lawyers in the country in [consumer class actions]." 214 F. Supp. 3d 877, 902 (C.D. Cal. 2016).
- ***Wong v. T-Mobile***, 05-cv-73922-NGE-VMM (E.D. Mich.). In this billing overcharge case, Mr. Schwartz served as co-lead class counsel and negotiated a settlement where T-Mobile automatically mailed class members checks representing a 100% net recovery of



the overcharges and with all counsel fees paid by T-Mobile in addition to the class members' 100% recovery.

- ***In re Certainteed Corp. Roofing Shingle Products Liability Litig.***, No. 07-md-1817-LP (E.D. Pa.). In this MDL case related to defective roof shingles, Mr. Schwartz served as Chair of Plaintiffs' Discovery Committee and worked under the leadership of co-lead class counsel. The parties reached a settlement that provided class members with a substantial recovery of their out-of-pocket damages and that the district court valued at between \$687 to \$815 million.
- ***Shared Medical Systems 1998 Incentive Compensation Plan Litig.***, Mar. Term 2003, No. 0885 (Phila. C.C.P.). In this case on behalf of Siemens employees, after securing national class certification and summary judgment as to liability, on the eve of trial, Mr. Schwartz negotiated a net recovery for class members of the full amount of the incentive compensation sought (over \$10 million) plus counsel fees and expenses. At the final settlement approval hearing, Judge Bernstein remarked that the settlement "should restore anyone's faith in class action[s]. . . ." Mr. Schwartz served as co-lead counsel in this case and handled all of the arguments and court hearings.
- ***In re Pennsylvania Baycol: Third-Party Payor Litig.***, Sept. Term 2001, No. 001874 (Phila. C.C.P.) ("Baycol"). Mr. Schwartz served as co-lead class counsel in this case brought by health and welfare funds and insurers to recover damages caused by Bayer's withdrawal of the cholesterol drug Baycol. After extensive litigation, the court certified a nationwide class and granted plaintiffs' motion for summary judgment as to liability, and on the eve of trial, he negotiated a settlement providing class members with a net recovery that approximated the maximum damages (including pre-judgment interest) that class members suffered. That settlement represented three times the net recovery of Bayer's voluntary claims process (which AETNA and CIGNA had negotiated and was accepted by many large insurers who opted out of the class early in the litigation)
- ***Wolens v. American Airlines, Inc.*** Schwartz served as plaintiffs' co-lead counsel in this case involving American Airlines' retroactive increase in the number of frequent flyer miles needed to claim travel awards. In a landmark decision, the United States Supreme Court held that plaintiffs' claims were not preempted by the Federal Aviation Act. 513 U.S. 219 (1995). After eleven years of litigation, American Airlines agreed to provide class members with mileage certificates that approximated the full extent of their alleged damages, which the Court, with the assistance of a court-appointed expert and after a contested proceeding, valued at between \$95.6 million and \$141.6 million.
- ***In Re ML Coin Fund Litigation***, (Superior Court of the State of California for the County of Los Angeles). Mr. Schwartz served as plaintiffs' co-lead counsel and successfully obtained a settlement from defendant Merrill Lynch in excess of \$35 million on behalf of limited partners, which represented a 100% net recovery of their initial investments (at the time of the settlement the partnership assets were virtually worthless due to fraud committed by Merrill's co-general partner Bruce McNall, who was convicted of bank fraud).
- ***Nelson v. Nationwide***, July Term 1997, No. 00453 (Phila. C.C.P.). Mr.



Schwartz served as lead counsel on behalf of a certified class. After securing judgment as to liability in the trial court (34 Pa. D. & C. 4<sup>th</sup> 1 (1998)), and defeating Nationwide's Appeal before the Pennsylvania Superior Court, 924 PHL 1998 (Dec. 2, 1998), he negotiated a settlement whereby Nationwide agreed to pay class members approximately 130% of their bills.

**Practice Areas:**

- Securities Fraud
- Non-Listed REITs
- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

**Education:**

- Villanova University School of Law, J.D., 1999 - *cum laude*
- Boston University, B.A. Political Science, 1996

**Memberships & Associations:**

- Pennsylvania Bar Association
- Villanova Law School Alumni Association

**Admissions:**

- Pennsylvania Supreme Court
- New Jersey Supreme Court
- Third Circuit Court of Appeals
- District of New Jersey
- Eastern District of Pennsylvania

**Honors:**

- Pennsylvania SuperLawyer: 2013– Present
- Named Pennsylvania Rising Star by Super Lawyers: 2006-2012
- Sutton Who's Who in American Law

# Kimberly Donaldson Smith



Kimberly Donaldson Smith is a partner in the Firm's Haverford Office. Kimberly has been counseling clients and prosecuting cases on complex issues involving securities, business transactions and other class actions for over 15 years.

Kimberly concentrates her practice in sophisticated securities class action litigation in federal courts throughout the country, and has served as lead or co-lead counsel in over a dozen class actions. She is very active in

investigating and initiating securities and shareholder class actions.

Kimberly is currently prosecuting federal securities claims on behalf of investors in numerous cases. Kimberly was instrumental in the outstanding settlements achieved for investors in:

- *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation*, Civ. No. 2:13-cv-2777 (W.D. Tenn.)(a settlement valued at over \$76 million for current and former W2007 Grace preferred stockholders);
- *In re Empire State Realty Trust, Inc. Investor Litigation*, Case 650607/2012, NY Supreme Court (a \$55,000,000 cash settlement fund and \$100 million tax savings for the Empire investors);
- *CNL Hotels & Resorts Inc. Federal Securities Litigation*, Case No. 04-cv-1231 (M.D. Fla.)(a \$35,000,000 cash settlement fund and a \$225 million savings for the CNL shareholders);
- *Inland Western Retail Real Estate Trust, Inc., et al. Litigation*, Case 07 C 6174 (U.S.D.C. N.D. Ill) (a \$90 million savings for the Inland shareholders subjected to a self-dealing transaction); and
- *Wells REIT Securities Litigation*, Case 1:07-cv-00862/1:07-cv-02660 (U.S.D.C. N.D. GA)(a \$7 million cash settlement fund for the Wells REIT investors).

Notably, Kimberly was an integral member of the trial team that successfully litigated the *In re Real Estate Associates Limited Partnership Litigation*, No. CV 98-7035 DDP (CD. Cal.) through a six-week jury trial that resulted in a landmark \$184 million plaintiffs' verdict, which is one of the largest jury verdicts since the passage of the Private Securities Litigation Reform Act of 1995. The Real Estate Associates judgment was settled for \$83 million, which represented full recovery for the Class (and an amount in excess of the damages calculated by Plaintiffs' expert).

Kimberly's pro bono activities include serving as a volunteer attorney with the Support Center for Child Advocates, a Philadelphia-based, nonprofit organization that provides legal and social services to abused and neglected children. Since 2006, Kimberly has been recognized by

Law & Politics and the publishers of Philadelphia Magazine as a Pennsylvania Super Lawyer or Rising Star, as listed in the Super Lawyers' publications.

**Practice Areas:**

- Antitrust
- Corporate Mismanagement
- Consumer Fraud & Deceptive Products
- Securities Fraud Litigation

**Education:**

- Rutgers School of Law-Camden, J.D., 2003 - *with High Honors*
- Rutgers University-Camden, B.A., 2000 - *with Highest Honors*

**Memberships & Associations:**

- National Association of Shareholder and Consumer Attorneys (NASCAT) Amicus Committee Member
- Rutgers Journal of Law & Religion – Lead Marketing Editor (2002-2003)

**Admissions:**

- Pennsylvania
- New Jersey
- Eastern District of Pennsylvania
- District of New Jersey
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Eleventh Circuit

**Honors:**

- 2019-2021 Lawdragon 500 Leading Plaintiff Lawyer
- Super Lawyers 2019-2021
- Pennsylvania Super Lawyers Rising Star 2008, 2010, 2013-2014
- Rutgers Law Legal Writing Award 2003

# Timothy N. Mathews



Tim Mathews is a partner in the firm's Haverford office. He has been described as "among the most capable and experienced lawyers in the country" in consumer class action litigation. *Chambers v. Whirlpool*, 214 F. Supp 3d 877 (C.D.Cal. 2016). He is also an experienced appellate attorney in the United States Courts of Appeals for the Third, Fourth, Ninth, and Eleventh Circuits, as well as the Supreme Court of California. Representative cases in which Mr. Mathews has held a lead

role include:

- *Suarez v. Nissan North America* (M.D.Tenn.) – over \$50 million settlement providing reimbursements, free repairs, and extended warranty for Nissan Altima headlamps;
- *Rodman v. Safeway, Inc.* (N.D.Cal.) – \$42 million judgment against Safeway, Inc., representing 100% of damages plus interest for grocery delivery overcharges;
- *Ardon v. City of Los Angeles* (Superior Court, County of Los Angeles) – \$92.5 million tax refund settlement with the City of Los Angeles after winning landmark decision in the Supreme Court of California securing the rights of taxpayers to file class-wide tax refund claims under the CA Government Code;
- *McWilliams v. City of Long Beach* (Superior Court, County of Los Angeles) - \$16.6 million telephone tax refund settlement;
- *Granados v. County of Los Angeles* - \$16.9 million telephone tax refund settlement;
- *In re 24 Hour Fitness Prepaid Memberships. Litig.* (N.D.Cal.) - Full-relief settlement providing over \$8 million in refunds and an estimated minimum of \$16 million in future rate reductions, for class of consumers who purchased prepaid gym memberships;
- *Chambers v. Whirlpool Corp.* (C.D.Cal.) – Settlement providing 100% of repair costs and other benefits for up to 24 million dishwashers that have an alleged propensity to catch fire due to a control board defect;
- *Livingston v. Trane U.S. Inc.* (D.N.J.) – multimillion-dollar settlement providing repair reimbursements, extended warranty coverage, and free service for owners of defective air conditioners;
- *In re Apple iPhone Warranty Litig.* (N.D.Cal.) – \$53 million settlement in case alleging improper iPhone warranty denials; class members received on average 118% of their damages;
- *In re Colonial Bancgroup, Inc.* – Settlements totaling \$18.4 million for shareholders in securities lawsuit involving one of the largest U.S.

bank failures of all time;

- *International Fibercom* (D.Ariz.) – Represented plaintiff in insurance coverage actions against D&O carriers arising out of securities fraud claims; achieved a near-full recovery for the plaintiff; and
- *In re Mutual Funds Investment Litigation*, MDL 1586 (D.Md.) – Lead Fund Derivative Counsel in the multidistrict litigation arising out of the market timing and late trading scandal of 2003, which involved seventeen mutual fund families and hundreds of parties, and resulted in over \$250 million in settlements.

Mr. Mathews graduated from Rutgers School of Law-Camden with high honors, where he served as Lead Marketing Editor for the Rutgers Journal of Law & Religion, served as a teaching assistant for the Legal Research and Writing Program, received the 1L legal Writing Award, and received a Dean's Merit Scholarship and the Hamerling Merit Scholarship. He received his B.A. from Rutgers University-Camden in 2000 with highest honors, where he was inducted into the Athenaeum honor society.

Mr. Mathews also serves as Co-Chair of the Planning Commission for the township of Lower Merion. His pro bono work has included representation of the Holmesburg Fish and Game Protective Association in Philadelphia. He also served on the Amicus Committee for the National Association of Shareholder and Consumer Attorneys (NASCAT) for over ten years.

**Practice Areas:**

- Antitrust
- Automobile Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud
- Data Breach

**Education:**

- Penn State Dickinson School of Law, J.D., 2005 - Woollack Honor Society
- Penn State Harrisburg, M.B.A., 2004 - Beta Gamma Sigma Honor Society
- Washington and Lee University, B.S., 2002 - *cum laude*

**Memberships & Associations:**

- Executive Committee, Young Lawyers Division of the Philadelphia Bar Association (2011-2014)
- Board Member, The Dickinson School of Law Alumni Society
- Editorial Board, Philadelphia Bar Reporter (2013-2016)
- The Federalist Society

**Admissions:**

- Supreme Court of Pennsylvania
- Supreme Court of New Jersey
- Third Circuit Court of Appeals
- Fifth Circuit Court of Appeals
- Ninth Circuit Court of Appeals
- D.C. Circuit Court of Appeals
- Eastern District of Pennsylvania
- Middle District of Pennsylvania
- Western District of Pennsylvania
- District of New Jersey
- District of Colorado
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- U.S. Court of Federal Claims

# Benjamin F. Johns



Benjamin F. Johns first began working at the firm as a Summer Associate while pursuing a J.D./M.B.A. joint degree program in business school and law school. He became a full-time Associate upon graduation, and is now a Partner. Over the course of his legal career, Ben has argued in state and federal courts across the country, including the Pennsylvania Supreme Court (won unanimous reversal), Pennsylvania Commonwealth Court (won), and U.S. Court of Appeals for the D.C. Circuit (lost, 2-1). He has taken and defended hundreds of depositions, including those of c-suite level

executives of Fortune 500 companies, lawyers, bankers, experts, engineers, prison guards, I.R.S. officials, and information technology personnel.

