IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

VICKY BERGMAN et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 14-cv-03205-WDQ
	)	
DAP PRODUCTS INC. et al.	)	
	)	
Defendants.	)	
	)	

MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

Plaintiffs Vicky Bergman, Michael Carton, Cynthia Finnk, Rocco Lano, Laurina Leato, Marilyn Listander, Roger Mammon, William Dumone and Amy Joseph ("Plaintiffs"), by and through their respective counsel of record, submit this Motion for Preliminarily Approval of Class Action Settlement between Plaintiffs and the proposed Settlement Class and Defendants and for an order: (a) granting approval of the Parties' proposed class action settlement (the "Settlement"); (b) certifying the proposed Settlement Class[1] for settlement purposes only; (c) approving the proposed form, content, and dissemination of the notice to the Settlement Class pursuant to the notice plan detailed in the Settlement Agreement; (d) appointing Class Counsel and Settlement Class Representatives; and (e) scheduling a final approval hearing in this matter. In support of their unopposed motion, Plaintiffs state as follows:

I. Factual Background

The proposed Settlement resolves four (4) class action lawsuits against Defendants DAP Products Inc. and National Express, Inc. (collectively, "Defendants") involving allegations that Defendants engaged in a pattern of fraudulent, deceptive, and otherwise improper advertising,

[1] Unless otherwise stated, capitalized terms shall have the same meaning as set forth in the Parties' Settlement Agreement ("Settlement Agreement" or "Agreement"), attached hereto as Exhibit 1.

sales, and marketing practices regarding the quality of the XHose, XHose Pro, and XHose Pro Extreme (collectively, "XHose" or "Covered Products").[2]

Plaintiffs asserted claims on behalf of themselves and for all others similarly situated in the United States (collectively "Class Members" or "the Class") based on: (i) alleged violations of the Maryland Consumer Protection Act for deceptive and false advertisements about whether the Covered Products were defectively designed or manufactured, failed prematurely, and were not suitable for their intended use; (ii) similar alleged violations of the consumer protection statutes of the States of Illinois, California, Delaware, Florida, Texas, and Wisconsin; (iii) alleged violations of express warranties provided to purchasers of the Covered Products, including warranties concerning the durability and functionality of the Covered Products; (iv) alleged violations of the implied warranties of merchantability and fitness for a particular purpose; (v) common law fraud; (vi) breach of the duty of good faith and fair dealing; and (vii) unjust enrichment and restitution. Defendants deny all allegations of wrongdoing and liability asserted in the class actions.

The Parties participated in two all-day mediation sessions with the Honorable Frederic N. Smalkin (Ret.), a retired federal judge who presided in the U.S. District Court, District of Maryland for over fifteen years, and was the Chief Judge of the U.S. District Court, District of Maryland from 2001-2003. As part of the mediation process, Defendants provided Plaintiffs with substantial information and documents that they requested. After two days of mediation, and additional negotiations assisted by Judge Smalkin, the Parties reached agreement on this

[2] *Vicky Bergman et al. v. DAP Products Inc., et al.*, No. 14-cv-03205-WDQ, which was consolidated with *Carton et. al. v. DAP Products Inc., et. al.*, No. 14-cv-04015 (together, the "Consolidated Class Action"), and *Joseph v. DAP Products, Inc. et. al.*, No. 15-cv-00016, and *Dumone v. Blue Gentian, LLC, et. al.*, No. 14-cv-04046 (together, the "Separate Actions"). The Consolidated Class Action and the Separate Actions are currently pending in the United States District Court for the District of Maryland.

Settlement. The Parties have negotiated the attached Settlement Agreement, which, upon approval by the Court, will resolve all issues between Defendants and Plaintiffs and the other Class Members related to the marketing and sale of the Covered Products. .

Under the Settlement, the available relief is in some respects different based on whether the specific Class Members is a "Direct Purchaser" or a "Non-Direct Purchaser." Direct Purchasers are defined as "purchasers who purchased a Covered Product either (i) directly through the website located at the URLs, https://www.xhose.com/ or https://www.xhose.com/pro/; or (ii) by calling a toll free number in response to direct response television (DRTV) advertising for a Covered Product." (See Ex. 1, § I.K.) Non-Direct Purchasers are defined as "all purchasers of a Covered Product who are not Direct Purchasers." (See Ex. 1, § I.L.)

First, some of the relief available for the Direct Purchasers and Non-Direct Purchasers is the same. All class members, including Direct and Non-Direct Purchasers, will have the same opportunity to return the male and female fittings affixed to the end of the covered XHose to the Settlement Administrator for a $30 payment for each purchase transaction, up to a maximum of three purchase transactions per purchaser. Moreover, any class member who chooses this relief and returns the XHose fittings can chose either (a) to download a prepaid postage label from the Settlement Website, or (b) to have a $6.00 check mailed to them by the Settlement Administrator to reimburse them for the approximate cost of return postage for the XHose fittings within five business days of receipt of the male and female fittings. (See Ex. 1, § III.B.3.)

Second, the differences in relief available for Direct Purchasers and Non-Direct Purchasers concern those Class Members who choose not to return the male and female fittings of the XHose in exchange for a $30 payment and request other relief. The reasons for these

differences in relief are: (1) Defendants are able to identify and have business records of the purchases for Direct Purchasers but they cannot identify and do not have proofs of purchase for Non-Direct Purchasers; (2) the parties agree that the vast majority of Non-Direct Purchasers do not keep receipts or otherwise have readily available proofs of purchase for the XHose products which generally were sold for retail prices of between approximately $20 - $70; and (3) for Non-Direct Purchasers, the retail packaging provided for a one year warranty for defects in material or workmanship and they were thus able to return the products, if defective, to the store where they purchased it to receive a refund or replacement during this period.

As an alternative to a $30 payment for those class members who elect to return the male and female fittings, Defendants will for Direct Purchasers: (i) extend the total replacement warranty period to 270 days from the date of purchase, or (ii) pay $15, for up to a maximum of three purchase transactions per purchaser, if the Class Member states both that he or she is dissatisfied with the XHose and that he or she no longer possesses the XHose. (See Ex. 1, § III.B.1.) For Non-Direct Purchasers, as an alternative to a $30 payment for Class Members who return the XHose fittings, Defendants will make a one-time payment of $8 if the Class Member identifies the color of the XHose the Class Member purchased and the name of the retailer from whom the Class Member purchased the XHose. (See Ex. 1, § III.B.2.)

Defendants have also agreed to pay a total of $1,100,000 in attorney's fees, costs, and expenses to Class Counsel. (See Ex. 1, § III.C.1.) This amount specifically includes all attorney's fees, costs, and expenses incurred by Class Counsel and Plaintiffs in connection with the Consolidated Class Action and Separate Actions thus far, as well as fees, costs and expenses incurred through seeking to finally approve the Settlement of the Consolidated Class Action and Separate Actions.

Finally, the Settlement provides that Class Counsel will apply to the Court for an incentive award to each Settlement Class Representative in an amount not to exceed $2,000.00 per Settlement Class Representative, for his or her participation as a Settlement Class Representative, for taking on the risks of litigation, and for settlement of his or her individual claims in the Consolidated Class Action. (See Ex. 1, § III.C.2.)

II. Certification of a Settlement Class

Plaintiffs request that the Court certify a settlement class pursuant to Fed. R. Civ. P. 23(e) consisting of:

> All persons who purchased Covered Products in the United States, its territories, or at any United States military facility or exchange from January 1, 2012 through December 29, 2015.
>
> Excluded from the Settlement Class are all persons who validly opt out of the Settlement Class in a timely manner; counsel of record (and their respective law firms) for the Parties; Defendants and any of their parents, affiliates, and subsidiaries and all of their respective employees, officers, and directors; the presiding judge in the Consolidated Class Action or Separate Actions, and all of his immediate family and judicial staff.
>
> "Covered Products" means all products bearing the brand name XHose, including the XHose, XHose Pro, and XHose Pro Extreme, including all sizes thereof, that have been designed, marketed, advertised, sold, manufactured, and/or distributed by any of the Released Parties.

Class certification requires: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of class representatives. In addition, a proposed settlement class must also meet at least one of the conditions set forth in the subparts of Fed. R. Civ. P. 23(b). All of the prerequisites are satisfied here:

(a) Numerosity: The numerosity factor of Fed. R. Civ. P. 23(a)(1) is met because the proposed Class numbers in the hundreds of thousands of consumers, making joinder of Class Members impracticable.

(b) Commonality: The commonality factor of Fed. R. Civ. P. 23(a)(2) is met because there are numerous questions of law or fact common to every member of the Class, specifically: Whether Defendants engaged in a common pattern of fraudulent, deceptive, and otherwise improper advertising, sales, and marketing practices regarding the Covered Products that affected each individual in the same or similar manner.

(c) Typicality: The typicality factor of Fed. R. Civ. P. 23(a)(3) is met because the claims of the named Plaintiffs, who are the representative parties, are typical of the claims of the class. Here, the named Plaintiffs have the same claims based on the same facts as the other Class Members. The named Plaintiffs are almost evenly split between Direct and Non-Direct Purchasers.

(d) Adequacy of Class Representatives: Plaintiffs, who are the proposed Settlement Class Representatives, have and will diligently prosecute this action, have no conflict of interest with the other Class Members, and have and will continue to zealously represent and protect the interests of the Class. In addition, Plaintiffs have engaged attorneys at CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP, CHIMICLES & TIKELLIS LLP, LITE DEPALMA GREENBERG, LLC, MILSTEIN ADELMAN, LLP, ZIMMERMAN LAW OFFICES, P.C., KRAMON & GRAHAM, P.A., and BROWN GOLDSTEIN LEVY who have extensive experience prosecuting class actions. Further, the parties agreed and the Court appointed Bryan L. Clobes of CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP, and Joseph G. Sauder of CHIMICLES & TIKELLIS LLP "Lead Class Counsel" for purposes of this Action. Therefore, the Settlement Class

Representatives, Proposed Class Counsel, and Lead Class Counsel will provide the Class with adequate representation.

The Class meets the requirements of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact detailed above that affect all members of the class predominate over any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy for the following reasons:

(a) no Class Member has an interest in individually controlling the prosecution of a separate action;

(b) to Plaintiffs' knowledge, no other litigation concerning the alleged pattern of fraudulent, deceptive, and otherwise improper advertising, sales, and marketing practices regarding the quality of the Covered Products is currently pending;

(c) concentrating all potential litigation concerning the alleged violations will avoid a multiplicity of suits, will conserve judicial resources, and is the most efficient means of resolving the dispute; and

(d) administration of this action as a class action will not be complicated or difficult because the Plaintiffs and Defendants already have reached a proposed settlement premised upon certification of the Class.

For the foregoing reasons, the Court should certify this case as a class action for settlement purposes as to the claims of the Class Members.

III. Appointment of Class Representatives and Class Counsel

A. Settlement Class Representatives.

As described in Section II(C)-(D) above, the Settlement Class Representatives have claims that are typical of the Class, and they have and will continue to adequately represent the interests of all Class Members.

B. Class Counsel.

Proposed Class Counsel are experienced litigators who have been appointed class counsel in scores of class cases.

Class Counsel have litigated this case effectively, have obtained a favorable settlement for the Class, and will, as they have in other class actions, assure that the recovery is reasonably distributed to the Class. *See* Firm Biographies, attached hereto as Exhibit 2. Accordingly, the Court should appoint Bryan L. Clobes of CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP and Joseph G. Sauder of CHIMICLES & TIKELLIS LLP as Lead Class Counsel. The Court should appoint Katrina Carroll of LITE DEPALMA GREENBERG, LLC, Gillian L. Wade of MILSTEIN ADELMAN, LLP, Thomas A. Zimmerman, Jr. of ZIMMERMAN LAW OFFICES, P.C., James P. Ulwick of KRAMON & GRAHAM, P.A., and Andrew D. Freeman of BROWN GOLDSTEIN LEVY, as Class Counsel.

IV. Preliminary Approval of the Settlement

Plaintiffs request that the Court preliminarily approve the proposed settlement of this class action.

> [C]ourts typically follow a two-step procedure to analyze and finalize a class action settlement. First, upon motion by the parties, the court preliminarily approves a proposed settlement if the proposal is within the range of possible approval, after which the parties notify the proposed class members of the settlement. Later, the court conducts a final approval fairness hearing to establish whether the proposed settlement is fair, adequate and reasonable within the

> meaning of Rule 23. The fairness hearing also affords the interested parties an opportunity to object to the proposed settlement.

Benway v. Resource Real Estate Servs., LLC, 2011 WL 1045597, at *4 (D. Md. Mar. 16, 2011) (quotation and citation omitted). To be "within the range of possible approval," there must be "probable cause to notify the class of the proposed settlement." *Horton v. Merrill Lynch*, 885 F. Supp. 825, 827 (E.D.N.C. 1994).

The Settlement here falls well within the range of possible approval. Thus, there is "probable cause" to notify the Class of the proposed settlement and hold a fairness hearing "at which all interested parties will have an opportunity to be heard and after which a formal finding on the fairness of the proposal will be made." *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D. Md. 1983) (citation omitted). Further, each of the following factors favors preliminary approval of the Settlement.

First, the Settlement is the result of good-faith, arm's-length negotiations between capable adversaries. Counsel for Plaintiffs and Defendants engaged in two all-day mediation sessions with Judge Smalkin (Ret.). (See Ex. 1, § II.C.) As part of the mediation process, Defendants provided Plaintiffs with substantial information and documents that Plaintiffs requested. (See Ex. 1, § II.C.) After two days of mediation, and additional negotiations assisted by Judge Smalkin, the Parties reached agreement on this proposed Settlement.

Second, the Plaintiffs and Defendants have fully explored the strengths and weaknesses of the claims through the informal exchange of information they participated in prior to the mediations.

Third, as discussed above, Class Counsel have the experience and skill to vigorously litigate the claims as well as to determine when and to what extent settlement is appropriate. Counsel have exercised that judgment in this case with respect to the proposed Settlement.

Federal Rule of Civil Procedure 23 provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed or compromised only with the court's approval." Fed. R. Civ. P. 23(e). Final approval of a class action settlement turns on whether the settlement is both "fair" and "adequate." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158-59 (4th Cir. 1991). There is a strong judicial policy in favor of settlement in order to reserve scarce resources that would otherwise be devoted to protracted litigation. *Bennett v. Behring Corp.*, 737 F. 982, 986 (11th Cir. 1984). As will be explained further in a motion for final approval, the proposed settlement meets the standard for final approval because the Settlement is fair and adequate. Settlement avoids various risks regarding whether and how much Class Members would ultimately recover. It also allows them to be paid years earlier than if this case were litigated to its conclusion, including likely resulting appeals.

"A settlement is fair if it was reached as a result of good faith bargaining at arm's length, without collusion." *Whitaker v. Navy Fed. Credit Union*, 2010 WL 3928616, at *2 (D. Md. Oct. 4, 2010). In determining whether the settlement is "fair," the court should consider "(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of class action litigation." *Id.*

Upon analysis of the foregoing factors, the Settlement is fair. Although the Settlement conference occurred before formal discovery had begun, the Parties exchanged information sufficient to allow Plaintiffs' counsel to develop detailed estimates of the potential damages in this case in advance of Settlement. Furthermore, negotiations were conducted by capable counsel with ample experience in class action litigation. Plaintiffs' had also accumulated substantial relevant information during the course of their extensive pre-filing investigations.

When determining whether a settlement is substantively adequate, a court should consider: "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendant and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Id.*

Based on the foregoing factors, the proposed Settlement is adequate. Plaintiffs and Defendants are both confident in the strength of their positions; Defendants have denied all allegations of wrongdoing and liability. Future litigation of the lawsuit would likely be protracted and costly. Plaintiffs and their counsel believe the Settlement is fair and adequate and will encounter little opposition from Class Members. Counsel for Plaintiffs have met with the named Plaintiffs and have discussed with them the Settlement and the process of settling the case. Specifically, Plaintiffs' counsel have explained the costs and benefits of the Settlement in light of further litigation. Based on these meetings and conversations, Plaintiffs and their counsel believe that the Settlement is fair and adequate and will be supported by the vast majority of the Class.

Accordingly, the Court should preliminarily approve the Settlement.

V. Class Notice

Plaintiffs request the Court to approve the proposed contents and manner of disseminating the class notice.

A. The Contents of the Class Notice

Plaintiffs submit that the proposed class notice (the "Class Notice"), copies of which are attached as Exhibits C, E, G, H, and J to the Settlement Agreement, meets the requirements of Fed. R. Civ. P. 23(c)(2)(B). That rule, in pertinent part, provides as follows:

> The notice must concisely and clearly state in plain, easily understood language:
> (i) the nature of the action;
> (ii) the definition of the class certified;
> (iii) the class claims, issues, or defenses;
> (iv) that a class member may enter an appearance through an attorney if the member so desires;
> (v) that the court will exclude from the class any member who requests exclusion;
> (vi) the time and manner for requesting exclusion; and
> (vii) the binding effect of a class judgment on class members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B).

The Class Notice satisfies each of these requirements. It states the nature of the action, the Class definition, the Class claims, and the issues and defenses. It also states that a Class Member may enter an appearance through counsel, may elect to opt out of the Class, and that the Settlement, if and when approved, will be binding on all Class Members who do not opt out. The Class Notice further sets forth the terms of the proposed Settlement and the right of each Class Member to object to the proposed Settlement. *See* Rule 23(e)(4)(A). It summarizes the nature of the pending litigation and the Settlement's essential terms. It also informs the Class, among other things, that complete information regarding the Settlement is available upon request from Class Counsel and that any Class Member may appear and be heard at the hearing on final approval of the Settlement. In addition, the Class Notice informs the Class Members of the request for the award of attorneys' fees and reimbursement of litigation expenses by Proposed Class Counsel. Fed. R. Civ. P. 23(h).

B. The Manner of Notice

As to the manner of giving notice, Fed. R. Civ. P. 23(c)(2)(B) provides, in pertinent part, as follows:

> For any class certified under Rule 23(b)(3), the Court must direct to class members the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort.

An individual mailing to each class member's last known address has been held to satisfy the "best notice practicable" test. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974).

The Settlement provides that a qualified class action administrator retained by Class Counsel ("the Settlement Administrator") will send the Class Notice by email to all purchasers who purchased products directly through Defendants (*i.e.*, "Direct Purchasers") and that, accordingly, Defendants can affirmatively identify. For those Direct Purchasers for which Defendants do not have an email address (and for any whose email notices may "bounce back"), they will be provided with notice via U.S. mail. (See Ex. 1, § IV.E.) The Settlement Administrator will establish a Settlement Website where Class Members can obtain details about the Settlement and file a Claim Form online. (See Ex. 1, § IV.B.) Further, the Settlement Administrator will publish notice of the Settlement in People Magazine and online through over 130 million internet banner ads that will direct Class Members to the Settlement Website. (See Ex. 1, §§ IV.D, F.) The mailing and the fairness hearing will be timed so that the Class Members will have approximately 45 days from the date of publication to opt out of the Class, to object to the Settlement, and to appear by counsel. Finally, Defendants will send to certain retailers that sold the Covered Products requests to post a summary notice of the Settlement in the retailer's store. (See Ex. 1, § IV.H.)

VI. Scheduling a Fairness Hearing

Plaintiffs request that the Court set a fairness hearing that, subject to the Court's calendar, would be held 120 days after preliminary approval. (See Ex. 1, § IX.A.) At the fairness hearing, Plaintiffs will request that the Court finally approve the Settlement.

VII. Summary of Relevant Deadlines

Plaintiffs propose that the Court set the beginning of Publication Notice to be no later than 45 days from the date of the Preliminary Approval Order, and that the Court set the hearing date on the Final Approval Hearing as 120 days from the date of the Preliminary Approval Order. The following deadlines would then follow:

Event	Date
Settlement Administrator to establish the Settlement Website, publish notice of the Settlement in People Magazine, publish notice through over 130 million internet banner adds, and provide email or mail notice to Direct Purchasers (together, the "Publication Notice")	Begins no later than 45 days after entry of a Preliminary Approval Order.
Claims Period begins	On the date of Publication Notice (i.e., 45 days from date of Preliminary Approval Order).
Deadline to submit objections and exclusions/opt-outs	45 days after the Publication Notice begins (i.e., 90 days from the date of Preliminary Approval Order)
Final Approval Papers filed, including exclusions	No later than 10 days before Final Approval Hearing
Deadline for Class Counsel and/or Defendants to respond to any filed written objections to the Settlement	No later than 5 business days before the Final Approval Hearing
Final Approval Hearing	120 days after the entry of a Preliminary Approval Order
Claims Period ends	30 days after the Final Approval Hearing, but no longer than a total of 120 days after the Claims Period begins
Defendants pay to Lead Counsel the attorneys' fees and incentive awards	15 days after entry of the Final Judgment
Settlement Administrator to pay claims	No later than 60 days after the Effective Date

WHEREFORE, Plaintiffs respectfully request that the Court enter the proposed Order, attached as Exhibit D to the Settlement Agreement: (1) certifying the Settlement Class; (2) appointing Class Counsel, Lead Class Counsel, and Settlement Class Representatives; (3) preliminarily approving the Settlement; (4) approving the form and manner of Notice to the Class; and (5) setting the time for Publication Notice to begin no later than 45 days from the date of the Preliminary Approval Order and scheduling a Final Approval Hearing for the final consideration and approval of the Settlement 120 days from the date of the Preliminary Approval Order or the soonest available date thereafter.

Respectfully submitted,

/s/ James P. Ulwick
James P. Ulwick (Bar No. 00536)
KRAMON & GRAHAM, P.A.
One South Street, Suite 2600
Baltimore, MD 21202
Tel: (410) 752-6030
Email: julwick@kg-law.com

/s/
Bryan L. Clobes
CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP
1101 Market Street
Philadelphia, PA 19107
Tel: (215) 864-2800
Email: bclobes@caffertyclobes.com

/s/
Joseph G. Sauder
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Tel: (610) 642-8500
Email: JosephSauder@chimicles.com

Lead Class Counsel

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "**Agreement**") is made and entered into as of December 29, 2015, by and between the following parties: Plaintiffs Vicky Bergman, Michael Carton, Cynthia Finnk, Rocco Lano, Laurina Leato, Marilyn Listander, Roger Mammon, William Dumone and Amy Joseph, on behalf of themselves individually and on behalf of the Settlement Class (collectively, "**Plaintiffs**" or the "**Settlement Class Representatives**"), and Defendants DAP Products Inc. and National Express, Inc. ("**Defendants**") and their respective counsel of record.

I. DEFINITIONS.

As used in this Agreement and all related documents, the following terms have the meanings stated below:

A. "**Claims Deadline**" means the last date on which Claim Forms may be submitted or postmarked.

B. "**Claim Form**" or "**Claim Forms**" means the form or forms Settlement Class Members must submit to participate in the refund provisions of the Settlement under this Agreement substantially in the forms attached as Exhibit A.

C. "**Class Counsel**" means Bryan L. Clobes and Daniel O. Herrera, CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP; Joseph G. Sauder and Joseph B. Kenney, CHIMICLES & TIKELLIS LLP; Katrina Carroll and Kyle A. Shamberg, LITE DEPALMA GREENBERG, LLC; Gillian L. Wade, MILSTEIN ADELMAN, LLP; Thomas A. Zimmerman, Jr., ZIMMERMAN LAW OFFICES, P.C., James P. Ulwick, KRAMON & GRAHAM, P.A., and Andrew D. Freeman, BROWN GOLDSTEIN LEVY.

D. "**Lead Class Counsel**" means Bryan L. Clobes, CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP, and Joseph G. Sauder, CHIMICLES & TIKELLIS LLP.

E. "**Class Period**" means January 1, 2012 through December 29, 2015.

F. The "**Consolidated Class Action**" means the consolidated class action proceedings prosecuted under the caption *Bergman et al. v. DAP Products Inc. et al.*, Maryland District Court Case No. 14-cv-03205-WDQ, pursuant to the Order entered on March 26, 2015, Docket No. 29, in the *Bergman* matter.

G. The "**Consolidated Complaint**" means the Consolidated Class Action Complaint filed on May 13, 2015, Dkt. No. 34, in *Bergman et al. v. DAP Products Inc. et al.*, Maryland District Court Case No. 14-cv-03205-WDQ.

H. The "**Separate Complaints**" or "**Separate Actions**" mean the complaints or proceedings in: (i) *Bergman v. DAP Products Inc.*, Maryland District Court Case No. 14-cv-03205-WDQ, filed on October 10, 2014; (ii) *Carton et al. v. DAP Products Inc. et al.*, Maryland District Court Case No. 14-cv-04015, filed December 24, 2014; (iii) *Joseph v. DAP Products, Inc. et al.*, Maryland District Court Case No. 15-cv-00016; before the *Joseph* action was transferred to the United States District Court for the District of Maryland, a Complaint against DAP Products Inc. and a First Amended Complaint against DAP Products, Inc. et. al. were originally filed in *Joseph v. DAP Products, Inc. et. al.*, Northern District of Illinois (Eastern Division) District Court Case No. 14 cv 7628; and (iv) *Dumone v. Blue Gentian, LLC et al.*, Maryland District Court Case No. 14-cv-04046, filed December 31, 2014.

I. "**Court**" means the United States District Court for the District of Maryland.

J. "**Covered Products**" means all products bearing the brand name XHose, including the XHose, XHose Pro, and XHose Pro Extreme, including all sizes thereof, that have been designed, marketed, advertised, sold, manufactured, and/or distributed by any of the **Released Parties**.

K. "**Direct Purchasers**" means purchasers who purchased a Covered Product either (i) directly through the website located at the URLs, https://www.xhose.com/ or https://www.xhose.com/pro/; or (ii) by calling a toll free number in response to direct response television (DRTV) advertising for a Covered Product.

L. "**Non-Direct Purchasers**" means all purchasers of a Covered Product who are not Direct Purchasers.

M. "**Effective Date**" means the latest of (i) the expiration date of the time for the filing or notice of any appeal from the Final Approval Order and Judgment, (ii) the date of final affirmance of any appeal of the Final Approval Order and Judgment, (iii) the expiration of the time for, or the denial of, a petition for writ of review of the Final Approval Order and Judgment or, if the writ is granted, the date of final affirmance of the Final Approval Order and Judgment following review pursuant to that grant; or (iv) the date of final dismissal of any appeal from the

Final Approval Order and Judgment or the final dismissal of any proceeding on *certiorari* to review the Final Approval Order and Judgment.

N. "**Final Approval Hearing**" means the hearing scheduled to take place at which the Court shall, among other things: (a) consider any timely objections to the Settlement and all responses thereto and determine whether to grant final approval to the Settlement; and (b) rule on Plaintiffs' applications for attorneys' fees and costs, and Plaintiffs' application for incentive awards.

O. "**Final Approval Order and Judgment**" means the order, substantially in the form of Exhibit B attached hereto, in which the Court grants final approval of this Settlement and authorizes the entry of a final judgment and dismissal with prejudice of the Consolidated Complaint.

P. "**Long Form Notice**" means notice of the proposed settlement to be provided to Settlement Class Members pursuant to Sections IV.D. and IV.G. of this Agreement substantially in the form attached as Exhibit C.

Q. "**Objection/Exclusion Deadline**" means the date set by the Court for the submission of objections or requests for exclusion from the class, and shall be approximately forty-five (45) days after the date of publication of the Publication Notice, on the date specifically set by the Court in the Preliminary Approval Order.

R. "**Parties**" means, collectively, the Settlement Class Representatives, on behalf of themselves and all others similarly situated, and Defendants.

S. "**Preliminary Approval**" means the date the Court preliminarily approves the settlement of the Action, including but not limited to, the terms and conditions of this Agreement.

T. "**Preliminary Approval Order**" means the order, substantially in the form of Exhibit D attached to this Agreement, in which the Court grants its preliminary approval to the Settlement, conditionally certifies the Settlement Class, approves and authorizes notice to the Settlement Class, and sets a Final Approval Hearing.

U. "**Publication Notice**" means notice of this Settlement to be provided to Settlement Class Members under section IV of the Agreement substantially in the form attached as Exhibit E.

V. "**Released Parties**" means any and all of the following entities and persons: Defendants DAP Products Inc. and National Express, Inc.; each of their present and former parent companies, subsidiaries, divisions, affiliates, officers, directors, owners, shareholders, employees, agents, attorneys, and legal representatives (including without limitation RPM International, Inc.); each of their insurers; each entity and person upstream of Defendants involved in the manufacture, design, or production of the Covered Products (including without limitation Taizhou Yayi Valve Co. Ltd.); each of the downstream sellers of the Covered Products including all distributors, wholesalers, licensees, retailers, franchisees, and dealers selling the Covered Products (including without limitation Ace Hardware Corporation, E. Mishan & Sons, Inc., and/or Emson, Inc.); each entity or person who participated in creating or authorizing advertisements for the Covered Products; the inventor of the XHose (including without limitation Blue Gentian, LLC, and/or Michael Berardi); each entity or person involved in customer service, warranty claims, returns, and/or refunds for the Covered Products (including without limitation Fosdick Fulfillment Corporation); each entity or person involved in product fulfillment for orders by Direct Purchasers for the Covered Products; and the predecessors, successors and assigns of each of the foregoing.

W. "**Request for Exclusion**" means a valid request for exclusion from a member of the Settlement Class.

X. "**Settlement**" means the terms of this Agreement.

Y. "**Settlement Administrator**" means AB Data, Ltd.

Z. "**Settlement Class**" means all persons who purchased Covered Products in the United States, its territories, or at any United States military facility or exchange during the Class Period. Excluded from the Settlement Class are all persons who validly opt out of the Settlement Class in a timely manner; counsel of record (and their respective law firms) for the Parties; Defendants and any of their parents, affiliates, and subsidiaries and all of their respective employees, officers, and directors; the presiding judge in the Consolidated Class Action or Separate Actions, and all of his immediate family and judicial staff.

AA. "**Settlement Class Member**" means any member of the Settlement Class.

BB. "**Summary Notice**" means notice of the proposed settlement to be provided to Settlement Class Members pursuant to Sections IV.E.1. and IV.E.2. of this Agreement substantially in the form attached as Exhibit G.

CC. "**Valid Claim**" means a claim for a settlement payment timely submitted by a Settlement Class Member that satisfies all the criteria for receiving consideration as stated in this Agreement.

II. LITIGATION BACKGROUND.

A. Between September and December 2014, Plaintiffs filed Separate Complaints in the Separate Actions each alleging that the Covered Products were defective and unsuited for their intended purpose, that Defendants had concealed the existence of the alleged defects from the Plaintiffs and putative class members, and that Defendants had breached various warranty obligations. On March 26, 2015, the Court ordered that the Separate Actions be consolidated and that the Plaintiffs file a Consolidated Complaint.

B. On May 14, 2015, Plaintiffs filed the Consolidated Complaint in which they alleged that Defendants made false and misleading statements in their labeling and advertising of the Covered Products, that the Covered Products were defective, and that Defendants have breached express and implied warranties for the Covered Products. Plaintiffs have asserted claims on behalf of themselves and for all others similarly situated in the United States based on: (i) alleged violations of the Maryland Consumer Protection Act for deceptive and false advertisements about whether the Covered Products were defectively designed or manufactured, failed prematurely, and were not suitable for their intended use; (ii) similar alleged violations of the consumer protection statutes of the States of Illinois, California, Delaware, Florida, Texas, and Wisconsin; (iii) alleged violation of express warranties provided to purchasers of the Covered Products, including warranties concerning the durability and functionality of the Covered Products; (iv) alleged violations of the implied warranties of merchantability and fitness for a particular purpose; (v) common law fraud; (vi) breach of the duty of good faith and fair dealing; and (vii) unjust enrichment and restitution. In the Consolidated Complaint, Plaintiffs sought to certify a nationwide class and, in the alternative, six state subclasses for California, Delaware, Florida, Illinois, Texas and Wisconsin. Defendants deny any wrongdoing or liability arising out of any of the facts or conduct alleged in the Consolidated Class Action and Separate Actions and believe that they have valid defenses to Plaintiffs' claims.

C. The Parties participated in two all-day mediation sessions with the Honorable Frederic N. Smalkin (Ret.), a retired federal judge who presided in the U.S. District Court, District of Maryland for over fifteen years, and was the Chief Judge of the U.S. District Court,

District of Maryland from 2001-2003. As part of the mediation process, Defendants provided plaintiffs with substantial information and documents that Plaintiffs requested as relevant to their claims. After two days of mediation, and additional negotiations assisted by Judge Smalkin, the Parties reached agreement on this Settlement.

D. Defendants have decided to enter into this Settlement Agreement solely to avoid the further expense, inconvenience, and burden of further litigation and the distraction and diversion of their personnel and resources, thereby putting to rest this controversy. Defendants consent to certification of the Settlement Class, the appointment of Vicky Bergman, Michael Carton, Cynthia Finnk, Rocco Lano, Laurina Leato, Marilyn Listander, Roger Mammon, William Dumone and Amy Joseph as the Settlement Class Representatives, and the appointment of Class Counsel and Lead Class Counsel solely for this purposes of the Settlement embodied in this Settlement Agreement.

E. Based on the expense, burden, and time necessary to prosecute the Consolidated Class Action through trial and possible appeals, the risks and uncertainty of further prosecution of the Consolidated Class Action considering the defenses at issue, the contested legal and factual issues involved, and the benefits to be conferred upon Plaintiffs and Settlement Class Members pursuant to this Agreement, Class Counsel has concluded that a settlement with Defendants on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class in light of all known facts and circumstances.

F. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims that Plaintiffs and the Settlement Class have or may have against Defendants and the other Released Parties arising from or related to the Covered Products and the Consolidated Class Action.

III. TERMS OF SETTLEMENT.

In consideration of the mutual covenants and promises set forth herein, and subject to Court approval, the Parties agree as follows:

A. Certification of Settlement Class:

1. For settlement purposes only, and without any finding or admission of any wrongdoing or fault by Defendants, and solely pursuant to the terms of this Agreement, the Parties consent to and agree to the establishment and conditional certification of the Settlement Class.

2. This certification is conditioned on the Court's preliminary and final approvals of this Agreement. In the event the Court does not approve all terms of the Agreement, then the certification shall be void and this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Consolidated Class Action or in any other case or controversy. And, in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all Parties hereto, who shall be restored to their respective positions as of the date of this Agreement; Defendants shall not be deemed to have waived and shall be deemed to have specifically reserved any opposition or defense they have to any aspect of the claims asserted in the Consolidated Class Action or Separate Actions or to whether those claims are amenable to class-based treatment.

B. Settlement Consideration from Defendants. In full and complete settlement of the Released Claims, Defendants will, within 60 (sixty) days from the Effective Date, provide the following consideration to Settlement Class Members who submit a valid and timely Claim Form with sufficient proof under penalty of perjury:

1. For those Settlement Class Members who are Direct Purchasers and who have not previously received a refund from Defendants or other Released Parties, they are eligible to receive one of the following. If a Settlement Class Member qualifies for more than one of the following, he or she must elect the preferred option:

(a) If the replacement warranty the Settlement Class Member received upon purchase was for a period of less than 270 days and it has not already expired as of the date of entry of the Preliminary Approval Order, the Settlement Class Member may choose to have it extended so that the total replacement warranty period is 270 days from the date of purchase.

(b) If the Settlement Class Member returns to the Settlement Administrator both of the male and female fittings affixed to the ends of the Covered Product, the Settlement Class Member shall receive $30.00 for each purchase transaction for Covered Products purchased during the Class Period, for up to a maximum of three purchase transactions by each Settlement Class Member. In cases where a Direct Purchaser purchased a Covered Product through a "buy one get one" offer in which the Direct Purchaser purchased one Covered Product and received a second one by only paying the price of shipping and handling for the

second Covered Product, then this counts as one "purchase transaction," not two, for purposes of determining the amount of a payment to which a Settlement Class Member is entitled. Further provided that Direct Purchasers who return both of the male and female ends for both Covered Products that they purchased as part of a "buy one, get one" offer and elect to return both of the male and female ends for both XHOSEs (*i.e.* four ends in total) shall receive an additional $4.00 payment for the second XHOSE, for a total of $34.00 for that purchase transaction.

(c) If the Settlement Class Member states both that (i) he or she is dissatisfied with the Covered Product and that (ii) he or she no longer possesses the Covered Product, the Settlement Class Member shall receive $15.00 for each purchase transaction for Covered Products purchased during the Class Period, for up to a maximum of three purchase transactions by each Settlement Class Member.

2. For those Settlement Class Members who are Non-Direct Purchasers and who have not previously received a refund, they are eligible to receive one of the following. If a Settlement Class Member qualifies for more than one of the following, he or she must elect the preferred option:

(a) If the Settlement Class Member returns to the Settlement Administrator both of the male and female fittings affixed to the ends of the Covered Product, the Settlement Class Member shall receive $30.00 for each purchase transaction for Covered Products purchased during the Class Period, for up to a maximum of three purchase transactions by each Settlement Class Member; or

(b) If the Settlement Class Member states that he or she is dissatisfied with the Covered Product, he or she shall receive a total of $8.00, with a limit of one $8.00 payment for each Settlement Class Member. Settlement Class Members who elect this option will need to answer certain anti-fraud questions on the Claim Form including: (i) what color is the XHOSE or XHOSE PRO that you purchased, and (ii) from which retailer did you purchase it?

3. Settlement Class Members who return the male and female fittings of Covered Products to the Settlement Administrator shall, at their election (a) have the option of downloading a prepaid postage label from the Settlement Website, or (b) have a $6.00 check mailed to them by the Settlement Administrator to reimburse them for the approximate postage of return postage within five business days of receipt of the male and female fittings.

