

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STACIE KOBYLANSKI and TIMOTHY  
CONNER, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

MOTOROLA MOBILITY, INC.,  
and MOTOROLA SOLUTIONS, INC.,  
Delaware corporations.

Defendants.

Civil Action No. 2:13-cv-01181-TFM

Judge Terrence F. McVerry

Filed Electronically

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

Plaintiffs, Stacie Kobylanski and Timothy Connery, on behalf of themselves and the other Members of the nationwide Settlement Class, by and through their undersigned counsel, respectfully move this Court for an Order preliminarily approving the terms of a proposed class action settlement; approving the form and method of providing Notice of the Settlement to the Class; and scheduling a Final Settlement Hearing. In support of this Motion, the Plaintiffs aver as follows:

1. After arms-length negotiations, the Parties have reached a proposed settlement of this putative class action. On or about April 9, 2014, the Parties executed a Class Action Settlement Agreement (“Settlement Agreement” or “Settlement”), a copy of which is attached as Exhibit A.

2. Consistent with the Memorandum of Law filed herewith, Plaintiffs respectfully request that the Court sign the proposed Order preliminarily approving the terms of the proposed class action Settlement; approving the form and method of providing Notice of the Settlement to

the Class; and scheduling a Final Settlement Hearing.

3. Plaintiffs' counsel has conferred with Defendants' counsel with respect to this Motion and Defendants do not oppose the Motion.

WHEREFORE, Plaintiffs hereby move this Court for an Order: (i) preliminarily approving the terms of the Settlement as set forth in the Settlement Agreement; (ii) approving the form of Notice and method of providing Notice of the Settlement to the Class as set forth in the Settlement Agreement, and directing that said form of Notice be provided to Class Members in that manner; and (iii) scheduling a Final Settlement Hearing at which the request for final approval of the proposed Settlement, Plaintiffs' Counsels' application for an award of attorneys' fees and costs, and the entry of the Final Judgment and Order will be considered. A proposed Order Preliminarily Approving the Class Settlement, Directing the Issuance of Notice to the Class, and Scheduling a Settlement Hearing is attached to the Settlement Agreement as Exhibit A.

Dated: April 9, 2014

Respectfully submitted,

/s/ R. Bruce Carlson

R. Bruce Carlson

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# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STACIE KOBYLANSKI and TIMOTHY  
CONNERY, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

MOTOROLA MOBILITY, INC.,  
and MOTOROLA SOLUTIONS, INC.,  
Delaware corporations.

Defendants.

Civil Action No. 2:13-cv-01181-TFM

Judge Terrence F. McVerry

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement (the "Settlement Agreement") is entered into by and between Stacie Kobylanski and Timothy Connery (the "Class Representatives" or "Plaintiffs"), on behalf of themselves and the Class Members as defined herein (with the assistance and approval of Class Counsel) and Motorola Mobility LLC, Motorola Mobility, Inc., and Motorola Solutions, Inc. ("Motorola" or "Defendants"). By entering into this Settlement Agreement, the Settling Parties, including all Class Members, intend to fully, finally, and forever release, resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions of this Settlement Agreement, and subject to the final approval of the Court.

WHEREAS, the Litigation was commenced by Plaintiffs, individually and on behalf of an alleged nationwide class of persons, and such Litigation is currently pending;

WHEREAS, in the Litigation, Class Representatives allege that Defendants violated, *inter alia*, breach of express warranty, breach of the implied warranty of merchantability, violation of §349 and §350 of the New York General Business Law, and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. § 201-1, *et seq.*);

WHEREAS, Motorola denies Plaintiffs' claims, any liability to Class Representatives or any member of the alleged or proposed Class, and any wrongdoing of any kind;

WHEREAS, Class Representatives and Motorola agree that it is desirable that the Litigation be settled upon the terms and conditions set forth below to avoid further expense and uncertain, burdensome, and potentially protracted litigation and resolve all claims that have been or could have been asserted; and

WHEREAS, the Settling Parties have engaged in arms-length settlement negotiations and Class Counsel represent that they have otherwise conducted a thorough study and investigation of the law and facts relating to the claims that have been or might have been asserted in the Litigation and have concluded – taking into account the benefits that the Class Representatives and the Class Members will receive as a result of this Settlement Agreement as well as the risks and delays of further litigation – that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of Class Representatives and the Class.

NOW, THEREFORE, intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth in this Settlement Agreement, the Settling Parties agree, subject to the approval of the Court and provisions contained in this Settlement Agreement, that the Litigation and Released Claims against Motorola and any Motorola Releasees are fully and finally compromised, settled, and released, and that the Litigation shall be dismissed with prejudice as follows:

1. **Conditional Nature of Settlement Agreement.** This Class Action Settlement Agreement and Release, including all associated exhibits and attachments, is made for the sole purpose of attempting to consummate settlement of this action on a class-wide basis. The Settlement Agreement is made in compromise of disputed claims. The Settlement Agreement is

intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions set forth in this Settlement Agreement. Because this action was pled as a class action, this settlement must receive preliminary and final approval by the Court. Accordingly, the Settling Parties enter into this Settlement Agreement and associated settlement (the "Settlement") on a conditional basis that is subject to the final approval of the Court.

2. **Effect of Disapproval.** In the event that the Court does not execute and file the Order Granting Final Approval of the Settlement, or in the event that the associated Judgment does not become Final for any reason, this Settlement Agreement shall be deemed null and void *ab initio*: it shall be of no force or effect whatsoever (except regarding the return of funds as indicated in this Settlement Agreement); it shall not be referred to or utilized for any purpose whatsoever; and any negotiations, terms, and entry of the Settlement Agreement shall remain subject to the provisions of Federal Rule of Evidence 408 and any similar state law.

3. **Denial of Liability; No Admissions.** Motorola denies all of the claims as to liability, damages, penalties, interest, fees, restitution, and all other forms of relief as well as the allegations asserted in the Litigation. Neither this Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations connected with it, shall be construed as any admission or concession by Motorola of any legal violations, any legal requirement, or any failure to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be used, offered, or received as evidence in any action or proceeding to establish: any liability or admission on the part of Motorola or any Motorola Releasees; any condition constituting a violation of, or non-compliance with, federal, state, local, or other applicable laws;

or the propriety of class certification in any proceeding or action. The Settling Parties expressly agree and represent that in the event that the Court does not approve the Settlement Agreement or any appellate court disapproves of the Settlement Agreement in any way that prevents the Settlement from becoming final and effective, no Party will use or attempt to use any conduct or statement of any other Party in connection with this Settlement Agreement or any effort to seek approval of the Settlement to affect or prejudice any other Party's rights in any ensuing litigation. Motorola has agreed to resolve this Litigation through this Settlement Agreement, but to the extent this Settlement Agreement is deemed void or the Effective Date does not occur, Motorola does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Litigation upon all procedural and factual grounds including, without limitation, the ability to challenge class action treatment on any grounds or assert any and all defenses or privileges. Motorola expressly reserves all rights and defenses as to any claims and does not waive any such rights or defenses in the event that the Settlement Agreement is not approved for any reason. The Class Representatives and Class Counsel agree that Motorola and the Motorola Releasees retain and reserve these rights and agree not to take a position to the contrary. Specifically, the Class Representatives and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that Motorola could not contest class certification on any grounds if this Litigation were to proceed.

**4. Definitions.**

As used in all parts of this Settlement Agreement, the following terms have the meanings specified below:

4.1 "Class" means the collective group of those persons within the applicable statute of limitations period who purchased the MOTOACTV Device.

4.2 “Class Counsel” means the law firms of Carlson Lynch Ltd. and Del Sole Cavanaugh Stroyd LLC.

4.3 “Class Member” or “Member of the Class” means a person who is a member of the Settlement Class under Federal Rule of Civil Procedure 23 who does not submit a valid and timely request for exclusion or “opt-out” from the Class in accordance with the terms of this Settlement Agreement.

4.4 “Class Notice” means the Summary Notice and Internet Notice to be approved by the Court substantially in the form attached as Exhibits B1 and B2.

4.5 “Class Period” means January 1, 2011, through the Preliminary Approval Date, inclusive.

4.6 “Court” means the United States District Court for the Western District of Pennsylvania.

4.7 “Effective Date” means the date on which the Judgment becomes Final, unless there are no objections to the Settlement, in which circumstance the Effective Date will be the date of the entry of Judgment.

4.8 “Final Effective Date” means the latest of: (i) the date of final affirmance of the last pending appeal of the Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Judgment; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal from the Judgment.

4.9 “Judgment” means the judgment to be rendered by the Court pursuant to this Settlement Agreement substantially in the form attached as Exhibit D.

4.10 “Litigation” or the “Lawsuit” means the lawsuit captioned *Stacie Kobylanski and Timothy Connery v. Motorola Solutions, Inc. and Motorola Mobility, Inc.*,

United States District Court for the Western District of Pennsylvania, Case No. 13-cv-01181-TFM.

4.11 “MOTOACTV Device” means all versions of the GPS sports watch manufactured and sold by Motorola during the Class Period. The MOTOACTV Device was sold in several memory capacities, including 8GB and 16GB models, with some devices focused on certain sports, such as golf. All models and varieties are included within the definition of MOTOACTV Device.

4.12 “Motorola” means Motorola Mobility LLC, Motorola Mobility, Inc., and/or Motorola Solutions, Inc.

4.13 “Motorola Releasees” means “Motorola,” as defined above, and each of its or their current and former affiliates (including, but not limited to, any parents and subsidiaries); each of the foregoing’s predecessors, successors, divisions, joint ventures, and assigns; and each of any of the foregoing’s past or present directors, officers, employees, partners, members, principals, agents, underwriters, insurers, co-insurers, re-insurers, shareholders, attorneys, accountants or auditors, banks or investment banks, personal or legal representatives, or associates.

4.14 “Notice Publication Deadline” means the deadline for publication of the Summary Notice fifteen (15) days after the Preliminary Approval Date. This same deadline shall apply for the posting of internet notice.

4.15 “Notice Response Deadline” means the date forty-five (45) days after the Class Notice is published to the Class Members.

4.16 “Order of Final Approval” or “Order Granting Final Approval of Settlement” means an order to be entered and filed by the Court entitled “Order Granting Final Approval of Settlement” substantially in the form attached as Exhibit C.

4.17 “Participating Claimant” or “Participating Claimants” means each Member of the Class who properly and timely submits a Qualifying Settlement Claim Certification Form in response to the Class Notice.

4.18 “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

4.19 “Preliminary Approval Order” means an order to be executed and filed by the Court entitled “Order Granting Preliminary Approval” substantially in the form attached as Exhibit A.

4.20 “Proof of Payment” means documentary evidence of the amount paid by the Class Member for the purchase of the MOTOACTV Device, the date of the payment, and the entity to which the Class Member made the payment. Acceptable Proof of Payment includes a receipt, credit card statement, cancelled check referencing the MOTOACTV Device, or such other documentary evidence provided by the Class Member deemed sufficient by the Settlement Administrator after consulting with Class Counsel and counsel for the Defendants.

4.21 “Proof of Purchase” means documentary evidence that the Class Member submitting a claim under the Settlement purchased a MOTOACTV Device within the applicable statute of limitations. Acceptable Proof of Purchase includes a receipt, credit card statement, the original UPC from the packaging, a picture of the device, or such other documentary evidence provided by the Class Member deemed sufficient by the Settlement Administrator after

consulting with Class Counsel and counsel for the Defendants. To the extent a Class Member submits a picture of the device as the proof of purchase, the serial number must be visible.

4.22 “Qualifying Settlement Claim Certification Form” means a Settlement Claim Certification Form that is completed, properly executed, and timely returned to Class Counsel postmarked within one-hundred and twenty (120) days from the date of publication of Class Notice. Class Counsel shall be apprised of any claim that is challenged by Motorola; and, the parties, through their counsel, shall meet and confer in an attempt to resolve any challenged claim.

4.23 “Released Claims” means, individually and collectively, any and all claims (including, without limitation, Unknown Claims as defined herein), demands, rights, liabilities, and causes of action of every nature and description whatsoever including, without limitation, statutory, constitutional, contractual, or common law claims, whether known or unknown, whether or not concealed or hidden, whether contingent or vested, against Motorola, the Motorola Releasees, or any of them, that accrued, had accrued, or could have accrued at any time on or prior to the Preliminary Approval Date for any type of relief whatsoever including, without limitation, compensatory damages, treble damages, unpaid costs, penalties, statutory damages, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, rescission, or equitable relief, based on any and all claims which are or could have been raised in the Litigation either individually or on a class-wide basis or which arise out of or are in any way related to Defendants’ marketing and promotion of the MOTOACTV Device’s durability and suitability as a wearable fitness performance tracker product designed to be “sweat-proof” and/or “rain-resistant” between January 1, 2011, through the Preliminary Approval Date.

4.24 “Settlement Claim Certification Form” means the form attached as Exhibit E.

4.25 “Settlement Hearing” or “Fairness Hearing” means a hearing set by the Court to take place no earlier than ninety (90) days after entry of the Preliminary Approval Order for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Settlement Agreement and associated Settlement pursuant to class action procedures and requirements; and (ii) entering Judgment. Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(d), an order giving final approval of a proposed settlement may not be issued earlier than ninety (90) days after the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under 28 U.S.C. § 1715(b).

4.26 “Settlement Agreement” means this Agreement and Release, and all of its attachments and exhibits, which the Settling Parties understand and agree sets forth all material terms and conditions of the Settlement between them and which is subject to Court approval. It is understood and agreed that Motorola’s obligations for payment under this Settlement Agreement are conditioned on the preliminary approval of the Settlement and the distribution of any funds to any Class Member or Class Counsel is conditioned upon the occurrence of the Final Effective Date.

4.27 “Settling Parties” or “Parties” means Motorola and the Class Representatives on behalf of themselves and any and all Class Members.