Ben is currently serving as Court appointed interim co-lead counsel in several consumer data breach class actions, including *Perdue et al. v. Hy-Vee, Inc.*, No. 1:19-cv-01330-MMM-JEH (C.D. Ill.); *In re Wawa, Inc. Data Security Litig.*, Lead Case No. 2:19-cv-06019-GEKP (E.D. Pa); *Kostka v. Dickey's Barbeque Rests.*, Civil Action No. 3:20-cv—3424-K (N.D. Tex.); and *In re Rutter's Inc. Data Security Breach Litig.*, No. 1:20-cv-382 (M.D. Pa.). He has also been appointed Chair of the Executive Committee in *In re Subaru Battery Drain Prods. Liab. Litig.*, Civil Action No. 1:20-cv-03095-JHR-JS (D.N.J.), a consumer automobile case that largely withstood a motion to dismiss, and is among the lead lawyers prosecuting a case against Apple related to allegedly defective MacBook keyboards. *In re Macbook Keyboard Litig.*, No. 5:18-cv-02813-EJD (N.D. Cal.). Along with his co-counsel, Ben successfully argued against two motions to dismiss and for class certification in that case.

Over the course of his career, Ben has provided substantial assistance in the prosecution of the following cases:

- *Udeen v. Subaru of Am., Inc.*, 18-17334 (RBK/JS) (D.N.J.) (Mr. Johns was co-lead counsel in this consumer class action involving allegedly defective infotainment systems in certain Subaru automobiles, which resulted a settlement valued at \$6.25 million. At the hearing granting final approval of the settlement, the district court commented that the plaintiffs' team "are very skilled and very efficient lawyers...They've done a nice job.")
- *In re Nexus 6P Product Liability Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (Mr. Johns served as co-lead counsel – and argued two of the motions to dismiss – in this defective smartphone class action. The case resulted in a settlement valued at \$9.75 million, which Judge Beth Labson Freeman described as "substantial" and an "excellent resolution of the case.")
- *In re MyFord Touch Consumer Litig.*, No. 13-cv-03072-EMC (N.D. Cal.) (Mr. Johns served as court-appointed co-lead counsel in this consumer class action concerning allegedly defective MyFord Touch infotainment systems, which settled for \$17 million shortly before trial)
- *Weeks v. Google LLC*, No. 5:18-cv-00801-NC, 2019 U.S. Dist. LEXIS 215943, at \*8-9 (N.D. Cal. Dec. 13, 2019) (Mr. Johns was co-lead counsel – and successfully argued against a motion to dismiss – in this defective smartphone class action. A \$7.25 million settlement was

reached, which Magistrate Judge Nathanael M. Cousins described as being an “excellent result.”)

- *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC (D. Colo.) (Mr. Johns served as co-lead counsel of behalf of a class of millions of cardholders who were impacted by a data breach at Chipotle restaurants. After largely defeating a motion to dismiss filed by Chipotle, the case resulted in a favorable settlement for affected consumers. At the final approval of the settlement, the district court noted that class counsel has “extensive experience in class action litigation, and are very familiar with claims, remedies, and defenses at issue in this case.”)
- *Bray et al. v. GameStop Corp.*, No. 1:17-cv-01365-JEJ (D. Del.) (Mr. Johns served as co-lead counsel for consumers affected by a data breach at GameStop. After largely defeating a motion to dismiss, the case was resolved on favorable terms that provided significant relief to GameStop customers. At the final approval hearing, the District Judge found the settlement to be “so comprehensive that really there’s nothing else that I need developed further,” that “the settlement is fair,” “reasonable,” and “that under the circumstances it is good for the members of the class under the circumstances of the claim.”)
- *In re: Elk Cross Timbers Decking Marketing, Sales Practices and Products Liability Litig.*, No. 15-cv-18-JLL-JAD (D.N.J.) (Mr. Johns served on the Plaintiffs’ Steering Committee in this MDL proceeding, which involved allegedly defective wood-composite decking, and which ultimately resulted in a \$20 million settlement)
- *In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK (S.D. Fla.). (Ben was actively involved in these Multidistrict Litigation proceedings, which involve allegations that dozens of banks reorder and manipulate the posting order of debit transactions. Settlements collectively in excess of \$1 billion were reached with several banks. Ben was actively involved in prosecuting the actions against U.S. Bank (\$55 million settlement) and Comerica Bank (\$14.5 million settlement)
- *In re Flonase Antitrust Litig.*, 2:08-cv-03301-AB (E.D. Pa.). (indirect purchaser plaintiffs alleged that the manufacturer of Flonase (a nasal allergy spray) filed “sham” citizen petitions with the FDA in order to delay the approval of less expensive generic versions of the drug. A \$46 million settlement was reached on behalf of all indirect purchasers. Ben argued a motion before the District Court.)
- *In re TriCor Indirect Purchasers Antitrust Litig.*, No. 05-360-SLR (D. Del.). (\$65.7 million settlement on behalf of indirect purchasers who claimed that the manufacturers of a cholesterol drug engaged in anticompetitive conduct designed to keep generic versions off of the market.)
- *Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation*, No. 1:10-cv-00264-CAB (N.D. Ohio). (\$20 million settlement on behalf of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA.)
- *West v. ExamSoft Worldwide, Inc.*, No. 14-cv-22950-UU (S.D. Fla.) (\$2.1 million settlement on behalf of July 2014 bar exam applicants in several states who paid to use software for the written portion of the exam which allegedly failed to function properly)
- *Henderson v. Volvo Cars of North America, LLC*, No. 2:09-cv-04146-



CCC-JAD (D. N.J.). (provided substantial assistance in this consumer automobile case that settled after the plaintiffs prevailed, in large part, on a motion to dismiss)

- *In re Marine Hose Antitrust Litig.*, No. 08-MDL-1888 (S.D. Fla.) (Settlements totaling nearly \$32 million on behalf of purchasers of marine hose)
- *In re Philips/Magnavox Television Litig.*, No. 2:09-cv-03072-CCC-JAD (D. N.J.). (Settlement in excess of \$4 million on behalf of consumers whose flat screen televisions failed due to an alleged design defect. Ben argued against one of the motions to dismiss.)
- *Allison, et al. v. The GEO Group*, No. 2:08-cv-467-JD (E.D. Pa.), and *Kurian v. County of Lancaster*, No. 2:07-cv-03482-PD (E.D. Pa.). (Settlements totaling \$5.4 million in two civil rights class action lawsuits involving allegedly unconstitutional strip searches at prisons)
- *In re Canon Inkjet Printer Litig.*, No. 2-14-cv-03235-LDW-SIL (E.D.N.Y.) (Ben was co-lead counsel in this consumer class action involving allegedly defective printers that resulted in a \$930,000 settlement.)
- *In re Recoton Sec. Litig.*, 6:03-cv-00734-JA-KRS (M.D.Fla.). (\$3 million settlement for alleged violations of the Securities Exchange Act of 1934)
- *Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB (D. Colo.). (Obtained a settlement in this consumer fraud case that provided full recovery to approximately 930,000 class members)

Ben has also had success at the appellate level in cases to which he substantially contributed. *See Cohen v. United States*, 578 F.3d 1 (D.C. Cir. 2009), *reh'g granted per curiam*, 599 F.3d 652 (D.C. Cir. 2010), *remanded by*, 650 F.3d 717 (D.C. Cir. 2011) (en banc) (reversing district court's decision to the extent that it dismissed taxpayers' claims under the Administrative Procedure Act); *Lone Star Nat'l Bank, N.A. v. Heartland Payment Sys.*, No. 12-20648, 2013 U.S. App. LEXIS 18283 (5th Cir. Sept. 3, 2013) (reversing district court's decision dismissing financial institutions' common law tort claims against a credit card processor).

Ben was elected by fellow members of the Philadelphia Bar Association to serve a three year term on the Executive Committee of the organization's Young Lawyers Division. He also served on the Editorial Board of the Philadelphia Bar Reporter, and the Board of Directors for the Dickinson School of Law Alumni Society. Ben was also a head coach in the Narberth basketball summer league for several years. He has been published in the Philadelphia Lawyer magazine and the Philadelphia Bar Reporter, presented a Continuing Legal Education course, and spoken to a class of law school students about the practice. While in college, Ben was on the varsity basketball team and spent a semester studying abroad in Osaka, Japan. Ben has been named a "Lawyer on the Fast Track" by The Legal Intelligencer, a "Top 40 Under 40" attorney by The National Trial Lawyers, and a Pennsylvania "Rising Star" for the past nine years.

**Practice areas:**

- Corporate Mismanagement and Shareholder Derivative Actions
- Mergers and Acquisitions

**Education:**

- SUNY Cortland, B.S., 2002, *cum laude*
- Syracuse University College of Law, 2006, J.D., *cum laude*
- Whitman School of Management at Syracuse University, 2006, M.B.A

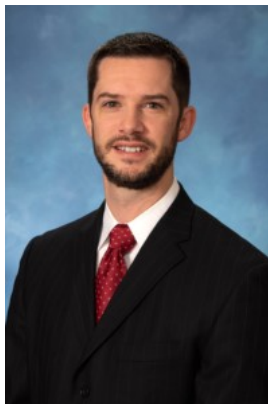
**Admissions:**

- Supreme Court of Delaware
- Supreme Court of Connecticut
- District of Colorado
- District of Delaware
- Third Circuit Court of Appeals

**Honors:**

- Named a 2016, 2017, 2018, and 2019 Delaware "Rising Star"
- Martindale Hubbell-Distinguished rated
- 2015–2017 Secretary of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- 2013 – 2015 Assistant Secretary of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- 2010 – 2013 Associate Member of the Board of Bar Examiners of the Supreme Court of the State of Delaware
- Member, Richard S. Rodney Inn of Court

# Scott M. Tucker



Scott M. Tucker is a Partner in the Firm's Wilmington Office. Mr. Tucker is a member of the Firm's Mergers & Acquisitions and Corporate Mismanagement and Shareholder Derivative Action practice areas. Together with the Firm's Partners, Mr. Tucker assisted in the prosecution of the following actions:

- *In re Kinder Morgan, Inc. Shareholders Litigation*, Consol. C.A. No. 06-C-801 (Kan.) (action challenging the management led buyout of Kinder Morgan Inc., which settled for \$200 million).
- *In re J.Crew Group, Inc., Shareholders Litigation*. C.A. No. 6043-CS (Del. Ch.) (action that challenged the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management which resulted in a settlement fund of \$16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction be approved by a majority of the unaffiliated shareholders).
- *In re Genentech, Inc. Shareholder Litigation*, C.A. No. 3911-VCS (Del. Ch.) (action challenging the attempt by Genentech's controlling stockholder to take Genentech private which resulted in a \$4 billion increase in the offer).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.*, C.A. No. 6900-VCP (Del. Ch.) (action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and controlling shareholder of Oracle, which led to a settlement valued at \$440 million, one of the larger derivative settlements in the history of the Court of Chancery).
- *In re Sanchez Derivative Litigation*, C.A. No. 9132-VCG (Del. Ch.) (action challenging a related party transaction between Sanchez Energy Inc. and Sanchez Resources, LLC a privately held company, which settled for roughly \$30 million in cash and assets)

Mr. Tucker is a Member of the Richard S. Rodney Inn of Court. While attending law school, Mr. Tucker was a member of the Securities Arbitration Clinic and received a Corporate Counsel Certificate from the Center for Law and Business Enterprise.

#### Practice Areas:

- Antitrust
- Automotive Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation

#### Education:

- Villanova Law School, J.D. - *cum laude*
- ◇ Villanova Law Review, Associate Editor
- ◇ Villanova Moot Court Board
- ◇ Obert Corporation Law Prize
- University of Virginia, B.A., English literature

#### Memberships & Associations:

- Pennsylvania Bar Association
- Passe' International

#### Admissions:

- Pennsylvania
- Eastern District of Pennsylvania
- Federal Circuit

## Anthony Allen Geyelin



Tony is Of Counsel to the firm at the Haverford office, where since 2001 he has used his extensive private and public sector corporate and regulatory experience to assist the firm in the effective representation of its many clients. Tony has previously worked as an associate in the business department of a major Philadelphia law firm; served as Chief Counsel and then Acting Insurance Commissioner with the Pennsylvania Insurance Department in Harrisburg; and represented publicly traded insurance companies based in Pennsylvania and Georgia

as their senior vice president, general counsel and corporate secretary.

Tony has represented the firm's clients in multiple significant litigations, including the DynCorp False Claim Act, Home Advisor, Orrstown, Anadarko (Chesapeake Energy), Ford Sync, Whirlpool Fire, Clear Channel, Carrier Air Conditioner, Cipro Antitrust, Phoenix Leasing and Reliance Insurance Company Insolvency Matters.