C. Attorneys' Fees, Costs, and Expenses and Incentive Awards for Settlement Class Representatives:

1. Defendants have agreed to pay a total of $1,100,000.00 (one million one hundred thousand dollars) in attorney's fees, costs, and expenses to Class Counsel, subject to Court approval. This amount specifically includes all attorney's fees, costs, and expenses incurred by Class Counsel and Plaintiffs in connection with the Consolidated Class Action and Separate Actions thus far, as well as ongoing and future fees, costs and expenses through finalization of the Settlement of the Consolidated Class Action. Class Counsel agrees that it shall file a motion for recovery of attorney's fees, costs, and expenses, to be heard at the same time as the Final Approval hearing. Plaintiffs and Class Counsel agree not to move for attorneys' fees, costs, and expenses exceeding $1,100,000.00. Defendants shall pay the lesser of $1,100,000.00 or the amount of fees, costs and expenses awarded by the Court to Class Counsel.

2. Class Counsel agrees to apply to the Court for an incentive award to each Settlement Class Representative in an amount not to exceed $2,000.00 per Settlement Class Representative, for his or her participation as a Settlement Class Representative, for taking on the risks of litigation, and for settlement of his or her individual claims in the Consolidated Class Action. The Settlement Class Representatives and Class Counsel agree not to move for an incentive award exceeding $2,000.00 per Settlement Class Representative, and Defendants agree not to oppose such a motion. Defendants shall pay the lesser of $2,000.00 or the incentive award authorized by the Court to each Settlement Class Representative.

3. Any failure by the Court to approve the amount of attorney's fees, costs, or expenses, or incentive awards to Settlement Class Representatives shall not affect the validity of the other terms of this Agreement.

4. Plaintiffs and Class Counsel shall provide Defendants all identification information necessary to effectuate the payment of the fees, costs, expenses and incentive awards including Tax Payer Identification Numbers and completed Internal Revenue Service Form W-9(s).

5. Notwithstanding the existence of any timely filed objections to the Settlement or potential appeals, no later than fifteen (15) days following the entry of the Final Judgment approving the Settlement, Defendants shall pay to Lead Counsel the lesser of $1,100,000.00 or the amount of fees, costs and expenses awarded by the Court to Class Counsel

and the lesser of $2,000.00 or the incentive amount awarded by the Court as incentive fees to each Settlement Class Representative, subject to the Lead Counsels' and their respective firms' joint and several obligations (secured by signed promissory notes, in the form attached as Exhibit F) to refund or repay within fifteen (15) days all amounts paid if, for any reason, including as a result of any appeal, proceedings on remand, or successful collateral attack, the Final Judgment approving the Settlement terms is vacated or materially modified or the amounts of attorney's fees, costs and expenses awarded or incentive amounts are lowed, overturned, or reduced.

D. Release:

1. Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, Plaintiffs and the Settlement Class (together, the "**Releasing Parties**") forever and fully release, relinquish, and discharge the Released Parties from any and all claims, demands, actions, causes of action, damages, rights to restitution and disgorgement, rights to attorneys, fees, costs, and expenses, rights to injunctive relief, and all other rights to relief (collectively, "**Claims**"), that the Releasing Parties ever had, now have, may have, or hereafter have, of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under federal, state or local common law, regulatory or statutory law, or otherwise, and regardless of the type or amount of relief and/or damages claimed, that are: included within, arise out of, or relate to the allegations or the Claims that were alleged or that could have been alleged by Plaintiffs, the Settlement Class and/or any Settlement Class Member against the Released Parties in the Consolidated Complaint, Separate Actions or any other legal action relating to the Covered Products, whether those Claims are asserted individually or on a class-wide basis (collectively, the "**Released Claims**"). The Release shall be construed to effectuate complete finality over the Consolidated Class Action and Separate Actions involving allegations of false advertising, defects in, and breach of express and implied warranties for, the Covered Products. Further provided that this definition of Released Claims expressly excludes Claims for personal injury.

2. Plaintiffs expressly understand and acknowledge, and all Settlement Class Members will be deemed by the Final Judgment to acknowledge, that certain principles of law, including but not limited to Section 1542 of the Civil Code of the State of California provide that, "A general release does not extend to claims which the creditor does not know or suspect to

exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." To the extent that these principles of law are applicable to this Settlement – notwithstanding that the Parties have chosen Maryland law to govern this Agreement – Plaintiffs hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules or legal principles, are hereby knowingly and voluntarily waived, relinquished, and released by Plaintiffs and all Settlement Class Members.

IV. NOTICE TO THE SETTLEMENT CLASS.

Subject to Court approval in the Preliminary Approval Order, the Parties agree that Defendants shall, at their cost, provide the Settlement Class with notice of the Settlement by the following methods:

A. Settlement Administrator. Defendants shall engage the Settlement Administrator to administer the notice, claims and payment process and shall pay the Settlement Administrator's reasonable costs and fees in connection therewith.

B. Settlement Website. Subject to the Parties' consents as to an appropriate URL (not to be unreasonably withheld), the Claims Administrator shall obtain a URL to specifically handle the Settlement process (the "Settlement Website"). The Long Form Notice shall be posted on the Settlement Website within forty-five (45) days of the entry of the Preliminary Approval Order and shall stay online until the end of the Claims Period. Settlement Class Members will be able to file a Claim Form online through the Settlement Website or to submit Claims Forms through U.S. mail. *See* Section V., below.

C. Claims Period. The Claims Period shall begin within forty-five (45) days of the entry of the Preliminary Approval Order. It shall begin on the date of the Publication Notice provided in Section IV.D., below. The Claims Period shall continue until thirty (30) days after the Final Approval Hearing or for a total of ninety (90) days, whichever is longer; provided, however, that, notwithstanding the foregoing, absent written consent from Defendants, in no event shall the Claims Period be longer than one hundred twenty (120) days. Regardless of when the Final Approval Hearing is scheduled, the Claims Period shall end on or before the one hundred twentieth day.

D. Publication Notice: The Settlement Administrator will cause the Publication Notice to be published once in People Magazine in the form attached hereto as Exhibit E, not

later than forty-five (45) calendar days after entry of the Preliminary Approval Order. The Publication Notice shall be sized for a one-third page ad.

E. Individual Notice: Within 45 (forty-five) days of entry of the Preliminary Approval Order, the Settlement Administrator shall provide email notice and/or notice via U.S. postal service postcards as follows:

1. To all of the Direct Purchasers for which NEI or its product fulfillment contractor have an email address, the Settlement Administrator shall send an email notice. The email will contain the same wording that is in the Summary Notice attached as Exhibit G. The email will also contain a link to the Settlement Website.

2. For Direct Purchasers for which NEI or its product fulfillment contractor only have postal addresses, and for Direct Purchasers for whom the email notices were returned as undeliverable, the Settlement Administrator shall send a postcard attached as Exhibit G, via First-Class U.S. Mail to their last known address. The postcard notice will direct the customers to the Settlement Website to obtain more information about the Settlement and/or to complete a Claim Form, and will also provide them with a toll-free number that they may call for additional information. (See Section IV.G., below.)

F. Internet Ads: The Settlement Administrator will cause to be published internet advertisements in the form of banner notices or text ads. The Settlement Administrator will purchase approximately 130 million "Impressions" for banner notices or text ads during the Claims Period. The banner notices will include an embedded link to the Settlement Website and will be in one of the forms attached as Exhibit H. An "Impression" generally means how often an ad is shown on the Internet. More precisely, it is a measurement of responses from a Web server to a page request from a user browser. An Impression is counted each time an ad is shown on a search result page or other Internet page or site.

G. Toll-Free Telephone Support: The Settlement Administrator shall establish a toll-free telephone support number with live operator assistance and automated Interactive Voice Response (IVR) system to provide Settlement Class Members with (a) general information about the litigation; (b) frequently asked questions and answers; and (c) the ability to request a Long Form Notice or Claim Form. Callers will be able to request a live operator to answer questions during normal business hours, Monday through Friday. The toll free number will be prominently displayed in printed notice materials.

H. Requests to Retailers to Post Notice. Defendants NEI or DAP shall send a request via email or U.S. mail to the retailers that sold the Covered Products to consumers listed on Exhibit I hereto and request that they post a Summary Notice of the Settlement in each store where the Covered Products were sold for the duration of the Claims Period. The form of the request that NEI or DAP shall send is as set forth in Exhibit J. NEI or DAP agree to send the requests to the retailers and to use reasonable efforts to have the retailers post the Summary Notices, but they do not guarantee that the retailers will actually post the notices.

I. Class Action Fairness Act Notice. Defendants, or the Settlement Administrator acting on behalf of Defendants, shall serve upon the appropriate State official of each State in which a Settlement Class Member resides and the appropriate Federal official, a notice of the Settlement, in compliance with 28 U.S.C. Section 1715(b)(1)-(8).

V. CLAIMS ADMINISTRATION.

A. The Claim Forms shall be as provided in Exhibit A. Settlement Class Members shall be able to obtain the Claim Forms from the Settlement Website or by calling the toll free telephone support.

B. Settlement Class Members will be able to complete and submit Claim Forms online directly through the Settlement Website, and they may also complete them on paper and submit them via U.S. mail.

C. No Claim Form will be deemed valid if it is not signed by the Settlement Class Member under penalty of perjury, is not postmarked or submitted electronically on or before the Claims Deadline, or does not contain the requested information. Settlement Class Members who do not return a Claim Form postmarked on or before the last day of the Claims Period, and Settlement Class Members who return a Claim Form that is timely but is not signed or not substantially completed, will not qualify to receive Settlement consideration as provided in Section III.B., above, but will remain Settlement Class Members and be bound by this Settlement. Notwithstanding the above, Defendants may, but shall have no obligation to, honor untimely Claims received by the Settlement Administrator after the Claims Period.

D. The Claims Administrator shall review all submitted Claim Forms within a reasonable time to determine each Settlement Class Member's eligibility for class relief, and the amount of such relief, if any. Copies of submitted Claim Forms shall be provided to Defendants and to Class Counsel upon request. Settlement Class Members submitting completed Claim

Forms shall be entitled to the relief identified in Section III.B., above, unless the Claims Administrator has a good faith belief that one or more required fields containing material fact(s) identified in the Claim Form is/are fraudulent or materially inaccurate, or that the male and female fittings returned are not from a Covered Product. Within 60 days after the Claims Period ends, the Claims Administrator shall submit a report to Plaintiffs' and Defendants' Counsel regarding all Claim Forms submitted, the disposition thereof, and the basis for rejection of any Claim Forms. The Claims Administrator will also notify each Claimant whose Claim Form is rejected. Any Claimant whose Claim Form is rejected may seek reconsideration by contacting the Claims Administrator. Completed Claim Forms that are timely submitted to the Claims Administrator and that the Claims Administrator does not believe are fraudulent or materially inaccurate, shall be deemed Accepted Claim Forms.

E. The Court will retain jurisdiction regarding disputed Claim Forms. If Class Counsel and Defendants cannot agree on the resolution of any disputed Claim Forms, final determination of disputed Claim Forms will be made by the Court. Class Counsel and Defendants will exercise best efforts to submit any such disputed Claim Forms to the Court in batches.

F. Issuance of Settlement Proceeds: The Settlement Administrator is responsible for issuing the payments specified in Section III.B., above, to Settlement Class Members whose claim Forms have been determined to be Accepted Claims Forms. Checks will be mailed by the Settlement Administrator within sixty (60) calendar days of the Effective Date. No Settlement checks shall be issue or mailed until the Effective Date.

VI. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION FROM SETTLEMENT.

A. Objections: Only Settlement Class Members may object to the Settlement. To object, a Settlement Class Member must provide the following information in writing: (i) full name, current address, and current telephone number; (ii) name of the Covered Product owned by the objecting Settlement Class Member; (iii) documentation or attestation sufficient to establish membership in the Settlement Class including when and where the Covered Product was purchased; and (iii) a statement of all grounds for the objection accompanied by any legal or factual support for the objection.

1. All objections must be filed on or before the Objection/Exclusion Deadline with the Clerk of Court, 101 West Lombard Street, Baltimore, Maryland 21201. Objections may be filed with the Court through the Court's Case Management/Electronic Case Files (CM/ECF) system or through any other method in which the Court will accept filings. An objection properly filed through the Court's CM/ECF system shall be deemed to have been served on all counsel. If the objection is filed in a manner other than through the Court's CM/ECF system, then it must also be served contemporaneously therewith on each of the following via U.S. mail **and** email:

Class Counsel	**Defendants' Counsel**
Joseph G. Sauder Chimicles & Tikellis LLP One Haverford Centre 361 West Lancaster Ave. Haverford, PA 19041 Email: JosephSauder@chimicles.com; **and** Bryan L. Clobes Cafferty Clobes Meriwether & Sprengel LLP 1101 Market Street, Suite 2650 Philadelphia, PA 19107 Email: bclobes@caffertyclobes.com	Howard A. Slavitt Coblentz Patch Duffy & Bass LLP One Montgomery Street, Suite 3000 San Francisco, CA 94104 Email: hslavitt@cpdb.com

2. Any Settlement Class Member objecting to the Settlement shall also state in the objection (a) whether he or she is represented by counsel, and, if so, identify that counsel by name, firm name, and address, (b) a list of all other objections submitted by the objector or the objector's counsel to any class action settlements submitted in any state or federal court in the previous three (3) years, including the case name, the jurisdiction in which it was filed, and the docket number, or, alternatively, if the Settlement Class Member or his or her counsel has not objected to any other class action settlements in the previous three (3) years, he or she shall affirmatively state this in the objection.

3. The date of the postmark on the mailing envelope or a legal proof of service accompanied and a file-stamped copy of the submission shall be the exclusive means used to determine whether an objection and/or notice of intention to appear has been timely filed and served. In the event that the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it is received by the counsel for the Parties within two (2) calendar days of the Objection/Exclusion Deadline.

4. By filing an objection, the objecting Settlement Class Member agrees to submit to the jurisdiction of the Court for discovery relating to his or her objection, as may be appropriate. After an objection is filed, Class Counsel and Defendants' Counsel may request documents from and take the deposition of the objecting Settlement Class Member on an expedited basis in order to obtain any evidence relevant to the objection.

5. An objection that does not meet all of these requirements will be deemed invalid and will be overruled. Any Settlement Class Member who fails to timely file a written objection with the Court in compliance with the above requirements and at the same time provide copies to designated counsel for the Parties shall not be permitted to object to the Settlement Agreement and shall be foreclosed from seeking review of this Settlement Agreement by appeal or other means.

6. Class Counsel and/or Defendants shall, at least five (5) business days (or such other number of days as the Court shall specify) before the Final Approval Hearing, file any responses to any written objections submitted to the Court by Settlement Class Members in accordance with this Agreement.

7. Subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the Settlement should not be approved as fair, adequate, and reasonable, or object to any petitions for attorneys' fees, costs and expenses or payment of Settlement Class Representative incentive awards. The objecting Settlement Class Member must file with the Clerk of the Court and serve upon Class Counsel and Defendants' Counsel (at the addresses listed above), a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") on or before the Objection/Exclusion Deadline.

8. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Class Notice, will not be allowed to speak or otherwise present any views at the Final Approval Hearing.

B. Exclusions.

1. Settlement Class Members who wish to opt out of the settlement must submit a written statement within the Objection/Exclusion Deadline. The Long Form Notice shall provide mandatory language for the request for exclusion (sometimes also referred to herein as a request "to opt out"). Requests to be excluded that do not include all required information and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Settlement Class Member's exclusion request has been timely submitted.

2. In the event that the postmark is illegible, the exclusion request shall be deemed untimely unless it is received by counsel for the Parties within three (3) calendar days of the Objection/Exclusion Deadline. Any Settlement Class Member who properly opts out of the Settlement Class using this exclusion procedure will not be entitled to any portion of payments or other consideration available to the Settlement Class Members, will not be bound by the Settlement, and will not have any right to object, appeal or comment thereon. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the Settlement and the final judgment entered in this litigation if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the Settlement.

C. No Solicitation of Settlement Objections or Exclusions: The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Members to object to the Settlement or request exclusion from participating as a Settlement Class Member, or encourage any Settlement Class Member to appeal from the Final Judgment.

VII. TERMINATION.

A. Defendants shall, at their sole discretion, have the right to terminate this Agreement in its entirety at any time and without further obligation if: (1) any court rejects or denies approval of any material term or condition of this Agreement; (2) any court makes any order purporting to alter, amend or modify any material term or condition of this Agreement; (3) any court fails to certify the class of Settlement Class Members as defined above; or (4) more than 25,000 Settlement Class Members submit timely and valid requests to opt-out and to be excluded from the Settlement.

B. In the event that Defendants exercise their right to terminate this Agreement, they shall promptly notify the Court and Class Counsel in writing and cause the Claims Administrator to notify the Settlement Class Members by posting information on the Settlement Website and by emailing information to those Claimants who provided an email address to the Claims Administrator.

C. In the event that Defendants exercise their right to terminate this Agreement, this Settlement Agreement shall be rendered null and void and shall have no force or effect, no person or entity shall be bound by any of its terms or conditions, and the rights of all persons or entities with respect to the claims and defenses asserted in the Consolidated Class Action shall be restored to the positions existing immediately prior to execution of this Agreement.

D. Except as otherwise provided herein, in the event the Agreement is terminated in accordance herewith, vacated, or fails to become effective for any reason, then the Parties to this Agreement shall be deemed to have reverted to their respective statuses in the Consolidated Class Action as of the date of this Agreement and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. Without limiting the generality of the foregoing, in the event the Agreement is terminated in accordance herewith, vacated, or fails to become effective for any reason, Defendants shall have retained all rights to contest class certification, liability and damages as if no Settlement was entered into, and any amounts paid by Defendants into an interest bearing account together with any interest earned thereon for an award of attorney's fees, costs and expenses to Class Counsel and incentive amounts awarded to Settlement Class Representatives shall be returned to Defendants.

VIII. NO ADMISSION.

This Agreement is not to be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or as an admission that class treatment in the Consolidated Action is proper for any purpose other than during settlement. Defendants deny all liability for claims asserted in the Consolidated Action and that class treatment for the Consolidated Action is proper for any purpose other than settlement. The Parties agree that, pending entry of a Preliminary Approval Order staying all further proceedings, Defendants do not need to file an answer or other response to the Consolidated Complaint and Defendants shall have a reasonable extension to do so in the event that the Court were to deny Plaintiffs' Motion

for Preliminary Approval. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a settlement document and shall, pursuant to Federal Rule of Evidence 408 and related or corresponding state evidence laws, be inadmissible in evidence in any proceeding. This Agreement or the existence of this Settlement shall not be used or cited in any proceeding other than (i) an action or proceeding to approve or enforce this Agreement, or (ii) in a subsequent proceeding barred or potentially barred by the Release specified herein. The provisions of this paragraph will survive and continue to apply even if the Court does not approve the Settlement, or the Court's approval of this Settlement is set aside on appeal, or Defendants exercise their right to terminate the Settlement Agreement pursuant to Section VII., above.

IX. DUTIES OF THE PARTIES PRIOR TO FINAL COURT APPROVAL.

The Parties shall promptly submit this Agreement to the Court in support of Plaintiffs' Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Agreement, Plaintiffs shall apply to the Court for the entry of a Preliminary Approval Order substantially in the following form, as more particularly set forth in Exhibit D, including:

A. Scheduling a Final Approval Hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class Members, to be scheduled 120 days after the Preliminary Approval of the Settlement, or as soon thereafter that is convenient for the Court;

B. Approving as to form and content the class notice;

C. Approving as to form and content the proposed Claim Form and instructions;

D. Directing publication of the Publication Notice, and the method of class notice;

E. Preliminarily approving the Settlement;

F. Preliminarily and conditionally certifying the Settlement Class for settlement purposes;

G. Preliminarily approving the Settlement Administrator and the administration of the settlement in accordance with the procedures set forth in this Agreement; and

H. Staying all proceedings in the Consolidated Class Action and Separate Actions, and enjoining the prosecution of any other individual or class claims with the scope of the Released Claims.

X. COURT APPROVAL.

Class Counsel will submit a proposed Final Order and Judgment at the Final Approval Hearing in the form set forth as Exhibit B, which shall:

A. Approve the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

B. Rule on Class Counsel's application for the requested award of attorneys' fees and costs and the Settlement Class Representatives' applications for incentive awards; and

C. Dismiss the Consolidated Class Action with prejudice and permanently bar Plaintiffs and Settlement Class Members from prosecuting any and all claims against Defendants and the other Released Parties in regard to those matters released as set forth in Section III.D., above.

XI. PARTIES' AUTHORITY.

Each signatory represents that he or she is fully authorized to enter into this Agreement and to bind the Parties to its terms and conditions.

XII. MUTUAL FULL COOPERATION.

The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and the taking of such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement. As soon as practicable after execution of this Agreement, Class Counsel, with the assistance and cooperation of Defendants and their counsel, shall take all necessary steps to secure the Court's preliminary and final approvals of this Agreement.

XIII. NOTICES.

Unless otherwise specifically provided, all notices, demands or other communications in connection with this Agreement shall be in writing and shall be deemed to have been given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

For Class Counsel and Settlement Class Representatives:	For Defendants:
Joseph G. Sauder Chimicles & Tikellis LLP One Haverford Centre 361 West Lancaster Ave. Haverford, PA 19041 Bryan L. Clobes Cafferty Clobes Meriwether & Sprengel LLP 1101 Market Street, Suite 2650 Philadelphia, PA 19107	Howard A. Slavitt Coblentz Patch Duffy & Bass LLP One Montgomery Street, Suite 3000 San Francisco, CA 94104 Charles L. Simmons, Jr. Gorman & Williams 36 South Charles Street, Ste. 900 Baltimore, Maryland 21201

XIV. CONSTRUCTION.

The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement.

XV. CAPTIONS.

Paragraph titles or captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any of its provisions.

XVI. INTEGRATION CLAUSE.

This Agreement contains the entire agreement between the Parties relating to the settlement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a Party or such Party's legal counsel, are extinguished.

XVII. PUBLIC STATEMENTS.

The Parties and Counsel shall not make, publish or circulate or cause to be made, publish or circulate any statements that represent or suggest that this Settlement or any Order by the Court regarding this Settlement represents or implies an admission by Defendants of any liability or wrongdoing, or a finding by the Court of liability or wrongdoing.

XVIII. NO COLLATERAL ATTACK.

This Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices to the Settlement Class after the final judgment and dismissal is entered.

XIX. AMENDMENTS.

The terms and provisions of this Agreement may be amended only by a written agreement, which is signed by the Parties who have executed this Agreement.

XX. GOVERNING LAW.

This Agreement shall be governed by, construed under, and interpreted, and the rights of the Parties determined in accordance with, the laws of the State of Maryland, irrespective of the State of Maryland's choice of law principles.

XXI. BINDING ON AND BENEFITTING SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

XXII. CLASS COUNSEL SIGNATORIES.

It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each Settlement Class Member execute this Agreement. The notice plan set forth herein will advise Settlement Class Members of all material terms of this Agreement, including the binding nature of the releases and such shall have the same force and effect as if this Agreement were executed by each Settlement Class Member.

XXIII. COUNTERPARTS.

This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties and the Settlement Class. Facsimile or PDF copy of signatures will be considered as valid signatures.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement:

By: Vicky Bergman 1/4/16
Plaintiff Vicky Bergman

By: Michael Carton 12-30-2015
Plaintiff Michael Carton

By: _____
Plaintiff Cynthia Finnk

XIX. AMENDMENTS.

The terms and provisions of this Agreement may be amended only by a written agreement, which is signed by the Parties who have executed this Agreement.

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XXI. BINDING ON AND BENEFITTING SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

XXII. CLASS COUNSEL SIGNATORIES.

It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each Settlement Class Member execute this Agreement. The notice plan set forth herein will advise Settlement Class Members of all material terms of this Agreement, including the binding nature of the releases and such shall have the same force and effect as if this Agreement were executed by each Settlement Class Member.

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This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties and the Settlement Class. Facsimile or PDF copy of signatures will be considered as valid signatures.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement:

By: _____
Plaintiff Vicky Bergman

By: _____
Plaintiff Michael Carton

By: Cynthia Finnk
Plaintiff Cynthia Finnk

By: Rocco Lano 12-31-2015
Plaintiff Rocco Lano

By: _____
Plaintiff Laurina Leato

By: _____
Plaintiff Marilyn Listander

By: _____
Plaintiff Roger Mammon

By: _____
Plaintiff William Dumone

By: _____
Plaintiff Amy Joseph

By: _____
Name:
Title:
On Behalf of Defendant DAP Products Inc.

By: _____
Name:
Title:
On Behalf of Defendant National Express, Inc.

By: _____
Plaintiff Rocco Lano

By: Laurina Leato
Plaintiff Laurina Leato

By: _____
Plaintiff Marilyn Listander

By: _____
Plaintiff Roger Mammon

By: _____
Plaintiff William Dumone

By: _____
Plaintiff Amy Joseph

By: _____
Name:
Title:
On Behalf of Defendant DAP Products Inc.

By: _____
Name:
Title:
On Behalf of Defendant National Express, Inc.

By: _____
Plaintiff Rocco Lano

By: _____
Plaintiff Laurina Leato

By: _____
Plaintiff Marilyn Listander

By: _____
Plaintiff Roger Mammon

By: _____
Plaintiff William Dumone

By: _____
Plaintiff Amy Joseph

By: _____
Name:
Title:
On Behalf of Defendant DAP Products Inc.

By: _____
Name:
Title:
On Behalf of Defendant National Express, Inc.

By: _____
Plaintiff Rocco Lano

By: _____
Plaintiff Laurina Leato

By: _____
Plaintiff Marilyn Listander

By: Roger Mammon
Plaintiff Roger Mammon

By: _____
Plaintiff William Dumone

By: _____
Plaintiff Amy Joseph

By: _____
Name:
Title:
On Behalf of Defendant DAP Products Inc.

By: _____
Name:
Title:
On Behalf of Defendant National Express, Inc.

By: _____
Plaintiff Rocco Lano

By: _____
Plaintiff Laurina Leato

By: _____
Plaintiff Marilyn Listander

By: _____
Plaintiff Roger Mammon

By: _____
Plaintiff William Dumone

By: _____
Plaintiff Amy Joseph

By: _____
Name:
Title:
On Behalf of Defendant DAP Products Inc.

By: _____
Name:
Title:
On Behalf of Defendant National Express, Inc.

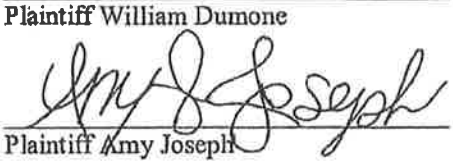
By: _____
Plaintiff Rocco Lano

By: _____
Plaintiff Laurina Leato

By: _____
Plaintiff Marilyn Listander

By: _____
Plaintiff Roger Mammon

By: _____
Plaintiff William Dumone

By: 
Plaintiff Amy Joseph

By: _____
Name:
Title:
On Behalf of Defendant DAP Products Inc.

By: _____
Name:
Title:
On Behalf of Defendant National Express, Inc.

By: _____
Plaintiff Rocco Lano

By: _____
Plaintiff Laurina Leato

By: _____
Plaintiff Marilyn Listander

By: _____
Plaintiff Roger Mammon

By: _____
Plaintiff William Dumone

By: _____
Plaintiff Amy Joseph

By: Swata Gandhi
Name:
Title: Swata Gandhi
General Counsel
On Behalf of Defendant DAP Products Inc.

By: _____
Name:
Title:
On Behalf of Defendant National Express, Inc.

By: _____
Plaintiff Rocco Lano

By: _____
Plaintiff Laurina Leato

By: _____
Plaintiff Marilyn Listander

By: _____
Plaintiff Roger Mammon

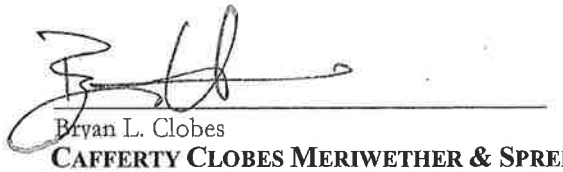
By: _____
Plaintiff William Dumone

By: _____
Plaintiff Amy Joseph

By: _____
Name:
Title:
On Behalf of Defendant DAP Products Inc.

By: Lewis R. Gotch
Name: Lewis R. Gotch
Title: VP Operations & Risk Management
On Behalf of Defendant National Express, Inc.

APPROVED AS TO FORM:



Bryan L. Clobes
CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP
1101 Market Street
Philadelphia, PA 19107
Tel: (215) 864-2800
Lead Counsel for Plaintiffs

Joseph G. Sauder
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Tel: (610) 642-8500
Lead Counsel for Plaintiffs

Howard A. Slavitt
COBLENTZ PATCH DUFFY AND BASS LLP
One Ferry Building
Suite 200
San Francisco, CA 94111
Tel: (415) 391-4800
Attorneys for Defendants

Charles L. Simmons Jr. (Fed. Bar No. 24278)
GORMAN AND WILLIAMS
36 S. Charles Street
Suite 900
Baltimore, MD 21201
Tel: (410) 528-0600
Attorneys for Defendants

APPROVED AS TO FORM:

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Philadelphia, PA 19107
Tel: (215) 864-2800
Lead Counsel for Plaintiffs

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Suite 900
Baltimore, MD 21201
Tel: (410) 528-0600
Attorneys for Defendants

Claim Forms - **Exhibit A** to Settlement in Bergman et. al. v. DAP Products Inc., United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ

MUST BE POSTMARKED ON OR BEFORE XXXXX XX, 2016

XHose Class Settlement
c/o A.B. Data Ltd
PO Box 170300
Milwaukee, WI 53217-8091

XHO

Control No: 1234567890
Claim No: XHO011111111

XHO1234567890

CLAIMANT#: 11111111
JANE CLAIMANT
123 4TH AVE
APT 5
SEATTLE, WA 67890

REQUIRED ADDRESS INFORMATION OR CORRECTIONS
If the pre-printed address to the left is incorrect or out of date, **OR** if there is no pre-printed data to the left, **YOU MUST** provide your current name and address here:

Name:	
Address:	
City/State/ZIP:	

XHOSE SETTLEMENT - CLAIM FORM - FOR DIRECT PURCHASERS

United States District Court of Maryland, Case No. 14-cv-03205

Please read all of the following instructions carefully before filling out your Claim Form. A complete description of the class qualifications and claim benefits can be found at: **www.xhoseclasssettlement.com**.

1. If you are a Direct Purchaser, to make a claim, you must fully complete and submit this Claim Form no later than___, 2016. A Direct Purchaser is someone who purchased an XHose, XHose Pro, or XHose Pro Extreme (collectively an "XHOSE") in the United States **directly from the internet website located at www.xhose.com or www.xhose.com/pro, or by calling a toll free number in response to a television advertisement**. The Settlement Administrator has sent emails and/or U.S. mail notices to all class members who are believed to be Direct Purchasers.

All persons who purchased an XHOSE from a retail store or from a website other than www.xhose.com or www.xhose.com/pro are "Non-Direct Purchasers." Non-Direct Purchasers must complete a different form, the Non-Direct Purchaser Claim Form, which can be obtained from **www.xhoseclasssettlement.com**, or by calling this toll free number: 1-866-545-1007

2. Complete Parts A, B, and C of the Claim Form by filling in the requested information. Only one Claim Form per person will be honored.

3. Sign the Claim Form (Part C). For those filing online, there is an e-signature requirement.

Part A - Claimant Information:

Claimant Name:
bbbbbbbbbbbbbbbbbbbbbbbbb

Street Address:
bbbbbbbbbbbbbbbbbbbbbbbbb
bbbbbbbbbbbbbbbbbbbbbbbbb

City: State: ZIP:
bbbbbbbbbbbbbbbbbb bb bbbbb

Daytime Phone Number:
(WWW) WWW - WWWW

E-Mail Address:
bbbbbbbbbbbbbbbbbbbbbbbbb

Part B - Payment or Extended Warranty for Qualifying Claimants:

1. To be eligible for a payment you must not have previously received a refund for your purchase of an XHOSE.
2. You are only eligible to file a claim if you purchased an XHOSE in the United States between January 1, 2012 and_____.
3. You may make a claim for one of the following:
   (a) If the replacement warranty that you received upon purchase of an XHOSE was for less than 270 days and the warranty has not already expired, then you may choose to have it extended so that the total replacement warranty period is 270 days from the date of purchase.
   (b) If you are dissatisfied with the XHOSE you purchased and you no longer possess it, then you may receive $15.00 for each purchase transaction, for up to a maximum of three purchase transactions per person.
   (c) If you return the male and female fittings affixed to the ends of the XHOSE you purchased to the Settlement Class Administrator, you may receive $30.00 for each purchase transaction, for up to a maximum of three purchase transactions per person.
4. Please fill out this chart identifying the purchase transaction(s) for which you are making a claim:

Approximate Date of Purchase	Place of Purchase - either from (www.xhose.com) or by calling toll free number	XHOSE Model Purchased	Was this a "Buy One Get One" purchase? (Yes or No)*

*If you bought an XHOSE through a buy one get one ("BOGO") offer and received a second XHOSE by only paying the price of shipping and handling for the second one, then this counts as only one purchase transaction, not two. However, if you return the male and female fittings for both XHOSEs that you purchased as part of a BOGO offer (*i.e.* four fittings in total) you shall receive an additional $4.00 payment for the second XHOSE, for a total of $34.00 for that purchase transaction.

5. Please choose only one of the following:
   (a) ☐ I would like to extend my replacement warranty for each XHOSE listed above so that the total replacement warranty period is 270 days from the date of purchase.
   (b) ☐ I request a $15.00 payment for each purchase transaction listed above. I am dissatisfied with the XHOSE(s) I purchased and I no longer possess it/them.
   (c) ☐ I request a $30.00 payment for each purchase transaction listed above.
   ☐ I request an additional $4.00 for each BOGO purchase listed above.

I am returning both the male and female fittings affixed to the ends of the XHOSE(s) to the Settlement Class Administrator for each purchase transaction for which I am requesting $30.00 and for each BOGO purchase for an additional $4.00.

If you are returning the male and female fittings of an XHOSE, you may (a) download a prepaid postage label from **www.xhoseclasssettlement.com**, OR (b) a $6.00 check will be mailed to you after the Settlement Administrator receives the male and female fittings to reimburse you for the approximate postage. Male and female fittings should be mailed to **XHose Class Settlement, c/o A.B. Data Ltd, PO Box 170300, Milwaukee, WI 53217-8091.**

Part C - Certification Under Penalty of Perjury:

You are required to read, date, and sign the statement below in order to qualify for a payment or an extended warranty. If you fail to complete this certification, we will not be able to process a payment for you or extend your warranty:

I certify under penalty of perjury that I purchased the XHOSE product(s) listed above, that I have not previously received a refund for the purchase of the listed XHOSE product(s), and that all of the information on this Claim Form is true and correct to the best of my knowledge.

Signature	Printed Name	Date

You must submit this Claim Form on or before_____, 2016, or your claim will be rejected.

MUST BE POSTMARKED ON OR BEFORE XXXXX XX, 2016

XHose Class Settlement
c/o A.B. Data Ltd
PO Box 170300
Milwaukee, WI 53217-8091

XHO

Control No: 1234567890
Claim No: XHO011111111

XHO1234567890

CLAIMANT#: 11111111
JANE CLAIMANT
123 4TH AVE
APT 5
SEATTLE, WA 67890

REQUIRED ADDRESS INFORMATION OR CORRECTIONS
If the pre-printed address to the left is incorrect or out of date, **OR** if there is no pre-printed data to the left, **YOU MUST** provide your current name and address here:

Name:	
Address:	
City/State/ZIP:	

XHOSE SETTLEMENT - CLAIM FORM - FOR NON-DIRECT PURCHASERS

United States District Court of Maryland, Case No. 14-cv-03205

Please read all of the following instructions carefully before filling out your Claim Form. A complete description of the class qualifications and claim benefits can be found at: **www.xhoseclasssettlement.com**.

1. If you are a Non-Direct Purchaser, to make a claim, you must fully complete and submit this Claim Form no later than_____, 2016. A Non-Direct Purchaser is someone who purchased an XHose, XHose Pro, or XHose Pro Extreme (collectively an "XHOSE") in the United States **from a retail store or from a website other than www.xhose.com or www.xhose.com/pro**.

If instead, you purchased an XHOSE from the website at www.xhose.com or www.xhose.com/pro or by calling a toll free number in response to a television advertisement, you are a "Direct Purchaser." Direct Purchasers must complete a different form, the Direct Purchaser Claim Form, which can be obtained from **www.xhoseclasssettlement.com**, or by calling this toll free number: 1-866-545-1007.

2. Complete Parts A, B, and C of the Claim Form by filling in the requested information. Only one Claim Form per person will be honored.

3. Sign the Claim Form (Part C). For those filing online, there is an e-signature requirement.

Part A - Claimant Information:

Claimant Name:
bbbbbbbbbbbbbbbbbbbbbbbbb

Street Address:
bbbbbbbbbbbbbbbbbbbbbbbbb
bbbbbbbbbbbbbbbbbbbbbbbbb

City: State: ZIP:
bbbbbbbbbbbbbbbbb bb bbbbb

Daytime Phone Number:
(www) www - wwww

E-Mail Address:
bbbbbbbbbbbbbbbbbbbbbbbbb b

Part B - Payment for Qualifying Claimants:

1. To be eligible for a payment you must not have previously received a refund for your purchase of an XHOSE.
2. You are only eligible to file a claim if you purchased an XHOSE in the United States between January 1, 2012 and_____.
3. You may make a claim for one of the following:
   (a) If you are dissatisfied with an XHOSE you purchased, then you are eligible to receive a total of $8.00, with a limit of one $8.00 payment per person.
   (b) If you return the male and female fittings affixed to the ends of the XHOSE you purchased to the Settlement Class Administrator, you may receive $30.00 for each purchase transaction, for up to a maximum of three purchase transactions per person.
4. Please fill out this chart identifying the purchase transaction(s) for which you are making a claim:

Approximate Date of Purchase Transaction	Place of Purchase (from which retailer)	XHOSE Model Purchased

5. Please choose only one of the following:
   (a) ☐ I request an $8.00 payment. I purchased the product(s) listed above and I am dissatisfied with the XHOSE product(s) I purchased.
   If you are requesting an $8.00 payment, then you need to fill out the chart above identifying your purchase transaction and you need to answer the following question: What is the color of the XHOSE that you purchased?_____.
   (b) ☐ I request a $30.00 payment for each XHOSE purchase transaction listed above. I am returning both the male and female fittings affixed to the ends of each XHOSE to the Settlement Class Administrator.