4.28 “Unknown Claims” means any Released Claims which the Class Representatives or any Class Member does not know or suspect to exist in his, her, or its favor at the time of the entry of the Judgment and which, if known by him, her, or it might have affected his, her, or its settlement with and release of Motorola and the Motorola Releasees. The Class

Representatives and each Class Member may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Class Representatives and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, regulation, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representatives acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

**5. The Settlement.**

**5.1 *Payment of Claims.***

Members of the Settlement Class who submit timely and valid claims shall be entitled to receive compensation as follows:

(a) Class Members who previously submitted a claim for water damage to Motorola, but were denied a repair or replacement by Motorola based on liquid damage to the MOTOACTV Device shall receive a refund of their purchase price, provided that they submit Proof of Purchase and Proof of Payment. The Settlement Administrator shall submit all documents in support of a claim for refund to Motorola prior to approving any such claims. Motorola shall have the right to verify claims for refunds against its records prior to the

Settlement Administrator's approval of such claims and before Motorola is obligated to make any payment to the Class Member.

(b) Class Members who certify that they purchased a MOTOACTV Device, in whole or in part, in reliance on the claim that it was "sweat-proof" and/or "rain-resistant" shall receive a \$35 coupon for use at [www.motorola.com](http://www.motorola.com) provided that they submit a valid Proof of Purchase. Each coupon will expire one hundred and twenty (120) days after issuance and shall not be transferable.

5.2 *Court Approval of Notice to the Class; Settlement Hearing.*

5.2.1 The Class Representatives and Motorola, through their counsel of record in the Litigation, shall file this Settlement Agreement with the Court, and Class Representatives shall move for (and Motorola shall not oppose) preliminary approval of this Settlement Agreement, conditional certification of the Class, and the form and manner of Class Notice. Through this submission and a supporting motion, the Class Representatives, through their counsel of record, will request (and Motorola shall not oppose) that the Court enter the Preliminary Approval Order thereby scheduling the Settlement Hearing for the purposes of determining the fairness, adequacy, and reasonableness of the Settlement; granting final approval of the Settlement; granting final approval of this Settlement Agreement; and entering Judgment.

5.2.2 If the Court enters the Preliminary Approval Order, Class Representatives and Motorola, through their counsel of record at the resulting Settlement Hearing, shall address any written objections from Class Members or any concerns from Class Members who attend the Settlement Hearing as well as any concerns of the Court, if any, and Class Representatives shall and hereby do, unless provided otherwise in this Settlement

Agreement, stipulate to (and Motorola shall not and does not oppose) final approval of this Settlement Agreement and entry of the Judgment by the Court.

5.3 *Notice to Class Members.*

5.3.1 If, by entering the Preliminary Approval Order, the Court provides authorization to publish the Class Notice to Class Members, Class Counsel shall cause the publication of Summary Notice and Internet Notice. Copies of the proposed Class Notice documents are attached to this Settlement Agreement as Exhibits B1 and B2.

5.3.2 Summary Notice shall be published one time in the USA Today newspaper. Summary Notice shall occupy at least 1/8 of a full page. In addition, Summary Notice shall be published on Facebook Advertisements targeting MOTOACTV Device users for a period of forty-five (45) days. Internet Notice shall be displayed on a website hosted by Class Counsel for a period of forty-five (45) days, commencing on the Notice Publication Deadline.

5.3.3 *CAFA Notice.* The Settlement Administrator shall send notice of the proposed class action Settlement to the appropriate Federal official and the appropriate State official, if any, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, no later than ten (10) days after the proposed Settlement is filed with the Court.

5.3.4 The costs of Summary Notice shall be paid by Motorola.

5.4 *Responses to the Notice Re: Pendency of Class Action; Motion for Final Approval.*

5.4.1 Class Members have the option to participate in this Lawsuit at their own expense by obtaining their own attorney(s). Class Members who choose this option

will be responsible for any attorneys' fees or costs incurred as a result of their decision. The Class Notice will advise Class Members of this option.

5.4.2 Class Members (other than Class Representatives) may elect to "opt out" of the Settlement and, thus, exclude themselves from the Lawsuit and Class. No opt-out request may be made by a group of Class Members or signed by an actual or purported agent or attorney acting or purporting to act on behalf of a Class Member. Any opt-out request must be mailed to Class Counsel, be personally signed by the Class Member opting-out, and include the following information: (i) the name of the Class Member, (ii) the current address of the Class Member, and (iii) the date signed. Any opt-out request must be mailed to Class Counsel and postmarked no later than the Notice Response Deadline. Those Class Members who do not opt out of the Settlement in a manner consistent with the conditions just described will be deemed to have forever waived their right to opt out of the Class and this Settlement. Class Members who do properly opt out shall have no further role in the Litigation and, for all purposes, shall be regarded as if they never were a party to this Litigation; thus, they shall not be entitled to any benefit as a result of this Litigation including, without limitation, any tolling of any pertinent statute of limitations. If more than 10% of eligible Class Members opt-out of the Settlement, Defendant shall have the option of terminating the Settlement Agreement at its sole discretion. If Defendant exercises this option, the Settlement Agreement shall be deemed null and void *ab initio*.

5.4.3 Class Members may also object to this Settlement Agreement by filing a written objection, together with any supporting papers (hereinafter collectively referred to as the "Notice of Objection") with the United States District Court for the Western District of Pennsylvania no later than the Notice Response Deadline. Class Counsel must also be

served with copies of the objections, postmarked no later than the Notice Response Deadline. The Class Notice shall advise Class Members of this option. Class Counsel shall immediately provide any such objections to Motorola and, subsequently, the Court in the final approval process. Any Class Member who does not object to the Settlement in the manner just described shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the proposed Settlement or any provision of this Settlement Agreement.

5.4.4 Prior to the Settlement Hearing and consistent with the rules established by the Court, the Class Representatives shall move (and Motorola shall not oppose) the Court for entry of the Order of Final Approval (and the associated entry of Judgment). Also prior to the Settlement Hearing, Class Counsel shall file a Motion for Fees and Costs, consistent with this Settlement Agreement. The Class Representatives and Class Counsel shall be responsible for justifying the agreed upon payments set forth in this Settlement Agreement. To the extent possible, the motion seeking entry of the Order of Final Approval shall be noticed for the same day as the Settlement Hearing. The Settling Parties shall take all reasonable efforts to secure entry of the Order of Final Approval. If the Court rejects the Settlement, fails to enter the Order of Final Approval, or fails to enter the Judgment, this Settlement Agreement shall be void *ab initio*, and Class Counsel shall cause all moneys held in escrow to be returned to Motorola.

5.5 *Timing of Payment to Participating Claimants and Notice of Final Approval to Settlement Class Members.*

5.5.1 Within forty-five (45) days of and only after the Effective Date, Class Counsel shall provide to each Participating Claimant his or her Settlement Payment.

5.5.2 Following the dissemination of Settlement Payments to Participating Claimants, Class Counsel shall provide Motorola with a written confirmation of this fact.

5.6 *Release.*

Upon the Effective Date, the Class Representatives and each of the Class Members (for themselves and their respective heirs, executors, administrators, affiliates, successors, and assigns) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, dismissed with prejudice, relinquished, and discharged all Released Claims.

5.7 *Payment of Costs and Attorneys' Fees and to the Class Representatives.*

5.7.1 Subject to Court approval, Class Counsel shall receive \$355,000 from Motorola for all attorneys' fees and allowable Litigation costs and expenses. This amount shall be payable within five (5) days of the Final Effective Date. Payments made pursuant to this Paragraph shall constitute full satisfaction of any claim for fees and/or costs and the Class Representatives and Class Counsel, on behalf of themselves and all Class Members, agree that they shall not seek nor be entitled to any additional attorneys' fees or costs under any theory. The Class Representatives and Class Counsel agree that they shall be responsible for justifying the amount of this cost and fee payment to the Court and submitting the necessary materials to justify this payment along with the motion for final approval of the Settlement Agreement. Motorola agrees not to object to Class Counsels' submission regarding, or request for approval of, this payment of fees or costs provided that it is consistent with this Settlement Agreement. Class Counsel shall provide counsel for Motorola with the pertinent taxpayer identification number and a Form W-9 for reporting purposes. Other than any reporting of this

fee payment as required by this Settlement Agreement or law, which Motorola shall make, Class Counsel and the Class Representatives shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this Paragraph.

5.7.2 On behalf of Plaintiff Stacie Kobylanski, in her personal capacity only, Class Counsel shall request an incentive payment in the gross amount of \$2,000 for Ms. Kobylanski to be paid by Motorola. On behalf of Plaintiff Timothy Connery, in his personal capacity only, Class Counsel shall request an incentive payment in the gross amount of \$2,000 for Mr. Connery to be paid by Motorola. These amounts shall be payable after the Final Effective Date. This payment shall be compensation and consideration for Plaintiff Kobylanski's and Plaintiff Connery's efforts as the Class Representatives in the Litigation. Motorola agrees not to object to Class Counsels' submission regarding said fees.

5.8 *Claims Administration.*

This Settlement shall be administered by Analytics, a third party class action administrator. Motorola or any Motorola Releasees shall have no responsibility or liability for any amounts, costs, or fees, including attorneys' fees, related to or arising out of the administration of the Settlement.

5.9 *Termination of Settlement.*

In the event that the Settlement Agreement is not approved by the Court; the Settlement set forth in the Settlement Agreement is terminated, cancelled, declared void, or fails to become effective in accordance with its terms; the Judgment does not become Final; or termination, cancellation, or voiding of the Settlement Agreement is otherwise provided, no payments shall be made or distributed to anyone in accordance with the terms of this Settlement

Agreement; the funds with all accrued interest shall be returned to Motorola within five (5) days; the Settling Parties will bear their own costs and fees with regard to the efforts to obtain Court approval; and this Settlement Agreement shall be deemed null and void with no effect on the Litigation whatsoever. In such event, the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

5.10 *Miscellaneous Provisions.*

5.10.1 The Settling Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement and (ii) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Settlement Agreement and exercise their best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement.

5.10.2 The Settlement Agreement compromises claims which are contested in good faith and it shall not be deemed an admission by any of the Settling Parties as to the merits of any claim or defense. The Settling Parties agree that the amounts paid in settlement and the other terms of the Settlement were negotiated in good faith by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

5.10.3 Neither the Settlement Agreement, nor any act performed or document executed pursuant to, or in furtherance of, the Settlement Agreement is, may be deemed to be, or may be used as an admission of, or evidence of: (i) the validity of any Released

Claim or of any wrongdoing or liability of Motorola, the Motorola Releasees, or any of them; or (ii) any fault or omission of Motorola, the Motorola Releasees, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

5.10.4 All of the exhibits to the Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

5.10.5 Except as otherwise provided in this Settlement Agreement, each party shall bear its own attorneys' fees and costs. All Class Members will be responsible for paying any and all income taxes that may be due as a result of their participation in the Settlement described in this Settlement Agreement.

5.10.6 The Settlement Agreement constitutes the entire agreement among the Settling Parties hereto and no representations, warranties, or inducements have been made to any party concerning the Settlement Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. This Settlement Agreement supersedes any and all prior oral or written understandings, agreements, and arrangements between the Parties with respect to the settlement of the Litigation and the Released Claims. Except those set forth expressly in this Settlement Agreement, there are no other agreements, covenants, promises, representations, or arrangements between the Parties with respect to the settlement of the Litigation and Released Claims. This Settlement Agreement may be altered, amended, modified, or waived, in whole or in part, only by a writing signed by all Parties to this Settlement Agreement, and may not be altered, amended, modified, or waived, in whole or in part, orally or by an unsigned writing of any kind.

5.10.7 Class Counsel, on behalf of the Class, are expressly authorized by the Class Representatives to take all appropriate action required or permitted to be taken by

the Class pursuant to the Settlement Agreement to effect its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Class which they deem appropriate. Each Party to this Settlement Agreement warrants that he, she, or it is acting upon his, her, or its independent judgment and/or upon the advice of his, her, or its own counsel, and is not acting in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in writing in this Settlement Agreement.

5.10.8 Each counsel or other Person executing the Settlement Agreement or any of its exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

5.10.9 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

5.10.10 This Settlement Agreement shall be binding upon, and inure to the benefit of, the heirs, administrators, executors, successors, and assigns of the Parties hereto; but otherwise this Settlement Agreement is not designed to and does not create any type of third party beneficiaries.

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

5.10.12 The Settlement Agreement and the exhibits hereto shall be considered to have been negotiated, executed, delivered, and wholly performed in the

Commonwealth of Pennsylvania, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal substantive laws of the Commonwealth of Pennsylvania without giving effect to that State's choice of law principles.

5.10.13 The language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. No party shall be deemed the drafter of this Settlement Agreement. The parties acknowledge that the terms of the Settlement Agreement are contractual and are the product of negotiations between the parties and their counsel. Each party and their counsel cooperated in drafting and preparing the Settlement Agreement. In any construction to be made of the Settlement Agreement, the Settlement Agreement shall not be construed against any party. Any canon of contract interpretation to the contrary, under the law of any state, shall not be applied.

5.10.14 The Class Representatives and Class Counsel shall not directly or indirectly cause any aspect of this Lawsuit or the terms of this Settlement Agreement to be reported to the media or news reporting services.


IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused the Settlement Agreement to be executed.

DATED: April 9, 2014

By:   
MARK L. DURBIN

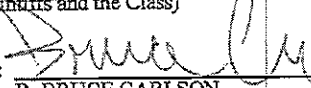
Barnes & Thornburg LLP (Attorney for  
Defendant Motorola)

DATED: April 9, 2014

By:   
BENJAMIN J. SWEET

Del Sole Cavonagh Stryd LLC (Attorney for  
Plaintiffs and the Class)

DATED: April 9, 2014

By:   
R. BRUCE CARLSON

Carlson Lynch Ltd. (Attorneys for Plaintiffs  
and the Class)

# **Exhibit A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STACIE KOBYLANSKI and TIMOTHY  
CONNERY, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

MOTOROLA MOBILITY, INC.,  
and MOTOROLA SOLUTIONS, INC.,  
Delaware corporations.

Defendants.