Outside of the office Tony's pro bono, professional and charitable activities have included volunteering as a Federal Public Defender; serving as a member and officer of White-Williams Scholars, the Schuylkill Canal Association, and the First Monday Business Club of Philadelphia organizations; and as a member of the National Association of Insurance Commissioners and the Radnor Township (PA) Planning Commission.

**Practice Areas:**

- Corporate Mismanagement & Shareholder Derivative Action
- Mergers & Acquisitions

**Education:**

- Villanova University School of Law, J.D., 2007
- ◇ Co-President of Asian-Pacific American Law Students Association
- Tufts University, B.A., 2002 – *cum laude* in Political Science

**Memberships & Associations:**

- Delaware State Bar Association
- The Richard S. Rodney American Inn of Court

**Admissions:**

- Delaware, 2007
- U.S. District Court for the District of Delaware, 2008

# Tiffany J. Cramer



Tiffany J. Cramer is Senior Counsel in the Wilmington office. Her entire practice is devoted to litigation, with an emphasis on corporate mismanagement & derivative stockholder actions and mergers & acquisitions.

Together with the Firm's Partners, Ms. Cramer has assisted in the prosecution of numerous shareholder and unitholder class and derivative actions arising pursuant to Delaware law, including:

- *In re Starz Stockholder Litigation*, C.A. No. 12584-VCG (Del. Ch.) (Co-Lead Counsel in Court of Chancery class action challenging the acquisition of Starz by Lions Gate Entertainment Corporation, which led to a settlement of \$92.5 million).
- *In re Freeport McMoRan Copper & Gold, Inc. Deriv. Litig.*, C.A. No. 815-VCN (Del. Ch.) (Co-Lead Counsel in Court of Chancery derivative litigation arising from Freeport McMoRan Copper & Gold, Inc.'s acquisition of Plains Exploration Production Co. and McMoran Exploration Production Co, which led to a settlement valued at nearly \$154 million, including an unprecedented \$147.5 million dividend paid to Freeport's stockholders).
- *City of Roseville Employees' Retirement System, et al. v. Ellison, et al.*, C.A. No. 6900-VCP (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative action challenging the acquisition by Oracle Corporation of Pillar Data Systems, Inc., a company majority-owned and controlled by Larry Ellison, the Chief Executive Officer and largest shareholder of Oracle, which led to a settlement valued at \$440 million, one of the larger derivative settlements in the history of the Court of Chancery).
- *In Re Genentech, Inc. Shareholders Litigation*, Consol. C.A. No. 3911-VCS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery class action litigation challenging Roche Holding's buyout of Genentech, Inc., which resulted in a settlement providing for, among other things, an additional \$4 billion in consideration paid to the minority shareholders of Genentech, Inc.).
- *In re Atlas Energy Resources, LLC Unitholder Litigation*, Consol. C.A. No. 4589-VCN (Co-Lead Counsel in the Court of Chancery class action litigation challenging Atlas America, Inc.'s acquisition of Atlas Energy Resources, LLC, which resulted in a settlement providing for an additional \$20 million fund for former Atlas Energy Unitholders).
- *In re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813-CS (Del. Ch.) (Co-Lead Counsel in the Court of Chancery derivative litigation arising from Barnes & Noble, Inc.'s acquisition of Barnes & Noble College Booksellers, Inc., which resulted in a settlement of nearly \$30 million).

Ms. Cramer is a Member of the Richard S. Rodney American Inn of Court. Ms. Cramer has also been selected to the Delaware "Rising Stars" list from Super Lawyers: 2016 and 2017. While in law school, she served as law clerk to the Honorable Jane R. Roth of the United States Court of Appeals for the

Third Circuit. While in college, she played the bassoon as a member of the Tufts Symphony Orchestra.

**Practice Areas:**

- Defective Products and Consumer Protection
- Data Breach
- ERISA
- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Other Complex Litigation

**Education:**

- Widener University Delaware Law School, J.D., 1998
- Pennsylvania State University, B.A., 1995

**Memberships and Associations:**

- The Sedona Conference, Working Group 1
- American Bar Association, Litigation Section:
  - 2022-2024 Diverse Leaders Academy
  - Class and Derivative Suits Committee
- American Association of Justice
- Philadelphia Bar Association
- South Asian Bar Association, Philadelphia Chapter

**Admissions:**

- Pennsylvania
- District of Columbia
- Eastern District of Pennsylvania
- Western District of Pennsylvania
- Middle District of Pennsylvania
- Eastern District of Michigan

# Beena M. McDonald



Beena Mallya McDonald is Senior Counsel in the Firm's Haverford office. She is an experienced federal and state trial attorney, having first-chaired numerous civil and criminal jury trials, hundreds of bench trials, and innumerable arbitrations, motions, and depositions. She has also successfully argued before the Judicial Panel on Multidistrict Litigation for centralization of large-scale nationwide class actions.

Beena focuses her practice on complex litigation including consumer protection, ERISA, and securities fraud cases. She manages cases that demand significant motion practice, massive e-discovery, and numerous depositions of Fortune 500 corporate 30(b)(6) witnesses and fiduciaries, product design and development engineers, marketing heads, investment company executives, and liability and damages experts. She also serves as part of the firm's Client Business Development group, responsible for overseeing client portfolio monitoring, evaluation, and litigation, and maintaining client relationships.

Prior to joining the firm Beena served as a Special Assistant U.S. Attorney in the Southern District of California where she prosecuted major corruption, drug importation and immigration cases. Upon initially receiving her law degree, she rose through the ranks at the Defender Association of Philadelphia. She also served as lead counsel in cases throughout the Philadelphia area while in-house at Allstate Insurance Company.

Beena's extensive trial experience is also bolstered by her business management experience working for a Fortune 200 company, allowing her to bring this business acumen to her current practice representing defrauded consumers and investors.

- *In re: MacBook Keyboard Litig.*, No. 5:18-cv-02813-EJD (N.D. Cal.) (class action lawsuit alleging that Apple sold MacBook, MacBook Pro, and MacBook Air butterfly keyboard laptops from 2015 – 2020 with a known defect of allowing dust and debris to disrupt the keyboard use; CSK&D is class counsel);
- *In re Phillips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Liability Litigation* (MDL No. 3014) (W.D. Pa.) (successfully argued before the Judicial Panel on Multidistrict Litigation for centralization of more than 100 class action and personal injury cases to the Western District of Pennsylvania, arising out of Philips' recall of certain Continuous Positive Airway Pressure (CPAP), Bi-Level Positive Airway Pressure (Bi-Level PAP), and mechanical ventilator devices, due to the potential that its polyester-based polyurethane (PE-PUR) sound abatement foam may degrade into particles or off-gas volatile organic compounds that may then be ingested or inhaled by the user, causing injury);
- *In re Chevy Bolt EV Battery Litigation*, No. 2:21-cv-13256-TGB-CI (E.D. Mich.) (argued before the Judicial Panel on Multidistrict Litigation, that was ultimately centralized in the Eastern District of Michigan, in this class action against General Motors LLC and

various LG entities alleging that the Chevy Bolt EV is defective, causing its electric battery to overheat when charged to full or nearly full capacity, which has resulted in devastating fires and created an unreasonable safety risk to these vehicle owners. The operative complaint covers all Model Year 2020 – 2022 Chevy Bolts EVs and asserts that the defendants, as claimed by both GM and LG, were “strategic partners” in researching, developing, and manufacturing the Bolt EV and its critical components, including the defective electric battery cells and pack);

- *In re Nexus 6P Prods. Liab. Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (class action lawsuit alleging that smartphones manufactured by Google and Huawei contain defects that cause the phones to “bootloop” and experience sudden battery drain; after overcoming a motion to dismiss, a \$9.75 million settlement was reached, which Judge Beth Labson Freeman described as “substantial” and an “excellent resolution of the case.”);
- *Weeks v. Google LLC*, No. 5:18-cv-00801-NC (N.D. Cal.) (consumer class action against Google relating to Pixel smartphones, alleging that Google sold these phones with a known microphone defect; after defeating a motion to dismiss, a \$7.25 million settlement was reached, which Magistrate Judge Nathanael M. Cousins described as being an “excellent result.”);
- *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415- CMA (D. Colo.) (class action relating to a data breach suffered by Chipotle that allegedly exposed consumers’ payment card data to hackers, in which case CSK&D has been appointed interim co-lead counsel);
- *Christofferson v. Creation Entertainment, Inc.*, No. 19STCV11000 (Sup. Ct. CA). (class action relating to a data breach suffered by Creation Entertainment that allegedly exposed consumers’ payment card data to hackers, in which case CSK&D is interim co-lead counsel);
- *Turner v. Sony Interactive Entertainment LLC*, No. 4:21-cv-02454-DMR (N.D. Cal.) (class action lawsuit alleging that Sony’s PlayStation 5 DualSense Controller suffers from a “drift defect” that results in character or gameplay moving on the screen without user command or manual operation of the controller thereby compromising its core functionality);
- *Davis v. Washington University*, No. 4:17-cv-01641-RLW (E.D. Missouri) (ERISA class action lawsuit alleging breach of fiduciary duties in managing the Washington University in St. Louis Retirement Plan – one of the largest university retirement plans in the country with \$5.8 billion in assets and more than 27,000 participants – causing it to incur unreasonable and excessive recordkeeping fees);
- *Spitzley v. Mercedes-Benz U.S. Int’l, Inc.*, 7:21-cv-00074-RDP (N.D. Ala.) (ERISA class action lawsuit alleging breach of fiduciary duties in managing the Mercedes-Benz International Retirement and Savings Plan – a \$934 million plan with more than 4,400 participants – causing it to incur unreasonable and excessive fees for retirement plan services);
- *Mator v. Wesco Distribution, Inc.*, No. 2:21-cv-00403-MJH (W.D. Pa.) (ERISA class action lawsuit alleging breach of fiduciary duties by imprudently allowing the Wesco Distribution, Inc. Retirement Savings Plan – a \$837 million plan with more than 8,200 participants – to pay unreasonable recordkeeping and administrative expenses and retain higher-cost share classes of funds when lower-cost funds were



available);

- *Hummel v. East Penn Mfg. Co., Inc.*, No. 5:21-cv-01652 (E.D. Pa.) - (ERISA class action lawsuit alleging breach of fiduciary duties in managing the East Penn Manufacturing Co., Inc. Profit Sharing & 401(k) Savings Plan – with \$279 million in assets and over 10,000 participants – by imprudently failing to monitor recordkeeping fees and determine the reasonableness of those fees);
- *Cunningham v. USI Ins. Services LLC*, No. 7:21-cv-01819-NSR (S.D.N.Y.) (ERISA class action lawsuit alleging breach of fiduciary duties in managing the USI 401(k) Plan – a \$848 million plan with over 9,800 participants – by paying unreasonable and excessive retirement plan services fees);
- *Westmoreland County v. Inventure Foods*, No. CV2016-002718 (Super Ct. Ariz.) (state securities shareholder class action filed against Inventure Foods., Inc., after identifying that the company’s stock price had suffered a precipitous decline due to troubles at a manufacturing facility, including a major food recall. After mediation, a preliminary settlement was reached that recovers over 35% of damages for investors.); and
- *Orrstown Financial Services, Inc., et al., Securities Litig.*, No. 12-cv-00793 (USDC M.D. Pa.) (federal securities class action lawsuit by large transportation authority institutional investor client, named sole lead plaintiff, challenging false and misleading statements made by Orrstown to investors about its internal controls and financial condition).

**Practice Areas:**

- Automobile Defects and False Advertising
- Defective Products and Consumer Protection
- Other Complex Litigation
- Securities Fraud

**Education:**

- Villanova University School of Law, J.D., 2006
- ◇ Villanova Environmental Law Journal – managing editor of student works (2006), staff writer (2005)
- University of California, Los Angeles, B.A., 2003 – *cum laude*

**Membership & Associations:**

- Member, Philadelphia Bar Association

**Admissions:**

- Pennsylvania
- New Jersey
- Eastern District of Pennsylvania
- District of New Jersey
- District of Colorado

**Honors:**

- Pennsylvania Super Lawyers 2019-present
- Pennsylvania Super Lawyers Rising Star 2013-2016

# Alison Gabe Gushue



Alison G. Gushue is Of-Counsel at the Firm's Haverford Office. Her practice is devoted to litigation, with an emphasis on consumer fraud, securities, and derivative cases. Ms. Gushue also provides assistance to the Firm's Institutional Client Services Group.

Prior to joining the firm, Ms. Gushue was counsel to the Pennsylvania Securities Commission in the Division of Corporation Finance. In this capacity, she was responsible for reviewing securities registration filings for compliance with state securities laws and for working with issuers and issuers' counsel to

bring noncompliant filings into compliance.