If you are returning the male and female fittings of an XHOSE, you may (a) download a prepaid postage label from **www.xhoseclasssettlement.com**, OR (b) a $6.00 check will be mailed to you after the Settlement Administrator receives the male and female fittings to reimburse you for the approximate postage. Male and female fittings should be mailed to **XHose Class Settlement, c/o A.B Data Ltd, PO Box 170300, Milwaukee, WI 53217-8091.**

Part C - Certification Under Penalty of Perjury:

You are required to read, date, and sign the statement below in order to qualify for a payment. If you fail to complete this certification, we will not be able to process a payment or extend your warranty for you:

I certify under penalty of perjury that I purchased the XHOSE product(s) listed above, that I have not previously received a refund for the purchase of the listed XHOSE product(s), and that all of the information on this Claim Form is true and correct to the best of my knowledge.

Signature	Printed Name	Date

You must submit this Claim Form on or before_____, 2016, or your claim will be rejected.

Final Approval Order and Judgment – **Exhibit B** to Settlement in Bergman et. al. v. DAP Products Inc., United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

VICKY BERGMAN et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 14-cv-03205-WDQ
	)	
DAP PRODUCTS INC. et al.	)	
	)	
Defendants.	)	
	)	

[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING OF CLASS ACTION SETTLEMENT

On _____, this Court granted preliminary approval of the proposed class action settlement set forth in the Settlement Agreement (the "**Settlement Agreement**") between Plaintiffs Vicky Bergman, Michael Carton, Cynthia Finnk, Rocco Lano, Laurina Leato, Marilyn Listander, Roger Mammon, William Dumone and Amy Joseph (the "**Settlement Class Representatives**"), on behalf of themselves and all members of the Settlement Class, and Defendants DAP Products Inc. and National Express, Inc. ("**Defendants**").[1] The Court also conditionally certified the Settlement Class for settlement purposes, approved the procedure for giving notice to the members of the Settlement Class, and set a Final Approval Hearing to take place on _____.

On _____, the Court held a duly noticed Final Approval Hearing to consider (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate; (2) whether a judgment should be entered releasing the Released

[1] This Final Order and Judgment, except as otherwise indicated herein, hereby incorporates by reference the definitions of the Settlement Agreement as though fully set forth herein, and all terms used herein shall have the same meaning as set forth in the Settlement Agreement.

Claims and permanently barring the Settlement Class Representatives and Settlement Class Members from prosecuting the Released Claims against Defendants and all of the other Released Parties in regard to those matters released as set forth in Section III.D. of the Settlement Agreement; and (3) whether and in what amount to approve Class Counsel's motion for an award of attorneys' fees and costs and incentive awards for the Class Representatives.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. The Court has personal jurisdiction over the parties and the Settlement Class Members; venue is proper; and the Court has subject matter jurisdiction to approve the Settlement Agreement, including all exhibits thereto, and to enter this Final Order and Judgment. Without in any way affecting the finality of this Final Order and Judgment, this Court hereby retains jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Order and Judgment, and for any other necessary purpose.

2. The Court finds that Notice to the Settlement Class was given in the manner ordered by the Court; that it constituted the best practicable notice to apprise Settlement Class Members of the pendency of the Action; that it apprised them of their right to object or exclude themselves from the proposed Settlement and of their right to appear at the Final Approval Hearing through an attorney if they so desired; that it informed Settlement Class Members that the judgment would be binding; that the Notice to the Settlement Class was fair, reasonable, and adequate and constituted sufficient notice to all persons entitled to receive notice, including all Settlement Class Members; and complied fully with the requirements of Federal Rule of Civil Procedure 23.

3. The Court finds that Defendants' service of notice of the Settlement on the State officials of each State in which a Settlement Class Member resides and the appropriate Federal official complied with the Class Action Fairness Act and satisfies all requirements of 28 U.S.C. Section 1715(b).

4. The Court finds that the prerequisites for class certification under Federal Rule of Civil Procedure 23(a) and Federal Rule of Civil Procedure 23(b)(3) have been satisfied for settlement purposes for each Settlement Class Member in that (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class they seek to represent; (d) the Class Representatives have fairly and adequately represented the interests of the Settlement Class for purposes of entering into the Settlement Agreement; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual Settlement Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

5. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby finally certifies the following Settlement Class (as identified in the Settlement Agreement):

> All persons who purchased Covered Products in the United States, its territories, or at any United States military facility or exchange from January 1, 2012 through _____. Excluded from the Settlement Class are all persons who validly opted out of the Settlement Class in a timely manner (*see* Exhibit A hereto); counsel of record (and their respective law firms) for the Parties; Defendants and any of their parents, affiliates, and subsidiaries and all of their respective employees, officers, and directors; the presiding judge in the Action, and all of his immediate family and judicial staff. "Covered Products" means all products bearing the brand name XHose, including the XHose, XHose Pro, and XHose Pro Extreme, including all sizes thereof, that have been designed, marketed, advertised, sold, manufactured, and/or distributed by any of the Released Parties.

6. All persons who validly opted out of the Settlement Class and who the Court now excludes are listed on Exhibit A (the "Exclusion List"), hereto. The persons on the Exclusion List are not bound by this Judgment or the terms of the Settlement.

7. The Court finds that the Settlement is fair, reasonable, and adequate for all Class Members. Class Counsel undertook an extensive and costly investigation and reasonably evaluated the strengths and weaknesses of the Class's claims. Settlement at this time avoids substantial additional costs by all Parties. The Settlement confers substantial benefits upon Settlement Class Members including substantial payments to be made to those who file or have filed claim forms, balanced against the probable outcome of further litigation given the risks relating to liability and damages. The Settlement Agreement was reached only after vigorous, arm's-length, adversarial negotiations over the course of several months and in two separate, in-person mediation sessions with a respected mediator—the Honorable Frederic Smalkin (ret.) of JAMS.

8. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby awards Class Counsel Attorneys' Fees and Expenses in the amount of $_____ payable pursuant to the terms of the Settlement Agreement. The Court also awards incentive awards in the amount of $_____ each to Plaintiffs Vicky Bergman, Michael Carton, Cynthia Finnk, Rocco Lano, Laurina Leato, Marilyn Listander, Roger Mammon, William Dumone and Amy Joseph.

9. The terms of the Settlement Agreement and of this Final Order and Judgment, including all exhibits thereto, shall be forever binding on the parties, and shall have the effect of res judicata and claim preclusion effect in all pending and future lawsuits maintained by the

Plaintiffs and all other Settlement Class Members, as well as by any of their heirs, trustee, executors administrators, successors, and assigns.

10. The Release, which is set forth in Section III.D.1. of the Settlement Agreement and which is also set forth below, is expressly incorporated herein in all respects and is effective as of the date of this Final Order and Judgment; and the Released Parties (as that term is defined in the Settlement Agreement) are forever fully released, relinquished and discharged from all Released Claims:

> Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, Plaintiffs and the Settlement Class (together, the "**Releasing Parties**") forever and fully release, relinquish and discharge the Released Parties from any and all claims, demands, actions, causes of action, damages, rights to restitution and disgorgement, rights to attorneys, fees, costs, and expenses, rights to injunctive relief, and all other rights to relief (collectively, "**Claims**"), that the Releasing Parties ever had, now have, may have, or hereafter have, of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under federal, state or local common law, regulatory or statutory law, or otherwise, and regardless of the type or amount of relief and/or damages claimed, that are: included within, arise out of, or relate to the allegations or the Claims that were alleged or that could have been alleged by Plaintiffs, the Settlement Class and/or any Settlement Class Member against the Released Parties in the Consolidated Complaint, Separate Actions or any other legal action relating to the Covered Products, whether those Claims are asserted individually or on a class-wide basis (collectively, the "**Released Claims**"). The Release shall be construed to effectuate complete finality over the Consolidated Class Action and Separate Actions involving allegations of false advertising, defects in, and breach of express and implied warranties for, the Covered Products. Further provided that this definition of Released Claims expressly excludes Claims for personal injury.

11. This Final Order and Judgment and the Settlement Agreement (including the exhibits thereto) may be filed in any action against or by any Released Party to support a defense of res judicata or claim preclusion, collateral estoppel or issue preclusion, release, good faith settlement, judgment bar or any similar defense.

12. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

13. This Action, including all individual claims and class claims presented herein, is hereby DISMISSED on the merits and WITH PREJUDICE against the Plaintiffs and all other Settlement Class Members, without fees or costs to any party except as explicitly provided herein.

SO ORDERED THIS _____ OF _____ 2016.

_____

The Honorable William D. Quarles
United States District Judge

Long Form Notice – **Exhibit C** to Settlement in Bergman et. al. v. DAP Products Inc., United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ

NOTICE OF PENDENCY OF CLASS ACTION AND SETTLEMENT

To: All persons who purchased an XHOSE in the United States from January 1, 2012 to _____.

If you purchased an expandable hose called an "XHOSE," you may be eligible for a payment or other relief from a class action settlement.

A court authorized this Notice. You are not being sued.

- Your rights may be affected by the proposed settlement (the "Settlement") discussed in this court-authorized notice (the "Notice"). The Settlement resolves a class action lawsuit (the "Action") relating to Defendants' products called the XHose, XHose Pro and XHose Pro Extreme (collectively the "Covered Products"). The Action is called *Bergman et. al. v. DAP Products Inc.*, et. al., and it is pending in the United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ. The Action alleges that some of the advertisements for the Covered Products were false and misleading, that the Covered Products are defective, and that Defendants have breached express and implied warranties for the Covered Products. Defendants deny all allegations of wrongdoing and liability asserted in the Action. The Court has made no determination that any of the allegations are true, and has made no finding of liability or wrongdoing.
- This Notice is to inform you of the conditional certification of a class action for settlement purposes only (the "Settlement Class"), the nature of the claims at issue, your right to participate in or exclude yourself from the Settlement Class, and the effect of exercising your various options.
- The Settlement provides cash payments or an extended warranty to Settlement Class Members who submit valid and timely claim forms.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	This is the only way to receive a payment or an extended warranty. The last day for submitting a claim is_____, 2016.
EXCLUDE YOURSELF	Receive no monetary payment or extended warranty. This is the only option that allows you to file a lawsuit against Defendants about the Covered Products that asserts claims related to the allegations or claims in the Action. The exclusion deadline is_____, 2016.
OBJECT	Do not exclude yourself. Write to the Court and explain what you do not like about the Settlement. The objection deadline is_____, 2016.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement. Your notice of intention to appear at the Final Approval Hearing must be postmarked no later than_____, 2016.
DO NOTHING	Receive no monetary payment or extended warranty. Give up rights to be part of any other lawsuit about the Covered Products that asserts claims related to the allegations or claims in the Action, except for claims for personal injury.

- Your rights and options—and the deadlines to exercise them—are explained in this Notice. Your legal rights may be affected based on your decision to act or not to act. Please read this Notice carefully.
- The United States District Court for the District of Maryland (the "Court"), which is in charge of this Action, still has to decide whether to grant final approval to the Settlement. Payments will be made if the Court grants final approval to the Settlement and after any appeals are resolved.

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BASIC INFORMATION

1. WHY DID THE COURT ISSUE THIS NOTICE?

You may have purchased one or more Covered Products. The Court authorized this Notice to inform you about the Action, the proposed Settlement of the Action, and that the Settlement may affect your legal rights and that you have several options.

2. WHAT IS THE LAWSUIT ABOUT?

The lawsuit was filed by nine Plaintiffs (identified below). The companies they are suing — DAP Products Inc. and National Express, Inc. — are the Defendants.

Plaintiffs brought this Action on behalf of themselves and all others who, from January 1, 2012 to _____ (the "Class Period"), purchased one or more Covered Products in the United States. Plaintiffs alleged that some of the advertisements for the Covered Products were false and misleading, that the Covered Products are defective, and that Defendants have breached express and implied warranties that apply to the Covered Products. The Action seeks monetary damages, disgorgement of profits, injunctive relief, and attorneys' fees and costs.

Defendants deny Plaintiffs' claims and charges, deny that they have violated any laws, deny that the Covered Products are defective and believe that their advertising and marketing of the Covered Products have been truthful and not deceptive.

3. WHY IS THIS A CLASS ACTION?

In a class action, plaintiffs file a lawsuit on behalf of themselves and also seek to represent others who are similar situated (i.e. who purchased the same defective product). At some point during the litigation of a class action, plaintiffs file a motion for class certification. If granted, the plaintiffs are appointed as class representatives and those with similar claims are class members. Thereafter, one court resolves all issues for all class members, except for those who timely exclude themselves from the class. Here, on_____, Judge William Quarles, Jr. preliminarily certified a Settlement Class and directed that this Notice be made available to all Settlement Class Members on the Settlement Website at *www.XHoseClassSettlement.com* or upon request to the Settlement Administrator. Judge Quarles also ordered various other forms of notice as provided at pages __ in Sections __ of the Settlement Agreement which is available on the Settlement Website.

4. WHY IS THERE A SETTLEMENT?

Both sides agreed to the Settlement to avoid the cost and risk of ongoing litigation. That way, the cost and uncertainty of a trial is avoided, and any purchaser who is dissatisfied with the Covered Products and makes a claim will receive compensation. Even if Plaintiffs were successful in their litigation efforts, class action litigation can take many years to be finally resolved. The parties reached this agreement only after extensive arms'-length negotiations using a former federal judge as a mediator, an exchange of information, and consideration of the risks and benefits of settlement. The Settlement does not mean that Defendants violated any laws or engaged in any wrongdoing, nor does it mean that Plaintiffs would prevail if the case went to trial. The Court will decide whether to grant final approval to the Settlement, but it will not decide in favor of Plaintiffs or Defendants. Both sides agreed to this Settlement, which they believe is a fair, reasonable, and adequate compromise of their respective positions.

WHO IS IN THE SETTLEMENT

To see if you are affected or if you can receive benefits under the Settlement, you first have to determine whether you are a Settlement Class Member.

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

On_____, _____, the Court preliminarily certified a Settlement Class defined as follows: "All persons who purchased Covered Products in the United States, its territories, or at any United States military facility or exchange from January 1, 2012 through_____." The only exclusions from this definition are: all persons who validly opt out of the Settlement Class in a timely manner; counsel of record (and their respective law firms) for the Plaintiffs and Defendants; Defendants and any of their parents, affiliates, and subsidiaries and all of their respective employees, officers, and directors; and the presiding judge in the Action, and all of the judge's immediate family and judicial staff.

6. I'm still not sure if I am included in the Settlement.

If you are still not sure whether you are included in the Settlement Class, you can go to *www.XHoseClassSettlement*.com, or you can call 1-866-545-1007, and ask for free help.

The Settlement Benefits – What You Get

7. What does the Settlement provide?

Summary: If the Court grants final approval to the proposed Settlement, it will provide cash payments and other relief to the Settlement Class. In return for the relief described below, the Settlement Class Members release their rights to pursue any claims arising from or related to the allegations that were or could have been raised in the Action against Defendants or others involved in marketing or selling the Covered Products. The central provisions of the Settlement are as follows:

A. Class Relief – Monetary Payments or an Extended Warranty.

All Class Members seeking compensation will need to complete a Claim Form and provide requested information including the name of the retailer from which they purchased the Covered Product, the date of the purchase, and the particular product they purchased.

1. Class Relief for Direct Purchasers.

Direct Purchasers are persons who purchased a Covered Product directly from the website at www.xhose.com or www.xhose.com/pro or by calling a toll free number in response to a television advertisement. Direct Purchasers may make a claim for one of the following:

(a) If the replacement warranty they received was for less than 270 days and the warranty has not already expired, then they may choose to have it extended so that the total replacement warranty period is 270 days from the date of purchase.

(b) If they are dissatisfied with the Covered Product they purchased and no longer possess it, then they may receive $15.00 for each purchase transaction, for up to a maximum of three purchase transactions (or $45.00) per person.

(c) If they return the male and female fittings affixed to the ends of the Covered Product they purchased to the Settlement Class Administrator, they may receive $30.00 for each purchase transaction, for up to a maximum of three purchase transactions (or $90.00) per person. In cases where a Direct Purchaser purchased a Covered Product through a "buy one get one" offer and received a second Covered Product by only paying additional shipping and handling, they will receive an additional $4.00 if they also return the male and female ends for the second product, for a total of $34.00 for that purchase transaction.

2. Class Relief for Non-Direct Purchasers.

A Non-Direct Purchaser is someone who purchased a Covered Product in the United States from a retail store or from a website other than www.xhose.com or www.xhose.com/pro. Non-Direct Purchasers may make a claim for one of the following:

(d) If they are dissatisfied with a Covered Product they purchased, then they will have to complete a Claim Form in order to be eligible to receive a payment of $8.00, and identify the color of the Covered Product they purchased.

(e) If they return the male and female fittings affixed to the ends of the Covered Product they purchased to the Settlement Class Administrator, they may receive $30.00 for each purchase transaction, for up to a maximum of three purchase transactions (or $90.00) per person.

B. Defendants to Pay the Costs of Notice and to Administer the Settlement.

In addition to the above relief, Defendants will pay for the costs of providing Notice and administering the Settlement, including all costs billed by the Settlement Administrator.

8. HOW CAN I MAKE A CLAIM AND RECEIVE PAYMENT OR AN EXTENDED WARRANTY?

To request compensation, you must complete and submit a Claim Form, and, if you are seeking a payment of $30.00 for each Covered Product you return, you must also return the ends of the Covered Product.

You have two options for submitting a claim form:

(i) You may complete the claim form and mail it to the Settlement Administrator at XHose Class Settlement, c/o A.B. Data Ltd, PO Box 170300, Milwaukee, WI 53217-8091; or

(ii) You may complete the claim form online by going to *www.XHoseClassSettlement.com*.

To receive a claim form you can contact the Settlement Administrator by telephone at 1-866-545-1007, or by mail at XHose Class Settlement, c/o A.B. Data Ltd, PO Box 170300, Milwaukee, WI 53217-8091, or you may download it from the settlement website at *www.XHoseClassSettlement.com*.

If you are returning the male and female fittings of an XHOSE, you may (a) download a prepaid postage label from *www.XHoseClassSettlement.com*, OR (b) a $6.00 check will be mailed to you after the Settlement Administrator receives the male and female fittings to reimburse you for the approximate postage. Male and female fittings should be mailed to **XHose Class Settlement, c/o A.B. Data Ltd, PO Box 170300, Milwaukee, WI 53217-8091.**

Checks will be mailed to Settlement Class Members who submit valid and timely Claim Forms, after the Court grants "final approval" of the Settlement, and after the time for appeals has ended, or if an appeal is timely filed, after any appeals have been resolved.

9. WHAT IS THE DEADLINE FOR SUBMITTING A CLAIM?

The last day for submitting a claim is_____, 2016. Please read the instructions carefully, fill out the Claim Form, and either submit it online at *www.XHoseClassSettlement.com* or mail it postmarked no later than this deadline.

10. WHAT AM I GIVING UP BY PARTICIPATING IN THE SETTLEMENT?

Unless you exclude yourself from the Settlement Class, you will give up the right to sue Defendants and all others involved in marketing and selling the Covered Products for the claims and allegations that this Settlement resolves. Final approval of the proposed Settlement will result in you releasing and waiving any and all claims arising from, including, or otherwise relating to the claims and factual allegations that were or could have been raised in the Action, including

claims that advertisements for the Covered Products were false and misleading, that the Covered Products are defective, and for breach of express and implied warranties for the Covered Products. By participating in the Settlement, however, you will not be releasing any claims that you may have for physical injury arising from use of the Covered Products. This release will be effective whether the matters released are known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, or developed or undeveloped.

The complete Settlement Agreement is available at *www.XHoseClassSettlement.com* and describes the released claims with more specificity at page __, Section __. You can talk to the Settlement Administrator or one of the Class Counsel attorneys listed below if you have questions about the released claims or what they mean.

EXCLUDING YOURSELF FROM THE SETTLEMENT

11. WHAT DOES IT MEAN TO REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS?

If you do not want a payment or extended warranty from the Settlement, and you want to keep your right to sue Defendants or others involved in marketing or selling the Covered Products regarding one or more Covered Product(s) that you purchased, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself, or "opting out" of the Settlement Class. If you exclude yourself, you will not receive any payment or anything else from the Settlement.

12. HOW DO I GET OUT OF THE SETTLEMENT? (EXCLUDING YOURSELF.)

To exclude yourself from the Settlement, you must send a letter by mail saying that you wish to be excluded from *Bergman. v. DAP Products Inc.* Be sure to include your name, address, telephone number and your signature. You cannot exclude yourself on the telephone or by email. You must mail your Request for Exclusion, **postmarked no later than _____, 2016**, to:

XHose Class Settlement
EXCLUSIONS
c/o A.B. Data Ltd
PO Box 170300
Milwaukee, WI 53217-8091

13. IF I EXCLUDE MYSELF, CAN I STILL GET MONEY FROM THE SETTLEMENT?

No. If you exclude yourself or fail to submit a valid and timely claim form, you will not receive money or any other benefits and cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. But you may be able to sue Defendants or others involved in marketing and selling the Covered Products in the future.

14. IF I DON'T EXCLUDE MYSELF, CAN I SUE LATER?

No. Unless you exclude yourself, you give up the right to sue Defendants and all others involved in marketing and selling the Covered Products for the claims that this Settlement resolves. You must exclude yourself from this Settlement Class to be able to bring your own, separate lawsuit against Defendants regarding the Covered Products. Remember, the exclusion deadline is _____, **2016**.

THE LAWYERS REPRESENTING YOU

15. DO I HAVE A LAWYER IN THE CASE?

The Court has designated the following lawyers and law firms below to represent you as Lead Class Counsel:

Joseph G. Sauder; Chimicles & Tikellis LLP; One Haverford Centre; 361 West Lancaster Ave.; Haverford, PA 19041; Telephone: 610-642-8500; and

Bryan L. Clobes; Cafferty Clobes Meriwether & Sprengel LLP; 1101 Market Street; Philadelphia, PA 19107; Telephone: 215-864-2800

You will not be charged for the above lawyers who represent the entire Settlement Class. You also have a right to obtain your own attorney separate from Lead Class Counsel. If you want to be represented by your own attorney, you may hire one at your own expense.

16. How will the attorneys for the Settlement Class be paid?

Like all class action settlements, the amount of attorney's fee and costs paid to Class Counsel is subject to Court approval. Class Counsel will ask the Court to award attorneys' fees, costs and expenses of $1,100,000.00 (one million one hundred thousand dollars), and also for a payment of $2,000.00 (two thousand dollars) to each Class Representative for their service. Defendants have agreed not to oppose these requests for fees and expenses or payments to the Class Representatives. Defendants will separately pay the fees and expenses that the Court awards. These payments will not affect the amounts paid to Settlement Class Members. Class Counsel has agreed to file a motion for attorney's fees, costs, and incentive awards to be heard at the Final Approval Hearing.

Objecting To The Settlement

You can tell the Court if you do not agree with the Settlement or some part of it.

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

If you are a Settlement Class Member, you can object to the Settlement if you do not like it or a part of it. You must give reasons why you think the Court should not approve it. The Court will consider your views in determining whether to grant final approval to the Settlement.

To object, you must provide a written objection to the Settlement, stating that you object to the Settlement in the matter of *Bergman et. al. v. DAP Products Inc., et. al.*, Maryland District Court Case No. 14-cv-03205-WDQ. Be sure to include your name, address, telephone number, your signature, the reasons you object to the Settlement, and all documents that you want the Court to consider. The requirements and procedures for filing an objection are set forth in detail in Section __ of the Settlement Agreement, which is available on the Settlement website at *www.XHoseClassSettlement.com* or by calling 1-866-545-1007. If you want to object, you should carefully read these procedures. Failure to comply with these procedures may result in the Court not considering your written objection.

Mail any objection to each of the three different places listed below postmarked no later than_____:

Court	Class Counsel	Defense Counsel
Clerk of Court 101 West Lombard Street Baltimore, Maryland 21201	Joseph G. Sauder Chimicles & Tikellis LLP One Haverford Centre 361 West Lancaster Ave. Haverford, PA 19041 Bryan L. Clobes 1100 Market Street Suite 2650 Philadelphia, PA 19107	Howard A. Slavitt Coblentz Patch Duffy & Bass LLP; One Montgomery Street, Suite 3000 San Francisco, CA 94104

18. What's the difference between objecting and excluding myself from the Settlement?

Objecting is telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class.

In contrast, excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Action no longer affects you

THE COURT'S FAIRNESS HEARING/FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to finally approve the Settlement. This is called the Fairness Hearing or Final Approval Hearing. You may attend and you may ask to speak, but this is not required.

19. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold the Final Approval Hearing at _____(EST) on _____, 2016, at _____ of the United States District Court for the District of Maryland. At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The judge will listen to people who have asked to speak at the hearing and complied with the procedures for doing so. (These procedures are summarized in Question__, below, and set forth fully in page__, Section __of the Settlement Agreement.) After the hearing, the Court will decide whether to approve the Settlement. The Court will also decide how much Class Counsel are entitled to recover from Defendants in attorneys' fees, costs and expenses for representing the Settlement Class Members and whether to award incentive payments to the Class Representatives. We do not know how long these decisions will take.

It is possible that the Final Approval Hearing may be moved to a different date or time without additional notice to you, so it is a good idea to regularly check *www.XHoseClassSettlement.com* if you plan on attending or speaking at the hearing.

20. DO I HAVE TO COME TO THE FINAL APPROVAL HEARING?

No. Lead Class Counsel will answer questions that the judge may have. You are welcome to attend at your own expense. If you file an objection, you do not 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 that is not a requirement.

21. MAY I SPEAK AT THE FINAL APPROVAL HEARING?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file with the Clerk of the Court and serve upon Lead Class Counsel and Defendants' Counsel (at the addresses listed above in question __), a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear"). Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than _____. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that you intend to present to the Court in connection with the Final Approval Hearing.

IF YOU DO NOTHING

22. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing, and the Court approves the Settlement, you will be bound by its terms. Unless you exclude yourself, you will not be able to file a lawsuit or be part of any other lawsuit asserting claims against Defendants or any others involved in marketing and selling the Covered Products concerning or relating to the claims and factual allegations that were or could have been raised in the Action. The complete Settlement Agreement is available at *www.XHoseClassSettlement.com* and more specifically describes the released claims at page ___, Section __.

As long as you do not request exclusion from the Settlement Class, you may be entitled to a payment or an extended warranty as described in Section __ if you properly submit a claim form. **You must complete and submit a claim form postmarked no later than _____ or your claim will not be considered and will be rejected.**

GETTING MORE INFORMATION

23. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

This notice summarizes the proposed Settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by visiting *www.XHoseClassSettlement.com*, by writing to the Settlement Administrator at XHose Class Settlement, c/o A.B. Data Ltd, PO Box 170300, Milwaukee, WI 53217-8091, or by calling 1-866-545-1007. By visiting the website at *www.XHoseClassSettlement.com* or calling the number listed above, you will find answers to common questions about the Settlement, a claim form, plus other information to help you determine whether you are a Settlement Class Member and whether you are eligible for a payment or other consideration.

Preliminary Approval Order – **Exhibit D** to Settlement in Bergman et. al. v. DAP Products Inc., United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

VICKY BERGMAN et al. Plaintiffs, v. DAP PRODUCTS INC. et al. Defendants.	)	Civil Action No. 14-cv-03205-WDQ

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND PROVISIONALLY CERTIFYING A SETTLEMENT CLASS (the "PRELIMINARY APPROVAL ORDER" or "ORDER")

WHEREAS, this Preliminary Approval Order addresses the settlement reached in *Vicky Bergman et al. v. DAP Products Inc. et al.*, No. 14-cv-03205-WDQ, which was consolidated with *Carton et. al. v. DAP Products Inc. et al.*, No. 14-cv-04015, *Joseph v. DAP Products, Inc. et al.*, Case No. 15-cv-00016, and *Dumone v. Blue Gentian, LLC et al.*, No. 14-cv-04046, all of which are pending in the United States District Court for the District of Maryland (collectively, the "Action").

WHEREAS, the Parties have entered into a Settlement Agreement, which the Court has considered in accordance with Rule 23 of the Federal Rules of Civil Procedure;

WHEREAS, after having considered the Settlement Agreement and the Plaintiffs' Motion for Preliminary Approval thereof, the Motion for Preliminary Approval is hereby **GRANTED**, as follows:

1. This Order, except as otherwise indicated herein, hereby incorporates by reference the definitions of the Settlement Agreement as though fully set forth herein, and all terms used herein shall have the same meaning as set forth in the Settlement Agreement.

2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby conditionally certifies and approves for settlement purposes a nationwide Settlement Class (sometimes hereinafter referred to as simply the "Class"):

> All persons who purchased Covered Products in the United States, its territories, or at any United States military facility or exchange from January 1, 2012 through December 29, 2015. Excluded from the Settlement Class are all persons who validly opt out of the Settlement Class in a timely manner; counsel of record (and their respective law firms) for the Parties; Defendants and any of their parents, affiliates, and subsidiaries and all of their respective employees, officers, and directors; the presiding judge in the Consolidated Class Action or Separate Actions, and all of his immediate family and judicial staff. "Covered Products" means all products bearing the brand name XHose, including the XHose, XHose Pro, and XHose Pro Extreme, including all sizes thereof, that have been designed, marketed, advertised, sold, manufactured, and/or distributed by any of the Released Parties.

3. The Court provisionally approves Plaintiffs Vicky Bergman, Michael Carton, Cynthia Finnk, Rocco Lano, Laurina Leato, Marilyn Listander, Roger Mammon, William Dumone and Amy Joseph as Class Representatives.

4. The Court also finds that Bryan L. Clobes, CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP, and Joseph G. Sauder, CHIMICLES & TIKELLIS LLP, are experienced and adequate counsel for purposes of these settlement approval proceedings, and hereby designates them Lead Counsel for the Settlement Class. The Court further finds that Katrina Carroll, LITE DEPALMA GREENBERG, LLC; Gillian L. Wade, MILSTEIN ADELMAN, LLP; Thomas A. Zimmerman, Jr., ZIMMERMAN LAW OFFICES, P.C.; James P. Ulwick, KRAMON & GRAHAM, P.A.; and Andrew D. Freeman, BROWN GOLDSTEIN LEVY, are experienced and adequate counsel for purposes of these settlement approval proceedings, and hereby designates them and Lead Counsel as Class Counsel for the Settlement Class. Any Settlement Class Member (sometimes referred to hereinafter as "Class Members") may enter an appearance in the action, at his or her

own expense, either individually or through counsel of his or her own choice. However, if Settlement Class Members do not enter an appearance, they will be represented by Class Counsel.

5. The Court hereby preliminarily approves the proposed Settlement upon the terms and conditions set forth in the Settlement Agreement. The Court preliminarily finds that the Settlement is within the range of reasonableness, or the range of possible approval, necessary for preliminary approval by the Court. The Court finds that the requirements of Federal Rule of Civil Procedure, Rules 23(a) and 23(b)(3) are met and that the Settlement terms are fair, adequate, and reasonable as to all Settlement Class Members in light of the benefits to be conferred upon Settlement Class Members, including substantial payments to be made to Settlement Class Members if the Settlement receives final approval, as balanced against the probable outcome of further litigation given the risks relating to liability and damages.

6. It further appears that extensive and costly investigation and research has been conducted such that counsel for the Parties at this time are reasonably able to evaluate their respective positions, and that settlement at this time will avoid substantial additional costs by all parties, as well as the delay and risks that would be presented by the further prosecution of the above-titled action. It further appears to the Court that the Settlement Agreement was reached only after arm's-length negotiations over the course of several months an in two separate, in-person mediation sessions with a respected mediator—the Honorable Frederic Smalkin (ret.) of JAMS.

7. The Court approves as to form and content the Notices submitted by the parties (Exhibits C, E, G, H, and J to the Settlement Agreement) and finds that the Notice procedures described in Section IV of the Settlement Agreement meet all applicable requirements of law,

including the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and that they provide the best notice practicable under the circumstances, and are hereby approved. The Settlement Administrator shall commence to provide notice by publishing the Publication Notices no later than forty (45) days after entry of this Order, and the Settlement Administrator and Parties shall otherwise comply with the Notice procedures set forth in Section IV of the Settlement Agreement.

8. Defendants, or the Settlement Administrator acting on behalf of Defendants for this purpose, shall serve upon the appropriate State official of each State in which a Settlement Class Member resides and the appropriate Federal official, a notice of the Settlement in compliance with 28 U.S.C. Section 1715(b).

9. Prior to the Final Approval Hearing, the Settlement Administrator and/or, as appropriate, the Parties, shall file proof, by declaration, of compliance with the Notice procedures set forth in Section IV of the Settlement Agreement.

10. Any Class Member who wishes to be excluded from the Class must send to the Settlement Administrator by U.S. Mail (XHose Settlement c/o AB Data Ltd, PO Box 170300, Milwaukee, WI 53217-8091) a personally signed letter including his or her (a) full name, (b) current address, (c) a clear statement communicating that he or she elects to be excluded from the Class, does not wish to be a Class Member, and elects to be excluded from any judgment entered pursuant to the Settlement, (d) his or her signature, and (e) the case name and case number (*Bergman. v. DAP Products Inc.*, No. 14-cv-03205-WDQ). A Settlement Class Member can exclude only himself or herself from the Settlement Class, and shall not be allowed to request that another individual or a group be excluded. Any request for exclusion or opt out must be postmarked on or before _____, 2016 [**90 days after date of Preliminary**

Approval Order]. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Settlement Class Member's exclusion request has been timely submitted. In the event that the postmark is illegible, the exclusion request shall be deemed untimely unless it is received by the Settlement Administrator within three (3) calendar days of the Objection/Exclusion Deadline. The Settlement Administrator or parties shall file a list with the Court of all timely requests for exclusion no later than _____ **[10 days before the Final Approval Hearing**].

11. If the Court grants final approval to this Settlement Agreement, any potential Settlement Class Member who has not submitted a timely written request for exclusion from the Class on or before _____, 2016 [**45 days after the Publication Notice begins**], shall be bound by all terms of Settlement Agreement (including without limitation the release in Section III.D., thereof) and the Final Approval Order and Final Judgment in this Action.

12. To object to the Settlement, a Settlement Class Members must do so in writing and the objection must be filed on or before _____, 2016 [**45 days after the Publication Notice begins**], with the Clerk of Court, 101 West Lombard Street, Baltimore, Maryland 21201. Any Settlement Class Member may file a written objection with the Court through the Court's Case Management/Electronic Case Files (CM/ECF) system or through any other method in which the Court will accept filings. An objection properly filed through the Court's CM/ECF system shall be deemed to have been served on all counsel. If the objection is filed in a manner other than through the Court's CM/ECF system, then it must also be served contemporaneously therewith on each of the following via U.S. mail **and** email:

Class Counsel	Defendants' Counsel
Joseph G. Sauder Chimicles & Tikellis LLP One Haverford Centre 361 West Lancaster Ave. Haverford, PA 19041 Email: JosephSauder@chimicles.com; **and** Bryan L. Clobes Cafferty Clobes Meriwether & Sprengel LLP 1101 Market Street Philadelphia, PA 19107 Email: bclobes@caffertyclobes.com	Howard A. Slavitt Coblentz Patch Duffy & Bass LLP One Montgomery Street, Suite 3000 San Francisco, CA 94104 Email: hslavitt@cpdb.com

Only Settlement Class Members may object to the Settlement. To object, a Settlement Class Member must provide the following information in writing: (i) full name, current address, and current telephone number; (ii) name of the Covered Product purchased by the objecting Settlement Class Member; (iii) documentation or attestation sufficient to establish membership in the Settlement Class including when and where the Covered Product was purchased; and (iv) a statement of all grounds for the objection accompanied by any legal or factual support for the objection. Any Settlement Class Member objecting to the Settlement shall also state in the objection (a) whether he or she is represented by counsel, and, if so, identify that counsel by name, firm name, and address, (b) a list of all other objections submitted by the objector or the objector's counsel to any class action settlements submitted in any state or federal court in the previous three (3) years, including the case name, the jurisdiction in which it was filed, and the docket number, or, alternatively, if the Settlement Class Member and his or her counsel has not objected to any other class action settlements in the previous three (3) years, he or she shall affirmatively state this in the objection. The date of the postmark on the mailing envelope or a legal proof of service accompanied and a file-stamped copy of the submission shall be the exclusive means used to determine whether an objection has been timely filed and served. In the

event that the postmark is illegible, the objection shall be deemed untimely unless it is received by the counsel for the Parties within three (3) calendar days of the Objection Deadline. By filing an objection, the objecting Settlement Class Member agrees to submit to the jurisdiction of the Court for discovery relating to his or her objection. An objection that does not meet all of these requirements will be deemed invalid and will be overruled.

13. Subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the Settlement should not be approved as fair, adequate, and reasonable, or object to Plaintiffs' petition for attorneys' fees, costs and expenses or payment of Class Representative incentive awards. The objecting Class Member must file with the Clerk of the Court and serve upon Class Counsel and Defendants' Counsel (at the addresses listed above in paragraph 12, above), a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") on or before _____, 2016 [**45 days after the Publication Notice begins**].

14. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Any Class Member who does not provide a Notice of Intention to Appear in complete accordance with these deadlines and specifications will not be allowed to speak or otherwise present any views at the Final Approval Hearing.