Civil Action No. 2:13-cv-01181-TFM

Judge Terrence F. McVerry

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED  
CLASS ACTION SETTLEMENT, DIRECTING THE DISSEMINATION OF NOTICE,  
AND SCHEDULING A FINAL SETTLEMENT HEARING (Exhibit A)**

The Court has considered the Class Action Settlement Agreement and its exhibits; Plaintiffs' Motion for an Order preliminarily approving a class action Settlement directing the dissemination of Notice and setting a Final Settlement Hearing; and all other papers filed in this action. The matter having been submitted and good cause appearing therefore:

The Court finds as follows:

1. All defined terms contained herein shall have the same meanings as set forth in the Class Action Settlement Agreement executed by the Settling Parties and filed with this Court (the "Settlement Agreement");
2. The Class Representatives, on behalf of themselves and the nationwide Class, and the Motorola Releasees, through their counsel of record in the Litigation, have reached an agreement to settle all claims in the Litigation;
3. The Court preliminarily concludes that, for the purposes of approving this Settlement only and for no other purpose and with no other effect on the Litigation should the proposed Settlement Agreement not ultimately be approved or should the Effective Date not

occur, the proposed Rule 23 Class likely meets the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that joinder of all members of the Class is impracticable; (b) there are questions of law or fact common to the proposed Class and there is a well-defined community of interest among members of the proposed Class with respect to the subject matter of the Litigation; (c) the claims of the Class Representatives are typical of the claims of the members of the proposed Class; (d) the Class Representatives will fairly and adequately protect the interests of the Members of the Class; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; (f) the counsel of record for the Class Representatives are qualified to serve as counsel for the Class Representatives in their own capacities as well as their representative capacities and for the Class; and (g) common issues will likely predominate over individual issues;

4. Plaintiffs also have presented to the Court, for review, a Class Action Settlement Agreement. The Settlement Agreement proposes a Settlement that is within the range of reasonableness and meets the requirements for preliminary approval; and

5. Plaintiffs have presented to the Court, for review, a plan to provide Notice to the proposed Class of the terms of the Settlement and the various options that the Class has including, among other things, the option for Class Members to opt-out of the class action; to be represented by counsel of their choosing and object to the proposed settlement; and/or to become a Participating Claimant. The Notice will be published consistent with the Settlement Agreement. The Notice proposed by the Settling Parties is the best practicable under the circumstances, consistent with Fed. R. Civ. P. 23(c)(2)(B).

Good cause appearing, therefore, IT IS HEREBY ORDERED that:

1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Class Action Settlement Agreement is preliminarily approved.

2. Notice of the proposed Settlement and the rights of Class Members to opt in and/or out of the Settlement and/or become Participating Claimants shall be given by issuance

of publication Notice consistent with the terms of the Settlement Agreement by **[INSERT DATE THAT IS 15 DAYS AFTER DATE OF PRELIMINARY APPROVAL ORDER]**.

3. A hearing shall be held before this Court on **[INSERT DATE AND TIME AT LEAST 90 DAYS FROM DATE OF PRELIMINARY APPROVAL ORDER]** to consider whether the Settlement should be given final approval by the Court:

(a) Written objections by Class Members to the proposed Settlement will be considered if received by Class Counsel on or before the Notice Response Deadline;

(b) At the Settlement Hearing, Class Members may be heard (orally or if they have timely submitted written objections) in opposition to the Settlement; and

(c) Class Counsel and counsel for Defendants should be prepared at the hearing to respond to objections filed by Class Members and provide other information as appropriate bearing on whether the Settlement should be approved.

4. In the event that the Effective Date occurs, all Class Members (including all known and unknown Members) will be deemed to have forever released and discharged the Released Claims. In the event that the Effective Date does not occur for any reason whatsoever, the Settlement Agreement shall be deemed null and void and shall have no effect whatsoever.

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

\_\_\_\_\_  
Terrence F. McVerry  
United States District Judge

# **Exhibit B1**

## CLASS ACTION SETTLEMENT

This notice may affect your rights. Please read carefully.

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: KOBYLANSKI ET AL. V. MOTOROLA  
MOBILITY, INC. ET AL.,  
CASE NO.: 13-CV-1181

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### SUMMARY NOTICE OF CERTIFIED CLASS ACTION SETTLEMENT

A settlement has been proposed in a class action lawsuit filed by Stacie Kobylanski and Timothy Connery ("Plaintiffs"), on behalf of all members of the Class (known and unknown), against Motorola Mobility LLC, Motorola Mobility, Inc., and Motorola Solutions, Inc. ("Motorola") asserting that Motorola made false and misleading claims about its product.

#### WHO IS INCLUDED?

All persons who purchased a MOTOACTV GPS sports watch (including 8 GB and 16 GB models) manufactured or sold by Motorola between January 1, 2011, through [insert Preliminary Approval Date] (the "MOTOACTV Device"), **MAY BE ELIGIBLE TO RECEIVE SETTLEMENT RELIEF**, as set forth below.

If you qualify, you may send in a claim form to get benefits; exclude yourself from the Settlement; or object to the Settlement.

If you believe that you are a member of the Class, you may view the Full Notice and print a claim form online at [insert website] or you can request a copy of the Full Notice and Claim Form by calling Class Counsel at 1-800-467-5241 or e-mailing Class Counsel at: [bsweet@dscslaw.com](mailto:bsweet@dscslaw.com).

#### WHAT DOES THE SETTLEMENT PROVIDE?

Under the terms of the Settlement, Class Members who send in a timely and valid claim form shall be entitled to receive compensation as follows:

- Class Members who previously submitted a claim for water damage to Motorola, but were denied a repair or replacement by Motorola based on liquid damage to the MOTOACTV Device shall receive a refund of their purchase price, provided that they submit Proof of Purchase and Proof of Payment (e.g., receipt, credit card statement, cancelled check, etc.).
- Class Members who certify that they purchased a MOTOACTV Device, in whole or in part, in

reliance on the claim that it was "sweat-proof" and/or "rain-resistant" shall receive a \$35 coupon for use at [www.motorola.com](http://www.motorola.com) provided that they submit a valid Proof of Purchase (e.g., receipt, credit card statement, the original UPC from the packaging, a picture of the device with a visible serial number, etc.).

#### WHAT ARE YOUR OTHER OPTIONS?

If you do not want to be legally bound by the Settlement, you must exclude yourself by [insert date] or you won't be able to sue, or continue to sue, Motorola about the legal claims in this case. If you exclude yourself, you can't get Settlement relief from this Settlement. If you stay in the Settlement, you may object to it by [insert date]. The Full Notice contains important information regarding the rights, obligations, requirements, and deadlines for Class Members to participate in the Settlement, exclude themselves from the Settlement, or object to the Settlement.

If you wish to communicate with Class Counsel identified above, you may do so by writing to Benjamin J. Sweet at Del Sole Cavanaugh Stroyd LLC, 200 First Avenue, Suite 300, Pittsburgh, PA 15222. Alternatively, you may call the offices of the firm at (412) 261-2393.

IF YOU HAVE ANY QUESTIONS OR CONCERNS, ADDRESS ALL INQUIRIES IN THE MANNER SET FORTH ABOVE. THE COURT AND THE CLERK WILL NOT ANSWER LEGAL QUESTIONS FROM INDIVIDUAL CLAIMANTS. BY ISSUING THIS NOTICE, THE COURT EXPRESSES NO OPINION AS TO THE MERITS OF ANY CLAIMS OR DEFENSES ASSERTED IN THIS CIVIL ACTION. **PLEASE DO NOT CONTACT THE COURT.**

**Exhibit B2**

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

**KOBYLANSKI ET AL. V. MOTOROLA MOBILITY, INC. ET AL.  
CASE NO.: 13-CV-1181**

**NOTICE OF CLASS ACTION SETTLEMENT**

- All persons who purchased a MOTOACTV GPS sports watch (including 8 GB and 16 GB models) manufactured and sold by Motorola between January 1, 2011 through [insert Preliminary Approval Date] (the “MOTOACTV Device”), may be eligible to receive a full refund of the purchase price or a \$35 coupon for use at [www.motorola.com](http://www.motorola.com).
- The Settlement resolves a lawsuit alleging that Motorola Mobility LLC, Motorola Mobility, Inc., and Motorola Solutions, Inc.’s (“Motorola” or “Defendants”) marketing and promotion of the MOTOACTV product relies on false and misleading claims about the durability and suitability of the MOTOACTV product as a wearable fitness performance tracker product designed to be used outdoors and/or during physical activity. It avoids costs and risks to you from continuing the lawsuit, entitles certain persons to Settlement relief, and releases Motorola from any liability.
- Your legal rights are affected whether you act or do not act. Please read this Notice carefully.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

<b>SUBMIT A CLAIM FORM</b>	The only way to get Settlement relief.
<b>EXCLUDE YOURSELF</b>	Get no Settlement relief. This is the only option that allows you to ever be part of any other lawsuit against Motorola about the legal claims in this case.
<b>OBJECT</b>	Write to the Court about why you do not like the Settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up rights.

- These rights and options – and the deadlines to exercise them – are explained in this Notice.

- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**1. What is this lawsuit about?**

Stacie Kobylanski and Timothy Connery ("Plaintiffs"), on behalf of all members of the Class (known and unknown), have asserted that Defendants violated various laws, including state consumer protection laws. Specifically, Plaintiffs claim that Defendants' marketing and promotion of the MOTOACTV product relies on false and misleading claims about the durability and suitability of the MOTOACTV product as a wearable fitness performance tracker product designed to be used outdoors and/or during physical activity as specifically set forth in the Complaint on file and available at the Court at 700 Grant Street, Suite 3100, Pittsburgh, PA 15219. Defendants deny any liability or wrongdoing.

**2. Why is this a class action?**

In a class action, one or more people, called Class Representatives (in this case, Stacie Kobylanski and Timothy Connery), sue on behalf of people who are similarly situated and have similar claims. All these people (known and unknown) are Class Members. One Court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

**3. Why is there a Settlement?**

The Court did not decide in favor of Plaintiffs or Defendants. Plaintiffs think that they could have prevailed at trial. Defendants think that they could have prevailed at trial. But there was no trial. Instead, both sides agreed to a Settlement. That way, both sides avoid the costs of a trial and the people affected will get compensation. The Class Representatives and the attorneys think that the Settlement is best for all Class Members.

**4. How do I know if I am part of the Settlement?**

The Court decided that everyone who fits this description is a Class Member:

All persons who purchased a MOTOACTV Device manufactured or sold by Motorola between January 1, 2011, through [insert Preliminary Approval Date].

**5. I'm still not sure if I am included.**

If you are still not sure whether you are included, you can ask for free help. You can call 1-800-467-5241.

**6. What does the Settlement provide?**

Class Members who send in a timely and valid claim form shall be entitled to receive compensation as follows:

- Class Members who previously submitted a claim for water damage to Motorola, but were denied a repair or replacement by Motorola based on liquid damage to the MOTOACTV Device shall receive a refund of their purchase price, provided that they submit Proof of Purchase and Proof of Payment (*e.g.*, receipt, credit card statement, cancelled check, *etc.*)
- Class Members who certify that he, she, or it purchased a MOTOACTV Device, in whole or in part, in reliance on the claim that it was “sweat-proof” and/or “rain-resistant” shall receive a \$35 coupon for use at [www.motorola.com](http://www.motorola.com) provided that they submit a valid Proof of Purchase (*e.g.*, receipt, credit card statement, the original UPC from the packaging, a picture of the device with a visible serial number, *etc.*).

**7. How can I get Settlement relief?**

If you believe that you are a member of the Class and desire to participate in this Settlement, you should completely fill out the “Proof of Claim” form that accompanies this Notice and return it to the following address: [insert address]. The “Proof of Claim” must be postmarked by [insert date].

To receive a full refund, you must submit a valid Proof of Payment and a valid Proof of Purchase. The Proof of Payment can include a receipt, credit card statement, cancelled check referencing the MOTOACTV Device, or other valid forms of documentary evidence. The Proof of Purchase can include a receipt, credit card statement, the original UPC from the packaging, a picture of the device, or other valid forms of documentary evidence. To the extent you submit a picture of the device as the Proof of Purchase, the serial number must be visible.

To receive a \$35 voucher, you must submit a valid Proof of Purchase. The Proof of Purchase can include a receipt, credit card statement, the original UPC from the packaging, a picture of the device, or other valid forms of documentary evidence. To the extent you submit a picture of the device as the Proof of Purchase, the serial number must be visible.

Failure to fully follow the procedures will result in a Class Member receiving no relief under the Settlement, but nonetheless being bound by any judgments, orders, and releases in this case.

**8. When would I get Settlement relief?**

The Court will decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It’s always uncertain whether these appeals can be resolved and resolving them can take time, perhaps more than a year. Please be patient.

**9. What am I giving up to get Settlement relief or stay in the Class?**

Unless you exclude yourself, you are staying in the Class, and that means that you can’t sue, continue to sue, or be part of any other lawsuit against Motorola or the other entities released in the Settlement Agreement about the legal issues in this case. It also means that all of the Court’s orders will apply to you and legally bind you.

**10. Can I exclude myself from the Class?**

If you do not wish to participate in this Settlement, you must notify Class Counsel in writing of your intent to be excluded. Your election to opt-out must contain the following information and be signed by the Class Member opting-out: (i) the name of the Class Member, (ii) the current address of the Class Member, and (iii) the date signed. You must mail your exclusion request, postmarked no later than [insert cite] to:

[Insert address.]

If you ask to be excluded, you will not get Settlement relief and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue Motorola or the other entities released in the Settlement Agreement in the future regarding the legal issues in this case.

**11. If I don't exclude myself, can I sue Defendants for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Motorola and the other entities released in the Settlement Agreement for the claims that this Settlement resolves. If you have a pending lawsuit, involving the same claims that this Settlement resolves, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit. If you have a pending lawsuit on matters not addressed in this Settlement, you may continue that lawsuit against Defendants.

**12. If I exclude myself, can I get Settlement relief from this Settlement?**

No. If you exclude yourself, do not send in a claim form to ask for Settlement relief.

**13. Do I have a lawyer in this case?**

The law firms of Carlson Lynch Ltd. and Del Sole Cavanaugh Stroyd LLC represent you and other Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**14. How will these lawyers be paid?**

Class Counsel will ask the Court to approve payment of attorneys' fees and expenses of \$355,000. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement. In addition, Class Counsel will ask for payments of \$2,000 each to Stacie Kobylanski and Timothy Connery for their services as Class Representatives. Defendants have agreed not to oppose the request for these fees and expenses.