Together with the Partners, Ms. Gushue has provided substantial assistance in the prosecution of the following cases:

- *Lockabey et al. v. American Honda Motor Co., Inc.*, Case No. 37-2010-00087755-CU-BT (San Diego Super. Ct.) (settlement valued by court at \$170 million for a class of 460,000 purchasers and lessees of Honda Civic Hybrids to resolve claims that the vehicle was advertised with fuel economy representations it could not achieve under real-world driving conditions, and that a software update to the IMA system further decreased fuel economy and performance)
- *In re DVI Inc. Securities Litigation*, Case No. 2:03-cv-05336-LDD (over \$17m in settlements recovered for the shareholder class in lawsuit alleging that the company's officers and directors, in conjunction with its external auditors and outside counsel, violated the federal securities laws)
- *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, No. 06-cv-7023 (N.D. Ill.) & Case No. 09-wp-65003-CAB (N.D. Ohio) (MDL No. 2001)(settlement providing a "full-value, dollar-for-dollar recovery" that was "as good, if not a better, recovery for Class Members than could have been achieved at trial" in a lawsuit relating to defective central control units in front-load washers manufactured by Whirlpool and sold by Sears.) 2016 U.S. Dist. LEXIS 20290 at \*35 (N.D. Ill. Feb. 29, 2016)
- *Orrstown Financial Services, Inc., et al., Securities Litig.*, No. 12-cv-00793 (M. D. Pa.) (pending federal securities lawsuit challenging false and misleading statements made by Orrstown Bank to investors about its internal controls and financial condition);

Ms. Gushue has also provided pro bono legal services to nonprofit organizations in Philadelphia such as the Philadelphia Bankruptcy Assistance Project, the Public Interest Law Center of Philadelphia, and the Community Legal Services of Philadelphia..

**Practice Areas:**

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation

**Education:**

- Drexel University Thomas R. Kline School of Law, J.D., 2015
- Drexel University, B.S. in Business Administration, 2005

**Memberships and Associations:**

- Member, Philadelphia Bar Association
- Member, Pennsylvania Bar Association

**Admissions:**

- Pennsylvania, 2015

# Stephanie E. Saunders



Stephanie E. Saunders is an associate in the Firm's Haverford office. She focuses her practice on complex litigation including securities fraud, shareholder derivative, and consumer protection cases. She also provides assistance to the Firm's Client Development Group which is responsible for establishing and maintaining strong client relations.

Stephanie received her law degree from the Drexel University Thomas R. Kline School of

Law in 2015. Her law school career was marked by several academic honors which included being named the CALI Excellence for the Future Award® recipient in Legal Methods & Legal Writing for earning the highest grade in the class. While in law school, she clerked for the Firm and conducted her practice-intensive semester long co-op with the Firm during her second year of law school.

Upon graduating from Drexel University's LeBow College of Business in 2005, Stephanie began her professional career in marketing. She was an integrated marketing and promotions manager with Condé Nast Publications in Manhattan where she managed and executed print and digital advertising campaigns. Upon returning to the Philadelphia region, she joined PNC Wealth Management where she was the marketing segment manager of Hawthorn, an ultra-high net worth multi-family office, where she was responsible for the development of integrated marketing plans, advertising, and client events.

**Practice Areas:**

- Securities Fraud
- Corporate Mismanagement and Shareholder Derivative Action
- Defective Products and Consumer Protection
- Other Complex Litigation

**Education:**

- Michigan State University College of Law, J.D. *summa cum laude*, 2017
- Michigan State Law Review – managing editor (2016-2017), staff editor (2015-2016)
- York College of Pennsylvania, B.A. *magna cum laude*, 2013

**Admissions:**

- Pennsylvania
- Eastern District of Pennsylvania
- United States Court of Appeals for the Ninth Circuit

**Honors:**

- 2019-2021 Rising Star, Pennsylvania Super Lawyers

## Zachary P. Beatty



Zachary P. Beatty is an associate in the Firm's Haverford office. He focuses his practice on complex litigation including securities fraud, shareholder derivative suits, and consumer protection class actions.

Zachary received his law degree from Michigan State University College of Law in 2017. While in law school, Zachary served as a managing editor for the Michigan State Law Review. His law school career was

marked by several academic honors including earning Jurisprudence Awards for receiving the highest grades in his Corporate Finance, Business Enterprises, Constitutional Law II, and Advocacy classes. Zachary clerked for a small central Pennsylvania law firm and clerked for the Honorable Carol K. McGinley in the Lehigh County Court of Common Pleas. He also clerked for the Firm's Haverford office. Zachary graduated from York College of Pennsylvania where he majored in history.

Zach has assisted in prosecuting the following matters, among others:

- *Oddo v. Arcoaire Air Conditioning & Heating*, No. 8:15-cv-01985-CAS-E (C.D. Cal.) (consumer class action against Carrier Corporation arising out of the sale of air conditioners that contained an unapproved rust inhibitor in the compressor, which causes widespread failures of thermostatic expansion valves. The plaintiffs allege that the unapproved rust inhibitor was present in virtually all Carrier-manufactured air conditioners from December 2013 through August 2014);
- *Livingston v. Trane U.S. Inc.*, No. 2:17-cv-06480-ES-MAH (D.N.J.) (consumer class action against Trane U.S. Inc. arising out of the sale of air conditioners that contained an unapproved rust inhibitor in the compressor, which causes widespread failures of thermostatic expansion valves);
- *In re MyFord Touch Consumer Litig.*, No. C-13-3072 EMC (N.D. Cal.) (consumer class action against Ford alleging flaws, bugs, and failures in certain Ford automobile infotainment systems. CSK&D is co-lead counsel in this certified class action);
- *Weeks v. Google LLC*, No. 5:18-cv-00801-NC (N.D. Cal.) (consumer class action against Google relating to Pixel smartphones alleging that Google sold these phones with a known defect);
- *In re Nexus 6P Prods. Liab. Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (class action lawsuit alleging that smartphones manufactured by Google and Huawei contain defects that cause the phones to "bootloop" and experience sudden battery drain; CSK&D has been

appointed interim co-lead class counsel;

- *Gordon v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415- CMA (D. Colo.) (class action relating to a data breach suffered by Chipotle that allegedly exposed consumers' payment card data to hackers, in which case CSK&D has been appointed interim co-lead counsel); and
- *Chambers v. Whirlpool Corp.*, No. 11-1773-0FMO (C.D. Cal.) (a national class action involving alleged defects resulting in fires in Whirlpool, Kenmore, and KitchenAid dishwashers. The district court approved a settlement which he negotiated that provides wide-ranging relief to owners of approximately 24 million implicated dishwashers, including a full recovery of out-of-pocket damages for costs to repair or replace dishwashers that suffered Overheating Events).

**Practice Areas:**

- Defective Products and Consumer Protection
- Securities Fraud Class Actions
- Other Complex Litigation

**Education:**

- University of Michigan Law School, J.D. cum laude, 2014
- The College of William & Mary, B.A. cum laude, 2011

**Admissions:**

- Pennsylvania
- New Jersey
- Western District of Pennsylvania
- Eastern District of Pennsylvania
- Middle District of Pennsylvania
- District of New Jersey
- Central District of Illinois
- Eastern District of Michigan

**Honors:**

- 2021 & 2022 Rising Star, Pennsylvania Super Lawyers

# Alex M. Kashurba



Alex M. Kashurba is an associate in the Firm's Haverford office. He focuses his practice on complex litigation including securities, consumer protection, and data privacy class actions.

Alex received his law degree from the University of Michigan Law School. While in law school, he interned for the United States Attorney's Office for the Eastern District of Pennsylvania as well as the Office of General Counsel for the United States House of Representatives. Prior to joining

the Firm, Alex served as a law clerk in the United States District Court for the Western District of Pennsylvania, including for the Honorable Kim R. Gibson and the Honorable Nora Barry Fischer. Alex graduated from The College of William & Mary where he majored in Government.

Alex has assisted in prosecuting the following matters, among others:

- *In re Phillips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Liability Litigation* (MDL No. 3014) (W.D. Pa.) (MDL of more than 100 class action and personal injury cases consolidated in the Western District of Pennsylvania, arising out of Philips' recall of certain Continuous Positive Airway Pressure (CPAP), Bi-Level Positive Airway Pressure (Bi-Level PAP), and mechanical ventilator devices, due to the potential that its polyester-based polyurethane (PE-PUR) sound abatement foam may degrade into particles or off-gas volatile organic compounds that may then be ingested or inhaled by the user, causing injury);
- *Suarez v. Nissan North America*, No. 3:21-cv-00393 (M.D. Tenn.) (appointed lead class counsel in a consumer class action alleging defective headlamps in Nissan Altima vehicles, a settlement valued at over \$50 million that provided reimbursements, free repairs, and an extended warranty received final approval from the Court);
- *Udeen, et al. v. Subaru of America, Inc.*, No. 1:18-cv-17334-RBK-JS (D.N.J.) (final approval granted of a settlement valued at \$6.25 million in this consumer class action involving defective infotainment systems in certain Subaru automobiles);
- *In re: MacBook Keyboard Litig.*, No. 5:18-cv-02813-EJD (N.D. Cal.) (class action lawsuit alleging that Apple sold 2015 and later MacBook and 2016 and later MacBook Pro laptops with a known defect plaguing the butterfly keyboards, and allowing dust and other debris to disrupt keyboard use; CSK&D is appointed interim co-lead counsel);
- *In re Nexus 6P Prods. Liab. Litig.*, No. 5:17-cv-02185-BLF (N.D. Cal.) (final approval of a \$9.75 million settlement granted in this class action lawsuit which alleged that Google smartphones contained a defect that caused "bootlooping" and sudden battery drain; CSK&D served as co-lead class counsel);
- *Weeks, et al. v. Google LLC*, 5:18-cv-00801-NC (N.D. Cal.) (final

approval of a \$7.25 million settlement granted in this consumer class action alleging that Google sold first-generation Pixel smartphones with a known microphone defect; CSK&DS was appointed co-lead class counsel);

- *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 1:17-cv-01415-CMA (D. Colo.) (final approval granted in class action relating to a data breach that allegedly exposed consumers' payment card data to hackers; CSK&D served as co-lead class counsel).



**Practice Areas:**

- Consumer protection
- Consumer fraud and defective products
- Other complex litigation

**Education:**

- Temple Beasley School of Law, J.D., 2011
- Pennsylvania State University, B.A., Political Science, 2007
- Pennsylvania State University, B.A., Spanish, 2007

**Admissions:**

- Pennsylvania
- Eastern District of Pennsylvania
- New Jersey

## Samantha E. Holbrook



Samantha E. Holbrook is an Associate Attorney in the firm's Haverford office. She has extensive experience in consumer protection class action litigation. Prior to joining the firm, Sam was an attorney in the Radnor office of a national class action law firm where she represented consumers and investors in nationwide class actions. Sam has experience handling and litigating all aspects of the prosecution of national class action litigation asserting claims under state and federal law challenging predatory lending practices, product defects, breach of fiduciary duty, antitrust claims,

consumer fraud and unfair and deceptive acts and practices in federal courts throughout the country.

Over the course of her career, Sam has provided substantial assistance in the prosecution of the following cases:

- *Suarez v. Nissan North America*, No. 3:21-cv-00393 (M.D. Tenn.) (appointed lead class counsel in a consumer class action alleging defective headlamps in Nissan Altima vehicles which reached a settlement valued at over \$50 million that provides reimbursements, free repairs, and an extended warranty);
- *Kostka v. Dickey's Barbecue Restaurants, Inc.*, No. 3:20-cv-03424-K (N.D. Tex.) (appointed as additional interim class counsel on behalf of consumers whose sensitive payment card information was exposed in a data breach at Dickey's restaurant chains);
- *In re Wawa, Inc. Data Security Litig.*, No. 2:19-cv-06019-GEKP (E.D. Pa.) (achieved \$12 million settlement on behalf of consumers whose sensitive payment card information was exposed to criminals as part of a highly-publicized data breach);
- *Lacher et al v. Aramark Corp.*, 2:19-cv-00687 (E.D. Pa. 2019) (represented a class of Aramark's current and former managers alleging that Aramark breached its employment contracts by failing to pay bonuses and restricted stock unit compensation to managers nationwide);
- *Turner v. Sony Interactive Entertainment LLC*, No. 4:21-cv-02454-DMR (N.D. Cal.) (class action lawsuit alleging that Sony's PlayStation 5 DualSense Controller suffers from a "drift defect" that results in character or gameplay moving on the screen without user command or manual operation of the controller thereby compromising its core functionality);
- *Board of Trustees of the AFTRA Retirement Fund, et al. v. JPMorgan Chase Bank, N.A.*, 09-CV-686 (SAS), 2012 WL 2064907 (S.D.N.Y. June 7, 2012) (approving \$150 million settlement); and
- *In re 2008 Fannie Mae ERISA Litigation*, Case No. 09-cv-1350 (S.D.N.Y.) (\$9 million settlement on behalf of participants in the Federal National Mortgage Association Employee Stock Ownership Plan).

Sam has also obtained favorable recoveries on behalf of multiple nationwide classes of borrowers whose insurance was force-placed by their mortgage services.