15. Class Counsel shall file their Motion for Attorneys' Fees and Expenses by no later than _____, 2016 [**10 days before Final Approval Hearing**].

16. The Final Approval hearing will be held before this Court on _____, 2016, at _____ [a.m./p.m.] at 101 W. Lombard Street, Baltimore, MD 21201, to determine

whether the settlement of the Action pursuant to the terms and conditions of the Stipulation of Settlement should be approved as fair, reasonable and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e). The Court will also rule on Class Counsel's application for an award of attorneys' fees, costs, and expenses and incentive awards (the "Fee Application") for Plaintiffs at that time. Class Counsel and/or Defendants shall, by _____ [**10 days before Final Approval Hearing**], file briefs in support of Final Approval of the Settlements and/or for the Fee Application. Class Counsel and/or Defendants shall, at least five (5) business days before the Final Approval Hearing, file any responses to any written objections submitted to the Court by Settlement Class Members in accordance with the Settlement Agreement.

17. Pending determination of whether the Settlement should be finally approved, all proceedings in the Consolidated Class Action and Separate Actions, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this Order, are hereby stayed.

18. In the event the Court does not grant final approval to the Settlement, or in the event the Settlement Agreement is terminated in accordance with its terms, is vacated, or fails to become effective for any reason, this Order and all orders entered in connection herewith shall become null and void, and shall not be used or referred to for any purposes whatsoever in the Consolidated Class Action or Separate Actions or in any other case or controversy; in such event the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement, including that the provisional certification of the Settlement Class

pursuant to this Order shall be vacated automatically and Defendants shall have retained all rights to contest class certification.

19. In summary, the deadlines set by this Order are as follows:

Date	**Event**
Add date **[45 days after date of Preliminary Approval Order]**	Beginning of Publication Notice and other methods of notice
Add date **[90 days after date of Preliminary Approval Order]**	Deadline for Settlement Class Members to Exclude Themselves
Add date **[90 days after date of Preliminary Approval Order]**	Deadline for Settlement Class Members to Object and/or to File a Notice of Intention to Appear at Final Approval Hearing
Add date **[10 days before Final Approval Hearing]**	Briefs in support of Final Approval, Attorneys' Fees and Costs, and Class Representative Incentive Awards to be filed
Add date **[5 business days before the Final Approval Hearing]**	Responses to Objections to be filed
_____, 2016	Final Approval Hearing

The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class, except to instruct counsel for the Parties to post any such extensions on the Settlement website. Settlement Class Members must check the settlement website (www.XhoseClassSettlement.com) regularly for updates and further details regarding any extensions of these deadlines or dates.

20. Class Counsel and Defense Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notices and other exhibits that they jointly agree are reasonable or necessary.

21. All further proceedings in the Consolidated Class Action and Separate Actions shall be stayed except such proceedings necessary to review, approve, and implement this Settlement.

SO ORDERED THIS _____ OF _____, 2016.

_____
The Honorable William D. Quarles
United States District Judge

Publication Notice – **Exhibit E** to Settlement in Bergman et. al. v. DAP Products Inc., United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ

If you bought an XHose, you could receive benefits from a class action settlement.

The proposed class action settlement *Bergman et. al. v. DAP Products Inc., et. al.,* (the "Settlement") is pending in the United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ. The Settlement relates to the XHose, XHose Pro and XHose Pro Extreme (collectively, the "Covered Products"). The class action alleges that some of the advertisements for the Covered Products were false and misleading, that the Covered Products are defective, and that Defendants have breached express and implied warranties for the Covered Products. Defendants deny all allegations of wrongdoing. The Court has made no determination of liability or wrongdoing.

You may be included in the Settlement if you purchased a Covered Product at any time from January 1, 2012 to December _, 2015, in the United States, its territories or any U.S. military exchange.

What are your Options?

File a Claim: Purchasers of the Covered Products who are dissatisfied with their purchase and submit a claim form may receive a monetary payment or an extended warranty. In order to stay in the Settlement Class and receive payment, you must submit a claim form online at www.XHoseClassSettlement.com or by mail no later than **Month DD, 2016**. The payment amount will be based on the number of Covered Products you purchased and whether you return the hose ends. Payments are $30 for each Covered Product you bought if you return the hose ends, and up to $15 for each Covered Product you bought if you do not return the hose ends. For details go to the website listed below.

Exclude yourself: If you don't want to be legally bound by the Settlement, you must exclude yourself by **Month DD, 2016**. If you exclude yourself, you cannot receive a payment as part of this Settlement but you would keep any rights you may have to participate in another lawsuit about these claims.

Object: Objections may also be filed with the Court and served on Lead Class Counsel and Defense Counsel by **Month DD, 2016**.

Do Nothing: If you do nothing, you will remain in the class and not be eligible for payment.

The Court will hold a fairness hearing in this case on _____ at ___ in Courtroom __ of the United States District Court, 101 West Lombard Street, Baltimore, MD 21201, to consider granting final approval to the Settlement, including the relief to Class Members, payment of Class Counsels' attorney's fees and expenses of up to $1.1 million and up to $2,000 for each of the nine Class Representatives. You will be able to view Class Counsels' request at the website below after it is filed. You may appear at the hearing, but you are not required to do so.

This Notice is only a summary. Please see the detailed notice at www.XHoseClassSettlement.com, call 1-866-545-1007, or write to the Settlement Administrator at XHose Class Settlement, c/o A.B. Data Ltd, PO Box 170300, Milwaukee, WI 53217-8091 for additional information on your rights, options and benefits.

1-866-545-1007
www.XHoseClassSettlement.com

Promissoy Note – **Exhibit F** to Settlement in Bergman et. al. v. DAP Products Inc., United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ

CONFESSED JUDGMENT
PROMISSORY NOTE

[$1,118,000.00]

_____, 2016
Baltimore, Maryland

FOR VALUE RECEIVED, **JOSEPH G. SAUDER** (hereafter "Mr. Sauder"), **individually and on behalf of CHIMICLES & TIKELLIS, LLP** (hereafter "Chimicles & Tikellis"), their address being One Haverford Centre, 361 West Lancaster Avenue, Haverford, PA 19041 **and BRYAN L. CLOBES** (hereafter "Mr. Clobes")**, individually and on behalf of CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP** (hereafter "Cafferty Clobes"), their address being 1101 Market Street, Philadelphia, PA 19107 (Mr. Sauder, Chimicles & Tikellis, Mr. Clobes, and Cafferty Clobes are hereinafter collectively referred to as the "Makers"), absolutely and unconditionally promise, jointly and severally, to pay to the order of **NATIONAL EXPRESS, INC**, a corporation organized under the laws of the state of Connecticut with its principal place of business located at 2 Morgan Avenue, Norwalk, CT 06851 (National Express, Inc. is hereafter referred to as the "Holder") the principal sum of [**One Million One Hundred Eighteen Thousand and 00/100 Dollars ($1,118,000.00)**] (the "Principal Amount"). This Confessed Judgment Promissory Note (the "Note") will mature and the entire unpaid balance of the Principal Amount, together with any applicable unpaid interest amounts pursuant to Section 4 below, shall become due and payable within fifteen (15) days of the following event: If, for any reason, including as a result of any appeal, proceedings on remand, and/or successful collateral attack, either (A) the Final Judgment approving the terms of that certain Settlement Agreement and Release (the "Settlement Agreement"), a copy of which is attached as Exhibit A, hereto, is vacated or materially modified, or (B) the amounts awarded as attorneys' fees, costs and expenses or as incentive awards pursuant to Section III.C of the Settlement Agreement (attached as Exhibit A) are lowered, overturned, or reduced. If neither of the events contained in subpart (A) or subpart (B) of the preceding sentence arises and, instead, the "Effective Date" as defined in Section I.N. of the Settlement occurs, then this Note shall not mature and shall be discharged in full and extinguished as of the Effective Date.

MAKERS JOINTLY AND SEVERALLY COVENANT AND AGREE AS FOLLOWS:

1. **Payment.** All payments under this Note, including applicable interest, if any pursuant to Section 4, below, shall be paid in lawful money of the United States of America either by cashier's or bank check or equivalent immediately available good funds draft made payable to **NATIONAL EXPRESS, INC.**, and delivered during regular business hours to Howard A. Slavitt, Coblentz Patch Duffy & Bass LLP, One Montgomery Street, Suite 300, San Francisco, CA 94104, or at such other place as the Holder of this Note may at any time or from time to time designate in writing to Makers.

2. **CONFESSED JUDGMENT.** IF THIS NOTE IS NOT PAID WHEN DUE (INCLUDING ANY APPLICABLE GRACE PERIOD) OR ANY OTHER DEFAULT SHALL OCCUR HEREUNDER, MAKERS AUTHORIZE ANY CLERK OF ANY COURT OF RECORD OR ANY ATTORNEY TO ENTER IN ANY COURT (AS OF ANY TERM) OF COMPETENT JURISDICTION IN MARYLAND, WITHOUT PRIOR HEARING OR NOTICE, JUDGMENT BY CONFESSION AGAINST MAKERS, JOINTLY AND SEVERALLY, OR MAKERS' ASSIGNEES (IF HOLDER CONSENTS TO ASSIGNMENT PURSUANT TO SECTION 8, BELOW), AND IN FAVOR OF HOLDER OR ITS ASSIGNEES FOR THE ENTIRE PRINCIPAL AMOUNT OF THIS NOTE THEN REMAINING UNPAID, WITH INTEREST ON THE PRINCIPAL AMOUNT AT ANY TIME OUTSTANDING AT THE DEFAULT RATE SPECIFIED IN SECTION 4 BELOW AND ANY OTHER SUMS DUE HEREUNDER, TOGETHER WITH COSTS OF SUIT AND REASONABLE ATTORNEY'S FEES WITHOUT STAY OF EXECUTION OR RIGHT OF APPEAL. MAKERS EXPRESSLY WAIVE AND RELEASE TO THE EXTENT PERMITTED BY LAW ALL ERRORS AND ALL RIGHTS OF EXEMPTION, APPEAL, STAY OF EXECUTION, INQUISITION AND EXTENSION UPON ANY LEVY ON REAL ESTATE OR PERSONAL PROPERTY TO WHICH MAKERS MAY OTHERWISE BE ENTITLED UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE OR POSSESSION OF THE UNITED STATES OF AMERICA NOW IN FORCE OR WHICH MAY HEREAFTER BE PASSED, AS WELL AS THE BENEFIT OF ANY AND EVERY STATUTE, ORDINANCE, OR RULE OF COURT WHICH MAY LAWFULLY BE WAIVED CONFERRING UPON MAKER ANY RIGHT OR PRIVILEGE OF EXEMPTION, APPEAL, STAY OF EXECUTION, OR SUPPLEMENTARY PROCEEDINGS, OR OTHER RELIEF FROM THE ENFORCEMENT OR IMMEDIATE ENFORCEMENT OF A JUDGMENT OR RELATED PROCEEDINGS ON A JUDGMENT. THE AUTHORITY AND POWER TO APPEAR FOR AND ENTER JUDGMENT AGAINST MAKER OR MAKERS' ASSIGNEES SHALL BE EXERCISABLE CONCURRENTLY IN ONE OR MORE JURISDICTIONS AND NO SINGLE EXERCISE OF THE FOREGOING POWER TO CONFESS JUDGMENT SHALL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE INVALID, VOIDABLE OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED, AND IT MAY BE EXERCISED FROM TIME TO TIME, IN

THE SAME OR DIFFERENT JURISDICTONS, AS OFTEN AS THE HOLDER OF THIS NOTE SHALL ELECT, UNTIL SUCH TIME AS THE HOLDER OF THIS NOTE SHALL HAVE RECEIVED PAYMENT IN FULL OF ALL INDEBTEDNESS DUE TO THE HOLDER OF THIS NOTE. MAKERS ACKNOWLEDGE THAT INDEPENDENT LEGAL COUNSEL HAS REVIEWED THIS PROVISION AND ADVISED THEM AND THAT MAKERS HAVE KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY ASSENTED TO THIS PROVISION.

3. **Default.** If payment in whole or in part of any amount provided for hereunder is not timely made when due, this Note shall be in default. The Holder shall give notice of the default to the Makers ("Notice of Default") pursuant to Section 6, below. If such default shall continue for ten (10) calendar days from the date of providing written notice pursuant to Section 6 (the "Cure Period"), then, at the sole and absolute discretion of the Holder, upon notice to Makers the entire unpaid principal balance, all unpaid costs, fees and expenses hereof (including reasonable attorney's fees), and accrued interest thereon at the default rate as provided in Section 4 of this Note beginning from the date of default, plus any other sums due hereunder, may be declared and shall then become at once due and payable in full and, in addition, the holder hereof may pursue any and all other rights, remedies, and recourses available to it by law.

4. **Default Rate of Interest.** Upon default hereunder with or without demand or notice, interest shall accrue and be payable upon the entire unpaid Principal Amount at the default rate of six percent (6%) per annum calculated on the basis of three hundred sixty (360) days factor applied to the number of actual days beginning from the date of default until all amounts due and payable, including the Principal Amount together with interest thereon and unpaid costs, fees (including reasonable attorney's fees), and expenses, if any, are paid in full. Cost and expenses incurred and payable by Makers hereunder shall be payable on demand. For avoidance of doubt, Holder and Makers confirm that unless and until this Note is in default as specified in Section 3, above, no interest, unpaid costs, fees, or expenses (including reasonable attorney's fees), shall accrue or be payable.

5. **Costs and Expenses of Collection.** If this Note is forwarded to an attorney for collection after maturity and the Holder of this Note prevails in a suit to enforce this Note, the Makers shall be liable for and shall pay all costs and expenses of collection, including reasonable attorney's fees as specified in Section 2 above.

6. **Notice**. Any Notice of Default or demand upon any or all of the Makers which must be given or made hereunder or with reference to this Note shall be sufficient notice or demand if made in writing and personally delivered, sent via facsimile, or mailed via overnight delivery, express mail, certified mail or registered mail, return receipt requested, addressed to each of Joseph G. Sauder and Chimicles & Tikellis, LLP, One Haverford Centre, 361 West Lancaster Avenue, Haverford, PA 19041, fax: (610) 649-3633, and Bryan L. Clobes, Cafferty Clobes Meriwether & Sprengel LLP, 1101 Market Street, Philadelphia, PA 19107, fax (215) 864-2810. A notice that is sent by overnight delivery or express mail shall be deemed given twenty-four (24) hours after being sent. A notice that is sent by certified mail or registered mail, return receipt

requested, shall be deemed given seventy-two (72) hours after it is mailed. A notice that is sent via facsimile shall be deemed given upon transmission.

7. **Waiver of Demand, Etc.** With the exception of the Notice of Default that must be provided pursuant to Sections 3 and 6 in the event of default, as to this Note, Makers waive all applicable exemption rights, whether under any state constitution, homestead laws or otherwise, and also waive valuation and appraisement, presentment, protest and demand, notice of protest, demand and dishonor, and non-payment of this Note, and expressly agree that the maturity of this Note, or any payment due hereunder, may be extended from time to time without in any way affecting the liability of Makers.

MAKERS HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVE, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF THE HOLDER ON THIS NOTE, ANY AND EVERY RIGHT MAKERS MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (III) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT MAKERS FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST THE HOLDERS WITH RESPECT TO ANY ASSERTED CLAIM.

8. **Assignment.** This Note may be assigned by the Holder at any time or from time to time. This Note shall inure to the benefit of and be enforceable by the Holder and its successors and assigns and any other person to whom the Holder may grant an interest in Makers' obligations to the Holder, and shall be binding and enforceable against each Maker and his or its successors and assigns. This Note may not be assigned by Makers without the prior written consent of the Holder.

9. **Severability.** In the event that any provision (or any part of any provision) contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this Note, but this Note shall be construed as if such invalid, illegal or unenforceable provision (or part thereof) had never been contained herein, but only to the extent it is invalid, illegal or unenforceable.

10. **Governing Law.** Makers hereby acknowledge, consent and agree that the provisions of this Note and the rights of all parties mentioned herein shall be governed by the laws of the State of Maryland (without regard to principles of conflict of law), both in interpretation and performance. Makers acknowledge and warrant that this Note is to be treated for all purposes, including choice of law purposes, as though it was executed and delivered within the geographic boundaries of the State of Maryland, even if it was, in fact, executed and delivered elsewhere.

11. **Jurisdiction.** Makers submit to the jurisdiction of the federal court sitting in the State of Maryland and submit to the venue of the U.S. District Court for the District of Maryland, Northern Division. All actions and proceedings arising out of or relating to this Note shall be heard and determined first in the U.S District Court for the District of Maryland, Northern Division as long as such court has jurisdiction over such action, or, in the alternative, if it does not, then all such actions and proceedings shall be heard and determined in the State of Maryland Circuit Court for Baltimore City.

12. **Mutual Waiver of Jury Trial.** This Note is given in connection with the Settlement Agreement and Release (attached as Exhibit A). That Agreement concerns the consolidated action filed in the United States District Court for the District of Maryland, Northern Division, styled as *Vicky Bergman, et al. v. Matt Hornung, et al v. DAP Products, Inc., et al.*, Civil Action No. 1:14-cv-04015-WDQ (the "Litigation"). The Holder and Makers IRREVOCABLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ALL RIGHTS TO TRIAL BY JURY OF ANY AND ALL CLAIMS ARISING UNDER THIS NOTE, whether any such claims be now existing or hereafter arising, now known or unknown. This waiver is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. In making this waiver, the Holder and Makers acknowledge and agree that any and all claims made by the Holder against Makers and all claims made by Makers against the Holder shall be heard by a judge of a court of proper jurisdiction and shall not be heard by a jury. The Holder and Makers acknowledge and agree that this waiver of trial by jury is a material element of the consideration for this transaction. The Holder and Makers, with advice of independent counsel selected at their own free will, each acknowledges that they are knowingly, intentionally, and voluntarily waiving a legal right by agreeing to this waiver provision. The Holder and Makers each further acknowledges that they have read and understand the meaning and consequences of this waiver provision. The Holder and Makers are hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver.

13. **No Waiver.** No waiver of any power, privilege, right or remedy (hereinafter collectively referred to as "Rights") hereunder shall be effective unless in writing. No failure or delay on the part of the Holder in exercising any Rights hereunder, or under any other instrument executed by Makers, shall operate as a waiver thereof, and no single or partial exercise of any such Rights shall preclude other or further exercise thereof, or the exercise of any other Rights. Waiver by the Holder of any default by Makers shall not constitute a waiver of any subsequent defaults, but shall be restricted to the default so waived. The acceptance by the Holder of any late payment hereunder or any payment hereunder that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of any Rights, or nullify any prior exercise of any Rights. All Rights of the Holder hereunder are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all Rights given hereunder or in or by any other instrument or any laws now existing or hereafter enacted.

14. **Time of the Essence.** Makers acknowledge that TIME IS OF THE ESSENCE with respect to the payment and performance of this Note.

15. **Indebtedness.** This Note is given and accepted as evidence of indebtedness only, and not in payment or satisfaction of any indebtedness or obligation.

16. **Offset.** Makers' obligations to the Holder hereunder shall be unconditional and without right of offset.

17. **Joint and Several Obligations.** The obligations of Makers under this Note shall be joint and several. Mr. Sauder, Chimicles & Tikellis, Mr. Clobes, and Cafferty Clobes shall each be jointly and severally liable for all of the obligations of Makers under this Note. Without limiting the generality of the foregoing, (i) whenever this Note imposes an obligation on the Makers the entire obligation shall be imposed on each of Mr. Sauder, Chimicles & Tikellis, Mr. Clobes and Cafferty Clobes; (ii) whenever Makers make a grant, agreement, covenant, representation, warranty, waiver, or etc., in this Note, such grant, agreement, covenant, representation, warranty, waiver, or etc., shall be deemed made by each of Mr. Sauder, Chimicles & Tikellis, Mr. Clobes and Cafferty Clobes; (iii) whenever this Note provides that the Holder shall have a right or remedy against Makers, the Holder shall have such right or remedy against each of Mr. Sauder, Chimicles & Tikellis, Mr. Clobes and Cafferty Clobes; (iv) the occurrence of a default as to any of Mr. Sauder, Chimicles & Tikellis, Mr. Clobes and Cafferty Clobes, or all four of them, or the failure of Mr. Sauder, Chimicles & Tikellis, Mr. Clobes and Cafferty Clobes, or all four of them, to comply with any provision of this Note in any instance shall be considered to be a default or failure to comply by any and all of Mr. Sauder, Chimicles & Tikellis, Mr. Clobes and Cafferty Clobes; and (v) in the event of any ambiguity or question whether, in any instance, the term "Makers" refers only to any or several of Mr. Sauder, Chimicles & Tikellis, Mr. Clobes and Cafferty Clobes or all four of them, the ambiguity or question shall be resolved in favor of the Holder. The Holder may settle, compromise, or release the obligations of any or several of Mr. Sauder, Chimicles & Tikellis, Mr. Clobes and Cafferty Clobes without thereby compromising or releasing the obligations of any of the other(s) of them.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, Makers have each executed this Note on the day and year first-above written, intending it to be a sealed instrument.

WITNESS:

_____

MAKERS

_____(SEAL)
Joseph G. Sauder, individually

ATTEST:

_____

CHIMICLES & TIKELLIS, LLP

_____(SEAL)
By: Joseph G. Sauder
Title: Partner

_____

_____(SEAL)
Bryan L. Clobes, individually

ATTEST:

_____

CAFFERTY CLOBES MERIWETHER & SPRENGEL, LLP

_____(SEAL)
By: Bryan L. Clobes
Title: Partner

Summary Notice/Postcard Notice – **Exhibit G** to Settlement in Bergman et. al. v. DAP Products Inc., United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ

[Exhibit to Settlement]

Legal Notice

If you purchased an XHose between January 1, 2012, and December___, 2015, you can participate in a class action settlement.

1-866-545-1007

www.xhoseclasssettlement.com

XHose Class Settlement
c/o A.B. Data Ltd
P.O. Box 170300
Milwaukee, WI 53217-8091

First-Class Mail
US Postage
Paid
Permit #XX

*MMMMM02180
32624*

Postal Service: Please do not markbarcode

1234567890

JANE CLAIMANT
123 4TH AVE
APT 5
SEATTLE, WA 67890

LEGAL NOTICE ORDERED BY U.S. DISTRICT COURT OF MARYLAND

There is a proposed Class Action Settlement (the "Settlement") relating to products called the XHose, XHose Pro and XHose Pro Extreme (collectively, the "Covered Products"). The lawsuit (the "Action") claims that some ads for the Covered Products were false, that the Covered Products are defective, and that express and implied warranties for the Covered Products were breached. The Defendants in the Action deny all allegations of wrongdoing and liability. The parties agreed to a Settlement that they believe is a fair, reasonable, and adequate compromise of their respective positions.

The Settlement includes all persons who purchased a Covered Product in the U.S., its territories or any U.S. military exchange from January 1, 2012, to December , 2015. Together these people are called the "Class Members."

Purchasers of the Covered Products who submit a claim form may receive a monetary payment or an extended warranty. The payment amount will be based on the number of Covered Products you purchased and whether you return the hose ends with the claim form. Payments are $30 for each Covered Product you bought if you return the hose ends, and up to $15 for each Covered Product you bought if you do not.

What are Your Options?

To receive a Settlement benefit, Class Members must submit a completed Claim Form on-line or postmarked by **Month 00, 0000. You can obtain a Claim Form at www.xhoseclasssettlement.com or by calling 1-866-545-1007**. Defendants have also agreed to payment of attorney's fees and expenses of up to $1.1 million for Class Counsel and up to $2,000 for each of the nine Plaintiffs.

If you **submit a claim form or do nothing**, you are choosing to remain a Class Member and will be legally bound by all orders and judgments of the Court. You will not be able to sue Defendants about the legal claims resolved by this Settlement. If you stay in the Class, **you may object to the Settlement**. Objections and requests to appear are due by Month 00, 2016. If you don't want to stay in the Class, you must **submit a request for exclusion** by Month 00, 2016. If you exclude yourself, you can't get a payment from this Settlement, but you keep any rights you may have to sue Defendants for the same claims. The U.S. District Court of Maryland will hold a hearing in this case (Bergman et. al. v. DAP Products Inc., *et. al.*, Case No. 14-cv-03205-WDQ) on Month 00, 0000 at 00:00_.m. to consider whether to approve: the Settlement; Class Counsel's request for fees and expenses; and the payments to the Class Representatives. For more information and to obtain or fill out the claim form, go to **www.xhoseclasssettlement.com**, or call toll free **1-866-545-1007**.

Banner Notice – **Exhibit H** to Settlement in Bergman et. al. v. DAP Products Inc., United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ

Exhibit H – Form of Internet Banner Ads:

"If you bought an XHose expandable hose in the United States, you may be eligible to receive benefits from a class action settlement."

List of Retailers to Which a Request to Post Notices Will Be Sent – **Exhibit I** to Settlement in Bergman et. al. v. DAP Products Inc., United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ

Exhibit I to Class Action Settlement

Bergman v. DAP Products, Inc., U.S. District Court Maryland, Case No. 14-cv-03205-WDQ

List of Retailers that Defendants NEI or DAP Will Request to Post a Summary Form of Notice

Defendants NEI or DAP shall send a request via email or U.S. mail to the below-listed brick and mortar retailers that sold the Covered Products to consumers and request that they post a Summary Notice of the Settlement in each store where the Covered Products were sold for the duration of the Claims Period. Other than those that made *de minimus* sales, the reasonably known brick and mortar retailers that sold the Covered Products and to which the request will be sent are the following:

Ace Hardware
Amazon
Bed Bath & Beyond
Boscov's Dept. Store
Do It Best
Here Today Stores
The Home Depot
Menards
Meijer
The Pep Boys
Rite Aid
Ross
Target
Tractor Supply
Tru Serv/True Value
Walmart

Form of Request To Send To Retailers – **Exhibit J** to Settlement in Bergman et. al. v. DAP Products Inc., United States District Court for the District of Maryland, Court Case No. 14-cv-03205-WDQ

Exhibit __ to Settlement Agreement in *Bergman et. al. v. DAP Products Inc., et. al.*, Maryland District Court Case No. 14-cv-03205-WDQ

Month __, 2016

Via Email

Contact Name
Retailer
[address]
[email address]

Re: *Bergman et. al. v. DAP Products Inc., et. al*, No. 1:14-cv-04015 (D. Md.); Notice of Class Action Settlement

Dear _____:

I am writing to you because you are a retailer who has sold the XHose, XHose Pro and/or XHose Pro Extreme (the "Covered Products") to consumers in the United States.

DAP Products Inc. and National Express, Inc. ("Defendants") have entered into a proposed settlement of the above-captioned class action lawsuit against them. The lawsuit alleges that some advertisements for the Covered Products were false, that the Covered Products are defective, and that express and implied warranties for the Covered Products were breached. Defendants deny all allegations of wrongdoing and liability. The court hearing the case did not decide which side was right. Defendants and the parties agreed to the settle the lawsuit to avoid the costs of continued litigation.

In addition to other forms of notice being provided pursuant to the settlement agreement, Defendants have also agreed to request that retailers who sold the Covered Products post a summary notice of the settlement in the form of a flyer (the "Flyer") in each of its stores for the duration of the Claims Period, which is from _____ to _____. Defendants request that You post the Flyers in your stores.

We are enclosing a copy of the Flyer. We are happy to provide you with paper copies of the Flyer upon your request.

Please contact me if you have any questions about the foregoing.

Very truly yours,

Representative of
[**DAP Products Inc**.] or [**National Express, Inc**.]

EXHIBIT 2

Cafferty Clobes Meriwether&Sprengel LLP

Chicago • Philadelphia • Ann Arbor
www.caffertyclobes.com

I. Overview

Cafferty Clobes Meriwether & Sprengel LLP, which has offices in Chicago, Philadelphia, and Ann Arbor, combines the talents of attorneys with a wide range of experience in complex civil litigation. The skill and experience of CCMS attorneys has been recognized on repeated occasions by courts that have appointed these attorneys to major positions in complex multidistrict or consolidated litigation. As the cases listed below demonstrate, these attorneys have taken a leading role in numerous important actions on behalf of investors, employees, consumers, businesses, and others. In addition, CCMS attorneys are currently involved in a number of pending class actions, as described on the Firm's web page.

II. Consumer and Other Class Actions

Apple iPhone Warranty Litigation (N.D. Cal.) On January 29, 2010, CCMS first of its kind class action against Apple in the Superior Court of Santa Clara County, with the goal of achieving a nationwide recovery for all similarly situated Apple consumers. The suit challenged Apple's policy of denying warranty claims based on liquid contact indicators located in headphone jacks and dock connector ports of iPhones and iPod touches. Similar class actions were subsequently filed in federal courts on behalf of Apple consumers. Our firm, together with other counsel representing the state and federal plaintiffs, achieved a $53 million global settlement of the state and federal cases. On May 8, 2014, the Honorable Judge Richard Seeborg granted final approval to the settlement.

Traxler v. PPG Industries, Inc., (N.D. Ohio) No. 1:15-cv-00912-DAP. Cafferty Clobes is co-lead counsel in a consumer class action brought on behalf of purchasers of defective deck stain.

Darisse v. Nest Labs, Inc., (N.D. Cal.) No. 5:14-cv-01363-BLF. Cafferty Clobes is leading an action alleging consumer fraud in connection with sale of "smart" thermostats.

Klug v. Watts Regulator Co., (D. Neb.) No. 8:15-cv-00061-JFB-TDT. Cafferty Clobes is leading an action on behalf of consumers that alleges consumer fraud and breach of warranty against the manufacturer of water heaters sold with defective

Sharp v. Watts Regulator Co., (D. Mass.) No. 1:14-cv-14080-ADB. Cafferty Clobes is leading an action on behalf of consumers that alleges consumer fraud and breach of warranty against the manufacturer of water heaters sold with defective flexible braided stainless steel water heater supply lines.

Sabol v. Ford Motor Co., (E.D. Pa.), No. 2:14-cv-06654-HB. Cafferty Clobes is sole counsel in a nationwide consumer class action alleging breach of express and implied warranty, violation of the Magnuson-Moss Warranty Act, and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law on behalf of owners of certain vehicles containing 2.0- and 1.6-L EcoBoost

branded engines. Most recently, Cafferty Clobes successfully opposed Ford's motion for summary judgment and the litigation is ongoing.

Meyers v. Garmin Int'l, Inc., (D. Kan.), No. 13-cv-2416. Cafferty Clobes serves as lead counsel in nationwide class action under Kansas law alleging that defendant's products use defective batteries prone to early failure.

Hadley v. Chrysler Group, LLC, (E.D. Mich.), No. 13-cv-13665. Cafferty Clobes is lead counsel in a consumer class case asserting breach of warranty and consumer fraud claims brought on behalf of Jeep Cherokee owners whose vehicles contain defective airbags.

In re Midway Moving & Storage, Inc.'s Charges to Residential Customers, No. 03 CH 16091 (Cir. Ct. Cook Cty., Il.). A class action on behalf of customers of Illinois' largest moving company whose final moving charges exceeded their pre-move written estimates. Plaintiffs alleged violation of the Illinois Consumer Fraud Act, breach of contract and breach of the covenant of good faith and fair dealing. A litigation class was certified and upheld on appeal. *See Ramirez v. Midway Moving and Storage, Inc.*, 880 N.E.2d 653 (Ill. App. 2007). On the eve of trial, the case settled on a class-wide basis. On October 12, 2012, the Court (Judge Richard J. Elrod) granted final approval and stated that CCMS is "highly experienced in complex and class action litigation, vigorously prosecuted the Class' claims, and achieved an excellent Settlement for the Class under which Class members will receive 100% of their alleged damages."

Grider v. Keystone Health Plan Central Inc. et al., Civ. No. 01-5641 (E.D. Pa.). A class action filed on behalf of medical service providers who rendered services to patients insured by the defendants. Plaintiffs alleged that the defendants improperly denied, delayed or reduced payments to medical providers for the services they rendered to class members. On June 13, 2008, Judge Gardner, of the Eastern District of Pennsylvania, granted final approval to two settlements that fully resolved the case. Under the terms of the settlement agreement, the defendants were required to pay class members almost $7.5 million and make substantial changes to their business practices. The estimated value of the business practice changes was $48 million.

Supnick v. Amazon.Com, Inc., and Alexa Internet, No. 00-CV-221 (W.D. Wash.). Class action against internet browsing service provider and its parent for violating user privacy by secretly collecting personally identifying information of users without informed consent. On July 27, 2001, the court granted final approval to a settlement that included programmatic and monetary relief. The FTC endorsed the settlement and elected to not prosecute defendants based, in part, on the relief achieved in the settlement with plaintiffs.

PrimeCo Personal Communications, L.P. v. Illinois Commerce Commission, No. 98 CH 5500 (Circuit Court of Cook County, Ill.). This class action sought recovery of an unconstitutional infrastructure maintenance fee imposed by municipalities on telephone and other telecommunications customers in the State of Illinois. On August 1, 2002, the court granted final approval to a settlement of wireless telephone and pager customers' claims against the City of Chicago worth over $31 million.

Walter Cwietniewicz d/b/a Ellis Pharmacy, et al. v. Aetna U.S. Healthcare, June Term, 1998, No. 423 (Pa. Common Pleas). On May 25, 2006, Judge Stephen E. Levin of the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, Civil Trial Division, granted final approval to a settlement of a class action brought for the benefit of Pennsylvania pharmacies that participated in U.S. Healthcare's capitation program and had money withheld from capitation payments during the second half of 1996 and the first half of 1997. The lawsuit alleged that participating pharmacies should have received certain semi-annual payments for these two six-month periods in order to be properly compensated for dispensing prescriptions to plan members. At the final approval hearing, Judge Levin noted that "this particular case was as hard-fought as any that I have participated in" and with respect to the Class's reaction to the settlement achieved as a result of our firm's work: ". . . a good job, and the reason there should be no objection, they should be very very happy with what you have done."

Gersenson v. Pennsylvania Life and Health Insurance Guaranty Assoc., No. 3468 (Pa. Common Pleas). Class action against state insurance guaranty association brought on behalf of Pennsylvania resident insureds of Executive Life Insurance Co. for violating due process, and failing to pay required benefits and other monies. Plaintiff's motion for summary judgment was granted and the court awarded plaintiff and the Class more than $18 million. The judgment was upheld on appeal.

Supnick v. Amazon.Com, Inc., and Alexa Internet, No. 00-CV-221 (W.D. Wash.). Class action against internet browsing service provider and its parent for violating user privacy by secretly collecting personally identifying information of users without informed consent. On July 27, 2001, the court granted final approval to a settlement that included programmatic and monetary relief. The FTC endorsed the settlement and elected to not prosecute defendants based, in part, on the relief achieved in the settlement with plaintiffs.

Curley v. Cumberland Farms Dairy, Inc., No. 86-5057 (D.N.J.). Class action arising out of convenience store chain's treatment of employees to prevent losses. In September 1993, the court approved a settlement in the amount of $5.5 million. In a November 12, 1993 opinion awarding attorneys fees, Judge Stanley S. Brotman noted that "petitioners [including Mr. Faucher and Ms. Meriwether] demonstrated in this case great skill and determination in representing their clients through the many stages of this lengthy and complex litigation."

III. Antitrust Class Actions and Litigation

In re Insurance Brokerage Antitrust Litig., MDL No. 1663 (D.N.J.). CCMS was appointed Co-Lead Counsel for plaintiffs who alleged that insurance brokers and insurers conspired to allocate customers in a complicated scheme to maximize their own revenues at the expense of class members. The litigation concluded in August 2013 with final approval of last of five separate settlements that, in aggregate, exceeded $270 million. *See*: (1) *In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 542227, (D.N.J. Feb. 16, 2007) (approving $121.8 million settlement with the Zurich Defendants), *aff'd*, 579 F.3d 241(3d Cir. 2009); (2) *In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 2589950 (D.N.J. Sept. 4, 2007) (approving $28 million settlement with the Gallagher

Defendants), *aff'd*, 579 F.3d 241(3d Cir. 2009); (3) *In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 2009 WL 411877 (D.N.J. Feb. 17, 2009) (approving $69 million settlement with Marsh & McLennan Cos. Inc.); (4) *In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 2012 WL 1071240 (D.N.J. Mar. 30, 2012) (approving $41 million settlement with several defendants, including AIG, Hartford, Fireman's Fund and Travelers); and (5) *In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 297 F.R.D. 136 (D.N.J. 2013) (approving $10.5 million settlement with ACE defendants, Chubb defendants and Munich Re defendants). Judge Claire C. Cecchi recently observed that "Class counsel include notably skilled attorneys with experience in antitrust, class actions and RICO litigation." *Id.* at *17; *see also In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 1652303, at *6 (D.N.J. June 5, 2007).

State of Indiana v. McWane, Civ. No. 12-6667 (D.N.J.). CCMS serves as counsel for the State of Indiana Attorney General, Greg Zoeller, in a case alleging that certain ductile iron pipe fittings ("DIPF") manufacturers conspired to fix prices and monopolize the market for DIPF through a series of agreements spanning several years. The action further alleges that Indiana municipalities and political subdivisions overpaid for DIPF during that period as a result of the manufacturers' anticompetitive conduct. The Honorable Anne E. Thompson denied the Defendants' motions to dismiss the State of Indiana's complaint as to all claims for damages as a result of those alleged overcharges. *In re Ductile Iron Pipe Fittings ("DIPF") Indirect Purchaser Litig.*, Civ. No. 12-169, 2013 WL 5503308 (D.N.J. Oct. 2, 2013).