**15. How can I object to the Settlement?**

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter that you object to the Class Settlement in *Kobylanski et al. v. Motorola Mobility, Inc. et al.*, No. 13-CV-1181. Be sure to include your name, address, telephone number, signature, and the reasons you object to the Settlement. You must file the objection with the Clerk of the Court and serve notice of the objection to Plaintiffs' Class Counsel and Defense Counsel at the following addresses postmarked no later than [insert date]:

[Insert addresses.]

Objectors who fail to properly or timely file their objections with the Court, or serve them as provided above, shall not be heard during the Fairness Hearing, nor shall their objections be considered by the Court.

**16. What's the difference between objecting and excluding?**

Objecting is telling the Court that you do not agree with the Settlement, in whole or in part. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

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

The District Court will hold a hearing to decide whether to approve the Settlement. The Fairness Hearing will be held on [insert date and time] at the Court, 700 Grant Street, Court Room #6C, Pittsburgh, PA 15219. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections or requests to be heard, the Court may consider them at the hearing. The Court may also decide the amount of attorneys' fees and costs to be paid to Plaintiffs' Class Counsel.

**18. Do I have to come to the Hearing?**

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

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

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear" in *Kobylanski et al. v. Motorola Mobility, Inc. et al.*, No. 13-CV-1181. Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than [insert date] and sent to the Clerk of the Court and Class Counsel at the addresses in question 15. You cannot speak at the hearing if you have excluded yourself.

**20. What happens if I do nothing at all?**

If you do nothing, you will not get Settlement relief from this Settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the legal issues in this case, ever again.

**21. How do I get more information?**

The foregoing is only a summary of the circumstances surrounding the Litigation, the claims asserted, the Class, the Settlement, and related matters. You may seek the advice and guidance of your own private attorney, at your own expense, if you desire. For more detailed information, you may review the pleadings, records, and other papers on file in this Litigation, which may be inspected during regular business hours at the Court. If you wish to communicate with Class Counsel identified above, you may do so by writing to Benjamin J. Sweet, Del Sole Cavanaugh Stroyd LLC, 200 First Avenue, Suite 300, Pittsburgh, PA 15222. Alternatively, you may call the offices of the firm at (412) 261-2393.

# **Exhibit C**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STACIE KOBYLANSKI and TIMOTHY  
CONNERY, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

MOTOROLA MOBILITY, INC.,  
and MOTOROLA SOLUTIONS, INC.,  
Delaware corporations.

Defendants.

Civil Action No. 2:13-cv-01181-TFM

Judge Terrence F. McVerry

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT (Exhibit C)**

Having considered the Class Action Settlement Agreement and all other materials properly before the Court, and having conducted an inquiry, pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Settlement Agreement was entered by all parties in good faith and the Settlement Agreement is approved. The Court will, or the Clerk of the Court shall simultaneously, enter the Judgment provided in the Settlement Agreement. Class Counsel shall disseminate Class relief to Participating Claimants and otherwise effectuate the Settlement consistent with the terms of the Settlement Agreement.

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

\_\_\_\_\_  
Terrence F. McVerry  
United States District Judge

# **Exhibit D**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STACIE KOBYLANSKI and TIMOTHY  
CONNERY, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

MOTOROLA MOBILITY, INC.,  
and MOTOROLA SOLUTIONS, INC.,  
Delaware corporations.

Defendants.

Civil Action No. 2:13-cv-01181-TFM

Judge Terrence F. McVerry

**[PROPOSED] JUDGMENT (Exhibit D)**

This matter came for hearing upon the Parties' application for approval of the Settlement set forth in the Class Action Settlement Agreement (the "Settlement Agreement"). Due and adequate notice having been given to the Class; the Court having considered the Settlement Agreement, all papers filed, proceedings had, and all oral and written comments received regarding the proposed Settlement; the Court having reviewed the record in this Litigation; and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The Court, for purposes of this Judgment and Order of Dismissal ("Judgment"), adopts all defined terms as set forth in the Class Action Settlement Agreement filed in this case.
2. The Court has jurisdiction over the subject matter of the Litigation, the Class Representatives, the other Members of the Settlement Class (known and unknown), and Defendants.
3. The Court finds that the distribution of the Notice to Class Members Re: Pendency of Class Action, as provided for in the Order Granting Preliminary Approval for the

Settlement, constituted the best notice practicable under the circumstances to all Persons within the definition of the Class and fully met the requirements of due process under the United States Constitution. Based on evidence and other material submitted in conjunction with the Settlement Hearing, the Notice to the Class was adequate.

4. The Court finds in favor of Settlement approval.

5. The Court approves the Settlement of the above-captioned action, as set forth in the Settlement Agreement, and finds that each of the releases and other terms are fair, just, reasonable, and adequate to the Settling Parties. The Settling Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement.

6. Except as to any individual claim of those persons (identified in Attachment A hereto) who have validly and timely requested exclusion from the Class, all of the Released Claims are dismissed with prejudice as to the Class Representatives and the other Members of the Class (known and unknown). The Settling Parties are to bear their own attorneys' fees and costs, except as otherwise provided in the Settlement Agreement and this Judgment.

7. Solely for purposes of effectuating this Settlement, this Court has certified a nationwide Class of all Members of the Settlement Class, as that term is defined in and by the terms of the Settlement Agreement.

8. With respect to the Rule 23 Class and for purposes of approving this Settlement only, this Court finds and concludes that: (a) the Members of the Class are ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Class and there is a well-defined community of interest among Members of the Class with respect to the subject matter of the Litigation; (c) the claims of the Class Representatives are typical of the claims of the Members of the Class; (d) the Class Representatives have fairly and adequately protected the interests of the Members of the Class; (e) a class action is superior to other available methods for an efficient adjudication of this controversy and common issues predominate over individual issues; and (f) the counsel of record

for the Class Representatives (*i.e.*, Class Counsel) are qualified to serve as counsel for Plaintiffs in their individual and representative capacities and for the Class.

9. By this Judgment, the Class Representatives shall release, relinquish, and discharge, and each of the nationwide Settlement Class Members (known and unknown) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against Motorola and the Motorola Releasees that accrued at any time on, or prior to, the date of Preliminary Approval for any type of relief whatsoever including, without limitation, compensatory damages, treble damages, unpaid costs, penalties, statutory damages, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, rescission, or equitable relief based on any and all claims which are, or could have been raised, in the Litigation either individually or on a class-wide basis, or which arise out of, or are in any way related to, Defendants' marketing and promotion of the MOTOACTV Device's durability and suitability as a wearable fitness performance tracker product designed to be "sweat-proof" and/or "rain-resistant" between January 1, 2011, through the Preliminary Approval Date.

10. This action is hereby dismissed in its entirety with prejudice.

11. Neither the Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of the Settlement may be used in any proceeding or deemed to be an admission of, or evidence of: (i) the validity of any Released Claim, or of any wrongdoing or liability of Motorola, the Motorola Releasees, or any of them; or (ii) any fault or omission of the Releasees, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

12. Notwithstanding, Motorola and the Motorola Releasees may file the Settlement Agreement and/or the Judgment from this Litigation in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment, bar, reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. The only Settlement Class Members entitled to relief pursuant to this Judgment are Participating Claimants. Neither the Settlement Agreement nor this Judgment will result in the creation of any unpaid residue or residual.

14. Defendants have agreed to pay \$355,000 for Class Counsel's reasonable attorneys' fees and allowable costs in this matter and have also agreed to pay \$2,000 to each Class Representative as Plaintiff incentive payments. The Court finds that the amount of fees and costs requested by Class Counsel and the Class Representatives' incentive payments are fair and reasonable. Defendants are directed to make such payments in accordance with the terms of the Settlement Agreement.

15. The Court reserves exclusive and continuing jurisdiction over the Litigation, the Class Representatives, the Settlement Class, and Defendants for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Judgment.

16. This document shall constitute a Judgment for purposes of Rule 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

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

\_\_\_\_\_  
Terrence F. McVerry  
United States District Judge

# **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STACIE KOBYLANSKI and TIMOTHY  
CONNERY, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

MOTOROLA MOBILITY, INC.,  
and MOTOROLA SOLUTIONS, INC.,  
Delaware corporations.

Defendants.

Civil Action No. 2:13-cv-01181-TFM

Judge Terrence F. McVerry

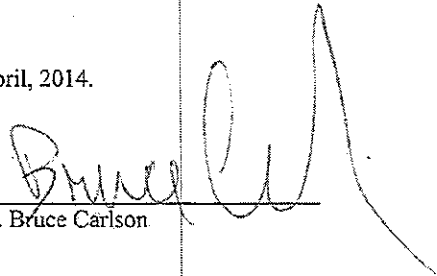
Filed Electronically

DECLARATION OF R. BRUCE CARLSON

1. My name is Bruce Carlson and I am a founding partner of Carlson Lynch Ltd., resident in the firm's Pittsburgh, Pennsylvania office.
2. Attached to this Declaration as Exhibit A is the Firm Resume for Carlson Lynch, delineating the firm's relevant class action experience since the firm's founding in June 2004.
3. Attached to this Declaration as Exhibit B is the Firm Resume for Del Sole Cavanaugh Stroyd LLC.

Under penalty of perjury, I declare that the above statements, and the statements in the attached Firm Resumes, are true and correct.

Executed at Pittsburgh, Pennsylvania this 9<sup>th</sup> day of April, 2014.

  
R. Bruce Carlson

# **Exhibit A**

**FIRM RESUME OF CARLSON LYNCH LTD.**

Effective June 1, 2004, Bruce Carlson and Gary Lynch combined their prior practices to form the firm of Carlson Lynch Ltd., with the intention of building a boutique firm that expanded upon their substantial individual experience and success representing plaintiffs in consumer, labor and employment and wage and hour, class action litigation in federal and state courts throughout the country. Litigation prosecuted by Carlson Lynch has resulted not only in the substantial monetary recoveries on behalf of class members described below, but Carlson Lynch cases continue to generate seminal legal authority, and the firm recently obtained its third federal appellate reversal within a twelve month period. In June 2012, the United States Supreme Court granted *certiorari* in a collective action under the FLSA in which Carlson Lynch is lead counsel for Plaintiff. Oral argument occurred in December 2012, wherein the Solicitor General of the United States participated as *amicus* supporting the position advocated by Carlson Lynch (this case originated in the EDPA).<sup>1</sup>

From June 2004 through April 1, 2014, Carlson Lynch was either lead or co-lead counsel representing plaintiffs in the following representative list of settled class actions:

■ *In re Wireless Phone Equipment Replacement Insurance Litigation*, (C.P. Allegheny County, Pennsylvania): Bruce Carlson and Gary Lynch were lead counsel in this national litigation alleging consumer fraud in connection with wireless phone equipment replacement insurance. Following the fairness hearing in November, 2004, the Court entered Findings of Fact and Conclusions of Law which commented on the adequacy of Carlson Lynch as lead counsel as follows:

“Class counsel have abundant experience as lead counsel in consumer class

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<sup>1</sup> In a highly anticipated 5-4 decision, the Supreme Court reversed the Third Circuit and ruled against Plaintiff.

action litigation. Indeed, class counsel have frequently appeared before this Court. Other courts have routinely recognized class counsel's adequacy . . . . This Court readily agrees with these other courts, and finds that Bruce Carlson and Gary Lynch are more than adequate counsel, and indeed are capable and diligent class action attorneys."

The settlement was approved and the settlement proceeds were distributed to the class.

■ *Gualano v. Abercrombie & Fitch Stores, Inc.*, (U.S.D.C., W.D. Pa.). Bruce Carlson and Gary Lynch were co-lead counsel in this wage and hour litigation alleging that defendant retail clothier was violating federal and state minimum wage laws. Following the fairness hearing in early 2005, where a multi-state settlement was presented to the Court for approval, the Court entered Findings of Fact and Conclusions of Law addressing lead counsel's adequacy as follows:

"The Court finds the plaintiffs' counsel, Bruce Carlson and Gary Lynch, are experienced class counsel and that they have met all of the requirements of Rule 23(g)(1)(B) and (C). Consistent with the underlying purpose of Fed. R. Civ. P. 23, plaintiffs' counsel have achieved, with utmost efficiency, a quality result for the entire class and are commended for the diligence and effective advocacy they have displayed on behalf of their clients."

■ *Pasci v. Express, LLC*, (U.S.D.C., W.D. Pa.). This case was similar to the *Abercrombie* case discussed above, and proceeded to a fairness hearing in November 2004, where a multi-state settlement was presented to the Court for approval. Regarding the adequacy of Carlson Lynch, the Court issued Findings and Conclusions stating:

"With respect to the adequacy of counsel, the Court finds that class counsel have capably and vigorously represented the class. Bruce Carlson and Gary Lynch have substantial experience in class-based litigation involving consumer fraud and employment claims . . . . Class counsel achieved an efficient and excellent result on behalf of the class."

■ *White v. United Steel Workers of America*, (U.S.D.C., W.D. Pa.). Carlson Lynch was co-lead counsel in this age-discrimination class action against the U.S.W.A. After overcoming a motion to dismiss on a legal issue regarding which there was a substantial split of authority, the

defendant requested mediation to explore the possibility of settlement. After extensive mediation over a one month period in June 2004, the case ultimately settled for an amount that defense counsel characterized as the highest ever paid by the U.S.W.A. in connection with civil litigation.

■ *Bannon v. First One Lending, Inc.*, (C.P., Allegheny County, Pennsylvania). Carlson Lynch was co-lead counsel in this class action filed on behalf of Pennsylvania second mortgage loan borrowers alleging that they were charged excessive settlement fees in violation of the Pennsylvania Secondary Mortgage Loan Act. After the court denied defendant's motion to dismiss, the case ultimately settled and plaintiffs and the class were refunded 100% of the alleged overcharge.

■ *Dwight v. American Eagle Outfitters, Inc.*, (C.P., Allegheny County, Pennsylvania). Carlson Lynch was lead counsel in this class action alleging that American Eagle violated the minimum wage laws. The parties negotiated a multi-state settlement, which was approved by the trial court. The settlement proceeds have been distributed to the class.