Sam received her law degree from Temple University Beasley School of Law. While in law school, she served as the President of the Moot Court Honor Society and President of the Student Animal Legal Defense Fund. She was also a member of nationally-recognized Temple's Trial Team. Upon graduating, she served as an adjunct professor for Temple coaching its Trial Team from 2013-2018. She received her undergraduate degrees from the Pennsylvania State University in Political Science and Spanish. While in college, Sam spent a semester studying abroad in Sevilla, Spain. She currently serves as the Board President for Citizens for a No-Kill Philadelphia, a Philadelphia-based animal welfare advocacy organization, and serves on the Board of Directors of City of Elderly Love, a senior-focused animal rescue organization.

Sam has been recognized by Pennsylvania Super Lawyers as a Rising Star for 2020-2022. She has also been recognized as a Top Young Rising Attorney in Pennsylvania in 2020, and a Pennsylvania & Delaware Top Attorneys Rising Stars in 2021.

**Education:**

- Widener University Delaware Law School, J.D., 2018
- University of Delaware, B.A., 2015

**Admissions:**

- Pennsylvania
- New Jersey
- Delaware

## Emily L. Skaug



Emily L. Skaug is an associate in the Firm's Wilmington office. Together with the Firm's Partners, she focuses her practice on complex litigation, including shareholder derivative and other investor rights cases.

Emily received her Bachelor of Arts in Psychology from University of Delaware. She received her law degree from Widener University Delaware Law School in 2018. While in law school, Emily was a student ambassador and was involved in Wills for Heroes and Delaware Volunteer Legal Services. After graduating law school, Emily interned in the Delaware Superior Court for the Honorable Jan R. Jurden, President Judge and later served as a law clerk for the Honorable John A. Parkins, Jr. and the Honorable Calvin L. Scott, Jr.

## Practice Areas

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### **Health & Welfare Fund Assets**

*CSK&D Protects Clients' Health & Welfare Fund Assets Through Monitoring Services & Vigorously Pursuing Health & Welfare Litigation.*

At no cost to the client, CSK&D seeks to protect its clients' health & welfare fund assets against fraud and other wrongdoing by monitoring the health & welfare fund's drug purchases, Pharmacy benefit Managers and other health service providers. In addition, CSK&D investigates potential claims and, on a fully-contingent basis, pursues legal action for the client on meritorious claims involving the clients' health & welfare funds. These claims could include: the recovery of excessive charges due to misconduct by health service providers; antitrust claims to recover excessive prescription drug charges and other costs due to corporate collusion and misconduct; and, cost-recovery claims where welfare funds have paid for health care treatment resulting from defective or dangerous drugs or medical devices.

### **Monitoring Financial Investments**

*CSK&D Protects Clients' Financial Investments Through Securities Fraud Monitoring Services.*

Backed by extensive experience, knowledge of the law and successes in this field, CSK&D utilizes various information systems and resources (including forensic accountants, financial analysts, seasoned investigators, as well as technology and data collection specialists, who can cut to the core of complex financial and commercial documents and transactions) to provide our institutional clients with a means to actively protect the assets in their equity portfolios. As part of this no-cost service, for each equity portfolio, CSK&D monitors relevant financial and market data, pricing, trading, news and the portfolio's losses. CSK&D investigates and evaluates potential securities fraud claims and, after full consultation with the client and at the client's direction, CSK&D will, on a fully-contingent basis, pursue legal action for the client on meritorious securities fraud claims.

### **Corporate Transactional**

*CSK&D Protects Shareholders' Interest by Holding Directors Accountable for Breaches of Fiduciary Duties*

Directors and officers of corporations are obligated by law to exercise good faith, loyalty, due care and complete candor in managing the business of the corporation. Their duty of loyalty to the corporation and its shareholders requires that they act in the best interests of the corporation at all times. Directors who breach any of these "fiduciary" duties are accountable to the stockholders and to the corporation itself for the harm caused by the breach. A substantial part of the practice of Chimicles Schwartz Kriner & Donaldson-Smith LLP involves representing shareholders in bringing suits for breach of fiduciary duty by corporate directors.

## Practice Areas

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### **Securities Fraud**

*CSK&D Protects and Recovers Clients' Assets Through the Vigorous Pursuit of Securities Fraud Litigation.*

CSK&D has been responsible for recovering over \$1 billion for institutional and individual investors who have been victims of securities fraud. The prosecution of securities fraud often involves allegations that a publicly traded corporation and its affiliates and/or agents disseminated materially false and misleading statements to investors about the company's financial condition, thereby artificially inflating the price of that stock. Often, once the truth is revealed, those who invested at a time when the company's stock was artificially inflated incur a significant drop in the value of their stock. CSK&D's securities practice group comprises seasoned attorneys with extensive trial experience who have successfully litigated cases against some of the nation's largest corporations. This group is strengthened by its use of forensic accountants, financial analysts, and seasoned investigators.

### **Antitrust and Unfair Competition**

*CSK&D Enforces Clients' Rights Against Those Who Violated Antitrust Laws.*

CSK&D successfully prosecutes an array of anticompetitive conduct, including price fixing, tying agreements, illegal boycotts and monopolization, anticompetitive reverse payment accords, and other conduct that improperly delays the market entry of less expensive generic drugs. As counsel in major litigation over anticompetitive conduct by the makers of brand-name prescription drugs, CSK&D has helped clients recover significant amounts of price overcharges for blockbuster drugs such as BuSpar, Coumadin, Cardizem, Flonase, Relafen, and Paxil, Toprol-XL, and TriCor.

### **Real Estate Investment Trusts**

*CSK&D is a Trail Blazer in Protecting Clients' Investments in Non-Listed Equities.*

CSK&D represents limited partners and purchaser of stock in limited partnerships and real estate investment trusts (non-listed REITs) which are publicly-registered but not traded on a national stock exchange. These entities operate outside the realm of a public market that responds to market conditions and analysts' scrutiny, so the investors must rely entirely on the accuracy and completeness of the financial and other disclosures provided by the company about its business, its finances, and the value of its securities. CSK&D prosecutes: (a) securities law violations in the sale of the units or stock; (b) abusive management practices including self-dealing transactions and the payment of excessive fees; (c) unfair transactions involving sales of the entities' assets; and (d) buy-outs of the investors' interests.

# Practice Areas

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## **Shareholder Derivative Action**

*CSK&D is a Leading Advocate for Prosecuting and Protecting Shareholder Rights through Derivative Lawsuits and Class Actions.*

CSK&D is at the forefront of persuading courts to recognize that actions taken by directors (or other fiduciaries) of corporations or associations must be in the best interests of the shareholders. Such persons have duties to the investors (and the corporation) to act in good faith and with loyalty, due care and complete candor. Where there is an indication that a director's actions are influenced by self-interest or considerations other than what is best for the shareholders, the director lacks the independence required of a fiduciary and, as a consequence, that director's decisions cannot be honored. A landmark decision by the Supreme Court of Delaware underscored the sanctity of this principal and represented a major victory for CSK&D's clients.

## **Corporate Mismanagement**

*CSK&D is a Principal Advocate for Sound Corporate Governance and Accountability.*

CSK&D supports the critical role its investor clients serve as shareholders of publicly held companies. Settlements do not provide exclusively monetary benefits to our clients. In certain instances, they may include long term reforms by a corporate entity for the purpose of advancing the interests of the shareholders and protecting them from future wrongdoing by corporate officers and directors. On behalf of our clients, we take corporate directors' obligations seriously. It's a matter of justice. That's why CSK&D strives not to only obtain maximum financial recoveries, but also to effect fundamental changes in the way companies operate so that wrongdoing will not reoccur.

## **Defective Products and Consumer Protection**

*CSK&D Protects Consumers from Defective Products and Deceptive Conduct.*

CSK&D frequently represents consumers who have been injured by false advertising, or by the sale of defective goods or services. The firm has achieved significant recoveries for its clients in such cases, particularly in those involving defectively designed automobiles and other consumer products. CSK&D has also successfully prosecuted actions against banks and other large institutions for engaging in allegedly deceptive conduct.

## Practice Areas

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### **Data Breaches**

#### *CSK&D Protects Consumers Affected by Data Breaches*

CSK&D has significant experience in prosecuting class action lawsuits on behalf of consumers who have been victimized by massive payment card data breaches. Large-scale payment data breaches have been on the rise over the past couple years. These breaches occur when cybercriminals gain unauthorized access to a company's payment systems or computer servers. When they occur, consumers are forced to take significant precautionary measures such as cancelling other cards and accounts, obtaining replacement cards (often for a fee), purchasing credit monitoring and identity theft, and spending large amounts of time reviewing accounts and statements for incidences of fraud. Two recent examples of settlements that CSK&D has resolved are: *Crystal Bray v. GameStop Corp.*, No. 1:17-cv-01365 (D. Del.) and *Gordon, et al. v. Chipotle Mexican Grille, Inc.*, No. 1:17-cv-01415-CMA-SKC (D. Colo.).



# Representative Cases

## Securities Cases Involving Real Estate Investments

### ***CNL Hotels & Resorts Inc. Securities Litigation, Case No. 6:04-CV-1231, United States District Court, Middle District of Florida.***

CSK&D was Lead Litigation Counsel in CNL Hotels & Resorts Inc. Securities Litigation, representing a Michigan Retirement System, other named plaintiffs and over 100,000 investors in this federal securities law class action that was filed in August 2004 against the nation's second largest hotel real estate investment trust, CNL Hotels & Resorts, Inc. (f/k/a CNL Hospitality Properties, Inc.) ("CNL Hotels") and certain of its affiliates, officers and directors. CNL raised over \$3 billion from investors pursuant to what Plaintiffs alleged to be false and misleading offering materials. In addition, in June 2004 CNL proposed an affiliated-transaction that was set to cost the investors and the Company over \$300 million ("Merger").

The Action was filed on behalf of: (a) CNL Hotels shareholders entitled to vote on the proposals presented in CNL Hotels' proxy statement dated June 21, 2004 ("Proxy Class"); and (b) CNL Hotels' shareholders who acquired CNL Hotels shares pursuant to or by means of CNL Hotels' public offerings, registration statements and/or prospectuses between August 16, 2001 and August 16, 2004 ("Purchaser Class").

The Proxy Class claims were settled by (a) CNL Hotels having entered into an Amended Merger Agreement which significantly reduced the amount that CNL Hotels paid to acquire its Advisor, CNL Hospitality Corp., compared to the Original Merger Agreement approved by CNL Hotels' stockholders pursuant to the June 2004 Proxy; (b) CNL Hotels having entered into certain Advisor Fee Reduction Agreements, which significantly reduced certain historic, current, and future advisory fees that CNL Hotels paid its Advisor before the Merger; and (c) the adoption of certain corporate governance provisions by CNL Hotels' Board of Directors. **In approving the Settlement, the Court concluded that in settling the Proxy claims, "a substantial benefit [was] achieved (estimated at approximately \$225,000,000)" and "this lawsuit was clearly instrumental in achieving that result."** The Purchaser Class claims were settled by Settling Defendants' payment of **\$35,000,000**, payable in three annual installments (January 2007 to January 2009).

On August 1, 2006, the Federal District Court in Orlando, Florida granted final approval of the Settlement as fair, reasonable, and adequate, and in rendering its approval of an award of attorneys' fees and costs to Plaintiffs' Counsel, the Court noted that "Plaintiffs' counsel pursued this complex case diligently, competently and professionally" and "achieved a successful result." More than 100,000 class members received notice of the proposed settlement and no substantive objection to the settlement, plan of allocation or fee petition was voiced by any class member.

# Representative Cases

## Securities Cases Involving Real Estate Investments

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### ***In re Real Estate Associates Limited Partnership Litigation, Case No. CV 98-7035, United States District Court, Central District of California.***

Chimicles Schwartz Kriner & Donaldson-Smith LLP achieved national recognition for obtaining, in a federal securities fraud action, the first successful plaintiffs' verdict under the PSLRA. Senior partner Nicholas E. Chimicles was Lead Trial Counsel in the six-week jury trial in federal court in Los Angeles, in October 2002. The jury verdict, in the amount of \$185 million (half in compensatory damages; half in punitive damages), was ranked among the top 10 verdicts in the nation for 2002. After the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for \$83 million, representing full recovery for the losses of the class. At the final hearing, held in November 2003, the Court praised Counsel for achieving both a verdict and a settlement that "qualif[ied] as an exceptional result" in what the Judge regarded as "a very difficult case..." In addition, the Judge noted the case's "novelty and complexity...and the positive reaction of the class. Certainly, there have been no objections, and I think Plaintiffs' counsel has served the class very well."

**Case Summary:** In August of 1998, over 17,000 investors ("Investor Class") in 8 public Real Estate Associates Limited Partnerships ("REAL Partnerships") were solicited by their corporate managing general partner, defendant National Partnership Investments Corp. ("NAPICO"), and other Defendants via Consent Solicitations filed with the Securities and Exchange Commission ("SEC"), to vote in favor of the sale of the REAL Partnerships' interests in 98 limited partnerships ("Local Partnerships"). In a self-dealing and interested transaction, the Investor Class was asked to consent to the sale of these interests to NAPICO's affiliates ("REIT Transaction"). In short, Plaintiffs alleged that defendants structured and carried out this wrongful and self-dealing transaction based on false and misleading statements, and omissions in the Consent Solicitations, resulting in the Investor Class receiving grossly inadequate consideration for the sale of these interests. Plaintiffs' expert valued these interests to be worth a minimum of \$86,523,500 (which does not include additional consideration owed to the Investor Class), for which the Investor Class was paid only \$20,023,859.