In re New Motor Vehicles Canadian Export Antitrust Litig., MDL No. 1532 (D. Me.). CCMS was appointed Class Counsel, together with other firms, in multidistrict litigation alleging that automobile manufacturers and other parties conspired to prevent lower priced new motor vehicles from entering the American market during certain periods, thereby artificially inflating prices. *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 270 F.R.D. 30, 35 (D. Me. 2010). On February 3, 2012, the court approved a $37 million settlement with Toyota and the Canadian Automobile Dealers' Association. *In re New Motor Vehicles Canadian Export Antitrust Litig.*, MDL 1532, 2012 WL 379947 (D. Me. Feb. 3, 2012).

In re TriCor Indirect Purchaser Antitrust Litig., No. 05-360 (D. Del). CCMS was appointed Co-Lead Counsel for consumer and third-party payor plaintiffs who alleged that defendants engaged in unlawful monopolization in the market for fenofibrate products, which are used to treat high cholesterol and high triglyceride levels. *See Abbott Laboratories v. Teva Pharmaceuticals, Inc.*, 432 F. Supp. 2d 408 (D. Del. 2006) (denying defendants' motions to dismiss). On October 28, 2009, the court granted final approval to a $65.7 million settlement (an amount that excludes an initial payment to opt-out insurance companies).

Nichols v. SmithKline Beecham Corp., No. Civ.A.00-6222 (E.D. Pa.). CCMS served as Co-Lead Counsel for consumers and third-party payors who alleged that the manufacturer of the brand-name antidepressant Paxil misled the U.S. Patent Office into issuing patents that protected Paxil from competition from generic substitutes. On April 22, 2005, Judge John R. Padova granted final approval to a $65 million class action settlement for the benefit of consumers and third-party payors who paid

for Paxil. *Nichols v. SmithKline Beecham Corp.*, No. Civ.A.00-6222, 2005 WL 950616, 2005-1 Trade Cas. (CCH) ¶74,762 (E.D. Pa. April 22, 2005). *See also Nichols v. SmithKline Beecham Corp.*, No. Civ.A.00-6222, 2003 WL 302352, 2003-1 Trade Cas. (CCH) ¶ 73,974 (E.D. Pa. Jan. 29, 2003) (denying defendant's motion to strike expert testimony).

In re Relafen Antitrust Litig. No. 01-12239 (D. Mass.). On September 28, 2005, Judge William G. Young of the United States District Court for the District of Massachusetts granted final approval to a $75 million class action settlement for the benefit of consumers and third-party payors who paid for branded and generic versions of the arthritis medication Relafen. In certifying an exemplar class of end-payors, the court singled out our Firm as experienced and vigorous advocates. *See In re Relafen Antitrust Litig.*, 221 F.R.D. 260, 273 (D. Mass. 2004). In the opinion granting final approval to the settlement, the court commented that "Class counsel here exceeded my expectations in these respects [*i.e.*, experience, competence, and vigor] in every way." *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85 (D. Mass. 2005); *see also id.* at 80 ("The Court has consistently noted the exceptional efforts of class counsel."). The litigation resulted in many significant decisions including: 286 F Supp. 2d 56 (D. Mass. 2003) (denying motion to dismiss); 346 F. Supp. 2d 349 (D. Mass. 2004) (denying defendant's motion for summary judgment).

VisaCheck/MasterMoney Antitrust Litig., Master File No. 96-5238 (E.D.N.Y.). CCMS's client, Burlington Coat Factory Warehouse, and the other plaintiffs alleged that Visa and MasterCard violated the antitrust laws by forcing retailers to accept all of their branded cards as a condition of acceptance of their credit cards. On June 4, 2003, the parties entered into settlement agreements that collectively provided for the payment of over $3.3 billion, plus widespread reforms and injunctive relief. On December 19, 2003, the Settlement was finally approved by Judge John Gleeson. On January 4, 2005, the Second Circuit Court of Appeals affirmed Judge Gleeson's decision.

In re Warfarin Sodium Antitrust Litig., MDL 98-1232 (D. Del.). Multidistrict class action on behalf of purchasers of Coumadin, the brand-name warfarin sodium manufactured and marketed by DuPont Pharmaceutical Company. Plaintiffs alleged that the defendant engaged in anticompetitive conduct that wrongfully suppressed competition from generic warfarin sodium. On August 30, 2002, the Court granted final approval to a $44.5 million settlement. *See In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231 (D. Del. 2002). On December 8, 2004, the Third Circuit upheld approval of the settlement. 391 F.3d 516 (3d Cir. 2004).

In re Cardizem CD Antitrust Litig., MDL No. 1278 (E.D. Mich.). Multidistrict class action on behalf of purchasers of Cardizem CD, a brand-name heart medication manufactured and marketed by Hoechst Marion Roussel, Inc. Plaintiffs alleged that an agreement between HMR and generic manufacturer Andrx Corp. unlawfully stalled generic competition. On October 1, 2003, Judge Nancy Edmunds granted final approval to an $80 million settlement for the benefit of consumers, third-party payors and state attorneys general. *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508 (E.D. Mich. 2003), *app. dismissed*, 391 F.3d 812 (6th Cir. 2004). The litigation resulted in several significant decisions, including: 105 F. Supp. 618 (E.D. Mich. 2000) (denying motions to dismiss); 105 F. Supp. 2d 682 (E.D. Mich. 2000) (granting plaintiffs' motions for partial summary judgment and holding

agreement *per se* illegal under federal and state antitrust law); 200 F.R.D. 326 (E.D. Mich. 2001) (certifying exemplar end-payor class); 332 F.3d 896 (6th Cir. 2003) (upholding denial of motion to dismiss and grant of partial summary judgment).

Blevins v. Wyeth-Ayerst Labs., No. 324380 (Sup. Ct. San Francisco Cty. CA). Plaintiff alleged that Wyeth-Ayerst unlawfully monopolized the market for conjugated estrogen drug products through exclusive contracts with health benefit providers and pharmacy benefit managers. On October 30, 2007, the court approved a $5.2 million settlement for a class of California purchasers of Wyeth-Ayerst's conjugated estrogen drug product.

In re DDAVP Indirect Purchaser Antitrust Litig., No. 05-2237 (S.D.N.Y.). CCMS was appointed Co-Lead Counsel for consumer and third-party payor plaintiffs who alleged that defendants the defendant pharmaceutical manufacturers relied upon sham patents and sham patent litigation to preclude generic competition. On December 18, 2013, the court entered an order approving a $4.75 million settlement.

House v. GlaxoSmithKline PLC, No. 2:02-cv-442 (E.D. Va.). Plaintiffs alleged that GSK, which makes Augmentin, misled the United States Patent Office into issuing patents to protect Augmentin from competition from generic substitutes. On January 10, 2005, the court entered and order approving a $29 million settlement for the benefit of consumers and third-party payors.

In re Synthroid Marketing Litig., MDL No. 1182 (N.D. Ill). This multidistrict action arises out of alleged unlawful activities with respect to the marketing of Synthroid, a levothyroxine product used to treat thyroid disorders. On August 4, 2000, the court granted final approval of a consumer settlement in the amount of $87.4 million. *See* 188 F.R.D. 295 (N.D. Ill. 1999). On August 31, 2001, approval of the settlement was upheld on appeal. *See* 264 F.3d 712 (7th Cir. 2001).

In re Lorazepam & Clorazepate Antitrust Litig., MDL 1290 (D.D.C.). This multidistrict class action arose out of an alleged scheme to corner the market on the active pharmaceutical ingredients necessary to manufacture generic clorazepate and lorazepam tablets. After cornering the market on the supply, defendants raised prices for generic clorazepate and lorazepam tablets by staggering amounts (*i.e.*, 1,900% to over 6,500%) despite no significant increase in costs. On February 1, 2002, Judge Thomas F. Hogan approved class action settlements on behalf of consumers, state attorneys general and third party payors in the aggregate amount of $135 million. *See* 205 F.R.D. 369 (D.D.C. 2002).

In re Lithotripsy Antitrust Litig., No. 98 C 8394 (N.D. Ill.). Antitrust class action arising out of alleged stabilization of urologist fees in the Chicago metropolitan area. In granting class certification, Judge George Lindberg stated that "Miller Faucher [as CCMS was then known] is experienced in antitrust class action litigation and defendants do not dispute that they are competent, qualified, experienced and able to vigorously conduct the litigation." *Sebo v. Rubenstien*, 188 F.R.D. 310, 317 (N.D. Ill. 1999). On June 12, 2000, the court approved a $1.4 million settlement. *In re Lithotripsy Antitrust Litig.*, 2000 WL 765086 (N.D. Ill. June 12, 2000).

Brand-Name Prescription Drug Indirect Purchaser Actions. Coordinated antitrust actions against the major pharmaceutical manufacturers in ten states and the District of Columbia. The actions were brought under state law on behalf of indirect purchaser consumers who obtained brand name prescription drugs from retail pharmacies. In 1998, the parties agreed to a multistate settlement in the amount of $64.3 million, which was allocated among the actions. In approving state-specific settlements, the courts were highly complementary of the performance of counsel. In approving the Wisconsin Settlement, for example, Judge Moria G. Krueger commented that "this Court, in particular, has been helped along every step of the way by some outstanding lawyering and I believe that applies to both sides. ... You can hardly say that there's been anything but five star attorneys involved in this case". *Scholfield v. Abbott Laboratories*, No. 96 CV 0460, Transcript of Hearing at 31 & 33 (Cir. Ct., Dane Co., Wisc., Oct. 5, 1998). *See also McLaughlin v. Abbott Laboratories*, No. CV 95-0628, Transcript of Proceedings at 28 (Super. Ct., Yavapai County, Oct. 28, 1998) ("I think the quality of counsel is excellent."). Reported decisions include: *Goda v Abbott Labs*, No. 01445-96, 1997 WL 156541, 1997-1 Trade Cas. (CCH) ¶71,730 (Superior Court D.C., Feb 3, 1997) (granting class certification); *In re Brand Name Prescription Drugs Antitrust Litig. (Holdren, Yasbin, Meyers)*, 1998 WL 102734, 1998-1 Trade Cas. (CCH) ¶72,140 (N.D. Ill., Feb. 26, 1998) (remanding three actions to state courts).

In Re Cellular Phone Cases, Coordination Proceeding No. 4000 (Superior Court, San Francisco County, Cal.). Class action under California's Cartwright Act, which alleged price-fixing of cellular telephone service in the San Francisco area market. On March 27, 1998, the court granted final approval to a settlement that provides $35 million in in-kind benefits to the Class and a release of debt in the amount of $35 million.

Garabedian v. LASMSA Limited Partnership, No. 721144 (Superior Court, Orange County, Cal.). Class action under California's Cartwright Act which alleged price-fixing of cellular telephone service in the Los Angeles area market. By order of January 27, 1998, the court granted final approval to two settlements that provide $165 million in in-kind benefits.

Lobatz v. AirTouch Cellular, 94-1311 BTM (AJB) (S.D. Cal.) Class action alleging price-fixing of cellular telephone service in San Diego County, California. On June 11, 1997, the court approved a partial settlement in the amount of $4 million. On October 28, 1998, the Court approved another settlement that entailed $4 million worth of in-kind benefits. In an order entered May 13, 1999, Judge Moskowitz stated that "[t]hrough the course of this complex and four-year long litigation, Class Counsel demonstrated in their legal briefs and arguments before this Court their considerable skill and experience in litigating anti-trust class actions..."

In re Airline Ticket Commission Antitrust Litig., MDL No. 1058 (D. Minn.) Antitrust class action on behalf of travel agents against the major airlines for allegedly fixing the amount of commissions payable on ticket sales. The action settled for $87 million. *See* 953 F. Supp. 280 (D. Minn. 1997).

IV. Commodities and Securities Class Actions and Derivative Litigation

In re Kaiser Group International, Case No. 00-2263 (Bankr. D. Del.). On December 7, 2005, Chief Judge Mary F. Walrath of the United States Bankruptcy Court for the District of Delaware granted final approval to a settlement that produced 175,000 shares of common stock for a class of former shareholders of ICT Spectrum Contructors, Inc. (a company that merged with ICF Kaiser Group International and ICF Kaiser Advanced Technology in 1998). The settlement followed Judge Joseph J. Farnan's ruling which upheld the Bankruptcy Court's decision to award common stock of the new Kaiser entity (Kaiser Group Holdings, Inc.) to the Class of former Spectrum shareholders based on contractual provisions within the merger agreement. *See Kaiser Group International, Inc. v. James D. Pippin (In re Kaiser Group International)*, 326 B.R. 265 (D. Del. 2005).

Danis v. USN Communications, Inc., No. 98 C 7482 (N.D. Ill.). Securities fraud class action arising out of the collapse and eventual bankruptcy of USN Communications, Inc. On May 7, 2001, the court approved a $44.7 million settlement with certain control persons and underwriters. Reported decisions: 73 F. Supp. 2d 923 (N.D. Ill. 1999); 189 F.R.D. 391 (N.D. Ill. 1999); 121 F. Supp. 2d 1183 (N.D. Ill. 2000).

In re Sumitomo Copper Litig., 96 Civ. 4584(MP) (S.D.N.Y.). Class action arising out of manipulation of the world copper market. On October 7, 1999, the court approved settlements aggregating $134.6 million. *See* 189 F.R.D. 274 (S.D.N.Y. 1999). In awarding attorneys' fees, Judge Milton Pollack noted that it was "the largest class action recovery in the 75 plus year history of the Commodity Exchange Act". 74 F. Supp. 2d 393 (S.D.N.Y. Nov. 15, 1999). Additional reported opinions: 995 F. Supp. 451 (S.D.N.Y. 1998); 182 F.R.D. 85 (S.D.N.Y. 1998).

In re Exide Corp. Sec. Litig., No. 98-CV-60061 (E.D. Mich.). Securities fraud class action arising out of sales and financial practices of leading battery manufacturer. On September 2, 1999, Judge George Caram Steeh approved a settlement in the amount of $10.25 million.

In re Caremark International Inc. Sec. Litig., No. 94 C 4751 (N.D. Ill.). Securities fraud class action arising out of Caremark's allegedly improper financial arrangements with physicians. On December 15, 1997, the court approved a $25 million settlement.

In re Nuveen Fund Litig., No. 94 C 360 (N.D. Ill.). Class action and derivative suit under the Investment Company Act arising out of coercive tender offerings in two closed-end mutual funds. On June 3, 1997, the court approved a $24 million settlement. Magistrate Judge Edward A. Bobrick commented that "there's no question that the attorneys for the plaintiffs and the attorneys for the defendants represent the best this city [Chicago] has to offer ... this case had the best lawyers I've seen in a long time, and it is without question that I am committed to a view that their integrity is beyond reproach." (6/3/97 Tr. at 5-6.)

In re Archer-Daniels-Midland, Inc. Sec. Litig., No. 95-2287 (C.D. Ill.). Securities fraud class action arising out of the Archer-Daniels-Midland price-fixing scandal. On April 4, 1997, the court approved a $30 million settlement.

In re Soybean Futures Litig., No. 89 C 7009 (N.D. Ill.). A commodities manipulation class action against Ferruzzi Finanziaria SpA and related companies for unlawfully manipulating the soybean futures market in 1989. In December 1996, the court approved a settlement in the amount of $21.5 million. *See* 892 F. Supp. 1025 (N.D. Ill. 1995).

In re Prudential Securities Incorporated Limited Partnerships Litig., MDL 1005 (S.D.N.Y.). A massive multidistrict class action arising out of Prudential Securities Incorporated's marketing and sale of speculative limited partnership interests. On November 20, 1995, the court approved a partial settlement, which established a $110 million settlement fund. *See* 912 F. Supp. 97 (S.D.N.Y. 1996). On August 1, 1997, the court approved a partial settlement with another defendant in the amount of $22.5 million.

Feldman v. Motorola, Inc., No. 90 C 5887 (N.D. Ill.) Securities fraud class action against Motorola, Inc. and its high ranking officers and directors. In June 1995, the court approved a $15 million settlement. *See* [1993 Transfer Binder], Fed. Sec. L. Rep. (CCH) ¶97,806 (N.D. Ill. Oct. 14, 1993).

In re Salton/Maxim Sec. Litig., No. 91 C 7693 (N.D. Ill.). Class action arising out of public offering of Salton/Maxim Housewares, Inc. stock. On September 23, 1994, Judge James S. Holderman approved a $2.4 million settlement, commenting that "it was a pleasure to preside over [the case] because of the skill and the quality of the lawyering on everyone's part in connection with the case."

Horton v. Merrill Lynch, Pierce Fenner & Smith, Inc., No. 91-276-CIV-5-D (E.D.N.C.). A $3.5 million settlement was approved on May 6, 1994 in this securities fraud class action arising out of a broker's marketing of a speculative Australian security. The Court stated that "the experience of class counsel warrants affording their judgment appropriate deference in determining whether to approve the proposed settlement." 855 F. Supp. 825, 831 (E.D.N.C. 1994).

In re International Trading Group, Ltd. Customer Account Litig., No. 89-5545 RSWL (GHKx) (C.D. Cal.). Class action alleging violation of the anti-fraud provisions of the Commodity Exchange Act. The case settled with individual defendants and proceeded to a judgment against the corporate entity. In that phase, the Court awarded the Class a constructive trust and equitable lien over the corporation's assets and entered a $492 million judgment in favor of the Class. Approximately $7 million was recovered on the judgment.

Hoxworth v. Blinder Robinson & Co., No. 88-0285 (E.D. Pa.). Securities fraud and RICO class action resulting from alleged manipulative practices and boiler-room operations in the sale of "penny stocks." *See* 903 F.2d 186 (3rd Cir. 1990). Judgment in excess of $70 million was obtained in February, 1992. The judgment was affirmed by the Third Circuit Court of Appeals, 980 F.2d 912 (3rd Cir. 1992). *See also Hoxworth v. Blinder*, 74 F.3d 205 (10th Cir. 1996).

Benfield v. Steindler, No. C-1-92-729 (S.D. Ohio). Shareholder derivative suit on behalf of General Electric Corporation shareholders arising out of the sale of military aircraft engines to the government

of Israel in violation of U.S. law. On December 10, 1993, the Court approved a settlement in the amount of $19.5 million. In a January 13, 1994 Report to the Court Concerning Attorney Fees, the Special Master characterized the firm as a "leading litigation" firm, and stated that the "representation given plaintiff was first rate".

In re Structural Dynamics Research Corporation Derivative Litig., No. C-1-94-650 (S.D. Ohio). Shareholder derivative action arising out of Structural Dynamics's inaccurate reporting of its financial performance. In approving a $5 million settlement on July 19, 1996, Judge Herman J. Weber stated that "in my mind the highest professional service a lawyer can give to his or her client is to terminate the litigation as early as possible and at the most economical cost to your clients. The Court finds that the lawyers in this case have done just that..."

V. Employee Benefits Class Actions

Polk v. Hecht, No. 92-1340 (D.N.J.). Class action brought under the Employee Retirement Income Act of 1974 on behalf of all participants or beneficiaries under the Mutual Benefit Life Savings and Investment Plan for Employees on July 16, 1991, when Mutual Benefit Life Insurance Corporation was placed in rehabilitation. On April 12, 1995, Judge Harold A. Ackerman approved a $4.55 million settlement, noting that "[c]ounsel did a darn good job, and the record should be clear on that point, that that is the opinion, for what it's worth, of this Court."

In re Unisys Retiree Medical Benefits ERISA Litig., MDL No. 969 (E.D. Pa). Class action on behalf of over 25,000 retirees of Unisys Corporation concerning entitlement to retiree medical benefits. After trial, in November 1994, Chief Judge Cahn approved a partial settlement in the amount of $72.9 million. *See* 57 F.3d 1255 (3d Cir. 1995).

VI. Individual Biographies

PARTNERS

PATRICK E. CAFFERTY graduated from the University of Michigan, with distinction, in 1980 and obtained his J.D., *cum laude*, from Michigan State University College of Law in 1983. In law school, he received the American Jurisprudence Award for study of commercial transactions law. From 1983 to 1985, he served as a prehearing attorney at the Michigan Court of Appeals and as a Clerk to Judge Glenn S. Allen, Jr. of that Court. Mr. Cafferty is admitted to the state bars of Michigan and Illinois, the Supreme Court of the United States, the United States Courts of Appeals for the Federal, Second, Third, Fourth, Sixth and Seventh Circuits, and the United States District Courts for the Eastern District of Michigan, Western District of Michigan, and Northern District of Illinois. In *In Telesphere Sec. Litig.*, Judge Milton I. Shadur characterized Mr. Cafferty's credentials as "impeccable." 753 F. Supp. 176, 719 (N.D. Ill. 1990). In 2002, Mr. Cafferty was a speaker at a forum in Washington D.C. sponsored by Families USA and Blue Cross/Blue Shield styled "Making the Drug Industry Play Fair."

At the Health Action 2003 Conference in Washington D.C., Mr. Cafferty was a presenter at a workshop titled "Consumers' Access to Generic Drugs: How Brand Manufacturers Can Derail Generic Drugs and How to Make Them Stay on Track." In December 2010, Mr. Cafferty made a presentation on indirect purchaser class actions at the American Antitrust Institute's annual antitrust enforcement conference. *See Indirect Class Action Settlements* (Am. Antitrust Inst., Working Paper No. 10-03, 2010), *available at* http://www.antitrustinstitute.org/~antitrust/content/aai-working-paper-no-10-03-indirect-purchase-settlement-data-base-updated. Mr. Cafferty has attained the highest rating, AV®, from Martindale-Hubbell.

BRYAN L. CLOBES is a 1988 graduate of the Villanova University School of Law and received his undergraduate degree from the University of Maryland. While in law school, Mr. Clobes clerked for Judge Arlin M. Adams of the United States Court of Appeals for the Third Circuit and Judge Mitchell H. Cohen of the United States District Court for the District of New Jersey. In 1988, after graduating from law school, Mr. Clobes served as a law clerk to Judge Joseph Kaplan of the Maryland Circuit Court in Baltimore. From 1989 through June, 1992, Mr. Clobes served as Trial Counsel to the Commodity Futures Trading Commission (CFTC) in Washington, D.C. While at the CFTC, he was responsible for investigating and litigating enforcement actions involving all aspects of exchange trading and off exchange fraud, manipulation and illegal trading and other conduct in federal courts around the country. As CFTC Trial Counsel, Mr. Clobes worked closely and coordinated with the DOJ, FBI, Postal Inspection Service and many state regulators. Mr. Clobes practices out of the firm's Philadelphia Office. He has served as lead counsel in dozens of national, commodities, antitrust, consumer, securities,employment, insurance and other commercial class actions throughout the U.S. Mr. Clobes authored *In the Wake of Varity Corp. v. Howe: An Affirmative Duty to Disclose Under ERISA,* 9 DePaul Bus. L.J. 221 (1997). Mr. Clobes has also authored a number of briefs filed with the Supreme Court. Mr. Clobes has attained the highest rating, AV®, from Martindale-Hubbell and has been named a "Pennsylvania Super Lawyer" over ten times. Mr. Clobes is a long-standing member of the bars in New Jersey and Pennsylvania, the Supreme Court of the United States, the United States Courts of Appeals for the Third Circuit, and the United States District Courts for the Eastern District of Pennsylvania, District of New Jersey, and the Eastern District of Michigan.

ELLEN MERIWETHER received her law degree from George Washington University, *magna cum laude*, in 1985. She was a member of the *George Washington Law Review* and was elected to the Order of the Coif. Ms. Meriwether received a B.A. degree, *with highest honors*, from LaSalle University in 1981. She was an adjunct professor at LaSalle University teaching a course in the University's honors program from 1988-1993. Ms. Meriwether is a member of the Bar of the Commonwealth of Pennsylvania and is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the Second, Third, Seventh, Tenth and Eleventh Circuits, and the United States District Court for the Eastern District of Pennsylvania. In 2012 Ms. Meriwether was Chair of the Federal Courts Committee of the Philadelphia Bar Association, and has chaired several of its subcommittees. From 2000-2011, she was the course planner and moderator for the Committee's annual presentation of "My First Federal Trial," an award-winning program that gives young lawyers the opportunity to hear from a panel of federal judges from the Eastern District of Pennsylvania. Ms.

Meriwether is a member of the Board of the Public Interest Law Center of Philadelphia (PILCOP), the Advisory Board of the American Antitrust Institute and the Editorial Board of ANTITRUST, a publication by the section of Antitrust Law of the American Bar Association. She is a frequent presenter and lecturer on topics relating to complex, class action and antitrust litigation and has published a number of articles on those subjects including: *"Comcast Corp. v. Behrend:* Game Changing or Business as Usual?," *Antitrust*, (Vol. 27, No. 3, Summer 2013); "Class Action Waiver And the Effective Vindication Doctrine At the Antitrust/Arbitration Crossroads," *Antitrust*, (Vol. 3, Summer 2012); "The Hazards of *Dukes*: Antitrust Plaintiffs Need Not Fear the Supreme Court's Decision," *Antitrust*, (Vol. 26, No. 1, Fall 2011); "Economic Experts: The Challenges of Gatekeepers and Complexity," *Antitrust*, (Vol. 25, No. 3 Summer 2011); "Putting the 'Squeeze' on Refusal to Deal Cases: Lessons from *Trinko* and *linkLine*," (Vol. 24, No. 2, Spring 2010) and "Rigorous Analysis in Certification of Antitrust Class Actions: A Plaintiff's Perspective." (Vol. 21, No. 3, Summer 2007). Since 2010, Ms. Meriwether has been included in the US News and World Report Publication of "Best Lawyers in America" in the field of Antitrust Law. She has been named a "Pennsylvania Super Lawyer" for the past ten years and has attained the highest rating, "AV", from Martindale-Hubbell.

JENNIFER WINTER SPRENGEL is a 1990 graduate of DePaul University College of Law, where she was a member of the *DePaul University Law Review*. She received her undergraduate degree from Purdue University in 1987. Ms. Sprengel has handled a variety of commercial litigation matters in both state and federal court. Ms. Sprengel is admitted to practice law in Illinois, the United States District Court for the Northern District of Illinois and the United States Court of Appeals for the Third and Seventh Circuits. Ms. Sprengel currently serves as Co-Chair of the Class Action and Derivative Suits Committee of the American Bar Association's Litigation Section.

ANTHONY F. FATA is a 1999 graduate of The Ohio State University College of Law, where he graduated with honors and was elected to the Order of the Coif, served as Managing Editor of The Ohio State Journal on Dispute Resolution, and earned the CALI award for Consumer Law and the CALI Excellence for the Future Award. Mr. Fata received his undergraduate degree from Miami University in 1995. Mr. Fata began his legal career in the trial and white collar practice groups at McDermott Will & Emery. Mr. Fata joined Cafferty Clobes Meriwether & Sprengel LLP in 2003. He has successfully prosecuted a wide range of commodities, securities, antitrust and consumer class actions. He has successfully represented the firm's business clients in a variety of commercial disputes and transactional matters and investor clients in securities arbitrations and regulatory proceedings. Among other publications, Mr. Fata authored *Doomsday Delayed: How the Court's Party-Neutral Clarification of Class Certification Standards in Wal-Mart v. Dukes Actually Helps Plaintiffs*," 62 DePaul Law Review 401 (Spring 2013), *Class Actions: Attaining Settlement Class Certification Under Amchem and Ortiz*, 19 *Product Liability Law & Strategy 1* (2001), and was a contributing author for *IICLE Securities Law*, Chapter 15 – Civil Remedies (2003). Among other speaking engagements, Mr. Fata was a panelist for the 22nd Annual DePaul Law Review Symposium, *Class Action Rollback? Wal-Mart v. Dukes and the Future of Class Action Litigation* (2012), and has been selected to serve as a panelist for the Practising Law Institute's *Internal Investigations: What to Do, and What Not to Do* (2013). Mr. Fata is admitted to the bar in Illinois, as well as the Sixth, Seventh and Ninth Circuit Courts of Appeals, the Northern District of Illinois (including the Trial Bar) and the District of Colorado.

NYRAN ROSE RASCHE received her undergraduate degree *cum laude* from Illinois Wesleyan University in 1995, and earned her law degree from the University of Oregon School of Law in 1999. Following law school, Ms. Rasche served as a clerk to the Honorable George A. Van Hoomissen of the Oregon Supreme Court. She is the author of *Protecting Agricultural Lands: An Assessment of the Exclusive Farm Use Zone System*, 77 Oregon Law Review 993 (1998). Ms. Rasche is admitted to practice in the state courts of Oregon (inactive) and Illinois, as well as the United States District Courts for the Northern District of Illinois and the Southern District of Illinois. She is also a member of the Chicago Bar Association.

CHRISTOPHER B. SANCHEZ is a 2000 graduate of the DePaul University College of Law, where he wrote for the *Journal of Art and Entertainment Law* and was the school's student representative for the Hispanic National Bar Association. He received his undergraduate degree, *cum laude*, from the University of New Mexico in 1996. Mr. Sanchez is admitted to practice in Illinois, as well as the United States District Court for the Northern District of Illinois and United States Court of Appeals for the Seventh Circuit. He is also a member of the Illinois State Bar Association and of the Hispanic National Bar Association.

ASSOCIATES

KELLY L. TUCKER received her law degree from Fordham University School of Law in 2010, where she was the Executive Notes and Articles Editor of the Fordham Journal of Corporate and Financial Law and a member of the Executive Board of Fordham Law Moot Court. While in law school, Ms. Tucker published a Note on the subject of antitrust litigation entitled, *In the Wake of Empagran—Lights out on Foreign Activity Falling under Sherman Act Jurisdiction?*, 15 FORDHAM J. CORP. & FIN. L. 807 (2010) and served as a Judicial Intern to the Honorable Douglas Eaton, a Magistrate Judge in the District Court for the Southern District of New York. She earned her undergraduate degree from the American University Honors Program in 2003. Since joining the firm, Ms. Tucker has had substantial experience in the litigation of complex class actions, including high-level involvement in the prosecution of several consumer class cases. Ms. Tucker joined the firm in 2011.

DANIEL O. HERRERA received his law degree, *magna cum laude*, and his MBA, with a concentration in finance, from the University of Illinois at Urbana-Champaign in 2008. Mr. Herrera received his bachelor's degree in economics from Northwestern University in 2004. Mr. Herrera joined CCMS as an associate in 2011 and is resident in its Chicago, Illinois Office. Prior to joining CCMS, Mr. Herrera was an associate in the trial practice of Chicago-based Mayer Brown LLP, where he defended corporations in securities and antitrust class actions, as well as SEC and DOJ investigations and enforcement actions. Mr. Herrera also routinely handled commercial matters on behalf of corporate clients. Mr. Herrera is licensed to practice in Illinois and before the U.S. District Court for the Northern District of Illinois.

OF COUNSEL

DOM J. RIZZI received his B.S. degree from DePaul University in 1957 and his J.D. from DePaul University School of Law in 1961, where he was a member of the *DePaul University Law Review*. From 1961 through 1977, Judge Rizzi practiced law, tried at least 39 cases, and briefed and argued more than 100 appeals. On August 1, 1977, Judge Rizzi was appointed to the Circuit Court of Cook County by the Illinois Supreme Court. After serving as circuit court judge for approximately one year, Judge Rizzi was elevated to the Appellate Court of Illinois, First District, where he served from 1978 to 1996. Judge Rizzi also teaches at both the undergraduate and graduate level: since 1980, he has been a part-time faculty member of the Loyola University School of Law and, since 1992, he has been a part-time faculty member at the University of Illinois-Chicago. Judge Rizzi became counsel to the firm in October 1996.

Chimicles & Tikellis LLP

Attorneys at Law

Firm Resume

HAVERFORD, PA
361 West Lancaster Avenue
Haverford, PA 19041
Voice: 610-642-8500
Toll Free: 866-399-2487
Fax: 610-649-3633

WILMINGTON, DE
P.O. Box 1035
222 Delaware Avenue
Suite 1100
Wilmington, DE 19899
Voice: 302-656-2500
Fax: 302-656-9053

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Our Attorneys-Partners

Nicholas E. Chimicles

is senior partner and Chairman of the Firm's Executive Committee. Mr. Chimicles is a 1970 graduate of the University of Pennsylvania, where he received a Bachelor of Arts Degree with Honors. Mr. Chimicles graduated in 1973 from the University of Virginia School of Law, where he was a member of the Editorial Board of the University of Virginia Law Review and was the author of several published comments. While attending law school, he co-authored a course and study guide entitled "Student's Course Outline on Securities Regulation," published by the University of Virginia School of Law. Upon graduation from law school, Mr. Chimicles joined a major Philadelphia law firm where he practiced for eight years and specialized in litigation including complex commercial, antitrust and securities fraud cases and served as principal or assistant trial counsel in several matters.

Mr. Chimicles has actively prosecuted major complex litigation, antitrust, securities fraud, breach of fiduciary duty and consumer suits.

Notably, Mr. Chimicles successfully presented for final approval the settlement of a massive consumer litigation involving false advertising and other claims relating to the Honda Civic Hybrid ("HCH") (*Lockabey v. American Honda Motors*, Case No. 37-2010-00087755-CU-BT-CTL), resolving claims with respect to AHM's advertising of fuel efficiency of Model Year 2003-09 HCHs as well as claims arising from a mandatory software modification made by AHM in mid-2010 that adjusted, to the detriment of fuel efficiency, the operation of the integrated motor assist (hybrid) battery. Nearly 500,000 class members are covered by the settlement and the Superior Court of San Diego County estimated the settlement provided more than $170 million in benefits for the Class. The settlement received final approval in a more than 40 page opinion dated March 16, 2012.

The trial of securities class actions is rare and achieving a plaintiff's verdict in such cases is even rarer. Mr. Chimicles was lead trial counsel for a Class of investors in a six-week jury trial of a securities fraud/breach of fiduciary duty case that resulted in a $185 million verdict. *In re Real Estate Associates Limited Partnerships Litigation*, No. CV 98-7035 DDP, was tried in the federal district court in Los Angeles before the Honorable Dean D. Pregerson. On November 15, 2002, the 10 member jury returned a unanimous verdict in favor of the Class (comprising investors in the eight REAL Partnerships) and against the REALs' managing general partner, National Partnership Investments Company ("NAPICO") and the four individual officers and directors of NAPICO. The jury awarded more than $25 million in damages against all five defendants on Count I, the Section 14(a),

Nicholas E. Chimicles cont.

1934 Act, proxy fraud claim and more than $67 million in damages against NAPICO on Count II for breach of fiduciary duty. On November 19, 2002, the jury returned a verdict of $92.5 million in punitive damages against NAPICO. This total verdict of $185 million was among the "Top 10 Verdicts of 2002," as reported by the National Law Journal (verdictsearch.com). The Court upheld in all respects the jury's verdict on liability as to both Count I and Count II, upheld in full the jury's award of $92.5 million in compensatory damages, upheld the Class's entitlement to punitive damages (but reduced those damages to $2.6 million based on the application of California law to NAPICO's financial condition), and awarded an additional $25 million in pre-judgment interest. Based on the Court's decisions on the post-trial motions, the judgment entered in favor of the Class on April 28, 2003 totaled over $120 million, $91 million on Count II and $30 million on Count I.

In 2010, Mr. Chimicles, as principal litigation counsel, negotiated a settlement of a class action challenging the accuracy of a proxy statement that sought (and received) stockholder approval of the merger of an external advisor and property managers by a multi-billion dollar real estate investment trust, Inland Western Retail Real Estate Trust, Inc. (*City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc.*, Case No. 07 C 6174 (N.D. Ill.). The settlement received final federal court approval in November 2010 and provided that the owners of the advisor/property manager entities (who are also officers and/or directors of Inland Western) had to return nearly 25% of the Inland Western stock they received in the merger, such stock having been valued at $90 million at the time of the merger.

In 2006, Mr. Chimicles, as lead counsel, negotiated the settlement of the *CNL Hotels & Resorts, Inc. Securities Litigation*, Case No. 6:04-cv-1231 (M.D. Fla., Orl. Div). The case settled Sections 11 and 12 claims for $35 million in cash and Section 14 proxy claims by significantly reducing the merger consideration by more than $225 million (from $300 million to $73 million) that CNL paid for internalizing its advisor/manager.

In other federal securities fraud action, he served as a lead counsel in the *Hercules Securities Litigation*, Civil Action No. 90-442 (RRM) (D. Del.) ($18 million recovery); *Scott Paper Securities Litigation*, Civil Action No. 90-6192 (E.D. Pa.) ($8 million recovery); *Sunrise Savings & Loan Securities Litigation*, MDL No. 655 (E.D. Pa.) ($15 million recovery); *Storage Technology Corp. Securities Litigation*, Master File No. 84 -F-1981 (D. Colo.) ($18 million recovery); *In re Fiddler's Woods Bondholders Litigation*, Civil Action No. 83-2340 (E.D. Pa.), a bondholders' class action arising out of a default on a $33 million industrial development bond issue (recovery of more than $7 million for the Class); and *Charter Securities Litigation*, Civil Action No. 84-448 Civ-J-12 (M.D. Fla.) (recovery of $7.75 million); *Continental Illinois Corporation Securities Litigation*, Civil Action No. 82 C 4712 (N.D. Ill.) involving a twenty-week jury trial conducted by Mr. Chimicles that concluded in July, 1987 (the Class ultimately recovered nearly $40 million).

Our Attorneys-Partners

Nicholas E. Chimicles cont.