■ *Tarlecki v. Bebe Stores, Inc.* (U.S.D.C., N.D. CA) Carlson Lynch was co-lead counsel in this wage and hour litigation alleging that defendant retail clothier was violating federal and state minimum wage laws. With the mediation assistance of a former federal judge from the Northern District of California, the parties reached a proposed national settlement, and final approval was granted following a fairness hearing in late 2009, at which Gary Lynch appeared on behalf of the Class.

■ *Dykeman v. Charming Shoppes, Inc.*, (Sup. Ct., King County, Washington) Carlson Lynch was co-lead counsel in this case alleging violations of the Washington state minimum wage laws. After the Court denied defendants' motion to dismiss and granted plaintiffs' class

certification motion, the parties reached a mediated settlement which was approved by the trial judge. The settlement proceeds were distributed to the class in early spring of 2007.

Carlson Lynch was also co-lead counsel in a related case in state court in California on behalf of a class of California Charming Shoppes Employees. The parties in that case negotiated a proposed settlement, and final approval was granted following a fairness hearing in May 2008.

■ *Pitts v. NovaStar Home Loans, Inc. et al.*, (U.S.D.C., S.D., Ga.) Carlson Lynch was co-lead counsel for plaintiffs in this national RESPA class action. The Southern District of Georgia was the MDL court for this litigation. After the Court denied defendant's motion to dismiss, after the court denied defendants' motion for summary judgment and granted plaintiffs' motion for class certification in a related Maryland state court action – where Carlson Lynch was also co-lead counsel, and after extensive discovery including the video depositions of several of defendants' top executives, the parties participated in multiple mediation sessions and ultimately arrived at a national cash settlement on behalf of class members for \$17,300,000.00. The Court granted preliminary approval of the proposed settlement on July 11, 2007. A fairness hearing was held on September 14, 2007, at which Bruce Carlson appeared on behalf of the class. On September 18, 2007, the court entered an Order granting final approval of the settlement and entering Judgment.

■ *Battaline v. Advest*, (U.S.D.C., W.D. Pa.). Carlson Lynch was lead counsel for plaintiffs in this wage and hour class action alleging that defendant stock brokerage company violated state overtime laws. After Defendant filed its answer and substantial informal and formal discovery ensued, the parties participated in mediation and reached an agreement regarding a proposed national settlement. The Court entered an order granting final approval of the settlement on September 16, 2008.

■ *Ellis v. Edward Jones* (U.S.D.C.N.D.OH.). Gary Lynch and Carlson Lynch chaired the Plaintiffs' Leadership Committee in this wage and hour class action alleging that defendant stock brokerage company violated federal and state overtime laws. After Defendant filed an answer and after significant discovery wherein Defendant produced in excess of 500,000 pages of documents and hundreds of videotapes, the parties commenced mediation to pursue a potential global settlement. The first mediation, which occurred in Atlanta in March 2007, was unsuccessful. Ultimately, the parties participated in a second mediation in San Francisco, at which the parties arrived at the basic terms of a proposed settlement pursuant to which class members from multiple states received in excess of \$19,000,000.00. After a fairness hearing on January 5, 2009, the Court granted final approval of the settlement.

■ *Byers v. PNC Financial Services Group, Inc.* (U.S.D.C. W.D. Pa.) Carlson Lynch was lead plaintiff's counsel in this wage and hour class action alleging that defendant stock brokerage company violated federal and state overtime laws. A multi-state settlement was approved following a fairness hearing in June 2008.

■ *Steen v. A.G. Edwards, Inc.* (U.S.D.C., S.D. Ca.) Carlson Lynch was co-class counsel for plaintiff in this wage and hour litigation alleging that defendant stock brokerage company violated federal and state overtime laws. A mediated national class-based settlement has been reached and preliminary approval has been granted. A fairness hearing was held on August 31, 2009 in Los Angeles, after which the Court has entered an Order granting final approval of the settlement.

■ *Meola v. AXA Financial, Inc.* (U.S.D.C., N.D. Ca.) Carlson Lynch was co-class counsel for plaintiff in this wage and hour litigation alleging that defendant financial services company violated federal and state overtime laws. A mediated national class-based settlement

was negotiated in this matter and final approval was granted following a fairness hearing in the fall of 2009.

■ *In re St. Francis Health System* (C.P., Allegheny County Pennsylvania) Carlson Lynch was counsel for the class in connection with this wage and hour litigation on behalf of certain former employees of the St. Francis Health System in Pittsburgh. Plaintiff asserted that the class was deprived of severance benefits when St. Francis Health System was acquired by another hospital group in Western Pennsylvania. Prior to the disposition of Plaintiff's class certification motion, the parties engaged in extensive mediation before reaching a class-based settlement.

■ *Haag v. Janney Montgomery Scott* (U.S.D.C., E.D. Pa.) Carlson Lynch was a member of the three firm Executive Committee in this wage and hour class action alleging that defendant stock brokerage company violated federal and state overtime laws. After protracted litigation and two separate mediations, the parties reached a multi-state settlement. A fairness hearing was conducted in Philadelphia on June 30, 2009, where Gary Lynch appeared on behalf of the class. Following the hearing, the Court granted final approval of the settlement.

■ *Steinberg v. Morgan Stanley & Co.* (U.S.D.C., S.D. Ca.) Carlson Lynch was co-class counsel for plaintiff in this wage and hour litigation alleging that defendant stock brokerage company violated federal and state overtime laws. A mediated national class-based settlement was reached and final approval of the settlement has been granted.

■ *Ramsey v. Ryan Beck, Inc.* (U.S.D.C., S.D. N.Y.) Carlson Lynch was co-class counsel in this wage and hour class action alleging that defendant stock brokerage company violated federal and state overtime laws. After protracted litigation, the parties reached a multi-state settlement and final approval was granted in June 2010.

■ *Kniess v. Heritage Valley Health Systems, Inc.* (C.C.P., Allegheny Cty, PA) Carlson Lynch was lead counsel in this wage and hour class action alleging the defendant hospital system failed to pay overtime compensation to its nurse practitioners and physician's assistants. The parties reached a mediated class settlement whereby class members received the majority of the back pay alleged by Carlson Lynch.

■ *Leadbitter v. The Washington Hospital, Inc.* (U.S.D.C., W.D. PA.) Carlson Lynch was lead counsel in this wage and hour class action alleging the defendant hospital system failed to pay overtime compensation to its nurse practitioners and physician's assistants. The parties reached a mediated class settlement whereby class members will be eligible to receive the majority of the back pay alleged by Carlson Lynch, and the settlement has received final approval from the Court.

■ *Kaher v. Ameriquest Mortgage Co.* (U.S.D.C., W.D. Pa./MDL N.D. Ill.). Carlson Lynch was counsel for plaintiff in connection with this consolidated group of class actions alleging the existence a kick-back scheme in violation of RESPA, along with numerous other unfair lending practices. The specific case being handled by Carlson Lynch created new law under RESPA. Specifically, Carlson Lynch filed this action as a test case to challenge what they viewed as a negative trend in the law regarding how federal trial courts were determining whether a consumer has standing to sue under RESPA, as well as the manner in which damages are calculated under RESPA. Every prior federal trial court to consider these issues had sided with defendants. In opposing the Ameriquest motion to dismiss that was filed in this case, Carlson Lynch argued that these other federal trial courts had fundamentally misinterpreted the legislative history of RESPA, to support their decisions to dismiss the prior cases. In a seminal decision, the United States District Court for the Western District of Pennsylvania departed from

the holdings issued by these other federal courts, and agreed with the arguments of Carlson Lynch, denying the motion to dismiss. *See, Kahrer v. Ameriquest Mortgage Co.*, 418 F.Supp.2d 748 (W.D. Pa. 2006)(Hay, J.). Multiple federal courts of appeal have adopted the *Kahrer* reasoning, including at least the Sixth and Third Circuits.

This case was ultimately settled as part of MDL proceedings against Ameriquest in the Northern District of Illinois, and final approval of the settlement has been granted.

■ *Career Education Corporation Misclassification Litigation* (U.S.D.C., W.D. Pa.) In early 2011, Carlson Lynch filed a putative collective action on behalf of admissions representatives employed by culinary schools operated by Career Education Corporation. Carlson Lynch alleges that these individuals were misclassified and improperly denied overtime benefits. A class settlement was negotiated in this case and final approval of the settlement was granted in December 2011.

■ *Atrium Centers, LLC Automatic Meal Break Deduction Litigation* (U.S.D.C., N.D. Ohio) Carlson Lynch is lead counsel in this collective action on behalf of hourly health care workers (primarily nurses) alleging improper pay practices in connection with automatic meal break deductions. After the court granted Plaintiffs' motion for conditional certification of a collective action under the FLSA, extensive discovery ensued. Following the close of discovery, in the fall of 2012 the Parties engaged in mediation with a former United States Magistrate Judge and reached an agreement to settle the case on a collective basis. The settlement was approved by the court in December 2012 and the settlement proceeds have been distributed.

■ *Northwestern Memorial Healthcare Automatic Meal Break Deduction Litigation* (U.S.D.C., N.D. Ill.) Carlson Lynch is lead counsel in this collective/class action on behalf of hourly health care workers (primarily nurses) alleging improper pay practices in connection with

automatic meal break deductions. After extensive discovery and the denial of Defendant's motion for summary judgment, the Parties reached a mediated class settlement in the fall of 2012. The Court has preliminarily approved the settlement and a fairness hearing is set for the fall of 2013.

■ *Crozer-Keystone Health System Overtime Litigation (Nurse Practitioners/Physician's Assistants)*. Carlson Lynch filed a putative collective action against Crozer-Keystone Health System in the Eastern District of Pennsylvania. The Complaint challenges pay practices related to nurse practitioners and/or physicians' assistants. The plaintiffs in these cases allege that they are illegally being denied overtime compensation by their employers. After discovery, the Parties filed cross motions for summary judgment. In a widely reported opinion issued on January 4, 2011, the Court granted Plaintiff's motion for summary judgment, holding that Defendant has misclassified individuals in Plaintiff's job position. Defendant's motion for reconsideration of the federal court's summary judgment decision was denied in a twenty one page opinion and order issued on August 15, 2011.

Following mediation, the settlement of this case was approved in August 2012.

■ *CitiMortgage SCRA Litigation (S.D.NY)*. In July 2011, Carlson Lynch is tri-lead counsel in a class action against CitiMortgage on behalf of Sergeant Jorge Rodriguez in the Southern District of New York. This case alleges that CitiMortgage improperly foreclosed upon Mr. Rodriguez's home (and the homes of similarly situated individuals) while he was serving his country in Iraq, in violation of the Servicemembers Civil Relief Act. The case has settled on a class basis and the Court has granted preliminary approval of the settlement.

■ *Rescap Bankruptcy (S.D.N.Y. Bkr.)* On November 27, 2013, the Bankruptcy Court in the Southern District of New York granted final approval of a class settlement on behalf of in

excess of 45,000 residential mortgage borrowers. Bruce Carlson is co-lead counsel for the class. The settlement is for an allowed claim amount of \$300 million dollars. There is a guaranteed payout of approximately \$36 million dollars. The debtor assigned its insurance rights to the class and the potential insurance coverage will potentially cover the difference between the \$36 million dollar guaranteed payout and the allowed claim amount of \$300 million.

#### **Other Active Class Actions**

In addition to the above-listed cases, Carlson Lynch is lead, or co-lead counsel in numerous pending class actions including the following (this list is *not* complete—it is intended to be representative only):

■ *In re Community Bank of Northern Virginia and Guaranty National Bank of Tallahassee Secondary Mortgage Loan Litigation*, (U.S.D.C., W.D. Pa.). Carlson Lynch is class counsel in this national litigation under the Real Estate Settlement Procedures Act. The case originally settled for a cash amount in excess of \$33,000,000.00. Bruce Carlson was lead counsel for the settling plaintiffs and presented the original proposed settlement at a fairness hearing in November 2003. The Court approved the settlement notwithstanding a coordinated opt-out and objection campaign mounted by a consortium of competing plaintiffs' counsel. The objectors appealed the Court's order approving the settlement, and Carlson presented the settling plaintiffs' position at oral argument before the U.S. Court of Appeals for the Third Circuit on February 17, 2005. In August 2005, the Third Circuit vacated the order approving the settlement, and remanded the case for further proceedings relating to the settlement.

After extensive additional briefing on remand, and with the mediation assistance of a former judge from the United States Court of Appeals for the Third Circuit, the settling parties negotiated a modified and enhanced settlement, whereby Defendants agreed to make available to

the class an additional amount in excess of \$14,000,000, so that the value of the proposed modified settlement was close to \$50,000,000.00. At the same time, United States District Court Judge Gary L. Lancaster issued a lengthy opinion rejecting the objectors' argument that the settling plaintiffs should have asserted additional claims under the Truth in Lending Act. The proposed modified and enhanced settlement was referred to the former Chief Judge of the Western District of Pennsylvania – acting as a friend of the Court –to make an initial determination regarding the fairness and adequacy of the revised settlement. On July 5, 2007, former Chief Judge Ziegler issued an advisory opinion holding that the modified, enhanced settlement was fair, adequate and reasonable for the class.

Thereafter, Judge Lancaster conducted a lengthy hearing regarding whether the proposed settlement class should be certified and the modified settlement preliminarily approved. On January 25, 2008, Judge Lancaster issued an opinion and order certifying the settlement class and preliminarily approving the proposed settlement. A fairness hearing related to the enhanced settlement was conducted on June 30, 2008. On August 15, 2008, the Court issued a comprehensive Opinion and Order granting final approval of the modified settlement.

Objectors again appealed the final judgment and approval of the modified settlement to the Third Circuit. Following extensive briefing, Bruce Carlson argued the position of the settling plaintiffs before the Third Circuit on April 20, 2010.

In the fall of 2010, the Third Circuit issued a published a lengthy precedential decision vacating the Order approving the settlement and remanding for further proceedings. The initial post-remand status conference was held on February 23, 2011.