Plaintiffs and the Certified Class asserted claims under Section 14 of the Securities Exchange Act of 1934 ("the Exchange Act"), alleging that the defendants caused the Consent Solicitations to contain false or misleading statements of material fact and omissions of material fact that made the statements false or misleading. In addition, Plaintiffs asserted that Defendants breached their fiduciary duties by using their positions of trust and authority for personal gain at the expense of the Limited Partners. Moreover, Plaintiffs sought equitable relief for the Limited Partners including, among other things, an injunction under Section 14 of the Exchange Act for violation of the "anti-bundling rules" of the SEC, a declaratory judgment decreeing that defendants were not entitled to indemnification from the REAL Partnerships.

**Trial:** This landmark case is the *first* Section 14 – proxy law- securities class action seeking damages, a significant monetary recovery, for investors that has been tried, and ultimately won, before a jury anywhere in the United States since the enactment of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Trial began on October 8, 2002 before a federal court jury in Los Angeles. The jury heard testimony from over 25 witnesses, and trial counsel moved into evidence approximately 4,810 exhibits; out of those 4,810 exhibits, witnesses were questioned about, or referred to, approximately 180 exhibits.

# Representative Cases

## Securities Cases Involving Real Estate Investments

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On November 15, 2002, the ten-member jury, after more than four weeks of trial and six days of deliberation, unanimously found that Defendants knowingly violated the federal proxy laws and that NAPICO breached its fiduciary duties, and that such breach was committed with oppression, fraud and malice. The jury's unanimous verdict held defendants liable for compensatory damages of \$92.5 million in favor of the Investor Class. On November 19, 2002, a second phase of the trial was held to determine the amount of punitive damages to be assessed against NAPICO. The jury returned a verdict of \$92.5 million in punitive damages. In total, trial counsel secured a unanimous jury verdict of \$185 million on behalf of the Investor Class.

With this victory, Mr. Chimicles and the trial team secured the 10<sup>th</sup> largest verdict of 2002. (See, National Law Journal, "The Largest Verdicts of 2002", February 2, 2003; National Law Journal, "Jury Room Rage", Feb. 3, 2002). Subsequent to post-trial briefing and rulings, in which the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for \$83 million. The settlement represented full recovery for the losses of the class.

**Prosecuting and trying this Case required dedication, tenacity, and skill:** This case involved an extremely complex transaction. As Lead Trial Counsel, CSK&D was faced with having to comprehensively and in an understandable way present complex law, facts, evidence and testimony to the jury, without having them become lost (and thus, indifferent and inattentive) in a myriad of complex terms, concepts, facts and law. The trial evidence in this case originated almost exclusively from the documents and testimony of Defendants and their agents. As Lead Trial Counsel, CSK&D was able, through strategic cross-examination of expert witnesses, to effectively stonewall defendants' damage analysis. In addition, CSK&D conducted thoughtful and strategic examination of defendants' witnesses, using defendants' own documents to belie their testimony.

**The significance of the case:** The significance of this trial and the result are magnified by the public justice served via this trial and the novelty of issues tried. This case involved a paradigm of corporate greed, and CSK&D sent a message to not only the Defendants in this Action, but to all corporate fiduciaries, officers, directors and partners, that it does not pay to steal, lie and cheat. There needs to be effective deterrents, so that "corporate greed" does not pay. The diligent and unrelenting prosecution and trial of this case by CSK&D sent that message.

Moreover, the issues involved were novel and invoked the application of developing case law that is not always uniformly applied by the federal circuit courts. In Count I, Plaintiffs alleged that defendants violated § 14 of the Exchange Act. Subsequent to the enactment of the PLSRA, the primary relief sought and accorded for violations of the proxy laws is a preliminary injunction. Here, the consummation of the REIT Transaction foreclosed that form of relief. Instead, Plaintiffs' Counsel sought significant monetary damages for the Investor Class on account of defendants' violations of the federal proxy laws. CSK&D prevailed in overcoming defendants' characterization of the measure of damages that the Investor Class was required to prove (defendants argued for a measure of damages equivalent to the difference in the value of the security prior to and subsequent to the dissemination of the Consent Solicitations), and instead, successfully recouped damages for the value of the interests and assets given up by the Investor Class. The case is important in the area of enforcement of fiduciary duties in public partnerships which are a fertile ground for unscrupulous general partners to cheat the public investors.

# Representative Cases

## Securities Cases Involving Real Estate Investments

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### ***Aetna Real Estate Associates LP***

Nicholas Chimicles and Pamela Tikellis represented a Class of unitholders who sought dissolution of the partnership because the management fees paid to the general partners were excessive and depleted the value of the partnership. The Settlement, valued in excess of \$20 million, included the sale of partnership property to compensate the class members, a reduction of the management fees, and a special cash distribution to the class.

### ***City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc., Case No. 07 C 6174, United States District Court, Northern District of Illinois .***

CSK&D was principal litigation counsel for the plaintiff class of stockholders that challenged the accuracy of a proxy statement that was used to secure stockholder approval of a merger between an external advisor and property managers and the largest retail real estate trust in the country. In 2010, in a settlement negotiation lead by the Firm, we succeeded in having \$90 million of a stock, or 25% of the merger consideration, paid back to the REIT.

### ***Wells and Piedmont Real Estate Investment Trust, Inc., Securities Litigation, Case Nos. 1:07-cv-00862, 02660, United States District Court, Northern District of Georgia.***

CSK&D served as co-lead counsel in this federal securities class action on behalf of Wells REIT/Piedmont shareholders. Filed in 2007, this lawsuit charged Wells REIT, certain of its directors and officers, and their affiliates, with violations of the federal securities laws for their conducting an improper, self-dealing transaction and recommending that shareholders reject a mid-2007 tender offer made for the shareholders' stock. On the verge of trial, the Cases settled for \$7.5 million and the Settlement was approved in 2013.

### ***In re Cole Credit Property Trust III, Inc. Derivative and Class Litigation, Case No. 24-C-13-001563, Circuit Court for Baltimore City.***

In this Action filed in 2013, CSK&D, as chair of the executive committee of interim class counsel, represents Cole Credit Property Trust III ("CCPT III") investors, who were, without their consent, required to give Christopher Cole (CCPT III's founder and president) hundreds of millions of dollars' worth of consideration for a business that plaintiffs allege was worth far less. The Action also alleges that, in breach of their fiduciary obligations to CCPT III investors, CCPT III's Board of Directors pressed forward with this wrongful self-dealing transaction rebuffing an offer from a third party that proposed to acquire the investors' shares in a \$9 billion dollar deal. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

# Representative Cases

## Securities Cases Involving Real Estate Investments

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### ***Roth v. The Phoenix Companies, Inc. and U.S. Bank National Association, in its capacity as Indenture Trustee, Index No. 650634/2016 (N.Y. Sup. Ct.).***

CSK&D served as lead counsel in this action on behalf of bondholders in connection with a 2015 going-private merger. In early 2016, Phoenix sought Bondholder's consent to amend the Company's Indenture to severely limit Bondholder's access to financial information and to allow the Trustee to waive certain of its oversight responsibilities. CSK&D promptly filed a complaint seeking injunctive relief, and within seven days, CSK&D secured material benefits for Bondholders, including, most significantly, ongoing access to material financial and corporate information which increased the value of the Bonds by \$17.5 million and secured ongoing liquidity for the Bonds. In approving the settlement, the Court stated that "I think the plaintiffs were successful in getting everything they could have gotten .... I think it's a great settlement."

### ***Gamburg, et al., v. Hines Real Estate Investment Trust, Inc., et al, Case No. 24C16004496 (Cir. Ct. Baltimore City, MD).***

CSK&D served as co-lead counsel in this direct and derivative action filed in 2016 on behalf of Hines REIT and its stockholders which challenges various self-dealing conduct by the managers and directors of Hines REIT. The action alleged, among other things, that \$15 million in fees were paid to affiliates in violation of contractual and fiduciary duties. Defendants moved to dismiss the action, and the Court held a hearing in December 2015. In an expedited partial ruling on an issue of first impression, the Court held that plaintiffs were entitled to proceed with their derivative claims even subsequent to the then-pending liquidation – a crucial initial decision in favor of the stockholders that preserved rights that could have otherwise been extinguished upon the liquidation. While the Court's ruling on the remaining issues raised in Defendants' motion was pending, the parties reached a settlement in January 2018. On June 6, 2018 the court granted final approval of the Settlement which provides for the cash payment of \$3.25 million, which represents a recovery of over 20% of the fees paid to affiliates.

### ***In re Empire State Realty Trust, Inc. Investor Litigation, Case 650607/2012, New York Supreme Court.***

In this action filed in 2012, CSK&D represents investors who own the Empire State Building, as well as several other Manhattan properties, whose interests and assets are proposed to be consolidated into a new entity called Empire State Realty Trust Inc. The investors filed an action against the transaction's chief proponents, members of the Malkin family, certain Malkin-controlled companies, and the estate of Leona Helmsley, claiming breaches of fiduciary for, among other things, such proponents being disproportionately favored in the transaction. A Settlement of the Litigation has been reached and was approved in full by the Court. The Settlement consists of: a cash settlement fund of \$55 million, modifications to the transaction that result in an over \$100 million tax deferral benefit to the investors, and defendants will provide additional material information to investors about the transaction.

# Representative Cases

## Securities Cases Involving Real Estate Investments

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***Delaware County Employees Retirement Fund v. Barry M. Portnoy, et al.*, Case No. 1:13-cv-10405, United States District Court, District Court of Massachusetts.**

CSK&D is lead counsel in an action pending in federal court in Boston filed on behalf of Massachusetts-based Commonwealth REIT (“CWH”) and its shareholders against CWH’s co-founder Barry Portnoy and his son Adam Portnoy (“Portnoys”), and their wholly-owned entity Reit Management & Research, LLC (“RMR”), and certain other former and current officers and trustees of CWH (collectively, “Defendants”). The Action alleges a long history of management abuse, self-dealing, and waste by Defendants, which conduct constitutes violations of the federal securities laws and fiduciary duties owed by Defendants to CWH and its shareholders. Plaintiff seeks damages and to enjoin Defendants from any further self-dealing and mismanagement. The Defendants sought to compel the Plaintiff to arbitrate the claims, and Plaintiff has vigorously opposed such efforts on several grounds including that CWH and its shareholders did not consent to arbitration and the arbitration clause is facially oppressive and illegal. The parties are awaiting the Court’s ruling on that matter.

# Representative Cases

## Securities Cases (Non-Real Estate)

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### ***Westmoreland County v. Inventure Foods, Case No. CV2016-002718 (Super. Ct. Ariz.)***

In this securities shareholder class action, CSK&D served as Lead Counsel against Inventure Foods, and certain of its officers and underwriters, arising out of the company's secondary stock offering held in September 2014. As portfolio monitoring counsel for Westmoreland, CSK&D first identified that the company's stock price had suffered a precipitous decline, rather soon after the offering, due to troubles at the Company's manufacturing facility, including a major food recall. Before filing a complaint, CSK&D investigated the potential causes of the problems – including securing documents from the FDA and GA Department of Agriculture, talking to former employees and engaging a listeria expert. Subsequent to the investigation, CSK&D filed the first complaint alleging that the Defendants violated the Securities Act of 1933 by issuing a false and misleading Registration Statement and Prospectus in connection with the stock offering. In a pair of rulings entered on February 24, 2017, and August 4, 2017, the Court rejected defendants' motions to dismiss the action. The parties proceeded with Mediation and reached a proposed Settlement which was preliminarily approved by the court on June 6, 2018. On November 2, 2018 the court granted final approval of the settlement which recovers over 35% of damages for investors (which percentage even assumes all offering shares were damaged).

### ***Orrstown Financial Services, Inc., et al, Securities Litigation, Case No. 12-cv-00793 United States District Court, Middle District of Pennsylvania.***

In this federal securities fraud class action filed in 2012, CSK&D serves as Lead Counsel on behalf of Lead Plaintiff Southeastern Pennsylvania Transportation Authority (SEPTA). The action alleges that Orrstown bank, its holding company, and certain of its officers, violated the Securities Exchange Act by misleading investors concerning material information about Orrstown's loan portfolio, underwriting practices, and internal controls. CSK&D investigated the cause of the decline which included reviewing Orrstown's filings with the SEC, making FOIA requests on the Federal Reserve Bank of Philadelphia and the PA Department of Banking, and interviewing former employees of Orrstown. The Court denied in large part Defendants' motions to dismiss, and the parties are currently engaged in discovery. This case demonstrates CSK&D's ability to identify potential claims, fully investigate them, bring litigation on behalf of a pension fund, secure appointment of lead plaintiff for its client and then vigorously prosecute the case.