Mr. Chimicles has been a principal counsel in several major litigations that have resulted in precedent-breaking recoveries for classes of limited partners. In addition to the *Real Estate Associates Limited Partnership Litigation*, discussed above, Mr. Chimicles was a member of the Executive Committee in the *Prudential Limited Partnerships Litigation*, MDL 1005 (S.D.N.Y.), where the Class recovered $130 million in settlement from Prudential, and other defendants. Mr. Chimicles was lead counsel in the *PaineWebber Limited Partnerships Litigation*, 94 Civ. 8547 (S.D.N.Y.) in which a $200 million settlement was approved in mid-1997. As co-lead counsel in several litigations involving ML-Lee Acquisition Fund, L.P., ML-Lee Acquisition Fund II, L.P. and ML-Lee Acquisition Fund (Retirement Accounts) II, L.P. (C.A. No. 92-60, 93-494, 94-422 and 95-724) that were prosecuted in the Delaware Federal District Court. Mr. Chimicles (together with partner Pamela Tikellis and financial specialist Kathleen Chimicles) negotiated settlements that resulted in more than $30 million in cash and other benefits to be paid or made available to investors in the various funds. In litigation involving PLM Equipment Growth and Income Funds IV-VII, Mr. Chimicles (together with financial specialist Kathleen Chimicles) was instrumental in negotiating a settlement reached in 2001 that provided both monetary and equitable relief for the limited partners. In February 2002, the Superior Court of Marin County, California, approved the settlement of a case in which Mr. Chimicles was co-lead counsel, involving five public partnerships sponsored by Phoenix Leasing Incorporated and its affiliates and resulting in entry of a judgment in the amount of $21 million. (*In Re Phoenix Leasing Incorporated Limited Partnership Litigation*, Superior Court of the State of California, County of Marin, Case No. 173739).

Mr. Chimicles has represented limited partners who successfully have sought the liquidation of assets or the reorganization of the partnership. For example, in *In re the Mendik Real Estate Limited Partnership*, N.Y. Supreme Ct. No. 97-600185, Mr. Chimicles, as co-lead counsel, negotiated a settlement which provided for the prompt sale of more than $100 million of the partnership's real estate assets. Additionally, as co-lead counsel, Mr. Chimicles, together with partner Pamela Tikellis, negotiated the settlement of a suit filed against the general partners of Aetna Real Estate Associates, L.P., providing for the orderly liquidation of the more than $200 million in that partnership's real estate holdings, the reduction of general partner fees and the payment of a special cash distribution to the limited partners. (*Aetna Real Estate Associates, L.P., Area GP Corporation and Aetna/Area Corporation*, Delaware Chancery Court, New Castle County, Civil Action Nos. 15386-NC and 15393-NC).

Mr. Chimicles has also represented stockholders in suits arising from proposed mergers, acquisitions and hostile takeovers. For example, in *Garlands, Inc. Profit Sharing Plan et al. v. The Pillsbury Company, et al.*, State of Minnesota, County of Hennepin, Fourth Judicial District, Court File No. 88-17834, Mr. Chimicles was a lead counsel in a suit brought to compel Pillsbury's board of directors to negotiate in good faith with Grand Metropolitan and persuaded the court to enjoin a proposed

spin-off of Burger King. Additionally, Mr. Chimicles has represented shareholders in obtaining enhanced consideration for their stock in takeovers or going private transactions. *Randee L. Shantzer, et al. v. Charter Medical Corp., et al.*, Court of Chancery, State of Delaware, New Castle County, Consolidated Civil Action No. 9530; *In re Interstate Bakeries Corporation Shareholders Litigation*, Court of Chancery, State of Delaware, New Castle County, Consolidate Civil Action No. 9263.

In the antitrust field, Mr. Chimicles has acted as a lead and co-lead counsel in numerous class suits. He was co-lead counsel in the *Travel Agency Commission Antitrust Litigation*, (D. Minn.) in which the Firm represented the American Society of Travel Agents, an Alexandria, Virginia-based association that represents more than 9,000 travel agencies nationwide and worldwide in a suit against seven airlines for Section 1 (Sherman Act) violations involving commission cuts. The case was settled in late 1996 for more than $80 million. Mr. Chimicles was also co-lead counsel in the *Insurance Antitrust Litigation*, Case No. C-88-1688 (N.D. Calif.) which charged commercial general liability insurers, domestic and London-based reinsurers and an insurance service organization with violations of the Sherman and Clayton Acts. The case was settled after an earlier dismissal was reversed by the Ninth Circuit, a decision affirmed by the U.S. Supreme Court. *In re Insurance Antitrust Litigation*, 938 F.2d 919 (9th Cir. 1991); *aff'd sub nom. Hartford Fire Insurance Co. v. California*, 113 S.Ct. 2891 (1993).

As an appellate advocate, Mr. Chimicles has handled cases which have protected the rights of victims of securities fraud in bankruptcy proceedings. In cases that he successfully argued before the Courts of Appeals for the Tenth and Eleventh Circuits, due process and notice principles were extended to protect securities purchasers filing claims in bankruptcy cases, *In re Standard Metals Corp.*, 817 F.2d 625 (10th Cir.), *rev'd in part on rehearing*, 839 F.2d 1383 (1987), and it was established that class proofs of claim are allowable in bankruptcy proceedings, *In re the Charter Company*, 876 F.2d 866 (11th Cir. 1989).

Mr. Chimicles has also actively prosecuted suits involving public utilities constructing nuclear plants. He was lead counsel in the *Philadelphia Electric Company Securities Litigation*, Master File No. 85-1878 (E.D. Pa.) and a lead counsel in the *Consumers Power Company Derivative Litigation*, Master File No. 84-CV-3788 AA (E.D. Mich.). Mr. Chimicles was co-lead counsel in the stockholder derivative suit arising from mismanagement claims against former officers of Philadelphia Electric Company involved in the closing of the Peach Bottom Nuclear Plant, a suit which Mr. Chimicles was authorized to bring by a PECO board of directors resolution. *In re Philadelphia Electric Company Derivative Litigation*, Case No. 7090, Court of Common Pleas, Philadelphia County, PA. That case resulted in a recovery of $35 million for the utility company in November 1990.

Mr. Chimicles was also a co-lead counsel in a major environmental litigation, *Ashland Oil Spill Litigation*, Master File M-14670 (W.D. Pa.), involving the claims of

Nicholas E. Chimicles cont.

residents and businesses for damage arising from the largest inland waterway oil spill in history that occurred on January 2, 1988 in Pittsburgh. In 1990, the case was settled upon creation of a claims fund of over $30 million for the class. This and similar environmental suits in which the Firm was involved were the subject of a program, "Toxic Torts May Not Be Hazardous To Your Health: A Lawyer's Guide to Health Survival in Mass Tort Litigation," in which Mr. Chimicles was a principal speaker at this program which was held at the American Bar Association's 1989 Convention in Honolulu.

Mr. Chimicles has acted as special counsel for the City of Philadelphia and the Philadelphia Housing Authority in an action seeking to hold lead pigment manufacturers liable for federally mandated abatement of lead paint in properties owned, managed or operated by the plaintiffs. *City of Philadelphia, et al. v. Lead Industries Ass'n, et al.*, Civil Action No. 90-7064 (E.D. Pa.) and No. 92-1420 (3rd Cir.).

Mr. Chimicles is admitted to practice in the Supreme Court of the United States, numerous federal district and appellate courts, as well as the Supreme Court of Pennsylvania. Mr. Chimicles was appointed in 2011 to a second 3-year term as a Hearing Committee Member of the Disciplinary Board of the Supreme Court of Pennsylvania. He is a member of the American Bar Association (Sections of Litigation; Antitrust; and Corporation, Banking and Business Law), the Pennsylvania Bar Association, and the Philadelphia Bar Association (Federal Courts Committee and various subcommittees). Mr. Chimicles has lectured frequently on securities law at the Rutgers University Law School Camden, the Wharton School Graduate Division of the University of Pennsylvania, New York University, the University of Virginia, and for Prentice Hall Law and Business Publications. Mr. Chimicles has addressed numerous law and accounting conferences, including ALI-ABA, Practising Law Institute, the Pennsylvania Bond Counsel Association and the Pennsylvania Institute of Public Accountants, the Institute for Law and Economic Policy and has also frequently appeared as a speaker in numerous state and national bar association sponsored seminars on topics involving federal securities laws, RICO, class actions, hostile corporate takeovers, and professional ethics. Mr. Chimicles also is a contributor to and member of the advisory boards of various professional publications involving the securities law field. Mr. Chimicles has previously served as a member of the Board of Overseers of the School of Arts and Sciences of the University of Pennsylvania. He is the past President of the National Association of Securities and Commercial Law Attorneys.

Mr. Chimicles serves on the boards of directors of numerous non-profit organizations including the Public Interest Law Committee of Philadelphia; the Shriver Center on Poverty Law (Chicago); the Opera Company of Philadelphia; Pennsylvanians for Modern Courts; and the American Hellenic Institute (Washington, D.C.). Mr. Chimicles was awarded the Ellis Island Medal of Honor in 2004, in recognition of his professional achievements and charitable work.

Our Attorneys-Partners

Pamela S. Tikellis

is a name partner and a member of the Firm's Executive Committee. Ms. Tikellis was born in Lawrence, Kansas and is a 1974 graduate of Manhattanville College, where she received a Bachelor of Arts, and a 1976 graduate of the Graduate Faculty of the New School for Social Research, where she received a Master's in Psychology. Ms. Tikellis graduated in 1982 from Widener University School of Law, where she was the Managing Editor of the Delaware Journal of Corporate Law. Upon graduating from law school, Ms. Tikellis served as a law clerk in the nationally recognized Court of Chancery in Wilmington, Delaware. Before joining the Firm, Ms. Tikellis engaged in significant shareholder litigation practice. In 1987, she opened the Delaware office of the Firm, where she is a resident and has continued to specialize in litigation, including complex transactional cases, both derivative and class, limited partnership litigation, antitrust and securities fraud litigation. She is AV rated by Martindale Hubbell.

Ms. Tikellis has prosecuted class and derivative suits of national importance for over 20 years. Notably, Ms. Tikellis has represented stockholders in numerous suits, primarily in the Court of Chancery in Wilmington, Delaware arising out of mergers and acquisitions and hostile takeovers. Ms. Tikellis served as liaison counsel in the litigation arising out of the Paramount/Viacom merger. She and her co-counsel represented Paramount stockholders in the successful challenge to the merger and were instrumental in eliciting the highest possible value to the stockholders. (Court of Chancery Civil Action No. 13117; Delaware Supreme Court No. 427, 1993). Similarly, Ms. Tikellis served as lead counsel in *Home Shopping Network Shareholders and Securities Litigation*, (C.A. No. 93-406; Court of Chancery, Cons. C.A. No. 12868; Delaware District Court C.A. No. 93-336 (MMS)) obtaining over $15 million in settlement funds for the class of Home Shopping stockholders. More recently, as lead counsel, she actively prosecuted litigation on behalf of Cyprus Amax stockholders arising out of 0 proposed merger with Asarco and helped achieve a merger for Cyprus Amax with Phelps Dodge for greater consideration than was offered by Asarco. (*In re Cyprus Amax Shareholders Litigation*, Court of Chancery, C.A. No. 17383-NC). Ms. Tikellis also acted as one of lead counsel representing a Class of stockholders of First Interstate Bancorp prior to the acquisition of First Interstate by Wells Fargo & Co. The litigation resulted in Wells Fargo's acquisition of First Interstate for a substantially greater consideration than offered by the First Bank Systems in a battle for the company. (*First Interstate Bancorp Shareholders Litigation*, Cons. C.A. No. 14623). Most recently, in the merger amd acquisition arena, Ms. Tikellis serves as Co-Lead Counsel in the class action challenging the $21 billion management-led buyout of Kinder Morgan, Inc. *In re Kinder*

Pamela S. Tikellis cont.

Morgan, Inc. Shareholders Litigation, Consol. C.A. No. 06-C-801 (Kan.). Additionally, she is serving as Lead Counsel in the class action challenging Roche Holding's buyout of Genentech, Inc. *In re Genentech, Inc. Shareholders Litigation*, Civil Action No. 3911-VCS. The litigation was settled shortly after the Court of Chancery held a hearing on Plaintiffs' motion for a preliminary injunction and prior to the closing of the transaction. The settlement provides for, among other things, the additional $4 Billion in consideration paid to the minority shareholders in the transaction.

Ms. Tikellis has actively prosecuted derivative litigation on behalf of companies and their stockholders. *Sanders v. Wang*, DE Court of Chancery C.A. No. 16640, was a derivative suit brought on behalf of Computer Associates International, Inc. The suit alleged that the board exceeded its authority under the KESOP by awarding 9.5 million excess shares to the participants. Ms. Tikellis was instrumental in achieving the return from the defendants of over $50 million in stock issued in violation of the Company's plan. This represented a recovery of substantially all of the relief sought by Plaintiffs. Reported decisions include 1998 Del. Ch. LEXIS 207 (Del. Ch. Nov 19, 1998); 1999 Del. Ch. LEXIS 203 (Del. Ch. Nov. 8, 1999); 2001 Del. Ch. LEXIS 82 (Del. Ch. May 24, 2001); 2001 Del. LEXIS 387 (Del. Aug. 22, 2001); 2001 Del. Ch. LEXIS 121 (Del. Ch. Sept. 18, 2001). Ms. Tikellis serves as Co-Lead Counsel representing Montgomery County Employee's Retirement Fund in a suit filed derivatively on behalf of Citigroup Inc. in the Court of Chancery in the State of Delaware, for wrongdoing stemming from Citigroup's financial and business exposure to subprime loans and subprime mortgage crisis. The litigation is in an early stage. *In re Citigroup Inc. Shareholder Derivative Litigation*, Civil Action No. 3338-CC. Currently, Ms. Tikellis also serves as Lead Counsel in the Court of Chancery derivative litigation arising out of the merger of Bank of America and Merrill Lynch. *In re Bank of America Corporation Stockholder Derivative Litigation*, Civil Action No. 4307-VCS

In the limited partnership arena, Ms. Tikellis along with partner Nicholas Chimicles has actively and successfully prosecuted several cases including *ML Lee Acquisition Fund L.P.* and *ML-Lee Acquisition Fund II L.P.* and *ML-Lee Acquisition Fund* (Retirement Accounts), (C.A. Nos. 92-60, 93-494, 94-422, and 95-724). The litigation resulted in a negotiated settlement exceeding $30 million in cash and other benefits made available to investors in these funds. In another limited partnership matter, Ms. Tikellis along with partner Nicholas Chimicles was successful in representing limited partners of Aetna Real Estate Associates L.P. This settlement provided for the orderly liquidation of more than $200 million in the partnership's real estate holdings and reduction of general partners' fees and the payment of a special cash distribution to the limited partners (*Aetna Real Estate Associates, L.P.*, Delaware Court of Chancery, C. A. Nos. 15386-NC and 15393-NC).

On the Appellate level, Ms. Tikellis has successfully handled cases before the Delaware Supreme Court resulting in victories for the shareholders and investors. Within the years of 2002 and 2003, Ms. Tikellis argued successfully three appeals in the

Our Attorneys-Partners

Pamela S. Tikellis cont.

Delaware Supreme Court. She argued en banc to the Delaware Supreme Court in *Saito v. McKesson Corporation*, Civil Action No. 18553. This books and records case was tried by Ms. Tikellis. While the Court of Chancery permitted production of certain documents, the Court imposed severe restrictions. The limitations imposed by the Court of Chancery were appealed successfully by the Plaintiff. Importantly, the documents ultimately received in the books and records Saito case resulted in the filing of an amended derivative complaint in the underlying case against McKesson and its directors. The derivative suit was recently settled and the settlement won approval by the Court of Chancery. The settlement provides for a $30 million payment to the Company by the insurance carriers for the directors and the implementation of important corporate governance reforms.

In a case argued by Ms. Tikellis, the Delaware Supreme Court overruled the Court of Chancery's determination that accorded the presumption of the business judgment rule to a board's merger recommendation even though 5 of the 7 directors were interested in the transaction. The Supreme Court held that the mere existence of a purportedly disinterested special committee (consisting of the other two board members) did not shield the remaining 5 members from liability. *Krasner v. Moffett*, 826 A.2d 277 (Del. June 18, 2003). Importantly, the Court held that a full record needed to be developed to determine whether the entire fairness standard of review or the business judgment standard of review would apply in the case. The decision has broken new ground in the field of corporate litigation in Delaware. A settlement providing for a $17.5 million fund for the Class was approved by the Court of Chancery on April 20, 2006.

Ms. Tikellis is admitted to practice before all Courts in the State of Delaware and the United States Court of Appeals for the Third Circuit. She is a member of the Delaware Bar Association and the American Bar Association (Litigation and Business Sections). Ms. Tikellis has served as a member of the Board of Bar Examiners of the Supreme Court of the State of Delaware since 1994 and is currently Chairman. She also served as the Chair of the Delaware Bar Association Ethics Committee from 1989 to 1992, and is a director of the Historical Society of the Court of Chancery for the State of Delaware.

Ms. Tikellis has addressed numerous conferences including ALI-ABA, The Practising Law Institute, the American Bar Association, the Delaware Bar Association, and the Pennsylvania Bar Institution lecturing on corporate governance, merger and acquisitions, hostile takeovers, defense mechanisms and professional ethics. She has participated as a commentator on corporate governance as part of the Institute for Law and Economic Policy's program on Corporate Accountability and recently addressed institutional investors at the OPAL Conference regarding the various tools available in Delaware to protect shareholder rights. Ms. Tikellis was a member of the faculty of the 7th Annual Colorado Business Law Institute that was held in Vail, Colorado on August 10-12, 2006. She participated on a panel featuring the Honorable Phillip S. Figa of the United States District Court for the District of Colorado and the Honorable Leland P. Anderson of the Colorado State District Court addressing the topic of

fiduciary duties. In October 2007 and 2008, Ms. Tikellis, at the request of Chancellor William B. Chandler III of the Court of Chancery of the State of Delaware, participated as guest lecturer in the Chancellor's course on derivative litigation at Vanderbilt University Law School. Ms. Tikellis recently participated in the May 2009 Practising Law Institute Program: What all Business Lawyers must know about Delaware Law Developments 2009 and the Practising Law Institute's 41st Annual Institute on Securities Regulation in November 2009 speaking on Developments in Delaware Corporate Law.

In 2007, 2008, 2009 and 2012 Law & Politics named Ms. Tikellis a Delaware Super Lawyer. Super Lawyers are the top 5 percent of attorneys in Delaware, as chosen by their peers and through the independent research of Law & Politics.

Our Attorneys-Partners

Robert J. Kriner, Jr.

is a Partner in the Firm's Wilmington, Delaware office. He is admitted to practice before the Supreme Court of Delaware and the United States District Court for the District of Delaware. Mr. Kriner is a 1983 graduate of the University of Delaware with a degree in chemistry, and a 1988 graduate of the Delaware Law School of Widener University, where he was managing editor of *The Delaware Journal of Corporate Law*. From 1988 to 1989, Mr. Kriner served as law clerk to the Honorable James L. Latchum, Senior Judge of the United States District Court for the District of Delaware. Following his clerkship and until joining the Firm, Mr. Kriner was an associate with a major Wilmington, Delaware law firm, practicing in the areas of corporate and general litigation.

Mr. Kriner's practice focuses primarily on business litigation on behalf of investors. Mr. Kriner has prosecuted actions, including class and derivative actions, on behalf of stockholders, limited partners and other investors with claims relating to mergers and acquisitions, hostile acquisition proposals, the enforcement of fiduciary duties, the election of directors, and the enforcement of statutory rights of investors such as the right to inspect books and records. Mr. Kriner prosecuted the *Home Shopping Network, McKesson* and *Moffett* matters along with Partner Pamela Tikellis. In addition, Mr. Kriner represented holders of Series B stock of Litton Industries in *Myers and Koehler v. Litton Industries, Inc., et al.*, C.A. No. 18947-NC in connection with the short form merger cash out of the Series B stock in 2001. The short form merger price was $35 per share. Mr. Kriner negotiated a settlement of the claims which provided an additional $1.84 per share to the Series B holders.

Mr. Kriner also was on the trial team in *Gelfman, et al. v. Weeden Investors, L.P., et al.*, C.A. No. 18519-NC, which was tried in the Delaware Court of Chancery and resulted in a judgment in favor of the limited partners represented by Mr. Kriner. In *Weeden,* the limited partners represented by Mr. Kriner asserted that dilution and a cash out of their interests at a book value of $4.20 per Unit was unfair and in violation of the Partnership Agreement and the General Partner's fiduciary duties. After trial, the Court agreed, concluding the value of the interests was $20.92 per Unit, 4.98 times that paid on the cash out plan, and awarded damages to the limited partners.

Mr. Kriner represented the public limited partners in *I.G. Holdings, Inc., et al. v. Hallwood Realty LLC, et al.*, C.A. No. 20283-NC, in an action challenging the defensive response of the General Partner of Hallwood Partners LP to a premium tender offer by an affiliate of Carl Icahn in 2003. Mr. Kriner led the litigation on behalf of

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the public limited partners through expedited injunction proceedings and an expedited trial which led to the General Partner's agreement to auction and sell the Partnership. The sale of the Partnership resulted in a per unit price of $136.70 to the limited partners, as compared to the trading range for the Units of $60 - $80 prior to the litigation.

Recently, Mr. Kriner was one of the co-lead counsel in actions brought on behalf of the public stockholders of Chiron Corporation challenging the buyout of Chiron by its 42% parent, Novartis AG. Novartis initially proposed a buyout at $40 per share and thereafter entered into a merger agreement to acquire Chiron for $45 per share. Mr. Kriner and his co-counsel moved preliminarily to enjoin the merger pending a proper process to maximize value and full disclosure to the stockholders. After completion of briefing on the injunction motion, an agreement in principle was reached for a settlement of this litigation which includes, among other things, an increase in the merger price to $48 per share, or an aggregate increase of over $330 million for the public stockholders.

Mr. Kriner was plaintiff's counsel in an action on behalf of the public unit holders of Northern Border Partners, L.P and on behalf of that Partnership, alleging breaches of the partnership agreement and breaches of fiduciary duties against the general partners of the Partnership and certain affiliates. The claims arose in connection with a transaction in which, among other things, the Partnership acquired assets of ONEOK, Inc., the indirect majority owner of the general partners. The Partnership paid cash and newly created "Class B" Units for the assets. The Class B Units included provisions that would provide premium distributions to ONEOK in the event the public unit holders did not vote to grant ONEOK certain rights. Pursuant to an agreement to settle the claims, the economic terms of the Class B Units were substantially reduced to the Partnership's and Class' benefit. The Settlement also secured provisions requiring approval of the nonaffiliated unit holders of any amendments to the independence provisions of the Audit and Conflict Committees.

Mr. Kriner represented a Delaware corporation and its public shareholders in a class and derivative action alleging, among other things, that members of the board of directors of Randall Bearings, Inc. breached their fiduciary duties to the company and its stockholders and committed corporate waste in connection with an executive stock incentive plan which transferred approximately 30% of the company's outstanding stock (200,000 shares) to 3 executive directors for a total cost of $200. In an opinion dated January 23, 2007, the Delaware Court of Chancery upheld all claims against the directors. *Sample v. Morgan*, 914 A.2d 647 (Del. Ch. 2007). In a subsequent opinion, the Court denied a motion to dismiss claims against company's outside lawyer and his law firm. *Sample v. Morgan*, 2007 Del. Ch. LEXIS 166 (Nov. 27, 2007). On May 27, 2008, the parties agreed to the terms of a settlement of the claims which included rescission and cancellation of the executive stock incentive plan, return to the company of all 200,000 shares granted to the Defendant executives, $2.45 million in cash plus wide-ranging prospective governance provisions

Robert J. Kriner, Jr. cont.

relating to future stockholder voting and any future executive incentive plans. The settlement was approved by the Court on August 5, 2008.

Mr. Kriner is an associate member of the Board of Bar Examiners of the Supreme Court of the State of Delaware.

In 2007 and 2008, Law & Politics named Mr. Kriner a Delaware Super Lawyer. Super Lawyers are the top 5 percent of attorneys in Delaware, as chosen by their peers and through the independent research of Law & Politics.

Our Attorneys-Partners

Steven A. Schwartz

a Partner in the Haverford office, is admitted to practice before the United States Supreme Court, the Supreme Court of Pennsylvania, the United States District Courts for the Eastern and Western Districts of Pennsylvania, the Eastern District of Michigan, the United States District Court for the District of Colorado, and the United States Courts of Appeals for the Third, Sixth, Eighth and Ninth Circuits. He graduated from the Duke University School of Law (J.D. 1987), where he served as a senior editor of *Law & Contemporary Problems*. He is a 1984 *cum laude* graduate of the University of Pennsylvania, where he received a B.A. in political science. Mr. Schwartz previously practiced at Schnader Harrison Segal & Lewis LLP, concentrating in complex civil litigation.

Mr. Schwartz has actively prosecuted complex class actions in a wide variety of contexts. Notably, Mr. Schwartz has been successful in obtaining several settlements where class members received a full recovery on their alleged damages. For example, Mr. Schwartz wasSchwartz was appointed Co-Lead Counsel in *In re Apple iPhone/iPod Warranty Litigation*, No. CV-10-01610 (N. D. Cal.). Plaintiffs alleged that Apple improperly denied warranty coverage for iPhone and iPod touch devices based on external "Liquid Submersion Indicators" (LSIs), which are small paper-and-ink laminates, akin to litmus paper, which are designed to turn red upon exposure to liquid. The Court recently granted preliminary approval to a proposed $53 million non-reversionary cash settlement which, if approved, will represent a substantial, and possibly a complete, recovery of class members' damages.

Mr. Schwartz was also Co-Lead Counsel in *Wong v. T-Mobile*, a case alleging that T-Mobile overcharged its subscribers by billing them for data access services even though T-Mobile's subscribers had already paid a flat rate monthly fee of $5 or $10 to receive unlimited access to those various data services. Mr. Schwartz defeated a motion by T-Mobile to force resolution of these claims via arbitration and successfully convinced the Court to strike down as unconscionable a provision in T-Mobile's subscription contract prohibiting subscribers from bringing class actions. After that victory, the parties reached a settlement requiring T-Mobile to provide class members with a net recovery of the full amount of the un-refunded overcharges with all costs for notice, claims administration, and counsel fees paid in addition to class members' 100 % net recovery. The gross amount of the overcharges, which occurred from April 2003 through June 2006, was approximately $6.7 million. As a result of the lawsuit, T-Mobile also implemented changes to its billing system to prevent such overcharging in the future.

Steven A. Schwartz cont.

Mr. Schwartz also served as Co-Lead Counsel for a certified national class of employees of Siemens Medical Solutions whose 1998 Incentive Compensation was retroactively reduced by 30% by Siemens. The Philadelphia Court of Common Pleas granted Plaintiffs' motion for summary judgment as to liability, and a few days before trial was scheduled to begin, Siemens agreed to pay class members a net recovery of the full amount that their incentive compensation was reduced (approximately $10.1 million), and pay all counsel fees and expenses in addition to the class members' recovery.

Similarly, in connection with the withdrawal by Bayer of its anti-cholesterol drug Baycol, Mr. Schwartz represented various Health and Welfare Funds (including the Pennsylvania Employees Benefit Trust Fund, the Philadelphia Firefighters Union, and the American Federation of State, County and Municipal Workers District Council 47) and a certified national class of "third party payors" seeking damages for the sums paid to purchase Baycol for their members/insureds and to pay for the costs of switching their members/insureds from Baycol to an another cholesterol-lowering drug. The Philadelphia Court of Common Pleas granted plaintiffs' motion for summary judgment as to liability; this was the first and only judgment that has been entered against Bayer anywhere in the United States in connection with the withdrawal of Baycol. The Court subsequently certified a national class, and the parties recently reached a settlement in which Bayer agreed to pay class members a net recovery that approximates the maximum damages (including pre-judgment interest) suffered by class members.

In the securities litigation field, as lead or co-lead counsel, Mr. Schwartz has obtained significant recoveries for defrauded investors. In *In Re Coin Fund Litigation*, (Superior Court of the State of California for the County of Los Angeles), Mr. Schwartz served as plaintiffs' co-lead counsel and successfully obtained a settlement in excess of $35 million on behalf of limited partners, which represented a 100% net recovery of their initial investments. Mr. Schwartz also served as Plaintiffs Co-Lead Counsel in *In re Veritas Software Corp. Derivative Litigation* (Superior Court of the State of California for the County of Santa Clara). In early 2005, the Court approved a settlement in which Veritas agreed to extensive corporate governance changes, including requiring that 75% of the members of Veritas' Board of Directors would be independent directors, and that all reporting 16b officers and directors of the Company would be prohibited from engaging in any sales of Veritas' stock except pursuant to a newly-enacted 10b5-1 Trading Plan. Mr. Schwartz currently serves as Plaintiffs' Liaison Counsel in *In Re DVI Securities Litigation*, (E.D. Pa.). To date, Mr. Schwartz has recovered over $ 1720 million in settlements in that litigation, including a $ 3.25settlements of over $8 million settlement paid from the individual assets (and not from an insurance policy) of members of DVI's audit committee and an officer of DVI.

In the consumer protection field, Mr. Schwartz served as Chair of Plaintiffs' Discovery Committee in a Multi-District litigation captioned *In re Certainteed Corp. Roofing Shingle Products Liability Litigation*, No, 07-MDL-1817 (E.D. Pa.). That case

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alleged that CertainTeed marketed and sold organic shingles that were defectively designed and manufactured thereby causing premature and unreasonable deterioration, blistering, crumbling, curling, cracking, pitting, balding, and leaking. After several years of litigation the parties reached a settlement which was approved by the Court in 2010 and valued at between $687 to $815 million. Mr. Schwartz also served as plaintiffs' co-lead counsel in *Wolens, et al. v. American Airlines, Inc.* In that class action, plaintiffs alleged that American Airlines breached its contracts with members of its AAdvantage frequent flyer program when it retroactively increased the number of frequent flyer miles needed to claim certain frequent flyer miles travel awards. In a landmark decision, the United States Supreme Court held that plaintiffs' claims were not preempted by the Federal Aviation Act. 513 U.S. 219 (1995). The parties ultimately reached a settlement in which American agreed to provide class members with mileage certificates that represent, for practical purposes, the full extent of class members' alleged damages, which the Court valued at between $ 95.6 million to $ 141.6 million. Mr. Schwartz also represented a national class of owners of wood clad doors and windows manufactured by Marvin Windows that prematurely rotted due to a defective wood preservative. (Minn. 4th Judicial Dist.). Even though the windows were between 12 and 16 years old, the parties reached a national settlement providing class members with the opportunity to obtain replacement windows with minimum net discounts of between 45 % and 58 %. Mr. Schwartz currently serves in leadership positions in *In re LG Front Load Washing Machine Class Action Litigation* and *In re Whirlpool Corp. Front Loading Washing Machine Class Litigation.*

Mr. Schwartz has also developed an expertise in representing the interests of providers of medical services whose bills have been denied for payment by insurers. Mr. Schwartz represented a certified class of Pennsylvania physicians and chiropractors who were not paid by Nationwide Mutual Insurance Company for physical therapy/physical medicine services provided to its insureds. Nationwide agreed to pay class members approximately 130% of their bills. Mr. Schwartz is currently representing certified classes of medical providers seeking interest for overdue bills for treatment provided to insureds of Progressive Insurance Company. In that case Progressive appealed a judgment obtained by Mr. Schwartz for the full amount of interest owed.

In the product liability field, Mr. Schwartz served as a member of the Plaintiffs' Steering Committee for medical monitoring claims in *In re Pennsylvania Diet Drugs Litigation,* (Phila. C.C.P.). To settle that case, American Home Products agreed to pay for an extensive medical monitoring program for all Pennsylvania residents who ingested fenfluramine and dexfenfloramine, the "fen" of the "fen phen" diet drug combination.

For the past several years, Law & Politics and the publishers of Philadelphia Magazine have named Mr. Schwartz a Pennsylvania Super Lawyer. Super Lawyers are the top 5 percent of attorneys in Pennsylvania, as chosen by their peers and through the independent research of Law & Politics.

Our Attorneys-Partners

Kimberly Donaldson Smith

Ms. Donaldson Smith is a Partner in the Firm's Haverford office. Ms. Donaldson Smith concentrates her practice on the prosecution of securities fraud class action litigation, shareholder derivative actions and breach of fiduciary duty class action lawsuits. She is also a member of the Firm's Client Development Group, working closely with the Firm's institutional clients, and speaking often at conferences nationwide educating clients on issues impacting investors' legal rights.

Ms. Donaldson Smith is a 1999 *cum laude* graduate of Villanova University School of Law and is a 1996 graduate of Boston University, where she received a B.A. in Political Science, and interned with the Massachusetts Office of the Attorney General, Public Protection Bureau. Ms. Donaldson Smith is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey, and various Federal Appellate and District Courts. Ms. Donaldson Smith's pro bono activities include serving as a volunteer attorney with the Support Center for Child Advocates, a Philadelphia-based, nonprofit organization that provides legal and social services to abused and neglected children.

Ms. Donaldson Smith was selected to the 2013 Pennsylvania *SuperLawyer* list, and to the Pennsylvania *Rising Star* list from 2006 through 2012. Each year no more than five percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor and have attained a high degree of peer recognition and professional achievement. She also has been included in *Sutton's Who's Who in American Law.*

Ms. Donaldson Smith prosecuted several federal securities fraud cases, breach of fiduciary duty suits and corporate derivative actions, including the following:

In re Cole Credit Property Trust III, Inc. Derivative and Class Litigation, Case No. 24-C-13-001563 (Cir. Ct. Md.). In this Action filed in 2013, C&T represents Cole Credit Property Trust III ("CCPT III") investors, who were, without their consent, required to give Christopher Cole (CCPT III's founder and president) hundreds of millions of dollars' worth of consideration for a business that plaintiffs allege was worth far less. The Action also alleges that, in breach of their fiduciary obligations

Kimberly Donaldson Smith cont.

to CCPT III investors, CCPT III's Board of Directors pressed forward with this wrongful self-dealing transaction rebuffing an offer from a third party that proposed to acquire the investors' shares in a $9 billion dollar deal. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

In re Empire State Realty Trust, Inc. Investor Litigation, Case 650607/2012, NY Supreme Court. In this action filed in 2012, C&T represents investors who own the Empire State Building, as well as several other Manhattan properties, whose interests and assets are proposed to be consolidated into a new entity called Empire State Realty Trust, Inc. The investors filed an action against the transaction's chief proponents, members of the Malkin family, certain Malkin-controlled companies, and the estate of Leona Helmsley, claiming breaches of fiduciary for, among other things, such proponents being disproportionately favored in the transaction. A Settlement was achieved and received final court approval in 2013. The Settlement consideration consists of: a cash settlement fund of $55 million, modifications to the transaction that result in an over $100 million tax deferral benefit to the investors, and defendants will provide additional material information to investors about the transaction.

Orrstown Financial Services, Inc., et al, Securities Litigation, Case No. 12-cv-00793 (U.S.D.C. M.D. Pa). In this federal securities fraud class action filed in 2012, C&T serves as Lead Counsel, representing the Southeastern Pennsylvania Transportation Authority (SEPTA) as Lead Plaintiff and Orrstown shareholders. The action alleges that Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by misleading investors concerning material information about Orrstown's loan portfolio, underwriting practices, and internal controls. After extensive investigation, including having interviewed several confidential witnesses, C&T filed an 100+ page amended complaint in early 2012. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

Wells and Piedmont Real Estate Investment Trust, Inc., Securities Litigation, Case Nos. 1:07-cv-00862, 02660 (U.S.D.C. N.D. GA). C&T serves as co-lead counsel in this federal securities class action on behalf of Wells REIT/Piedmont shareholders. Filed in 2007, this lawsuit charged Wells REIT, certain of its directors and officers, and their affiliates, with violations of the federal securities laws for their conducting an improper, self-dealing transaction and recommending that shareholders reject a mid-2007 tender offer made for the shareholders' stock. On the verge of trial, the Cases settled for $7.5 million and the Settlement was approved in 2013.

Inland Western Retail Real Estate Trust, Inc., et al., Case 07 C 6174 (U.S.D.C. N.D. Ill). C&T served as lead litigation and co-lead counsel in this settled action which was filed in 2007 asserting federal securities law claims against Inland Western and certain of its current and former directors, officers and affiliates, and its financial advisor, by virtue of their devising and soliciting the shareholders' approval of a merger of defendants' affiliate with Inland Western for $375 million worth of the Company's stock. The Settlement required the insiders to return stock valued at $90 million.

CNL Hotels & Resorts Inc. Federal Securities Litigation, Case No. 04-cv-1231 (M.D. Fla.). C&T served as lead litigation counsel in this settled action which was filed in 2004 asserting federal securities law claims under the 1933 Securities Act involving a $3.0 Billion real estate investment trust. The Litigation was settled by: (1) the establishment of a $35,000,000 Cash Settlement Fund for the benefit of the Purchaser Class; and, (2) by CNL entering into revised agreements in connection with a proposed Merger between CNL and its affiliate which Plaintiffs estimate reduced the amount to have been paid by CNL and its stockholders in connection with the merger by over $225 Million. On August 1, 2006, the Federal District Court in Orlando, Florida granted final approval of the Settlement of the CNL Litigation, noting that "Plaintiffs' counsel pursued this complex case diligently, competently and professionally" and "achieved a successful result." The Court also concluded that, "a substantial benefit [was] achieved (estimated at approximately $225,000,000)" and "this lawsuit was clearly instrumental in achieving that result."

In re Real Estate Associates Limited Partnerships Litigation, No. CV 98-7035 DDP (CD. Cal.). The Firm was Lead Trial Counsel in this class action asserting federal securities law claims and claims for state law breaches of fiduciary duty. As the principal trial assistant to Mr. Chimicles, Kimberly was an integral member of the trial team that obtained the *first* plaintiffs' jury verdict in a federal securities fraud/breach of fiduciary duty lawsuit tried to a jury in the past ten years. The total verdict of $185 million (including $92.5 million in punitive damages) was among the "Top 10" Verdicts of 2002. The *Real Estate Associates* judgment was settled by an agreement approved by the Court in November 2003 for $83 million, which represented *full recovery* for the Class (and an amount in excess of the damages calculated by Plaintiffs' expert).