At the post-remand status conference, counsel for Plaintiffs – including counsel for the objectors—proposed two alternative suggestions for the direction of the litigation going forward:

1) global mediation to ascertain whether a new settlement was possible; or, 2) entry of an MDL case management order appointing Bruce Carlson and Fred Walters as co-lead counsel for all of the consolidated actions, and directing that the case be litigated consistent with the structure set forth in the proposed order. The Court granted Defendants' request for thirty days to consider which way it would like to proceed, and Defendants ultimately requested additional mediation, which occurred in Manhattan on June 9-10, 2011. The case did not settle and is back in litigation. Defendants have filed motions to dismiss and Plaintiffs filed their brief in opposition to the motions in early February 2012. Oral argument on the motion was held in September 2012. In late June 2013, the Court issued an Order granting the motions in part, and denying the motions in part. All of Plaintiffs' key claims survived the motions to dismiss.

Bruce Carlson and Fred Walters have been formally appointed as interim lead counsel for the class. Following the death of former Chief Judge Lancaster, the case was transferred to Judge Schwab. After the case was transferred, Plaintiffs filed a motion for class certification. The Court granted the certification motion.

Defendant sought leave to appeal the certification order pursuant to Fed. R. Civ. P. 23(f). The Third Circuit granted the petition and the parties are currently briefing the appeal.

■ *FACTA Litigation.* Carlson Lynch has been counsel for Plaintiffs in numerous putative class actions alleging a violation of the Fair and Accurate Credit Transaction Act. These cases have been filed in various federal courts nationally. Class certification motions have been granted in multiple cases. Motions to Dismiss have been denied in at least five of the cases. A motion for summary judgment was denied in a sixth case. Proposed class-based settlements have been negotiated in more than (20) twenty of the cases, with final approval having been granted, and judgment entered, in those cases.

On June 4, 2008, Congress passed an amnesty bill that eliminated potential liability for every defendant that had a FACTA case pending against it as of that date, but did not change the law prospectively. As a result, several defendants with which Carlson Lynch had negotiated class settlements—wherein final judgment had not been entered—attempted to retreat from settlements based upon the change in law. Two judges in the Western District of Pennsylvania, and one judge in the Eastern District of Pennsylvania, issued orders and wrote opinions supporting Carlson Lynch's efforts to enforce the settlements, and those cases proceeded to judgment. One judge in the Western District of Pennsylvania refused to enforce a similarly postured class settlement, and vacated the preliminary approval order that she had previously issued. Carlson Lynch appealed that decision and the Third Circuit reversed in a published decision issued on June 15, 2010. The Third Circuit directed the trial judge to enforce the settlement, and a fairness hearing in that case was held on February 10, 2011, at which time final approval of the settlement was granted.

Carlson Lynch has recently filed multiple new FACTA cases, and discovery in those cases is ongoing, with proposed class settlements negotiated in numerous cases.

■ *Hospital Meal-Break Overtime Litigation.* Beginning in late 2010, Carlson Lynch filed numerous putative class and/or collective actions on behalf of hourly health care workers (primarily nurses) alleging improper pay practices in connection with automatic meal break deductions. These cases remain in active litigation. Some of the defendants in these cases include: UPMC (Pittsburgh), West Penn Allegheny Health Systems (Pittsburgh), Genesis Health Care (Philadelphia), Northwestern University Health Care System (Chicago), Kindred Health Care (Chicago), HCR Manorcare (Toledo), Vanderbilt University Health Care System (Nashville), HCA, Inc. (Nashville), Resurrection Health Care (Chicago), St. John Health

(Detroit). Document and deposition discovery is ongoing in some of the cases. Conditional certification was granted in at least seven of the cases.

There has been active motions practice in a number of the cases as well, with numerous issues currently pending before multiple federal courts of appeal. On August 31, 2011, the United States Court of Appeals for the Third Circuit issued a seminal opinion in *Symczyk v. Genesis Healthcare Corporation*, reversing the trial court's order granting defendant's motion to dismiss. Gary Lynch successfully argued the appellant/plaintiff's position before the Third Circuit in this case. In this opinion, the Third Circuit defined the standards for preliminary certification in cases under Section 216(b) of the Fair Labor Standards Act. The decision in this case represented the third federal appellate reversal obtained by Carlson Lynch in the twelve month period preceding the issuance of the decision.

Some of these cases have settled on a collective basis during the summer and fall of 2012, and those settlements will be described in more detail once the documents become public.

■ *EFTA Litigation.* Beginning in late 2010, Carlson Lynch filed putative class actions on behalf of consumers in multiple federal venues under the Electronic Fund Transfer Act. Those venues include: Western District of Pennsylvania, Eastern District of Pennsylvania, Middle District of Pennsylvania, Western District of New York, Southern District of New York, Northern District of Ohio, District of Maryland, Middle District of Florida, Southern District of Florida, Western District of Missouri, Eastern District of Missouri, Southern District of Texas, Northern District of Texas, Western District of Texas, Middle District of Tennessee, Western District of Tennessee and Northern District of Georgia. These cases allege that various automated-teller machine ("ATM") operators (primarily financial institutions) violated mandatory ATM fee disclosure requirements, and therefore were not permitted to impose

transaction fees on ATM users at their machines. Motions to dismiss were granted in two cases based upon EFTA's statutory safe harbor provision, and Carlson Lynch appealed the dismissals to the Third Circuit. The Third Circuit agreed with Carlson Lynch and reversed the Orders granting the motions to dismiss, and both of those cases were remanded for further proceedings, and then settled on a class basis. Class settlements have been negotiated in at least twenty five additional cases to date. Some cases have been settled on an individual basis. Numerous cases remain pending throughout the country and are in active litigation. Litigation classes have recently been certified in some of the cases.

■ *ADA ATM Accessibility Litigation.* Carlson Lynch is currently counsel for Plaintiffs in a substantial number of actions filed under the Americans with Disabilities Act on behalf of blind individuals to enforce ATM accessibility laws. These cases are pending in numerous federal venues nationally. A substantial number of the cases have been settled, and in all of those cases the Defendants have agreed to equitable relief calculated to guarantee that they come into compliance with the relevant regulations, and that once they are in compliance, they will remain in compliance. There has been a limited amount of motions practice in these cases. Several Defendants have filed motions to dismiss challenging Plaintiffs' standing to sue under Article III of the Constitution. None of these motions have been successful to date, and in fact one United States Magistrate Judge in the Eastern District of Texas initially issued a Report and Recommendation suggesting that Defendant's motion to dismiss should be granted, but after Carlson Lynch filed a motion for reconsideration demonstrating that the Magistrate Judge was urging a position that would be a clear error of law, the Magistrate Judge issued an amended opinion and recommended that the motion to dismiss be denied in its entirety. Motions to dismiss have been denied in six of these cases to date.

■ *Other Class Actions.* As of June 2013 Carlson Lynch has filed numerous additional class actions on behalf of consumers and wage earners throughout the country. These cases include wage and hour cases against adult entertainment establishments (i.e. on behalf of “strippers” who have been paid improperly) and false advertising cases related to deceptive product labeling. Those cases will be described in greater detail as the cases mature.

## **FIRM LAWYERS**

### **Bruce Carlson**

Bruce Carlson is from Wilkinsburg, Pennsylvania, where he attended the public schools. He graduated from the University of Pittsburgh School of law in 1989. He was the Executive Editor of the Journal of Law and Commerce in law school. He also obtained his undergraduate degree from the University of Pittsburgh, graduating *summa cum laude* in political philosophy. After law school, he was employed for approximately four years at Eckert Seamans Cherin & Mellott, in Pittsburgh. Subsequently, he was a member at the Pittsburgh plaintiffs-FELA and mass tort firm previously known as Peirce Raimond, Osterhout, Wade, Carlson & Coulter. During his five year tenure at the Peirce firm, Carlson developed and managed one of the largest, if not the largest, pediatric lead poisoning practices in the country. After his practice evolved and began to focus more on consumer class action litigation, he affiliated the practice with a prominent Pittsburgh-based plaintiffs’ class action firm. During the three and one-half years that he was affiliated with that firm, Carlson originated and was lead counsel in more consumer class cases than any lawyer in Western Pennsylvania. These cases were filed not only in Western Pennsylvania, but in state and federal courts throughout the country. Effective June 1, 2004, Carlson ended his relationship with his former firm and aligned his practice with his law school friend and frequent co-counsel, Gary Lynch.

Carlson is admitted to practice in the state courts of Pennsylvania and West Virginia, the United States District Courts for the Western, Middle and Eastern Districts of Pennsylvania, the Northern and Southern Districts of West Virginia, the Northern District of Ohio, the Northern, Southern, Eastern and Western Districts of Texas, the District of Maryland, the Western District of Tennessee and the United States Courts of Appeal for the Third and Eleventh Circuits. He is a member of the Million Dollar Advocates Forum. He is a member of the American Association of Justice, and the Pennsylvania, Western Pennsylvania and West Virginia Trial Lawyers Associations.

### **Gary Lynch**

Gary Lynch is from New Castle, Pennsylvania, where he attended the public schools. He has been engaged in the practice of complex litigation on behalf of plaintiffs for the last fifteen years. He graduated from the University of Pittsburgh School of Law in 1989, after obtaining a Bachelor of Science degree in Accounting at Penn State University in 1986. While in law school, he was the Topics Editor of the *Law Review*.

After graduating from law school, Lynch was initially employed by Reed Smith, then the largest law firm in Pittsburgh. After working at that firm for several years and focusing primarily on litigation defense, he decided that he wanted to start his own practice, representing plaintiffs rather than defendants. Initially, he specialized in employment litigation on behalf of plaintiffs, and in that context, successfully handled both individual cases and class actions.

From 1994 through 1999, he served as the managing partner of a four-attorney "boutique" firm, focusing on plaintiff employment litigation, complex personal injury, Workers' Compensation and Social Security disability. During this time, Lynch began to focus his practice on class litigation, at first solely in the context of employment discrimination litigation.

Since founding Carlson Lynch with Bruce Carlson in 2004, he has continued his practice in plaintiffs' employment litigation and, at the same time, has increasingly worked on consumer class actions. In collaboration with Bruce, Gary has been successful in expanding his class action practice nationally. Gary is currently spearheading nationwide class litigation involving a number of different industries and practices. He oversees all of the firm's labor and employment class litigation.

Gary is admitted to practice in the state courts of Pennsylvania, the United States District Courts for the Western, Middle and Eastern Districts of Pennsylvania, the Northern and Southern Districts of Ohio, the Northern District of Illinois and the United States Courts of Appeal for the First, Third, Seventh, Ninth and Eleventh Circuits. He is also admitted to the United States Supreme Court.

**Pam Miller**

Pam graduated from Westminster College in 1989 with a degree in history and political science. She graduated from the University of Pittsburgh School of Law in 1993. Pam oversees the firm's disability practice.

**Stephanie Goldin**

Stephanie attended the College of William of Mary, where she graduated in 2000 with a Bachelors of Business Administration, with a minor in economics. She graduated *cum laude* from the University of Pittsburgh School of Law in 2006. While at Pitt Law, Stephanie served on the Journal of Law and Commerce. Stephanie worked as a clerk at Carlson Lynch between her second and third years of law school, and during her third year of law school, before joining the firm as a full time lawyer in the fall of 2006. Stephanie works primarily in the firm's consumer class litigation practice.

**Sunshine Fellows**

Sunshine attended the University of Pennsylvania, where she graduated in 1998 with a Bachelor of Arts in Sociology. She graduated *cum laude* from the University of Pittsburgh School of Law in 2001. While at Pitt Law, Sunshine served as a Research Editor for the Law Review. After law school, Sunshine was an associate at Kirkpatrick Lockhart & Gates between 2001 and 2004, Bechtol & Lee between 2004 and 2007 and Jackson Lewis between 2007 and 2011. Sunshine works primarily in the firm's wage and hour and employment practices.

**Carlos Diaz**

Carlos attended Duquesne University where he graduated in 2001 with a Bachelor of Science in Business Administration. He obtained his law degree from Duquesne in 2004. After law school, Carlos was an associate at Melkus, Fleming & Gutierrez in Tampa, Florida, between 2004 and 2006, and Burns White in Pittsburgh between 2006 and 2011. Carlos is admitted to practice in both Pennsylvania and Florida. Carlos speaks fluent Spanish. Carlos works primarily in the firm's consumer class litigation practice.

**Jamisen Etzel**

Jamisen attended Duquesne University where he graduated *magna cum laude* in 2008 with a Bachelor of Arts in Political Science. He obtained his law degree from New York University School of Law in 2011. While at NYU Law, Jamisen was the Managing Editor of the Journal of Legislation and Public Policy. During the summer of 2010, Jamisen served an internship with United States District Judge William H. Walls of the United States District Court for the District of New Jersey. Jamisen works primarily in the firms' consumer class litigation practice.

**OF COUNSEL:**

**Tom Withers**

Tom became of counsel to Carlson Lynch in June 2008, and often provides advice and counsel to the firm regarding trial strategy.

Tom graduated from the University of Georgia law school in 1984. He also received his undergraduate degree from the University of Georgia.

After graduating from law school, Tom joined Oliver, Maner and Gray, in Savannah, Georgia, where he was a partner from 1988 until 1990. While at Oliver, Maner and Gray, Tom was primarily engaged in the defense of medical malpractice cases for physicians. During his six years with the firm, Tom tried approximately ten medical negligence cases to verdict, all of which resulted in verdicts for the defendants.

Thereafter, Tom joined the United States Attorney's Office in the Southern District of Georgia, where he remained for eight years. Tom initially served as an Assistant U.S. Attorney in the Criminal Section before becoming Chief of the Criminal Section in 1993. Tom also served as a Professional Responsibility Officer during his time with the United States Attorney's Office and was given the Department of Justice's Director's Award in 1997.

In 1998, Tom left the United States Attorney's Office and became a founding partner of Gillen Parker & Withers (now, Gillen Withers & Lake, LLC). Tom's practice focuses on federal and state criminal defense, Medicare/Medicaid fraud, and complex civil litigation.

Tom is admitted to practice in the state courts of Georgia, the United States District Courts for the Southern and Northern Districts of Georgia, and the United States Court of Appeals for the Eleventh Circuit.