### ***ML-Lee Litigation, ML Lee Acquisition Fund L.P. and ML-Lee Acquisition Fund II L.P. and ML-Lee Acquisition Fund (Retirement Accounts), (C.A. Nos. 92-60, 93-494, 94-422, and 95-724), United States District Court, District of Delaware.***

CSK&D represented three classes of investors who purchased units in two investment companies, ML-Lee Funds (that were jointly created by Merrill Lynch and Thomas H. Lee). The suits alleged breaches of the federal securities laws, based on the omission of material information and the inclusion of material misrepresentations in the written materials provided to the investors, as well as breaches of fiduciary duty and common law by the general partners in regard to conduct that benefited them at the expense of the limited partners. The complaint included claims under the often-ignored Investment Company Act of 1940, and the case witnessed numerous opinions that are considered seminal under the ICA. The six-year litigation resulted in **\$32 million** in cash and other benefits to the investors.



# Representative Cases

## Securities Cases (Non-Real Estate)

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### ***In re Colonial BancGroup, Inc. Securities Litigation*, Case No. 09-CV-00104, United States District Court, Middle District of Alabama.**

CSK&D is actively involved in prosecuting this securities class action arising out of the 2009 failure of Colonial Bank, in which Norfolk County Retirement System, State-Boston Retirement System, City of Brockton Retirement System, and Arkansas Teacher Retirement System are the Court-appointed lead plaintiffs. The failure of Colonial Bank was well-publicized and ultimately resulted in several criminal trials and convictions of Colonial officers and third parties involved in a massive fraud in Colonial's mortgage warehouse lending division. The pending securities lawsuit includes allegations arising out of the mortgage warehouse lending division fraud, as well as allegations that Colonial misled investors concerning its operations in connection with two public offerings of shares and bonds in early 2008, shortly before the Bank's collapse. In April 2012, the Court approved a \$10.5 million settlement of Plaintiffs' claims against certain of Colonial's directors and officers. Plaintiffs' claims against Colonial's auditor, PwC, and the underwriters of the 2008 offerings are ongoing.

### ***Continental Illinois Corporation Securities Litigation*, Civil Action No. 82 C 4712, United States District Court, Northern District of Illinois.**

Nicholas Chimicles served as lead counsel for the shareholder class in this action alleging federal securities fraud. Filed in the federal district court in Chicago, the case arose from the 1982 oil and gas loan debacle that ultimately resulted in the Bank being taken over by the FDIC. The case involved a twenty-week jury trial conducted by Mr. Chimicles in 1987. Ultimately, the Class recovered nearly \$40 million.

### ***PaineWebber Limited Partnerships Litigation*, 94 Civ. 8547, United States District Court, Southern District of New York .**

The Firm was chair of the plaintiffs' executive committee in a case brought on behalf of tens of thousands of investors in approximately 65 limited partnerships that were organized or sponsored by PaineWebber. In a landmark settlement, investors were able to recover \$200 million in cash and additional economic benefits following the prosecution of securities law and RICO (Racketeer Influenced and Corrupt Organizations Act) claims.

# Representative Cases

## Delaware and Other Merger and Acquisition Suits

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### ***In re: Starz Shareholder Litigation, Cons. C.A. No. 12584-VCG (Del. Ct. Ch.)***

In this stockholder class action, CSK&D served as co-lead counsel in this stockholder class action lawsuit against Starz, its controlling stockholder, John C. Malone (“Malone”), and certain of its officers and directors, arising out of the acquisition of Starz by Lions Gate Entertainment Corp. (“Lions Gate”) (the “Merger”). Pursuant to the Merger, Malone who is also a director of Lions Gate, was to receive superior consideration, including voting rights in Lions Gate, while the remaining Starz stockholders would receive less valuable consideration and lose their voting rights. The Action alleges that the process undertaken by the Starz’s board of directors in connection with the Merger was orchestrated by Malone and tainted by multiple conflicts. The Complaint also alleges that the consideration proposed is unfair and represents an effort by Malone to enlarge his already-massive media empire and to ensure his control position, to the detriment of Starz’s minority stockholders. On August 16, 2016, the Court appointed Norfolk County as Co-Lead Plaintiff and CSK&D, specifically Robert Kriner, as Co-Lead Counsel. After a 2-day mediation session in August 2018, the parties have reached a proposed settlement of a \$92.5 million payment to former shareholder of Starz. The Settlement Agreement and supporting papers were filed with the court on October 9, 2018, and the court has scheduled the settlement hearing for December 10, 2018.

### ***In re Sanchez Energy Derivative Litigation, C.A. No. 9132-VCG (Del. Ch.)***

In this derivative action, CSK&D served as co-lead counsel for plaintiffs in this derivative action which challenged the acquisition by Sanchez Energy Corporation of assets in the Tuscaloosa Marine Shale from Sanchez Resources LLC, an affiliate of Sanchez Energy’s CEO, Tony Sanchez, III, and Executive Chairman Tony Sanchez, Jr. The case alleged wrongful self-dealing in the acquisition in which Sanchez Energy paid the affiliate acreage prices which far exceeded prices paid in comparable transactions. On November 6, 2017, the Delaware Court of Chancery approved a Settlement valued at more than \$30 million. In approving the Settlement, the Court characterized it as a very good result in CSK&D having obtained a substantial portion of the home-run damages available at trial.

### ***In re Freeport-McMoran Sulphur, Inc. Shareholder Litigation, C.A. No. 16729, Delaware Court of Chancery.***

In this shareholder class action, CSK&D served as Lead Plaintiffs’ Counsel representing investors in a stock-for-stock merger of two widely held public companies, seeking to remedy the inadequate consideration the stockholders of Sulphur received as part of the merger. In June 2005, the Court of Chancery denied defendants’ motions for summary judgment, allowing Plaintiffs to try each and every breach of fiduciary duty claim asserted in the Action. In denying defendants’ motions for summary judgment the Court held there were material issues of fact regarding certain board member’s control over the Board including the Special Committee members and the fairness of the process employed by the Special Committee implicating the duty of entire fairness and raising issues regarding the validity of the Board action authorizing the merger. The decision has broken new ground in the field of corporate litigation in Delaware. Before the trial commenced, Plaintiffs and Defendants agreed in principle to settle the case. The settlement, which was approved in April 2006, provides for a cash fund of \$17,500,000.

# Representative Cases

## Delaware and Other Merger and Acquisition Suits

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### ***In re Genentech, Inc. Shareholders Litigation, C.A. No. 3911-VCS, Delaware Court of Chancery.***

In this shareholder class action, CSK&D served as Co-Lead Counsel representing minority stockholders of Genentech, Inc. in an action challenging actions taken by Roche Holdings, Inc. ("Roche") to acquire the remaining approximately 44% of the outstanding common stock of Genentech, Inc. ("Genentech") that Roche did not already own. In particular, Plaintiffs challenged that Roche's conduct toward the minority was unfair and violated pre-existing governance agreements between Roche and Genentech. During the course of the litigation, Roche increased its offer from \$86.50 per share to \$95 per share, a \$4 billion increase in value for Genentech's minority shareholders. That increase and other protections for the minority provided the bases for the settlement of the action, which was approved by the Court of chancery on July 9, 2009.

### ***In re Kinder Morgan Shareholder Litigation, C.A. No. 06-c-801, District Court of Shawnee County, Kansas***

In this shareholder class action, CSK&D served as Co-Lead Counsel representing former stockholders of Kinder Morgan, Inc. (KMI) in an action challenging the acquisition of Kinder Morgan by a buyout group lead by KMI's largest stockholder and Chairman, Richard Kinder. Plaintiffs alleged that Mr. Kinder and a buyout group of investment banks and private equity firms leveraged Mr. Kinder's knowledge and control of KMI to acquire KMI for less than fair value. As a result of the litigation, Defendants agreed to pay \$200 million into a settlement fund, believed to be the largest of its kind in any buyout-related litigation. The district Court of Shawnee County, Kansas approved the settlement on November 19, 2010.

### ***In re Chiron Shareholder Deal Litigation, Case No. RG05-230567 (Cal. Super.) & In re Chiron Corporation Shareholder Litigation, C.A. No. 1602-N, Delaware Court of Chancery***

CSK&D represents stockholders of Chiron Corporation in an action which challenged the proposed acquisition of Chiron Corporation by its 42% stockholder, Novartis AG. Novartis announced a \$40 per share merger proposal on September 1, 2005, which was rejected by Chiron on September 5, 2005. On October 31, Chiron announced an agreement to merge with Novartis at a price of \$45 per share. CSK&D was co-lead counsel in the consolidated action brought in the Delaware Court of Chancery. Other similar actions were brought by other Chiron shareholders in the Superior Court of California, Alameda City. The claims in the Delaware and California actions were prosecuted jointly in the Superior Court of California. CSK&D, together with the other counsel for the stockholders, obtained an order from the California Court granting expedited proceedings in connection with a motion preliminary to enjoin the proposed merger. Following extensive expedited discovery in March and April, 2006, and briefing on the stockholders' motion for injunctive relief, and just days prior to the scheduled hearing on the motion for injunctive relief, CSK&D, together with Co-lead counsel in the California actions, negotiated an agreement to settle the claims which included, among other things, a further increase in the merger price to \$48 per share, or an additional \$330 million for the public stockholders of Chiron. On July 25, 2006, the Superior Court of California, Alameda County, granted final approval to the settlement of the litigation.

# Representative Cases

## Delaware and Other Merger and Acquisition Suits

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### ***Gelfman v. Weeden Investors, L.P., Civ. Action No. 18519-NC, Delaware Court of Chancery***

Chimicles Schwartz Kriner & Donaldson-Smith LLP served as class counsel, along with other plaintiffs' firms, in this action against the Weeden Partnership, its General Partner and various individual defendants filed in the Court of Chancery in the State of Delaware. In this Class Action, Plaintiffs alleged that Defendants breached their fiduciary duties to the investors and breached the Partnership Agreement. The Delaware Chancery Court conducted a trial in this action which was concluded in December 2003. Following the trial, the Chancery Court received extensive briefing from the parties and heard oral argument. On June 14, 2004, the Chancery Court issued a memorandum opinion, which was subsequently modified, finding that the Defendants breached their fiduciary duties and the terms of the Partnership Agreement, with respect to the investors, and that Defendants acted in bad faith ("Opinion"). This Opinion from the Chancery Court directed an award of damages to the classes of investors, in addition to other relief. In July 2004, Class Counsel determined that it was in the best interests of the investors to settle the Action for over 90% of the value of the monetary award under the Opinion (over \$8 million).

### ***I.G. Holdings Inc., et al. v. Hallwood Realty, LLC, et al., C.A. No. 20283, Delaware Court of Chancery.***

In the Delaware Court of Chancery, C& T represented the public unitholders of Hallwood Realty L.P. The action challenged the general partner's refusal to redeem the Partnership's rights plan or to sell the Partnership to maximize value for the public unitholders. Prior to the filing of the action, the Partnership paid no distributions and Units of the Partnership normally traded in the range of \$65 to \$85 per unit. The prosecution of the action by CSK&D caused the sale of the Partnership, ultimately yielding approximately \$137 per Unit for the unitholders plus payment of the attorneys' fees of the Class.

# Representative Cases

## Delaware and Other Merger and Acquisition Suits

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### ***Southeastern Pennsylvania Transportation Authority v. Josey, et. al., C.A. No. 5427, Delaware Court of Chancery.***

Chimicles Schwartz Kriner & Donaldson-Smith served as class counsel in this action challenging the acquisition of Mariner Energy, Inc. by Apache Corporation. Following expedited discovery, CSK&D negotiated a settlement which led to the unprecedented complete elimination of the termination fee from the merger agreement and supplemental disclosures regarding the merger. On March 15, 2011, the Delaware Court of Chancery granted final approval to the settlement of the litigation.

### ***In re Pepsi Bottling Group, Inc. Shareholders Litigation, C.A. No. 4526, Delaware Court of Chancery.***

The Firm served as class counsel, along with several other firms challenging PepsiCo's buyout of Pepsi Bottling Group, Inc. CSK&D's efforts prompted PepsiCo to raise its buyout offer for Pepsi Bottling Group, Inc. by approximately \$1 billion and take other steps to improve the buyout on behalf of public stockholders.

### ***In re Atlas Energy Resources LLC, Unitholder Litigation, Consol C.A. No. 4589, Delaware Court of Chancery.***

The Firm was co-lead counsel in an action challenging the fairness of the acquisition of Atlas Energy Resources LLC by its controlling shareholder, Atlas America, Inc. After over two-years of complex litigation, the Firm negotiated a \$20 million cash settlement, which was finally approved by the court on May 14, 2012.

### ***In re J. Crew Group, Inc. S'holders Litigation, C.A. No. 6043, Delaware Court of Chancery.***

The Firm was co-lead counsel challenging the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management. After hard-fought litigation, the action resulted in a settlement fund of \$16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction to be approved by a majority of the unaffiliated shareholders. The settlement was finally approved on December 16, 2011.