Our Attorneys-Partners

Joseph G. Sauder

a Partner in the Firm's Haverford office. Mr. Sauder concentrates his practice on prosecuting class actions, including securities fraud, shareholder derivative actions, antitrust and consumer fraud cases on behalf of shareholders, consumers, businesses and institutional clients. Prior to joining the firm, Mr. Sauder was an associate with a major Philadelphia firm where he concentrated on complex civil litigation. From 1998 to 2003, Mr. Sauder was a prosecutor in the Philadelphia District Attorney's Office where he served as lead counsel in hundreds of criminal trials including over twenty jury trials involving major felonies.

In 2012 and 2013 the National Trial Lawyers Association named Mr. Sauder one of the Top 100 Trial Lawyers in Pennsylvania.

In 2011 through 2013 Law & Politics and the publishers of Philadelphia Magazine named Mr. Sauder a Pennsylvania Super Lawyer. Super Lawyers are the top 5 percent of attorneys in Pennsylvania, as chosen by their peers and through the independent research of Law & Politics.

In August 2007, American Lawyer Media, publisher of *The Legal Intelligencer* and the *Pennsylvania Law Weekly*, named Mr. Sauder one of the "Lawyers on the Fast Track" a distinction that recognized thirty-five Pennsylvania attorneys under the age of 40 who show outstanding promise in the legal profession and make a significant commitment to their community.

Recently, Mr. Sauder was a lead counsel in the following recent actions:

In re Checking Account Overdraft Litig., Multidistrict Litigation proceedings, which involve allegations that dozens of banks reorder and manipulate the posting order of debit transactions. Mr. Sauder served as Court appointed co-team leader in a $55 million settlement with US Bank, preliminarily approved and a $14.5 million settlement with Comerica awaiting Court approval.

Henderson v. Volvo Cars of North America LLC, et al., Mr. Sauder served as a lead counsel on behalf of 90,000 purchasers and lessees of Volvo vehicles with defective automatic transmissions; final approval granted to this nationwide settlement in March 2013.

Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation, No. 1:10-cv-00264-CAB (N.D. Ohio). Mr. Sauder served as a lead counsel in this class action lawsuit on behalf of hospitals and surgery centers that purchased

Joseph G. Sauder cont.

a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA. Final approval was granted to a settlement that provides approximately $20 million worth of benefits to class members.

Smith v. Gaiam, Inc., No. 09-cv-02545-WYD-BNB (D. Colo.). Mr. Sauder served as co-lead counsel on this consumer protection class action lawsuit which alleged that the defendant made affirmative misrepresentations about aluminum water bottles that it sold. Obtained a settlement that provided full recovery to approximately 930,000 class members.

Allison, et al. v. The GEO Group, No. 2:08-cv-467-JD (E.D.Pa.). Mr. Sauder served as co-lead counsel on this civil rights class action lawsuit alleging that pre-trial detainees admitted to prisons operated by The GEO Group were unconstitutionally strip searched. After the Court denied the defendant's motion for judgment on the pleadings, the parties reached a $2.9 million settlement.

Kurian v. County of Lancaster, No. 2:07-cv-03482-PD (E.D.Pa.). Mr. Sauder served as co-lead counsel on this civil rights class action lawsuit alleging that pre-trial detainees admitted to the Lancaster County Prison were unconstitutionally strip searched. The district court granted final approval to a $2.5 million settlement.

In re Heartland Payment Systems Inc. Customer Data Security Breach Litig., No. H-09-MD-02046 (S.D.Tx.). Mr. Sauder is co-lead counsel on this case, which is the largest data breach in history. The lawsuit seeks to represent a putative class of banks, credit unions, and financial institutions that have re-issued debit and credit cards, incurred unreimbursed fraudulent charges, or were otherwise injured as a result of the data breach.

Mr. Sauder received his Bachelor of Science, *magna cum laude* in Finance from Temple University in 1995. He graduated from Temple University School of Law in 1998, where he was a member of *Temple Law Review*.

Mr. Sauder's public service activities include teaching trial advocacy to a local Philadelphia high school team which competed in the State Mock Trial Competition. He is vice president of the Philadelphia District Attorneys' Alumni Association and on the Executive Committee of Temple Law Alumni Association. His *pro bono* activities include serving as a volunteer attorney with the Support Center for Child Advocates, a nonprofit organization that provides legal and social services to abused and neglected children.

Mr. Sauder is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey, the United States Court of Appeals for the Third Circuit, the United States District Courts for the Eastern District of Pennsylvania, the Middle District of Pennsylvania, the District of New Jersey and the District of Colorado.

Our Attorneys-Partners

Timothy N. Mathews

a partner in the Haverford office, graduated from Rutgers School of Law-Camden *magna cum laude* (J.D. 2003), where he was the Lead Marketing Editor of the Rutgers Journal of Law & Religion, served as Teaching Assistant for the Legal Research and Writing Program, received the 1L Legal Writing Award, and was one of the top 10 oralists in the national Judge John R. Brown Admiralty Moot Court competition. Mr. Mathews received his B.A. from Rutgers University-Camden *summa cum laude* (2000), where he was inducted into the Athenaeum honor society.

Mr. Mathews has helped recover hundreds of millions of dollars in class actions and shareholder derivative actions in federal and state courts across the country. He litigates cases covering a broad array of subject matters, including securities, consumer fraud, antitrust, ERISA, and tax refund litigation. He is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey, the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey, and the United States Courts of Appeals for the Third, Fourth, Ninth, and Eleventh Circuits.

Mr. Mathews is a seasoned appellate lawyer, having played a principal role in appellate litigation in the United States Courts of Appeals for the Third, Fourth, Ninth, and Eleventh Circuits, as well as the Supreme Court of California. He also serves on the Amicus Committee for the National Association of Shareholder and Consumer Attorneys (NASCAT).

Some of his cases include the following:

- *In re Mutual Funds Investment Litigation* (MDL 04-1586) - Mr. Mathews played a prominent role in this multidistrict litigation involving alleged market timing in eighteen mutual fund families. The MDL involved hundreds of parties and resulted in settlements totaling over $250 million. On behalf of the firm in its role as lead fund derivative counsel, Mr. Mathews was instrumental in achieving the following joint class/derivative settlement amounts:

Pilgrim Baxter Subtrack	$29.8 million
Strong Subtrack	$13.7 million
One Group Subtrack	$5.5 million
Excelsior Subtrack	$3.9 million
Janus Subtrack	$1.9 million

Timothy N. Mathews cont.

- *In re Apple iPhone/iPod Warranty Litigation* – Mr. Mathews is Court-appointed Co-Lead Counsel in this action pending in the Northern District of California brought on behalf of iPhone and iPod Touch owners whose warranty claims were denied based on "liquid contact indicators," small pieces of tape that turn red when exposed to liquid that Apple places in headphone jacks and docking ports of the devices. The plaintiffs allege that these indicators are subject to false positives and should not have been used as a basis to deny warranty claims. The Court recently granted preliminary approval of a proposed $53 million cash settlement, which, if finally approved, will represent a substantial recovery for class members.

- *In re Colonial Bancgroup, Inc.* – Mr. Mathews also recently helped achieve a $10.5 million settlement for shareholders with Colonial Bank's former officers in this securities lawsuit involving one of the largest U.S. bank failures of all time. Claims against the bank's underwriters and accountants are still pending.

- *California Tax Refund Actions* – (*Ardon v. City of Los Angeles, McWilliams v. Long Beach*, and *Granados v. County of Los Angeles*) – Mr. Mathews is co-lead counsel in three pending cases challenging the imposition of a utility users tax on certain telephone service by the City and County of Los Angeles and the City of Long Beach. The cases have gone up to the California Supreme Court twice on important issues involving taxpayer rights and both times the Supreme Court has ruled unanimously in Plaintiff's favor.

- *International Fibercom* – D&O Insurance Actions – Mr. Mathews has had a central role in prosecuting several related actions in the United States District Court for the District of Arizona seeking to recover a securities fraud judgment from several Director's and Officer's Liability insurers. The first layer carrier settled for the full balance of its policy limits, and an action against the second layer carrier is pending.

- *Alberton v. Commonwealth Land Title Ins. Co.* – Mr. Mathews has played a prominent role in this certified class action in the United States District Court for the Eastern District of Pennsylvania where Plaintiffs allege that Commonwealth Land Title Insurance Company and its agents overcharged homeowners for title insurance policies by failing to provide refinance and reissue rate discounts as required by law.

- *In re natural Gas Commodity Litigation* – Mr. Mathews assisted lead counsel in prosecuting this multidistrict litigation alleging manipulation of the price of natural gas futures contracts which resulted in over $100 million in settlements.

Mr. Mathews was selected as a Pennsylvania Rising Star in 2008, 2010, and 2013 by Law & Politics and the publishers of Philadelphia Magazine, as listed in the "Pennsylvania Rising Stars Super Lawyers" publication.

Our Attorneys-Partners

A. Zachary Naylor

A partner in the Wilmington office, Mr. Naylor is a graduate of the Widener University School of Law (J.D., 2003 *magna cum laude*), the University of Delaware (B.A. in Economics and Political Science, 2000) and Salesianum School. While at Widener, he served as Wolcott Law Clerk to the Honorable Joseph T. Walsh of the Supreme Court of Delaware. He was also a Managing Editor of the *Delaware Journal of Corporate Law,* meriting the Russell R. Levin Memorial Award for outstanding service and dedication to that publication. Mr. Naylor is admitted to practice before the Supreme Court of Delaware, the United States District Court for the District of Delaware and the United States Court of Appeals for the Third Circuit.

Mr. Naylor has participated in the prosecution of numerous shareholder class and derivative actions including:

In re Freeport McMoRan Sulphur Inc. Shareholder Litigation, C.A. No. 16729-NC (Del. Ch.) This Action challenged the fairness of the terms and process of a 1998 merger between Freeport-McMoRan Sulphur Inc. and McMoRan Oil & Gas, Co. *See e.g.* 2005 Del. Ch. LEXIS 96 (Del. Ch. June 30, 2005) and 2005 Del. Ch. LEXIS 7 (Del. Ch. Jan. 26, 2005). A settlement providing for a $17.5 million fund for the Class was approved by the Court of Chancery on April 20, 2006.

IG Holdings, Inc. et.al. v. Hallwood Realty, LLC, C.A. No. 20283-NC (Del. Ch.) This Action challenged the response of a Partnership's general partner to a tender offer and the eventual allocation of merger consideration between the general partner and limited partners. Ultimately, as a result of the litigation, the limited partners received a premium price for their units, protected by a minimum "floor" price.

Saito, et.al. v. McCall, et.al., C.A. No. 17132-NC (Del. Ch.) This Action involved derivative litigation on behalf of McKesson HBOC arising from alleged oversight violations by certain board members. The Court approved a settlement including a $30 million fund for the Company's behalf, mechanisms to protect the independent prosecution of certain realigned claims, and other corporate governance benefits. The settlement represents a historically large achievement for cases of this type and was characterized by the Court of Chancery as "strikingly good" particularly in light of the "onerous path" presented by Delaware law for derivative Plaintiffs.

In re Chiron Shareholder Deal Litigation, Consol. Case No. RG05-230567 (Cal). & *In re Chiron Corporation Shareholder Litigation*, C.A. No. 1602-N (Del. Ch.) These Actions

A. Zachary Naylor cont.

sought to enjoin the proposed acquisition of shares of Chiron Corporation not already held by its 42% stockholder, Novartis AG. The Actions also sought to invalidate certain contractual provisions that effectively prevented Chiron's board members from effectively discharging their unremitting fiduciary duties in accordance with Delaware law. Following briefing on a motion for preliminary injunction, a settlement was reached pursuant to which Novartis increased the offered merger consideration by $330 million.

Sample v. Morgan, et. al., C.A. No. 1214-VCS (Del. Ch.) Mr. Naylor represents a Delaware corporation and its shareholders in this class and derivative action, which alleges, among other things, that members of the board of directors of Randall Bearings, Inc. breached their fiduciary duties to the company and its stockholders and committed corporate waste. In an opinion dated January 23, 2007, the Delaware Court of Chancery upheld all claims against the directors. *Sample v. Morgan*, 914 A.2d 647 (Del. Ch. 2007). In a subsequent opinion, the Court denied a motion to dismiss for lack of jurisdiction aiding and abetting claims against the directors' and company's lawyer and his law firm. *Sample v. Morgan*, 2007 Del. Ch. LEXIS 166 (Nov. 27, 2007).

In re Genetech, Inc. Shareholder Litigation, C.A. No. 3911-VCS (Del. Ch.) In this action, Plaintiffs, represented by Chimicles & Tikellis LLP, sought to enjoin an attempt by Roche, Genentech's 56% stockholder, from acquiring the remaining shares by hostile tender offer for $86.50 per share. During the course of Plaintiffs' challenge to the tender offer, Roche increased its offer to $95 per share, leading to a settlement of the action. The Court of Chancery approved the settlement on July 9, 2009.

In re Tricor Indirect Purchaser Antitrust Litigation, C.A. No. 05-360-SLR (D. Del.). Mr. Naylor was liaison counsel in Delaware for a class of third party payers for and consumers of Tricor. The litigation resulted in the creation of a fund of $65.7 million for indirect purchasers of phenofibrate products during the class period.

In re Atlas Energy Resources, LLC Unitholder Litigation, C.A. No. 4589-VCN (Del. Ch.). This action challenged the fairness of the acquisition of Atlas Energy Resources, LLC by its controlling unitholder, Atlas America, Inc. *See e.g.* 2010 WL 4273122 (Del. Ch. Oct. 28. 2010). On May 14, 2012, the Court of Chancery approved a settlement that created a $20 million fund for the benefit of the class.

Our Attorneys-Partners

Matthew D. Schelkopf

a partner in the Firm's Haverford office with extensive trial and courtroom experience. His practice is devoted to litigation, with an emphasis on class actions involving automotive defects, consumer protection, defective products and false advertising. Matthew is a member of the Firm's Case Development Group, and is responsible for identifying and assessing potential new cases.

While working towards his *juris doctorate*, he was an active member of the Trial Advocacy Society and an Executive Board Member of the Moot Court Honor Society. In 2000, he attended the University of Geneva Graduate Institute in Geneva, Switzerland where he studied health law and international criminal law. He was one of five students inducted into the National Order of Barristers in 2002.

After graduation, Matthew became a criminal prosecutor with the District Attorney's Office of York County. He litigated 27 jury trials and over 50 bench trials. He quickly progressed to Senior Deputy Prosecutor where he headed a trial team responsible for approximately 300 felony and misdemeanor cases each quarterly trial term. During this period, he wrote and implemented a county handbook defining extradition policies and procedures used in returning fugitives to Pennsylvania for prosecution.

In 2004, he became a full-time associate with a suburban law firm and focused on civil trial litigation throughout Pennsylvania and New Jersey. In 2006, he was assistant counsel in a Philadelphia County trial resulting in a $30,000,000.00 jury verdict in favor of his clients – the largest state verdict recorded for that year. He has also been responsible for numerous appeals establishing a revised application of the law in both New Jersey and Pennsylvania. See *C.W. v. Cooper Health System*, 388 N.J. 42 (NJ App. 2006) and *Miller v. Ginsberg*, 2005 Pa. Super 136 (Pa. Super. 2005).

He has presented oral arguments before the Pennsylvania and New Jersey appellate courts and also volunteered in judging the annual University of Pennsylvania mock trial competitions. He has organized group participation in the Habitat for Humanity foundation and currently works in a *pro bono* capacity with both the Montgomery Child Advocacy Project and the Legal Aid of Southeastern Pennsylvania. Outside of the office, Matthew enjoys mountain biking, skiing and restoring classic automobiles.

Our Attorneys-Partners

Benjamin F. Johns

Benjamin F. Johns first began working at the firm as a Summer Associate while pursuing a J.D./M.B.A. joint degree program in business school and law school. He became a full-time Associate upon graduation, and is now a Partner. Over the course of his legal career, Ben has argued in the United States Court of Appeals for the District of Columbia Circuit, before the Judicial Panel for Multidistrict Litigation, and in other state and federal district courts across the country. He has argued and briefed dispositive motions to dismiss, for class certification and for summary judgment. He has also deposed prison guards, lawyers, bankers, engineers, I.R.S. officials, information technology personnel, and other witnesses.

Specifically, he has provided substantial assistance in the prosecution of the following cases :

- *In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK (S.D. Fla.). (Ben is actively involved in these Multidistrict Litigation proceedings, which involve allegations that dozens of banks reorder and manipulate the posting order of debit transactions. Settlements collectively in excess of $1 billion have been reached with several banks. Ben was actively involved in prosecuting the actions against U.S. Bank ($55 million settlement) and Comerica Bank ($14.5 million settlement).

- *In re Flonase Antitrust Litig.*, 2:08-cv-03301-AB (E.D. Pa.). (indirect purchaser plaintiffs alleged that the manufacturer of Flonase (a nasal allergy spray) filed "sham" citizen petitions with the FDA in order to delay the approval of less expensive generic versions of the drug. A $46 million settlement was reached on behalf of all indirect purchasers. Ben argued a motion before the District Court.).

- *In re TriCor Indirect Purchasers Antitrust Litig.*, No. 05-360-SLR (D. Del.). ($65.7 million settlement on behalf of indirect purchasers who claimed that the manufacturers of a cholesterol drug engaged in anticompetitive conduct designed to keep generic versions off of the market.)

- *Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation*, No. 1:10-cv-00264-CAB (N.D. Ohio). ($20 million settlement on behalf of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA.)

- *Henderson, v. Volvo Cars of North America, LLC*, No. 2:09-cv-04146-CCC-JAD (D. N.J.). (provided substantial assistance in this consumer automobile case

that settled after the plaintiffs prevailed, in large part, on a motion to dismiss).

- *In re Marine Hose Antitrust Litig.*, No. 08-MDL-1888 (S.D. Fla.) (Settlements totaling nearly $32 million on behalf of purchasers of marine hose.)

- *In re Philips/Magnavox Television Litig.*, No. 2:09-cv-03072-CCC-JAD (D. N.J.). (Settlement in excess of $4 million on behalf of consumers whose flat screen televisions failed due to an alleged design defect. Ben argued against one of the motions to dismiss.)

- *Allison, et al. v. The GEO Group*, No. 2:08-cv-467-JD (E.D. Pa.), and *Kurian v. County of Lancaster*, No. 2:07-cv-03482-PD (E.D. Pa.). (Settlements totaling $5.4 million in two civil rights class action lawsuits involving allegedly unconstitutional strip searches at prisons).

- *In re Recoton Sec. Litig.*, 6:03-cv-00734-JA-KRS (M.D.Fla.). ($3 million settlement for alleged violations of the Securities Exchange Act of 1934)

- *Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB (D. Colo.). (Obtained a settlement in this consumer fraud case that provided full recovery to approximately 930,000 class members.)

Ben has also had success at the appellate level. *See Cohen v. United States*, 578 F.3d 1 (D.C. Cir. 2009), *reh'g granted per curiam*, 599 F.3d 652 (D.C. Cir. 2010), *remanded by*, 650 F.3d 717 (D.C. Cir. 2011) (en banc) (reversing district court's decision to the extent that it dismissed taxpayers' claims under the Administrative Procedure Act); *Lone Star Nat'l Bank, N.A. v. Heartland Payment Sys.*, No. 12-20648, 2013 U.S. App. LEXIS 18283 (5th Cir. Sept. 3, 2013) (reversing district court's decision dismissing financial institutions' common law tort claims against a credit card processor).

Ben was recently elected to a three year term on the Executive Committee of the Philadelphia Bar Association's Young Lawyers Division. He is also presently on the Editorial Board of the Philadelphia Bar Reporter, the Board of Directors for the Dickinson School of Law Alumni Society, and the Vestry of the Church of the Holy Comforter in Drexel Hill, Pa. Ben was also a head coach in the Narberth basketball summer league for several years. He has been published in the Philadelphia Lawyer magazine and the Philadelphia Bar Reporter, presented a Continuing Legal Education course to fellow lawyers, and spoken to a class of law school students about the practice. While in college, Ben was on the varsity basketball team and spent a semester studying abroad in Osaka, Japan.

Ben has been named a "Lawyer on the Fast Track" by The Legal Intelligencer, a "Top 40 Under 40" attorney by The National Trial Lawyers, and a Pennsylvania "Rising Star" for the past five years.

Our Attorneys-Of Counsel

Anthony Allen Geyelin

Of Counsel, is admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the Supreme Court of Pennsylvania.

Mr. Geyelin is a graduate of the University of Virginia (B.A. in English, 1968) and the Villanova University School of Law (J.D. 1974 *cum laude*), where he was a member of the Moot Court Board, an Associate Editor of the *Villanova Law Review*, and a recipient of the Obert Corporate Law Award. After graduation from law school Mr. Geyelin was an associate in the business department of a major Philadelphia law firm before accepting an appointment as Chief Counsel to the Pennsylvania Insurance Department in Harrisburg, an office he held from 1981 through 1983. Mr. Geyelin served as Pennsylvania's Acting Insurance Commissioner in 1983 and 1984. In 1985 Mr. Geyelin accepted the position as chief inside counsel for Academy Insurance Group, Inc. in Valley Forge, Pennsylvania and Atlanta, Georgia, serving as General Counsel and Secretary of the publicly traded holding company and its operating subsidiaries. In 1994 Mr. Geyelin was appointed Secretary and General Counsel of Penn-America Insurance Company in Hatboro, Pennsylvania, and in 1995 assumed the same offices with Penn-America Group, Inc., the publicly traded parent company. From 1997 until joining the Firm Mr. Geyelin was in private practice, concentrating on general business, insurance regulatory and litigation support matters.

Our Attorneys-Of Counsel

David M. Maser

is Of Counsel in the Firm's Haverford office, a member of the Firm's Client Development Group and works closely with the Firm's institutional clients.

He has worked in both law and government for more than 20 years and has been involved with multiple Presidential, federal, state and local campaigns. Prior to joining the Firm, he worked with the Major League Baseball Players Association and as a government affairs specialist, representing numerous clients, including Fortune 500 companies & counseling them in legislative issues, appropriation requests, and business development opportunities at the federal, state and local levels.

He serves as a Member of the Board of Governors of the Pennsylvania State System of Higher Education (PASSHE), the Secretary of the Board and spokesman for the Garces Foundation, Secretary of the Board for the Second Chance Foundation and Treasurer of the Board of Keystone Weekend. In addition, he is a member of the Union League of Philadelphia, the Pennsylvania Society and Pennsylvania Statue University and Temple Law Alumni Associations.

Mr. Maser is a 1995 graduate of the Temple University School of Law and a 1992 graduate of the Pennsylvania State University where he received a B.S. in Marketing .

Our Attorneys-Senior Counsel

Catherine Pratsinakis

is Senior Counsel in the Firm's Haverford Office where she represents institutional investors in complex corporate governance and securities litigation.

Prior to joining the Firm, Ms. Pratsinakis spent seven years at the Wilmington office of a national litigation boutique firm that concentrated on institutional investor rights. Notably, Ms. Pratsinakis represented lead plaintiffs in *In re Parmalat Sec. Litig.*, MDL 04-1653 (S.D.N.Y.) which resulted in nearly $100 million in settlements with Parmalat and its former officers, directors, banks and auditors. One of the highlights from this case included Ms. Pratsinakis convincing the SDNY to allow lead plaintiffs to prosecute Parmalat in the securities class action despite being a protected debtor in bankruptcy court. Ms. Pratsinakis also represented lead plaintiffs in *In re Hollinger Int'l Sec. Litig.*, 04-CV-0834 (N.D. Ill.), which led to the recovery of $37.5 million in one of the most infamous cases of insider self-dealing.

Ms. Pratsinakis has also achieved significant results for investors in the Delaware Chancery Court with litigation such as *TRSL v. Greenberg, et al.*, No. 20106 (Del. Ch.). Overcoming a special litigation committee review of the self-interested transactions at issue, Ms. Pratsinakis went on to help secure one of the largest settlements in the Delaware Chancery Court ($115 million) on the eve of trial.

She represented lead plaintiffs in *In re Cablevision Systems Corp. Options Backdating Litigation; Teachers' Retirement System of Louisiana v. Scrushy; the Mattel Inc.* derivative case; *Barnes & Noble* derivative case; and *Covad Communications* derivative case. She also assisted the trial team in *In re Safety-Kleen Securities Corporation Bondholders Litigation.*

Immediately out of law school, Catherine joined the litigation and bankruptcy departments of one of the largest defense firms in Philadelphia, where she spent her time representing Fortune 500 companies in an array of commercial litigation, including antitrust, malpractice, shareholder, consumer and creditor actions.

Ms. Pratsinakis participated in the Volunteer for the Indigence Program (VIP) in Philadelphia and served on the editorial board of the *Philadelphia Bar Reporter.* Today she volunteers her time in the community through her participation as advisor to two youth organizations run by her local church and her involvement in the Friends of Weccacoe Playground, an organization involved in the revitalization of

Catherine Pratsinakis, cont.

an inner-city park and community center in Queen Village, Philadelphia, where she lives with her husband and two daughters.

Ms. Pratsinakis is a supporter of the American Constitution Society, the National Association of Shareholder and Consumer Advocates and Public Justice.

Ms. Pratsinakis graduated in 1997 from the University of Maryland – College Park with a B.A. in psychology, received her J.D., with honors, from the Rutgers School of Law in 2001 and her MBA, with honors, from the Rutgers School of Business. She served as a Law Clerk to the Honorable Joseph E. Irenas in the U.S. District Court for the District of New Jersey in the summer of 1999. She made Law Review in 1999 and served on the Rutgers Law Journal as a Notes and Casenotes Editor from 2000 to 2001.

Ms. Pratsinakis is admitted to practice law in Delaware, Pennsylvania and New Jersey and the United States District Court for the Eastern District of Pennsylvania.

Our Attorneys-Associates

Vera G. Belger

an associate in the Wilmington office, is admitted to practice before the Supreme Courts of Delaware, New York, and Connecticut. She is a graduate of the University of Virginia School of Law (J.D. 2008) and the University of Virginia (B.A. 2004). While attending law school, Mrs. Belger was a Board Member of the Public Interest Law Association and a participant in the William Minor Lile Moot Court Competition. Following graduation, Mrs. Belger was an associate with an international law firm where she practiced complex commercial litigation.

Tiffany J. Cramer

an associate in the Wilmington office, is admitted to practice before the Supreme Court of Delaware and the U.S. District Court for the District of Delaware. She is a graduate of Villanova University School of Law (J.D. 2007) and received her undergraduate degree in Political Science from Tufts University (B.A. 2002, *cum laude*). While in law school, she served as law clerk to the Honorable Jane R. Roth of the United States Court of Appeals for the Third Circuit.

Alison G. Gushue

an associate in the Haverford Office, is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey, the United States District Court for the Eastern District of Pennsylvania, and the United States District Court for the District of New Jersey. Ms. Gushue is a graduate of Villanova University School of Law (J.D. 2006) and the University of California, Los Angeles (B.A. 2003, *cum laude*). While in law school, Ms. Gushue served as Managing Editor of Student Works for the *Villanova Environmental Law Journal*. Prior to joining Chimicles & Tikellis, Ms. Gushue was counsel to the Pennsylvania Securities Commission in the Division of Corporation Finance. In this capacity, she was responsible for reviewing securities registration filings for compliance with state securities laws and for working with issuers and issuers' counsel to bring noncompliant filings into compliance.

Together with the Partners, Ms. Gushue has provided substantial assistance in the prosecution of the following cases:

- *Lockabey et al. v. American Honda Motor Co., Inc.*, Case No. 37-2010-00087755-CU-BT (San Diego Super. Ct.) (settlement valued by court at $170 million for a class of 460,000 purchasers and lessees of Honda Civic Hybrids to resolve claims that the vehicle was advertised with fuel economy representations it could not achieve under real-world driving conditions, and that a software update to the IMA system further decreased fuel economy and performance)

- *In re DVI Inc. Securities Litigation*, Case No. 2:03-cv-05336-LDD (over $17m in settlements recovered for the shareholder class in lawsuit alleging that the company's officers and directors, in conjunction with its external auditors and outside counsel, violated the federal securities laws)

- *In re LG Front Loading Washing Machine Litigation*, Case No. 2:08-cv-61 (D.N.J); and *In re Whirlpool Front Loading Washing Machine Litigation*, Case No. 1:08-wp-65000 (N.D. Oh.) (pending cases which allege that LG and Whirlpool's front loading washing machines suffer from a defect that leads to the formation of mold and mildew on the inside of the washing machines and production of foul and noxious odors)

Ms. Gushue has also provided pro bono legal services to nonprofit organizations in Philadelphia such as the Philadelphia Bankruptcy Assistance Project and the Public Interest Law Center of Philadelphia.

Our Attorneys-Associates

Joseph B. Kenney

an associate in the Haverford office and is admitted to practice before the Supreme Courts of Pennsylvania and New Jersey. Mr. Kenney is a graduate of Villanova University School of Law (J.D., cum laude, 2013) and Ursinus College (B.A. 2010). Mr. Kenney served as a Managing Editor of Student Works for the Jeffrey S. Moorad Journal of Sports Law Journal (formerly the Villanova Sports and Entertainment Law Journal) during his third year of law school. His comment, Showing On-Field Racism the Red Card: How the Use of Tort Law and Vicarious Liability Can Save the MLS from Joining the English Premier League on Racism Row, was selected for publication in the Spring 2012 Volume of the Journal. During law school, Mr. Kenney also served as a law clerk at Hamburg, Rubin, Mullin, Maxwell and Lupin, PC and at the United States Environmental Protection Agency Office of Regional Counsel for Region III.

Christina Donato Saler

an associate in the Haverford office, is admitted to practice before the Supreme Courts of New Jersey and Pennsylvania, the United States District Court of New Jersey and the Eastern District Court of Pennsylvania, and the United States Court of Appeals for the Third Circuit. She is a graduate of Rutgers University School of Law – Camden (J.D. 2003, with honors) and Fairfield University (B.A. 1995).

Following her law school graduation, Ms. Saler was an associate with the Philadelphia litigation boutique Kohn, Swift & Graf, P.C. where she prosecuted securities and consumer class actions as well as represented individual plaintiffs in First Amendment cases against media defendants. Ms. Saler gained extensive experience in all aspects of complex litigation and significant trial experience. Her accomplishments were acknowledged by her peers in 2011 and 2012 as she was selected as a Pennsylvania Rising Star SuperLawyer by Law & Politics and the publishers of Philadelphia Magazine, a designation held by only 2.5 percent of lawyers statewide.

Having joined the firm in July 2011, Ms. Saler continues to concentrate her practice on prosecuting class action litigation, including securities fraud, consumer protection, and ERISA cases on behalf of shareholders, consumers and institutional clients.

While attending law school, Ms. Saler received several academic honors including being named "Best Oralist" of her first year moot court class. She was also a member of the Rutgers Law Journal and served on the Editorial Board as the Lead Articles Editor. In 2002, the Rutgers Law Journal published her note, Pennsylvania Law Should No Longer Allow A Parent's Right to Testamentary Freedom to Outweigh the Dependent Child's "Absolute Right to Child Support," 34 Rutgers L.J. 235 (Fall 2002). Also in 2002, Ms. Saler served as law clerk to The Honorable Mark I. Bernstein, Court of Common Pleas – Commerce Court, First Judicial District of Pennsylvania.

Ms. Saler's professional career began in advertising. She was a senior account executive with the Tierney Agency where she managed the execution of various advertising campaigns and Verizon's contractual relationship with its spokesperson, James Earl Jones.

Scott M. Tucker

an associate in the Wilmington Office, is admitted to practice before the Supreme Courts of Delaware and Connecticut, the United States District Court for the District of Delaware and the United States Court of Appeals for the Third Circuit. He is a graduate of the Syracuse University College of Law (J.D. 2006, *cum laude*), the Whitman School of Management at Syracuse University (M.B.A. 2006), and SUNY Cortland (B.S. 2002, *cum laude*). While attending law school, Mr. Tucker was a member of the Securities Arbitration Clinic and received a Corporate Counsel Certificate from the Center for Law and Business Enterprise.

Together with the Firm's Partners, Mr. Tucker is assisting in the prosecution of numerous shareholder and unitholder class and derivative actions arising pursuant to Delaware law, including:

In re Kinder Morgan, Inc. Shareholders Litigation, Consol. C.A. No. 06-C-801 (Kan.) This pending action alleges the value of KMI's shares is materially in excess of the $107.50 agreed to in connection with the Buyout, that the consideration is inadequate and represents an attempt by the Buyout Group to wield its control to force out the public shareholders in order to reward itself with the profits rightfully belonging to the Plaintiffs and KMI's public shareholders, and that the proposed offer was timed to take advantage of a slump in the share price of KMI that immediately preceded the initial Buyout offer.

In Re Yahoo! Shareholders Litigation, Civil Action No. 3561-CC (Del. Ch.) This action alleged that Yahoo and its board of directors (the "Board") acted to thwart a non-coercive takeover bid by Microsoft, which would provide a 62% premium over Yahoo's pre-offer share price, and instead approved improper defensive measures and pursued third party deals that would be destructive to shareholder value. A settlement providing comprehensive changes to Yahoo's change in control severance plans was approved by the Court of Chancery on March 6, 2009. The settlement was characterized by one analyst as making "Yahoo much more attractive to suitors because it removes a potentially open ended liability from the acquisition equation. We see a definite positive."

Mr. Tucker is an associate member of the Board of Bar Examiners of the Supreme Court of the State of Delaware.

Practice Areas

Health & Welfare Fund Assets

C&T Protects Clients' Health & Welfare Fund Assets Through Monitoring Services & Vigorously Pursuing Health & Welfare Litigation.

At no cost to the client, C&T seeks to protect its clients' health & welfare fund assets against fraud and other wrongdoing by monitoring the health & welfare fund's drug purchases, Pharmacy benefit Managers and other health service providers. In addition, C&T investigates potential claims and, on a fully-contingent basis, pursues legal action for the client on meritorious claims involving the clients' heath & welfare funds. These claims could include: the recovery of excessive charges due to misconduct by health service providers; antitrust claims to recover excessive prescription drug charges and other costs due to corporate collusion and misconduct; and, cost-recovery claims where welfare funds have paid for health care treatment resulting from defective or dangerous drugs or medical devices.

Monitoring Financial Investments

C&T Protects Clients' Financial Investments Through Securities Fraud Monitoring Services.

Backed by extensive experience, knowledge of the law and successes in this field, C&T utilizes various information systems and resources (including forensic accountants, financial analysts, seasoned investigators, as well as technology and data collection specialists, who can cut to the core of complex financial and commercial documents and transactions) to provide our institutional clients with a means to actively protect the assets in their equity portfolios. As part of this no-cost service, for each equity portfolio, C&T monitors relevant financial and market data, pricing, trading, news and the portfolio's losses. C&T investigates and evaluates potential securities fraud claims and, after full consultation with the client and at the client's direction, C&T will, on a fully-contingent basis, pursue legal action for the client on meritorious securities fraud claims.

Corporate Transactional

C&T Protects Shareholders' Interest by Holding Directors Accountable for Breaches of Fiduciary Duties

Directors and officers of corporations are obligated by law to exercise good faith, loyalty, due care and complete candor in managing the business of the corporation. Their duty of loyalty to the corporation and its shareholders requires that they act in the best interests of the corporation at all times. Directors who breach any of these "fiduciary" duties are accountable to the stockholders and to the corporation itself for the harm caused by the breach. A substantial part of the practice of Chimicles & Tikellis LLP involves representing shareholders in bringing suits for breach of fiduciary duty by corporate directors.

Practice Areas

Securities Fraud

C&T Protects and Recovers Clients' Assets Through the Vigorous Pursuit of Securities Fraud Litigation.

C&T has been responsible for recovering over $1 billion for institutional and individual investors who have been victims of securities fraud. The prosecution of securities fraud often involves allegations that a publicly traded corporation and its affiliates and/or agents disseminated materially false and misleading statements to investors about the company's financial condition, thereby artificially inflating the price of that stock. Often, once the truth is revealed, those who invested at a time when the company's stock was artificially inflated incur a significant drop in the value of their stock. C&T's securities practice group comprises seasoned attorneys with extensive trial experience who have successfully litigated cases against some of the nation's largest corporations. This group is strengthened by its use of forensic accountants, financial analysts, and seasoned investigators.

Antitrust

C&T Enforces Clients' Rights Against Those Who Violated Antitrust Laws.

C&T successfully prosecutes an array of anticompetitive conduct, including price fixing, tying agreements, illegal boycotts and monopolization, anticompetitive reverse payment accords, and other conduct that improperly delays the market entry of less expensive generic drugs . As counsel in major litigation over anticompetitive conduct by the makers of brand-name prescription drugs, C&T has helped clients recover significant amounts of price overcharges for blockbuster drugs such as BuSpar, Coumadin, Cardizem, Flonase , Relafen, and Paxil, Toprol-XL, and TriCor.

Real Estate Investment Trusts

C&T is a Trail Blazer in Protecting Clients' Investments in Non-Listed Equities.

C&T represents limited partners and purchaser of stock in limited partnerships and real estate investment trusts (non-listed REITs) which are publicly-registered but not traded on a national stock exchange. These entities operate outside the realm of a public market that responds to market conditions and analysts' scrutiny, so the investors must rely entirely on the accuracy and completeness of the financial and other disclosures provided by the company about its business, its finances, and the value of its securities. C&T prosecutes: (a) securities law violations in the sale of the units or stock; (b) abusive management practices including self-dealing transactions and the payment of excessive fees; (c) unfair transactions involving sales of the entities' assets; and (d) buy-outs of the investors' interests.

Practice Areas

Shareholder Derivative Lawsuits

C&T is a Leading Advocate for Prosecuting and Protecting Shareholder Rights through Derivative Lawsuits and Class Actions.