# **Exhibit B**

## FIRM PROFILE

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### DEL SOLE CAVANAUGH STROYD LLC

The Class Action Litigation Group at Del Sole Cavanaugh Stroyd LLC, specializes in representing shareholders and consumers in complex class action litigation in state and federal courts throughout the United States. The Class Action Litigation Group is led by partners Benjamin J. Sweet and Edwin J. Kilpela, Jr., each of whom has significant experience in the successful prosecution and defense of complex class action cases. In addition, partners Stephen J. Del Sole, Patrick Cavanaugh, Arthur H. Stroyd, Jr., Bryan C. Devine and William Stickman IV bring significant class action and complex civil litigation experience and skill to bear on behalf of our individual and institutional clients.

The attorneys of the Class Action Litigation Group of Del Sole Cavanaugh Stroyd LLC have successfully litigated some of the most complicated class action matters in recent memory.

The Firm recently served as Liaison Counsel in the Heinz Shareholder Merger Litigation and currently serves as Lead Counsel in the In re Hartford Derivative Shareholder Litigation, pending in the District of Connecticut and Royal Mile et al. vs. Highmark, Inc. and UPMC, an antitrust class action pending the Western District of Pennsylvania. In addition, Group Co-Head Benjamin J. Sweet serves as a Court-appointed member of the Litigation Committee in the In re Blue Cross-Blue Shield Antitrust Litigation MDL pending in the Northern District of Alabama.

#### **Group Co-Heads**

**BENJAMIN J. SWEET**, Partner and Co-Head of the Class Action Litigation Group, is a native Pittsburgher who received his juris doctor, *cum laude*, from The Dickinson School of Law of the Pennsylvania State University, and his BA, *cum laude*, from University Scholars Program (now the Schreyer Honors College) of The Pennsylvania State University. While in law school, Mr. Sweet served as Articles Editor of the *Dickinson Law Review*, and was also awarded Best Oral Advocate and Best Team in the ATLA Mock Trial Competition.

From 2003 through 2012, first as an associate and for the last several years as partner, Mr. Sweet practiced at Kessler Topaz Meltzer & Check LLP in Philadelphia, one of the largest and most prestigious plaintiffs' firms in the country, where he concentrated his practice exclusively in class action litigation, with an emphasis on federal securities litigation. He helped to obtain significant recoveries on behalf of class members in several nationwide federal securities class actions, including:

- *In re Tyco, Int'l Sec. Litig.*, No. 02-1335-B (D.N.H.) (\$3.2 billion total recovery for class members, the largest ever recovery from a single corporate defendant in a federal securities action)
- *In re Wachovia Preferred Securities and Bond/Notes Litig.*, No. 09-Civ. 6351 (RJS), (S.D.N.Y.) (\$627 million recovery for class members)

- *In re CVS, Inc. Sec. Litig.*, No. 01-11464-JLT (D. Mass.) (\$110 million recovery for class members)
- *In re PNC Fin. Svcs. Group Inc. Sec. Litig.*, No. 02-CV-271 (W.D. Pa.) (\$39 million recovery for class members)
- *In re McLeod USA Inc. Sec. Litig.*, No. C02-0001-MWB (N.D. Iowa) (\$30 million recover for class members)
- *In re Wireless Facilities, Inc., Sec. Litig.*, 04-CV-1589 (S.D. Cal.) (\$16.5 million recovery for class members)
- *In re Solectron Corp. Sec. Litig.*, No. C-03-0986-CRB (N.D. Cal.) (\$15 million recovery for class members)
- *In re Zomax Inc. Sec. Litig.* No. 04-1155 (DWF/SRN) (D. Minn.) (\$9 million recovery for class members),
- *In re Michael Baker Corp. Sec. Litig.*, No. 08-cv-00370 (JFC) (W.D. Pa.) (\$4.5 million recovery for class members),
- *In re DDi Corp. Sec. Litig.*, No. 03-7063-SGL (C.D. Cal.) (\$4.4 million recovery for class members)
- *In re Flextronics Int'l Sec. Litig.*, No. C-03-2102-PJH (N.D. Cal.) (\$4.25 million recovery for class members)
- *In re Thornburg Mortgage Inc. Sec. Litig.*, No. 07-815JB/WD, (D.N.M.) (\$2 million recovery for class members)
- *In re Black Box Corp. Sec. Litig.*, No. 03-CV-412 (W.D. Pa.) (\$2 million recovery for class members)

Mr. Sweet is currently litigating numerous antitrust, derivative and consumer fraud matters on behalf of consumers and investors throughout the country.

Justice Sonia Sotomayor quoted Mr. Sweet's co-authored *amicus curiae* brief on behalf of medical researchers in *Matrixx Initiatives, Inc. v. Sircusano*, 563 U.S. (2011), a landmark securities case in which the Supreme Court held that evidence of company's failure to disclose reports of adverse events associated with a product need not achieve statistical significance to plead the materiality element of a federal securities fraud claim.

Mr. Sweet has been selected by his peers five times - in 2008, 2010, 2011, 2012 and 2013 - as a Pennsylvania SuperLawyers *Rising Star*, a distinction bestowed annually on no more than 2.5% of Pennsylvania lawyers under the age of 40. In 2014, Mr. Sweet was selected by his peers as a Pennsylvania *SuperLawyer*.

Mr. Sweet is admitted to practice in the Supreme Court of the United States, the Commonwealth of Pennsylvania, the Courts of Appeal for the First, Second, Third, Ninth and Tenth Circuits, and the federal district courts for the Western District of Pennsylvania and the District of Colorado.

Mr. Sweet began his career at Reed Smith LLP in Pittsburgh, focusing on complex civil and employment litigation.

**EDWIN J. KILPELA, JR.**, Partner and Co-Head of the Class Action Litigation Group, is a native of Pittsburgh, where he graduated from North Allegheny High School. He attended The Pennsylvania State University and the New School for Social Research where he earned both Bachelors and Masters Degrees in philosophy. Mr. Kilpela graduated *cum laude* from the University of Michigan law school. While at Michigan, Mr. Kilpela won the prestigious Campbell Moot Court Competition, during which he also won awards as the best oral advocate and for having authored the best brief.

From 2005 until 2012, Mr. Kilpela litigated and tried complex class-action and mass tort matters at both Williams & Connolly, LLP and then, later, at Wheeler Trigg O'Donnell LLP, two of the finest complex litigation firms in the country. Mr. Kilpela's civil litigation clients have included institutions from the banking, investment, pharmaceutical, telecommunication, insurance, and consumer goods industries.

A representative sample of Mr. Kilpela's current litigation includes:

- Representing a class of insurance purchasers in Western Pennsylvania in an antitrust conspiracy class-action alleging illegal collusion between the area's largest health insurer and hospital system, resulting in increased insurance premiums and lack of competition in the health insurance market.
- Representing a class of insurance purchasers across the United States alleging an improper anti-competitive arrangement between some of the nation's largest health insurers, leading to decreased competition and increased premiums for tens of millions of customers across the United States.
- Serving as counsel for purchasers of glucosamine/chondroitin health supplements who were defrauded by multiple companies in their marketing and advertising of those supplements in which unsupported and medically false claims were made regarding joint health benefits the supplements do not provide.
- Litigating claims on behalf of purchasers of freezers equipped with a faulty ice maker which ceases to operate and then, eventually, causes leaks leading to property damage.

A representative sample of Ed's past litigation experience includes the following:

- Counsel for large financial institution and its officers and directors in connection with securities class action and ERISA lawsuits stemming from alleged accounting manipulation and corresponding stock losses.
- National Counsel for large multinational pharmaceutical corporation in multiple cases across the country defending against allegations that company failed to adequately warn consumers and prescribing health providers about potential product risks.
- Represented large multinational consumer goods manufacturer in multiple products liability class action matters stemming from claims regarding alleged product defects.

- Conducted investigation for several large international financial institutions in response to investigations led by the U.S. Department of Justice, the U.S. Securities and Exchange Commission, and other federal agencies.
- Represented former U.S. Senator in criminal proceedings brought by the U.S. Department of Justice.
- Trial counsel for multi-national company in multi-million dollar litigation.
- Trial counsel in numerous multi-million dollar personal injury matters.

Mr. Kilpela has been selected by his peers as a SuperLawyers *Rising Star* in both Pennsylvania and Colorado, a distinction given to no more than 2.5% of his peers under the age of 40.

Mr. Kilpela is admitted to practice in Pennsylvania, Colorado, and the District of Columbia as well as the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia.

### **Partners**

**STEPHEN J. DEL SOLE**, Firm Co-Founder and Partner, has a broad background in civil litigation and focuses his practice on representing businesses in commercial disputes.

Prior to founding the firm, Mr. Del Sole was a litigation partner at Reed Smith LLP, a prestigious multi-national law firm. He has handled a variety of complex disputes including shareholder disputes, design and construction claims, purchase-price adjustment disputes, product liability, insurance coverage, director and officer liability, intellectual property disputes and contractual matters.

Mr. Del Sole has litigated in Pennsylvania, West Virginia, New York, New Jersey, California and Ohio. He has tried numerous jury and non-jury trials in both state and federal court, as well as private arbitration proceedings. He has successfully argued before the appellate courts of Pennsylvania and West Virginia.

Mr. Del Sole has been recognized in Philadelphia Magazine's Pennsylvania Super Lawyers - Rising Stars edition for 2006 and 2007. He is a published member of the Duquesne Law Review; a recipient of the American Jurisprudence Award for Excellence in Torts, the 1st place winner in the Academy of Trial Lawyers Gourley Cup Mock Trial competition, and an inductee in the Order of the Barristers.

**PATRICK CAVANAUGH**, Firm Co-Founder and Partner, is a 1990 graduate of Yale University and a 1994 graduate of Duquesne University School of Law where he was a member of the *Duquesne Law Review* and a recipient of the American Jurisprudence Award for excellence in the study of Contracts.

Prior to the formation of Del Sole Cavanaugh Stroyd LLC in April 2003, Mr. Cavanaugh was a partner at a prominent Pittsburgh law firm where his practice focused largely on commercial litigation. Since 2003, Mr. Cavanaugh's practice has continued in the field of commercial litigation and business disputes of a wide variety, but has also expanded to include plaintiff personal injury matters, including automobile, trucking and motorcycle accidents, medical malpractice, accidental electrocutions, slip and falls, investment claims, minority shareholder disputes and class actions. Mr. Cavanaugh has tried numerous jury trials and has several multimillion dollar verdicts to his credit. Mr. Cavanaugh has tried cases in state and federal court, argued before the Pennsylvania Supreme Court, Pennsylvania Superior Court,

Pennsylvania Commonwealth Court and the Third Circuit Court of Appeals. Mr. Cavanaugh is licensed in both Pennsylvania and West Virginia.

Following is a representative list of the matters in which Mr. Cavanaugh has been involved:

Commercial Matters:

- Lead defense counsel in eleven industrial explosion cases representing a publicly-traded, fortune 100 company;
- Lead counsel in a \$36,000,000 commercial property leasing dispute representing a publicly-traded company;
- Lead counsel for a publicly-traded energy company in a multi-million dollar dispute over ownership rights of natural gas;
- Lead counsel in a federal district court case representing a Texas-based shipping company in which he successfully defended an international shipping dispute to determine the ownership of industrial pipe cargo;
- Lead class action defense counsel in a state-court class action involving claims of unfair debt collection practices against a mortgage company;
- Lead defense counsel in numerous alleged fraud cases against mortgage companies and banks;
- Lead defense counsel for a publicly-traded company involved in a international check-fraud case.

Personal Injury/Contingent Matters:

- Won a \$3,500,000 verdict in a medical malpractice action involving severe brain injury resulting from a misdiagnosed sinus infection;
- Won a \$1,600,000 verdict in a wrongful death case in a motorcycle accident case;
- Won a \$4,100,000 verdict in a minority shareholder fraud action;
- Lead plaintiff counsel in a wrongful death case against a publicly-traded, international defense contractor arising out of the electrocution death of an Army Green Beret in Iraq;
- Settled hundreds of automobile accident, medical malpractice and slip and fall actions totaling in the tens of millions of dollars.

Mr. Cavanaugh was born in Pittsburgh, Pennsylvania where he currently resides with his wife and two children. Mr. Cavanaugh is licensed to practice law in Pennsylvania, West Virginia, the United States Court of Appeals for the Third Circuit and the U.S. District Court for the Western District of Pennsylvania, Southern District of West Virginia, Northern District of West Virginia and the District of Colorado.

**ARTHUR H. STROYD, JR.**, a Partner of the Firm, began the practice of law following a clerkship with the Honorable Joseph F. Weis, Jr., U.S. Court of Appeals for the Third Circuit. He spent more than 30 years with the international law firm, Reed Smith LLP, where he was one of its Managing Partners also serving as Head of its Litigation Group and a Practice Leader for its Products Liability and Insurance Coverage Group. In his years of practice, he has had extensive experience in all areas of civil litigation. He is a Fellow in the American College of Trial Lawyers and is recognized in *The Best Lawyers in America* in four (4) categories for the past ten (10) years where he was named Lawyer of the Year 2012, in *Pennsylvania Super Lawyers*, in *The Best Lawyers in Pittsburgh* and with the highest "AV Preeminent Rating" in legal ability and ethics by *Martindale-Hubbell* for 30 years.

Throughout Mr. Stroyd's career, he has handled a wide array of matters involving commercial disputes, the formation and dissolution of businesses, breaches of contract, corporate waste, the sale and disposition of properties, restrictive covenants, the valuation of assets and business opportunities, product liability litigation, construction disputes, and more. He has represented defendants in class actions and complex litigation including *Wright et al. v. Owens Corning et al.* Civil Action No. 09-01567 (W.D.Pa.), *National Association of Chain Drug Stores et al. v. Express Scripts, Inc. et al.* Civil Action No. 12-395 (W.D.Pa.), *Black et al. v. JPMorgan Chase, et al.* Civil Action No. 10-848 (W.D.Pa.), *Linda Menichino et al. v. Genworth Mortgage Insurance Corp. et al.* Civil Action No. 12-cv-00058 (W.D.Pa.), *Christopher Manners et al. v. Genworth Mortgage Insurance Corporation et al.* Civil Action No. 12-00442 (W.D.Pa.) and more. His experience in these areas has taken him into courts and before arbitration panels around the country, representing major corporations, financial institutions, and individual entrepreneurs. Mr. Stroyd frequently serves as a Mediator, Arbitrator and Early Neutral Evaluator, both privately and for the federal courts. As such, he is certified by the Federal Bar Association in Mediation and has been appointed as a Special Master for discovery in complex cases. Mr. Stroyd has planned and lectured at various seminars relating to commercial litigation, civil procedure, construction law, products liability as well as trial and appellate practices and was in charge of training litigation attorneys and paralegals at Reed Smith.