# Representative Cases

## Delaware and Other Merger and Acquisition Suits

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### ***In re McKesson Derivative Litigation, Saito, et al. v. McCall, et al., C.A. No. 17132, Delaware Court of Chancery.***

As Lead Counsel in this stockholder derivative action, CSK&D challenged the actions of the officers, directors and advisors of McKesson and HBOC in proceeding with the merger of the two companies when their managements were allegedly aware of material accounting improprieties at HBOC. In addition, CSK&D also brought (under Section 220 of the Delaware Code) a books and records case to discover information about the underlying events. CSK&D successfully argued in the Delaware Courts for the production of the company's books and records which were used in the preparation of an amended derivative complaint in the derivative case against McKesson and its directors. Seminal opinions have issued from both the Delaware Supreme Court and Chancery Court about Section 220 actions and derivative suits as a result of this lawsuit. Plaintiffs agreed to a settlement of the derivative litigation subject to approval by the Delaware Court of Chancery, pursuant to which the Individual Defendants' insurers will pay \$30,000,000 to the Company. In addition, a claims committee comprised of independent directors has been established to prosecute certain of Plaintiffs' claims that will not be released in connection with the proposed settlement. Further, the Company will maintain important governance provisions among other things ensuring the independence of the Board of Directors from management. On February 21, 2006, the Court of Chancery approved the Settlement and signed the Final Judgment and Order and Realignment Order.

### ***Barnes & Noble Inc., C.A. No. 4813, Delaware Court of Chancery.***

CSK&D served as Co-Lead Counsel in a shareholder lawsuit brought derivatively on behalf of Barnes & Noble ("B&N") alleging wrongdoing by the B&N directors for recklessly causing B&N to acquire Barnes & Noble College Booksellers, Inc. ("College Books") the "Transaction") from B&N's founder, Chairman and controlling stockholder, Leonard Riggio ("Riggio") at a grossly excessive price, subjecting B&N to excessive risk. The case settled for nearly \$30 million and finally approved by the court on September 4, 2012.

### ***Sample v. Morgan, et. al., C.A. No. 1214-VCS, Delaware Court of Chancery.***

Action alleging that members of the board of directors of Randall Bearings, Inc. breached their fiduciary duties to the company and its stockholders and committed corporate waste. The action resulted in an eve-of-trial settlement including revocation of stock issued to insiders, a substantial cash payment to the corporation and reformation of the Company's corporate governance. The Court finally approved the settlement on August 5, 2008.

### ***Manson v. Northern Plain Natural Gas Co., LLC, et. al., C.A. No. 1973-N, Delaware Court of Chancery.***

Chimicles Schwartz Kriner & Donaldson-Smith served as counsel in a class and derivative action asserting contract and fiduciary duty claims stemming from dropdown asset transactions to a partnership from an affiliate of its general partner. The case settled for a substantial adjustment (valued by Plaintiff's expert to be worth more than \$100 million) to the economic terms of units issued by the partnership in exchange for the assets. The settlement was finally approved by the Court on January 18, 2007.

# Representative Cases

## Consumer Cases

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### ***Lockabey v. American Honda Motors Co., Inc., Case No. 37-2010-00087755-CU-BT-CTL, San Diego County Superior Court***

Mr. Chimicles is co-lead counsel in a nationwide class action involving fuel economy problems encountered by purchasers of Honda Civic Hybrids ("HCH"). *Lockabey v. American Honda Motors Co., Inc., Case No. 37-2010-00087755-CU-BT-CTL* (Super. Ct. San Diego). After nearly five years of litigation in both the federal and state courts in California, a settlement benefiting nearly 450,000 consumers who had leased or owned HCH vehicles from model years 2003 through 2009. Following unprecedented media scrutiny and review by the attorneys general of each state as well as major consumer protection groups, the settlement was approved on March 16, 2012 in a 40 page opinion by the Honorable Timothy B. Taylor of the San Diego County (CA) Superior Court in which the Court stated:

*The court views this as a case which was difficult and risky... The court also views this as a case with significant public value which merited the 'sunlight' which Class Counsel have facilitated..*

Depending on the number of claims that are filed (deadline will not expire until 6 months after a pending single appeal is resolved), the Class will garner benefits ranging from \$100 million to \$300 million.

### ***In re Pennsylvania Baycol: Third-Party Payor Litigation, Case No. 001874, Court of Common Pleas, Philadelphia County.***

In connection with the withdrawal by Bayer of its anti-cholesterol drug Baycol, CSK&D represents various Health and Welfare Funds, including the Pennsylvania Employees Benefit Trust Fund, and a certified national class of "third party payors" seeking damages for the sums paid to purchase Baycol for their members/insureds and to pay for the costs of switching their members/insureds from Baycol to another cholesterol-lowering drug. The Philadelphia Court of Common Pleas granted plaintiffs' motion for summary judgment as to liability; this is the first and only judgment that has been entered against Bayer anywhere in the United States in connection with the withdrawal of Baycol. The Court subsequently certified a national class, and the parties reached a settlement (recently approved by the court) in which Bayer agreed to pay class members a net recovery that approximates the maximum damages (including pre-judgment interest) suffered by class members. The class settlement negotiated by CSK&D represents a net recovery for third party payors that is between double and triple the net recovery pursuant to a non-litigated settlement negotiated by lawyers representing third party payors such as AETNA and CIGNA that was made available to and accepted by numerous other third party payors (including the TRS). CSK&D had advised its clients to reject that offer and remain in the now settled class action. On June 15, 2006 the court granted final approval of the settlement.



# Representative Cases

## Consumer Cases

### ***Shared Medical Systems 1998 Incentive Compensation Plan Litigation, Philadelphia County Court of Common Pleas, Commerce Program, No. 0885.***

Chimicles Schwartz Kriner & Donaldson-Smith LLP is lead counsel in this action brought in 2003 in the Philadelphia County Court of Common Pleas. The case was brought on behalf of approximately 1,300 persons who were employees of Defendant Siemens Medical Solutions Health Services Corporation (formerly Shared Medical Systems, Inc.) who had their 1998 incentive compensation plan ("ICP") compensation reduced 30% even though the employees had completed their performance under the 1998 ICP contracts and had earned their incentive compensation based on the targets, goals and quotas in the ICPs. The Court had scheduled trial to begin on February 4, 2005. On the eve of trial, the Court granted Plaintiffs' motion for summary judgment as to liability on their breach of contract claim. With the rendering of that summary judgment opinion on liability in favor of Plaintiffs, the parties reached a settlement in which class members will receive a net recovery of the full amount of the amount that their 1998 ICP compensation was reduced. On May 5, 2005, the Court approved the settlement, stating that the case "should restore anyone's faith in class actions as a reasonable way of proceeding on reasonable cases."

### ***Wong v. T-Mobile USA, Inc., Case No. CV 05-cv-73922-NGE-VMM, United States District Court, Eastern District of Michigan.***

Chimicles Schwartz Kriner & Donaldson-Smith LLP and the Miller Law Firm P.C. filed a complaint alleging that defendant T-Mobile overcharged its subscribers by billing them for data access services even though T-Mobile's subscribers had already paid a flat rate monthly fee of \$5 or \$10 to receive unlimited access to those various data services. The data services include Unlimited T-Zones, Any 400 Messages, T-Mobile Web, 1000 Text Messages, Unlimited Mobile to Mobile, Unlimited Messages, T-Mobile Internet, T-Mobile Internet with corporate My E-mail, and T-Mobile Unlimited Internet and Hotspot. Chimicles Schwartz Kriner & Donaldson-Smith LLP and the Miller Law Firm defeated a motion by T-Mobile to force resolution of these claims via arbitration and successfully convinced the Court to strike down as unconscionable a provision in T-Mobile's subscription contract prohibiting subscribers from bringing class actions. After that victory, the parties reached a settlement requiring T-Mobile to provide class members with a net recovery of the full amount of the un-refunded overcharges with all costs for notice, claims administration, and counsel fees paid in addition to class members' 100% net recovery. The gross amount of the overcharges, which occurred from April 2003 through June 2006, is approximately \$6.7 million. To date, T-Mobile has refunded approximately \$4.5 million of those overcharges. A significant portion of those refunds were the result of new policies T-Mobile instituted after the filing of the Complaint. Pursuant to the Settlement, T-Mobile will refund the remaining \$2.2 million of un-refunded overcharges.

### ***In re Checking Account Overdraft Litig., No. 1:09-MD-02036-JLK, United States District Court, Southern District of Florida.***

These Multidistrict Litigation proceedings involve allegations that dozens of banks reorder and manipulate the posting order of consumer debit transactions to maximize their revenue from overdraft fees. Settlements in excess of \$1 billion have been reached with several banks. CSK&D was active in the overall prosecution of these proceedings, and was specifically responsible for prosecuting actions against US Bank (pending \$55 million settlement) and Comerica Bank (pending \$14.5 million settlement).

# Representative Cases

## Consumer Cases

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***In re Apple iPhone/iPod Warranty Litig.*, No. 10-CV-01610, United States District Court, Northern District of California .**

CSK&D is interim co-lead counsel in this case brought by consumers who allege that Apple improperly denied warranty coverage for their iPhone and iPod Touch devices based on external “Liquid Submersion Indicators” (LSIs). LSIs are small paper-and-ink laminates, akin to litmus paper, which are designed to turn red upon exposure to liquid. Plaintiffs alleged that external LSIs are not a reliable indicator of liquid damage or abuse and, therefore, Apple should have provided warranty coverage. The district court recently granted preliminary approval to a settlement pursuant to which Apple has agreed to pay \$53 million to settle these claims.

***Henderson v. Volvo Cars of North America LLC, et al.*, No. 2:09-CV-04146-CCC-JAD, United States District Court, District of New Jersey.**

CSK&D was lead counsel in this class action lawsuit brought behalf of approximately 90,000 purchasers and lessees of Volvo vehicles that contained allegedly defective automatic transmissions. After the plaintiffs largely prevailed on a motion to dismiss, the district court granted final approval to a nationwide settlement in March 2013.

***In re Philips/Magnavox Television Litig.*, No. 2:09-cv-03072-CCC-JAD, United States District Court, District of New Jersey.**

This class action was brought by consumers who alleged that a defective electrical component was predisposed to overheating, causing their televisions to fail prematurely. After the motion to dismiss was denied in large part, the parties reached a settlement in excess of \$4 million.

***Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation*, No. 1:10-cv-00264-CAB, United States District Court, Northern District of Ohio.**

This case was brought on behalf of a class of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA. The case settled for approximately \$20 million worth of benefits to class members. CSK&D, which represented an outpatient surgical center, was the sole lead counsel in this case.

***Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB, United States District Court, District of Colorado.**

CSK&D was co-lead counsel in this consumer case in which a settlement that provided full recovery to approximately 930,000 class members was achieved.

***In re CertainTeed Corp. Roofing Shingle Products Liability Litigation*, No. 07-MDL-1817-LP, United States District Court, Eastern District of Pennsylvania.**

This was a consumer class action involving allegations that CertainTeed sold defective roofing shingles. The parties reached a settlement which was approved and valued by the Court at between \$687 to \$815 million.

# Representative Cases

## Antitrust Cases

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***In re TriCor Indirect Purchasers Antitrust Litig.*, No. 05-360-SLR, United States District Court, District of Delaware.**

CSK&D was liaison counsel in this indirect purchaser case which resulted in a \$65.7 million settlement. The plaintiffs alleged that manufacturers of a cholesterol drug engaged in anticompetitive conduct, such as making unnecessary changes to the formulation of the drug, which was designed to keep generic versions off of the market.

***In re Flonase Antitrust Litig.*, No. 2:08-cv-3301, United States District Court, Eastern District of Pennsylvania.**

CSK&D was liaison counsel and trial counsel on behalf of indirect purchaser plaintiffs in this pending antitrust case. The plaintiffs allege that the manufacturer of Flonase engaged in campaign of filing groundless citizens petitions with the Food and Drug Administration which was designed to delay entry of cheaper, generic versions of the drug. The court has granted class certification, and denied motions to dismiss and for summary judgment filed by the defendant. A \$46 million settlement was reached on behalf of all indirect purchasers a few months before trial was to commence.

***In re In re Metoprolol Succinate End-Payor Antitrust Litig.*, No. 1:06-cv-00071, United States District Court, District of Delaware.**

CSK&D was liaison counsel for the indirect purchaser plaintiffs in this case, which involved allegations that AstraZeneca filed baseless patent infringement lawsuits in an effort to delay the market entry of generic versions of the drug Toprol-XL. After the plaintiffs defeated a motion to dismiss, the indirect purchaser case settled for \$11 million.

***In re Insurance Brokerage Antitrust Litigation*, No. 2:04-cv-05184-GEB-PS, United States District Court, District of New Jersey.**

This case involves allegations of bid rigging and steering against numerous insurance brokers and insurers. The district court has granted final approval to settlements valued at approximately \$218 million.