C&T is at the forefront of persuading courts to recognize that actions taken by directors (or other fiduciaries) of corporations or associations must be in the best interests of the shareholders. Such persons have duties to the investors (and the corporation) to act in good faith and with loyalty, due care and complete candor. Where there is an indication that a director's actions are influenced by self-interest or considerations other than what is best for the shareholders, the director lacks the independence required of a fiduciary and, as a consequence, that director's decisions cannot be honored. A landmark decision by the Supreme Court of Delaware underscored the sanctity of this principal and represented a major victory for C&T's clients.

Corporate Governance and Accountability

C&T is a Principal Advocate for Sound Corporate Governance and Accountability.

C&T supports the critical role its investor clients serve as shareholders of publicly held companies. Settlements do not provide exclusively monetary benefits to our clients. In certain instances, they may include long term reforms by a corporate entity for the purpose of advancing the interests of the shareholders and protecting them from future wrongdoing by corporate officers and directors. On behalf of our clients, we take corporate directors' obligations seriously. It's a matter of justice. That's why C&T strives not to only obtain maximum financial recoveries, but also to effect fundamental changes in the way companies operate so that wrongdoing will not reoccur.

Consumer Protection

C&T Protects Consumers from Defective Products and Deceptive Conduct.

C&T frequently represents consumers who have been injured by false advertising, or by the sale of defective goods or services. The firm has achieved significant recoveries for its clients in such cases, particularly in those involving defectively designed automobiles and other consumer products. C&T has also successfully prosecuted actions against banks and other large institutions for engaging in allegedly deceptive conduct.

Representative Cases

I. *Securities Cases Involving Real Estate Investments*

***CNL Hotels & Resorts Inc. Securities Litigation*, Case No. 6:04-CV-1231, United States District Court, Middle District of Florida .**
C&T was Lead Litigation Counsel in CNL Hotels & Resorts Inc. Securities Litigation, representing a Michigan Retirement System, other named plaintiffs and over 100,000 investors in this federal securities law class action that was filed in August 2004 against the nation's second largest hotel real estate investment trust, CNL Hotels & Resorts, Inc. (f/k/a CNL Hospitality Properties, Inc.)("CNL Hotels") and certain of its affiliates, officers and directors. CNL raised over $3 billion from investors pursuant to what Plaintiffs alleged to be false and misleading offering materials. In addition, in June 2004 CNL proposed an affiliated-transaction that was set to cost the investors and the Company over $300 million ("Merger").

The Action was filed on behalf of: (a) CNL Hotels shareholders entitled to vote on the proposals presented in CNL Hotels' proxy statement dated June 21, 2004 ("Proxy Class"); and (b) CNL Hotels' shareholders who acquired CNL Hotels shares pursuant to or by means of CNL Hotels' public offerings, registration statements and/or prospectuses between August 16, 2001 and August 16, 2004 ("Purchaser Class").

The Proxy Class claims were settled by (a) CNL Hotels having entered into an Amended Merger Agreement which significantly reduced the amount that CNL Hotels paid to acquire its Advisor, CNL Hospitality Corp., compared to the Original Merger Agreement approved by CNL Hotels' stockholders pursuant to the June 2004 Proxy; (b) CNL Hotels having entered into certain Advisor Fee Reduction Agreements, which significantly reduced certain historic, current, and future advisory fees that CNL Hotels paid its Advisor before the Merger; and (c) the adoption of certain corporate governance provisions by CNL Hotels' Board of Directors. **In approving the Settlement, the Court concluded that in settling the Proxy claims, "a substantial benefit [was] achieved (estimated at approximately $225,000,000)" and "this lawsuit was clearly instrumental in achieving that result."** The Purchaser Class claims were settled by Settling Defendants' payment of **$35,000,000**, payable in three annual installments (January 2007 to January 2009).

On August 1, 2006, the Federal District Court in Orlando, Florida granted final approval of the Settlement as fair, reasonable, and adequate, and in rendering its approval of an award of attorneys' fees and costs to Plaintiffs' Counsel, the Court noted that "Plaintiffs' counsel pursued this complex case diligently, competently and professionally" and "achieved a successful result." More than 100,000 class members received notice of the proposed settlement and no substantive objection to the settlement, plan of allocation or fee petition was voiced by any class member.

Representative Cases

***In re Real Estate Associates Limited Partnership Litigation*, Case No. CV 98-7035, United States District Court, Central District of California.**

Chimicles & Tikellis LLP achieved national recognition for obtaining, in a federal securities fraud action, the first successful plaintiffs' verdict under the PSLRA. Senior partner Nicholas E. Chimicles was Lead Trial Counsel in the six-week jury trial in federal court in Los Angeles, in October 2002. The jury verdict, in the amount of $185 million (half in compensatory damages; half in punitive damages), was ranked among the top 10 verdicts in the nation for 2002. After the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for $83 million, representing full recovery for the losses of the class. At the final hearing, held in November 2003, the Court praised Counsel for achieving both a verdict and a settlement that "qualif[ied] as an exceptional result" in what the Judge regarded as "a very difficult case..." In addition, the Judge noted the case's "novelty and complexity...and the positive reaction of the class. Certainly, there have been no objections, and I think Plaintiffs' counsel has served the class very well."

Case Summary: In August of 1998, over 17,000 investors ("Investor Class") in 8 public Real Estate Associates Limited Partnerships ("REAL Partnerships") were solicited by their corporate managing general partner, defendant National Partnership Investments Corp. ("NAPICO"), and other Defendants via Consent Solicitations filed with the Securities and Exchange Commission ("SEC"), to vote in favor of the sale of the REAL Partnerships' interests in 98 limited partnerships ("Local Partnerships"). In a self-dealing and interested transaction, the Investor Class was asked to consent to the sale of these interests to NAPICO's affiliates ("REIT Transaction"). In short, Plaintiffs alleged that defendants structured and carried out this wrongful and self-dealing transaction based on false and misleading statements, and omissions in the Consent Solicitations, resulting in the Investor Class receiving grossly inadequate consideration for the sale of these interests. Plaintiffs' expert valued these interests to be worth a minimum of $86,523,500 (which does not include additional consideration owed to the Investor Class), for which the Investor Class was paid only $20,023,859.

Plaintiffs and the Certified Class asserted claims under Section 14 of the Securities Exchange Act of 1934 ("the Exchange Act"), alleging that the defendants caused the Consent Solicitations to contain false or misleading statements of material fact and omissions of material fact that made the statements false or misleading. In addition, Plaintiffs asserted that Defendants breached their fiduciary duties by using their positions of trust and authority for personal gain at the expense of the Limited Partners. Moreover, Plaintiffs sought equitable relief for the Limited Partners including, among other things, an injunction under Section 14 of the Exchange Act for violation of the "anti-bundling rules" of the SEC, a declaratory judgment decreeing that defendants were not entitled to indemnification from the REAL Partnerships.

Representative Cases

Trial: This landmark case is the *first* Section 14 – proxy law- securities class action seeking damages, a significant monetary recovery, for investors that has been tried, and ultimately won, before a jury anywhere in the United States since the enactment of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Trial began on October 8, 2002 before a federal court jury in Los Angeles. The jury heard testimony from over 25 witnesses, and trial counsel moved into evidence approximately 4,810 exhibits; out of those 4,810 exhibits, witnesses were questioned about, or referred to, approximately 180 exhibits.

On November 15, 2002, the ten-member jury, after more than four weeks of trial and six days of deliberation, unanimously found that Defendants knowingly violated the federal proxy laws and that NAPICO breached its fiduciary duties, and that such breach was committed with oppression, fraud and malice. The jury's unanimous verdict held defendants liable for compensatory damages of $92.5 million in favor of the Investor Class. On November 19, 2002, a second phase of the trial was held to determine the amount of punitive damages to be assessed against NAPICO. The jury returned a verdict of $92.5 million in punitive damages. In total, trial counsel secured a unanimous jury verdict of $185 million on behalf of the Investor Class.

With this victory, Mr. Chimicles and the trial team secured the 10th largest verdict of 2002. (See, National Law Journal, "The Largest Verdicts of 2002", February 2, 3003; National Law Journal, "Jury Room Rage", Feb. 3. 2002). Subsequent to post-trial briefing and rulings, in which the court reduced the punitive damage award because it exceeded California statutory limits, the case settled for $83 million. The settlement represented full recovery for the losses of the class.

Prosecuting and trying this Case required dedication, tenacity, and skill: This case involved an extremely complex transaction. As Lead Trial Counsel, C&T was faced with having to comprehensively and in an understandable way present complex law, facts, evidence and testimony to the jury, without having them become lost (and thus, indifferent and inattentive) in a myriad of complex terms, concepts, facts and law. The trial evidence in this case originated almost exclusively from the documents and testimony of Defendants and their agents. As Lead Trial Counsel, C&T was able, through strategic cross-examination of expert witnesses, to effectively stonewall defendants' damage analysis. In addition, C&T conducted thoughtful and strategic examination of defendants' witnesses, using defendants' own documents to belie their testimony.

The significance of the case: The significance of this trial and the result are magnified by the public justice served via this trial and the novelty of issues tried. This case involved a paradigm of corporate greed, and C&T sent a message to not only the Defendants in this Action, but to all corporate fiduciaries, officers, directors and partners, that it does not pay to steal, lie and cheat. There needs to be effective deterrents, so that "corporate greed" does not pay. The diligent and unrelenting prosecution and trial of this case by C&T sent that message.

Moreover, the issues involved were novel and invoked the application of developing case law that is not always uniformly applied by the federal circuit courts. In Count I, Plaintiffs alleged that defendants violated § 14 of the Exchange Act. Subsequent to the enactment of the PLSRA, the primary relief sought and accorded for violations of the proxy laws is a preliminary injunction. Here, the consummation of the REIT Transaction foreclosed that form of relief. Instead, Plaintiffs' Counsel sought significant monetary damages for the Investor Class on account of defendants' violations of the federal proxy laws. C&T prevailed in overcoming defendants' characterization of the measure of damages that the Investor Class was required to prove (defendants argued for a measure of damages equivalent to the difference in the value of the security prior to and subsequent to the dissemination of the Consent Solicitations), and instead, successfully recouped damages for the value of the interests and assets given up by the Investor Class. The case is important in the area of enforcement of fiduciary duties in public partnerships which are a fertile ground for unscrupulous general partners to cheat the public investors.

Aetna Real Estate Associates LP
Nicholas Chimicles and Pamela Tikellis represented a Class of unitholders who sought dissolution of the partnership because the management fees paid to the general partners were excessive and depleted the value of the partnership. The Settlement, valued in excess of $20 million, included the sale of partnership property to compensate the class members, a reduction of the management fees, and a special cash distribution to the class.

***City of St. Clair Shores General Employees Retirement System, et al. v. Inland Western Retail Real Estate Trust, Inc., Case No. 07 C 6174,* United States District Court, Northern District of Illinois .**
C&T was principal litigation counsel for the plaintiff class of stockholders that challenged the accuracy of a proxy statement that was used to secure stockholder approval of a merger between an external advisor and property managers and the largest retail real estate trust in the country. In 2010, in a settlement negotiation lead by the Firm, we succeeded in having $90 million of a stock, or 25% of the merger consideration, paid back to the REIT.

***Wells and Piedmont Real Estate Investment Trust, Inc., Securities Litigation*, Case Nos. 1:07-cv-00862, 02660, United States District Court, Northern District of Georgia.**
C&T served as co-lead counsel in this federal securities class action on behalf of Wells REIT/Piedmont shareholders. Filed in 2007, this lawsuit charged Wells

REIT, certain of its directors and officers, and their affiliates, with violations of the federal securities laws for their conducting an improper, self-dealing transaction and recommending that shareholders reject a mid-2007 tender offer made for the shareholders' stock. On the verge of trial, the Cases settled for $7.5 million and the Settlement was approved in 2013.

***In re Cole Credit Property Trust III, Inc. Derivative and Class Litigation,* Case No. 24-C-13-001563, Circuit Court for Baltimore City.**
In this Action filed in 2013, C&T, as chair of the executive committee of interim class counsel, represents Cole Credit Property Trust III ("CCPT III") investors, who were, without their consent, required to give Christopher Cole (CCPT III's founder and president) hundreds of millions of dollars' worth of consideration for a business that plaintiffs allege was worth far less. The Action also alleges that, in breach of their fiduciary obligations to CCPT III investors, CCPT III's Board of Directors pressed forward with this wrongful self-dealing transaction rebuffing an offer from a third party that proposed to acquire the investors' shares in a $9 billion dollar deal. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

***Delaware County Employees Retirement Fund v. Barry M. Portnoy, et al.*, Case No. 1:13-cv-10405, United States District Court, District Court of Massachusetts.**
C&T is lead counsel in an action pending in federal court in Boston filed on behalf of Massachusetts-based CommonWealth REIT ("CWH") and its shareholders against CWH's co-founder Barry Portnoy and his son Adam Portnoy ("Portnoys"), and their wholly-owned entity Reit Management & Research, LLC ("RMR"), and certain other former and current officers and trustees of CWH (collectively, "Defendants"). The Action alleges a long history of management abuse, self-dealing, and waste by Defendants, which conduct constitutes violations of the federal securities laws and fiduciary duties owed by Defendants to CWH and its shareholders. Plaintiff seeks damages and to enjoin Defendants from any further self-dealing and mismanagement. The Defendants sought to compel the Plaintiff to arbitrate the claims, and Plaintiff has vigorously opposed such efforts on several grounds including that CWH and its shareholders did not consent to arbitration and the arbitration clause is facially oppressive and illegal. The parties are awaiting the Court's ruling on that matter.

***In re Empire State Realty Trust, Inc. Investor Litigation, Case 650607/2012,* New York Supreme Court.**
In this action filed in 2012, C&T represents investors who own the Empire State Building, as well as several other Manhattan properties, whose interests and assets are proposed to be consolidated into a new entity called Empire State Realty

Trust Inc. The investors filed an action against the transaction's chief proponents, members of the Malkin family, certain Malkin-controlled companies, and the estate of Leona Helmsley, claiming breaches of fiduciary for, among other things, such proponents being disproportionately favored in the transaction. A Settlement of the Litigation has been reached and was approved in full by the Court. The Settlement consists of: a cash settlement fund of $55 million, modifications to the transaction that result in an over $100 million tax deferral benefit to the investors, and defendants will provide additional material information to investors about the transaction.

II. ***Securities Cases (Non-Real Estate)***

***Continental Illinois Corporation Securities Litigation*, Civil Action No. 82 C 4712, United States District Court, Northern District of Illinois.**

Nicholas Chimicles served as lead counsel for the shareholder class in this action alleging federal securities fraud. Filed in the federal district court in Chicago, the case arose from the 1982 oil and gas loan debacle that ultimately resulted in the Bank being taken over by the FDIC. The case involved a twenty-week jury trial conducted by Mr. Chimicles in 1987. Ultimately, the Class recovered nearly $40 million.

***PaineWebber Limited Partnerships Litigation, 94 Civ. 8547*, United States District Court, Southern District of New York**

The Firm was chair of the plaintiffs' executive committee in a case brought on behalf of tens of thousands of investors in approximately 65 limited partnerships that were organized or sponsored by PaineWebber. In a landmark settlement, investors were able to recover $200 million in cash and additional economic benefits following the prosecution of securities law and RICO (Racketeer Influenced and Corrupt Organizations Act) claims.

***ML-Lee Litigation, ML Lee Acquisition Fund L.P.* and *ML-Lee Acquisition Fund II L.P.* and *ML-Lee Acquisition Fund (Retirement Accounts)*, (C.A. Nos. 92-60, 93-494, 94-422, and 95-724), United States District Court, District of Delaware.**

C&T represented three classes of investors who purchased units in two investment companies, ML-Lee Funds (that were jointly created by Merrill Lynch and Thomas H. Lee). The suits alleged breaches of the federal securities laws, based on the omission of material information and the inclusion of material misrepresentations in the written materials provided to the investors, as well as breaches of fiduciary duty and common law by the general partners in regard to conduct that benefited them

at the expense of the limited partners. The complaint included claims under the often-ignored Investment Company Act of 1940, and the case witnessed numerous opinions that are considered seminal under the ICA. The six-year litigation resulted in **$32 million** in cash and other benefits to the investors.

***Orrstown Financial Services, Inc., et al,* Securities Litigation, Case No. 12-cv-00793 United States District Court, Middle District of Pennsylvania.**

In this federal securities fraud class action filed in 2012, C&T serves as Lead Counsel, and the Southeastern Pennsylvania Transportation Authority as Lead Plaintiff. The action alleges that Defendants violated the Securities Act of 1933 and the Securities Exchange Act of 1934 by misleading investors concerning material information about Orrstown's loan portfolio, underwriting practices, and internal controls. After extensive investigation, including having interviewed several confidential witnesses, C&T filed a 100+ page amended complaint in early 2012. Defendants have moved to dismiss the complaint, and plaintiffs have filed papers vigorously opposing the motion.

***In re Colonial BancGroup, Inc. Securities Litigation*, Case No. 09-CV-00104, United States District Court, Middle District of Alabama.**

C&T is actively involved in prosecuting this securities class action arising out of the 2009 failure of Colonial Bank, in which Norfolk County Retirement System, State-Boston Retirement System, City of Brockton Retirement System, and Arkansas Teacher Retirement System are the Court-appointed lead plaintiffs. The failure of Colonial Bank was well-publicized and ultimately resulted in several criminal trials and convictions of Colonial officers and third parties involved in a massive fraud in Colonial's mortgage warehouse lending division. The pending securities lawsuit includes allegations arising out of the mortgage warehouse lending division fraud, as well as allegations that Colonial misled investors concerning its operations in connection with two public offerings of shares and bonds in early 2008, shortly before the Bank's collapse. In April 2012, the Court approved a $10.5 million settlement of Plaintiffs' claims against certain of Colonial's directors and officers. Plaintiffs' claims against Colonial's auditor, PwC, and the underwriters of the 2008 offerings are ongoing.

III. *Delaware and Other Merger and Acquisition Suits*

***In re Genentech, Inc. Shareholders Litigation*, C.A. No. 3911-VCS, Delaware Court of Chancery.**

In this shareholder class action, C&T served as Co-Lead Counsel representing minority stockholders of Genentech, Inc. in an action challenging actions taken by Roche Holdings, Inc. ("Roche") to acquire the remaining approximately 44% of the outstanding common stock of Genentech, Inc. ("Genentech") that Roche did not already own. In particular, Plaintiffs challenged that Roche's conduct toward the minority was unfair and violated pre-existing governance agreements between Roche and Genentech. During the course of the litigation, Roche increased its offer from $86.50 per share to %95 per share, a $4 billion increase in value for Genentech's minority shareholders. That increase and other protections for the minority provided the bases for the settlement of the action, which was approved by the Court of chancery on July 9, 2009.

***In re Kinder Morgan Shareholder Litigation*, C.A. No. 06-c-801, District Court of Shawnee County, Kansas**

In this shareholder class action, C&T served as Co-Lead Counsel representing former stockholders of Kinder Morgan, Inc. (KMI) in an action challenging the acquisition of Kinder Morgan by a buyout group lead by KMI's largest stockholder and Chairman, Richard Kinder. Plaintiffs alleged that Mr. Kinder and a buyout group of investment banks and private equity firms leveraged Mr. Kinder's knowledge and control of KMI to acquire KMI for less than fair value. As a result of the litigation, Defendants agreed to pay $200 million into a settlement fund, believed to be the largest of its kind in any buyout-related litigation. The district Court of Shawnee County, Kansas approved the settlement on November 19, 2010.

***In re Freeport-McMoran Sulphur, Inc. Shareholder Litigation*, C.A. No. 16729, Delaware Court of Chancery.**

In this shareholder class action, C&T serves as Lead Plaintiffs' Counsel representing investors in a stock-for-stock merger of two widely held public companies, seeking to remedy the inadequate consideration the stockholders of Sulphur received as part of the merger. In June 2005, the Court of Chancery denied defendants' motions for summary judgment, allowing Plaintiffs to try each and every breach of fiduciary duty claim asserted in the Action. In denying defendants' motions for summary judgment the Court held there were material issues of fact regarding certain board member's control over the Board including the Special Committee members and the fairness of the process employed by the Special Committee impli-

cating the duty of entire fairness and raising issues regarding the validity of the Board action authorizing the merger. The decision has broken new ground in the field of corporate litigation in Delaware. Before the trial commenced, Plaintiffs and Defendants agreed in principle to settle the case. The settlement, which was approved in April 2006, provides for a cash fund of $17,500,000.

***In re Chiron Shareholder Deal Litigation*, Case No. RG05-230567 (Cal. Super.) & *In re Chiron Corporation Shareholder Litigation*, C.A. No. 1602-N, Delaware Court of Chancery**

C&T represents stockholders of Chiron Corporation in an action which challenged the proposed acquisition of Chiron Corporation by its 42% stockholder, Novartis AG. Novartis announced a $40 per share merger proposal on September 1, 2005, which was rejected by Chiron on September 5, 2005. On October 31, Chiron announced an agreement to merge with Novartis at a price of $45 per share. C&T was co-lead counsel in the consolidated action brought in the Delaware Court of Chancery. Other similar actions were brought by other Chiron shareholders in the Superior Court of California, Alameda City. The claims in the Delaware and California actions were prosecuted jointly in the Superior Court of California. C&T, together with the other counsel for the stockholders, obtained an order from the California Court granting expedited proceedings in connection with a motion preliminary to enjoin the proposed merger. Following extensive expedited discovery in March and April, 2006, and briefing on the stockholders' motion for injunctive relief, and just days prior to the scheduled hearing on the motion for injunctive relief, C&T, together with Co-lead counsel in the California actions, negotiated an agreement to settle the claims which included, among other things, a further increase in the merger price to $48 per share, or an additional $330 million for the public stockholders of Chiron. On July 25, 2006, the Superior Court of California, Alameda County, granted final approval to the settlement of the litigation.

***Gelfman v. Weeden Investors, L.P.*, Civ. Action No. 18519-NC, Delaware Court of Chancery**

Chimicles & Tikellis LLP served as class counsel, along with other plaintiffs' firms, in this action against the Weeden Partnership, its General Partner and various individual defendants filed in the Court of Chancery in the State of Delaware. In this Class Action, Plaintiffs alleged that Defendants breached their fiduciary duties to the investors and breached the Partnership Agreement. The Delaware Chancery Court conducted a trial in this action which was concluded in December 2003. Following the trial, the Chancery Court received extensive briefing from the parties and heard oral argument. On June 14, 2004, the Chancery Court issued a memorandum opinion, which was subsequently modified, finding that the Defendants breached their fiduciary duties and the terms of the Partnership Agreement, with respect to the investors, and that Defendants acted in bad faith ("Opinion"). This

Opinion from the Chancery Court directed an award of damages to the classes of investors, in addition to other relief. In July 2004, Class Counsel determined that it was in the best interests of the investors to settle the Action for over 90% of the value of the monetary award under the Opinion (over $8 million).

***I.G. Holdings Inc., et al. v. Hallwood Realty, LLC*, et al., C.A. No. 20283, Delaware Court of Chancery.**

In the Delaware Court of Chancery, C& T represented the public unitholders of Hallwood Realty L.P. The action challenged the general partner's refusal to redeem the Partnership's rights plan or to sell the Partnership to maximize value for the public unitholders. Prior to the filing of the action, the Partnership paid no distributions and Units of the Partnership normally traded in the range of $65 to $85 per unit. The prosecution of the action by C&T caused the sale of the Partnership, ultimately yielding approximately $137 per Unit for the unitholders plus payment of the attorneys' fees of the Class.

***Southeastern Pennsylvania Transportation Authority v. Josey*, et. al., C.A. No. 5427, Delaware Court of Chancery.**

Chimicles & Tikellis served as class counsel in this action challenging the acquisition of Mariner Energy, Inc. by Apache Corporation. Following expedited discovery, C&T negotiated a settlement which led to the unprecedented complete elimination of the termination fee from the merger agreement and supplemental disclosures regarding the merger. On March 15, 2011, the Delaware Court of Chancery granted final approval to the settlement of the litigation.

***In re Pepsi Bottling Group, Inc. Shareholders Litigation*, C.A. No. 4526, Delaware Court of Chancery.**

The Firm served as class counsel, along with several other firms challenging PepsiCo's buyout of Pepsi Bottling Group, Inc. C&T's efforts prompted PepsiCo to raise its buyout offer for Pepsi Bottling Group, Inc. by approximately $1 billion and take other steps to improve the buyout on behalf of public stockholders.

***In re Atlas Energy Resources LLC, Unitholder Litigation*, Consol C.A. No. 4589, Delaware Court of Chancery.**

The Firm was co-lead counsel in an action challenging the fairness of the acquisition of Atlas Energy Resources LLC by its controlling shareholder, Atlas America, Inc. After over two-years of complex litigation, the Firm negotiated a $20 million cash settlement, which was finally approved by the court on May 14, 2012.

Representative Cases

***In re J. Crew Group, Inc. S'holders Litigation*, C.A. No. 6043, Delaware Court of Chancery.**
The Firm was co-lead counsel challenging the fairness of a going private acquisition of J.Crew by TPG and members of J.Crew's management. After hard-fought litigation, the action resulted in a settlement fund of $16 million and structural changes to the go-shop process, including an extension of the go-shop process, elimination of the buyer's informational and matching rights and requirement that the transaction to be approved by a majority of the unaffiliated shareholders. The settlement was finally approved on December 16, 2011.

IV. *Delaware Shareholder Derivative Suits*

***In re McKesson Derivative Litigation, Saito*, et al. v. McCall, et al., C.A. No. 17132, Delaware Court of Chancery.**
As Lead Counsel in this stockholder derivative action, C&T challenged the actions of the officers, directors and advisors of McKesson and HBOC in proceeding with the merger of the two companies when their managements were allegedly aware of material accounting improprieties at HBOC. In addition, C&T also brought (under Section 220 of the Delaware Code) a books and records case to discover information about the underlying events. C&T successfully argued in the Delaware Courts for the production of the company's books and records which were used in the preparation of an amended derivative complaint in the derivative case against McKesson and its directors. Seminal opinions have issued from both the Delaware Supreme Court and Chancery Court about Section 220 actions and derivative suits as a result of this lawsuit. Plaintiffs agreed to a settlement of the derivative litigation subject to approval by the Delaware Court of Chancery, pursuant to which the Individual Defendants' insurers will pay $30,000,000 to the Company. In addition, a claims committee comprised of independent directors has been established to prosecute certain of Plaintiffs' claims that will not be released in connection with the proposed settlement. Further, the Company will maintain important governance provisions among other things ensuring the independence of the Board of Directors from management. On February 21, 2006, the Court of Chancery approved the Settlement and signed the Final Judgment and Order and Realignment Order.

***Barnes & Noble Inc.*, C.A. No. 4813, Delaware Court of Chancery.**
C&T served as Co-Lead Counsel in a shareholder lawsuit brought derivatively on behalf of Barnes & Noble ("B&N") alleging wrongdoing by the B&N directors for recklessly causing B&N to acquire Barnes & Noble College Booksellers, Inc.

("College Books") the "Transaction") from B&N's founder, Chairman and controlling stockholder, Leonard Riggio ("Riggio") at a grossly excessive price, subjecting B&N to excessive risk. The case settled for nearly $30 million and finally approved by the court on September 4, 2012.

***Sample v. Morgan*, et. al., C.A. No. 1214-VCS, Delaware Court of Chancery.**
Action alleging that members of the board of directors of Randall Bearings, Inc. breached their fiduciary duties to the company and its stockholders and committed corporate waste. The action resulted in an eve-of-trial settlement including revocation of stock issued to insiders, a substantial cash payment to the corporation and reformation of the Company's corporate governance. The Court finally approved the settlement on August 5, 2008.

***Manson v. Northern Plain Natural Gas Co.*, LLC, et. al., C.A. No. 1973-N, Delaware Court of Chancery.**
Chimicles & Tikellis served as counsel in a class and derivative action asserting contract and fiduciary duty claims stemming from dropdown asset transactions to a partnership from an affiliate of its general partner. The case settled for a substantial adjustment (valued by Plaintiff's expert to be worth more than $100 million) to the economic terms of units issued by the partnership in exchange for the assets. The settlement was finally approved by the Court on January 18, 2007.

V. Consumer Cases

***Lockabey v. American Honda Motors Co., Inc.*, Case No. 37-2010-00087755-CU-BT-CTL, San Diego County Superior Court**
Mr. Chimicles is co-lead counsel in a nationwide class action involving fuel economy problems encountered by purchasers of Honda Civic Hybrids ("HCH"). *Lockabey v. American Honda Motors Co., Inc.*, Case No. 37-2010-00087755-CU-BT-CTL (Super. Ct. San Diego). After nearly five years of litigation in both the federal and state courts in California, a settlement benefiting nearly 450,000 consumers who had leased or owned HCH vehicles from model years 2003 through 2009. Following unprecedented media scrutiny and review by the attorneys general of each state as well as major consumer protection groups, the settlement was approved on March 16, 2012 in a 40 page opinion by the Honorable Timothy B. Taylor of the San Diego County (CA) Superior Court in which the Court stated:

The court views this as a case which was difficult and risky... The court also views this as a case with significant public value which merited the 'sunlight' which Class Counsel have facilitated.

Depending on the number of claims that are filed (deadline will not expire until 6 months after a pending single appeal is resolved), the Class will garner benefits ranging from $100 million to $300 million.

***In re Pennsylvania Baycol: Third-Party Payor Litigation*, Case No. 001874, Court of Common Pleas, Philadelphia County.**

In connection with the withdrawal by Bayer of its anti-cholesterol drug Baycol, C&T represents various Health and Welfare Funds, including the Pennsylvania Employees Benefit Trust Fund, and a certified national class of "third party payors" seeking damages for the sums paid to purchase Baycol for their members/insureds and to pay for the costs of switching their members/insureds from Baycol to an another cholesterol-lowering drug. The Philadelphia Court of Common Pleas granted plaintiffs' motion for summary judgment as to liability; this is the first and only judgment that has been entered against Bayer anywhere in the United States in connection with the withdrawal of Baycol. The Court subsequently certified a national class, and the parties reached a settlement (recently approved by the court) in which Bayer agreed to pay class members a net recovery that approximates the maximum damages (including pre-judgment interest) suffered by class members. The class settlement negotiated by C&T represents a net recovery for third party payors that is between double and triple the net recovery pursuant to a non-litigated settlement negotiated by lawyers representing third party payors such as AETNA and CIGNA that was made available to and accepted by numerous other third party payors (including the TRS). C&T had advised its clients to reject that offer and remain in the now settled class action. On June 15, 2006 the court granted final approval of the settlement.

***Shared Medical Systems 1998 Incentive Compensation Plan Litigation*, Philadelphia County Court of Common Pleas, Commerce Program, No. 0885.**

Chimicles & Tikellis LLP is lead counsel in this action brought in 2003 in the Philadelphia County Court of Common Pleas. The case was brought on behalf of approximately 1,300 persons who were employees of Defendant Siemens Medical Solutions Health Services Corporation (formerly Shared Medical Systems, Inc.) who had their 1998 incentive compensation plan ("ICP") compensation reduced 30% even though the employees had completed their performance under the 1998 ICP contracts and had earned their incentive compensation based on the targets, goals and quotas in the ICPs. The Court had scheduled trial to begin on Febru-

ary 4, 2005. On the eve of trial, the Court granted Plaintiffs' motion for summary judgment as to liability on their breach of contract claim. With the rendering of that summary judgment opinion on liability in favor of Plaintiffs, the parties reached a settlement in which class members will receive a **net recovery of the full amount of the amount that their 1998 ICP compensation was reduced.** On May 5, 2005, the Court approved the settlement, stating that the case "should restore anyone's faith in class actions as a reasonable way of proceeding on reasonable cases."

***Wong v. T-Mobile USA, Inc.*, Case No. CV 05-cv-73922-NGE-VMM, United States District Court, Eastern District of Michigan.**
Chimicles & Tikellis LLP and the Miller Law Firm P.C. filed a complaint alleging that defendant T-Mobile overcharged its subscribers by billing them for data access services even though T-Mobile's subscribers had already paid a flat rate monthly fee of $5 or $10 to receive unlimited access to those various data services. The data services include Unlimited T-Zones, Any 400 Messages, T-Mobile Web, 1000 Text Messages, Unlimited Mobile to Mobile, Unlimited Messages, T-Mobile Internet, T-Mobile Internet with corporate My E-mail, and T-Mobile Unlimited Internet and Hotspot. Chimicles & Tikellis LLP and the Miller Law Firm defeated a motion by T-Mobile to force resolution of these claims via arbitration and successfully convinced the Court to strike down as unconscionable a provision in T-Mobile's subscription contract prohibiting subscribers from bringing class actions. After that victory, the parties reached a settlement requiring T-Mobile to provide class members with a net recovery of the full amount of the un-refunded overcharges with all costs for notice, claims administration, and counsel fees paid in addition to class members' 100% net recovery. The gross amount of the overcharges, which occurred from April 2003 through June 2006, is approximately $6.7 million. To date, T-Mobile has refunded approximately $4.5 million of those overcharges. A significant portion of those refunds were the result of new policies T-Mobile instituted after the filing of the Complaint. Pursuant to the Settlement, T-Mobile will refund the remaining $2.2 million of un-refunded overcharges.

***In re Checking Account Overdraft Litig.*, No. 1:09-MD-02036-JLK, United States District Court, Southern District of Florida.**
These Multidistrict Litigation proceedings involve allegations that dozens of banks reorder and manipulate the posting order of consumer debit transactions to maximize their revenue from overdraft fees. Settlements in excess of $1 billion have been reached with several banks. C&T was active in the overall prosecution of these proceedings, and was specifically responsible for prosecuting actions against US Bank (pending $55 million settlement) and Comerica Bank (pending $14.5 million settlement).

Representative Cases

***In re Apple iPhone/iPod Warranty Litig.*, No. 10-CV-01610, United States District Court, Northern District of California.**
C&T is interim co-lead counsel in this case brought by consumers who allege that that Apple improperly denied warranty coverage for their iPhone and iPod Touch devices based on external "Liquid Submersion Indicators" (LSIs). LSIs are small paper-and-ink laminates, akin to litmus paper, which are designed to turn red upon exposure to liquid. Plaintiffs alleged that external LSIs are not a reliable indicator of liquid damage or abuse and, therefore, Apple should have provided warranty coverage. The district court recently granted preliminary approval to a settlement pursuant to which Apple has agreed to pay $53 million to settle these claims.

***Henderson v. Volvo Cars of North America LLC, et al.*, No. 2:09-CV-04146-CCC-JAD, United States District Court, District of New Jersey.**
C&T was lead counsel in this class action lawsuit brought behalf of approximately 90,000 purchasers and lessees of Volvo vehicles that contained allegedly defective automatic transmissions. After the plaintiffs largely prevailed on a motion to dismiss, the district court granted final approval to a nationwide settlement in March 2013.

***In re Philips/Magnavox Television Litig.*, No. 2:09-cv-03072-CCC-JAD, United States District Court, District of New Jersey.**
This class action was brought by consumers who alleged that a defective electrical component was predisposed to overheating, causing their televisions to fail prematurely. After the motion to dismiss was denied in large part, the parties reached a settlement in excess of $4 million.

***Physicians of Winter Haven LLC, d/b/a Day Surgery Center v. STERIS Corporation*, No. 1:10-cv-00264-CAB, United States District Court, Northern District of Ohio.**
This case was brought on behalf of a class of hospitals and surgery centers that purchased a sterilization device that allegedly did not receive the required pre-sale authorization from the FDA. The case settled for approximately $20 million worth of benefits to class members. C&T, which represented an outpatient surgical center, was the sole lead counsel in this case.

***Smith v. Gaiam, Inc.*, No. 09-cv-02545-WYD-BNB, United States District Court, District of Colorado.**
C&T was co-lead counsel in this consumer case in which a settlement that provided full recovery to approximately 930,000 class members was achieved.

***In re Certainteed Corp. Roofing Shingle Products Liability Litigation*, No, 07-MDL-1817-LP, United States District Court, Eastern District of Pennsylvania.**
This was a consumer class action involving allegations that CertainTeed sold defective roofing shingles. The parties reached a settlement which was approved and valued by the Court at between $687 to $815 million.

V. Antitrust Cases

***In re TriCor Indirect Purchasers Antitrust Litig.*, No. 05-360-SLR, United States District Court, District of Delaware.**
C&T was liaison counsel in this indirect purchaser case which resulted in a $65.7 million settlement. The plaintiffs alleged that manufacturers of a cholesterol drug engaged in anticompetitive conduct, such as making unnecessary changes to the formulation of the drug, which was designed to keep generic versions off of the market.

***In re Flonase Antitrust Litig.*, No. 2:08-cv-3301, United States District Court, Eastern District of Pennsylvania.**
C&T was liaison counsel and trial counsel on behalf of indirect purchaser plaintiffs in this pending antitrust case. The plaintiffs allege that the manufacturer of Flonase engaged in campaign of filing groundless citizens petitions with the Food and Drug Administration which was designed to delay entry of cheaper, generic versions of the drug. The court has granted class certification, and denied motions to dismiss and for summary judgment filed by the defendant. A $46 million settlement was reached on behalf of all indirect purchasers a few months before trial was to commence.

***In re In re Metoprolol Succinate End-Payor Antitrust Litig.*, No. 1:06-cv-00071, United States District Court, District of Delaware.**
C&T was liaison counsel for the indirect purchaser plaintiffs in this case, which involved allegations that AstraZeneca filed baseless patent infringement lawsuits in an effort to delay the market entry of generic versions of the drug Toprol-XL.

After the plaintiffs defeated a motion to dismiss, the indirect purchaser case settled for $11 million.

***In re Insurance Brokerage Antitrust Litigation*, No. 2:04-cv-05184-GEB-PS, United States District Court, District of New Jersey.**
This case involves allegations of bid rigging and steering against numerous insurance brokers and insurers. The district court has granted final approval to settlements valued at approximately $218 million.