He serves on the Advisory Committee for Pennsylvania Bar Association's Commission for Justice Initiatives, is a member of the Jury Service Committee of the Pennsylvania Interbranch Commission for Gender, Racial & Ethnic Fairness and is General Counsel of the Material Handling Industry, a trade association of 700 manufacturers in North Carolina. He is the past President of the Academy of Trial Lawyers of Allegheny County and of the Allegheny Country Bar Association where he also served as Chair of its Judiciary Committee and its Civil Litigation Section and Co-chair of a Task Force for its Gender Initiative. He was also a member of the Pennsylvania Supreme Court's Civil Procedural Rules Committee and of the House of Delegates of the Pennsylvania Bar Association, where he also chaired a Task Force reviewing its subsidies.

Active in the community, Mr. Stroyd has been a director of various civic and nonprofit organizations including service as President of the Mt. Lebanon School Board and of the Center for Theater Arts Board as well as Chair of the Mt. Lebanon Hospital Authority and its Zoning Hearing Board. He was elected to the Alumni Council of his alma mater. He has been a Director on the Board of Neighborhood Legal Services Association and the Solicitor for the Republican Party of Allegheny County, where he was on its Executive Committee, for 10 years. He recently served as Chair of the Board of Leadership Pittsburgh, Inc. and is on the Board of the Material Handling Industry Education Foundation. He recently completed service on the boards of the Senator John Heinz History Center and the University of Pittsburgh Cancer Institute.

After graduating from Kenyon College in Gambier, Ohio, with an A.B. in economics, Stroyd entered the School of Law of the University of Pittsburgh. He received his J.D. after serving as a U.S. Naval Legal Officer during the Vietnam War.

Mr. Stroyd is a Fellow of the American College of Trial Lawyers, the Past-President of the Academy of Trial Lawyers of Allegheny County, and the Past-President of the Allegheny County Bar Association.

Mr. Stroyd is licensed to practice law in the Commonwealth of Pennsylvania, the United States Court of Appeals for the Third Circuit and the U.S. District Court for the Western District of Pennsylvania.

**BRYAN C. DEVINE**, a Partner of the Firm, is a litigator who focuses his practice on both commercial disputes and personal injury matters.

Prior to joining Del Sole Cavanaugh Stroyd LLC, Mr. Devine practiced with Reed Smith LLP, an international law firm, where he focused his practice in the area of complex litigation with a particular emphasis in class action defense.

Mr. Devine has litigated a broad spectrum of commercial disputes in a range of industries including banking and financial services, natural gas production and transmission, engineering, construction, manufacturing and real estate. Mr. Devine also has substantial experience in handling all types of personal injury claims, including those arising out of medical mistakes, nursing home neglect, automobile accidents, motorcycle accidents, construction site and industrial accidents, premises liability and defective products. A brief summary of Mr. Devine's representative matters include the following:

- Currently defending the 2011 Pennsylvania Reapportionment Commission in a lawsuit in which the Plaintiffs are requesting that the United States District Court for the Eastern District of Pennsylvania appoint a special master to reapportion Pennsylvania's legislative districts based on the 2010 census and order special elections to be held under the plan prepared by the special master.
- Obtained a defense verdict on behalf of a multidisciplinary engineering firm in a lawsuit in which the developer of a large condominium project contended that the HVAC systems for the project were improperly designed.
- Obtained summary judgment on behalf of an integrated natural gas production, gathering, transmission and distribution company in a lawsuit in which it was alleged that that its acts and

omissions caused the Plaintiff to suffer a multi-million dollar loss on natural gas it had produced and sold to a third party.

- Obtained summary judgment on behalf of a global asset management company in a lawsuit in which the Plaintiffs sought to recover \$600,000.00 in mutual fund losses under Pennsylvania's Unfair Trade Practice/Consumer Protection Law.
- Obtained a voluntary dismissal of a local utility company, after extensive discovery, from a lawsuit in which the Plaintiff contended that nearby construction activities substantially damaged its bottling plant resulting in the failure of its business.
- Obtained favorable settlements on behalf of a multidisciplinary engineering firm, after extensive discovery, in lawsuits arising out of an automobile accident which resulted in two deaths and a catastrophic brain injury. The Plaintiffs contended that the roadway was improperly designed.
- Obtained favorable settlements on behalf of the designer and manufacturer of a voltage tester in lawsuits in which the Plaintiffs contended that the tester malfunctioned resulting in their receipt of serious electrical burns.

Mr. Devine obtained his law degree, *magna cum laude*, from the Duquesne University School of Law where he graduated first in his class. He was the recipient of two full-tuition, academic scholarships: the James P. McArdle Memorial Scholarship and the Dean's Scholarship for Excellence. Mr. Devine served as Executive Articles Editor of the *Duquesne Law Review* and is the author of the *Note: Madison Construction Co. v. Harleysville Mutual Insurance Co.*, 735 A.2d 100 (Pa. 1999), 38 DUQ. L. REV. 949 (2000). Upon graduation, he was awarded the Allegheny County Bar Association Award and the West Group Scholastic Achievement Award for outstanding academic achievement.

Mr. Devine obtained his Bachelor of Arts, *summa cum laude*, from Duquesne University where he was a member of the Director's Circle and the Dean's List for all eight semesters. Mr. Devine was the recipient of two academic scholarships: the Presidential Scholarship and the Ferry Scholarship.

Mr. Devine was selected by his peers as a Pennsylvania Super Lawyers Rising Star, a distinction bestowed annually on no more than 2.5% of Pennsylvania lawyers under the age of 40.

Mr. Devine was born in Pittsburgh and currently resides with his wife and two children in the Pittsburgh area.

Mr. Devine is admitted to practice in the Commonwealth of Pennsylvania, the United States District Court for the Western District of Pennsylvania and the United States District Court for the Eastern District of Pennsylvania.

**BILL STICKMAN**, a Partner of the Firm, began his legal career as a litigation associate at the Pittsburgh offices Reed Smith LLP. There, he participated in the defense of multi-district toxic tort and product liability actions. Mr. Stickman next served as a judicial law clerk to Chief Justice Ralph J. Cappy of the Supreme Court of Pennsylvania. His duties with the Court included aiding the Chief Justice in writing judicial opinions and analyzing Petitions for Allowance of Appeal.

Since joining the Firm, Mr. Stickman has represented clients at both the trial and appellate levels of state and federal courts. Mr. Stickman has litigated actions, including class actions, under various financial industry and consumer protection statutes. He has also represented individual clients in a wide variety of claims at all stages of the litigation process, including multiple jury trials. Mr. Stickman has both personally litigated and consulted litigants in a variety of appellate matters, including briefing, petitions for discretionary review, and oral argument. He has litigated and argued more than a dozen matters before the Pennsylvania Supreme Court, both in its appellate jurisdiction and under its King's Bench authority. Mr. Stickman has also guided business clients through a variety of transactional and regulatory issues, including the drafting of contractual terms, purchase and sale agreements, and governmental compliance issues. A brief summary of Mr. Stickman's representative matters include:

- Representing the 2011 Pennsylvania Legislative Reapportionment Commission in multiple challenges to the decennial statewide reapportionment in the original jurisdiction of the Pennsylvania Supreme Court. Mr. Stickman responded to multiple challengers and argued several of the matters before the Court;
- Representing a Fortune 200 Manufacturing Company in complex litigation involving multiple claims of personal injury and property damage;
- Successfully arguing an appeal to the Pennsylvania Commonwealth Court regarding the interplay between statutory regulation of utilities and the Pennsylvania Unfair Trade Practices and Consumer Protection Law;
- Representing a nationwide freight-forwarder in complex federal litigation regarding contractual obligations and involving multiple collateral lawsuits in various state and federal courts.
- Defending a nation-wide lender in a federal class-action arising under the Fair Debt Collection Practices Act;
- Successfully representing a bankruptcy trustee in an adversary proceeding seeking to recoup fraudulent transfers and conveyances;
- Serves as associate general counsel to a major nationwide trade organization;
- Preserving, briefing and arguing an issue testing the contours of the Sixth Amendment to the United States Constitution and state-wide pension forfeiture statutes. A petition for a writ of certiorari is currently pending before the Supreme Court of the United States.

In 2011, Mr. Stickman was nominated by the Pennsylvania Supreme Court to serve a three-year term on the Pennsylvania Civil Procedural Rules Committee. Mr. Stickman is one of twelve attorneys statewide who work with the Supreme Court to draft, monitor and edit the Pennsylvania Rules of Civil Procedure. Mr. Stickman was also named a Pennsylvania SuperLawyers *Rising Star* every year since 2010.

Mr. Stickman has served as faculty for the Pennsylvania Bar Institute and has been a presenter for the annual Civil Practice Update, presenting the civil procedural rule updates.

Mr. Stickman graduated from Duquesne University School of Law. There, he participated in trial and appellate moot court competitions as well as the Duquesne University Law Review and the Duquesne University Business Law Journal. His publications include *An Exercise in Futility: Does the Inquiry Required to Apply the Ministerial Exception to Title VII Defeat its Purpose?*, 43 Duq.L.Rev. 285 (2005), and *Working Owners of Small Businesses May Participate in ERISA-qualified Employee Benefit Plans: Yates v. Hendon*, 7 Duq.Bus.L.J. 151 (2005). Mr. Stickman is also the co-author of *An Independent Judiciary: The Role of Chief Justice Cappy*, 47 Duq.L.Rev. 547 (2009), and *Litigation about Litigation, The dangerous world of the local courthouse-Wrongful use of civil proceedings, abuse of process, and recent court rule changes-2004*. PBI; no. 2004-3519 Pennsylvania Bar Institute.

Mr. Stickman received a B.A. in Ancient Languages (Latin, Greek, Sanskrit) from Duquesne University where he was president of the Mortar Board Honor Society and valedictorian. He has subsequently served as an adjunct lecturer of the Classics. He serves on the Board of Directors for Our Lady of the Sacred Heart High School.

#### ***Of Counsel***

**HONORABLE JOSEPH DEL SOLE**, Of Counsel to the Firm, served on the Superior Court of Pennsylvania from 1984 until his retirement in 2006 and served as the Court's President Judge from 2001 to 2006. Prior to being elected to the Superior Court, he served on the Allegheny County Court of Common Pleas from 1978 until 1984 and was its Calendar Control Judge. As a trial judge, he presided over numerous jury and non-jury trials and settlement conferences. He creatively mediated the complex dispute among the Pittsburgh Pirates, Pittsburgh Steelers, and the City of Pittsburgh over their Three Rivers Stadium lease, the extensive litigation arising from the explosion at Langley Hall on the University of Pittsburgh Campus, and the multiple claims following the Beacon Warehouse fire. From 1965 until assuming the bench, he was in private practice specializing in civil litigation and has extensive experience in civil cases, personal injury, professional negligence, commercial, employment and insurance disputes. He has completed the National Judicial College's course on Civil Mediation and was an adjunct professor at Duquesne University School of Law lecturing on Pennsylvania Civil Procedure.

Judge Del Sole is a member of the Allegheny County, Pennsylvania and American Bar Associations and of the Academy of Trial Lawyers of Allegheny County. He is a member of the Century Club of Distinguished Alumni of Duquesne University and serves on the Board of Directors of the Pennsylvania Bar Institute. During his tenure on the bench, he was the first Chair of the Judicial Conduct Board and served on the Appellate Court Rules Committee. He was appointed Chair of the Supreme Court's Ad Hoc Committee reviewing post-trial practice in civil and criminal litigation and the Court's Ad Hoc Committee establishing special procedures to resolve litigation resulting from silicone gel breast implants. He has lectured at the Pennsylvania School for New Judges and served as vice chair of the Supreme Court's Committee on Judicial Education.

Judge Del Sole provides mediation and arbitration services throughout Pennsylvania.

Judge Del Sole received his LLM from the University of Virginia School of Law, his JD from Duquesne University School of Law and his BS in Mechanical Engineering from Carnegie Institute of Technology.

### ***Associates***

Justin T. Romano, an associate of the Firm, maintains a broad civil practice, focusing on commercial, class action, personal injury, and appellate litigation. Prior to joining Del Sole Cavanaugh Stroyd LLC, he worked for a Pittsburgh-based litigation firm, handling a variety of civil defense matters. A brief summary of his current representative matters includes:

- Representation of plaintiff class in an antitrust case against regional medical provider and health insurer;
- Representation of hedge fund in case alleging fraud, negligence, and breach of fiduciary duty in management of fund;
- Representation of mortgage company in fair debt collection practice proceedings;
- Representation a designer of patented technology in defective construction case;
- Representation of Fortune 200 company in defense of claims arising from catastrophic workplace accident;
- Representation of corporations in a myriad of disputes, including: wrongful termination, breach of contract, fraud, misrepresentation, misappropriation, corporate waste, breach of fiduciary duty, tortious interference with contractual relations, and conspiracy; and
- Representation of corporations and individuals in seeking and defending preliminary injunctions and other equitable relief.

Mr. Romano is licensed to practice in the Commonwealth of Pennsylvania, the State of West Virginia, and the Federal District Courts for the Western District of Pennsylvania and Southern District of West Virginia.

Mr. Romano graduated from Pennsylvania State University in 2006 with a Bachelor of Science Degree in Crime, Law, and Justice and Minors in Labor and Industrial Relations and Sociology. He earned his Juris Doctor from Duquesne University School of Law in 2009. While at Duquesne, he received the Clinical Legal Education Association Outstanding Student Award.

Mr. Romano is active in the community and currently serves as an adjunct professor at Duquesne University School of Law. He is a member of the Pennsylvania Bar Association, the West Virginia Bar Association, and the Allegheny County Bar Association Young Lawyers Division. He is also a member of the Pittsburgh Urban Magnet Project.

Mr. Romano currently resides in the Shadyside neighborhood of Pittsburgh.